



MOZAMBIQUE

COUNTRY PROFILE

Article 11(5) of the 2004 Constitution of Mozambique establishes 'the defence and promotion of human rights and of the equality of citizens before the law'. To reflect this, Article 35 on the principles of universality, provides for equality of citizens and non-discrimination on the basis of, amongst others, sex. Article 36 on principles of equality further provides that '[m]en and women shall be equal before the law in all spheres of political, economic, social and cultural life'. Article 39 goes a step further and provides that discrimination on the basis of sex, amongst others, undermines national unity and creates division and is punishable by law. Article 122 of the Constitution specifically mentions the promotion, protection and development of women 'in all spheres of political, economic, social and cultural life of the country'.

Article 119 presents the family as the 'fundamental unit and basis of society'. It further provides that free consent must be the basis of marriages. Both parents can pass down their Mozambican citizenship to their children.²⁰⁷

Article 119 of the Constitution states that '[t]he law shall establish forms in which traditional and religious marriage shall be esteemed, and determine the registration requirements and effects of such marriage'. Article 17 of the Family Law Act No. 22/2019 recognises civil, religious and traditional marriages and this extends to *de facto* marriages.

Treaty	Date of ratification	Reservations/Declarations
CEDAW	21 April 1997	None
African Charter	22 February 1989	None
Maputo Protocol	9 December 2005	None

Article 43 of the Constitution provides that the latter shall be interpreted in line with the UDHR and the African Charter.

MAIN TRENDS IN FAMILY LAW

Articles 318 and 322 of the Family Law Act No.22/2019 provide that both parents have parental authority over their children during marriage or *de facto* union and in the event of divorce, separation, marriage annulment or termination of a *de facto* union.²⁰⁸

Articles 179 and 193 provide that all men and women have equal rights to initiate and finalise a divorce or annulment.

In 2009, the government adopted a Domestic Violence Law²⁰⁹ that prohibits violence against women, including marital rape.

²⁰⁷ Article 23(1) of the Mozambique Constitution 2004, amended 2007. Available at https://www.constituteproject.org/constitution/Mozambique_2007 (accessed 17 April 2024)

²⁰⁸ <https://faolex.fao.org/docs/pdf/moz208614.pdf> (accessed 17 April 2024)

²⁰⁹ <https://learningpartnership.org/resource/violence-against-women-prevention-law-mozambique-document-portuguese> (accessed 17 April 2024)

KEY GAPS AND CONTESTATIONS

- (i) **Polygamy:** While Article 18 of the Family Code prohibits polygamy, its provisions only apply to civil marriages and to religious and traditional marriages duly transcribed in the civil registry. This provision leaves a void when it comes to women in religious and traditional marriages whose marriages are not registered with the civil registry.
- (ii) **Child marriage:** Article 30 of the Family Law Act Law No. 22/2019 sets the legal age of marriage for both men and women at 18 years with no exceptions. As a general rule, only people over eighteen years of age can get married, in accordance with Article 30, paragraph 1, a) of the Family Law. Exceptionally, a man and a woman over sixteen years of age can get married when there are circumstances of recognised public and family interest and when there is the consent of the parents or legal representatives.²¹⁰
- (iii) **Inheritance:** Articles 66 and 2133 of the Civil Code²¹¹ provide for equal inheritance of surviving spouses, sons and daughters. Moreover, Articles 10 and 15 Law No 19/97 on Land provide that men and women have a right to inheritance regardless of their gender. However, Article 12 acts as a potential clawback clause since it provides that land inheritance must be in line with customary and traditional practices, although these must not be against the Constitution which includes equality on the basis of sex.

RECOMMENDATIONS

Sensitisation: Sensitise the population about equality in the Constitution, Civil Code and Law on Land and the customary and traditional practices that are against inheritance rights of women.

Law reform and effective implementation: Amend the law to eliminate all exceptions for marriage for those under 18 years and effectively implement the laws on child marriage using a multi-sectoral approach in accordance with the SADC Model Law on Eradicating Child Marriage and Protecting Children already in Marriage.

²¹⁰ Report from the Government of the Republic of Mozambique pursuant to Article 62 of the ACHPR. (Consolidated Report 2015 to 2021. Available at <https://achpr.au.int/sites/default/files/files/2023-12/engmozambiqueconsolidated-report-2015-2021.pdf>

²¹¹ <https://resourceequity.org/record/881-mozambique-civil-code/> (accessed 17 April 2024)