

TUNISIA

Under Tunisia's first post-independence leader, President Habib Bourguiba, important advances in women's legal rights and female education were made, unmatched by any other Arab nation.¹ As early as 1956, the government had amended the former family code, banning polygamy and repudiation, promoting consensual marriage and introducing equal divorce proceedings.² Further amendments to the personal status code, labour code, and criminal code further strengthened women's rights in Tunisia. The enrolment of girls in primary and secondary schools was accelerated, and by the 1980s, enrolment rates for both girls and boys were very high.³ That said advancement in ensuring women's rights and access to education has not translated into women's economic empowerment, as women's participation in the economic sphere remains low.⁴

Reforms to the Personal Status Code, Labour Code, and Penal Code undertaken in 1993 further reinforced women's social, cultural and political rights in Tunisia. Tunisia ratified the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) in 1985, but with reservations to Article 9(2), regarding the right of a woman to pass her nationality to her children; Article 15(4), regarding the right of the woman to choose her own domicile; several paragraphs of Article 16 related to marriage and divorce; and Article 29, regarding arbitration of disputes arising from the convention.⁵ All specific reservations were removed in 2011.⁶ The Optional Protocol was ratified in 2008.⁷ Tunisia has yet to ratify the Protocol to the African Charter on Human and People's Rights on the rights of women in Africa.⁸

In January 2014, Tunisia's parliament officially adopted a new constitution. Following critiques on the part of women's rights advocates in 2012 for language that referred to "complementarity" as opposed to equality between the sexes, the new charter now recognises equality between men and women for the first time.⁹ Article 21 of the constitution reads, "All male and female citizens have the same rights and duties. They are equal before the law without discrimination."

¹ Freedom House (2013); CIA (2013)

² Ben Salem (2010) p.488

³ Idem

⁴ UNECA (2009) pp.126, 130, 193; World Bank (n.d.)

⁵ United Nations Treaty Collection (n.d.); UNICEF (2011) p.1

⁶ UNICEF (2011) p.1

⁷ United Nations Treaty Collection (n.d.)

⁸ African Commission on Human and Peoples' Rights (n.d.)

⁹ BBC (2014); Freedom House (2013)

1. Discriminatory family code

Tunisian laws are largely based on the French Code. The Tunisian personal status code underwent significant amendments in 1956 and 1993, and as a result Sharia courts were abolished and many discriminatory clauses were removed. The country has a single unified court system and personal status code.¹⁰

In 2007, the personal status code was again amended to set the minimum **legal age of marriage** for men and women at 18,¹¹ although individuals below this age can get married with the consent of their guardians and special authorization from a judge, granted only for serious reasons and if in the best interests of the spouses (Art. 5).¹² In addition, Article 3 of the Personal Status Code requires consent of both spouses and dowry has been reduced to a symbolic sum of one dinar.¹³ Muslim women are not, however, permitted to marry non-Muslim men unless they convert; the same does not apply to Muslim men.¹⁴ While both women and men are free to choose their marriage partners, they are expected to seek their parents' permission and advice before marrying, and to respect their wishes in regard to suitable marriage partners.¹⁵ The law, however, prohibits intervention on the part of the father or guardian in the choice of a spouse or in the conclusion of the marriage contract (Art. 9).¹⁶ Figures for **early marriage** are as follows: according to the 2011-2012 Multiple Indicators Cluster Survey (MICS4), 0.4% of women aged 15-49 were married before the age of 15, and 5.1% were married before the age of 18.¹⁷ The United Nations (using data from 2004) reports that 2.1% of women age 15-19 have ever been married, divorced or widowed.¹⁸

The previous stipulation that wives are to obey their husbands was removed in 1993 and **parental authority** is to be shared between women and men.¹⁹ While article 23 of the Personal Status Code foresees the joint management of family life, including the raising of children and contribution to household expenditures and joint investments, the same article also grants the status of "head of the household" to the husband.²⁰ Many women NGOs are active to amend article 23 of the Personal Status Code to remove the status of "head of the household" to the husband in order to be more coherent with the shared parental authority between women and men as mentioned in the same article. Generally, fathers are viewed as having greater authority in family life, child rearing and decisions affecting family and children.²¹ In the event of **divorce**, custody is granted according to the best interests of the child, although the father remains a guardian. Reforms in 1993 amended the law to increase guardianship rights of custodial mothers.²² In practice custody is typically awarded to the mother until boys turn 7 and girls turn 9, at which point the father may request custody.²³

¹⁰ Ben Salem (2010) p.494; UNICEF (2011) p.1; World Bank (2013)

¹¹ Ben Salem (2010) p.494; UNICEF (2011) p.2

¹² Jurisite Tunisie, Articles 5 and 6 (2012); CEDAW (2010) p.51

¹³ CEDAW (2010) p.51

¹⁴ Ben Salem (2010) p.494

¹⁵ Idem

¹⁶ CEDAW (2010) p.51

¹⁷ MICS4 (2013) p.113

¹⁸ United Nations (2012) World Marriage Data

¹⁹ CEDAW (2010) p.16

²⁰ World Bank (2013)

²¹ Kte'pi (2013) p.1211

²² Ben Salem (2010) p.496

²³ Kte'pi (2013) p.1211; UNICEF (2011) p.2

Family law reform has not, however, addressed **inheritance** law, which continues to be governed by Sharia law. Under Sharia law, Muslim women may inherit from their father, mother, husband or children and, under certain conditions, from other family members. However, their share is generally smaller than that to which men are entitled. Daughters, for example, inherit only half as much as sons and widows without children may receive nothing.²⁴ Contrary to Sharia law, however, Tunisian law states that if a father has no sons, the inheritance passes to his daughter(s) rather than to his own family.²⁵ In addition, following a court ruling in 2009, it is now possible for non-Muslim women to inherit from their Muslim husbands.²⁶ In rural areas in particular, however, women often renounce their inheritance in favour of male relatives, in order to keep property and land within the family.²⁷ Some parents get around inheritance laws by gifting property or assets to daughters before they die; this practice is facilitated by tax exemptions granted on gifts made between parents and their children.²⁸

More

Polygamy has been illegal in Tunisia since 1956.²⁹ That said, many Muslim men feel that they are entitled to multiple wives if they have the finances to support them, and unofficial second wives or mistresses maintained in a second household are not unheard of.³⁰

Repudiation is illegal, and women and men have the same **divorce rights** in Tunisia, meaning that a divorce can be granted at the request of either spouse.³¹ Women who have been the victims of assault or battery at the hands of their husbands may also file for divorce on the grounds of the injury suffered.³² Tunisian law requires divorces to be registered with a civil authority, and all divorces take place before a judge.³³

The adolescent **fertility rate** is 6 births per 1,000 girls age 15-19.³⁴

2. Restricted physical integrity

Following amendments to the penal code made in 1993, **domestic violence** is also a criminal offence, punishable by imprisonment for up to 2 years.³⁵ In addition, the amendment treats marital relationships as an aggravating circumstance warranting a harsher penalty.³⁶ However, the law also provides that “withdrawal of the complaint by a victim who is an ascendant or spouse shall terminate any proceedings, trial or enforcement of penalty,”³⁷ the rationale being “to leave the door open for sound family reconciliation rather than closing it by seeking at all costs to punish the spouse (...)”.³⁸ The definition of domestic violence is also considered too narrow as it is not

²⁴ Kte’pi (2013) p.1212; World Bank (2013)

²⁵ Ben Salem (2010) p.499; CEDAW (2010) p.50

²⁶ Ben Salem (2010) p.499; UNICEF (2011) p.1

²⁷ Ben Salem (2010) p.498

²⁸ Idem, p.499

²⁹ Kte’pi (2013) p.1211; UNICEF (2011) p.2

³⁰ Kte’pi (2013) p.1211

³¹ Ben Salem (2010) p.495; Kte’pi (2013) p.1211; CEDAW (2010) p.51

³² CEDAW (2010) p.16

³³ Kte’pi (2013) p.1211

³⁴ United Nations World Fertility Data (2013), data from 2007

³⁵ Ben Salem (2010) p.495; CEDAW (2010) p.16

³⁶ Idem; Idem

³⁷ Ben Salem (2010) p.495

³⁸ CEDAW (2010) p.18

clear to what extent psychological violence is covered by the provisions of the Penal Code.³⁹

Generally, domestic violence is viewed as a private issue and the police typically refuse to intervene, often because they lack the training or resources to carry out investigations or protect victims effectively.⁴⁰ In addition, 30.3% of women questioned in the 2011-2012 MICS4 survey agreed that wife beating is justified in at least one of the proposed circumstances, indicating that societal acceptance of domestic violence remains prevalent.⁴¹ Women's rights organisations provide some support to victims, including in a crisis centre and a shelter.⁴² The first government-run domestic violence shelter and hotline opened in late 2012.⁴³ According to a 2010 survey, 10% of Tunisian women had experienced some form of violence (physical or sexual) at least once in their lifetime.⁴⁴

Rape is illegal under the Tunisian penal code, including spousal rape (Arts 227 and 227bis).⁴⁵ Very few cases, however, are prosecuted and Article 227 states that in the case of a statutory rape involving a minor female (between the age of 13 and 19), legal proceedings against the perpetrator may be dropped if the victim agrees to marry him.⁴⁶ Although marriages by law require the consent of both parties, girls may face familial and social pressure to marry the perpetrator in order to protect the honour of the family.⁴⁷

The Penal Code (Art 226-ter) was amended in 2004 to include **sexual harassment** as a criminal offence, carrying a penalty of one year in prison and fines.⁴⁸ The law does not specifically address sexual harassment in employment and has been critiqued as overly vague and susceptible to abuse.⁴⁹ Although sexual harassment is reportedly a problem, there is no data on prevalence. The Ministry of Justice and Human Rights recorded only one conviction for harassment in the 2008-09 judicial year, for which the penalty was limited to a fine.⁵⁰

There have been no documented cases of **female genital mutilation** (FGM) in Tunisia, and it is a criminal offence.⁵¹

More

Amendments to the penal code passed in 1993 abolished a previous provision that considered adultery as justifiable grounds for granting pardon to husbands who killed their wives, effectively criminalising '**honour crimes**'.⁵² It is unclear whether such crimes continue to take place.

³⁹ The World Organisation Against Torture (OMCT) (2002), p. 22

⁴⁰ Ben Salem (2010) p.496

⁴¹ MICS4 (2013) p.114

⁴² Ben Salem (2010) p.497; CEDAW (2009) p.18

⁴³ US Department of State (2012); Women's UN Report Network (2013)

⁴⁴ OECD (2014), Gender, Institutions and Development Database, <http://stats.oecd.org>

⁴⁵ CEDAW (2010) p.17

⁴⁶ CEDAW (2010) p.18; Tunisia Live (2012)

⁴⁷ Idem; Idem

⁴⁸ World Bank (2013); CEDAW (2010) p.17

⁴⁹ World Bank (2013); US Department of State (2012); AllAfrica (2012)

⁵⁰ CEDAW (2010) p.17

⁵¹ Ben Salem (2010) p.508; CEDAW (2009) p.17

⁵² Ben Salem (2010) p.491

Women are able to access contraceptive services in Tunisia, which are available from state-run clinics and hospitals.⁵³ According to the United Nations, 51.5% of women questioned reported using a modern form of **contraception**,⁵⁴ while 7% reported having an unmet need for family planning.⁵⁵

Abortion is available on demand in Tunisia.⁵⁶ Tunisia has generally had a long history of promoting reproductive rights and a dedicated office (National Office of the Family and the Population (ONFP)) directing family planning has been active since the early 1970s.⁵⁷

3. Son bias

The male/female **sex ratio** for the working age population (15-64) in 2013 was 0.97 and the sex ratio at birth was 1.07.⁵⁸ There is evidence to suggest that Tunisia is a country of low concern in relation to **missing women** due to elevated child sex ratios.

More

Under-five mortality rates are slightly higher for boys than for girls, as are malnutrition rates.⁵⁹ Gender-disaggregated data regarding immunisation rates also shows approximately equal coverage for both boys and girls (girls just slightly higher).⁶⁰

Primary and secondary school gross enrolment ratios (females as a percentage of males) similarly show approximately equal numbers for both sexes, with girls slightly outnumbering boys at the secondary level (primary GER: 96%; secondary GER: 103%).⁶¹ At tertiary level, female students also outnumber male students.⁶²

The figures above would not indicate that Tunisia is a country of concern in regard to son preference in early childhood care or access to education.

4. Restricted resources and assets

Women in Tunisia have equal ownership rights to property⁶³ and are free to **own and manage land** independently.⁶⁴ The default marital property regime is separation of property and the original owner has the legal right to administer their property during marriage.⁶⁵ Law 98-91 (1998) allows spouses to opt for the community of property regime, under which common goods may be transferred only with the consent of both spouses; lacking this option in the matrimonial contract, separation of property applies.⁶⁶

⁵³ Ben Salem (2010) p.507; CEDAW (2009) p.41

⁵⁴ United Nations, World Contraceptive Use (2012), data from 2006

⁵⁵ OECD (2014), Gender, Institutions and Development Database, <http://stats.oecd.org>

⁵⁶ UNDP (2010)

⁵⁷ Tunisia Live (2013)

⁵⁸ CIA (2013)

⁵⁹ MICS4 (2013) p.35; UNICEF (2014) p.34

⁶⁰ MICS4 (2013) p.52

⁶¹ UNICEF (2014) p.76

⁶² UNECA (2009) pp.3, 83; Ben Salem (2010) p.500

⁶³ World Bank (2013)

⁶⁴ Ben Salem (2010) p.498

⁶⁵ World Bank (2013)

⁶⁶ Ben Salem (2010) p.498

In practice, few women own land, and most **non-land assets** – whether owned or rented – is registered in the husband or father’s name.⁶⁷ In addition, as mentioned above, inheritance law continues to be governed by Sharia law, such that women inherit less than their brothers and may in fact renounce any inheritance in favour of male relatives, so as to keep property and land within the family.⁶⁸ As inheritance is the primary means of acquiring land rights in Tunisia, discriminatory succession norms can have a particularly strong impact on female property and land access.⁶⁹

Legally, women have equal **access to financial services** and may open a bank account in the same way as a man, have equal access to bank loans, and can enter into business and financial contracts independently.⁷⁰ The Ministry of Agriculture has a specific unit in place to provide rural women with targeted advice and support, and women are also able to access micro credit facilities.⁷¹ This may indicate that other forms of credit are less forthcoming for women. However, it appears that women are entering into entrepreneurship, as it is reported that women head an increasing number of businesses.⁷² Approximately 33% of the loans issued by the Tunisian Solidarity Bank were granted to women in 2010, and of these 43.3% were involved in small-scale activities.⁷³ Encouraging women’s economic participation through access to financial credit has been a focus of the Tunisian’s government.⁷⁴

More

The female activity rate was 25.8% against 70.3% for men in 2012.⁷⁵ Unemployment is more severe among women (22.5% in the third quarter of 2013) than men (13.1%), and affects twice the women graduated in tertiary education (43.5%) than male graduated (23.1 %)⁷⁶.

5. Restricted civil liberties

There are no legal restrictions on women’s freedom of movement and **access to public space**, and they do not need permission to obtain a passport or travel.⁷⁷ Married women may also choose where to live in the same way as a man.⁷⁸ On a day-to-day basis, however, the close association made between women’s behaviour and family ‘honour’ means that women’s freedom of movement may be restricted by husbands and male relatives.⁷⁹ In addition, data from the MICS4 survey reveals that 18.5% of women felt a husband is justified in beating his wife if she goes out without telling him.⁸⁰

⁶⁷ Ben Salem (2010) pp.498-499

⁶⁸ Kte’pi (2013) p.1212; World Bank (2013); Ben Salem (2010) p.498

⁶⁹ FAO (n.d.)

⁷⁰ Ben Salem (2010) p.498

⁷¹ UNECA (2009) pp.156-157; Ben Salem (2010) p.509; CEDAW (2009) p.47

⁷² CEDAW (2010) p.43

⁷³ Idem

⁷⁴ UNICEF (2011) p.3

⁷⁵ National Institute for statistics (2013)

⁷⁶ National Institute for statistics (2013, 4th quarter)

⁷⁷ Ben Salem (2010) pp.493-494; World Bank (2013)

⁷⁸ World Bank (2013)

⁷⁹ Idem, p. 493

⁸⁰ MICS4 (2013) p.114

Freedoms of expression, association and assembly have been heavily restricted in Tunisia before 2011.⁸¹ However, since the revolution of 2011, the government has not restricted the registration or work of private organizations, political parties, or women's organizations.⁸² Non-governmental organizations were legally prohibited from pursuing political activities under the Ben Ali regime, but since the fall of the latter, they have become increasingly active; especially vocal have been protests on issues such as women's rights, the role of religion in the state, and the needs of nomadic Berber communities.⁸³ Their existence is not, however, protected by any legal framework.⁸⁴ Women's rights groups are active in Tunisia on a range of issues, including raising awareness of violence against women and providing support to victims, campaigning for changes to the inheritance laws⁸⁵

Women and men have the same right to vote and stand for election in Tunisia.⁸⁶ Prior to the 2009 elections, the ruling party and main opposition parties all introduced gender **quotas** to increase the number of women candidates (of 30% in the case of the ruling party).⁸⁷ At the end of 2010 (i.e. before the overthrow of President Ben Ali), there were 59 women in the lower Chamber of Deputies (out of 214 – 27.6%), and 17 women in the upper Chamber of Councillors (out of 126 – 15.2%).⁸⁸ In 2011, legislated candidate quotas were introduced in Article 16 of Decree 35, by which 'candidates shall file their candidacy applications on the basis of parity between men and women.'⁸⁹ Despite the newly introduced legislation for parity and alternation provisions in candidate lists, results did not see an equal representation of women in the National Constituent Assembly, but rather, following the 2011 elections women form approximately the same proportion (27%, or 58 of 217 seats).⁹⁰ In addition, there are no quotas at sub-national level.⁹¹ A recent survey from the International Foundation for Electoral Systems (IFES) reports that the majority of Tunisians support women in various political roles. However, the same survey reveals that over one-third of men oppose women taking on more direct leadership roles: women as government ministers (39%), women in parliament (34%), women as candidates in an election (35%) or women heading a political party (42%).⁹²

More

Under the labour code, women and men have the same right to **work**, and discrimination on the basis of gender is banned in regard to employment and pay.⁹³ Following the amendments made to the labour code in 1993, a married woman no longer needs permission from her husband in order to be able to work.⁹⁴ However, women are still prohibited from working at night, apart from certain circumstances.⁹⁵ Pregnant women in Tunisia are

⁸¹ Amnesty International (2010); Freedom House (2013); US Department of State (2012)

⁸² US Department of State (2012)

⁸³ Freedom House (2013)

⁸⁴ Freedom House (2013)

⁸⁵ UNICEF (2011) p.3

⁸⁶ Ben Salem (2010) p.488; UNICEF (2011) p.3

⁸⁷ Ben Salem (2010) p.505

⁸⁸ Inter-Parliamentary Union (n.d.-a); Inter-Parliamentary Union (n.d. -b)

⁸⁹ Quota Project (2014)

⁹⁰ Quota Project (2014); UN Statistics Division (2013)

⁹¹ Quota Project (2014)

⁹² IFES (2012) pp.6-7

⁹³ Ben Salem (2010) pp.490, 500; CEDAW (2010) p.39

⁹⁴ Ben Salem (2010) p.500

⁹⁵ Idem

entitled to 30 days' paid **maternity leave** in the private sector, financed by the government⁹⁶, while they are entitled to 60 days paid maternity leave, in the public sector. In addition, Act No. 2006-58 of 2006 introduced a special regime of half-time employment at two-thirds pay for mothers with one or more children under the age of 16.⁹⁷ The past 30 years have seen a significant shift in women's employment patterns, away from agricultural labour and into wage labour in the manufacturing sector. That said, overall, women's participation in the labour force remains low (25% compared to 71% for men), and women's wages are consistently lower than men's at all levels.⁹⁸

Following a change in the law in 2002, women also have the right to pass Tunisian **citizenship** onto their children, in the event that the children's father is not a Tunisian citizen.⁹⁹

⁹⁶ World Bank (2013)

⁹⁷ CEDAW (2010) p.42

⁹⁸ UNECA (2009) pp.130, 134; World Bank (n.d.) Data: Labor participation rate, female

⁹⁹ Ben Salem (2010) p.490

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