



Empowered lives
Resilient nations

Yemen

Gender Justice & The Law

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Yemen

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 Yemen. 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.

Drafts of the Yemen country profile were reviewed by Ms. Lubna Al-Qadasi, Women's National Committee (Yemen); and Ms. Marta Colburn, Yemen Country Programme Manager, UN Women. Their contributions to the final text are gratefully acknowledged.

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.

YEMEN



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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)

Yemen acceded to CEDAW in 1984. It maintains a reservation to Article 29(1), which relates to the settlement of disputes through arbitration by the International Court of Justice.

Constitution

Article 41 of the 1991 Constitution provides that citizens are equal in public rights and duties. Article 75 of the 2015 Draft Constitution provides for non-discrimination based on sex.

NATIONALITY LAW

NATIONALITY

Women can pass nationality to their children but do not have the same rights as men to pass citizenship to a foreign spouse.

CRIMINAL LAWS

Domestic violence

There is no domestic violence legislation in Yemen.

Abortion for rape survivors

Abortion is prohibited by Articles 239 and 240 of the Penal Code. There is no exception for rape survivors.

Female Genital Mutilation / Cutting (FGM/C)

A 2001 Ministerial Decree prohibits carrying out FGM/C procedures in public and private hospitals and clinics, but the Decree does not impose penalties.

Marital rape

Marital rape is not specifically criminalized. The Personal Status Code obliges a woman to obey her husband. The courts interpret this to mean that a woman cannot refuse her husband's request for intercourse.

Sexual harassment

There is no specific offence of sexual harassment. Some types of harassment may fall under the crimes of committing disgraceful acts against women and girls, which are punishable under Articles 273 and 275 of the Penal Code.

Human trafficking

There is no comprehensive anti-trafficking law criminalizing all forms of trafficking and addressing prevention and protection measures. There are minimal legal protections against human trafficking.

Rape (other than of a spouse)

The Penal Code No. 12 of 1994 criminalizes rape.

Honour crimes: Mitigation of penalty

Mitigation for 'honour' crimes that are committed against women caught in the act of committing adultery is provided by Article 232 of the Penal Code.

Sex work and anti-prostitution laws

Article 278 of the Penal Code criminalizes prostitution, which is punishable with imprisonment for a period not exceeding three years or a fine. Sex workers may also run the risk of prosecution for zina (sex outside of marriage), which attracts severe penalties.

Exoneration by marriage

There is no specific provision in the Penal Code exonerating a rapist who marries his victim.

Adultery

Adultery is an offence under Article 12 of the Penal Code.

Sexual orientation

Homosexual conduct is criminalized by Articles 264 and 268 of the Penal Code.

PERSONAL STATUS LAWS

Minimum age of marriage

The Personal Status Code and its amendments do not specify a minimum age of marriage.

Guardianship of children

The father enjoys sole guardianship of his children. After a divorce, the father remains the legal guardian of the children and payment of child support is his responsibility.

Male guardianship over women

The Personal Status Code requires a male marriage guardian to consent to a woman's marriage and to sign the marriage contract. The woman's consent is also necessary. Article 18 of the Personal Status Code allows a woman to apply the court if she seeks to refuse to enter a marriage arranged by the guardian.

Custody of children

Custody is generally granted to the mother until a son is nine and a daughter is 12. A divorced woman loses custody if she remarries.

Marriage and divorce

Women do not enjoy equal rights in marriage and divorce. The wife owes obedience to her husband. Men have a right to divorce by repudiation without resorting to the court. Women have access to limited types of divorce that can only be obtained from a court.

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. A daughter receives half the share that a son receives.

Polygamy

Polygamy is permitted by the Personal Status Code.

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 under Article 67 of the Labour Code, No. 5 of 1995.

Domestic workers

Domestic workers are excluded from the Labour Code by Article 3 of the Code and therefore do not benefit from its protective provisions.

Dismissal for pregnancy

Article 45 of the Labour Code prohibits employers from dismissing a worker during her maternity leave because of her pregnancy.

Paid maternity leave

Article 45 of the Labour Code provides that women are entitled to 70 days of maternity leave with full pay, which employers are liable to pay directly to the employee. This is less than the 14 weeks required by ILO standards.

Legal restrictions on women's work

Article 46 of the Labour Code prohibits employment of women in occupations that are hazardous, arduous, or harmful to their health or social standing. It is also forbidden to employ women at night, except during Ramadan and in the jobs specified by order of the Minister.

OVERVIEW

Social context

The current crisis in Yemen is characterized by war, conflict, and massive humanitarian needs. The crisis has had a profound impact on the capacities of government institutions and the legal system. Many proposed legal reforms have been delayed, and government salaries have not been paid regularly since October 2016. This has been especially devastating to women who were previously employed by the government.¹

This study focuses on the formal legal system and does not deal with the impact of customary tribal laws (*'urf*) on gender justice in Yemen. Transmitted through oral and written texts, a key function of *'urf* is to minimize and resolve conflicts. Customary law is important in tribal areas, where Yemenis may choose to seek justice from either formal or customary legal systems. In areas of Yemen where tribal customs predominate, Yemenis usually choose the channels of customary law.

The choice of legal system is based on many factors, including perceived advantage, cost, and accessibility. For women, the obstacles to justice are greatly influenced by the gender dynamics that dictate whether they can claim their legal rights through formal or customary legal channels, or through a combination of both. These factors include the type of legal issue in question, where they live in Yemen, as well as their age, educational status, wealth, and cultural standing.

Legal framework

International law

The Republic of Yemen (ROY) came into existence with the unification of the Yemen Arab Republic (YAR) and the People's Democratic Republic of Yemen (PDRY) in 1990. The ROY is a signatory to a number of international conventions relevant to gender justice including:

Convention on the Rights of the Child (1990), ratified 1 May 1991 via the ROY. Yemen acceded to this treaty with no reservations. In 2007 it acceded to the Optional Protocol on the involvement of children in armed conflict, and in 2004 to the Optional Protocol on the sale of children, child prostitution, and child pornography, with no reservations to either treaty.

Convention for the Suppression of the Traffic in Persons and the Exploitation of Prostitution of Others (1951), acceded to 6 Apr 1989 via the YAR.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1964), acceded to 9 Feb 1987 via the PDRY.

Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), ratified in 1983, acceded to 30 May 1984 via the PDRY, maintaining a reservation to Article 29(1), which relates to the settlement of disputes through arbitration by the International Court of Justice.

Convention Relating to the Status of Refugees (1951) and its 1967 Protocol, acceded to 18 January 1980 via the YAR.

The ROY is not a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).

Domestic law

The main laws relevant to gender justice are:

- Constitution of 1991
- Constitution of 1994
- Draft Constitution of 2015
- Passports Law of 1990
- Medical and Health Facilities Law of 1990
- Nationality Law of 1990
- Evidence Law of 1992
- Personal Status Code of 1992
- Penal Code of 1994

¹ Kristine Anderson, *Now is the Time: Research on Gender Justice, Conflict and Fragility in the Middle East and North Africa: Country synthesis note: Yemen* (UK Foreign Commonwealth Office, Oxfam and International Alert, 2017).

Labour Code of 1995
Insurance and Pensions Law of 1996
Social Welfare Law of 1996
Civil Pleadings and Enforcement Law of 2002

Constitution of 1991

Following unification in 1990, the ROY Constitution was ratified by popular referendum on 16 May 1991.² Article 27 of the 1991 Constitution provided “[a]ll citizens are equal before the law and are equal in public rights and duties without discrimination on grounds of gender, color or ethnic origin, language, profession, social status or creed.” This Article was removed in 1994.

Constitution of 1994

The Constitution of 1994 remains in force (subject to amendments made in 2001).

Article 3 provides Islamic Sharia is the source of all legislation.

Article 6 confirms Yemen’s adherence to the UN Charter, the Universal Declaration of Human Rights, the Charter of the Arab League, and principles of international law.

The 1994 Constitution impacted the personal status law and the penal code by removing Article 27 and introducing Articles 31 and 41.

Article 31 states that “women are the sisters of men and have rights and duties guaranteed and assigned by Islamic principles and prescribed by law”. Article 41 stipulates that “all citizens are equal in public rights and duties.” Discrimination on grounds of gender is thus no longer prohibited, and the rights of women and girls are to be based Islamic principles.

Article 25 of the Constitution affirms that Yemeni society is based on social solidarity, justice, freedom and equality according to the law.

Article 26 provides that the family is the basis of society; its pillars are religion, customs and love of the homeland; and that the law shall maintain the integrity of the family and strengthen its ties.

Draft Constitution of 2015

Following the Arab Spring and the political transition process of the National Dialogue Conference,³ a new draft Constitution was prepared in 2015. However, this draft Constitution has not been approved.

The draft Constitution guarantees equality before the law (Article 74), non-discrimination based on sex or creed (Article 75), and prohibits physical and sexual exploitation (Article 77) and trafficking in humans (Article 78). The draft Constitution also establishes 18 years as the minimum age for marriage for both men and women (Article 124).⁴

Policy framework

The *Fourth 5-Year Economic and Social Development Plan for Poverty Reduction* (2011–2015) included the following components relevant to gender justice: women’s economic empowerment, combating violence against women, women’s political participation, and reforming laws that discriminate against women.⁵

The Women’s National Committee (WNC) of the Supreme Council of Women’s Affairs is the mandated government-affiliated body tasked with working to empower women, established in 1996 to implement the Beijing Platform for Action adopted at the UN Fourth World Conference on Women (1995). WNC is responsible for reporting on Yemen’s progress in implementing CEDAW and in advocating for legislative and regulatory changes related to women’s rights. The WNC developed the *National Strategy for Women’s Development 2006–2015*⁶ with the aim to:

Provide basic education for all by 2015, provide gender equal access to education at all levels, and reduce illiteracy among women and girls by half.

Expand women’s access to adequate health care.

Enhance women’s economic empowerment.

Increase women’s participation in leadership positions.

² In February 2001, several amendments were passed by national referendum extending the presidential term to seven years and the parliamentary term to six years and increasing the size and authority of the Shura Council.

³ The National Dialogue Conference was the cornerstone to the political transition in 2013–2014, engaging 565 delegates spanning political parties and geography with 27 per cent female delegates.

⁴ Draft Constitution of 2015.

⁵ Supreme Council for Women, Women’s National Committee, National Report on the Implementation of the Declaration and Action Plan of Beijing +20 (2014).

⁶ Supreme Council for Women, Women’s National Committee, Women’s Development Strategy (2008).

Facilitate women's effective practice of their human rights guaranteed by Sharia, national legislation and international laws, and eradicate all forms of discrimination against women.

The objectives of the National Strategy relevant to combating violence against women are as follows:

- Abolish all discriminatory articles in laws and adopt legal measures that guarantee and protect equal rights for women.
- Ensure equal access to justice for women especially in the judicial system.
- Raise awareness of causes, results, and forms of violence against women and effective ways to eliminate them.
- Amend educational curricula and media discourse that encourage, directly or indirectly, discriminatory practices against women, and incorporate human rights instead.
- Increase the number of women working in the judicial system and law enforcement institutions.
- Raise awareness of basic rights and freedoms and legal principles among men and women.
- Establish effective and modern methods to support and protect women survivors of violence.
- Allocate adequate resources from public budgets and donor funds to implement activities aimed at combating violence against women and enabling them to enjoy their human rights.
- Build a database on women's enjoyment of their rights and vulnerability to gender-based violence (GBV).

Legal and support services

Most GBV cases are addressed within families and through customary law, rather than the formal justice system. Yemen remains a largely tribal society with strong patriarchal traditions.

The Yemen Women's Union (YWU) was established in 1990 and provides legal information to survivors of GBV and referrals to legal and other services.⁷ YWU is a non-governmental organization with formal links to police, health, and accommodation services. However, even prior to the current crisis there were limited services available to survivors of GBV. The incidence of such crimes has increased significantly as a result of the conflict.

WNC receives reports of some cases of GBV and provides legal advice to the affected women or refers them to the Ministry of Justice or to YWU. The Ministry of Justice has a special unit providing legal and judicial assistance to women victims and to women who are unable to afford court fees.

The Ministry of Interior has a special unit for the protection of the family, which is operated by a team of female officers who receive complaints from women against their husbands, brothers, or families. The five-year action plan (2011–2015) of the Ministry of Social Affairs and Labour included the development of five new shelters for women in five governorates. However, this work has been halted due to the current conflict.⁸

Women are eligible to work in the judiciary and to appear in court. However, they are under-represented in the judicial system and face systemic legal discrimination. In judicial proceedings, the testimony of two women equals the testimony of one man. Women are prohibited from giving testimony in *hudud* and *qisas* cases, such as adultery, defamation, theft, and sodomy. Men dominate the legal system, and the majority of police and court officials view women's transactions with suspicion because of the social stigma associated with the presence of women in court. The lack of female judges, prosecutors, and lawyers discourages women from accessing the legal system.

PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

There is no specific legislation addressing domestic violence or marital rape.

In 2014 a draft law combating violence against women and girls was prepared by the Women's National Committee and other legal specialists under the supervision of the Ministry of Human Rights, and was submitted to Parliament. The process, however, was halted due to the war.

The Penal Code prescribes a range of penalties for assaults of different severity.⁹ Rape is punishable by imprisonment for a period not exceeding seven years. The sentence is imprisonment for not less than two years and not more than ten years if the crime is committed by two or more persons, or the victim is under the offender's protection or the victim suffers grave harm or conceives a child due to the crime. The punishment is imprisonment for between three and fifteen years if the age of the victim does not exceed fourteen years or the act led to the suicide of the victim.¹⁰

⁷ At unification, YWU was formed by combining the Yemeni Women's Association in the North, officially founded in 1965, and the General Union of Yemeni Women in the South, established in 1968. YWU is headquartered in Sana'a, with 22 branch offices and 132 smaller offices throughout the country.

⁸ Supreme Council for Women, Women's National Committee, National Report on the Implementation of the Declaration and Action Plan of Beijing +20.

⁹ Penal Code, Arts. 241–243.

¹⁰ Ibid., Art 269.

The Penal Code criminalizes “disgraceful acts” with a female. A “disgraceful act in violation of chastity” is defined as any act which conflicts with public ethics or chastity, including undressing and intentional exposure of the genitals and words or gestures violating chastity and contradictory to good conduct. Punishment is imprisonment for a period not exceeding one year, or a fine if there is no consent.¹¹ The Penal Code also criminalizes “disgraceful acts in violation of chastity which conflicts with public ethics,” which is sometimes used to justify detention of women found in the company of a man who is not a relative (*khalwa*).¹²

In cases where a woman is murdered, financial compensation to the victim’s family (‘blood money’ or *diya*)¹³ is half the amount that applies for a murdered man.¹⁴ A legal amendment to make the compensation equal for both men and women, submitted by the WNC, is under deliberation in the Parliament.

HONOUR CRIMES

The Penal Code provides for reduced punishment for honour crimes, as follows:

If the husband murders his wife and whoever commits adultery with her when both are caught “red-handed,” or assaults both of them leading to either death or disability, no punishment is required thereof, but the husband is reprimanded with imprisonment for a period not exceeding one year or a fine. The same judgment applies to whoever surprises any of his ancestors or offspring or sisters caught “red-handed” with the crime of adultery.¹⁵

In other circumstances, the crime of murder is punishable by death. *Qisas* (retribution in kind) provides the murdered victim’s family the right to a pardon, seek financial compensation, or demand execution of the convicted offender. Where a family member has killed a female relative in the name of honour, he can be pardoned by his family. The state can still sentence him to 10 years’ imprisonment, but only in cases where he is deemed a threat to public order or “corruption on earth.” However, such cases are left to the determination of the judge, and thus the offender may be exonerated.¹⁶

ADULTERY AND SEX OUTSIDE OF MARRIAGE

The Penal Code lists *zina* (sex outside of marriage) and adultery as crimes “for which punishments prescribed by religious [Sharia] jurisdiction are meted out.”¹⁷ The penalty for sex outside of marriage is whipping by one hundred strokes for premarital sex or stoning to death if the offender is married.¹⁸

Other honour-related offences include:

“Disgrace to Honour Without Coercion,” which is punished by imprisonment for a period not exceeding one year or a fine.¹⁹ “Disgraceful acts” with a female. If the act is done with the female’s consent, both persons will be punished with imprisonment for a period not exceeding six months or a fine.²⁰ Immoral conduct or “immorality,” which is punishable with imprisonment for a period not exceeding three years or a fine. A woman can be prosecuted for immoral acts if found in the company of a man who is not her relative.²¹

11 Ibid., Art. 275.

12 Ibid., Art. 273; Elham Manea, *Women’s Rights in the Middle East and North Africa*, Yemen (2010).

13 Diya refers to indemnity money paid to the victim or her family by the party that caused the injury. It is an Islamic legal practice that provides a type of social insurance. In Yemen, the rate of diya is periodically adjusted for inflation, and the amount depends on the circumstances surrounding the death or injury.

14 Criminal Procedure Law of 1994, Art. 12.

15 Penal Code, Art. 232.

16 Human Rights Watch, HRW Submission to the CEDAW Committee on Yemen Periodic Report, 62nd Session, (2015).

17 Penal Code, Art. 12.

18 Ibid., Art. 263.

19 Ibid., Art. 271.

20 Ibid., Art. 275.

21 Ibid., Art. 278.

ABORTION FOR RAPE SURVIVORS

Abortion is prohibited by the Penal Code.²² There is no exception for rape survivors. If the abortion occurs with the consent of the woman, the person who performs the abortion is punished with blood money of the embryo or full blood money according to the circumstances. There is no punishment if a specialist doctor determines that the abortion is necessary for the preservation of the life of the mother.

FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

It is estimated that 19 per cent of all Yemeni women and girls aged 15 to 49 years have undergone some form of circumcision or cutting.²³

There is no law that prohibits FGM/C. A 2001 ministerial decree prohibits carrying out FGM/C procedures in public and private hospitals and clinics. However, the decree does not impose specific penalties for violations.²⁴ According to health officials, the decree has not been effective in stopping FGM/C due to the difficulty of monitoring its implementation in medical facilities.²⁵

A child rights bill that proposed to criminalize FGM/C and stipulated prison sentences and fines for offenders was submitted for ministerial review in 2014.²⁶ The Safe Motherhood Bill proposed to introduce a provision that prohibited “surgical interventions on a woman’s genitalia” unless required for legitimate or surgical reasons. Some members of Parliament opposed the provision due to concerns that it contradicted Sharia. As a result, the prohibition on FGM/C was not included in the Safe Motherhood Law when it was passed in 2014.²⁷



22 Ibid., Arts. 239–240.

23 Ministry of Public Health and Population, Central Statistical Organization (Yemen), Pan Arab Programme for Family Health and ICF International, Yemen National Health and Demographic Survey 2013 (2015), p.165.

24 UN Population Fund and Ministry of Public Health and Population, Yemen National Reproductive Health Strategy 2011–2015 (Feb. 2011), p. 9.

25 Ibid.

26 Ibid.

27 Human Rights Watch, “Killing My Daughter Haunts Me”: Female Genital Mutilation in Yemen (2015).

FAMILY MATTERS

Forced and early marriages

Yemen has very high rates of child marriage. Marrying off girls at a young age provides financial benefits to poor families and has been adopted as a coping strategy by many families affected by the conflict.²⁸

A 2013 survey found that 15.5 percent of married women aged 15 to 49 years were married by age 15 and that 43.6 percent were married by age 18.²⁹

A 2006 survey found that young women belonging to the poorest households are more likely to be married before the age of 18 than those of the wealthiest households (49 per cent/23 per cent). Rural girls were slightly more likely to marry before the age of 15 than urban girls (14.5 per cent/13.2 per cent), with a more significant disparity between those marrying before the age of 18 (55.7 per cent/44.1 per cent). There is a dramatic difference in the incidence of early marriage before age 15 between girls that had no education and those with basic education (21 per cent/7 per cent), with a similar gap for those married before age 18 (64.4 per cent/34.7 per cent).³⁰

Ninety-six percent of Yemeni women marry men who are older than they are, and half marry men who are five or more years older. This contributes to power imbalances in marital relations.³¹

Minimum marriage age

The Personal Status Code and its amendments do not specify a minimum age of marriage. Instead, religious traditions are applied, under which the minimum age for marriage for boys and girls is set at the onset of puberty. The law allows for marriage on the provision that the girl or woman is “fit for sexual intercourse.” The Personal Status Code states: “The marriage of a girl is legally valid, but she is not to be wedded until she’s ready for sex, even if she exceeds 15 years of age. And marriage of a boy is not legally valid unless it is proven for the good.”³²

A 2014 submission by WNC to Parliament suggested amending the age of marriage by proposing the following wording: “It is not permissible to marry a male or female without reaching the age of 18 years. The judge may reduce the age of marriage if he sees fit to do so.”

The 2015 draft Constitution proposes to establish 18 as the minimum age for marriage for men and women.³³

Marriage rights under the Personal Status Code

A male relative has the right to *wilaya* (guardianship) over a woman for life. Article 18 of the Personal Status Code allows a woman to resort to the judiciary if she seeks to refuse a marriage arranged by the guardian. If the guardian of a woman or her next of kin does not accept the judge’s order, the judge can assume the role of guardian to the woman. The law stipulates that the woman’s own consent is necessary to marry, although a woman is not allowed to sign her own wedding contract. The silence of a virgin bride is sufficient to signify consent to marriage. Only previously married women need to express consent to a marriage.³⁴

If a woman marries without the permission of her male guardian, the guardian is entitled under the law to file for an annulment of her marriage.³⁵

A man is permitted to take up to four wives if he has the financial means to provide them with support.

28 International Organization for Migration (IOM) and Colburn Consulting International, Pilot Study Tourist Marriages in Yemen (2014), p.14.

29 UNICEF, Situation Analysis of Children in Yemen 2014 (Yemen Ministry of Planning and International Cooperation and UNICEF, 2014).

30 Yemen Ministry of Health and Population and UNICEF, Yemen Multiple Indicator Cluster Survey 2006, Final Report (UNICEF, 2008), p.119.

31 Ragui Assaad, Ghada Barsoum, Emily Cupito, and Daniel Egel, “Youth Exclusion in Yemen: Tackling the Twin Deficits of Human Development and Natural Resources,” Middle East Youth Initiative Working Paper (Wolfensohn Center for Development and Dubai School of Government, 2009), p. 37.

32 Personal Status Code, Art. 15. Prior to unification in 1991, the age for marriage was set at 15 in North Yemen and 16 in South Yemen.

33 For a discussion of the age of marriage, see Human Rights Watch, “How Come You Allow Little Girls to Get Married?” (2011).

34 Personal Status Code, Article 23.

35 Ibid., Art. 16.

The Personal Status Code obliges a woman to obey her husband in all household matters in the interest of the family.³⁶ The courts interpret this obligation to mean that a woman cannot refuse a husband's request for intercourse. This has been criticized for condoning marital rape.³⁷

The law considers that the husband has no right to prevent his wife from leaving the family home for a legitimate excuse, in particular to perform her job. The Personal Status Code states the husband may not use his wife's money and that she should not be harmed financially or morally.³⁸ Further, the wife has the right to suitable residence, maintenance, and clothing for herself and her children.

The Passport Law No. 7 of 1990 does not require the consent of a male guardian to the issue of a passport. A citizen who has attained the age of 16 years is entitled to obtain a passport without the consent of the husband or the guardian. Women have the legal right to obtain their own identity card or passport. Women may travel without a *mahram* (male relative escort). As a matter of practice, women's access to identity documents and freedom to travel independently varies according to circumstances, and sometimes women are obstructed from enjoying these rights.

According to the Personal Status Code, a man can unilaterally divorce his wife through repudiation without providing a reason (*talaq*). A man may simply pronounce his repudiation three times to obtain divorce.³⁹

While women have the legal right to sue for divorce, unlike men they must provide justification to a court, such as a defect in the marriage contract or the spouse, either existing before marriage or occurring after; *darar* (damage) as a result of prolonged absence, imprisonment, or non-payment of maintenance; and *karahiya* (deep hatred). Other legally admissible justifications for divorce include adultery, impotence, disease, or marriage to a second wife without permission. A critical issue for women initiating divorce is that the wife must return the *mahr* (similar to a dowry), thus discouraging such an action.⁴⁰

A woman also has the option to seek a divorce through *khul'a* by foregoing her financial rights without being required to specify any reasons or grounds.⁴¹ However, in such cases the husband's consent is required. Many women apply to the courts to obtain *khul'a*, although such a practice is often viewed with suspicion. There is social stigma attached to female divorcees, regardless of the grounds for divorce.

A woman has the right to maintenance (alimony), unless she leaves the marital home without a legitimate excuse or works outside the house without her husband's consent, but not in a case where the reason for his preventing her from working is deemed arbitrary.⁴²

Guardianship and custody of children

The father enjoys sole guardianship of his children. After a divorce the father remains the legal guardian of the children, and payment of child support is his responsibility.

Custody is generally granted to the mother until her son reaches nine and her daughter reaches twelve years.⁴³ A divorced woman forfeits custody rights if she remarries.⁴⁴ In such cases, the custody of the children is transferred to her mother or sister(s), if there is no other guardian. The mother's new husband is not entitled to prevent her from custody of her child.

The law specifies that if the child is with one of his/her parents, the other parent has the right to see the child in the manner agreed upon or as ordered by a judge. However, in practice, such rights are not always recognized. A woman may not deny the father visitation rights, while a father can deny a mother's visitation rights.⁴⁵

36 Ibid., Art. 40.

37 Equality Now, Information on Yemen for Consideration by the Committee on the Elimination of Discrimination against Women at its 62nd Pre-Sessional Working Group (March 2015).

38 Personal Status Code, Art. 41.

39 Personal Status Code, Art. 59.

40 Marta Colburn, Situation Analysis of Gender and Development in Yemen (Amman: Friedrich Ebert Stiftung, 2002), p. 6.

41 Personal Status Code, Arts. 36 and 72.

42 Ibid., Art. 152.

43 Ibid., Arts. 139, 141.

44 Ibid., Art. 143.

45 Ibid., Art. 145.

INHERITANCE

The Constitution affirms the right of inheritance to all Yemenis and for women a specific share of inheritance. Article 23 of the Constitution states that “the right to inheritance is guaranteed in accordance with Islamic law.”

The Personal Status Code states six inheritance categories and confirms that women have a share according to Islamic law and cannot be denied access to their share.⁴⁶

With some exceptions, a woman’s share of inheritance is generally half the amount of a man’s share, if both have the same relationship to the deceased. This recognizes the financial responsibility under Islamic law of the man to provide for his wife and children. Two noted exceptions are that of a uterine sister (half-sister with the same mother but a different father) inheriting equally with her brother, and a mother and father inheriting equally from their deceased child.⁴⁷

There are some exceptional cases in which women inherit more than men, such as when a married woman dies having two maternal half-sisters and two brothers. In this case, each maternal half-sister would receive twice as much as the brothers.

Additionally, there are cases in which a woman inherits while a man would not, for example, if a man dies while his maternal grandparents are alive. The grandmother would inherit while the grandfather would not.⁴⁸

Status inequalities emanating from differing gender roles are evident in the fact that women have no legal financial responsibility for household maintenance in tribal and Islamic traditions. The same logic of male responsibility and female dependence is also applied to Islamic laws of inheritance, initiating divorce, and custody of children.⁴⁹

Women have the right to resort to the judiciary to preserve any of their rights or to claim inheritance based on the principle of the right of litigation guaranteed to every citizen. The Yemeni Constitution stipulates in Article 51 that citizens have the right to petition the judiciary to protect their legitimate rights and interests, and to submit complaints, criticisms, and proposals to the State and its institutions.

As stated in the Civil Procedure and Enforcement Law No. 40 of 2002, Article 16, litigants are equal in the exercise of the right of litigation. The judge shall abide by the principle of equality between the litigants in this right, in accordance with the provisions of Islamic law and the laws in force.

In practice, wealthy families, particularly high-status women, rely on cultural practices that prevent their daughters from marrying outside the family.⁵⁰ Because women are often unaware of their lawful inheritance share, their rights may be denied or diminished. Additionally, due to difficult economic conditions in families and to social custom, some women do not resort to the courts to obtain their inheritance. Women who have married into a different tribe, for example, may be prevented from inheriting property in order to keep the property under tribal ownership.⁵¹

NATIONALITY

The Nationality Law treats men and women equally in their ability to pass nationality to their children. The Yemeni Nationality Law of 1990 was amended in 2010 to allow Yemeni women married to foreign spouses to grant their Yemeni nationality to their children.

The Nationality Law does not treat men and women equally in their ability to pass nationality to their spouse. The Nationality Law prescribes ways for Yemeni men to transmit citizenship to a foreign spouse, but does not enable Yemeni women to do so.⁵² Non-Yemeni men who wish to marry Yemeni women must apply for approval from the Ministries of Interior and Justice.⁵³ Yemeni women can marry a non-Yemeni man providing he is a Muslim.

46 Ibid., Art. 307.

47 Annelies Glander, *Inheritance in Islam: Women’s Inheritance in Sana’a*, European University Studies, Series XXVII Asian and African Studies, vol. 69 (1998), p. 78.

48 Women’s National Committee, “Women Rights in Yemeni Legislation” (booklet, 2010).

49 Marta Colburn, *Situation Analysis of Gender and Development in Yemen* (2002), p. 2.

50 Kafa’a is a marriage practice that discourages higher social classes from marrying below their status group, most strongly evident among women from Sa’da who are descendants of the Prophet Mohammed. See IOM and Colburn Consulting International, *Pilot Study Tourist Marriages in Yemen*, (2014).

51 Human Rights Watch, *Human Rights Watch Submission to the CEDAW Committee on Yemen Periodic Report*, 62nd Session (2015).

52 Nationality Law of 1990, Art. 11.

53 IOM and Colburn Consulting International, *Pilot Study: Tourist Marriages in Yemen* (2014).

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LABOUR LAWS

As a result of the conflict, many women support their families financially because men are absent or are unable to earn sufficient income to provide support. Women work mostly in the informal sector, running their own businesses or working in family businesses, where they are not protected by labour laws.⁵⁴

Entering employment

The Labour Code of 1995 includes a broad commitment to equality, as follows: “Work is a natural right of every citizen and a duty for everyone who is capable of working, on the basis of equal conditions, opportunities, guarantees, and rights without discrimination on grounds of sex, age, race, colour, beliefs, or language.”⁵⁵ However, there is no specific penalty for discrimination against women in recruitment and hiring.

The Labour Code restricts women’s employment in some occupations. It is prohibited to employ women in industries and occupations that are hazardous, arduous, or harmful to their health or social standing. It is also forbidden to employ women at night, except during the month of Ramadan and in the jobs specified by order of the Minister.⁵⁶

⁵⁴ Kristine Anderson, *Now is the Time: Research on Gender Justice, Conflict and Fragility in the Middle East and North Africa: Country synthesis note: Yemen (2017)*.

⁵⁵ Labour Code, Art. 5.

⁵⁶ *Ibid.*, Art. 46.

The Personal Status Code requires a woman to obtain her husband's permission to go to work, but the law does not allow a man to prevent his wife from doing so. She may leave the home to attend a mutually agreed job that does not conflict with Islamic law.⁵⁷

Remaining in employment

The Labour Code provides that women shall be equal with men in relation to all conditions of employment and employment rights, duties, and relationships, without any discrimination, and that women shall also be equal with men in employment, promotion, wages, training, rehabilitation, and social insurance.⁵⁸

Women are entitled to wages equal to those of men if they perform the same work under the same conditions and specifications.⁵⁹ However, this entitlement does not extend to equal remuneration for work of equal value where it is a different type of job.

Women are entitled to 10 weeks /70 days maternity leave with full pay, which employers are liable to pay directly to the employee.⁶⁰ A woman is entitled to a further 20 days leave if the childbirth was difficult or if the woman gives birth to twins. The Labour Code prohibits an employer from dismissing a woman during her maternity leave.⁶¹ Employers with 50 or more female employees are required to provide childcare facilities.⁶²

The Labour Code provides that "women may not be employed for additional hours from the sixth month of pregnancy and within the six months following the commencement of work after the maternity leave."⁶³ Employers are required to take the necessary precautions to protect pregnant worker from any risks that may lead to damage to her health or pregnancy while retaining the right of the worker to treatment and compensation.⁶⁴

The Insurance and Pensions Law No. 25 of 1991 and Social Welfare Law No. 26 of 1991 provide working women with a retirement pension. The law specifies the mandatory retirement age for women as 60 years and the optional retirement age as 55 years.

Workplace sexual harassment

The Labour Code does not include a specific prohibition on sexual harassment in the workplace. However, there is a general prohibition on harassment of women in the Penal Code (the offence of "scandalous act with a female").⁶⁵

A worker may unilaterally terminate a contract of employment without prior written notice to the employer if the employer or his representative commits a morally offensive act towards the worker or if the employer or his representative assaults the worker. The worker shall also be entitled to special compensation for the damage caused by the termination of the contract by the employer in an arbitrary manner.⁶⁶

One of the amendments to the Penal Code proposed by the WNC to the Council of Ministers is the criminalization of sexual harassment. The draft law combating violence against women and girls proposes the criminalization of sexual harassment.

Domestic workers

Domestic workers, both Yemeni and migrant, are vulnerable to sexual harassment and other forms of GBV. They do not benefit from the protection of labour laws because domestic workers and female farmers are excluded from the protections of the Labour Code.⁶⁷

57 Personal Status Code, Art. 40.

58 Labour Code, Art. 42.

59 Ibid., Art. 67.

60 Ibid., Art. 45 (Law No.5 of 1995, as amended by Law No.15 of 2008).

61 Ibid.

62 Ibid., Art. 45 bis (introduced into the Labour Code by Law No. 25 of 2004).

63 Ibid., Art. 44.

64 Ibid., Art. 47.

65 Penal Code, Art. 275.

66 Labour Code, Art. 39.

67 Ibid., Art. 3(2).

SEX WORK AND ANTI-PROSTITUTION OFFENCES

The Penal Code criminalizes prostitution, which is punishable with imprisonment for a period not exceeding three years or a fine.⁶⁸ Sex workers may also run the risk of prosecution for *zina* (sex outside of marriage), which incurs severe penalties. Operating a brothel and instigating prostitution are also offences, and a male guardian is prohibited from allowing consenting to his wife or any unmarried females under his guardianship to practice prostitution.⁶⁹

HUMAN TRAFFICKING

Yemen is a country of origin and, to a lesser extent, transit and destination for women and children subjected to trafficking. The US Government's *2017 Trafficking in Persons Report* describes the situation in Yemen as follows:

The ongoing conflict, lack of rule of law, and the deteriorating economy have likely disrupted some trafficking patterns and exacerbated others.... Prior to the conflict, Yemen was a transit point and destination for women and children, primarily from the Horn of Africa, who were subjected to sex trafficking and forced labor. Ethiopians and Somalis traveled voluntarily to Yemen with the hope of employment in Gulf countries, but some women and children among this population may have been exploited in sex trafficking or domestic servitude in Yemen. Others migrated based on fraudulent offers of employment as domestic workers in Yemen, where they were subsequently subjected to sex trafficking or forced labor. Some female refugees were previously forced into prostitution in Aden and Lahj governorates. Prior to the conflict's escalation and the government's departure in March 2015, Yemeni migrant workers were allegedly deported from Saudi Arabia and returned to Yemen through the al-Tuwal and al-Buq border crossings. Most deportees were reportedly returned to the impoverished Tihamah region located on the west coast of Yemen, many of whom remained displaced and highly vulnerable to exploitation, including trafficking. The UN estimated that the protracted Syrian conflict resulted in an influx of as many as 100,000 Syrian refugees to Yemen; Syrian refugee women and children begging in the streets were highly vulnerable to forced labor and sex trafficking in the country.⁷⁰

Some forms of human trafficking are criminalized by the Penal Code. Kidnapping is punished with imprisonment for a period not exceeding five years. If the kidnapping happens to a female or a juvenile, or if the kidnapping happens by force or threat or fraud. The sentence is imprisonment for a period not exceeding seven years. If the kidnapping is accompanied or followed by injury or assault or torture, the punishment is imprisonment for a period not exceeding 10 years.⁷¹ The Penal Code also criminalizes slavery (any person who buys, sells, or gives as a gift or otherwise deals in human beings, and anyone who brings into the country or exports from it a human being with the intent of taking advantage of her or him).⁷²

'Tourist marriages' are known to occur in Yemen and may be considered a form of human trafficking. Such marriages occur most often between Yemeni girls and women from poor families and men from Gulf countries. The marriage is intended by the groom to be for a limited duration, but this is often not clearly communicated to the parents, bride, or Yemeni officials. In many cases, Yemeni girls are taken back to the groom's country and exploited as domestic workers or for sexual purposes.⁷³ A number of ministerial decrees have been issued to prohibit the marriage of Yemenis to non-Yemenis, except with the Ministry of Interior's permission.

An inter-ministerial National Technical Committee to Combat Human Trafficking drafted anti-trafficking legislation in 2013, including provisions related to forced marriage. This draft legislation was adopted by the Ministry of Human Rights, but it has not been introduced to Parliament due to the political crisis and war.⁷⁴ The draft Child Rights Law proposes to criminalize the commercial sexual exploitation of children.⁷⁵

68 Penal Code, Art. 278.

69 Ibid., Arts. 279–281.

70 US Department of State, *2017 Trafficking in Persons Report: Yemen* (2017).

71 Penal Code, Art. 249.

72 Ibid., Art. 248.

73 IOM and Colburn Consulting International, *Pilot Study: Tourist Marriages in Yemen* (2014).

74 Ministry of Human Rights, *Draft Law on Trafficking in Humans* (2013). Available from <http://www.mhrye.org/466/107-107/672--مشروع-قانون-مكافحة-الاتجار-بالشخص>.html. See also IOM and Colburn Consulting International, *Pilot Study Tourist Marriages in Yemen* (2014), pp. 28–30.

75 Draft Child Rights Law, Art. 163.

INTERNALLY DISPLACED PERSONS (IDPS), REFUGEES, AND ASYLUM SEEKERS

Civil war and displacement have created extreme vulnerability to gender-based violence, including sexual violence, domestic violence, child marriage, and survival sex. Conflict-related sexual violence includes forced marriage, rape, and sexual slavery by armed actors.

A report of the UN High Commissioner for Human Rights has noted that the ongoing conflict has exacerbated the inequalities faced by women and girls, resulting in increased vulnerability to GBV.⁷⁶ The collapse of formal and informal protection mechanisms and large-scale displacement have led to harmful coping strategies, particularly child marriage. The High Commissioner for Human Rights reported that currently more than two thirds of Yemeni women are marrying before the age of 18 years, compared to 43 percent before the conflict.

GBV is often not reported because of the stigma and risks associated with doing so. While there are no available statistics, information received by the Office of the High Commissioner indicates that migrants, refugees, displaced persons, and detainees are all at increased risk of GBV.

The refugee population includes a high number of single females and single mothers. Child and/or forced marriage and FGM/C are widespread among Somali refugee communities in Yemen. Responding to GBV incidents experienced by IDPs, refugees, and asylum seekers is highly challenging due to the current civil conflict, lack of legal and social protection systems, and the absence of personal documentation provided by Yemeni authorities.

SEXUAL ORIENTATION, GENDER IDENTITY, AND RELATED ISSUES

The Penal Code provides that sodomy is a criminal offence. Unmarried men are punished with 100 lashes of the whip or a maximum of one year of imprisonment. Married men are punished with death by stoning.⁷⁷

Consensual homosexual conduct between women is also an offence, with a penalty of up to three years of imprisonment.⁷⁸

Transgender people have no protections or legal right to register a change of gender. There are no specific laws protecting people from being targeted for acts of violence or discrimination based on their sexual orientation or transgender identity.

SOCIAL WELFARE

Article 56 of the Constitution stipulates that the State shall guarantee social welfare to all its citizens in cases of illness, disability, unemployment, old age or loss of the breadwinner. The Social Welfare Law grants the right to social welfare. Article 6 (b) of the Social Welfare Law No. 31 of 1996 stipulates that “the right to receive permanent assistance is provided to women without a breadwinner.”

Article 55 of the Constitution affirms that health care is the right of all citizens and that the State guarantees this right by establishing and expanding hospitals and health institutions. Article 11 of the Medical and Health Facility Law No. 60 of 1999 provides that private medical and health facilities shall make an effective contribution to the provision of primary health care services, including mother and child care.

⁷⁶ Human Rights Council, Report of the High Commissioner for Human Rights, The situation of human rights in Yemen: Violence and violations since September 2014, 13 September 2017 (A/HRC/36/33).

⁷⁷ Penal Code, Art. 264.

⁷⁸ Ibid., Art. 268.

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