



Universiteit
Leiden
The Netherlands

Family law in Syria: a plurality of laws, norms, and legal practices

Eijk, E. van

Citation

Eijk, E. van. (2013, September 19). *Family law in Syria: a plurality of laws, norms, and legal practices*. Retrieved from <https://hdl.handle.net/1887/21765>

Version: Corrected Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/21765>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <http://hdl.handle.net/1887/21765> holds various files of this Leiden University dissertation.

Author: Eijk, Esther van

Title: Family law in Syria : a plurality of laws, norms, and legal practices

Issue Date: 2013-09-19

Family Law in Syria
A Plurality of Laws, Norms, and Legal Practices

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,
volgens besluit van het College van Promoties
te verdedigen op 19 september 2013
klokke 16.15 uur

door

ESTHER VAN EIJK

geboren te Rotterdam in 1976

Promotiecommissie

Promotor:

Prof. dr. L.P.H.M. Buskens

Overige leden:

Prof. mr. M.S. Berger

Prof. dr. B. Dupret (Centre National de la Recherche Scientifique, France)

Prof. dr. H.L. Murre-van den Berg

Prof. mr. J.M. Otto

Prof. dr. P.M. Sijpesteijn

**There is a crack, a crack in everything
That's how the light gets in.**

Anthem, Leonard Cohen (1992)

للشعب السوري

To the Syrian People

Copyright © Esther van Eijk, Leiden

Cover design: Anne-Sophie van der Spek

Druk: CPI Wöhrmann Print Service – Zutphen

FAMILY LAW IN SYRIA: A PLURALITY OF LAWS, NORMS, AND LEGAL PRACTICES

Acknowledgements	ix
Note on Transliteration	xi
List of Abbreviations	xiii

Introduction	1
--------------	---

PART I THE PLURAL LEGAL LANDSCAPE: FAMILY LAWS IN SYRIA

1 Law, Politics, and Religion in Syria: Past and Present

Introduction	21
1.1 Syria in the Ottoman era	21
1.1.1 Non-Muslims under Ottoman rule: the <i>millet</i> -system	22
1.1.2 Ottoman Reforms: <i>Tanzīmāt</i> and the <i>millet</i> -system	24
1.1.3 Ottoman codifications of Islamic (family) law	25
1.2 Decline of the Ottoman Empire and the Arab Kingdom of Syria	28
1.3 Syria under the French Mandate	29
1.3.1 French-initiated personal status law reforms: religious and secular protests	32
1.4 Post-independence: military dictatorships (1949-54) and the United Arab Republic (1958-1961)	34
1.5 Ba‘th Party Rule	36
1.5.1 Syria under Hafez al-Asad	37
1.5.2 Syria under Bashar al-Asad	39
1.5.3 Syrian Revolution 2011	40
1.6 Islam and the state	41
1.6.1 Islam and the Constitution	41
1.6.2 Religion of the President is Islam	42
1.6.3 ‘Official Islam’	43
1.7 State-sponsored religious legal pluralism	45
1.8 Conclusion	49

2 Mapping the Plurality of Jurisdictions: The Laws of Personal Status

Introduction	51
2.1 The 1953 Syrian Personal Status Law	52
2.1.1 Amendments to the SLPS	57

2.1.2	Articles 306-308: Application of the SLPS	58
2.2	Personal status courts	59
2.2.1	The judiciary	61
2.3	Other Personal Status Laws and Courts	65
2.3.1	The Druze community	65
2.3.2	Christian communities in Syria	67
	<i>I & II. The Orthodox Churches (Oriental and Eastern Orthodox)</i>	68
	<i>III. The Catholic Churches</i>	69
	<i>IV. The Evangelical or Protestant Churches</i>	69
	<i>V. The Assyrian Church of the East</i>	69
2.3.2.1	Christian personal status laws & courts	70
	<i>Orthodox Laws of Personal Status & courts</i>	71
	<i>Catholic Law of Personal Status & courts</i>	71
	<i>Evangelical Law of Personal Status & courts</i>	72
2.3.3	The Jewish community	72
2.4	Other applicable laws	73
2.5	Complex realities of the intersection of jurisdictions	73
2.5.1	Mixed marriages and conversions	74
2.5.2	Children and interreligious marriages	77
2.5.3	'Islam is the better religion'	78
2.6	Conclusion	81

3 Debating and Changing Family Law

	Introduction	83
3.1	The challenge of secularism	85
3.1.1	State feminism	86
3.1.2	Equality for all citizens?	88
3.2	Mending family law: who wants change?	91
3.2.1	2003: Syria's accession to CEDAW – a catalyst for social and legal action	92
3.2.2	Petitioning for change: the 2003 SLPS amendment	95
3.3	Other reform projects concerning family law and gender	98
3.4	The 2006 Catholic Law of Personal Status	100
3.5	The 2009 SLPS drafts	102
3.6	SLPS amendment no. 76/2010	105
3.7	Balancing for legitimacy	106
3.8	Conclusion	109

**PART II UNITY IN MULTIPLICITY:
MUSLIM AND CHRISTIAN LAWS AND LEGAL PRACTICES**

4 Patriarchy, Religion, and Legal Rules

	Introduction	115
4.1	Patriarchal family: family as the nucleus of society	116
4.2	Morality and propriety	120
4.2.1	Preserving the honour of the family – control of women’s sexuality	122
4.3	Marriage ideals: marriage as a ‘safety-valve’	126
4.3.1	Unsuitable marriages	127
4.4	Muslim marriage: A contractual relationship	130
4.5	Marriage according to the Syrian Law of Personal Status	132
4.5.1	The role of the marriage guardian	132
4.5.2	Dower	135
4.6	The effects of marriage: marital rights and duties	135
4.6.1	Financial obligations of the husband	136
4.6.2	Obedience of the wife	137
4.7	Dissolution of marriage	138
4.7.1	Repudiation (<i>talāq</i>) by the husband	138
4.7.2	Divorce by mutual consent (<i>mukhāla‘a</i>)	139
4.7.3	Judicial divorce (<i>tafrīq</i>)	140
4.7.4	Reconciliation and divorce	140
4.8	Legal consequences of divorce: waiting period, unpaid dower, and post-divorce maintenance	141
4.8.1	Child custody after divorce	142
4.9	Christian marriage and divorce: some general observations	143
4.9.1	Christian marriage: marriage as a sacrament	144
4.9.2	Christian marital rights and duties	146
4.10	Divorce, separation or annulment of marriage?	147
4.11	Conclusion	149

5 The Versatility of Personal Status Law: Legal Practices in a *Shar‘iyya* Court

	Introduction	151
5.1	In a Damascus <i>shar‘iyya</i> court: some general observations	153
5.2	Marriage	157
5.3	Financial obligations of the husband – providing maintenance (<i>nafaqa</i>)	160
5.4	Duty of the wife – marital obedience	164

5.5	Valid seclusion: determining sexual opportunity	165
5.6	Unregistered marriages	168
5.6.1	' <i>urfī</i> and other marriage practices	169
5.6.2	Registration of a customary marriage	171
5.7	Nameless children: establishing and providing paternity	174
5.8	Dissolution of marriage	180
5.8.1	Divorced or not divorced? Out-of-court <i>ṭalāq</i>	183
5.8.2	<i>mukhāla</i> 'a divorce	188
5.8.3	Judicial divorce – <i>tafrīq</i>	193
5.8.4	Court-ordered arbitration – <i>taḥkīm</i>	196
5.9	Conclusion	198
6	The Catholic court: Guardian of Order and Sacraments	
	Introduction	201
6.1	Eastern Catholic Churches in Syria	202
6.1.1	The legal position of Catholics in Syria	203
6.1.2	The 2006 Catholic Law of Personal Status	204
	<i>The relation between the CLPS and the CCEO</i>	205
6.2	Damascus Catholic court: Guardian of order and the sacraments	206
6.2.1	Inside a Catholic <i>ruḥiyya</i> court	207
6.2.2	A truly ecclesiastical court?	210
6.3	The indissolubility of a sacramental marriage	212
6.3.1	<i>buṭlān al-zawāj</i> : Nullification of a marriage	214
6.4	Reconciliation: return to marital life	216
6.5	Collection of proof	220
6.5.1	Witness statements	224
6.6	Marital rights and duties	227
6.6.1	Spousal maintenance versus obedience of the wife	231
6.7	Unconventional marriage practices	235
6.8	Conclusion	237
	Conclusion	239
	Appendix Marriage and divorce according to the Syrian Law of Personal Status	249
	References	265
	Samenvatting	281
	Curriculum vitae	287

Acknowledgements

My fieldwork stays in Syria were made possible by funding from the Leiden University Fund (LUF) and funding from the Leiden University Institute for Area Studies (LIAS), previously known as the CNWS. For general assistance I would like to thank the now dissolved Netherlands Institute for Academic Studies in Damascus (NIASD) and the (former) staff of LIAS/CNWS, in particular Ilona Beumer, José Brittijn, Rogier Busser, Margriet Laere, and Wilma van Trommelen.

My sincere appreciation and gratitude goes out to my promoter, Prof. Léon Buskens, who supervised me from the design phase through completion of the manuscript. His constructive feedback, valuable advice and motivation at various stages were indispensable to the successful completion of this thesis project.

My utmost thanks goes out to the people I met in Syria who made it possible for me to conduct my research, both professionally and personally. In particular, I would like to express my deepest gratitude to Catherine and Muhanned, whom have helped me in countless ways and with whom I became close friends. My thanks also goes out to my 'Syrian family' who also generously looked after me and, by sharing their lives and thoughts with me, have taught me invaluable lessons about Syrian history, family life, politics and culture. Also, I would like to extend my earnest appreciation and gratitude to judge Ibrahim and his clerk; judges Anton and Elias and other staff members of Catholic court of Damascus; staff members of the Greek-Orthodox court of Damascus; in addition to lawyers Ahmed, Hanan, Nawal, Rania, and Yusuf. My thanks is also due to other persons whom I have interviewed and/or interacted with in various ways whilst in Syria, a special mention goes to Aslan, Mr. 'Ali, and Eleonora Mura.

I would like to extend my appreciation and thanks to the many colleagues in the field (in its broadest sense) whose valuable suggestions, thoughts, and work have contributed to the successful completion of my PhD research, including Mohammed Al-Sulami, Jessica Carlisle, Mary Davies, Merel Kahmann, Pauline

Kruiniger, Friso Kulk, Marie Legendre, Annet Niemeijer, Iva Peša, Martine Roeleveld, Iris Sportel, Maaïke Voorhoeve, Khaled Younes, in addition to (other) Leiden PhD candidates, members of the Researchers Islamic Family Law and the Dutch Network of PhD Candidates in Sociology of Law. A special thanks to my friend and colleague Nadia Sonneveld for her encouragement, understanding and many, many valuable comments and suggestions on my work. Finally, I would like to thank dr. Ton Meijers (Tilburg University) and dr. Johan Meijer for their comments and suggestions on my chapter on Eastern Catholic Law.

Last but not least I would like to everyone else who supported me, be it emotionally and/or physically: Ingrid, thank you for offering and making me numerous supportive & comforting dinners; my triathlon De Zijl buddies & Mary, thank you for keeping me company during the much needed, de-stressing running, cycling and swimming trainings; John, thank you for your supportive reading and reviewing of my work, and your support & encouragement during the final, most stressful phase; and to all others unmentioned here but not forgotten, I thank you.

Leiden, 25 July 2013

Note on transliteration

In this thesis both Modern Standard Arabic and Syrian colloquial Arabic terms and expressions (with the exception of proper names and geographic names), are presented and transliterated into English. I use a simplified system, which is based on the transliteration system of the *International Journal of Middle East Studies*. Please note that in Arabic there are two types of vowels: short and long vowels; I transliterated both, e.g. ي appears as ī; ى and ā as ā.

Arabic	Transliterated English
ء	'
ب	b
ت	t
ث	th
ج	j
ح	ḥ
خ	kh
د	d
ذ	dh
ر	r
ز	z
س	s
ش	sh
ص	ṣ
ض	ḍ
ط	ṭ
ظ	ẓ
ع	‘
غ	gh
ف	f
ق	q
ك	k
ل	l
م	m
ن	n
ه	h
و	w / ū
ي	y / ī / iyy

List of abbreviations

ASI	Association for the Social Initiative
CCEO	<i>Codex Canonum Ecclesiarum Orientalium</i> ; Code of Canons of the Eastern Churches
CEDAW	Convention of Elimination of all forms of Discrimination Against Women
CLPS	Catholic Law of Personal Status
CRC	Convention on the Rights of the Child
L.R.	<i>Lois et Réglements</i>
OLFR	Ottoman Law of Family Rights
SCFA	Syrian Commission for Family Affairs
SLPS	Syrian Law of Personal Status

