

TUNISIA¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 31 May 2017)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Equality of spouses in marriage</p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncoded? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly</i></p>	<p>Article 21 of the Constitution states that all Tunisians, female and male, have equal rights and duties, and are equal before the law without any discrimination.²</p> <p>Article 46 of the Constitution guarantees the equality of opportunities between men and women to have access to all levels of responsibility and in all fields.³</p> <p>Article 7 of the Constitution provides that family is the nucleus of society and commits the State to protect it.⁴</p> <p>The Personal Status Code (PSC) is the main codified law that governs marriage and family relations in Tunisia,⁵ a country with a predominantly Muslim</p>	<p>In some cases, judges use <i>Shari'ah</i> as a source of law in cases relating to marriage and family relations.⁹ They refer to Article 1 of the Constitution which declares Islam as the official state religion although Article 2 of the Constitution also provides that Tunisia is a civil state based on the rule of law.¹⁰</p>	<p>Upon ratification of CEDAW in 1985, Tunisia had reservations to Articles 9(2), 16(c), (d), (f), (g), (h) and 29(1). In 2014, Tunisia withdrew all its reservations to CEDAW.¹¹</p> <p>The Government of Tunisia in its 2000 report to the CEDAW Committee explained that although the law states the husband as head of the family, no relationship of domination over the</p>		<p>According to the 2016 UNDP Human Development Report, Tunisia ranked 97 on the UNDP Human Development Index and 58 on the UNDP Gender Inequality Index.¹³</p> <p>The PSC is commonly viewed as secular in nature and does not specifically refer to Islam as a source of law or interpretation. However, the influence of the religion is evident as follows:</p>

¹ This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Tunisia country table, we would also like to thank Mida Zantout and Tunisian experts including Zahia Jouirou, for their inputs in its preparation.

² Article 21 of Tunisia's Constitution (2014), https://www.constituteproject.org/constitution/Tunisia_2014.pdf

³ Article 46 of Tunisia's Constitution (2014), https://www.constituteproject.org/constitution/Tunisia_2014.pdf

⁴ Article 7 of Tunisia's Constitution (2014), https://www.constituteproject.org/constitution/Tunisia_2014.pdf

⁵ Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

<p><i>state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>population.</p> <p>The PSC exclusively recognises civil marriages and applies to all Tunisians regardless of religion.⁶</p> <p>Despite the equality guarantee of Article 21 of the Constitution, the PSC provides for a marital framework based on ‘reciprocal’ or ‘complementary’ rights (as opposed to ‘equal’ rights) between the two spouses that in turn is based on the concept of male guardianship over women and children.⁷ Article 23 of the PSC states that:⁸</p> <ul style="list-style-type: none"> • The husband, as head of the family, must provide for the needs of his wife and children based on his financial means. The wife must also contribute if she has the financial means 		<p>wife is implied. Instead, the notion of the husband as head of the household is linked to his responsibility as the main provider for the needs of his wife and children, a situation that is justified by the country’s economic reality whereby women’s economic participation is far lower than that of men.¹²</p>	<ul style="list-style-type: none"> • The development of the PSC is influenced by Maliki jurisprudence (<i>fiqh</i>);¹⁴ and • Although many gender-based discriminatory practices that existed in the past were abolished by the PSC, the Code still contains “legal inequalities dating from their promulgation in 1957 and 1963, often reflecting inequalities proper to Islamic
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⁹ UN Working Group Mission to Tunisia, U.N. Doc. A/HRC/23/50/Add.2 (2013), paras. 9, 35, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_ENG.pdf

¹⁰ Articles 1, 2 of Tunisia’s Constitution (2014), https://www.constituteproject.org/constitution/Tunisia_2014.pdf

¹¹ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en

¹³ UNDP, “Human Development Report 2016”, Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

⁶ Omar Fassatoui, “Women’s rights in Tunisia: The remaining legal inequalities”, (C.A. Perspectives on Tunisia, 1, 2016), pp. 2-3, <http://www.cap-lmu.de/download/2016/CAPerspectives-Tunisia-01.pdf>

⁷ UN Working Group Mission to Tunisia, U.N. Doc. A/HRC/23/50/Add.2 (2013), paras. 9, 35, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_ENG.pdf

⁸ Article 23 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

¹² Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), paras. 44, 1063, 1068, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹⁴ Mari Norbakk, “The Women’s Rights Champion: Tunisia’s potential for furthering women’s rights”, (CMI Report, 5, 2016), p. 9, <https://www.cmi.no/publications/file/5973-the-womens-rights-champion.pdf>

	<p>to do so;</p> <ul style="list-style-type: none"> • Both spouses are to treat each other with kindness and must not harm each other; • Both spouses must perform their conjugal duties in accordance with usual custom; • Both spouses must cooperate in managing the family's affairs, the proper education of their children and the conduct of their children's affairs, including education, travel and financial transactions. 				<p>law” regarding certain aspects of marital and inheritance rights.¹⁵</p> <p>The PSC was amended in 1993 to remove the wife's duty to obey her husband in 1993. Nevertheless, according to the UN Working Group on the Issue of Discrimination Against Women in Law and in Practice (UN Working Group), the law still “constitutes discrimination which violates the principle of equality” as husbands remain the legal heads of households. This is despite the role of the husband being confined to the maintenance obligation of his spouse and children because “the status</p>
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¹⁵ Omar Fassatoui, “Women's rights in Tunisia: The remaining legal inequalities”, (C.A. Perspectives on Tunisia, 1, 2016), pp. 2-3, <http://www.cap-lmu.de/download/2016/CAPerspectives-Tunisia-01.pdf>

				<p>that is granted to the husband and father and the notion of customs and traditional practices give rise to certain abuses, in particular as regards the choice of domicile.”¹⁶</p> <p>According to the UN Economic and Social Commission for Western Asia (ESCRWA), about 12% of households in Tunisia are headed by women.¹⁷</p> <p>According to information on the ground, although husbands are the legal heads of households and primary providers for their families, in reality, wives play a key role alongside their husbands in catering for the</p>
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¹⁶ UN Working Group Mission to Tunisia, U.N. Doc. A/HRC/23/50/Add.2 (2013), paras. 31, 32, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_ENG.pdf

¹⁷ ESCRWA et al, “A Comparative Analysis of Gender Disparities in Arab Countries: A Study Based on Household Survey Data”, p. 29, https://www.unescwa.org/sites/www.unescwa.org/files/uploads/general_final_escwa.pdf

					<p>moral and material needs of the family. In addition they take on household tasks, and very often a significant share of the household's expenses.¹⁸</p> <p>According to reports by the UN Working Group, civil society and the media, feminist groups increasingly fear a backlash from conservative Muslim groups, especially the Salafist groups, who are reportedly becoming increasingly vocal and violent in their demands.¹⁹</p>
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¹⁸ Massan d'Almeida, "Marriage and Divorce in Tunisia: Women's Rights", *AWID*, 10 September 2010, <https://www.awid.org/news-and-analysis/marriage-and-divorce-tunisia-womens-rights>

¹⁹ UN Working Group Mission to Tunisia, U.N. Doc. A/HRC/23/50/Add.2 (2013), para. 19, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_ENG.pdf; European Parliament, "Gender Equality Policy in Tunisia", (Briefing Note, PE 462.502, 2012), p. 13, [http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT\(2012\)462502_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT(2012)462502_EN.pdf); Yasmin Ryan, "Tunisia: Women's rights hang in the balance", *Al Jazeera*, 20 August 2011, <http://www.aljazeera.com/indepth/features/2011/08/201181617052432756.html>; Marc Fisher, "In Tunisia after Arab Spring, Islamists new freedoms create new Muslim divide", *The Washington Post*, 28 April 2012, https://www.washingtonpost.com/world/in-tunisia-after-arab-spring-islamists-new-freedoms-create-new-muslim-divide/2012/04/28/gIqAN9yJoT_story.html?utm_term=.36166326851b

<p>Minimum and equal legal age for marriage</p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>The minimum legal age for marriage is 18 for females and males as per Article 5 of the PSC. However, Article 5 also provides that a judge may permit girls and boys below 18 to marry for serious reasons and if it is in the best interest of both prospective spouses.²⁰</p> <p>The law does not stipulate an absolute minimum age below which a marriage may not be authorised.</p> <p>The minimum legal age for marriage is below the legal age of civil majority. Under Article 153 of the PSC, the legal age of civil majority is 20 for both females and males. A minor over the age of 17 attains adulthood by marriage with regard to his or her personal status and management of civil and commercial affairs.²¹</p>	<p>Judges generally allow marriage below the minimum legal age for marriage in cases of pregnant minors.²²</p> <p>Judges also generally allow marriage below the minimum legal age for marriage in applications relating to Article 227bis of the Criminal Code which allows a man who had sex with a minor girl over the age of 13 without physical coercion to marry her and at the same time terminate any criminal proceedings.²³ In this regard, according to a media reports, a</p>	<p>The Government of Tunisia in its 2000 report to the CEDAW Committee explained that as mothers have the same right as the guardian to authorise the marriage of their children, the interest of minors is served as their marriages are no longer dependent on the wishes of one parent which may be detrimental them and of which girls were generally the victims.²⁵</p>	<p>According to UNICEF's 2016 State of the World's Children Report, 2% of women aged 20-24 in Tunisia were first married by 18.²⁶</p> <p>According to UN World Marriage Data 2015, the average age of first marriage among Tunisian females fell from 28.7 in 2004 to 28.5 in 2012. In 2004, the average age of first marriage among Tunisian males was 32.6.²⁷</p>
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²⁰ Article 5 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

²¹ Article 153 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

²² Omar Fassatoui, "Women's rights in Tunisia: The remaining legal inequalities", (C.A. Perspectives on Tunisia, 1, 2016), p. 3, <http://www.cap-lmu.de/download/2016/CAPerspectives-Tunisia-01.pdf>

²³ Omar Fassatoui, "Women's rights in Tunisia: The remaining legal inequalities", (C.A. Perspectives on Tunisia, 1, 2016), p. 3, <http://www.cap-lmu.de/download/2016/CAPerspectives-Tunisia-01.pdf>. See also "Violence against women in the family" below.

²⁵ Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 1080, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

²⁶ UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf

²⁷ United Nations Population Division, "World Marriage Data 2015", <https://esa.un.org/ffps/Index.html#/maritalStatusData>

		Tunisian court, relying on Article 227bis of the Criminal Code, approved the marriage of a 13-year old girl to her 20-year old brother-in-law who made her pregnant despite the objections of their parents. ²⁴			
<p>Women's consent to marriage</p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21</p>	<p>Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, <i>ijbar</i> marriages are prohibited.</p> <p>Article 3 states that a marriage is valid if: (i) both parties to the marriage consented to it; (ii) the marriage is concluded in the presence of two honourable witnesses; and (iii) a dower (<i>mahr</i>) has been fixed for the benefit of the woman.²⁸</p> <p>Article 21 of the PSC states that a marriage contracted without the consent of the parties is null and void.²⁹</p>	<p>The courts have tended to interpret Article 3 of the PSC to mean that consent should be manifested in an undisputable manner by saying "Yes" before the officiating officer.³²</p>	<p>The Government of Tunisia in its 2000 report to the CEDAW Committee explained that the dower is "increasingly less likely to be perceived as a condition of marriage." As encouraged by the authorities, most marriage contracts refer to a symbolic dower five Tunisian dinars for the bride.³³</p>	<p>There is a standardised marriage contract. It is a civil contract and includes the: (i) exact identity of the spouses; (ii) mutual consent of the spouses; (iii) guardian's authorisation (in case of minors); (iv) names and signatures of witnesses; and (v) <i>mahr</i>.³⁴</p>	<p>According to the UN Working Group as well as civil society reports, <i>urfi</i> marriages in Tunisia is a cause for concern because of the apparent rise of such marriages in Tunisia. Concluded verbally and without a written contract, <i>urfi</i> marriages:³⁵</p> <ul style="list-style-type: none"> • Enables the circumvention of the ban on

²⁴ Basma Atassi, "Tunisian court approves marriage of pregnant 13-year old", *CNN*, 15 December 2016, <http://edition.cnn.com/2016/12/14/middleeast/tunisia-court-child-marriage/>; Harriet Agerholm, "13-year old girl forced to marry her "rapist" step-brother", 19 December 2016, <http://www.independent.co.uk/news/world/africa/rape-tunisia-13-year-old-girl-pregnant-article-227-child-marriage-womens-right-consent-a7483941.html>

²⁸ Article 3 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

²⁹ Article 21 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

Paras. 25-26, 33-34 GR29	<p>The mandatory registration of marriages is implicit in Article 4 of the PSC which provides that a marriage may only be proved by an official document prescribed by law.³⁰</p> <p>The PSC prohibits unregistered or customary marriages (<i>urfi</i>) and non-compliance with the marriage registration requirements is penalised.³¹</p>				<p>polygamy in Tunisia;</p> <ul style="list-style-type: none"> • Take place in rural areas that are far away from public administration; • Place women in vulnerable situations when the “husband” abandons them and their children with no rights stemming from legal marriage.
Women’s capacity to enter into marriage	Prospective brides and grooms over 20 do not require the consent of a guardian to enter into				According to a briefing note commissioned by

³² Women Living Under Muslim Laws, “Knowing Our Rights: Women, Family Laws and Customs in the Muslim World”, (Nottingham, UK: The Russell Press, Third Edition, 2006), p. 82, http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf

³³ Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), paras. 1049-51, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>. Article 12 of the PSC provides that “The dowry may consist of any lawful property having monetary value. It shall belong to the wife.”, <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

³⁴ Women Living Under Muslim Laws, “Knowing Our Rights: Women, Family Laws and Customs in the Muslim World”, (Nottingham, UK: The Russell Press, Third Edition, 2006), p. 151, http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf

³⁵ UN Working Group Mission to Tunisia, U.N. Doc. A/HRC/23/50/Add.2 (2013), para. 35, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_ENG.pdf; The Advocates for Human Rights and MRA Mobilising for Rights Associations, “Tunisia: Women’s Rights”, *Joint Stakeholder Report for the United Nations Universal Periodic Review*, 2016, para. 30, <http://mrawomen.ma/wp-content/uploads/doc/Tunisia%20UPR%20Submission%20FINAL.pdf>; European Parliament, “Gender Equality Policy in Tunisia”, (Briefing Note, PE 462.502, 2012), p. 12, [http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT\(2012\)462502_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT(2012)462502_EN.pdf)

³⁰ Article 4 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

³¹ UN Working Group Mission to Tunisia, U.N. Doc. A/HRC/23/50/Add.2 (2013), para. 35, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_ENG.pdf

<p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>	<p>marriage. Prospective brides and grooms below 20 require the consent of their guardian and mother or judge to enter into marriage.</p> <p>Article 9 of the PSC provides that both females and males have the right to conclude their marriage by themselves or through their proxies.³⁶</p> <p>Article 6 of the PSC provides that the marriage of a minor is subject to the consent of his or her guardian and mother. If the guardian or mother refuses consent, the minor may seek the authorisation of a judge to get married.³⁷</p> <p>Pursuant to Article 11 of the PSC, both spouses may stipulate any condition relating to persons or property in their marriage contract. The failure to meet these conditions allows either spouse to seek divorce.³⁸</p>				<p>the European Parliament's Committee on Women's Rights and Gender Equality, although the PSC gives women the possibility to negotiate their marital rights, in practice social pressure influences this matter more than the law.³⁹</p>
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³⁶ Article 9 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>
³⁷ Article 6 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>
³⁸ Article 11 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>
³⁹ European Parliament, "Gender Equality Policy in Tunisia", (Briefing Note, PE 462.502, 2012), pp. 9-10, [http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT\(2012\)462502_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT(2012)462502_EN.pdf)

<p>Polygamous marriages</p> <p><i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>Polygamous marriages are prohibited.</p> <p>Article 18 of the PSC criminalises polygamy, whereby:⁴⁰</p> <ul style="list-style-type: none"> • A man who contracts a polygamous marriage is liable to a year of imprisonment or a fine of 240,000 Tunisian dinars or both; • A woman who knowingly enters into a polygamous marriage is liable to the same punishment. <p>Temporary marriages are prohibited. Article 14 of the PSC provides that there two kinds of impediments to marriage: permanent and temporary. Permanent impediments arise from kinship, alliance, breastfeeding or triple divorce. Temporary impediments arise from the existence of an undissolved marriage and from the non-expiry of the period of viduity.⁴¹</p>		<p>The Government of Tunisia in its 2010 report stated that, "Free union is legally prohibited in Tunisia and gives rise to penalties and consequences in law in that, being likened to customary marriage (<i>urfi</i>), it is deemed to promote de facto polygamy."⁴²</p> <p>However, in February 2012, the Minister for Women and Family Affairs stated that the practice of unregistered or customary marriage was a matter of "personal freedom".⁴³</p>		<p>According to civil society and media reports, conservative Muslim groups have been making increasing demands to legalise polygamy.⁴⁴</p>
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⁴⁰ Article 18 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

⁴¹ Article 14 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

⁴² Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 1120, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁴³ UN Working Group Mission to Tunisia, U.N. Doc. A/HRC/23/50/Add.2 (2013), para. 17, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_ENG.pdf

⁴⁴ European Parliament, "Gender Equality Policy in Tunisia", (Briefing Note, PE 462.502, 2012), p. 12, [http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT\(2012\)462502_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT(2012)462502_EN.pdf); Yasmin Ryan, "Tunisia: Women's rights hang in the

<p>Divorce rights</p> <p><i>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to</i></p>	<p>Divorce rights between women and men are equal.</p> <p>Article 30 of the PSC provides that divorce can only take place before a court.⁴⁵</p> <p>Article 31 of the PSC states that the court may grant a divorce: (i) if both spouses mutually agree to the divorce; (ii) at the request of one of the spouses on the basis of harm; (iii) at the request of the husband or the wife.⁴⁶</p> <p>Unilateral divorce (talāq) outside the court system is not recognised.⁴⁷</p>				<p>According to civil society reports and academic research:</p> <ul style="list-style-type: none"> • Divorce legal procedures initiated by women tend to drag on for years and are rarely concluded,⁴⁸ and • Some judges have been reported to refuse to acknowledge a woman's right to request for a divorce, which leads to practical difficulties despite legal entitlements.⁴⁹
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balance", *Al Jazeera*, 20 August 2011, <http://www.aljazeera.com/indepth/features/2011/08/201181617052432756.html>; Marc Fisher, "In Tunisia after Arab Spring, Islamists new freedoms create new Muslim divide", *The Washington Post*, 28 April 2012, https://www.washingtonpost.com/world/in-tunisia-after-arab-spring-islamists-new-freedoms-create-new-muslim-divide/2012/04/28/gIqAN9yJoT_story.html?utm_term=.36166326851b

⁴⁵ Article 30 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

⁴⁶ Article 31 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>. See also Musawah, "CEDAW and Muslim Family Laws: In Search of Common Ground", 2012, p. 36, http://www.musawah.org/sites/default/files/CEDAWMFLReport2012Edition_1.pdf

⁴⁷ Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 1042, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Alexandra Bertgeorge, "Societu's Views and the Personal Status Code: A Discussion of Tunisian Men and Women's Roles in Marriage and Divorce", (Global Studies Student Papers, Paper 18, 2010), p. 11, http://digitalcommons.providence.edu/cgi/viewcontent.cgi?article=1016&context=glibstudy_students

⁴⁸ Massan d'Almeida, "Marriage and Divorce in Tunisia: Women's Rights", *AWID*, 10 September 2010, <https://www.awid.org/news-and-analysis/marriage-and-divorce-tunisia-womens-rights>

⁴⁹ Pascale Fournier et al, "En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia", (Amsterdam Law Forum, 3:2, 2011), p. 117, <http://amsterdamlawforum.org/article/viewFile/213/405>

<p><i>register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>					
<p>Women's financial rights after divorce</p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h)</p>	<p>Generally, upon divorce, a woman may be entitled to: (i) financial maintenance and compensation until her remarriage, death or she no longer requires them; and (ii) a share of the matrimonial assets if the couple had opted for the regime prior to the divorce.</p> <p>Pursuant to Article 31 of the PSC, if the court finds that a wife has suffered harm during her marriage, it will proceed to determine the appropriate level of maintenance and compensation due to her upon the pronouncement of the divorce. The level of maintenance and compensation is determined based on the standard of living that the former wife was accustomed to during her marriage. The maintenance and compensation takes the form of regular monthly payments that continue until the former wife's remarriage, death or she no longer requires them.⁵⁰ If the court</p>	<p>Judges rarely provide sufficient financial maintenance and many women face poverty after divorce.⁶⁵</p>	<p>The Government of Tunisia in its 2000 report to the CEDAW Committee highlighted two essential characteristics of the matrimonial property regime. First, it is optional and voluntary, both in terms of the time when this regime is chosen (spouses can make their choice on conclusion of the contract of marriage or at a subsequent date) and in terms of the property which may be included within this choice (immovable property only or all movable and immovable property). Second, the regime can be</p>		<p>According to the UN Working Group, the matrimonial property regime is not well-known, it is not well known and seldom applied.⁶⁷</p>

⁵⁰ Article 31 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

<p>Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>finds the wife has been divorced fairly by her husband, the wife may find herself with nothing.⁵¹</p> <p>Law No. 98-91 of 9 November 1998 provides for a legal concept of matrimonial assets.⁵²</p> <p>Pursuant to Article 1, at the time of the marriage contract or at a subsequent date, spouses have the option of choosing a matrimonial property regime that ensures that “the spouses have joint ownership of an immovable property or group of immovable properties which are specifically intended for the family’s use.”⁵³</p> <p>Article 2 provides that when the spouses declare that they have chosen the regime of joint estate, they will be subject to the provisions of the Act as well as any express agreement to</p>		<p>dissolved with the explicit agreement of both parties.⁶⁶</p>		
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⁶⁵ Pascale Fournier et al, “En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia”, (Amsterdam Law Forum, 3:2, 2011), p. 118, <http://amsterdamlawforum.org/article/viewFile/213/405>

⁶⁷ UN Working Group Mission to Tunisia, U.N. Doc. A/HRC/23/50/Add.2 (2013), para. 33, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_ENG.pdf

⁵¹ Pascale Fournier et al, “En-gender-ing Legal Reforms: Islamic Law in Africa and East Asia”, (Amsterdam Law Forum, 3:2, 2011), p. 118, <http://amsterdamlawforum.org/article/viewFile/213/405>

⁵² Law No. 98-94 of 9 November 1998 on the common property regime between spouses, <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/1998/1998F/091/TF1998941.pdf>

⁵³ Article 1 of the Law No. 98-94 of 9 November 1998 on the common property regime between spouses, <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/1998/1998F/091/TF1998941.pdf>

	<p>increase the extent of the joint estate.⁵⁴</p> <p>Pursuant to Article 7, where the spouses do not expressly opt for the regime of joint estate, the default regime of separate estate applies. Article 7 also provides that that the public officer in charge of drafting the marriage contract between the prospective spouses must remind both parties of the provisions of Articles 1 and 2 of and record their response in the contract.⁵⁵</p> <p>Article 10 provides that any immovable property acquired after the marriage will be considered as common property between the spouses unless the property has been transferred to the spouse concerned as a gift or bequest and provided the property is intended for the family use or acquired in the interest of the family, notwithstanding the fact that the use is continuous, seasonal or occasional. The couple may expressly agree to include immovable properties</p>				
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⁶⁶ Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 1094, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁵⁴ Article 2 of the Law No. 98-94 of 9 November 1998 on the common property regime between spouses, <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/1998/1998F/091/TF1998941.pdf>

⁵⁵ Article 2 of the Law No. 98-94 of 9 November 1998 on the common property regime between spouses, <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/1998/1998F/091/TF1998941.pdf>

	<p>acquired before the marriage or through a gift or bequest as part of the common property.⁵⁶</p> <p>Article 18 provides that the matrimonial property regime is dissolved upon: (i) the death of a spouse, (ii) divorce; (iii) disappearance of one of them; (iv) judicial separation of the property; or (v) agreement of both parties.⁵⁷</p> <p>Article 25 provides for the equal division of the common property between the two spouses, after payment of the debts or the deposit of the sums necessary for their settlement. In the event that it is impossible to divide the property, the court may decide to allocate the property to one of the spouses who must pay to the other spouse the market value of the property. In the alternative, the court may order the liquidation of the property.⁵⁸</p> <p>Article 53bis of the PSC criminal-</p>				
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⁵⁶ Article 10 of the Law No. 98-94 of 9 November 1998 on the common property regime between spouses, <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/1998/1998F/091/TF1998941.pdf>

⁵⁷ Article 18 of the Law No. 98-94 of 9 November 1998 on the common property regime between spouses, <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/1998/1998F/091/TF1998941.pdf>

⁵⁸ Article 25 of the Law No. 98-94 of 9 November 1998 on the common property regime between spouses, <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/1998/1998F/091/TF1998941.pdf>

	<p>ises the failure to pay the amount due following the divorce.⁵⁹</p> <p>Article 53bis also provides for the establishment of a maintenance and divorce allowance guarantee fund (Fund) which assumes the responsibility of paying the maintenance and divorce allowance stipulated in the final judgement awarded to the former wife and children should the former husband be delinquent in his payment.⁶⁰</p> <p>Law No. 93-65 of 5 July 1993 provides more details of the Fund. Article 1 provides that the maintenance and divorce allowance fund is to be administered by the National Social Security Fund.⁶¹</p> <p>Article 2 provides that in the event the former husband is delinquent in his payment of maintenance and divorce allowance, the fund will pay the amount due to the former wife and their children within 15 days of the date of submission of an application to</p>				
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⁵⁹ Article 53bis of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

⁶⁰ Article 53bis of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

⁶¹ Article 1 of the Law No. 93-65 of 5 July 1993 establishing a fund to guarantee maintenance and divorce allowance, <http://www.legislation.tn/sites/default/files/journal-officiel/1993/1993F/Jo05093.pdf>

	<p>the Fund provided that all legal conditions are met.⁶²</p> <p>Article 7 provides that the Fund will be financed by: (i) a contribution from the State budget; (ii) amounts recovered from delinquent husbands; (iii) the Fund's investment income; (iv) any gifts and bequests; and (v) other resources allocated to the Fund.⁶³</p> <p>Article 9 provides that the Fund shall cease payment where is no longer reason to make such payment. Anyone who, in bad faith, has received or attempted to receive payments from the Fund will be criminally liable.⁶⁴</p>				
<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers au-</i></p>	<p>During marriage, both parents have custodial rights over their children.⁶⁸ Pursuant to Article 67 of the PSC:⁶⁹</p> <ul style="list-style-type: none"> In the event of a divorce, custody of the child is entrusted to either the father 		<p>The Government of Tunisia explained in its 2000 report to the CEDAW Committee that while there is “a balance of sorts between the father and mother”, to</p>		

⁶² Article 2 of the Law No. 93-65 of 5 July 1993 establishing a fund to guarantee maintenance and divorce allowance, <http://www.legislation.tn/sites/default/files/journal-officiel/1993/1993F/Jo05093.pdf>

⁶³ Article 7 of the Law No. 93-65 of 5 July 1993 establishing a fund to guarantee maintenance and divorce allowance, <http://www.legislation.tn/sites/default/files/journal-officiel/1993/1993F/Jo05093.pdf>

⁶⁴ Article 9 of the Law No. 93-65 of 5 July 1993 establishing a fund to guarantee maintenance and divorce allowance, <http://www.legislation.tn/sites/default/files/journal-officiel/1993/1993F/Jo05093.pdf>

⁶⁸ Article 57 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

⁶⁹ Article 67 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

<p><i>tomatically lose custody upon re-marriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>or mother or a third person. The judge decides taking into account the interests of the child; and</p> <ul style="list-style-type: none"> In the event of a death of a parent, the custody of the child is entrusted to the surviving father or mother. <p>In addition, according to Article 58 the PSC⁷⁰</p> <ul style="list-style-type: none"> The custodian of the child must be of full age, sane, honest, capable of providing for the child's needs and free from any contagious disease; If the custodian is male (e.g. father), he must demonstrate that there is a woman in his life to help him shoulder the custodial responsibility. In addition, where the child is female, he must be closely related to the child; If the custodian is female (e.g. mother), she must be unmarried unless the judge determines that it is in the best interest of the child to be in her custody or her husband is 		<p>some extent “there is a difference in the rights and duties of parents.” The Tunisian government stated further that the difference “may even warrant positive discrimination in favour of women”, citing the example of the award of child maintenance.⁷¹</p>		
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⁷⁰ Article 58 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

⁷¹ Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 1078, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	a close relative or guardian of her children.				
<p>Guardianship of Children</p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>During the marriage, both parents have guardianship rights to their children.⁷²</p> <p>In the event of a divorce,⁷³ the father has priority right to guardianship of the children. However:</p> <ul style="list-style-type: none"> • Where the custody of the child is entrusted to the mother, she has the prerogatives of guardianship with regard to the child's travel, studies and management of the child's financial accounts; and • A judge may grant guardianship rights to a mother who has custody of the child, if the father: (i) exhibits abusive behaviour; (ii) neglects to properly fulfill his guardianship obligations to child; (iii) abandons the home and has no known address. The judge may also grant the custodian 		<p>The Government of Tunisia in its 2000 report to the CEDAW Committee:</p> <ul style="list-style-type: none"> • Reiterated that, in the event of a divorce, guardianship reverts entirely to the father, even if the mother has custody of the children. The mother is granted the right of guardianship over her minor children in the event of the father's death,⁷⁵ • Asserted that even though the rights of parents were unequal with respect to 		

⁷² Articles 23, 60 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>. Article 60 of the PSC provides that "The father, the guardian and the mother of the child may have a right of say over his affairs, provide for his education and send him to educational establishments, although the child may not stay overnight with anyone other than the person who has custody of him, subject, in all cases, to a decision of the judge to the contrary in the interests of the child."

⁷³ Articles 60, 67 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

⁷⁵ Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 50, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>mother guardianship of the child if it is deemed to be in the best interest of the child.</p> <p>In the event of the death of the father, the guardianship of the child is entrusted to the surviving mother.⁷⁴</p>		<p>guardianship, the father does not enjoy absolute right in the matter. To preserve the right of the child to a good education and to the care of both parents, residence restrictions are imposed on both the mother and the father in the event of divorce;⁷⁶</p> <ul style="list-style-type: none"> • Informed that in order to give effect to the guardianship prerogatives of the mother under Article 67 of the PSC, particularly with regard to the issuance of children's passports and the management of their financial accounts, a 		
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⁷⁴ Articles 60, 67 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>; Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 50, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁷⁶ Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 1119, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

			<p>Circular No. 7/97of 3 September 1997, signed by the Ministries of Justice, Interior and Education, and Foreign Affairs, was issued to call on their departments to maintain strict application of the law.⁷⁷</p>	
<p>Family Planning</p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>Article 214 of the Criminal Code generally prohibits abortion. However, it authorises Tunisian women to have an abortion during the first three months of the pregnancy. After three months, the pregnancy may be aborted if the woman's health is at risk or if the child is likely to suffer from a serious disease. The abortion must take place in an authorised establishment by an authorised medical professional.⁷⁸</p>		<p>The Government of Tunisia in its 2000 report to the CEDAW Committee asserted that, "In Tunisia, spouses have enjoyed equality in regard to freely choosing the number and spacing of their children since the early 1970s." As such, family planning is "well established in the collective consciousness as a</p>	<p>According to World Bank data, the total fertility rate decreased from 6.9 children per woman in 1960 to 2.1 in 2015.⁸⁰</p> <p>According to the UN Population Division's 2015 Trends in Contraceptive Use Worldwide:⁸¹</p> <ul style="list-style-type: none"> • 64% of married women aged 15-

⁷⁷ Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 1118, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁷⁸ Article 214 of the Criminal Code (1913), <http://www.legislation.tn/sites/default/files/codes/Penal.pdf>

			right inherent to the right to health.” ⁷⁹		<p>49 are using a method of contraception, with women mainly using a modern method (53%);</p> <ul style="list-style-type: none"> • 11% of married women aged 15-49 have an unmet need for family planning services; and • 71% of marriage women aged 15-49 had their demands for family planning satisfied by modern methods of contraception.
<p>Personal rights of spouses</p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive vari-</i></p>	<p>Article 40 of the Constitution provides that all citizens, male and female, shall have the right to decent working conditions and to a fair wage.⁸²</p>		<p>The Government of Tunisia in its 2000 report to the CEDAW Committee informed that “The Chamber of</p>		<p>According to World Bank data, female labour force participation increased from 20% in 1990 to 25% in 2016.⁸⁶ Dur-</p>

⁸⁰ The World Bank, “Fertility rates, total (births per woman)”, <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

⁸¹ United Nations Population Division, “Trends in Contraceptive Use Worldwide 2015”, Annex Table 1, pp. 36-42, <http://www.un.org/en/development/desa/population/publications/pdf/family/trendsContraceptiveUse2015Report.pdf>

⁷⁹ Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), paras. 1084-85, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁸² Article 40 of Tunisia’s Constitution (2014), https://www.constituteproject.org/constitution/Tunisia_2014.pdf

⁸⁶ The World Bank, “Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)”,

<p><i>ous health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>Article 46 of the Constitution commits the state to protect women's accrued rights and work to strengthen those rights.⁸³</p> <p>Article 5bis of the Labour Code provides that, "No discrimination between men and women shall be made in the application of the provisions of this Code and the legislations adopted to implement it."⁸⁴</p>		<p>Deputies adopted Act No. 2000-17 of 7 February 2000 annulling provisions which required that a husband should give prior authorisation for his wife to work (art. 831 of the Code of Obligations and Contracts).⁸⁵</p>	<p>ing the same period, male labour force participation decreased from 76% to 71%.⁸⁷</p> <p>According to the 2016 UNDP Human Development Report:⁸⁸</p> <ul style="list-style-type: none"> • 38% of women over 25 have at least some secondary education as compared to 50% of men of the same age group; • 98% of females and males aged 15-24 are able to read and write a short simple; and • 30% of women aged 15-49 con-
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⁸³ <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

⁸⁴ Article 46 of Tunisia's Constitution (2014), https://www.constituteproject.org/constitution/Tunisia_2014.pdf

⁸⁵ Article 5bis of the Labour Code (1966), <http://www.legislation.tn/sites/default/files/codes/travail.pdf>

⁸⁶ Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 595, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁸⁷ The World Bank, "Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)",

<http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

⁸⁸ UNDP, "Human Development Report 2016", Tables 5, 9, 12, 14, pp. 214-217, 230-233, 242-245, 250-253,

http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

				<p>sider that a husband is justified in hitting or beating his wife for at least one of the following reasons: if his wife burns the food, argues with him, goes out without telling him, neglects the children or refuses sexual relations; and</p> <ul style="list-style-type: none"> • 65% of women are satisfied with their freedom of choice as compared to 71% of men. <p>According to academic research while women generally enjoy personal freedoms under the law, societal pressure, particularly in light of the rise of conservative Muslim groups that are reportedly conducting</p>
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					campaigns “intending to ‘safeguard tradition’ by promoting regressive measures regarding women’s rights”, may serve as a restrictive force in this regard. ⁸⁹
<p>Inheritance rights</p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p>	<p>Generally, inheritance rights between women and men are unequal, although there are exceptions to the general rule.</p> <p>The PSC generally follows <i>Shari’ah</i> in terms of inheritance laws.⁹⁰ Articles 85-152 detail the inheritance shares. In many instances, such as in the cases of widows and widowers and siblings, a woman is entitled to half the share of a man.⁹¹</p> <p>An exception to the general rule include Article 143bis of the PSC which permits an only daughter to</p>		<p>The Government of Tunisia in its 2000 report to the CEDAW Committee explained that the law has instituted “a mandatory bequest in favour of the daughter’s children if she should predecease her father.”⁹³</p>		<p>According to reports by the UN Working Group and civil society, to protect female family members, some families:</p> <ul style="list-style-type: none"> • Divide their wealth while still alive;⁹⁴ • Execute civil contracts between parents and children.⁹⁵

⁸⁹ Lilia Ben Salem, “Tunisia”, in *Women’s Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), p.7, https://freedomhouse.org/sites/default/files/inline_images/Tunisia.pdf

⁹⁰ Omar Fassatoui, “Women’s rights in Tunisia: The remaining legal inequalities”, (C.A. Perspectives on Tunisia, 1, 2016), p. 3, <http://www.cap-imu.de/download/2016/CAPerspectives-Tunisia-01.pdf>; Lilia Ben Salem, “Tunisia”, in *Women’s Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), p.13, https://freedomhouse.org/sites/default/files/inline_images/Tunisia.pdf; UN Women, “Tunisia”, *Spring Forward for Women Programme*, <http://spring-forward.unwomen.org/en/countries/tunisia>

⁹¹ Articles 85-152 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

<p>Applicable CEDAW Provision Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>inherit her parents' estate in its entirety.⁹²</p>				
<p>Violence against women in the family</p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are</i></p>	<p>Article 23 of the Constitution provides that the State shall protect human dignity and physical integrity, and prohibits mental and physical torture.⁹⁶</p> <p>Article 46 of the Constitution commits the State to take all necessary measures in order to eradicate violence against women.⁹⁷</p> <p>Tunisia has not adopted specific legislation to criminalise acts of domestic violence.</p> <p>The Criminal Code contains some</p>	<p>When hearing divorce cases that are filed on the basis of harm, judges interpret harm to include domestic violence, in addition to considering such violence as a breach of Article 23 of the PSC the requires spouses to treat each other with care and maintain good relations.¹⁰⁶</p>	<p>Since 2013, the Government of Tunisia has announced a pending violence against women bill. The law has not yet been enacted.¹⁰⁷</p> <p>The Ministry of Women's Affairs issued a press release in February 2012 warning Tunisian families against the pro-female genital</p>		<p>A major survey conducted by the National Office of Family and the Population in 2010 highlighted a high prevalence of violence against women in the private sphere. The survey found that:¹⁰⁹</p> <ul style="list-style-type: none"> • 48% of women aged 18-64 reported having experienced at least one form of

⁹³ Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 1042, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁹⁴ Centre on Housing Rights and Evictions, "In Search of Equality: A Survey of Law and Practice related to women's inheritance rights in the Middle East and North Africa (MENA) region", 2006, p. 102, http://www.gewamed.net/share/img_documents/41_in_search_of_equity_a_survey_of_law_and_practice_related_to_women_inheritance_rigths.pdf

⁹⁵ UN Working Group Mission to Tunisia, U.N. Doc. A/HRC/23/50/Add.2 (2013), para. 34, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_ENG.pdf

⁹⁶ Article 143bis of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>. See also Tunisia State party report, U.N. Doc. CEDAW/C/TUN/3-4 (2000), para. 1042, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁹⁷ Article 23 of Tunisia's Constitution (2014), https://www.constituteproject.org/constitution/Tunisia_2014.pdf

⁹⁷ Article 46 of Tunisia's Constitution (2014), https://www.constituteproject.org/constitution/Tunisia_2014.pdf

¹⁰⁶ The Advocates for Human Rights and MRA Mobilising for Rights Associations, "Tunisia: Women's Rights", *Joint Stakeholder Report for the United Nations Universal Periodic Review*, 2016, para. 16, <http://mrawomen.ma/wp-content/uploads/doc/Tunisia%20UPR%20Submission%20FINAL.pdf>

¹⁰⁷ The Advocates for Human Rights and MRA Mobilising for Rights Associations, "Tunisia: Women's Rights", *Joint Stakeholder Report for the United Nations Universal Periodic Review*, 2016, para. 27, <http://mrawomen.ma/wp-content/uploads/doc/Tunisia%20UPR%20Submission%20FINAL.pdf>

¹⁰⁹ Office National de la Famille et de la Population, *Enquête Nationale sur la Violence a l'Egard des Femmes en Tunisie: Rapport de l'enquête*, 2010, pp. 37, 41, <http://www.medcities.org/documents/10192/54940/Enqu%C3%AAte+Nationale+Violence+envers+les+femmes-+Tunisie+2010.pdf>

<p><i>there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> GRs 12 & 19 Para. 40 GR21</p>	<p>general prohibitions that are applicable to domestic violence. For instance:</p> <ul style="list-style-type: none"> • Article 218 of the Criminal Code deems marital and familial bonds to be an aggravating circumstance for sentencing purposes in criminal assault and battery cases. However, Article 218 also allows for the withdrawal of the complaint by an abused spouse or ascendant in which case any prosecution, trial or enforcement of penalty will be terminated;⁹⁸ • Articles 226, 226bis and 226ter provide for the penalties for the various forms of sexual harassment. However, Article 226quater provides that such cases may only be initiated if the victim makes a complaint. In addition, if the alleged perpetrator is acquitted, the accuser may be criminally prosecuted and be sued for defamation;⁹⁹ • Article 227 stipulates the death penalty for rape. It 		<p>mutilation (FGM) messages of an Egyptian cleric. The Ministry stressed that such practices are not derived from any Muslim origin, and highlighted the fact that all international conventions prohibit these procedures.¹⁰⁸</p>		<p>violence (physical, psychological, sexual and economic) during their lifetime;</p> <ul style="list-style-type: none"> • The intimate partner (husband, fiancé, friend) is reportedly the main perpetrator of violence against women. They are reported to be the perpetrators of economic and sexual violence in 78% cases, psychological violence in 69% of cases, and physical violence in 47% of cases; • Family members (father, brother and other male members of the family) form the next main group of aggressors. They are reported
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⁹⁸ Article 218 of the Criminal Code (1913), <http://www.legislation.tn/sites/default/files/codes/Penal.pdf>

⁹⁹ Articles 226-226quater of the Criminal Code (1913), <http://www.legislation.tn/sites/default/files/codes/Penal.pdf>

	<p>provides for statutory rape of a victim below the age of 13;¹⁰⁰</p> <ul style="list-style-type: none"> Article 227bis provides that a sexual act without violence on a girl under 15 is punishable by 6 years imprisonment and 5 years imprisonment if the victim is aged 15-20. However, Article 227bis also provides that in both of these cases, the marriage between the perpetrator and the victim terminates the prosecution or the execution of the sentence, although they may resume if a divorce takes place within two years of the marriage,¹⁰¹ Article 319 of the Criminal Code provides the penalties for assault and violent acts that do not lead to serious or lasting consequences on health. However Article 319 also allows for the withdrawal of the complaint by an abused spouse or ascendant in which case any prosecution, trial or enforcement of penalty will be terminated.¹⁰² 				<p>to be the perpetrators of physical violence in 43% of cases, economic violence in 22% of cases, psychological violence in 17% of cases and sexual violence in 1% cases.</p> <p>The 2010 survey also found that:¹¹⁰</p> <ul style="list-style-type: none"> 42% of women who had been abused by their partners, had never spoken about it. The 'normalisation' of violence by women appears to be the main determinant for this lack of communication - 55% of victims stated that
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¹⁰⁸ European Parliament, "Gender Equality Policy in Tunisia", (Briefing Note, PE 462.502, 2012), p. 12, [http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT\(2012\)462502_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT(2012)462502_EN.pdf)

¹⁰⁰ Article 227 of the Criminal Code (1913), <http://www.legislation.tn/sites/default/files/codes/Penal.pdf>

¹⁰¹ Article 227bis of the Criminal Code (1913), <http://www.legislation.tn/sites/default/files/codes/Penal.pdf>

¹⁰² Article 319 of the Criminal Code (1913), <http://www.legislation.tn/sites/default/files/codes/Penal.pdf>

	<p>The Criminal Code does not specifically criminalise marital rape.¹⁰³</p> <p>Article 13 of the PSC provides that “a husband cannot, if he has not paid the dowry, compel the woman to the consummation of marriage.”¹⁰⁴</p> <p>Article 31 of the PSC gives female victims of domestic violence the right to file for divorce, maintenance, housing, custody of their children and the right to financial compensation for any emotional or material damages.¹⁰⁵</p>				<p>violence is a common occurrence and does not deserve to be talked about. Other reasons for women not speaking out include shame and the fear of aggravating the situation;</p> <ul style="list-style-type: none"> • 73% of women who had been abused do not seek help. Reasons for this include victims feeling resigned that help is not available to them and fear, including fear of stigmatisation or losing custody of their children. The few who do
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¹¹⁰ Office National de la Famille et de la Population, *Enquête Nationale sur la Violence a l’Egard des Femmes en Tunisie: Rapport de l’enquête*, 2010, pp. 58-59
<http://www.medcities.org/documents/10192/54940/Enqu%C3%AAte+Nationale+Violence+envers+les+femmes-+Tunisie+2010.pdf>

¹⁰³ The Advocates for Human Rights and MRA Mobilising for Rights Associations, “Tunisia: Women’s Rights”, *Joint Stakeholder Report for the United Nations Universal Periodic Review*, 2016, para. 14, <http://mrawomen.ma/wp-content/uploads/doc/Tunisia%20UPR%20Submission%20FINAL.pdf>

¹⁰⁴ Article 13 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>

¹⁰⁵ Article 31 of the Personal Status Code (1956), <http://www.legislation.tn/sites/default/files/codes/Statutpersonnel.pdf>; UNHCR, “Tunisia: Domestic Violence, legislation and protection available to victims (2007-2009)”, <http://www.refworld.org/docid/4b20f04a3c.html>

					<p>seek help turn mostly to their family. Only 5%, 4% and 2% turn to NGOs, the police and health services, respectively, for help.</p> <p>According to a civil society report while abused wives may file for divorce on the basis of harm and obtain financial maintenance and compensation for damages, in practice, women face several impediments in this regard because:¹¹¹</p> <ul style="list-style-type: none"> • There are high evidentiary requirements in this type of divorce cases as either a confession by the perpetrator or a medical certificate is required; and
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¹¹¹ The Advocates for Human Rights and MRA Mobilising for Rights Associations, "Tunisia: Women's Rights", *Joint Stakeholder Report for the United Nations Universal Periodic Review*, 2016, para. 16, <http://mrawomen.ma/wp-content/uploads/doc/Tunisia%20UPR%20Submission%20FINAL.pdf>

				<ul style="list-style-type: none"> • Judges generally will not grant this type of divorce unless there is a criminal conviction first. <p>Concerns have been expressed that Articles 13 and 23 of the PSC may be interpreted to mean that once the dowry is paid, the husband may force his wife to sexual intercourse.¹¹²</p> <p>Ministry of Justice statistics show that in the 2012-2013 judicial year, the public prosecution received 5,575 complaints of marital violence, of which 66% (3,672) were either withdrawn or dismissed. Of the accepted complaints, only</p>
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¹¹² Omar Fassatoui, "Women's rights in Tunisia: The remaining legal inequalities", (C.A. Perspectives on Tunisia, 1, 2016), p. 3, <http://www.cap-lmu.de/download/2016/CAPerspectives-Tunisia-01.pdf>; The Advocates for Human Rights and MRA Mobilising for Rights Associations, "Tunisia: Women's Rights", *Joint Stakeholder Report for the United Nations Universal Periodic Review*, 2016, para. 14, <http://mrawomen.ma/wp-content/uploads/doc/Tunisia%20UPR%20Submission%20FINAL.pdf>

					<p>29% (551) resulted in convictions.¹¹³</p> <p>According to a civil society report, the risks of being criminally prosecuted or being sued for defamation should the alleged perpetrator be acquitted have led women to drop their claims of sexual harassment. Statistics indicate that there are very few successful sexual harassment cases. There was one conviction during the 2008-09 judicial year and 14 convictions during the 2012-13 judicial year.¹¹⁴</p>
<p>Nationality rights</p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the na-</i></p>	<p>A Tunisian man automatically passes his nationality to his non-Tunisian wife if his wife loses her original nationality upon marriage to a foreigner. If his wife is able to</p>				<p>According to academic research, even if a non-Tunisian husband fulfils all the criteria</p>

¹¹³ Amnesty International, "Assaulted and Accused: Sexual and gender-based violence in Tunisia", 2015, p. 21, <https://www.amnestyusa.org/sites/default/files/tunisia-assaulted-and-accused-report.pdf>

¹¹⁴ The Advocates for Human Rights and MRA Mobilising for Rights Associations, "Tunisia: Women's Rights", *Joint Stakeholder Report for the United Nations Universal Periodic Review*, 2016, paras. 4, 32, <http://mrawomen.ma/wp-content/uploads/doc/Tunisia%20UPR%20Submission%20FINAL.pdf>

<p><i>tionality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>retain her nationality upon marriage to a foreigner, she may claim Tunisian nationality by means of a declaration.¹¹⁵</p> <p>The law does not specifically provide for a Tunisian woman to confer her nationality to her foreign husband. The foreign husband of a Tunisian woman may acquire Tunisian nationality through naturalisation i.e. only by decree and only if he resides in Tunisia, has sufficient knowledge of the Arabic language and is morally upright.¹¹⁶</p> <p>A Tunisian father passes his citizenship to his children wherever they are born.¹¹⁷ However, the law is ambiguous with regard to a Tunisian mother's ability to confer her nationality to her children:</p> <ul style="list-style-type: none"> • A Tunisian woman married to a non-Tunisian husband may confer her nationality to their child if the child was born abroad,¹¹⁸ 				<p>for Tunisian citizenship, he often have difficulties obtaining it.¹²⁰</p>
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¹¹⁵ Articles 13-14 of the Tunisian Nationality Code (1963), <http://www.legislation.tn/sites/default/files/codes/Nationalite.pdf>

¹¹⁶ Articles 19-23 of the Tunisian Nationality Code (1963), <http://www.legislation.tn/sites/default/files/codes/Nationalite.pdf>

¹¹⁷ Articles 6, 7 of the Tunisian Nationality Code (1963), <http://www.legislation.tn/sites/default/files/codes/Nationalite.pdf>

¹¹⁸ Article 12 of the Tunisian Nationality Code (1963), <http://www.legislation.tn/sites/default/files/codes/Nationalite.pdf>

¹²⁰ Lilia Ben Salem, "Tunisia", in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), p.4, https://freedomhouse.org/sites/default/files/inline_images/Tunisia.pdf

	<ul style="list-style-type: none"> • There appears to be ambiguity in the law as to whether a Tunisian mother may transmit her nationality to her children if they were born in Tunisia. Article 6 of the Tunisian Nationality Code provides that a child born to a Tunisian father or mother is Tunisian. Article 7 provides further that a child born in Tunisia is Tunisian if his or her father or grandfather were also born in Tunisia. No mention is made of the maternal lineage. In contrast, Article 12 specifically states that a child born abroad to a Tunisian mother and a non-Tunisian father may claim Tunisian citizenship.¹¹⁹ 				
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¹¹⁹ Omar Fassatoui, "Women's rights in Tunisia: The remaining legal inequalities", (C.A. Perspectives on Tunisia, 1, 2016), p. 3, <http://www.cap-lmu.de/download/2016/CAPerspectives-Tunisia-01.pdf>