

Sao Tome and Principe

1. Discrimination in the family

a) Overarching legal framework for marriage

Under the state's Constitution, women and men have the same rights to form a family and enter into marriage (Art. 25, 1990). Marriage is defined as a voluntary union between a man and a woman of legal age (Law on Family, Art 2, 1997). By the state's definition, marriage between persons of the same sex is not legally recognised (Constitution, 1990). Both religious and common law marriage are recognised by the state (CRC, 2010; Law 2/77; CRC, 2010).

In practice, most couples cohabit in informal unions versus entering into formal marriages (CRC, 2010). To protect women's and men's rights in such partnerships, the state adopted Law 2/77 which legitimises the traditional practice of informal cohabitation through a common law marriage modality (CRC, 2010).

b) Child marriage

For both women and men, the legal age of marriage without parental consent is 18 years old (Law on Family, Art 2/77, 1997). There are however exceptions to enter marriage below the minimum age of 18. Provided that the girl is above the age of 14 and the boy is above the age of 16, the couple may enter into marriage if there is full consent by a parent, guardian, or the court old (Law on Family, Art 2/77, 1997). While data on the practice is limited, there are reports that the early marriage of girls in particular still persists in the country (US Department of State, 2017; UNFPA, 2012).

c) Household responsibilities

Under the state's Constitution, all citizens, women and men enjoy the same rights and are subject to the same duties in the family (Art 14, 1990). Moreover, the law specifically stipulates provisions for matrimonial equality, where spouses have equal rights under civil law (Art 25, 1990).

With regard to children, both the father and the mother have equal rights as guardians as well as the equal responsibility in the maintenance and education of the child, irrespective of their marital status (Constitution, Art 25, 1990). While the law places the duty of care for the child on both parents, women often bear the child-rearing responsibilities due to prevailing traditional beliefs (US Department of State, 2017).

d) Divorce

Under the Family Law, a marriage can be dissolved by either spouse by mutual consent (Art 51, 1997). With respect to the children, the law equally ensures that women have the same rights and guardianship to the children as men in the event of a divorce (Art 74, 1990).

e) Inheritance

In Sao Tome and Principe, a universal right held by all is the right to inherit property (Constitution, Art 46, 1990). What is not clear is the extent to which the rights are enjoyed equally by women and men, boys and girls. While the constitution offers the same legal status and same rights for women and men, it does not define such rights as they pertain specifically to inheritance and property, among other things (US Department of State, 2016). According to the World Bank, women and girls (whether it be daughters or surviving spouses) are equally afforded the right to inheritance as men and boys (Women, Business and the Law, World Bank, 2017). For those in informal unions or common law marriages, Law 2/77 offers some protection for surviving spouses with regard to intestate successions (CRC, 2010).

2. Restricted Physical integrity

a) Violence against women

In 2010, Sao Tome and Principe signed the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), however it has not yet ratified the Protocol. To date, there is no specific law addressing violence against women, however there is existing legislation that provides general protections against violence for all citizens. Namely, the Constitution has provisions that protect the physical integrity and personal safety of both women and men. Moreover, it establishes protections for all citizens from torture or treatments or punishments that are cruel, inhumane or degrading (Art. 23, 2003). In 2012, the state also passed a new Criminal Code (Act No. 6/2012) which defines certain crimes against women and children in order to accelerate proceedings for them (Human Rights Council, 2015).

b) Domestic violence

Domestic violence is considered a criminal offense under the Domestic Violence Law (Act No. 11/2008) and the Law Strengthening Legal Protection Mechanisms for Domestic Violence Victims (Act No. 12/2008). The Domestic Violence Law stipulates that "all women, men and children, regardless of class, ethnicity, sexual orientation, profession, culture, education level, age or religion, shall enjoy the fundamental rights inherent to human beings, and shall be guaranteed the opportunities and freedom to live without violence, to preserve their physical and mental health and their moral, intellectual and social integrity" (Act No. 11/2008; Human Rights Council, 2015). Depending on the seriousness of the crime, the law prescribes penalties ranging from a minimum imprisonment of three to eight years for those perpetrators convicted of domestic violence to imprisonment of eight to 16 years for more aggravated forms of violence, including when the violence leads to loss of life (US Department of State, 2017).

In addition, the Domestic Violence Law addresses abuse from spouses, former partners and within the family (Act No. 12/2008). The Strengthening Legal Protection Mechanisms for Domestic Violence Victims Act provides additional support to victims through providing mediation and counselling activities against domestic violence, a hotline, and a small 48-hour shelter for victims of domestic violence (Act No. 12/2008; Human Rights Council, 2015). In addition, the Gender Equality Institute within the Office of Women's Affairs under the Prime Minister's Office conducted awareness-raising initiatives to educate women on their rights as well as provided training to law enforcement officers on how to recognize and respond to cases of domestic abuse. (US Department of State, 2017).

Still, even with these legal protections and support mechanisms in place, domestic violence reportedly remains widespread in the country (US Department of State, 2017). Many women did not seek legal recourse in cases of domestic violence due to the cost of bringing cases to court, the perceived ineffectiveness of the justice system in the country, a lack of knowledge of their legal rights, and the underlying pressures of traditional and culture that dictates the resolution of domestic disputes to stay within one's family (US Department of State, 2017).

c) Rape

Under the Penal Code, rape, including spousal rape, is a criminal offense that is punishable by imprisonment, where prison sentences are dependent on the severity of the crime (Art 167, 2012). The state's legal definition of rape is grounded in consent, which includes victims who are unconscious or unable to resist (Art 167, 2012). Further, the Penal Code also addresses imbalances of power and the abuse of authority that may also facilitate rape (Art 167, 2012). To further support the law, a National Strategy to Combat Sexual Violence (2013-2018) was drafted and is currently being implemented (UN Women, n.d.). Other efforts to combat rape include awareness-raising efforts by government health facilities and local NGOs (US Department of State, 2017). While the extent of rape cases throughout the country is unknown and not regularly documented, rape is most often reported when there is evidence of violent assault or if the victim is a minor (Ibid).

d) Sexual harassment

By law, sexual coercion and harassment is prohibited, punishable by civil remedies and criminal penalties, which vary by seriousness of the crime (Penal Code, Art. 166, 2012). While there are legal protections against sexual harassment, the law only specifically extends to sexual harassment in the workplace (World Bank, 2016). While sexual harassment reportedly occurs in the country, there was no data available on its extent (US Department of State, 2017).

e) Female genital mutilation

There is no evidence that female genital mutilation is widely practiced in Sao Tome and Principe (IPU, n.d.).

f) Abortion

Under the Penal Code, abortion is illegal (Art. 137, 2012). The law penalizes both the pregnant woman (in cases of consent to an abortion) and the medical professional or person(s) performing

the abortion with imprisonment from two to eight years (Penal Code, 2012). Under the exceptional circumstance to save a woman's life, an abortion is permissible if approved by a medical professional and performed during the first 12 weeks of pregnancy (UN DESA, 2015). For a pregnant minors (under the age of 18 years old), a waiver must be signed by the parents if she is a minor (UN DESA, 2015).) In practice, the de facto policy on abortion allows for the procedure during the first 12 weeks of pregnancy on medical grounds and in cases of rape, incest or fetal impairment (UN DESA, 2015). Such grounds would need to be approved by the medical professional who would perform the abortion (UN DESA, 2015).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

In principle, the law affords both women and men equal rights to own property, and to transfer it in life or through death (Constitution, Art. 36, 1990). While the Constitution establishes the principle of equality between women and men, the laws governing the inheritance and property are not as clear (US Department of State, 2016). In 1997, the government passed the Law on Family which outlined marital property regimes and the administration of common property (Art. 29-32; Art. 35-37). Under this law, each spouse has the right to administer, use and transfer property, provided both agree on the terms (Family Law, 1997; World Bank, 2016). For informal unions, Law 2/77 legitimized informal unions so that property may be transferred to the surviving partner in intestate successions (CRC, 2010).

b) Secure access to formal financial resources

Under the state's Constitution, it is established that women and men shall be equal before the law in all areas of economic life (Art 14, 1990). 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 (World Bank, 2017). Reportedly, economic discrimination did not occur in the areas of credit between women and men (US Department of State, 2017). While women are economically, they do not enjoy the same access as men to the means of production and the financial resources needed for their activities (IMF, 2014).

c) Workplace rights

In 1982, Sao Tome and Principe ratified ILO Conventions on equal remuneration (100) and discrimination in employment and occupation (111) (ILO). Accordingly, the state has domesticated these laws within their legal frameworks. Under the state's Constitution, each citizen is granted the equal right and duty to work, observing the principle of equal salary for equal work (Art 42, 1990). By this same measure, the state's Labour Code establishes that women and men are afforded equal opportunities in work, prohibiting any form of discrimination that is based on sex (Labour Code, 2010). Further, the law establishes that employers should ensure women and men equal opportunities and equal treatment as regards training and the development of career, specific protections with regard to work hazardous to health and provisions for maternity leave (Ibid). However, women are not allowed to work the same night hours as men (Law 6/92, Art 141).

The state passed a Presidential Decree adopting the international convention Maternity Protection Convention (C 183), entitling women to a period of maternity leave of not less than 14 weeks (ILO; Humans Rights Council, 2015). In recent years, there were no reported incidents of gender-based discrimination in employment and occupation (US Department of State, 2017). While women are economically active in a variety of sectors, they do not enjoy the same access as men to the means of production and the financial resources needed for their activities (IMF, 2014).

4. Restricted Civil liberties

a) Citizenship rights

By law, women and men have equal rights to acquire, change or retain their nationality, regardless of their marital state (Nationality Law, 1990). Further, women and men have equal rights to confer their nationality to a foreign spouse (Ibid). The Constitution also provides both women and men the freedom of movement, with no prohibitions on obtaining a passport or travel documents (Constitution, 1990; World Bank, 2017).

With regard to children, civil law allows women and men to register the birth of their child as well as confer their nationality to their child (Nationality Law 1990). In order to improve birth registration, the government adopted the Law of Family/Decree No. 45 in 2009, approving the national strategy for permanent birth registry.

b) Voting

In the state's Constitution, universal and equal suffrage is afforded to each citizen who is 18 years of age or over (Constitution, Art. 6, rev 1990). While there are no laws limiting the participation of women in the political process, their participation was limited due to cultural factors (US Department of State, 2017).

c) Political voice

By law, women are entitled to fully participate in political life on equal footing to men (Constitution, Art 14, 190). Moreover, the law affords women and men the right to vote, access to political posts, the right to petition (Humans Rights Council, 2015). Underlying cultural factors inhibit women's participation in political life as well as women's access to opportunities in government, particularly older women who faced significant social discrimination (US Department of State, 2017).

d) Access to justice

Under the state's Constitution, each citizen is afforded specific provisions to access justice, including the presumption of innocence, legal defence and access to the courts, regardless of economic means (Art 39; Art 19, 1990). Even with these laws in place, women often do not seek justice, and rather opt for the more traditional and customary practice of resolving domestic disputes inside the family (US Department of State, 2017). This is particularly the case with domestic violence incidents where many women do not seek formal justice (US Department of State, 2017). Compounding this the high costs of bringing cases to court, the perceived ineffectiveness of the justice system in the country, a

lack of knowledge by women of their legal rights, which taken together inhibit women from fully exercising their right to access justice (US Department of State, 2017).

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