

Report

## **Syria: Marriage legislation and traditions**



**LANDINFO**  
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## **SUMMARY**

Marriage legislation in Syria differs between Muslims, Christians and the Druze. A marriage or divorce needs to be registered at official religious family courts. Civil marriages cannot be contracted inside Syria. According to Syrian tradition, marriages are arranged through negotiations and understandings between families, but often on the initiative of the young couples themselves. Traditions vary from place to place and according to religion and class background. Because of the civil war, parts of the population are no longer able to register marriage and divorce, or to document individual civil status. The civil war has also caused changes to certain marriage traditions.

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# **1. INTRODUCTION**

This report concerns marriage legislation and traditions in Syria. After a brief introductory overview of ethnic and religious groups in Syria (Chapter 2), marriage legislation is described in Chapter 3. The report explains which institutions have the authority to marry and which official documents that are used to confirm marriage and divorce. Chapter 4 continues to describe key features of the marriage traditions, including how marriages usually are entered into, who makes decisions regarding the choice of spouse and the age at which it is common to marry. Finally, Chapter 5 describes how the civil war in Syria has affected the population's access to registering marriages and divorces and how the war has affected and changed certain aspects of the marriage traditions.

The laws relating to marriage and divorce differ for Muslims, Christians and Druze. The report covers legislation applying to all groups. However, because over 80% of the population are considered to be Muslims under Syrian family law, most attention is devoted to Muslim family law.

## **1.1 CONCERNING SOURCES**

The information concerning marriage legislation is based on the Syrian Personal Status Law of 1953, which regulates marriage and divorce, and on other relevant legislation. Reference is also made to various academic studies concerning the subject, including those of researcher Esther van Eijk, who has carried out observational fieldwork at several Christian and Muslim family courts in Syria (van Eijk 2016).

Very few empirical studies have been carried out concerning marriage traditions in Syria. For many years, the political situation has made it difficult for social scientists to carry out fieldwork. One exception is the Swedish anthropologist Annika Rabo, who has conducted numerous studies since the 1980s. The source material in this part of the report is therefore somewhat limited and based almost entirely on the studies by van Eijk and Rabo (van Eijk 2016; Rabo 2005; 2005b; 2011; e-mail correspondence, September 2017).

A related challenge is the relatively large variation within Syria. Household and family composition vary enormously, and the country's inhabitants manage family life in many different ways. There are considerable differences between urban and rural areas, between social classes and between different ethnic and religious groups. Also, society has changed and continues to change constantly. Customs that were common 30 or 50 years ago are not necessarily common today. The report therefore only describes the better-known aspects of the country's marriage traditions. However, the reader must also remember that not all social strata in Syria necessarily follow the norms outlined in this report.

The latter part of the report presents an overview of changes that the civil war has caused, and is primarily based on oral sources consulted during fact-finding missions to Syria and the region in general between 2015 and 2018. Some of the organisations consulted did not wish to be identified because of the sensitivity of their work in Syria. These sources have therefore been anonymized.

## 2. ETHNIC AND RELIGIOUS GROUPS IN BRIEF

Syria is a multi-religious and multi-ethnic society, with many different ethnic groups living side-by-side. The exact population composition cannot be determined precisely, as no official statistics are available. An estimated 85-90% of the population have Arabic as their native language, but the Arabic speakers belong to various religious groups. It is estimated that 60-65% of the population are Arabic-speaking Sunni Muslims. About 12% of the population are Christians, split between at least 14 different denominations. The majority of these have Arabic as their native language, but amongst them, there are also Armenians and groups who speak various Aramaic dialects. There are also small minorities of Muslims who speak Turkmen and Circassian languages. About 12% are Alawis and about 3% are Druze, both religious orientations with roots in Shia Islam. There are also small minorities of Shia Muslims (Twelver-Shia) and Ismaili Muslims. The Alawis, Druze, Shia Muslims and Ismaili Muslims all speak Arabic. About 10% of the population consider themselves to be Kurds and have Kurdish (Kurmanji) as their native language. These are almost exclusively Sunni Muslims, except for a small minority of Yazidis (Izady n.d.; Rabo 2013, p. 108).

The various minorities tend to converge in specific areas of the country. The Kurds live in the north along the border with Turkey. The heartland of the Alawis lies in the mountains in the northwest of the country, while the Druze tend to live in the southern province of Swayda. Most cities have also attracted immigrants from a wide variety of ethnic and religious groups and thus appear multiethnic, although the precise mix varies from city to city (Rabo 2013, p. 108-109).

## 3. MARRIAGE LEGISLATION – AN OVERVIEW

In Syria, family legislation, hereunder marriage, divorce, custody, guardianship, wills and inheritance, is regulated by the Personal Status Law (*qanun al-ahwal al-shakhsiyya*) of 1953, revised in 1975, 2003 and 2010. The law is a codification of Islamic law, Sharia. Specific official Sharia courts (*al-mahkama al-shar'iyya*) handle all types of cases under the Personal Status Law (van Eijk 2016, p. 49-51; Rabo 2011, p. 32-33).

The law applies to all Syrians, but certain exceptions are made for Druze, Christians and Jews,<sup>1</sup> who can apply their own religious laws regarding marriage, divorce, child maintenance, dowries, wills and inheritance. Druze and Christians have their own family courts competent to rule in these case areas (see sections 3.2 and 3.3). Other matters regulated by the Personal Status Law, such as guardianship and paternity issues, apply to all Syrians, regardless of religion (van Eijk 2016, p. 51-54, 90, 175). The Sharia courts are therefore competent to decide on issues relating to matters such

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<sup>1</sup> Almost all remaining Jews in Syria emigrated in the early 1990s. Today, it is estimated that there are fewer than 100 left in Syria. Information about Jewish family law in Syria can therefore be difficult to find and is not discussed further in this report.

as guardianship for all Syrians, regardless of religion, but they only consider issues relating to marriage and divorce when Muslims are involved.

All aspects of the law apply to Muslims and to marriage where one of the parties (the man) is Muslim. The law permits a Muslim man to marry a non-Muslim woman. Christian women who marry Muslim men do not need to convert. Children of such marriages are regarded as Muslims. A Muslim woman cannot marry a non-Muslim (Christian or Druze) man. Such marriages are considered void (*batil*). In order for a non-Muslim man to marry a Muslim woman, he must first convert to Islam (see also section 4.10 concerning marriage across religion) (van Eijk 2016, p. 64-65).

The Personal Status Law applies to marriages where one of the spouses is a Syrian citizen and the other is a foreign national, as well as to foreign Muslims from states where Islamic family law applies (van Eijk 2016, p. 53). It does not apply to Syrians and foreign nationals (Muslims and non-Muslims) who have entered into marriage in countries with civil marriage legislation. However, such marriages can generally be recognised and registered in Syria, unless they contradict Syrian public order (*ordre public*). For example, marriages entered into in another country between two people of the same gender will not be accepted. If a civil marriage is dissolved in another country, the divorce will normally also be allowed recognised and registered in Syria (Rabo 2011, p. 40).

It is important to underline that the law does not differentiate between different sects within Islam and that it applies to Sunni Muslims, Alawis and other Shia Muslim orientations represented in Syria (except for Druze, if one considers this to be a Muslim sect). There is no separate Shia Muslim family law or court of justice, as there is in Lebanon or Iraq, for example (van Eijk 2016, p. 52).<sup>2</sup>

All marriages must be registered with the courts in order for them to be officially recognised, either with the Sharia courts (Muslims), with the Druze court or with Christian churches (van Eijk 2016, p. 53; Rabo 2011, p. 34).

The following sections describe Muslim (section 3.1), Christian (section 3.2) and Druze (section 3.3) family law, with an emphasis on aspects such as registration procedures, minimum age for marriage and divorce rules.

### 3.1 MARRIAGE LEGISLATION FOR MUSLIMS

According to Islamic case law and the Personal Status Law, marriage is a contract between two parties where there must be an offer (*i'jab*) from one party and acceptance (*qabul*) from the other. The contract gives the man and woman different and clearly defined rights and duties in the marriage. The marriage is entered into through the parties, or their representatives, signing a marriage contract. The contract must also be signed by two witnesses. Among other things, the contract stipulates the size of the dowry (*mahr*) which the groom must pay the bride (van Eijk 2016, p. 215; Tabet 2005; CEDAW 2005, p. 86). The marriage must be registered with the Sharia court, but in practice, this is usually done at a different time than the actual wedding celebrations. Some families register the marriage with the court before the wedding celebrations and before the wedding is “consummated”, i.e. before the parties have moved together and

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<sup>2</sup> Landinfo understands that the Yezidis are not recognised as a separate religious group. They are presumably registered as Muslims in public registries in Syria and thus come under the jurisdiction of the Personal Status Law.



started their wedded life together. Other couples register their marriage after the celebrations are over and they have begun living together (see sections 3.1.2 and 4.4).

### 3.1.1 Registration of marriages with the Sharia court

Registration with the Sharia court is the only recognised procedure (for Muslims) in order to have a marriage legally recognised. Only the family courts have formal authority to conduct marriages. It is not possible to enter into a civil marriage in Syria (CEDAW 2005, p. 86; Tabet 2005).

There are a total of 24 Sharia courts in Syria, six of which are situated in Damascus. The courts are led by a single judge. The judges are lawyers who have graduated from law faculties of Syrian universities, without specialisation in family or Islamic law. There are no specific appellate courts, but cases from the Sharia courts can be appealed to a separate “Sharia chamber” in the Supreme Court (Court of Cassation) (van Eijk 2016, p. 54-55; Rabo 2011, p. 32-33).

In order to register their marriage, the spouses must submit an application to the Sharia court. The following documents must be enclosed with the application (van Eijk 2016, p. 218; Person Status Law 1953, article 40, 1):

- a certificate from the local *mukhtar*<sup>3</sup> which confirms the age, name and residential address of the parties and the name of the bride’s guardian. The certificate must also verify that there are no legal hindrances to the parties entering into marriage.
- extract of national civil registry information issued by the Civil Status Department (see section 3.1.2) showing the civil status of both parties
- medical certificate confirming that the parties do not have any diseases that prevent them from entering into marriage
- permission from the military authorities for those serving in the armed forces and those of conscription age (men aged between 18 and 42)
- permission from the security service if either party is a foreign national.

The registration process is normally completed by an assistant judge signing the marriage contract itself, either at home for a small fee, or at the court. The assistant or judge must ensure that all documentation enclosed with the application is in order. There is normally no celebration or ceremony associated with this process.

The spouses do not have to attend the court in person in connection with the registration of their marriage, but can be represented by representatives (*wakil*). The woman’s guardian for the purposes of the marriage (see section 3.1.4) can be her representative (international organisation, meeting, May 2017). The representative must present written authorisation from the party that is not present (humanitarian organisation, meeting, June 2018).

The courts use standard contracts (*sakk zawaj*) to which the names and personal details of the spouses are added, along with the names of the two witnesses and names of any representatives. There are also separate sections for the size of the dowry and any

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<sup>3</sup> *Mukhtars* are responsible for legalising certain types of documents and issue confirmations of identity and residential affiliation. There are *mukhtars* in every municipality in Syria and in all urban areas.

“special requirements”, i.e. other circumstances which the spouses have agreed to include in the contract. Although the contracts are standardised, the format and layout can vary to some extent from one court to another (NID, e-mail correspondence, September 2017; Rabo, e-mail correspondence, September 2017; van Eijk, meeting, June 2018).

### 3.1.2 Registration of marriages in the civil registry

The court must send a copy of the marriage contract to the *Civil Status Department* (*al-shu'un al-madaniyya*), which is a separate department under the Syrian Ministry of Interior, within ten days. This department is responsible for administering the civil registries (national registries) and issuing ID cards and other official identity documents. The department has its head office in Damascus along with regional offices in the provincial capitals and at sub-province level. Before the outbreak of civil war in 2011, there were around 280 local offices across the country (Landinfo 2017, p. 7). When the Civil Status Department receives notification of a marriage or divorce from the Sharia courts, they must update the civil status of the spouses in the civil registries. After the marriage has been registered, the department will issue a separate marriage certificate (*bayan zawaj*) and a family book (*daftar aila*) to the husband (DISCS n.d.; van Eijk 2016, p. 218; Landinfo 2017, p. 10-11; CEDAW 2005, p. 86; U.S. Department of State, n.d.).

Unmarried women are registered with their father's family and under the same *family number* as the father's family in the civil registry. The family number (*khana* or *qayd*) is the civil registry's archive key and has been in use since the first Syrian registry was established in 1922. The family number consists of a place name (village or district in a major city), followed by a number (normally at least two digits). All members of the extended family have the same family number.

When a woman marries, she is transferred from her father's family number to her new husband's family number. The number is stated on most official identity documents and recorded on marriage certificates (*bayan zawaj*) issued by the Civil Status Department. Today, all Syrian nationals have a unique national number (*raqam watani*) in addition to the family number. This change was introduced at the time the registries were digitalised in 2004 (Landinfo 2017, p. 7; Civil Status Department, meetings, September 2015 and September 2016; Civil Status Department, n.d.).

As a result of the ongoing civil war, the notification procedures between the Sharia courts and the civil registries do not always work (see section 5.1).

### 3.1.3 Late registration of marriages

The Personal Status Law also allows for late registration of unofficial religious marriages already entered into between the parties. The date of marriage will be the date specified by the spouses and witnesses. The courts will normally register the marriage even if there is no written private marriage contract, provided the spouses and two witnesses testify that the marriage has actually taken place, and provided all other terms are met and the requisite documentation is presented.

According to the Personal Status Law, if a child has already been born or a woman is verifiable pregnant, a marriage shall even be registered regardless of whether or not all the terms are met. Late registration is known as *tathbit al-zawaj* (affirmation of

marriage) and standard certificates used for this purpose by the Sharia courts have the heading *bayan ithbat zawaj sadir an al-makhama al-shar'iyya fi ...* (Confirmation of affirmation of marriage issued by the Sharia court of ...) (van Eijk 2016, s. 218; van Eijk, e-mail correspondence, March 2016; NID, e-mail correspondence, September 2017; Personal Status Law 1953, article 40, 2).

Registration is mandatory. It is a punishable offence to enter into marriage without registering it if the conditions for entering into marriage laid down in the Personal Status Law are not met. The spouses, witnesses and wedding officiant can be punished by a fine and, in some cases, a prison sentence. However, sanctions have rarely if ever been enforced in practice (UNICEF 2014, p. 13). In June 2018, the Syrian Parliament adopted an amendment to the Penal Code, which introduced stricter fines and punishments for anyone entering into a marriage privately without registering it and without all the conditions being met (SANA 2018). It is too early to assess what implications the amendment will have, in practice, for those who enter into a marriage without registering it.

#### **3.1.4 Guardian of the bride**

Any woman who is considered an adult (*kabira*), i.e. at least 17 years old as per the Personal Status Law, does not need permission of their guardian in order to marry. In practice, however, the guardians of women are usually always present and give their consent to the marriage. There is a social expectation that guardians should give their consent even though the women are of legal marrying age (Brørby & Hanson 2010; Rabo, e-mail correspondence, September 2017).

Although the law allows an adult woman to marry without the consent of a guardian, the judge is obliged to ask the guardian for his views concerning the marriage. If the guardian does not object to the marriage or if he has objections that are not sufficiently well-justified, the judge can allow the marriage to take place provided that the spouses have the same social status, which according to the Personal Status Law is determined by local customs (*urf al-balad*). A woman can marry a man of higher social status, but the opposite, where a woman marries below her standing, is problematic (see also section 4.1). Women under the age of 17 must always have the consent of their guardian in order to marry (CEDAW 2005, p. 86; van Eijk 2016, p. 216-217; Personal Status Law 1953, article 20-28; Rabo, e-mail correspondence, September 2017).

The woman's father is normally her guardian in connection with entry into marriage. If he is not available or he is deceased or unfit for the task, the paternal grandfather or another male relative, with priority according to the order of inheritance, will act as guardian (van Eijk 2016, p. 216; Personal Status Law 1953, article 21).

#### **3.1.5 Minimum age for marriage**

The minimum age to enter into marriage according to the Personal Status Law is 18 for men and 17 for women. If the parties are younger than this, they can still submit an application for marriage to the court, provided they are physically mature and over 15 (males) and 13 (women). If they are underage, their respective guardians must consent to the marriage. The judge may refuse to authorise marriage involving minors if the age difference between them is too great or if it is not in the best interests of the couple to marry. What is meant by interest of the parties (*maslaha*) is not further elaborated in the law (van Eijk 2016, p. 216; Personal Status Law 1953, article 18-19).

According to a source interviewed by the Norwegian embassy in Damascus, a judge can also approve a marriage of a girl who is less than 13 years old if she is pregnant. According to the same source, it is not difficult to obtain permission for marriage in such circumstances (Brørby & Hanson 2010).

### 3.1.6 Dowry (*mahr*)

A marriage implies that the man pays the woman a dowry. The dowry is the woman's right and the man's duty. An unpaid dowry is considered to be a debt which the husband owes his wife (van Eijk 2016, p. 220; CEDAW 2005, p. 87).

The Personal Status Law sets no upper or lower limits for dowries. If it is not specified in the contract, the size of the dowry should be determined according to what is customary amongst the woman's equals and according to local tradition (van Eijk 2016, p. 220; CEDAW 2005, p. 87).

The dowry is normally divided into an "immediate" dowry (*mahr mu'ajjal*), which is paid upon establishment of the contract, and a "delayed" dowry (*mahr muajjal*).<sup>4</sup> The delayed dowry should be paid in the event of divorce or if the husband dies, unless a different date is stipulated in the marriage contract. The dowry *does not have to* be split. All or part of the dowry may be either immediate or delayed (van Eijk 2016, p. 220; CEDAW 2005, p. 87).

### 3.1.7 Rights and obligations in marriage

The man and woman have different rights and obligations in marriage. The man is obliged to pay for his wife's maintenance (*nafaqa*), including housing, clothing, food and medical care. Islamic case law stipulates that the woman be entitled to the same standard of living as she had before she married (Tabet 2005, p. 2). The Personal Status Law states that the size and standard of the home must be in proportion to her social status. The maintenance payment must be determined based on the man's finances and may change over time (van Eijk 2016, p. 221; Personal Status Law 1953, Articles 65-71).

The husband is considered to be the head of the family, and the woman is obliged to act obediently towards him after she has received the immediate dowry. The duty of obedience means that she must live with her husband. If she leaves their shared home for no legitimate reason or prevents her husband from entering their shared home, she will be considered disobedient (*nashiza*) and will lose her right to maintenance for as long as she continues to act disobediently (van Eijk 2016, p. 221; Tabet 2005). There are no provisions laid down in law which directly refer to the sexual rights and obligations of the man and the woman, unlike classic Islamic case law, where the woman has the right to become pregnant and the man is entitled to the wife's sexual services (Rabo, e-mail correspondence, September 2017).

The woman may also lose the right to maintenance if she takes paid work outside the home without the consent of her husband (van Eijk 2016, p. 221; Tabet 2005).

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<sup>4</sup> The terms *mu'ajjal* (immediate) and *muajjal* (delayed) are pronounced differently in Arabic and written as *ayn* (ع) and *hamza* (أ), respectively. Immediate and delayed dowries are also referred to in Islamic case law as *mahr muqaddam* (immediate) and *mahr mu'akhar* (delayed) (Dahl 1992, p. 66).

Women are not obliged to share their income with their husband, but in practice, almost all working women contribute to the family's subsistence. The economic situation in Syria has made it virtually impossible for a family to live off the husband's income alone (Rabo, e-mail correspondence, September 2017).

### **3.1.8 Polygamy**

Under Islamic case law, the Personal Status Law allows a man to be married to up to four women at the same time, subject to certain conditions. However, the judge at a Sharia court may refuse to approve a polygamous marriage if there are no "legitimate grounds" for the marriage. What is meant by legitimate grounds (*musawwigh shar'i*) is not defined in law. The provision was amended through a legislative change in 1975. The intention behind the amendment was apparently to limit the man's possibility of taking more wives. The man is also obliged to treat his wives equally with regard to maintenance, and he must provide them with housing of the same standard (Brørby & Hanson 2010; van Eijk 2016, p. 79, 221, 249).

Polygamy does occur, but it is not very widespread. According to a study by the United Nations Development Fund for Women in 2005, 12% of respondents in the survey said that they had married two women. The ratio was 9% in urban areas and 16% in rural areas (UNIFEM 2005). After civil war broke out in 2011, the prevalence of polygamy has apparently increased considerably in some areas because far more males than females have been killed as a result of the war (Enab Baladi 2017b).

### **3.1.9 Divorce amongst Muslims**

There are three main types of divorce according to the Personal Status Law. These are divorce declared by the husband (*talaq*), divorce by mutual agreement based on the woman renouncing her economic rights in their entirety or in part (*mukhala'a*), and various forms of legal divorce granted by the court (*tafriq*) (van Eijk 2016, p. 222-228).

Both men and women have the right to remarry after divorce, but women must wait until the end of a "waiting period" to make sure she is not carrying her ex-husband's child. The waiting period (*idda*) is three full menstrual cycles for a woman who is not pregnant, four months and ten days for a widow, a whole pregnancy term if the woman is pregnant, a full year for women who have not menstruated for an extended period of time and three months for women of menopausal age. If the marriage was not consummated, no waiting period is imposed on the woman. The man is obliged to pay maintenance to the woman for the full waiting period (Brørby & Hanson 2010; van Eijk 2016, p. 227-228; Personal Status Law 1953, articles 121-128).

In the same way as marriage, divorces must be registered and approved by the court, who will then inform the Civil Status Department within ten days. The department will then update the civil status in the registries and record the divorce in the family book (the divorced woman is deleted from the husband's family book and re-entered under her father's family book). The Civil Status department may also issue a divorce certificate (*bayan talaq*) (DISCS n.d.; Landinfo 2017, p. 10-11; van Eijk 2016, p. 218-219; Civil Status Department, meeting, September 2017).

### 3.1.9.1 Declaration of divorce by the man – *talaq*

Any man over 18 years of age has the right to separate from his wife without having to give any specific reason (*talaq*). Women do not have a similar right. The man can declare divorce by saying “I divorce you”, either verbally or in writing. Men under 18 years of age need the consent of a judge in order to be entitled to *talaq*. Any man who is of age can delegate the right to divorce to another person, i.e. divorce by proxy. He can also delegate the right to his wife. In this case, it must be stipulated in the marriage contract, thus implying the woman’s right to divorce her husband (van Eijk 2016, p. 222).

A distinction is made between revocable (*raji’*) and irrevocable (*ba’in*) divorce. A revocable divorce means that a husband can change his mind and take his wife back within the waiting period. The divorce becomes final if the man does not take his wife back and the waiting period expires. In this case, the couple may only remarry if a new marriage is entered into with a new marriage contract and a new dowry. A man may only divorce and take his wife back two times. If he divorces through *talaq* for a third time, the divorce becomes irrevocable, and he loses his right to take her back or to marry her again. In such cases, the couple may only remarry if, during the intervening period, she has married another man, consummated the marriage and then divorced him. Each *talaq* must be declared on a separate occasion. A triple-*talaq*, where the man declares a divorce three times in a row or in the same turn, is considered to constitute one *talaq* (van Eijk 2016, p. 222 – 223).

A *talaq* must be registered with the court. According to the Personal Status Law, the judge must first defer registration for one month in the hope that the husband will change his mind. After a month, the judge will summon the parties to the court. If the husband insists on divorce, the judge has both a duty and a right to attempt to reconcile the parties, also through involving other family members. If the reconciliation proves unsuccessful, the judge must approve the registration of the divorce (van Eijk 2016, p. 225). In practice, the statutory provisions concerning deferred registration and mediation are often ignored. It is believed that many divorces are registered by judges on the same day that the divorce is notified to the court (van Eijk, meeting, June 2018).

Men are known to declare divorce privately, but fail to contact the court in order to register the divorce. In such cases, the woman may contact the court in order to verify that she is actually divorced or to request registration of the divorce (van Eijk 2016, p. 157-158).

A divorced woman can go to a court and claim compensation if her husband’s *talaq* was made on an arbitrary basis and without good reason. If an arbitrary divorce results in the woman suffering poverty and other difficulties, the man may be ordered to pay compensation, either in the form of regular maintenance payments (*nafqa*) for up to three years in addition to maintenance during the waiting period or in the form of a lump sum. The man will not be required to pay compensation if the woman has other relatives who can support her financially (van Eijk 2016, p. 224).

### 3.1.9.2 Divorce by mutual agreement – *mukhala’a*

*Mukhala’a* is divorce through mutual agreement. The spouses sign a divorce contract which states that the man agrees to the divorce in return for the woman paying the man compensation. In order for the contract to be valid, both parties must be of age and consent and the contract must stipulate the amount of financial compensation that the

woman must pay the man. For example, the compensation might be that the woman entirely or partly renounces her right to a delayed dowry and/or maintenance payments after the divorce. The parties are free to determine the amount of compensation. The judge at the Sharia court must not register the *mukhala'a* divorce immediately, but must first attempt to reconcile the parties by following the same steps as in the case of *talaq* divorces referred to above (van Eijk 2016, p. 224-225; CEDAW 2005, p. 89).

### 3.1.9.3 Legal divorce – *tafriq*

The Personal Status Law allows either party to apply to the court for a divorce, known as a legal divorce (*tafriq*), subject to certain conditions. These can be summarised as follows (van Eijk 2016, p. 225-226; CEDAW 2005, p. 90-95):

- A deficiency or defect associated with the husband: This could be a defect which prevents the marriage from being consummated, where the man has become mentally ill after the marriage or the impotence of the man. The woman cannot seek a divorce on this basis if she was aware of and accepted the defect at the time she entered into the marriage. The judge will consider the case and dissolve the marriage if there is no prospect of the man's defect being restored. A divorce on this basis is considered to be an irrevocable (*ba'in*) divorce.
- The man's disappearance or absence: If a man is absent or missing or if he is sentenced to imprisonment for more than three years, the woman may apply for a divorce after the absence has lasted at least one year. A divorce on this basis is revocable (*raji'*), which means that the man may take his wife back if he is found or is released from prison within the waiting period (*idda*).
- Non-payment of maintenance: Women can apply for divorce on this basis. The judge will give the man a maximum of three months to resume payment of the maintenance contributions. If he fails to do so, a divorce will be granted. This type of divorce is also revocable. The man may take back his wife during the waiting period if he resumes his payments.
- Disputes and animosity between the spouses: Either spouse can apply for a divorce on this basis. The party that submits a case must prove that the other party has caused so much harm that it has become impossible to continue the cohabitation. If such harm can be proven and the judge is unable to reconcile the parties, an irrevocable divorce may be granted. If harm cannot be proven, the judge must defer the decision for at least a month in the hope of reconciliation.

In the absence of reconciliation between the spouses after an application for a legal divorce has been submitted and the plaintiff stands by the claim, the judge must appoint two mediators from the spouses' families, who will attempt to reconcile the parties. If the reconciliation is unsuccessful and the mediators conclude that the husband has committed a wrongdoing, the mediators will recommend that an irrevocable divorce be granted. If they decide that the woman is also partly to blame or that both parties have wronged each other, the mediators will recommend a legal divorce in return for the woman returning all or part of the dowry. If the mediators conclude that neither party is to blame, they may recommend that the marriage be dissolved through a *mukhala'a* divorce, but only if the woman agrees to renounce all rights to financial compensation. Once the mediators have completed their task, they

will present a report to the judge with their recommendations. The judge has the right to reject the report and appoint new brokers (van Eijk 2016, p. 227).

### 3.1.10 Guardians and custody of children

The law makes a distinction between legal guardianship (*wilaya*) and daily custody (*hadana*) of children. The parents have joint custody of the children while they are married, but the father will always be the legal guardian (*wali*) of the children until they reach 18 years of age. Guardianship is divided into two categories: Guardianship of a person (*al-wilaya al-nafsiyya*) and guardianship of a minor's property (*al-wilaya ala al-mal*). Guardianship of a person means that the guardian is responsible for reaching decisions concerning education, medical treatment, upbringing, consent to marriage and other matters relating to the interest of the minor.

Both categories of guardianship fall to the child's father. If there is no father, the guardianship must be delegated to the paternal grandfather or another male family member according to the order of inheritance as defined in Islamic case law, subject to the condition that the male family member is related to the child in a manner which prevents marriage between them (*mahram*). The judge may appoint a woman, such as the child's mother, as guardian of the child's property (*wasi*). However, a woman cannot act as guardian of a minor (*wali*) (van Eijk 2016, p. 67).

Following divorce, women have custody (*hadana*) of their children. This means that the children will live with the mother, even though the father or another male family member in the father's family will always be the children's guardian. The mother can go to court and request custody, which she is entitled to until the child reaches 13 years of age in the case of boys or 15 for girls. The father then has the right to take over custody; however, the parents are free to agree on a different arrangement. If the mother remarries while the children are under 13 and 15 years of age, respectively, she will lose custody (van Eijk 2016, p. 67; van Eijk, meeting, June 2018; CEDAW 2005, p. 95).

The parent who does not have custody of the children has the right to see the children on a regular basis. In the event of a dispute, the judge may determine the exact visiting arrangements (CEDAW 2005, p. 95).

A mother with custody of minors may not obtain passports for the children or travel with them without the consent of the guardian.<sup>5</sup> Similarly, the guardian may not travel with the children without the mother's consent if the mother has custody (Directorate for Migration and Passports, meeting, September 2015; Syria's Ministry of Interior, n.d.; CEDAW 2005, p. 97).

The provisions of the Personal Status Law concerning guardianship apply to everyone, i.e. Muslims, Druze and Christians. However, the provisions of the law concerning daily custody of children apply only to Muslims, while Druze and Christians have their own family laws (van Eijk 2016, p. 67 – 68).

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<sup>5</sup> According to an article on the website Syrian Law Journal, posted in September 2017, some Syrian embassies have recently asked the Sharia court to grant Syrian women living abroad guardianship of their children so that they can apply for a passport for their children. Today, many women live abroad without their husbands because of the war in Syria. It is unclear to Landinfo whether such arrangements where guardianship is assigned to the mother are in accordance with the law. The article does not say anything about what the Sharia courts have decided regarding this issue (Syrian Law Journal, n.d.n.d.).



### 3.2 MARRIAGE LEGISLATION FOR CHRISTIANS

Syria is part of the historical region where Christianity first arose and spread, and the country has had a continuous Christian settlement throughout the history of the church. Many different denominations exist in the country today. These are often divided into three main categories: 1) Catholic churches, i.e. denominations that recognize the authority of the Pope in Rome, 2) Orthodox or Eastern Churches, and 3) evangelical or Protestant churches. The Greek Orthodox Church (also known as the Roman Orthodox Church, *rum urthudhuks* in Arabic), with around 500,000 members, is the largest denomination in Syria (van Eijk 2016, p. 59-63).

Article 308 of the Personal Status Law states that Christians and Jews must apply their own religious rules with regard to engagements, marriage and divorce. Since 2010, this has been expanded to cover inheritance and wills for both Christians and Druze. Marriages are entered into at a church and issues regarding divorce are dealt with by Christian religious courts (*mahakim ruhiyya*). A separate law passed in 1936 during the French Mandate period lists the Christian denominations which have a formal right to adopt their own family laws: Maronites, Greek Orthodox, Greek Catholic, Armenian Orthodox, Armenian Catholic, Syrian Orthodox, Syriac Catholic, Assyro-Chaldean, Chaldean (Catholic), Latin and Protestants.

Only these officially recognised denominations are permitted to adopt their own family laws, but this must be done within the applicable national framework, which means that the laws must be formally adopted and approved by legislative authority. The most recent example in this respect is a separate law for the Catholic Churches which was adopted by the Syrian Parliament, and then announced through a presidential decree as Law No. 31 in 2006. The Greek Orthodox, Syrian Orthodox, Armenian Orthodox, and evangelical churches also have their own family laws (van Eijk 2016, p. 59-63).

Marriages take place in the churches of the respective denominations. The spouses sign a marriage contract during a religious ceremony with two witnesses present. The church forwards the contract to the Civil Status Department, which then updates the civil status of the spouses in the population registry, in the same way as is done for Muslims. Divorce may be granted by the Christian family courts subject to certain conditions. The regulations vary from one denomination to another. Polygamy is forbidden for all Christians (Brørby & Hanson 2010).

Civil marriages entered into in another country will normally be registered in Syria, but this does not apply to Christians. Christian Syrians are obliged to marry religiously in a church even if the marriage is entered into abroad (Rabo 2011, p. 40).

Unlike Muslims and Druze, Christians are also not permitted to marry by proxy, but must be present during the ceremony (van Eijk, meeting June 2018).

The provisions of the Personal Status Law concerning guardianship and paternity, among other things, apply to all Syrians, regardless of religion. However, this situation changed for a period of time through the introduction of the Catholic Personal Status Law of 2006. This law gave the Catholic family courts full jurisdiction over all aspects of personal status, including guardianship and paternity. In addition, the law introduced the possibility of adoption and equal inheritance rights for men and women. This meant that the Personal Status Law of 1953 no longer had jurisdiction over Catholics in Syria in any area, while the other denominations in Syria were still bound by the Personal Status Law with regard to guardianship and paternity.

However, a revision of Article 308 of the Personal Status Law in 2010 changed this situation. Firstly, inheritance and wills, which had previously been regulated by the Personal Status Law, were now delegated to the various denominations. Thus, all denominations in Syria were given jurisdiction over these areas, along with marriage and divorce. At the same time, much of the Catholic Personal Status Law was disregarded through the abolition of provisions concerning adoption, guardianship and paternity. Thus, Catholics are once again bound by the Personal Status Law with regard to guardianship and paternity in the same way as other denominations in Syria. Precisely what this will mean for the application of the Catholic Personal Status Law is unclear, but in any case, marriage and divorce are now, as before, regulated by the Catholic law and under the jurisdiction of the Catholic family courts (van Eijk 2016, p. 90, 175).

#### **3.2.1.1 Catholic family law**

The Catholic Personal Status Law (*qanun al-ahwal al-shakhsiyya lil-tawa'if al-kathulikiyya*) was announced as Law No. 31 in 2006. The law applies to all Catholic denominations in the country. The minimum age of marriage is 18 years for men and women, but in special cases, permission may be granted for boys down to 16 years of age and girls down to 14. There are no requirements regarding guardians, but two witnesses must be present (Brørby & Hanson 2010; Makhul 2009).

The Catholic courts consist of three judges, who are also priests. All the judges have been trained in Oriental canon law in Rome. There are courts in Damascus, Aleppo, Homs, Latakia, Bosra and Qamishli. There is also a separate appellate court in Damascus (van Eijk 2016, p. 177-180).

Most of the cases that the courts consider concern the dissolution of marriage. Divorce is a problematic concept within the Roman Catholic Church and is not accepted in accordance with the Catholic Personal Status Law. However, the court may annul a marriage (*butlan al-zawaj*), which means that the spouses must prove that the marriage was established on false premises. Marriages may be terminated through annulment, but only those that were never considered by the church to be valid in the first place.

The annulment procedures of the courts are time-consuming and can last for over a year. The court will attempt to reconcile the parties at every stage of the process. Examples of acceptable grounds for divorce include circumstances where one of the parties was not qualified to marry because of impotence, one of the parties had not been baptized, one of the spouses did not know enough about the other party, the existence of a close family relationship between the spouses and that the marriage was established subject to an unlawful condition, such as that one spouse did not want children.

In addition to annulment (*butlan*), a court may also grant separation (*infisal*) in the event of infidelity, or if one of the spouses subjects the other to mental or physical danger. Upon separation, spouses are no longer obliged to live together, but the marriage between them will not be dissolved (van Eijk 2016, p. 182-185; Rabo 2011, p. 40).

#### **3.2.1.2 Orthodox family laws**

The three Orthodox churches in Syria have three family laws: the Greek Orthodox Personal Status Law (*qanun al-ahwal al-shakhsiyya wa-usul al-muhakimat lil-rum al-*

*urthudhuks*), the Syrian Orthodox Personal Status Law (*qanun al-ahwal al-shakhsiyya lil-siriyani al-urthudhuks*) and the Armenian Orthodox Personal Status Law (*qanun al-ahwal al-shakhsiyya lil-armani al-urthudhuks*). There are Orthodox family courts in each diocese, i.e. Damascus, Homs, Hama, Latakia and Aleppo. Since 2004, ordinary judges with a law education, including women, have been able to become a judge at a Greek Orthodox court, a position previously reserved for priests only (van Eijk 2016, p. 61-62; Makhul 2009).

The minimum age of marriage in the Greek Orthodox church is 18 for both men and women, and 17 for men and 15 for women with the written consent of both the bride's and the groom's guardians. The priest has the final say following an assessment of the couple's maturity. Within the Syrian Orthodox church, the minimum age of marriage is 18 for men and women without exception. The minimum age of marriage in the Armenian Orthodox church is 18 for men and 15 for women, but with the possibility of marriage at 16 for men and 14 for women if their priest believes that there are compelling reasons to permit the marriage to take place. Both men and women must have parental consent if they are under 21. The Orthodox Personal Status Law permits divorce subject to certain conditions. The procedures followed by the courts are normally easier and quicker than those followed by the Catholic courts (Brørby & Hanson 2010; van Eijk 2016, p. 61 – 62; Rabo 2011, p. 40).

#### **3.2.1.3 Protestant family law**

Protestants have their own family law, the Evangelical Personal Status Law (*qanun al-ahwal al-shakhsiyya lil-ta'ifa al-injiliyya*), as well as their own family courts in Damascus, Homs, Latakia and Aleppo. The minimum age of marriage is 18 for men and 16 for women, but marriages below these age limits may be accepted through a court ruling. Divorce is permitted subject to certain conditions (Brørby & Hanson 2010; Makhul 2009; van Eijk 2016, p. 62-63).

### **3.3 MARRIAGE LEGISLATION FOR DRUZE**

Article 307 of the Personal Status Law exempts Druze from the provisions of the law which do not conform to the practising of the Druze religion. Druze apply their own Druze Personal Status Law (*qanun al-ahwal al-shakhsiyya lil-ta'ifa al-durziyya*), adopted in Lebanon in 1948 and since revised in Lebanon in 1959. The law applies to Druze in Lebanon, Syria and Israel. The Druze in Syria have a single family court (*al-mahkama al-madhabiyiyya*), with a single judge in Swayda south of Damascus, where most Druze in Syria live. Appeals are handled by the "Sharia chamber" of the Supreme Court, in the same way as appeals from the Sharia courts. Marriages amongst Druze must be registered with the court. Two witnesses, a man and a woman, must witness the ceremony and sign the marriage contract. The minimum age of marriage is 17 for women and 18 for men.

Druze family law prohibits polygamy and mixed marriage, i.e. marriage between a Druze and a non-Druze. Divorce may be granted by the court after a court case during which both parties are heard. Remarriage after divorce is possible, but there is an absolute ban on remarrying persons to which one has been married to before. The Druze recognise complete freedom with regard to wills, in contrast to the Hanafi school of Islamic case law, and the Personal Status Law, which impose limits on how much Muslims can bequeath (Brørby & Hanson 2010; van Eijk 2016, p. 57-59).

## 4. MARRIAGE TRADITIONS IN SYRIA

This chapter looks at how marriages usually come about and are celebrated in Syria. It is difficult to describe these traditions because few concrete studies have been carried out, there are major geographical, ethnic and class variations, and traditions change over time. The chapter therefore describes certain general characteristics of the traditions. The reader must also remember that not all social strata in Syria necessarily follow the norms outlined here.

### 4.1 CHOICE OF SPOUSE

The family has a central role in Syrian society, and both men and women are expected to marry and have children. In Middle Eastern Muslim communities, marriage is considered to be a primary goal for both men and women, and Islam encourages everyone to marry if they can. Marriage also facilitates the only socially sanctioned sexual relationship between a man and a woman.

Accordingly, it is almost an obligation to help close friends and family members to find a spouse (Dahl 1992, p. 50; El Feki 2013, p. 31-32). In a study of the merchant classes of Aleppo, anthropologist Annika Rabo states that marriage is a family matter and that family members are involved in finding appropriate spouses for their relatives. A wide circle of close relatives feel they have both a right and an obligation to become involved as soon as a young man is considered to be ready for marriage. Girls and their families are expected to wait for offers from other men's families (Rabo 2005a, p. 89-90).

The family's social status and reputation are important factors when considering marriage. Most families look for a son- or daughter-in-law from a family with a fairly similar social rank or status to their own. In Rabo's study, people looked for a person from a "good" family with a "name", i.e. a family that the collective defines as "good" and with a good reputation. The more that is known about the other family before a decision concerning marriage is reached, the better. The merchant classes of Aleppo also take it for granted that marriages will bring together families with the same religion and ethnicity (Rabo 2005a, p. 90).

The principle of equal financial and social status (*kafa'a*) is also emphasised in Islamic case law and in the Personal Status Law, which states that a marriage will only be valid if the husband is of the same social standing as his bride. It is not considered to be an issue if the man marries below his standing. In the opposite case, there may be legal consequences.

The woman's guardian has the right to refer the matter to a court in order to have the marriage annulled if an adult woman marries a man who appears to be below her social status without the guardian's consent (van Eijk 2016, p. 217; Personal Status Law 1953, articles 26-29). Rabo states that, during 40 years of research in Syria, she has never heard of the legislative provision being applied. However, Syrian families are careful to ensure that their daughters do not "marry beneath themselves". This is not just a question of family prestige, but also about "genuine care for their daughters" (Rabo, e-mail correspondence, September 2017).

## 4.2 ARRANGED AND FORCED MARRIAGES

One or two generations ago, marriages were normally arranged by the family and spouses often had little say in the matter. Today, it is far more common for young people to be a lot more involved in the matter. The merchant classes of Aleppo say that young men and women should not be married off against their will. Moreover, young people themselves often establish ties with a member of the opposite sex without too much involvement from the rest of their family. In such cases, they must convince their parents that the marriage is appropriate (Rabo 2005a, p. 90).

Amongst the highly educated young adults of Damascus' middle classes, regardless of religion, Landinfo have observed, during a series of visits and stays in the country, that some people find a partner without much involvement from their family and then seek family approval of their partner. The families normally do not protest, provided that the other partner has a similar social background and religion. In other cases, efforts are made to persuade the person to agree to the marriage that is proposed by the family, but they are normally given the opportunity to reject candidates that are put forward.

Women in particular are sometimes forced to agree to a marriage which they are uncomfortable about, either for financial reasons or because the family wants the marriage to take place for other reasons (Freedom House 2010, p. 8-9). It is difficult to quantify this phenomenon. According to a survey by the United Nations Development Fund for Women in 2005, 14% of the female respondents responded that their family had chosen their future husband. The number varied according to the woman's level of education. Amongst women with upper secondary school or higher education, this only applied to 10%, whilst the corresponding figure for women with a primary education or no schooling at all was 19%. 7.5% of all female respondents, regardless of their level of education, had a husband chosen for them by their family against their will (UNIFEM 2005).

## 4.3 ENGAGEMENTS

Getting engaged (*khutuba*) is a popular tradition that is not legally binding. The tradition has very different expressions in Syria, depending on place of origin and what social class one belongs to. In many rural areas, young people are considered to be engaged as soon as the man's family has visited the woman's family and asked for her hand in marriage, whereupon the opening verse of the Quran, *al-fatiha*, is recited. The future bride or groom often takes no part in this ceremony, even though it may have been they themselves who initiated the engagement and insisted that the families meet.

Becoming engaged is usually what enables a young couple to meet each other. Amongst highly educated and 'modern' families, engagement means that a girl and boy can be seen in public and go out together, and that they can visit each other at their respective families' homes. Conservative families tend to impose stricter control over what the woman does and monitor the time she spends with her fiancée (Rabo, e-mail correspondence, September 2017).

Gifts and engagement rings may be given in connection with the engagement, but not always. The customs vary between communities. In urban areas, an engagement party is normally held for the immediate family (Rabo, e-mail correspondence, September 2017).

The engagement may be broken if the parties announce that they do not intend to marry. In some cases, any gifts that the woman has received will be returned to the man's family. A number of consecutive broken engagements will not be well-regarded, as people may begin to speculate whether there is something wrong with the person concerned. However, broken engagements are very common, particularly in communities where young people of different genders cannot socialise together unless they get engaged (Rabo, e-mail correspondence, September 2017).

There are no rules concerning the duration of an engagement. In general and particularly in rural areas, most people believe that engagements should not last too long, but in some cases engagements can still last several years. If a young couple cannot afford to live together and start a family, their engagement may last a long time. It has become relatively common for young men to be unable to afford to get married because of the difficult economic situation in Syria over the past few decades, and as a result of the substantial financial obligations that accompany marriage (Rabo 2011, p. 37; Rabo, e-mail correspondence, September 2017).

#### **4.4 WEDDING CELEBRATIONS, DOWRIES AND MARRIAGE REGISTRATION**

At the time an engagement is announced or soon after, the family will discuss the marriage contract and the size of the dowry. Dowries vary in size and the law does not impose any upper or lower limit on the amount (see also section 3.1.6). For some religious families, the dowry is symbolic only. For others, it represents important financial security.

Many factors come into play in the negotiations. The woman's family will not want to give their daughter away "too cheaply", as this could harm the family's reputation. At the same time, the demands they make should not be unreasonably high. It is not unusual for engagements to be broken off because the families cannot come to an agreement. It is the bride who receives the dowry, as her personal property. This is in accordance with Islamic case law and the Personal Status Law, and most families follow this custom and pay the dowry to the bride. However, in rural areas in northeastern Syria, it is common for the father of the bride to receive the dowry, although this is contrary to the provisions of the law (Rabo, e-mail correspondence, September 2017).

The signing and registration of the marriage with the Sharia court is what makes the marriage legally binding for Muslims. However, this does not normally take place at the time of the wedding celebrations. Registration of the marriage is not normally accompanied by a celebration or ceremony. In some cases, the marriage is registered before the wedding celebrations take place, whilst in others it is registered retrospectively (van Eijk 2016, p. 136-137, 218). Amongst the middle classes of Damascus, weddings are normally celebrated a few days or weeks after the marriage is registered with the court (van Eijk, meeting, June 2018). Elsewhere, including in the Kurdish regions of northeastern Syria, it is common to celebrate the wedding first and register the marriage at a later date (humanitarian organisation, meeting, June 2018).

The *ziffa*, or *haflat al-urs*, wedding celebration is the ritual that marks the marriage of the couple. The wedding celebration also has a legal effect, in addition to the social marking. Consummation (*al-dukhla*), i.e. sexual intercourse, is important for establishing the validity of a marriage. Consummation also has financial consequences. If the parties have signed and registered a marriage contract before the

wedding celebrations take place and the marriage is dissolved before it is “consummated”, it will be easy to get the marriage dissolved if the parties agree. In such cases, the woman will retain the early dowry and be entitled to half of the delayed dowry (van Eijk 2016, p. 117; Rabo, e-mail correspondence, September 2017).<sup>6</sup>

The traditions surrounding wedding celebrations vary considerably. In rural areas, it is common for the bride’s family to organise a cortège of cars and buses to the bride’s house in order to collect her, accompanied by a lot of tooting of horns and noise. Such cortèges are also common in urban areas, and the groom’s car is often decorated. Wealthy families usually have a big party at a hotel or a hired venue with several hundred guests. It is common for relatives to give the bride gold. In the marriage contract, the families can agree how much gold the bride will receive and how much of her early dowry should be spent on the wedding dress and other bridal items (Rabo 2017, e-mail correspondence, September 2017).

#### **4.5 UNREGISTERED MARRIAGES - *urfi* MARRIAGES**

Marriages are often entered into privately without being registered with the Sharia courts. These marriages are known as *urfi* marriages or “customary” marriages (*zawaj urfi*). A Muslim religious leader, a *shaykh*, will often lead the actual wedding ceremony, with witnesses present. In some cases, a private marriage contract is signed. In other cases, no written contract at all is prepared (humanitarian organization, meeting, June 2018).

The law provides for late registration of *urfi* marriages with the Sharia courts. No precise statistics are available, but *urfi* marriages seem to be relatively widespread, particularly in rural areas. Where there is no private written marriage contract from an *urfi* marriage, testimonies from witnesses will normally suffice (humanitarian organisation, meeting, June 2018; van Eijk 2016, p. 144; Rabo 2011, p. 35; UNICEF 2014, p. 13).

There are various reasons why people get married traditionally and either delay the formal registration of their marriage or do not register it at all. In some cases, this is down to tradition. In rural northern Syria, for example, it used to be unusual to register marriages (Rabo 2011, p. 34-35). Amongst the Kurds in northeastern Syria, it is most common to register a marriage after it has been established and celebrated (humanitarian organization, meeting, June 2018). In other cases, it may be a question of a marriage that has not been sanctioned by the families, or a polygamous marriage either with or without the knowledge of the first wife (van Eijk 2016, p. 145).

Some people marry traditionally only because the military service restricts the possibility of registering a marriage (the permission of the military authorities is required). This procedure is believed to have become very widespread since 2011 because it has become more difficult to obtain permission from the military authorities since the outbreak of civil war (humanitarian organisation, meeting, June 2018). In

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<sup>6</sup> If a dispute regarding payment of a delayed dowry in connection with divorce is referred to the Sharia court, there can sometimes be disagreement between the spouses over whether or not the marriage was consummated. As this is difficult to prove, the judge will, in such cases, listen to testimonies from the parties and other family members and come to a decision as to whether the spouses had sufficient opportunity to be alone together. It will be assumed that they have had sexual intercourse if they had the opportunity to be alone together over a certain period of time (van Eijk 2016, p. 142).

order to register such a marriage retrospectively without the permission of the military authorities, it is necessary for the women to be pregnant or to have already given birth (see section 3.1.3). In recent years, it has become relatively common for couples who are only religiously married and where the man is serving in the military to fabricate a pregnancy or birth in order to register their marriage with the court (Enab Baladi 2017c).

#### **4.6 MARRIAGE BY PROXY**

As mentioned in section 3.1.1, spouses can be represented by proxies in connection with the registration of their marriage. However, both parties are normally present. The role of the proxies is limited to the registration with the Sharia court. Both parties are always present during the wedding celebrations and there is almost always a wedding party to celebrate the marriage, regardless of the family's financial situation. Representatives play no part in the wedding celebrations (Rabo, e-mail correspondence, September 2017).

#### **4.7 CHILD MARRIAGES**

No official statistics concerning child marriages or the average age of marriage are available. According to van Eijk, who cites a report from the Syrian Commission for Family Affairs (the primary source was not determined), the average age of marriage rose from 26 to 29 years for men and from 21 to 25 years for women between 1981 and 2000 (van Eijk 2016, p. 135).

The survey conducted by the United Nations Development Programme for Women in 2005 showed that early marriage was widespread and that the prevalence of such marriages was somewhat greater in rural areas than in cities. 38% of the women questioned in the survey got married when they were aged between 15 and 19. 3% of the women stated that they became pregnant before they reached the age of 15; 2% in urban areas and 4% in rural areas. 30% of the women became pregnant between the ages of 15 and 19; 29% in urban and 31% in rural areas (UNIFEM 2005).

Surveys conducted by UNICEF amongst Syrian refugees in Jordan show similar trends. 25% married before the age of 18 in 2013. This rose to 32% in the first quarter of 2014. Qualitative interviews of Syrian refugees as part of the same survey indicate that, although marriage with underage girls has long been an accepted practice in Syria, the civil war and resultant refugee existence in Jordan has led to greater pressure on girls to marry early. The survey also indicated a correlation between early marriage and level of education (UNICEF 2014, p. 8-9).

The same is true amongst Syrian refugees in Lebanon. In this case, unpublished figures obtained by Landinfo from surveys conducted by an international organisation show that 27% of Syrian women in Lebanon under 18 years of age were married in 2016. The number varies according to the girls' level of education. Amongst those with higher education, only 5% were married before the age of 18, while the corresponding figure amongst those who only had primary or no education was over 30%.

The men are usually older when they get married, and very few are under 18 years of age at the time. At official Sharia courts in Jordan, fewer than 0.5% of the men were under the age of 18 when they got married and registered the marriage the first time. This includes the entire population, including Jordanians, Syrian refugees and other



foreign nationals in the country (UNICEF 2014, p. 8). No corresponding figure is available for Syria.

Researcher Esther van Eijk (meeting, June 2018) states that she did not encounter a single marriage involving minors during her field observations at Sharia courts in Damascus in 2008 and 2009. However, these courts cover areas where the population is primarily middle class. Elsewhere, including amongst the Kurds in the northeastern province of Hassaka, marriage with minors is believed to be widespread (humanitarian organisation, meeting, June 2018).

#### **4.8 AGE DIFFERENCES BETWEEN SPOUSES**

No official statistics are available concerning the average age of marriage. The statistics that are available indicate that, on average, men are somewhat older than women at the time of their first marriage. The report by the Syrian Commission for Family Affairs shows an average age difference of just under five years. UNICEF's study of Syrian refugees in Jordan in 2014 shows that 48% of married underage girls (under 18 years old) had married men who were more than ten years older than them. Of these, over 10% married men who were more than fifteen years older. However, the survey sample is small and the refugee population in Jordan is not necessarily representative of Syria as a whole (UNICEF 2014, p. 24).

#### **4.9 MARRIAGE BETWEEN CLOSE RELATIVES**

In Syria, as elsewhere in the Middle East, there is a certain tradition of marrying close relatives, including marriages between cousins. The phenomenon exists throughout Syria, but is more common in rural areas and amongst the less well-off in cities. Urban families are generally less "clan-oriented", but marriage also occurs between close relatives in the cities (Rabo, e-mail correspondence, September 2017).

#### **4.10 MARRIAGE ACROSS RELIGIOUS DIVIDE**

As mentioned in Chapter 3, marriage across religious affiliation is legal in theory, but subject to certain restrictions. According to the Personal Status Law, a Muslim man may marry a non-Muslim woman and have the marriage registered at a Sharia court. The opposite is not possible, i.e. a marriage between a Christian or Druze man and a Muslim woman.<sup>7</sup>

In practice, "mixed marriages" across religious affiliation are rare and, in most cases, considered socially unacceptable. Although Christian women can, in theory, marry Muslim men, the family will not normally accept such a marriage. The Druze do not accept mixed marriages. Although Druze family law does not explicitly prohibit it, it is strictly forbidden under Druze religious doctrine. Marriage between a Druze man

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<sup>7</sup> According to Islamic case law, marriage between a Muslim man and a Christian woman does not represent a problem, as Muslim men are allowed to marry women who belong to "the People of the Book", i.e. Christians and Jews. The situation is less clear as regards marriage between Muslim men and Druze women. In a case which researcher Van Eijk (2016, p. 148) followed at a Sharia court in Damascus, a marriage between a Muslim man and a Druze woman was registered after she had converted to Islam and the judge had verified both that she had actually converted and the date on which her conversion took place. The reason was probably that as a Druze she does not belong to "the People of the Book". However, there is no consensus amongst Islamic scholars or the Druze themselves as to whether or not Druze should be considered Muslims.

and a Muslim woman is not possible under the Personal Status Law. Marriage between a Druze woman and a Muslim man is very rare and is not considered socially acceptable. Druze women who marry outside their own sect risk being ostracised and in the worst case can even be killed by their family (van Eijk 2016, p. 149).

Marriage between Christians from different denominations is relatively widespread and does not normally pose any problems (van Eijk 2016, p. 110).

There is also little social acceptance for mixed marriage amongst Muslims. For example, it is taken for granted amongst Aleppo's merchant class that marriages bring together individuals and families with the same religion and ethnicity (Rabo 2005a, p. 90).

In rare cases, conversions take place to enable marriage between two people with different religious backgrounds. There are examples of Christian men converting to Islam in order to marry a Muslim woman, which is viewed with considerable disdain amongst the Christian communities of Syria (Rabo 2005b, p. 82). In rare cases, conversion from Christianity to Islam also takes place to enable divorce, as Muslims can obtain a divorce through their courts more readily than they can through the Christian family courts (van Eijk 2016, p. 65).

#### **4.11 OTHER UNORTHODOX FORMS OF MARRIAGE AND COHABITATION**

As mentioned above, *urfi* marriages or customary marriages which are not registered with the courts are relatively widespread. This is usually because there is no local tradition of registering a marriage until a later date. However, the term *urfi* marriage also includes unorthodox marriages which do not coincide with the prevailing traditions.

Such modern and unorthodox marriages have been widely debated in the Muslim world over the past ten years and include *misyar* marriages, where the woman renounces her right to a dowry, maintenance or a home of her own. The validity of such marriages is often questioned because they are entered into secretly and are often polygamous. In addition, they are often time-limited, so-called *mut'a* marriages, although such marriages are only recognised in Shia Muslim tradition and not under Sunni Muslim case law.

Unorthodox "modern" *urfi* marriages take various forms and the motives for entering into such marriages vary. They exist in a number of Muslim countries. One of the practices observed in Syria is what is known as "summer marriages" (*zawaj al-sayf*), where local women marry vacationing men from the Gulf countries. These marriages are usually temporary and free from any financial obligations for the man. They often end unhappily for the women, with divorce and "illegitimate" pregnancies and children (van Eijk 2016, p. 145-146).

Cohabitation between a man and a woman outside of marriage is taboo and not considered socially acceptable in Syria, regardless of ethnicity, religion or class. People who have sexual relationships outside of marriage can even be prosecuted under the provisions of the Penal Code which ban sexual intercourse outside marriage. Cohabitation is almost non-existent but there are reports of very rare cases. These exceptional cases can be found amongst young students who live in a different city to their families. The cohabitation is usually kept hidden from the family (Muhanna, 2009).

## **5. CONSEQUENCES OF THE CIVIL WAR**

During 2012 and 2013, the Syrian regime lost control of much of the country to a number of insurgent groups. However, the authorities retained control of some of the most populous areas in the west and were gradually able to regain territory from the insurgent groups from 2015 onwards. By the summer of 2018, the central authorities had regained control of most of the country with the exception of the Idlib province and northern parts of the Aleppo province, which were controlled by insurgent groups, and the northeastern parts of the country which were controlled by the Kurdish party PYD and their allies (LIFO 2017; Liveuamap, n.d.).

Half of the population of about 23 million has been forced to flee because of the war. Of these, over 5 million live as refugees in neighbouring countries, while the remainder have been displaced internally within Syria (OCHA n.d.; UNHCR 2017).

### **5.1 INEFFECTIVE REGISTRATION ROUTINES**

The state bureaucracy, including the sharia courts and the offices of the Civil Status Department (the population register), still functions in government-controlled areas. This means that it is still normally possible to register marriages and divorces in these areas. The Sharia courts and civil status offices also function and operate in PYD-controlled areas in the northeast of the country (humanitarian organisation, meeting, June 2018; humanitarian organisation, meeting May 2017; international organisation, meeting, May 2017).

#### **5.1.1 Outside government-controlled areas**

The state bureaucracy no longer functions outside government-controlled areas. Some government offices, including civil status offices, still operate in insurgent controlled areas, often with the same staff as before. However, the authorities state that they do not recognise or communicate with government offices or courts in these areas. Thus, it is no longer possible to register marriages outside government-controlled areas (Civil Status Department, meeting, May 2017).

The population in insurgent-controlled areas of Syria can only register marriages, divorces and births by contacting the government-controlled bureaucracy. In theory, this can be done either by crossing the front lines into a government-controlled area or by using proxies, who must have written authorisation. It is difficult to obtain such authorisation from insurgent-controlled areas because both must sign in front of a notary public. As a result, very few people can use this procedure in practice (humanitarian organisation, meeting, June 2018; humanitarian organisation, meeting, May 2017; international organisation, meeting, May 2017).

Many residents in insurgent-controlled areas are also unable to cross the front lines into a government-controlled area because of the risks that this entails. Another challenge is that men from insurgent-controlled areas are generally not able to obtain the requisite permission from the military authorities. Others lack the identity documents or other breeder documents needed to complete the registration process (humanitarian organisation, meeting, June 2018; humanitarian organisation, meeting, May 2017; international organisation, meeting, May 2017).

### **5.1.2 Government- and Kurdish-controlled areas**

There are also challenges associated with marriage registration in government- and Kurdish-controlled parts of the country where Sharia courts and civil status offices are still operating. The civil war sometimes disrupts communication between different government-controlled areas. As a result, some couples who register a marriage or divorce at an official Sharia court are not registered in the public registries with the proper marital status and are therefore not issued appropriate documentation by the Civil Status Department, such as a marriage certificate, family book or divorce certificate.

When two people enter into marriage, the woman's file in the national registry is "moved" from her father's family to the new husband, where she is registered under the same "family number" as her husband (see section 3.1.2). If the spouses are registered in different places, this can cause problems due to a lack of communication between the civil status offices.

In Damascus, routines are still functioning. The Sharia courts send a notification to the civil status office, but long delays can occur if one of the parties is from a different province. Outside Damascus, those who register their marriage at a Sharia court are asked to contact the civil status office covering their home address in order to have the records updated (meeting, June 2018; humanitarian organisation, meeting, May 2017; international organisation, meeting, May 2017).

The communication problems between civil status offices also apply to the online registries. Sometimes, the online registries in the provinces are not updated when changes are made in the registries centrally and vice versa. Therefore, central online registries in Damascus do not always correspond with those in the provinces. The same applies between the central online registries and the paper registries kept at the local civil status offices.

### **5.1.3 Split families and deceased husbands**

Today, many families are split because of the civil war. Many women who do not live with their spouse have no family book or other appropriate documentation. This presents challenges if they then wish to update their marital status or register children. Some women have also married foreign soldiers who are fighting for various rebel groups. Such marriages are not registered because marriage to a foreign national requires authorisation from the security service. Thus, children from such marriages are not registered either (humanitarian organisation, meeting in May 2017; international organisation, meeting in May 2017).

Public authorities are aware of these major challenges and have taken steps to rectify the situation. In February 2017, changes were made to the Civil Status Law, which resulted in routines being simplified. As a result, women can, for example, now be issued a family book if the husband is absent or unable to attend at a civil status office (international organisation, meeting, May 2017; humanitarian organisation, meeting, May 2017).

Far more men than women have been killed during the civil war. Widows of deceased men who have only been married through an unofficial *urfi* marriage can have their marriage registered, provided their late husband was Syrian. In such cases, they must

submit their case to the court and produce evidence in the form of documentation and/or witness statements (humanitarian organisation, meeting, June 2018).

## 5.2 REGISTRATION OF MARRIAGES FROM OTHER COUNTRIES

Syrian embassies are usually able to assist with the registration of marriages and births that have taken place abroad and ensure that they are registered correctly in Syria. In neighbouring countries, this is possible through Syria's consulate in Istanbul and the embassies in Beirut and Amman. In Iraq, including the Kurdistan Region of Iraq (KRI), there is no Syrian embassy or consulate (Syria's Ministry of Foreign Affairs and Expatriates, meeting, May 2017).

In practice, however, many Syrian refugees in neighbouring countries are unable to carry out the registration. Some are reluctant to contact an embassy because they no longer recognise the authorities in Damascus, because they are afraid of negative reactions towards themselves or family members still in Syria, because a member of the family has avoided military service or deserted, or because they cannot afford to pay the fees (humanitarian organisation, meeting, May 2017). Many people are unfamiliar with the routines for registering marriage and newborns in the host countries or consider the registration procedures to be insurmountable. Before marriage and/or birth can be registered in Syria via a Syrian embassy, it must be registered in the host country. These registration routines can be difficult to complete (NRC 2017; UNICEF 2014, p. 10).

In Lebanon, the process of registering a marriage has become somewhat easier than previously, as there is no longer a requirement for a valid residence permit in the country. Syrians who have entered into an unofficial *urfi* marriage in Lebanon can contact an official Sharia court in Lebanon in order to register their marriage. If the woman is already pregnant or has given birth, the Lebanese Sharia court will register the marriage with the same date as the established unofficial *urfi* marriage. In such cases, the dates provided by the spouses and witnesses will be used as a basis.

If the woman is not pregnant, the couple will be informed that they can enter into a "new" marriage and register it. In such cases, the date of marriage will be the same as the date of registration. After registration with the Sharia court, the marriage contract must be taken to a local *mukhtar*, who will sign it. It is then necessary to contact the Lebanese Civil Status Department, who will sign the document and assign it a number. The final step is to contact the "immigration office" of the Lebanese Ministry of Foreign Affairs and Expatriates for signing and stamping. The couple can then take all the documents to the Syrian embassy in Beirut to get the marriage and any children registered in Syria (humanitarian organisation, meeting, March 2018).

Unofficial *urfi* marriages entered into outside of Syria between two Syrians must normally be registered in the host country before it can be registered in Syria. However, some Syrians are able to circumvent these procedures by contacting a Sharia court in Syria directly and retrospectively register their marriage in the usual way. This can be done either by attending in person or by using a proxy in Syria. An unknown number of Syrian refugees in Turkey have, for example, made use of this procedure (humanitarian organisation, meeting, June 2018). In such cases, it is unclear whether the marriage contract issued by the Sharia court will state where the marriage was entered into.

### **5.3 FALSE DOCUMENTS AND CORRUPTION**

During the civil war, the prevalence of false identity documents has increased considerably. The same applies to official documents issued on the basis of erroneous premises and/or inaccurate information in return for the payment of bribes, including marriage and divorce certificates and family books. Since the outbreak of the civil war, the immigration authorities of various Western countries have seen an increase in the number of false marriage certificates and other “supporting documents” in applications for family immigration (document expert at a Western embassy in Amman, meetings in September 2013 and September 2015; Norway’s embassy in Amman, meeting in September 2015; diplomat at a Western embassy in Beirut, meeting, October 2014). According to an article on the website Syrian Law Journal (n.d.), published in September 2017, half of all attempts to legalise and register foreign marriage contracts in Syria involved forged documents in some way. The source of the information was not disclosed.

In Syria, it has been common, also before the civil war began, to pay small sums of money to public officials in order for services to be rendered. At the Sharia courts, for example, it is common to pay a small sum in order to obtain forms and for the judge’s assistant to fill in the marriage contract. Some people probably also register or obtain documents that are not in accordance with the applicable regulations by paying large sums of money in bribes (van Eijk, meeting in June 2018).

Some people in the insurgent controlled areas of Syria pay large sums of money to “intermediaries” who offer to register a marriage on their behalf at a Sharia court in a government-controlled area. In some cases, those who use such intermediaries are swindled and given false marriage certificates which they believe are genuine (humanitarian organisation, meeting, June 2018).

### **5.4 CHANGING MARRIAGE PATTERNS AS A RESULT OF THE WAR**

The civil war has been a contributory factor behind changing marriage patterns. Amongst refugees in neighbouring countries, the number of marriages between Syrians and foreign nationals is increasing sharply. Many Syrian women who are refugees in Jordan, Lebanon and Turkey marry men from the host country or another Arab state. Amongst Syrians who are based in a European country, the number of marriages between Syrians and Europeans is increasing (Enab Baladi 2017a).

Parallel to these trends is a strong increase in the number of divorces amongst Syrians in exile. Refugees interviewed by Enab Baladi (2017b) explain this through the fact that many men leave their wives, stop supporting their families or are otherwise unable to fulfil their obligations as a father. Some people link this to the fact that men who find themselves in exile begin to behave in ways that they would not have dared to back home in Syria, with their family around them and the social control that this entails. Some women divorce because they are no longer prepared to accept their husband’s behaviour. These couples are often unable to have their divorce registered in Syria because of the practical challenges associated with life as a refugee.

Amongst refugees in neighbouring countries, not only is the number of marriages between Syrians and foreign nationals rising, but the number of marriages involving minors, where young women in their teens marry older men from Syria, the host country, or another Arab state, is also on the increase. There are also women and young

girls who become the victim of forced marriage, “temporary marriage” and prostitution. The reasons behind these phenomena are complex, but is partly explained by poverty and the need to safeguard the material future of the young women and their families (UNICEF 2014, p. 8; U.S. Department of State 2017, p. 382).

Another trend is the growing number of women in opposition-controlled areas that marry foreign members of armed groups. This is, for example, widespread in the Idlib area, but the incidence varies from city to city. People’s attitudes to this kind of marriage also vary considerably (Enab Baladi 2017a). As mentioned above, such marriages are not registered, nor are any children from such marriages (humanitarian organisation, meeting, May 2017; international organisation, meeting, May 2017).

Inside Syria, the number of polygamous marriages is also on the rise, largely as a result of an imbalance between the sexes, as far more men than women have been killed during the civil war. In opposition-controlled areas, it is impossible to quantify this, but in government-controlled areas, a six-fold increase in polygamous marriages is believed to have occurred between 2010 and 2015 (Enab Baladi 2017b).

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