



Djibouti

Gender Justice & The Law

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Djibouti

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 Djibouti. 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.

Validation of the Djibouti country profile was led by Ms. Amina Ahmed (Consultant) and coordinated by Mr. Harbi Omar Chirdon, Coordination Specialist, UN Resident and Humanitarian Coordinator, Djibouti. The following persons were consulted in the finalization of this country profile:

- Ministry of Justice: Mr. Ahmed Osman, Director of Legislation, and Ms. Farhya Djama Ibrahim, Technical Adviser to the Minister of Justice on Trafficking in Persons and Smuggling of Migrants
- Ministry of Women and Family: Ms. Choukri Djibah, Gender Director, and Mrs. Zamzam Hassan, Head, Department of Child Protection.
- President of the National Commission for Human Rights
- United Nations Population Fund: Resident Representative in Djibouti and Ms. Amina A. Mohamed, Programme Officer.
- United Nations High Commissioner for Refugees: Ms. Oubah Abdi, Assistant to the Programme Officer.
- National Union of Djiboutian Women: Ms. Fatouma Moussa, Secretary-General, and Ms. Saharla Hassan, Coordinator of the Information and Referral Unit.

Their contributions 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.



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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)

Djibouti ratified CEDAW in 1998 without reservations.

Constitution

Article 10 of the 1992 Constitution provides that the State assures equality before the law to all without distinction of language, origin, race, sex, or religion.

NATIONALITY LAW

NATIONALITY

There is no discrimination with regard to acquiring citizenship, pursuant to the Nationality Code of 2004.

CRIMINAL LAWS

Domestic violence

The Penal Code of 1995 criminalizes acts of violence. However, Djibouti does not have a separate law that specifically criminalizes domestic violence.

Abortion for rape survivors

Abortion that is not for therapeutic purposes is a criminal offence under Articles 447–448 of the Penal Code, including for survivors of rape.

Female Genital Mutilation / Cutting (FGM/C)

FGM/C was criminalized by Law No. 55 of 2009. Article 333 of the Penal Code provides a sentence of five years' imprisonment and a fine for a person who conducts FGM/C procedures. The law also provides for up to one year's imprisonment and a fine for anyone who fails to report FGM/C to the authorities.

Marital rape

Rape is defined by Article 343 of the Penal Code Law No. 59 of 1995 as an act of sexual penetration committed on another person with the use of violence, constraint, or threat. The courts may consider marital rape as constituting an offence. However, marital rape is rarely prosecuted.

Sexual harassment

Penal Code offences may cover some forms of sexual harassment. Articles 430–431 of the Penal Code criminalize public insult with penalties of six months' imprisonment and a fine.

Human trafficking

Law No. 133 of 2016 on Combating Trafficking in Persons and the Smuggling of Migrants criminalizes trafficking and includes preventive and protective measures.

Rape (other than of a spouse)

Rape with the use of violence, constraint, or threat is punished with a maximum of ten years' imprisonment, or twelve years' imprisonment if there are aggravating circumstances.

Honour crimes: Mitigation of penalty

No specific provision was identified in the Penal Code reducing penalties for honour crimes.

Sex work and anti-prostitution laws

Prostitution is prohibited by Articles 394–398 of the Penal Code. Women who sell sex may be deterred from reporting rape or violence because they risk prosecution for selling sex.

Exoneration by marriage

No specific provision was identified in the Penal Code exonerating perpetrators of honour crimes who married their victims.

Adultery

There is no legal prohibition in the Penal Code against adultery.

Sexual orientation

There is no specific prohibition of homosexual conduct in the Penal Code. There is lack of information about the application of criminal laws to penalize consensual same-sex conduct or expression of sexual orientation.

PERSONAL STATUS LAWS

Minimum age of marriage

Articles 13 and 14 of the Family Code, Law No. 152 of 2002, provide that the minimum age of marriage for men and women is 18, but a minor can marry with the consent of a guardian or with a judge's approval if consent is not granted.

Guardianship of children

Fathers have the right to control matters related to education and cultural upbringing.

Male guardianship over women

Article 7 of the Family Code provides that the marriage is formed with the consent of both spouses and the guardian of the woman.

Custody of children

The mother has custody rights, and either parent may be granted custody after a divorce. The judge decides custody on the basis of the best interests of the child. A mother with custody loses custody if she remarries, unless a court decides it is in the best interest of the child to award custody to a married woman or if the new husband is within the prohibited degree of relationship to the child.

Marriage and divorce

Women do not enjoy equal rights in marriage and divorce. The wife owes a duty of obedience to her husband. The husband must support the wife financially. The husband may file for divorce without providing grounds. The wife may file for divorce without grounds by renouncing her financial rights.

Inheritance

Under the Family Code, Sharia rules of inheritance apply. Women have a right to inheritance, but in many cases receive less than men. Daughters receive half the share that sons receive.

Polygamy

Polygamy is permitted by Article 22 of the Family Code, subject to restrictions.

LABOUR LAWS

Right to equal pay for the same work as men

Article 137 of the Labour Code, Law No. 133 of 2006, provides a right to equal pay.

Dismissal for pregnancy

Article 114 of the Labour Code provides that it is unlawful to dismiss a woman from employment because of her pregnancy.

Paid maternity leave

Article 113 of the Labour Code provides that women are entitled to 14 weeks' maternity leave at full pay, which is paid half by the government and half by the employer.

Legal restrictions on women's work

There are restrictions on women performing arduous work. Article 112 of the Labour Code provides that women cannot work in a job that is recognized to be above their strength and female workers must be assigned suitable work for a person of their strength.

Domestic workers

No information available.

OVERVIEW

Legal framework

International law

Djibouti ratified the Convention on the Rights of the Child in 1990 and acceded to Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1998. Djibouti has not entered any reservations to CEDAW.

In 1992, Djibouti ratified the African Charter on the Rights and Welfare of the Child. In 2005, it ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).

Domestic law

The main laws relevant to gender justice are:

- Constitution of Djibouti of 1992
- Penal Code of 1995
- Family Code of 2002
- Nationality Code of 2004
- Labour Code of 2006
- Law on Trafficking in Persons of 2007
- Law on Violence Against Women, Specifically on Female Genital Mutilation of 2009
- Law on the Fight against Trafficking in Persons and the Illicit Smuggling of Migrants of 2016
- Law on the Status of Refugees in the Republic of Djibouti of 2017

Constitution

The Constitution provides that Islam is the religion of the State, and that the State “assures to all equality before the law without distinction of language, origin, race, sex or religion.”¹ The Constitution also provides that no one may be subject to “inhuman, cruel, degrading, or humiliating actions or treatment.”²

Policy framework

The Ministry of Women and Family is responsible for policy on women's empowerment and develops proposals for new laws and regulations on the rights of women and girls. The government collaborates with the National Union of Djiboutian Women (UNFD) in advocacy efforts to combat gender-based violence (GBV) and provides counselling services to assist survivors of GBV. The Ministry and the UNFD, with the support of the United Nations Population Fund, have also established a national protocol on GBV with the key relevant national institutions. The objective is to install focal points in these institutions to raise awareness of GBV.

The *National Strategy for the Integration of Women in Development*³ and its action plan aim to strengthen women's participation in political and economic life, improve maternal and child health, and increase access to education and literacy for women and girls.⁴ There is no specific strategy or plan on domestic violence or GBV.

The *National Gender Policy 2011–2021* includes in its strategic objectives the elimination of harmful practices and GBV by advocating for institutions to implement the protection of women's rights in accordance with the national Constitution, CEDAW, and other human rights conventions.⁵ The government has also issued a national action plan to address human trafficking, which has been updated and extended to 2020.⁶

Female genital mutilation/cutting (FGM/C) remains a common practice in Djibouti. In 2015, it was estimated that 71 percent of girls and women in the country were excised.⁷ Djibouti adopted the Declaration of Cairo for the Elimination of FGM/C in 2003 and

1 Constitution of Djibouti of 1992, Arts. 1, 10.

2 Ibid., Art. 16.

3 Law No. 173/AN/02/4th L.

4 United Nations Economic Commission for Africa (UNECA), Violence against Women in Africa, A Situational Analysis, (2010), <http://www1.unece.org/Portals/awro/Publications/21VAW%20in%20Africa-A%20situational%20analysis.pdf>.

5 Law No. 154/AN/12/6thL of 9 June 2012.

6 United States, State Department, Trafficking in Persons Report, Djibouti (2017), <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271178.htm>.

7 Ministry of Women and Family, National Strategy for the Total Abandonment of FGM/C 2018–2022 (2017).

the subsequent Declaration FGM/C +5 in 2008. FGM/C was criminalized in 1995 by amendments to Article 333 of the Penal Code. The first *National Strategy to Combat all Forms of Excision* was introduced in 2006. In 2009 the Ministry of Women and Family established a National Committee for the Abandonment of FGM/C to coordinate actions and interventions.⁸

The Ministry for Women and Family, with technical and financial support from UNICEF, has developed a new national strategy to accelerate the abandonment of FGM/C, which takes into consideration lessons learned and obstacles encountered from earlier actions. In 2017, the Ministry of Women and Family issued the *National Strategy for the Total Abandonment of FGM/C 2018–2022*. Objectives of the Strategy include to promote the application of legislation and the declaration of a *fatwa* on abandonment of FGM/C, and to engage politicians and religious leaders in actions to accelerate abandonment of the practice. The government delivers FGM/C information programmes through schools and NGOs using radio, television, and door-to-door campaigns.⁹ The government's efforts to end FGM/C include a high-profile national publicity campaign and outreach to Muslim religious leaders. Efforts by UNFD and other groups to educate women are reported to have been effective in reducing the incidence of FGM/C in the capital.¹⁰

Government policy on gender equality is influenced by the cultural and religious context. In response to a question regarding the challenges faced by courts in reconciling discriminatory customary or religious laws governing issues such as inheritance with CEDAW principles, Djibouti has indicated to the CEDAW Committee: "As regards...the husband's role in the family and women's share of an inheritance, these cannot be amended as they are rooted in our country's higher socio-cultural and religious values."¹¹

Legal and support services

A law on legal aid was introduced in 2011, enabling poor people to receive legal representation in national courts. Legal aid extends to criminal matters as well as civil claims for damages resulting from incidents of violence.¹² However, according to prevailing social norms, incidents of family violence are usually addressed within family or traditional contexts, rather than the formal legal system. In recent years, according to the UNFD, the number of women filing complaints of domestic violence has increased due to awareness-raising campaigns on GBV.

Women have historically been under-represented in Djibouti's judiciary,¹³ but the number of female judges has increased in recent years, including in the Personal Status Court. Women now preside over five of the eight courts in Djibouti, including the Court of First Instance, the Court of Appeals, the Supreme Court, and the Court of Audit and Budgetary Disciplines. A woman also serves as the head of the public prosecutor's office for the Court of Audit.

According to the Ministry of Women and Family, few formal complaints of domestic violence are received by the courts and many women are placed under pressure from family members not to complain and to preserve the traditional family home.¹⁴ In collaboration with UNFD, the Ministry has developed a strategy to provide GBV survivors with legal services to improve access to justice.

Services for survivors of trafficking¹⁵

An anti-trafficking working group led by the Ministry of Justice leads anti-trafficking efforts. The government funds local NGOs, which operate counselling centres and other programmes that may be of assistance to trafficking victims. The government, in partnership with the International Organization on Migration, provides trainings of officials and publishes awareness-raising materials.

The government provides trafficking survivors with medical, psychological, and social assistance such as appropriate housing, in addition to legal assistance and the services of an interpreter, if necessary. The United Nations Office on Drugs and Crime is implementing an anti-trafficking project that aims to strengthen the criminal justice system response, including through the establishment of a referral mechanism for survivors of trafficking.

Foreign survivors of trafficking have the right to residence in Djibouti for the duration of legal proceedings taken against traffickers under the anti-trafficking laws. They may subsequently benefit from permanent residence and access to education for their children. In addition, a foreign trafficked person is not criminally responsible for illegal entry, residence, or work in Djibouti if there are reasonable grounds to believe that the person is a victim of trafficking.

⁸ Republic of Djibouti, *Five Year Evaluation of the National Report on the Implementation Programme of Action of Beijing (1995) and Texts from the Twenty-Third Special Session of the General Assembly (2000)*, (July 2014), https://www.unescwa.org/sites/www.unescwa.org/files/page_attachments/djiboutifir.pdf.

⁹ United Nations Economic Commission for Africa, Africa Women's Rights Observatory, Djibouti, <http://www1.uneca.org/awro/CountrySpecificInformationDjibouti.aspx>.

¹⁰ United States, Department of State, *Country Reports on Human Rights Practices for 2016: Djibouti (2017)*, <https://www.state.gov/j/drl/rls/hrrpt/2016/af/265248.htm>.

¹¹ United Nations CEDAW Committee, *Responses [by Djibouti] to the list of issues and questions with regard to the consideration of the combined initial, second and third periodic report (2011)*, CEDAW/C/DJI/Q/1-3/Add.1.

¹² Loi n°136/AN/11/6ème L relative à l'aide judiciaire, 20 July 2011, Chapter II, Art. 4. See also "Access to Justice for Children: Djibouti," Report produced by White & Case LLP and Child Rights International Network (CRIN), July 2015, https://www.crin.org/sites/default/files/djibouti_access_to_justice_0.pdf.

¹³ United Nations CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women on Djibouti (28 July 2011)*, CEDAW/C/DJI/CO/1-3.

¹⁴ Ministry for Promotion of Women and Family Planning, *Five-Year Evaluation of the Implementation of the Beijing Platform for Action 1995 and the Outcome of the Twenty-Third Special Session of the General Assembly 2000 (2014)*, p.25.

¹⁵ See United States Department of State, *Trafficking in Persons Report, Djibouti (2017)*.

Services for refugees and asylum seekers

Djibouti has a large refugee population as a result of conflict and natural disasters in neighbouring countries, including Ethiopia, Eritrea, Somalia, Sudan, and Yemen. The UN Economic Commission for Africa describes the situation for refugees in Djibouti as follows:¹⁶

Refugees are often the victims of violence and social exclusion. Almost all the refugees are of Islamic faith and therefore age, gender and clan relation determine power and hierarchy. The male elders (said to have been traditional healers in Somalia) remain the decision makers. The immediate protection and long-term care of women victims of sexual violence is not guaranteed. Rape may or may not be reported and resolution is often in the form of financial compensation negotiated by a traditional council composed of male relatives.

Provision of GBV services and access to justice in refugee camps is very challenging. There are reports of sexual violence in the Ali-Adeh refugee camp, with limited access to justice for survivors.¹⁷ UNHCR, UNICEF, and partners have identified strengthening GBV responses as a priority in refugee camps. The National Union of Djiboutian Women operates information, guidance, and counselling centres for survivors of GBV in Djibouti City and the Ali-Adeh and Holl-Holl refugee camps, and it has extended its operations to the Markasi camp to assist newly arriving Yemeni refugees.

The UNFD has set up listening, information, and guidance units in refugee camps to support women who are survivors of GBV with services and referrals to institutions, including facilitation of access to judicial proceedings.

Training has been provided to agencies working in the camps to strengthen capacity in GBV, clinical management of rape, and provision of psychosocial support to refugees who are GBV survivors. For example, medical services in Obock received GBV training in 2015 to assist in the response to the influx of large numbers of refugees arriving from Yemen.¹⁸

PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

The Penal Code of 1995 criminalizes acts of violence, regardless of whether the crime was committed by a spouse or any other member of the family. However, Djibouti does not have a separate law that specifically criminalizes domestic violence. There is no legal process for a woman to obtain a protection order from a court to protect against potential future acts of domestic violence.

Rape is defined by the Penal Code as an act of sexual penetration committed on another person with the use of violence, constraint, or threat.¹⁹ The rape offence applies to all persons. The courts may consider violence within the family, including marital rape, as constituting an act of violence punishable under criminal law. However, marital rape remains taboo and therefore is rarely prosecuted.²⁰

Rape renders the offender liable to ten years' imprisonment, or twelve years' imprisonment if there are aggravating circumstances, e.g., the offence is committed by several persons, or the offender used or threatened to use a weapon.²¹ Rape is punishable by life imprisonment where it caused the accidental death of the victim, or is accompanied or followed by torture or the murder of the victim.²²

Sexual assault other than rape committed with the use of violence, constraint, or threat, is also an offence, with penalties ranging from three years' imprisonment and a fine of one million Djiboutian francs (DJF) to ten years' imprisonment and a fine of five million DJF where there are aggravating circumstances.²³

Sexual assault of a minor committed without violence, constraint, threat, or surprise is an offence, with penalties ranging from two years' imprisonment and a DJF 500,000 fine, to three years' and a DJF 1 million fine, to five years' and a DJF 2 million fine.²⁴

The Criminal Procedure Code states that an association with a mandate to address FGM or sexual assault, regularly constituted

¹⁶ UNECA, *Violence against Women in Africa*.

¹⁷ UN CEDAW Committee, *Concluding Observations*.

¹⁸ Djibouti Inter-Agency Update for the Response to the Yemeni Situation #25 (9 October 2015). Available from <http://www.refworld.org/pdfid/562f31e54.pdf>

¹⁹ Penal Code of 1995, Art. 343.

²⁰ United Nations Human Rights Committee, *Concluding observations on the initial report of Djibouti, Addendum Information received from Djibouti on follow-up to the concluding observations (4 February 2015)*, CCPR/C/DJI/CO/1/Add.1, p.7.

²¹ Penal Code of 1995, Arts. 343, 344.

²² *Ibid.*, Arts. 345, 346.

²³ *Ibid.*, Arts. 347–350.

²⁴ *Ibid.*, Arts. 464–466.

for at least five years, may, in cases of FGM or sexual assault, file a civil action concurrently to the criminal proceedings. In the case of sexual assault of a minor, the association must first obtain the consent of the victim and of their parents or legal guardian.²⁵

The Penal Code criminalizes torture and acts of barbarity and specifies penalties of up to 20 years' imprisonment for perpetrators.²⁶ The fact of being a spouse is an aggravating factor for this crime and the crime of manslaughter.

HONOUR CRIMES

No specific provision was identified in the Penal Code exonerating perpetrators or reducing penalties for honour crimes.

ADULTERY AND SEX OUTSIDE OF MARRIAGE

There is no specific legal prohibition in the Penal Code against adultery, extra-marital sex, or pre-marital sex.

ABORTION FOR RAPE SURVIVORS

The Penal Code provides that a pregnancy may be legally terminated by a physician for therapeutic purposes only, in accordance with public health.²⁷ The Penal Code, however, does not specify which abortions will be considered therapeutic. The Djibouti Code of Medical Ethics includes a similar provision, restricting lawful abortions to therapeutic cases.²⁸

Abortion that is not for therapeutic purposes is illegal under the Penal Code, including for survivors of rape. A person who procures an abortion is liable to two years' imprisonment and payment of a fine of DJF 500,000 whether the pregnant woman consented or not.²⁹ A woman who attempts to procure her own abortion or consents to an abortion is liable to six months' imprisonment and a fine of DJF 100,000.³⁰

FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

FGM/C is criminalized by the Penal Code with a sentence of five years' imprisonment and a fine of DJF 1 million.³¹ However, FGM/C is a deep-rooted traditional practice and only a few prosecutions have occurred under this provision. The law also provides for up to one year's imprisonment and a fine of up to DJF 100,000 for anyone who fails to report a completed or planned FGM/C to the authorities. The Ministry of Health's National Safe Motherhood Programme works to implement the prohibition of FGM/C.³²

25 Criminal Procedure Code, Book I, Title I, Chapter II, Art. 7.

26 Penal Code, Art. 324.

27 Ibid., Art. 450.

28 Decree of 2008, 0098/PR/MS, on Code of Medical Ethics (2008), Art. 17.

29 Penal Code, Art. 447.

30 Ibid., Art. 448.

31 Penal Code, Art. 333, as amended by Law No. 55 of 2009 on Violence against Women Specifically on Female Genital Mutilation.

32 Inter-Parliamentary Union, "Parliamentary Campaign Stop Violence against Women: FGM Legislation and Other National Provisions," <http://www.ipu.org/wmn-e/fgm-prov-d.htm>; See also http://www.geneva-academy.ch/RULAC/pdf_state/Law-19-July-2009-on-violence-against-women-and-female-genital-mutilations.pdf.

FAMILY MATTERS

The introduction of the Family Code in 2002 improved the legal status of women in family life. Sharia courts have been replaced by the Personal Status Tribunal (*Tribunal de Statut Personnel*), which applies the Family Code.

Marriage

Marriage is formed with the consent of both spouses and the guardian of the woman.³³ The minimum age for marriage for men and women is 18, but a minor can marry with the consent of a guardian or with a judge's approval, if consent is not granted.³⁴

The Family Code encourages mutual respect, but requires the obedience of wives to their husbands, as noted:

Spouses owe each other respect, fidelity, help, and assistance. The husband must bear the expenses of the marriage and provide for the needs of wife and their children. The wife can voluntarily contribute to household expenses if she has property. The woman should respect the prerogatives of the husband as head of household and must obey him in the interest of the family. The husband and wife should fulfil their conjugal duties in accordance with practice and custom.³⁵

The law requires payment to the bride of a dowry (*mahr*) in order for the marriage to be valid.³⁶

Polygamy is permitted, subject to economic safeguards for the first wife. The husband must observe justice and equal treatment of his wives, and a wife can go to court in order to assess the damage caused by a new marriage.³⁷

The law does not grant the husband the right or authority to administer the property of his wife.

Divorce

Under the Family Code, the husband may file for divorce without being required to provide a justification. The wife must provide evidence of injuries suffered as grounds for divorce.³⁸ As an alternative to proving injury, the woman may file for divorce by renouncing her financial rights.³⁹

In case of mutual consent to divorce by the spouses, the judge shall decide on the material and moral damage suffered by each of them, which is determined at fair value taking into account the husband's income.⁴⁰ Divorce by mutual consent takes place before the Ma'adoun Al Chari (an unofficial magistrate) who attempts to reconcile the spouses. If reconciliation fails, he draws up the act of divorce and records the reconciliation terms in an enforceable official document.

The Family Code abolished the provision that allowed the husband to unilaterally declare the end of marriage (repudiation). A divorce must now be pronounced by a registrar or a judge.⁴¹

Guardianship and custody of children

Articles 70 and 71 of the Family Code address guardianship and custody of children. Fathers have the right to control matters related to education and cultural upbringing.⁴² However, the father cannot take the child away from the mother's place of residence except with her consent, unless otherwise required for the best interests of the child. The mother has custody rights and either parent may be granted custody after a divorce. The judge decides custody on the basis of the best interests of the child.⁴³

A divorced woman has the right to alimony / maintenance, including the right to child support from her former husband if she has custody of the children.⁴⁴

33 Family Code of 2002, Art. 7.

34 Ibid., Arts. 13, 14.

35 Ibid., Art. 31.

36 Ibid., Arts. 7, 20, 21.

37 Ibid., Art. 22.

38 Ibid., Art. 39(2).

39 UN CEDAW Committee, Concluding Observations.

40 Family Code of 2002, Art. 39.

41 Ibid., Art. 38.

42 Ibid., Art. 70; see also OECD/CAWTAR, Women in Public Life: Gender, Law and Policy in the Middle East and North Africa (OECD Publishing, 2014), p. 222.

43 Ibid., Art. 64.

44 United Nations Children's Fund, Djibouti, MENA Gender Equality Profile (2011).

INHERITANCE

The Family Code applies Sharia law principles to inheritance matters, whereby a woman's inheritance share is less than a man's. For example, a daughter's share is half that of a son.⁴⁵ Women receive less because they are not under the same legal obligation as men to provide financial support to their family.

NATIONALITY

There is no discrimination with regard to acquiring citizenship, pursuant to the Nationality Code of 2004. Regardless of origin, any child or person with at least one Djiboutian parent is entitled to citizenship.

LABOUR LAWS

Entering employment

The Labour Code and Penal Code provide legal protections against discrimination for women seeking employment. The Labour Code provides that no employer may take into account the gender of a worker when hiring for employment.⁴⁶ Further, the Penal Code provides that it is a criminal offence to discriminate on the grounds of sex in refusing to hire a person or in the terms of an offer of employment. Penalty for discrimination is two years' imprisonment and a fine of DJF 500,000.⁴⁷

The Labour Code provides for the implementation of an order issued at the request of the Minister of Labour and the Minister of Health, after consultations with the National Council of Labour, Employment, and Vocational Training, to determine the nature of work and categories of enterprises prohibited for women, pregnant women, young people, and other age limits.⁴⁸ Women cannot work in a job that is recognized to be above their strength, and female workers must be assigned suitable work for a person of their strength.⁴⁹

Remaining in employment

Employers are legally obliged to pay equal remuneration to male and female employees who do work of equal value.⁵⁰

The Labour Code provides that an employer must not take into account the gender of a worker in reaching decisions concerning performance and distribution of work, vocational training, advancement, promotion, remuneration, and other conditions of work, or in the granting of benefits, discipline, or termination of employment.⁵¹

The Penal Code provides that it is a criminal offence to discriminate on the grounds of sex in conditions of employment or dismissing a person from employment. Penalty for discrimination is two years' imprisonment and a fine of DJF 500,000.⁵² Penalties are greater if the offence is committed by a public official.

Women are entitled to 14 weeks' maternity leave at full pay, which is paid half by the government and half by the employer.⁵³ It is unlawful to dismiss a woman from employment because of her pregnancy.⁵⁴ The Labour Code penalizes any employer who does

45 Family Code of 2002, Arts. 101 et seq.

46 Labour Code of 2006, Art. 3.

47 Penal Code, Arts. 390, 391.

48 Labour Code, Art. 111.

49 Ibid., Art. 112.

50 Ibid., Art. 137.

51 Ibid.

52 Penal Code, Art. 391.

53 Labour Code, Art. 113.

54 Ibid., Art. 114.

not respect the right of a pregnant woman to leave or a breastfeeding mother to rest, with a fine of DJF 500,000 to 1 million.⁵⁵

Workplace sexual harassment

The Labour Code does not include a sexual harassment offence or other specific measures to prevent and respond to workplace sexual harassment.

Although the Labour Code has no specific sexual harassment offence, it does include penalties for coercion of workers by threats and violence in the context of employment contracts. Any person who, by violence, threats, deception, theft, or promise, forces a worker to be hired against his will or, by the same means, tries to prevent him from getting hired or fulfil the obligations under the contract are punished with a fine of DJF 1 million to 2 million and one month's imprisonment and, in case of recurrence, two months' imprisonment.⁵⁶

The Penal Code offence of "public insult" may cover some forms of sexual harassment in the workplace. The Penal Code criminalizes an offensive expression, in any manner or form, in respect of a person physically or morally, even if not named directly but identifiable. Anyone guilty of public insult is liable to six months' imprisonment and a fine of DJF 200,000.⁵⁷

SEX WORK AND ANTI-PROSTITUTION LAWS

The Penal Code criminalizes engaging in soliciting and activities associated with selling sex, including pimping and procuring, selling a room knowing it will be used for prostitution, and impeding the prevention, control, assistance, or rehabilitation of people engaged in prostitution.⁵⁸ It is an offence to operate or finance a prostitution business, punishable with up to ten years' imprisonment and a fine.⁵⁹ The penalty for soliciting a male or female in public is a fine of DJF 50,000 and one month's imprisonment.⁶⁰

Regulations dating from the 1970s require sex workers to register with the government⁶¹ and to attend mandatory medical examinations each month at a treatment centre.⁶² This suggests that sex work in private was tolerated, subject to compliance with health regulations. It is unclear whether this registration system still operates.

HUMAN TRAFFICKING⁶³

Djibouti first adopted a Law on Trafficking in Persons in 2007.⁶⁴ Supplementing this law, in 2011 the Law Regarding the Fight Against Terrorism and Other Serious Crimes provided penalties of up to ten years' imprisonment for human trafficking.

In 2016, Djibouti repealed the 2007 law and adopted the Law on Combating Trafficking in Persons and the Smuggling of Migrants,⁶⁵ strengthening existing legal protections. The new law prevents and punishes trafficking in persons, especially in women and children, and includes a comprehensive framework to combat human trafficking through investigation, prosecution, and suppression of trafficking. The 2016 anti-trafficking law allows trafficking victims temporary residency during judicial proceedings and directs that legal assistance and an interpreter be provided to victims. The Council of Ministers has established a national observance body to combat trafficking in persons and related practices.

Economic migrants from Ethiopia, Somalia, and Eritrea transit through Djibouti to the Middle East. During their time in Djibouti, this

55 Ibid., Art. 289.

56 Ibid., Art. 290.

57 Penal Code, Arts. 430–431.

58 Ibid., Arts. 394–398.

59 Ibid., Art. 399.

60 Ibid., Book V, Art. R5(10), <http://www.presidence.dj/PresidenceOld/LES%20TEXTES/dec0038pr95.htm>.

61 Protection Project, Djibouti, http://www.childtrafficking.com/Docs/the_protection_project%20_djibouti_0109.doc. See also Article 3 of Order No. 73–109 (23 January 1973), which states that "No foreign woman can be listed in the register provided for in this article if she does not hold a foreign identity card."

62 Order No. 73–109, Art. 4. According to Art. 8, "Any prostitute . . . who cannot show proof that she has undergone the monthly checkups at the preventive treatment center may, by administrative decision, be placed in that center for purposes of medical examination and possible treatment."

63 Content of this section draws from United States Department of State, Trafficking in Persons Report: Djibouti, (2017).

64 Law No. 210 of 2007 on the Fight Against Trafficking in Human Beings, <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271178.htm>.

65 Law No. 133 of 2016 on Combating Trafficking in Persons and the Smuggling of Migrants.

population is vulnerable to human trafficking. Some Djiboutian and migrant women and girls are subject to sexual exploitation and forced prostitution in Djibouti City, the Ethiopia-Djibouti trucking corridor, and Obock, a departure and arrival point for Yemen. Some migrants intending to be voluntarily smuggled are instead detained against their will and are vulnerable to GBV and abuse within Djibouti.⁶⁶

REFUGEES

The Law on the Status of Refugees in Republic of Djibouti of 2017⁶⁷ grants refugees fundamental rights akin to the rights of nationals. These include rights to: non-discrimination; freedom of movement; civil status, identity, and travel documents; access to education, work, and property; freedom of religion and association; social and public assistance; and naturalization. The Refugees Law streamlines refugee status determination procedures and grants more opportunities for socio-economic integration of refugees with better access to social services and health care. In 2017, UNHCR and the Ministry of Education and Vocational Training signed a Memorandum of Understanding to enable refugee children to receive the same quality education as Djiboutian children.⁶⁸

SEXUAL ORIENTATION, GENDER IDENTITY, AND RELATED ISSUES

There is no specific prohibition of homosexual conduct in the Penal Code. However, homosexuality is not legally recognized. There are no specific laws protecting LGBT people from hate crimes, GBV, or discrimination. There are no legal protections for, or recognition of, transgender people.

DJIBOUTI: KEY RESOURCES

Legislation

Laws of Djibouti are available from the following websites:

<http://www.justice.gouv.dj>

<http://www.présidence.dj>.

Nationality Code, Law No. 79 of 2004 (Law No. 79/AN/04/5th L).

Available from https://www.ecoi.net/file_upload/1504_1218035297_code-de-la-nationalite-djiboutienne.pdf.

Constitution of Djibouti of 1992, with amendments to 2010.

Available from https://www.constituteproject.org/constitution/Djibouti_2010.pdf.

Penal Code, Law No. 59 of 1995 (Law No. 59/AN/94).

Available from <http://www.gendarmerie.dj/Le%20Code%20P%C3%A9nal2.pdf>.

Family Code, Law No. 152 of 2002 (Law No. 152/AN/02/4th L).

Available from <https://unstats.un.org/unsd/vitalstatkb/KnowledgebaseArticle50735.aspx>.

Labour Code of 2006 (Law No. 133/AN/05/5th L).

Available from http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_126983.pdf.

⁶⁶ US Department of State, Trafficking in Persons Report: Djibouti.

⁶⁷ Law No. 159/AN/16/7th L.

⁶⁸ Ministry of National Education and Vocational Training, Memorandum of partnership between the Ministry of National Education and Vocational Training in Djibouti and UNHCR Djibouti, (28 August 2017).

Decree on Code of Medical Ethics of 2008 (Decree 0098/PR/MS). Available from <http://srhr.org/abortion-policies/documents/countries/04-Djibouti-Code-of-Medical-Ethics-2008.pdf>.

Law No. 55 of 2009 (Law No. 55/AN/09/6th L) on Violence Against Women Specifically on Female Genital Mutilation. Available from <http://evaw-global-database.unwomen.org/en/countries/africa/djibouti/2009/loi-n-55-an-09-6eme-l-relative-a-la-violence-contre-les-femmes-notamment-les-mutilations>.

Law No. 133 of 2016 (Law No. 133/AN/16/7th L) on Combating Trafficking in Persons and the Smuggling of Migrants. Available from <http://www.presidence.dj/texte.php?ID=133&ID2=2016-03-24&ID3=Loi&ID4=6&ID5=2016-03-31&ID6=n>.

Law on the Status of Refugees in Republic of Djibouti of 2017, (Law No. 159/AN/16/7th L). Available from <http://www.presidence.dj/texte.php?ID=159&ID2=2017-01-05&ID3=Loi&ID4=1&ID5=2017-01-15&ID6=n>.

References

"Africa for Women's Rights, Djibouti." Available from http://www.africa4womensrights.org/public/Dossier_of_Claims/Djibouti-UK.pdf.

Ministry of National Education and Vocational Training, *Memorandum of partnership between the Ministry of National Education and Vocational Training in Djibouti and UNHCR Djibouti* (28 August 2017).

Inter-Parliamentary Union, Parliamentary Campaign "Stop Violence against Women: FGM Legislation and Other National Provisions." Available from <http://www.ipu.org/wmn-e/fgm-prov-d.htm>.

Ministry of Women and the Family, *National Strategy for the Total Abandonment of FGM/C 2018–2022* (UNICEF & Ministry of Women and the Family, 2017). Available from http://www.famille.gouv.dj/mff/uploads_docs/Strategie%20Nationale%20MGF%202018.pdf.

Republic of Djibouti, *Five Year Evaluation of the National Report on the Implementation Programme of Action of Beijing (1995) and Texts from the Twenty-Third Special Session of the General Assembly (2000)*, July 2014. Available from <http://www.escwa.org.lb/sites/BeijingPlus20/docs/DjiboutiFr.pdf>.

United Nations Children's Fund, *Djibouti, MENA Gender Equality Profile* (UNICEF, 2011). Available from <http://www.unicef.org/gender/files/Djibouti-Gender-Equality-Profile-2011.pdf>.

United Nations CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women on Djibouti* (28 July 2011), CEDAW/C/DJI/CO/1–3. Available from www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-DJI-CO-1-3.pdf.

United Nations Economic Commission for Africa (UNECA), *Africa Women's Rights Observatory: Djibouti* (UNECA, n.d). Available from <http://www1.uneca.org/awro/CountrySpecificInformationDjibouti.aspx>.

United Nations Economic Commission for Africa, *Violence against Women in Africa, A Situational Analysis* (UNECA, 2011). Available from <http://www1.uneca.org/Portals/awro/Publications/21VAW%20in%20Africa-A%20situational%20analysis.pdf>.

United Nations Human Rights Committee, *Concluding observations on the initial report of Djibouti, Addendum Information received from Djibouti on follow-up to the concluding observations* (4 February 2015), CCPR/C/DJI/CO/1/Add.1. Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/017/10/PDF/G1501710.pdf>.

