NAMIBIA

Article 10 of the Constitution of The Republic of Namibia guarantees equality before the law and the right to non-discrimination on the basis of sex. The constitution is considered one of the few to use gender-neutral language throughout. Namibia ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1992 and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2000. It ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in 2004 and recently signed and ratified the SADC Protocol on Gender and Development. The government has also implemented several new policy measures, including an update of the National Gender Policy and the development of Vision 2030 and the third National Development Plan.

1. Discriminatory family code

The Married Equality Act, adopted in 1996, provides that the minimum legal age of marriage is 18 years for both men and women. However, persons under the age of 21 are considered minors, and need the consent of their father and mother to marry (if both are living), as well as special permission from the State. In addition, the Marriage Equality Act and Family Law both provide that men and women must freely consent to the marriage.

This legislation is, however, only applicable to civil marriages and not customary marriages, for which there is no defined minimum age of marriage. A Bill on the Recognition of Customary Marriages has been developed and if adopted, would also set the minimum age for customary marriage at 18. Similarly, the Child Care and Protection Bill currently being developed by the Ministry of Gender Equality and Child Welfare would also set the legal age of marriage at 18. At present, civil marriages are legally registered while customary marriages are not. The Bill on Recognition of Customary Marriages, would however, grant customary law marriages full legal recognition and registration, under the condition that the persons are of full age and have freely given consent and that neither is party to an existing customary law marriage or a marriage under common law. At present, the Constitution states that customary law survives only to the extent that it does not conflict with the Constitution. Although more recent data is not available, according to the 2001 census, 19% of all Namibians

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1 Article 10, Constitution of The Republic of Namibia, 1990.
2 Gender Links (2012) p.12
3 African Commission on Human and Peoples' Rights (2013)
4 CEDAW (2013) p.13
5 Gender Links (2012) p.19
6 Idem
7 CEDAW (2013) p.10
8 Gender Links (2012) p.15
9 Gender Links (2012) p.12
age 15 and over were married in civil marriages, compared to 9% of people in customary marriages. Another 7% were living as husband and wife without entering into civil or customary marriage.\(^9\)

**Early marriage** in Namibia is not as common compared to other African countries. The United Nations reports, based on 2006 data, that 5.4% of girls between 15 and 19 years of age were married, divorced or widowed, compared to 0.4% of boys in the same age range.\(^{11}\)

The 1996 Married Persons Equality Act removed the husband’s right to act as the sole head of the family, however this only applies to civil marriages.\(^{12}\) Both parents now share **parental authority**, and they have equal child custody rights in the event of divorce. The Maintenance Act (2003) provides that parents are legally responsible for maintaining their children; independent of whether the children were born inside or outside marriage or whether the marriage was civil or customary.\(^{13}\) The law automatically grants widows guardianship or custody of her children. In practice, however, family members may “inherit” both the wife and children up the death of her husband.\(^{14}\) Custody of young children in the event of a **divorce** is often awarded to the mother and custody of older children to fathers, while the parent who is not given custody is, by law, expected to provide regular contributions for the child’s expenses.\(^{15}\) In practice, however, orders on guardianship and custody are not always implemented.\(^{16}\)

**Intestate inheritance** is currently governed by the Intestate Succession Ordinance 12 of 1946 and the Native Administration Proclamation 15 of 1928, as well as the 1996 Married Person’s Equality Act.\(^{17}\) Under civil marriage, the type of property arrangement affects the inheritance regime. The default marital property regime is full community of property, and for couples married under the latter, the surviving spouse is entitled to half the value of the joint estate. The other half forms the estate of the deceased spouse and is divided according to their will.\(^{18}\) There is no discrimination between sons and daughters under civil marriages.\(^{19}\) In addition the Children’s Status Act states that children born outside of marriage are to be treated the same as those born within marriage, including matters of inheritance.\(^{20}\) The Communal Land Reform of 2002 protects widow’s (and widower’s) rights to communal land tenure by allowing them to remain on communal land allocated to their deceased spouse, even in the event that they remarry.\(^{21}\)

Under customary law, inheritance can be discriminatory towards women, with widows being dispossessed of their deceased husband’s property or land. The property is generally allocated to another male relative of the deceased.\(^{22}\) It is reported that ‘wife inheritance’ is also practiced in Namibia, where widows are either forced or pressured to marry their deceased husband’s brother as a condition of allowing the widow to receive any of her

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\(^{11}\) DHS (2006-2007) p.75

\(^{12}\) Gender Links (2012) p.14

\(^{13}\) Idem, p.16

\(^{14}\) Idem, p.20

\(^{15}\) Gender Links (2012) p.16;

\(^{16}\) Gender Links (2012) p.16

\(^{17}\) CEDAW (2013) p.9; Gender Links (2012) p.6

\(^{18}\) World Bank (2013)

\(^{19}\) Idem

\(^{20}\) CEDAW (2013) p.49

\(^{21}\) Gender Links (2012) p.16

\(^{22}\) Idem
deceased husband’s property or to remain in the home. The Chronic Poverty Research Centre reports that in 2006/2007, 29.4% of widows inherited the majority of assets after their spouses passed.\textsuperscript{23}

**More**

Heated parliamentary debate over whether or not to legalize **polygamy** has been ongoing since 2009. At present, polygamy is not recognized under Namibian civil law, although polygamous unions under customary law have been recognized since 2003. If the Bill on the Recognition of Customary Marriages described above were to be adopted, polygamous marriages would be outlawed in that, according to the Act, neither prospective spouse may be party to an existing customary or civil law marriage. Data from the 2006-07 Demographic Health Survey (DHS) indicates that 6% of currently married women are in a marriage with co-wives (ranging as high as 17% depending on region). Interestingly, 13% of married women have no knowledge about the number of co-wives they have. The survey also reports that polygamy does not vary much by women’s age, although rural women are more likely than urban women to live in a polygamous union.\textsuperscript{24}

In November 2004, the Law Reform and Development Commission published a Divorce Bill, which proposes a no-fault divorce regime that is based on the ground of irretrievable breakdown of marriage, to replace the outdated fault-based system that currently applies.\textsuperscript{25} The current law on **divorce** is, however, still based on the fault principle and the high costs and inaccessibility of the present system result in limited access to divorce, especially for the financially weaker spouse.\textsuperscript{26} According to the 2006-2007 DHS, 4.4% of women and 3.9% of men age 15-49 were divorced or separated.\textsuperscript{27}

The adolescent **fertility rate** according to the 2006-2007 DHS is 74.3 per 1000 women age 15-19.\textsuperscript{28}

Data from the 2006-2007 Demographic Health Survey also provides a snapshot of gender equality in household **decision-making**. Decisions over women’s earnings are, for the most part made jointly between husband and wife (49.5%) or mainly by the wife (39.4%). For large household purchases, 52.3% of women reported that such decisions were made jointly with their husbands, while 23.8% reported that decisions were made solely by their husbands. Decisions about daily household needs are primarily made by women themselves (40.6%) or jointly by husbands and wives (40.5%).\textsuperscript{29}

## 2. Restricted physical integrity

The Combating of Domestic Violence Act was introduced in 2003 and prohibits **domestic violence**;\textsuperscript{30} the definition of the latter includes physical abuse, sexual abuse, economic abuse, intimidation, harassment, entering without consent, or any emotional, verbal or psychological abuse.\textsuperscript{31} The law also provides for protections orders and punishment ranges from fines to 10 year’s imprisonment.\textsuperscript{32} In addition to the laws, the
government has introduced public education campaigns on violence against women and children and established 15 Women and Child Protection Units to provide medical, social and legal assistance to victims. The Ministry of Gender Equality and Child Welfare has also recently completed renovation of shelters in six regions for victims of gender-based violence. The Namibia Legal Assistance Center (LAC) has reported the challenges of collecting data on domestic violence due to the lack of separation between domestic violence cases and nondomestic crimes in police records.

The Combating of Rape Act was introduced in 2000 in response to increasing reports of sexual violence. The law prohibits rape using a broad definition of rape as an intentional commission of a sexual act under coercive circumstances and specifically prohibits marital rape. The penalty ranges between 5 and 15 years imprisonment for a first offence, and 10-45 years for a subsequent conviction. Despite the existence of this law, the US Department of State reports that effective enforcement is hindered by a lack of police transport, poor communication between police stations, lack of expertise in dealing with child rape complaints and the withdrawal of charges by rape victims, resulting in low conviction rates. According to police statistics, 1,100 cases of rape and attempted rape are reported each year, with women accounting for 93% of the victims of rape and attempted rape. The three most common reasons for withdrawal are resolving the case by means of compensation from the rapist or his family, family pressure or shame. Although underreporting of cases may continue to be an issue, data also suggests that the number of reported cases has constantly risen, suggesting greater official sensitivity to the issue of rape and awareness of the crime on the part of both police and the general public.

Sexual harassment is partly addressed in the 2003 Combating of Domestic Violence Act and in the 2000 Combating of Rape Act. It is explicitly addressed in the 2007 Labour Act (which came into force in 2009), and is defined as “any unwarranted conduct of a sexual nature towards an employee which constitutes a barrier to equality in employment where - the victim has made it known to the perpetrator that he or she finds the conduct offensive; or the perpetrator should have reasonably realised that the conduct is regarded as unacceptable, taking into account the respective positions of the parties in the place of employment, the nature of their employment relationships and the nature of the place of employment.”

Data on prevalence indicates that violence against women and girls is widespread in Namibia. According to the World Health Organization, 36% of women had experienced sexual and/or physical violence in their lifetimes from an intimate partner. In terms of attitudes towards violence, the 2006-2007 DHS reports that 35% of

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33 Idem
34 Idem
35 Idem
36 Gender Links (2012) p.17
37 US State Department (2012)
38 US State Department 2012
39 Gender Links (2012) p.56; CEDAW (2013) p.17
40 Gender Links (2012) p.56; CEDAW (2013) p.18; Legal Assistance Center (2009)
41 Gender Links (2012) p.57; CEDAW (2013) p.18
42 Gender Links (2012); CEDAW (2013) p.10
43 Labor Act 11 of 2007, section 5
respondents agree that a husband is justified in beating his wife for one of the five reasons proposed (neglecting the children, arguing, refusing sex, burning food or going out without telling him).  

Female genital mutilation (FGM) is reportedly practised in Namibia, but it affects only a very small portion of the population. There is no prevalence data available, nor is there legislation prohibiting the practice.

More

Limitations on women’s reproductive rights also infringes upon women’s physical integrity in Namibia. Namibia’s Abortion and Sterilization Act makes it a crime for a woman to seek an abortion, or to terminate her own pregnancy, except in very narrow circumstances. It is permitted to save a woman’s life or health, in the event of rape or incest or due to foetal impairment. It is not permitted on request or on social or economic grounds. To address wider issues linked with unwanted pregnancy, the draft Child Care and Protection Bill would allow children over the age of 14 to independently access contraceptives. The Ministry of Education has also implemented a new policy to prevent and manage adolescent pregnancy in the hopes of reducing the number of young women who attempt illegal abortions and providing flexible options to young pregnant mothers for continuing their education.

The 2006-2007 Demographic and Health Survey found that overall 55% of married women use contraception and 53% use modern methods of contraception. The survey also found that 20.7% of women aged 15-49 married or in a union had an unmet need for family planning.

The government reported that infanticide was increasingly common and is usually committed by young women. Several factors contribute to this phenomenon including the lack of social services to help young mothers, an absence of contraception and the difficulties involved in obtaining an abortion.

3. Son bias

According to the Central Intelligence Agency, Namibia has a male/female sex ratio for the working age population (15-64) of 1.03 in 2013 and a sex ratio at birth of 1.03.

There is no evidence to suggest that Namibia is a country of concern in relation to missing women.

More

Gender disaggregated data on rates of infant mortality and early childhood nutrition are not available for Namibia. Namibia has achieved gender parity in primary, secondary and tertiary education, indicating that there may be no preferential treatment of sons with respect to access to education. However, females face barriers

45 DHS (2006-2007) p.244
46 WHO (n.d.); International Parliamentary Union (n.d.)
47 CEDAW (2013) p.13
48 Gender Links (2012) p.17
49 DHS (2006-2007) p.58
50 Idem, p.93
52 Central Intelligence Agency (2013)
to education such as learner pregnancy and (for both males and females) difficulties meeting the required contributions to the school development fund.\textsuperscript{54}

The division of labour between boys and girls can also be an indicator of son preference. The African Development Bank reports that girls are more likely than boys to be engaged in fetching water in rural households.\textsuperscript{55} Whilst there is no child-specific time-use data, the African Development Bank reports that women spend on average 2 hours more than men on paid and unpaid work.\textsuperscript{56} This suggests that daughters may experience greater time poverty than sons.

4. Restricted resources and assets

There are no legal barriers to women’s \textbf{access to land} in Namibia. However, women’s access to land is still limited due to continuing discriminatory practices and limited implementation and awareness of existing laws and rights.\textsuperscript{57} Further, in some areas, leaders do not always have enough of an understanding of the provisions of the law to effectively implement the latter.\textsuperscript{58} The National Land Policy has a specific gender provision where women are accorded the same status as men with regard to all forms of land rights and the Communal Land Reform Act was introduced in 2002 to further enhance women’s access to land.\textsuperscript{59} The law provides that women and men are equally eligible for individual rights to communal land and the treatment of widows and widowers is identical. The aim of the legislation was to eliminate the practice of dispossessing widows of communal land that was allocated to the deceased spouse; a widow is entitled to keep her husband’s land upon is death, even in the event she decides to remarry.\textsuperscript{60} The legislation also prescribes that at least four members of the 12 member Land Boards are women.\textsuperscript{61} However, the United Nations Economic Commission for Africa reports that insecure tenure and discriminatory practices persist.\textsuperscript{62}

Women’s \textbf{access to non-land assets} in Namibia is dependent of the type of marriage. Men and women married under the community of property regime have equal rights. More specifically, the Married Person’s Equality Act states that a husband and wife married in community of property must equally agree when they sell, give away or borrow against important joint assets – such as the house, household furniture or livestock.\textsuperscript{63} They must also equally agree before taking out a loan that is secured by joint property.\textsuperscript{64} However, women can experience discrimination in accessing property in customary marriages, where these provisions do not apply.\textsuperscript{65} The Legal Assistance Centre reports the practice of ‘property grabbing’ by which widows are dispossessed of their property following the death of their husband. The practice has particularly come to attention in the context of HIV/AIDS-related deaths.\textsuperscript{66}

\begin{footnotesize}
\begin{enumerate}
\item CEDAW (2013) p.8
\item African Development Bank (2006) p.21
\item Idem
\item CEDAW (2013) p.45; Legal Assistance Center (2008)
\item Legal Assistance Center (2008) p.24
\item CEDAW (2013) p.45
\item Gender Links (2012) p.20; UNECA (2012)
\item Legal Assistance Center (2008) p.15
\item UNECA (2012)
\item Gender Links (2012) p.14
\item Idem
\item Gender Links (2012) p.20
\item Legal Assistance Centre (2008) p.28
\end{enumerate}
\end{footnotesize}
There is no legal discrimination against Namibian women in relation to access to financial services, including bank loans. Although, as mentioned above, the Married Persons Equality Act specifies that husband and wife must agree before taking out a loan that is secured by joint property. The African Development Bank reports that Namibian women are, however, disadvantaged in accessing credit as they often lack the collateral to obtain loans. The government has development co-operatives with micro-finance organisations and banks so as to assist in channelling funds to rural areas and facilitate access to loans by women.

5. Restricted civil liberties

Article 21 of the Constitution guarantees women’s freedom of movement and access to public space. Married and unmarried women may apply for both passports and national ID cards in the same way as a man. With regard to decisions concerning visits to her family and relatives, 20.4% of women reports that mainly her husband makes such choices, compared to 24.7% of cases in which women primarily make the decision, and 53.6% of cases in which the husband and wife decide together.

The US Department of State reports that the government in Namibia generally respects the right to freedom of assembly and association, both of which are protected by the constitution. There is evidence to suggest that Namibia has an active women’s movement with the government reporting to the United Nations in 2010 that women’s civil society groups have been very effective in pushing gender equality issues forward in the general public, particularly in terms of political participation. The 2013 report the Committee for the Elimination of Discrimination of Women (CEDAW) similarly states that women’s organisations are active and not discriminated against as a result of their lobbying activities. Female directors lead important organisations such as the Legal Assistance Centre and the Council of Churches.

With regard to women’s participation in political life, there are no quotas at the national level to promote women’s political participation although the South West Africa People’s Organization (SWAPO) party has a 50% quota with a zebra-system (alternation between men and women) in place for local election electoral lists. At the time of the 2009 national elections, women activists lobbied for a similar system at the national level. At the sub-national level, however, the Local Authorities Act of 1992 provides that in elections of local authority councils with ten or fewer members, party lists needed to include at least two women, while in elections to councils of eleven or more members, at least three women need to be included on party lists. Five years later these figures were increased to three and five, and in 2002, established as the system for future elections. In part a result of this legislation, women represent 40% of the local authority counsellor seats; there are 13

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67 CEDAW (2013) p.24  
68 Gender Links (2012) p.14  
69 African Development Bank (2006) p.16  
70 CEDAW (2013) p.48  
71 World Bank (2013)  
72 DHS (2006-2007) p.240  
73 US State Department (2012)  
74 United Nations (2010)  
75 CEDAW (2013) p.31  
76 QuotaProject (2012)  
77 CEDAW (2013) p.30
women regional councillors (out of 107, or 12%) and 3 regional governors (out of 13, or 23%). At the national level, female representation in Parliament is 24.4%. \(^{78}\)

More

Women’s representation and participation in the media may also influence women’s access to public space. According to the Gender and Media Progress Study, women made of 26% of all images in Namibian newspapers, compared to 19% of news sources in print media. \(^{79}\) Another study confirmed this statistic, with a slight increase to 20% for the latter, \(^{80}\) noting that women’s voices are most likely to be heard in areas concerning gender equality and gender violence, and less so on topics such as land and agriculture, sports, economics, and crime. \(^{81}\)

In addition to the non-discrimination provisions in the constitution, Namibia introduced the Affirmative Action (Employment) Act in 1998, which requires employers with more than 25 employees to prepare affirmative action plans targeting women. The Labour Act and Social Security Act further provides that women should be entitled to 12 weeks paid maternity leave to be granted at 100% of the basic wage, financed by the employer. The Labour Act 11 of 2007 (which came into force in 2009) further amends the aforementioned maternity leave, by providing that women who work for more than 6 months for the same employers are entitled to maternity leave (previously 12 months). The Labour act also provides against discrimination on the basis of sex in employment and recruitment, and defines and prohibits sexual harassment in the workplace. \(^{82}\) In addition, the Employment Rights Act mandates equal remuneration for men and women for work of equal value. \(^{83}\)

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\(^{79}\) Gender Links (2012) p.83

\(^{80}\) Idem, p.92

\(^{81}\) Idem

\(^{82}\) CEDAW (2013) p.10

\(^{83}\) World Bank (2013)
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