

INFORMATION SHEET

Reforming family law



READ AND REFLECT

The following text provides suggested contents for a knowledge input to precede the exercise: 'Reforming family law' which can be found on page 194 of the 'FORB facilitators toolkit'. Please adapt the contents to your context, including relevant real-life examples.

The need for and approaches to reform of religious family law

Family and personal status laws govern many areas of life such as marriage, divorce, inheritance, child custody, adoption and so on. Many countries have pluralistic religious family and personal status laws, so people who are, for example, registered as Christians, Muslims, Jews or Hindus (or as belonging to different branches of religions) have different legal frameworks for these aspects of life. In Lebanon, for example, there are 15 separate personal status codes – one for each registered religion with separate laws for different Christian denominations.

All law, whether religious or secular is based upon values and ideas. There is, therefore, nothing automatically problematic about legislation having a religious value basis so long as the legislation enacted respects the human rights which states have a duty to uphold. In addition, many minority communities regard separate legal codes as a protection from forcible assimilation – being forced to live in accordance with majoritarian religious edicts on such matters.

However, religious family and personal status laws often do violate human rights – in particular, human rights provisions on non-discrimination against women. Over 60 percent of the 440 reservations entered by states against the Convention of Elimination of all Discrimination against Women (CEDAW), are based on religion. The most reserved article of all UN human rights treaties is article 16 of CEDAW, which focuses on ending discrimination against women in marriage and family matters.

The CEDAW Committee, which monitors implementation of the Convention, has clearly stated that reservations to article 16 should be reviewed and modified, since they are impermissible and go against the very object and purpose of the convention.

Unfortunately, states and religious communities often misuse religion and culture to justify reservations and violations of international and constitutional rights to equality and non-discrimination. Religion and culture are also used in arguments against reform.

Sometimes freedom of religion or belief (FORB) is used as an argument for upholding a system of discriminatory religious family/personal status laws, despite the fact that no right may be used as a justification for violations of other rights.

Research shows that countries with discriminatory family/personal status laws tend to do poorly on gender equality surveys. Discriminatory laws often contribute to making women stay in abusive relationships and exposing them to sexual and gender-based violence. And if women are not considered as an equal in the family, or if they remain legal minors, they will never be able to reach their full potential.

A lack of equality for women and girls within the family also undermines their equality in other areas of society. Restrictions found in discriminatory personal status laws affect girls' and women's access to education, as well as their opportunities to economic and political participation. For example, married women may experience limitations of their rights to work and travel, asymmetrical inheritance rights and be subject of spousal obedience rules.

Reforming these laws is not only important for ensuring women's right to equality, non-discrimination and FORB. Reform is beneficial for the whole of society, including the economy, the country's prosperity and general well-being. SDG Indicator 5.1.1 has already identified family/personal status laws (religious and secular) as one of the four legal frameworks that must be reformed in order to accelerate progress to achieve gender equality and empower all women and girls.

Resistance to reform

Reform of religiously based discriminatory family/personal status laws remains one of the most difficult areas of law reform. Such laws often reflect deeply rooted customs, cultures and belief structures. These structures are reinforced by traditional, political and religious leaders, and may have considerable support among the general population as well.

Religious, cultural and ethnic identities are often vested in family/ personal status laws. In many contexts, attempts to address these laws are portrayed as a threat to group identity and rights. Often, patriarchal religious authorities and patriarchal state power work in tandem in opposing reform and are dependent on each other's validation.

Reform efforts are frequently perceived as a threat to the entire religious institution and to state power, as well as to those who benefit from the status quo. Who and what is perceived as being threatened varies from place to place, however, resistance to change is generally driven by a fear of losing power.

Sometimes resistance to reform is expressed using FORB as a justification for retaining discriminatory legislation. FORB includes respect for the autonomy of religious communities to organise and institutionalise their internal communal life as part of the right to express, practice and manifest religion or belief. These rights are important, protecting religious communities from state control and interference.

Just like freedom of expression, FORB enables all sorts of beliefs to be held and expressed. It gives religious leaderships the right to formulate and communicate gender equal or gender unequal doctrines and norms, and to organise the institutional life of the faith community in gender equal or unequal ways – for example choosing to only ordain male priests.

However, FORB also provides individuals with rights. Individuals are free to choose what they believe and to live in accordance with their beliefs (whilst respecting the rights and freedoms of others). They may choose to obey or not obey the doctrines and norms propounded by their religious leaderships in their personal lives. This is an essential protection for women.

Critically, FORB includes the right of the individual to protection from coercion in matters of religion. Nothing is more coercive than law. There is, of course, a need for personal status laws and law is inevitably coercive. However, no actor (secular or religious) may use the law to coerce people to follow discriminatory religious or secular norms and justify this with the institutional right to freedom of religion or belief. Individuals should not be legally coerced to follow discriminatory religious norms and should have access to a legal system where non-discriminatory laws are applied.

How can reform take place?

A process of reforming existing religious family/personal status laws can be driven by internal forces within a religious community, by other civil society actors or by the government itself, for example by reviewing existing family laws in the light of the international human rights framework and constitutional rights of equality and non-discrimination. Unquestionably, law makers and the parliament have an important role to play in this.

There are several ways to approach reform of existing religious family/personal status laws, all of which have their advantages and dilemmas. It is possible to combine different approaches at different stages, and within the same context, different actors may disagree on which approach is better.

A religious approach: This promotes change from within religious communities. It is based on a reinterpretation of religious sources and dialogue with religious leaders and scholars. It can often prove a slow and uphill process to get religious leaders on board and will often be met with resistance. Women within the community might find it difficult to get access to male religious leaders. But at the same time, if successful, this approach creates strong ownership and internal support for the changes, something that is crucial to ensure implementation of the reform in the religious courts.

A secular approach: This approach works to promote a joint civil law that can apply to everyone, and that has full respect for human rights. Such a law could either replace religious family law or offer an alternative for those who do not wish to be governed by religious family law. A joint civil law would also provide legal protection for those not belonging to a recognised religious group, including adherents of unrecognised religions and the non-religious, and protection for people who marry across religious divides. The drawback of this approach is that it may arouse greater resistance, being viewed as a 'foreign concept' by religious leaders and believers. There is also a risk that a joint civil code will be heavily influenced by the family law of the majority, at the expense of religious minority groups.

A legal approach: This approach uses courts, for example constitutional courts, to set new precedents or interpretations of the laws. This can be viewed as change enforced from the top down and may be regarded as illegitimate by religious authorities. Secular

courts are not automatically unbiased or in favour of human rights. Courts may be biased against religious minority groups and both male and female judges may be influenced by patriarchal values and/or by the state's desire to control citizens. It is important to work to ensure judges understand and value human rights. For reform to materialize in reality, it is vital to ensure systems to support the implementation of amended laws.

Often, the most effective way to reform is for different actors to work together, combining different approaches and using various arenas of influence in a strategic and sensitive way. This could involve combining internal dialogue on religious interpretation with advocacy towards UN treaty bodies, like the CEDAW committee, to put pressure on governments to review and reform family laws.

Regardless of which approach is taken to seeking legal reform, the realisation of gender equality will also be dependent not only on the law being changed but on successfully transforming attitudes in society so that officials want to implement reforms and citizens want to act in line with them.

The role of freedom of religion or belief in enabling reform

In the process of reforming religious family law, the full scope of freedom of religion or belief is important – including the right to freedom of thought and conscience. Without the freedom to think and question norms, values and interpretations, it is impossible for change to take place. The right to freedom of religion or belief:

- Allows space for theologians and scholars to reinterpret religious and faith-based texts in gender-sensitive ways.
- Empowers women to be agents in their own lives when it comes to religion.
- Contributes to the space and platform necessary for women to raise their concerns and question religiously-based discrimination.

Work to develop a 'culture' of freedom of religion or belief in the community and legal work to promote reform go hand in hand.

Follow this presentation with plenary discussion, and a discussion of case studies. (See the 'Reforming family law' exercise for details www.forb-learning.org/exercises/reforming-family-law.)

Find the FORB facilitators toolkit at www.forb-learning.org/raise-awareness/facilitators-toolkit.