Gender Justice & The Law

Assessment of laws affecting gender equality in the Arab States region
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Gender Justice & the Law was the result of a collaborative and consultative process. Contributions were made by numerous stakeholders including technical experts from UN agencies, governments, national human rights institutions and civil society organizations. We thank the UN Resident Coordinators, UN Country Teams especially UNDP, UN Women and UNFPA country offices in the Arab states for their invaluable contributions to this study. Thanks are due to the UN teams from UNDP, UN Women, UNFPA and ESCWA at regional level for their contributions, hard work and dedication which were critical for the completion of the study. Special thanks go to Marta Valdés, Frances Guy, Khaled Abdelshafi, Noeman Alsayyad, Kawtar Zerouali and Youssef Beyhum from the UNDP Regional Hub for the Arab States; Yoko Maruta, Maryse Guimond and Rachel Dore-Weeks of UN Women; Valentina Valpe and Emnath Ahmed of UNFPA; and Nada Darwazeh and Mehrinaz Ghaziyya of ESCWA.

The regional introduction and literature reviews that formed the basis of country assessments were authored by consultants John Godwin and Nadya Khahle, whose insights and hard work are also gratefully acknowledged. The country profiles were drafted by national consultants and edited for publication by John Godwin and Nadya Khahle. Nadya Khahle and Ami Khayr translated the outputs of the study into Arabic and English. Gratitude is also extended to John Tessitore for assistance with copyediting in English.
This study is based on the premise that development is endangered if it fails to address gender inequalities. No country will be able to realize the grand promise of development articulated in the SDGs unless women and girls are assured equal rights, opportunities, and access to all the benefits of peace and prosperity. Economic violence in this study is defined as violence inflicted on women in any form, including as domestic violence, rape and other forms of sexual assault, sexual violence, psychological violence, and economic violence. These various forms of violence manifest themselves in many ways both in the private and public spheres, including as domestic violence, rape and other forms of sexual violence, sexual harassment, child and forced marriage, female genital mutilation/cutting (FGM/C) and other harmful traditional practices, trafficking in persons, and other forms of violence of comparable gravity.

Gender-based violence

Noting that gender-based violence is a major barrier to gender justice, this study addresses gender-based violence in various terms, such as sexual violence, physical violence, and economic violence. Women and girls in Arab countries have long suffered violence inflicted on them in any form, including sexual violence, domestic violence, and economic violence. This study highlights gender-based violence as a major barrier to gender justice.

Economic violence is facilitated by laws and policies that cause financial disadvantage to women and girls, such as discriminatory laws relating to marriage, divorce, property inheritance, and employment. Economic violence includes violence that results from violence for all women.

Gender justice

For the purpose of this study, the term ‘gender justice’ is defined as just legal protection of the rights of half the population: women and girls. The obligation to respect, protect, and fulfil human rights, and these include the rights of half their population: women and girls. The obligation to respect means that states must refrain from interfering with or curtailing the enjoyment of human rights, the obligation to protect, from arbitrary or unlawful interferences with the enjoyment of human rights, and the obligation to fulfil means that states must take positive action to facilitate the enjoyment of basic human rights. Through ratification of international human rights treaties, governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties.
### Ratification of related international human rights instruments in the Arab states region

|-------------|---------------|---------------|--------------|------------|------------|----------------|------------------------|

- **Ratified**
- **Ratified with Reservations or Declarations**
- **Signature only**
- **No Action**

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Development as freedom

This study and its conceptualization adhere to the concept of human development and to the principle that gender justice is fundamental to human development. Human development – as defined by the first UNDP Human Development Report and building on Amartya Sen’s work on “Development as Freedom” – is “the process of enlarging people’s choices,” and thus allowing them to “lead a long and healthy life, to be educated to enjoy a decent standard of living” as well as to have “political freedom, other guaranteed human rights and various ingredients of self-respect.”

The human development approach aims to expand the richness of human life. It is an approach focused on people, their opportunities and choices. The human development approach is of critical importance when analysing women’s well-being by ensuring equitable, sustainable, and stable societies. It is an approach that reflects the aspirations set forth in the 2030 Agenda, and the commitments made from member states towards achieving the 17 Sustainable Development Goals (SDGs).

The analysis conducted therefore considers whether the legal environment allows women and girls to develop to their full potential and to have a reasonable chance of leading productive and creative lives that they value.

Gender justice and the 2030 Agenda

The 2030 Agenda for Sustainable Development is a commitment to eradicate poverty and achieve sustainable development worldwide by 2030, ensuring that no one is left behind. The adoption of the 2030 Agenda was a landmark achievement celebrated at the United Nations General Assembly in 2015, providing for a shared global vision towards sustainable development for all. Together with this world vision, all the governments of the world adopted the 17 Sustainable Development Goals.

As governments have begun to develop and implement their plans and visions for how to achieve these far-reaching goals, it has become increasingly clear that development will only be sustainable if its benefits accrue equally to both women and men; and women’s rights will only become a reality if they are part of broader efforts to ensure equitable societies, promoting sustainable development and ensuring that all people can live with respect and dignity.

Although legal status is only one part of equality, without legal equality, many of the SDG targets will be unattainable. In many parts of the world, women are still not equal to men before the law.

The SDGs cannot be achieved without addressing gender equality in the law and its practice.
Methodology

This study consists of a systematic review of the laws in 18 countries of the Arab states region to assess whether they promote or impede equality between women and men and provide protection against gender-based violence. Each country assessment was conducted between January 2016 and September 2018.

The countries included in the study are: Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Somalia, State of Palestine, Sudan, Syria, Tunisia, and Yemen. Collectively, this study refers to these countries as the Arab states region.

The study 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
- 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

This study consists of 18 country profiles addressing these topics. Each profile assesses whether the laws governing these subject areas comply with international human rights standards and with the recommendations of the UN Committee on the Elimination of Violence against Women (CEDAW Committee). Consideration is also given to country recommendations under Universal Periodic Reviews. Country validation processes took place between September 2017 and August 2018 to ensure the accuracy of each country report. These sought the views of government partners, non-governmental organizations, and other key national stakeholders. In several countries, consultation workshops were held to review the country reports and to highlight and identify priorities for future action.

All country profiles can be accessed online and are independent from one another. The authors of this report acknowledge that each country profile has its own strengths and weaknesses. As each country validation process differed, there is variation among the country profiles in the degree to which particular issues were examined and assessed. In some countries there was a higher degree of engagement from government and civil society partners, which contributed greatly to the quality of the final product.

Each of the profiles focuses on whether the laws guarantee equal rights for women/girls and men/boys, or whether they fail to provide protection against violence, thereby hampering the efforts of rule of law programmes that seek to provide access to justice for all. Further, the analysis acknowledges that gender-based violence can be enacted against both women and men as well as against both sexes.

The aim of each country profile is to provide a baseline to support governmental and non-governmental actors at the national, regional, and international levels to ensure that all 54 gender-specific indicators of the SDGs are met across the region. Since changes in legislation can only happen at the country level, it is essential for national actors to reflect on their own country findings and to develop an agenda for action that addresses their specific needs.

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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 assessments.

2. Realizing the limitations of desk-based literature reviews, comprehensive country validation processes for each of the draft country assessments were led by UN Country Teams and national consultants (except in Qatar, where there is no UN country presence and where the National Human Rights Committee provided feedback). Country validation processes took place between September 2017 and August 2018 to ensure the accuracy of each country report. These sought the views of government partners, non-governmental organizations, and other key national stakeholders. In several countries, consultation workshops were held to review the country reports and to highlight and identify priorities for future action.

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Gender justice assessment: Explanation of categories

Each country assessment includes a short summary overview of the legal framework. This section should be read in conjunction with these summaries (available separately). As part of this summary overview, each country’s laws on selected topics were categorized using a simple four colour code system that compares the laws identified in the country profiles 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 Review (UPR) recommendations. A grey category indicates that there is no available data or inadequate information. A red code indicates that gender justice in the relevant topic area has not been fully achieved. An amber code indicates that the law on a particular topic does not provide for gender equality and/or there is no or minimal protection from gender-based violence. A green code indicates that gender justice in the relevant topic area has been addressed, but important gender inequalities remain. Laws should be subject to ongoing review to assess how they can be improved to further eliminate gender inequalities and ensure improved protection from violence.

The topics assessed were categorized as follows:

CEDAW & CONSTITUTIONAL PROVISIONS

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

Constitution

Articles of the Constitution refer directly to gender equality or sex/gender discrimination. Sections of the Constitution refer to gender equality or sex/gender discrimination. There is some reference to gender or sex, but it provides limited or weak gender justice. Articles do not address gender equality or sex/gender discrimination.

CRIMINAL LAWS

Domestic violence

There is a law on domestic violence that enables women to obtain protection orders from a court and that criminalizes domestic violence. There is a domestic violence law, but it does not enable women to obtain protection orders from a court or it criminalizes domestic violence. There is no domestic violence law.

Rape (other than of a spouse)

Rape is criminalized. Penalties for aggravated rape do not include capital punishment. Rape is criminalized. Penalties for aggravated rape include capital punishment. Rape is not criminalized.

Examination by marriage

The Penal Code does not include a provision waiving the penalty for rape, abortion, or other crimes if the marital status of the offender is known to the authorities. The Penal Code includes provisions waiving the penalty for rape, abortion, or other crimes if the marital status of the offender is known to the authorities. The Penal Code includes provisions waiving the penalty for rape, abortion, or other crimes if the marital status of the offender is known to the authorities.

Marital rape

Marital rape is expressly addressed by penal law and criminalized. Marital rape is sometimes prosecuted under rape or other laws. The legal definition of rape in the Penal Code/Islamic law is interpreted by the legal system as excluding marital rape.

Abortion for rape survivors

Abortion for rape survivors may be permitted in some cases. Abortion for rape survivors is prohibited.

Sexual harassment

Sexual harassment is defined in legislation and is prohibited. Sexual harassment is prohibited and is not defined in legislation. Sexual harassment is not defined by legislation, but offences in criminal law or labour law provide some protections. There is limited or no protection from sexual harassment in criminal or labour laws.

Honor crimes: Mitigation of penalty

There is no provision allowing for the reduction of penalty for honour crimes. Some provisions allowing for reduction of penalty for honour crimes have been repealed, but loopholes remain. Provision allows for the reduction of penalty for honour crimes.

Adultery

Adultery is not criminalized. Adultery is not criminalized in the Penal Code, but Sharia penalties apply. Adultery is criminalized.

Female genital mutilation / Cutting

FGM/C is prohibited / criminalized. FGM/C is subject to regulation, but is not criminalized. FGM/C is practised and is not prohibited. There are no documented cases. There is no legal prohibition.

Human trafficking

There are comprehensive anti-trafficking laws with punitive, protective, and preventive measures. Some distinct forms of trafficking are criminalized, but the law does not require punitive and preventive measures. There are minimal or no anti-trafficking offences in criminal law.

Sex work and anti-prostitution laws

People who sell sex / sex workers are not criminalized. Sex work is criminalized, subject to exceptions that permit sex work in some areas under regulatory supervision. Anti-prostitution laws criminalize people who sell sex / sex workers.

Sexual orientation

Homosexual conduct is not criminalized.笑道 do not enforce criminal laws (e.g., sodomy, indecency, immoral conduct) for consensual same-sex conduct or expression of sexual orientation. These are conflicting judicial interpretations of the criminal law relating to homosexual conduct. Police enforce criminal laws (e.g., sodomy, indecency, immoral conduct) to penalize consensual same-sex conduct or expression of sexual orientation. Homosexual conduct is criminalized.
### PERSONAL STATUS LAWS

#### Minimum age of marriage
- **Green:** Minimum age of marriage is 18 years or older for women and men. Marriage at a younger age is only permitted if the minimum age is not below 16 years, the grounds for setting the legal age are strictly defined by law, and the law requires the full, free, and informed consent of the child who must appear in person before the court.
- **Amber:** The legal age for girls to marry is 18 years or older. Marriage at a younger age is permitted subject to judicial discretion.
- **Red:** The legal age for girls to marry is less than 18 years or there is no minimum age of marriage. Early marriage is not prohibited.

#### Male (marriage) guardianship over women
- **Green:** No legal requirement for a marriage guardian. Male guardianship over adult women does not exist in law.
- **Amber:** The law requires a male guardian to consent to a woman's marriage, but includes limitations such as requiring the woman's consent, not forcing a woman to marry against her will, and/or the right to challenge a guardian's refusal of consent in court.
- **Red:** Consent of the male guardian to marriage is an essential requirement. There is a lack of legislative protection to prevent forced or early marriage for women and girls subject to guardianship. The role of the male marriage guardian is maintained with weak legal protections for women and girls.

#### Marriage and divorce
- **Green:** Women enjoy equal rights in marriage and divorce.
- **Amber:** Women enjoy equal rights in some aspects of marriage and divorce, but significant legal inequalities remain.
- **Red:** Women do not enjoy equal rights in all or most aspects of marriage and divorce.

#### Polygamy
- **Green:** Polygamy is prohibited. Polygamy is permitted under strict conditions and requires court approval.
- **Red:** Polygamy is permitted without strict conditions.

#### Guardianship of children
- **Green:** Women and men have equal legal rights to guardianship of children, including after divorce.
- **Amber:** Women have some legal guardianship rights in important areas, such as decisions regarding education, health, and travel.
- **Red:** Women have no or minimal rights to guardianship of children.

#### Custody of children
- **Green:** Women and men have equal rights to custody of children, including after divorce. Consideration of the best interest of the child is a legal requirement.
- **Amber:** Women have rights to custody of children up to a certain age, but women's rights are restricted in some cases, e.g., loss of custody upon remarriage.
- **Red:** Women have no or minimal rights to custody of children, and consideration of the best interest of the child is not a legal requirement.

#### Inheritance
- **Green:** Women and men have equal rights under inheritance laws.
- **Red:** A subordinated religious minority (e.g., Christians) of women enjoy equal rights under inheritance laws.
- **Green:** Women do not enjoy equal rights under inheritance laws.