Madagascar


1. Discriminatory family code

The Family Code in Madagascar was amended in 2007, increasing the minimum legal age of marriage to 18 for both sexes. However, before this age and for serious (unspecified) reasons, the President of the court may authorize a marriage upon the request of the child’s parents or guardian and the consent of the child. Previously, the law provided that the minimum age was 14 for women and 17 for men. Early and forced marriages remain, however, a concern. The 2008 data from the UN reports that 39.9% of girls age 15-19 were married, divorced or widowed, up from the 27% reported in the 2003-2004 survey. In addition, 11.2% of women age 20-49 were married before the age of 15, and 42.2% by the age of 18. Early pregnancy is also common, the same survey found an adolescent fertility rate (women age 15-19) of 148 per 1000 women.

The Family Code (Law 2007-022) states that the father is the head of the family, however both parents have equal parental authority. Further, the law provides that both women and men have reciprocal rights and duties towards their children including when spouses separate, divorce or have marriages annulled.

Although Law 68-012 (of 1968) provides surviving male and female spouses equal inheritance rights to property, in practice it remains important to pass down the father’s name and estate through male heirs. To this end, the law allows heirs to agree that male heirs will receive the land, while female heirs will receive their

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1 Articles 8, 21, 27, and 28, Constitution of Madagascar 1992
2 United Nations Treaty Collection (2013)
3 ACHPR (2013)
4 United Nations General Assembly (2009) State report p.6
5 Africa Child Policy Forum (2013)
6 CEDAW (2008) p.36
8 Idem, p.100
9 Idem, p.60
11 Idem, p.16
12 World Bank (2013)
share in the form of immovable and productive assets.\textsuperscript{13} According to the same law, sons and daughters have equal inheritance rights to property.\textsuperscript{14}

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Polygamy is prohibited by law in Madagascar, and is punishable by imprisonment.\textsuperscript{15} A small portion of marriages is polygamous in Madagascar. The 2008-2009 DHS found that only 3 per cent of women age 15-49 lived in a polygamous union (and 1% of men), although in some regions (i.e. D’Andory) this percentage reaches as high as 18% per cent of women and 8% of men in polygamous unions.\textsuperscript{16}

Women may, by law, initiate divorce, and a divorcing wife usually receives half of joint assets, although customary law usually prevails in rural areas and males are given the advantage in divorce and child custody.\textsuperscript{17}

When it comes to decision-making, couples mainly decide jointly (62.9%) how to use money earned by the wife (compared to only 3.8% in which mainly the husband or partner decides).\textsuperscript{18} Large household purchases are also typically decided jointly by couples (67.1%), while women decide mostly when it comes to acquiring daily household items (65.7%).\textsuperscript{19}

2. Restricted physical integrity

Law no. 2000-021 and article 321 of the Criminal Code prohibit domestic violence, defined acts leading to physical injury.\textsuperscript{20} The law does not cover verbal, psychological or economic violence.\textsuperscript{21} Domestic violence is punishable with two to five years in prison and a fine. Like sexual harassment, domestic violence is reportedly prevalent, but specific data is not readily accessible, although NGOs report an increase in the incidence of domestic violence during the current political and economic crisis.\textsuperscript{22} According to the 2008-2009 Demographic and Health Survey (DHS), 32.3% of women believe her husband or partner is justified in beating his wife for at least one of the five proposed reasons.\textsuperscript{23} In 2007, The Madagascar National Institute for Public Health estimated that 55% of all women had experienced violence in the home.\textsuperscript{24}

The law prohibits rape with a penalty ranging from five years to life in prison, depending on various factors. Rapes of children and pregnant women are punishable by hard labour. Spousal rape is not, however, prohibited under the law.\textsuperscript{25} The 2009 African Women’s Report scored Madagascar on providing protection from rape on the basis of the law, policy commitment, planning, targets, institutional mechanisms, budget, human resources,

\textsuperscript{14} World Bank (2013)
\textsuperscript{15} CEDAW (1994) para. 225
\textsuperscript{16} DHS (2008-2009) p.99
\textsuperscript{17} Prudy, E. (2013) p.736
\textsuperscript{18} DHS (2008-2009) p.270
\textsuperscript{19} Idem, p.271
\textsuperscript{20} World Bank (2013)
\textsuperscript{21} UNECA (2012)
\textsuperscript{22} US State Department (2012)
\textsuperscript{23} DHS (2008-2009) p.273
\textsuperscript{24} Purdy, E. (2013) p.736
\textsuperscript{25} UNECA (2012)
research, involvement of civil society, information and monitoring and evaluation. The total score across these areas was 2 out of a possible 22. Reliable national data on the prevalence of rape is not available.

In 2000, the Criminal Code was amended to enhance protection against gender-based violence. Both Article 333 of the Criminal code and Articles 5 and 261 of the Labour Code prohibit sexual harassment generally and in the workplace, punishable with up to five years’ imprisonment and fines of up to 10 million ariary. Despite such legislation, sexual harassment is reportedly widespread although data on prevalence is not available.

Female genital mutilation (FGM) is not reported to be a common practice in Madagascar.

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Abortion is illegal in Madagascar, except if a woman’s life is in danger. Limitations on women’s reproductive rights can infringe upon women’s physical integrity. The 2008-2009 DHS found that overall 23% of women, at the time of the survey were using a modern form of contraception. In the majority of cases (95%), the husband or partner is aware of their use of contraception. When it comes to unmet need for family planning, 19% of women in a union declare having such a need; this percentage continues a downward trend from 1997, when this proportion was 26%. The median age at first birth among women age 20-49 was 20.1. Finally, the DHS also reports that it is primarily the wife (40%) or the husband and wife jointly (47.9%) who make decisions concerning personal health.

It is legal for two persons of the same sex to have sexual intercourse as long as they are 21 years old. The Penal Code prohibits such activity for persons below 21 years old and punished perpetrators with two to five years of jail and a fine between 900 US dollars and 4500 US dollars. However, marriage between two persons of the same sex is forbidden. Sexual orientation and gender identity are not issues that are discussed in the country; public attitudes can vary between approval and violent opposition, in particular towards transgender sex workers.

It is estimated that 23,000 women aged more than 15 years old are living with HIV, out of a total adult population aged over 15 years old of 50,000. According to the 2008 US Department of State Report, prostitution is not a crime in Madagascar, but related activities such as pimping and incitement of minors to immorality and debauchery are.

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26 Economic Commission of Africa (2009) pp.66-68
28 World Bank (2013)
29 US State Department (2012)
30 Inter-Parliamentary Union (n.d.)
31 UN Department of Economic and Social Affairs (2013)
32 DHS (2008-2009) p.80
33 Idem, p.94
34 Idem, p.119
35 Idem, p.70
36 Idem, p.271
37 US Department of State (2012)
38 UNAIDS (2012)
39 US department of State (2012)
3. Son bias

The male/female sex ratio for the working population in 2013 is 0.99 and the sex ratio at birth is 1.03. There is no evidence to suggest that Madagascar is a country of concern in relation to missing women.

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Gender disaggregated data on child health in Madagascar, reported in the 2009 African Women’s Report does not provide evidence of son preference in relation to the allocation of nutrition to infants. Further, according to the World Economic Forum in 2010, Madagascar has achieved gender parity in primary and secondary school enrolment, indicating no preferential treatment of sons with respect to access to education.

4. Restricted resources and assets

The law in Madagascar upholds women’s rights to ownership and there are no legal restrictions on women’s access to land. Ordinance No. 60-146 of 1960 relating to land ownership gives men and women equal rights to become landowners. However, in practice, land acquisition is strongly dependent on customs which can, in some cases infringe upon women’s rights, particularly in the south of the country. Such rights denial occurs in the cases of inheritance and sharing among spouses, and is all the more frequent given that most couples are married under the customary practices rather than common law.

Land reform however was initiated in 2005 partly with the aim of reconciling customary and statutory law and promoting women’s lands rights and has seen the passing of several related land laws. Although the land policy currently lacks a gender strategy, the 2005 law abolishes the principle that any land without legal title is state property. Reforms have thus provided for recognition of untitled private property and the creation of local land offices. Although the 2005 Land Law originally envisioned the possibility of a joint land certificate, the form has now been changed so as to provide space for the wife’s name. Despite such initiatives, villagers often remain unaware of the value of a land certificate, or that land certificates can be established in the wife’s name.

Continuing instability following the 2009 political crisis has further stalled the process of land reform.

Article 34 of the Constitution and Law no. 2007-002 guarantees women’s access to non-land assets. They can manage their own property without their husband’s agreement, whether it was acquired before or during the marriage. Under the law, both spouses have equal access to property acquired during the marriage, equal rights in jointly managing any property and equal rights to dispose of the property.

Women in Madagascar have access to financial services, including bank loans without their husband’s permission. It is reported that financial institutions have now eliminated requirements of requiring collateral in the form of immovable assets. Further, there has been the expansion of credit lines specifically targeted to

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40 Central Intelligence Agency (2013)
41 Economic Commission of Africa (2009) p.102
44 FAO (2013)
45 Idem, p.2
46 Idem
47 CEDAW (2008) pp.80-81
women. However, illiteracy continues to pose a barrier for women accessing credit. With respect to women’s engagement in business, the government reported in 2008 that men predominate in large business while women run smaller or more informal businesses.

5. Restricted civil liberties

There are no reported restrictions on women’s freedom of access to public space in Madagascar. Married and unmarried women can apply for both passports and national ID cards in the same way as a man. Women’s visits to her parents and relatively are generally decided jointly within the couple (73%), although 19.2% of women felt that her husband was justified in beating her if she went out without telling him.

Although protected by the constitution and law, the rights to freedom of assembly and association have been restricted extensively since the de facto government took over in 2009. Government official and security forces have regularly impeded political demonstrations by either denying authorization or through direction intimidation and violent repression. The constitution and law also provide for freedom of speech and press, but the de facto regime and military actors have similarly impeded both freedom of expression and the press through restrictions, intimidation, and imprisonment of critics or those who express dissent. Journalists have been suspended and/or imprisoned for broadcasts for broadcasts that have expressed oppositional stances. There is no available information on the gender impact of such restrictions.

With respect to women’s participation in political life, no legal quotas have been adopted on any level, nor have any political parties embraced voluntary quotas for women’s representation in elective bodies or for internal party leadership positions. In 2012, women held 17.5% of the seats in parliament. According to the 2013 SADC Gender Protocol, published by Gender Links and the Southern Africa SADC Gender Protocol Alliance, currently Madagascar and Zambia have the lowest representation of women in local government in the southern African region at 6%.

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The Labour Code (Article 53) of Madagascar provides women the equal right to work and the right to equal pay for work of equal value. Article 5 of this same Act also provides that no discrimination be practiced on the grounds of sex. Madagascar also has protections against pregnancy or marital status discrimination in the workplace. In 2003, the country introduced legislation providing three months paid maternity leave and 15 days paternity leave. Maternity leave is paid at 100 per cent of wages by the employer and the government.

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49 CEDAW (2008) p.39
50 World Bank (2013)
51 DHS (2008-2009) p.271
52 Idem, p.274
53 US State Department (2012)
54 UN Statistics Division (2013)
55 SADC (2013) p.14
56 CEDAW (2008) p.38
57 CEDAW (2011) p.2
58 CEDAW (2008), p.71
59 Idem; World Bank (2013)
While these provisions protect workers in the formal sector, there are no protections for women in the informal sector.\textsuperscript{60}

\textsuperscript{60} CEDAW (2011) p.3
Sources


