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Syria

Gender Justice & The Law

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United Nations Development Programme,
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Syria

Gender Justice

Assessment of laws affecting gender equality and protection against gender-based violence

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ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	UN Committee on the Elimination of Discrimination against Women
ESCWA	Economic and Social Commission for West Asia
FGM/C	female genital mutilation / cutting
GBV	Gender-based violence
ILO	International Labour Organization
IOM	International Organization for Migration
NGO	Non-government organization
OECD	Organisation for Economic Co-operation and Development
SDGs	Sustainable Development Goals
UNDP	United Nations Development Programme
UNESCWA	United Nations Economic and Social Commission for West Asia
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commission for Refugees (UN Refugee Agency)
UNICEF	United Nations Children's Fund
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WHO	World Health Organization
Arabic terms	
fatwa	Ruling or pronouncement on a point of Islamic law
'idda	The period a woman must observe after the death of her spouse or after a divorce during which she may not remarry
khalwa	Social mingling of men and women who are unrelated
khul'a	Divorce process initiated by the wife requiring return of her mahr
mahr	Mandatory payment by the groom or his father to the bride which then becomes her property
talaq	Repudiation; divorce process whereby the husband repudiates his wife
'urf	Custom
wali	Guardian
wilaya	Guardianship
zina	Unlawful sex, including adultery and sex between two persons neither of whom are married

INTRODUCTION

Scope

UNDP, in partnership with UN Women, UNFPA, and ESCWA, has conducted a study on Gender Justice and the Law to provide a comprehensive assessment of laws and policies affecting gender equality and protection against gender-based violence in the Arab states region.

The study is composed of an introductory piece that describes the background, rationale, analytical framework and methodology, and a total of 18 country profiles. Each country profile maps the country's key legislative and policy developments regarding gender justice.

This country profile presents the findings of the study relating to Syria. It provides an analysis of whether the country's laws and policies promote or impede equality between women and men before the law, and whether they provide protection against gender-based violence.

This country profile includes analysis of the following areas of the law:

- Constitutional guarantees of gender equality and constitutional protections against gender-based violence
- Status of penal codes and whether the country has domestic violence laws that address gender-based violence
- Status of personal status codes and how they impact gender equality
- Status of nationality laws and whether they ensure that women and men enjoy equal rights in relation to citizenship
- Status of labour laws and whether they provide protection from discrimination and gender-based violence in the workplace

Methodology and acknowledgements

The study was conducted in two phases:

1. A literature review was conducted between January 2016 and June 2017 of the various laws, regulations, policies, and law enforcement practices related to gender justice in each of the 18 countries, which then formed the basis of draft country profiles.
2. Realizing the limitations of desk-based literature reviews, country validation processes for each of the draft country profiles were led by UN Country Teams and national consultants. Country validation processes took place between September 2017 and August 2018 to ensure the accuracy of each country profile. These sought the views of government partners and other key national stakeholders.

The assistance of Dr. Hadeel Asmar, who reviewed drafts of this country profile, is gratefully acknowledged. The Syria country profile was finalized with support from Dr. Ameera Ahmad (UNFPA Syria Country Office), Dr. Widad Babikir (UNFPA Syria Country Office) and the UNDP Syria Gender Team, Mr. Hasan Fallaha (Socio-economic Recovery Technical Officer, UNDP Syria Country Office), Ms. Saima Abbasi (Gender Adviser, UNDP Syria Country Office), and Raghdaa Akbik (Human Resources Associate, UNDP Syria Country Office) whose assistance is also recognized and acknowledged.

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SYRIA



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The colour-coded representation below provides a comparison of the laws identified in the country profile with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women and country recommendations under the country's respective Universal Periodic Reviews.

Gender Justice & The Law

DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

YES

The law provides for gender equality and/or protection from gender-based violence and is substantially compliant with international standards. A green category does not indicate that the law is perfect or that gender justice in the relevant topic area has been fully achieved.

NO

The law does not provide for gender equality and/or there is no or minimal protection from gender-based violence.

Partly

Some gender justice aspects of the law have been addressed, but important gender inequalities remain.

No available data or inadequate information.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Syria ratified CEDAW in 2003, subject to reservations to Articles 9(2) (nationality), Article 15(4) (domicile and residence), Article 16(1)(c), (d), (f), and (g) (marriage and divorce), Article 16(2) (child marriage), and Article 29(1) (arbitration of disputes).

Constitution

Article 33 of the 2012 Constitution states that citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion, or creed.

NATIONALITY LAW

NATIONALITY

According to the Nationality Law of 1969, women do not have the same rights as men to pass citizenship to their children or a foreign spouse.

CRIMINAL LAWS

Domestic violence

Syria does not have domestic violence legislation.

Marital rape

Marital rape is not specifically criminalized. The rape offence excludes rape of a spouse.

Rape (other than of a spouse)

Article 489 of the Penal Code No. 148 of 1949 criminalizes rape, other than of a female spouse. The death penalty applies to rape if the victim is under 15 years or if the offence took place under the threat of the use of a firearm.

Exoneration by marriage

There is no provision fully exonerating an offender who marries his victim. However, a perpetrator of rape and certain other crimes may have his penalty reduced if he marries his victim under Article 508 of the Penal Code. A minimum penalty of two years imprisonment applies for rape.

Abortion for rape survivors

Abortion is prohibited by Articles 525–532 of the Penal Code, including for women who have been raped.

Sexual harassment

There is no specific sexual harassment offence in the Penal Code or Labour Law. However, according to the Penal Code criminal conduct includes indecent touching.

Honour crimes: Mitigation of penalty

Article 192 of the Penal Code provides for reduction of sentences if the judge finds that the motive was 'honourable'. Article 548 allows for reduction of the sentence of a man who injures or kills a spouse caught in the act of committing adultery.

Adultery

Adultery is a criminal offence under Articles 473–474 of the Penal Code.

Female Genital Mutilation / Cutting (FGM/C)

There is no legal prohibition. The practice is not reported to occur in Syria.

Human trafficking

The Law Against Trafficking in Persons No. 3 of 2010 provides comprehensive measures against human trafficking.

Sex work and anti-prostitution laws

Prostitution is prohibited by Article 513 of the Penal Code and the Law on Suppression of Prostitution of 1961.

PERSONAL STATUS LAWS

Minimum age of marriage

Article 16 of the Personal Status Law states that eligibility for marriage is reached at the age of 18 for a boy and 17 for a girl. Judges can authorize a marriage of a girl from the age of 13. If a 17-year-old girl wants to marry and the guardian does not object, the judge shall authorize the girls' marriage.

Male guardianship over women

The role of the male marriage guardian is restricted by the Personal Status Law. A valid marriage requires the woman's consent. However, the guardian may request a court to annul a marriage that he does not approve because of the husband's social status.

Marriage and divorce

Syria has reformed the law to improve the rights of women in marriage and divorce, but inequalities remain in some areas. A husband can choose arbitrary divorce by his own will.

Polygamy

Polygamy is permitted by the Personal Status Law subject to court permission. The husband must have a lawful justification and be able to support more than one wife.

Guardianship of children

Guardianship is normally granted to the father, but may be awarded to the mother with the consent of the judge.

Custody of children

The mother is entitled to keep custody of her sons till they reach the age of 13 and daughters till they are 15, provided the mother does not remarry a stranger.

Inheritance

The Personal Status Law defines the rules of inheritance for Muslims, which follow Sharia principles. Muslim women have a right to inheritance, but in many cases receive less than men. Women and men have equal rights to agricultural land, and Catholic women and men have equal inheritance rights.

LABOUR LAWS

Right to equal pay for the same work as men

Article 75 of the Labour Law recognises the principle of equal pay for equal work.

Dismissal for pregnancy

Article 67 of the Labour Law prohibits employers from dismissing a worker because of her pregnancy.

Paid maternity leave

Articles 121 and 122 of the Labour Law state that women are entitled to maternity leave, which employers are liable to pay. The entitlement is 120 days for the first child, 90 days for the second child, 75 days for the third child. This entitlement partially complies with the ILO standard of 14 weeks.

Legal restrictions on women's work

Article 120 of the Labour Law states that the Minister shall determine circumstances where women shall be allowed to perform night work or harmful, arduous, immoral, or other work prohibited to women.

Domestic workers

Article 5 of the Labour Law excludes domestic workers from the protections of the Labour Law. There are some protections for domestic workers provided by decisions of the Interior Ministry and the Minister of Social Affairs on work contracts and by-laws relating to work visas and the working conditions of migrants.

OVERVIEW

Gender-based violence (GBV) in the context of the current crisis

A 2018 needs assessment on humanitarian issues in conflict-affected areas confirmed that gender-based violence – particularly domestic violence (including family violence against women and girls), verbal harassment, child marriage, and the fear of sexual violence (including sexual harassment) – continues to pervade the lives of women and girls in some areas of Syria both inside and outside the home, resulting in very few spaces where women and girls feel safe. The fear of sexual violence, often associated with abduction, is a concern raised by women and girls in conflict-affected areas, contributing to psychosocial stress and further limitation of their movement.

The restriction on freedom of movement of women and girls also inhibits their access to services, humanitarian aid, and their human rights. Further, the shame and stigma surrounding sexual violence contributes to survivors remaining silent when it happens. Women and girls also fear 'honour' killing as a result of sexual violence. Families arrange marriages for girls, believing it will protect them and will ease the family's financial burden. Many girls are married at a young age. The socio-economic situation, lack of livelihood opportunities, and increased poverty is ultimately leading more women to resort to harmful coping mechanisms, such as performing sex for money in order to survive.

Legal framework

International law

International treaties constitute an essential element of the legislative framework for human rights in Syria, having acceded to most of the international human rights conventions. The international treaties that Syria has acceded to took immediate effect as part of domestic law, as domestic laws are required to comply with the provisions of international conventions. If there is a conflict between domestic law and an international convention, the latter prevails.¹

The National Commission for International Humanitarian Law has been established and charged with the task of sponsoring and coordinating national action for an integrated awareness of international humanitarian law, the harmonization of national legislation, and the monitoring of human rights violations.

International conventions to which Syria has acceded relevant to gender justice include:

- Equal Remuneration Convention, 1951 (ILO Convention No. 100).
- Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111).
- International Covenant on Economic, Social and Cultural Rights, ratified 21 April 1969.
- International Covenant on Civil and Political Rights, ratified 21 April 1969.
- International Convention on the Elimination of All Forms of Racial Discrimination, ratified 21 April 1969.
- The four Geneva Conventions of 1949 on humanitarian treatment in war, ratified on 2 November 1953, and Additional Protocol No. 1, ratified on 14 November 1983.
- Convention on the Rights of the Child, ratified on 15 July 1993, and its Optional Protocols: Protocol 1, on the involvement of children in military conflicts; and Protocol 2, on the exploitation of children in prostitution. Syria maintains a reservation to Article 14 to ensure that it does not enable a child to change his/her religion without the consent of the legal guardian.
- Syria ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 28 March 2003, subject to reservations entered on the following articles:
 - Article 9(2) concerning the grant of a woman's nationality to her children.
 - Article 15(4) regarding freedom of movement and choice of domicile and residence.
 - Article 16(1)(c), (d), (f) and (g) on equal rights and responsibilities during marriage and its dissolution with regard to guardianship, the right to choose a family name, maintenance, and adoption.
 - Article 16(2) on the legal effect of engagement and marriage of a child (in so far as this provision is incompatible with the provisions of Islamic Sharia).
 - Article 29(1) concerning arbitration between States Parties in the event of a dispute.

The government also entered a reservation to Article 2 of CEDAW (regarding discrimination) in 2003, but lifted its reservation by Decree 230 on 16 July 2017.

¹ Syria, Civil Code, 1949 (No. 84), Art. 25; Syria, Code of Criminal Procedure, 1950 (No. 112), Art. 311; Civil Chamber of the Court of Cassation, decision 1905/366 of 21 December 1980.

Domestic law

The main domestic laws relevant to gender justice are:

- Constitution of the Syrian Arab Republic of 2012
- Labour Law of 2010
- Penal Code of 1949
- Personal Status Law of 1953
- Law Against Trafficking in Persons of 2010
- Anti-Prostitution Act of 1961

Constitution

The Constitution of the Syrian Arab Republic of 2012 establishes basic principles that guarantee independence, sovereignty, and the rule of the people, which is founded on political and party pluralism, the protection of national unity, cultural diversity, public freedoms, human rights, social justice, equality, equality of opportunity, citizenship, and the rule of the law.

The articles of the Constitution relevant to protection against GBV are the following:

- Carrying out any political activity or forming any political parties or groupings on religious, sectarian, tribal, regional, class, or professional basis, or discrimination based on gender, origin, race, or colour, may not be undertaken. (Article 8(4))
- The family shall be the nucleus of society and the law shall maintain its existence and strengthen its ties. (Article 20 (1)).
- The state shall protect and encourage marriage and shall work on removing material and social obstacles that hinder it. The state shall also protect maternity and childhood, take care of young children and youth, and provide the suitable conditions for the development of their talents. (Article 20 (2))
- The state shall provide women with all opportunities enabling them to effectively and fully contribute to the political, economic, social, and cultural life, and the state shall work on removing the restrictions that prevent their development and participation in building society. (Article 23)
- Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion, or creed. (Article 33(3))
- The state shall guarantee the principle of equal opportunities among citizens. (Article 33(4))

Policy framework

The Supreme Constitutional Court and judicial authorities at various levels guarantee the defence of human rights and ensure that human rights come into effect through judicial supervision.

The following mechanisms also support defence of human rights:

1. The National Committee for International Humanitarian Law coordinates national action to raise awareness and disseminate international humanitarian law, propose action plans and training, and to recommend the harmonization of national legislation with relevant international conventions.²
2. The National-Regional Committee for the Follow-up of Children's Rights in the Context of the Crisis in Syria was established in 2013.³ It is responsible for documenting violations by armed groups against children and preparing national reports on these violations in order to establish a database for research into cases of children's recruitment in military conflicts.
3. The Syrian Commission for Family and Population Affairs⁴ has been assigned the tasks of protecting the family; deepening its cohesion; preserving its identity and values; monitoring, coordinating, and following-up efforts to implement CEDAW and the Convention on the Rights of the Child; and to propose legislation on women, children, family, and population matters. The commission opened the first family protection centre to provide protection, treatment, and legal services to women and children who have survived the violence resulting from the current crisis in general and those who have suffered domestic violence.
4. The Anti-Trafficking in Persons Department was established by Law No. 3 of 2010 with the mission to prevent trafficking in persons and protect its victims. A national plan has been drawn up to combat trafficking in persons and provide protection and care for victims. In 2017, the Department has rehabilitated and opened a special unit to receive women and children survivors of trafficking in cooperation with the Syrian Commission for Family and Population Affairs in

² The committee was established by the Prime Minister's Decision No. 2989 of 2 January 2004 and was reactivated by the Prime Minister's Decision No. 2072 of 21 July 2015.

³ Prime Minister's Decision No. 2310 of 20 August 2013.

⁴ Established by Law No. 42 of 20 December 2003 and amended by Law No. 6 of 2014.

compliance with international standards. The unit has a room specially equipped with video and audio taping devices, along with a one-way mirrored glass for survivors to tell their stories to a team of specialists in psychology, while the police sit in an outside room and observe the proceedings. The Centre has sleeping and recreation quarters that are adequately furnished.

5. The national Five-Year Plan (2005–2010) included policies and programmes on the development of women, including women's social and economic empowerment. In 2005 the Women's General Union formulated a National Strategy for the Development of Women (2006–2010), along with a draft strategy to combat violence against women. While the work plans have not been implemented since the onset of the crisis in 2011, the Ministry of Social Affairs and Labour, in collaboration with the concerned authorities and the Syrian Commission for Family and Population Affairs, is preparing a programme for the development of the role of women based on the provisions of CEDAW.

Legal and support services

There are few public or civil society services provided for survivors of GBV. Some civil society services are offered by special welfare centres affiliated with the Ministry of Social Affairs and the family protection centre of the Syrian Commission for Family and Population Affairs. In these special welfare centres, survivors of GBV receive treatment and health services, are enrolled in rehabilitation programmes for reintegration into society, and are given access to advice and legal support. The UN High Commissioner for Refugees and the International Rescue Committee have set up accommodation centres where services are offered to survivors of GBV from camps for internally displaced persons.

The Syrian Constitution affirms the right of citizens to go to court to litigate, sue, prosecute, defend, and appeal before the judiciary. The Constitution of 2012 supports judicial supervision and prohibits any administrative action or decision from being immune from judicial supervision. Anyone who has been wrongly sentenced and penalized has the right to be compensated for damages incurred.⁵

The State provides legal assistance to those who are cannot afford a lawyer. The Law on Legal Aid (amended by Law No. 29, 2013) exempts claimants from paying fees and indemnities if they cannot afford them. However, women face significant obstacles in accessing appropriate legal services for a variety of reasons, including ignorance of the law and of their legal rights, and because of social mores and traditions that restrict the advancement of women.

The judiciary is not independent, since the judges are appointed by the Supreme Judicial Council, headed by the Minister of Justice, which affects fairness of the judiciary in general. The judicial system is divided into civil, criminal, and Sharia courts, the latter deciding on legal matters pertaining to personal affairs such as marriages, births, and inheritance.

In 2012, the Syrian Government launched a judicial reform plan that included the issuing of a number of basic laws. These included the following new laws relevant to gender justice:

- Law No. 7 of 2014, concerning the restructuring of the Supreme Constitutional Court and the regulation of its powers in accordance with the Constitution.
- Act No. 11 of 2013, which includes the prohibition of child recruitment and an increased penalty for rape.
- Law No. 4 and Legislative Decree No. 7 of 2011, concerning the personal affairs of Christian communities to be in line with Article 3(4) of the Constitution (personal status of religious communities to be protected and respected).
- Legislative Decree No. 2 of 2013 amending the Law on Legal Aid, in which the poor are exempted from paying the costs of courts for transactions relating to the registration of births, marriages, divorces, and deaths.
- Legislative Decree No. 20 of 2013 to maximize the punishment of kidnapping done in return for a political, material, reprisal, retaliation, or ransom demand or for a sectarian cause. The sentence has been increased to life imprisonment with hard labour, and capital punishment if the victim of abduction dies, is sexually assaulted/raped, or permanently incapacitated.
- The formation of a number of committees to amend the laws, including the Penal Code.
- Administrative Order No. 11047/N of 16 August 2011 calls for the formation of a joint military investigation committee composed of the Ministry of Defence and the Ministry of Internal Affairs. The committee is tasked to investigate complaints against members of the army, security forces, and internal security forces in the course of carrying out their duties. The committee has dealt with many cases and has referred perpetrators who have been proven to have committed criminal acts to the competent judiciary.

Factors that continue to obstruct access to justice can be summarized as follows:

1. Poor application of laws.
2. Lack of laws and penalties to deter men from committing acts of violence against women.
3. Personal status laws require reform to align with CEDAW and the other international conventions ratified by Syria in a manner that corresponds with the current needs of women and girls.
4. The Penal Code is outdated and no longer appropriate to the current situation of women.
5. Some laws include contradictions and double standards. For example, while the Constitution and civil legislation has

⁵ Syria, Constitution of the Syrian Arab Republic 2012, Art. 53.

granted women the eligibility to enjoy a range of rights, including labour rights and the capacity to enter contracts unconditionally, the personal status laws treat women as minors lacking legal capacity for some purposes and lacking eligibility to exercise some rights.

PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

Syrian legislation does not explicitly define sexual violence or domestic violence. There is no law that prohibits domestic violence and no law that prohibits rape in marriage. However, according to the provisions of the Penal Code, criminal conduct includes rape, harassment, indecent assault (indecent touching of intimate areas), and acts intended for pornographic purposes. All such acts are penalized whether they were perpetrated by force, by means of deception, or in return for monetary gain.

Under Penal Code Article 508, a perpetrator of rape and certain other crimes may have his penalty reduced if he marries his victim. Article 508 was modified by Legislative Decree No.1 of 2011 such that the minimum penalty for a perpetrator in a rape case is two years if he marries his victim. Article 508 as amended states:

If a correct marriage contract is concluded between the perpetrator of one of the felonies stipulated in this section and the victim, such perpetrator shall benefit from mitigating excuses stipulated in Article 241, and the penalty shall be imprisonment for not less than two years.

Legal action shall be reinitiated if, before the passage of five years of the marriage, such marriage ended by divorcing the woman without a legitimate cause or because of a court judgment issued in the victim's favour. The period of the sentence already served shall be considered.

If a correct marriage contract is concluded between the perpetrator of one of the misdemeanours stipulated in this section and the victim, any pursuit shall be stopped; if a judgment was issued in the case, execution of penalty shall be suspended. Legal action shall be re-initiated if, before the passage of three years of the marriage, such marriage ended by divorcing the woman without a legitimate cause or because a court judgment issued in victim's favour. The period of the sentence already served shall be considered.

The definition of rape for the purpose of this article is subject to interpretation and needs to be understood in the context of social and religious pressures associated with shame.

Domestic violence cases may be addressed by applying the assault provisions of the Penal Code if there is evidence of violence causing physical injury.

The Penal Code does not stipulate a specific rule on rape in marriage. The Penal Code criminalizes sexual violence with a series of articles,⁶ including the following offences:

- *Rape*: Article 489 of the Penal Code criminalizes rape other than of a female spouse. Article 489 has been amended to increase the penalties in response to the increase of this type of crime during the current crisis. Currently, the sentence is life imprisonment with hard labour for anyone who coerces, by means of violence or threats, a woman other than his wife into having sexual intercourse. The penalty is capital punishment if the victim is under 15 years of age or if the offence took place under the threat of the use of a firearm. Prior to this amendment the minimum penalty for rape was 15 years of hard labour, or 21 years hard labour if the victim was under 15 years of age.
- *Incest*: Incest between parents and offspring, legitimate or illegitimate, between brothers and sister, between step-brother and step-sister, or between those of the same category among in-laws is punishable by one to three years' imprisonment. If one of the offenders has legal or actual authority over the victim, the penalty shall not be less than two years, and the offender is denied the right of guardianship. The offender is prosecuted on the basis of a complaint by a relative or an in-law up to the fourth degree (four times removed). Prosecution shall proceed without complaint if the incest leads to a scandal.

Anyone has the right to submit a claim or notification of an offence to the competent public prosecutor. The following reporting procedures apply:

- A personal claim to the public prosecutor's office from a woman who has been subjected to violence or from the guardian of a child victim initiates the case for prosecution.
- Alternatively, a notification may be made from a person other than the child's guardian. In such a case, the decision to either archive the notification or start the prosecution is at the discretion of the public prosecutor.

The prosecutor assigns the competent police department or judicial police to carry out investigations and to file the necessary paperwork. The case is then referred to the investigating judge to follow-up the proceedings. The public prosecutor's office refers the survivor to the office of the public forensic medical team to evaluate and characterize the case and to determine the degree of injury.

⁶ Syria, Penal Code, Arts. 489-506.

In conclusion, gaps in the system of combating domestic violence, and partner and sexual violence in general, may be summarized as follows:

1. There is no explicit legislative provision defining and classifying interventions in cases of sexual violence perpetrated by a husband against his spouse.
2. It is difficult to monitor and respond to cases of sexual violence within the family because of the culture of secrecy around this type of violence.
3. There is a lack of specialized centres to deal with female survivors of sexual violence.

HONOUR CRIMES

Judges have a wide margin of discretion to commute penalties when an offender commits his crime for the purpose of “restoring the family’s honour.” Article 192 of the Penal Code provides for reduction of sentences if the judge finds that the motive was honourable.

The Penal Code allows for reduction of the sentence of a man who injures or kills a spouse caught in the act of committing adultery. The Penal Code provides that an offender can take advantage of a mitigating excuse in the case when he catches a spouse, an offspring, a mother, or a sister *in flagrante* in an adulterous act or a debauched sexual intercourse with another and he kills or injures one or both parties. In such cases, the penalty shall be imprisonment from five to seven years for murder.⁷ Much longer prison sentences apply for murder in other circumstances.

ADULTERY AND SEX OUTSIDE OF MARRIAGE

The Penal Code criminalizes adultery. Although both men and women are tried for adultery, more women than men are likely to be prosecuted and are thus affected by its rules. Women may be prosecuted for committing an act of adultery that occurs anywhere, whereas men are prosecuted only if adultery is committed in the marital home or if the man takes a mistress openly. If convicted, a man faces a prison sentence ranging from one month to one year, while women face prison terms of three months to two years.⁸

It is not permissible to prosecute adultery except with the complaint of the husband, who takes on the status of the personal plaintiff. In the case of single women, the prosecution hinges on the complaint of the guardian, in accordance with the line of descent, the latter becoming a personal plaintiff.⁹

The criminalization of adultery may be harmful for women because it may deter them from reporting rape or sexual assault for fear that the authorities may prosecute the woman concerned for adultery.

ABORTION FOR RAPE SURVIVORS

The Syrian Constitution prohibits abortion. Under the Penal Code, abortion is generally illegal, including in cases of rape. An abortion can only be performed if it is necessary to save the life of a pregnant woman.¹⁰

A person who performs an illegal abortion with the woman’s consent is sentenced to three years imprisonment. A woman who undergoes an abortion by herself or consents to it is sentenced to six months to three years. Stricter penalties apply if the person who is performing the illegal abortion is a medical professional.

Penalties are mitigated if a woman undergoes an abortion in order to preserve her honour or if someone else performs the abortion in order to preserve the honour of a relative (up to twice removed relatives).¹¹

7 Ibid., Art. 548, as amended in 2011. Prior to 2011 the minimum term of imprisonment was two years.

8 Ibid., Arts. 473, 474.

9 Ibid., Art. 475.

10 Ibid., Arts. 525–532.

11 Ibid., Art. 531.

In terms of religious legitimacy, from which the Syrian law derives its articles, Islam does not absolutely prohibit abortion. It is a matter for doctrinal interpretation, and some doctrines allow for abortion during the early weeks of pregnancy. According to this doctrine, abortion during early pregnancy may be permissible in accordance with the following conditions:

- The consent of the parents is provided.
- The abortion does not expose the mother's life to serious danger.
- The certificate of a medical practitioner who is a known specialist in the field is provided.

Syrian law restricts the granting of abortion in the Practice of Medical Professions Law, which stipulates that a doctor or a midwife shall be prohibited from performing an abortion, by any means, unless the continuation of pregnancy is a threat to the life of the woman.¹² In that case, the following conditions apply:

- Abortion must be performed by a specialist doctor and supervised by another doctor.
- A draft report of the need for abortion must be provided before the operation.
- Four or more (as deemed necessary) copies of the draft report shall be written up, one copy for the family, and one copy for each of the performing doctors/medical staff, to be signed by the doctors, the patient, and the woman's husband or guardian.

FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

There is no legislation on FGM/C because this practice does not exist in the customs and traditions of Syria. However, FGM/C may be present in some communities where armed groups have resided, especially among people who have come from other countries where FGM/C is traditionally practiced.

FAMILY MATTERS

The Personal Status Law regulates the provisions relating to the rights of marriage, divorce, custody, guardianship, and inheritance. For Muslims, it defines these provisions in accordance with Islamic law (Sharia).

The Personal Status Law also specifies the provisions applicable to the Druze community, including the ban on polygamy and the authority of religious judges.¹³ Each Christian denomination is given the right to adopt its own personal status law.

Except as described below, men and women have the same rights and responsibilities during marriage and at the time of its dissolution.

Marriage

The Personal Status Law makes the consent of the wife a basic condition for marriage and specifies that the marriage will not be considered valid without her consent.¹⁴ Women enjoy the same rights as men in terms of freedom of choice, cancelling an engagement, and freedom to stipulate what is in their best interests in the marriage contract. The role of the male marriage guardian is limited by the Personal Status Law, but the guardian may request a court to annul a marriage if the guardian does not approve of the husband's status.¹⁵

Eligibility for marriage is reached at the age of 18 years for a boy and 17 years for a girl.¹⁶ This aspect of the law discriminates between boys and girls. Article 18 of the Personal Status Law stipulates:

If an adolescent boy has attained puberty after completing his fifteenth birthday or an adolescent girl has attained puberty after completing her thirteenth birthday and either has requested to get married, the following shall be imposed: The judge shall authorize him/her if the judge ascertains the truthfulness of his/her claim and the competency of his/her body. The consent of the guardian is required if the guardian is either the father or the grandfather.

This article violates the rights of the child to complete primary education. It also allows parents to marry girls to older husbands for reasons that lack justification. This results in violations of girls' rights, as has been demonstrated by the increase in girl child

¹² Practice of Medical Professions Law, Legislative Decree No. 12 of 1970, Art. 47(B).

¹³ Syria, Personal Status Law, Art. 307.

¹⁴ Ibid., Arts. 21–26.

¹⁵ Ibid., Art. 27.

¹⁶ Ibid., Art. 16.

or forced marriages during the crisis due to the misguided belief that girls should be married for their protection or for financial reasons.

Article 20 of the Personal Status Law states that if a girl has completed her seventeenth birthday and wants to marry, the judge shall ask her guardian for a statement of opinion. If the guardian does not object, the judge shall authorize the girls' marriage on the condition of legal competency. This does not address cases of coercion and parental control.

There is no mechanism to monitor or report a child marriage, or to annul a child marriage. Girl child marriages are thus allowed to exist by the current law.

Polygamy is legal for Muslim men, subject to restrictions.

Syrian laws offer a margin of freedom to members of other religions and sects in relation to personal status issues. The Catholic community adopted its own Personal Status Code in 2006. In all Christian denominations, the husband is legally required to provide financial support to his wife and to his ex-wife, for a specified period, in the event of their divorce, unless the divorce was requested by the wife.

Divorce

The Personal Status Law provides that both the husband and wife have the right to terminate their marriage. A man can terminate his marriage by his own will, which is considered an arbitrary divorce that has its own conditions and specifies rights for the benefit of women. Similarly, the law gives women the right to seek a divorce at her request or by mutual consent.

The Personal Status Law regulates divorce cases in Article 85 and beyond, including the articles which deal with arbitrary divorce. Article 112 allows for the wife to seek a divorce on the basis of violence, which is referred to as divorce due to discord.

The Code of Civil Procedure provides for expeditious legal procedures to resolve marital disputes.¹⁷

Guardianship and custody of children

A mother may determine the number of children and the intervals between pregnancies. Mothers have the same rights as fathers with respect to guardianship, wardship, and custody of children, where custody is granted to both mother and father.

Guardianship includes the provision of medical treatment, education, and vocational training and the right to give consent to marriage. Guardianship is normally granted to the men of the family, but may alternatively be awarded to the mother with the consent of the judge. Wardship is usually granted to a mother who is concerned with the care of a family member with special needs.

Women and men have the same rights and duties in terms of their role as parents. Articles 137, 138, 139, 140, and 147 regulate the rights of women concerning custody.

The mother is entitled to keep custody of her sons till they reach the age of 13 and daughters till 15, provided the mother does not remarry a non-*mahram* (stranger unrelated to the child). After a son reaches 13 and a daughter reaches 15, custody is transferred to the father or to the maternal or paternal grandmother.

INHERITANCE

The provisions of Islamic law are the basis for determining the rules of inheritance of all Syrian citizens except Christians. The Personal Status Law sets out 48 articles that regulate inheritance for Muslims.¹⁸ Under these rules, women inherit half the share that their male siblings inherit. In other cases, however, the situation varies. For example, women have equal inheritance rights in some special cases, such as inheriting agricultural land. In other cases, women have inheritance rights that are greater than those of men, but usually women are not aware of these rights. Women who are childless widows may be deprived of any inheritance whatsoever.

¹⁷ Syria, Code of Civil Procedure, Arts. 535–546.
¹⁸ Syria, Personal Status Law, Arts. 260–308.

NATIONALITY

The Nationality Law provides that a child born to a father who holds Syrian nationality automatically acquires nationality, regardless of whether the child was born inside or outside the country.¹⁹ However, Syrian women cannot pass their nationality to their children in the same way as Syrian men, except in the case of a child born in Syria to a Syrian mother where the identity of the father is unknown. If a Syrian woman marries a foreign husband, their children will have no claim to being Syrian nationals even if they were born and raised in Syria.²⁰

The Nationality Law stipulates the following persons are considered Syrian Arab:²¹

1. A person born in or outside the country of an Arab Syrian father.
2. A person born in the country from a Syrian Arab mother whose father has not been legally recognized.
3. Whoever was born in the country from unknown or stateless parents. An orphan in the country is considered born in the country and in the place where he/she was found, unless proven otherwise.
4. Whoever was born in the country and was not entitled at the time of his/her birth to acquire the nationality of a foreign father.
5. A person of Syrian origin who has not acquired any other nationality and has not applied for Syrian nationality within the deadlines established by previous resolutions and laws.

The 2012 Constitution stipulates equality of citizens without discrimination, as well as the need to amend all laws that do not comply with the Constitution within a maximum of three years. This opens new horizons for amending the Nationality Law to grant women equal rights in this field.

LABOUR LAWS

Equal opportunity and protection from discrimination

The Syrian Government is committed to creating equal opportunities for all citizens without discrimination according to the Labour Law.²²

The Labour Law states that it is prohibited to breach or infringe the principle of equal opportunities or equal treatment for any reason – in particular discrimination between workers in terms of race, colour, sex, marital status, creed, political opinion or union affiliation, nationality, social origin, or local dress or dress style – in a way that does not contravene with personal liberty in all matters relating to employment, organization of work, rehabilitation, vocational training, remuneration, promotion, social benefits, disciplinary measures, or dismissal from work.²³ Employees are entitled to reinstatement or compensation for unfair dismissal if they are dismissed for any of these reasons. Further, an injured worker has the right to claim compensation for material and moral damage before a competent court.²⁴

Women have the right to equal pay for work of equal value. On equal pay, the Labour Law provides:²⁵

- (a) Employers shall apply the principle of equal pay for work of equal value to all workers, without any discrimination on the basis of race, colour, gender, marital status, belief, political opinion, trade union membership, nationality, or social descent.
- (b) Work of equal value means work that requires equal qualifications and professional skills, as attested by a work experience certificate.

Women are entitled to maternity leave, which employers are liable to pay.²⁶ The entitlement is 120 days for the first childbirth, 90 days for the second childbirth, and 75 days for the third childbirth. Additional maternity leave of one month without pay may be granted to female workers upon request.

19 Syria, Nationality Law, Legislative Decree 276 of 1969, Art 3.

20 "The right to Syrian nationality," Syrian Law Journal (2016), available at <http://www.syrianlawjournal.com/index.php/right-syrian-nationality/>.

21 Syria, Nationality Law, Art. 3.

22 Syria, Labour Law, No. 17 of 2010.

23 Ibid., Art. 2.

24 Ibid.

25 Ibid., Art. 75.

26 Ibid., Arts. 121, 122.

The Labour Law provides that notices of dismissal shall not be given to a working woman during her maternity leave.²⁷ It also requires an employer who employs five or more women to prominently advertise a copy of the women's employment manual.²⁸

The Labour Law includes the following provisions relating to childcare:

- An employer who employs 100 workers or more in one place shall provide a nursery or assign a nursery for the care of the children of the workers, provided that the number of such children who do not exceed more than five years of age shall not be less than 25. The Minister shall determine, by virtue of a decision, the provisions of the license and the work terms of aforementioned nurseries. Enterprises belonging to different employers, each employing less than 100 workers in one region, may participate in the implementation of the obligation provided for by this article.²⁹
- In case of the non-availability of the conditions stated in the preceding paragraph, an employer who employs at least 20 married women workers shall prepare an appropriate place in the care of a qualified governess to care for the children of workers under the age of five years, provided they are not less than ten children in number.³⁰

Workplace sexual harassment

A worker may leave work before the end of the contract without notice to the employer if the employer or his representative behaves immorally towards the worker or a member of his/her family or if the employer or his representative assaults the worker. A worker who has left work before the end of his/her contract for any of the foregoing reasons is entitled to file a claim in court for unjustified dismissal.³¹

Monitoring and reporting cases of women harassed at work is the responsibility of the Ministry of Social Affairs and Labour and its directorates in the governorates. This is implemented either by inspection tours of establishments and factories or complaints submitted to the Ministry.

Gaps in protection of women

Gaps in the protection of women in the field of work are summarized as follows:

- Weakness in the efficiency of labour inspectors in detecting cases of harassment against women in the work environment that are contrary to the Labour Law.
- Lack of awareness and knowledge among many women workers about their rights in the work environment.

Domestic workers

- Article 5 of the Labour Code excludes domestic workers from the Labour Code. A series of decisions of the Interior Ministry provides some basic protections for domestic workers such as sanctions for contract violations. Law No. 61 of 2007 determined wages, benefits and pensions for foreign au-pairs working in Syria.

SEX WORK AND ANTI-PROSTITUTION LAWS

Engaging in sex work (prostitution) is prohibited under the Penal Code and the Law on Suppression of Prostitution.

Penal Code

The Penal Code criminalizes adultery and extra-marital sex. Articles 509–516 specifically address sex work. It is an offence for a woman to engage in prostitution in order to earn a living, punishable by imprisonment for a period of six months to two years.³² Inciting a person under 21 years of age to prostitution or an immoral act is punishable with imprisonment for a period of six months to three years.³³

Law on Suppression of Prostitution

Sex work is an offence under the Law on Suppression of Prostitution, which punishes the “habitual practice of prostitution” with

27 Ibid., Art 57.

28 Ibid., Art 125.

29 Ibid., Art. 126.

30 Ibid., Art. 127.

31 Ibid., Art 66.

32 Syria, Penal Code, Art. 513.

33 Ibid., Art. 509.

up to three years in prison.³⁴ A person who habitually works or resides in premises used for prostitution faces imprisonment for a period not exceeding one year.³⁵

It is an offence to incite, employ, entice, or lure a person with intent to “commit debauchery or prostitution,” punishable with imprisonment for a period of not less than one year and not more than three years and a fine of 1,000 to 3,000 Syrian pounds.³⁶

It is an offence to open, rent out, or manage “places of prostitution,” punishable with imprisonment for a period of not less than one year and not more than three years and a fine of not less than 1,000 and not more than 3,000 Syrian pounds.³⁷

HUMAN TRAFFICKING

The Law Against Trafficking in Persons defines human trafficking as follows:³⁸

1. The recruitment, transfer, abduction, deportation, harbouring, or receiving of persons for the purpose of unlawful acts or in exchange for material or moral gain or a promise thereof, award of benefits, or the pursuit of all or any of these purposes.
2. These acts shall remain criminal regardless of how they are carried out: by means of force or threat of force, by means of violence or persuasion, by the exploitation of ignorance or weakness, by fraud, by deception, by the exploitation of the status of one’s employment position, or by complicity or via the assistance of a person who has authority over the victim.
3. In all cases, the consent of the victim shall not be considered valid.

Sexual exploitation of children also falls within the definition of trafficking.³⁹

To implement the Law Against Trafficking in Persons, the government has taken the following measures:

- Establishment of a national committee to combat trafficking in persons and the protection of victims with the participation of civil society.
- Development of a National Plan of Action to Combat Trafficking in Persons that includes four main themes: prevention, protection measures, prosecution, partnership building, and local, regional, and international cooperation.
- Building the capacity of workers in this field through an integrated workshop.
- Introduction of Law No. 65 of 2013 regulating the recruitment and employment of foreign domestic workers.
- Rehabilitation of the Department for the Reception of Women and Children in the Department of Trafficking in Persons.
- Issuing a psychosocial support manual to deal with women and children who have survived trafficking crimes.

A statement may be presented to the competent public prosecutor by any person who is aware of the crime of human trafficking. It is the duty of the public prosecutor to charge the Anti-Trafficking Department with the preliminary investigation and seizure of the perpetrator. The Anti-Trafficking Department has allocated a special hotline to report cases of trafficking, in full confidentiality.

The legislation is considered integrated in terms of interventions and mechanisms. However, on the ground a number of courts still deal with trafficking cases by applying the general Penal Code rather than the Law Against Trafficking in Persons.

The Ministry of Social Affairs and Labour has opened shelters for victims of trafficking in Damascus and Aleppo. However, the work of these two shelters has been suspended due to administrative difficulties related to the crisis, despite the mounting need for their services.

The Department for Combating Against Trafficking in Persons at the Ministry of the Interior has played a pivotal role in addressing these crimes through surveillance and investigation. This department carries out investigations if it receives a direct communication, rather than via the public prosecutor’s office, and cooperates with the Criminal Security Branch if the offence is committed in another governorate that has no anti-trafficking department. Accordingly, the Attorney General’s permission is obtained to bring in the victim and the trafficker, to conduct the investigation within 24 hours, deliver the victim to her family or a designated shelter, and refer the matter to the office of the public prosecutor to bring the case against the trafficker. The administration has allocated a hotline for this purpose.

In conclusion, the gaps in combating trafficking in women can be summarized as follows:

- The Law Against Trafficking in Persons is not always applied by the courts, which often rely instead on the Penal Code.
- The Law Against Trafficking in Persons is not taught in the curriculum of the Faculty of Law or the Higher Institute of the Judiciary.
- There is a lack of specialized centres for female victims of trafficking, and those centres that were established have

34 Syria, Law on Suppression of Prostitution of 1961, Art. 9.

35 Ibid., Art. 13.

36 Ibid., Art. 1.

37 Ibid., Art. 8

38 Syria, Law Against Trafficking in Persons, Art. 4.

39 Ibid., Art. 5.

suspended their operations.

- Centralization of the Department of Combating Trafficking in Persons means that it lacks an adequate presence in the governorates.

SYRIA: KEY RESOURCES

Legislation

Syria, Penal Code, Legislative Decree No.148 of 1949, and its amendments. Available from http://www.wipo.int/wipolex/en/text.jsp?file_id=243237.

Syria, Law No. 11 of 2013 amending the Penal Code.

Syria, Code of Criminal Procedure, Legislative Decree No. 112 of 1950 and its amendments.

Syria, Personal Status Law, Legislative Decree No. 59 of 1953.

Syria, Law on Suppression of Prostitution, Law No. 10 of 1961. Available from <http://www.qub.ac.uk/slavery/?page=countries&category=2&country=167>.

Syria, Civil Status Law, Law No. 26 of 2007 and its amendments.

Syria, Labour Law, Law No. 17 of 2010. Available from <http://www.wipo.int/edocs/lexdocs/laws/en/sy/sy009en.pdf>.

Syria, Law Against Trafficking in Persons, Legislative Decree No. 3 of 2010. Available from <http://www.qub.ac.uk/slavery/?page=countries&category=2&country=167>.

A copy is available in Arabic from http://www.protectionproject.org/wp-content/uploads/2010/09/Syria_Trafficking-Law_2010-arabic.pdf.

Syria, Constitution of the Syrian Arab Republic of 2012. Available from http://www.ilo.org/wcmsp5/groups/public/---ed_protect/--protrav/---ilo_aids/documents/legaldocument/wcms_125885.pdf.

References

Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Syrian Arab Republic, 28 September 2016 (A/HRC/WG.6/26/SYR/1)*. Available from <http://www.ian.ohchr.org/EN/HRBodies/UPR/Pages/SYSession26.aspx>.

International Planned Parenthood Federation & Syrian Family Planning Association, "Unsafe abortion."

Second and third periodic report of the Syrian Arab Republic to the Convention on the Elimination of All Forms of Discrimination against Women, 25 October 2012 (CEDAW/C/SYR/2). Available from <http://www.un.org/Docs/journal/asp/ws.asp?m=CEDAW/C/SYR/2>.

Syrian Commission for Family and Population Affairs, *Review of the reality of monitoring, reporting and referral mechanisms in the Syrian Arab Republic*.

Syrian Commission for Family and Population Affairs, *Monitoring, reporting and referral mechanisms for the protection of women in Syria*.

United Nations CEDAW Committee (2014), *Concluding Observations on the Second Periodic Report of Syria*. Available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=3&DocTypeID=5.



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