



COUNTRY PROFILE

The Preamble of the Constitution recognises that the Constitution is being drafted to achieve equality between Egyptians 'in rights and duties with no discrimination'. Article 4 recognises that national unity is based 'on the principle of equality, justice and equal opportunity between citizens'. Under Article 9, the State has the obligation to ensure 'equal opportunity for all citizens without discrimination'. Article 11 of the Constitution focuses on the place of women and motherhood as follows:

The State commits to achieving equality between women and men in all civil, political, economic, social, and cultural rights in accordance with the provisions of this Constitution. The State commits to taking the necessary measures to ensure appropriate representation of women in the houses of parliament, in the manner specified by law. It grants women the right to hold public posts and high management posts in the State, and to appointment in judicial bodies and entities without discrimination.

The State commits to the protection of women against all forms of violence, and ensures women empowerment to reconcile the duties of a woman toward her family and her work requirements.

The State ensures care and protection and care for motherhood and childhood, and for breadwinning, and elderly women, and women most in need.

This is a progressive provision concerning the rights of women within the family in that it ensures equality between men and women, representation of women, protection against all forms of violence, and adopts an intersectional approach towards protecting motherhood, elderly women, and women most in need. However, it has some claw back clauses. For instance, 'within the provisions of this Constitution' women are exposed to discriminatory practices under Sharia law. Moreover, while the provision requires the State to empower women, it provides that such empowerment is done with the view of reconciling 'the duties of women toward her family and her work requirements'. Article 60 of the Constitution on inviolability of the human body can also be applied in instances of physical violence against women since it provides against '[a]ny assault, defilement or mutilation' of the human body.

Women's right to equality is further protected by Article 53 that provides that '[c]itizens are equal before the law, possess equal rights and public duties, and may not be discriminated against' on the basis of, amongst others, sex and any other reason. The inclusion of any other reason can be extended to same-sex couples. Furthermore, the State has to 'take all necessary measures to eliminate all forms of discrimination, and the law shall regulate the establishment of an independent commission for this purpose'.

The family as the basis of society receives constitutional protection under Article 10 of the Constitution. The family is 'based on religion, morality and patriotism'. The Constitution also protects the right to own private property. Under Article 35 of the Constitution, '[p]rivate property is protected. The right to inherit property is guaranteed. Private property may not be sequestrated except in cases specified by law, and by a court order'.

The Preamble of the 2014 Constitution of Egypt affirms that the 'principles of Islamic Sharia are the principle source of legislation, and that the reference for interpretation thereof is the relevant texts in the collected rulings of the Supreme Constitutional Court'. Article 2 further provides that 'Islam is the religion of the State and Arabic is its official language. The principles of Islamic Sharia are the principle source of legislation'. Recognising pluralism for Christians and Jews, Article 3 of the Constitution states that '[t]he principles of the laws of Egyptian Christians and Jews are the main source of laws regulating their personal status, religious affairs, and selection of spiritual leaders'. Article 7 of the Constitution establishes the Al-Azhar as 'an independent scientific Islamic institution, with exclusive competence over its own affairs'. The Al-Azhar is 'responsible for preaching Islam and disseminating the religious sciences and the Arabic language in Egypt and the world'. Hence, while other aspects of law in Egypt are regulated by French civil law, family law is regulated by Islamic Sharia law. In 1920, Egypt introduced its first codified Muslim Family Law.

Treaty	Date of ratification	Reservations/Declarations
CEDAW	18 September 1981	“In respect of Article 16: Reservation to the text of Article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic Sharia’s provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementary which guarantees true equality between the spouses. The provisions of the Sharia lay down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The Sharia therefore restricts the wife’s rights to divorce by making it contingent on a judge’s ruling, whereas no such restriction is laid down in the case of the husband. In respect of Article 29 The Egyptian delegation also maintains the reservation contained in Article 29, paragraph 2, concerning the right of a State signatory to the Convention to declare that it does not consider itself bound by paragraph 1 of that Article concerning the submission to an arbitral body of any dispute which may arise between States concerning the interpretation or application of the Convention. This is in order to avoid being bound by the system of arbitration in this field. General reservation on Article 2: The Arab Republic of Egypt is willing to comply with the content of this Article, provided that such compliance does not run counter to the Islamic Sharia.”¹³⁰
African Charter	20 March 1984	Egypt entered the following reservations upon ratification: “that the application of Article 8 and paragraph 3 of Article 18 should be in the light of Islamic Sharite Law and not to its detriment; and that Egypt interprets the first paragraph of Article 9 as being applicable only to information, the obtaining of which is authorised by Egyptian laws and regulations’.” ¹³¹
Maputo Protocol	Not ratified	-

These reservations pose a major challenge to the protection of the rights of women in the family, considering that Article 18 (3) of the Charter specifically provides for the States’ obligation to eliminate all forms of discrimination against women and to ensure the protection of the rights of women and children as stipulated under international law.

¹³⁰ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en#EndDec (accessed 16 April 2024)

¹³¹ <https://treaties.un.org/doc/Publication/UNTS/Volume%201520/v1520.pdf> (accessed 16 April 2024)

MAIN TRENDS IN FAMILY LAW

There have been several legal reforms related to family law in Egypt even before the Constitution. On 1 January 2000, there was the adoption of Law No.1 of 2000 that concerned backlogs of cases and inefficient legal procedures, which are mainly challenges that women face since they are the plaintiffs in most matters.¹³² Article 20 of Law No.1 of 2000 also gave women the right to file for no-fault divorce, albeit it was at the expense of forfeiting their financial rights, and Article 17 allowed women in unregistered marriages to file for divorce.

Concerning custody, women have more rights than men because of gender stereotypes and usually men have to struggle to have custody of the child. For instance, in 2011, a family court had to allow an ex-husband to have custody of his children to stay at his home once a month.¹³³

Under Article 6 of the Constitution, any person born to either an Egyptian father or an Egyptian mother can have Egyptian citizenship.

Law 126/2008 has set the minimum age of marriage at 18 but does punish perpetrators.¹³⁴

With regard to inheritance, Law No. 77 of 1943 was amended in 2017 to penalise intentionally depriving women/heirs of their inheritance. Article 49 stipulates that anyone who denies an heir their legitimate share of inheritance shall be punished by imprisonment for a minimum of 6 months and a fine of up to LE100,000 [US\$5,645]. The article adds that any person who withholds a document proving a person's legal right to inheritance shall be punished by imprisonment of 3 months and a fine of no less than LE10,000 [US\$564].¹³⁵ For Christians, recently, an Egyptian Christian woman contested the fact that she inherits less than her brothers and the court ruled in her favour. However, her case is only a judicial precedent for Christian women and not applicable to Muslim women.¹³⁶

KEY GAPS AND CONTESTATIONS

(i) Reservations to CEDAW and non-ratification of the Maputo Protocol:

Egypt's reservation to CEDAW and non-ratification of the Maputo Protocol limits the promotion and protection of women's rights within the family.

(ii) Only Sharia law to regulate family:

In 2021, the government put forward a new draft bill on personal status and family. However, this was considered controversial and had to be withdrawn.¹³⁷ The legislature rejected the bill as it did not want to move away from Islamic law when it comes to 'divorce rights and procedures for husbands and wives, visitation rights, child support payments, and the distribution of various facets of child custody and guardianship'.¹³⁸ The draft bill contained provisions against the Constitution such as restricting women's rights to initiate divorce and to child custody and requiring the patriarch's approval for women's marriage.¹³⁹

(iii) Wife obedience and head of household:

According to Law No 100 of 1985, the husband is responsible for providing for the children and thus is impliedly the head of the family.¹⁴⁰ The law also provides that a wife must obey her husband. In the event there is no obedience, the husband may file for a no-obedience complaint and withdraw his financial support to the wife. Both can decide where to live but a woman is expected to follow her husband when choosing the matrimonial home. Upon divorce, the wife may keep the matrimonial home when she has custody of the child but loses this privilege when the children reach majority or when she loses custody.¹⁴¹

132 M Al-Sharmani 'Recent reforms in personal status laws and women's empowerment: "Family courts in Egypt"' (2007) at 3. Available at <https://assets.publishing.service.gov.uk/media/57a08bcae5274a27b200d65/FamilycourtsFinalPaper.pdf> (accessed 17 April 2024)

133 Id at 20

134 <https://www.ilo.org/dyn/travail/docs/464/Amendments%20to%20Child%20Law%20No%2012%20of%201996%20-%2015%20June%202008.pdf> (accessed 17 April 2024)

135 <https://english.legal-agenda.com/egypt-denying-women-inheritance-is-a-crime-subject-to-imprisonment/> (accessed 17 April 2024)

136 BBC News 'Egyptian woman wins 'court battle' over unequal inheritance laws' (25 November 2019) <https://www.bbc.com/news/world-middle-east-50544239> (accessed 11 July 2022)

137 N Ahmed 'The regime between stability and stumbling: Family law in Egypt' *Carnegie Endowment for International Peace* (3 August 2021) Available at <https://carnegieendowment.org/sada/85081> (accessed 12 July 2022)

138 NJ Brown 'The battle over family law in Egypt shows only the personal can be political, and then only so far' *Carnegie Endowment for International Peace* (12 July 2022) <https://carnegieendowment.org/2022/07/12/battle-over-family-law-in-egypt-shows-only-personal-can-be-political-and-then-only-so-far-pub-87488> (accessed 11 July 2022)

139 Ahmed 9 (n above)

140 <https://wbl.worldbank.org/content/dam/documents/wbl/2024/snapshots/Egypt-arab-rep.pdf> (accessed 17 April 2024)

141 <https://ouclf.law.ox.ac.uk/modernizing-muslim-family-law-the-case-of-egypt/> (accessed 17 April 2024)

(iv) Polygamy:

According to amendments to Laws No. 25/1920 and 25/1929 in 1979, a husband can marry a second wife only with the consent of the first wife.¹⁴² If that was not the case, this could be considered as harming the first wife and automatic divorce could be granted. This sparked debate since it was seen as a restriction on polygamy.¹⁴³ After several contestations of this law being unconstitutional, in 1985, the court declared this law as being unconstitutional. There were several laws adopted to regulate the matter until the 2000 Law that provides that a woman just needs to prove that she can no longer live with her husband for a divorce in case of remarriage. Despite the law being considered revolutionary, it still recognises polygamy.

RECOMMENDATIONS

International treaties:

- ▶ Lift reservations to the CEDAW.
- ▶ Ratify the Maputo Protocol without any reservation.

Law reforms:

- ▶ Ensure the protection of women as per international human rights standards, rather than as per Islamic Sharia law and discriminatory interpretation when it comes to inheritance, divorce and polygamy.
- ▶ Adopt a law in line with the Constitution that provides for the protection of women against violence, including domestic violence.

¹⁴² N Bernard-Maugiron 'Courts and the reform of personal status law in Egypt: Judicial divorce for injury and polygamy' in E Giunchi (ed) *Adjudicating family law in muslim courts* (2014) at 111. Available at https://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers17-07/010061047.pdf (accessed 17 April 2024)

¹⁴³ As above