

## Madagascar

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Under civil law, women and men have equal rights to enter marriage. In 2007, the law was amended to increase the legal age for marriage for women and men to 18 years old. Further, the law recognises both civil and traditional ceremonies (if legally registered by an officer of civil status) and prohibits bigamy (Law on Marriage and Matrimonial Regimes, 2007).

In practice, customary marriages are widely practiced and few are legally registered, leaving women without the protections offered in civil law (FAO, n.d.; CEDAW, 2015). Traditional stereotypes and attitudes that place women inferior to men perpetuate the unequal treatment of women in family matters such as marriage, divorce, and child custody (CEDAW, 2015).

#### b) Child marriage

In 2007, the Law on Marriage and Matrimonial Regimes was amended to increase the legal age for marriage to 18 years old for both women and men. There is however an exception whereby the Court may authorize marriage for those underage (Law on Marriage and Matrimonial Regimes, 2007). This request is only be valid if the marriage is entered for "serious reasons" not specified by the law, and if the request and consent of the parent of the child who is underage is provided. To help enforce the age requirement, the law requires all marriages to be registered with a civil officer. The government has also made efforts to raise awareness on child marriage, including joining the African Union Campaign to End Child Marriage in Africa in 2015 (Girls Not Brides, n.d.).

Still, child marriage continues to be widely practiced, particularly in rural areas and in the southern regions of the country (US State Department, 2017; Girls Not Brides, n.d.). In some regions, the forced marriage of children continues, with reports of parents arranging marriages for girls as young as 10 years old (US Department of State, 2016; CEDAW, 2015). In other regions, particularly in the northwest regions, ethnic groups continue the practice of "*moletry*," a premarital arrangement that involves a dowry in the form of money or oxen from the future husband to the bride's family (Madagascar Coalition of CSOs, 2015; CEDAW, 2015; FAO, n.d.). Forced and early marriages also affect some boys around the age of 15 years old (Madagascar Coalition of CSOs, 2015; US Department of State, 2017). Often, the children engaged in these arrangements are also victims of domestic servitude and sexual slavery (US Department of State, 2015).

#### c) Household responsibilities

While the Law on Marriage and Matrimonial Regimes calls for mutual respect among spouses, it also establishes the husband as the head of the family (Article 54-55, 2007). The law requires the couple to live together in a common residence (Article 50, 2007). With regard to children, spouses have equal parental rights and share equal responsibilities to provide for and raise their children (Children's Act,

2007; Law on Marriage and Matrimonial Regimes, 2007). Couples living in informal unions who have children may exercise parental authority jointly if requested (Children's Law 2007).

Discriminatory stereotypes concerning the roles and responsibilities of women and men persist, such as confining the woman to occupations that are considered to be feminine, such as family care, and domestic work (Madagascar Coalition of CSOs, 2015; CEDAW, 2015).

#### d) Divorce

While either spouse can initiate divorce under the marriage and matrimonial regimes law (Art 66), divorce proceedings ultimately fall in men's favour. The court promotes conciliation over divorce; yet, if conciliation has not been reached the court may table the proceedings for a maximum period of six months to give the couple time for "reflection and appeasement", whereby the divorce can only be initiated again at the sole request of the husband (Matrimonial Regimes, Art 85, 2007).

In rural areas, customary law is still practiced where men are also favoured in divorce and child custody proceedings (CEDAW, 2015; Purdy, 2013). Moreover, some traditional practices, that serve to ward off divorce, are recognised in civil law. For example, in the event of domestic violence, women have the option of invoking "*misintaka*", a practice that allows the wife to leave the home without having to divorce her husband (Law on Marriage and Matrimonial Regimes, 2007; Purdy, 2013).

#### e) Inheritance

Under the Law on Estate, Wills and Donations, in the absence of a will, the estate of the deceased shall be partitioned according to the heirs listed, regardless of sex (Article 16, 1968). At the top of this list are the children of the deceased, while the surviving spouse is eighth in line. There is also a provision for co-heirs to decide if female heirs receive their share of the estate in a sum of money versus a portion of the property to be shared (Article 83, 1968). This practice allows for the continuation of "the father's name and estate" through his male heirs (CEDAW, 2015).

Despite these laws, customary practice often guides inheritance which can vary from one ethnic group to another, but in general these practices tend to favour men. Such laws serve to ensure the legacy of the father's name as well as the estate (CEDAW, 2015) Often land is divided among the male heirs only, or land is given back to families once a women leaves her village to get married (FAO, n.d.). There is also a practice known as the "customary third", which upon dissolution of the marriage provides the wife with one-third of the joint estate, disregarding the line of succession as stipulated in the inheritance law (US Department of State, 2017).

## 2. Restricted Physical integrity

### a) Violence against women

To date, Madagascar has not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). There is no comprehensive law that specifically criminalises violence against women (CEDAW, 2015). There are however provisions in the Penal Code and Labour Law that provide women some protection, in particular, against cases of rape and sexual harassment. In 2015, the state passed a National Plan to Combat Human Trafficking, providing women and young girls additional protections and assistance against gender based violence. In 2016, a

National Strategy to Combat Gender-Based Violence and its Plan for the period 2017-2021 was launched, which includes provisions for a dedicated hotline for domestic violence victims, the development of guidelines for service providers dealing with gender based violence cases, and the establishment of legal counselling centres, including mobile centres at the local level (Human Rights Committee, 2017). Moreover, the government continues to partake in the “16 Days of Activism against Gender Based Violence”, an annual global initiative to raise awareness on this issue. Apart from this initiative, the government is limited in its reach and regularity in its awareness raising efforts due to limited resources and a heavy reliance on external funding (Madagascar Coalition of CSOs, 2015).

Due to the absence of a comprehensive legal framework and the widespread social tolerance of domestic and sexual violence, violence against women continues to be underreported (CEDAW, 2015). This has been attributed to a lack of confidence in law enforcement and the judicial system, the slow nature of court procedures, and the high costs involved (Madagascar Coalition of CSOs, 2015).

### **a) Domestic violence**

There are no laws or action plans specifically dedicated to domestic violence; however, it falls under a broader law that criminalises physical violence towards another person (Penal Code, 2001). In the Penal Code, domestic violence is prohibited and punishable by imprisonment and monetary penalties based on the severity of the crime (Penal Code, 2001).

To assist survivors of domestic violence in various regions in the country, the Ministry of Population, Social Protection, and Promotion of Women established advisory centres called Centres for Listening and Legal Advice. At these centres, survivors can access medical care, psychological assistance, and legal advice; however there is no data on the accessibility or effectiveness of these services (US State Department, 2017).

There is not specific data on domestic violence cases in the country, but it has been documented that very few women have taken legal action against their husbands. Rather, women are left with more traditional ways of addressing the issue; namely, to invoke “*misintaka*”, a practice that allows the wife to leave the home without divorcing (Law on Marriage and Matrimonial Regimes, 2007; Purdy, 2013), or to resort to conciliation (CEDAW, 2015).

### **b) Rape**

In Madagascar, rape is criminalised with penalties of imprisonment and/or fines which vary depending on the severity of the crime (Penal Code, Article 332, 2001). The law does not specifically address spousal rape; however there have been discussions on introducing an amendment that would include marital rape into the law (Human Rights Committee, 2017).

Sexual violence is believed to be widespread and authorities often do not enforce the law, resulting in impunity for rape (US State Department, 2017).

### **c) Sexual harassment**

The Labour Code criminalises sexual harassment in the workplace, specifying imprisonment and financial penalties that increase if the offenders used force. There are however no protections for women and girls against sexual harassment outside the workplace. Similar to other forms of violence

against women, sexual harassment is widespread in the country and authorities often do not enforce the law (US Department of State, 2017). Outside of the workplace, there are reports of sexual harassment occurring in the public space, where young girls are victims of sexual abuse and harassment while walking to and from school (CEDAW, 2015).

#### **d) Female genital mutilation**

While there is no specific law explicitly stating the prohibition of female genital mutilation (FGM), the state's Constitution does affirm that torture, cruel, inhuman or degrading penalties or treatments are against the law. Specifically, there is also a stipulation in the law that it is illegal to submit a person to such treatments without their free consent to a medical or scientific experiment (Constitution, Article 8, 2010). No evidence suggest that female genital mutilation is practiced in the country (IPU, 2010).

#### **e) Abortion**

Under the penal code, abortion is illegal and any person attempting to perform or procure an abortion will be subject to imprisonment and/or fines (Article 317, 2001). There is a high prevalence of abortion as well as a high rate of health complications among women and girls (CEDAW, 2015).

#### *More*

The sexual exploitation of young women and girls is reported to be an issue in some rural areas, where the practice of "*Tsenan'ampela*" (market girls) continues, where young girls solicit themselves at cattle markets for money (US State Department, 2017).

### **3. Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

Under the current laws, women and men have equal access to land ownership. Specifically, in the Constitution each citizen is guaranteed the right to individual property (Article 34, 2010). The Ordinance relating to land regime and registration (2003) reaffirms the equal rights of women and men and protects the property rights of women. In the New Land Policy (2005), that stipulates the principles in the governance of land, joint registration of land is authorised (Archambault, Zoomers, 2015). Moreover, in the law relating to marriage and matrimonial regimes (2007), there are provisions that allow both spouses to own individual property where they are entitled to administer the property without interference or consent of others. Moreover, each spouse is also allowed to administer joint property acquired during the marriage, which was a right that was exclusively held by men (Law on Marriage and Matrimonial Regimes, 2007).

In both civil and customary law, discriminatory practices in land ownership, asset management and inheritance continue to exclude women from equally accessing, owning and managing land in the country (CEDAW, 2015; Madagascar Coalition of CSOs, 2015). In rural areas, customary law tends to be applied when dealing with land management. Customs with regard to land vary across regions and ethnic groups, but in most cases women tend to have only secondary rights to land. (Archambault, Zoomers, 2015). Often land is divided among the male siblings only, or land is given back to families once a woman leaves her village to get married (FAO, n.d.). In the event of a divorce or death, women are only afforded one third of the common property, and in some cases a wife may not receive

anything at all (Archambault, Zoomers, 2015). In some regions, land ownership exclusion specifically affects certain socio-economic groups, namely those lower in the caste system such as the descendants of slaves (FAO, n.d.).

### **b) Secure access to formal financial resources**

In civil law, women and men are afforded equal access to and participation in all spheres of life, including economic life (Constitution, Article 6, 2010). 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.

Financial inclusion in the country is quite low. Few women hold a bank account (especially in rural areas), or borrow money from financial institutions (International Monetary Fund, 2016). Women's low financial inclusion may be caused by a variety of factors including low literacy levels, limited or no access to steady income, and by law and tradition, men are considered the head of the household and decision making, which extends to financial decisions (CEDAW, 2015; Law on Marriage and Matrimonial Regimes, 2007).

### **c) Workplace rights**

Under the Labour Code, discrimination of all forms, including based on gender, religion, race, political affiliation, disability, or trade union membership, is prohibited in the workplace (Article 64, 2004). The law prohibits women from working in positions that would pose a danger to their health or safety. This includes working at night in the industrial sectors such as mining (Labour Law, Article 85, 2004). It is prohibited for employers to inquire about a woman's pregnancy or intention to have children during the recruitment process (Article 94-95, 2004). Pregnant women are afforded maternity leave of 14 weeks with full income paid by the government and job security during this period (Article 97, 2004). The law also offers paternity leave of 10 days with an allowance of at least 1/12 of their salary paid by the employer (Article 87, 2004). Moreover, the law allows for daily nursing breaks for women for a period of 15 months after birth (Labour Law, 2004).

Discrimination against women in the workplace remains a problem in the country (US Department of State, 2017). Due to discriminatory attitudes towards women, discriminatory practices of employers persist contributing to high rates of unemployment among women, a gender wage gap, the lack of implementation of social protections for women (in particular maternity allowances) and wide occupational segregation with a large concentration of women in the informal sector (CEDAW, 2015; Madagascar Coalition of CSOs, 2015). Discriminatory gendered stereotypes tend to limit women to occupations that are considered to be feminine such as domestic work, family care, and sewing (Madagascar Coalition of CSOs, 2015). Moreover, it has been documented that persons with disabilities and LGBTI individuals were subjected to hiring discrimination (US Department of State, 2017).

### ***More***

A majority of women rely on domestic work as their main source of income, yet these are largely informal jobs that tend to be low paying and do not offer the social protection or security of the formal sector (Madagascar Coalition of CSOs, 2015; CEDAW, 2015). Women domestic workers, both in the

country and abroad, are at a higher risk of being abused and raped, and worse trafficked for sexual and labour exploitation (CEDAW, 2015; US Department of State, 2017).

## 4. Restricted Civil liberties

### a) Citizenship rights

Under the Constitution all citizens are equal before the law and are protected by discrimination based on gender. Yet, with regard to basic citizenship rights, the status of women and men is uneven. Until 2017, the Nationality Code did not allow a Malagasy woman to confer her nationality to her children. In 2017, an amendment was passed by the government that now includes this provision as well as the provision where both spouses and their children are able to retain their nationality in the event that a spouse or a parent loses their citizenship (UNHCR, 2017). Still, the amendment does not allow a Malagasy woman to confer her nationality to her non-national spouse as a Malagasy man can to his foreign spouse (UNHCR, 2017).

By law, women and men have the freedom of movement within the country and outside of it (Constitution, 2010). In principle, women and men have equal access to national identity cards and passports, regardless of their marital status. Married women, however, are required to provide their marriage certificate when applying for passports.

With regard to birth registration, the mother or the father may register the birth (Law 61.025, 1961). However, if a child is born out of wedlock, the father must conduct the birth notification or provide an authenticated procuration (power of attorney) to an individual to do so (Law 61.025, Art. 29, 1961).

In practice, women many face bureaucratic hurdles when attempting to obtain national identity cards for their children. This may be particularly the case for women who have “foreign sounding names especially children with Arab, Muslim or Comorian sounding names” (Equal Rights Trust, 2016).

### b) Voting

By law, women and men can equally exercise their civil and political right to vote (Constitution of Madagascar, 2010). Despite universal suffrage, it has been reported that cultural and traditional factors prevent women from fully participating in political life (US State Department, 2017).

### c) Political voice

The state’s Constitution grants women and men equal rights to participate in political life, including the right to hold public and political office. There are no legal quotas to help promote women’s participation at the national level; however there are a few other measures in place to aid in enhancing their representation.

Specifically, in 2011, the government adopted a law relating to political parties (2011) that encourages political parties to implement a gender approach, but does not provide specifics on what actions to take. Also, the government developed a Gender and Elections Strategy for the period 2015-2020 to further enhance women’s participation in political life. To enhance the representation and participation of women in the political sphere, the government also developed a Gender and Elections Strategy for 2015-2020.

Malagasy women tend to participate less than men in political institutions and local decision making bodies (Archambault, Zoomers, 2015). There is a greater percentage of men than women in the national parliament, and decision making positions in the government at large (e.g. in public service, diplomatic service and at the community level) (CEDAW, 2015; IPU, accessed 2017). One reason for this is the prevailing cultural and traditional influences on the roles of women, especially those in leadership positions (US State Department, 2017).

#### **d) Access to justice**

By law, each citizen, woman or man, has the right to justice and the right to a defence (Constitution, Article 13, 2001). The law ensures that each citizen is afforded these rights in all stages of the procedure from the preliminary investigation to the trial (Constitution, Article 13, 2001). In 2014, the state established an independent National Human Rights Commission to investigate matters relating to the fundamental freedoms and human rights, in particular the rights of women, children, persons with disabilities, older persons and other vulnerable groups. In 2016, a National Strategy to Combat Gender-Based Violence and its Plan for the period of 2017-2021 was launched, which includes provisions of an dedicated hotline for domestic violence victims, the development of guidelines for service providers dealing with gender based violence cases, the establishment of legal counselling centres including mobile centres at the local level (Human Rights Committee, 2017). Moreover, there have been efforts from NGOs working in the country to promote the civic education of women and girls, raise awareness and increase the knowledge on legal rights and protections for women (US Department of State, 2017).

Despite these efforts, there are still many barriers for women to access to justice in the country, especially in cases of divorce and gender based violence (CEDAW, 2015). These include illiteracy among women, cultural and traditional legal systems, societal pressures and intimidation, corruption within the judiciary, the unavailability of courts in rural areas, and the legal costs incurred in proceedings (CEDAW, 2015; US Department of State, 2017). Traditional legal structures also exist, particularly in rural areas, where the local traditions and customary law tend to be in men's favour (CEDAW, 2015; US Department of State, 2017).

Adrianasolo, Nadeche (2013) *The Girl Child Marriage Practices in Madagascar: A Critical Analysis*, University of Pretoria.

[https://repository.up.ac.za/bitstream/handle/2263/43646/Andrianasolo\\_Girl\\_2013.pdf;sequence=1](https://repository.up.ac.za/bitstream/handle/2263/43646/Andrianasolo_Girl_2013.pdf;sequence=1)

Archambault, Caroline and Zoomers, Annelies (2015) *Global Trends in Land Tenure Reform: Gender Impacts*, Routledge. <https://www.routledge.com/Global-Trends-in-Land-Tenure-Reform-Gender-Impacts/Archambault-Zoomers/p/book/9781138787940>

Altius, Ave and Raveloharimisy, Joel (2016). *Women's Access to Political Leadership in Madagascar: The Value of History and Social Political Activism*, Journal of International Women's Studies. <http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1890&context=jiws>

Committee on the Elimination of Discrimination against Women (2015) *Concluding observations on the combined sixth and seventh periodic reports of Madagascar*. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgOTxO5cLIZ0CwAvhyns%2byLmM%2fyB34j7X9idprBwUmAjlzrNnUIJ9sYA2VEIML2Z6JRxiavV5BotzVeogTsF30LGBiO6TL4j9vd8GoQV%2b8%2fe40jhGRMkp%2fhy%2b%2b1V4sTfw%3d%3d>

Comité des droits de l'homme (2017) *Liste de points concernant le quatrième rapport périodique de Madagascar, Additif Réponses de Madagascar à la liste de points*. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspfQgftv24miQXmsibWTDK%2BwLSn2LWI8V78OjkBK6WxkRaC9ZE6A%2F%2Fbc3x%2FBnlakXhqXQ67dW59%2FnhllyhgHZDloQM0k3bfU1m1EhGz95By5JQIOVeKB94PhSd7fq%2FLfow%3D%3D>

Committee on the Elimination of Discrimination against Women (CEDAW) (2015) *Concluding observations on the combined initial to fifth periodic reports of Madagascar*. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fMDG%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fMDG%2fCO%2f4&Lang=en)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (2014) *Consideration of reports submitted by States parties and seventh periodic reports of States parties expected in 2014 Madagascar*. <http://www.refworld.org/type,STATEPARTIESREP,CEDAW,,564edff44,0.html>

Equal Rights Trust and Focus Development Association (2016) *Suggested issues and questions to be adopted by the Country Report Task Force at the 118<sup>th</sup> session of the Human Rights Committee in relation to the fourth periodic report - Madagascar*

Food and Agriculture Organization of the United Nations (FAO) *Gender and Land Rights Database – Madagascar* <http://www.fao.org/gender/landrights/> (accessed 3 December 2017.)

Girls not Brides, Country Database – Madagascar <http://www.girlsnotbrides.org/child-marriage/madagascar/> [accessed May 2017].

Global Campaign for Equal Nationality Rights (2015) *Submission to 62nd Pre-sessional Working Group of the Committee (9-13 March 2015) – Madagascar*, Geneva.



[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MDG/INT\\_CEDAW\\_NGO\\_MDG\\_19353\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MDG/INT_CEDAW_NGO_MDG_19353_E.pdf)

Government of Madagascar (2014), *National Review on Beijing +20*: <http://evaw-global-database.unwomen.org/en/countries/africa/madagascar/2012/plateforme-nationale-de-lutte-contre-les-violences-basees-sur-le-genre> [accessed May 2017].

Government of Madagascar, *Code of Malagasy Nationality*, 1960

Government of Madagascar, *Labour Code*, 2004

Government of Madagascar, *Law on Estates, Wills and Donations n ° 68-012*, 1968

Government of Madagascar, *Law on Marriage and Matrimonial Regimes*, 2007.

Government of Madagascar, *Law on the Rights and Protection of Children No 023*, 2007.

Government of Madagascar, *Loi Relative aux Partis Politiques*, 2011

Government of Madagascar, *Penal Code*, 2001

Human Rights Committee (2017) *Concluding observations on the fourth periodic report of Madagascar*, <http://docstore.ohchr.org/>

International Monetary Fund (2016) *Republic of Madagascar Financial System Stability Assessment*, Washington, D.C. <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Republic-of-Madagascar-Financial-System-Stability-Assessment-44452>

Madagascar Coalition of Civil Society Organisations (2015) *Shadow Report on Madagascar*.

Office of the United Nations High Commissioner for Refugees [https://www.unpr-info.org/sites/default/files/document/madagascar/session\\_20\\_-\\_october\\_2014/unhcr\\_upr20\\_mdg\\_e\\_main.pdf](https://www.unpr-info.org/sites/default/files/document/madagascar/session_20_-_october_2014/unhcr_upr20_mdg_e_main.pdf)

UNHCR (2017), *Background Note Gender Equality, Nationality Laws and Statelessness*.

Population Policy Data Bank – Madagascar Abortion. Department of Economic and Social Affairs of the United Nations. Available at: [https://www.google.com/search?q=abortion+madagascar&rlz=1C1CHFX\\_enUS489US489&oq=abortion+madagascar+&aqs=chrome..69i57j0.6437j0j7&sourceid=chrome&ie=UTF-8#](https://www.google.com/search?q=abortion+madagascar&rlz=1C1CHFX_enUS489US489&oq=abortion+madagascar+&aqs=chrome..69i57j0.6437j0j7&sourceid=chrome&ie=UTF-8#) (accessed 2017).

Purdy, Elizabeth Rholetter (2013) *“Madagascar” Cultural Sociology of Divorce: An Encyclopedia*, Sage Publications.

United Kingdom Border Agency (2008) *Female Genital Mutilation*, available at: World Bank Group (2015) *Women, Business and the Law 2016: Getting to Equal*, Washington, DC.

United States Department of State (2017) *2016 Country Reports on Human Rights Practices – Madagascar*, <http://www.refworld.org/docid/48776e342.html> [accessed May 2017].