

## Turkmenistan

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

The Family and Marriage Code (2012) stipulates the primary legal structure for families. Women and men have equal rights to marry (art. 25 of the Constitution; art. 15 of the Marriage and Family Code), provided that it was not a forced marriage or concluded with deceit (art. 4 of the Marriage and Family Code). Compelling or hindering women's right to enter into marriage (art. 162 of the Criminal Code), and kidnapping women for the purpose of marriage are punishable by law (art. 27 of the Criminal Code).

Informal relationships are not prohibited, nor are religious or customary marriage ceremonies, but they have no legal value. Only marriages concluded at a State Civil Registry are recognized (art. 3 of the Marriage and Family Code).

Women and men may enter marriage with foreign citizens and stateless persons (art. 14 of the Marriage and Family Code).

#### b) Child marriage

The (2012) Family Code raised the minimum age of marriage to 18 years for both sexes (UNICEF Girls Not Brides, 2016).

Marriages are still traditionally arranged by parents (Hays, 2016). A relatively small proportion of women are still married before 18 (FAO, 2017). According to UNICEF's State of the World's Children Report (2014), child marriage particularly occurs in rural regions and there are no laws addressing de facto unions involving underage brides. Problems of early marriage persist as women's status is indicated by marriage age and is closely related to their reproductive ability. As a result, mothers may risk their health due to childbearing at a young age, short intervals between childbirths and numerous childbirths (Gender Survey in Turkmenistan, n.d.).

#### c) Household responsibilities

The Family and Marriage Code (2012) regulates equal rights for women and men to be guardians (arts. 144 and 145), and to have shared parental authority (arts. 64 and 65). Women have the right to choose where to live and to travel (art. 24 of the Constitution and art. 1 of the Law).

In the late 90's, the number of female headed households increased due to men traveling abroad for work, amongst other reasons. Nevertheless, the stereotype of women as only mothers and caregivers remains strong (TIHR, 2012). It is common for women to bear the responsibility of the housework and children, while still maintaining economic independence (ILO, 2015). According to the Gender Survey in Turkmenistan (n.d.), most women are in a subordinated position to their husband, even if they earn similar incomes. The UN Committee on Economic, Social and Cultural Rights (CESCR) advised

Turkmenistan to expand awareness-raising activities countering negative traditional attitudes and stereotypes about the roles of women (CESCR, 2011).

Spouses are encouraged to have multiple children through various government initiatives. For example, in 2008 women who gave birth to and raised eight or more children were awarded and entitled to monetary and social benefits (TIHR, 2012). Working women who have three or more children pay 30% less in taxes, and for mothers with five or more children there is no tax obligation (Turkmenistan law dated 12 June 1999, “On amendments to the law on taxes and profits”).

#### **d) Divorce**

Under the Marriage and Family code, both spouses may initiate or finalise divorce, and the right to receive support after the dissolution of a marriage is established by law (art. 28). A man is not allowed to divorce his wife during her pregnancy or in the span of one year after the birth of a child (art. 33). Divorce performed outside of Turkmenistan is legally acknowledged (art. 216).

Divorce in rural communities are rare, particularly due to ‘bride price,’ which allegedly strengthens the marriage and keeps newlyweds from divorcing. The custom of paying a bride price (kalym) has increasingly been revived and payments to the bride’s family can range up to USD 10 000 (IWPR, 2012).

#### **e) Inheritance**

Spouses have the same legal rights to inheritance (Law on Property of 1993), and joint share of property (art. 21 of the Marriage and Family Code). Direct or indirect violation or limitation of human rights and/or civil freedoms on the grounds of gender is punishable by law (art. 145 of the Criminal Code).

Daughters and sons are equally heirs with rights in priority to inheritance (Art. 1154 of the Civil Code).

In practice, society favours men in instances of property, therefore the male relatives almost always receive the property rights (FAO, 2017). Inheritance is influenced by Turkmen custom and Islamic law. Sons have traditionally received the most inheritance, especially the youngest son who takes care of his parents and ends up receiving the remainder of his parent’s assets (Hay, 2016).

#### **More**

Polygamy is prohibited by law, and the legal framework does not provide for polygamous marriages under civil nor customary law. However, it remains a widespread practice (CEDAW, 2012). CEDAW expressed concern over the lack of legal provisions to address de facto unions, as it denies women redress or legal course of action in cases of separation or against husbands who take another wife (CEDAW, 2012).

## **2. Restricted Physical integrity**

### **a) Violence against women**

In 2007, the government passed a Gender Equality Act to help combat gender discrimination (The Advocates for Human Rights, 2013). Despite the lack of official data on cases of violence against women, NGOs report that violence against women is common (Human Rights House, 2012). In 2009,

the United Nations Development Program indicated that Turkmenistan was included in the category of countries in which "there are no or weak laws against domestic violence, rape, and marital rape, and these laws are not generally enforced." There are reports that honour killings may occur and are either overlooked or silenced (Bureau of Democracy, Human Rights, and Labour, 2016).

CEDAW (2012) and The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (2016) raised concerns over the absence of laws addressing violence against women, and Turkmenistan's failure to prevent domestic and sexual violence. The UN Convention on the Rights of Persons with Disabilities (CRPD) expressed concerns over the situation of women with disabilities, who face multiple and intersectional forms of discrimination, such as towards their right to be protected from violence (CRPD, 2015).

The government is striving to align with international standards and women's rights through the National Human Rights Action Plan (2016-2020) and National Action Plan on Gender Equality (2015-2020) (UN Women, 2016). Both aim to help prevent violence against women, with 15 benchmarks and 60 tasks to achieve (National Action Plan, 2015). It is still uncertain how effectively the measures will be implemented as public reports on progress have not yet been released (IPHR, 2017).

The revised constitution adopted in September 2016 does offer safeguards on equal rights and prohibits discrimination based on sex. States that violate the equality between sexes are subject to criminal responsibility (articles 28 and 29) (IPHR, 2017).

### **b) Domestic violence**

Domestic violence remains largely unaddressed in Turkmen society (The Advocates for Human Rights, 2013), and is particularly common in rural areas (FAO, 2017). Legislation criminalizing domestic violence is lacking (Articles 2, 3, 7, and 26 of the Criminal Code) and cultural bias against reporting or acknowledging abuse makes it difficult to determine the extent of the problem (CCPR, 2017).

Domestic violence, including spousal abuse, are prohibited through provisions in the criminal code that address intentional infliction of injury (Bureau of Democracy, Human Rights and Labour, 2016). CEDAW urged the government to expeditiously adopt comprehensive laws addressing all forms of violence against women in 2012 (IPHR, 2017). Turkmenistan told the UN Human Rights Committee in 2016 that they were in the process of determining whether it was necessary to adopt special legislation on domestic violence. CAT (2016) urged Turkmenistan to promptly create legislation on domestic violence as a separate crime in the Criminal Code; calling on the government to establish an effective complaints mechanism and ensuring all allegations are investigated and the perpetrators are prosecuted and punished.

The CEDAW committee reported that many women victims remain silent, as it is socially legitimized and accompanied by impunity (CEDAW, 2012). Cases of violence are therefore underreported, and women remain unaware of their rights (TIHR, 2012; CEDAW, 2012).

An NGO (Keik Okara), supported by the Organization for Security and Co-operation in Europe (OSCE), maintained a shelter for victims of domestic violence. According to reports, they provided a domestic violence hotline, free legal consultations, awareness-raising seminars and psychological assistance to victims of domestic violence. Additionally, it appears that one official women's rights group in

Ashgabat and several informal groups also assisted victims of domestic violence (Bureau of Democracy, Human Rights and Labour, 2016).

### **c) Rape**

Although rape, including spousal rape, is illegal and punishable by law (art. 134 of the Criminal Code), it is not enforced effectively (TIHR, 2012).

There is nothing in the Criminal Code to suggest that the perpetrator may escape punishment due to cultural, religious or customary practices (FAO, 2017). Penalties for rape can range from three to ten years in prison, but it depends on the extent of injury and if the rapist was a criminal or not (TIHR, 2012). Rape of a victim under 14 years of age has an increased penalty of ten to twenty-five years in prison (Bureau of Democracy, Human Rights and Labour, 2016).

There is little to no evidence of court cases addressing this matter even though women have full access to the legal system and have the option to receive free legal assistance (FAO, 2017; OHCHR, 2015).

### **d) Sexual harassment**

There is no comprehensive legal framework that addresses sexual harassment, but compelling a person to engage in sexual relations is a criminal offence (art. 137 of the Criminal Code)

Although sex education is provided through the national sexuality education programme (CSE) (UNFPA, 2016), the curriculum does not cover sexual violence or training on self-control of aggression (including sexual aggression) (OHCHR, 2015).

### **e) Female genital mutilation**

There is no evidence of female genital mutilation in Turkmenistan and it is not criminalised (OHCHR, 2015).

### **f) Abortion**

Abortion is legal on demand (Population Policy Data Bank, 2017). Abortion requires the consent of the pregnant woman, and is available within the first 12 weeks of pregnancy. Married women do not need permission from a parent or husband to seek abortion. Women under the age of 18 need permission from a parent or guardian to seek a legal abortion or access contraceptives (OHCHR, 2015).

After 12 weeks, induced abortion is accessible within 28 weeks from conception, “on judicial, genetic, vital broad medical and social grounds, as well as personal reasons with the special authorization of a commission of local physicians” (Population Policy Data Bank, 2017).

According to article (19) of the Law on Health Protection Act, 2002, as amended by Law of 2015, reasons for abortion include family planning, preservation of health (physical and mental), and prevention of unwanted pregnancy (OHCHR, 2015).

The Turkmenistan Programme Activities (2016) has focused on improving sexual and reproductive health services aimed to be gender-responsive (UNFPA, 2016). However, the same focus has not been placed to cover the cost of modern contraceptives and other reproductive health supplies (UNFPA, 2016). At-risk women may still not have full access to voluntary family planning services and supplies.

## More

The Criminal Code punishes prostitution by two years' imprisonment or forced labour. Involving a minor in prostitution or using force, threat, or blackmail to involve someone in prostitution is punishable by three to eight years in prison. Articles (138-142) of the Criminal Code prohibit prostitution-related activities.

The Committee on the Elimination of Racial Discrimination (CERD) (2017) welcomed Turkmenistan's adoption of new legislative and policy measures, including the National Human Rights Action Plan for 2016-2020 on 15 January 2016, the National Action Plan on Gender Equality for 2015-2020 on 22 January 2016, and the National Action Plan to Counter Human Trafficking 2016-2020 on 18 March 2016.

Despite these measures, Turkmenistan failed to respond to requests from the UN Special Rapporteurs and rejected international scrutiny from UN bodies (Amnesty International Report, 2017).

### 3. Restricted Access to productive and financial resources

#### a) Secure access to land and assets

Contracts and the contents within it may be freely concluded by men and women, within the boundaries of the law (art. 333 of the Civil Code), in addition to owning, using and disposing of movable and immovable property (art. 166 of the Civil Code).

Property acquired by married couples are their shared property, even when one partner is occupied in maintaining the domestic household and in caring for children, without an independent source of income. Spouses have the same rights of ownership, including the disposal of the property. In the event of divorce, a court may recognize the property acquired by each of the spouses as joint property (arts. 21 and 22 of the Marriage and Family Code).

In reality women face de facto discrimination. Many Turkmen families, especially those living in rural areas, only allow men to manage the land, have access to land and water use, and make the final decisions regarding land use (Gender Survey in Turkmenistan). Negative cultural mentality regards a girl as the father's property until she is married, then she is regarded as her husband's property (Hays, 2016).

#### b) Secure access to formal financial resources

Women and men have equal rights to apply for and receive agricultural credits and loans and the Law of Turkmenistan on Commercial Banks and Bank Activity of October 1993 access to loans (art. 13) did not depend on the sex of the borrower. The right to take out loans against immovable property and other forms of financial credits are stipulated by civil law (Clause 1, art. 1, Civil Code). Nevertheless, women face de facto discrimination due to cultural bias.

The right to manage a family's budget, to have access to financial resources and to make decisions, is hindered by social norms imposing that women's assets be mediated by men. Women's income has increasingly approached the income of men, yet women are discriminated against when it comes to having the right to manage the family budget, and making decisions equally with their spouses (Gender Survey in Turkmenistan).

Women have access to a state pension at age 57 and men at age 60 (art. 5 of the law “On pensions”). Pensions are granted to women after 20 years of service, whereas men receive it after 25. The amount paid corresponds to the time worked.

### c) Workplace rights

Articles (81) (169) (170) and (175) of the Labour Code provide women with lighter work, frequent breaks, and reduced output norms than men. There are also restrictions on working time, overtime work and night work, limiting women’s economic opportunities in several areas (CEDAW, 2012).

Articles (2) (3) and (26) of The Labour Code restricts women’s choice of employment based on stereotypes favouring male positions (CCPR, 2017).

Reports indicate that sexual harassment exists in the workplace and there is no law that specifically prohibits it (Bureau of Democracy, Human Rights and Labour, 2016; The Advocates for Human Rights, 2014).

Under the Labour Code, reduction in payments for workers as a function of gender is prohibited (art. 78) (art. 31 of the Constitution), any indirect or direct limitation in hiring as a function of gender is prohibited (art. 16) (art. 4 of the law “On the employment of the population”), and refusing to hire women or reducing their wages due to: pregnancy, presence of small children or disabled children is prohibited (art. 176). Any unjustified refusal to hire or reason to fire pregnant woman on the said grounds are punishable by law (art. 152 of the Criminal Code).

Women may take unpaid leave to care for their children up to age of three (arts. 15 and 16 of the law “On leave”), in addition to 11 months of vacation (art. 9 of the law “On leave”). Considering women are granted extended time-off, employers allegedly prefer to employ men to avoid losing employees due to pregnancy or child-care duties (Bureau of Democracy, Human Rights and Labour, 2016; TIHR, 2012).

In Turkmen society, stereotypes of what is female work exists. Women are encouraged and taught to be happy with auxiliary positions (Puls of Central Asia, 2015). Men dominate decision making positions and the government sector, whereas women are concentrated in the health-care, education, and service professions (Bureau of Democracy, Human Rights and Labour, 2016). At the same time, a handful of women hold high level positions but still represent the traditional image of Turkmen women. This paradox stems from the changing environments and mind-sets in urban and rural environments (Puls of Central Asia, 2015). In rural areas, women account for most home farm workers and household workers, where “widespread home farming and leasing of agricultural land result in the use of women and children as unpaid labour” (FAO, 2017).

The Constitution guarantees the right to participate in managing affairs of society and the state (art. 29), and elections for the President, deputies of the Majlis, khalk vekilleri, and members of the Gengeshi are universal and uniform (art. 87). According to the law “On service in the apparatus of state bodies,” the right to serve in the state apparatus is “held by citizens (...) regardless of gender” (art. 5).

Although all citizens have the right to choose a profession and the type of employment (art. 31 of the Constitution) (art. 43 of the Labour Code), most jobs favour ethnic Turkmen males. Women of ethnic minorities suffer from twofold discrimination, especially those wanting to obtain a position in a



governmental institution (Human Rights House, 2012). Restrictive laws plus negative traditional attitudes remain the root cause for the disadvantaged position of women (Economic and Social Council, 2011).

## 4. Restricted Civil liberties

### a) Citizenship rights

Men and women have equal rights to obtain, preserve and relinquish citizenship (art. 7 of the Constitution). Citizenship is equal for all regardless of how it was obtained (art. 5 of the Law on Citizenship).

By law a child derives citizenship from his/her parents. If the child lives outside of Turkmenistan the citizenship is determined by agreement of the parents (art. 13 of the law on Citizenship). Birth registration entails documentation that confirms Turkmenistan citizenship, such as the passport or other document confirming Turkmen citizenship issued by the authorized government agencies. Children under 16 may be confirmed by his or her birth certificate or the passport of the parent/parents who is a citizen of Turkmenistan (Law of 2013 on Citizenship).

Women do not lose their citizenship status after marriage or divorce. A change of citizenship by one of the spouses shall not entail the change of citizenship of the other spouse. Neither marriage nor dissolution of a marriage of a Turkmen woman with a foreign citizen shall entail the change of citizenship (art. 16 of the Law on Citizenship).

The Human Rights Committee expressed concern on restrictions placed on Turkmen citizens from exit and entry into the country (Human Rights Council, 2013), particularly in 2015 when a woman and her two children were unduly barred from leaving the country due to her father being an exiled former politician (HRW, 2016; Amnesty International, 2017).

### b) Voting

Women received the right to vote (art. 89 of the Constitution) and stand for election in 1927 (Country Review, 2017). Women and men, at the age of 18 years and older can vote (WIPO, 2008).

Restrictions on voting and candidate rights exist for citizens serving a prison sentence, irrespective of the seriousness of the crime (OSCE/ODIHR, 2013). Other persons that do not participate in elections include the mentally ill and those judged by a court to be incompetent (art. 87 of the Constitution).

Despite amendments and women's increased right to vote, many issues remain unaddressed, including provisions related to suffrage rights (OSCE/ODIHR, 2013). There is a lack of clarity in regulating important aspects of the electoral process, such as insufficient detailed provisions of voter lists and provisions promoting women's participation in the electoral process (OSCE/ODIHR, 2013: 5).

### c) Political voice

Men and women have equal civil rights, and violation of equality because of sex entails accountability (arts. 18 of the Constitution).

Public women's rights organisations and groups must be registered under the Women's Union of Turkmenistan, a state structure financed by the government (Human Rights House, 2012).

There are no legal restrictions on the participation of women in the political process, but women are underrepresented in all areas of government and politics (European Forum, 2017; CEDAW, 2012; UN women, 2012). There are no quota systems or temporary special measures implemented to further support women's participation in political and public life (CEDAW, 2012).

The Convention on Civil and Political Rights (CCPR) (2017) and CEDAW (2012) expressed concern over the continued systematic discrimination women face in the public and private sectors (CCPR, 2017 & Human Rights Council, 2013). The OSCE Ministerial Council critiqued the law on political parties, as the laws are too general and therefore insufficient to ensure effective gender equality (OCSE/ODIHR, 2012).

#### d) Access to justice

Men and women have equal civil legal capacity and may not be deprived of it (art. 20 of the Civil Code). By law, "citizens are guaranteed judicial protection of their personal and political human rights and civil freedoms" (art. 40 of the Constitution). The constitution guarantees access to a fair judicial system, regardless of gender (art. 105 of the Constitution). A citizen may not be denied or limited in his or her legal capability (art. 24 of the Civil Code).

Complaints may be filed in the *Kazyeta* (court) regarding actions of officials, authorities, private persons, state bodies, and/or social organisations. Citizens have the right to judicial procedure to demand redress for material or psychological damages inflicted upon them (art. 41 of the Constitution).

Amendments to the law "On the judicial system and the status of courts in Turkmenistan" realize that judicial power is to be recognised on the basis of equality (art. 6). Judicial protection for personal property and non-property rights, for example, are without regard to gender, and stipulated by the Civil Code of Turkmenistan (arts. 15 and 16,). In developing the constitutional right to judicial protection "On judicial recourse for actions," men and women may take legal recourse if their constitutional rights have been violated, interfered with, or hindered in their perception (arts. 2 and 5 of the law). Government bodies, enterprises, organisations and/or officials are prohibited from denying a woman's petition based on gender, and must assure restitution of the violation if so (arts. 4 and 11 of the law).

The government guarantees non-discrimination of women through the activities of state bodies and institutions, such as through the office of the prosecutor, whose job is to monitor and observe the legality of activities carried out (art. 108 of the Constitution) to ensure that violations or limitations are not geared towards women. If so, the prosecutor then acts until restitution is assured (arts. 21, 23 and 24 of the law "On the state prosecutor"). Additionally, professional unions are entitled to raise concerns that limit the rights and interests of men and women (art. 14 of the laws of the trade unions), and the Union of Women of Turkmenistan (Gurbansoltan-eje) is to cooperate in assuring the rights of women.

Many laws remain gender neutral, perpetuating indirect discrimination against women in court (CEDAW, 2012). General recommendations from CEDAW were not sufficiently referred to in the national court decisions to ensure the standards and norms of the Convention, and therefore no recorded cases invoking CEDAW in court existed. Women did not go to the courts even though they



had the right to do so, most preferred to resolve matters themselves or within the family (CEDAW, 2012).

### More

UNCT (2012) reported the amendments Turkmenistan made to the Criminal Code, such as penalizing the torture of women Article (1821), and special provisions aimed at improving the conditions of women in custody (Human Rights Council, 2013).

The United Nations Development Assistance Framework (UNDAF) for Turkmenistan (2010-2015 UNFPA) analysed Turkmenistan's national priorities and needs. This included capacity development efforts towards gender-sensitive national policies to ensure gender mainstreaming in development planning (UNFPA, 2009). Another initiative was to promote gender equality and empower women (UNDAF, 2009).

UNHCR recommended that Turkmenistan revise the 2012 Refugee Law to include a gender based approach, and recognition of the principle of *non-refoulement* (Human Rights Council, 2013).

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