

Ref: TIGO IOR 40/2013.078

Mme Nicole Ameline
Chairperson
UN Committee on the Elimination of Discrimination
against Women
Office of the High Commissioner for
Human Rights
UNOG-OHCHR
1211 Geneva 10, Switzerland

16 September 2013

**AMNESTY
INTERNATIONAL**



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Dear Mme Ameline

**RE: 58TH PRE-SESSIONAL MEETING OF THE UNITED NATIONS (UN) COMMITTEE ON THE
ELIMINATION OF DISCRIMINATION AGAINST WOMEN - SYRIAN ARAB REPUBLIC**

1. Introduction

Amnesty International submits this letter to the Committee on the Elimination of Discrimination against Women (the Committee) in advance of its 58th pre-sessional meeting, at which it will prepare for the review of the second periodic report of the Syrian Arab Republic.

The letter begins with an overview of discrimination against women in Syrian law, leading into a focus on the following specific issues: rights in parenthood, the right to equality in marriage and its dissolution, the right to protection from violence and the right to freedom of expression.

Amnesty International's concerns and recommendations are based on research work conducted from inside and outside Syria over recent years. The organization visited Damascus in June 2010 in the context of a project it was undertaking on women's human rights, in particular the issue of violence at the hands of family members. Some of the follow-up to this visit was interrupted by the outbreak of unrest in Syria in March 2011 and the subsequent emergence of an armed conflict. Amnesty International has not had access to government-controlled parts of Syria since then, although it has visited rebel-controlled areas on a number of occasions since 2012.

Since 2011, Amnesty International has focused on documenting the Syrian authorities' crackdown on opposition and their widespread, as well as systematic, attacks on the civilian population, which the organization considers to amount to crimes against humanity. The organization has also documented serious abuses, some amounting to war crimes, committed by the increasing number of armed opposition groups operating in Syria.

At the same time, Amnesty International has been seeking to update its information on legislative amendments over the last two and a half years and to examine how the legal structures persisting during the armed conflict are impacting on women.

A number of issues of serious concern to Amnesty International are not included in this paper because, while the organization is pursuing research work on them, it does not yet have detailed enough findings to present

them here. These issues include reports of rape in the context of armed conflict and in detention as well as the impact of the administration by armed groups of certain parts of the territory on women's human rights. Amnesty International has also been conducting research work into the situation of refugees in neighbouring countries, including the experiences of women and girl refugees, its latest field work in this regard being in Jordan in June 2013. However, the findings relate primarily to the responsibilities of the authorities of governments other than the Syrian and are therefore not included in this letter.

2. Discrimination against women in law

2.1 Syrian legal framework and reservations to CEDAW

Syria's constitution states that all citizens are equal before the law in their rights and obligations.¹ However various laws affecting women contradict what the constitution says, making its articles on citizens' equality invalid.

Laws in Syria, including the Personal Status Law (PSL) of 1953 (amended by Law 34 of 1975 and Law 18 of 2003) and the Penal Code of 1949, which are reinforced by social customs and ideas attributed to certain interpretations of religious beliefs, place the status of women in the family as inferior to that of men. This contributes to shaping unequal relationships that facilitate men abusing their power over women and help perpetuate domestic violence.

The PSL, which regulates the family affairs of the overwhelming majority of the population in Syria, namely the Sunni, Shi'a and Alawite Muslims, is essentially based on Shari'a² law and mainly influenced by the country's predominantly Hanafi school³ of Sunni Islam.⁴

Judges at Shari'a courts - which rule on family matters and whose decisions are governed by the PSL - are allowed to base their rulings on the most reliable references of the Hanafi jurisprudence if they are faced with situations not covered by the law.

This allowance granted to judges in article 305 of the PSL opens the door for courts to make case-by-case (ad hoc) decisions based on what they see fit, which exposes women to injustices, rather than apply rulings based on clear existing laws.

In adherence to article 305, many judges rely on the Qadri Basha Code,⁵ dating back to the 19th century, owing to the fact that it gathers rulings based on Hanafi jurisprudence. For example, the PSL does not state anything

¹ As stipulated in article 25 (subparagraph 3) of the Permanent Constitution of the State promulgated on 13 March 1973 and amended in March 1980, July 1991 and June 2000.

² Shari'a is a system of Islamic law that covers all aspects of a Muslim's life and is based on four main sources: the Qur'an (the Muslim holy book perceived as God's revelation to the Prophet Muhammad); the Sunna (the sayings and actions of the Prophet); *qiyas* (legal analogy to understand the reasons and causes of the principles of the Qur'an and Sunna); and the *ijma'* (consensus of Muslim scholars on the reasoning of particular rulings at a particular time).

³ The Hanafi school is one of the four schools of jurisprudence within Sunni Islam and is named after the Iraqi-born religious leader Nu'man ibn Thabet ibn Zouta ibn Marzuban, also known as Abu Hanifa, who lived in the seventh and eighth centuries. The other three schools of jurisprudence are the Shafi'i, Maliki and Hanbali.

⁴ The rules for legislation are set by the Permanent Constitution of the State, with article 3 stating that Islamic jurisprudence is "a principal source" for legislation, not "the" principal source. Thus, the use of other sources for legislation is acceptable.

⁵ The Qadri Basha Code is posted along with other existing laws on the website of the Damascus Bar Association.

on control of women's movement. When judges are faced with a case relating to such a situation, they refer to article 212 of the Qadri Basha Code, which stipulates that a wife cannot leave the marital home without her husband's permission.

The Penal Code complements the discrimination existing in the PSL and fails to address violence against women in the family.

'*Urf al-balad* or social customs and traditions prevailing in certain areas are so powerful in Syria that lawmakers take '*urf al-balad* as a source from which they generate legislation. One example is the reduced penalties handed down on perpetrators of so-called "honour crimes" (see below).

Amnesty International notes that many religious courts handling family affairs and criminal courts have stopped operating, and that law enforcement bodies now have limited roles, due to the devastating armed conflict and the worsening security situation.

Finally, Amnesty International notes with concern that Syria maintains reservations to CEDAW's article 2; article 9, paragraph 2, concerning the granting of a woman's nationality to her children; article 15, paragraph 4, concerning freedom of movement and of residence and domicile; article 16, paragraph 1 (c), (d), (f) and (g), concerning equal rights and responsibilities during marriage and at its dissolution with regard to guardianship, the right to choose a family name, maintenance and adoption; article 16, paragraph 2, concerning the legal effect of the betrothal and the marriage of a child; and article 29, paragraph 1, concerning arbitration between States in the event of a dispute.

2.2 Recommendation

Amnesty International urges the Syrian government to:

- Lift all reservations on CEDAW, revise laws and rules that discriminate against women, and make all necessary amendments to ensure equality in rights between men and women.

3. Rights as a parent – article 16 para 1 (d) (f)

3.1 Custodian vs guardian

The mother is a *hadana*, or custodian, whose role, as defined by the Hanafi jurisprudence on which the PSL is based, is to fulfil the basic needs of her children. These include teaching them how to drink and eat unassisted, educating them about other bodily functions, and teaching them how to perform ablutions or ritual self-purification unassisted.

The PSL gives divorced mothers custody of children until the age of 13 for boys and 15 for girls, despite the approximate ages set by Hanafi jurisprudence for children to live with their father being seven for boys and between nine and 11 for girls.⁶ At the same time, the PSL stipulates that the father as the *wali*, or guardian, has the responsibility to provide financially for the children's needs and that, in his death or absence, this responsibility falls on the father's father or brother.

⁶ Oxford Islamic Studies Online (<http://www.oxfordislamicstudies.com/article/opr/t125/e756>).

Although this economic responsibility on men may be an advantage to mothers who do not work, or have independent income, other responsibilities held by the guardian legally exclude the mother from taking part in major decisions concerning the lives of her children. These decisions include those related to education, such as which school to attend, travel and marriage.

In Syrian law, only men can assume the role of guardianship (*wilaya*) over their own or other people's children. Guardianship includes the exercise of disciplinary authority, the provision of medical treatment, education, career guidance, marriage consent and all matters involved in the care of a legal minor, in accordance with article 170 of the PSL.

The father and, in his absence (through death or disappearance), the male ascendants and descendants of the fourth degree on the father's side have the right to exercise guardianship, wardship and trusteeship over children. A woman has no legal right to assume that role even over her own children and even when their father is dead or absent.

This means that if a child completes their free mandatory education, which lasts until grade 9 when they are around 14-15 years old, and their father – or in the father's absence, the child's grandfather or uncle – decides that the child should not continue education, then, legally, the guardian's decision prevails, even if the mother wants her child to continue education.

In the event of the death of the guardian, or if he is declared legally incompetent, and if there is no other guardian available, the mother of a minor child can ask a Shari'a court (*mahkama shari'ya*) to appoint her as a *wasi*, or trustee, a person who handles a minor's financial and other affairs, such as travel, in accordance with article 174 of the PSL. In the absence of a guardian, Shari'a courts in Syria grant mothers a temporary trusteeship over her children, which expires when a male guardian becomes available. A *wasi*, however, does not have the legal authority to make other major decisions that the guardian has, such as those relating to the marriage of a minor child.

The guardian has the right to choose a trustee over the child and can choose the mother for this role, but he can also withdraw this role from her whenever he wants, as stipulated in article 176. However, if the property of a child is at risk due to the guardian's misconduct, a Shari'a court has the right to terminate or limit his guardianship and appoint a trustee to handle some of the financial tasks, and this trustee could be the female custodian of the child.

When the UN Committee on the Rights of the Child reviewed the third and fourth periodic reports of Syria in 2011, it recommended that the authorities ensure that mothers and fathers share responsibility for their children on an equal basis and that no distinction be made between boys and girls.

3.2 Consent to travel with children

Women departing the country with their children, even if they are still under the custody of the mother, are usually required to obtain a written and official stamped permission from the father of the children. If the father is dead, or absent due to detention, enforced disappearance or other reasons, other male guardians from his family can decide whether or not to allow the mother to travel with her children abroad. If the male guardian does not provide his consent, the mother will have to stay with her children in Syria. At the same time, a father has to obtain permission from the mother to take his children abroad as long as they are legally under her custody. He does not have to take her permission to take them abroad when they no longer are under her custody.

The worsening security situation in Syria means that many guardians have been either killed, detained, subjected to enforced disappearance or forced to flee the country. Others have been internally displaced such that they are isolated from other family members. This situation has left many mothers wanting to leave Syria

for safety with their children without the ability to access a male guardian to obtain consent. Such a situation has posed the risk of thousands of women and children in Syria being left exposed to danger.

The judicial authorities in Damascus seem to have been facilitating procedures for women who want to travel with their children without their father or other guardian. Amnesty International has learned that the main Shari'a court in Damascus has been providing a temporary *wisaya* (trusteeship) for women to enable them to travel with their children without the need for a guardian's consent. Amnesty International considers this to be a positive step, but has not been able to obtain information on the conduct of courts in government-held areas outside Damascus and therefore does not have sufficient information to know if there is a decision that has been taken by the authorities at a national level to support women and their children fleeing to safety.

At the same time, Amnesty International is aware of cases of divorced or widowed mothers who have been unable to seek safety with their children outside Syria because the father of the children or the guardians have insisted that the children should not travel abroad with their mother alone.

Amnesty International urges all religious courts to prioritize the safety of children, respecting their right to life as enshrined in human rights law and standards, by doing what is necessary to enable all mothers wanting to flee with their children to seek safety outside Syria.

The UN Committee on the Rights of the Child, when it reviewed the third and fourth periodic reports of Syria in 2011, called for amendments to the PSL to allow for freedom of movement for women with their children outside of the country without prior approval of the children's father or paternal grandparents.

3.3 Recommendations

Amnesty International urges the Syrian government to:

- Ensure that mothers are given an equal right to fathers in deciding on and managing all aspects of their children's affairs;
- Change the law to enable women to travel, alone or with their children, without the permission of a *wali*; failing this, the Syrian authorities should empower religious courts to facilitate travel of women with their children through a simple and accessible procedure.

4. Right to equality in marriage and its dissolution – article 16 para 1 (c)

4.1 Entering into marriage

Any marriage requires the consent of both the groom and bride as stated in articles 1, 6 and 7 of the PSL, and it is done through the proposal or offer (*ijab*) of one of the parties to marry (usually the groom) and the acceptance (*qubool*) of the other.

Every marriage contract includes a small section called "special conditions", which provides a space for the groom and bride to add their own conditions to the marriage agreement, so long as these do not contradict religious strictures. If these conditions are approved and signed by both parties, the couple will have to apply them during their marriage.

Setting conditions in the marriage contract play an important role in securing the rights of women in marriage. For example, a woman can list conditions relating to the pursuit of education after marriage or employment outside the home. Her husband, however, does not need to include such conditions in the marriage contract to be able to pursue his education or work.

If a wife has included the right to work, for example, in the marriage contract, and the husband, having agreed and signed it, changes his mind after the wedding and objects, he would not have the right to stop her. If he violates the marriage contract conditions and forbids her from working, the wife has the right to terminate the marriage.

However, if the wife does not want a divorce and continues to work despite her husband's objection – backed by the conditions of the marriage contract –, he can also exercise his right to divorce her, because men have the right to unilateral and unconditional divorce (see below "Ending a marriage"). This means that men's exclusive right to unilateral divorce can undermine any agreement in the marriage contract.

On the other hand, a wife who has not included a condition to work in the marriage contract and after marriage decides that she wants to pursue a career or education cannot do so unless she obtains her husband's consent. If her husband has included an objection in the marriage contract to her working and she subsequently decides she would like to work, she would not be able to do so or to obtain a marriage dissolution, because of her previous acceptance of her husband's conditions.

In any case, most women are unaware that they can include their own conditions in a marriage contract, because usually they only see the contract to sign it after the marriage ceremony has been performed. And those performing the ceremony – either the judge presiding over the Shari'a court, or a registrar authorized by the judge to conduct the marriage, or a sheikh if the ceremony is performed outside the court – usually do not explain to either the groom or the bride their right to set conditions.

4.2 Early marriage

Article 16 of the PSL sets the age of marriage at 18 for boys and 17 for girls. However, article 18 allows a judge to permit marriage for a boy over 15 and a girl over 13 if they ask for marriage and claim they have reached puberty. Judges must use their discretion to assess that the children are "physically fit" for marriage and also require the presence and approval of the guardian (*wali*).

Amnesty International is concerned that boys at the age of 15 and girls at the age of 13 are unable to adequately assess the implications and responsibilities of marriage. On the other hand, the organization is concerned that sexual contact outside of marriage is criminalized in Syrian law. Under human rights law, adolescents have an evolving capacity to make their own decisions about sexual contact. Amnesty International recognizes, therefore, that some adolescents may choose to marry to avoid being criminalized for sexual contact. Provisions in the PSL sanctioning child marriages raise the risk that adolescent children are coerced into making decisions that are uninformed, involuntary and inappropriate, with life-long consequences. Therefore judges should take special steps – for example, speaking to young people seeking permission to marry on their own, without any other person present – to ascertain whether they are making a free choice.

4.3 Polygyny

Another issue which enshrines discrimination against wives in law and places them at a lower status than their husbands is polygyny,⁷ which is permitted for men, who can marry up to four wives.⁸ The wife has no say

⁷ Polygyny is the form of polygamy in which a man has more than one wife. Its counterpart, polyandry (where women have more than one husband), is unknown in Syria.

⁸ Article 370 of the PSL states that the man cannot marry a fifth woman unless he divorces one of his four wives and waits for her to complete the *'idda*, which is the waiting period for the divorcee or widow before she can re-marry a man other than her former husband.

regarding her husband's additional marriages. As long as the husband provides an acceptable religious justification and is able to financially support his wives, the judge at a Shari'a court will allow the marriage.⁹ An acceptable religious justification includes a situation when the first wife is childless or suffering an illness preventing her from being sexually active.¹⁰

However, no effective mechanisms are in place to ensure compliance with even these loose conditions on the practice of polygyny. In practice,¹¹ a man wishing to marry a second wife often asks any sheikh outside the court to perform his second marriage without requiring him to provide proof that religiously accepted reasons are met. Once the marriage is established, the judge at a Shari'a court is obliged to register it – regardless of whether it meets the legally required justifications – in order to ensure the rights of any future children from this marriage. While this protects the legal status of children, it leads to untenable situations regarding co-wives whose wishes have not been respected.

The articles in the PSL sanctioning polygyny fail to provide women with any kind of equality with her spouse, give her no say regarding her own husband's marriage to up to three other women, and strip her of any control over decisions that affect her life enormously.

4.4 Unequal access to marriage dissolution

Just as a wife does not have equal rights in marriage, she also has unequal rights to end her marriage. Whereas a man has the right to *talaq*, a unilateral and unconditional divorce that he can exercise from the age of 18,¹² women – young and old – not only have no right to exercise *talaq*, they also have no right to contest it. If a woman wants to end her marriage, she can only request marriage dissolution in specific situations, and it is up to the judge, or two arbiters appointed by the judge, to handle the case to decide whether or not to grant her this request.

4.5 Recommendations

Amnesty International urges the Syrian government to:

- Reform the law on marriage conditions, so that wives can work, study, or undertake any other activities without the permission of their husbands, either within the marriage contract or outside it;
- Decriminalize sexual contact between freely agreeing adolescents and equalize the age of consent to marriage; failing this:
 - Make the age of consent to marriage the same for boys and girls;
 - Put in place in law stringent safeguards requiring the judge to assess carefully whether children under 18 seeking to marry are genuinely agreeing to marriage, for example, requiring the judge to interview the boy and girl separately;
- Amend the law on polygyny by limiting marriages to one spouse only;

⁹ In accordance with article 17 of the PSL.

¹⁰ In accordance with article 17 of the PSL.

¹¹ Phone interview with legislator in July 2009; confirmation by lawyers during interviews in June 2010.

¹² In accordance with PSL article 85.

- Make all necessary amendments to legislation to ensure men and women have equal access to marriage dissolution.

5. Right to protection from violence - article 2 (g)

Women in Syria have faced significant levels of gender-based violence, including murder and other serious crimes committed against them by male relatives ostensibly to uphold family "honour".

5.1 Honour crimes – reduced sentences in Penal Code

Syria's Penal Code prescribes lower penalties for murder and other violent crimes committed against women in which defence of family "honour" is considered a mitigating factor. On 3 January 2011, President al-Assad amended the Penal Code by decree to increase the minimum penalty for murder and other violent crimes committed against women in the name of family "honour" from at least two years to between five and seven years. Although this is an improvement in the law, it does not go far enough to give women equal protection from violence.

5.2 Reduced sentences in Penal Code for rapists who marry their victim

The same decree of 3 January 2011 also imposed a penalty of at least two years' imprisonment on those convicted of rape or other sexual assault in cases where they marry their victim; formerly, perpetrators were exempt from prosecution or punishment if they married their victim.

If a perpetrator of rape or sexual assault marries his victim, the prosecution against him is halted in cases where a trial has not concluded and his punishment is suspended in cases where a sentence has already been passed. The prosecution resumes or the penalty to be implemented is reactivated if, before three or five years (depending on the gravity of the offence) have passed, the husband divorces the rape survivor without a valid reason or she obtains a court order for the dissolution of the marriage.

While this law is an improvement on the previous law, it still allows men who have committed rape or sexual assault to escape with relative impunity, as well as compounding the harm of the initial crime by pushing women and girls to marry men who have perpetrated such offences. Marital rape is still not legally recognized in Syria.

5.3 Recommendation

Amnesty International urges the Syrian government to:

- Protect the lives and physical integrity of women and girls by examining and amending all legislation that in intent or effect discriminates against women and girls, particularly those affecting the physical integrity of women and girls, to ensure compliance with international human rights standards.

6. Right to freedom of expression – articles 2 and 7 (c)

6.1 Targeting human rights defenders and activists

Thousands of people have been arrested since the start of the unrest in March 2011, including human rights defenders and other peaceful activists. Many have been held incommunicado for long periods at unknown

locations where torture and other ill-treatment are reported to be rife in conditions amounting to enforced disappearance. While the majority of those arrested are men, Amnesty International believes that scores of women who are human rights defenders, peaceful activists, journalists and health workers, have been apprehended at one point or another by the Syrian authorities.

Some women who have been at the forefront of calls to end the use of lethal force against peaceful demonstrators and to refrain from targeting the civilian population in the armed conflict have been forced into hiding; some have fled the country. Some of those detained have been referred to the Anti-Terrorism Court.

Amnesty International notes the concluding observations of the UN Committee against Torture considered the situation in Syria in the absence of a report in 2012. It called on the government to cease immediately all attacks against journalists and human rights defenders and advocates, ensuring that all persons are protected from intimidation or violence as a result of their activities and exercise of human rights guarantees, to ensure prompt, impartial and effective investigation into such acts, and to prosecute and punish perpetrators, and provide redress to victims.¹³

6.2 Trials before the Anti-Terrorism Court

Human rights defenders and other peaceful activists, including women, are currently being tried before the Anti-Terrorism Court in Damascus, which was set up in July 2012 as a result of Law No.22 issued by President al-Assad, with the stated intention of tackling armed violence against the state. However, it has been used to prosecute peaceful opponents of Syrian government policies and practices.

This court does not afford defendants basic due process rights according to international fair trial standards. It is responsible for prosecutions under the Anti-Terrorism Law, which defines an act of "terrorism" as "every act that aims at creating a state of panic among the people, destabilizing public security and damaging the basic infrastructure of the country by using weapons, ammunition, explosives, flammable materials, toxic products, epidemiological or bacteriological factors or any method fulfilling the same purposes."

The law also stipulates that promoting "terrorism", including by distributing literature or other information, is punishable by imprisonment with hard labour. Financing terrorism includes supplying, directly or indirectly, money, weapons, ammunition, explosives, means of communication, information, or "other things" to be used in the implementation of a "terrorist act".

The Syrian authorities lifted a long-standing state of emergency on 21 April 2011, but they enacted Legislative Decree 55 on the same day. The decree limits the time that a person may be lawfully held in detention without judicial review to 60 days for certain crimes, including terrorism offences.

6.3 Recommendations

Amnesty International urges the Syrian government to:

- Release all women human rights defenders and activists who are detained solely for peacefully exercising their rights to freedom of expression, association or assembly;
- Redefine "terrorism" so that it does not criminalize behaviour protected by international human rights standards, for example, distributing literature or other information;

¹³ UN Document: CAT/C/SYR/CO/1/Add.2, Consideration by the Committee against Torture of the implementation of the Convention in the Syrian Arab Republic in the absence of a special report, 29 June 2012.

- Ensure that all detainees have prompt access to their family and lawyers, to health professionals should they be in need of medical attention, and to judicial authorities so that the legality of their detention can be challenged.

I would be grateful if you would make this letter available to the members of the Committee in advance of the pre-sessional meeting.

Yours sincerely

A handwritten signature in black ink that reads "Tania Baldwin-Pask". The signature is written in a cursive, slightly slanted style.

Tania Baldwin-Pask

International Advocacy Programme