

Uzbekistan

1. Discrimination in the family

a) Overarching legal framework for marriage

Women do not have the same rights as men to enter into marriage. The overarching legal framework for marriage is codified within the Constitution of Uzbekistan, which guarantees that the union shall be based upon the equal consent of both parties (Constitution of Uzbekistan, s. 63). Marriage is considered the primary unit of Uzbek society and both parents have the responsibility to care for and support children until age of majority at 18 (s. 64). Explicit references to the illegality of homosexual relations between two males as well as the prohibition of polygamy within Uzbek society underline that marriage may only be contracted between two, consenting, heterosexual individuals (s. 120-126).

In addition to recognising the consensual nature of a marriage, Uzbekistan Criminal Code prohibits bride kidnapping and forced marriage: a woman may not be forced to marry, forced to continue cohabitation against her free will, or prevented from getting married against her wishes. Likewise, a woman may not be abducted with the sole purpose of marrying her against her will, often referred to as “bride kidnapping”. Violation of these laws carries a punishment of a fine of up to 25 monthly wages, correctional labour of up to 3 years, arrest of up to 6 months, or imprisonment up to 3 years (Criminal Code of Uzbekistan, art. 136).

Despite these legislative prohibitions, there is evidence of the continued existence of both violent and non-violent bride kidnapping in Uzbekistan. Reports from UNFPA Uzbekistan (2012) indicate that the practise remains a customary tradition, and frequently includes the consent of both spouses before the bride kidnapping occurs. Anecdotal evidence gathered in the same report suggested that bride kidnapping may be used as a means to avoid the costs of traditional marriage or to bypass a mourning period after the death of a family member (Girls Not Brides). A separate report from the World Organisation against Torture (2007) suggests that violence against women in the form of bride kidnapping, as well as child marriages and polygamy, remained a significant concern.

Despite articles 46 and 18 of the Constitution of Uzbekistan guaranteeing equal rights as well as equality before the law respectively, discriminatory practices in the household limit women’s ability to realise these rights. The CEDAW Committee’s *Concluding Observations on the 5th Periodic report of Uzbekistan* highlights the sustained existence of highly patriarchal attitudes towards women in the family. These attitudes subordinate women within the family and define stereotypical gender roles, which may limit both education and employment outside of the home (UN Committee on the Elimination of Discrimination against Women).

b) Child marriage

While the age of majority is 18 years of age in Uzbekistan, Uzbek family law stipulates differing legal marriage age requirements for women and men: men have the right to contract a marriage from 18 years of age while women may legally conclude a marriage upon reaching 17 years of age. Additionally, under article 15 of the Family Code, the *hokim*, or mayor, of a district or town has the right to reduce the legal age requirement by one year to 16 for women and 17 for men. The Family Code does not specify the exceptional circumstances by which the legal minimum age requirement may be reduced;

however, in practise, it appears that unplanned pregnancy may serve as a common justification (Girls not Brides, 2012).

According to NGO reports, there exists some indication to suggest that the legal age requirement is often evaded through the practise of religious marriages, which are not registered with the government of Uzbekistan (Cavanaugh, pg. 9).

c) Household responsibilities

Regarding household responsibilities, article 2 of the Family Code of Uzbekistan outlines that women and men in marriage shall have equality of personal and property rights as well as a mutual consent in decision-making. Likewise, article 22 of the Family Code states that both spouses have the individual right to decide to choose where to reside as well as his or her occupation (Asian Development Bank, 2008).

Despite legislation codifying equality within the household, it appears that there is a divergence between the law and customary practise. According to the Gender and Land Rights Database (2017), men are most often considered the *de facto* head of the household. This may impact women's ability to access land when land is deeded solely to the head of household, most likely the husband or father.

According to article 61 of the Family Code, it appears that upon registering a child with the authorities of Uzbekistan, a mother is automatically granted guardianship of her child, irrespective of marital status. If, however, the father would like to claim paternity, he needs the consent of the mother, verified by a joint statement made by both parties (Asian Development Bank, 2008).

d) Divorce

All citizens of Uzbekistan have equal rights to pursue divorce proceedings under article 37 of the Family Code (1998). The law makes no distinction between women and men in the right to instigate divorce proceedings. Likewise, article 39 of the same code carries a disposition protecting women from financial hardship during pregnancy and young motherhood, stating that a man may not file for divorce during a wife's pregnancy or if the child is under one year of age (Asian Development Bank, 2008).

With respect to assets acquired within marriage and treatment during divorce, Uzbek law protects women's right to access an equal shared of joint property acquired during the course of marriage (Gender and Land Rights Database); however, proceeding a divorce, suggests that women may be left with little to no property rights in practice despite these guarantees (Refugee Review Tribunal).

In practice, however, women may be discouraged from pursuing divorce, even in cases of reported domestic violence. In addition to discriminatory traditions discouraging women to inquire into divorce proceedings, the process to finalize a divorce is highly complicated and rests as an effective barrier to both parties finalising a divorce. In addition to filing a divorce through the judicial system, one or both partners must also file a petition with the local, "reconciliation commission". This commission, or "mahalla" acts as a local governmental body with adjudicating powers. Reports indicate that the local commission often has an interest in refusing the petition for divorce in order to avoid heightened divorce statistics in the region. It appears that divorce has continued to be discouraged by both women and men (Women Living under Muslim Laws, 2006).

e) Inheritance

The right to property and to inheritance is guaranteed by the Constitution of Uzbekistan under article 36 as fundamental economic and social rights. Despite this guarantee in addition to article 46 assuring equal rights for women and men, there is evidence to suggest that patrilineal inheritance continues to be practised (FAO, 2017). The Gender and Land rights database indicates that, as a result, inheritance is typically transferred from father to son. There are reports of female siblings renouncing their legal share of inheritance in order to avoid conflict with their family (FAO, 2017).

2. Restricted Physical integrity

a) Violence against women

There does not appear to be a law that addresses explicitly sexual violence or violence against women. There is, however, evidence to suggest that violence against women, particularly, early marriages, polygamy and bride kidnapping, remain a concern in Uzbekistan (World Organisation against Torture, 2007). The CEDAW Committee (2015) notes that, while international law does take precedence over national law in Uzbekistan, it is rare that applicable dispositions from the CEDAW Convention are applied in cases of violence against women. Moreover, women seem to continue to be unaware of the existence of the Convention or her ability to invoke its dispositions. While a law on violence in the family has been drafted in previous years, it has not been implemented (CEDAW, 2015).

b) Domestic violence

There is currently no legislation on domestic violence in Uzbekistan. Legislation targeting violence in the family have been drafted; however, there is no evidence to suggest the passage of the draft law (CEDAW, 2015). Domestic violence remains an issue within Uzbekistan: Reports from the CEDAW Committee state that domestic and sexual violence remains of high concern. Moreover, the Committee purports that the state of Uzbekistan has furnished insufficient statistical information, particularly concerning victim-perpetrator relationships. Lacking legislation regarding domestic violence, customary practise and tradition appears to indicate that domestic violence remains largely a private matter between family members or within the locality, or *mahallah*. The *mahallah* appears to be responsible for reconciliation between the victim and the perpetrator of domestic violence.

Additionally, there is some indication to suggest that there is a correlation between domestic violence and female suicide rates due to the lack of laws targeting domestic violence, the lack of support for women to report, and an overall lack of public resources dedicated to the issue including safe houses. It is clear from anecdotal evidence reported by the World Organisation Against Torture that suicide remains linked to violence both within and outside of the family sphere as well as financial strain in Uzbekistan (World Organisation Against Torture, 2007).

c) Rape

Rape is prohibited by the Criminal Code (Criminal Code of Uzbekistan, s. 118). The definition of rape provided by Uzbekistan is sexual intercourse that is obtained by force or threats thereof. Likewise, sexual abuse of a helpless person is tried as rape and both crimes carry a sentence of 3 to 7 years (s. 118). Multiple acts of rape, rape committed by a recidivist, gang rape, or rape threatening to kill carries a sentence of 7 to 10 years. Rape of a child under the age of 18, of a family member, or rape that resulted in "grave consequences" is punishable with a prison sentence from 10 to 15 years. Envisaging Rape of a child under 14 years age carries a sentence of 15 to 20 years.

Spousal rape is not included in the Criminal Code; however, the code does coercion of a woman to sexual intercourse. This protects women from intercourse that has been coerced by a perpetrator due to a vulnerable position such as financial dependence. This could be used to charge a spousal perpetrator who has not necessarily used physical force or the threat thereof to conclude sexual intercourse (Criminal Code of Uzbekistan). The sentence associated with the crime of coercion of a woman to sexual intercourse is correctional labour up to two years or imprisonment up to six months. The same crime accompanied by sexual intercourse carries correctional labour between two and three years or imprisonment between three and five years (Criminal Code of Uzbekistan, s. 121).

The age of majority for engagement in consenting sexual intercourse is 16 years old in Uzbekistan. As a result, consensual sexual intercourse with a minor under the age of 16 is considered statutory rape and carries a sentence of correctional labour up to two years, arrest up to six months, or imprisonment from three to five years (Criminal Code of Uzbekistan, s. 128). Likewise, intercourse between two minors under the age of 16 or a minor under the age of 16 and a child under the age of 18 is also considered statutory rape. There is no evidence to suggest that statutory rape is decriminalised between two, consenting minors were of similar or identical age.

d) Sexual harassment

Sexual harassment does not appear to be explicitly prohibited by the Labour or Criminal Code of Uzbekistan; however, the Criminal Code does state that a woman may not be coerced into sexual intercourse due to a position of dependence, financial or otherwise, by the perpetrator (Criminal Code of Uzbekistan, s. 121). As a result, any act of sexual intercourse committed in the workplace by use of coercion could be prohibited under this law. Any other acts included verbal or non-verbal communication with the victim and sexual acts outside of intercourse committed by a perpetrator in a position of authority, particularly in the workplace, do not appear to be included however. The CEDAW Committee expressed concern over the general lack of information regarding legislative measures prohibiting sexual harassment, as well as any information indicating measures to prosecute and sentence sexual harassment offenders in Uzbekistan (CEDAW, 2015).

e) Female genital mutilation

There is no evidence to that female genital mutilation (FGM) is a concern in Uzbekistan (UNICEF, 2016). Additionally, there is no evidence to suggest the presence of laws criminalizing the practise of female genital mutilation.

f) Abortion

Abortion is available on request up to the first 12 weeks of pregnancy in Uzbekistan, which must be performed by a licensed physician or approved medical facility who has acquired the consent of the pregnant woman. After 12 weeks, a pregnant woman may pursue an abortion based upon economic or social, judicial, health, or general medical grounds. Such grounds include to save the life of the woman, to preserve physical or mental health of the pregnant woman, foetal impairment, inadequate financial resources, or in cases of rape or incest. Decisions to terminate a pregnancy between 12 and 28 weeks require the special authorization of a commission of physicians based upon region. There is no evidence to indicate that the law requires a pregnant woman to seek the consent of a father or spouse to proceed with an abortion (Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat).

In regard to criminal violations, the termination of a pregnancy by a certified physician or gynaecologist outside of the constraints of a certified medical institution carries a fine up to 25 months

of wages, correctional labour between one and two years, or deprivation of certain liberties up to three years. Likewise, abortion carried out by a non-licensed medical professional or private citizen shall be punished with a fine between 25 and 50 months of wages, correctional labour between 1 or 2 years, or arrest of up to 3 months. In either case, an abortion carried out in violation of this disposition shall be punished with either correctional labour between 2 to 3 years or imprisonment of up to 5 years if the pregnant women dies or suffers other grave consequences (Criminal Code of Uzbekistan, s. 114). Similarly, it is illegal under Uzbek law to coerce a woman into terminating a pregnancy. If an abortion occurs due to said coercion, the perpetrator will be punished with a fine of up to 50 months of wages, correctional labour of up to 2 years, or arrest of up to 6 months (s. 115).

In recent years, the Republic of Uzbekistan has made efforts to reduce the high number of abortions; however, these efforts appear to be related to an increase in the use of female sterilization methods. The CEDAW Committee report (2015) suggests that female sterilization has been employed due to a lack of access to reversible methods of contraception such as family planning resources, birth-control pills, and contraceptives. There is also evidence of allegations that female sterilization has occurred without the free and informed consent of the women having undergone the procedure. Sterilization procedures may have the consent of the women without her necessarily understanding its irreversibility. Likewise, it appears that the state has not passed legislation which would criminalize the practise of forced or non-consensual sterilization for both genders and would additionally require medical practitioners educate female patients undergoing the procedure. (CEDAW, 2015).

More

Discrimination against The LGBTQ community remains a concern in Uzbekistan. The OHCHR reports that LBTQ Women in Uzbekistan experience high levels of discrimination and sexual harassment, often leaving them unemployed or forced to marry in order to reduce the social stigma associated with her sexuality. LBTQ women may be forced to conform to societal and familial expectations or immigrate to another country, a difficult option for women who are not financially independent (OHCHR, 2010).

Separately, Trafficking in persons remains a significant concern in the international community: According to the most recent *2017 Trafficking in Persons Report*, the Republic of Uzbekistan remains incompliant with the minimum international standards regarding elimination of trafficking. Trafficking of children and adult labourers ultimately aimed for use in forced labour also continues to be of concern (United States Department of State). Notwithstanding, the government of Uzbekistan has continued campaigns aimed at raising awareness against child labour, particularly in the industry of cotton harvesting. These sustained efforts have effectively reduced the number of girls and boys working illegally in the child labour cotton industry (CEDAW, 2015).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Under the Constitution of Uzbekistan, all Uzbek citizens have the Constitutional guarantee to own and dispose of property at her or his own discretion. This includes ownership, employment, and the right to any revenues generated from said property ownership. The Constitution also guarantees the right and privacy of bank deposits and the right to inheritance, which provides secure access to land and asset allocation (Constitution of Uzbekistan, s. 36, 54). Likewise, the Civil Code of Uzbekistan guarantees the right to possession and disposal of private property as well as the right to recourse in the case of an eventual infringement of rights (Civil Code of Uzbekistan, s. 164).

Under article 2 of the Family Law Code of 1998 guarantees equal property rights between spouses and the right to personal property ownership (Asian Development Bank, 2008). Joint property acquired during marriage is shared and administered by both spouses. Spouses also have the right to enter into the marriage, having specified joint and separate property ownership through the writing of a marriage agreement (Land Code of Uzbekistan). While these rights are guaranteed under the Family Code and the Land Code, there is evidence to suggest that men are typically the *de facto* head of household and thus may be likely to administer joint assets without the consent of the wife. In addition, there are reports of land being deeded solely to the de-facto head of household, i.e. the man, impacting women's ability to access land. Thus, Women's access to land as a beneficiary is largely through unpaid labour activities such as food production for the family (Gender and Land Rights Database, 2017).

b) Secure access to formal financial resources

According to article 36 of the Constitution, everyone shall have the right to own property. The privacy of bank deposits and the right to inheritance shall also be guaranteed by law. This constitutional disposition guarantees secure access to immovable and movable property to all citizens irrespective of gender, which constitutes a necessity for guaranteeing access to formal financial resources (Constitution of Uzbekistan, s. 36). There is no explicit evidence of discriminatory practices limiting secure access to formal financial resources; however, it could be suggested that women may not customarily have such access in highlighting the fact that men are considered the *de facto* head of household for most families in Uzbekistan (Gender and Land Rights Database). In this case, it would be the male who would manage financial household resources, thus limiting the opportunity for a woman to be able to do so in the name of both spouses or for personal financial use.

c) Workplace rights

The overarching legal framework for workplace rights guarantees women and men equal rights within the sphere of labour participation: Any restriction that would prohibit either sex from equal access to the labour market is considered *de jure* discrimination. These same rights are codified in the Constitution under article 18, which prohibits discrimination based upon sex (Constitution of Uzbekistan). Likewise, equal remuneration for jobs providing equivalent services under Uzbek law is also codified by law (Asian Development Bank, 2008). The Labour Code does, however, restrict women's ability to access the labour market by including a number of dispositions, which prohibit women from working in certain industries, as well as placing restrictions on working overtime and night hours under the guise of protecting women's health. These provisions are intended to protect women, particularly pregnant women and young mothers, which are considered as valuable, social protections. As a result, the restrictions are not considered to be discriminatory towards women (Asian Development Bank, 2008).

Paid maternity leave is also guaranteed by the Labour Code under article 233, which is covered 100% by the government of Uzbekistan. 100% of the wages accrued during maternity leave are paid to the women during a period of 18 weeks (World Bank Group).

Notwithstanding the above legislation, there is evidence to suggest that, in practice, few employers adhere to measures guaranteeing equal pay. In addition to discriminatory practices in pay, women find it more difficult to obtain and sustain employment due to long-standing patriarchal attitudes, which assign stereotypical gender roles to women. (CEDAW, 2015).

4. Restricted Civil liberties

a) Citizenship rights

According to article 1 of the Law on Citizenship in the Republic of Uzbekistan, every citizen has the right to citizenship and no one may be unlawfully deprived of citizenship or the right to alter citizenship thereof. In addition to the right to citizenship guaranteed under article 1, article 2 assures equality before the law: Irrespective of how citizenship is acquired, all citizens are equal once granted citizenship rights. All citizens are equal under the law irrespective of other attributes, including sex.

There is no evidence to suggest the presence of discriminatory practices in relation to birth registration of children in Uzbekistan. Additionally, the law confirms that both women and men have equal right to pass citizenship to both foreign spouses and children (Law on Citizenship in the Republic of Uzbekistan, s. 1-2).

b) Voting

Under the Constitution of Uzbekistan, all citizens of the Republic have the right to vote irrespective of gender. This right is obtained upon reaching 18 years of age. General elections are guaranteed with equal and direct suffrage by secret ballot (Constitution of Uzbekistan, s. 117). While voting rights for both genders are guaranteed, it appears that women may be excluded from political participation as a result of the system of registration. The CEDAW Committee noted its concern in the most recent report (2015) that married women could be excluded from voter registration lists if they are living in a home registered solely under the male head of household without temporary or permanent registration. It also appears that single or divorced women are less likely to appear on a voter registration list. In addition to concerns over voter registration, there appears to be insufficient sex-desegregated data as well as a lack of coordination between the Central Election Commission and other government ministries that may have more complete lists of citizens able to vote. (CEDAW, 2015).

c) Political voice

Women and men have the same rights to hold political office in Uzbekistan; however, as a result of concerns over female participation in both state and local elections, the state of Uzbekistan implemented legislation mandating a 30% quota for political party candidate lists. While this quota has aided in proving a marginal increase in women's participation, particularly for women as head of *mahallas*, there is a low percentage of women participating in public and political life. It is reported that not only has women's participation in parliament been stagnant, but also appears to be in decline from 2015 electoral results. The CEDAW committee regrets that Uzbekistan lacks sufficient action plans aimed at education and capacity-building to promote women's political participation (CEDAW, 2015).

d) Access to justice

Access to justice is guaranteed under the Constitution under article 44, which states that all citizens of Uzbekistan are entitled to defend his or her rights and freedom. Additionally, she shall have the right to appeal any unlawful action undertaken by any state body, public official, or governmental association. This article guarantees the right to sue for both married and unmarried women of Uzbekistan (Constitution of Uzbekistan).

There is no evidence to suggest the existence of a disposition explicitly confirming women's testimony carries the same evidentiary weight as a man's. Notwithstanding, article 18 of the Constitution

guarantees equality before the law irrespective of sexual attribute, which should be applicable in attributing equal evidentiary weight between testimonies (Constitution of Uzbekistan, s. 18).

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