



CHAPTER 1

Constitutional and legal rights

Articles 4-11



Lesotho High Court.

Photo: Majara Molupe

KEY POINTS

- The South African High Court in Pretoria found the government's participation in signing regional legal instruments disbanding the original SADC Tribunal to be illegal and unconstitutional. This paves the way for the reconsideration of the role and position of the SADC Tribunal, including its role in disputes relating to the interpretation of the SADC Protocol on Gender and Development.
- The Government of eSwatini pronounced that widows in mourning would not be allowed to participate in the 2018 general elections due later in the year. Only widows who had been in mourning for at least two years and had been "cleansed" will be allowed to participate.
- In Lesotho, the High Court ruled that the Defence Forces could not dismiss female soldiers who get pregnant during the first five years of their engagement, as noted in the army regulations. This represents an important precedent given that many Defence Forces in the region have similar regulations.
- In Botswana, the High Court ordered the government to change the gender of a transgender woman on her identity documents. The government had initially refused to effect the change.
- In a landmark ruling in South Africa, the Supreme Court of Appeal recognised the responsibility of both parents to pay school fees for their children in cases of divorce or separation.
- The murder of people with albinism continued in the region. In South Africa, police found the bodies of a 13-year-old girl with albinism and a toddler - her killers had harvested body parts from the 13-year-old girl.
- In Zimbabwe, President Emmerson Mnangagwa said the country might need to develop a law to regulate commercial sex work.

Constitutional and legal rights are a **crucial** indicator of the **level** of **respect** for **human rights** in a country

Table 1.1: Trends in Constitutional and Legal Rights since 2009

	Target 2030	Baseline 2009	Progress 2018	Variance (Progress minus 2030 target)
GENDER AND RIGHTS ASSESSMENT OF CONSTITUTIONS AND LAWS				
Highest	100%		77%	-23%
Lowest	100%		47%	-53%
Number of countries that undertake constitutional reforms and review processes to align with the SADC Protocol on Gender and Development	15 countries	0	11 with 10 complete (Angola, DRC, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Zambia and Zimbabwe) and one in process (Tanzania, although the process is currently stalled)	5 countries have yet to complete this process
Number of countries that provide for non-discrimination on the basis of sex and others	15 countries	14 (Angola, Botswana, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, eSwatini, Tanzania, Zambia and Zimbabwe)	All SADC countries	All SADC countries have completed this process
Number of countries' Constitutions that provide for the promotion of gender equality	15 country Constitutions	7 (Angola, DRC, Lesotho, Malawi, Mozambique, South Africa and eSwatini)	13 (Angola, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, eSwatini, Tanzania, Zambia and Zimbabwe)	2 remain without constitutions that provide for the promotion of gender equality (Botswana and Seychelles)
Number of countries that have no claw back clauses	15 countries	7 (Angola, DRC, Madagascar, Mozambique, Namibia, Seychelles and South Africa)	10 (Angola, DRC, Madagascar, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe)	5 countries (Botswana, Lesotho, Malawi, Mauritius and eSwatini)
Number of countries that address the contradictions between the constitution, laws and practices	15 countries	4 (Namibia, South Africa, eSwatini and Tanzania)	12 (Angola, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Seychelles, South Africa, eSwatini, Tanzania, Zambia and Zimbabwe)	3 countries remaining (Botswana, DRC, Mauritius)
Number of countries that provide for special measures in their constitutions	15 countries	9 (DRC, Lesotho, Malawi, Namibia, Seychelles, South Africa, eSwatini, Tanzania and Zimbabwe)	13 (DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, eSwatini, Tanzania, Zambia and Zimbabwe)	2 countries (Angola, Botswana)
Number of countries that decriminalised LGBTI people	15 countries	None	4 (DRC, Mozambique, South Africa and Seychelles)	11 countries
Marriage age for girls and boys is a minimum of 18 in 15 countries	15 countries	8 (Angola, Botswana, Madagascar, Mauritius, Mozambique, Namibia, Seychelles and South Africa)	14 (Angola, Botswana, DRC, Madagascar, Malawi, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe)	Only Mauritius remains without this minimum
Marital rape is a crime in 15 countries	15 countries	None	9 (Angola, Lesotho, Malawi, Mozambique, Namibia, Seychelles, South Africa, eSwatini and Zimbabwe)	6 countries
15 countries decriminalise sex work	15 countries	None	None (although in May 2018 Zimbabwean President Mnangagwa signalled that the country might need a law to regulate commercial sex work)	All 15 countries
15 countries legalise abortion	15 countries	2 (South Africa and Zambia)	3 (Mozambique, South Africa and Zambia)	12 countries

Source: Gender Links, 2018.

Table 1.1 shows that:

- In some areas, the region has seen limited progress since 2009. This is especially true for decriminalisation of sex work, decriminalisation of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people, and legalisation of abortion.
- By 2018, only four countries had decriminalised homosexuality (DRC, Mozambique, Seychelles and South Africa). Seychelles is the latest addition.
- Marital rape criminalisation represents the most notable development, with three more countries adopting laws to criminalise marital rape (Angola, Mozambique and Seychelles).
- Most countries have begun or completed constitutional reforms and review processes to align with the SADC Protocol on Gender and Development.
- All constitutions now provide for non-discrimination on the basis of sex, and all countries except Botswana and Seychelles provide for the promotion of gender equality.
- Most countries also now address the contradictions between the constitution, laws and practices, with only Botswana, DRC and Mauritius yet to do so.

Background

Constitutional and legal rights are a crucial indicator of the level of respect for human rights in a country and they provide context in its developmental trajectory. Development cannot occur without human rights and protection of women's rights plays a significant role in any country's development process. This chapter highlights progress made in the last year based on the Post-2015 SADC Gender Protocol. With its improved rights language, stakeholders expected the 2015 Gender Protocol to stimulate positive advancements in women's rights protections. However, the region shows mixed progress, with countries stalled in certain instances. The courts have continued to play a vital role in upholding women's rights and compelling SADC Member States to do more to protect women's rights.

The fight to end child marriage continues, with policymakers making pronouncements on the need to end the scourge. Ending the practice, however, remains a challenge, with statistics indicating little or no change in many SADC countries. There region has also seen little movement in its domestication of the SADC Model Law on Eradicating Child Marriage and Protec-

ting Children Already in Marriage despite parliaments and governments making the right noises about the issue.

The contentious issues of marital rape, commercial sex work, LGBTI rights and abortion remain contested. Open discussions around the issues are often difficult due to highly personalised views, which come up against conservative religious and cultural beliefs.

One ruling in South Africa has revived hope for the reopening of the original SADC Tribunal, which lawmakers disbanded in 2012 - or at least one that allows access to SADC citizens. In February 2018, the South African High Court in Pretoria found the South African government's participation in signing regional legal instruments disbanding the original SADC Tribunal to be illegal and unconstitutional. This ruling will play an important role in improving access to justice for all, including women and girls.

As one expert noted, "Much hope was vested in the court, whose mission was to effectively and efficiently ensure compliance and resolve disputes related to the interpretation and application of SADC treaty and subsidiary legal instruments. Through this mandate, the court also both directly and indirectly support[ed] sustainable and equitable economic growth and socio-economic development and promote deeper cooperation among SADC's 15 member countries."¹ The Government of South Africa has, however, appealed the decision, signalling that the fight to bring back the SADC Tribunal with its original powers will be long and drawn out.²



Activist Kumi Naidoo and a staff member from Earthlife Africa launch the Kilimanjaro Declaration on Africa Day in Johannesburg in 2017. The Declaration commits to expand space for civic and political action and fight for women's rights and freedoms. Photo: Gender Links

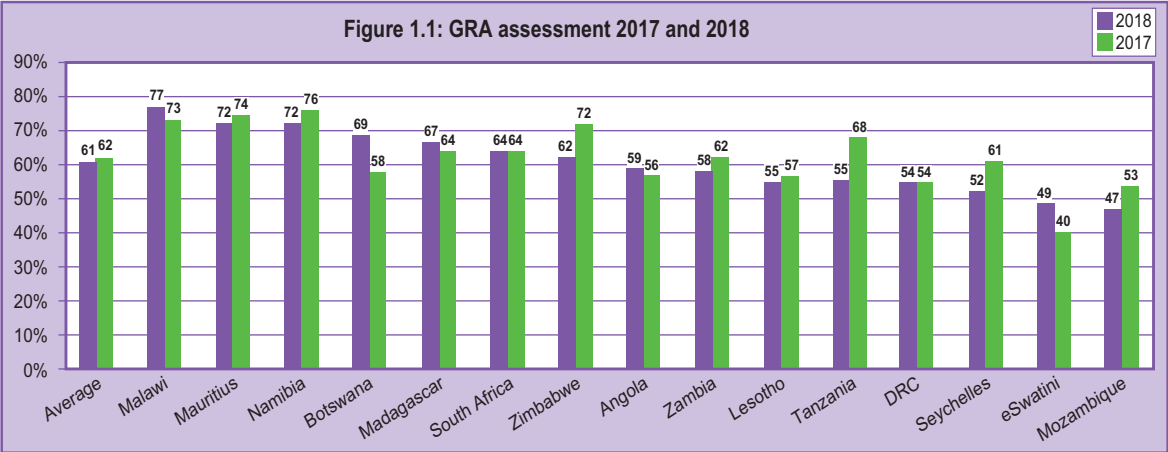
Most countries have begun or completed constitutional reforms and review processes to align with the SADC Gender Protocol

¹ <https://www.brookings.edu/blog/africa-in-focus/2018/04/02/a-house-of-justice-for-africa-resurrecting-the-sadc-tribunal/>

² Eye Witness News (2008), 'Afriforum: Presidency Files Notice to Appeal SADC Tribunal Ruling', available at: <http://ewn.co.za/2018/03/23/afriforum-presidency-files-notice-to-appeal-sadc-tribunal-ruling> (accessed 12 June 2018).

While the region has seen progress in legal and policy frameworks to promote gender equality, what is on paper does not always translate into reality

Gender and rights score card



Source: GRA scorecard.

Figure 1.1 shows the scores of the Gender and Rights Assessment (GRA), determined by legal and gender experts in each SADC country - a tool introduced as part of the Barometer in 2017. The GRA covers Articles 4 to 11 of the SADC Gender Protocol, including special measures, domestic legislation, equality in accessing justice, marriage and family rights, persons with disabilities, widow and widowers' rights, the girl and the boy child. The average regional score is 61%, a slight drop

from 62% in 2017. Malawi scored the highest (77%) while eSwatini scored lowest at 47%, although it posted a seven-percentage point increase from 2017. Fourteen SADC countries scored higher than 50%. This assessment indicates that the region has seen progress in legal and policy frameworks to promote gender equality. However, what is on paper does not always translate into reality. Only seven countries received a score higher than in 2017, while six received a lower ranking.



Group discussion during a SADC Gender and Rights Scorecard meeting.

Photo: Gender Links

Table 1.2: Analysis of gender equality clauses in Constitutions

Country	Provides for non-discrimination generally	Provides for non-discrimination based on sex specifically	Provides for non-discrimination on the basis of sex and others e.g. marital status, pregnancy	Provides for the promotion of gender equality	Has other provisions that relate to gender equality	Has claw back clauses	Addresses issues of contradictions between the Constitution, law and practices	Provides for special measures
Angola	Yes, Article 23	Yes, Article 21	Yes, Article 21	Yes, Article 21 and 35	Yes, Article 36 and 77	No	Yes, Article 239	No
Botswana	Yes, Section 15	Yes, Section 3	Yes, Section 15	No	No	Yes, Section 15	No	No
DRC	Yes, Articles 11, 12 and 13	Yes, Articles 14, 36 and 45	Yes, Articles 40	Yes, Article 14	Yes, Article 16	No	No	Yes, the national policy of gender mainstreaming, promotion of women, of the family and children
Lesotho	Yes, Chapter II, Section 1 and 18	Yes, Section 18	Yes, Section 18	Yes, Chapter III, Section 26 and 30	Yes, Section 26	Yes, Section 18	Yes, Section 18	Yes Article 18 and 26
Madagascar	Yes, Article 8	Yes	Yes, Article 8	Yes	Yes, Article 17	No	Yes, Article 160	Yes
Malawi	Yes, Section 20	Yes, Article 20	Yes, Section 13 and 20	Yes, Article 13	Yes, Section 19 and 18	Yes, Section 26	Yes, Article 5	Yes, Article 30
Mauritius	Yes, Article 3	Yes, Section 16	Yes, Section 16	Yes, Article 16	No	Yes, Section 16	No	Yes, Article 16 - to provide for gender neutral quota: 30% of either sex on party lists as candidates
Mozambique	Yes, Article 35	Yes, Article 36	Yes, Article 39	Yes, Article 120	Yes, decriminalisation of homosexuality and termination of pregnancy	No	Yes, Article 143	Yes
Namibia	Yes, Article 10	Yes, Article 10	Yes, Article 14	Yes, Article 95	Yes, Article 8	No	Yes, Article 19	Yes, Article 23
Seychelles	Yes, Article 27	No	Yes, Article 30	No	No	No	Yes, Article 5	Yes Article 27
South Africa	Yes, Chapter 1	Yes, Chapter 2, Section 9	Yes, section 9	Yes, Section 9	Yes, Section 12	No	Yes, Chapter 7, Section 15, 30	Yes, Section 9, Article 187
eSwatini	Yes, Section 20	Yes, Section 20	Yes, section 20 (2)	Yes, Section 28	Yes, Section 28	Yes, Section 20	Yes, Section 2 and Article 20	Yes, Section 20, Article 86
Tanzania	Yes, Article 13	Yes, Article 9	Yes, Article 16	Yes, Article 66	Yes, Article 13	No	Yes, Article 30	Yes, Article 78
Zambia	Yes, Article 23	Yes, Article 23	Yes, Article 23	Yes, Article 231 Gender equality and equity commission	Yes, Articles 45, 69, 231	Amended	Yes, Article 1(1)	Yes
Zimbabwe	Equality and Non-Discrimination Section in the Declaration of Rights	Section 23, Declaration of Rights	Section 23, Declaration of Rights	Gender equality is listed among the Founding Values and Principles; Gender Balance is one of the Sections articulated in the National Objectives	The Declaration of Rights in the new Constitution has been expanded to include Equality and Non-Discrimination	The new constitution invalidates customary law and practices that infringe on women's rights	A law review and reform process has started to align the countries laws, policies and practices to the provisions of the new Constitution	Yes, Section 23

Source: Gender Links (2016), Updated 2018.

Table 1.2 illustrates the diversity of legislation linked to gender equality in SADC constitutions. Some countries, such as Lesotho, Madagascar and South Africa, have progressive constitutions with

provisions linked to gender equality mainstreamed throughout. Botswana and Seychelles lag behind the others, with several gaps linked to gender equality in their Constitutions.

Constitutional rights



Article 4.1: State parties shall enshrine gender equality and equity in their Constitutions and ensure that any provisions, laws or practices do not compromise these.

In general, Constitutions of SADC Member States have strong gender provisions. The main challenges relate to aligning, repealing or amending existing contradictory and discriminatory laws and implementing the existing positive provisions. In addition, inherent discrimination based on customary law remains a problem in some of the countries in the region.



Due to **Namibia's** gender equality laws and policies, the Commonwealth Secretariat in August 2017 expressed satisfaction with the country's gender parity in decision-making structures. Commonwealth Secretary General Patricia Scotland urged the Namibian President to share Namibia's formula on gender equality with other Commonwealth countries.³

Zambia took a long time to establish its Gender Equity and Equality Commission, citing resource constraints.⁴ The Commission, as provided for in Article 231 of the Constitution, has a mandate to promote the attainment and mainstreaming of gender equality. Legislators also expect the Commission to monitor, investigate, research, educate, advise and report on issues concerning gender equality; ensure institutions comply with legal requirements and other standards relating to gender equality; take steps to secure appropriate redress to complaints relating to gender inequality; and perform such other functions as prescribed. Its operationalisation is therefore a long overdue but important action for equality and equity in the country.



In **Zimbabwe**, policymakers unveiled the revised National Gender Policy (NGP) on 6 July

2017, paving the way for policy direction in coordinating efforts to ensure gender equality and non-discrimination in the country. Similarly, the Zimbabwe Gender Commission (ZGC) held its inaugural National Forum, an annual event that the Zimbabwe Gender Commission Act: Chapter 10:31 provides for to ensure a constant and consistent national platform to discuss and promote gender equality and non-discrimination.

In **Tanzania**, finalisation of the constitutional review process remains stalled, even though a research survey has shown that 67% of Tanzanians want a new constitution.⁵ This means that the positive provisions in the draft constitution will remain of little benefit in the promotion of women's rights and gender equality in the country. There are even fears that the government might discard the current draft and start a whole new process, and it has indicated that it has no intention of resuming the constitution-making process in the near future.⁶ Meanwhile, repression in the country has reached alarming levels, with the Roman Catholic Church⁷ and a local Government official⁸ indicating that officials must arrest and prosecute teenage girls who get pregnant, along with their parents.⁹ One researcher has, however, indicated that such drastic measures do not present a solution as such pregnancies often result from poverty and limited options for young girls, not bad behaviour.¹⁰



In **Madagascar**, lawmakers implemented amendments to the Nationality Law in 2017, which will allow both men and women to pass on their nationality to their children. This will help address gender-based discrimination regarding parents' responsibility towards their children.

³ Namibian Broadcasting Corporation (2017), 'Commonwealth impressed with Namibia's Gender Equality in Decision-Making Structures' available at: <https://www.nbc.na/news/commonwealth-impressed-namibias-gender-equality-decision-making-structures.10097> (accessed 27 March 2018).

⁴ Interview between the author and a Zambian senior female lawyer.

⁵ Twaweza (2017), Unfinished Business: Tanzanians' Views on the Stalled Constitutional Review Process, Sauti za Wananchi. Brief No. 44.

⁶ The Citizen, 14 March 2018.

⁷ Priest from the Roman Catholic Church, Rev Father Leonard Kasimila.

⁸ Mlele District Commissioner (DC), Ms Rachel Kasanda.

⁹ AllAfrica.com, 25 February 2018, Tanzania: Church Wants Girls, Parents Arrested to Curb Teenage Pregnancies.

¹⁰ Pincock K, (2018), 'Punishment won't stop teenage pregnancies in Tanzania because 'bad behaviour' isn't the cause', available at: <https://theconversation.com/punishment-wont-stop-teenage-pregnancies-in-tanzania-because-bad-behaviour-isnt-the-cause-90187>, (accessed on 9 June 2018).



In **Mauritius**, the government committed to pursue discussions and consultations with relevant stakeholders to work towards an electoral reform that would address inclusiveness and gender representation. Representatives noted this to the UN Human Rights Council in October 2017 as they presented the country's report on implementation of the provisions of the International Covenant on Civil and Political Rights.¹¹

The Constitution of **Lesotho** guarantees the right to equality and non-discrimination on the basis of sex. However, it exempts customary laws from this guarantee. In addition, patriarchal and institutional practices and regulations often perpetuate discrimination against women. For example, army regulations in Lesotho allow for dismissal of women soldiers who fall pregnant within the first five years of joining.¹² Fortunately and to the relief of many women's rights advocates, the Lesotho High Court on 14 February 2018 ruled that the Lesotho Defence Force could not dismiss female soldiers for this reason.¹³ The Court ruled that this practice is illegal and discriminatory: an important precedent-setting decision given that many defence forces in the region have similar regulations. In overturning the



decision, the judge stated: "Although in form the case is about the legality of the decision of the commander of the Lesotho Defence Force to discharge pregnant soldiers, it is in substance a challenge to the culture of patriarchy in the military and an assertion of sexual and reproductive rights in military service. What is being contested is the idea that female soldiers are incapable to bear arms and babies at the same time and, on that account, are not fit for military purpose."¹⁴



In 2018, the Lesotho High Court ruled that the Lesotho Defence Force could not dismiss female soldiers who fall pregnant.
Photo: Lekau Mary Ntolo

Discriminatory legislation



Article 4:2: State parties shall develop and strengthen specific laws, policies and programmes to achieve gender equality and equity.

Article 4:3: State parties shall implement legislative and other measures to eliminate all practices which negatively affect the fundamental rights of women, men, girls and boys, such as their right to life, health, dignity, education and physical integrity.

Article 6: State parties shall review, amend or repeal all discriminatory laws and specifically abolish the minority status of women.

Several countries in the SADC region still have discriminatory laws on their statute books. These include laws that provide differentiated inheritance rights between men and women, boys and girls (Lesotho), laws that have limitations on maternity

leave (in South Africa, a woman can go on four months' maternity leave but her employer is not obliged to pay her during that period),¹⁵ laws that discriminate against and criminalise the LGBTI community. Five SADC countries (Botswana,

¹¹ CNBCAFRICA, 24 October 2017, "Human Rights Committee Considers the Report of Mauritius"

¹² Lesotho Defence Force (Regular Force) (Discharge Regulations 1998)

¹³ Private Lieketso Mokhele and Ors v The Commander of the Lesotho Defence Force and Ors, CIV/APN/442/16

¹⁴ Ibid.

¹⁵ Even though the employer is not obliged to pay a woman during maternity leave, the woman can claim a maternity benefit from the Unemployment Insurance Fund (UIF) provided they she was contributing to the fund for at least four months before going on maternity leave. Whilst South Africa has a generous four months maternity leave, the non-compulsion for an employer to pay the woman whilst she is on maternity leave means that many women go without money at a time when they need it most.

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Lesotho, Malawi, Mauritius and eSwatini) have claw back clauses in constitutions that effectively allow for discrimination on the grounds of gender.

At the international level, there have been noteworthy positive shifts around the need to protect the rights of LGBTI people. One of the most notable came from British Prime Minister Theresa May when she addressed the Commonwealth Joint Forum Plenary on 17 April 2018, stating: “Across the world, discriminatory laws made many years ago continue to affect the lives of many people, criminalising same-sex relations and failing to protect women and girls. I am all too aware that these laws were often put in place by my own country. They were wrong then, and they are wrong now. As the UK's prime minister, I deeply regret both the fact that such laws were introduced, and the legacy of discrimination, violence and even death that persists today.”¹⁶

In the same speech, May also reported that the Commonwealth had agreed to accredit the first organisation for LGBTI people. Whilst the colonial powers that introduced the discriminatory laws now note the injustices against the LGBTI community, their former colonies, including many in Southern Africa, continue to criminalise it. In the SADC region, homophobia runs high in most countries, as reflected in the attitude survey in 2016: 59% of men and 57% of women agreed or strongly agreed with the statement that “people who are attracted to the same sex should be outlawed.”



In **Madagascar**, it is legal for two persons of the same sex to have sexual intercourse if they are 21 years or older. The Penal Code prohibits same-sex intercourse for those younger than 21 and punishes perpetrators with two to five years of gaol time and a fine. Madagascar forbids marriage between two persons of the same sex.

In **South Africa**, violence against LGBTI people, and in particular lesbian women, continues, with many being raped and/or mur-



dered. Legislators have yet to enact the Prevention and Combating of Hate Crimes and Hate Speech Bill. If passed, the Bill would help in addressing hate crimes and hate speech against certain groups in society, including members of the LGBTI community.



In **Tanzania**, the government has perpetrated a crackdown against the LGBTI community. It closed 40 private health centres accused of providing services to the community¹⁷ and arrested and detained activists attending a workshop on access to health services for LGBTIs, including two South Africans, for 10 days in February 2017.¹⁸ Officials later released them without a charge. However, Amnesty International has reported that threats against the LGBTI community continue, including by the Home Affairs Minister, who on 25 June 2017 threatened to deport foreign nationals and prosecute anyone working on LGBTI rights.¹⁹

Mozambique decriminalised homosexuality in its Penal Code in 2015, making it one of a handful of African countries to legalise same-sex relationships. Despite this development, the Human Rights World Report 2018 notes that the government has yet to register the country's biggest LGBT group, Lambda.



The **Namibian** Constitution says that all persons must have equal rights under the law. It forbids discrimination on several grounds, including race and sex (Article 10). The Constitution also says that men and women must have equal rights in all aspects of marriage (Article 14). Although Namibia's Constitution has an inalienable Bill of Rights, it also still has a sodomy law in place, enacted under South African rule in 1927. There appears to be no immediate political move to rescind it. Organisations such as the Legal Assistance Centre and Sister Namibia advocate for the recognition of gay rights in the country.²⁰

Botswana has seen progress thanks to a landmark Court of Appeal ruling allowing the registration of an LGBTI organisation in the country. The court ruled that Botswana has no legislation preventing citizens from being homosexual. In keeping with this approach, in another landmark ruling in 2017, the Botswana High Court ordered the government to change the sex of a transgender woman on her identity documents. The transgender woman's documents identified her as male at birth even though she had undergone gender reassignment surgery. The government refused to legally recognise her as a woman until the High Court intervened.



¹⁶ United Kingdom Government (2018), 'PM speaks at the Commonwealth Joint Forum Plenary: 17 April 2018', available at: <https://www.gov.uk/government/speeches/pm-speaks-at-the-commonwealth-joint-forum-plenary-17-april-2018> (accessed 11 June 2018)

¹⁷ VOA, 17 February 2017, 'Tanzania Stops Private Health Centers From Offering AIDS Services'

¹⁸ Green, A (2017), 'In an apparent crackdown, Tanzania government raids NGO meeting on reproductive rights', available at: <https://www.devex.com/news/in-an-apparent-crackdown-tanzania-government-raids-ngo-meeting-on-reproductive-rights-89394>, (accessed 11 June 2018)

¹⁹ Amnesty International (2018), Amnesty International 2017/2018 Report, Amnesty International, London

²⁰ OSISA (2013), 'Tough times for LGBTI in Namibia too' available at: <http://www.osisa.org/lgbti/blog/tough-times-lgbti-namibia-too> (accessed on 17 March 2018).

Botswana High Court decision celebrated as landmark victory for trans rights

Tshepo Ricki Kgositau is a Motswana and the Director of the Cape Town-based organisation, Gender Dynamix, which works to advance transgender human rights. In 2011, she applied to the Botswana Civil and National Registration Office in Gaborone to have her sex as assigned at birth and as indicated on her identity documents changed because “her birth assigned gender [did] not correspond with her internal and individual experience of gender” (Mmegi 2017).



Tshepo Ricki Kgositau leads Gender Dynamix, a Cape Town-based organisation.
Photo courtesy of Gender Dynamix

The government denied her request, so she approached the High Court for an order compelling the Registrar of National Registration and the Attorney General to change the sex marker on her identity documents. In December 2017, the High Court of Botswana ordered the Government of Botswana to legally recognise Kgositau as a woman and to change her identity documents from male to female. Following the High Court decision, Kgositau told the media that “she had identified as a woman from an early age and that being marked as male on official documents caused her emotional distress and made her vulnerable to abuse and violence.” *Source: UK Independent, 2017*



In a similar case, the Western Cape High Court in **South Africa** ruled that individuals had the right to change their sex descriptor, even

in situations where they had been married as heterosexuals. The court made the ruling after three women and their spouses took the government to court when it refused to amend their identity documents.²¹

In the world of sport, the International Association of Athletics Federation (IAAF) proposed regulations in 2018 for female athletes with Differences of Sexual Development (DSD) to lower their testosterone levels if they planned to compete as females. Many saw the move as targeting South African athlete Caster Semenya, a dominant female runner on the international athletics scene. When the IAAF proposal went public, South African Minister of Sport Tokozile Xasa described it as “Caster Semenya Regulations” (The Guardian 2018). The reaction was entirely understandable, especially given that the IAAF has for many years been trying to get Semenya off the track. Semenya, who identifies as female, has often been called a man by fellow athletes and the IAAF Secretary General Pierre Weiss once stated that “she is woman, but maybe not 100%” (Longman 2016). The persecution that Semenya faced and continues to face reflects the persecution that the LGBTI community often faces from many angles.

The International Covenant on Civil and Political Rights (ICCPR) committee in 2017 questioned

eSwatini on the legal and practical measures that it had put in place to protect LGBTI rights since signing the Covenant in 2004. The committee wanted eSwatini to give information on measures put in place “to protect persons from discrimination and violence based on sexual orientation and gender identity, including in housing and employment, and to promote tolerance.”²² However, despite these efforts, in the same year, the eSwatini Senate threw out a motion to debate access to health by the LGBTI community, arguing that such provisions would be “discriminatory” in favour of LGBTI people in the country. In the same vein, in 2018, parents at an unnamed school in the country called for the removal of a gay teacher.²³



The LGBTI rights situation in **Malawi** remains precarious, with Amnesty International²⁴ and Human Rights Watch²⁵ calling on authorities to address it. In January 2017, Kenneth Msonda, a senior political actor and spokesman for the People's Party, called gay people worse than dogs and stated that they must be killed. At the same time, the Malawi Human Rights Commission said it would undertake a public inquiry to determine whether the laws affecting the LGBTI community should be changed. However, many criticised the methodology of the public hearing for potentially exposing the LGBTI community in the country at a time when they faced heightened vulnerability to attacks.

²¹ Human Rights Watch (2018), World Report 2018, Human Rights Watch, New York

²² AllAfrica (2017), 'ESwatini: Kingdom Faces LGBTI Rights Review' available at <http://allafrica.com/stories/201705010687.html> (accessed 11 June 2017)

²³ AllAfrica (2018), 'ESwatini: Parents Want 'Lesbian' Teacher Out' available at: <http://allafrica.com/stories/201803280593.html> (accessed 12 June 2018)

²⁴ Amnesty International (2018), Amnesty International Report 2017/2018, Amnesty International, London

²⁵ Human Rights Watch (2018), 'Malawi: Letter to Human Rights Commission re Public Inquiry into LGBTI Rights' available at: <https://www.hrw.org/news/2017/08/21/malawi-letter-human-rights-commission-re-public-inquiry-lgbti-rights> (accessed 1 April 2018)

Botswana
High
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Zimbabwe: Gays Praise Mnangagwa

President Emmerson Mnangagwa has received rare praise from the lesbian, gay, bisexual, transgender and intersex (LGBTI) community for abandoning his predecessor Robert Mugabe's politics of discrimination, hatred and intolerance.

Mugabe was a fervent critic of homosexuals, and was known for making homophobic statements over the years. He often described homosexuals as worse than pigs and dogs, with the LGBTI community also having its programmes disrupted by state security.

In a first, authorities allowed the LGBTI community and sex workers to exhibit at this year's premier trade showcase, the Zimbabwe International Trade Fair (ZITF), held in Bulawayo in April. Under Mugabe, this was unthinkable as they were often denied permission.

The LGBTI and sex workers exhibiting at the 2018 ZITF got support from organisations such as Women Against All Forms of Discrimination, Zimbabwe Aids Network, Sexual Rights Centre and the National Aids Council, among others.

"The operating environment under President Mugabe was quite restrictive in terms of what people could say or do. It was quite limiting in that we were also not able to meet with stakeholders that we thought could be important to facilitate dialogue.

Source: Zimbabwe Standard - read the full article on <http://allafrica.com/stories/201806170003.html>

Special measures



Article 5: State parties are to put in place special measures with particular reference to women in order to eliminate all barriers which prevent them from participating meaningfully in all spheres of life and to create a conducive environment for such participation.



South Africa has implemented special measures with particular reference to women in order to eliminate all barriers that prevent them from participating meaningfully in all spheres of life as well as create a conducive environment for such participation. The Constitution and laws in South Africa allow for affirmative action. However, while the South African Constitution looks good on paper, legislators often struggle to implement its provisions in practice.

At the start of the monitoring, nine countries employed affirmative action (now referred to as special measures in the revised Protocol) provisions in their constitutions. This has since increased by four countries to 13. Angola and Botswana still do not have special measures provisions in their constitutions. Botswana, however, implements special measures strategies to improve the lives of its citizens. For example, the Botswana Revised Area Development Programme of 2009 provides broad strategies aimed at uplifting members of remote areas.



Elizabeth Gwaunza, Zimbabwe's first female deputy chief justice.
Photo courtesy of Google images

In 2018, the new president of **Zimbabwe** appointed women to key positions in various areas of governance. These included



the chairperson of the Zimbabwe Electoral Commission (Priscilla Chigumba), Vimbai Nyemba as chairperson of the Procurement Regulatory Authority of Zimbabwe (PRAZ) and the deputy chief justice of the country (Elizabeth Gwaunza). The appointment of Gwaunza, however, came against the backdrop of a controversial constitutional amendment. It replaced an open interview-based selection process for all members of the higher courts with direct appointment by the president for the three most senior judicial positions (chief justice, deputy chief justice and judge president). The positive news is that this led to the appointment of the first female deputy chief justice in the country's history: a welcome development considering that the cabinet only has four women out of 22 posts.



Lesotho's Law, Human Rights and Constitutional Affairs Minister Lebohang Hlaele appointed the country's first female Director of Public Prosecutions in 2017, Hlalefang Motinyane, albeit in an acting capacity (apanews, 2017).

Although the **Zambian** government passed the Land Act in 1996, which guarantees women the ability



to own land, the legislation simultaneously allows for customary laws to dictate land ownership, which mainly confers land ownership to men. Under customary law, men dominate the allocation, inheritance and use of land. Women generally lack control over land but may have access and user rights to the land.



In **Mozambique**, a 2017 World Resources Institute report concluded that commercialisation and large-scale land acquisition negatively affected women more than men. It also noted that community decision-making regarding large scale land acquisitions often side-lines women, who are not consulted and often do not participate. It noted that "women's social disadvantages, including their lack of formal land rights and generally subordinate position, make it difficult for them to voice their interests in the management and proposed allocation of community land to investors. While the development of community and civil society have pushed for standards and safeguard policies that promote the meaningful involvement of rural communities generally in land acquisitions and investments, strengthening the participation of women as a distinct stakeholder group requires specific attention."



Article 7: Equality in accessing justice

1. State parties shall put in place legislative and other measures which promote and ensure the practical realisation of equality for women. These measures shall ensure:

- (a) Equality in the treatment of women in judicial and quasi-judicial proceedings, or similar proceedings, including customary and traditional courts and national reconciliation processes;
- (b) Equal legal status and capacity in civil and customary law; including, amongst other things, full contractual rights, the right to acquire and hold rights in property, the right to equal inheritance and the right to secure credit;
- (c) The encouragement of all public and private institutions to enable women to exercise their legal capacity;
- (d) Positive and practical measures to ensure equality for women as complainants in the criminal justice system;
- (e) The provision of educational programmes to address gender bias and stereotypes and promote equality for women in the legal systems;
- (f) That women have equitable representation on, and participation in, all courts, including traditional courts, alternative dispute resolution mechanisms and local community courts; and
- (g) Accessible and affordable legal services for women.

²⁶ CEDAW reports.

²⁷ World Resources Institute (2018), 'Making Women's Voices Count in Community Decision-Making on Land Investments' available at: <https://www.business-humanrights.org/en/tanzania-mozambique-poor-rural-women-discriminated-in-compensation-after-displacement-to-pave-way-for-agribusiness-says-report> (accessed 11 June 2018).

Mozambique
2017
report
found
that
large-scale
land
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Tanzanian
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Accessing justice in Southern Africa, especially for women, remains a struggle. In most situations, lack of resources, the complexity of the formal justice system and the failure of the traditional/customary justice systems to accord women their rights represent the main hindrances to accessing justice. Legal aid organisations have often stepped in to provide free legal assistance for women as a way of ensuring they can access justice. Such organisations include the Women and Law in Southern Africa Research and Educational Trust, various women lawyers' associations and various judges' associations. Governments also step in once in a while, although such efforts are often ad hoc and insufficient.



For example, in **Tanzania**, the government called on all women who had been deserted by their partners to register for legal aid to get assistance in claiming maintenance from their children's fathers. The Dar es Salaam Regional Commissioner (RC) made this call on International Women's Day 2018. Many women turned out, indicating the need for legal aid as well as the fact that women often forego their legal rights and fail to access justice because of a lack of legal representation and legal. In total 480 women turned up at the RC's office, with only 61 receiving assistance. The RC later reported that it started the programme to compel men to take responsibility for their children.²⁸



In **Zimbabwe**, the Legal Aid Directorate (LAD) now has offices in all ten provinces in the country and it is actively exploring establishment at the district level.²⁹ At the time of writing, stakeholders had almost completed launching it in the first district, Chikomba, giving hope for access to justice for citizens, including women, at the district level. The Policy Department of the Ministry of Justice, Legal and Parliamentary Affairs established LAD in 1982. It became a stand-alone directorate in 1996.³⁰ It is a concern that it has taken so long for government to decentralise it. Government needs to do more to ensure accessibility of the directorate.

In **Malawi**, women judges launched a programme to improve access to justice for poor urban and rural women, with the judiciary playing a leading role in providing legal clinics for the women. Justice Esme Chombo, president of the Women Judges Association of Malawi, said of the initiative: "We want to reach many vulnerable women and girls as much as possible through our outreach programs including legal clinics: and assured women that the Association would scale up its outreach programmes"³¹



Women gather outside the Dar es Salaam Regional Commissioner's office to register for legal assistance in claiming child support from their former partners. *Photo courtesy of All Africa*

²⁸ AllAfrica (2018), 'Hundreds of 'abandoned mothers' flock Dar es Salaam RC office for legal assistance,' available at: <http://allafrica.com/stories/201804100725.html>, (accessed 11 June 2018).

²⁹ Interview with the Legal Aid Directorate Director, Mr Nyangombe on 12 June 2018.

³⁰ Ibid.

³¹ The Maravi Post (2017), 'Malawi female judges commit on women rights protection; sign MoU, to provide legal clinics,' available at: <http://www.maravipost.com/malawi-female-judges-commit-women-rights-protection-sign-mou-provide-legal-clinics/> (accessed 30 March 2018).

Marriage and family rights



Article 8: 1. State parties enact and adopt appropriate legislative, administrative and other measures to ensure that women and men enjoy equal rights in marriage and are regarded as equal partners in marriage.

2. Legislation on marriage shall therefore ensure that:

(a) No person under the age of 18 shall marry;

(b) Every marriage takes place with free and full consent of both parties;

(c) Every marriage including civil, religious, traditional or customary, is registered in accordance with national laws; and

(d) During the subsistence of their marriage the parties shall have reciprocal rights and duties towards their children with the best interest of the children always being paramount.

3. State parties shall enact and adopt appropriate legislative and other measures to ensure that where spouses separate, divorce or have their marriage annulled:

(a) They shall have reciprocal rights and duties towards their children with the best interest of the children always being paramount; and

(b) They shall, subject to the choice of any marriage regime or marriage contract, have equitable share of property acquired during their relationship.

4. States parties shall put in place legislative and other measures to ensure that parents honour their duty of care towards their children, and maintenance orders are enforced.

5. States parties shall put in place legislative provisions which ensure that married women and men have the right to choose whether to retain their nationality or acquire their spouse's nationality.

Table 1.3 overleaf shows that, in ten SADC countries, women have the right to decide whether to retain their nationality or to acquire their spouse's nationality. In the case of Lesotho, only men have the right to decide their nationality and a woman acquires the nationality of her husband upon marriage following an application. All SADC countries prohibit polygamy in civil marriages, but it remains permissible under customary law marriages.

In principle, marriages take place with a woman's consent in most countries: Under civil law in all countries except Tanzania, marriage can only take place with the woman's consent. In Tanzania, a woman's parents can decide on her behalf under the Law of Marriage Act. In some other Southern African countries, parents can "give away" their daughters' hand in marriage or in some instance sell them under customary law. The justice system allows, for example in the case of South Africa, a judge to permit the marriage of a minor. In most countries, except Lesotho, the legal age of marriage is 18 years and older, which makes it proper for young girls to continue with school until completion without fearing that their parents or community may force them into marriage.

In eSwatini, King Mswati III in 2017 told his subjects that they cannot divorce, stating that there is no word for divorce in siSwati. Given that the King's word holds a lot of weight, such pronouncements can lead to women staying in dysfunctional and violent marriages because they believe that divorce is wrong and illegal. The King's eighth wife reportedly died by suicide in April 2018, reportedly following banishment by the King and three years in isolation. At the time, and as part of the strategy to isolate her, the King had reportedly refused permission for the woman to attend her sister's funeral.³² This report, which various media houses carried, signifies one of the worst forms of domestic violence, perpetrated by a national leader against his own wife.

Increasingly, men and women have reciprocal duties towards children in cases of divorce or annulment of marriage: In Zimbabwe, the Registrar General (RG) has, over the years, insisted on a practice (which is not in the law) compelling fathers who want to obtain birth certificates for their children to bring the mother of the child along. Yet mothers can obtain birth certificates for their children without the father being present at

In some countries, parents can "give away" their daughter or sell them under customary law

³² The Citizen (2018), 'King Mswati's 8th wife commits suicide following 'abuse'', available at: <https://citizen.co.za/news/news-africa/1880787/2king-mswatis-8th-wife-commits-suicide/> (accessed 10 June 2018).

the RG's office. A father who did not get a birth certificate for his child because of this policy and due to non-cooperation by the mother of the child recently sued the RG and the Minister of Home Affairs, arguing that the practice is discriminatory and unconstitutional, in addition to violating the rights of the child to a birth certificate and a nationality.³³ The case is still before the courts. Meanwhile, in South Africa, the Supreme Court of Appeal (SCA), decided a landmark ruling in which it recognised the responsibility of both parents to pay school fees for their children in cases of divorce or

separation.³⁴ The SCA ruled that, in applying the rules for school fee exemptions, education authorities must make an assessment based on the personal circumstances of the parent applying for the exemption in situations where the other parent is unavailable or unwilling to provide information on his or her financial situation. The refusal to assess based on the financial situation of one parent has typically affected mothers, who often must take full responsibility for their children after a divorce or separation.

Table 1.3: Marriage and family laws

Country	No person under the age of 18 shall marry	Every marriage shall take place with the full consent of both parties	Every marriage, including civil, religious or customary is registered	Parties have reciprocal rights and duties towards their children, including when spouses separate, divorces or have the marriage annulled	Law to enforce maintenance orders	Married women and men have the right to decide whether to retain their nationality or acquire spouses nationality
Angola	Yes, Although legal age of marriage is 18, with exception boys can marry at 16 and girls at 15 with the consent of the person with legal control over them	Yes	No	Yes	No	Yes
Botswana	Yes, the minimum age for marriage is 18	Yes	No	Yes	Yes	Yes
DRC	Minimum age for marriage increased from 14 for girls and 18 for boys to 18 for both in 2009.	Yes	No	Yes	No	Yes
Lesotho	No, legal age for marriage is 21, but girls can legally marry at 16 and at 18 for boys with the consent of the Minister of Justice. Under customary law, girls and boys can marry after puberty	Yes	No	Yes	No	No
Madagascar	Yes, the legal age for civil marriage is 18 but under customary law there is no fixed age requirement	Yes	No	Yes	No	No
Malawi	Yes, the legal age for marriage for girls and boys is 18, A Feb 2017 Constitutional amendment has reinforced this position	Yes	Yes	Yes	Yes	Yes
Mauritius	No, the official age for marriage is 18 for boys and girls but girls can get married from 16 with parental consent	Yes	Yes	Yes	Yes	Yes
Mozambique	Yes, the minimum age for marriage is 18	Yes	Yes	Yes	Yes	Yes
Namibia	Yes, the age for civil marriage is 21	Yes	No	Yes	Yes	No
Seychelles	No, the legal age for marriage is 18 but girls can get married from 15 with parental consent	Yes	Yes	Yes	Yes	Yes
South Africa	Yes, the minimum age for marriage is 18	Yes	Yes	Yes	Yes	Yes
eSwatini	Legal age of marriage is 18, but girls can civilly marry from 16 with the consent of the Minister of Justice. Under customary law, marriages can take place from puberty	Yes	No	No	Yes	Yes
Tanzania	No, girls can marry from 15 and boys from 18	No	No	No	No	No
Zambia	No, the legal age to marry is 21 but at 16 boys and girls can marry with parental consent. Under customary law marriage can take place from puberty	Yes	No	Yes	Yes	Yes
Zimbabwe	A landmark court case has set the age of marriage at 18.	Yes	No	Yes	Yes	No

Source: Gender Links.

³³ Pindula (2018), 'Mudede sued for not allowing men to acquire birth certificates for their children' available at: <https://news.pindula.co.zw/2018/04/05/mudede-sued-for-not-allowing-men-to-acquire-birth-certificates-for-their-children/> (accessed 10 June 2018).

³⁴ Head of Department: Western Cape Education Department & another v S (Women's Legal Centre as Amicus Curiae) (1209/2016) [2017] ZASCA 187 (13 December 2017).

Child marriages

Table 1.4: Incidence of child marriages in SADC

Countries and areas ³⁵	Child marriage (%) 2010-2017*	
	Married by 18	Married by 15
Angola	30	8
Botswana		
Malawi	42	9
Mozambique	48	14
Zambia	31	6
Madagascar	41	12
DRC	37	10
Tanzania	31	5
Zimbabwe	32	4
Lesotho	17	1
Mauritius		
Namibia	7	2
Seychelles		
eSwatini	5	1
South Africa	6	1

Source: UNICEF (<https://data.unicef.org/topic/child-protection/child-marriage/>) No data available for Botswana, Mauritius and Seychelles.

*The statistics in the table 1.4 record the percentage of girls married before the age of 15 or 18 in a sample of respondents between ages 20 - 24 in 2017.

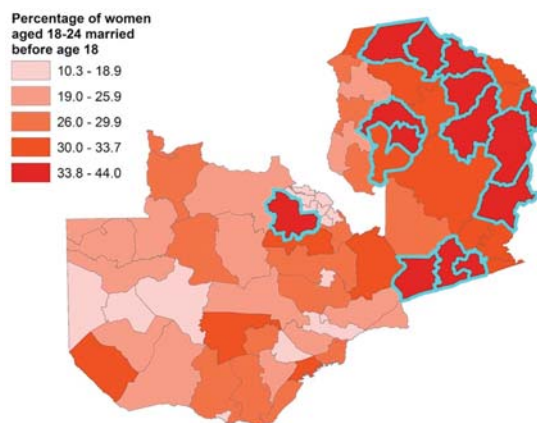
Table 1.4 shows that child marriage remains common in the region despite efforts to tackle the issue, which have yet to translate into tangible results on the ground. In Mozambique, almost half of women marry before they turn 18, while 14% marry before 15. Several other countries have high numbers of women marrying before age 18, including Malawi (42%), Madagascar (41%) and DRC (37%). Experts believe that child marriages contribute to the high number of maternal deaths in the region, with 13% of these caused by unsafe abortions.³⁶



Zambia's incidents of child marriage have significantly reduced from a high of 42% in 2013 to 31% in 2017.

Despite this, the rate remains one of the highest in the world (Zambia is ranked 16th globally amongst countries with the highest incidents of child marriage). In the Eastern Region of the country, incidences of child marriage are as

high as 60%, with Lusaka having the lowest rate at 28% (UNFPA 2018). The government has implemented important measures to fight child marriages in the country including what it calls "a civil society coalition against child marriage," which is a ten-member ministerial committee led by the Ministry of Gender, as well as "a draft policy on ending child marriage, and a National Strategy on Ending Child Marriage for the period 2016-21."³⁷



In Zambia, 31% of girls are married before their 18th birthday, making it one of the countries with the highest rates of child marriage in the world. Courtesy of UNFPA

In 2017, Zambian President Edgar Lungu urged traditional leaders to take the lead in ending child marriages. Harmonising the marriage laws and definitions of "child" in legislation, with the provisions of the 2016 amended constitution, will go a long way in addressing legal paradoxes, especially in terms of customary law. In January 2018, the president acknowledged that the country had experienced a 10% drop in cases of child marriages.³⁸

In **South Africa**, despite having the second lowest rates of child marriages in the region, the national statistical agency (Stats SA) in 2017 reported that the country saw an increase in child marriages, especially in the three provinces of KwaZulu-Natal, Gauteng and the Eastern Cape. The Commission for Gender Equality (CGE) expressed concern over the situation and outlined new efforts and strategies to address the issue.³⁹



Child marriage remains common

³⁵ UNICEF (2018) 'Child Marriage' available at: http://www.unicef.org/search/search.php?q_en=child+marriage&go.x=0&go.y=0 (accessed 12 June 2018).

³⁶ UNICEF (2016).

³⁷ Population Council (2017), 'Child Marriage in Zambia' available at: http://www.popcouncil.org/uploads/pdfs/2017RH_ChildMarriageZambia_brief.pdf (accessed 15 April 2018).

³⁸ African Leadership (2018), 'Zambia Progresses on ending Child Marriage. Records 10% Decline' available at: <http://africanleadership.co.uk/zambia-progresses-ending-child-marriage%E2%94%80-records-10-decline/> (accessed 12 June 2018).

³⁹ Commission for Gender Equality (2017), 'Gender Commission Supports COSATU and SACCWU Strike at Shoprite' available at: <http://www.cge.org.za/category/press-statement/page/2/> (accessed 18 April 2018).



In terms of the minimum legal age of marriage, the **Mauritius** Civil Code provides that a person can get married at the age of 18 years.

However, a person aged 16 years can get married with the consent of their parents, or with the consent of one of the parents exercising parental authority, or, in the absence of the consent of

parents, by the Judge in Chambers if the latter considers that it would be in the interests of the minor to get married. During the negotiations on the Post-2015 Protocol, Mauritius legislators voiced concerns about rigidly setting the legal age of marriage at 18, stating that certain religious groups in the country allow for marriage before the age of 18.

Bringing child brides back to the classroom

The SADC region has recently taken a bold and determined approach to end child marriages. The adoption, in 2016, of the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage (the SADC Model Law on Ending Child Marriages) by the SADC heads of state and government presents a clear sign that legislators in the region want to effectively address the issue.

Research has shown that Malawi is one of the countries most affected by child marriages in the region (and the world over), in many instances occupying the pole position in this regard. Because of this, lawmakers in the country have taken measures to end child marriages and to protect those children already in marriages.



Girl children in Malawi help with family chores. Child marriage affects almost half of all girls in the country.
Photo: Colleen Lowe Morna

In April 2018, it started a collaboration with many independent organisations to bring child brides back to school. Organisations such as Youth Net and Counselling (Yoneco), Save the Children and Malawi Girl Guides Association have played a significant role in rescuing children from marriages and helping them to go back to school. In rolling out the project, one stakeholder noted that "The problem with our society is patriarchy... Girls are convinced they were meant for marriage and not (to be) bread-winners." Taking girls back to school is a way of removing them from a "marriage rut," and ensuring that they can fend for themselves and their children.

The Department of Child Affairs in the Ministry of Gender, Children, Disability and Social Welfare acknowledged the impact of the project, indicating that it had so far rescued more than 5000 children from child marriage in 2017. However, few of them ended up staying in school.

Many challenges remain, including lack of societal support and the fact that the implementing organisations did not have adequate resources to pay school fees for the affected children. This provides an opportunity for the state to step in to ensure that the affected children receive emotional and material support so that they can enrol and stay in school. Education is one of the surest ways of ensuring that children affected by early marriages can have a brighter future.

Malawi and other SADC countries should implement sustainable programmes to end child marriages and ensure that children already in marriage can go back to school. Stakeholders can replicate the above programme, not only in Malawi but in other SADC countries. Parents, guardians, schools and communities must all play their part to supported, implement, replicate and sustain such programmes.

Source: Relief Web

<https://reliefweb.int/report/malawi/out-wedlock-and-back-school-educating-malawis-underage-brides>

How many more children must die?

How many more deaths of children are we waiting for before we change the law? I could not believe my ears listening to the radio this morning announcing that a pregnant married 13-year-old girl died. According to the Civil Code, the minimum age of marriage in Mauritius is 18 years old. But minors aged 16 or more can marry with the consent of his/her father and mother.

How can a 13-year-old girl get married? How come the person who celebrated the wedding did not know that he was going against the law? How did the parents on both sides agree for a 13-year-old girl to get married? How come the husband was not sued for having sexual intercourse with a minor? How come the Doctor who was treating a pregnant 13-year-old girl not report the case to the police?

There are so many questions that need to be answered but I have a specific one to the Speaker of the Mauritian Legislative Assembly, Maya Hanoomanjee, who has always claimed that she is for gender equality and is against any form of violence against women.

On 3 June 2016 the Southern African Development Community Parliamentary Forum (SADC-PF), in which Mauritius forms part, adopted the Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage. At the 39th Plenary Assembly meeting in eSwatini, SADC-PF adopted the Model Law and asked that member states, which includes Mauritius, harmonise their national laws to prevent child marriages. But this has never happened in Mauritius.

The Model Law has been developed to protect our children, to protect the 13-year-old pregnant girl who lost her life this morning, 21 June 2018, to protect all the girls who get married before the age of 18. Mauritius is the only SADC country that has not signed the SADC Protocol on Gender and Development and this is because of the clause on child marriage.

There is an urgent need to include child marriage in the Children's Bill that is being discussed with Stakeholders. Child marriage is an extreme form of violence. By not changing the law on child marriage the authorities are making Mauritius a barbaric society.

Excerpt from an article by Loga Virahsawmy, former GL Country Director in Mauritius, in L'Express on 21 June 2018.

Nine SADC countries have now established the legal age for marriage at 18 or older:

Namibia is amongst the most progressive in SADC, with the age of marriage at 21 for boys and girls. In Botswana, the Marriage Act (amended in 2001) sets the legal age of marriage at 18 for both sexes, conditional on parental consent. Without parental consent, the legal age is 21. This age limit does not apply to marriages conducted under customary or religious law, which have no age limits. The marriage age for girls in Lesotho, Tanzania, and Zambia is between 15 and 16. In these countries the marriage age for boys is 18.



In **Zimbabwe**, more than two years after the landmark ruling wherein the constitutional court outlawed child marriages, legislators have yet to revise relevant national legislation - the Customary Marriages Act: Chapter 5:07 and the Marriages Act: Chapter 5:11 - to align with the judgment and the Constitution. Whilst some have argued that the lack of alignment of

the laws does not stop the implementation of the judgment and the provisions of the Constitution, at a practical level such alignment makes implementation easier and improves certainty.



In **Malawi**, government reported in April 2018 that the country had reduced the rate of child marriage in just two years from 50% to 42% (2015-2017). Jean Kalilani, Minister of Gender, Children, Disability and Social Welfare, attributed this to the legal framework that government had created to reduce child marriages. Some of the legal frameworks included the harmonisation of the marriage laws, the constitutional amendment to set the age of marriage at 18 and the 2017 National Strategy on Ending Child Marriages. The country also implemented a National Action Plan to Combat GBV (2016-2021). A particularly innovative approach used by legislators in Malawi involved the adoption of local by-laws to end child marriages by local chiefs. Through these, local chiefs increased the age of marriage to 21 in their

Marriage
age for
girls
in
Lesotho,
Tanzania,
and
Zambia is
between

15
&
16

villages and supported penalties for men who married underage girls through imposition of fines paid in goats, chickens and even land.⁴⁰



In **Mozambique**, research has shown that social and economic stresses have reversed gains made in promoting gender equality, including reducing child marriages. The drought that hit Southern Africa in 2016/2017 hit Mozambique particularly hard. Aid agencies such as CARE International noted that, as the drought hit, families turned back to traditional gender roles to survive. Families also handed over their daughters in marriage to get resources such as food and cattle.⁴¹

In **Lesotho**, Princess Senate, the daughter of King Letsie III, took up her first public role in April 2018 as the “national champion to end child marriage.” At 16, she urged her peers to concentrate on their studies, indicating that education would give them a happy and healthy adulthood. Stating that marriage is not for children, she launched the #endchildmarriagenow campaign.



In 2017, the Lesotho Ministry of Education and Training reported that it was finalising a Gender-Based Violence Policy for presentation before Cabinet. Reports noted that the policy would “serve as a guideline on reproductive health, early marriages, unintended pregnancies and gender-based violence.”⁴² Legislators have not yet adopted it.



Members of Madagascar's Constitutional High Court gather in Antananarivo. Photo: Zoto Razanadratafa

Governments across Southern Africa still need to prioritise the harmonisation of Policies and Legislation to bring an end to child marriage:

At the international level, the AU Agenda 2063 and the SDGs promote the end of child marriages. Meanwhile, SADC has enacted Provisions to guard against child and forced marriages in the form of the SADC Protocol on Gender and Development and the SADC Model Law to end Child Marriages. The region has seen increased collaboration between government, civil society, traditional leaders, international development agencies and religious leaders in the fight to end child marriages. Such collaboration has had tremendous results and stakeholders should continue it going forward.

The SADC Model Law on child marriages gets the region one step closer to ending child marriage in Southern Africa: Since the passing of the Model Law, Parliaments in the region have debated its domestication into national law, but no country has yet domesticated it.

Choice of termination of pregnancy

Most SADC countries outlaw abortion. Only three countries have legislation in place legalising abortion (South Africa and most recently Mozambique). Following the 1996 Choice on Termination of Pregnancy Act, South Africa is the only country in SADC in which abortion is available upon request. In several other countries, including Angola, DRC, Lesotho, Madagascar, Malawi and Namibia abortion is permissible only to save a woman's life. Zimbabwe permits abortion to save a woman's life or if the pregnancy is as a result of rape or incest.

In **Madagascar**, parliament recently rejected efforts by the Ministry of Public Health to make amendments to the family planning law to allow for therapeutic abortion. As a result, abortion remains illegal in Madagascar under all circumstances, even when the mother's life is in danger. In rejecting the amendments which the House of Deputies had adopted, one senator stated that “Abortion is not consistent with Malagasy culture.”



⁴⁰ RiseUp (Undated), 'Ending Child Marriage in Malawi' available at: <http://www.riseuptogether.org/wp-content/uploads/2016/09/Malawi-Case-Study-FINAL.pdf> (accessed 18 April 2018).

⁴¹ NewsDeeply (2017), 'Drought Threatens to Undo Mozambique's Gender Equality Progress' available at: <https://www.newsdeeply.com/womenandgirls/articles/2017/01/19/drought-threatens-undo-mozambiques-gender-equality-progress> (accessed 18 April 2018)

⁴² AllAfrica (2017), 'Lesotho: Ministry Finalises Gender-Based Violence Policy', available at: <http://allafrica.com/stories/201708250190.html> (accessed 21 March 2018).

Our blessings encourage even young married women to give birth to seven girls and seven boys. If abortion was permitted, it would change young people.”⁴³ As a result, health professionals who perform abortion would be liable to imprisonment and loss of their professional practice.



Namibia's Abortion and Sterilisation Act makes it a crime for a woman to seek an abortion, or to terminate her own pregnancy, except in very specific circumstances. Namibia permits abortion to save a woman's life or in the event of rape or incest or due to foetal impairment. It is not permitted for social or economic reasons.

In **Lesotho**, government acknowledges the devastating effects of illegal backyard abortions on girls and women but still will not relent to make abortion legal in the country. Instead, it surreptitiously advises women to go across the border into South Africa where abortion is legal. The irony is not lost on human rights lawyer Lineo Tsikoane, who has said of the Ministry of Health “They know abortion is illegal, but they're telling us to advise girls to go elsewhere, and [yet] won't change our own law.”⁴⁴



In **Angola**, in March 2017, lawmakers set in motion a law to make abortion an offence in all circum-

stances. The current law allows abortion in narrow circumstances, including to safeguard the health of the mother, in cases of foetal deformity or where the pregnancy is because of rape. Parliamentary debate on the amendment stalled following a public outcry over it, leading to the ruling party proposing a revised version of the legal amendment. The revised version retained the legality of abortion in cases of rape or maternal health risk.⁴⁵

Increasingly women have turned to social media, in particular Facebook, to look for illegal abortion services. This can lead to serious complications and death if they receive the service from unqualified people and in unhygienic conditions (CNN 2018).

Public opinion on abortion remains deeply divided: In the Southern African attitudes survey, less than half (36% women and 28% men) said they agreed or strongly agreed that a woman had a right to terminate her pregnancy within the first trimester. Even in South Africa, with its strong pro-abortion laws, access to the service remains a challenge, with only 7% of the country's health facilities providing abortions.⁴⁶ Research shows that many health workers refuse to perform the procedure, with government unable to do anything about it. At the same time, information about where and how to acquire the service remains limited.⁴⁷

Persons with disabilities



Article 9: State parties shall, in accordance with the SADC Protocol on Health and other regional and international instruments relating to the protection and welfare of people with disabilities to which Member States are party, adopt legislation and related measures to protect persons with disabilities that take into account their particular vulnerabilities.

Article 9 remained unchanged in the Post-2015 Gender Protocol. However, SADC adopted a code on social security that includes social allowances for persons with disabilities with reference to Article 5 of the SADC Treaty.⁴⁸ Women with disabilities often face combined discrimination because of

their sex and their disability. As the SDGs call for “leaving no one behind” in development, organisations such as the Southern Africa Federation of the Disabled have called on Member States to mainstream disability in all development activities and develop a stand-alone protocol on disability.

⁴³ International Campaign for Women's Right to safe Abortion (2018), 'MADAGASCAR - Attempt to legalise therapeutic abortion sabotaged' available at: <http://www.safeabortionwomensright.org/madagascar-attempt-to-legalise-therapeutic-abortion-sabotaged/> (accessed 11 April 2018).

⁴⁴ Warren S (2018), 'In Lesotho, Women say they are Finding their Abortion on Facebook' available at: <https://edition.cnn.com/2018/03/07/health/lesotho-abortions-asequals-intl/index.html>, accessed 12 June 2018.

⁴⁵ The Citizen (2017), 'Angola Backs Down on Total Abortion Ban' available at <https://citizen.co.za/news/news-africa/1542075/angola-backs-total-abortion-ban/> (accessed 1 April 2018).

⁴⁶ Skosana, I (2017), 'Less than 7% of health facilities nationwide offer abortions - Amnesty International', available at: <http://bhekisisa.org/article/2017-02-14-00-only-260-health-facilities-nationwide-offer-abortions-amnesty-international/> (accessed 11 June 2018).

⁴⁷ Amnesty International (2018), Amnesty International Report 2017/2018, Amnesty International, London.

⁴⁸ Code on Social Security in SADC.

Less than half agree or strongly agree that a woman has a right to terminate her pregnancy within the 1st trimester



In 2018, eSwatini began developing a Disability Bill

Seven SDG targets specifically mention persons with disabilities (education, accessible schools, employment, accessible public spaces and transport, empowerment and inclusion, and data disaggregation). The UN Statistics Division explored development of SDG indicators that can be disaggregated by disability and sex, particularly for the targets on poverty, social protection, child mortality, health coverage, violence against women, sexual and reproductive health, access to water and sanitation and birth registration.⁴⁹ The SADC Monitoring, Evaluation and Reporting (MER) Framework for the Protocol includes two indicators for persons with disabilities: evidence of legislation to protect persons living with disabilities and evidence of targeted programmes for women with disabilities. These programmes will contain, among others, measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the UN Convention on the Rights of Persons with Disabilities (CRPD).

The UN Committee on the Rights of Persons with Disabilities recognised **Seychelles** as a leading country in the promotion of women's rights and urged the country to do the same in relation to the rights of persons with disabilities, including women. It stated this in Geneva when representatives from Seychelles presented their initial report on the country's implementation of the CRPD.⁵⁰



South Africa's pre-1994 negotiation process that disabled people must have the right to speak for themselves in all matters affecting their lives. The country has also mainstreamed disability across government machinery.⁵¹ Its 1997 Integrated National Disability Strategy proved to be a historical milestone in the fight to promote the rights of people with disabilities by guiding the formulation of policies and programmes aimed at advancing their rights. It supports services ranging from free health care to social assistance and inclusive education that targets both adults and children with disabilities and provides access to opportunities. In 2009, President Jacob Zuma announced that the government would establish a new department for people with disabilities.

However, in 2017, the South African Human Rights Commission expressed concern over the barriers children with disabilities face in accessing education. The Commission stated that more than half a million children with disabilities cannot access education.⁵²

A recent report noted that women make up 58% of **eSwatini's** total population with disabilities.⁵³ eSwatini signed the CRPD in 2007 and ratified the Convention on 24 September 2012. The Kingdom's Constitution Section 14, a clause on the fundamental rights and freedoms of the individual, provides for disability in 14(1)(e) and 14(3). The Provisions prohibit discrimination based on disability. Similarly, Section 20 provides for equality before the law. Section 30 provides for the rights of persons with disabilities. Subsequent to ratification of the CRPD, lawmakers developed a National Policy on Disability, aimed at promoting the mainstreaming of disability issues across all government development programs. The Federation Organisation of the Disabled People in eSwatini (FODSWA) strives to promote gender sensitivity amongst its affiliates. In 2018, the Government of eSwatini began developing a Disability Bill with the hope that Parliament would pass it into law. FODSWA emphasised the importance of the Bill in promoting the rights of people with disabilities, including women, and indicated that the Bill should compel government to pay school fees for children with disabilities. Similarly, the government indicated that the National Strategic Plan for 2017-2022 gave special attention to disabled people, especially at the Inkundla level.⁵⁴



Nomcebo Mbamali, Sonia Ntimane and Fezile Dlamini take part in a discussion about women living with disabilities in 2018 at Bethel Court, eZulwini, in eSwatini.

Photo courtesy of Zethu Shongwe

⁴⁹ United Nations Secretariat of The Convention on The Rights of Persons with Disabilities.

⁵⁰ CNBCAfrica (2018), 'Committee on the Rights of Persons with Disabilities Reviews the Initial Report of the Seychelles' available at: <http://www.cnbc africa.com/apo/2018/02/28/committee-on-the-rights-of-persons-with-disabilities-reviews-the-initial-report-of-the-seychelles/> (accessed 12 June 2018).

⁵¹ Vukuzenzele (2014), 'Women, people with disabilities empowered' available at <https://www.vukuzenzele.gov.za/women-people-disabilities-empowered> (accessed 10 June 2018).

⁵² Human Rights Watch (2017), 'South Africa Events of 2017' available at <https://www.hrw.org/world-report/2018/country-chapters/south-africa> (accessed 10 June 2018).

⁵³ University of Pretoria (2015), African Disability Rights Year Book (2015) Volume 3, Pretoria.

⁵⁴ Swazi Observer (2018), 'FODSWA President calls for Tertiary Education for the Disabled' available at <https://www.pressreader.com/eswatini/swazi-observer/20180329/281719795135548> (accessed 10 June 2018).

Living with albinism in Southern Africa



Earline Chimoyo, a student at The Polytechnic in Malawi, interviews Alex Machila of the Association of People with Albinism.

Photo courtesy of Maclan Kanyangwa

albinism, raised the alarm about the growing issue. When police located the bodies of the two, relatives reported that the killers had removed several body parts from the 13-year-old.

Deprose Muchena, Amnesty International's regional director for Southern Africa, noted that: "Deep-seated cultural traditions persist, including a belief in mythical powers of people with albinism and a conviction that their body parts could change lives, bringing fabulous wealth, power or good fortune. Some believe that albinos are not human, that their only value is monetary and that they have gold in their bones."

Governments in Southern Africa must pay closer attention to the rights of people with albinism and treat this issue as a regional crisis. They should implement measures to protect them through education and ensuring that the justice system appropriately punished perpetrators of abuse.

Source: Dr Makanatsa Mokonesse⁵⁵

Over the past few years, people with albinism have increasingly made the news in Southern Africa related to stories of abuse against them, as well as murder. This is common in Malawi, Tanzania, Mozambique and South Africa, where people with albinism live at risk that they may be hunted for their body parts for ritual purposes. Reports indicate that at least 20 Malawians with albinism have been murdered since 2014, whilst more than 75 have been killed in Tanzania since 2000. In South Africa the story of the abduction and murder of two children, including a 13-year-old girl with

Widow and widower rights



Article 10: 1. State parties shall enact and enforce legislation to ensure that widows and widowers:

- (a) Are not subjected to inhuman, humiliating or degrading treatment;
- (b) Automatically become the guardians and custodians of their children when their husband/wife dies unless otherwise determined by a competent court of law;
- (c) Have the right to an equitable share in the inheritance of the property of their spouses;
- (d) Have the right to remarry any person of their choice; and
- (e) Have protection against all forms of violence and discrimination based on their status.

The Protocol guards against inhuman treatment of widows.

At the insistence of Botswana policymakers, the Post-2015 SADC Gender Protocol refers to both widows and widowers, although the issues of inheritance, remarrying, custody of children, violence and discrimination primarily pertain to widows. The Post-2015 Protocol also removed the reference to a widow having "the right to employment and other opportunities to enable her to make a meaningful contribution to

society" on the grounds that governments cannot guarantee employment for widows.

The **Botswana** Abolition of Marital Power Act provides women equal rights regarding decision-making about family property management, including upon the death of a husband although this does not apply to customary or religious marriages where the eldest son assumes the role



⁵⁵ <https://www.amnesty.org/en/latest/news/2018/06/malawi-impunity-fuels-killings-of-people-with-albinism-for-their-body-parts/>
<https://citizen.co.za/news/south-africa/1809083/kidnap-of-two-kids-one-an-albino-may-be-related-to-superstition-mayor/>

The Post-
2015
SADC
Gender
Protocol
refers to
both
widows
and
widowers

as head of the household. In Botswana, if a spouse dies intestate (without a will) customary rules allow for the estate devolvement.



In **Angola**, the inheritance rights of widows and divorced women remain particularly precarious. Although divorced women or widows may inherit land, this is commonly only in trust for their children. A study conducted by the Rural Development Institute in 2008 found that only 23% of widows use the land left by their deceased husbands and many women lack knowledge of their land and inheritance rights.

The **DRC** Family Code gives preferential treatment to the children of the deceased and does not discriminate between women and men within the second category of heirs, although in practice women are not often full recipients of inheritance.⁵⁶ Article 758, paragraph 3, of the Family Code stipulates that women have the right to inherit their husband's property.



In 2011, the **Malawi** Parliament passed the Deceased Estates (Wills, Inheritance and Protection Act) Act, which provides widows and daughters equal inheritance rights and addresses the issue of widows being denied their inheritance upon the death of a spouse.⁵⁷

Following a 2009 Constitutional Court decision in **South Africa**, the government introduced the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009 so that the Intestate Succession Act, which also recognises polygamous marriages, now governs the rights of women to inherit property under customary law. The Recognition of Customary Marriages Act provided many headaches for courts in the administration of estates. It recognised polygamous marriages and noted that inheritance in such marriages did not apply to polygamous marriages that occurred before 15 November 2000, when the Act became operative. The Limpopo High Court ruled in 2017 that the Provisions should apply in retrospect and that failure to do so negatively affected the proprietary rights of women in older polygamous marriages, thereby discriminating



based on gender, race, ethnicity and social origin, which is unconstitutional. The court also urged Parliament to enact legislation to clearly address the proprietary and inheritance rights of women in older customary law marriages.⁵⁸



In **eSwatini**, in April 2018, the King ordered all widows to take off their mourning clothes to participate in celebrating his 50th birthday and the country's 50th anniversary of Independence. Government scheduled the celebrations for 19 April 2018. Ordinarily in eSwatini, traditional culture limits widows' participation in public life. For example, earlier in 2018 the government stated that widows would not be allowed to participate in the 2018 elections. A Senior Government Official stated that widows would "not be allowed to contest the election until they had been in mourning for two years and gone through a cleansing ceremony" (AllAfrica 2018).

Legislators amended the **Zimbabwe** Administration of Estates Act to make the surviving spouse and the children of a deceased person as his or her major beneficiaries, as opposed to the eldest son. The Act also provides that the matrimonial home, whatever the system of tenure under which the family holds it, and wherever it is situated, remains with the surviving spouse. However, a 2017 Human Rights Watch research report concluded that, despite the existence of progressive legislative provisions, the relatives of deceased husbands routinely deprive widows of their property - and widows have little reference or recourse to the courts and the justice delivery system in general.⁵⁹ Widows often suffer in silence due to lack of information, traditional and cultural imperatives and difficulties accessing justice. The case of Elizabeth Macheka, the widow of the late Morgan Tsvangirai, former Prime Minister, is one example. Macheka faced public humiliation from her late husband's relatives following the death of Tsvangirai on 14 February 2018. The family reportedly disowned Macheka, with Tsvangirai's mother threatening to commit suicide if Macheka attended her husband's funeral.⁶⁰ Jacob Mudenda, the Speaker of Parliament, castigated the Tsvangirai family for their behaviour, urging his colleagues to protect widows and their inheritance.⁶¹



⁵⁶ Chronic Poverty Research Centre (2011).

⁵⁷ Women's Inheritance Now (2012).

⁵⁸ Ramuhovhi and Others v President of the Republic of South Africa and Others (CCT194/16) [2017] ZACC 41; 2018 (2) BCLR 217 (CC); 2018 (2) SA 1 (CC) (30 November 2017).

⁵⁹ Human Rights Watch (2017), You will get Nothing: Violation of Property and Inheritance Rights of Widows in Zimbabwe, Human Rights Watch, New York.

⁶⁰ Pindula News (2018), 'Updated: Tsvangirai Family Disowns Elizabeth, Planning To Grab Entire Inheritance', available at: <https://news.pindula.co.zw/2018/02/19/tsvangirai-family-disowns-elizabeth-planning-grab-entire-inheritance/> (accessed 11 June 2018).

⁶¹ Newsday (2018), 'Speaker blasts Tsvangirai family', available at: <https://www.newsday.co.zw/2018/03/speaker-blasts-tsvangirai-family/> (accessed 11 June 2018).

Zimbabwe Council helping women claim their property rights



Beneficiaries in Kadoma meet to discuss how to acquire property deeds.

Photo courtesy of Kadoma Municipality

Zimbabwe's Kadoma Council has noted an increase in court cases about property ownership. In one week, it recorded at least four cases about disputes between a widow and her deceased spouse's relatives. In many cases, women and children become destitute following divorce or the death of a spouse.

Because most women do not know of the procedures needed to acquire ownership of a property, the Council, in association with the police and the Ministry of Gender and Women Affairs, facilitates procedures to ensure joint ownership of properties by divorced spouses, or property transfer to widows or divorcees.

The Council notes that its initiative has helped decrease gender-based violence. Women now also have the confidence to go to court to claim their property rights. Women who took part in the initiative have shared the knowledge and information they gained with other women, which means more women claim their property rights.

Source: SADC Protocol@Work summit, Zimbabwe, 2018

The girl and boy child



Article 10: 1. State parties shall adopt laws, policies and programmes to ensure the development and protection of the girl and the boy child by:

(a) Eliminating all forms of discrimination against them in the family, community, institutions and at state levels;

(b) Ensuring that they have equal access to education and health care, and are not subjected to any treatment which causes them to develop a negative self-image;

(c) Ensuring that they enjoy the same rights and are protected from harmful cultural attitudes and practices in accordance with the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child;

(d) Protecting them from economic exploitation, trafficking and all forms of violence including sexual abuse; and

(e) Ensuring that they have equal access to information, education, services and facilities on sexual and reproductive health and rights

2. State parties shall develop concrete measures to prevent and eliminate violence, harmful practises, child marriages, forced marriages, teenage pregnancies, genital mutilation and child labour as well as mitigate their impacts on girls' and boys' health, wellbeing, education, future opportunities and earnings.

The updated SADC Gender Protocol highlighted that boys also need protection. The escalation of child labour due to economic hardships in the region has forced many boys and girls out of school as they seek additional income for their families. SADC has also seen an increase in child-headed households due to HIV and AIDS pandemic and migration of parents looking for better economic opportunities. This leaves young girls and boys

vulnerable to sexual abuse, drug abuse, economic exploitation and trafficking, and with limited access to education and health opportunities. It also increases the multiple roles of girls.



A 2018 Human Rights Watch Research Report urged the Government of **Zimbabwe** to protect children from child

labour on the country's tobacco farms. The Report indicated that children as young as 11 work on tobacco farms, exposing them to toxic chemicals. The Report, *Bitter Harvest*, showed that families often force children to work in these conditions to increase family income and raise school fees, thereby exposing the inadequacies of Government policies meant to provide school fees for disadvantaged children. The country's Basic Education Assistance Module (BEAM), which seeks to provide school fees and other school essentials for such children, has not received adequate budgetary allocations for many years.



Meanwhile, in **eSwatini**, the Children's Protection and Welfare Act bans sexual activity with underage females and penalises parents who arrange early marriages with prison sentences of up to 20 years.

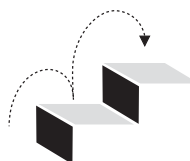
Governments often deny girls their fundamental right to education, especially where poverty persists. Due to stigmatisation of teenage pregnancies, girls usually drop out of school when they become pregnant. Many face ridicule from staff at health centres when seeking access to ante-natal care, which has contributed to increases in HIV infections in the region.

In 2017, a United Nations Population Fund report noted that **Zimbabwe** had the highest teenage pregnancy rates in sub-Saharan Africa. The report revealed that 10% of girls aged 15-19 fell pregnant every year, often signalling an end to their educational ambitions. The report attributed teenage pregnancy in the country to cultural and religious practices and beliefs as well as child marriage. At Policy level, government allows a pregnant girl to go on maternity leave for three months and then come back to school (Ncube and Mdau 2017). However, stigma, unsupportive school environments and the responsibilities of motherhood, amongst others, make the return impossible or difficult.



Girls take part in an IT course in Mauritius. Legislators in the region have taken steps to ensure more girls learn about the STEM subjects.
Photo: Colleen Lowe Morna

Schools often neglect the girl child in Science, Technology, Engineering and Mathematics (STEM) subjects: This has led to a lower proportion of girls graduating at tertiary level in these subjects. However, SADC Member States have embarked on a drive to increase the number of girls studying STEM subjects. In July 2017, the SADC Ministers of Justice and Attorneys General adopted the Draft SADC Charter on Women in Science, Engineering and Technology Organisation. This will go a long way in operationalising the SADC Gender Protocol Provisions on STEM and in ensuring national level policies and programmes to support STEM for girls and women.



Next steps

The adoption of the revised SADC Gender Protocol in 2016 represents a step in the right direction for the region concerning the promotion of women's rights and gender equality and equity. As such, the next steps should focus on implementation of the Protocol at both regional and national levels.

- Governments must make tangible efforts that go beyond words and political expressions to ensure national-level domestication and implementation of the SADC Model Law on Child Marriage.
- Stakeholders must create and maintain platforms for dialogue on difficult but critical issues such as termination of pregnancy, LGBTI rights and marital rape.
- Legislators should improve equal access to justice to all through effective legal centres, by increasing the number of judicial officers and police per 100 000 people and through public education on equal rights.
- Abolish harmful traditional practices such as female genital mutilation and forced marriages by working with traditional and religious leaders.
- Improve resource mobilisation to ensure a rights-based approach in localising the SDGs and implementing the Revised Protocol.
- Ensure effective measurement and tracking linked to progress in gender responsive laws.
- Build partnerships with civil society, the private sector and development partners around the Post-2015 Protocol implementation and SDG localisation.
- Encourage the courts to continue giving guidance through positive and progressive interpretation of laws that address the SADC Gender Protocol targets.
- Lobby parliaments to enact the necessary laws that address the SADC Gender Protocol targets using precedents from the courts.