UNITED REPUBLIC OF TANZANIA

The first draft of a new Constitution was completed in June 2013 and is currently being debated in constitutional forums around the country. Currently, the 1977 Constitution of Tanzania prohibits gender-based discrimination but the country’s legislation has yet to be adjusted to support this principle. In general, legal protection for women remains limited, in part because Tanzania’s judicial authorities take into account both customary and Islamic laws, though customary law is not recognized as a valid source of law under the Constitution.

1. Discriminatory family code

The minimum legal age for marriage is 15 years for women and 18 years for men, but the Marriage Act of 1971 allows exceptions for girls aged 14 years, with parental consent, and under “justifiable” circumstances. In 2013, the Tanzanian government presented the issue of minimum legal age of marriage to the Congressional Review Commission, who is currently holding forums across the country to debate the first draft of a new Constitution. The draft Constitution, completed in June 2013, is expected to be enacted in April 2014.

By law, mothers and fathers in Tanzania have equal rights in regard to parental authority, and there is no known legislation restricting women from becoming heads of households. However, in its latest report to the Committee on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the government indicated that, in practice, discriminate against women continues at the household level especially, noting that “[m]ost communities in Tanzania are essentially patriarchal, whereby traditional norms, practices, and attitudes are centred on male domination”. Further, men and women are not equally responsible for the financial management of household resources, under the Law of Marriage Act. As reported by IFAD, the Act also allows for polygamous non-registered marriages; the first wife may however formally object if the second marriage causes hardship for her and her

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1 Inherit Your Rights (2013)
3 CEDAW (2007), p. 16-17, 22
4 World Bank (2013a)
5 CEDAW (2008), p.10
6 Makoye, K. (2013)
7 Balile, D. (2013)
8 World Bank (2013a)
10 Law of Marriage Act, Article 63[a]; World Bank (2013a)
According to the joint NGO shadow report presented to CEDAW in 2008, the Law of Marriage Act is also discriminatory on several other grounds, including: Section 114, (2) (a), which requires the law to take into consideration customs of a community when dividing marital properties during divorce, many of which are discriminatory towards women; Section 125 (2) (c), which requires the court to consider the customs of the community when taking deciding custody matters after divorce, again, many of which are discriminatory toward women and; Sections 163-163, which tacitly allow a husband to beat his wife by requiring a very high burden of proof for crimes of bodily injury and other forms of domestic violence. The shadow report indicates that the Law of Marriage Act is also discriminatory in that only men are allowed to sue their wives for desertion – women are not allowed to sue their husbands for the same and, similarly, women are the only ones to be viewed as adulterers under the law.

Rules 27 and 28 provide that a widow has no share in her husband’s estate if there are issues of the union and the husband cannot inherit from his wife who dies intestate, unless the wife left no children or any member of her own family. The law does not provide women equal inheritance rights as daughters. Under the Local Customary Law Declaration Order, No.4 (1963) males inherit movable and immovable properties absolutely, but females inherit immovable property only for their use during their life time. They cannot sell such immovable property unless there are no male members in the family.

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The Law of Marriage Act provides that a marriage can be monogamous or polygamous, where in a polygamous union a man may be married to more than one woman. According to the 1971 Law of Marriage Act (article 99), either spouse may initiate divorce.

2. Restricted physical integrity

While there is no law in Tanzania specifically addressing domestic violence, there are general provisions under the Law of Marriage Act, which provide that “no person has any right to inflict corporal punishment on his or her spouse” (though no definition of “corporal punishment” is provided). Further, gender violence is addressed in the country’s national gender and development strategy, where it is defined as:

“any act, omission or conduct by means of which physical, sexual or mental suffering is inflicted directly or indirectly, through threat, coercion, or any other means on any

11 Carpano, F. (2010)
15 Legal and Human Rights Centre (2009)
17 Legal and Human Rights Center (2008), p. 11
person with the purpose of intimidating, punishing, humiliating, maintaining sex stereotyped roles, undermining the security of a person, self-respect or diminishing physical or mental capacities.”

According to the US Department of State and the World Health Organisation, domestic violence remains very widespread and severely under-reported. Pressure from family and the community to remain silent, and stigma surrounding gender-based violence prevents many women from reporting spousal violence. The number of complaints filed in relation to violence against women has increased in recent years. The 2009-2010 DHS found that 44% of women had experience physical and/or sexual violence in their lifetime. According to the Legal and Human Rights Centre, 6,531 cases of gender based violence were reported in 2007.

In 1998, the government passed the Sexual Offences Special Provision Act, 1998, which addresses both rape and incest, but there is no code, or set of laws, protecting women against violence. The law also criminalises spousal rape, but only if the couple is legally separated. Rape is punishable by life imprisonment or by 30 days in prison with corporal punishment. It is also worth noting that this Act recognizes the rape of minors unless the victim is 15 and above and the wife of the perpetrator.

Sexual harassment in the workplace is prohibited in Tanzania, but the scope of the problem is not clear. According to the US Department of State’s 2012 human rights report, instances of sexual harassment include women being expected to perform sexual favours in exchange for promotion at work have been reported.

Although there are no national statistics on gender-based violence in the country, the 2012 human rights report of the Legal and Human Rights Centre indicates that abuse of women is widespread, putting the rate of gender-based violence in the country from between 30 and 50%. The Centre also used a media review to document 8 instances of femicide by husbands/male partners of women in 2012.

To date, the Tanzanian government has not introduced comprehensive legislation to address violence against women. However, according to the United Nations Food and Agriculture Organization, the Law Reform Commission in Tanzania published a report on gender sensitive laws in 2012 that included the text of four draft laws - one law addressing sexual offenses and

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18 Tanzania National Strategy for Gender and Development, p. 4
19 US Department of State (2013); NBS and ICF Macro (2011); World Health Organization (WHO) (2005)
22 Legal and Human Rights Center (2008), p. 9
26 US Department of State (2013), p. 30
27 Legal and Human Rights Centre (2012), p. 158
28 Legal and Human Rights Centre (2012), p. 161
another on the topic of gender violence. If enacted, the Commission claims, the legislation would provide greater rights for women in Tanzania.  

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Violence against specific groups of women has also been reported, specifically with regard to older women/widows being targeted as witches. According to the Legal and Human Rights Centre, women (and men) are targeted as witches due to economic conflicts within and among families, superstition, and the use of witch doctors. Although reliable data on the number of people targeted for being witches is scarce, the Legal and Human Rights Centre found that a total of 2,585 killings of older women were reported between 2004 and 2009 in areas where witch attacks and killings have occurred. And the practice does not seem to be in decline; in 2012 alone, 630 people (men and women) were killed after accusations of witchcraft.

Other forms of violence against widows include the practices of inheritance and widow-cleansing. In these cases women are “inherited” by a male-relative of their deceased husband and in some cases raped by one of the husband’s relatives under the auspices of being “cleansed” or “purified.”

**Abortion** can only be performed legally in cases where the woman’s mental or physical health is in danger.

### 3. Son bias

The male/female sex ratio for the total population in 2014 is 0.99 while the sex ratio at birth is 1.03. Based on this initial evidence, it appears that Tanzania is not a country of low concern in relation to missing women due to AIDS mortality. In 2012, the ratio of female to male primary school enrolment was 103.2% and 87.5% for secondary school. The gender gap is more significant, and in detriment of girls, for secondary education. However, for the 2005-2012 period, the total percentage for birth registration was 16%. The most recent available data regarding the distribution of household chores between boys and girls is from 1999. According to this data, girls are more involved in household work, especially as they reach adolescence. Moreover, in the period of 2002-2012, child labour affected boys more than girls.

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29 FAO (n.d.)  
30 HelpAge International (2011)  
31 Legal and Human Rights Centre (2012), p. 33  
32 HelpAge International (2011)  
33 Legal and Human Rights Centre (2012), p. 31  
34 Legal and Human Rights Centre (2012), p. 156  
35 UN (2011)  
36 CIA World Fact Book  
37 World Bank Development Indicators Database  
38 UNICEF Country Info  
39 UNICEF’s Understanding Children’s Work Programme  
40 UNICEF Country Info
4. Restricted resources and assets

The 1995 National Land Policy gives women the right to acquire and own land. However, this right is contradicted in the Policy itself, which states that family land will continue to be governed by “custom and tradition” with regard to inheritance.\(^{41}\) As noted above (Family Law section), customary laws that restrict a woman’s property rights are still widespread. Similarly, although Tanzania’s Law of Marriage Act (1971) grants women certain ownership rights, including access to property other than land, customary and Islamic laws that undermine these rights prevail within the Muslim community.\(^{42}\) However, recent Supreme Court rulings have upheld the Law of Marriage Act, invalidating customary law that prevents women from selling land.\(^{43}\) That said, this case may be an anomaly, since, according to data gathered by the Food and Agriculture Organisation, “[w]omen who are aware of their [land] rights often lack financial support to enforce their rights before a court”.\(^{44}\)

Other legislation has been passed to address women’s land rights, including the 1999 Land Act, which gives Tanzanian women the right to own, use and sell land, and mandates joint titling of land.\(^{45}\) Again, however, as with the laws above, this law is contradicted by preferences given to customary law, in this case Rule 20 of the Customary Law Declaration Order No. 4, which states that, “women in patrilineal communities do not inherit absolute rights over immovable property but only use rights and therefore ... cannot sell properties”.\(^{46}\) And, although there is no recent data on the percentage of land owned by women compared to that owned by men in Tanzania, the latest data from the National Bureau of Statistics (2007/2008) indicates that the percentage of land owned under Customary Law is 69.3%, compared to 15.7% owned by purchase.\(^{47}\)

The Village Land Act (also of 1999) mandates that women be represented on land allocation committees and land administration councils.\(^{48}\) There is no information on how this Act has been implemented, and whether its implementation has resulted in a higher percentage of women’s land ownership, and/or greater women’s land rights, in Tanzania.

A 2004 amendment to the Land Act gave Tanzanian women the right to mortgage land to enable them to access to bank loans.\(^{49}\) However, since customary practices continue to restrict women’s access to land, it is unclear how successful such an amendment might be in significantly increasing women’s access to credit. According to the latest data from the World Bank, 13.8% of women had accounts at formal financial institutions in 2011, compared to 20.8% of men.\(^{50}\) During that same year the percentage of women (6.9) and men (6.3) who had

\(^{41}\) FAO (n.d.)  
\(^{42}\) ECOSOC (2003), p. 120  
\(^{43}\) World Bank, FAO, and International Fund for Agricultural Development (2009), p. 144  
\(^{44}\) FAO (n.d.)  
\(^{45}\) FAO (n.d.)  
\(^{46}\) FAO (n.d.)  
\(^{47}\) National Bureau of Statistics (2013), p. 46  
\(^{48}\) Land Act No. 4 of 1999; Village Lands Act No. 5 of 1999 in CEDAW (2007), p. 16  
\(^{49}\) CEDAW (2007), p. 16  
\(^{50}\) World Bank (2013b)
accessed a loan from a financial institution within the past year were approximately the same. Women do seem to have greater access to microfinance loans, however. In 2011, women were 62.81% of microfinance borrowers in Tanzania (of 16 institutions reporting) and 47.32% in 2012 (with 9 institutions reporting).

5. Restricted civil liberties

There are no stated legal restrictions on Tanzanian women’s access to public space. However, women’s freedom of movement may be restricted on a day-to-day basis: 48.9% of married women aged 15-49 questioned for the 2010 Demographic Health Survey (DHS) said that their husbands made the final decision as to whether or not they could travel to visit family. According to the organisation Wezesha, women who are lesbian and transgender are discriminated against, therefore prohibiting their full access to public space. In addition to discrimination by medical and education institutions against lesbian and transgender individuals, Wezesha reports that homosexuality is punishable by up to 30 years in prison in Tanzania, and that members of the gay, lesbian, bisexual and transgender community have been victims of physical assaults, evicted from their homes, and fired from their jobs for being gay.

The 14th Amendment to the Constitution (2004) requires 50% gender parity in the presidential nominees. The Constitution of Tanzania (Article 66) also includes a 30% quota for women’s representation in the National Assembly. The quota is implemented through the reservation of special seats for women, distributed evenly among major parties. The Tanzanian Constitution also requires that women hold one-third of the seats in local government. However, according to the country’s most recent report to the Committee on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), challenges to women’s full participation in politics remain, for example, due to the “[l]ack of financial resources that are required to create an enabling environment for women to compete with men in the elections”. There are voluntary party quotas in Tanzania.

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The Employment and Labour Relations Act of 2004 offers paid maternity leave to employed women for up to 84 days (12 weeks), paid at 100% of the average daily earnings, and financed by a national social security fund. Regarding workplace rights, the Employment and Labour

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51 World Bank (2013b)
52 Microfinance Information Exchange (2013)
53 NBS [Table 14.4.1]
54 Wezesha (n.d.)
55 CEDAW (2007), p. 17
56 The Quota Project (2013)
59 CEDAW (2007), p. 42
60 IDEA (2012)
61 ILO (2011)
Relations Act, enacted in 2004, also prohibits discrimination on the basis of gender, sex, disability status, marital status, and pregnancy.\footnote{CEDAW (2007), p. 34}
Sources


CEDAW (2008) ‘Responses to the list of issues and questions with regard to the consideration of the combined fourth, fifth and sixth periodic reports United Republic of Tanzania’, CEDAW/C/TZA/Q/6/Add.1, CEDAW, New York.


World Bank, Food and Agriculture Organization, and International Fund for Agricultural Development (2009), Gender in Agriculture Sourcebook, The World Bank, Washington, DC.