

Harmful Practices

7



City Council campaign against child marriage in Lusaka, Zambia.

Photo: Albert Ngosa

Key points

- All SADC constitutions provide for non-discrimination generally and for non-discrimination on the basis of sex and other grounds, i.e. marital status and pregnancy.
- The constitutions of some countries, including Lesotho and Botswana, still allow for discrimination in personal and customary law. Neither Botswana nor Lesotho have been able to conclude long-awaited and very necessary constitutional review.
- South Africa opened public comment on 10 April 2024 on a new Marriage Bill, which seeks to bring three existing laws together into one.
- Mozambique, Madagascar and Malawi have some of the highest rates of child marriage in the world (Malawi has the 12th highest prevalence of child marriage globally).
- Zambia enacted an amendment to the 1918 Marriage Act, setting the minimum age of marriage to 18 for civil and customary marriages.
- Tanzania is the only SADC country where female genital mutilation (FGM) is practiced widely, concentrated in the six northern regions (out of the country's 18 regions).
- Disability discrimination in Africa, which is rooted in deeply held beliefs that often include a supernatural dimension, is highly gendered, with disproportionate impact on women. In particular, mothers of children with disabilities may be accused of witchcraft or bringing a curse upon the family.
- The Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa, or the African Disability Protocol (ADP), entered into force in August 2024, following ratification by 15 nations, including five in SADC. The ADP has a distinctly African perspective on protecting and promoting the rights of persons with disabilities as compared with the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD).

Introduction

Harmful practices are deeply rooted in gender inequality

Harmful practices are grounded in discrimination based on sex, gender, age and other grounds, often with multiple and/or intersecting forms of discrimination. Harmful practices are a violation of human rights, disproportionately affecting women and girls and deeply rooted in gender inequality entrenched in social, cultural and religious norms. These practices have been committed over so long that communities have incorporated them into their culture and consider them acceptable.¹

For the purposes of this chapter, harmful practices include:

- Clawback clauses, dual legal systems or other legal frameworks allowing discrimination;
- Poor and/or unequal access to justice;
- Marriage and family practices, including polygamy and inheritance, which deny women rights;
- Child marriage;
- Female Genital Mutilation (FGM);
- Discrimination against people with disabilities and their family members, especially mothers of people with disabilities; and
- Violations of the rights of widows and widowers.

Almost all harmful practices are rooted in deeply held gender and social norms. The adoption of dual legal systems in many countries - combining both formal legal frameworks and customary law permitting gender discrimination - contributed to sustaining harmful practices. Countries are gradually changing their laws to promote greater gender equality and remove vestiges of discrimination. This is evident in

minimum marriage age laws for instance. Only three countries in SADC still have a minimum marriage age lower than 18 and countries that had exceptions in place are closing these.

Legal reform is a slow process, often delayed even longer due to elections and other changes in countries. What is clear, however, is that legal change alone does not change behaviour. There is also a significant need for raising awareness, education and mobilisation to change long held attitudes.

This chapter discusses current practices and presents legal and programmatic steps being taken to realise change.

Table 7.1 below shows that five of the 16 countries in SADC still have constitutions which include clawback clauses allowing certain rights to be partially limited (also called "limitation clauses"), usually related to personal law, for instance adoption, marriage, divorce, burial and inheritance. Clawback clauses take away non-discrimination protections for women and girls.

There has been slow progress regarding legislation to outlaw child marriage. Only three countries still have legislation setting minimum age of marriage as younger for females than males (Eswatini, Lesotho and South Africa). South Africa, at the time of writing, has a draft Bill before Parliament to remove this anomaly. Other countries have measures in their legislation that allow for marriage at younger ages under certain conditions. The percentage of girls getting married before age 18 varies between two percent in Eswatini and 53% in neighbouring Mozambique, and before age 15 between zero in Eswatini and 17% in Mozambique. The percentage of boys married before age 18 varies between zero in Eswatini and 11% in Madagascar.

¹ Derived from <https://www.unicef.org/protection/harmful-practices>, accessed 29 October 2024; <https://africa.ippf.org/sites/africa/files/2018-09/SOAW-Report-Chapter-6-Harmful-Practices.pdf>, accessed 28 August 2024 and https://www.saverauk.co.uk/wp-content/uploads/2020/08/SAVERA_What_are_Harmful_Practices_Factsheet_2020_v4.pdf, accessed 30 October 2024

² UNICEF Child marriage Database (2024) <https://data.unicef.org/topic/child-protection/child-marriage/>, accessed 1 August 2024.

Table 7.1: Key indicators on harmful practices

Indicators	Angola	Botswana	Comoros	DRC	Eswatini	Lesotho	Madagascar	Malawi	Mauritius	Mozambique	Namibia	Seychelles	South Africa	Tanzania	Zambia	Zimbabwe
Constitution																
Constitution has clawback clauses	No	Yes	Yes	No	Yes	Yes	No	No	Yes	No	No	No	No	No	No	No
Child marriages																
Minimum legal age of consent to marriage for girls/women	18	21	18	18	16	16	18	18	18	18	18	18	18	15	18	18
Minimum legal age of consent to marriage for boys/men	18	21	18	18	18	18	18	18	18	18	18	18	18	18	18	18
Exceptions (female)	15	18	Possible, no age	None	Possible, no age	Possible, no age	Possible, no age	None	None	None	Possible, no age	Possible, no age	16	Supreme Court ordered government to ban marriage of children younger than 18	None	None
Exceptions (male)	16	18		None	Possible, no age	Possible, no age	Possible, no age	None	None	None	Possible, no age	Possible, no age	None		None	None
% girls married by age 18 ²	30	10	21	29	2	16	39	38	No data	53	7	No data	4	29	29	34
% girls married by age 15	8	No data	5	8	0	1	13	8	No data	17	2	No data	1	5	6	5
% boys married by age 18	6	No data	7	6	0	2	11	7	No data	10	1	No data	1	4	3	2

Source: Gender Links (2019) and Girls Not Brides <https://data.unicef.org/country/>, accessed 1 August 2024.

Constitutional provisions for gender equality and non-discrimination



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.

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

The SADC Gender Protocol obligates Member States to ensure their constitution, the supreme law of the land, promotes gender equality and equity. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979 by the United Nations General Assembly, was a defining moment as it required countries to include gender equality in their national constitutions. Most constitutions adopted

before CEDAW did not promote gender equality, while those developed after CEDAW all have provisions for gender equality. Furthermore, in some countries emerging from conflict, such as South Africa, Mozambique and Namibia, the development of new constitutions was an opportunity to advocate for much greater emphasis on gender equality and non-discrimination. There are, therefore, significant

differences in the language found in constitutions of SADC Member States and how different constitutions present gender equality.³

An analysis of constitutions across different regions (Caribbean, Africa, Asia) found that former British colonies which were supported by the British Colonial office to develop their constitutions were likely to have included what are now known as clawback provisions.⁴ These constitutions provided for gender equality, then included clauses exempting personal law from general non-discrimination protection. A common clause found in many constitutions, with almost the same phrasing is, “no law shall make any provision that is discriminatory either of itself or in its effect” except for “with respect to adoption,

marriage, divorce, burial, devolution of property on death (inheritance) or other matters of personal law.”⁵ Many SADC Member States practice a dual system of law for various personal issues - the formal or western approach, as well as customary law. Customary law tends to align with the gender discriminatory approach allowed by these clauses.

Many constitutions developed in the sixties have clauses that allow gender discrimination in matters of personal law

Table 7.2: Key gender provisions in SADC constitutions

Constitution	Angola	Botswana	Comoros	DRC	Eswatini	Lesotho	Madagascar	Malawi	Mauritius	Mozambique	Namibia	Seychelles	South Africa	Tanzania	Zambia	Zimbabwe
Provides for non-discrimination generally	Yes, Art 23	Yes, Sec 15	Yes, Art 2	Yes, Art 11, 12 and 13	Yes, Sec 20	Yes, Ch II, Sec 1 and 18	Yes, Art 8	Yes, Sec 20	Yes, Art 3	Yes, Art 35	Yes, Art 10	Yes, Art 27	Yes, Ch 1	Yes, Art 13	Yes, Art 23	Yes, Sec 17
Provides for non-discrimination based on sex specifically	Yes, Art 21	Yes, Sec 3	Yes, Art 2	Yes, Art 14, 36 and 45	Yes, Sec 20	Yes, Sec 18	Yes	Yes, Art 20	Yes, Sec 16	Yes, Art 36	Yes, Art 10	No	Yes, Ch 2, Sec 9	Yes, Art 9	Yes, Art 23	Yes, Sec 23
Provides for non-discrimination based on sex and other grounds, i.e. marital status, pregnancy	Yes, Art 21	Yes, Sec 15	Yes, Art 2 (sex only)	Yes, Art 40	Yes, Sec 20 (2)	Yes, Sec 18	Yes, Art 8	Yes, Sec 13 and 20	Yes, Sec 16	Yes, Art 39	Yes, Art 14	Yes, Art 30	Yes, Sec 9	Yes, Art 16	Yes, Art 23	Yes, Sec 23
Provides for the promotion of gender equality	Yes, Art 21 and 35	No	Yes, Art 3, 34, 38, 61	Yes, Art 14	Yes, Sec 28	Yes, Ch III, Secs 26 and 30	Yes	Yes, Art 13	Yes, Art 16	Yes, Article 120	Yes, Art 95	No	Yes, Sec 9	Yes, Art 66	Yes, Art 231	Yes, Sec 17, 246
Has other provisions related to gender equality	Yes, Art 36 and 77	No	Yes, Art 34, 38, 61	Yes, Art 16	Yes, Sec 28	Yes, Sec 26	Yes, Art 17	Yes, Sec 19 and 18	No	Decriminalisation of homosexuality and termination of pregnancy	Yes, Art 8	No	Yes, Sec 12	Yes, Art 13	Yes, Art 45, 69 and 231	Yes, Sec 17, 246
Addresses contradictions between the constitution, laws and practices	Yes, Article 239	No	No	No	Yes, Sec 2 and Art 20	Yes, Sec 18	Yes, Art 160	Yes, Art 5	No	Yes, Art 143	Yes, Art 19	Yes, Art 5	Yes, Ch 7, Sec 15 and 30	Yes, Art 30	Yes, Art (1)	Yes, Sec 2

Source: Gender Links and <https://constitutions.unwomen.org/en/countries>, accessed 15 October 2024

³ UN Women (2021) Why and How Constitutions Matter for Advancing Gender Equality: Gains, Gaps and Policy Implications. Policy Brief No. 8. UN Women. New York <https://www.unwomen.org/en/digital-library/publications/2017/2/why-and-how-constitutions-matter-for-advancing-gender-equality>, accessed 1 November 2024.

⁴ Nabaneh, S. S. Inglis and L. Waldorf, “Decolonizing the narrative around constitutions, personal laws, and women’s rights”, 17 May 2023 <https://www.openglobalrights.org/decolonizing-narrative-around-constitutions-personal-laws-womens-rights/>, accessed 15 August 2024.

⁵ Ibid.

Table 7.2 illustrates that:

- All SADC constitutions provide for non-discrimination generally.
- All SADC constitutions (except Seychelles) provide for non-discrimination based on sex, specifically. They also (including Seychelles) provide for non-discrimination on the basis of sex and other grounds, i.e. marital status and pregnancy.
- The constitutions of Botswana and Seychelles do not provide for the promotion of gender equality.

- The constitutions of some countries, including Lesotho and Botswana, still allow for discrimination based on personal and customary law. Due to this, and because reform efforts remain incomplete, women and girls still face legal discrimination.

Efforts to review the constitutions of Botswana and Lesotho have been on-going for several years.



Botswana constitutional reform

The Botswana Democratic Party (BDP), which led Botswana from independence in 1966 until elections in 2024, promised constitutional review in its 2019 election manifesto. The President appointed a Commission of Inquiry into the Review of the Constitution of Botswana in December 2021. This initiated a process that was not concluded before the BDP lost October 2024 elections to the opposition Umbrella for Democratic Change. The new government has suggested that it will re-open the consultation process. Civil society expects that the President will speak on the issue in the first State of the Nation address in late November.

The Presidential Commission held consultations in all of Botswana's 57 constituencies and received submissions from a number of bodies, including Gender Links. The Commission submitted its *Report of the Presidential Commission of Inquiry into the Review of Constitution of Botswana* to the President in September 2022.⁶ Government released the Government White Paper No. 1 of 2023 and introduced the Constitutional (Amendment) Bill 2024.

A coalition of civil society organisations mobilised against the Constitutional (Amendment) Bill, arguing that the process had been flawed, with several submissions overlooked and participation not sufficiently informed. The organisations suggested that the Bill needed to include provisions such as:



Community kgotla meeting discussion on child marriage in Botswana.
Credit: Keletso Serole

- Right to affordable and culturally appropriate healthcare services, including sexual reproductive health care, mental health care and emergency medical treatment, and the state's obligation to provide healthcare.
- Right to quality education with specific reference to the level of education provided by the state.
- Right to employment/work with emphasis on the creation of decent work.
- Right to land access and assurance of secure tenure.
- Rights of the child, including fundamental nourishment, housing, essential healthcare provisions and social welfare services.
- Cultural rights.
- Environmental rights.

⁶ Mosinyi, T. Masisi receives constitutional review report, 29 September 2022. Daily News. <https://dailynews.gov.bw/news-detail/69435>, accessed 26 August 2024.

- Right to citizenship and nationality.
- Protection from discrimination, including on the basis of multiple citizenship, the entrenchment of equality, and reinforcement of inclusion.
- Reforms around the electoral system, judiciary and judicial system (including creation of a

specialised Constitutional Court) and propositions on inclusion.

Subsequently, Parliament did not vote to pass the Bill, it failed at its third reading on 4 September 2024.⁷



Lesotho constitutional reform

Constitutional reform has been ongoing in Lesotho since 2012

The constitutional reform process in Lesotho has been ongoing since 2012 and is rooted in the need to stabilise the politico-legal landscape, including the judiciary, security agencies and civil service. The process included a consultative process from 2018 to 2022.⁸ Amongst the proposals from the consultative process was a call to redraft the Bill of Rights so that it:

- Includes political as well as socio-economic rights.
- Removes the clawback clause that currently allows for discrimination of women.
- Addresses the rights of children, youth, people with disabilities and the elderly.⁹

Prior to Lesotho's 2022 elections, the previous government attempted to pass a Tenth Constitutional Amendment, which contained all the recommended changes. The judiciary overturned this as it had not passed through required processes. The current government has divided

the changes into three amendments or processes:

1. The Tenth Amendment to the Constitution Bill, 2024, which was passed by the lower house of Parliament in September 2024¹⁰ and must now be approved by the Senate. This Bill ensures greater independence of key institutions such as the Auditor General's office, Human Rights Commission and Public Service Commission. The changes in the Tenth Amendment require a simple majority in Parliament to pass.
2. The Eleventh Amendment to the Constitution Bill, 2024, which is being discussed by Parliament, has changes that require a two thirds majority of Parliament to pass. The changes include the structure and workings of Parliament. The current government does not have a two thirds majority and will need support from other parties.
3. The third group of provisions can only be changed by a referendum and include the revised Bill of Rights which addresses the clawback clause. There is currently no plan for such a referendum.¹¹

Several civil society organisations and other actors have criticised this as a piecemeal approach to constitutional reform.

⁷ Mungure, MD. Democracy in Action: The Role of Civil Society in Botswana's Failed Constitutional Amendment Bill', ConstitutionNet, International IDEA, 9 October 2024, <https://constitutionnet.org/news/voices/civil-society-botswanas-failed-constitutional-amendment-bill> accessed 16 October 2024.

⁸ Nyane, H. The State of Lesotho's Constitutional Reforms: Progress or Stagnation? ConstitutionNet, International IDEA, 29 June 2023. <https://constitutionnet.org/news/state-lesothos-constitutional-reforms-progress-or-stagnation> accessed 16 October 2024.

⁹ Nyane, H and M. Makhobole, 2019. Expert Report of Constitutional Reforms. Maseru. Government of Lesotho. <https://www.gov.ls/download/expert-report-of-constitutional-reforms/> accessed 16 October 2024.

¹⁰ Phakoana, M. Parliament passes 10th Amendment to Constitution, 24 September 2024. <https://www.thereporter.co.ls/2024/09/24/parliament-passes-10th-amendment-to-constitution/> accessed 16 October 2024.

¹¹ Nyane, H. Lesotho needs constitutional reforms to help gain political stability - but the latest attempt is flawed, 22 September 2024 <https://theconversation.com/lesotho-needs-constitutional-reforms-to-help-gain-political-stability-but-the-latest-attempt-is-flawed-237905> accessed 16 October 2024.

The Tenth Amendment Bill, which has been passed, does include:

Insertion of Section 20 A: Affirmative action in favour of marginalised groups:

20A. (1) Notwithstanding anything in this constitution, the state shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history or law, for the purpose of redressing imbalances which exist against them.

(2) Parliament shall make laws for the purpose of giving full effect to this section.

As well as:

Membership of the Human Rights commission

133b. 2. The composition of the commission shall, as far as possible, be representative of a broad cross section of society such as women, people with disabilities, youth and other marginalised groups.¹²

Access to justice



Article 7: Equality in accessing justice

1. State parties shall enact legislative and other measures that promote and ensure the practical realisation of equality for women. These measures shall ensure:

- Equality in the treatment of women in judicial and quasi-judicial proceedings, or similar proceedings, including customary and traditional courts and national reconciliation processes;
- 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;
- The encouragement of all public and private institutions to enable women to exercise their legal capacity;
- Positive and practical measures to ensure equality for women as complainants in the criminal justice system;
- The provision of educational programmes to address gender bias and stereotypes and promote equality for women in the legal systems;
- That women have equitable representation on, and participation in, all courts, including traditional courts, alternative dispute resolution mechanisms and local community courts; and
- Accessible and affordable legal services for women.

African experts define access to justice¹³ as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.” Access to justice is the foundation for women to enjoy a range of other rights and plays a crucial role in fostering their dignity. However, for most women in the region and especially those living in rural areas, access to the courts remains a challenge. Women require access to courts not only to have criminal or civil cases heard, but also to access other services such as registration of marriages.

A study on access to justice in ten East and Southern African countries, including Malawi, Mozambique, Tanzania and Zimbabwe in SADC, found that access to justice for women is strongly influenced by the nexus between culture, politics and economics.¹⁴ Some barriers to accessing justice are: culture and customary specific harmful practices; legislative and policy challenges; corruption; limited access to technology; pervasive low levels of awareness; physical inaccessibility of courts; few women officers in the police and courts; and poverty and inability to pay various fees including for lawyers and for

¹² The Parliament of Lesotho (2024) Tenth Amendment to the Constitution Bill, 2024. <https://nationalassembly.parliament.ls/wp-content/uploads/2024/05/Tenth-Amendment-to-the-Constitution>, accessed 30 August 2024.

¹³ Equality Now, (2024). Gender Inequality in Family Laws in Africa: An Overview of Key Trends in Select Countries. <https://equalitynow.org/africafamilylaw> accessed 30 August 2024.

¹⁴ UN Women (2021) Multi-country analytical study on access to justice for victims and survivors of violence against women and girls in east and southern Africa. <https://africa.unwomen.org/sites/default/files/Field%20Office%20Africa/Attachments/Publications/2021/MULTI%20COUNTRY%20ANALYTICAL%20STUDY%20ON%20ACCESS%20TO%20JUSTICE%20FOR%20VICTIMS%20AND%20SURVIVORS%20OF%20VIOLENCE%20AGAINST%20WOMEN.pdf>, accessed 3 November 2024.

corrupt officials. Despite progressive legislation, policies and procedures, prevailing patriarchal and discriminatory attitudes still often prevent women from accessing justice.

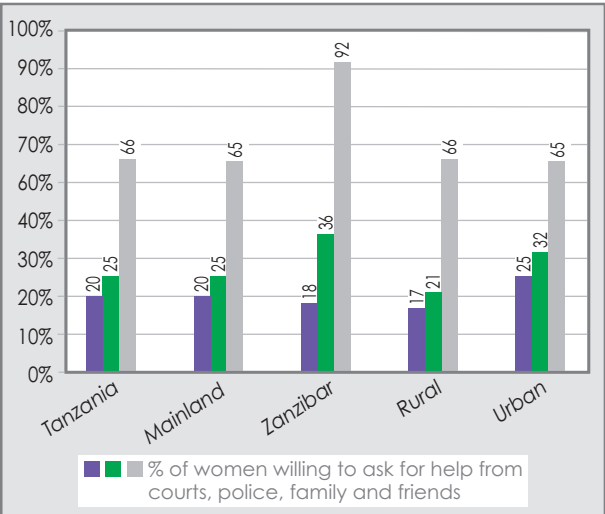
The inaccessibility of the courts is one of the reasons for low marriage registration in Southern Africa. In the absence of a registered marriage, women are more vulnerable to harmful practices such as property grabbing upon the death of a husband or partner and property loss at divorce. Registering marriages is an important way of fighting such practices.



Access to justice is one of the indicators reported on in the Social Institutions and Gender (SIGI) Index study conducted in **Tanzania**. The indicator measures discrimination against women in relation to their access to justice. It considers women's ability to access the country's justice system from the plaintiff's perspective, measuring their confidence and trust in the police or judiciary in cases of conflict. The indicator also measures attitudes towards women's opportunities to go to court or the police freely.¹⁵

The study found that women have limited ability and willingness to turn to the courts and the police.

Figure 7.1: Women's willingness to ask for help from the court, police or family and friends in Tanzania



Source: SIGI Index, Tanzania

Only 17% of rural women and 25% of urban women would seek recourse in the courts in Tanzania

Figure 7.1 shows that in situations of conflict, only 20% of women would seek access to the lowest court in the judicial hierarchy - Primary Courts in Mainland and Khadi Courts in Zanzibar - and just 25% would seek help from the police. However, about two thirds of women in Tanzania would turn to relatives or friends. Women living in urban areas are more likely to access a court or police to settle a conflict than those in rural areas.

Furthermore, the study found that only 27% of women would turn to religious or traditional leaders, but about 70% of women would turn to local government authorities in a case of conflict. The study also considered attitudes to needing a male partner's permission to access courts or the police. The results are summarised in table 7.3.

Table 7.3: Attitudes to women needing a male partner's permission to access courts or police

Region	Percentage of population who agree women need husband/partner's permission to access	
	Court	Police
Tanzania	78	77
Mainland	77	76
Zanzibar	98	99
Rural	79	78
Urban	76	75

Source: SIGI Index, Tanzania

Table 7.3 shows that norms and attitudes curtail women's access to justice. The majority of both women and men believe that a woman needs her husband's or partner's permission to contact the police or a court. These norms of restrictive masculinities that promote men's role as protectors and guardians of the household are widely held across all regions of Tanzania as no region had a score below 50%.

¹⁵ OECD (2022), SIGI Country Report for Tanzania, Social Institutions and Gender Index, OECD Publishing, Paris, <https://doi.org/10.1787/06621e57-en>, accessed 29 October 2024.

Marriage and family rights



Article 8: 1. States 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. States 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.



Community discussion on inheritance rights in Siloe, Lesotho during 16 Days of Activism. Photo: Ntolo Lekau

A 2024 report by Equality Now, *Gender Inequality in Family Laws in Africa: An Overview of Key Trends in Select Countries*, reviewed family laws in 20 countries including Angola, Botswana, DRC, Malawi, Mozambique, South Africa and Tanzania in SADC.¹⁶ The report notes that family law in

Africa is a patchwork of legal pluralism resulting from traditional or customary law, overlaid by European statutory and religious (Christian and Muslim) laws. Many provisions in religious and customary laws discriminate against women and girls in areas such as polygamy, divorce and child custody, matrimonial property and inheritance. Often customary law continues to prevail even after statutory law has been reviewed and there is great need for awareness and community mobilisation for implementing new laws.

Many provisions of religious and customary law discriminate against women and girls

¹⁶ Equality Now (2024). *Gender Inequality in Family Laws in Africa: An Overview of Key Trends in Select Countries*. <https://equalitynow.org/africafamilylaw>, accessed 30 August 2024.

Some of the findings of the report are:



In **Angola**, the Family Code is based on civil and customary laws. Customary laws should, however, not contradict the constitution.

Inequality in family laws exists in Angola in the following aspects: there are exceptions to the legal age of marriage; there are discriminatory customary inheritance laws which facilitate women to be disinherited and even thrown out of their homes; and polygamy also exists in parts of the country. Even though polygamy is outlawed, it is still possible for men to be legally married to one woman and informally married to more.¹⁷



Malawi recognises and regulates civil marriages, customary marriages, religious marriages, and marriage by cohabitation or reputation. The constitution provides that the State must progressively adopt and implement policies and legislation to achieve gender equality through full and equal participation of women in all spheres of Malawian society; non-discrimination; and implementing policies to address social issues such as domestic violence, security, lack of maternity benefits, economic exploitation and rights to property. Section 24 of the Constitution is dedicated to the rights of women and includes provision for “the right to be accorded the same rights as men in civil law, including equal capacity to enter into contracts;

to acquire and maintain rights in property, to acquire and retain custody, guardianship and care of children, and to have an equal right in the making of decisions that affect their upbringing;” as well as for “fair disposition of property that is held jointly with a husband; and to fair maintenance upon dissolution of a marriage.”¹⁸

South Africa has had a fragmented legal system governing marriages with three different pieces of legislation: the Marriage Act, the Civil Union Act and the Recognition of Customary Marriages Act. A new Marriage Bill, which seeks to bring all the laws together into one, opened for public comment on 10 April 2024. This was too late to finalise the Bill before national elections in May.¹⁹ The new Bill sets the minimum age of marriage as 18 for both girls and boys, without exception. It would also require registration of all marriages including same sex marriages and polygamous marriages. The new Bill has been criticised as discriminatory for not allowing women to have more than one partner (polyandry); putting women in polygamous marriages at risk if they struggle to register their marriages (especially after their spouse has died); not referencing Muslim marriages; and not referencing domestic partnerships. The Constitutional Court recognised domestic partnerships as deserving the same legal protection as marriages.²⁰



Child marriages



SADC Protocol Article 8.2a: No person under the age of 18 shall marry.

Maputo Protocol Article 6(a) no marriage shall take place without the free and full consent of both parties; Article 6(b) the minimum age of marriage for women shall be 18 years.

SDGs 5.3: Eliminate all harmful practices, such as child, early, and forced marriage and female genital mutilation.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

¹⁹ Business Tech. New marriage laws for South Africa take the next big step. 10 April 2024. <https://businesstech.co.za/news/lifestyle/767324/new-marriage-laws-for-south-africa-take-the-next-big-step/> Accessed 30 August 2024.

²⁰ Joyi, N and C. Potgeiter. The new marriage bill and its implications in South Africa. 29 September 2023. <https://www.csvr.org.za/the-new-marriage-bill-and-its-implications-in-south-africa/> accessed 30 August 2024.

CEDAW Article 16(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent and **Article 16 (2)** The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

International Conference on Population and Development (ICPD) 6.11: Countries should create a socio-economic environment conducive to the elimination of all child marriages and other unions as a matter of urgency and should discourage early marriage.

SADC UN CSW Resolution calls on all governments to enact and intensify the implementation of laws, policies, and strategies to eliminate all forms of gender-based violence and discrimination against women and girls in the public and private spheres. This includes harmful practices, such as child, early, and forced marriage, female genital mutilation and trafficking in persons. It should ensure the full engagement of men and boys in order to reduce the vulnerability of women and girls to HIV and AIDS.

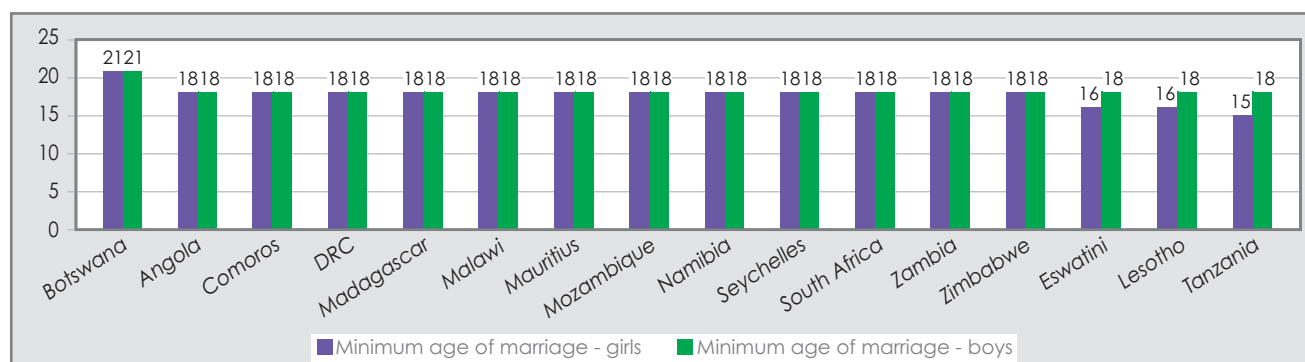
The SADC Model Law on Child Marriage defines “child marriage” as “a statutory or customary union in which one party is a child or both of the parties are children.”²¹ The same Model Law defines a child as any person under the age of 18 years in line with other international human rights instruments.²²

Minimum age of marriage

There is slow but steady progress in review of legislation in SADC to ban child marriage

The numerous normative frameworks above, which governments of SADC Member States are signatories to, have called for the elimination of child marriage and setting the minimum age of marriage to 18 without any exception. There is slow but steady progress in revising legislative frameworks across SADC to ensure that this is legislated, with support from the adoption of the SADC Model Law on Child Marriage and other initiatives.

Figure 7.2: Minimum age of marriage for females and males by country



Source: Gender Links, SADC SRHR Laws and Policies Audit 2019, updated

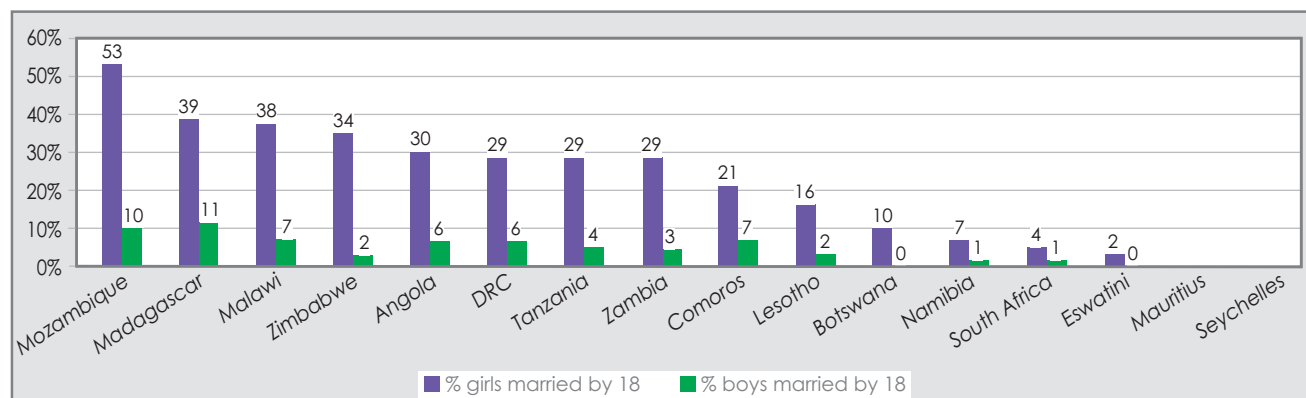
²¹ 'SADC Model Law on eradicating Child Marriage and Protecting Children already in Marriage', <https://www.girlsnotbrides.org/documents/484/model-law-on-eradicating-child-marriage-and-protecting-children-already-in-marriage.pdf>, accessed 28 June 2021.

²² Article 1 of the Convention on the Rights of the Child defines a child as every human being below the age of 18 years

Figure 7.2 shows that most SADC countries have set the age of consent to marriage at 18. Only Eswatini, Lesotho and Tanzania still have legislation that sets age of consent to marriage lower for girls than 18. However, other countries still have exceptions to their general provisions.

Though there is ongoing legislative change, it will take time for this to change behaviour and bring down the rates of child marriage. Figure 7.3 shows that rates of child marriage are still persistently high across much of SADC.

Figure 7.3: Percent girls and boys married by age 18 in SADC



Source: Gender Links computation from UNICEF Child Marriage Database, 2024

Figure 7.3 shows that rates of girls being married before the age of 18 still varies between zero in Mauritius and Seychelles to 53% in Mozambique. Rates of boys being married before the age of 18 varies from zero in Mauritius and Seychelles to 11% in Madagascar. Mozambique, Madagascar and Malawi have some of the highest rates of child marriage in the world (Malawi has the 12th highest prevalence of child marriage globally). There are much lower rates of boys being married before the age of 18, but there are boys that marry as children.



At the end of December 2023, **Zambia** enacted an amendment to the 1918 Marriage Act to set the minimum age of marriage to 18 for civil and customary marriages. Zambia has, thus, banned child marriages. Zambia has a dual system of statutory and customary law. The 1918 Act previously set the minimum age of marriage at 21, but allowed

boys and girls between 16 and 21 to marry with parental consent, and those younger than 16 to marry with consent of a High Court Judge. There was previously no age limits for marriages entered into under customary law.²³

The First Lady, Mutinta Hichilema, has launched a programme to raise awareness to end child marriage nationwide, including by engaging with chiefdoms about the new legal frameworks.²⁴

It is very important that national level legal change is accompanied by local community level change in practice. One way of achieving such change is by working with local leaders. The following case study outlines work with traditional leaders in Zimbabwe to develop by-laws to stop child marriage. This effort complements national legislative change.

²³ Goltom, H. Zambia: Amendment to Marriage Act Enacted, Child Marriage Outlawed. 6 February 2024. <https://www.loc.gov/item/global-legal-monitor/2024-02-05/zambia-amendment-to-marriage-act-enacted-child-marriage-outlawed/#:~:text=On%20December%202023%2C%20Zambia,those%20concluded%20under%20customary%20law>, accessed 30 August 2024.

²⁴ UNFPA. Zambia takes bold steps to end child marriage with landmark law. 29 May 2024. <https://esaro.unfpa.org/en/news/zambia-takes-bold-steps-end-child-marriage-landmark-law>, accessed 30 August 2024.



Traditional leaders in Zimbabwe create by-laws to curb child marriage

The development of by-laws in Shamva District in central Zimbabwe presents a powerful example of how traditional leaders can be partners in ending harmful cultural practices and advance the rights of girls and women. Through strong community engagement and leadership, the by-laws offer a sustainable and culturally relevant solution to child marriages, setting a precedent for other provinces in Zimbabwe and beyond.

Shamva District, especially the Bushu and Nyamaropa chiefdoms, has been grappling with high rates of child marriages and harmful cultural practices such as “kuzvarira” (pledging daughters in marriage) and “kuripa ngozi” (virgin pledging) which underlie child marriage. These practices perpetuate gender-based violence and violate the rights of young girls. In a groundbreaking initiative, traditional leaders, with the support of Rozaria Memorial Trust (RMT), spearheaded the development of by-laws to curb these harmful practices and end child marriages in their communities.

Mashonaland Central province, in which Shamva is located, has the highest child marriage rates in Zimbabwe, with a prevalence of 50%. Poverty, cultural beliefs, and religious practices drive this practice. Many families in Shamva resort to child marriages as a survival tactic, marrying off young girls in exchange for *lobola* (Southern African variation of dowry) or goods. The district's economy is heavily reliant on small-scale mining and agriculture, exacerbating vulnerabilities for young girls who are often lured into early marriages by promises of financial stability from wealthier men.



Community dialogues being held in Shamva District in Zimbabwe.
Photo: Rozaria Memorial Trust

The process of developing by-laws in Shamva involved extensive consultation and engagement with community members, including chiefs, village heads, local authorities and other implementing partners in the district. The process began with a series of community meetings to gather insights on harmful practices and seek input into the formulation of culturally relevant and legally sound by-laws. With technical support from RMT, the chiefs led the process to create by-laws addressing child marriage and associated challenges in the communities.

Key features of the bylaws

The by-laws explicitly prohibit child marriages and hold community members accountable for practices that violate the rights of children, particularly girls. They also clarify the roles of all people in the community. The key provisions include:

- *Prohibition of child marriages:* no person under 18 is allowed to marry, cohabit or engage in sexual activities. Cultural and religious justifications for child marriage are explicitly banned.
- *Roles and responsibilities of traditional leaders:* Chiefs and village heads are tasked with enforcing the by-laws and are required to supervise and monitor compliance. Any leader found facilitating child marriages is subject to dismissal.
- *Community involvement:* the by-laws emphasise the role of parents, extended families, and the entire community to protect children from harmful practices. Parents are responsible for ensuring their children attend school and are raised with values.
- *Creation of a special court:* a specialised court handles cases of child marriage, with the chief as the presiding authority, to ensure swift justice for victims and deter future violations.

Since adopting the by-laws, reported cases of child marriages in Bushu and Nyamaropa have significantly reduced. Specialised children's courts based with the Chief's Advisory Council, comprised of a social worker, Victim Friendly Unit (VFU) police officer and community-based

outreach workers, have been very successful. The court is a critical part of the initiative to enforce the by-laws. The court ensures that children can participate in proceedings in a safe and supportive environment, with assessors that include young people and individuals with disabilities.

This initiative reflects the Chiefs' commitment to protecting children's rights and promoting inter-generational leadership. Involving traditional leaders to enforce the by-laws empowered the community to take collective action against harmful practices. The Mashonaland Central province reviewed the progress achieved in

Shamva and recommended that all chiefs in the province should have similar by-laws. This recommendation led 29 other chiefs in the province adopting the by-laws in September 2024.

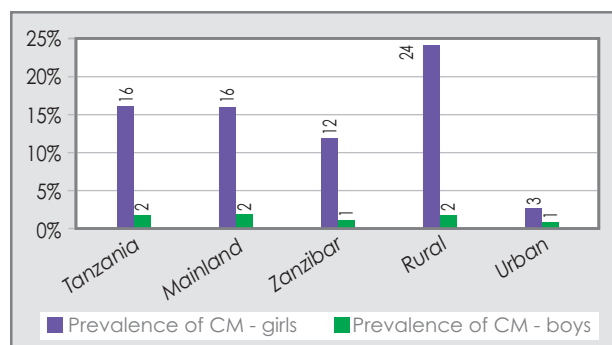
Leading the development of the by-laws strengthened the chiefs' role as custodians of culture while ensuring that cultural practices evolve to respect human rights.

Source: Colleta Zinyama and Loveness Mudzuru, Rozaria Memorial Trust and a Woman of the South Speak Out (WOSSO) fellow

When the Tanzanian government tabled the Child Protection Laws (Miscellaneous Amendments) Bill, 2024, at the end of August 2024, it sparked a debate about why nothing has yet been done to review the outdated 1977 Marriage Act. Two High Court rulings have directed the government to review the law to raise the minimum age of marriage to 18, without exception. A number of Members of Parliament spoke about the need for this review. It is believed that reform faces stiff opposition from religious leaders, especially in the Muslim faith who argue that girls need to be married to prevent them from engaging in sex before marriage.²⁵

The SIGI Index study investigated the rates of child marriage in different areas in Tanzania, as captured in Figure 7.4.

Figure 7.4: Prevalence child marriage (CM) in Tanzania

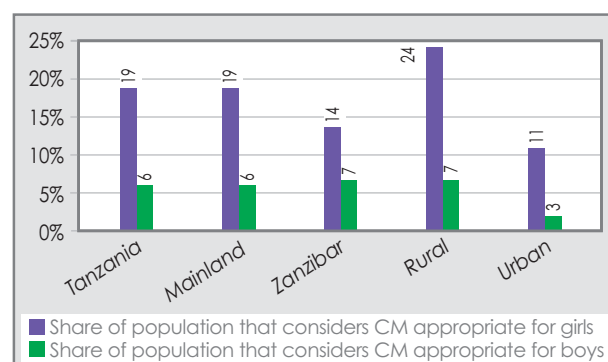


Source: Tanzania SIGI Index

Figure 7.4 shows that child marriage rates are much higher in rural areas than in urban areas in Tanzania. Child marriage rates in boys are very low across all areas.

Another question was about attitudes to child marriage for girls and for boys.

Figure 7.5: Attitudes to child marriage



Source: Tanzania SIGI Index

Figure 7.5 illustrates that there are still significant levels of support for child marriage for both girls and boys across all sectors of Tanzania society, therefore there is still much to be done to change these attitudes.

Even when communities stop children from being married, this may not be enough to prevent child marriage if families still support it. The following case study from rural Zimbabwe illustrates challenges for persuading families that child marriage is not a route out of poverty.

²⁵ Mosenda, J. Marriage law controversy: A bone of contention in Tanzania. 7 September 2024. The Citizen. <https://www.thecitizen.co.tz/tanzania/news/national/marriage-law-controversy-a-bone-of-contention-in-tanzania-4745736>, accessed 1 November 2024.



Community efforts to stop child marriage in Zimbabwe

Maranatha Orphans Care Trust trained and supported Gender Champions to be gender-based violence watchdogs in their communities in Matobo District in southwest Zimbabwe. The district has been badly affected by climate change, resulting in very poor crops, deepening poverty and food insecurity. One strategy that desperate families adopt is to marry a young daughter to an older man who will look after the girl and contribute to the family.

In December 2022, Gender Champions heard about a wedding between a 15-year-old girl and a 38-year-old man planned for the following morning. The girl had been in Form Three and had been forced to stop her education to get married to this wealthy man. The Gender Champions went to the office of the Ministry of Women Affairs to notify the District Development Officer (DDO). The DDO and Gender Champions told the local police and social welfare office. The Gender Champions work with a multi-sectoral team to protect themselves against the perpetrators they bring to book.

This team went to the homestead where they found wedding preparations underway and people arriving for the wedding. The team spoke to the girls' parents and told them if they went ahead with the wedding they would be arrested, as arranging for the marriage of a girl below the age of 18 is a criminal offence. The police announced that no wedding would take place and it was cancelled.

The Gender Champions have intervened in several other cases of child marriage. One of these was a 14-year-old from a very poor family who married off their child. The girl dropped out of school, and a customary marriage was concluded with a 30-year-old man.

The Gender Champions reported the case to the police who arrested the 30-year-old man who was convicted and sentenced to 6-months of community service.



Police in Ward 14, Matobo, Zimbabwe holding a dialogue to raise awareness on campaign against child marriage.
Credit: Nothabo Sibanda

A year or so after these cases Maranatha investigated to find out what had happened to the young women. The girls told them they had been happy to get married and escape poverty. The white wedding in the first case was cancelled but customary procedures continued, and the families consider the two to be husband and wife. In the second case the man completed his community service sentence and came home to the marriage.

Communities have recommended that programmes to tackle child marriage in rural communities should include livelihoods interventions. Poverty is the root cause of the resurgence of harmful community practices such as child marriage. Young girls, parents and communities also need constant awareness raising on the ills of child marriages and the negative impact these have on young girls' lives.

Some Voice and Choice SAF grantees are also raising awareness about child marriage.

Unlimited Hope Alliance Trust (UHAT) engaged community leaders through dialogues on addressing harmful cultural practices and improving access to sexual reproductive health rights (SRHR) in Goromonzi rural district, not far from Harare, Zimbabwe.

The community dialogues identified and discussed harmful cultural practices, facilitated by respected local figures, including traditional and religious leaders, elders and educators.

Open discussions encouraged participants to share their experiences and concerns, fostering a supportive environment for change. Pre- and post-dialogue assessments revealed a 70% increase in participants' awareness of harmful cultural practices.



Community dialogue organised by Unlimited Hope Alliance Trust in Goromonzi District, Zimbabwe.
Photo: Unlimited Hope Alliance Trust

About 50% of community leaders who participated in the dialogues turned insights into actionable plans to address harmful practices, such as strategies for community awareness campaigns and initiatives to enhance access to SRHR services. The initiative culminated in the development of a localised child protection policy, which complements the established Child Protection Committee.

She Decides is an organisation that works with young women on SRHR issues.

Blessing Mutambara is a young woman from a rural community studying at the Great Zimbabwe University in Masvingo, central Zimbabwe. Mutambara was one of the young women who organised the She Decides Open House where they mobilised religious leaders and young women to have an open discussion on the challenges women in Masvingo are facing regarding SRHR. The discussion highlighted the barriers caused by harmful practises. It was an opportunity to share information on SRHR through theatre performances and to understand the position of the religious leaders on SRHR issues.



Blessing Mutambara
Photo: Unlimited Hope Alliance Trust

Mutambara reflected on the Open House: "The 'She Decides' open house session we organised was more than just an event - it was a movement. It was a declaration of our rights, our power and our resilience. We broke the silence, shattered the stigma and demanded change. We invited various stakeholders including religious leaders and we discussed issues that affect adolescents and young women in our communities. It's a reminder that we all have the power to create a better world, one story one voice, and one movement at a time."

Source: Nothabo Sibanda, Marantha OVC Project, a Woman of the South Speak Out (WOSSO) fellow; UHAT report to Gender Links, She Decides report to Gender Links

Impact of child marriage on girls and their children

The impact of child marriage on the girls involved as well as their children is devastating. It almost always results in girls dropping out of school, which limits their opportunities for economic activity. Furthermore, child brides are often isolated from friends, social networks and even faith communities, with little support.²⁶

Child marriage is associated with adolescent pregnancy and motherhood, which have negative impact on girls' physical and mental health.²⁷ Despite these negative impacts and legislation to end child marriage, it is still very common.

²⁶ Girls Not Brides. Impact of Child Marriage on girls' education. <https://www.girlsnotbrides.org/learning-resources/child-marriage-and-education/> accessed 2 August 2024.
²⁷ Girls Not Brides. Impact of Child Marriage on girls' health. <https://www.girlsnotbrides.org/learning-resources/child-marriage-and-health/> accessed 2 August 2024.

Female Genital Mutilation



SDGs 5.3: Eliminate all harmful practices, such as child, early, and forced marriage and female genital mutilation (FGM).

Female genital mutilation (FGM) refers to all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons. It is most often conducted on young girls between infancy and age 15. Younger children especially have no say in whether this should be performed or not. FGM is an expression of deeply rooted gender inequality and a violation of girls' and women's fundamental human rights, including their rights to health, security and dignity.

FGM is quite often done by traditional circumcisers, in unsterile conditions and without any anaesthesia, which is very painful and can result in serious complications. However, there are reports of medical FGM performed by trained medical service providers. FGM is believed to discourage sexual behaviour and elevate the female's social status; it is often viewed as a rite of passage into womanhood with deep historical and social origins. In some instances, men will not marry a woman who has not undergone FGM or it has consequences for the bride price that a man will pay.²⁸

It is estimated that about 230 million girls and women from 31 countries across three continents have been subjected to the practice. FGM has serious physical and mental health implications for girls and women and can lead to complications during childbirth. UNFPA estimates that over 4 million girls are at risk of FGM each year.

In 2021, an additional 2 million cases of FGM were predicted to occur over the next decade, as a result of COVID 19 related school closures and disruptions to programmes addressing FGM. Girls and women with primary education are 30% more likely to oppose FGM and those with secondary education 70% more likely.²⁹

The World Health Assembly passed resolution WHA61.16 on the elimination of FGM in 2008, emphasising the need for concerted action across all sectors including health, education, finance, justice and women's affairs. Concerted global action has succeeded in reducing the incidence of FGM.³⁰

Tanzania is the only SADC country where FGM is practiced widely, concentrated mainly in the six northern regions (of Tanzania's 18 regions). However, there are reports of isolated instances of FGM in South Africa, Mozambique, Zimbabwe and Malawi.³¹ In the six regions of Tanzania where FGM is practiced prevalence is higher than 30% and rises as high as 58% in Arusha and 63% in Manyara. FGM is about twice as common in rural areas than in urban areas. At least 88% of people in the six regions where FGM is prevalent believe the practice should be abandoned.



As the case study illustrates, organisations are advocating at local levels as part of global efforts to end FGM.

²⁸ Ayenew AA, Mol BW, Bradford B and Abeje G (2023) Prevalence of female genital mutilation and associated factors among daughters aged 0-14 years in sub-Saharan Africa: a multilevel analysis of recent demographic health surveys. *Front. Reprod. Health* 5:1105666. doi: 10.3389/frph.2023.1105666. accessed 14 August 2024.

²⁹ UNICEF (2024). Female Genital Mutilation. <https://www.unicef.org/protection/female-genital-mutilation>, accessed 27 July 2024.

³⁰ Mkwanaazi, S, and L. Joubert, (2023). Towards ending female genital mutilation by 2030. <https://www.unisa.ac.za/sites/corporate/default/Colleges/Human-Sciences/News-&-events/Articles/Towards-ending-female-genital-mutilation-by-2030> accessed 28 August 2024.

³¹ The Orchid Project. Where does Female Genital Cutting happen? <https://www.orchidproject.org/about-fgc/where-does-fgc-happen/malawi/> accessed 17 August 2024.



Taking a stand against FGM in Tanzania

At just 15-years-old, Katesho³² took a stand against female genital mutilation (FGM) for herself, despite significant family pressure. With information from a session presented by Salama Foundation, a Voice and Choice SAF grantee in Tanzania, Katesho fled home when her father insisted she should undergo FGM before enrolling in secondary school. He believed the procedure was vital to preserve the family's honour.

"He told me that I had grown up and needed to be cut for our family to be respected," Katesho recalls. Determined to resist, Katesho walked for ten hours to the nearest Local Government Authority office. There, she reported her situation to the authorities, which was a powerful assertion of her independence.



Salama Foundation community dialogues are raising awareness about harmful practices in Tanzania. Credit: Orinah Nyuki

Despite the prohibition of FGM in Tanzania since 1998, the practice persists in remote areas like Mara, which is in northern Tanzania, bordering Lake Victoria. In Mara 32% of women aged 15 to 49 have been subjected to FGM. Katesho met the Salama Foundation when they visited her school during the commemoration of 16 Days of Activism against Gender-based Violence (GBV).

Katesho recalls, "Last year when the Salama Foundation visited our school to discuss the dangers of FGM they provided us with educational materials and fact sheets. I learned about the severe health and psychological effects of this practice, which made me refuse to undergo it. I'm grateful my brother supported

me through this ordeal, despite the strong opposition from our parents."

Katesho's mother struggled to understand her daughter's concerns and complained, "You are making me look foolish."

Following her brave escape, Katesho asked the local government executive officer to contact the Salama Foundation for further support as she was determined to continue her education. The Salama Foundation prioritised her case and collaborated with the MKUKI (*Mtandao wa Kupinga Ukatili wa Kijinsia* or Coalition against Gender-Based Violence) to provide assistance.

Today, Katesho lives at Masanga Center in Tarime, where she continues her education and aspires to become a military officer. Her journey represents the growing movement among young women in Tanzania who are rejecting FGM despite societal pressures.

"I am happy to be here, I feel safe because my father is not around and I can continue with school," says Katesho.

The Salama Foundation, in partnership with the MKUKI Coalition (a network of 70 Tanzanian organisations collaborating to end GBV in rural and urban areas), have become an essential force in the battle against GBV in general and FGM specifically. Their initiatives include school programmes, anti-violence clubs and using creative methods like dance to address reproductive health.

Katesho's determination is a testament to resilience and courage. Her fight against FGM underscores the power of ongoing advocacy and education. Her story inspires others to defend their rights and live free from the fear of harmful traditions.

Source: Salama Foundation, report to Gender Links

³² Pseudonym to preserve her anonymity.

Discrimination against people with disabilities



Article 9: Persons with disabilities: States 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.

Seven SDG targets specifically mention persons with disabilities: education, accessible schools, employment, accessible public spaces and transport, empowerment and inclusion, and data disaggregation.³³

The approximately 80 million people with disabilities in Africa face similar kinds of exclusion and discrimination as people with disabilities in other continents. However, they are also subject to discrimination specific to Africa, which is rooted in deeply held beliefs that often link disability with a spirituality or a supernatural dimension. Disability discrimination in Africa is highly gendered, disproportionately affecting women. In particular, mothers of children with disabilities may be accused of witchcraft or bringing a curse upon the family. Consequently, many children with disabilities are hidden and locked away, unable to participate in education or benefit from health services. These children are not able to achieve their potential.

One example of the specific challenges that people with disabilities are subject to in Africa is regarding albinism. Albinism is a genetic condition that causes a person to have little to no melanin, the chemical that gives colour to skin, hair, and eyes. People with albinism at best face social exclusion and at worst are subject to deadly attacks, as their body parts are in great demand for ritual purposes. There are also beliefs that intercourse with a woman or girl with albinism can cure HIV, which has led to widespread sexual violence against women and girls with albinism.³⁴



Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa

The Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa, also referred to as the African Disability Protocol or ADP, was adopted by the African Union (AU) Heads of State at the thirtieth ordinary session of the AU Assembly in Addis Ababa on 29 January 2018. The AU announced in August 2024 that the ADP had entered into force following ratification by 15 nations, including

Angola, Malawi, Mozambique, Namibia and South Africa³⁵ in SADC. Zimbabwe also ratified the ADP in May 2024³⁶ and Lesotho has signed it³⁷.

While there are many specifically African aspects to discrimination of people with disabilities, there is also a very vibrant community of African disability rights activists, campaigners and organisations

³³ United Nations Convention on the Rights of Persons with Disabilities.

³⁴ Alexiou, Gus. 2024 "Africa on Verge of its ADA Moment if African Disability Protocol Passes". <https://www.forbes.com/sites/gusalexioiu/2024/02/11/africa-on-verge-of-its-ada-moment-if-african-disability-protocol-passes/> accessed 23 August 2024.

³⁵ African Union, 5 August 2024, "African Commission: The African Disability Rights Protocol has entered into force", <https://africadvisory.africa/2024/08/05/african-commission-the-african-disability-rights-protocol-has-entered-in-force/> accessed 23 August 2024.

³⁶ <https://www.herald.co.zw/zimbabwe-ratifies-african-disability-protocol-paving-the-way-for-improved-rights-and-inclusion/> accessed 23 August 2024.

³⁷ <https://www.thereporter.co.ls/2024/02/26/lesotho-signs-protocol-on-disability-rights/> accessed 23 August 2024.

of people with disabilities. This community campaigned tirelessly for many years for the ADP and are continuing to advocate with national governments to ratify and implement its provisions.³⁸

The ADP has a distinctly African perspective on protecting and promoting the rights of persons with disabilities

The ADP has a distinctly African perspective on protecting and promoting the rights of persons with disabilities compared with the United Nations Convention on the Rights of Persons with Disability (UNCRPD). The ADP has a much stronger focus on the role of families and communities; rights of caregivers to people with disabilities; and women, girls and children with disabilities. Furthermore, the ADP includes sections on youth (including SRHR education) and older persons, which the UNCRPD does not have. The ADP thus addresses issues of intersectional discrimination.

In several sections, the ADP stresses the right of persons with disabilities to health, including SRHR, and the right of women to have children if they wish, as well as access to contraception.

The ADP's Article 11 specifically protects persons with disabilities from harmful practices:

"State parties shall take all appropriate measures and offer appropriate support and assistance to victims of harmful practices, including legal sanctions, educational and advocacy campaigns, to eliminate harmful practices perpetrated on persons with disabilities, including witchcraft, abandonment, concealment, ritual killings, or association of disability with omens.

States parties shall take measures to discourage stereotyped views on the capabilities, appearance or behaviours, of persons with disabilities, and they shall prohibit the use of derogatory language against persons with disabilities."

The case study of Thandeka Dlamini in rural KwaZulu Natal, South Africa, illustrates the struggles of a mother of a child with a disability.



Journey from child marriage to leader advocating for change

Thandeka Dlamini, who is from a rural area in South Africa's KwaZulu Natal province, is emerging as a leader in the Imbokodo Women Empowerment group. She joined the group after being referred to Incema's SheCAN project by Pastor Sabelo Zungu, a community leader and a member of the Incema Men's Forum. Incema, a VCSAF grantee in South Africa, launched the SheCAN (She Creates, Achieves, and Nurtures) support programme in 2021 to provide a space for women and girls to talk about their issues and challenges and build their economic capacity.

Dlamini, who was forced into marriage at age 15, endured years of abuse. Her first child, born when she was only 16, has severe cerebral palsy. The child cannot sit, stand or speak. To ensure proper care for her child, Dlamini enrolled her in a facility in Hillcrest, a small town close to her home. She is using the child's government provided disability grant to pay for the service.

The SheCAN programme is helping Dlamini to turn her life around. She received counselling and psychosocial care which helped her

³⁸ Kesamang, Lefoko, AK Dube, G Antwi-Atsu, E Orowe, 14 December 2023, Why countries must ratify the African Disability Protocol, <https://africanarguments.org/2023/12/why-countries-must-ratify-the-african-disability-protocol/#:~:text=%5B2%5D%20As%20of%2029th,Republic%2C%20South%20Africa%2C%20Uganda> accessed 23 August 2024.

emotional healing and empowered her to leave her abusive marriage to start a new chapter in her life. She has also learnt about bodily autonomy, contraceptive use and self-awareness. This knowledge has been critical in helping her regain control over her life to ensure healthier futures for herself and her children. Dlamini moved to a town closer to Hillcrest to be able to visit her child over weekends. And found a job in a factory not too far away.

Incema is negotiating with a local Technical and Vocational Education and Training (TVET) college to provide Dlamini with skills that can help her generate income and break free from dependence on abusive environments. While waiting for formal bursary opportunities and skills programmes that may be available in 2025, Dlamini enrolled in a six-month Civil Engineering Technical Construction course. She is balancing her studies, job and motherhood. Her priorities are challenging, as she struggles to prioritise her mental health while focusing on providing for her children. She is participating in on-going therapy at Incema, where she receives guidance and emotional support to navigate her challenges.

The Imbokodo Women Empowerment group is comprised of young women at Incema who were married as children. Together, the young women raise awareness about child marriages, with plans to run educational programmes for young girls in schools, and develop income-generating initiatives such as sewing, beadwork, and baking. The group is a safe space for



Thandeka Dlamini is a member of the Imbokodo Women Empowerment group in South Africa. Credit: Thenjiwe Ngcobo

members to discuss their challenges and support one another in their healing journey. Dlamini has taken a leadership role in the group.

The Incema Men's Forum that began in 2021 is comprised of traditional and other community leaders who are committed to addressing gender-based violence (GBV) and domestic violence. Members of the Men's Forum work with other stakeholders, to ensure proper referrals and support. Traditional authorities from four local communities (KwaMpumuza, Inadi, KwaMafunze and Incwadi) are represented in the forum. Traditional and other community leaders play a crucial role in promoting change within their communities. They plan and implement activities to address GBV in the communities.

Dlamini's story is a testament to the profound impact of combining community-based support with traditional leadership engagement. With Incema's guidance and the support, she is determined to break free from the cycle of abuse and ensure that her daughters grow up free from patriarchal oppression. Dlamini's journey from a victim of child marriage to a leader advocating for change reflects her resilience and the power of the SheCAN programme, which focuses on SRHR and gender equality. She continues to advocate for the rights of young women in her community, seeking to end the harmful cultural practices that have affected so many lives.

Reflecting on her journey, Dlamini says, "I want to go back to my community and be an example, to bring hope to other women who are victims of child marriages."

Source: Incema, report to Gender Links

Countries are adapting their laws as well as institutions to provide more comprehensive care to people with disabilities as illustrated in the cases below:



The **DRC** promulgated Organic Law No. 22/003 in June 2022 to protect and promote the rights of people with disabilities. The law,

which aligns to the Convention on the Rights of People with Disability (CRPD), enshrines the rights of people with disabilities, including the rights to non-discrimination, participation and access to all services. It also creates a national framework for implementation throughout the DRC's 26 provinces. It has been hailed as a milestone by organisations that support people with disability.

There is now a coordinated effort to make the provisions of the law widely known throughout the country.³⁹

Several countries have bodies responsible for coordinating services and programmes to uphold the rights of people with disabilities. Two of these are Zambia and Seychelles.



The **Zambian** Persons with Disabilities Act No. 6 of 2012 established the Zambia Agency for Persons with Disabilities (ZAPD) under the Ministry of Community Development and Social Services. The ZAPD was established to plan, promote, regulate and coordinate

services for persons with disabilities. It recently developed a Strategic Plan 2023 - 2026 which heavily emphasises mobilising and using resources effectively.⁴⁰

The National Council for Disabled Persons in **Seychelles**, established by the National Council for Disabled Persons Act, is responsible for promoting and protecting the rights of persons with disabilities. It coordinates activities of private and public organisations to provide support and care to people with disabilities. The Council promotes services and programmes, including education, sports, vocational training and job placement.⁴¹



The rights of widows and widowers



Article 10: Widow and widower rights

1. States 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 spouse 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.

CEDAW, Article 16(b) provides for widows, the same right freely to choose a spouse and to enter into marriage only with their free and full consent; among other protections that are given to widows.

Across most of SADC there is slow progress on reviewing legislation, policy and practice to prevent discrimination against widows especially, and also widowers. As with many other aspects of personal law, laws governing inheritance are subject to formal, traditional or customary and religious nuances. Traditionally, widows had few rights to ownership of land or property and were

often dispossessed of homes, property and the means to care for themselves and their children when their husbands died. There is gradual change in both formal legislation providing protection for widows and their children and family and community understanding of the protection of widows.

³⁹ CBM, New Law Protects Disability Rights in the DR Congo, 19 April 2023. <https://www.cbm.org/news/news-regions/news-africa-west-and-central/new-law-protects-disability-rights-in-the-dr-congo/>, accessed 14 October 2024.

⁴⁰ Zambia Agency for Persons with Disabilities with Ministry of Community Development and Social Services, (2023). Zambia Agency for Persons with Disabilities Strategic Plan 2023 - 2026. https://www.undp.org/sites/g/files/zskgke326/files/2024-02/zapd_strategic_plan.pdf, accessed 14 August 2024.

⁴¹ Kamga, GEK. (2022) 'Country report: Seychelles' African Disability Rights Yearbook 187-201 <http://doi.org/10.29053/2413-7138/2022/v10a9/>, accessed 14 August 2024.



Lesotho promulgated the *Administration of Estates and Inheritance Act of 2024* which superseded several acts that have been repealed.⁴² The new Act introduced several reforms and provides an efficient, transparent and inclusive framework for dealing with inheritance issues. Some of the reforms it includes are:

- Inheritance rights for all children, irrespective of gender and whether born in or out of wedlock.
- The Master of the High Court now has responsibility to administer intestate estates under both civil and customary systems.
- Recognition of the complexities of modern family arrangements, including blended families resulting from remarriage.
- Clarity of property inheritance, especially in cases of polygamy.
- Rules for drafting, registering and monitoring wills.

- Transparency in estate planning.
- Provides different management for estates of different values.
- Protection for those that are most vulnerable i.e. mentally ill, critically ill or intellectually incapacitated.
- Upholds the rights of customary widows with equal protection for both women and men in customary marriages.

Lesotho's new Administration of Estates and Inheritance Act has introduced a number of reforms to how Lesotho handles inheritance issues



Norton Junior councillors take a stand against child marriage in Zimbabwe.

Photo: Tapiwa Zvaraya

⁴² LexAfrica, (2024), The New Administration of Estates and Inheritance Act No.2 of 2024: Key Changes and Implications. <https://lexafrika.com/2024/09/lesotho-estates-and-inheritance-act/#:~:text=Lepule%20in%202016.,The%20Harmonization%20of%20the%20rights%20of%20Customary%20Widows%20with%20the,in%20the%20administration%20of%20Estates>, accessed 1 November 2024.



Next steps

Harmful practices are a violation of human rights, deeply rooted in social norms that sustain gender inequality. This chapter has illustrated several progressive steps forward, showing that change is possible.

Key recommendations include:

- **Promote constitutional review** and specifically removal of all clawback clauses, especially in Lesotho and Botswana which have already invested much effort in this process. Ensure all personal legislation (marriage, inheritance, etc) respects the rights of women.
- **Promote women's access to justice** at all levels, including by advocating for more women to be hired and promoted in the police and justice system.
- **Continue legal review to eliminate** any chance of **child marriage** in the law in all countries. Promote programmes to mobilise communities to embrace changes to custom and tradition. Encourage programmes to incorporate efforts to address livelihoods for families so that they are not tempted to "marry off" their daughters as a strategy to escape poverty.
- **Continue efforts to improve education**, to support the millions who dropped out of school during the COVID 19 pandemic, encourage girls and boys to complete secondary school.
- **Continue legal review to address all forms of discrimination in marriage** and to protect the rights of women in marriage. This includes addressing discrepancies between customary and formal legislation, including regarding custody of children and ownership of property. The principle of non-discrimination must govern laws and practices in case of death of one spouse as well as in cases of dissolution of the marriage for whatever reason.
- **Be vigilant against all forms of FGM.** Promote programmes to raise community voices against FGM, including in countries where it is not very common.
- **Support girls and young women already in child marriages** to overcome the most deleterious impacts.
- Encourage all member states to **ratify the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disability in Africa** and to develop plans and institutions to implement its provisions.



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