

Guinea-Bissau

1. Discrimination in the family

a) Overarching legal framework for marriage

Under the Civil Code, women and men have the same rights to enter into marriage, provided there is mutual consent (Art. 1617). Both civil and religious marriages are recognized by law as well as de facto unions (Civil Code, Art. 1576 & 1587).

While women have the same rights as men by law, discrimination against women remains a problem, particularly in rural areas where traditional and Islamic laws dominate. Where customary law applies, early and forced marriage, polygamy and levirate (i.e. where a widow is required to marry the brother of her late husband so that she remains in the same household group) continue to persist and are widespread particularly in rural areas (Emery, 2014; CEDAW, 2009; Africa For Women's Rights, n.d.). In some areas, women do not have the right to choose their husbands (CEDAW, State Party Report, 2009).

b) Child marriage

In 2011, the State adopted the Act of Reproductive Health, which raised the minimum age for marriage to 18 years old for both girls and boys. Previously, the legal age of marriage was 14 years old for girls and 16 years old for boys (Africa for Women's Rights, n.d.). Marriage of a child under the legal age may be permissible if there is consent by a parent, guardian or court authority, or if the child is emancipated by law (Civil Code, Art. 1649).

Discriminatory practices such as early and forced marriage continue to affect women and girls in the country (CRC, 2013; CEDAW, 2009). This is particularly the case in poor, rural areas where in some instances girls are forced to marry before they reach the age of 15 years old (CRC, 2013).

c) Household responsibilities

While the Constitution places women and men on equal footing with regard to legal status and rights, the Civil Code designates the husband as the sole head of the family (Art. 1674). In this capacity, the husband has full authority to represent his wife and make decisions on all matters relating to their married life (Civil Code, Art. 1674). The wife cannot do business without the consent of the husband unless she is appointed the administrator of all the couple's assets (Civil Code, Art. 1674). The law however does not require a married woman to obtain her husband's consent to work or obtain a profession (Civil Code, Art. 1676).

With regard to children, the Civil Code outlines special functions for the father and mother. The father is responsible to provide the child with financial assistance and moral guidance, as well as authorize consent for specific tasks, including choosing their profession and manage their assets

(Art. 1881). The mother's legal role is to support and fulfil the father's role if and when the father is remotely located or unable to perform for some reason (Civil Code, Art. 1881).

Guinea-Bissau continues to be characterized by a deeply patriarchal social structure where discriminatory norms and attitudes shape the roles and responsibilities of women and men in all spheres of life (CEDAW, 2009). Women are disproportionately responsible for domestic duties (e.g. maintain the household, raising of the children) (CEDAW, State Party Report, 2009).

d) Divorce

Under civil law, a marriage can be dissolved upon death or divorce by either spouse (Civil Code, Art 1792). Divorce may be initiated by either of the spouses on the basis of various grounds, including mutual consent by both spouses, and finalized through a court decision (Act No. 6/76, Art. 4). This is also applicable in customary law where village courts adjudicate over divorce cases, allowing both women and men to initiate divorce (Emery, 2013). This is a progressive development where previously men were allowed to divorce their wives unilaterally (Emery, 2013). As an exception to these provisions, the state's civil law also stipulates that the application of divorce does not extend to catholic marriage (Civil Code, Art 1790).

e) Inheritance

Women and girls have the same inheritance rights as men and boys (Constitution, Art 14). In practice, women are often excluded from inheritance from their husbands or fathers (CEDAW, 2009). Customary laws that govern some ethnic groups prohibit women from inheriting property and the latter is passed on to a male heir (CEDAW, 2009; Africa for Women's Rights, n.d.). Moreover, under customary law, widows do not receive inheritance, rather are themselves inherited by the family of the deceased husband. A practice known as levirate requires the widow to marry the brother of her late husband so that she can remain in the same household group (Emery, 2014; CEDAW, 2009; Africa for Women's Rights, n.d.). If the widow does not accept such arrangements, her and her children can be evicted from the family's land (CEDAW, 2009).

2. Restricted Physical integrity

a) Violence against women

Guinea-Bissau ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol) in 2008, reinforcing its commitment to eliminate all forms of discrimination and gender based violence against women. Under the state's Constitution, each citizen, irrespective of gender, has the right to life and to physical and mental well-being and no person may be submitted to penalties involving cruel, inhuman, or degrading treatment (Art. 32). Yet, the country does not have an overarching law that specifically addresses violence against women. Nevertheless, the country has made efforts to domesticate the protocol through adopting laws that address different forms of violence against women, including specific acts criminalizing domestic violence, rape and female genital mutilation. In the absence of a specific law prohibiting violence against women, violence including incest and domestic violence are widespread in the country (CEDAW, 2009; Africa for Women's Rights, n.d.). Moreover, in many

cases, women do not report incidents, particularly in instances of rape and other forms of sexual violence (CRC, 2013).

b) Domestic violence

In 2013, the state adopted the Domestic Violence Bill to address the pervasive problem of domestic violence in the country.

Despite the adoption of a law tackling domestic violence, it remains widespread in the country (US Department of State, 2017; Human Rights Council, 2015). It is considered socially acceptable for husbands to “discipline their wives” (Emery, 2013). In addition to the lack of resources of state structures, especially the police, to deal with domestic violence, other factors discourage women from reporting it such as the lack of capacity of state, traditional or non-profit organizations to advise and protect victims or women’s lack of knowledge their rights (AFDB, UN Women, 2015).

c) Rape

Under the penal code, rape, including spousal rape, is prohibited and a perpetrator may be sentenced to two to six years in prison (Art. 133). There is also a statutory rape law prohibiting sexual intercourse with a person under age 16 years old (US Department of State, 2017).

However, the laws are not effectively enforced and perpetrators are rarely prosecuted, in large part due to a lack of resources (US Department of State, 2017; CRC, 2013; Africa for Women’s Rights, n.d.). In some communities, girls are forced to marry the perpetrators, or are sent back to the communities where the abuse occurred, resulting in additional social and psychological harm (CRC, 2013). Women and girls generally do not report incidents of sexual assault or rape for fear of social stigma and retaliation, particularly among rural ethnic groups, where the norm is to settle those cases within the family and community (CRC, 2013; US Department of State, 2017). Similarly, many families tend to cover up incidents of sexual abuse within the family to avoid public shame and stigma (US Department of State, 2017). The government did not undertake any additional measures to challenge discriminatory norms that prevent women from reporting such cases (US Department of State, 2017).

d) Sexual harassment

At present, there is no law specifically addressing sexual harassment (US Department of State, 2017). Across the country, sexual harassment is widespread, and if reported, the police often blame the survivors (US Department of State, 2017). Young girls are also at risk of abuse and harassment in schools given the lack of trained and qualified teachers, in particular female teachers (CRC, 2013).

e) Female genital mutilation

In 2011, the State adopted a law criminalizing female genital mutilation (FGM), where conviction of the practice is punishable by a fine of up to XOF five million and five years in prison (Law against FGM/C, 2011). The government of Guinea-Bissau also developed a national action plan and established a National Committee for the Abandonment of Harmful Practices (CEDAW, 2013; Human Rights Council, 2015). In 2014, the Ministry of Health developed manuals and related strategies on

reproductive health and FGM, and accordingly, public health-care institutions across the country integrated FGM prevention into their prenatal, neonatal, and immunization services (US Department of State, 2017). In addition of these efforts by the state, Muslim preachers and scholars have also called for the eradication of FGM in the country (US Department of State, 2017).

The practice remains widespread in the country, notably among rural communities (CEDAW, 2013). In some regions, FGM is practiced within the context of the “*fanado*”, a traditional initiation ceremony marking the passage of both boys and girls into adulthood (AFDB and UN Women, 2015). Some Muslim communities continue the practice of FGM under the pretext of religious tradition (AFDB and UN Women, 2015). Among some ethnic groups, FGM is performed on girls as young as four months old (US Department of State, 2017).

f) Abortion

Abortion on-demand is illegal in Guinea-Bissau. It is permitted only to save the life of the pregnant woman (Penal Code, Art. 112). In this instance, the procedure must be performed in a hospital within the first three months of pregnancy, with the consent of the spouse, a tutor (in the case of Muslim mothers), or a legal representative if the woman is unmarried (DESA, 2014).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

In principle, the law affords women and men equal rights to own and make decisions on property (Constitution, Art. 12-14). While the constitution establishes the principle of equality between women and men, the laws governing land and assets ownership do not reflect this in marriage. Under the Civil Code, a married couple’s assets belong to the husband, who is also designated as head of the family (Art. 1678; Africa for Women’s Rights, n.d.). The wife may only administer assets if the husband is not able to (e.g. is abroad or incapacitated for some reason) (Civil Code, Art. 1678; Africa for Women’s Rights, n.d.). Even still, the husband may denounce a transition or contract relating to marital property at any time (CEDAW, State Party Report, 2009).

Customary regimes relating to land often exclude women or limit their access to land (CEDAW, State Party Report, 2009). In rural and traditional communities, the wife is considered inferior to her husband and has no effective rights or access to land (CEDAW, State Party Report, 2009). Women’s lack of access to property limits their access to income generating activities and their autonomy and decision making power (US Department of State, 2017).

b) Secure access to formal financial resources

Under civil law, women and men are equal in all areas of political, economic, social, and cultural life (Constitution, Art. 24). In principle, this right allows women and men to open individual bank accounts as well as access formal financial services such as a line of credit or financial loan, regardless of their marital status. Reinforcing this, the civil code specifies that women have same rights as men to open a bank account and manage financial assets (Civil Code, Art 1680). In the

event of a divorce, civil law stipulates that the husband and the wife have the same rights and legal capacity (CEDAW, State Party Report, 2009).

In practice, the authority on most matters resides with the husband as he is the legal head of the household. This is particularly the case in rural areas where customary and Islamic laws dominate and discrimination against women remains a problem, especially when obtaining credit or owning and managing businesses (US Department of State, 2017; Africa for Women's Rights, n.d.).

c) Workplace rights

In 1922, Guinea-Bissau ratified ILO conventions relating to equal remuneration and discrimination in employment and occupation. Accordingly, the state has domesticated these laws within its legal framework. Under the constitution, each citizen is granted the equal right and duty to work (Art. 36). The Labour Code establishes that women and men are afforded equal opportunities in work, prohibiting any form of discrimination based on sex (Labour Code, Art. 155). Women have the legal right to pursue any profession and married women can start a business without the consent of their husband to (Labour Code, Art 155). All workers, female or male, are guaranteed equal pay for equal work (Constitution, Art 36).

Women may not engage in jobs that require heavy work, unsanitary conditions, or any tasks that may place pregnant women at risk (Labour Code, Art. 155), nor to work at night (Art. 160). Women are guaranteed a 60 day maternity leave paid for in full by social security and the employer.

Women often experience discrimination in employment (US Department of State, 2017; CRC, 2013). Girls in particular are exposed to dangerous work and long working hours, mistreatment as well as abuse and sexual violence (US Department of State, 2017; CRC, 2013). Women's share of unpaid care and domestic work often prevent them from seeking paid opportunities outside the home, especially in rural areas (CEDAW, State Party Report, 2009).

3. Restricted Civil liberties

a) Citizenship rights

Under the Constitution, each citizen is afforded equal rights and legal status, regardless of race, belief, social status, race, religion or philosophical conviction (Art. 23). By law, women and men have equal rights with regards to acquiring, changing or retaining their nationality, regardless of their marital status (Nationality Law, Ch. 3-4). Women and men have equal rights to confer their nationality to a foreign spouse (Nationality Law, Ch. 3-4, 2010). The Constitution guarantees women and men the freedom of movement, with no prohibitions on obtaining a passport or travel documents (Constitution, 1991; US Department of State, 2017).

The Nationality Law allows mothers and fathers, irrespective of marital status, to confer nationality to their children (Ch. 3) and to register the birth of their children (Ch. 7). However, birth registration rates are low (US Department of State, 2017). In order to improve birth registration, the government put in place several initiatives including suspending the collection of fees for registration and

partnering with multi-lateral institutions to establish birth registration facilities and national immunization centres in hospitals around the country (US Department of State, 2017).

b) Voting

Each citizen who is 18 years of age or over can vote (Constitution, Art. 47). In practice cultural and traditional practices may prevent women from participating in political life, such as voting, on the same basis as men (US Department of State, 2017).

c) Political voice

The Constitution provides each citizen, woman or man, the right and duty to participate in the nation's political life (Constitution, Art. 43) and to be elected for public office (Art. 47).

Yet, women's participation in public and political affairs is limited and their representation at decision making levels in government (e.g. ministers, parliamentary level) is very low (Human Rights Council, 2015). This is in part attributed to the traditional discriminatory attitudes about the roles of women in society as well as women's lack of access to property and assets that has contributed to their limited autonomy and decision-making power (US Department of State, 2017; CEDAW, 2009). At present, there is no legislation in place such as quotas to ensure equal representation of women in politics.

d) Access to justice

Under the Constitution, each citizen is afforded the right to access justice, including to seek redress for violations of their rights, the right to counsel, and the presumption of innocence (Art. 35). Moreover, the legal system of Guinea-Bissau upholds the principle of equality of the parties (making no distinction based on sex, civil, economic or social status of parties) to ensure that justice may be accessed by all citizens for all forms of legal action whether it be criminal, civil, administrative or labour-related (Decree-Law No.11/2010; Human Rights Council, 2015; CEDAW, State Party Report, 2009)

To improve access to justice, the state has also instituted measures that provide for legal assistance; including the Legal Assistance Act. Additionally, the Guinea-Bissau Human Rights League and non-governmental organizations provide legal assistance and support for women and children (CEDAW, State Party Report, 2012).

Even with these structures in place, women often do not seek justice, particularly in cases of rape and other forms of sexual violence (CRC, 2013). Rather, women and girls do not report such cases to the authorities, and in some instances are forced to marry their abusers or are sent back to the communities where the abuse occurred, exposing them to potentially additional social and psychological harm (CRC, 2013). This discrimination is particularly acute in rural areas, where local traditions and customary law not always in line with civil law are widely accepted (ISSAT, 2017). Despite the fact that traditional authorities often violate the rights of women and children, women continue to seek justice through these channels (ISSAT, 2017).

Sources

Africa for Women's Rights – *Guinea-Bissau Info-note*, www.africa4womensrights.org.

African Development Bank, UN Women (2015) *Country Gender Profile – Guinea-Bissau*, www.afdb.org/.

Committee on the Elimination of Discrimination against Women (CEDAW) (2009) *Concluding observations of the Committee on the Elimination of Discrimination against Women - Guinea-Bissau*.

Committee on the Elimination of Discrimination against Women (CEDAW) (2009) *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined initial, second, third, fourth, fifth and sixth periodic reports -Guinea-Bissau*.

Committee on the Rights of the Child (2013) *Concluding observations on the combined second to fourth periodic reports of Guinea-Bissau, adopted by the Committee at its sixty-third session (27 May–14 June 2013)*.

Emery, Robert (2013), *Cultural Sociology of Divorce: An Encyclopaedia*, SAGE Publications, Virginia.

Food and Agriculture Organization of the United Nations (FAO) *Gender and Land Rights Database*, www.fao.org/gender/landrights/.

Government of Guinea-Bissau (1986) *Ley núm. 2/1986 general del trabajo*.

Government of Guinea-Bissau (2006) *Código Civil e Legislação Complementar*.

Government of Guinea-Bissau (1992) *Nationality Law Lei no 2/92*.

Government of Guinea-Bissau (1996) *The Constitution of Guinea-Bissau*.

Human Rights Council (2015) *Working Group on the Universal Periodic Review Twenty-first session 19–30 January 2015 National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 -Guinea-Bissau*.

The International Security Sector Advisory Team (ISSAT) (2017) *Final evaluation of the Rule of Law and Justice (RoL&J) Project (2014-2016) of the United Nations Development Programme (UNDP) in Guinea-Bissau*, www.issat.dcaf.ch.

United Nations, Department of Economic and Social Affairs, Population Division (2014). *Abortion Policies and Reproductive Health around the World*.

United States Department of State (2017) *2016 Country Reports on Human Rights Practices – Guinea-Bissau*.