

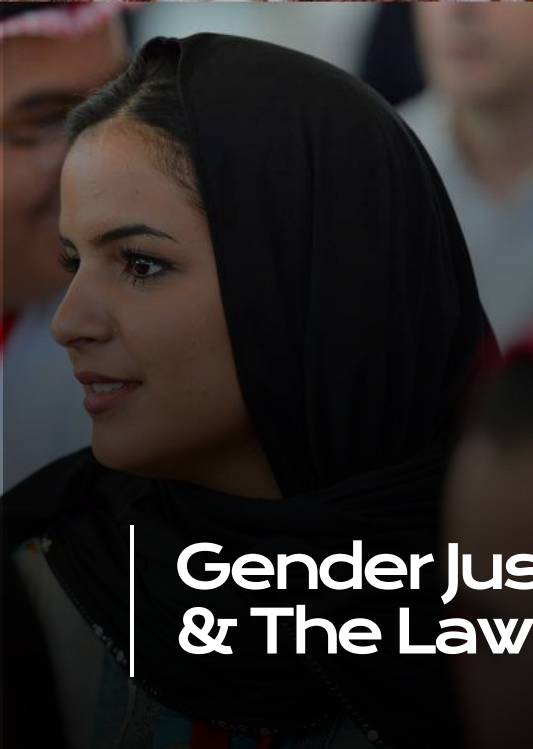


Empowered lives
Resilient nations



Gender Justice & The Law

Assessment of laws affecting gender equality
in the Arab States region



**Gender Justice
& The Law**

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United Nations Development Programme, UNDP
One UN Plaza, New York, NY, 10017, USA

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This "Gender Justice & The Law" publication was developed by the United Nations Development Programme (UNDP) in collaboration with the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Population Fund (UNFPA) and the United Nations Economic and Social Commission for West Asia (ESCWA).

The views and analysis in this publication do not necessarily reflect the views of the United Nations Development Programme, its Executive Board Members, the United Nations, any of its Member States or any of its affiliated organizations.

Design and layout: Prolance FZC

ISBN:

The work on this publication was made possible with the support from Government of Japan, and donors contributing to the UN Global Focal Point for Police, Justice and Corrections, among others.

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|------------------------|--|
| 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 Western Asia |
| FGM/C | Female genital mutilation/cutting |
| SDGs | Sustainable Development Goals |
| UNDP | United Nations Development Programme |
| UNFPA | United Nations Population Fund |
| UN Women | United Nations Entity for Gender Equality and the Empowerment of Women |



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ACKNOWLEDGEMENTS

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

The regional introduction and literature reviews that formed the basis of country assessments were authored by consultants John Godwin and Nadya Khalife, whose insights and hard work are also gratefully acknowledged. The country profiles were drafted by national consultants and edited for publication by John Godwin and Nadya Khalife. 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.

This study is based on the premise that development is endangered if it fails to address gender inequalities. No country will be able to realize the grand promise of Agenda 2030 for Sustainable Development when half of its social and economic power is hampered by gender inequalities. The law and the justice system play a central role in guaranteeing equality, not only as a principle but in functional terms as well.

More than a decade ago, The Arab Human Development Report 2005: Towards the Rise of Women in the Arab World warned that “Many laws in the Arab countries discriminate against women. Constitutional provisions for the protection of women’s rights exist in nearly all countries but are often flouted, contradicted by other legislation or not enforced.” The report went on to illustrate a range of discriminatory provisions and practices that “reveal the bias of the Arab legislator against women.”¹

Considerable progress has been made since 2005, but as the United Nations Economic and Social Commission for Western Asia (ESCWA) makes clear in its 2017 report on The State of Gender Justice in the Arab Region, “the notion of access to justice has remained gender blind, partly because of conservative and traditional institutions that reinforce men’s authority and control over women under the pretext of protecting the sanctity of the family.” The report notes that a “lack of confidence in governments and legal systems prevails, especially where existing accountability systems are weak and perceived as biased against women.”² The report clearly points to the need for persistent and concerted efforts to achieve gender equality through guaranteeing equality before the law, full access to justice, and protection from violence for all women.

UNDP, in partnership with UN Women, UNFPA, and ESCWA, has conducted this study on Gender Justice & the Law in the Arab States Region to provide a comprehensive assessment of laws and policies affecting gender equality and protection against gender-based violence in Arab countries. The report is composed of 18 country profiles accessible online, each of which maps a country’s key legislative developments and gaps regarding gender justice. This introduction provides the analytical framework and methodological approach that has guided each country analysis and is followed by a brief summary of the legal framework in each country examined.

Gender justice

For the purpose of this study, the term ‘gender justice’ uses the definition introduced by Anne Marie Goetz and subsequently adopted by ESCWA’s 2017 report The State of Gender Justice in the Arab Region. Gender justice is thus defined as the creation of gender equality through ending inequality between women and men, as well as through redress for existing inequalities.

Gender equality is achieved when men and women enjoy the same rights and opportunities across all sectors of society, including access to justice and to economic and social opportunities. The study highlights gender-based violence as a major barrier to gender justice.

Gender justice is both a formal process and a substantive outcome. The successful realization of gender justice relies on two elements: accountability and equality, in line with international and regional standards, notably those of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); the Beijing Platform for Action; the Women, Peace, and Security Agenda; and the 2030 Agenda for Sustainable Development.

Gender-based violence

Noting that gender-based violence is a major barrier to gender justice, this study addresses gender-based violence in its various forms, such as sexual violence, physical violence, psychological violence, and economic violence. These various forms of violence manifest themselves in many ways both in the private and public spheres, including as domestic violence, rape and other forms of sexual assault, sexual harassment, child and forced marriage, female genital mutilation/cutting (FGM/C) and other harmful traditional practices, trafficking in persons, and honour-based crimes.⁷

¹ United Nations Development Programme (UNDP), Arab Human Development Report 2005: Towards the Rise of Women in the Arab World (2006), http://hdr.undp.org/sites/default/files/rbas_ahdr2005_en.pdf.

² ESCWA, The State of Gender Justice in the Arab Region (Beirut: ESCWA, 2017), (E/ESCWA/ECW/2017/4).

³ Ibid.

⁴ Ibid.

⁵ Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women (Beijing, 1995).

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

Some acts of gender-based violence may constitute international crimes (crimes against humanity and war crimes), including the use of rape as a weapon of war, sexual slavery, enforced prostitution, forced pregnancy, or other forms of sexual violence of comparable gravity.⁸

Access to justice through international human rights law

The notion of access to justice is equally crucial to the analysis of gender justice. Access to justice includes the entire machinery of law making, law interpretation, law application, and law enforcement, and it is defined by equitable and just outcomes. According to international human rights law, when states become parties to international treaties they have an obligation to respect, protect, and fulfil human rights, and these include the rights of half their population: women and girls. The obligation to respect means that states must refrain from interfering with or curtailing the enjoyment of human rights, the obligation to protect requires states to protect individuals and groups against human rights abuses, and the obligation to fulfil means that states must take positive action to facilitate the enjoyment of basic human rights. Through ratification of international human rights treaties, governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties.



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⁶ Concepts of physical, sexual, and psychological violence are defined by the UN Declaration on the Elimination of Violence against Women (A/RES/48/104).

⁷ United Nations Population Fund (UNFPA), Regional Strategy on Prevention and Response to Gender-Based Violence in the Arab States Region (2014–2017), (2014); General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (14 July 2017), (CEDAW/C/GC/35).

⁸ Falling under definitions in Arts. 7 and 8 of the Rome Statute of the International Criminal Court.

⁹ UNDP, Programming for Justice: Access for All – A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice (Bangkok: UNDP Asia-Pacific Rights and Justice Initiative).

¹⁰ Office of the High Commissioner for Human Rights, “International Human Rights Law,” <https://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational

¹¹ Organized Crime, adopted by UN General Assembly Resolution 55/25 of 15 November 2000.

Ratification of related international human rights instruments in the Arab states region



| | ICCPR International Covenant on Civil and Political Rights (1966) | ICESCR International Covenant on Economic, Social and Cultural Rights (1966) | CEDAW Convention on the Elimination of all forms of Discrimination Against Women (1979) | CAT Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) | CRC Convention on the Rights of the Child (1989) | ICRMW International Convention on Protection of all Migrant Workers and Members of their Families (1990) | Palermo Protocol on Human Trafficking (2000) |
|--------------|--|--|--|--|--|--|---|
| Algeria | 1989 | 1989 | 1996 | 1989 | 1993 | 2005 | 2004 |
| Bahrain | 2006 | 2007 | 2002 | 1998 | 1992 | --- | 2004 |
| Djibouti | 2002 | 2002 | 1998 | 2002 | 1990 | --- | 2005 |
| Egypt | 1982 | 1982 | 1981 | 1986 | 1990 | 1993 | 2004 |
| Iraq | 1971 | 1971 | 1986 | 2011 | 1994 | --- | 2009 |
| Jordan | 1975 | 1975 | 1992 | 1991 | 1991 | --- | 2009 |
| Lebanon | 1972 | 1972 | 1997 | 2000 | 1991 | --- | 2005 |
| Libya | 1970 | 1970 | 1989 | 1989 | 1993 | 2004 | 2004 |
| Morocco | 1979 | 1979 | 1993 | 1993 | 1993 | 1993 | 2011 |
| Oman | --- | --- | 2006 | --- | 1996 | --- | 2005 |
| Palestine | 2014 | 2014 | 2014 | 2014 | 2014 | --- | 2017 |
| Qatar | 2018 | 2018 | 2009 | 2000 | 1995 | --- | 2009 |
| Saudi Arabia | --- | --- | 2000 | 1997 | 1996 | --- | 2007 |
| Somalia | 1990 | 1990 | --- | 1990 | 2015 | --- | --- |
| Sudan | 1986 | 1986 | --- | 1986 | 1990 | --- | 2014 |
| Syria | 1969 | 1969 | 2003 | 2004 | 1993 | 2005 | 2009 |
| Tunisia | 1969 | 1969 | 1985 | 1988 | 1992 | --- | 2003 |
| Yemen | 1987 | 1987 | 1984 | 1991 | 1991 | --- | --- |

■ Ratified
■ Ratified with Reservations or Declarations
■ Signature only
■ No Action

Development as freedom

This study and its conceptualization adhere to the concept of human development and to the principle that gender justice is fundamental to human development. Human development – as defined by the first UNDP Human Development Report and building on Amartya Sen’s work on “Development as Freedom” – is “the process of enlarging people’s choices,” and thus allowing them to “lead a long and healthy life, to be educated, to enjoy a decent standard of living” as well as to have “political freedom, other guaranteed human rights and various ingredients of self-respect.”¹²

The human development approach aims to expand the richness of human life. It is an approach focused on people, their opportunities and choices.¹³ The human development approach is of critical importance when analysing women’s well-being by ensuring equitable, sustainable, and stable societies. It is an approach that reflects the aspirations set forth in the 2030 Agenda, and the commitments made from member states towards achieving the 17 Sustainable Development Goals (SDGs). The analysis conducted therefore considers whether the legal environment allows women and girls to develop to their full potential and to have a reasonable chance of leading productive and creative lives that they value.

Gender justice and the 2030 Agenda

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

As governments have begun to develop and implement their plans and visions for how to achieve these far-reaching goals, it has become increasingly clear that development will only be sustainable if its benefits accrue equally to both women and men; and women’s rights will only become a reality if they are part of broader efforts to ensure equitable societies, promoting sustainable development and ensuring that all people can live with respect and dignity.¹⁴

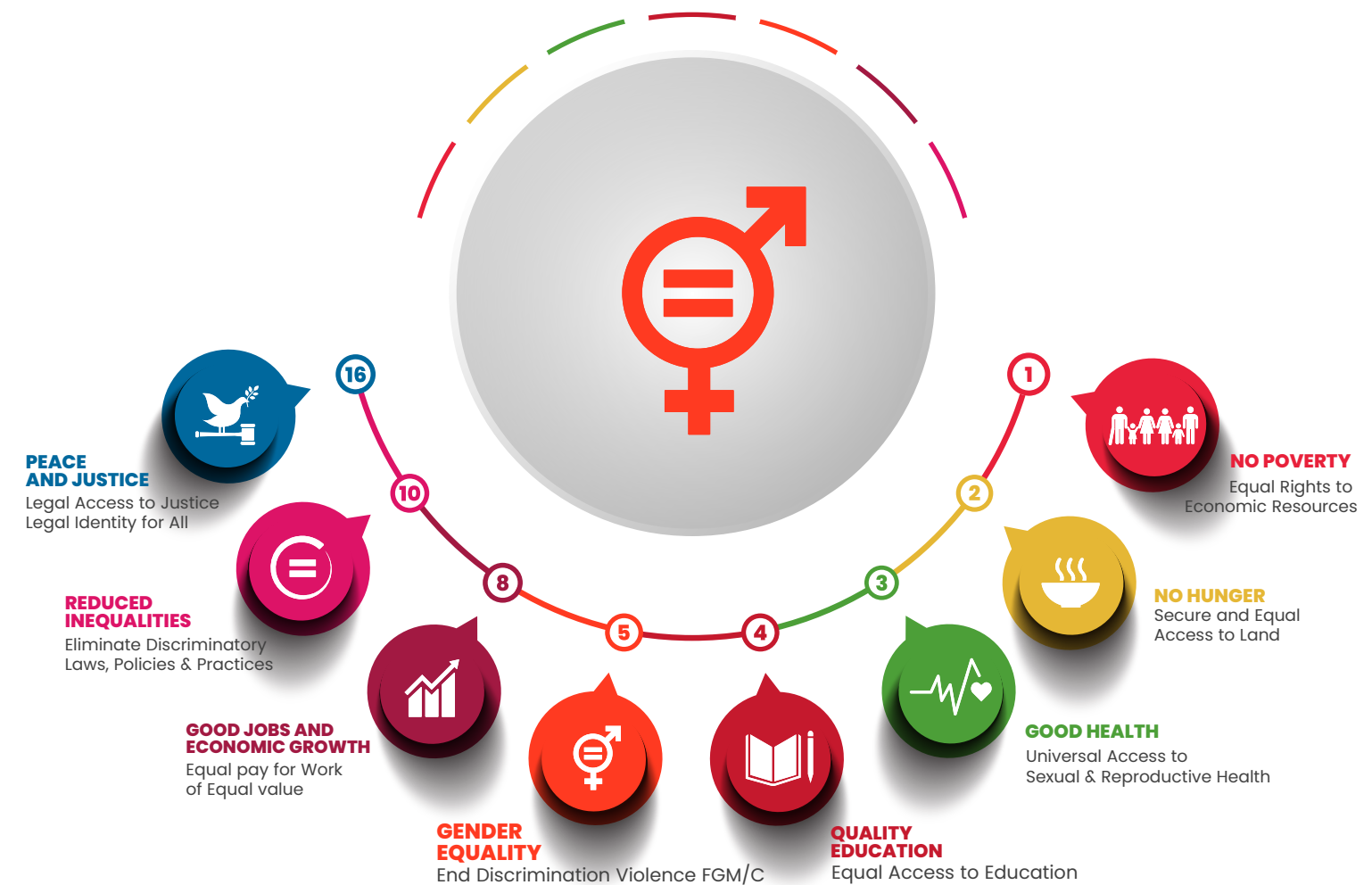
Although legal status is only one part of equality, without legal equality many of the SDG targets will be unattainable. In many parts of the world, women are still not equal to men before the law.

12 UNDP, Human Development Report 1990 (New York, 1990).

13 UNDP, About Human Development (Human Development Report Office, UNDP), <http://hdr.undp.org/en/humandev>.

14 UN Women, Turning promises into action: Gender equality in the 2030 Agenda for Sustainable Development (2018).

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



16 These are the 18 countries where UNDP, UN Women, and/or UNFPA were able to validate national reports. The 18 countries are all members of the League of Arab States, which also includes Comoros, Kuwait, Mauritania, and United Arab Emirates.

Methodology

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

The countries included in the study are: Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Somalia, State of Palestine, Sudan, Syria, Tunisia, and Yemen.¹⁶ Collectively, this study refers to these countries as the Arab states region.

The study includes analysis of the following areas of the law:¹⁷

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

This study consists of 18 country profiles addressing these topics. Each profile assesses whether the laws governing these subject areas comply with international human rights standards and with the recommendations of the UN Committee on the Elimination of Violence against Women (CEDAW Committee). Consideration is also given to country recommendations under Universal Periodic Reviews. Each country profile highlights where progress has been made as well as the main challenges and opportunities under current legal frameworks to ensure access to justice and equality before the law.

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

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

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

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



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¹⁷ Women's political participation is an important dimension of gender justice, but it is outside the scope of this study.

¹⁸ UN Women, Turning promises into action, Annex 1.

Gender justice assessment: Explanation of categories

Each country assessment includes a short summary overview of the legal framework. This section should be read in conjunction with these summaries (available separately). As part of this summary overview, each country's laws on selected topics were categorized using a simple four colour code system that compares the laws identified in the country profiles with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women and country recommendations under the country's respective Universal Periodic Reviews.

A green code indicates that laws on this topic provide for gender equality and/or protection from gender-based violence and are 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.

A red code indicates that the law on a particular topic does not provide for gender equality and/or there is no or minimal protection from gender-based violence.

An amber code indicates that some gender aspects of the law on this topic have been addressed, but important gender inequalities remain.

A grey code indicates that there is no available data or inadequate information.

Laws should be subject to ongoing review to assess how they can be improved to further eliminate gender inequalities and ensure improved protection from violence. The objective of categorizing the laws of each country in this way is to highlight examples from which countries can learn from each other. It is intended to assist discussion and debate about the legislative models that support the achievement of gender justice.

 **The topics assessed were categorized as follows**

CEDAW & CONSTITUTIONAL PROVISIONS

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

- Green:** Ratified with no reservations.
- Amber:** Ratified with reservations.
- Red:** Not ratified.

Constitution

- Green:** Articles of the Constitution refer directly to gender equality or sex/gender discrimination.
- Amber:** There is some reference to gender or sex, but it provides limited or weak equality rights to women.
- Red:** Articles do not address gender equality or sex/gender discrimination.

CRIMINAL LAWS

Domestic violence

- Green:** There is a law on domestic violence that enables women to obtain protection orders from a court and that criminalizes domestic violence.
- Amber:** There is a domestic violence law, but either it does not enable women to obtain protection orders from a court or it does not criminalize domestic violence.
- Red:** There is no domestic violence law.

Rape (other than of a spouse)

- Green:** Rape is criminalized. Penalties for aggravated rape do not include capital punishment.
- Amber:** Rape is criminalized. Penalties for aggravated rape include capital punishment.
- Red:** Rape is not criminalized.

Exoneration by marriage

- Green:** The Penal Code does not include a provision exonerating an offender for rape, abduction, or other crimes if he marries the victim
- Amber:** Exoneration of offenders upon marriage occurs in limited circumstances, e.g., as a result of enforcement of customary law or loopholes in penal codes allowing for exoneration where the victim is a girl below a prescribed age.
- Red:** The Penal Code includes provisions exonerating an offender for rape, abduction, or other crimes if he marries the victim.

Marital rape

- Green:** Marital rape is expressly addressed by penal law and criminalized.
- Amber:** Marital rape is sometimes prosecuted under rape or other laws.
- Red:** The legal definition of rape in the Penal Code/Sharia is interpreted by the legal system as excluding marital rape.

Abortion for rape survivors

- Green:** Abortion for rape survivors is legal.
- Amber:** Abortion for rape survivors may be permitted in some cases.
- Red:** Abortion for rape survivors is prohibited.

Sexual harassment

- Green:** Sexual harassment is defined in legislation and is prohibited by the Penal Code or Labour Code.
- Amber:** Sexual harassment is not defined in legislation, but offences in criminal or labour laws provide some protections.
- Red:** There is minimal or no protection from sexual harassment in criminal or labour laws.

Honour crimes: Mitigation of penalty

- Green:** There is no provision allowing for the reduction of penalty for honour crimes.
- Amber:** Some provisions allowing for reduction of penalty for honour crimes have been repealed, but loopholes remain.
- Red:** A provision allows for the reduction of penalty for honour crimes.

Adultery

- Green:** Adultery is not criminalized.
- Amber:** Adultery is not criminalized in the Penal Code, but Sharia penalties apply.
- Red:** Adultery is criminalized.

Female Genital Mutilation / Cutting

- Green:** FGM/C is prohibited / criminalized.
- Amber:** FGM/C is subject to regulation, but is not criminalized.
- Red:** FGM/C is practised and is not prohibited.
- Grey:** There are no documented cases. There is no legal prohibition

Human trafficking

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

Sex work and anti-prostitution laws

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

Sexual orientation

- Green:** Homosexual conduct is not criminalized. Police do not enforce criminal laws (e.g., debauchery, indecency, immoral conduct) for consensual same-sex conduct or expression of sexual orientation.
- Amber:** There are conflicting judicial interpretations of the criminal law relating to homosexual conduct. Police enforce criminal laws (e.g., debauchery, indecency, immoral conduct) to penalize consensual same-sex conduct or expression of sexual orientation.
- Red:** Homosexual conduct is criminalized.

PERSONAL STATUS LAWS

Minimum age of marriage

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

Male (marriage) guardianship over women

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

Marriage and divorce

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

Polygamy

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

Guardianship of children

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

Custody of children

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

Inheritance

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

NATIONALITY LAWS

Nationality

- Green:** Women have the same rights as men to pass their nationality to a child and foreign spouse.
- Amber:** Women have the same rights as men to pass their nationality to a child, but not to a foreign spouse.
- Red:** Women do not have the same rights as men to pass their nationality to a child or a foreign spouse.

LABOUR LAWS

Right to equal pay for the same work as men

- Green:** The labour code provides women with the right to equal pay for the same work as men.
- Red:** The labour code does not provide women with the right to equal pay for the same work as men.

Dismissal for pregnancy

- Green:** The labour code prohibits employers from dismissing women because of pregnancy.
- Amber:** Although the labour code does not include a specific prohibition on dismissing women because of pregnancy, such conduct may be illegal under other provisions, e.g., unlawful discrimination.
- Red:** Dismissing women because of pregnancy is not prohibited.

Paid maternity leave

- Green:** Women have a legal right to paid maternity leave at the ILO standard of 14 weeks.
- Amber:** Women have a legal right to paid maternity leave at less than the ILO standard of 14 weeks.
- Red:** Women do not have a legal right to paid maternity leave.

Legal restrictions on women's work

- Green:** No legal restrictions on night work, arduous work, or specific occupations.
- Red:** Legal restrictions on night work, arduous work, or specific occupations.

Domestic workers

- Green:** Domestic workers are covered by the labour code and have substantial legal protections from exploitation and abuse.
- Amber:** Domestic workers have some legal rights to protection from exploitation and abuse, but do not have the same or similar labour law protections that other workers enjoy.
- Red:** Domestic workers have minimal or no legal rights to protection from exploitation and abuse.