



Tunisia

Gender Justice & The Law

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Tunisia

Gender Justice

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

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ACRONYMS

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

INTRODUCTION

Scope

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

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

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

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

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

Methodology and acknowledgements

The study was conducted in two phases:

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

The Tunisia country profile is an edited version of a draft provided by Ms. Hafidha Chekir, Ministry of Woman, Family and Childhood, Centre for Research and Studies Documentation and Information on Women (CREDIF). Consultation on the draft occurred through a validation workshop held on 18 December 2017 attended by representatives from the Ministry of Woman, Family, and Childhood, Ministry of Social Affairs, Ministry of Labour, UNFPA, UNDP, UN Women, and civil society organizations, as well as policy experts, academics, and members of the media.

The literature reviews that formed the basis of the country assessment were authored by consultants John Godwin and Nadya Khalife. They also edited the final drafts for publication after feedback from national counterparts. Their insights and hard work are recognized with gratitude. Nadya Khalife and Amr Khairy translated the outputs of the study into Arabic and English. Gratitude is also extended to John Tessitore for assistance with copyediting in English.

TUNISIA



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Gender Justice & The Law

DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

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

YES

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

NO

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

Partly

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

No available data or inadequate information.

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

Tunisia ratified CEDAW in 1985 and lifted all specific reservations to the Convention in 2014. Tunisia maintains a general declaration stating it will not take any regulatory or legislative decision that would violate Article 1 of the Tunisian Constitution, which states that Tunisia's religion is Islam.

Constitution

Article 21 of the 2014 Constitution states that all citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination.

NATIONALITY LAW

NATIONALITY

Women can pass on their nationality to their children in the same way as men. However, they do not have the same rights as men to pass citizenship to a foreign spouse.

CRIMINAL LAWS

Domestic violence

Women and girls are protected by the Law on Eliminating Violence against Women, No. 58 of 2017.

Abortion for rape survivors

Abortion has been decriminalized. Article 214 of the Penal Code permits an abortion during the first three months of pregnancy if it is performed by a doctor in a hospital or licensed clinic.

Female Genital Mutilation / Cutting (FGM/C)

Article 221 of the Penal Code prohibits the mutilation or partial or full removal of a woman's sexual organ.

Marital rape

Marital rape is not specifically criminalized. The Personal Status Code requires both spouses to "fulfil their marital obligations according to custom." However, Tunisia has indicated to the CEDAW Committee that marital rape can be prosecuted.

Sexual harassment

Article 226 of the Penal Code prohibits sexual harassment.

Human trafficking

Law No. 61 of 2016 on Preventing and Combating Trafficking in Persons provides comprehensive measures against trafficking.

Rape (other than of a spouse)

Article 227 of the Penal Code criminalizes rape, which is defined as any act of intercourse with a man or woman without consent, regardless of the nature or the method used.

Honour crimes: Mitigation of penalty

Mitigation for 'honour' crimes committed against women caught in the act of committing adultery no longer applies. Article 207 of the Penal Code was repealed in 1993.

Sex work and anti-prostitution laws

Article 231 of the Penal Code criminalizes prostitution other than as regulated by law. A Decree issued in 1942 regulates the conditions for the legal practice of prostitution in specific residences, with the requirement for sex workers to undergo health screening, pay taxes, and register with the Interior Ministry.

Exoneration by marriage

Article 227 bis of the Penal Code exonerated a rapist if he married his victim. Article 239 exonerated a man from punishment for kidnapping a woman if he married her. These articles were removed from the Penal Code in 2017.

Adultery

Adultery is an offence under Article 236 of the Penal Code.

Sexual orientation

Homosexual conduct is criminalized. Sodomy is prohibited by Article 230 of the Penal Code.

PERSONAL STATUS LAWS

Minimum age of marriage

The legal age of marriage for each spouse is 18 years. It is possible in exceptional cases to conclude a marriage contract below the prescribed age after obtaining special permission from the court, which is given only for serious reasons and for the obvious interest of the spouses.

Guardianship of children

The father is the guardian over his children. The Personal Status Law was amended by Law No. 74 of 1993 to enable women to exercise some guardianship authority.

Male guardianship over women

There is no legal requirement for a male marriage guardian to consent to an adult woman's marriage or to sign the marriage contract.

Custody of children

Judges have discretion in granting custody to the mother or the father based on the best interests of the child. After divorce, the mother loses custody if she remarries unless it is judged by the court to be in the best interest of the child to award custody to a married woman or if the husband is within the prohibited degree of relationship to the child.

Marriage and divorce

Women and men have equal rights in most aspects of marriage and divorce. The law requires consensual marriage. The Personal Status Code provides for judicial divorce and guarantees equal divorce rights for women and men.

Inheritance

The Personal Status Code defines the rules of inheritance, which follow Sharia principles. Women have a right to inheritance, but in many cases receive less than men. Daughters receive half the share that sons receive.

Polygamy

Polygamy is prohibited by the Personal Status Law.

LABOUR LAWS

Right to equal pay for the same work as men

Women have the right to equal pay for the same work as men. Article 5 bis of the Labour Code prohibits discrimination between men and women in the application of the Code.

Domestic workers

Domestic workers do not benefit from the protective provisions of the Labour Code. Their relationship with their employer is subject to the civil law of contracts.

Dismissal for pregnancy

Article 20 of the Labour Code prohibits employers from dismissing a worker because of her pregnancy.

Paid maternity leave

Article 64 of the Labour Code states that women are entitled to 30 days of maternity leave. This is below the ILO standard of 14 weeks.

Legal restrictions on women's work

The Labour Code includes legal restrictions on women's employment in undertaking night work, mining, and scrap metal work.

OVERVIEW

Tunisia's public policy has a strong focus on improving the status of women, which is considered a pillar for national development and a modern state. Tunisia has created new institutions concerned with improving the status of women and has formulated a range of policies that promote the status and rights of women as a State priority. It has also issued laws that recognize and protect women's human rights.

The Personal Status Code was the country's first legislative text, appearing just three months following Tunisia's independence in 1956. Independence from France opened the way for the establishment of a new State founded on modernity and domestic institutions that are inclusive of women's rights. Political leaders at the time were committed to the importance of promoting and improving women's status in the family, considering such status to be at the core of society and the guarantor of a democratic society and rule of law. This was confirmed by the priority given to establishing the legal framework for the family three years before Tunisia was established as a State by a 1959 Constitution. Numerous other laws were introduced in this context to acknowledge the rights of women and men based on equality, including in the areas of education, the right to work, and political rights – including the right to vote and to run for public office.

Foundational texts

The Constitution of Tunisia of 2014

Tunisia's new Constitution of 2014 is founded on equality between male and female citizens in rights and duties without discrimination, and specifically acknowledges the rights of women in numerous articles. This exemplifies progress, building on Chapter 6 of the 1959 Constitution, which stated that "all citizens are equal in rights and duties and are equal before the law."

The following Articles of the Constitution of 2014 address women's rights:

- Article 21: All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination. The State guarantees freedoms and individual and collective rights to all citizens, and provides all citizens the conditions for a dignified life.
- Article 23: The State protects human dignity and physical integrity, and prohibits mental and physical torture. Crimes of torture are not subject to any statute of limitations.
- Article 34: The rights to election, voting, and candidacy are guaranteed, in accordance with the law. The State seeks to guarantee women's representation in elected bodies.
- Article 40: Work is a right for every citizen, male and female. The state shall take the necessary measures to guarantee work on the basis of competence and fairness. All citizens, male and female, shall have the right to decent working conditions and to fair wages.
- Article 46: The State commits to protect women's accrued rights and work to strengthen and develop those rights. The State guarantees the equality of opportunities between women and men to have access to all levels of responsibility in all domains. The State works to attain parity between women and men in elected Assemblies. The State shall take all necessary measures in order to eradicate violence against women.
- Article 74: Every male and female voter who holds Tunisian nationality since birth, whose religion is Islam shall have the right to stand for elections to the position of President of the Republic.

The following Constitutional mechanisms guarantee women's rights:

- Article 20: International agreements approved and ratified by the Assembly of the Representatives of the People have a superior status to laws and are inferior to the Constitution.
- Article 49: The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defence, public health or public morals, and provided there is proportionality between these restrictions and the objective sought. Judicial authorities ensure that rights and freedoms are protected from all violations. No amendment may undermine the human rights and freedoms guaranteed in this Constitution.

International law

Tunisia has ratified several international conventions on the rights of women adopted by the United Nations General Assembly and the International Labour Organization (ILO), including:

- Convention on the Political Rights of Women, 1967

- Convention on the Nationality of Married Women, 1967
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1967
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1985.
- Optional Protocol to CEDAW, 2008
- Convention on Equal Remuneration, 1951 (ILO No. 100)
- Convention on Discrimination in Respect of Employment and Occupation, 1951 (ILO No. 111)
- Convention Concerning Night Work of Women Employed in Industry, 1948 (ILO No. 89, revised)
- Protocol to ILO Convention concerning Night Work of Women Employed in Industry, 1990
- Convention concerning the Employment of Women on Underground Work in Mines of all Kinds, 1934 (ILO No. 45)

Upon ratification of CEDAW, Tunisia made general and specific reservations and declarations to the Convention. The general declaration confirmed that Tunisia would not take any regulatory or legislative decision that would violate Article 1 of the Tunisian Constitution, which states that Tunisia is a free, independent, and sovereign state, its religion is Islam, its language is Arabic, and its system is republican. Tunisia lifted all specific reservations to the Convention in 2014. Tunisia was the first country in the region to remove all specific reservations to CEDAW. However, Tunisia maintained its general declaration.

At the regional level, Tunisia has not yet ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

National laws

The following is a list of key laws related to gender justice:

- Penal Code, 1913
- Code of Personal Status, 1956
- Code of Nationality, 1956
- Labour Code, 1966 as amended 1996
- Public Sector Law, 1983
- Law on the Prevention and Control of Trafficking in Persons, 2016 (No. 61)
- Law on Eliminating Violence against Women, 2017 (No. 58)

Policy framework

The Peer Council for Equal Opportunities for Men and Women is an advisory body established by Government Decree No. 626–2016. Its main mission is to mainstream the gender approach in development policies and plans in Tunisia (planning, programming, evaluation, and budgeting) with the aim of eradicating all forms of gender-based discrimination and to achieve equality in rights and duties. It is also empowered to give its opinion on bills relating to the rights of women.

Since the Law on Eliminating Violence against Women (No. 58, 2017) entered into force in 2018, a common framework agreement between government institutions and NGOs has been developed to support women victims of violence. The agreement aims to unify a common approach on violence against women and to establish good practices from the region to mainstream them into coordinated frameworks. The agreement also aims to reach the desired effectiveness in tackling obstacles facing women victims of violence. It will also implement sectoral measures to support women victims of violence in the sectors of justice, interior, health, social affairs, and women.

Anti-trafficking policy is coordinated by the National Committee to Combat Trafficking in Persons, which includes representatives of relevant ministries and anti-trafficking NGOs.

Legal and support services

The Law on Eliminating Violence against Women requires ministries to provide services to survivors of gender-based violence. The Ministry of Health is requested to implement programmes to eliminate violence against women in medical trainings at all levels, to detect and evaluate all forms of violence against women, and to promote its prevention, in addition to providing examinations, treatments, and follow-ups to women and to children residing with them. It is also requested to provide special units for women victims of violence as well as health and psychosocial services.

The Ministry of Social Affairs (MSA) is required to provide trainings for all social intervention workers, and especially for specialized social workers, to build their capacity with regards to intervention tools for women survivors of violence. The MSA provides protection services through social centres for vulnerable populations in towns and cities; and under the auspices of the MSA and the Ministry of Women, Family and Childhood, the government provides such services at these social centres as shelter, clothing, psychological counselling, legal advice, and medical care.

PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

Marital rape

Marital rape is not specifically criminalized in the Penal Code or the newly adopted Law on Eliminating Violence against Women. Article 23 of the Personal Status Code requires both spouses to “fulfil their marital obligations according to custom.” Therefore, sexual relations between spouses is considered a marital obligation.

Law on Eliminating Violence against Women, No. 58 of 2017

The law aims to put in place measures to eliminate gender-based violence against women in order to achieve equality and respect for human dignity by adopting a comprehensive approach to prevention of all forms of violence, to punish its perpetrators, and to protect victims of violence.

The law applies to all forms of violence, including physical, moral, sexual, political, and economic, and to vulnerability.¹ It adopts the internationally agreed definition of violence against women consistent with the Declaration on the Elimination of Violence against Women adopted by the UN General Assembly in 1993.

The Law defines discrimination against women based on the CEDAW definition and includes all forms of discrimination against women on the basis of sex, economic and social circumstances, health status, language, or disability. Article 3 defines discrimination against women as follows:

Any distinction, exclusion or restriction whose effects or purposes impair the recognition by women of human rights and freedoms on the basis of full and effective equality in the civil, political, economic, social and cultural fields, or nullify the recognition, enjoyment or exercise of women’s rights regardless of colour, race, religious belief, age, nationality, economic and social conditions, civil status, health, language or disability.

The law also recognizes the concept of positive discrimination for the first time in Tunisian law, stating that “positive measures to accelerate gender equality are not considered discriminatory.”

The law protects females of all ages. The ‘victim’ is defined to mean the woman and her children who are residing with her who were also affected by physical, emotional, or economic harm or were prevented from enjoying their freedom and rights through acts, words, or neglect.

Chapter 4 of the law establishes general human rights-based principles that recognize violence against women and children as a form of discrimination and a human rights abuse.

The law adopts a comprehensive approach that addresses violence against women through four pillars:

1. Prevention of violence
2. Protection of women victims of violence
3. Penalization of perpetrators of violence
4. Procedures, services, and institutions that provide support to women victims of violence

Pillar 1: Prevention of violence

Prevention of violence is the responsibility of government institutions and civil society organizations. The State has obligations to introduce national policies, national action plans, and coordinated or sectoral programmes for the elimination of violence against women. In addition, the law calls for all necessary measures to be taken to eliminate all discriminatory practices against women, especially in wages and social protection, in all sectors and to refrain from economically exploiting women and from employing them in harsh, dishonourable, and harmful conditions that are detrimental to their health, safety, and dignity.

The law requests ministries concerned with teaching, higher education, vocational training, culture, health, youth, sports, and religious affairs to carry out educational programmes with the objective of renouncing and combating violence against women and strengthening the principles of human rights and gender equality as well as providing health services and sexual education.

¹ Ibid., Art. 2.

It calls on these institutions to organize trainings for educators on equality, non-discrimination, and the elimination of violence against women; to renew counselling centres and social and health centres in partnership with related institutions; and to work on spreading a culture of human rights, especially through youth.

The Ministry of Health is requested to implement medical trainings, to detect and evaluate all forms of violence against women and its prevention, in addition to providing care and treatment to women and children. It is also required to establish special units for women victims of violence to provide them with health and psychosocial services.

The Social Affairs Ministry is required to provide training for all social intervention workers and specialized social workers to build their capacity with regards to intervention tools for women survivors of violence.

The Ministries of Justice and of the Interior are required to carry out programmes on combating violence against women in education and in the capacity-building of institutions to improve the handling of women's complaints. The Ministry of Justice also takes measures to rehabilitate and reintegrate perpetrators of violence into the family and society.

In the area of prevention, the media is obligated to raise awareness of citizens on the dangers of violence against women and on approaches to combat it. Media organizations are required to build the capacities of their employees on how to deal with violence against women with respect to professional ethics, human rights, and equality. The media is required not to disseminate information containing stereotypical images, scenes, words, or acts detrimental to women.

In relation to the role of civil society organizations, the Ministry of Women is also requested to establish partnerships and to provide support and coordination mechanisms.

Pillar 2: Protection of women

The law defines a set of rights that women victims of violence shall enjoy, including legal protection that is appropriate to respond to the type of violence experienced, the right to access information and legal counselling, judicial assistance, and fair compensation. The State has the responsibility for the provision of medical and psychosocial follow-up and support, and for urgent protection according to available means.

The law stipulates the obligation of professionals (e.g., medical practitioners) to report an act of violence against a woman to authorities. A woman can seek protection from the violent conduct of her husband and other males, including a former spouse (separated or divorced), fiancé, or former fiancé.

Pillar 3: Criminalization of perpetrators of violence

The law revises articles in the Penal Code to broaden the types of violent conduct that is criminalized and to increase penalties. It also recognizes that some women have increased vulnerability due to a young or old age, serious illness, pregnancy, or mental or physical impairment.

The law introduces into the Penal Code new aggravated circumstances for committing certain crimes of violence, including assault that leads to death, threat to assault or cause harm, or assault that results in the severing of a body part.² The penalty under the Penal Code is increased for crimes of violence if the circumstances are aggravated by prescribed factors, for example:

- The victim is a child.
- The perpetrator is from the victim's ascendants or descendants from any social class or is one of the spouses, divorcees, fiancé, or former fiancé of the perpetrator.
- The victim is in a vulnerable state.
- The victim is a witness to a crime or affected by a personal right and is prevented from testifying or alerting authorities to a crime or from presenting a complaint or for from knowing or filing a complaint, or testifying.
- A group actively commits or participates in a crime.
- The assault is accompanied with the use of a weapon or threat of using a weapon.
- The assault is committed through an order or command.

The Penal Code was amended to provide a more comprehensive definition of sexual harassment. The new definition of sexual harassment is: every assault on another person through acts, gestures, or words likely to harm the person's dignity or decency with the aim of compelling the person to submit to the offender's sexual desires or by exerting harmful pressure to weaken the person's will to resist these pressures.³ The penalty for sexual harassment is increased if the victim is a child; if the perpetrator was an ascendant or descendant or had authority over the victim, or exploited his authority; or if the crime was perpetrated when the victim was in a vulnerable state.

The Penal Code was amended to provide a wider legal definition of rape, now defined as any act resulting in intercourse

² Aggravated circumstances apply to Penal Code Arts. 208, 218, 219, 222, and 223.

³ Tunisia, Penal Code, Art. 226(3).

regardless of the nature or the method used against a female or male without consent.⁴ Punishment for rape is 20 years imprisonment, or life imprisonment if the perpetrator uses violence, a weapon, or threat, or threat with a weapon, or uses narcotic materials, substances, tablets, or drugs against a male or female under the age of 16 years, or in cases of incest.

A wider legal definition of incest was introduced.⁵ The crime of incest is now defined as the rape of a child that is carried out by: brothers and sisters; the son of any of his or her brothers or sisters, or any of their descendants; the husband's father or the wife's father or the mother's husband or the father's wife or the husband's family; or persons who are spouses of a brother or sister. The penalty is doubled for intentional sexual intercourse with a male or female child with consent between 16 and 18 years of age if the perpetrator is the victim's teacher, a care giver, or doctor; if the perpetrator has authority over the victim or used the influence of his or her role; if the offence is committed by a group of persons acting as participants; or if the victim is in a state of vulnerability.

Exoneration for rapists who married their victims was previously available under Articles 227 bis and 239 of the Penal Code. These provisions of the Penal Code were removed by the Law to Eliminate Violence against Women.

It is an offence to indecently assault a male or a female without consent.⁶ The penalty is six years imprisonment, which is doubled in a range of circumstances, including:

- If the victim is a child.
- If the perpetrator is a family member or relative of the victim.
- If the perpetrator had authority over the victim or has exploited a position of influence.
- If the crime was easily facilitated due to the victim's vulnerable situation.
- If the crime was committed by a group of persons.

Threatening to use a weapon is an offence with a penalty of one year in prison and a fine of 120 Tunisian Dinars (TD).⁷ The penalty is doubled if there are aggravating circumstances.

It is an offence to abuse a spouse, a child, or a person in a vulnerable state or a person under the offender's authority.⁸ The offence is punishable with six months to one year in prison and a fine of 1,000 TD.

It is an offence to repeatedly assault a victim by word, gesture, or act that affects the dignity of the victim or her psychological or physical safety.⁹

Article 218 criminalizes assault where a person deliberately injures, strikes, or commits any other violent act or assault. Article 218 was amended to abolish the right to drop a domestic violence prosecution or the execution of punishment for the crime of domestic violence for the benefit of the husband. Previously, it provided that "withdrawal of the complaint by a victim who is an ascendant or spouse shall terminate any proceedings, trial or enforcement of penalty." A similar provision was contained in Article 319, which relates to less severe acts of violence that do not cause serious or long-term damage to health. Article 319 was amended to abolish the wife's right to suspend the prosecution or execution of the sentence for this offence.

In addition to the Penal Code offences discussed above, the Law on Eliminating Violence against Women also includes the following criminal offences that apply to perpetrators of violence:

- Article 17: Harassment of women in a public space.
- Article 18: Commit an act of political violence.
- Article 19: Commit discrimination or economic violence on the basis of sex if it results in the deprivation or control of women's economic resources; discrimination in remuneration for work of equal value; or occupational discrimination, including promotion and gradation of employment
- Article 20: Employment of children as domestic workers
- Article 21: Commit discrimination, deprivation, or restriction of the victim's enjoyment of her rights or access to benefits or services; preventing the victim from partaking in normal activities; refusing to employ; or dismissing or punishing the victim.

Pillar 4: Services to women victims of violence

The fourth pillar relates to specialized procedures, services, and institutions that provide information and support to women who experience violence. This includes government assistants who receive complaints about violence against women and the allocation of separate spaces inside the courts of first instance that include judges specialized in cases of violence against women on the levels of public prosecutors, investigation, and family justice.

The law provides for the establishment of a specialized security unit in the every security region or in the National Guard, whose members are women, to investigate crimes of violence against women. After receiving a notification of violence, the investigators

4 Ibid., Art. 227.

5 Ibid., Art. 227 bis.

6 Ibid., Art. 228.

7 Ibid., Art. 223.

8 Ibid., Art. 224.

9 Ibid., Art. 224 bis.

are required to:

- Immediately proceed to the place after notifying the Republic's agent.
- Notify the victim of her rights, including the right to protection by a family judge.
- Take protective measures for the woman and the children living with her, such as:
 - transporting them to a safe dwelling or to a hospital to receive first aid, if physically injured, or
 - removing the occupants from the dwelling, or
 - preventing the offender from approaching the victim or from being present near her dwelling or workplace.

The law prohibits any officer responsible for investigating crimes from placing pressure on the victim or using any kind of coercion to force the victim to waive her rights or to change the content of her complaint. The victim of sexual crimes may request to be heard in the presence of a psychologist or a social worker.

The hearing of the child victim of a sexual offence must take place in the presence of a psychologist or social worker, and a hearing of a child victim of a sexual offense cannot take place more than once. The hearing must be recorded and the hearing shall not be conducted in the presence of the alleged perpetrator.

It is within the competence of the Family Judge to consider protection demands and to take a range of measures in protection decisions, such as preventing the offender from contacting the victim or the children residing with her; obliging the offender to leave the family home in case of danger to the victim or her children; refraining from harming the victim's property, the children who are included in the protection order, or any joint funds or disposing of them; dropping the custody or guardianship over children; and determining visitation procedures that take into account the best interest of the child.

HONOUR CRIMES

The articles of the Penal Code that provided mitigation of penalties for perpetrators of 'honour' crimes against women and girls were removed by Law No. 93-72 of 12 July 1993.

ADULTERY AND SEX OUTSIDE OF MARRIAGE

Adultery of a wife or husband is prohibited by the Penal Code, which does not discriminate in the penalties that apply to husbands or wives. The maximum penalty is five years imprisonment and a fine.¹⁰ Criminal proceedings are not allowed except by permission from the wife or husband. The prosecution can be terminated or the punishment suspended if both the husband and wife agree.

Sexual relations between consenting adult women and men is not criminalized if they are both unmarried.

ABORTION FOR RAPE SURVIVORS

The Penal Code permits an abortion during the first three months of pregnancy on condition that the abortion is performed by a legally licensed medical doctor in a hospital or health facility or in a licensed clinic. After the first three months of pregnancy, an abortion may be performed if there is a risk that the mother's health or mental well-being will be impaired by continuing the pregnancy or a risk that the unborn child will suffer from a serious illness or disability.¹¹

¹⁰ Tunisia, Penal Code, Art. 236.

¹¹ Ibid., Art. 214.

FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

FGM/C is not known to occur in Tunisia. Penal Code Article 221, as amended in 2017, prohibits the mutilation or partial or full removal of a woman's sexual organ.¹²

FAMILY MATTERS

Reforms to the Personal Status Code in 1956 and 1993 introduced important measures to improve the status of women, including: abolition of polygamy; removal of divorce through the husband's unilateral act of repudiation; removal of the duty of wives to obey their husbands; and the granting of equal rights to men and women in most aspects of marriage, divorce, and property ownership. Women have the freedom to consent to marriage and to conclude a marriage contract directly, without the requirement to first obtain the consent of the father or guardian. Women enjoy the legal right to administer their property without their husband's consent.

However, women are still unequal to men in some areas. Marriage is subject to a dowry (*mahr*) paid by the husband to the wife. The father is recognized as the head of the family. Single mothers remain unrecognized and their children born out of wedlock do not enjoy the same rights as children born within a marriage.

Personal Status Code

The judicial system was unified and religious courts were abolished in 1956. Laws enacted on the personal rights of women include:

- The Civil Status Act of 1957 that confirms the importance of registering marriages
- Law No. 46 of 1964 on pre-nuptial medical certificate
- Law No. 27 of 1958 on public custody, guardianship, and adoption
- Law No. 94 of 1998 on the system of participation in property between spouses
- Law No. 75 of 1998 on allocating a patronymic family name to abandoned children and those of unknown parentage

The Personal Status Code was amended to promote women's rights within the family in 1993. The obligation of obedience imposed on women since 1956 was abolished and the law recognized guardianship rights of mothers for their children's upbringing and their affairs, including education, travel, and financial transactions.

The Personal Status Code also defines the obligations of each spouse to treat one another with consideration, to maintain good relations, avoid causing harm, and fulfil marital obligations according to custom and tradition.

Marriage

The Personal Status Code was revised in 2007 to set the legal age of marriage for each spouse at 18 years.¹³ Prior to this, the legal age of marriage was 20 for males and 17 for females. It is possible in exceptional cases to conclude a marriage contract below the prescribed age after obtaining special permission from the court, which is given only for serious reasons and for the obvious interest of the spouses.¹⁴

Marriage can only be entered into with the consent of both spouses.¹⁵ Both spouses must be free of legal prohibitions set out in the Personal Status Code, which are eternal or temporary. Eternal prohibitions relate to kinship, alliances through marriage, nursing, or divorcing three times. Temporary prohibitions relate to the right of the other to marry or *iddat*, that is, the period in which a woman must not marry after the death of her spouse or a divorce.

The Personal Status Code does not place restrictions on the freedom to choose a spouse and does not classify religious

¹² Ibid., Art. 221. The penalty is 20 years in prison for full or partial dismemberment and life in prison if the injury leads to death. Art. 223 doubles the penalty for a minor.

¹³ Tunisia, Personal Status Code, Art. 5 (revised by Law No. 32, 14 May 2007).

¹⁴ Ibid., Art. 6.

¹⁵ Ibid., Art. 3.

differences as a prohibition. The legislators' silence on this has been interpreted in two ways.

The first perspective considers the silence of the legislators as a reference to religious basis, which forbids the marriage of Muslim women to non-Muslim men, and especially since the legislators used the term "legal prohibitions."

The second perspective considers that the Personal Status Code does not require interpretation with reference to the provisions of Islamic law because Tunisia has ratified a number of international agreements, including the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, and CEDAW. These conventions have superior status to national law according to the Constitution. Further, the 2014 Constitution mandated the State to safeguard the freedom of belief and conscience and the exercise of religious practice, and the Constitution does not consider the Qur'an and *Sunnah* as the main sources of legislation.¹⁶

A decree issued by the Ministry of Justice in 1973 prohibited the marriage of a Muslim woman to a non-Muslim man.¹⁷ The decree was inconsistent with articles of the new Constitution related to equality between male and female citizens and the role of the State in supporting and advancing women's rights.¹⁸ In response to demands from women's organizations, the Minister of Justice cancelled this decree in September 2017. The Minister of Local Affairs and the Minister of Foreign Affairs also terminated publications that restricted women's freedom to choose her spouse, and required the civil status offices to release marriage contracts between Muslim women and non-Muslim men.

Divorce

The Personal Status Code provides for judicial divorce and guarantees equal divorce rights for women and men. Divorce may occur with the consent of both spouses, upon a request from either spouse due to harm caused, or on the basis of the husband's or wife's request to divorce.¹⁹

Women who wish to retain their right to maintenance are obligated to request a divorce on the basis of harm, which involves lengthy court proceedings. Generally, to prove harm the judge requires evidence of a criminal conviction or the husband's acknowledgement of harm. The burden of proof is on the person seeking divorce, which is an obstacle for women seeking to obtain a divorce on the basis of harm.

Before the final divorce decision, the judge tries to reconcile the spouses. Reconciliation sessions chaired by the judge are mandatory. When there are one or more minor children, the reconciliation session is repeated three times, with no less than thirty days between each session.

Article 31 provides compensation for harm suffered by either spouse and the monthly maintenance paid by the husband to his former wife. Monthly maintenance payments are calculated according to the standard of living of the woman prior to her divorce.

Guardianship and custody of children

In his capacity as head of the family, the man is the guardian over his children and is responsible for financially maintaining his wife and children to the best of his ability. The Personal Status Code was amended by Law No. 74 of 1993 to enable women to exercise some guardianship authority through cooperation between the spouses in family affairs, taking on responsibilities and marital obligations.²⁰ At the time of marriage, both parents share guardianship over their children, as custodial rights are the rights of both parents.²¹

The situation is different during divorce and requires the intervention of the judge, who makes decisions to specify custody, housing, maintenance, and visitation rights,²² and in most cases the mother has custody of the child. However, financial maintenance of the child is the responsibility of the father if he is able to provide it; and if not, the responsibility is passed on to his father (the child's patrilineal grandfather).

Judges have discretion in granting custody to the mother or the father in the best interest of the child.²³ If the mother does not have effective proper housing, the father shall provide housing for her and the child. The custodian mother has certain guardianship rights over the child, such as in decisions on travel, education, and financial accounts.²⁴

¹⁶ Constitution of 2014, Art. 6.

¹⁷ Decree 216 of 5 November 1973, Justice and Legislation Gazette, No. 9 of 1973, p. 83.

¹⁸ Constitution of 2014, Arts. 21, 46.

¹⁹ Personal Status Code, Art. 31.

²⁰ Ibid., Art. 23.

²¹ Ibid., Art. 57.

²² Ibid., Art. 32.

²³ Ibid., Art. 58.

²⁴ Ibid., Art. 67.

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In addition, the judge may transfer the guardianship if the guardian does not take on his/her guardianship responsibilities on a regular basis; was negligent in carrying out his/her duties; was absent or his/her residence became unknown; or for other reasons that are harmful to the interest of the child.²⁵

INHERITANCE

The Personal Status Code provides that inheritance is based on Islamic Sharia law. If a father dies leaving sons and daughters, the daughters inherit half the share that sons inherit. It is unclear whether these laws will be considered unconstitutional by the courts if challenged, given the guarantee of gender equality in the 2014 Constitution. In some less-common scenarios males and females have equal inheritance rights, e.g., the rights of orphaned grandchildren to inherit from a grandparent.

The Personal Status Code was revised by Law No. 77 of 1959 to enable girls to enjoy full inheritance rights if there are no male siblings.

The legal situation prior to the 2014 Constitution is summarized by the Social Institutions and Gender Index of the Organization for Economic Cooperation and Development as follows:²⁶

Under Sharia law, Muslim women may inherit from their father, mother, husband or children and, under certain conditions, from

²⁵ Ibid.

²⁶ Organization for Economic Cooperation and Development, Social Institutions and Gender Index, Tunisia (2014).

other family members. However, their share is generally smaller than that to which men are entitled. Daughters, for example, inherit only half as much as sons, and widows without children may receive nothing. Contrary to Sharia law, however, Tunisian law states that if a father has no sons, the inheritance passes to his daughter(s) rather than to his own family. In addition, following a court ruling in 2009, it is now possible for non-Muslim women to inherit from their Muslim husbands. In rural areas in particular, however, women often renounce their inheritance in favour of male relatives, in order to keep property and land within the family. Some parents get around inheritance laws by gifting property or assets to daughters before they die; this practice is facilitated by tax exemptions granted on gifts made between parents and their children.

NATIONALITY

The Nationality Law was issued in 1963. Since 2010, women have enjoyed the same rights as men to pass Tunisian nationality to their children.

However, the Nationality Code still includes discriminatory provisions. A Tunisian man married to a non-Tunisian woman can pass on his nationality to his wife automatically after marriage, provided that her national law revokes her original citizenship if she marries a foreigner or if the spouses reside in Tunisia for two years and she requests nationality in accordance with certain conditions. However, a non-Tunisian man married to a Tunisian woman is required to apply for citizenship by submitting an application. Tunisian nationality can only be granted if the man is an adult and has proven to have knowledge of the Arabic language matching his social status, is mentally sound, has good manners, and his state of health is not a burden on society or a danger to himself.

Amendments must therefore be made to the Nationality Law and the Foreign Status Law of 1968 to ensure that women and men have equal rights to nationality and residency.²⁷

LABOUR LAWS

The Law on Eliminating Violence against Women

The Law on Eliminating Violence against Women addresses economic violence in the context of employment and includes the following provisions related to women's employment rights.

It is illegal to commit discrimination or economic violence on the basis of sex if it results in the deprivation or control of women's economic resources; to discriminate in remuneration for work of equal value; to discriminate in terms of occupation, including in refusing promotion and grade of employment.²⁸

It is illegal to commit discrimination, deprivation, or restriction of the victim's enjoyment of her rights or access to benefits or services; to prevent the victim from partaking in normal activities; to refuse to employ; or to dismiss or punish the victim.²⁹

The Law on Eliminating Violence against Women prohibits the employment of children in domestic work.³⁰

The Labour Code³¹

A 1993 amendment to the Labour Code added an article that states: "There is no distinction between women and men in the application of the provisions of this Code and its applicable texts."³²

The minimum age for employment is 16 years, but the Labour Code allows children who are less than 16 to work in family

²⁷ Ministry of Woman, Family and Childhood, *Inequality and Discrimination against Women and Girls in Tunisian Laws* (2016).

²⁸ Law on Eliminating Violence against Women, No. 58 of 2017, Art. 19.

²⁹ *Ibid.*, Art. 21.

³⁰ *Ibid.*, Art. 20.

³¹ Labour Code, Law No. 66–27 of 30 April 1966, as revised 15 July 1996.

³² Labour Code, Art. 5 bis.

institutions under the authority of the father, mother, or guardian.³³

Domestic workers do not benefit from the protective provisions of the Labour Code. Their relationship with their employer is subject to civil contract law.

Sexual harassment in the workplace

The Labour Code does not include any provisions on sexual harassment in the workplace, except in Article 76, which requires good manners and public morals – especially for shops that employ women and children over 18 years. However, the Law on Eliminating Violence against Women prohibits sexual harassment of women in public places, and the Penal Code includes a comprehensive sexual harassment offence. Sexual harassment has been prohibited under the Penal Code since 2004.

Maternity protection under the Labour Code

The Labour Code prohibits dismissal of a woman on the grounds of her pregnancy or nursing as follows: “In the period leading up to and after birth, it is not permissible for an employer to dismiss his employee. Otherwise, the woman has a right to demand damages to compensate. She must inform the employer of her absence.”³⁴

Women are entitled to 30 days maternity leave, which may be extended for a period of 15 days if there are complications or medical grounds.³⁵ The maternity leave entitlement is paid by the government through the National Social Security Fund. The period of leave is below the ILO standard of 14 weeks. Tunisia has not ratified the ILO Maternity Protection Convention, No.183.

A woman who is breastfeeding her child has the right to two breaks of a half-hour each during her work day to enable her to nurse her child for nine months beginning from the day of birth. Each employer with at least 50 female employees is required to have a nursing room.³⁶

The Labour Code does not acknowledge a right to maternity leave prior to birth or a right to family leave. It places responsibilities related to pregnancy, birth, and the upbringing of children on women and does not acknowledge the role of the man.

Maternity protection under the Public Sector Law

The Public Sector Law³⁷ grants female public servants the right to childbirth leave for two months, and this may be combined with vacation leave.³⁸ After childbirth, additional optional leave may be taken up to four months with half pay upon the woman's request, subject to the employer's agreement to enable her to tend to her children's upbringing.

Female public sector workers have the right to nursing breaks for one hour during the beginning or towards the end of the work day on condition that the work day is at least four hours. If the work is in two shifts, the woman is granted two breaks; one hour during the beginning or towards the end of each shift on condition that the sum of total working hours is at least seven hours per day. The nursing break may be granted up to six months beginning from the last day of childbirth leave.³⁹

Restrictions on women's participation in work

The Labour Code includes legal restrictions on women's employment in undertaking night work, mining, and scrap metal work.

Previously, the Labour Code prohibited women from working at night except in exceptional circumstances related to urgent or *force majeure* cases. However, after Tunisia's ratification of ILO Convention No. 89 of 1948 concerning the employment of women in night work as well as the Protocol to the same convention in 1990 and the amendments to the Labour Code in 1996, the situation was changed so that night work may be permitted by the Minister of Social Affairs. It is permissible to amend the night periods that are prohibited for women as stipulated by the Labour Code or to limit women's night work by a decision from the Minister of Social Affairs.⁴⁰ However, women are prohibited from working at night for at least 16 weeks before and after birth.⁴¹

33 Ibid., Art. 54.

34 Ibid., Art. 20(2).

35 Ibid., Art. 64.

36 Ibid.

37 Law No. 112 of 1983 on the general status of State personnel, local public authorities, and public administrative establishments.

38 Labour Code, Art. 48.

39 Ibid., Art. 48 bis, introduced by law No. 83 of 1997.

40 Ibid., Art. 68.

41 Ibid.

In 1957, Tunisia ratified ILO Convention No. 45 of 1953 concerning the employment of women underground. The Labour Code has placed general restrictions on women's employment underground. Women regardless of their age, or children under 18 years, may not be employed in underground work in mines and quarries.⁴² Women are also restricted from working in roles where the recovery, processing, or storage of scrap metals takes place.⁴³

SEX WORK AND ANTI-PROSTITUTION LAWS

The Penal Code criminalizes prostitution that is practised in ways other than is regulated by law.⁴⁴

The Decree issued on 30 April 1942 regulates the conditions for the legal practice of sex work in specific homes, with the requirement for sex workers to undergo health screening, to pay a special tax, and to register with the Interior Ministry. Sex workers must work in licensed brothels in certain defined areas, which they cannot leave without police permission. They are granted six to ten days of leave per month, corresponding to their monthly periods. They are required to undergo medical examinations every two weeks for sexually transmitted diseases. They are subject to the supervision of the Ministry of Interior. Under the same regulations, those who wish to leave their jobs must prove their ability to earn a living by "honest" means and obtain permission from the police, which creates obstacles for those who no longer wish to engage in sex work.

The Child Protection Law provides for penalties related to the commercial sexual exploitation of children.⁴⁵

HUMAN TRAFFICKING

Organic Law No. 61 of 2016 on Preventing and Combating Trafficking in Persons implements Tunisia's international obligations resulting from the ratification of the Palermo Protocol.⁴⁶

The law prohibits all forms of exploitation that persons can be subjected to, especially women and children, and combats it by preventing persons from being trafficked, preventing perpetrators from trafficking, and protecting and assisting victims. Penalties for trafficking range from 10 years to life imprisonment.

The law defines key terms, including trafficking in persons, the situation of vulnerability, forced or compulsory servitude, slavery, slavery-like practices, exclusion, sexual exploitation, and victimization.

Trafficking in persons is defined as the recruitment, transfer, deportation, harbouring, or receiving of persons by force or weapon or threat thereof or other forms of coercion, abduction, fraud, deception, exploitation of a situation of vulnerability, exploitation of power, extradition, or acceptance of money, benefits, gifts, or promises to obtain the consent of a person who has control over another person, with the intention of exploiting in whatever form, either by the perpetrator of such acts or by placing the person in the hands of others for exploitation.

Exploitation includes the exploitation of prostitution of others, or prostitution, or other forms of sexual exploitation; forced labour or servitude; slavery or practices similar to slavery; begging; and the removal of organs, tissues, cells, reproductive sex cells (gametes), embryos, or parts thereof.

The law establishes a National Committee to Combat Trafficking in Persons, which includes representatives of relevant ministries and two anti-trafficking NGOs. The committee is required to develop a national strategy to prevent and combat trafficking in persons and to propose mechanisms for assistance and protection. It is required to issue guidelines to enable the monitoring of trafficking in persons, and for identifying and providing assistance to survivors of trafficking in persons. It is also required to coordinate efforts between public and private sectors, raise awareness among citizens, organize training courses, support public services for the protection and care of survivors of trafficking, and develop mechanisms for assistance and protection.

42 Ibid., Art. 77.

43 Ibid., Art. 78.

44 Penal Code, Art. 231.

45 Child Protection Code of 1995, Art. 25.

46 Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000).

The law provides mechanisms for the assistance and protection of survivors of trafficking, witnesses, informants, and anyone who notifies the authorities of trafficking offences. Measures to ensure protection may be extended to family members of trafficked persons. The National Committee to Combat Trafficking in Persons supports recovery of survivors of trafficking, who receive free treatment from health services and social assistance to reintegrate them into social life, to accommodate them, to help them settle and obtain compensation for damages, and to provide legal aid.

SEXUAL ORIENTATION, GENDER IDENTITY, AND RELATED ISSUES

The Penal Code provides for a maximum three-year prison sentence for homosexual conduct (sodomy), even if the act was consensual and committed in a private space.⁴⁷

Transgender and homosexual persons may be charged with acts contrary to public morals and subject to a penalty of imprisonment for a period up to six months.⁴⁸ There are no laws providing legal recognition or protection to transgender people.

In the past, men accused of engaging in a same-sex activity were required by courts to be subjected to anal examinations to establish “proof” of sex.⁴⁹ There is no scientific basis for such examinations. In 2017, the Minister for Human Rights announced the government’s intent to end the practice of forced anal examinations.⁵⁰

KEY RESOURCES

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47 Penal Code, Art. 230.

48 Ibid., Art. 226.

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