



Review of Human Rights and GBV Legal/Policy Frameworks in Syria

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ACRONYMS

CP	Child Protection
CMR	Clinical Management of Rape
FPU	Family Protection Unit
GBV	Gender-Based Violence
GUSW	General Union of Syrian Women
HNO	Humanitarian Needs Overview
HRP	Humanitarian Response Plan
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IPV	Intimate Partner Violence
MoSAL	Ministry of Social Affairs and Labor
MoFA	Ministry of Foreign Affairs and Expatriates
NGO	Non-Governmental Organization
OCHA	Office of the Coordination of Humanitarian Affairs
PSL	Personal Status Law
PSEA	Protection from Sexual Abuse and Exploitation
PWD	People with Disabilities
UNFPA	United Nations Population Fund

Review Background

The current challenges related to COVID-19 have a direct impact on increasing gender-based violence (GBV) in conflict-affected areas. Results of a recent UN Women Study highlighted the impact of the COVID-19 pandemic, which has exacerbated violence and revealed connections between violence and food insecurity as well as the negative impact of violence on women's mental health. The stark socio-economic inequalities aggravated by the pandemic have placed the most vulnerable groups of women at an even higher risk of violence, as a loss of income for women in abusive situations makes it even harder for them to escape GBV¹.

Different forms of GBV - particularly domestic violence-, verbal harassment, child marriage, and the fear of sexual violence or harassment continue to pervade the lives of women and girls in some areas of Syria. Because it happens both inside and outside the home, the result is that very few spaces are left where women and girls feel safe². 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 related to COVID-19 on the freedom of movement inhibits the access of especially women and girls to services and humanitarian aid, affecting their human rights³. Further, the shame and stigma surrounding sexual violence contributes to survivors' remaining silent about it. Women and girls also fear 'honour' killing by sexual violence perpetrators. Families arrange marriages for girls, either believing it will protect them or to 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 lead to more women resorting to harmful activities, such as performing sex for money to survive⁴.

Since 2011, the crisis in Syria had already had a direct impact on the economic conditions of women and their access to health care. Even though the Syrian authorities have not initiated a complete lockdown since 2020, the Syrian population is facing challenges (losing income and access to job opportunities). Examples of restrictive measures affecting the vulnerable are shorter shopping hours and the restriction of access without proof of vaccination to public centres⁵.

However, due to limited data and statistics on the current state of GBV in Syria, it is difficult to add an analysis based on factual figures to our study.

The assessment of the GBV legal and policy framework in Syria, after eleven years of crisis remains an important step in addressing the protection of human rights in post-conflict times. Therefore, the objectives of the review are to provide an overview of the legal provisions and policies as tool to identify the gaps in the protection against GBV, and to recommend operational actions at legislative level to improve GBV protection. The recommendation could lead to strengthening compliance with international instruments that Syria has ratified.

¹ Report "Violence against Women during COVID", UN Women, <https://data.unwomen.org/sites/default/files/documents/Publications/Measuring-shadow-pandemic.pdf>, last check 09.12.2021

² An analysis of the evolution of GBV and sexual and reproductive health service within the Syria Crisis response 2017-2020, https://syria.unfpa.org/sites/default/files/pub-pdf/srh-gbv_assessment_-_english_-_121020_1.pdf, last check on 20.12.2021

³ OCHA, relief web <https://reliefweb.int/report/syrian-arab-republic/syrian-arab-republic-covid-19-update-no-05-10-april-2020>, last check on 20.11.2021

⁴ Whole of Syria, Gender-Based Violence Area of Responsibility, voices from Syria, Assessment Finding of the Humanitarian Needs Overview, available on https://reliefweb.int/sites/reliefweb.int/files/resources/gbv.pdf_p.8, last visit 11.11.2021

⁵ Xinhua media website, http://www.xinhuanet.com/english/2020-03/23/c_138905988_2.htm, checked on 8.12.2021- Syrian Ministry of culture, http://moc.gov.sy/?fbclid=IwAR3czBdoPn3zXyY0oUINFsvlqL2bLgywFHxxzYCVYUNeViOlqNgGH14_zRI, last check on 10.12.2021

1- Overview of Legal and Policy Framework

The provisions related to the protection against GBV in the Syrian legal framework can be found in two main legal sources which are international and domestic laws.

The policy guidance related to GBV is provided mainly by the Ministry of Social Affairs and Labour. Other governmental bodies, such as the Family Protection Unit (FPU) of the Syrian Commission for Family and Population Affairs, are providing support in the matter of protection against GBV.⁶

A- Sources of the legal framework - complementarity of international and domestic laws

1 – **International law** constitutes an essential element of the legislative framework for human rights in Syria, having acceded to various international human rights conventions. The international treaties that Syria has acceded to took immediate effect as part of domestic law, as Syrian Codes require domestic laws to comply with the provisions of international conventions. If there is a conflict between domestic law and an international convention, the latter prevails.⁷

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 harmonisation of national legislation, and the monitoring of human rights violations.

International conventions to which Syria has acceded relevant to GBV include:

1. The four Geneva Conventions of 1949 on humanitarian treatment in war⁸, ratified on 2 November 1953, and Additional Protocol No. 1, ratified on 14 November 1983.
2. Equal Remuneration Convention, 1951 (ILO Convention No. 100).
3. Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111).
4. International Covenant on Economic, Social and Cultural Rights, ratified 21 April 1969.
5. International Covenant on Civil and Political Rights, ratified 21 April 1969.
6. International Convention on the Elimination of All Forms of Racial Discrimination, ratified 21 April 1969.
7. 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.
8. 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 women granting nationality to their 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.

In addition to the above reservations, the Syrian government also entered a reservation to Article 2 of CEDAW (regarding discrimination) in 2003. The mentioned reservation was lifted by issuing the Decree No.230 on 16 July 2017, as long as it does not contradict Sharia Law.

⁶ The national development programme of post-war strategy 2030, Syrian Cabinet, Department of Planning and International Cooperation, published in May 2020

⁷ Syrian Civil Code, 1949 (No. 84), Article. 25; Syria, Code of Criminal Procedure, 1950 (No. 112), Article. 311; Civil Chamber of the Court of Cassation, decision 1905/366 of 21 December 1980.

⁸ The First Geneva Convention "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field"
The Second Geneva Convention "for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea"

The Third Geneva Convention "relative to the Treatment of Prisoners of War"

The Fourth Geneva Convention "relative to the Protection of Civilian Persons in Time of War". In addition to International Humanitarian Law's instruments, the rules of customary IHL are binding, notably the rule 93 Rape and Other Forms of Sexual Violence. Cf. The ICRC customary IHL database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule93 Last check 01.12.2021

2- The main **domestic laws** including provisions related to GBV are:

- Constitution of the Syrian Arab Republic of 2012.
- Penal Code of 1949.
- Personal Status Law of 1953 (amendment by Law No. 4 of 2019).
- Law Against Trafficking in Persons of 2010.
- Anti-Prostitution Act of 1961.
- Labour Law of 2010.
- Social Insurance Law No. 92 of 1959.
- Parties Law, promulgated by Legislative Decree No. 100 of 2011.
- Electoral Law, promulgated by Law No. 5 of 2014.

B- Overview of the Constitution - obligation of equal rights

The Constitution of the Syrian Arab Republic of 2012 establishes basic principles that guarantee independence, sovereignty, and the rule of the people, as 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 Constitution contains the following provisions relevant to protection against GBV.⁹

1. Any political activity or the forming of any political parties or groupings on religious, sectarian, tribal, regional, class, or professional basis, or discrimination based on gender, origin, race, or skin color, may not be undertaken. (Article 8(4))
2. The family shall be the nucleus of society and the law shall maintain its existence and strengthen its ties. (Article 20 (1)).
3. 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))
4. The state shall provide women with all opportunities enabling them to effectively 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)
5. Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion, or creed. (Article 33(3))
6. The state shall guarantee the principle of equal opportunities among citizens. (Article 33(4)).

C- Policy framework - institutions in charge of implementation of GBV human rights

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

In addition to the above institutions, the following mechanisms also support the defence of human rights:

1. The national development programme for post-war strategy 2030, included a specific national programme for women's empowerment which confirms the Syrian government's plan to include policies and programmes on the development of women, including women's social and economic empowerment. The General Union of Syrian Women (GUSW) was invited to participate in drafting the strategy to combat violence against women¹⁰. 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.

⁹ Syrian Constitution of 2012, Syrian Parliament website, <http://www.parliament.gov.sy/arabic/index.php?node=202&mode=1&#>, last check 15.11.2021

¹⁰ A legislative decree was issued in 2017 disbanding the General Union of Syrian Women (GUSW). According to the mentioned decree, the Ministry of Social Affairs and Labor assumed the rights and duties of the GUSW.

2. 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 harmonisation of national legislation with relevant international conventions.¹¹
3. The Syrian Commission for Family and Population Affairs¹² was 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 Unit (FPU) to provide protection, treatment, and legal services to women and children survivors of GBV.
4. The National-Regional Committee for the Follow-up of Children's Rights in the Context of the Crisis in Syria was established in 2013.¹³ 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.
5. The Anti-Trafficking in Persons Department was established by Law No. 3 of 2010 with the mission to prevent trafficking in humans 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 rehabilitated and opened a special unit to receive woman and child trafficking survivors in cooperation with the Syrian Commission for Family and Population Affairs in 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.

D- Social and legal support services - implementation of GBV policy

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 sentenced wrongly and penalised has the right to be compensated for damages incurred.¹⁴

The State provides legal assistance to those who 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 customs and traditions that restrict the advancement of women.

As clarification it deems to be noted that the judicial system is divided into civil, criminal, and Sharia courts. The latter determines legal matters pertaining to personal affairs such as marriages, births, and inheritance.

Over the last ten years of crisis, the Syrian Government has launched a judicial reform plan that included the issuing of the following basic laws. These included the following new laws relevant to gender justice:

- 1- Law No. 4 of 2019 and Law No. 20/2019, which amended some articles of the PSL, notably regarding marriage conditions.
- 2- Law No. 24 of 2018, which amended the legislative decree No.148 of 1949 regarding the Penal Code concerning the sanctions in case of issuance of marriage certificates outside the designated courts.
- 3- Law No. 7 of 2014, concerning the restructuring of the Supreme Constitutional Court and the regulation of its powers in accordance with the Constitution.
- 4- 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.
- 5- Act No. 11 of 2013, which includes the prohibition of child recruitment and an increased penalty for rape.

¹¹ 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. Facebook page of the Ministry of Foreign Affairs mentioning the SNCIHL Plan of Action overview 2019-202 <https://www.facebook.com/2139426746344441/posts/2829180167369092/>
<https://www.facebook.com/2139426746344441/posts/2401318453488601/>

¹² Established by Law No. 42 of 20 December 2003 and amended by Law No. 6 of 2014

¹³ Prime Minister's Decision No. 2310 of 20 August 2013. Established by Law No. 42 of 20 December 2003 and amended by Law No. 6 of 2014

¹⁴ Syria, Constitution of the Syrian Arab Republic 2012, Art.53

- 6- 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.
- 7- 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).

Regarding access of survivors to support services, few public or civil society services are providing support to survivors of GBV. Limited civil 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 their reintegration into society, and are given access to advice and legal support. The UN High Commissioner for Refugees and the International Rescue Committee set up accommodation centres where services are offered to survivors of GBV from camps for internally displaced persons.

4. Analysis of GBV related Provisions under Domestic Law

Following from the domestic laws mentioned in the first chapter (1-A-2), now follows the analysis of GBV related provisions:

A- Discriminatory Provisions of the Nationality Law

Syrian judiciary sees that “Issues of nationality are considered one of the core matters within the entity of the state, as it is a political and legal bond between an individual and a state, related to the public order, so its issues stemmed from the sovereignty of the state itself.¹⁵

In this context concerns should be raised about the Syrian Nationality Law in which men and women are not being subjected to the same provisions. 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.¹⁶ However, Syrian women cannot grant 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.

The Nationality Law stipulates the following persons as Syrian Arab:¹⁷

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.

¹⁵ Decision 140/1974 – Base 189 – Supreme Administrative Court of the Council of State – Syria – Rule 452 – Set of Principles of the Supreme Administrative Court 1965–1990

¹⁶ Syrian Nationality Law, Legislative Decree 276 of 1969, Art 3

¹⁷ Syrian Nationality Law, Art. 3

B- Gaps in protection from sexual violence

Syrian legislation does not explicitly define sexual violence or domestic violence. In addition, there is no law that prohibits domestic violence or rape in marriage. According to the provisions of the Penal Code¹⁸, criminal conduct includes rape, harassment, indecent assault (indecent touching of intimate areas), and acts intended for pornographic purposes. All such acts are penalised 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:

- 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 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.
- 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, the execution of the 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 of a court judgment issued in the victim's favour. The period of the sentence already served shall be considered.

The definition of rape is currently subject to interpretation and needs to be understood in the context of social and religious pressures associated with shame. The Penal Code does not contain a specific recognition of or a ruling about rape in marriage. Domestic violence cases can only be addressed by applying the assault provisions of the Penal Code if there is evidence of violence causing physical injury.

The Penal Code criminalises sexual violence with a series of articles,¹⁹ including rape and incest as offences:

- **Rape**: Article 489 of the Penal Code criminalises rape other than that 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 brother and sister, between stepbrother and stepsister, 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 based on 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.

The right to submit a claim or notification of an offence to the competent public prosecutor is granted. 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 come 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 characterise the case and to determine the degree of injury.

¹⁸ Syrian Penal Code, Arts. 489–506

¹⁹ Syrian Penal Code, available in Arabic <http://www.wipo.int/edocs/lexdocs/laws/ar/sy/sy013ar.pdf>

Gaps in the system of combating domestic violence, and partner and sexual violence in general, may be summarised as follows:

- 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.
- There is no explicit legislative provision defining and classifying interventions in cases of sexual violence perpetrated by a husband against his spouse.
- There is a lack of specialised centres to deal with and support female survivors of sexual violence.

1- 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 the reduction of the sentence of a man who injures or kills a spouse caught in the act of committing adultery. Apart from a spouse, an offender can also take advantage of a mitigating excuse in the case of an offspring, a mother, or a sister caught *in flagrante* in an adulterous act or a debauched sexual intercourse with another, whether he injured or killed one or both parties. In such cases, the penalty shall be imprisonment from five to seven years for murder.²⁰ Much longer prison sentences apply for murder in other circumstances.

However, a new Legislative Decree No. 2, was issued on 17 March 2020 and abolished Article 548 of the Penal Code, therefore abolishes legal recognition of honour killings.

2- ADULTERY AND SEX OUTSIDE OF MARRIAGE

The Penal Code criminalises 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.²¹

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.²²

The criminalisation of adultery can 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.

3- 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.²³

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 to preserve her honour or if someone else performs the abortion to preserve the honour of a relative (up to twice removed relatives).²⁴

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 doctrine can allow for abortion during the early weeks of pregnancy.

According to this doctrine, abortion during early pregnancy may be permissible in on the following

²⁰ Art. 548, as amended in 2011. Prior to 2011 the minimum term of imprisonment was two years.

²¹ Syrian Penal Code, Arts. 473,474

²² Syrian Penal Code, Arts.525, 532.

²³ Syrian Penal Code, Art. 475.

²⁴ Syrian Penal Code, Art. 531

conditions:

- The consent of the parents.
- 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 should be 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.²⁵ 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 or medical staff to be signed by the doctors, the patient, and the woman's husband or guardian.

4- FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

The practice of female genital mutilation 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. There is no legislation on FGM/C specifically. However, the Penal Code has such violence included under Article 543: *"If the act has resulted in the removal of a member or the amputera of one of the parties, the disruption of one of the senses, the cause of serious mutilation or any other permanent impairment or the appearance of permanent impairment, the criminal is punished with a maximum of ten years' hard labor."*

C- Inequity in family rights

The Personal Status Law (PSL) 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). Each Christian denomination is given the right to adopt its own PSL. The PSL also specifies the provisions applicable to the Druze community, including the ban on polygamy and the authority of religious judges.²⁶

Although men and women have the same rights and responsibilities during marriage and at the time of its dissolution, exceptions do exist.

1- MARRIAGE

The amendment in 2019 of the PSL²⁷ confirmed the consent of the wife a basic condition for marriage and specifies that the marriage will not be considered valid without her consent.²⁸ 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. Still the male marriage guardian after his role has been limited by the PSL, may request a court to annul a marriage if he does not approve of the husband's status.²⁹

Regarding child marriage and the marriage guardian, articles 15-20 of the PSL address eligibility for marriage, with several articles related to age criteria, while articles 21-24 address the role of the marriage guardian. The amendments introduced an increased legal age for marriage for girls from 17 to 18 years, same as the age for boys, and the age for early marriage of girls from 13 to age 15, also similar to boys.³⁰ However, such amendment does not necessarily prevent child marriages, but rather leaves it to the discretion of the judge who assesses if the required elements of the marriage are present prior to authenticating the marriage. The judicial assessment encompasses age, mental status and fitness of the parties to the marriage. According to Sharia judge, judges can ask for medical reports, a witness or the mother's testimony to assess the couples' puberty. Furthermore, the couple can be

²⁵ Practice of Medical Professions Law, Legislative Decree No. 12 of 1970, Art. 47(B)

²⁶ Syrian Personal Status Law, Article 307

²⁷ Syrian Personal Status Law, Law No.4 of 2019, Articles 14, 16, 26.

²⁸ Syrian Personal Status Law, Law No.4 of 2019, Articles 21 (2)

²⁹ Syrian Personal Status Law, Article 27

³⁰ Syrian Personal Status Law, Article 18

referred to a family centre to attend sessions on marital life. If a judge determines that a boy or girl who is at least 15 years old has the maturity and the ability to marry, the judge can approve the registration of that marriage.³¹

Significant amendments relating to the marriage guardian's role were also made – in the absence of the default marriage guardian (the father first, then closest male relatives), a judge can now assign the marriage guardian role to the mother. Previously, in the absence of male guardians, the judge himself would have assumed this role.³² This amendment accepts the mother in the role of marriage guardian ahead of a judge, but only if a suitable paternal adult male cannot be found. In the context of Syria, where many families may have absent, missing, or deceased males, this amendment should enable courts to empower some female heads of households as decision-makers, at the same time reducing the burden of decision-making on the courts.

Another notable amendment is Article 21. This amendment formalised bridal approval as a requirement, which had previously been customary but was not stated explicitly. If the marriage guardian has agreed to a marriage without the bride's permission, the completion of the contract as a correct marriage now requires proper acceptance by the bride.³³

While Articles 16 and 18 of the PSL have been revised to reduce the extent to which males and females are treated differently, the wording should harmonise with Law 4 which makes clear that the age of marriage is at the completion of 18 years of age, for both males and females.

Articles 19 and 20 elaborate the role of the judge in ensuring beneficial marriages. Article 19 has not been revised; it permits a judge to withhold permission for the marriage if he finds that there is an age disparity between the betrothed and sees no benefit in the marriage. While Article 16 harmonises the provision for males and females, Article 20 requires the judge to seek a guardian's approval before endorsing the marriage contract of a never-before-married adult (18-year-old) woman - something that is not required for a comparable adult man, or for a widowed/divorced adult woman. Under Article 20, if a never-married adult woman wishes to enter into a marriage contract, the judge should give her guardian a period of time (not more than 15 days) to raise any objection; the judge will rule if that objection is legitimate or not. 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."³⁴

Article 20 of the PSL states that if a girl had 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 girl's marriage if other legal conditions are met. This power of the guardian facilitates coercion of girls to marry older husbands for reasons that lack justification. This article also violates the right of the girl child to complete her education. The overall result is violation of girls' rights, as has been demonstrated by the increase in girls' marriages or forced marriages during the Syrian crisis.

The current National Programme for Women's Empowerment does not provide any mechanism to report or monitor a child marriage, or to annul a child marriage. Girls' marriages are thus allowed to exist by the current legislation.

Polygamy is not encouraged but is legal for Muslim men. "*The judge may not allow a married man to marry another woman unless he has a legitimate justification for doing so and is able to financially afford supporting both wives.*"³⁵ Thus the legislator has left the matter of legal jurisdiction open to interpretation based on loosely-worded conditions and non-specific criteria. For instance, a customary marriage can be allowed and legally recognised once the woman becomes pregnant. Actually, the court should exercise discretion judicially.

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.

³¹ Syrian Personal Status Law, Article 18

³² Syrian Personal Status Law, Article 24

³³ Syrian Personal Status Law, Article 21 (2) ; Article 51 states that what happens in the event of an incorrect marriage, which is considered void if it has not been consummated.

³⁴ Syrian Personal Status Law, Article 18.

³⁵ The Personal Status Law, Law No.4 of 2019, Articles 12 (2)

2- DIVORCE

The PSL stipulates 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, women have the right to seek a divorce at her request or by mutual consent. The PSL regulates divorce in Article 85 and beyond. Article 112 allows for the wife to seek a divorce on the grounds 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.³⁶

3- GUARDIANSHIP AND CUSTODY OF CHILDREN

Women and men have the same rights and duties in terms of their role as parents. 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 by a judge to the mother. Wardship is usually granted to a mother who is concerned with the care of a family member with special needs.

The PSL regulates the rights of women concerning custody.³⁷ The mother is entitled to keep custody of her sons till they reach the age of 13 and of their 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.

4- NUMBER OF WITNESSES

The amended PSL of 2019 maintained the previous provision related to witnesses as prerequisite for the validity of a marriage contract; it is one of *“the matters and specifications that must exist in order for the existence of the contract to be valid, and if it does not exist, the contract is considered as void and inadmissible”*.³⁸

Although marriage is a contract like any other contract, whose validity requires the presence of two witnesses, the PSL renounces the general rule of equality and discriminates between men and women regarding the number of witnesses required for the validity of the marriage contract. It states that witnesses must be either two men or one man and two women, as quoted: *“The validity of the marriage contract requires the presence of two witnesses, being two men or one man and two women, who are Muslims, of sound mind, adults, and who have heard the consent and understood its meaning”*.³⁹

It is noticed here that the original practice of two men was preserved while two women and one man as witnesses is the deviation. Moreover, a woman is equated to half a man, as two women would compensate for the absence of one man, even if they are Muslims of sound mind, adults, and who have heard the consent and understood its meaning.

5- INHERITANCE

The provisions of Islamic law are the basis for determining the rules of inheritance of all Syrian citizens excluding Christians. The PSL sets out 48 articles that regulate inheritance for Muslims.⁴⁰ Under these rules, women inherit half the share that their male siblings inherit. There are some exceptions, however. For example, women have equal inheritance rights in some special cases, such as inheriting agricultural land. In other cases, women have inheritance rights 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.

³⁶ Syrian Code of Civil Procedure, Articles 535–546

³⁷ The Personal Status Law, Articles 137, 138, 139, 140, and 147

³⁸ The Personal Status Law, Law No.4 of 2019, Articles 12 (2).

³⁹ The Personal Status Law, Law No.4 of 2019, Articles 12 (1)

⁴⁰ Syrian Personal Status Law, Articles 260–308

D- Provisions against GBV in the workplace and Labour Laws

The Constitution affirms, in more than one of its articles, the right to work and equality of citizens - men and women - in the application of its laws; and that all must have equal access to employment, enjoyment of their rights and subjection to its duties.

The Constitution stipulates that:

*“Work shall be a right and a duty for every citizen, and the state shall endeavor to provide for all citizens, and the law shall organize work, its conditions and the workers’ rights”.*⁴¹

Secondly it affirms that *“Citizens shall be equal in assuming the functions of public service, and the law shall determine the conditions of assuming such functions and the rights and duties assigned to them.”*⁴²

This is in line with the general rule of equality affirmed in Article 33 of the Constitution that states:

“Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed”.

“The state shall guarantee the principle of equal opportunities among citizens.”

Bearing in mind the commitment of the State particularly towards women, the Constitution under Article 23 states that *“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”.*

There are different laws that regulate labour in the different sectors in Syria. While public sector workers are subject to the Basic Law of State Employees No. 50 of 2004 and its amendments, the private, cooperative, and joint sectors’ workers are subject to Labor Law No. 17 of 2010 and its amendments. Agricultural workers are subject to Agricultural Relations Regulatory Act No. 56 of 2004 and its amendments. There is one social insurance law in Syria that initially applies to all workers. Male and female workers are subject to the provisions of Social Insurance Law No. 92 of 1959 and its amendments, regardless of the nature of labour and the employer.

1- EQUAL ACCESS AND WORK OPPORTUNITIES

The Labour Law states the creating of equal opportunities for all citizens without discrimination as the duty of the government. The Labour Law prohibits the breach or infringement of 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 personal liberty in all matters relating to employment, organisation of work, rehabilitation, vocational training, remuneration, promotion, social benefits, disciplinary measures, or dismissal from work.⁴³ 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.⁴⁴

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

- Employers shall apply the principle of equal pay for work of equal value to all workers, without any discrimination based on race, colour, gender, marital status, belief, political opinion, trade union membership, nationality, or social descent.
- Work of equal value means work that requires equal qualifications and professional skills, as attested by a work experience certificate.⁴⁵

Women are entitled to paid maternity leave.⁴⁶ 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. The Labour Law provides that “notices of dismissal shall not be given to a working woman during her maternity leave”.⁴⁷ It also requires “an employer who employs five or more women to prominently advertise a copy of the women’s employment manual”.⁴⁸

⁴¹ Constitution of the Syrian Arab Republic, Article 40 paragraph 1

⁴² Constitution of the Syrian Arab Republic, Article 26 paragraph 2

⁴³ Syrian Labour Law, No. 17 of 2010, Article 2

⁴⁴ Syrian Labour Law, No. 17 of 2010, Article 2

⁴⁵ Syrian Labour Law, No. 17 of 2010, Article. 75

⁴⁶ Syrian Labour Law, No. 17 of 2010, Articles 121, 122

⁴⁷ Syrian Labour Law, No. 17 of 2010, Article 57

⁴⁸ Syrian Labour Law, No. 17 of 2010, Articles 121, 122

Regarding paternity leave, there are no express legal provisions on paternity leave in the Labour Law. All workers may interrupt work for no more than six days a year and maximum of two days at a time for urgent and valid reasons. The emergency leave shall be deducted from the annual leave prescribed for workers. Workers who have exhausted their annual leave may take emergency leave without pay. However, public servants under the Basic Law on State Employees No. 50/2004 enjoy paternity leave, although the conditions and extension are not clear.⁴⁹

Regarding childcare, the Labour Law includes the following provisions:

*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.*⁵⁰

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.⁵¹

2- SEXUAL HARASSMENT AT THE WORKPLACE

The Penal Code criminalises adultery and extra-marital sex.

A worker may leave before the end of his/her 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.⁵²

The Ministry of Social Affairs and Labour is responsible for the monitoring and reporting of sexual harassment at work. The monitoring process should be implemented through directorates of the Ministry of Social affairs in the governorates, either by inspection visits to establishments, facilities and factories or complaints submitted to the Ministry.

3- PROSTITUTION

Articles 509-516 of the Penal Code 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.⁴⁹ Inciting a person under 21 years of age to engage in prostitution or an immoral act, is punishable with imprisonment for a period of six months to three years.⁵³

Sex work is an offence under the law on Suppression of Prostitution which punishes the “*habitual practice of prostitution*” with up to three years in prison.⁵⁴ A person who habitually works or resides in premises used for prostitution faces imprisonment for a period not exceeding one year.⁵⁵

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 pounds⁵⁶.

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.⁵⁷

4- HUMAN TRAFFICKING

⁴⁹ Syrian Labour Law No. 17 of 2010 paragraph 165. Basic Law on State Employees No. 50/2004, Al Jarida Al Rasmiyah, Syria, 2004-12-15, Vol 1, No 50 bis pp.2961-3024 (INFORM P60790) title II

⁵⁰ Syrian Labour Law, No. 17 of 2010, Article 126

⁵¹ Syrian Penal Code, Article 513

⁵² Syrian Penal Code, Article 509

⁵³ Syrian Labour Law, No. 17 of 2010, Article 66

⁵⁴ Syrian Law on Suppression of Prostitution of 1961, Article 9

⁵⁵ Syrian Law on Suppression of Prostitution of 1961, Article 13

⁵⁶ Syrian Law on Suppression of Prostitution of 1961, Article 1

⁵⁷ Syrian Law on Suppression of Prostitution of 1961, Article 8

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

- 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.
- 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.
- In all cases, the consent of the victim shall not be considered valid.⁵⁸

Sexual exploitation of children also falls within the definition of trafficking.⁵⁹ To implement the Law Against Trafficking in Persons, some governmental efforts resulted in these measures:

- Rehabilitation of the Department for the Reception of Women and Children into the Department of Trafficking in Persons.
- Introduction of Law No. 65 of 2013 regulating the recruitment and employment of foreign domestic workers.
- Development of a National Plan of Action to Combat Trafficking in Persons that includes four main themes: prevention, protection measures, prosecution, and partnership building by local, regional, and international cooperation.
- Establishment of a national committee to combat trafficking in persons and the protection of victims with the participation of civil society.
- Conducting workshops for capacity building of workers in this field.
- 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 ground level several courts still deal with trafficking cases by applying the general Penal Code rather than the Law Against Trafficking in Persons.

Regarding related policies, the Ministry of Social Affairs and Labour is responsible for providing shelters for victims of trafficking. Shelters were opened in Damascus and Aleppo in the last three years. However, these two shelters are experiencing administrative difficulties related to the crisis, despite the mounting need for their services⁶⁰.

The Ministry of Interior is seeking to address human trafficking crimes through surveillance and investigation made by the Department of Anti-Trafficking in Persons. This department carries out investigations if it receives a direct communication, rather than via the Attorney General'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 Attorney General to bring the case against the trafficker. The administration has allocated a hotline for this purpose.

The gaps in combating trafficking of women can be summarised as follows:

- There is a need to incorporate the Law Against Trafficking in Persons as a part of the national curriculum of the Faculties of Law or the Higher Institute of the Judiciary.
- The Law Against Trafficking in Persons is not always applied by the judiciary institutions, which often rely instead on the Penal Code.
- There is a need of awareness at civil society level, in addition there is a lack of specialised centres for female victims of trafficking.

E- Discrimination under the Electoral and Parties Laws

⁵⁸ Syrian law Against Trafficking in Persons, Article 4

⁵⁹ Syrian law Against Trafficking in Persons, Article 5

⁶⁰ Ministry of Social Affairs and Labour FaceBook page, <https://www.facebook.com/mosal.syria>

The Syrian Constitution affirms in Article 34 that “every citizen shall have the right to participate in the political, economic, social, and cultural life and the law shall regulate this”. Regarding the voting process, the Constitution stipulates in Article 49 that “Election and referendum are the right and duty of the citizens and the law shall regulate their exercises”. As such voting is both a right and a duty, and the law establishes controls and regulates the functioning of parties and political life

In Article 61 the principles on which the Electoral Law shall be established are laid down, of which the most important are: ensuring the freedom of voters to choose their representatives, ensuring the safety and integrity of the electoral procedures, the right of candidates to supervise the electoral process, and punishment for those who abuse the trust of voters. As for political parties, the constitution states in Article 8 that the political system of the state shall be based on the principle of political pluralism, exercising power democratically through the ballot box; and that licensed political parties and constituencies shall contribute to the national political life, and shall respect the principles of national sovereignty and democracy. Later it states that “the law shall regulate the provisions and procedures related to the formation of political parties”, and that it is prohibited to “carry out any political activity or form any political parties or groupings on the basis of religious, sectarian, tribal, regional, class-based, professional grounds, or on discrimination based on gender, origin, race, or colour”.

The Electoral and Parties Laws are considered relatively new, with the Parties Law promulgated by Legislative Decree No. 100 of 2011 and the Electoral Law promulgated by Law No. 5 of 2014.

The Syrian government confirmed in 2014 in its second periodical report about the CEDAW Convention that the Parties Law promulgated by Legislative Decree No. 100 of 2011 was a qualitative shift on the path of reform in Syria; for it legislates political pluralism as a cornerstone of the democratic system through the formation of a wide and varied space for political participation and the establishment of a healthy political life. The government report confirmed that the Parties Law shall not discriminate between citizens according to gender, whether in joining parties or forming ones. It stipulates under Article 2 that all citizens of the Syrian Arab Republic have the right to form and join political parties under this Law. Practical reality affirms this; the ratio of female members in licensed parties varying between 30 to 40 percent and women holding leadership positions in these parties. Two out of ten licensed parties are headed by women and the political programs of all licensed parties include special programs designed to promote the role of women in political life while their by-laws provide for gender equality, non-discrimination, and the empowerment of women.⁶¹

The Electoral Law, as confirmed by the government in the same report, guarantees that a Syrian citizen, male or female, who has reached the age of 18 years, has the right to stand for election and vote without discrimination. The government report also noted the presence of women in all decision-making positions in the Syrian Arab Republic: “vice president, two advisers to the President, three ministers, 30 members of the People’s Assembly, and 35 per cent of the diplomatic corps. Women head various boards and directorates, and are assistant ministers in all ministries; there are also women university presidents, deans of faculties, directors of hospitals, etc.” Women are also represented in the Judiciary, accounting for 20 per cent of its members (of a total of 1740 judges, 302 are women).⁶²

Nonetheless, the Committee on the Elimination of Discrimination against Women has expressed in its concluding observation about the second periodic report of the Syrian Arab Republic its concern over “the stagnation at 12 per cent for more than a decade in the level of representation of women in the People’s Assembly and the drop in the participation of women in government positions from 10 to 8 per cent,; also at the overall low level of participation of women in political and public life, in particular in decision-making positions at all levels, owing to persistent traditional and patriarchal attitudes regarding the role of women in society, which limit the participation of women; absence of quotas for women in the Electoral Law (Decree No. 101/2011) and the Parties Law (Decree No.100/2011); in addition to restrictions on establishing women’s and civil society organizations owing to, among other things, considerable delays in adopting the bill on associations”.⁶³

Therefore, the absence of clear discriminatory provisions in the Electoral and Parties Laws currently in force did not contribute on the ground to achieving equality between men and women in exercising their rights and bearing duties and responsibilities stipulated in both Laws. For both Laws lack “temporary

⁶¹ Committee on the Elimination of Discrimination against Women – List of issues and questions raised in relation to the second periodic report of the Syrian Arab Republic – Responses of the Syrian Arab Republic. See the United Nations document: CEDAW / C / SYR / Q / 2 / Add.1 – 23 January 2014

⁶² Committee on the Elimination of Discrimination against Women - List of issues and questions raised in relation to the second periodic report of the Syrian Arab Republic - Responses of the Syrian Arab Republic. See the United Nations document: CEDAW / C / SYR / Q / 2 / Add.1 - 23 January 2014

⁶³ Committee on the Elimination of Discrimination against Women, adopted by the Committee at its fifty-eighth session (30 June-18 July 2014). Concluding observations on the second periodic report of the Syrian Arab Republic - see the United Nations document: CEDAW / C / SYR / CO / 2 - 24 July 2014, p.11

special measures” on behalf of women to actively enhance their participation in the political and public life and to obtain rights on equal terms with men. The absence of clear gendered language threatens women’s enjoyment of some rights stipulated in both laws.

- ABSENCE OF SPECIAL MEASURES

The CEDAW Convention stipulated in paragraph 1 Article 4 that *“adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved”*.

According to General Recommendation No. 25, in Article 4 paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women, the Committee concerned with the Elimination of All Forms of Discrimination against Women considered temporary special measures to be an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women. It is not enough to guarantee equal treatment of men and women. The position of women will not improve if the underlying causes of discrimination and inequality are not effectively addressed. Consequently, according to the same recommendation, these measures target discriminatory dimensions of past and current societal and cultural contexts which impede women’s enjoyment of their human rights and fundamental freedoms. They aim at the elimination of all forms of discrimination against women, including the elimination of their de facto or substantive inequality. Therefore, the application of temporary special measures is one of the means to realise *de facto* or substantive equality for women, rather than an exception to the norms of non-discrimination and equality.

The Committee concerned with the Elimination of All Forms of Discrimination against Women, recommended in General Recommendation No. 25, that State parties should include, in their constitutions or in their national legislations, provisions that allow for the adoption of temporary special measures. Note that the Syrian Electoral and Parties Laws did not include any such measures. Hence the Committee concerned with the Elimination of All Forms of Discrimination against Women recommended that the Syrian government should *“pursue sustained policies aimed at the promotion of the full and equal participation of women in decision-making as a democratic requirement in all areas of public and political life at the national, regional, and local levels, inter alia, by adopting temporary special measures in accordance with Article 4 (1) of the Convention and the Committee’s General Recommendation No. 25 (2004) on temporary special Measures”*.⁶⁴

The special measures adopted by governments vary, they encompass, according to General Recommendation No. 25 *“a wide variety of legislative, executive, administrative, and other regulatory instruments, policies and practices, such as outreach or support programs; allocation and/or reallocation of resources; preferential treatment, hiring and promotion; numerical goals connected with time frames; and quota systems”*. The quota system is one of the most prominent temporary measures to resort to; it constitutes a form of positive discrimination for women that aim at providing them with the support necessary to overcome barriers to their participation in political work. Women quota means the allocation of a minimum number of seats for women in elected councils, administrative and executive authorities to raise their representation in political positions and their inclusion in decision-making.⁶⁵

Bear in mind that the Committee concerned with the Elimination of All Forms of Discrimination against Women recommended that the Syrian government amends Electoral Law (Decree No. 101/2011) to incorporate quotas of at least 30 percent for women’s representation in the People’s Assembly and Provincial Councils.⁶⁶

⁶⁴ Committee on the Elimination of Discrimination Against Women - Adopted by the Committee at its fifty-eighth session (30 June-18 July 2014). Concluding observations on the second periodic report of the Syrian Arab Republic - see the United Nations document: CEDAW / C / 5⁸YR / CO / 2 - 24 July 2014

⁶⁵ Economic and Social Commission for Western Asia (ESCWA), Arab Women’s Participation in Political Action: Challenges and Suggestions. See the United Nations document: E / ESCWA / ECW / 2013/1 - 22 January 2013

⁶⁶ Committee on the Elimination of Discrimination Against Women - Adopted by the Committee at its fifty-eighth session (30 June-18 July 2014). Concluding observations on the second periodic report of the Syrian Arab Republic - see the United Nations document: CEDAW / C / SYR / CO / 2 - 24 July 2014

3. Recommendations for improving the legal/ policy GBV framework in Syria

This review has presented a selection of provisions in the Syrian laws with the aim of highlighting issues relevant to GBV and human rights. Although evidence of positive reform was found, current legislations still contain discriminatory provisions dating from the past and deeply rooted in ideas and practices that prevailed in previous centuries.

The following is a summary of the findings of this research:

- 1- There is a need to initiate a national revision programme for identifying the gaps in Syrian legislation, under the umbrella of the Ministry of Social Affairs and Labour. It should be aiming to analyse the discriminatory provisions in the legislation mentioned in this review which showed up as gaps in the legal/policy framework of the Syrian Arab Republic. Those provisions are incomplete or in contradiction with Syria's ratification of various relevant international conventions.
- 2- Inconsistencies with the Syrian Constitution exist and were pointed out in the analysis. Under Article 33 of the Constitution, citizens have personal freedom, dignity and security guaranteed by the state; and every citizen enjoys equal rights, opportunities, and duties without discrimination.
- 3- All legislation should be compatible with the Constitution as the supreme law of the country. If any piece of legislation contradicts with a constitutional provision, then the constitutional provision shall prevail, and the provisions of the contradictory law shall be amended. The Syrian Constitution (Article 154) requires the amendment of all legislation contradictory to itself within three years. This means that amendments of contradictory discriminatory provisions are more than four years overdue. These should be repealed or amended to redress not only women's rights but also the respectful standing of the Constitution.
- 4- The review has revealed that discrimination against women is present in the Penal Code, Nationality Law, Labour Law, Social Insurance Law, Electoral Law, and Parties Law. A detailed list of recommended revisions is enclosed hereafter to serve as an aid for planning further action.
- 5- Legal texts lack clear definitions and contain misinterpretations of some human rights concepts like gender equality and discrimination. It should be emphasised that equality means all citizens are equal before the law/legal texts and not the equality of women to men in a literal sense, neither is it a quantitative value of women compared to men. Rather, equality refers to the subjection of all to the same rules and regulations when in the same legal conditions, alternatively, statutory rule shall not differ based on gender or other considerations. Discrimination against women should not be ignored as being a solely religious and cultural issue. In fact, many Sharia and doctrinal opinions have also called for change which could lead to the abolishment of existing discrimination.
- 6- The absence of explicit prohibition of discrimination against women in legal texts have contributed to insufficient implementation of preventative measures against GBV and consequently insufficient protection of the vulnerable in Syria. The "prohibition of discrimination against women in legal texts" should be regarded as a general legalistic issue which is not limited to a feminist application. For the law cannot tolerate discrimination in legal provisions that treat women or any group as second-rank citizens.

Concerning provisions in the Nationality Law

- 1- Amending of paragraph A of the third article in the Nationality Law, so that the Syrian mother can grant her child the Syrian Arab nationality by blood relation on the mother side, so that the text of this article becomes: A- "Anyone who is born in or outside Syria, to a Syrian Arab father or a Syrian Arab mother is definitely a Syrian Arab."
- 2- Amending articles related to granting nationality via marriage in order to allow a Syrian woman's foreign husband to obtain Syrian nationality, similar to the Syrian man who enjoys the right of granting nationality.
- 3- Amending article 12 about liability of the Syrian woman to lose her Syrian nationality in case she marries a foreign man, so that the same provision will be valid in the case of marriage between a Syrian person, man or woman, to a foreign person, man or woman, without discrimination.

Concerning provisions in the Penal Code

- 1- Abolishing articles containing discrimination in punishment according to gender, especially regarding honour crimes. In addition, there is a need to adopt clear legal texts that guarantee protection for individuals who report these crimes and for women, who are more liable to be their victims or survivors.
- 2- Broadening the definition of rape to include forcing a woman into sexual intercourse "unnaturally" or by causing suffering.
- 3- Abolishing advantages enjoyed by the rapist of any mitigating excuse or reason, whether under article 508 or any other article that enables the rapist to escape punishment for the crime or mitigate the penalty imposed.
- 4- Criminalising "marital rape" by amending the text of article 489 to include instead of excluding the spouse. The article only criminalises "any person who has sexual intercourse with someone other than their spouse, without their consent, whether by violence or threat..."
- 5- Issuing specific legislation about violence against women, under the title "Eliminating Violence against Women", which should include a wide-scope definition of violence against women, and provide mechanisms for filing complaints, addressing criminal and civil lawsuits, and providing services for the women survivors and their integrating in society. The text should include, explicitly and in details, the rights of women victims of violence, and the expanding of services including nursing homes for the victims.

Concerning provisions in the Personal Status Law

- 1- Amending articles on the age of marriage, whether in the General PSL or in the respective Laws of the sects, to ensure equality between women and men in defining this age, and to prevent allowing this age to be below the age of legal capacity which is completing 18 years old.
- 2- Amending article 12 of the PSL which considers that the witnessing of a man equals the witnessing of two women, to achieve equality.
- 3- Amending articles 21 to 25 on guardianship in marriage where the woman is treated as a person with incomplete capacity, needing a guardian to share her right in choosing whom to marry.
- 4- Amending article 17 on polygamy⁶⁷: either to abolish polygamy altogether, or to ensure applying the conditions that allow it in the strictest possible manner.
- 5- Amending articles in the PSL that distinguish the man with the right to terminate a marriage by his unilateral desire, and in taking back the divorced wife, as well as articles not doing justice to women in case of arbitrary divorce, particularly articles 85, 118, 119.
- 6- Amending the article on inheritance to eliminate discrimination, whether in texts on inheritance according to Sharia or on inheritance according to the law.

Regarding Labour Law and Social Insurance Law

- 1- Amending labour laws in force in Syria and adding legal provisions guaranteeing equality between women and men. These provisions shall ensure *de facto* equality and non-discrimination in all work areas (notably equal opportunity, equal treatment at work, equal wage for work of equal value, equal access to a safe and healthy work environment and social insurance, equality of rights, union freedom, equal access to actual job promotion, ensuring an equitable balance between work and family life for both women and men, equal participation in decision-making).
- 2- Adopting of new and explicit provisions prohibiting sexual harassment in the workplace.

⁶⁷ UNFPA "Voices from Syria" 2018, Page 49. Participants in the assessments felt that the rates of divorce and polygamy are on the rise and often linked to changing gender roles in families, early and forced marriages as well as serial temporary marriages of women and girls, and domestic violence.

- 3- Unifying Syrian labour laws on maternity protection, firstly to provide the working mother with the maximum possible protection, and secondly ensuring equality among working mothers in different sectors therefore subject to different labour laws.
- 4- Amending Social Insurance Law Article 90 that specifies the share of the pension transferred to beneficiaries, to eliminate discrimination and achieve equality. Article 90 states that the widow receives a share of her deceased husband pension for life or till she remarries, while the widower continues to receive a share of his deceased wife's pension for life.

Concerning Electoral Law and Parties Law

- 1- Amending the Electoral and Parties Laws to incorporate a mandatory women quota with a proportion not less than 30 per cent, and to set the controls necessary to ensure commitment to this quota and meeting the requirements of its realisation.
- 2- Amending the current Electoral Law to guarantee that existing parties are required to amend their by-laws to incorporate the quota system in the internal partisan regulations and laws.

In addition to the recommendations pertaining to all mentioned domestic laws, the adoption of an **explicit gendered language** in the drafting of laws is recommended to dissipate any controversy or clarify any ambiguity that could influence the interpretation and application of those provisions.

It is to be noted that the repealing of discriminatory provisions contained in different Syrian laws requires also working on a **gender-based evaluation of the Syrian Constitution**, pinpointing its vulnerable and discriminatory features, as well as incorporating new provisions which will ensure the realisation of *de facto* desired gender equality constitutionally and legally.

KEY RESOURCES

• **Syrian Legislation**

- Constitution of the Syrian Arab Republic of 2012. Available from the Syrian parliament website <http://www.parliament.gov.sy/arabic/index.php?node=202&mode=1&#>
- Penal Code, Legislative Decree No.148 of 1949, and its amendments. Available from http://www.wipo.int/wipolex/en/text.jsp?file_id=243237.
- Law No. 11 of 2013 amending the Penal Code
- Syrian Code of Criminal Procedure, Legislative Decree No. 112 of 1950 and its amendments.
- Syrian PSL, Legislative Decree No. 59 of 1953 and its amendments by Law No.4 of 2019
- Syrian Law on Suppression of Prostitution, Law No. 10 of 1961. Available from <http://www.qub.ac.uk/slavery/?page=countries&category=2&country=167>.
- Syrian Civil Status Law, Law No. 26 of 2007 and its amendments.
- Syrian Labour Law, Law No. 17 of 2010. Available from <http://www.wipo.int/edocs/lexdocs/laws/en/sy/sy009en.pdf>.
- Syrian 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>.
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- Annex No. 10 to the “National Plan for Women’s empowerment 2018” of the national development programme of post-war strategy 2030, Syrian Cabinet, Department of Planning and International Cooperation. (Available Arabic version).
- 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*.
- Syrian Ministry of Culture webpage http://moc.gov.sy/?fbclid=IwAR3czBdoPn3zXyY0oUiNFsvlqL2bLgywFHxzYCVYUNeViOlqNgGH14_zRI
- Syrian Ministry of Foreign Affairs facebook page / Syrian National Commission for IHL meetings <https://www.facebook.com/2139426746344441/posts/2829180167369092/>
<https://www.facebook.com/2139426746344441/posts/2401318453488601/>
- Report “Violence against Women during COVID”, UN Women, <https://data.unwomen.org/sites/default/files/documents/Publications/Measuring-shadow-pandemic.pdf>
- *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.lan.ohchr.org/EN/HRBodies/UPR/Pages/SYSession26.aspx>.
- *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>.
- OCHA, relief web <https://reliefweb.int/report/syrian-arab-republic/syrian-arab-republic-covid-19-update-no-05-10-april-2020>
- 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.
- ICRC, Customary IHL Rules database, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule93
- ICRC, Domestic implementation of International Humanitarian Law prohibiting sexual violence, <https://shop.icrc.org/domestic-implementation-of-international-humanitarian-law-prohibiting-sexual-violence-a-checklist-for-states-and-the-international-red-cross-and-red-crescent-movement-pdf-en.html>

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