

Harmful Practices

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Youth from Kapoche Secondary school in Luangwa, Zambia, take part in a demonstration against child marriage in October 2019.

Photo: Albert Ngosa

KEY POINTS

- The Tanzania Court of Appeal upheld a 2016 High Court judgment outlawing child marriage and declaring it unconstitutional. The Government had appealed the 2016 ruling, arguing that the court should uphold Islamic and customary laws, which allowed for marriage before age 18.
- Civil society in Mauritius continue to lobby government to repeal Section 145 of the Civil Code, which allows children from the age of 16 years to marry if they have parental consent. Meanwhile, the government has tabled a Children's Bill, which seeks to repeal the Child Protection Act and replace it with a new legislative framework to protect children.
- In South Africa, a 2019 Constitutional Court ruling gave spouses in both monogamous and polygamous customary marriages equal rights of ownership and control over matrimonial property.
- In Eswatini, the progressive Sexual and Domestic Violence Act continued to face resistance, mostly because it criminalises marital rape.
- DRC is on track to pass its Disability Rights Bill in 2020. The Act will protect children with disabilities from accusations of witchcraft.
- Zimbabwe gazetted a Marriage Bill to harmonise its different marriage regimes and laws and ensure that it governs all marriages under one law.
- Emerging harmful practices in the region, such as skin lightening/bleaching and vaginal tightening have negative impacts on women's health yet remain readily available.



Introduction

Harmful cultural and traditional practices continue to threaten lives and the overall health and wellbeing of girls and women in Southern Africa. Various stakeholders in the Southern African Development Community (SADC), including media and gender activists, continue to report cases of child marriage, marital rape, witchcraft accusations, widow inheritance, and female genital mutilation (FGM).

These practices have a negative impact on women and girls' sexual and reproductive health and rights (SRHR). Additionally, child marriage, marital rape, widow inheritance, virginity testing, and FGM also contribute to increased transmission of sexually transmitted infections (STIs), including HIV, amongst women and girls. Meanwhile, the problematic practice of virginity testing leaves young women more vulnerable to rape and HIV transmission due to the false belief, held among some in the region, that engaging in sexual intercourse with a virgin can cure HIV and AIDS.

Practices such as wearing the traditional mourning dress stigmatise women and can cause emotional distress. It is also a discriminatory practice because most regional customs do not require men to don traditional mourning clothes or, if they do, their mourning apparel is not as easily recognisable as what women wear in these circumstances. Other cultural and religious rules forbid women from undertaking certain activities, such as cooking, whilst they are menstruating. This leads to stigmatisation of a natural bodily function. It also affects the dignity and privacy of girls and women, given that most would prefer to keep menstruation to themselves.

It is commendable that many governments in the region have recently led efforts to end some of these practices through legislation, enforcement, and educating members of the public about the dangers associated with them. The

courts have also played a significant role in declaring harmful cultural practices discriminatory and unconstitutional, thereby paving the way for law reforms that protect women, girls, and children. In 2019, higher courts in the region highlighted their vital role in this regard in rulings on customary marriage in South Africa and on child marriage in Tanzania.



In her piece in the *Times of Zambia*, Emelda Mwitwa notes that the country has some of the highest rates of child marriage in SADC. Photo courtesy of Times of Zambia

However, several crises affecting the region in recent years may imperil recent achievements to address harmful cultural practices. This includes major droughts during the 2018-2019 and 2019-2020 agricultural seasons that, according to World Vision and the International Federation of Red Cross, caused a spike in child marriages, especially in Angola, Lesotho, Namibia, Zambia, and Zimbabwe.¹ In January 2020, the World Food Programme reported that 45 million people in Southern Africa needed food aid because of droughts, flooding, and other factors.² These dire circumstances force many families to consider early marriage for young girls as a way to get money for food through the custom of bride price payment from the groom to the parents of the bride. Marrying off young daughters also reduces the number of people to feed and look

¹ Reuters. (2020). Cheap as bread, girls sell sex to survive drought crisis in Angola. Retrieved from <https://www.dispatchlive.co.za/news/africa/2020-01-31-cheap-as-bread-girls-sell-sex-to-survive-drought-crisis-in-angola>
² Al Jazeera. (2020, January 16). Record 45 million need urgent food aid in southern Africa: UN. Retrieved from <https://www.aljazeera.com/news/2020/01/record-45-million-urgent-food-aid-southern-africa-200116161326843.html>

after. Additionally, the droughts led to increasing instances of rape and sexual assault and forced many girls and women into transactional sex in order to buy food.³

The Global COVID-19 pandemic has similarly exposed women, girls, and children to violence and harmful cultural practices. Property grabbing from widows and widow inheritance may also increase in a disaster.

The SADC Protocol on Gender and Development (SADC Gender Protocol) requires state parties to end harmful cultural practices and protect

women, girls, and children from them and the attendant gender-based violence (GBV). Article 21 (1) states that they must take measures, including legislative measures, to discourage cultural and traditional norms that exacerbate the persistence and tolerance of GBV so as to eliminate such practices. In addition, the Protocol urges that "States Parties and policies must ensure that policies and programmes take account of the unequal status of women, the particular vulnerability of the girl child as well as harmful practices and biological factors that result in women constituting the majority of those infected and affected by HIV and AIDS."⁴



South Africa: COVID-19 school closures raise alarm on child marriages

On 19 May 2020, Angie Motshekga, South Africa's basic education minister, announced that the country's schools would re-open on 15 June after being closed for more than two months due to COVID-19. Motshekga cited the scourge of child marriages as one reason why children must get back to school. The announcement sparked a heated debate in the country, as many parents questioned whether governments and schools had prepared adequately to ensure children's safety from COVID-19 infection.



South Africa's Basic Education Minister Angie Motshekga fears an increase in child marriage if schools remain closed due to COVID-19. Photo courtesy of Twitter

The government then advised parents that they could not guarantee children would remain free of infection, despite its best efforts, but it also emphasised that the longer children stayed away from school, the higher the probability that some would never return. Many experts worry that teenagers or children from poorer households will not to return to school, as well as teenage girls who get married during this time.

As the COVID-19 lockdown continued, more affluent schools moved more quickly to provide online learning options for children, but school administrators in poorer communities in both rural and urban areas could not provide such facilities in many cases. This has pushed many children away from the structure and routine of education and school systems, potentially exposing them to harmful practices, including child marriage.

Despite some reservations about the reopening of schools in South Africa, including key institutions like the South African Human Rights Commission, the decision by government has to be viewed in the context of the other dangers children face outside the school system. As long as harmful practices persist, the school system will continue to play an important role in protecting children from them.

Source: Adapted from News24 website and South African Women in Dialogue conversations.

³ Shrimpton, W. (2020, January 15). Children in southern Africa are being forced into prostitution due to drought. Retrieved from <https://www.newshub.co.nz/home/world/2020/01/children-in-southern-africa-are-being-forced-into-prostitution-due-to-drought.html>

⁴ Article 27 (2), SADC Protocol on Gender and Development

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 claw back clauses	No	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	No	No	No	No	No	No
Constitution addresses contradictions between the constitution, laws and practices	Yes	No	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Gender Responsive Assessment of constitutions and laws (all articles refer to the SADC Protocol on Gender and Development)																
Gender Responsive Assessment (GRA) of constitutions and laws %	50	43		39	30	50	49	73	54	32	68	73	62	67	58	74
Constitutional rights (Article 4) %	52	52		60	24	44	56	84	60	56	72	60	68	48	52	72
Laws and practice (Article 6) %	40	40		N/A	30	52	64	66	62	N/A	56	72	46	62	56	56
Access to justice (Article 7) %	48	30		42	6	42	24	56	48	34	68	78	64	56	62	76
Persons with disability (Article 9) %	80	40		40	60	40	80	60	N/A	80	80	60	100	100	80	100
Widows and widowers (Article 10) %	70	50		60	0	60	60	80	80	40	80	100	90	100	100	100
Marriage and family rights (Article 8) %	47	50		70	57	40	63	93	37	50	87	73	63	77	60	83
Early Child Marriages																
Minimum legal age of consent to marriage for women	15	21	18	15	16	16	18	18	18	18	18	15	18	15	21	18
Minimum legal age of consent to marriage for men	18	21	18	18	18	18	18	18	18	18	18	18	18	18	21	18
Exceptions for women	15	18	A judge can authorise marriage younger than 18 in certain cases and if both parties consent	None	Possible no age	Possible no age	Possible no age	None	16	None	Possible no age	Possible no age	None	Legislation under appeal	16	None
Exceptions for men	16	18	A judge can authorise marriage younger than 18 in certain cases and if both parties consent	None	Possible no age	Possible no age	Possible no age	None	16	None	Possible no age	Possible no age	None	Legislation under appeal	16	None
Percentage young women married by age 18	30	n/d	32	37	5	17	41	42	n/d	48	7	n/d	6	31	31	32
Percentage young women married by age 15	8	n/d	10	10	1	1	12	9	n/d	14	2	n/d	1	5	6	4

Source: Gender Links and Girls Not Brides.

Over the years, many SADC governments have made provisions in both constitutions and acts of parliament to provide protections for women and girls as illustrated in Table 7.1. It summarises key indicators on harmful practices, which show that:

- The constitutions of six SADC countries (Botswana, Comoros, Eswatini, Lesotho, Malawi, and Mauritius) have clawback clauses. This means they provide for gender equality on one hand but make other guarantees that undermine its provision.
- Four Constitutions (Botswana, Comoros, DRC, and Mauritius) have not addressed contradictions between their constitutions and customary laws and practices.
- The highest rated GRA areas include disability and widower/widow rights. The lowest is access to justice.
- Ten SADC countries have a minimum legal age of consent to marriage for women set at 18 or older. All SADC countries have set the minimum legal age of consent to marriage for men at 18 or older.

- Eswatini has the lowest percentage of women married by age 18 (5%) and Mozambique has the highest (48%).

This chapter will look at the impact of harmful cultural practices on the rights of women, girls, and children in Southern Africa. It identifies the enablers of such practices; efforts made by governments, civil society, and communities to end them. The chapter is framed in the context of the COVID-19 pandemic, its likely impact, and mitigation strategies.

States can end harmful cultural practices through legislation reviews and public education

Harmful cultural practices and COVID-19

In response to the COVID-19 outbreak, many SADC governments issued various regulations to contain the pandemic. They formulated these in terms of states of emergency (as provided for in constitutions), states of disaster (as provided in national disaster management laws), and as public health emergencies (as contained in public health legislation). In all instances, the most far-reaching provisions related to lockdowns (social and physical distancing measures), which entailed limits on fundamental rights and freedoms, in particular the rights to freedom of movement and association.

This confined many people to their homes, which resulted in an inability to protect many women and girls from GBV and harmful practices. Indeed, stakeholders worry that some may “take

advantage of emergency situations such as the COVID-19 pandemic to perpetuate such harmful practices.”⁵ As a result of the lockdown, many of these, such as FGM, can now happen in the confinement of the home during a time when communities have little or no outside oversight from neighbours, schools, and law enforcement. When in session, schools can provide a protective social net for children experiencing abuse in the home. Children can report abuse and harmful cultural practices to teachers and other school authorities who can then refer these on to law enforcement agencies.

Most teachers have the requisite training to identify trauma in children, or they can quickly identify absent children, including those who fall victim to child marriage. The World Economic

⁵ COVID-19 pandemic putting girls at high risk of FGM in Kenya. (2020, February 4). Retrieved from <https://www.endfgm.eu/news-en-events/news/covid-19-pandemic-putting-girls-at-high-risk-of-fgm-in-kenya>

Forum has reported that the COVID-19 pandemic could expose up to four million girls worldwide to child marriages.⁶ The closure of schools therefore means the absence of such protection mechanisms for children. Effectively, it will take longer for the relevant stakeholders to identify abuse. Further, appropriate and meaningful assistance for children suffering, or recovering, from harmful cultural practices may be minimal or unavailable.

In many parts of the region, COVID-19 has overwhelmed law enforcement authorities because of additional duties related to an emergency situation like a pandemic. This includes ensuring that people observe regulations such as social distancing; controlling non-essential travel, both within and across borders; and monitoring business and industry for operational compliance in line with regulations. This has led to lapses and gaps in other areas of policing, including in protecting women and girls from harmful cultural practices. Courts have also been operating minimally and attending only to “urgent” cases. Without clear definitions of what courts should consider “urgent,” cases relating to harmful cultural practices may fall through the cracks.

In some communities, there may be limited scientific understanding of the causes and origins

of COVID-19, leading to witchcraft accusations against women and girls, and particularly elderly women.

The COVID-19 pandemic could expose up to four million girls worldwide to child marriages

Countries such as South Africa have acknowledged that the lockdowns associated with COVID-19 have negative impacts on women and children, leading to increases in GBV. Because of this, the Government of South Africa declared the Commission for Gender Equality and other women's rights organisations to be essential service providers during its lockdown to ensure they could help those experiencing GBV. Data from 3 April 2020 backed up worries about increased violence, as the police reported that their phone lines had been “flooded” with 87 000 calls linked to GBV in the first seven days of the country's lockdown.⁷

Constitutional and legislative provisions



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.

There have been no new constitutional enactments in the region during the year under review. However, after its 2019 elections, Botswana saw an increased debate about the need for consti-

tutional reform. This may present an opportunity to address its constitutional provisions that perpetuate gender-based discrimination and, consequently, harmful cultural practices. Similarly,

⁶ Batha, E., & Thomson Reuters Foundation. (2020). Coronavirus could put 4 million girls at risk of child marriage. Retrieved from <https://www.weforum.org/agenda/2020/05/coronavirus-early-child-marriage-covid-19-pandemic>

⁷ Covid-19 lockdown: Police receive 87 000 gender-based violence calls. (2020, April 3). Retrieved from <https://www.power987.co.za/news/covid-19-lockdown-police-receive-87-000-gender-based-violence-calls>

discussions for constitutional reform have been ongoing in Lesotho as part of the SADC-mediated political negotiations in the country. Lawmakers and activists can use the constitution-making process to ensure stronger protections for women and girls, including the removal of provisions that promote discrimination and harmful cultural practices.



Comoros promulgated a new constitution in 2018 (mentioned here because this is the first time the Barometer has incorporated Comoros since it joined SADC in 2017). The Constitution prohibits gender-based discrimination. However, most women do not yet enjoy these enshrined rights. For example, reports indicate village leaders and families continue to settle rape cases using traditional approaches, and they do not bring such cases to, or report them within, the formal criminal justice system.⁸



On 31 December 2019, **Zimbabwe** gazetted a constitutional amendment (Constitutional Amendment Bill Number 2) that sparked controversy, especially because it seeks to reverse many positive provisions in the current Constitution (2013). As a result, the negative provisions in the proposed bill have overshadowed the positive ones. Its positive measures include the extension a quota that ensures at least 60 women MPs in the National Assembly for another 10 years. Women MPs in the country, including those who take part thanks to this quota, have been instrumental in fighting for the rights of women and girls.

Female MPs have been particularly vocal in calling for legislation to outlaw child marriage. They have also been at the forefront of explaining the civil partnership clause in section 40 of the 2019 Marriage Bill. Religious Zimbabweans and some women's rights NGOs viewed it negatively and saw it as promoting "small houses."⁹ However, female MPs such as Priscilla Misihairabwi-Mushonga have been out front in explaining the clause to both fellow parliamentarians and members of the public, including its benefits to

Zimbabwean women, many of whom are in such partnerships. A major benefit of civil partnership would be that at the dissolution of a partnership, the law would treat the property of the civil partners the same way it treats the property of legally married couples. Currently, the law does not recognise such a partnership.



Even though **South Africa** prohibits child marriage, legislative provisions and inconsistencies about it remain.

Whilst the legal age of marriage is 18, exceptions still exist. For example, a minor can get married with the consent of his or her parents. In August 2019, the South African Law Reform Commission (SALRC) began an investigation into a single marriage statute. It noted discrepancies regarding the legal age of marriage in the three marriage statutes, namely: the Marriage Act, the Recognition of Customary Marriages, and the Civil Union Act. The Commission has solicited public views about whether South Africa should "comply with international and regional instruments to set a uniform minimum age for marriage of 18 without any exceptions for third party consent by parents, courts, or any other official to prevent children being married or to enter into unmarried intimate relationships."

Several SADC countries still need to reform their laws to criminalise marital rape. Most of the countries that outlaw marital rape in legislation rely on customary law to support it, noting that once a family pays bride price, a woman must always consent to sexual intercourse with her husband. SADC countries still using this customary law approach in 2020 include Botswana, the Democratic Republic of the Congo (DRC), and Madagascar. Tanzania clearly excludes marital rape as a criminal offence and, in Malawi, the courts have ruled that the law only considers it an offence if a couple has separated.

Coupled with legislative enactments is the need for governments to raise awareness about available laws, as well as the role of society, families and communities in protecting women and girls against harmful cultural practices.

⁸ Comoros - United States Department of State. (2020, March 11). Retrieved from <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/comoros>

⁹ A term used in Zimbabwe to refer to women in extramarital relationships with married men.

¹⁰ South African Law Reform Commission (2019), Issue Paper 35: Project 144: Investigation into a Single Marriage Statute: Questions, South African Law Reform Commission, South African Law Reform Commission (2019), Issue Paper 35: Project 144: Investigation into a Single Marriage Statute: Questions, South African Law Reform Commission (2019).

Table 7.2: Key gender provisions of SADC Constitutions

Country/Constitution	Angola	Botswana	Comoros	DRC	Eswatini	Lesotho	Madagascar
Provides for non-discrimination generally	Yes, Article 23	Yes, Section 15	Yes, Article 2	Yes, Articles 11, 12 and 13	Yes, Section 20	Yes, Chapter II, Sections 1 and 18	Yes, Article 8
Provides for non-discrimination based on sex specifically	Yes, Article 21	Yes, Section 3	Yes, Article 2	Yes, Articles 14, 36 and 45	Yes, Section 20	Yes, Section 18	Yes
Provides for non-discrimination on the basis of sex and others e.g. marital status, pregnancy	Yes, Article 21	Yes, Section 15	Yes, Article 2 (sex only)	Yes, Articles 40	Yes, Section 20 (2)	Yes, Section 18	Yes, Article 8
Provides for the promotion of gender equality	Yes, Articles 21 and 35	No	Yes, Articles 3, 34, 38, 61	Yes, Article 14	Yes, Section 28	Yes, Chapter III, Sections 26 and 30	Yes
Has other provisions that relate to gender equality	Yes, Articles 36 and 77	No	Yes, Articles 34, 38, 61	Yes, Article 16	Yes, Section 28	Yes, Section 26	Yes, Article 17
Has claw back clauses	No	Yes, Section 15	No	No	Yes, Section 20	Yes, Section 18	No
Addresses contradictions between the constitution, laws and practices	Yes, Article 239	No	No	No	Yes, Section 2 and Article 20	Yes, Section 18	Yes, Article 160

Table 7.2 provides a synopsis of some of the key constitutional provisions on gender in all SADC countries.

Of particular note:

- 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 others, e.g. marital status and pregnancy.
- The constitutions of Botswana and Seychelles do not provide for the promotion of gender equality.

Malawi	Mauritius	Mozambique	Namibia	Seychelles	South Africa	Tanzania	Zambia	Zimbabwe
Yes, Section 20	Yes, Article 3	Yes, Article 35	Yes, Article 10	Yes, Article 27	Yes, Chapter 1	Yes, Article 13	Yes, Article 23	Equality and Non-Discrimination Section in the Declaration of Rights
Yes, Article 20	Yes, Section 16	Yes, Article 36	Yes, Article 10	No	Yes, Chapter 2, Section 9	Yes, Article 9	Yes, Article 23	Section 23, Declaration of Rights
Yes, Sections 13 and 20	Yes, Section 16	Yes, Article 39	Yes, Article 14	Yes, Article 30	Yes, Section 9	Yes, Article 16	Yes, Article 23	Section 23, Declaration of Rights
Yes, Article 13	Yes, Article 16	Yes, Article 120	Yes, Article 95	No	Yes, Section 9	Yes, Article 66	Yes, 231	Gender equality a Founding Value and Principles; gender balance a National Objective
Yes, Sections 19 and 18	No	Yes, decriminalisation of homosexuality and termination of pregnancy	Yes, Article 8	No	Yes, Section 12	Yes, Article 13	Yes, Articles 45, 69 and 231	The Declaration of Rights in the new Constitution has been expanded to include equality and non-discrimination
Yes, Section 26	Yes, Section 16	No	No	No	No	No	No	The new Constitution invalidates customary law and practices that infringe on women's rights
Yes, Article 5	No	Yes, Article 143	Yes, Article 19	Yes, Article 5	Yes, Chapter 7, Sections 15 and 30	Yes, Article 30	Yes, Article 1(1)	Lawmakers began a law review and reform process following the 2013 elections, but progress has been slow in achieving alignment

Source: Gender Links.

Village leaders and families continue to settle rape cases using traditional approaches in Comoros

Harmful practices discourse analysis in Namibia

Media monitoring researchers in Namibia tracked political discourse on harmful cultural practices and their impact on enjoyment of SRHR during the period under review. In particular, researchers looked at the objectification of young girls during the festival of *Olufuko*, which its supporters argue represents a “means of observing and preserving culture.”

To many others, the festival is controversial, like Eswatini’s reed dance, which has been a point of contention in the region for years. *Olufuko* is an Ovambo word meaning “wedding” or “to be wed.” As part of the festival, girls as young as 14 (some literature claim girls can be as young as 12) participate in the traditional initiation ceremony. Its proponents claim it prepares girls for marriage, childbearing, and caring for a family. Participants view these girls as “brides-in-waiting.”

The festival lasts for seven days and, during this time, the young female participants regularly dance for local men, who then adorn those girls whom they wish to have as a bride with jewellery, such as bracelets. Both single and married men reportedly participate in the festival. The gifts these men supply serve as expressions of intent to secure the young girl of their choice, highlighting a problematic objectification of young children. Researchers found that girls who refuse to take part have been threatened and told their parents would suffer harm. Key human rights organisations, such as NamRights and various churches, have rejected and condemned the practice.

📰 FESTIVAL BRANDED A 'STRIP SHOW' FOR RICH MEN

NamRights to sue over Olufuko

CATHERINE GASHMAN
The human rights organisation says the cultural festival is more like a strip show where young girls are put on display for men with money.

NamRights is preparing a lawsuit to stop the Olufuko festival and other cultural practices that it considers harmful sexual initiations. It intends to lodge the legal challenge before the end of the year, and argues Olufuko is unconstitutional because it seeks to convert young children into adult child-bearing women.

It says the festival deprives and robs children of their normal and natural childhood (in which mental and physical development, and that it is simply illegal, both in terms of international, customary, humanitarian and human rights laws.

NamRights says the Olufuko festival is also contrary to Namibia's constitution, civil, cultural, political and social customs and practices, and parades poor, bare-breasted girls in public without their consent to attract economic investments for affluent families.

The organisation says further that the festival is criminal enterprise, which constitutes indecent exposure, and holds nothing positive in terms of culture and tradition.



📰 CONTINUED ON PAGE 2 PENDING BATTLE: NamRights is preparing a lawsuit to stop the annual Olufuko festival, with aims

NamRights, a Namibian human rights organisation, has condemned the practice of *Olufuko* and took a case in 2018 to the country's highest court.

Photo courtesy of Namibia Sun

Former President Sam Nujoma approved the resuscitation of the practice of *Olufuko* in 2012. Namibians had not widely practiced it for many years. In 2019, Namibia's Supreme Court dismissed a challenge brought forward by NamRights on the basis that the human rights agency did not have locus standi, or the proper standing to bring the challenge to court.

This underscores the need for provisions in Namibia's Constitution and other laws to ensure that civil society organisations and agencies, and other individuals can have the right to bring such cases linked to the public interest before the courts without limitations. Many expect an appeal in future linked to this case.

Unfortunately, the patronage of the festival by the former president means the practice has gained wider support within government and the ruling South West Africa People's Organisation (SWAPO) party. For example, Sophia Shaningwa, minister of urban development, officially opened the an *Olufuko* festival at Outapi in the Omusati Region in August 2016. Instead of using her platform to call attention to the harmful effects of the practice on young girls, Shaningwa said she supported the practice, claiming that it prepares girls for marriage by teaching them various skills such as pounding maize and preparing traditional beverages for the men - what she views as elements of the country's cultural values.

Civil society organisations and the Namibian media must continue to call out the practice and the political figures who support it, as it is clearly detrimental to girls' development and wellbeing. Litigation should also continue to push the courts to see their role in protecting the rights of girl children. Positive court decisions that recognise the rights of women and girls will oblige lawmakers to repeal the laws that promote these harmful practices.¹¹

¹¹ Source: GenderLinks, Namibia Political Discourse Analysis: GMPS Qualitative Analysis: Sexual and Reproductive Health and Rights (SRHR) 2020

Discriminatory legislation



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

In July 2019, the South African Cabinet submitted the Recognition of Customary Marriages Amendment Bill to Parliament for debate. It sought to amend Section 7 (1) of the 1998 Recognition of Customary Marriages Act by further regulating the proprietary consequences of customary marriages before the commencement of that Act. This followed a 2017 Constitutional Court judgment, which ordered Parliament to amend the Act by 30 November 2019 to remove provisions that unfairly discriminated against women who had entered polygamous customary marriages before 1998.¹² Parliament failed to amend the Act by the set date and consequently the interim order of the Constitutional Court became final on 30 November 2019.

A new law in South Africa gives spouses joint and equal ownership and management of property

The earlier Act gave husbands the rights of ownership and control over marital property while wives had no such powers. The new law means that spouses in both monogamous and polygamous customary marriages have joint and equal ownership and management of, and control over, property.¹³

Access to justice



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:

- 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;

¹² Ramuhovhi and Others v President of the Republic of South Africa and Others [2017] ZACC 41

¹³ Memorandum on the Objects of the Recognition of Customary Marriages Amendment Bill, 2019 (2019).

- 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 justice 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.”¹⁴

Access to justice for women, however, remains a challenge in the region for several reasons. These include the physical inaccessibility of the courts, in particular superior courts, which are centrally located in major cities and therefore inaccessible for women in rural areas. South Africa, with 14 provincial divisions of its High Court,

has the most high courts in the region, but even these operate only in major urban areas.

Customary courts, which exist closer to the people, remain the most accessible for many women. However, women also face challenges in utilising these courts, including discriminatory customary laws and practices, which, for example, prohibit them from accessing courts without a male chaperone. The customary court structures and models in the region therefore need to be modernised to ensure full and equal accessibility for women.¹⁵

Legal representation is also expensive, making it difficult for many women to hire lawyers. Yet most SADC countries do not have viable state legal aid systems to ensure equal access to quality legal representation. Legal aid provision must be a priority service for many governments in the region if they want to improve women's access to justice.

In the context of COVID-19, due to the limited operations of the courts, many women faced challenges in accessing justice, in particular those who experienced domestic violence. Most jurisdictions did not initially classify legal services as essential during the lockdowns, making it difficult for women to access lawyers or NGOs that provide these services.



Women discuss issues of inheritance in Siloe, Lesotho, during the 16 Days of Activism campaign in 2019. Photo: Ntolo Lekau

¹⁴ Maregere, T. (2018). Justice in Transition and the Complexities of Access. African Centre for the Constructive Resolution of Disputes.

¹⁵ Despite many South Africans recognising the need for traditional courts as a way of improving access to justice, the 2017 Traditional Courts Bill has faced resistance because of its failure to protect the fundamental rights of rural people, including rural women.

Marriage and family rights



Article 8: Marriage and family rights

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.
-

Polygamy

The practice of polygamy continues to present challenges for many women in the region and it persists despite international acknowledgment that polygamy has a negative impact on women's rights and wellbeing. This includes HIV and AIDS exposure, as polygamous marriages expose women to concurrent sexual partner alliances.¹⁶

The economic empowerment of women remains paramount as it ensures that challenging economic circumstances do not force women into polygamous marriages. It also helps in ensuring that women in untenable polygamous marriages can leave them without worrying about their economic wellbeing and that of their children.

¹⁶ Reniers, G., & Watkins, S. (2010). Polygyny and the spread of HIV in sub-Saharan Africa: a case of benign concurrency. *Aids*, 24(2), 299-307. doi: 10.1097/qad.0b013e328333af03



Mozambican woman gets new lease on life after leaving polygamous marriage



Women of Gaza Mandlakazi market trained by GL. Photo: GL Mozambique

Research shows that there is a considerable mental health burden amongst women in polygamous marriages. These mental health problems often include somatisation, obsessive-compulsive disorder, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism.

Nora António Luís, a mother of four from Gaza-Mandlakazi in Mozambique, has experienced some of these first-hand. She gave birth to her children while in a polygamous marriage before she finally separated from her husband in 2011.

In a Gender Links "I" Story, Luís recounted that, during her marriage, she suffered from psychological violence because her husband had two other wives. Luís lived in the same home with the other wives until she gathered the courage to take her children and leave the marriage.

After she left, her husband persuaded her to come back, but she preferred to stay away

from the marriage, and she remains happy with her decision. Her three older children have finished high school and her youngest, 16, still attends school.

Luís operates a vegetable stall at an informal market. After leaving her husband in 2013, she attended a gender-based entrepreneurship and violence training workshop, which she says provided many benefits. After the training, Luís learned how to prepare a budget, and save her earnings. Eventually she left the informal market to become a wholesaler in the central market in her town.

According to Luís, she feels "like a victorious woman" because her decision to leave the polygamous marriage improved her mental wellbeing and gave her the courage and determination to learn new things and excel in her business. Polygamous marriages often prevent women from partaking in such opportunities, ensuring they have lower economic status and forcing them to share their few available resources amongst the large families.

Since the training and improvement in her business, Luís has managed to make significant profits. She installed electricity in her house, where she lives with her children, bought a freezer and a TV, and paid the school fees for her four children. She also bought a piece of land, on which she intends to build a new house. She says she feels "self-sufficient and free to do what she wants." She is happy she has gained back her dignity and shaken off the burden of polygamy.

Source: Gender Links "I" Stories:
<https://genderlinks.org.za/stories/after-we-broke-up-my-husband-asked-me-to-return-and-i-refused/>

Advocacy to stop harmful practices

Members of civil society organisations taking part in a harmful practices campaign in Zimbabwe say they have noticed a direct link between COVID-19-induced poverty and harmful cultural practices in the country. Zimbabwean women who depend on the informal sector for their livelihoods have been experiencing significant financial challenges due to the prolonged lockdown, which legislators first imposed on 27 March 2020.

Women's rights advocates say the ripple effects from this include increases in child marriage in a country with a high prevalence of them even before the pandemic.¹⁷ Because of the limited operation and movement of civil society teams, much of this has occurred away from public glare. Thus, CSOs have created a new campaign to push for an end to child marriages.

As part of this campaign, Zimbabwe's women's rights movement has engaged President Emmerson Mnangagwa and presented a list of "key asks," including calling for the finalisation of the Marriages Bill, which would domesticate Zimbabwe's international commitments to

gender equality and set the legal age of marriage at 18 years. Past advocacy of this sort contributed to the initial drafting of the Marriage Bill, which has provisions on eradication of child marriages and enshrines commitments to eliminate child, early, and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals (SDGs).

Lawmakers have since gazetted the bill and given it a second reading in Parliament. It is set to continue to the committee stage of Parliament. Women's rights groups must remain vigilant to ensure that lawmakers do not dilute the law before they pass it.¹⁸

CSOs have created a new campaign to push for an end to child marriages

Child marriages



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

CEDAW, Article 16(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

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.

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.

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

¹⁷ 32% of girls in Zimbabwe are married before the age of 18 and 4% are married before their 15th birthday.

¹⁸ Source: Gender Links, Zimbabwe Report for the Analysis of SRHR Campaigns.

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

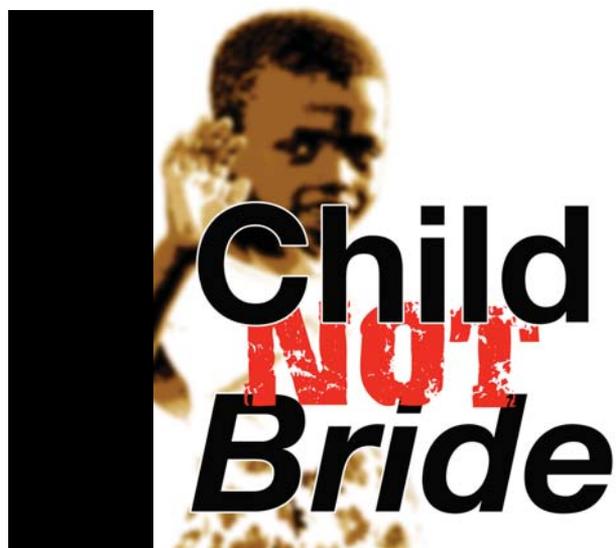
SADC UN CSW RESOLUTION calls upon all governments to enact and intensify the implementation of laws, policies and strategies to eliminate all forms of gender-based violence and discrimination against women and girls in the public and private spheres and harmful practices, such as child, early and forced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

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.”¹⁹ The same Model Law defines a child as any person under the age of 18 years in line with other international human rights instruments.²⁰

Child marriages directly affect children's sexual and reproductive health and rights, including exposing children to HIV and AIDS infection and impeding their ability to access safe abortion. In South Africa and other countries in the region, practices such as *ukuthwala*²¹, which encourage child marriage, have been justified as customary by some quarters as part of tradition and custom.²¹ At a time when the region is struggling to end child marriages, decision-makers should condemn any additional justifications for such harmful practices.

In May 2020, three men from Binga in Matabeleland North, Zimbabwe, invoked the harmful *ukuthwala* practice, also known as *musengabere* in Zimbabwe, and kidnapped a 17-year-old girl. One of the men then raped the young girl and attempted to claim her as his wife, including by introducing her to his family. Thankfully, police arrested the three men and charged them with rape.²³

It is important that people in positions of power also discourage marriages between children as they deprive children of their rights to education, often condemning them and their own children to a life of poverty. In May 2020, the Government of South Africa announced a plan to overhaul the country's marriage law regime, stating that “the current legislation does not regulate some religious marriages such as the Hindu, Muslim and other customary marriages that are practised in some African or royal families.”²⁴ This is a welcome development given that it is often in the context of religious, customary, and royal traditions that arranged or forced marriages continue in the region, including forcing marriages between children. Often this occurs in the context of maintaining royal alliances and blood, or ensuring that children marry within the same religious sect.



¹⁹ SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage, s 2.

²⁰ Article 1 of the Convention on the Rights of the Child defines a child as every human being below the age of 18 years

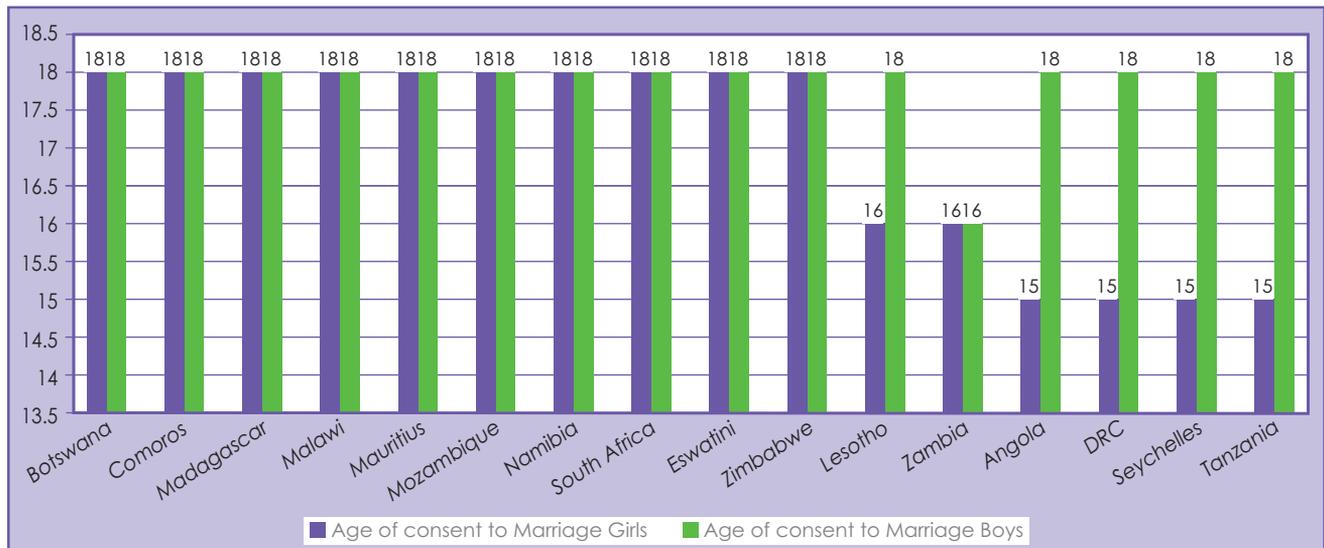
²¹ Marriage by kidnapping/abducting a girl and then forcing her into marriage.

²² Social Institutions and Gender Index, 2019

²³ SHOCK as Binga Trio invoke Ancient 'Musengabere' Custom, Arrested for Rape.' (2020, May 12). Zwnews.

²⁴ South Africa is changing its marriage laws'. (2020, May 12). BusinessTech

Figure 7.1: Age of consent to marriage for girls and boys by country



Source: Gender Links.

Figure 7.1 shows that most SADC countries have set the age of consent to marriage at 18, which aligns to the provisions in the SADC Gender Protocol. Six countries - Angola, DRC, Lesotho, Seychelles, Tanzania, and Zambia - have lower ages of consent for either girls, boys, or both.



In 2019, the **Tanzanian** Court of Appeal upheld a 2016 High Court judgment outlawing child marriage and declaring it unconstitutional.²⁵ The government had appealed the earlier decision that outlawed marriage before the age of 18 under Islamic and customary laws. In dismissing the government's appeal, the Court of Appeal ordered the Government of Tanzania to uphold the judgment of the High Court and amend the offending sections of the country's Law of Marriage Act.²⁶

The SADC Gender Protocol obliges state parties to introduce and support gender sensitisation

and public awareness programmes aimed at changing behaviours and eradicating GBV.²⁷

The intersection between tradition, religion, and politics continues to be a stumbling block in eliminating child marriage



Zambia has accelerated campaigns to end child marriages, as highlighted in a case study which saw senior government officials taking the lead on this issue.

²⁵ The Attorney General v Rebeca Z. Gyumi, Civil Appeal Number 204 of 2017 (October 2019)

²⁶ Tanzania: Celebrating ending child marriages judgement. (n.d.). Retrieved from <https://genderlinks.org.za/news/tanzania-celebrating-judgement-on-ending-child-marriages>

²⁷ SADC Protocol on Gender and Development, Article 21 (2)



Zambia: Leaders do their part to end child marriage



A Zambian community comes together to protest child marriage in October 2019.

Photo: Albert Ngosa

The Zambian government has been at the forefront of fighting child marriage in the country. However, despite its efforts, Zambia still experiences high levels of child marriage. According to Girls Not Brides “31% of Zambian girls are married before their 18th birthday and 6% are married before the age of 15.”²⁸ Take Bridget Tendwa, of Kawambwa District in Luapula Province, for example. After getting married at the age of 16, her marriage later failed, which proved to be a blessing in disguise for Tendwa.

Like many girls in her situation, Tendwa decided to go back to school and she is currently studying to become a teacher. In 2016, the Ministry of Education found that, of the 11 000 girls who fell pregnant or were married, half went back to school. Unfortunately, many others face a lifetime of poverty and abuse. Early marriage for them means that they cannot proceed with their education and will likely not have adequate resources to look after their families and children, perpetuating a cycle of poverty.

Activists have commended the President and First Lady for playing a leading role in ending child marriage. This includes spearheading a campaign to ensure that Zambian girls get the same educational opportunities as boys. President Edgar Lungu is also a champion of the campaign to end child marriage in Africa, working closely with the African Union to end the scourge.

Meanwhile, First Lady Esther Lungu works for the same aim through the foundation that bears her name. She has teamed up with traditional leaders, such as Chief Mazimawe of the Ngoni people in Eastern Province, and other stakeholders to help fight the scourge. Such open efforts by national leaders to end child marriage are critical in sending a clear message to citizens about the dangers of the practice and the consequences to adults who marry or aid in the marriage of children.

Source: Gender Links News Service
'Married off at 16' available at:
<https://genderlinks.org.za/news/zambiamarried-off-at-16/>
(accessed 27 April 2020)

²⁸ Girls Not Brides. (2018, December 16). Zambia - Child Marriage Around the World. Girls Not Brides. Retrieved from <https://www.girlsnotbrides.org/child-marriage/zambia/>

Strengthening laws and policies on child marriage in SADC



Zimbabwe gazetted its Marriage Bill on 19 July 2019. The Bill seeks to harmonise the country's different marriage regimes and laws and ensure that one law governs all marriages. Significant issues covered by the Bill include the recognition of customary law unions, including registration of the unions, recognition of civil partnerships for purposes of sharing property at dissolution, and the prohibition of child marriages. Currently, Zimbabwe has different marriage regimes, i.e. civil marriages, registered customary marriages, and unregistered customary law unions.²⁹ The regimes come with differentiated, hierarchical, and often discriminatory rights during a marriage, at divorce, and in terms of inheritance, with civil marriage having the best bundle of rights, and the unregistered customary law union, the lowest. The Bill seeks to domesticate the SADC Model Law on Child Marriages by ending all forms of child marriage. It also looks to align with the provisions of the 2013 Constitution by addressing gender-based discrimination, aligning customary law with the constitution and ending child marriages.



Zimbabwean citizens hold up a UNICEF poster advocating against GBV and gender discrimination. Many religious groups continue to push the Zimbabwean government to perpetuate gender inequalities.

Photo courtesy of UNICEF Zimbabwe

The intersection between tradition, religion, and politics continues to be a stumbling block in eliminating child marriage and other harmful cultural practices in Zimbabwe and elsewhere in the region.³⁰ Often the same patriarchal systems and individuals that drive traditional harmful practices such as child marriage are key decision-makers in religious settings and therefore make similar decisions and dictations in both settings.

Politics in Zimbabwe, especially by the ruling party, has thrived thanks to its alignment with a coalition of traditional leaders and religious sects that influence the vote of the citizens they lead. As a result, these same groups often negatively influence policy- and law-making at government level on harmful cultural and religious practices. For example, religious groups such as the Johane Masowe and Johane Marange apostolic sects have managed to create strong ties with the government.³¹ The apostolic sects in Zimbabwe represents one of the largest religious groups, with an estimated membership of 34% of the country's population (ZimStats, 2011), ensuring they will remain a powerful constituency.³² Gender advocates should consider ways to work with these groups as part of a strategy to tackle harmful practices.



To date, **Mauritius** has not signed the SADC Protocol on Gender and Development. However, in September 2019, its Cabinet approved the introduction of the Children's Bill in Parliament for debate and enactment. The enactment of the Children's Bill aims to address the issue of child marriages in the country.

²⁹ Customary law unions are currently not recognised as marriages except for specific limited purposes, and in particular the recognition of the rights of children born out of such unions.

³⁰ Chamisa, M., (2019). Religious Affiliation - Child Marriages Nexus in Zimbabwe: A Case of Marange. *Dynamic Research Journals: Journal for Economics and Finance*, 4(2), 38-44.

³¹ Chamisa, M., (2019). Religious Affiliation - Child Marriages Nexus in Zimbabwe: A Case of Marange. *Dynamic Research Journals: Journal for Economics and Finance*, 4(2), 38-44.

³² Chamisa, M., (2019). Religious Affiliation - Child Marriages Nexus in Zimbabwe: A Case of Marange. *Dynamic Research Journals: Journal for Economics and Finance*, 4(2), 38-44.



Mauritius: Activists seize the momentum on child marriages

Change may be coming for children in Mauritius. According to its government, the new Children's Bill looks to "repeal the Child Protection Act and replace it with a more appropriate, comprehensive and modern legislative framework."

The aim is "to better protect children and to give better effect to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child."³³

Following the introduction of the Bill, civil society organisations in Mauritius formed a consortium called Kolektif Drwa Imin (KDI) that includes Gender Links, Pils, Young Queer Alliance, Collectif Arc en Ciel, and Kolektif Drwa Zanfan Morisien. Their aim is to lobby government for a more comprehensive act that addresses all the country's critical children's rights issues.

The group wants the government, using its new bill, to repeal Section 145 of the Civil Code, which allows children as young as 16 to be married with parental consent. The other issues they want addressed include:

- Increase minimum age of criminal responsibility (MACR) from 12 to 16, with the upper limit at 18 years;
- Include Lesbian, Gay, Bisexual, Trans, and Intersex (LGBTI) citizens in the non-discrimination principle; and



The Kolektif Drwa Imin, a group that advocates for children's rights in Mauritius, taking part in a children's activity day in November 2016. Photo courtesy of DefiMedia

- Include the right to health for children and young people.

As part of their lobbying and advocacy, the group sent a letter to the prime minister's office, the attorney general, minister of gender and all parliamentarians underlining the positive provisions in the Children's Bill which stakeholders presented to Parliament on 17 September 2019. The letter also included recommendations on the issues stated above, which the groups requested be included the Bill. The coalition of groups also held a press conference to highlight these issues.

The Bill is awaiting its third reading in Parliament and the group of organisations is hopeful that government will incorporate their issues into it. Once lawmakers pass the Bill civil society groups in Mauritius intend to reignite their lobby efforts to convince government to ratify the revised SADC Protocol on Gender and Development.

Source: GL Mauritius country manager, Anushka Virahsawmy

³³ Pep, L. E. (2019, September 30). The Children's Bill. Retrieved from <http://www.mauritiustimes.com/mt/the-childrens-bill>

Persons with disabilities



Article 9: Persons with disabilities: 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.

Seven SDG targets specifically mention persons with disabilities (education, accessible schools, employment, accessible public spaces and transport, empowerment and inclusion, and data disaggregation).³⁴

Many programmes and governments continue to exclude people with disabilities from enjoying their SRHR or accessing information on these topics that is relevant for them. This presents an issue for stakeholders in the region to address, because “persons with disabilities have the same sexual and reproductive health (SRH) needs as other people.”³⁵

Because of this, they should not face barriers to information and services, including information and services on family planning, maternal health, and HIV and AIDS.

The COVID-19 pandemic brought this issue into focus, given that many people with disabilities required special care during the pandemic and in lockdown. Thus, targeting them with such information in the context of COVID-19 has been even more critical although, as noted earlier, the pandemic has increasingly made information and services on SRHR generally inaccessible to all.³⁶



The DRC is on track to pass its Disability Rights Bill into law in 2020.

Activists expect the law to improve the lives of millions of people living with disabilities in the country.³⁷ The bill will address the discrimination and harmful cultural practices directed specifically at women and children with disabilities. Children with disabilities in the DRC have often been accused of witchcraft. The new law is a critical piece of legislation aimed at addressing this issue and providing these children with protection.³⁸



Women attending the launch of the Barometer in January 2020 in Palapye, Botswana, where activists also highlighted the challenges faced by women with disabilities. Photo: Keletso Serowe

³⁴ United Nations Convention on the Rights of Persons with Disabilities.

³⁵ Promoting sexual and reproductive health for persons with disabilities. (2020, January 16). Retrieved from

³⁶ <https://www.who.int/reproductivehealth/publications/general/9789241598682/en>

³⁷ Access to SRHR services impacted by COVID-19 pandemic. (2020). Retrieved from <https://genderlinks.org.za/news/absence-of-srhr-services-may-trigger-health-crisis-for-women>

³⁸ Disability Rights Bill Offers Hope in Congo. (2020, May 30). Retrieved from <https://www.hrw.org/news/2020/03/11/disability-rights-bill-offers-hope-congo>

Hope for disabled Congolese kids accused of witchcraft | The Southern Times. (n.d.). Retrieved from <https://southernimesafrica.com/site/news/hope-for-disabled-congolese-kids-accused-of-witchcraft>

The rights of widows and widowers



Article 10: Widows' and widowers' rights

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.

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.



The **Comoros** is a culturally and traditionally matrilineal society and therefore property and inheritance rights favour its women. The result is that most inheritable property is in the hands of women.³⁹

Whilst this may look positive for women, gender activists view any practices that discriminate against either men or women based on gender as detrimental in the long term. Legislators should address these matrilineal property and inheritance practices in the Comoros constitution to remove gender-based discrimination.

Most inheritable
property in
Comoros is in the
hands of its women

Marital rape



Activists celebrated the passing of the Sexual and Domestic Violence Act in 2018 in **Eswatini** as a landmark development in the country. However, the law has seen significant resistance from men and traditionalists, with most disagreeing with its criminalisation of marital rape. These men share the same beliefs as Bongani 'S'gcokosiyancinca'

Dlamini, who has said that when a man asks for a woman's hand in marriage the traditional way, the woman must be submissive, forfeit her rights and only refuse sexual intercourse if she is ill.⁴⁰ Some MPs petitioned Parliament to review the Act, although they later withdrew their request.⁴¹

Such attitudes deter women from reporting cases of marital rape even when the law is on their side. In addition, women fear being ostracised by friends, family, and religious communities, which is why few women report instances of marital rape in the region. In Zimbabwe, women's

³⁹ Comoros - United States Department of State. (2020, March 11). Retrieved from <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/comoros>

⁴⁰ Hlatshwayo, S. [n.d.]. Over 400 SODV Cases Reported in 8 Months'. Times of Swaziland. Retrieved from <http://www.times.co.sz/news/123699-over-400-sodv-cases-reported-in-8-months.html>

⁴¹ Mdululi, M. (2019). SODV Act Petition Withdrawn'. The Observer. Retrieved from <http://new.observer.org.sz/details.php?id=10603>

rights activists have reported that “the majority of women suffer in silence [because] the way our society is structured... makes it harder to discuss these issues openly.”⁴²



Men and women discuss harmful traditional practices in Eswatini in 2019.
Photo: Thandokuhle Dlamini

Women's rights activists worry that the COVID-19 pandemic has exacerbated this issue as SADC women suffer in confinement under lockdown. Marital rape cases have likely increased during this period, with no immediate help or recourse for women.

Despite the above-noted challenges, the reporting of the first marital rape case in Eswatini in January 2020 marks a significant step toward stemming the scourge of marital rape. Police arrested a 34-year-old man, Nhlanhla Dlamini, for marital rape: the first instance of this in the country following the passing of its Sexual Offences and Domestic Violence Act.⁴³

Female genital mutilation



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

 **Tanzania** has the highest number of FGM cases in Southern Africa. The harmful practice remains common in several communities in the country. Activists worry that some Tanzanian communities increasingly seem to be performing FGM on babies. One in ten women in Tanzania (aged 15-49) has experienced FGM. Of these, 35% were mutilated before the age of one. However, the practice has been declining thanks to advocacy and awareness-raising from government, civil society, and development partners. Some of their interventions include working with peer educators to educate girls and communities about the many dangers associated with FGM. Because the practice provides a needed source of income for those who perform it, eliminating FGM has taken longer in a country where many live in impoverished conditions. Providing alter-

native sources of income remains an important way to ensure these communities eliminate the practice once and for all. Organisations such as Plan International and Child Dignity Forum in Tanzania have been leading these efforts.⁴⁴

Few legal and policy interventions exist to protect women and girls from FGM in other countries of the region. Emerging evidence in Zimbabwe suggests that the practise may be more widespread in other countries of the region than is generally believed.

⁴² Mbanje, P. (2009). Spousal rape remains under-reported. *Newsday*. Retrieved from <https://www.newsday.co.zw/2019/12/spousal-rape-remains-under-reported>

⁴³ First arrest puts marital rape in spotlight in Eswatini. (2020). *Daily Monitor*. Retrieved from <https://www.monitor.co.ug/News/World/First-arrest-puts-marital-rape-spotlight-Eswatini/688340-5421376-ps86xbz/index.html>

⁴⁴ RIORDAN, L. (2020, February 4). Countering child marriage and FGM in Tanzania - International Cooperation Development European Commission. Retrieved from https://ec.europa.eu/international-partnerships/stories/countering-child-marriage-and-fgm-tanzania_en



Zimbabwe: Tackling the hidden scourge of FGM

Due to widespread belief that FGM does not occur in Zimbabwe, few women's rights organisations offer support to women and girls who experience FGM or, for that matter, spend their time demanding action from policymakers to address the problem. Beyond the broad legal and constitutional protection on gender equality, protection of women's rights, and the outlawing of harmful customary practices, including Section 80 (3) of the Constitution of Zimbabwe and its Domestic Violence Act, no explicit protections exist.

Recently, organisations such as Amakhosikazi Media have helped bring the issue to the fore and reignite debate about the practice in the country. The organisation has highlighted specific cases of girls who have experienced FGM in the country so these women can get much needed assistance. This included Thapelo Muleya, a 16-year-old from Binga who confirmed that the practice is prevalent in that area. She was subjected to FGM at age 15.

The death of a woman in 2016 after excessive bleeding following a botched FGM procedure showed that many routinely practice FGM in Binga. Police took the woman who performed the procedure to court and Zimbabwean media quoted the surprised local chief, who acknowledged the long-standing practice in his community:



Gago Sariya Muyinde (left) and Lebeka Munkuli of the BaFonga tribe in Binga, Zimbabwe in October 2015. FGM remains common in the community.
Photo courtesy of Chronicle Zimbabwe

"We are not sure how things went wrong considering the effectiveness of the method which has been part of us for generations. Maybe they cut off a wrong part I cannot say but I'm told it's before the courts now, which is very unfortunate. The practice of removing fibroids mostly done by grandmothers has helped married women who have trouble conceiving become pregnant."

This incorrect and misleading view on the part of the local leadership underscores the need for Zimbabwe's policymakers to both acknowledge the existence of the practice and disseminate information about its dangers in order to protect women and girls. In addition, government must create specific legislative and policy measures to protect women from FGM.

Source: Amakhosikazi Media, <http://www.amakhosikazimedia.org/index.php/news/109-female-genital-mutilation-still-a-big-problem-in-zimbabwe-s-rural-communities>

Government must create specific legislative and policy measures to protect women from FGM

Other harmful practices



The **Zimbabwe** Domestic Violence Act recognises the practice of fathers-in-law engaging in sexual intercourse with their newly married daughters-in-law as a form of domestic violence and a harmful cultural practice. Research shows that this practice is part of the Kalanga culture, a group largely found in Matabeleland South Province in Zimbabwe. Kalanga also live in north-eastern Botswana, in Gaza Province in Mozam-

bique, and in the Limpopo Province in South Africa. Following awareness-raising campaigns carried out by government and NGO staff, who recognised the practice's role in spreading STIs and HIV, it is believed that most Kalanga people no longer engage in this practice.⁴⁵ However, there is a need for governments in the region to continue monitoring communities and continue raising awareness about the harms associated with it.

Emerging harmful practices

Even as stakeholders and activists grapple with harmful practices that have affected the health and wellbeing of SADC women and girls for years, they must also address emerging ones such as skin lightening and bleaching, and vaginal tightening. Experts note that these practices increase the risk of getting cancer. Scientists have also linked skin lightening to organ failure.



Harmful skin lightening products remain readily available in formal and informal markets across SADC. Photo courtesy of Google

Yet despite this knowledge, harmful skin lightening products including creams, injections, and pills remain readily available in formal and informal markets. Traders sell them online and even ship them across borders and continents. SADC governments must therefore work to ensure restrictions in the sale and marketing of such products and provide information and education to women and girls about the dangers associated with them.

Vaginal tightening is also a growing harmful practice with women using creams, gels, laser procedures, traditional herbs, and even home remedies to achieve it. However, in many instances, these products and procedures are harmful.⁴⁷ Some of the dangers include vaginal scarring and burns and infection.⁴⁸ Women need more information about the dangers of such practices.

The World Health Organisation acknowledges that skin bleaching can cause liver and kidney damage, psychosis, brain damage in foetuses and cancer, noting that "beauty standards promoted by media, advertising and marketing reinforce the bias that lighter skin tone is more desirable than darker skin tone."⁴⁶

Harmful practices that negatively affect men and boys in Southern Africa also exist. This includes male initiation, an important event in many cultures as it supposedly marks the transition of a boy into a man, and often involves circumcision. Whilst many governments in the region

⁴⁵ The CSW SADC Resolution on HIV/AIDS acknowledged the role of harmful cultural practices in spreading HIV and AIDS amongst women and girls.

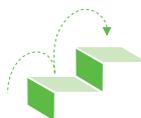
⁴⁶ World Health Organisation. (2019). Mercury in Skin Lightening Products. Geneva.

⁴⁷ Coyle Institute. (2020, April 27). Vaginal Tightening Gel: Miracle or Vaginal Health Hazard? Retrieved from <https://coyleinstitute.com/does-vaginal-tightening-gel-work>

⁴⁸ Vaginal Rejuvenation Surgery: Vaginoplasty Risks and Results. (n.d.). Retrieved from <https://www.isaps.org/procedures/body/vaginal-rejuvenation>

allow the practice, many boys die during initiation season due to complications during or after circumcision.⁴⁹ There is a need for more thorough

government monitoring of these practices, as well as involvement of medical personnel, to reduce the attendant harms.

A graphic consisting of three green 3D rectangular blocks arranged in a staircase pattern, with a dashed green arrow pointing upwards and to the right.

Next steps

- The 2019 Barometer called on courts to play a more pronounced role in challenging harmful practices that undermine constitutional provisions. In the same year, courts in South Africa and Tanzania played prominent roles in outlawing harmful cultural practices and declaring them unconstitutional. Governments should follow their lead and step up to play a stronger role in implementing these types of court rulings as well as enacting laws that recognise court rulings and protect their citizens from these harms.
- The Parliament of South Africa must still amend Section 7 of the Recognition of Customary Marriages Act to ensure that it aligns with the recent Constitutional Court ruling. This helps ensure laws sit in one place. Instead of cross-referencing the law to the Constitutional Court ruling, citizens and other actors can then easily refer to the amended Act when seeking enforcement.
- Civil society organisations and the Namibian media must continue to call out the practice of *Olufuko* and the political figures who support it, as it is clearly detrimental to girls' development and wellbeing.
- Most leaders continued to speak out against child marriage in line with the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage. However, lawmakers across SADC must get better at enforcing laws that protect children, taking a page from the Zambian President and First Lady.
- Governments and activists must invest more in education for men and boys, as well as traditional leaders, about the rights of children, girls and women, as well as the eradication of harmful cultural practices.
- Legislators should review customary court structures and models to ensure that women can access them and that they accommodate women, given their proximity to most women in the region, as opposed to formal courts in urban centres.
- Advocacy, education, and economic empowerment programmes should target older women, who often enforce harmful practices, such as FGM in Tanzania.
- Implement clear and unequivocal mandates for institutions that advance women's rights to address harmful practices, especially in the context of COVID-19 and the additional and new threats that women and girls face because of it. The declaration of the Commission for Gender Equality and other women and girls' rights organisations by the Government of South Africa as essential service providers during the COVID-19 lockdown provides one example of how governments should respond in such a crisis.
- SADC Governments must restrict the sale and marketing of skin lightening products given their negative impact on the health of women and girls. They should also provide information and education about the dangers of these products.

⁴⁹ Fihlani, P. (2019, December 20). South Africa initiation schools suspended after circumcision deaths. Retrieved from <https://www.bbc.com/news/world-africa-50838014>