



COUNTRY PROFILE

The Gambia is a predominantly Muslim State.³¹⁴ As such, over 90% of family law matters are adjudicated in the Cadi or Islamic courts by application of Islamic law.³¹⁵ Thus, while the Constitution of The Gambia provides that women are entitled to full and equal dignity of the person, equal treatment, equal opportunities, and protection from discrimination,³¹⁶ this is subject to the caveat that the prohibition of unfair discrimination against women does not apply to any law regarding adoption, marriage, divorce, burial, devolution of property on death, or other matters of personal law, nor to the application of customary law over persons subject to that law.³¹⁷

In 2017, The Gambia ushered in democracy with the end of Yahya Jammeh's 22 years in power.³¹⁸ A constitutional review and reform process was launched, culminating in a 2020 draft Constitution, which omitted the troubling caveat to women's rights. Unfortunately, the constitution reform process has stalled and the 2020 Constitution has not been passed into law.³¹⁹ As a result, family law in The Gambia remains subject to the regressive provisions of customary and Islamic law.

Treaty	Date of ratification	Reservations/Declarations
CEDAW	16 April 1993	None
African Charter	8 June 1983	None
Maputo Protocol	25 March 2005	None. ³²⁰

MAIN TRENDS ON FAMILY LAW

In general, there is a trend towards progress in The Gambia's family law, though implementation of progressive legislation is hindered by The Gambia's pluralistic legal system.

In 2010 The Gambia adopted the Women's Act³²¹ to domesticate CEDAW and the Maputo Protocol. The Act is the result of a comprehensive review of relevant legislation and consolidates all laws relating to women's rights in The Gambia. The Act seeks to implement the legal provisions of the National Policy for the Advancement of Gambian Women and Girls and provides for equal rights for women in marriage, divorce, custody, inheritance, and maintenance issues. In 2015, following the recommendations of the CEDAW Committee, the Women's Act³²² was amended to criminalise female genital mutilation.³²³ The Act is a major legislative victory, though the vast majority of women who marry in terms of Islamic and customary law do not have full access to its benefits.³²⁴

Another area of legislative progress has been regarding violence against women. The Sexual Offences Act has amended substantive laws and procedures related to the prosecution of rape and other sexual offences, including providing a broader definition of rape and abolishing the cautionary rule which required corroboration when prosecuting sexual offences.³²⁵ In the same year, The Gambia enacted the Domestic Violence Act to protect victims of domestic violence and abuse.³²⁶ The Domestic Violence Act adopts a broad definition of violence, including within its ambit physical, sexual, psychological, emotional,

314 Section 7 of the Constitution of The Gambia 1997 provides that customary law so far as it concerns members of the communities to which it applies and the Shari'a as regards matters of marriage, divorce and inheritance among members of the communities to which it applies are sources of law.

315 UN Women and Commonwealth Secretariat "Towards Reversing Discrimination in Law: Mapping and Analysis of the Laws of The Gambia from a Gender Perspective" (2020) at 12. Available at https://africa.unwomen.org/sites/default/files/Field%20Office%20Africa/Attachments/Publications/2020/Gambia%20report%20_layout_FINAL_DIGITAL_2907.pdf

316 See Sections 28 and 33 of the Constitution of the Republic of The Gambia 1996, amended 2004

317 See Sections 33(5)(c) and (d) of the Constitution of the Republic of The Gambia 1996, amended 2004

318 See Institute for Security Studies "The Gambia's president faces a tricky second term" (2022). Available at: <https://issafrica.org/iss-today/the-gambias-president-faces-a-tricky-second-term>

319 Fadera, L. (n.d.). Gambia's draft constitution rejected by lawmakers. ConstitutionNet. <https://constitutionnet.org/news/gambias-draft-constitution-rejected-lawmakers#:~:text=Gambia's%20lawmakers%20have%20rejected%20a,votes%20at%20the%20national%20assembly>

320 Initially, The Gambia made a blanket reservation on Articles 5 (elimination of harmful practices), 6 (marriage), 7 (separation, divorce and annulment of marriage) and 14 (health and reproductive rights) of the Maputo Protocol. In 2006, due to intense advocacy and The Gambia hosting the African Union (AU Summit), the reservation was removed

321 Women's Act 2010. Available at <https://wwwex.ilo.org/dyn/natlex2/natlex2/files/download/90619/GMB90619.pdf> (accessed 17 April 2024)

322 Women's (Amendment Act) 2015 Available at <https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5a0f4ede2c4830bd808329a/1520497906008/Women%27s+Act+Amendment+Act+2015.pdf> (accessed 17 April 2024)

323 The Women's Amendment Act, 2024 introduced in the National Assembly of the Gambia seeks to repeal the prohibition of FGM in Tthe Gambia. The Bill was still under debate in the National Assembly at the time of publication of this Report

324 OECD Development Centre "Social Institutions and Gender Index" (2019). Available at: <https://www.genderindex.org/wp-content/uploads/files/data-sheets/2019/GM.pdf>

325 Sexual Offences Act 2013. Available at <https://static1.squarespace.com/static/5a7c2ca18a02c7a46149331c/t/5d1d654749d9a70001826156/1562207562046/Sexual+Offences+Act+2013.pdf> (accessed 17 April 2024)

326 Domestic Violence Act 2013. Available at <https://wwwex.ilo.org/dyn/natlex2/natlex2/files/download/90619/GMB90619.pdf> (accessed 17 April 2024)

and economic abuse. In addition, the Act allows victims of domestic violence to choose to settle cases through alternative dispute resolution.³²⁷

Finally, the Children's Amendment Bill passed in 2016 amended the Children's Act³²⁸ to prohibit child marriage and impose a penalty of up to 20 years imprisonment on those who violate the prohibition. While this is a positive move, there is concern that child marriage continues in customary and religious settings, and that there is societal backlash against the prohibition.³²⁹

KEY GAPS AND CONTESTATIONS

(i) Legal pluralism:

Unfortunately, while statutory progress has been made, customary and Islamic law present significant obstacles. For instance, while the Women's Act provides that men and women have equal rights to an equitable sharing of the joint marital property upon divorce, in reality, under customary law the husband is deemed to own the matrimonial home and in the distribution of property, the woman's contribution to the acquisition

(ii) of marital property is not given due consideration.³³⁰ Similarly, while the Women's Act provides that men and women have the same rights to inherit equitable shares of familial estates, including in the case of surviving spouses, the Christian Marriage Act³³¹ makes succession of property dependent on the will of the husband, and under Islamic law, women inherit a lower share of assets than men.³³²

(iii) Harmful practices:

The Woman's Act does not do enough to prohibit harmful cultural and traditional practices. While it commendably prohibits female genital mutilation, it is silent on other harmful practices such as levirate marriage and unequal inheritance.

(iv) Marital rape:

Finally, while the Sexual Offences Act is generally progressive, it explicitly permits marital rape, providing that "rape shall not apply to married couples."³³³ This is a violation of married women's rights to equality, dignity, and bodily autonomy.

RECOMMENDATIONS

Legal reform:

- ▶ Section 33(5)(c) of the Constitution should be repealed so that women are granted absolute protection from discrimination. Customary and Islamic law should be applicable only to the extent that they do not discriminate against women.
- ▶ Women's rights to equality in matters regarding matrimonial property, inheritance and custody must be enforced, even in customary and religious contexts.
- ▶ The Women's Act must be amended to prohibit other harmful traditional practices, in addition to female genital mutilation. The attempts that are being made by Parliament to repeal the legal provisions within the Women's Act which prohibit and criminalise FGM should be stopped by the other organs of government.
- ▶ The Sexual Offences Act must be amended to prohibit marital rape.

Policy and sensitisation:

Policy and awareness interventions must be launched to combat patriarchal cultural and religious attitudes.

327 UN Women and Commonwealth Secretariat "Towards Reversing Discrimination in Law: Mapping and Analysis of the Laws of The Gambia from a Gender Perspective" (2020) at 30. Available at https://africa.unwomen.org/sites/default/files/Field%20Office%20Africa/Attachments/Publications/2020/Gambia%20report%20_Layou_FINAL_DIGITAL_2907.pdf (accessed 17 April 2024)

328 Children's (Amendment) Act 2016. Available at <https://security-legislation.gm/wp-content/uploads/2022/10/Childrens-Amendment-Act-2016.pdf> (accessed 17 April 2024)

329 OECD Development Centre "Social Institutions and Gender Index" (2019). Available at: <https://www.genderindex.org/wp-content/uploads/files/data-sheets/2019/GM.pdf>

330 UN Women and Commonwealth Secretariat "Towards Reversing Discrimination in Law: Mapping and Analysis of the Laws of The Gambia from a Gender Perspective" (2020) at 27

331 <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/gambia-republic-of-the/> (accessed 17 April 2024)

332 OECD Development Centre "Social Institutions and Gender Index" (2019). Available at: <https://www.genderindex.org/wp-content/uploads/files/data-sheets/2019/GM.pdf>

333 Section 3(3) of the Sexual Offences Act 2013

BINTA'S* STORY

The Gambia



Case study collected with the support of
African Centre for Democracy and Human Rights Studies (ACDHRS)

The Women's (Amendment) Act, 2004, provides that men and women have equal rights to an equitable sharing of the joint marital property upon divorce. In reality, under customary law, the husband is deemed to own the matrimonial home, and in the distribution of property, the woman's contribution to the acquisition of marital property is not given due consideration. Similarly, while the Women's Act provides that men and women have the same rights to inherit equitable shares of familial estates, including surviving spouses, the Christian Marriage Act makes succession of property dependent on the husband's will. Under Islamic law, women inherit a lower share of assets than men.

"My name is Binta*, a widow from Western Gambia. I have eight children who, despite facing numerous challenges, have become the centre of my strength. The turning point in my life occurred when my husband passed away several years ago, leaving our children relatively young. Unfortunately, instead of support and compassion, his relatives seized everything he had left for me and my children – properties and other belongings.

While I hadn't directly contributed to purchasing our matrimonial land, I had invested in constructing our matrimonial home on this land and purchased furniture – a fact well-known by my husband's relatives. The unfair and biased distribution of our assets by my husband's relatives left me and my children with virtually nothing. They tried to sell my matrimonial home, where I was staying with my children. However, after months of family in-fighting, my brothers helped me to reclaim my house, where I still reside with my children. However, I was left with nothing to make a living off as the cattle I reared for business purposes had been taken away.

The repercussions of this unjust inheritance distribution have been profound, affecting my emotional well-being and financial stability. Struggling to make ends meet, I ventured into various small businesses to put food on the table for my family. I tried to go to the courts, but the fees I had to pay initially to initiate the inheritance proceedings created a significant financial hurdle for me. Some of my children had to abandon their education due to my inability to afford school fees and other related expenses. As a result, I stopped pursuing this option. It was just too expensive.

The unfair and biased distribution of our assets by my husband's relatives left me and my children with virtually nothing.

The entire situation could have been mitigated had the inheritance been distributed equitably. Unfortunately, coupled with my limited education, I was unaware of the procedures involved or the laws that apply in my case. Moreover, my financial constraints made navigating the complex legal processes more challenging.

It would be good to see more women in society educated on the laws so they may know how to fight the traditional systems that often favour relatives who steal one's property to benefit themselves. Further, the legal fees involved and the long court processes make poor widows in rural areas like us feel alienated."

* Not her real name