



COUNTRY PROFILE

The Constitution of the United Republic of Tanzania establishes that every person is entitled to respect and protection of his family and matrimonial life.²⁹⁸ The Constitution also entrenches the right to equality and prohibits discrimination on, among others, the ground of sex.²⁹⁹

Treaty	Date of ratification	Reservations/Declarations
CEDAW	20 August 1985	None
African Charter	18 February 1984	None
Maputo Protocol	3 May 2011	None

MAIN TRENDS ON FAMILY LAW

Tanzania has historically enjoyed progressive family laws. The Law of Marriage Act, enacted in 1971, was the first piece of legislation in Commonwealth Africa to recognise a married woman's right to "acquire, hold and dispose of property". The Act also dictates that when determining division of matrimonial property upon divorce, a court must consider each spouse's contribution to the household.³⁰⁰ Unfortunately, courts have interpreted this provision to be limited to financial contribution, in spite of legal precedent recognising unpaid domestic labour and childcare as contributions to the household.³⁰¹ This interpretation leaves women who are financially weaker than their spouses and burdened by unpaid labour vulnerable to financial destitution upon divorce.

The Child Act grants women equal rights to custody upon divorce.³⁰² However, the Law of Marriage Act stipulates that the customs of the community must be considered when determining division of matrimonial property and custody of children.³⁰³ This has the potential to undermine women's right to equality, since custom may not recognise women's right to property and children are often considered a part of their father's clan, thus there is a preference for granting father's custody in custom.³⁰⁴ Courts must be sure to consider custom as one of many factors in the matrimonial property and custody determinations, rather than as the determinative factor.

Finally, while Tanzania has adopted policy measures to combat child marriage, child marriage remains permitted in law.³⁰⁵ The Law of Marriage Act prescribes that the minimum age of marriage for boys is 18 years and for girls 15 years.³⁰⁶ With the court's permission, both boys and girls can marry from the age 14, with girls also requiring parental consent.³⁰⁷ However, in 2016 the High Court held in *Rebeca Z. Gyumi vs Attorney General* that Sections 13 and 17 of the Law of Marriage Act were unconstitutional and directed the Government through the Attorney General to amend the law within one year from the date of the decision to set the minimum age of marriage to 18 years for both boys and girls.³⁰⁸ The Attorney General appealed unsuccessfully and the Court of Appeal in 2019 directed the Government to abide by the order of the High Court and amend the Law of Marriage Act.³⁰⁹ The law had not yet changed at the time of publishing this Report.

298 Section 16 of the Constitution of the United Republic of Tanzania 1977, amended 2005. Available at https://www.constituteproject.org/constitution/Tanzania_2005#:~:text=The%20organs%20vested%20with%20executive,the%20organs%20vested%20with%20legislative (accessed 17 April 2024)

299 Sections 12-13 of the Constitution of the United Republic of Tanzania 1977, amended 2005

300 Section 114 of the Law of Marriage Act 1971. Available at <http://parliament.go.tz/polis/uploads/bills/acts/1461835089-ActNo-5-1971.pdf> (accessed 17 April 2024)

301 *Mohamed vs Sefu* Court of Appeal 1983; K Van Aelst "Household decision-making and gender relations in Tanzania: Literature and theory review" (2014). Available at https://www.chr.up.ac.za/images/researchunits/wru/documents/_caselaw/bi_hawa_mohamed_v_ally_sefu_9_of_1983.pdf (accessed 17 April 2024)

302 Section 9 of the Law of the Child Act 2009. Available at <https://www.bunge.go.tz/polis/uploads/bills/acts/1452143878-ActNo-21-2009.pdf> (accessed 17 April 2024)

303 Section 125(2) of the Law of Marriage Act 1971.

304 OECD Development Centre "Social Institutions and Gender Index Tanzania" (2019). Available at: <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/TZ.pdf>

305 Id

306 Section 13(1) of the Law of Marriage Act 1971

307 Section 13(2) of the Law of Marriage Act 1971

308 *Rebeca Z. Gyumi vs Attorney General* (Misc. Civil Cause 5 of 2016) [2016] TZHC 2023 (3 March 2016) Available at <https://tanzlii.org/akn/tz/judgment/tzhc/2016/2023/eng@2016-03-03> (accessed 17 April 2024)

309 *Attorney General vs Rebeca Z. Gyumi* (Civil Appeal 204 of 2017) [2019] TZCA 348 (23 October 2019) Available at <https://tanzlii.org/akn/tz/judgment/tzca/2019/348/eng@2019-10-23> (accessed 17 April 2024)

KEY GAPS AND CONTESTATIONS

(i) Inheritance:

Ensuring that women have equal rights to inheritance has proven challenging. Under both customary law and Islamic law, women do not enjoy equal inheritance rights. In 2016, the CEDAW Committee held in *E.S. and S.C. vs. Tanzania* that by condoning a patrilineal inheritance system and legal restraints on inheritance and property rights that discriminate against women, Tanzania had violated CEDAW.³¹⁰ The case concerned two widows who were prevented from inheriting and administering the estates of their deceased husbands and were evicted from their homes. The case is a landmark victory and a stark reminder of the challenges experienced by women when they are overlooked by the law of succession. Tanzania must ensure that legislation and mindsets reflect this decision, so that women are able to inherit equally.

(ii) Violence against women:

A further gap exists in the regulation of violence against women. While rape is criminalised,³¹¹ there is no specific legislative response to domestic violence.

(iii) Marital rape:

Marital rape is only criminalised upon separation since rape is defined as a male person having “sexual intercourse with a girl or woman under circumstances falling under any of the following descriptions: (a) not being his wife or being his wife who is separated from him without her consenting to it at the time of the sexual intercourse...”³¹² This greatly undermines women’s equality, dignity, and bodily autonomy. It is however worth noting that the High Court in *Mzumbe Masunga @ Maguryati and Another vs Republic* (Criminal Appeal 54 of 2022) [2023] TZHC 16379 (24 March 2023)³¹³ held that Section 130 (2) (e) of the Tanzania Penal Code, which states that “A male person commits the offence of rape if he has sexual intercourse with a girl or a woman... with or without her consent when she is under eighteen years of age unless the woman is his wife who is fifteen or more years of age and is not separated from the man.”, is redundant to the extent of recognition of a marriage with a girl of 15 years. The Court noted the lack of legal coherence in the provision, highlighting that it categorises an act as rape only when committed against an unmarried girl under 18 years old. However, if the girl is married at 15 years old, the same act is not considered rape according to the provision.

RECOMMENDATIONS

Legal reform:

- ▶ Increase the legal age of marriage to 18, without any exceptions.
- ▶ Reform unequal customary inheritance law.
- ▶ Enact legislation to combat domestic violence and abuse, including marital rape.

Judiciary:

- ▶ Courts must interpret the Law of Marriage Act to recognise women’s non-economic contributions to the household when dividing matrimonial property.
- ▶ Courts must ensure that considering custom does not unfairly prejudice women when determining inheritance and custody of children after divorce.

310 CEDAW/C/60/D/48/2013 Communication No. 48/2013. Available at https://www.escri-net.org/sites/default/files/caselaw/cedaw_tanzania_inheritance_laws_views.pdf

311 Section 5 of the Sexual Offences (Special Provisions) Act 1998. Available at <http://parliament.go.tz/polis/uploads/bills/acts/1457516075-ActNo-4-1998.pdf> (accessed 17 April 2024)

312 Ibid

313 <https://tanzlii.org/akn/tz/judgment/tzhc/2023/16379/eng@2023-03-24> (accessed 15 April 2024)

FATU'S* STORY

Tanzania



Case study collected with the support of
Network Against Female Genital Mutilation (NAFGEM)

In Fatu's case, There is no legal framework in Tanzania that adequately defines the scope of domestic violence or criminalises it. While Section 66 of the Law of Marriage Act prohibits domestic violence, it doesn't include any penalties or sanctions. The definition of rape in Tanzania's statutory laws also excludes marital rape. These contribute as impediments for survivors of domestic violence and marital rape in seeking redress.

"My name is Fatu*, and I am 55 years old with two children. I live in Moshi District in Kiborloni Ward of Tanzania. I am trapped in a harrowing tale of hardship and abuse. I am married to an older man in the security sector who, even before being expelled from work due to his drunkenness and neglect of responsibilities, subjected me to a life of violence and fear.

My husband's violent demands for money, food, and what he claims are **"conjugal rights"** have made my life a constant struggle. He forces me to have sex any time he wants; otherwise, he threatens to punch me severely.

His assaults, both in public and behind closed doors, are relentless. This has driven me to avoid spending nights in our shared space, where he keeps menacing tools under his bed, including a machete, hammer, and screwdriver. I fear those tools may one day be turned against me, exacerbating the pain he's already inflicted on me, as evidenced by a scar on my hand – a brutal reminder of his attempt to take my life when he beat me and cut me with a knife.

My 22-year-old daughter lives 600 kilometres away in Dar-es-Salaam and has severed all ties, leaving me in extreme poverty to care for my two grandchildren. My pleas for help have fallen on deaf ears. Neighbours and relatives have abandoned me and have warned me not to involve the police because if I do, my husband will be jailed. They have gone further, threatening to evict me from our family and the community. NAFGEM has been a pillar of support for me and provided me with some counselling and legal advice. The organisation has also connected me with some local economic welfare groups. These have been a great support system for me.

What I'm going through affects my mental and emotional health, but I do not have any other alternative. Despite the toll on my mental well-being, divorce is not an option for me. I have nowhere to go - I am an orphan with no siblings to turn to. I fear that if I relocate, I will be in more danger. I don't feel safe. It has been a 20-year vicious cycle. I am caught in a cycle of desperation, weakness, sleepless nights, and constant anxiety.

My husband's violent demands for money, food, and what he claims are "conjugal rights" have made my life a constant struggle.

* Not her real name