

MALI¹
OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES
(Updated as at 10 September 2017)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Equality of spouses in marriage</p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly</i></p>	<p>Article 2 of the Constitution provides for equal rights and duties among citizens. Any discrimination based on social origin, colour, language, race, sex, religion, or political opinion is prohibited.²</p> <p>Article 6 of the Constitution provides that family life shall be inviolable and can only be touched within conditions preordained by the law.³</p> <p>The Personal and Family Code (PFC) is the main codified law that governs marriage and family relations in Mali,⁴ a country with a Muslim majority population.</p> <p>The PFC recognises both civil and religious marriages and</p>	<p>The Institute for Human Rights and Development in Africa (IHRDA) has filed a suit before the African Court on Human and Peoples' Rights on 26 July 2016, claiming that the PFC violates the provisions of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol). The claim is made on several basis including the non-alignment of the minimum age for</p>			<p>According to the 2016 UNDP Human Development Report, Mali ranked 175 on the UNDP Human Development Index and 156 on the UNDP Gender Inequality Index.⁸</p> <p>According to Mali's 2012/13 Demographic and Health Survey, about 9% of households in Mali are headed by women.⁹</p> <p>The PFC, which was drafted with the</p>

¹ This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Mali country table, we would also like to thank Alyssa Oravec from Harvard Law School, and Djingarey Maida for their inputs in its preparation.

² Article 2 of Mali's Constitution (1992), https://www.constituteproject.org/constitution/Mali_1992.pdf?lang=en

³ Article 6 of Mali's Constitution (1992), https://www.constituteproject.org/constitution/Mali_1992.pdf?lang=en

⁴ Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Soumaila T Diarra, "Women's rights in Mali 'set back 50 years' by new 'Family Code' law", *Guardian*, 1 May 2012, <https://www.theguardian.com/global-development/2012/may/01/womens-rights-mali-50-years>

<p><i>state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>applies to all Malians regardless of religion.⁵</p> <p>Despite the equality guarantee under Article 2 of the Constitution, the PFC provides for a marital framework based on 'reciprocal' or 'complementary' rights (as opposed to 'equal' rights) between the two spouses, whereby in return for maintenance and protection from her husband, a wife is expected to obey him. Thus:⁶</p> <ul style="list-style-type: none"> Article 318 of the PFC defines marriage as a contract between spouses that gives rise to the obligation to ensure the material and moral direction of the family as well as to nurture and raise children for the future; 	<p>marriage for girls with the Protocol and the unequal right to inheritance between women and men.⁷</p>			<p>assistance of conservative Muslim groups, came into force amidst concerns by feminist groups that it takes a conservative approach towards the role of women in marriage and family relations, thereby denying women their rights and discriminating against them.¹⁰</p> <p>According to local advocates Muslims opt to marry in mosques rather than civil courts.</p>
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⁸ UNDP, "Human Development Report 2016", Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

⁹ Planning and Status Unit et. al and ICF International, "Mali Demographic and Health Survey 2012-2013", Table 2.8, p. 24, <http://dhsprogram.com/pubs/pdf/FR286/FR286.pdf>

⁵ Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Soumaila T Diarra, "Women's rights in Mali 'set back 50 years' by new 'Family Code' law", *Guardian*, 1 May 2012, <https://www.theguardian.com/global-development/2012/may/01/womens-rights-mali-50-years>

⁶ Articles 316, 318-319 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

⁷ Institute for Human Rights and Development in Africa, "Discriminatory provisions of Mali's Family Code in conflict with the Maputo Protocol", 2016, <http://www.ihrda.org/2016/08/discriminatory-provisions-of-malis-family-code-in-conflict-with-the-maputo-protocol/>

¹⁰ Matthew Squire, "Towards a Legal Pluralistic Approach of Law Reform: a Case Study of Mali's Failed Family Law Reform of 1996-2009", (The Centre for Human Rights and Legal Pluralism Working Paper Series, 5:2, 2017), p. 16, https://www.mcgill.ca/humanrights/files/humanrights/ihr_i_wps_v5_n02_squire.pdf; Soumaila T Diarra, "Women's rights in Mali 'set back 50 years' by new 'Family Code' law", *Guardian*, 1 May 2012, <https://www.theguardian.com/global-development/2012/may/01/womens-rights-mali-50-years>; FIDH, "Mali's new Family Law: women's rights defined, discrimination upheld", *Press Release*, 9 December 2011, <https://www.fidh.org/en/region/Africa/mali/Mali-s-new-Family-Law-women-s>

	<ul style="list-style-type: none"> Article 316 provides that the wife must obey her husband and the husband must protect his wife; Article 319 provides that the husband is the head of the family and he is responsible for the financial maintenance of the family. The wife with income may contribute to the household expenses. 				Traditional marriages in villages usually take place at home. Women often have difficulty getting a copy of the marriage registration forms, in order to access redress in the event of a marital problems.
<p>Minimum and equal legal age for marriage</p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>The minimum legal age for marriage is 16 for females and 18 for males as per Article 281 of PFC. Article 281 also provides that the head of the administrative district may permit girls and boys below the minimum legal ages for marriage to marry on serious grounds¹¹</p> <p>Article 281 does not permit the authorisation of the marriage of girls and boys below 15.¹²</p> <p>Under Article 282 of the PFC, any civil registrar or clergymen who celebrates the marriage of a person who has not reached the minimum legal age for marriage</p>		The Government of Mali passed the PFC after much debate over the minimum age for marriage. ¹⁴		According to local advocates, consent of girls is merely taken as any response given by the girl, when she is asked whether she wants to marry. Child and early marriage is common, and there are cases of parents who married off girls for the simple reason that they are followed on the way to school, sometimes as young as 13 years.

¹¹ Article 281 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

¹² Article 281 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

	<p>will be penalised (imprisonment and fine).¹³</p> <p>Mali has ratified the Child Rights Convention.</p>				<p>According to UNICEF's State of the World's Children 2016 report, 55% of women aged 20- 24 in Mali were first married by 18 and 15% were first married by 15.¹⁵</p> <p>According to UN World Marriage Data 2015, the average age of first marriage among Malian females decreased from 19.9 in 2009 to 18.5 in 2012/13. Similarly, during the same period, the average age of first marriage among Malian men fell from 27.6 to 26.4.¹⁶</p> <p>According to Girls</p>
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¹⁴ Girls Not Brides, "Mali", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/mali/>

¹³ Article 282 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

¹⁵ UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf

¹⁶ United Nations Population Division, "World Marriage Data 2015", <https://esa.un.org/ffps/Index.html#/maritalStatusData>

					Not Bride, socio-economic factors such as limited access to education by girls as well as harmful cultural practices such as forced and polygamous marriages contribute to the high prevalence of child marriage in Mali. ¹⁷
<p>Women's consent to marriage</p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b)</p>	<p>Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, <i>ijbar</i> marriages are prohibited.</p> <p>Article 283 of the PFC states that marriage is not possible if there is no consent. Consent is not valid if it was obtained through violence or made in error by the person.¹⁸</p> <p>The mandatory registration of marriages is provided for in Article 173 of the PFC.¹⁹</p>			<p>The PFC mandates civil registrars and clergymen to conduct marriages.²⁰ Civil registrars are legally obliged to verify the consent of spouses and provides for punishment against them should they fail to verify to consent.²¹ However, clergymen do not have a similar legal obligation to do so, nor is there</p>	<p>According to information gathered by the Immigration and Refugee Board of Canada as well as the OECD:²³</p> <ul style="list-style-type: none"> Forced marriages, particularly among children, are common in Mali, indicating that the law against forced marriages is not effectively

¹⁷ Girls Not Brides, "Mali", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/mali/>

¹⁸ Article 283-287, 299 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

¹⁹ Article 173 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

²⁰ Articles 290-299, 300-305, 282 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

²¹ Article 287 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

<p>Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>				<p>punishment for clergymen who fail to verify consent of spouses.²²</p>	<p>enforced;</p> <ul style="list-style-type: none"> • There has been a recent increase in forced marriages due to political and economic instability, as well as military conflict.
<p>Women's capacity to enter into marriage</p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b)</p>	<p>Consent of male guardian (usually father or brother) of bride is required to consent to marriage. If bride has neither a father or brother, the practice is that a male relative on the father's side will act as guardian.</p>				

²³ Immigration and Refugee Board of Canada, "Mali: Forced marriage, including the prevalence of forced marriage, related legislation, state protection, support services and ability of women to refuse a forced marriage", 2016, <http://www.refworld.org/docid/57a18aed4.html>; OECD Development Centre, "Mali", *Social Institutions and Gender Index*, 2013, pp. 2-3, <http://www.genderindex.org/sites/default/files/datasheets/ML.pdf>

²² Institute for Human Rights and Development in Africa, "Discriminatory provisions of Mali's Family Code in conflict with the Maputo Protocol", 2016, <http://www.ihrda.org/2016/08/discriminatory-provisions-of-malis-family-code-in-conflict-with-the-maputo-protocol/>

<p>Paras. 15-16 GR21 Para. 34 GR29</p>					
<p>Polygamous marriages</p> <p><i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>Under the PFC, a couple may opt to get married under a monogamous or polygamous matrimonial regime. Where the couple opt for a:²⁴</p> <ul style="list-style-type: none"> • A monogamous matrimonial regime, the man can revise the marriage regime to a polygamous regime with the consent of the existing wife; • Where the couple opt for a polygamous matrimonial regime, the man may marry up to a maximum of four wives at one time. <p>The matrimonial regime is chosen at the time of the marriage contract is signed or at the time the marriage is celebrated. The matrimonial option is stated in the marriage certificate.²⁵</p> <p>Any man who has engaged in the bonds of monogamous marriages and subsequently marries another, will be punished. Similarly a civil registrar or clergyman who consciously allow</p>	<p>The spouses in the case of <i>Monsieur A. T. v Madame A.D.</i> (Supreme Court, 2004), were committed to each other in a monogamous marriage. The husband subsequently entered into another marriage without the consent of his existing wife. The Supreme Court held that by the marrying a second wife without the express agreement of his existing wife, the husband had broken the rules of a monogamous marriage.²⁷</p>			<p>According to local advocates, polygamy is very common and it is not unusual for the husband to house multiple wives in the same house/compound.</p> <p>Polygamy is considered normal to Muslim women and a part of the Muslim identity.</p> <p>While there is a possibility to opt out, it is unusual for the couple to discuss whether their marriage will be a polygamous or monogamous one at the time of the marriage. And in instances when the woman tries to resist a polygamous marriage, she will be most likely</p>

²⁴ Article 307 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

²⁵ Article 308 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

	<p>a man in a monogamous marriage to marry will also be punished.²⁶</p>				<p>pressured into consenting to one, by her relatives.</p> <p>Even if in monogamous marriage – its not unusual for the husband to still consider polygamy with the pressure of divorce if the existing wives disagree.</p> <p>According to Mali's 2012/13 Demographic and Health Survey, about 35% of or marriages in Mali are polygamous. The survey also found:²⁸</p> <ul style="list-style-type: none"> • Older women were more likely than younger women to have co-wives. For instance, 50% of
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²⁷ Cornell Law School, "Mali", *Country Details*, <http://www.lawschool.cornell.edu/womenandjustice/Legal-and-Other-Resources/DisplayCountry.cfm?CountryID=82>
²⁶ Article 310 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>
²⁸ Planning and Status Unit et. al and ICF International, "Mali Demographic and Health Survey 2012-2013", Table 4.2.1, p. 53, <http://dhsprogram.com/pubs/pdf/FR286/FR286.pdf>

				<p>married women aged 45-49 reported having co-wives, as compared with 23% of women aged 20-24;</p> <ul style="list-style-type: none"> • Rural women were more likely to report having co-wives than urban women (22% versus 39%); • Women living in poorer households were more likely than women living in richer households to have co-wives. For instance, 35% of women living in households in the lowest wealth quintile reported having co-wives, as compared with 23% of women living in households in the highest quintile; and • Lower educated
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					<p>women were slightly more likely to report having co-wives than higher educated women. For instance, 38% of married women with no education reported having co-wives, as compared with 15% of women who has attained secondary or higher education.</p> <p>According to information compiled by the OECD, consent to a polygamous matrimonial regime is often obtained from the wife through coercion and abuse.²⁹</p>
<p>Divorce rights</p> <p><i>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court?</i></p>	<p>Pursuant to Article 325 of the PFC, divorce can be obtained on the basis of mutual consent, a breakdown in marital relations or by fault of a spouse.³⁰ Except in instances of divorce by mutual</p>				<p>According to information compiled by the Immigration and Refugee Board of Canada as well as</p>

²⁹ OECD Development Centre, "Mali", *Social Institutions and Gender Index*, 2013, p. 2, <http://www.genderindex.org/sites/default/files/datasheets/ML.pdf>

³⁰ Article 325 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

<p><i>What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>consent, it is compulsory for the couple to undergo a reconciliation process.³¹ Article 317 of the PFC prohibits the repudiation of either spouse.³²</p> <p>Generally, when seeking divorce on the basis of mutual consent, the couple are simply required simply to a draft agreement, settling the consequences of the divorce, the judge's approval. Generally, the couple are not required to state their reason for divorce and may freely determine the conditions and consequences of the divorce so long as they are not contrary to public order, common decency or interests of the children.³³</p> <p>A spouse may petition for a divorce on the grounds of prolonged breakdown of the relationship where: (i) the spouses have lived separately for three years; (ii) one of the spouses is unable to fulfil marital obligations; or (iii) the mental state of one of the spouses has for at least three</p>				<p>academic research, some of the challenges faced by women with regard to divorce include:³⁶</p> <ul style="list-style-type: none"> • Obstacles to access to justice that include legal procedures characterised by esoteric language, rigorous formalities, long procedures, unnecessary referrals, difficulties in obtaining the delivery of judgements in a timely manner, etc. In addition, many women cannot cope with the cost of bringing divorce proceedings before the court;
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³¹ Article 326 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

³² Article 317 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

³³ Article s337, 339-340 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Stephanie Lagoutte (ed.) with participation of Abraham Bengaly (Mali) et al, "Dissolution of Marriage, Legal Pluralism and Women's Rights in Francophone West Africa", (Bamako, Dakar, Niamey and Copenhagen: Danish Institute for Human Rights, 2014), p. 32, https://menneskeret.dk/files/media/dokumenter/udgivelser/kvinder_og_skilsmisser_i_vestafrika_engelsk_version_2014.pdf

	<p>been so altered that there is no longer any semblance of shared life between the spouses.³⁴</p> <p>Valid basis for a divorce on the grounds of fault include: (i) adultery; (ii) excesses; (iii) abuse or serious insults rendering married life impossible; (iv) the conviction of a spouse for a serious crime; (v) serious alcoholism or drug addiction; (vi) failure to honour a substantial commitment. In addition, a wife may seek divorce if the husband refuses to provide her with basic needs.³⁵</p>				<ul style="list-style-type: none"> • The lack of financial resources or employable skills due to lack of education, etc. preventing women from considering divorce as an option even though they may have valid grounds to do so; • Divorced women being “treated like pariahs,” especially when they were the party who initiated the divorce and face
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³⁶ Immigration and Refugee Board of Canada, “Mali: polygamy, including conditions to be met for a man to be able to marry a second wife; divorce, specifically when a woman requests a divorce, including the grounds and treatment of women by society and the authorities”, 2014, <http://www.refworld.org/docid/53ecb7c74.html>; Stephanie Lagoutte (ed.) with participation of Abraham Bengaly (Mali) et al, “Dissolution of Marriage, Legal Pluralism and Women’s Rights in Francophone West Africa”, (Bamako, Dakar, Niamey and Copenhagen: Danish Institute for Human Rights, 2014), pp. 26-31, https://menneskeret.dk/files/media/dokumenter/udgivelser/kvinder_og_skilsmisser_i_vestafrika_engelsk_version_2014.pdf

³⁴ Articles 348-349 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Stephanie Lagoutte (ed.) with participation of Abraham Bengaly (Mali) et al, “Dissolution of Marriage, Legal Pluralism and Women’s Rights in Francophone West Africa”, (Bamako, Dakar, Niamey and Copenhagen: Danish Institute for Human Rights, 2014), p. 33, https://menneskeret.dk/files/media/dokumenter/udgivelser/kvinder_og_skilsmisser_i_vestafrika_engelsk_version_2014.pdf

³⁵ Article 352 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Stephanie Lagoutte (ed.) with participation of Abraham Bengaly (Mali) et al, “Dissolution of Marriage, Legal Pluralism and Women’s Rights in Francophone West Africa”, (Bamako, Dakar, Niamey and Copenhagen: Danish Institute for Human Rights, 2014), pp. 34-36, https://menneskeret.dk/files/media/dokumenter/udgivelser/kvinder_og_skilsmisser_i_vestafrika_engelsk_version_2014.pdf

					<p>a number of prejudices on a daily basis. Consequently, women hesitate to ask for a divorce regardless of their reasons for doing so.</p> <ul style="list-style-type: none"> • Some men intentionally affect malevolent behaviour in order to force their wife to initiate the divorce, so as to avoid having to bear the cost of proceedings. In addition as soon as the judge grants the divorce, some men appeal the decision but then neglect the case in order to cause embarrassment for their wife.
Women's financial rights after	Generally, a wife is entitled to: ³⁷				

³⁷ Article 368 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natllex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Stephanie Lagoutte (ed.) with participation of Abraham Bengaly (Mali) et al, "Dissolution of Marriage, Legal Pluralism and Women's Rights in Francophone West Africa", (Bamako, Dakar,

<p>divorce</p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<ul style="list-style-type: none"> Financial maintenance if she has been placed in a situation of need arising from a divorce granted on the basis of the husband's fault. <p>The maintenance cannot exceed a quarter of the husband's total income and this fraction is reduced for polygamous marriages (1/8 for two wives; 1/12 for three wives; 1/15 for four wives)</p> <p>The financial maintenance ceases after five years. It may cease earlier if the wife: (i) remarries; (ii) is proven to have misconducted herself; or (iii) no longer needs the maintenance.</p> <ul style="list-style-type: none"> Damage resulting from the divorce. <p>Article 388 of the PFC states that the separation of property is the default marital property regime.³⁸</p>				<p>According to academic research the challenges faced by women with regard to their financial rights include the following:⁴¹</p> <ul style="list-style-type: none"> Financial maintenance is not often granted and even if it is, the amount is small because of the husband's lack of income. In addition, some husbands do not pay the court-ordered financial maintenance. Some women do not claim the maintenance to which they are entitled, through ignorance or
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Niamey and Copenhagen: Danish Institute for Human Rights, 2014), p. 38,

https://menneskeret.dk/files/media/dokumenter/udgivelser/kvinder_og_skilsmisser_i_vestafrika_engelsk_version_2014.pdf

³⁸ Article 368 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natllex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Stephanie Lagoutte (ed.) with participation of Abraham Bengaly (Mali) et al, "Dissolution of Marriage, Legal Pluralism and Women's Rights in Francophone West Africa", (Bamako, Dakar, Niamey and Copenhagen: Danish Institute for Human Rights, 2014), p. 38, https://menneskeret.dk/files/media/dokumenter/udgivelser/kvinder_og_skilsmisser_i_vestafrika_engelsk_version_2014.pdf

	<p>Nevertheless, regardless of the marital property regime adopted by the couple, the property consequences of all judicial divorces (i.e. except for divorce by mutual consent where property matters are agreed upon between the two spouses and approved by the judge), must be regulated by the judge who grants the divorce.³⁹</p> <p>Both mothers and fathers are obliged to pay for the maintenance and upbringing of their children.⁴⁰</p>				<p>even simply reserve.</p> <ul style="list-style-type: none"> • The lack of financial maintenance creates difficulties (e.g. in terms of housing) for divorced women especially those who do not have financial resources of their own because while in the marriage they did not work and were dependent entirely on their husband. Even for women with a sufficient income, social considerations mean that they often return to live with their
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⁴¹ Stephanie Lagoutte (ed.) with participation of Abraham Bengaly (Mali) et al, “Dissolution of Marriage, Legal Pluralism and Women’s Rights in Francophone West Africa”, (Bamako, Dakar, Niamey and Copenhagen: Danish Institute for Human Rights, 2014), p. 39,

³⁹ https://menneskeret.dk/files/media/dokumenter/udgivelser/kvinder_og_skilsmisser_i_vestafrika_engelsk_version_2014.pdf
Articles 338-342 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Stephanie Lagoutte (ed.) with participation of Abraham Bengaly (Mali) et al, “Dissolution of Marriage, Legal Pluralism and Women’s Rights in Francophone West Africa”, (Bamako, Dakar, Niamey and Copenhagen: Danish Institute for Human Rights, 2014), p. 37,

⁴⁰ https://menneskeret.dk/files/media/dokumenter/udgivelser/kvinder_og_skilsmisser_i_vestafrika_engelsk_version_2014.pdf
Articles 568 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

					family in order to escape the criticism, prejudice and difficulties that a life alone entails.
<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon re-marriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>Pursuant to Article 368 of the PFC, custody of minors is entrusted to the spouse in whose favour the divorce was granted unless the court orders that, in the best interests of the child, all or some of them are to be placed in the care and custody of either the other spouse or the third person. The court's decision on the matter is determined according to information collected either through a request made to the family or through the public prosecutor.⁴²</p>				<p>Accprding to local advocates, in practice, case of divorce usually child custody is given to the mother up till daughters are 15 years and sons are 7 years.</p> <p>According to academic research, in some cases, women refuse to apply for custody of their children because their income is inadequate to maintain the children.⁴³</p>

⁴² Article 368 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Stephanie Lagoutte (ed.) with participation of Abraham Bengaly (Mali) et al, "Dissolution of Marriage, Legal Pluralism and Women's Rights in Francophone West Africa", (Bamako, Dakar, Niamey and Copenhagen: Danish Institute for Human Rights, 2014), p. 38,

https://menneskeret.dk/files/media/dokumenter/udgivelser/kvinder_og_skilsmisser_i_vestafrika_engelsk_version_2014.pdf; American Bar Association, "Access to Justice for Mali", 2012, p. 1, http://www.americanbar.org/content/dam/aba/directories/roli/mali/mali_access_to_justice_assessment_2012.authcheckdam.pdf

⁴³ Stephanie Lagoutte (ed.) with participation of Abraham Bengaly (Mali) et al, "Dissolution of Marriage, Legal Pluralism and Women's Rights in Francophone West Africa", (Bamako, Dakar, Niamey and Copenhagen: Danish Institute for Human Rights, 2014), p. 38, https://menneskeret.dk/files/media/dokumenter/udgivelser/kvinder_og_skilsmisser_i_vestafrika_engelsk_version_2014.pdf

<p>Guardianship of Children</p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>Under the PFC, parental authority over the child is belongs to the mother and father.⁴⁴ In the event of a dispute, parental authority is entrusted to the spouse who has custody of the children unless the best interest of the child dictates otherwise.⁴⁵</p>				<p>According to local advocates, in case of divorce and if the husbands dies - in practice women's right to guardianship depends on the revenue of the mother and her ability to maintain the children. If she is unable to maintain, then children are usually given over to the father's family.</p>
<p>Family Planning</p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>Law No. 02-044 of 24/06/2002 on reproductive health provides that "men and women are equal in rights and dignity with regard to reproductive health" (free choice of number of children, spacing of children).⁴⁶</p> <p>Women have the right to decide when and how many children they want to have.⁴⁷</p> <p>Abortion is strictly prohibited by</p>				<p>According to World Bank data, the total fertility rate decreased from 7.0 children per woman in 1960 to 6.1 in 2015.⁴⁹</p> <p>According to Mali's 2012/13 Demographic and Health Survey:⁵⁰</p>

⁴⁴ Articles 562, 568-569 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Stephanie Lagoutte (ed.) with participation of Abraham Bengaly (Mali) et al, "Dissolution of Marriage, Legal Pluralism and Women's Rights in Francophone West Africa", (Bamako, Dakar, Niamey and Copenhagen: Danish Institute for Human Rights, 2014), p. 38,

⁴⁵ https://menneskeret.dk/files/media/dokumenter/udgivelser/kvinder_og_skilsmisser_i_vestafrika_engelsk_version_2014.pdf
⁴⁶ Article 569 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

⁴⁶ Mali State party report, U.N. Doc. CEDAW/C/MLI/6-7 (2015), para. 225, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁴⁷ OECD Development Centre, "Mali", *Social Institutions and Gender Index*, 2013, p. 4, <http://www.genderindex.org/sites/default/files/datasheets/ML.pdf>

	<p>law, except when it is necessary to save the pregnant woman's life.⁴⁸</p>				<ul style="list-style-type: none"> • The median birth interval in Mali is 33.5 months, with 21% of children being born less than 24 months after their siblings; • 26% of married women have an unmet need for family planning services, with 19% having an unmet need for spacing and 7% an unmet need for limiting of children; • 10% of married women are using a method of contraception, with 10% of women using a modern method; • Knowledge of at least one method of family planning
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⁴⁹ World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>
⁵⁰ Planning and Status Unit et. al and ICF International, "Mali Demographic and Health Survey 2012-2013", Tables 5.6, 7.1, 7.3, pp. 70, 87, 90,
<http://dhsprogram.com/pubs/pdf/FR286/FR286.pdf>

⁴⁸ Article 170 of the Penal Code (1961), http://www.wipo.int/wipolex/en/text.jsp?file_id=193676; Centre for Reproductive Rights, "The World's Abortion Laws", 2014,
<https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap2014.PDF>

					is quite high (85%) among married women in Mali.
<p>Personal rights of spouses</p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>Article 1 of the Constitution states that every individual has the right to liberty.⁵¹</p> <p>Article 5 of the Constitution states that all citizens have freedom in their choice of residence.⁵²</p> <p>Article 17 of the Constitution guarantees the right to work, which shall be equal for all.⁵³</p> <p>Despite the constitutional provisions stating otherwise, the PFC could potentially restrict the personal rights of a married woman as a result of the maintenance-for-obedience legal framework provided for under the law. Thus, a wife is obligated to:⁵⁴</p> <ul style="list-style-type: none"> • Obey her husband; • Live in the marital home chosen by the husband. 				<p>According to Mali's 2012/13 Demographic and Health Survey:⁵⁵</p> <ul style="list-style-type: none"> • 50% of married Malian women were employed at the time of the survey; • 76% of married women earning cash made independent decisions on how to spend their earnings; • 51% of married women aged 15-49 do not own a house while 61% do not own land;

⁵¹ Article 1 of Mali's Constitution (1992), https://www.constituteproject.org/constitution/Mali_1992.pdf?lang=en

⁵² Article 5 of Mali's Constitution (1992), https://www.constituteproject.org/constitution/Mali_1992.pdf?lang=en

⁵³ Article 17 of Mali's Constitution (1992), https://www.constituteproject.org/constitution/Mali_1992.pdf?lang=en

⁵⁴ Articles 316, 319 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>

⁵⁵ Planning and Status Unit et. al and ICF International, "Mali Demographic and Health Survey 2012-2013", Tables 17.1, 17.2.1, 17.4.1, 17.6.1, 17.7.1, pp. 274, 276, 279, 282, 284, <http://dhsprogram.com/pubs/pdf/FR286/FR286.pdf>

					<p>among women who do own assets, 10% and 9% of women own a house and land by themselves, respectively;</p> <ul style="list-style-type: none"> • Only 9% of married women participate either alone or jointly with their husband in making decisions pertaining to their own healthcare, major household purchases and visits to parents and other family members of the wife; and • 76% of women aged 15-49 accept at least one reason as a justification for wife beating. Women are most likely to agree that if a wife refuses to have sex with the husband (59%).
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					<p>According to World Bank data, female labour force participation increased from 36% in 1990 to 50% in 2016.⁵⁶ During the same period, male labour force participation increased from 66% to 82%.⁵⁷</p> <p>According to the 2016 UNDP Human Development Report.⁵⁸</p> <ul style="list-style-type: none"> • 7% of women over 25 have at least some secondary education as compared to 16% of men of the same age group; • 46% of females aged 15-24 are able to read and write a short sim-
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⁵⁶ World Bank, “Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)”, <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

⁵⁷ World Bank, “Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)”, <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

⁵⁸ UNDP, “Human Development Report 2016”, Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

					<p>ple sentence as compared to 62% of males in the same age group; and</p> <ul style="list-style-type: none"> • 62% of women are satisfied with their freedom of choice as compared to 68% of men.
<p>Inheritance rights</p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p>	<p>Generally, inheritance rights between women and men are unequal.</p> <p>Article 751 of the PFC provides that religious or customary law applies to all inheritance matters unless otherwise decided through a will on the distribution of the inheritance.⁵⁹ Under Islamic law, women are attributed half of the part attributed to a male.⁶⁰</p>				

⁵⁹ Article 751 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Institute for Human Rights and Development in Africa, “Discriminatory provisions of Mali’s Family Code in conflict with the Maputo Protocol”, 2016,

⁶⁰ <http://www.ihrda.org/2016/08/discriminatory-provisions-of-malis-family-code-in-conflict-with-the-maputo-protocol/>
Institute for Human Rights and Development in Africa, “Discriminatory provisions of Mali’s Family Code in conflict with the Maputo Protocol”, 2016, <http://www.ihrda.org/2016/08/discriminatory-provisions-of-malis-family-code-in-conflict-with-the-maputo-protocol/>

<p>Applicable CEDAW Provision Paras. 34-35 GR21 Paras. 49-53 GR29</p>					
<p>Violence against women in the family</p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p> <p>Applicable CEDAW Provision GRs 12 & 19 Para. 40 GR21</p>	<p>Article 1 of the Constitution states declares the human person as sacred and inviolable and everyone has the right to life, security and integrity.⁶¹</p> <p>Article 3 of the Constitution prohibits torture and inhuman, cruel, degrading or humiliating treatment or brutality.⁶²</p> <p>Mali has not adopted specific legislation criminalising domestic violence.⁶³</p> <p>The Penal Code contains some general prohibitions that are applicable to domestic violence such as murder, various forms of physical and sexual assault, kidnapping, etc.⁶⁴</p> <p>The Penal Code does not specifically criminalise marital rape.</p>		<p>Law enforcement officials have stated that criminal laws relating to rape apply to marital rape.⁶⁵</p>	<p>There is currently a Bill drafted by civil society organizations that has been sent to the national assembly. CSO's, pending with the Ministry of Women's Affairs.</p>	<p>According to Mali's 2012/13 Demographic and Health Survey:⁶⁶</p> <ul style="list-style-type: none"> • Overall, 44% of married women aged 15-49 reported having experienced emotional, physical and/or sexual violence from their spouse at least once, and 37% reported having experienced one or more of these forms of violence in the past 12 months; • 32% of married women aged 15-

⁶¹ Article 1 of Mali's Constitution (1992), https://www.constituteproject.org/constitution/Mali_1992.pdf?lang=en
⁶² Article 3 of Mali's Constitution (1992), https://www.constituteproject.org/constitution/Mali_1992.pdf?lang=en
⁶³ US Department of State, "Mali", *Human Rights Report*, 2016, p. 20, <https://www.state.gov/documents/organization/265488.pdf>
⁶⁴ Articles 160-191 of the Penal Code (1961), http://www.wipo.int/wipolex/en/text.jsp?file_id=193676
⁶⁵ US Department of State, "Mali", *Human Rights Report*, 2016, p. 20, <https://www.state.gov/documents/organization/265488.pdf>
⁶⁶ Planning and Status Unit et. al and ICF International, "Mali Demographic and Health Survey 2012-2013", Tables 19.9, 19.14, 19.15 pp. 318, 325, 326, <http://dhsprogram.com/pubs/pdf/FR286/FR286.pdf>

					<p>49 reported having experienced emotional violence from their spouse at least once, and 26% reported having experienced such violence within the 12 months prior to the survey;</p> <ul style="list-style-type: none"> • 30% of married women aged 15-49 reported having experienced physical violence from their spouse at least once, and 21% reported having experienced such violence within the 12 months prior to the survey; • 14% of married women aged 15-49 reported having experienced sexual violence
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					<p>from their spouse at least once, and 12% reported having experienced such violence within the 12 months prior to the survey;</p> <ul style="list-style-type: none"> • Among married women who had experienced spousal violence (physical or sexual) in the past 12 months, 21% reported experiencing physical injuries; and • A sizeable number of abused women in Mali do not seek assistance from any source for violence they have experienced. 69% of women never sought help and never told anyone about the violence they have
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					<p>experienced.</p> <p>According to the 2016 US Department of State report on Mali.⁶⁷</p> <ul style="list-style-type: none"> • Most rape cases are not reported as victims face pressure not to pursue charges against relatives; • Women are reluctant to file complaints of spousal abuse as they fear they would be interpreted as grounds for divorce.
<p>Nationality rights</p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p>	<p>A Malian man may pass his nationality to his non-Malian wife. However, the law does not specifically provide for a Malian woman to confer her nationality to her foreign husband.⁶⁸</p> <p>A Malian mother or father may pass their citizenship to their children regardless of whether the</p>				

⁶⁷ US Department of State, "Mali", *Human Rights Report*, 2016, pp. 20-21, <https://www.state.gov/documents/organization/265488.pdf>

⁶⁸ Article 23 of the Code of Malian Nationality (1962), <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=548e9fdd4>

<p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>child was born in Mali or abroad. This includes where the mother or father is a Malian and the other parent is a non-Malian.⁶⁹</p>				
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⁶⁹ Article 224 of the Personal and Family Code (2011), <http://www.ilo.org/dyn/natllex/docs/ELECTRONIC/96981/114895/F844479551/MLI-96981.pdf>; Mali State party report, U.N. Doc. CEDAW/C/MLI/6-7 (2015), para. 54, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>