

Gender Equality or Legal Pluralism? An Ostensible Puzzle in Syrian Rojava's Legal System

By Davide Grasso

The current Autonomous Administration of the Syrian North-East (AANES) came as a result of the confederal revolution in the Syrian civil war. It developed at first in the Kurdish areas of Syria (Rojava), advocating the national liberation of the Kurdish people and promoting a parallel process of reform.¹

The Movement for a Democratic Society (TeV Dem) was founded by the predominantly Kurdish Democratic Union Party (PYD) in 2011. In July 2012 it took control of several Syrian cities, largely populated by Kurdish-speaking residents. The People's and Women's Protection Units (YPG-YPJ), the armed wings of the PYD, drove out government forces almost completely from the area, though most of administrative institutions of the state were kept intact ever since. Deprived of political authority, they were flanked by new decision-making bodies, bearing the function of political leadership in the subsequent reforming process.²

These bodies were initially the People's Councils promoted by the PYP during the 2011 popular uprising. A complex system of representation emerged from their structure, branching out from assemblies, neighborhood commissions, village communes and city, district and cantonal councils made up of delegates. The TeV Dem was the result of the union of such representatives with the political parties adhering to this process. It instituted a parallel governing structure in 2013 aimed at outlining, with declared diplomatic purposes, a de facto regional institution. This structure consists of legislative, executive, and judicial councils forming what was declared in 2014 as the Autonomous Administration of Rojava. The declaration was accompanied with the publication of a sort of fundamental law called the Social Contract of the Autonomous Regions (SCAR).³

The liberation of Arab-majority territories from the presence of the Islamic State (IS) in 2015 led to the creation of an assembly (the Syrian Democratic Congress or SDC) to better represent the linguistic identities of northern Syria. In 2016 the SDC declared the autonomy of a larger Democratic Federation of Northern Syria (DFNS) by publishing a second Social Contract.⁴ Following the liberation of more territories from IS, the broader Autonomous Administration of North and East Syria (AANES) was established in 2018. A Document of Understanding signed by the newly appointed General Council followed in 2019, and a third Social Contract has been announced for the end of 2021.⁵

The aim of this article is to investigate how the notion of pluralism is understood by the autonomous institutions of the AANES. To this end we will illustrate some aspects of the confederal legal system and its legislative production, focusing on the relevant realm of Family Law. The sources for this study are legal documents obtained online or by AANES authorities, primary and secondary scientific literature, journalistic sources and interviews collected in situ and online by the author between 2016 and 2021. For the sake of brevity, the autonomous institutions will be named Autonomous Regions (AR) independently of their historical denominations at different times.

Uniformity and Pluralism: The Syrian state

The principles contained in the laws enacted by the AR portray a will to influence, at least partially, the spirit of a possible new Syrian constitution.⁶ This new constitution will be written through a dialogue initiated (unlikely at the moment) with the government.⁷ The AR's goal is thus not unilateral independence, but the integration of the new institutional system into a new national legal framework transformed by

domestic and international developments into a more federalist and democratic form. The future relationship of the AANES's armed forces with this future republic was left deliberately undetermined, and defining their role was postponed to a hypothetical future agreement with a post-war Syrian state.⁸

Despite the political will to reach a peaceful compromise with the regime, the content and the political orientation of AANES' provisions are different from those embodied in the Syrian system. An insistence on liberal principles, on the idea of the rule of law, and on linguistic freedom is striking, with emphasis on political rights of women and youth. The Contracts provide for unrestricted adoption of all international human rights conventions. In comparison, the Syrian state has ratified these selectively and with reservations.⁹

The formal legal differences between the Syrian state system and the AR may not prove exhaustive for a thorough juristic comparison. Both retain a revolutionary conception of the role of a vanguard party, albeit differently (the Ba'ath for the state, the PYP for the AR). This by itself may produce distinct institutional arrangements and opaque pluralities of juridical sources (beside the ongoing condition of war). In any case, the differences between the AANES and the Ba'athist systems can be considerable, and there is empirical evidence of a significant correspondence between the legal formulations of the AR and many of its socially implemented procedures and rules.¹⁰

As far as the idea of pluralism is concerned, the legislative production of the AR displays a conception diametrically opposed to that of the Syrian state. The Ba'athist system holds – even in the very name of the republic and states it yet in the Preamble of the Constitution – a notion of national community as a segment of a transcendent Arab nation. In terms of sources of law, a somewhat crucial position is assigned to divine revelation, especially as interpreted by the Sunni schools of Islamic jurisprudence or *fiqh*.¹¹ The Syrian nation is thus defined politically by an attempt at ideological standardization of the country's de facto linguistic and religious plurality: two predominant demographic with their cultural connotations - the Arabic language and Sunni Islam - are superimposed on the identities of the entire population.¹²

On the other hand, the Syrian legal system allows for a partial recognition of Syria's cultural plurality. Such a balance between uniformity and pluralism is formulated according to the criterion of a contrast between 'public' and 'private' spheres of life. The private sphere is not to be understood as individual, but rather more linked to kinship structures.¹³ In the contemporary Syrian Arab Republic, legal uniformity is affirmed in the public sphere (Constitution, Civil Code, Criminal Code) but juxtaposed with legal pluralism as far as Family Law is concerned.¹⁴

The most recent codification of Family law is the Law of Personal Status (LPS) promulgated in 1953 and amended in 1975, 2003, 2006, and 2010.¹⁵ The text regulates both family law and succession, crucial matters in relation to the rapports between genders and generations. The code's legal solutions are drawn from Islamic (Sunni) schools of *fiqh*, with the predominance of the Hanafi school.¹⁶ A specific section circumscribes areas of legislative and judicial autonomy for three specific (religious) communities: Druze, Christians, and Jews.¹⁷

Uniformity and pluralism: the Autonomous Regions

The changes introduced by the confederal movement are inspired by an inverted conception of the relationship between plurality and standardization. Quotas for political representation have been established at the political-institutional level for the different linguistic communities residing in the region.¹⁸ Previously excluded minority languages (Kurdish and Syriac) have gradually become part of the teaching curriculum alongside Arabic.¹⁹ Reforms like this are inspired by a specific conception of the 'democratic nation' that is theorized by PKK leader and Kurdish essayist Abdullah Öcalan, who conceives each national

community as culturally non-uniform and enriched when its component communities are valued instead of being denied.²⁰ These reforms assert thus a pluralist logic in general political terms and at the highest level, breaking explicitly with the statist superimposition of Syrian national identity and Arab, Sunni or even Muslim identity. This linguistic, pedagogical, and religious pluralism ought not to be confused, however, with the notion of legal pluralism. The constitutive laws of the AR enshrine and formally protect the right of different communities to actively participate in politics, but do not mention statutory legislative autonomies based on religious or linguistic affiliation, especially not in family matters.

The distinction between the private and public spheres found in the Syria constitution is conceived differently in the constitution laws of the AR. The statist distinction was challenged early by the theoretical elaboration of Kongra Star, the revolutionary movement of the women's organizations and communes.²¹ Kongra Star conceives of the family as a "small state" capable of determining the political supremacy of adult men over women and young people.²² This conception left its mark on the legal formulation of democratic autonomy in the AR, insofar as we find in the SCAR a distinction between ethnic-linguistic or religious identities on one side (under the concept of 'communities' or 'components') and generational or gender groups on the other (falling under the notion of 'social segments').²³

The social segments are named "youth" and "women." Women and youth acquire at their turn, in the SCAR, the right to quotas of institutional representation, the creation of autonomous institutions and the protection of their political, social, and economic rights, including those established by international conventions. These rights are not necessarily compatible with existing state, religious or customary laws regulating family life and inheritance in Syria.²⁴ That is why the confederal institutions, albeit animated by continuous reference to cultural pluralism and administrative self-regulation, came to abolish the constrained pluralistic provisions guaranteed in Family Law by the Syrian Republic and by the whole Islamic tradition.

The Confederal Reform of Family Law

One of the key steps in Family Law reform was the promulgation of the Fundamental Provisions and General Principles Regarding Women (GPW), published on October 22, 2014, during the battle of Kobane between the YPG-YPJ and IS.²⁵

The GPW entail a series of significant breaches with the forms of Family Law imposed both by Syrian regime and the Salafi armed groups participating in the civil war. Among the new principles are: equal distribution of inheritance between male and female children;²⁶ the ban of polygamy;²⁷ the abolition of *mahr* (the financial contribution offered by the Muslim groom to the bride on the stipulation of the marriage contract) and dowry (the Christian analogue in reverse);²⁸ the equal right to terminate the marriage contract for both sexes (state's and Islamist regulations make it easier for men to divorce, in compliance with orthodox interpretations of Islamic law).²⁹ The GPW also extend the mother's right to custody over her children and equate the value of a woman's testimony in court with that of a man (the LPS and Islamist regulations make the value of a woman's testimony half than that of a man).³⁰ Lastly, they also abolish the extenuating circumstances granted by the Syrian Penal Code to those who commit femicide under the pretext of "honor killing."³¹

Although AANES institutions often struggle to implement these provisions, they apply without distinction to all residents of the AR, regardless of their religious or communal identities.³² Such a standardization overcomes the only reserve of legal pluralism allowed by the Syrian state and the Islamic legal tradition entitling Christians, Druze and Jews (though not other communities) partial autonomy in Family Law and its related spheres.

The universalistic understanding of family regulation by the GPW differs from that of the LPS also in another aspect. The GPW rejects the religious connotation of the General Section of the state's law and make no reference to religious sources for laws. Although promising equality for all citizens, the general section of LPS is a blatant expression of the aforementioned superimposition of Sunni Muslim religious law on the whole of Syria's societal and cultural fabric. Moreover, whereas the religious pluralism formalized by the state occurs through autonomous religious courts, each following its own legislation, the GPW entrust the judicial competencies in matters of personal status to the Committees of Justice of the Communes, depriving the religious courts of any formal residual power under the autonomous jurisdiction.³³

The general and declamatory nature of the GPW, in addition to resistance encountered among parts of the mostly conservative population, made their application difficult.³⁴ To date, the AR institutions report to be still working towards a consensual, peaceful application of the measures through raising awareness and education campaigns.³⁵ Interestingly, they also report a greater success in urban Kurdish communities and greater difficulties among rural Arab ones.³⁶

Nevertheless, Kongra Star has also equipped itself with repressive instruments to overcome overt resistance to the implementation of the GPW. The Syrian civil and penal codes continue to be the referent for cantonal judicial authorities unless amended by the confederal bodies.³⁷ In 2016, articles of the Penal Code related in various ways to family and gender issues were amended.³⁸ Confederal authorities promulgated in 2016 a 'Crimes against Family and Public Morality' (PC-A) amendment section to the Penal Code, in which twenty-four articles provide for prison sentences and fines for those breaking bans on polygamy, child abduction, violence against women, incest, body mutilations, adultery by men, and forced marriages.³⁹

Conclusion

The examination of the confederal Family Law reform highlights a tension internal not only to Syria, but to the notion of pluralism itself. Promoting a plurality of views, interests and values involves the necessary decision on where and how to trace the decisive lines differentiating them. The juridical interests of 'communities' - be they defined in religious, linguistic, or customary terms - are not necessarily identical to those of 'social segments' like women or youth, which can push for critical assessments of traditional, communitarian understandings of social relations. When the confederal movement affirms its pluralist orientation in the protection of linguistic diversity and religious minorities, it does not seem to extend this to forms of legal pluralism. The equal participation of communities in a plural political process establishing uniform rules in the constitutional, criminal, and personal status realms is considered adequate for the task of balancing communitarian, generational and gender rights. Although sensitive to the protection of national and cultural differences, such a conception appears to be equally aimed at strengthening interests stemming from conditions of subalternity transversal to communities and sects.

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- ² Anja Flach, Ercan Ayboğa, and Michael Knapp, *Revolution in Rojava: Frauenbefreiung und Kommunismus zwischen Krieg und Embargo: eine Veröffentlichung der Rosa-Luxemburg-Stiftung in Kooperation mit der Kampagne TATORT Kurdistan*, 3. aktualisierte Auflage (Hamburg: VSA: Verlag, 2016), 104-109.
- ³ Unsigned Document, *Peymanameya Hevpeymana Civakî*, 2014; e.t., *The Social Contract of Rojava Cantons in Syria*, (SCAR), 2014; URL: <https://bit.ly/2WsOZ13>; accessed July 29, 2021; Martina Bianchi, *Sulla soggettività internazionale: il caso Rojava. Spazi grigi per la regione a maggioranza curda nel nord della Siria*, (Ph.D. Thesis, Università degli studi di Pisa, 2016).
- ⁴ Meclisa Damezrîner a Federaliya Demokratîk a Rojava-Bakurê Sûriyê, *Reşnivîsa Hevpeymana Civakî ya Federaliya Demokratîk a Bakurê Sûriyeyê*, 2016; The Constituent Assembly of the Democratic Federalism of Northern Syria, *Social Contract of the Democratic Federalism of Northern Syria*, (SCDF), 2016; URL: <https://bit.ly/3BUSwFC>; accessed July 29, 2021; Stefano Marinelli, "The 2016 Rojava Social Contract: a Democratic Experiment of Civil and Social Rights in Northern Syria", International Law Blog, October 24th, 2016. <https://internationallaw.blog/2016/10/24/the-2016-rojava-social-contract-a-democratic-experiment-of-civil-and-social-rights-in-northern-syria/>
- ⁵ Rojava Information Center (RIC), "The AANES has announced that NES-wide elections will be held after the renewal of the social contract", Twitter, June 14, 2021; <https://bit.ly/3xaPSrL>; accessed July 30, 2021; Ammar Abdullatif, "The new social contract will shape the administration: Syria's AANES", North Press Agency, July 14, 2021, accessed July 30, 2021. <https://bit.ly/3icCNtE>;
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- ⁷ Jared Szuba, "Alliance between SDF and Syrian regime is 'very far away', senior Kurdish official Salih Muslim says", The Defence Post, February 18, 2019; accessed July 30, 2021. <https://bit.ly/3xbH70M>
- ⁸ SCAR, Title II, Art. 15; see more broadly SCDF, Title IV, Art. 71
- ⁹ SCAR, Title II, Art. 20; Title III, Art. 21; SCDF, Preamble; see also Rania Maktabi, "Gender, family law and citizenship in Syria", *Citizenship Studies*, 14:5, 557-572, 2010; Rania Maktabi, "Female Citizenship in the Middle East: Comparing family law reform in Morocco, Egypt, Syria and Lebanon", *Middle East Law and Governance* 5, pp. 280-307, 2013.
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- ¹¹ Syrian Arab Republic, *Constitution*, Title I, Art. 3, 2012, accessed July 28th, 2021. <https://bit.ly/3i52H2x>; Syrian Arab Republic, *Qanun al-ahwal al-shakhsiyya* (Law of Personal Status), No. 59, 1953, Art. 305, accessed July 31, 2021. <https://bit.ly/3xlRUFO>; Maurits S. Berger, "The Legal System of Family Law in Syria", *Bulletin d'études orientales, Institut Français du Proche-Orient*, T. 49, 1997, pp. 116-119; Razi A. Diab Esq, "Religion and the Law in Syria", Arab Center for International Humanitarian Law and Human Rights Education, 2010; accessed July 29th, 2021. <https://bit.ly/3iRURIE>.
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- ¹³ Maktabi, "Female Citizenship in the Middle East", 559-560.
- ¹⁴ Annika Rabo, "Family Law in Multicultural and Multireligious Syria", in Collste, Göran, ed., *Possibilities of Religious Pluralism* (Linköping University Electronic Press, 2005) pp. 71-87.
- ¹⁵ J. N. D. Anderson, "The Syrian Law of Personal Status", *Bulletin of the School of Oriental and African Studies*, University of London, Cambridge University Press on behalf of School of Oriental and African Studies, Vol. 17, No. 1, 1955, pp. 34-49; Berger, "The Legal System of Family Law in Syria"; Esther van

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¹⁶ LPS, Art. 1-305

¹⁷ LPS Art. 306-308.

¹⁸ Iylmaz Orkan (Chair of Ufficio d'Informazione del Kurdistan in Italia – Uiki Onlus), *Interview*, Online, May 2021; Nilufer Koç (Co-Chair of the Kongreya Neteweyî ya Kurdistanê – KNK), *Interview*, Online, June 2021.

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²⁰ Abdullah Öcalan, *Democratic Nation* (International Initiative Edition and Mesopotamian Publishers, Neuss-Cologne, 2016).

²¹ Pinar Tank, “Kurdish Women in Rojava: From Resistance to Reconstruction”, *Die Welt des Islams*, Vol. 57, No. 3, pp. 404-428, 2017; Arianne Shahvisi, “Beyond orientalism: exploring the distinctive feminism of democratic confederalism in Rojava”, *Geopolitics*, 2018; Kongra Star, Charter Preparation Committee, *Kongra Star Charter*, August 25th, 2020; accessed July 28th, 2021; <https://bit.ly/3rRuZ45>

²² Heval Zilan (Member of Kongra Star, DFNS), *Interview*, Qamishlo, November 2017.

²³ For example, SCAR, Art. 3, 6, 9, 14, 32, 17, 27, 28, 47, 95.

²⁴ Maktabi, “Gender, family law and citizenship in Syria”, 2010; Esther van Eijk, “Pluralistic Family Law in Syria: Blane or Blessing?”, *Electronic Journal of Islamic and Middle Eastern Law*, Vol. 2, 2014.

²⁵ Anf News, “Die Frauengesetze der Autonomieverwaltung von Nord- und Ostsyrien”, *Anf Deutsch*, June 19, 2021; accessed July 29, 2021, <https://bit.ly/3f5ydM8>;

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²⁷ GPW, Art. 13

²⁸ GPW, Art. 11

²⁹ GPW, Art. 14. For more the inequality between genders in matters of marriage and divorce in Islamic law, see also Gihane Tabet, “Women in Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria”, *SHS Papers in Women’s Studies/ Gender Research*, No. 4, July 2005; Juelda Lamce, “Marriage Requirements in the Classic Doctrine of the Islamic Sunni Schools”, *Academic Journal of Interdisciplinary Studies*, Vol. 3, No. 1, March 2014; Roberta Aluffi Beck Peccoz, “Islamic Law. Marriage”, in *Routledge Handbook of Religious Laws* (London, Routledge, 2019), 256-260.

³⁰ GPW, Art. 25, 9,

³¹ GPW, Art. 17.

³² Ramazan Mendanlioglu, “Geschichte und Gegenwart der ‘Frauenrevolution‘ in Rojava”, *Work in Progress. Work on Progress. Doktorand*innen-Jahrbuch 2020 der Rosa-Luxemburg-Stiftung* (Herausgegeben von Marcus Hawel, 2020), 280-283; Omer Horo and Hîvda Hêbun, “Cihan Xidro: Das Frauengesetz Muss Umgesetzt Werden”, *Anha News*, July 14, 2021; accessed July 29, 2021, <https://bit.ly/37ejYQt>

³³ GPW, Art. 27.

³⁴ Andrea Benario, “Zum Verhältnis von Recht und Moral: Die Dialektik der Frauengesetze in Rojava”, *Kurdistan Report*, 2017; accessed July 29, 2021, <https://bit.ly/3jgrqAz>

³⁵ Zilan, *Interview*, 2017.

³⁶ Aynur Pasha (Member of the Justice Council of the Cizire Region, AANES), *Interview*, Online, June 2021.

³⁷ SCAR, Title IX, Art. 88; except for restorative and conciliatory judicial practices enacted by the Communes, which have no links with state legislation, see Yasin Duman, “Peacebuilding in a Conflict Setting”, *Journal of Peacebuilding & Development*, Sage Publications, Inc., Vol. 12, No. 1, April 2017. pp. 86-87.

³⁸ Pasha, *Interview*, 2021.

³⁹ Unsigned Document, *Chapter III. In Crimes Against the Family and Public Morals*, (PC-A), Art. 158, 175, 165, 167, 170, 172-74, 164, 178, 162, 159-160.