

MOZAMBIQUE

1. Discriminatory family code

The Family Law Act was adopted in 2004, and article 30 of that act set the minimum **legal age for marriage** at 18 years for both men and women. Exceptionally, marriage can be authorised from the age of 16 years, in the event of pregnancy or with consent of the parents or legal representatives.¹ Marriage requires the consent of both adults, with the family law stating that marriage is a voluntary union.² *De facto* unions are the most common type of union in Mozambique, and it is unclear how the 2004 Act affects the minimum ages of marriage in these unions.³

Previous family legislation recognised the husband as the sole head of the household.⁴ However, article 97 of the 2004 Family Law Act states that both parents have equal **parental authority** and reciprocal rights and duties towards their children, even when they are **divorced**, ‘the duty to provide food and contribution to domestic needs maintain even if the separation was in common agreement’.⁵ In its latest CEDAW session, the government reported that divorced mothers who retained custody of their children were entitled to child support from the father until the children reached the age of 21 or until they had finished university.⁶

Although surviving spouses and sons and daughters legally have equal rights to **inheritance** under articles 66 and 2133 of the Civil Code,⁷ the 2007 shadow report to CEDAW reported that, in practice, inheritance laws in Mozambique were discriminatory towards women.⁸ Customary practices also discriminate against women where widows are commonly left with no rights to inheritance,⁹ especially in the case of *de facto* unions. Customary practices also force widows to remain unmarried if they are to retain their husband’s property and guardianship of their children.¹⁰

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With respect to **polygamous marriages**, the government’s most recent report to CEDAW indicated that it had amended the law to provide equal inheritance rights to all wives.¹¹

Women and men have equal rights in terms of **divorce** procedure.¹²

¹ CEDAW (2007a), para 50

² Family Act 10/2004, article 7; Namburete, E (2009) p.26

³ AMCS et al (2007) p. 16

⁴ CEDAW (2005), p.63

⁵ Namburete, E (2009), p.26

⁶ CEDAW (2007a) para 51

⁷ World Bank (2013a)

⁸ AMCS et al (2007), p. 23

⁹ CEDAW (2005) p. 67

¹⁰ Namburete, E (2009) p.27

¹¹ CEDAW (2007a) para 50

¹² CEDAW (2005)

Societal discrimination against **widows** is a problem in Mozambique, and the rights of widows are not directly addressed in the Family Law Act.¹³ For instance, there is a practice of accusing widows of witchcraft and then expelling them from their homes. This is reported to be more common in rural areas.¹⁴

2. Restricted physical integrity

In 2009, the parliament passed a specific **domestic violence** law, which prohibits physical, financial, emotional, and sexual violence against women, including marital rape.¹⁵ The law also provides penalties of up to 12 years' imprisonment for engaging in sexual activity while knowingly infected with a contagious disease.¹⁶

In terms of the effectiveness of government responses to domestic violence, Mozambique rates relatively well. The 2009 African Women's Report scored Mozambique on providing protection from domestic violence on the basis of the law, policy commitment, planning, targets, institutional mechanisms, budget, human resources, research, involvement of civil society, information and monitoring and evaluation. The total score for across these areas was 18 out of a possible 22.¹⁷ In 2012 a national plan to combat violence against women was also being implemented in five provinces and, as part of the plan, the Ministry of Women conducted a campaign on television and radio targeted at informing women of their rights under the legislation.¹⁸ The government also runs special women's and children's units in police stations that are equip to deal with domestic violence claims.¹⁹

According to the US Department of State, **rape** is prohibited by law in Mozambique with a punishment of two to eight years' imprisonment if the victim is 12 years of age or older and eight to 12 years' imprisonment if the victim is under the age of 12. It is defined as sexual intercourse with a woman against her will, by means of physical violence, intimidation or any fraud which does not constitute seduction, or by taking advantage of a woman deprived of her senses.²⁰

In Mozambique it is anecdotally reported that intra-family rape (incest) is a common, but nevertheless a taboo subject which is very rarely reported. The 2009 African Women's Report highlighted that hospital gynaecologists have treated numerous cases of incest and rape of young girls by male relatives, often without parental knowledge.²¹

Although there is no information on its frequency or public attitudes towards it, **sexual harassment** is illegal in Mozambique under both the Penal Code and the Labour Code, with criminal sanctions included under the former.²²

The country has been less effective in responding to sexual violence, with a score of 15 out of a possible 22 in the 2009 African Women's Report.²³ The US Department of State's 2012 human rights

¹³ Namburete, E (2009) p. 27

¹⁴ Namburete, E (2009) p.23

¹⁵ Law on Domestic Violence Perpetrated Against Women Act, enacted 29 September 2009

¹⁶ US Department of State (2012) pp. 18-19

¹⁷ Economic Commission of Africa (2009), pp.66-68

¹⁸ The UN Secretary-General's Database on Violence against Women (n.d.)

¹⁹ US Department of State (2012) p. 20

²⁰ Penal Code, Articles 393, 394

²¹ Economic Commission of Africa (2009) pp.69

²² Penal Code, Article 299; Labour Code, Article 66; World Bank (2013a)

²³ Economic Commission of Africa (2009) pp.66-68

report on Mozambique cites NGO reports that indicate that many families chose to settle cases of sexual violence through community courts or through private financial remuneration rather than through the judicial system.²⁴

Recent statistics provided by the latest Demographic and Health Survey (DHS) found that one-third of all women in Mozambique had experienced violence at some point since the age of 15, and 12% of women reported being forced to have sex at some point in their lifetime.²⁵ Of the women surveyed who were victims of sexual violence, 59% never sought help or informed anyone.²⁶

A key problem for women's physical integrity is the widespread nature of attitudes that accept and excuse violence against women. Based on data from The 2008 Demographic and Health Survey, 36% of women aged 15–49 think that a husband/partner is justified in hitting or beating his wife/partner for at least one of the following reasons: if she burns the food, argues with him, goes out without telling him, neglects the children or refuses sexual relations..²⁷

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Limitations on women's reproductive rights also infringes upon women's physical integrity in Mozambique. **Abortion** is permitted only in the event to save a woman's life or to preserve her health. It is not permitted in the event of foetal impairment, on request, on social or economic grounds, or in cases of rape or incest, the latter being particularly critical given the above-cited statistics.²⁸ It was reported in 2009 that there was a debate underway to review laws to allow women access to safe abortion.²⁹

3. Son bias

The male/female **sex ratio** for the working age population (15-64) in 2013 is 0.90 while the sex ratio at birth is 1.02.³⁰ There is no evidence to suggest that Mozambique is a country of concern in relation to **missing women**.

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The 2008-2012 data on education provided by UNICEF clearly indicates a gender gap in detriment of girls in primary school enrolment. In secondary education, the gender gap is very small.³¹ Moreover, the ratio of female to male in primary education (2012) is 90.6 and 88.9 for secondary education. For the same year, there were 405,033 girls out of school and 286,479 boys.³²

Immunization data from UNICEF and the World Bank's Development Indicators Database is not gender disaggregated.³³

Malnutrition data from 2011 indicates that male children were more vulnerable in this regard than females.³⁴

²⁴ US Department of State (2012) p. 18

²⁵ Measure DHS (2013), p. 245

²⁶ Measure DHS (2012) p. 273

²⁷ OECD (2014), Gender, Institutions and Development Database, <http://stats.oecd.org>

²⁸ United Nations Department of Economic and Social Affairs (UN DESA) (2013)

²⁹ Namburete, E (2009) p.60

³⁰ CIA (n.d.)

³¹ UNICEF (n.d.)

³² World Bank Development Indicators Database (n.d.)

³³ UNICEF (n.d.); World Bank Development Indicators Database (n.d.)

Birth registration data from UNICEF is not gender disaggregated.³⁵

Data on the gender division of household chores between girls and boys was not located. Based on 2002-2012 data from UNICEF, child labour affected girls more than boys.³⁶

4. Restricted resources and assets

The Land Law of 1997 introduced legal measures to help communities, men and women gain equal legal **rights to use land**, even though the state retains ownership of the land. According to the Norwegian Agency for Development Cooperation (NORAD), the law is regarded as one of the best pieces of land rights legislation in the world, for the way it “protects and codifies local people’s land rights and confers powers to local participatory processes that involve both men and women.”³⁷

However, these rights are not enjoyed by women in practice due to a lack of knowledge of their rights and because administrative practices are not yet aligned with the law. Also, both NORAD and the FAO report that, while the law provides women equal rights to land, it also formally recognises customary systems of land tenure in which male relatives regulate women’s access to land.³⁸

By law, women who are single, divorced and widowed have the same rights as men in relation to **access to non-land assets**.³⁹ The new 2004 Family Law also guarantees gender equality in property ownership.⁴⁰ Married women have the right to register property jointly with their husbands.⁴¹

Despite these legal rights, women’s ownership of land and property in Mozambique is limited. The 2009 African Women’s Report scored Mozambique 0.301 where 1.00 represents the level of male ownership of rural/urban plots/houses or land.⁴²

There are no reported legal constraints on women’s **access to financial services**, including credit in Mozambique. However, in 2005 the government reported to CEDAW that women face constraints due to a lack of information and because of the guarantees required by financial institutions⁴³ and, in 2007, it reported that it had introduced programmes including credit facilities for women and training in business and administration.⁴⁴ In the 2009 African Women’s Report, Mozambique performed very well on women’s access to credit, with a score of 1.10, where 1.00 represents men’s access to credit.⁴⁵ According to the latest data available from the World Bank, in 2011 35.5% of women had accounts at formal financial institutions, compared to 45% of men, and women fared only slightly lower than men with regard to receiving loans from formal financial institutions – 5.4% and 6.4% respectively.⁴⁶ Women make up the clear majority of borrowers from microfinance institutions – 67.99% in 2012.⁴⁷

³⁴ World Bank Development Indicators Database (n.d.)

³⁵ UNICEF (n.d.)

³⁶ UNICEF (n.d.)

³⁷ Kaarhus, R. with S. Martins (2012), p. 9

³⁸ F.A.O. (n.d.)

³⁹ Constitution of Mozambique; Civil Code, articles 66, 67, and 1305; Family Law Act, article 102; World Bank (2013a)

⁴⁰ Family Law Act, article 102; World Bank (2013a)

⁴¹ F.A.O. (n.d.)

⁴² Economic Commission of Africa (2009) p.138

⁴³ CEDAW (2005) p.40

⁴⁴ CEDAW (2007a) para. 33

⁴⁵ Economic Commission of Africa (2009) p.138

⁴⁶ World Bank (2013b)

⁴⁷ Microfinance Information Exchange (2013)

5. Restricted civil liberties

In 2007, while the CEDAW committee commended the government on the removal of previous discriminatory laws that placed restrictions on women's movements and **access to public space**, it raised concerns about the persistence of discriminatory social norms and the need to properly implement the new legislation to ensure women's freedom of access to public space.⁴⁸

With respect to women's participation in political life, women in Mozambique fare particularly well. According to the Southern Africa Development Community's 2013 Gender Protocol report, women in Mozambique made up 39.2% of Parliament, 35% of local government, and 32% of the cabinet.⁴⁹ There are no **quotas** at national or sub-national level, but Mozambique has voluntary party quotas.⁵⁰

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A study conducted in 2008 monitoring the representation of gender in the **media** in Mozambique found that there was a gross under-representation of women's voices and views in the media,⁵¹ although by 2013 the country showed progress in this area.⁵² With respect to women's freedom to associate, women's civil society organisations play an active role in influencing policy in the country.⁵³

The labour law of Mozambique provides women with 60 days paid **maternity leave** at 100% of wages.⁵⁴ However, only 11% of women are part of the non-agricultural paid labour force in Mozambique,⁵⁵ so it is unclear how many women benefit from this legislation.

⁴⁸ CEDAW (2007b)

⁴⁹ Morna, C.L., K. Rama, L. Makamure, M. Makaya-Magarangoma (2013) p. 22

⁵⁰ IDEA (2012)

⁵¹ Namburete, E (2009) p.71

⁵² Morna, C.L., K. Rama, L. Makamure, M. Makaya-Magarangoma (2013), p. 22

⁵³ Namburete, E (2009) p.73

⁵⁴ Labour Law, No. 23/2007 of 1 August 2007; International Labour Organisation (2011)

⁵⁵ Morna, C.L., K. Rama, L. Makamure, M. Makaya-Magarangoma (2013) p. 22

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