

Mozambique

The Constitution of Mozambique was approved and enacted on November 2, 1990 and revised in 2004. Parts 2 and 3 of the Constitution lay out the fundamental rights, duties and freedoms of all Mozambicans and Article 66 prohibits discrimination based on colour, race, sex, ethnic origin, place of birth, religion, educational level, social position, the legal status of their parents, or their profession. Article 57 specifically addresses gender equality between men and women, recognizing and encouraging the participation of women in the political, economic, social and cultural activities of the country (Constitution Act, 1990).

The Ministry of Gender, Child and Social Welfare (MGCAS) is the national machinery tasked with ensuring gender equality in Mozambique (Human Rights Council State Report, 2015). Concerns around inadequate human, capital and financial support to strengthen the work of the Ministry has been noted by the Committee for the Elimination of Discrimination Against Women (CEDAW).

1. Discrimination in the family

a) Overarching legal framework for marriage

Adopted in 2004, the Family Law is the overarching legal framework for marriage and provides for equal rights for all women and men to enter marriage (Article 7). The Law also addresses customary and religious marriages (Article 17) though it is unclear what the legal implications for informal and de facto unions are despite many Mozambicans remaining in de facto unions (Africa for Women's Rights, n.d.). Article 7 of the Family Law, 2004 defines marriage as the voluntary union between a man and a woman (Family Law, 2004).

Despite campaigns against it, the practice of "purification" where a widow is forced to have sexual intercourse with a relative of her deceased husband's family happens, particularly in rural areas (US Human Rights Report, 2016). Widows who are still able to bear children remain in the family as part of the inheritance (FAO, 2009). Furthermore, land and property grabbing continue affect widows and particularly women accused of witchcraft continue to have their land taken away from them (CSO ICCPR Report, 2013).

b) Child marriage

The legal minimum age of marriage for girls and boys is 18 years old. However, with the consent of the parents, guardian or court girls and boys as young as 16 can be married (Family Law, 2004)

Article 19 of the Family Law prohibits child marriage. The government adopted the National Strategy for the Prevention and Combatting of Early Marriage (2015-2019) in December 2015 to strengthen legal and public measures to prevent child marriage with the goal of eliminating the practice by 2019 (Mozambique Strategy, 2016). The Ministry charged with the coordination and implementation of this strategy is the Ministry of Social Action, Children and Gender (Girls). There is no budget for the implementation of the strategy and no legal sanctions for someone who facilitates child marriage.

Stark regional differences in the rates of child marriage across Mozambique suggest that sociocultural factors play a significant role (UNICEF, n.d.). Initiation rites to “prepare” girls to marriage and procreation are also practiced, especially in the Northern and Central regions where child marriages are most common (UNICEF, n.d.).

In January 2017, Mozambique faced the worst drought experienced in southern Africa in 35 years and organizations were concerned about the regression of progress made towards gender equality. With additional stressors placed on families with already limited economic access, child marriage became a solution to reducing the number of dependents in a household and parents were marrying off their children to help ensure that they could be fed (CARE International Mozambique, 2017).

c) Household responsibilities

Article 97 of the Family Law Act grants equal parental authority rights to both parents. However, married women do not have the right to determine how many children they would like to have and are not allowed to travel alone with their children without the permission of their husbands (CEDAW State Report, 2005). The Family Law Act allows all men and women to become the head of the household and there are no legal duties or ramifications for a wife failing to obey her husband. Articles 97 and 331 holds both parents legally responsible of their children, including upon divorce. Articles 309 and 310 hold both parents responsible for the care and protection of their children during marriage (Family Law, 2004).

A 2015 Study on Gender Differences in Time-Poverty in Rural Mozambique found that though women’s labour directed at economic activities was comparable to that of men, household chores and care work remain women’s responsibility (Arora, 2015).

d) Divorce

The introduction of the Family Law Code in December 2004 helped ensure gender equality in divorce proceedings. All women and men have equal rights to initiate a divorce and to finalize a divorce or annulment (Family Law, 2004, articles 193, 179). Upon divorce, women and men have the same rights and responsibilities to care, protect and provide for their children (Family Law, 2004, articles 196, 197(b)).

The new law may help to improve the situation of women who may have to repay the *lobolo* (dowry) upon divorce; however, limited understanding of the law and access to resources and support may leave women in a weaker position. It is also unclear how many women prefer to access community tribunals and mediation as opposed to the formal legal system.

In some parts of Mozambique, women use divorce as a means of regaining agency when resisting their spouse’s desire to enter into a polygamous relationship (Arnfred, 2011).

Domestic violence is considered a valid reason to seek a divorce, however working poor women who have little alternative options for economic and social support remain with the abuser for stability (US Human Rights Report, 2016).

e) **Inheritance**

Articles 66 and 2133 of the Civil Code allow for equal inheritance rights of surviving spouses, daughters and sons. The 1997 Land Act also guarantees the right of use and improvement of land and inheritance regardless of gender (Article 16(1)). Article 48 of the Constitution also guarantees State recognition and protection of rights to land use obtained through inheritance or occupation, unless disputed by another person or entity (Constitution Act, 2004).

However, in practice, customary laws and practices discriminate against women and girls rights to their spouses' and parents' property (CEDAW Shadow Report, 2005). The customary inheritance laws in Mozambique are intricately linked to the kinship and social structures of the immediate and extended family. These laws are meant to ensure that land and other assets are collectively owned and that they remain within the lineage, therefore allowing administrative control and power to the extended family (FAO, 2009). Men historically having control over property on behalf of the family was translated to an obligation on the part of male family members to care for and ensure access to the property and assets of their female family members (FAO, 2009). In patrilineal communities, women and girls are not allowed to own or inherit property for upon marriage, the assets would be transferred to the new husband's family (FAO, 2009). Only if there are no male children, siblings or ascendants of the deceased, will a widow have the right to inherit. Daughters' rights to inherit follow that of a widow (FAO, 2009). Widows are granted access to housing, land and other assets to care for themselves and their children (FAO, 2009). Once the children have reached adulthood, the inheritance is transferred to them. Widows continue to be accused of witchcraft, are subject to widow inheritance and continue to experience land and property grabbing (FAO, 2009).

2. Restricted Physical integrity

Mozambique ratified the Maputo Protocol to the African Charter on Human and Peoples' Rights on December 9, 2005 which further commits the state to eliminating all forms of violence and systemic, cultural and social barriers that negatively impact the advancement of women's rights. Mozambique has a monist legal system whereby ratified international and regional treaties and agreements automatically become part of domestic law, but article 18 of the Constitution requires that international treaties and agreements be first published in the National Gazette.

a) **Violence against women**

The 2004 Family Code, the Penal Code, the 2009 Law on Domestic Violence Perpetrated Against Women Act and the Law on Combating Trafficking are the main pieces of legislation that address violence against women, domestic violence, sexual violence and sexual harassment.

The Integrated Multi-Sectorial Assistance Mechanism for Victims of Violence was approved in May 2012 to guide a national, coordinated and integrated response to violence against women. In an effort to increase access to services and support for survivors of domestic violence, the Offices for Assistance to Family and Children Victims of Violence were established across Mozambique (UPR, 2015).

Affordable, accessible and specialised services such as legal aid were created to support survivors of gender-based violence (SADC Gender Protocol, 2017).

b) Domestic violence

The Law on Domestic Violence Perpetrated Against Women Act, the first of its kind in Mozambique, was enacted on September 29, 2009. The Act prohibits sexual, financial, physical and emotional violence against women and categorizes domestic violence as a crime against the public thus removing the requirement for the victim to press charges in order for the state to intervene and prosecute. Intimidation, harassment, stalking, damage to property and any other controlling or abusive behaviour that harms or may harm can also be considered as domestic violence. The law also prohibits marital or spousal rape. The perpetrator can be a partner, former partner in a legal and common law union and may include relatives of the women. If found guilty of the offence, the imposition of fines, community work and imprisonment between three days to eight years may apply.

Articles 21-35 lay out provisions for the investigation, prosecution and punishment of perpetrators and the law does not forbid mediation and/or conciliation.

c) Rape

Articles 393 and 394 of the Penal Code criminalise rape defining it as sexual intercourse with a woman against her will, with the use of physical violence, intimidation and fraud and that does not constitute seduction or taking advantage of a woman who is deprived of her senses. Article 17 of the 2009 Domestic Violence Law criminalises marital and spousal rape, which punishable of 6 months to 2 years imprisonment and a fine (Domestic Violence Act, 2009).

Someone accused of rape can serve 2-8 years in prison; 8-12 years if the victim is 12 years of age or older and 20-24 years if the victim is under 12 (Penal Code, articles 392-394). The CSO report submitted to the UN Committee on Human Rights notes that the highest penalties are rarely applied.

Intra-family rape or incest has been acknowledged as an ongoing concern but given the stigma and taboo associated with discussing it, it is rarely reported (OECD, 2014).

Civil society organizations have noted that though the revised wording in the Penal Code covers both vaginal and anal sexual relations, it does not cover other forms of rape such as oral sex and the use of objects (US Human Rights Report, 2016).

NGO Reports have noted that many families prefer to settle rape allegations outside of the formal justice system and prefer to access informal community courts and tribunals and/or to settle the case with financial compensation (US Human Rights Report, 2016).

d) Sexual harassment

Article 224 of the Penal Code and Article 66 of the Labour Code criminalise sexual harassment in schools where the Penal Code provides specific monetary sanctions if found guilty. However, it continues to occur not only in schools but also in businesses, within the government and across society (US Human Rights Report, 2016).

e) Female genital mutilation

Article 178(1) of the Penal Code criminalises female genital mutilation (FGM) and imposes an imprisonment term of 12 to 16 years. The law does not provide for sanctions against parents, guardians, medical officials or other practitioners of FGM. The law also does not provide for the regular

monitoring and evaluation of FGM practices and the implementation of campaigns and public awareness. FGM does not appear to be a practice of concern in Mozambique.

f) Abortion

Abortion is legal on demand within the first 12 weeks of pregnancy. Young women under the age of 16 require the permission of a parent or guardian to seek abortion services (Penal Code 2014, article 168(3)).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

As indicated in Article 100 of the Constitution, all land is owned by the State. Therefore, land cannot be mortgaged, sold or abandoned (UPR, 2015). Access to, use of and the exploration of land is regulated by the Law No. 19/97 of 1 October, also known as the Land Act, which addresses both customary and traditional laws (UPR, 2015) and allows for women, men and communities to use and benefit from the land. Where customary laws contravene the Constitution, the Constitution takes precedence (Article 4).

Article 104 of the Family Law 2004, provides for joint land tilting for land used during marriage and article 14(3) of the Land Act 1997 provides for joint land tilting used during informal unions. However, in practice, under customary law women have no right to inherit land thus contravening the Constitution.

All women have equal rights to non-land assets (Constitution of Mozambique; Civil Code, articles 66, 67, and 1305; Family Law Act, article 102) and the Family Law Act 2004 provides for equal access to property ownership for women and men (article 102).

The Food and Agriculture Organization (FAO) in conjunction with the government of Mozambique and local communities have worked on rural women's access to secure land rights both within the individual and community context (FAO, 2015). The FAO's work with the Mozambican Ministry of Justice led to the development of a comprehensive gender training programme on gender, women and children's rights that has resulted in a decrease in discriminatory practices towards women, recognition by traditional courts of widows' and children's rights, appointment of women customary judges and the registration of land titles to marginalised women (FAO, 2015).

CSOs noted serious concerns of large scale land-grabbing by foreign corporations and foreign agricultural companies in addition to the displacement of local communities due to land reallocation (CSO UN HRC Report, n.d.).

b) Secure access to formal financial resources

There are no noted legal constraints on women's access to formal financial resources including banking and credit. A recent study on women's access to financial resources found that though it may not meet their full demands, the main mechanisms used by women are informal: *xitique* (pooling together of a fixed set of funds by a group of people, also known as *sou-sou* in African and Caribbean communities), family and friends, accumulated savings and credit associations (ICC, 2014).

c) Workplace rights

The Labour Law 2007 is the main statute governing all aspects of employment relationships. Article 84 of the Constitution guarantees the right of every Mozambican of working age to work (CRM, 1990). The right to work is regulated by the Labour Law, Law No. 23/2007, of August 1. The Labour Law 2007, article 4 also prohibits discrimination based on gender and article 11 explicitly forbids an employer from dismissing, disciplining or discriminating against a female employee because of her gender.

Article 59 of the Labour Law requires employers to “to pay employees fair remuneration, in accordance with the quantity and the quality of their work”.

All female employees can access 60 days of fully-paid maternity leave and fathers can access one day of paid paternity leave, every two years, on the day immediately following the birth (Labour Law 2007, article 12). During maternity leave, the woman is protected from being dismissed, without just cause, as well as one year after giving birth (Labour Law 2007, Article 11). A woman’s job is protected upon her return from maternity leave.

4. Restricted Civil liberties

a) Citizenship rights

All women and men have equal rights to acquire, change and retain their nationality as well as to confer nationality to their foreign spouses (Constitution Act 2004, articles 26-31). The Constitution also protects citizens’ rights to elect a government of their choosing in free, fair and regular elections held by secret ballot and aligned with principles of universal and equal suffrage (Article 30).

Many Mozambicans are unable to access citizenship benefits as they their births were not registered. Failure to register the birth of a child may prevent them from being able to access education, free healthcare, identity cards and passports as they need proof of their Mozambican citizenship (US Human Rights Report, 2016). As a result, a comprehensive legal reform including the adoption of the 2004 Family Law and the 2008 Children’s Act led to the expansion of the period of free birth registration from 30 days to 120 days after a child is born (UNICEF, n.d.). Discriminatory practices continue to deprive women, especially in rural areas, of their legal right to register their child without the presence of the child’s father (US Human Rights Report, 2016).

b) Voting

The Constitution provides all women and men, over the age of 18, equal voting rights and participation in the political election process at all levels of state and society (Article 73).

c) Political voice

The Constitution, Article 122(1) provides all women and men equal rights to hold public and political office. There are no known laws or customary practices that prevent or discriminate against women occupying public and political positions of power. Though Mozambique does not have legal quotas to encourage the participation of women at the national and local levels, there was an increase in women’s representation in public life following the 2014 general elections (Inter-Parliamentary Union, 2015).

d) Access to justice

All women and men have a legal right to access the courts, the Office of the Ombudsman, legal representation and obtain assistance regardless of one's ability to pay (Constitution Act, 2004, part 4, article 100). Given the transference of international law and treaties into domestic law, in theory, citizens can appeal decisions made in the domestic courts.

The National Commission on Human Rights (NCHR) and the Ombudsman have been created to help facilitate access to justice and the protection and promotion of human rights for Mozambicans (URP, 2015). Established in September 2012, the NCHR is mandated by Law 33/2009 to promote and protect human rights in Mozambique and to submit an annual Activity Report to the Parliament and to the President of the Republic (UPR, 2015). However, since its establishment in 2012, the Commission has been unable to submit a report citing institutional and outreach barriers as the reason (UPR, 2015). Funded by the State and other cooperating partners, the Ombudsman was elected by Parliament in May 2012 to "ensure the citizens' rights, the protection of legality and justice in the action of Public Administration" (UPR, 2015). Since 2013, the Ombudsman has been submitting annual reports to the Parliament on challenges, opportunities and recommendations as well as statistics regarding the number of human rights complaints lodged by civilians (UPR, 2015).

A lack of information on legal rights and opportunities for redress, delayed, lengthy and cost-prohibitive legal proceedings and untrained legal and justice personnel including the police, act as barriers for women (Africa for Women's Rights, n.d.).

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