



ANALYSIS OF THE LAWS OF TANZANIA MAINLAND AND ZANZIBAR FROM A GENDER PERSPECTIVE



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Analysis of the Laws of Tanzania Mainland and Zanzibar from a Gender Perspective

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TABLE OF CONTENTS

ABBREVIATIONS AND ACRONYMS	V		
ACKNOWLEDGMENTS	VII		
FOREWORD	VIII		
EXECUTIVE SUMMARY	1		
PART I:			
OVERVIEW OF STUDY BACKGROUND AND METHODOLOGY	3		
1.1 Background	4		
1.2. Methodology	6		
1.3. Structure of the Report	7		
PART II:			
OVERVIEW OF TANZANIA'S GLOBAL AND REGIONAL COMMITMENTS TO GENDER EQUALITY AND WOMEN'S EMPOWERMENT	8		
A. Tanzania's International Gender Equality and Women's Empowerment Commitments	9		
B. Tanzania's Regional Gender Equality and Women's Empowerment Commitments	13		
PART III:			
LEGAL CONTEXT AND THE JUDICIAL SYSTEM IN TANZANIA MAINLAND	17		
3.1. Introduction	18		
3.2. Legal Context	18		
3.3. Sources of Law	18		
3.4. Institutional Framework of the Judiciary	19		
3.4.1. Independence of the Judiciary	19		
3.4.2 The Judiciary and Gender	19		
3.5. The Judicial System in Tanzania	20		
		3.5.1. The Court System in Tanzania	20
PART IV:			
GENDER ANALYSIS OF NATIONAL LAWS IN TANZANIA MAINLAND	21		
4.1. Overview	22		
4.2. Analysis of National Laws in Tanzania Mainland	22		
4.2.1. The Constitution of the United Republic of Tanzania, 1977	22		
4.2.2. The Law of Marriage Act, 1971	24		
4.2.3. The Local Customary Law (Declaration) Order 1963	26		
4.2.4 The National Election Act, 2015	27		
4.2.5 The Political Parties (Amendment) Act, 2015	30		
4.2.6 Local Authorities (Elections) Act, 2015	31		
4.2.7 Local Government (District Authorities) Act, 2002	32		
4.2.8. The National Education Act, R.E 2002	33		
4.2.9. The Citizenship Act, R.E 2002	34		
4.2.10. Births and Deaths Registration Act, R.E 2002	35		
4.2.11. Employment and Labour Relations Act, 2004	35		
4.2.12. Penal Code 2002	36		
4.2.13. Persons with Disabilities Act, 2010	37		
PART V:			
THE LEGAL SYSTEM AND CONTEXT OF ZANZIBAR	38		

5.1. Introduction and Overview of the Legal System of Zanzibar	39	Showcasing Gender Equality Principles	50
5.2. Context of the Legal System of Zanzibar	39	PART VIII:	
5.3. THE JUDICIAL SYSTEM IN ZANZIBAR	39	RECOMMENDATIONS BASED ON LEGAL ANALYSIS	53
5.3.1. The Court System in Zanzibar	39	8.1. Overview	54
PART VI:		8.1.1. Laws and Provisions to be Revised/ Amended	54
GENDER ANALYSIS OF NATIONAL LAWS IN ZANZIBAR	41	8.1.2. Laws to be Repealed	58
6.1. Overview of the Analysis of National Laws in Zanzibar	42	8.1.3. Proposals for New Laws	58
6.2. The Zanzibar Constitution of 1984 with Amendments	42	8.1.4. Social Policy and Related Actions	59
6.3. Gender Analysis of Zanzibar National Laws	43	PART IX:	
6.3.1. The Zanzibar Elections Act, 2017	43	CONCLUSION	61
6.3.2. The Zanzibar Children’s Act, 2011	43	ANNEX 1:	
6.3.3. The Employment Act, 2005	44	SUMMARY OF RECOMMENDATIONS	63
6.3.4. The Penal Act, 2018	44	Laws of Tanzania Mainland to Revise or Amend	63
6.3.5. The Kadhi’s Court Act, 2017	45	Laws of Zanzibar to Revise or Amend	64
6.3.6. The Persons with Disabilities (Rights and Privileges) Act, 2006	45	Laws of Tanzania Mainland to Repeal	65
6.3.7. The Spinsters and Single Parent Children Protection Act 2005	46	Laws of Zanzibar to Repeal	65
PART VII:		Enact New Lawz: Tanzania Mainland	65
THE ROLE OF THE JUDICIARY IN THE ENFORCEMENT OF GENDER EQUALITY NORMS AND STANDARDS	48	Enact New Laws: Zanzibar	65
7.1. Overview of The Role of the Judiciary in the Enforcement of Gender Equality Norms and Standards	49	Policy and other Measures	66
7.2. Court of Appeal and High Court Cases		ANNEX 2:	
		LIST OF STAKEHOLDERS IN VALIDATION MEETING	67
		ANNEX 3:	
		TECHNICAL REFERENCE GROUP	69
		The Reference Group (institutions/organizations) includes Government, MPs and CSOs	69
		ANNEX 4:	

CHECKLIST FOR UNDERTAKING	
A LEGAL ANALYSIS FROM A GENDER PERSPECTIVE	70
ENDNOTES	75
LIST OF TABLES	

Table One: Summary of Obligations under CEDAW	10
Table Two: Summary of Obligations in the Maputo	

Protocol	14
Table Three: Gender Equality Rights and Relevant Articles in the Constitution of URT	22
Table Four: Gender Equality Rights and Relevant Articles in the Constitution of Zanzibar	42

ABBREVIATIONS AND ACRONYMS

ACHPR	African Charter on Human and People’s Rights
AU	African Union
BPfA	Beijing Platform for Action
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHRGG	Commission for Human Rights and Good Governance
CRC	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organizations
ELRA	Employment and Labour Relations Act
ESARO	East and Southern Africa Regional Office
FGM	Female Genital Mutilation
FYDP	Five-Year Development Plan III
GDP	Gross Domestic Product
GEWE	Gender Equality and Women’s Empowerment
GNI	Gross National Income
GR	General Recommendation
ILO	International Labour Organisation
LHRC	Legal and Human Rights Centre
LMA	Law of Marriage Act
Maputo Protocol	Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa
MCDGWC	Zanzibar Ministry of Community Development, Gender, Women and Children
MLHSD	Ministry of Lands, Housing and Human Settlements Development
MoCDGWSG	Ministry of Community Development, Gender, Women and Special Groups
MoCLA	Ministry of Constitution and Legal Affairs
NEEC	National Women’s Economic Empowerment Council

NSGD	The National Strategy for Gender Development
PMO-LYEPD	Prime Minister’s Office – Labour, Youth, Employment and Persons with Disability
PO-CLAPSGG	The President’s Office – Constitution, Legal Affairs, Public Service and Good Governance
RGoZ	Revolutionary Government of Zanzibar
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SHIVYAWATA	Tanzania Federation of Organizations of Persons with Disabilities
SIGI	Social Institutions and Gender Index
TAMWA	Tanzania Media Women’s Association
TANLAP	Tanzania Network for Legal Aid Providers
TAWJA	Tanzania Women Judges Association
TAWLA	Tanzania Women Lawyers Association
TDV 2025	Tanzania Development Vision 2025
TGNP	Tanzania Gender Networking Program
TLS	Tanganyika Law Society
ToR	Terms of Reference
TWPG	Tanzania Women Parliamentary Group
UCDW	Unpaid Care and Domestic Work
UN Women	United Nations Entity for Gender Equality and Women’s Empowerment
UNSDCF	UN Sustainable Development Cooperation Framework
UPR	Universal Periodic Review
URT	United Republic of Tanzania
UAWAZA	Association of Women Members of the Zanzibar House of Representatives
VAWC	Violence Against Women and Children
WEE	Women Economic Empowerment
WiLDAF	Women in Law and Development in Africa
WLAC	Women’s Legal Aid Clinic
ZAFELA	Zanzibar Female Lawyers Association
ZHoR	Zanzibar House of Representatives
ZLRC	Zanzibar Law Review Commission
ZLS	Zanzibar Law Society
ZLSC	Zanzibar Legal Services Centre

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Development, Gender, Women and Special Groups (MCDGWSG), the Ministry of Constitution and Legal Affairs (MoCLA) in Tanzania Mainland; the Zanzibar Ministry of Community Development, Gender, Women and Children (MCDGWC), The President's Office – Constitution, Legal Affairs, Public Service and Good Governance (PO-CLAPSGG) and the Zanzibar Law Review Commission for spearheading the analysis and for their valuable comments and technical inputs as part of the reference group. UN Women would like to extend sincere gratitude to all the reference group members for their critical role in the quality control of the analysis. They participated in meetings and guided the drafting of the report through their regular feedback and advice. The other members of the reference group included representatives of the Association of Women Members of the Zanzibar House of Representatives (UWAWAZA), Tanzania Women Parliamentary Group (TWPG), Zanzibar Female Lawyers Association (ZAFELA), Tanzania Media Women's Association (TAMWA), Msichana Initiative, Landesa and Tanzania Federation of Organizations of Persons with Disabilities (SHIVYAWATA).

FOREWORD

Lawful discrimination is a significant impediment to achieving gender equality. In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) laid out a blueprint for women's rights, including commitments to embody the principle of equality between men and women in law and practice. Yet discriminatory laws that deny equal rights to women hinder their full enjoyment of economic, social, cultural, civil and political rights.

Tanzania, along with many other countries, continues to uphold laws that formalize discrimination and benefit men rather than women. This includes, for example, the Local Customary Declaration Order GN 436, which does not recognize the right of the wife to matrimonial property and grants unequal property rights to male children over female. Factors such as culture and religion have contributed towards discriminative practices being viewed as normal or acceptable. At the heart of the gender-based discrimination that women and girls face every day lie discriminatory social norms, preconceived ideas, biased attitudes and harmful customary practices. Women and girls left behind by discriminatory laws are often permanently excluded from development benefits. This legal assessment and gender analysis thus not only takes into account the legal system and context of Zanzibar and Tanzania Mainland, but also analyses the judiciary's role in enforcing gender equality norms and standards.

The 2022 Social Institutions and Gender Index (SIGI) Report for Tanzania, indicates that discriminatory social institutions are rooted in and upheld by formal laws that establish unequal conditions for women and men. *“Ensuring that legal frameworks do not create inequalities between men and women and do not erect formal barriers to women's empowerment is therefore a fundamental prerequisite to addressing deeply entrenched discriminatory social norms”*¹. The SIGI report recommends legislative action to review

legal provisions related to access to agricultural land, inheritance, girl child marriage, violence against women and female genital mutilation (FGM).

In line with the ongoing commitment of UN Women and its Gender Equality and Women's Empowerment (GEWE) mandate, research was conducted to validate the legal assessment of discriminatory laws in Tanzania Mainland and Zanzibar through consultations with relevant stakeholders, validation of findings with a reference group and a nationwide consultative gathering. This legislative analysis from a gender perspective will facilitate better understanding of the present legal framework and assist in identifying issues, gaps and discriminatory provisions, with the long-term goal of advocacy for legal review.

A thorough analysis of Tanzania's legal framework from a gender perspective is fundamental in gaining insight into what changes are needed to achieve equal rights for women in the country. The 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs) further present an unprecedented opportunity for Tanzania to accelerate the elimination of gender-discriminatory laws. Additionally, the National Gender and Women's Development Policy (2023) outlines clear commitments to amend and repeal discriminatory laws.

UN Women is proud to have supported the assessment and analysis of the national laws of

Tanzania Mainland and Zanzibar from a gender perspective. This report and its recommendations are a step towards the implementation of *Equality in Law for Women and Girls by 2030: A Multi-stakeholder Strategy for Accelerated Action*, a joint initiative of UN Women, the African Union, the Commonwealth, the Organisation Internationale de la Francophonie, the Secretaría General Ibero-Americana, and other organizations.

Since 2021, the Government of Tanzania has significantly advanced national commitments to reviewing discriminatory legislation. This includes ongoing national consultations in Tanzania Mainland to review the law on the minimum age of marriage, coordinated by the Ministry of Constitution and Legal Affairs (MoCLA). The UN Women Multi-Country Analysis on Child Marriage (2018),² shows that out of the 55 African Union Member States, 43 (78 per cent) have legal frameworks that put the minimum age of marriage at 18 years or above for both girls and boys. However, 27 (63 per cent), including Tanzania, have exceptions legalizing child marriage, either with parental/guardian consent, a judge's approval, court/state approval or other exemptions allowing a child to marry below the age of 18 legally.

Twenty-two of the 2022 Universal Periodic Review (UPR) recommendations on FGM and

child/early/forced marriage are supported by the United Republic of Tanzania, which indicates a strong commitment for reform. This includes: “*Strengthen the policies and the legal framework to ensure marriage registration to address cases of early child marriages*”. The President of the Revolutionary Government of Zanzibar, who recently joined the HeForShe Alliance, was declared Tanzania's national champion for gender equality by UN Women. The President has reaffirmed his commitment to advancing women's and girls' rights in Zanzibar, including a review of laws that discriminate against women and girls.

In light of these positive developments, I hope that this Analysis of the Laws of Tanzania Mainland and Zanzibar from a Gender Perspective will serve as a valuable advocacy tool in supporting the ongoing efforts of both the Mainland and Zanzibar governments, including the Ministries of Justice, Ministries of Gender, the National Assembly, and the House of Representatives, as they work to align national laws with international and regional obligations for promoting and protecting the rights of women and girls. I further encourage civil society, the UN, development partners and other stakeholders, to leverage this report to further strengthen legal reforms.

Hodan Addou

UN Women Representative, Tanzania

EXECUTIVE SUMMARY

Introduction and Background

UN Women leads and coordinates United Nations efforts to ensure that commitments on gender equality and gender mainstreaming translate into action worldwide. UN Women in Tanzania commissioned this legislative analysis to provide an in-depth understanding of the current legal framework in both Tanzania Mainland and Zanzibar, and to identify gaps and discriminatory provisions with the long-term vision of advocating for legal reform.

The analysis explores the vast spectrum of laws in Tanzania Mainland and Zanzibar to assess their gender responsiveness, and highlights discriminatory provisions and gaps that require repeal, amendment or enactment. *“Applying a gender perspective in these processes will help to ensure that laws and policies are designed to respond to the unique experiences of women and men, avoiding one-size-fits-all thinking. This contributes to greater equality and a legal framework that favours as many people as possible”*.³

Methodology

The methodology for this assessment of national laws in Tanzania Mainland and Zanzibar involved a desk review of relevant statutes and case law and included consultations with a broad range of stakeholders from both government institutions and Civil Society Organizations (CSOs). The desk review entailed an in-depth analysis of current legislation and legal provisions relevant to Tanzania’s gender equality commitments in international treaties and conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Protocol to the African Charter on Human

and Peoples’ Rights on the Rights of Women in Africa, known as the Maputo Protocol, and other international commitments.

The methodology and approach further involved consultations with various stakeholders. The validation process included working with a reference group and holding a national consultative meeting⁴ to validate the findings of the assessment. The stakeholders provided insights and feedback on the draft report. The reference group further reviewed and provided additional insights through emails and virtual spaces.

The assessment of national laws took into consideration: the legal, political, social, economic and cultural context of Tanzania; Tanzania’s commitments to global, regional and subregional frameworks that advance gender equality; the extent to which these commitments have been translated into domestic laws; identifiable gaps in the content of existing laws, including implementation and the reasons for such gaps; and an analysis of other sectoral laws and how these impact the achievement of gender equality. In addition, a legal analysis checklist in line with the terms of reference guided the review of the comprehensive national assessment of discriminatory laws in Tanzania Mainland and Zanzibar.

Tanzania’s Commitments to Gender Equality and Women’s Empowerment

Tanzania has endorsed several key international conventions, declarations and action plans that are significant in the advancement of gender equality and women’s empowerment. The principle of

equality is enshrined in the Charter of the United Nations and advocates for the elimination of discrimination against women and girls; the empowerment of women; and the achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action, peace and security. The Charter of the United Nations is complemented by international and regional instruments and protocols that promote gender equality.

Tanzania ratified CEDAW in 1985. CEDAW is the key international convention for the promotion of women's rights and gender equality. It details states' obligations to ensure non-discrimination based on gender and to ensure equal access to the law for all.

The URT also ratified The Convention on the Rights of the Child (CRC) in 1991. This convention establishes principles, such as non-discrimination and the best interest of the child, and forms the legal framework for child protection, rights and welfare. CRC sets the foundation for equality between girls and boys who will become adult men and women, thereby promoting principles of gender equality from an early age.

Other instruments promoting women's rights that URT has signed and ratified at the regional level include the 2003 Optional Protocol on Human and People's Rights on the Rights of Women; the 1997 Southern African Development Community (SADC) Gender Declaration and its 1998 Addendum on the Prevention and Eradication of Violence against Women and Children; the 2004 Solemn Declaration on Gender Equality in Africa (SDGEA); and the 2008 SADC Protocol on Gender and Development.

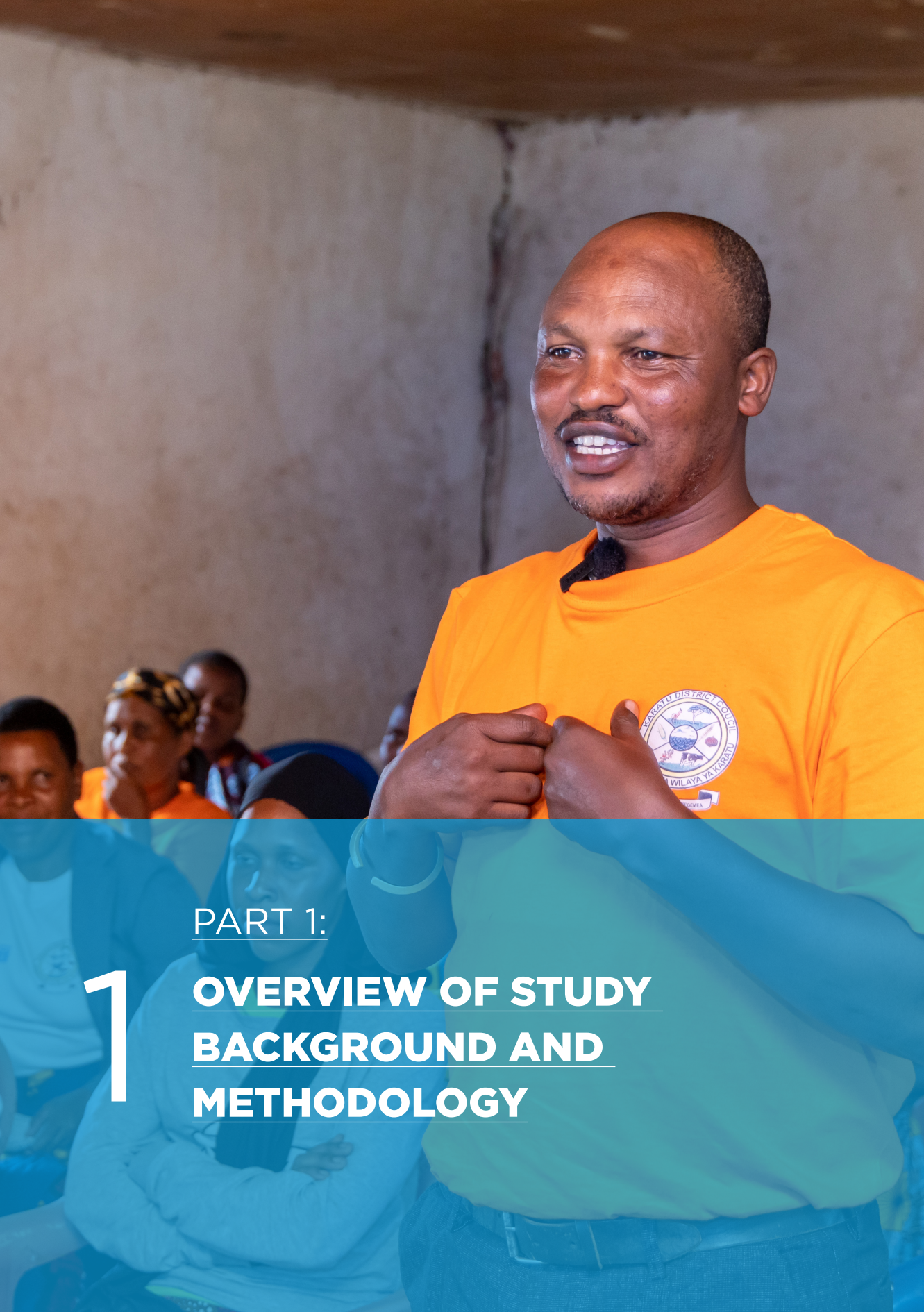
Further to this, Tanzania has also ratified the following significant instruments that prohibit discrimination based on sex or gender, promoting gender and women's rights: The African Charter on Human and People's Rights (ACHPR) in 1984; the Maputo Protocol; and the Protocol to the African

Charter on Human and People's Rights and the Establishment of an African Court on Human and People's Rights. Tanzania ratified The African Charter on the Welfare of the Child in 1998. The 2008 SADC Protocol on Gender and Development was adopted by heads of state (including Tanzania) to affect the provisions of the SADC Treaty, which prohibits discrimination based on sex or gender. Tanzania is one of seven partner states that form the East African Community (EAC). The Treaty for the Establishment of the East African Community⁵ highlights gender mainstreaming and respect for women's rights as fundamental principles that govern the EAC integration process.

URT has embraced the African Union (AU) Agenda 2063. This framework for continental growth prioritises people-centred development and gender equality, creating an enabling environment for all Africans to be part of every development endeavour on the continent and empowering men, women, children and youth to flourish and reach their full potential.⁶

Key Findings of the Gender Analysis of Laws

The analysis provides 76 gender responsive recommendations across all reviewed legislation. A total of 18 laws must be revised or amended (12 in Tanzania Mainland and 6 in Zanzibar), two (2) laws must be repealed in whole or in part (1 in Tanzania Mainland and 1 in Zanzibar), and five (5) new laws must be enacted (3 in Tanzania Mainland and 2 in Zanzibar) to bring Tanzania's legislative framework in line with its regional and international obligations on gender equality and women's empowerment. The report also emphasizes the need to prioritize the implementation of national laws that comply with gender equality standards, and, in this context, recommends 12 policy measures to ensure that laws fully deliver on women's rights (4 general recommendations, 7 in Tanzania Mainland and 1 in Zanzibar).



PART 1:

1

**OVERVIEW OF STUDY
BACKGROUND AND
METHODOLOGY**

OVERVIEW OF STUDY BACKGROUND AND METHODOLOGY

UN Women is grounded in the vision of equality as enshrined in the Charter of the United Nations. It places women's rights at the centre of all its efforts; works for the elimination of discrimination against women and girls; the empowerment of women; and the achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action, peace and security. UN Women commissioned this study to address access to justice issues for women and girls through reforming discriminatory laws. Discrimination in law inhibits the achievement of gender equality. Equality in law is crucial to gender equality, as women and girls look to their state's laws to protect, fulfil and enforce their rights. Laws that discriminate and deny them equal rights with men and boys betray their trust in society and signal that gender discrimination is acceptable, normal and to be expected.

In 1979, CEDAW laid out a blueprint for women's rights, including commitments to embody the principle of equality between men and women in law and practice. The 1995 Beijing Declaration, Platform for Action, and the 2030 Agenda for Sustainable Development further built on these commitments and reinforced the global drive to achieve gender equality and women's empowerment.

1.1 Background

The United Republic of Tanzania (URT) is in the East African Community (EAC) and within the African Great Lakes region. URT is a republic formed of a union consisting of Tanzania Mainland⁷ and Zanzibar. Tanganyika, as Tanzania Mainland was formerly known, gained independence on 9th December 1961 and became a republic one year

later. On April 26th, 1964, it united with Zanzibar to form the United Republic of Tanzania. Zanzibar gained independence on 12th January 1964.

Over the past decade, Tanzania has continued to register robust economic growth coupled with a stable macroeconomic environment enjoyed since the turn of the century. Annual Gross Domestic Product (GDP) growth was maintained at an average of 6 to 7 per cent, peaking at an average rate of 6.9 per cent between 2016 and 2019. Though impressive, annual GDP growth rates are still lower than the Tanzania Development Vision (TDV) 2025 targeted rate of more than 8 per cent per annum. This rate was deemed necessary to eradicate absolute poverty and to take the country on the right path toward realizing the ambitious objectives of the vision. Nevertheless, the country has been able to qualify as a lower middle-income country since July 2020. According to the World Bank, Tanzania's Gross National Income (GNI) per capita increased from TZS 2,225,099 (USD 1,022) in 2016 to TZS 2,577,967 (USD 1,080) in 2019, exceeding the lower threshold for middle-income status (USD 1,035).⁸

Tanzania's third five-year development plan (FYDP III) is a strategy that has been designed primarily to implement the realization of the country's National Development Vision 2025 goals, including the Zanzibar Vision 2020-2050. These goals include Tanzania attaining middle-income status and continuing with the transformation of becoming an industrial country with high human development or a high standard of living. Upon reaching its vision, Tanzania will have the following attributes: peace, stability and unity; good governance; an educated and learning society; and

a strong economy that can withstand competition and benefit many people.⁹

The current government of Tanzania (6th phase) is committed to good governance and accountability, gender equality and women's economic empowerment. These objectives are visible in international, regional and national commitments; national plans such as FYDP III and the Blueprint for Regulatory Reforms, laws and policies. Further to this, Tanzania has set up a Commission for Human Rights and Good Governance (CHRAGG) and a National Women's Economic Empowerment Council (NEEC). Tanzania has also joined the Generation Equality Forum.¹⁰

The legal system of Tanzania is largely based on common law, but it has incorporated Islamic and customary laws, which are mainly applied in matters of family law and inheritance. The Constitution of the United Republic of Tanzania, 1977 (amended from time to time) contains a Bill of Rights providing equality. Article 13 of the Constitution prohibits discrimination based on gender, among other things. Articles 12 to 29 incorporate the Bill of Rights and Duties, which set out the basic rights and duties of citizens. In regard to discrimination against women, Article 12 states that all human beings are equal, and *"every person is entitled to recognition and respect for his dignity."* Article 13 guarantees equality and protection before the law *"...without any discrimination."*

Under the United Republic of Tanzania Constitution, the administration of justice is not a union matter. As such, Zanzibar maintains a legal regime distinct from that of Tanzania Mainland, though the two jurisdictions share some legal institutions, laws and even legal practices.¹¹

The Tanzania Mainland and Zanzibar constitutions declare equal rights for men and women and equal access to social, economic and development opportunities. However, women, especially poor women, girls and people with disabilities, face

a host of direct and indirect discrimination that marginalizes them from effectively participating in and benefiting from economic, social, legal and political developments in the country. This situation is a result of a deep-rooted cultural, structural and systemic practice of unequal relations and gender disparities, and directly contravenes URT commitments and hinders the achievement of its development vision.¹²

However, Tanzania Mainland and Zanzibar have implemented policies concerning gender and women's development. These policies provide the government and other stakeholders with direction and guidelines for advancing gender issues socially, culturally, economically and politically.

This study, an Analysis of the Laws of Tanzania Mainland and Zanzibar from a Gender Perspective, is in line with government plans, such as the Blueprint for Regulatory Reforms and the national Five-Year Development Plan (FYDP) III 2021/22 -2025/26 of the United Republic of Tanzania and the Zanzibar Development Plan (ZADep) 2021-2026 and Zanzibar Development Vision 2050.

While undertaking the legal analysis from a gender perspective, it was noted that within the legal framework, there are sections where gender-sensitive legal provisions are already in place, yet the challenge of enforcement remains. The analysis further considers how existing laws are enforced.

UN Women in Tanzania conducted this legislative analysis from a gender perspective to provide an in-depth understanding of the current legal framework and the existence of gaps and discriminatory provisions, with the long-term vision of advocating for law reform to enact new laws, or repeal or revise discriminatory legislation. The gender analysis explores the vast spectrum of laws to assess gender responsiveness. It highlights discriminatory provisions and gaps that would require repeal, amendment or enactment through a law reform process.

Tanzania has international, regional and national commitments related to gender and women's rights, including women's economic empowerment and access legal aid services. Despite positive developments in the legal and policy framework, there are still discriminatory provisions that have legal implications for women. There is a need to review gender discriminatory aspects of the laws.

In line with UN Delivering as One, all UN agencies in Tanzania are working closely with the Government to support FYDP III and Zanzibar Development Plan (ZADep) 2021-2026 through the UN Sustainable Development Cooperation Framework (UNSDCF) – to empower women legally, politically and socioeconomically. UN Women also aims to achieve gender equality by addressing power imbalances between men and women, fostering mutual respect, and promoting equal opportunities across all sectors of society.¹³

1.2 Methodology

The methodology for assessing national laws in Tanzania Mainland and Zanzibar involved a desk review of relevant statutes and case law, as well as consultations with a broad range of stakeholders from government institutions and civil society organizations (CSOs). The desk review entailed an in-depth analysis of current legislation and legal provisions relevant to Tanzania's gender equality commitments in international treaties and conventions such as CEDAW, the Maputo Protocol and other international instruments.

The methodology and approach further involved consultations with various stakeholders, validating the findings with a reference group and a national consultative meeting¹⁴ to validate the assessment of laws. The assessment involved a gender analysis of the laws per the terms of reference. The analysis of the national legal framework was undertaken in line with Tanzania's international, regional and national commitments to gender equality. Considering COVID-19, precautionary measures were observed, and in some instances, virtual and

telephone interviews were conducted, though physical meetings were also held with various stakeholders. The approach included working closely with UN Women staff and partners. The respondents for the interviews included CSOs; Tanzania Women Lawyers Association (TAWLA), Zanzibar Female Lawyers Association (ZAFELA), Legal and Human Rights Centre (LHRC), Zanzibar Legal Services Centre (ZLSC), Tanganyika Law Society (TLS) and Zanzibar Law Society (ZLS). The representatives of the ministries responsible for constitutional and legal affairs and the ministries responsible for gender in both Tanzania Mainland and Zanzibar were involved in the stakeholders meeting for further engagement and consultation and as part of the technical reference group.

The technical reference group was established to review the study and the criteria for selecting members based on the role of the sector ministry and specific stakeholders in the law reform processes, as per terms of reference shared with the members. The technical reference group list is attached to this report as Annex 2.

The assessment of national laws took into consideration:

- 1) The legal, political, social, economic and cultural context of Tanzania;
- 2) Tanzania's commitments to global, regional and subregional frameworks that advance gender equality;
- 3) The extent to which these commitments have been translated into domestic laws, identifiable gaps in the content of existing laws as well as implementation and the reasons for such gaps; and
- 4) An analysis of other sectoral laws and how these impact the achievement of gender equality.

A legal analysis checklist (Annex 3), in line with the terms of reference, guided the desk review of discriminatory laws in Tanzania Mainland and Zanzibar.

1.3 Structure of the Report

Part One forms the introduction and gives an overview and background of the gender analysis of laws in Tanzania Mainland and Zanzibar. Part Two covers URT's global and regional gender equality and women's empowerment commitments. Part Three concerns the legal system and judicial context of Tanzania Mainland, and Part Four focuses on the gender analysis of national laws in Tanzania Mainland. Part Five portrays Zanzibar's legal system and judicial context, and Part Six covers the gender analysis of national laws in

Zanzibar. Part Seven focuses on the role of the judiciary in enforcing gender equality norms and standards, providing some landmark cases that set precedent on gender and women's rights issues. Finally, Part Eight contains a conclusion and recommendations based on the comprehensive assessment of the legal framework to enhance gender equity. The recommendations include proposed amendments of laws, repeal of laws and enactment of gender-sensitive progressive laws based on the analysis.



PART II:

2

OVERVIEW OF TANZANIA'S
GLOBAL AND REGIONAL
COMMITMENTS TO GENDER
EQUALITY AND WOMEN'S
EMPOWERMENT

OVERVIEW OF TANZANIA'S GLOBAL AND REGIONAL COMMITMENTS TO GENDER EQUALITY AND WOMEN'S EMPOWERMENT

Tanzania is party to several key international conventions, declarations and action plans which have a bearing on GEWE. Some of those that were

reviewed are:

- 1) The Universal Declaration of Human Rights of 1948;
- 2) The International Covenant on Economic, Social and Cultural Rights of 1966;
- 3) The International Covenant on Civil and Political Rights of 1966;
- 4) The UN Convention on the Elimination of All Forms of Discrimination against Women of 1979;
- 5) The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984;
- 6) The UN Declaration on the Right to Development of 1986;
- 7) The Convention on the Rights of the Child of 1989;
- 8) The UN Declaration on the Elimination of Violence Against Women of 1993;
- 9) The UN Convention on the Rights of Persons with Disabilities of 2006;
- 10) The International Labour Organisation (ILO) Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value of 1951 (No. 100);
- 11) The ILO Convention Concerning Discrimination in Respect of Employment and Occupation of 1958 (No. 111);
- 12) The UN Fourth World Conference on Women, Beijing Declaration and Platform for Action of 1995;

A. Tanzania's International Gender Equality and Women's Empowerment Commitments

The principle of equality is enshrined in the Charter of the United Nations and includes the elimination of discrimination against women and girls; the empowerment of women; and the achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action and peace and security. The Charter of the United Nations is complemented by international and regional instruments and protocols that promote gender equality.

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW is the key international convention for the promotion of women's rights and gender equality. Tanzania ratified CEDAW in 1985. The convention details states' obligations to ensure non-discrimination based on gender and to ensure equal access to the law for all women in its territory.

Article 2(g) of CEDAW places an obligation on states "To repeal all national penal provisions which constitute discrimination against women."

Table One: Summary of obligations under CEDAW¹⁵

THEMATIC AREA	RELEVANT ARTICLES
Principle of equality and non-discrimination	Preamble; Articles 1, 2, 3 and 4
The right to work (employment)	Article 11
Education	Article 10
Healthcare	Article 12
Economic and social benefits	Articles 11 and 13
Leadership and political participation	Article 7
Marriage and inheritance	Articles 11 and 16
Trafficking in persons	Article 6
Citizenship and nationality	Article 9
Access to justice	Article 15

CEDAW Committee issued General Recommendation No. 33 on Women’s Access to Justice (CEDAW GR33)¹⁶

In this general recommendation, the committee examines the obligations of State parties to ensure that women have access to justice. These obligations encompass protecting women’s rights against discrimination to empower them as individuals and rights holders. Effective access to justice optimizes the emancipatory and transformative potential of law.¹⁷ A legal system that protects women’s access to justice should articulate those rights in legislation.¹⁸

General Issues and Recommendations on Women’s Access to Justice

The issues and themes revolve around justiciability, availability, accessibility, good quality, provision of remedies, accountability of justice systems and the provision of remedies for victims to ensure access to justice. The committee has made specific recommendations for each aspect. For instance, on justiciability, the committee recommends that State parties: (a) Ensure that rights and correlative legal protections are recognized and incorporated in the law, improving the gender responsiveness of the justice system; and (b) Improve women’s unhindered access to justice systems and thereby

empower them to achieve de jure and de facto equality. The above recommendations are key for Tanzania, since unhindered access to justice for women is a critical pathway for achieving gender equality.

CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations (CEDAW GR 21)¹⁹

Some of the general recommendations adopted by the committee on eliminating discrimination against women in the thirteenth session (1994) are within General Recommendation No. 21, which focuses on equality in marriage and family relations. General Assembly Resolution 34/180, annex, affirms the equality of human rights for women and men in society and the family. Some key themes emphasized are nationality, domicile and property accumulated during the marriage.

Examining State parties’ reports demonstrates that a woman will not always be permitted by law to choose her domicile. Domicile, like nationality, should be capable of change at will by an adult woman regardless of her marital status. Any restrictions on a woman’s right to choose a domicile on the same basis as a man may limit her access to the courts in the country in which she lives or prevent her from entering and leaving a country freely and in her own right.

In many countries, including Tanzania, property accumulated during a de facto relationship is not treated by law on the same basis as property acquired during a marriage. Property laws and customs that discriminate in this way against married or unmarried women, with or without children, should be revoked and discouraged.²⁰

Concerning inheritance, the Council recommended that States ensure that men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession.²¹ The above recommendations are critical for Tanzania to domesticate equal rights between men and women on nationality and property rights in a family.

CEDAW General Recommendation No. 27 on Older Women and Protection of their Human Rights (CEDAW GR 27)²²

The Committee on the Elimination of Discrimination against Women decided at its forty-second session in 2008, pursuant to Article 21 of CEDAW, to adopt a general recommendation on older women and protection of their human rights.

This general recommendation explores the relationship between the articles of the Convention and aging. It identifies the multiple forms of discrimination that women face as they age. This recommendation outlines the content of the obligations to be assumed by State parties about women aging with dignity and older women's rights, including policy recommendations aimed at mainstreaming the responses to the concerns of older women into national strategies, legislations, development initiatives and positive action so that older women can fully participate in society without discrimination and on an equal basis with men. The elimination of all forms of discrimination against older women can only be achieved by fully respecting and protecting their dignity and their right to integrity and self-determination.

Some of the general recommendations for State

parties include the following: State parties must recognize that older women are an important resource to society, and accordingly have an obligation to take all appropriate measures, including legislation, to eliminate discrimination against older women. State parties should also adopt gender-sensitive and age-specific policies and measures, including temporary special measures, in line with Article 4, paragraph 1 of the Convention and General Recommendations No. 23 (1997) and No. 25 (2004) of the Committee to ensure that older women participate fully and effectively in the political, social, economic, cultural and civil life or any other field in their societies. State parties should therefore ensure that all legal provisions, policies and interventions aimed at the full development and advancement of women do not discriminate against older women.

The laws in Tanzania consider the question of aging in women, including in the Constitution of URT.²³ Studies show that older people in Tanzania are the most forgotten part of the entire population.²⁴ More needs to be done to ensure that the international commitments regarding older women are reflected in the laws and policies and provide protection. Tanzania's laws and policies should consider the multidimensional nature of discrimination against women and ensure that the principle of gender equality applies throughout women's life cycle, in legislation and the practical implementation thereof. In this regard, the State should aim to repeal or amend existing laws, regulations and customs that discriminate against older women and ensure that legislation proscribes discrimination based on age and sex. Tanzania is obliged under its international obligations to draft legislation recognizing and prohibiting violence, including domestic violence, sexual violence and violence in institutional settings and against older women, including those with disabilities.

General Recommendation No. 29 on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, Economic Consequences of Marriage, Family Relations and their Dissolution, CEDAW/C/GC/29, 26 February 2013

Paragraph 16 is adopted from General Recommendation No. 21, in paragraph 13, which acknowledges that families take many forms and underscores the obligation of equality within the family under all systems, “*both at law and in private.*”²⁵

The constitutions and legal frameworks of several State parties still provide that personal status laws (relating to marriage, divorce, distribution of marital property, inheritance, guardianship, adoption and other such matters) are exempt from constitutional provisions prohibiting discrimination or reserve matters of personal status to the ethnic and religious communities within the State party. In such cases, equal constitutional protection and anti-discrimination provisions do not protect women from the discriminatory effects of marriage under customary practices and religious laws. Some State parties have adopted constitutions that include equal protection and non-discrimination provisions, but have not revised or adopted legislation to eliminate the discriminatory aspects of their family law regimes, whether they are regulated by civil code, religious law, ethnic custom or any combination of laws and practices. Such constitutional and legal frameworks are discriminatory, in violation of Article 2 in conjunction with Articles 5, 15 and 16 of the Convention. State parties should guarantee equality between women and men in their constitutions and should eliminate any constitutional exemptions that would serve to protect or preserve discriminatory laws and practices concerning family relations.

State parties should also adopt written family codes or personal status laws that provide equality between spouses or partners, irrespective of their

religious or ethnic identity or community, following the Convention and the committee’s general recommendations. In the absence of unified family law, the system of personal status laws should provide for individual choice as to the application of religious law, ethnic custom or civil law at any stage of the relationship. Personal laws should embody the fundamental principle of equality between women and men and should be fully harmonized with the provisions of the Convention to eliminate all discrimination against women in all matters relating to marriage and family relations. State parties should provide equally formal and de facto legal capacity to own and manage property.

The Convention on the Rights of the Child (CRC)

Tanzania ratified the CRC in 1991. It establishes principles such as non-discrimination and the best interests of the child. It further provides the legal framework for children’s protection, rights and welfare.

Article 2 of the CRC states that the right to non-discrimination could be applied to every right as set out in the Convention. Each article includes examples of both discrimination against children as a group and against particular children.²⁶

ILO Conventions

Concerning ILO conventions, “out of the 37 conventions ratified by the United Republic of Tanzania, of which 30 are in force, 2 conventions have been denounced; 5 instruments abrogated; none have been ratified in the past 12 months.”²⁷ One of the critical ratifications is the Equal Remuneration Convention, 1951 (No. 100), ratified by Tanzania on February 26, 2002, which provides for equal remuneration for men and women workers for work of equal value.²⁸

OTHER GLOBAL COMMITMENTS:

The 1995 Beijing Declaration and Platform for Action

In 1995, at the historic United Nations Fourth World Conference on Women in Beijing, governments

from around the world agreed on one of the most progressive plans to advance women's rights and achieve gender equality – the Beijing Platform for Action. At the conference, 189 governments, including Tanzania, agreed on a comprehensive roadmap, the Beijing Declaration and Platform for Action. In it, States committed to *“revoke any remaining laws that discriminate based on sex.”*²⁹

Commission on the Status of Women

The 65th session of the Commission on the Status of Women took place from 15 to 26 March 2021. The outcome of the Commission's consideration of the priority theme took the form of agreed conclusions negotiated by all Member States. The Commission on the Status of Women adopted agreed conclusions (E/CN.6/2021/L.3) on *“Women's full and effective participation and decision-making in public life, as well as the elimination of violence, for achieving gender equality and the empowerment of all women and girls”* on 26 March 2021.

With an emphasis on strengthening normative, legal and regulatory frameworks, it was agreed that State parties should: 1) Take action to fully implement existing commitments and obligations for the achievement of gender equality and the empowerment of all women and girls, and the full and equal enjoyment of their human rights and fundamental freedoms without discrimination of any kind, to improve progress towards women's full and effective participation and decision-making in public life, as well as the elimination of violence; 2) Review and reform laws and policies that discriminate against women and girls and hinder women's equal participation in all aspects of public life, and implement targeted measures to address, inter alia, all forms of discrimination as well as violence against women and girls, ensuring women's and girls' access to justice and accountability for violations of their human rights; 3) Enact or strengthen and enforce laws and regulatory frameworks that ensure equality and eliminate discrimination against women and

girls, inter alia, laws and frameworks that prohibit discrimination based on pregnancy, motherhood, marital status or age, as well as other forms of discrimination; and 4) Protect and promote the rights to freedom.³⁰

As a state party, Tanzania is obliged to submit periodic reports to committees, such as the Universal Periodic Review (UPR), CEDAW Committee, CRC Committee and UN Commission on the Status of Women (CSW), which assesses the Beijing Declaration and Platform for Action. In due course, these committees provide comments, observations and recommendations. Monitoring human rights through review of implementation reports submitted by State parties also promotes gender equality through legal reforms based on the recommendations of the committees.

B. Tanzania's Regional Gender Equality and Women's Empowerment Commitments

African regional and subregional human rights instruments include:

- 1) The African Charter on Human and Peoples Rights (1981);
- 2) The African Charter on the Welfare of a Child (1990);
- 3) The AU Declaration on Gender Equality in Africa (1995);
- 4) The SADC Protocol on Gender and Development (2008); and
- 5) The EAC Policy on Gender (2018).

Tanzania has additionally signed and ratified the following instruments at the regional level:

- 6) The SADC Gender Declaration (1997) and its Addendum on the Prevention and Eradication of Violence against Women and Children (1998);
- 7) The Maputo Protocol (2003);
- 8) The SDGEA (2004); and
- 9) The SADC Protocol on Gender and Development (2008).

Tanzania has continued to implement and provide reports on implementation status as stipulated in the declarations, conventions and protocols.

The African Charter on Human and People’s Rights (ACHPR)

Tanzania ratified ACHPR in 1984. Known as the Banjul Charter,³¹ it aims to promote and protect the African continent’s human and basic rights. It prohibits discrimination, torture and inhumane treatment and promotes equality before the law.

The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol)

The Maputo Protocol is a product of ACHPR. It ensures the protection of women’s rights,

dignity and protection from all forms of violence, particularly sexual and verbal violence. Having ratified the Maputo Protocol, Tanzania is accountable for violations against the rights of women and girls.

In 2009, the Government ratified the Maputo Protocol and the Protocol to the African Charter on Human and Peoples’ Rights and the Establishment of an African Court on Human and Peoples’ Rights. This made Tanzania one of the first countries to commit itself to protecting women’s rights as regards land tribunals. Tanzania’s ratification of regional protocols is also a significant indicator of its commitment towards GEWE aspects in a multi-dimensional context.

Table Two: Summary of Obligations in the Maputo Protocol³²

THEMATIC AREA	RELEVANT ARTICLES
Principle of equality and non-discrimination	Article 1
The right to work/employment	Article 13
Education	Article 12
Right to dignity	Article 3
Economic and social benefits	Articles 13, 15 and 16
Gender-based violence, specifically, violence against women	Articles 4 and 5
Marriage and inheritance	Articles 6, 7, 20 and 21
Citizenship	Article 6
Access to justice	Article 8
Leadership and political participation	Article 9

The Solemn Declaration on Gender Equality in Africa

This Declaration was adopted by the AU Assembly in 2004, calling for Member States' continual action toward achieving gender equality and reinforcing their commitment to international and regional women's rights instruments. In the declaration, State parties agreed to *"actively promote the implementation of legislation to guarantee women's land, property and inheritance rights, including their rights to housing."*³³

The African Charter on the Welfare of the Child

Tanzania ratified the African Charter on the Welfare of the Child (ACRWC) in 1998. This charter sets out rights, defines principles for the status of children and their responsibilities and calls for their protection from harmful cultural and traditional practices, including FGM, child marriage and child labour.

The Southern African Development Community Protocols

The SADC Protocol on Gender and Development was adopted by the Heads of State to give effect to the provisions of the SADC Treaty, which, among other things, prohibits discrimination based on sex or gender. The object of this Protocol is to provide for the empowerment of women, eliminate discrimination and achieve gender equality.

Article 6(1) provides a review of domestic legislation. It obliged State parties to review, amend and/or repeal all laws that discriminate on the grounds of sex or gender by 2015.³⁴

Article 9 of the 2000 SADC Protocol on Culture, Information and Sport commits Member States to cooperate in ensuring gender equality and equity in culture, information and sports, while the 1997 SADC Protocol on Gender established a deadline for gender equality in the media by 2015.

The Treaty for the establishment of the East African Community

Tanzania is a member of the East African

Community (EAC). Articles 121-122 of the Treaty for the establishment of the EAC endorse the importance of East African women's role in the region's economic, social and political development. This is mainly through their activities as producers of goods and services, keepers of family health, first teachers of children, and guardians of morals and culture. Despite constituting over 60 per cent of the EAC population, women are still marginalized in decision-making processes and have limited access to education, finance and information and communication technologies as compared to their male counterparts. To address the above challenges, Partner States have taken several measures to address the imbalances meted out to the female gender throughout human history. This has been done through enacting and implementing different policies and legal frameworks. At the regional level, Article 5(e) of the Treaty covers issues of mainstreaming gender into all EAC endeavours, while Articles 121 and 122 emphasize the role of women in socioeconomic development in Partner States. Various EAC policy frameworks have operationalized the Treaty provisions by recognizing the vital role of women in driving regional integration processes. Such documents include the EAC Gender and Community Development Strategic Plan and the 4th EAC Development Strategy (2011-2016), which provides guidelines for mainstreaming gender in EAC policies and programmes.³⁵ Tanzania has domesticated the above policies and has been a champion in the region in implementation of several components in the frameworks.

Additionally, Tanzania is a party to Agenda 2063, the plan for Africa's structural transformation by 2063. The plan prioritizes inclusive growth and people-centred development, along with gender equality, to create an enabling environment for Africans to be part of every development endeavour on the continent. This is seen as crucial to empower men, women, children and youth to flourish and reach their full potential. Agenda 2063 aspires that by

2063, Africa will have undergone a deepening of the culture of good governance, democratic values (respect for human rights, justice and the rule of law) and gender equality in all spheres of life.³⁶

Tanzania has made commitments to several GEWE-related international and regional initiatives, and has further commitments that it needs to ratify, including the C190 - Violence and Harassment Convention, 2019 (No. 190), the 2018 African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities (African

Disability Rights Protocol), and the 2012 African Charter on Democracy, Elections and Governance. Tanzania should also hasten the domestication of GEWE-related laws and allow the automatic application of international and regional conventions upon signing and ratification. The country could further consider amending and/or enacting laws and policies in line with global and regional conventions to address systemic gender problems in the country.



PART III:

3

LEGAL CONTEXT AND THE JUDICIAL SYSTEM IN TANZANIA MAINLAND

LEGAL CONTEXT AND THE JUDICIAL SYSTEM IN TANZANIA MAINLAND

3.1 Introduction

The United Republic of Tanzania is a unitary state based on a multiparty parliamentary democracy. All matters of state are exercised and controlled by the URT and the Revolutionary Government of Zanzibar.³⁷

Tanzania adheres to and respects the constitutional principles of separation of powers.³⁸ There are three organs that comprise the central government of URT: the executive, the judiciary and the legislature. The functions and powers of each of the three organs are laid out in Article 4 of the 1977 Constitution of the URT, as amended from time to time.³⁹

The Government of URT has authority over all Union matters in the United Republic, as stipulated under the Constitution, and it also runs all non-Union matters in Tanzania Mainland, i.e., the territory formerly known as Tanganyika. Non-Union matters are all those that do not appear in the Schedule to the Constitution, which stipulates the list of Union matters.⁴⁰

3.2. Legal Context

Tanzania's legal system is based on the English common law system, but it also accommodates Islamic or customary laws, the latter sources of law being called upon in personal or family matters.⁴¹

Besides established sources of law, as outlined in the next section, the formation of laws and subsequent regulations may also be influenced by social, economic, political, cultural and technological developments at both the local and global levels.

3.3 Sources of Law

The Constitution⁴²

The first source of law for URT is the 1977 Constitution. The Constitution provides for a bill of rights, even though it also contains several claw-back clauses. The enjoyment of certain rights and freedoms under the Constitution is not absolute, but subject to legal regulation. The Constitution under Article 30(3) allows any person to challenge any law, act or omission that contradicts their right or the Constitution in a Court of law.

Statutes⁴³

The second source of law is Statutes or Acts of Parliament. The Laws Revision Act of 1994, Chapter Four of the Laws of Tanzania [R.E. 2002] established that all legislations previously known as Ordinances, i.e., those enacted by the pre-independence colonial administration, as Orders in Council, can now be legally recognized as Acts. These principal and subsidiary legislations are published in the Government *Gazette* and printed by the Tanzania Government Printers.

Case Law⁴⁴

The third source is case law, also known as precedent. These are cases from the High Court and Court of Appeal that are either reported or unreported and are being used as precedent and binding lower courts thereto. Reported Tanzanian cases are found in the Tanzania Law Reports, High Court Digests and East Africa Law Reports.

Received Laws⁴⁵

The fourth source is Received Laws, established under Section 2.3 of The Judicature and Applications of Laws Act, Chapter 358 of the

Laws of Tanzania [R.E. 2002] (JALA). These include common law, Doctrine of Equity and Statutes of General Application of England, applicable before 22 July 1920, deemed the reception date for English Law in Tanzania.

Customary and Islamic Law⁴⁶

The fifth source is customary and Islamic law, established under Section 9 of JALA. Customary law is in effect only when it does not conflict with statutory law, while Islamic law applies to Muslims under JALA. This empowers courts to apply Islamic law to matters of succession in communities that generally follow Islamic law, including with regard to personal status and inheritance.

International Law

(Treaties and Conventions)⁴⁷

International laws, that is, treaties and conventions, are not self-executing in Tanzania. An act of parliament can apply treaties and conventions to which Tanzania is a party in the courts in Tanzania only after ratification.

3.4. Institutional Framework of the Judiciary

The Judiciary draws its mandate from Articles 107A and 107B of the Constitution of the United Republic of Tanzania of 1977.⁴⁸ The Constitution establishes an independent judiciary and respect for the principles of the rule of law, human rights and good governance.⁴⁹ The Judiciary is charged with dispensing justice and maintaining peace in the country.⁵⁰

In executing its constitutional mandate, the Judiciary of Tanzania operates under the Judiciary Administration Act No. 4 of 2011. The Act makes provisions for the administration of the judiciary and puts in place the offices of the chief court administrator, head of general administration and accounting officer and chief registrar responsible for the effective performance of judicial functions.⁵¹ The Judiciary operates in different court levels to ensure the effective dispensation of justice.

3.4.1. Independence of the Judiciary⁵²

As per the 13th Amendment of the Union Constitution, the doctrine of independence of the judiciary is reflected under Article 107A. The article provides that the authority to dispense justice in the United Republic is vested in the judiciary and the Judiciary of Zanzibar, and therefore no other organ of the Government or Parliament or the House of Representatives of Zanzibar shall have the final say in the dispensing of justice. Article 107B provides further that: *“In exercising its authority to dispense justice, all courts shall be independent and shall be bound only by the Constitution and the law of the land.”*

To ensure the independence of the judiciary, judicial personnel are appointed by the Judicial Service Commission, while the President appoints judges and justices of appeal after consultation with the Chief Justice. Their appointment, both judges and magistrates, are protected by their security of tenure. Thus, they cannot be removed or shifted (without their consent) in office for making a decision that does not please the appointing body. The judges receive their remuneration from the Consolidated Fund budget allocation, which is not subject to discussion in Parliament and so further contributes to their independence.

3.4.2 The Judiciary and Gender⁵³

Tanzania is a signatory to international conventions regarding gender equality as part of a good governance framework. The Judiciary in Tanzania has not lagged in gender balance.⁵⁴ Ensuring gender balance in judicial leadership has been increasingly highlighted in various literature as a key governance issue related to fairness, transparency and the effective rule of law.⁵⁵ A diverse judicial workforce, composed of both men and women from different backgrounds, can bring different voices and perspectives to the bench. Such diversity can also strengthen the integrity of the judiciary, promoting citizens' trust in justice services. Strengthened participation of women in judicial professions, particularly at senior levels,

can help eliminate gender stereotypes and increase women's willingness to enforce their rights.⁵⁶

3.5. The Judicial System in Tanzania

3.5.1. The Court System in Tanzania

The Judiciary operates in a four-tier system: the Court of Appeal, the High Court, Courts of Resident Magistrate and District Courts and, finally, the Primary Courts.⁵⁷

The Court of Appeal⁵⁸

This is the first and the highest level in the justice delivery system in Tanzania. The Court of Appeal draws its mandate from Article 117(1) of the Constitution of the United Republic of Tanzania. The Court hears appeals on both points of law and facts for cases from the High Court of Tanzania and Magistrates with extended jurisdiction in the exercise of their original jurisdiction or appellate and revisional jurisdiction over matters in the District Land and Housing Tribunals, District Courts and Courts of Resident Magistrate. The Court also hears similar appeals from quasi-judicial bodies of status equivalent to that of the High Court. It further hears appeals on points of law against the decisions of the High Court in matters originating from Primary Courts.

The Court of Appeal exercises jurisdiction on appeals from the High Court of Zanzibar, except for constitutional issues arising from the interpretation of the Constitution of Zanzibar and matters arising from the Kadhi Court, with highest appeal in the High Court of Zanzibar.

The High Court⁵⁹

This is the second level in the justice delivery hierarchy. It draws its mandate from Article 108(1) of the Constitution. It has both appellate and original powers on civil and criminal matters. It also hears appeals from the Courts of the Resident Magistrate, the District Courts and the District Land and Housing Tribunals in the exercise of their original, appellate and/or revisional jurisdiction. Further, the High Court has revisional and supervisory powers over subordinate courts,

tribunals and administrative and quasi-judicial bodies. The High Court is divided into Zones and specialized divisions.

Currently, there are sixteen (16) Zones and four (4) Specialized Divisions: Commercial, Land, Labour and Corruption & Economic Crime. These special divisions were established to create an environment conducive to attracting investments that promote economic growth by processing legal matters requiring the court's intervention.⁶⁰

Court of Resident Magistrate and District Court⁶¹

Under Section 5(1) of the Magistrates' Courts Act [CAP 11 R.E 2019], the Chief Justice establishes the Court of Resident Magistrate, which is the third level in the Judiciary justice delivery hierarchy, at the same level as the District Court. It has original jurisdiction in both civil and criminal matters and exercises jurisdiction over the area specified by the order establishing it.

The District Court exercises jurisdiction within the district of its establishment or as may be extended by the Chief Justice. It further has both appellate and revisional jurisdiction over matters originating in the Primary Court. Section 4(1) of the Magistrates' Courts Act [CAP 11 R.E 2019] establishes the District Court.

It is noted that the District Land and Housing Tribunal deals with land matters only. This is established under Section 22 of the Courts (Land Disputes Settlement) Act, 2002 [R.E.2019]. Below this tribunal is a Ward Tribunal and the Village Land Council, which has jurisdiction over land matters.

Primary Court⁶²

This court is established under Section 3(1) of the Magistrates' Courts Act [CAP 11 R.E 2019]. It is the lowest level of court in the hierarchy and exercises criminal and civil jurisdiction within the district of its establishment. The Primary Court has appellate and revisional jurisdiction over Ward Tribunals (save for land matters with different frameworks as presented above).



PART IV:

4

GENDER ANALYSIS OF NATIONAL LAWS IN TANZANIA MAINLAND

GENDER ANALYSIS OF NATIONAL LAWS IN TANZANIA MAINLAND

4.1. Overview

This section provides a comprehensive analysis of the laws of Tanzania Mainland. The analysis is based on Tanzania’s commitments to global, regional and subregional frameworks that advance gender equality. A checklist is attached as an annex to this report. The focus of this section is as follows:

- Examination of which of these commitments have been translated into domestic laws, identifiable gaps in the content of existing laws, as well as obstacles to implementation and the reasons for such gaps;
- Analysis of how these laws impact the achievement of gender equality; and
- Evaluation of whether these laws explicitly treat women and men or girls and boys differently, and/or indirectly, based on being ostensibly neutral, but are discriminatory in effect due to pre-existing inequalities that are not addressed by the neutral measure.⁶³

The analysis reviewed the following laws from a gender perspective:

- 1) The Constitution of the United Republic of Tanzania, 1977
- 2) The Law of Marriage Act, 1971
- 3) The Local Customary Law (Declaration) Order, 1963
- 4) The National Election Act, 2015
- 5) The Political Parties (Amendment) Act, 2019
- 6) The Local Authorities (Elections) Act, 2015
- 7) The Local Government (District Authorities) Act, 2002
- 8) The National Education Act, 2002
- 9) The Citizenship Act, 1995
- 10) The Births and Deaths Registration Act, 2002

- 11) The Employment and Labour Relations Act, 2004
- 12) The Penal Code, 2002
- 13) The Persons with Disabilities Act, 2010

4.2. Analysis of National Laws in Tanzania Mainland

4.2.1. The Constitution of the United Republic of Tanzania, 1977

The Constitution of the United Republic of Tanzania, 1977 (as amended) is the grounding norm and basis for all national laws. It provides for basic rights and duties in Part III, all of which are directly relevant to issues of gender equality (see Table 3).

Table Three: Gender Equality Rights and Relevant Articles in the Constitution of URT

ARTICLE	PRESCRIBED RIGHT
11	Equality and other pursuits
12	Equality of human beings
13	Equality before the law
14	Life
15	Personal freedom
16	Privacy and personal security
17	Freedom of movement
18	Freedom of expression
19	Freedom of religion
20	Freedom of association
21	Freedom to participate in public affairs
ARTICLE	PRESCRIBED RIGHT
22	Work
23	Just remuneration
24	Property ownership
25	Duty to participate in work
26	Duty to abide by the laws of the land
27	Duty to safeguard public property

Such rights are to be upheld for both males and females without discrimination.

The Constitution of URT has a bill of rights and duties as stipulated in Articles 12 to 29. Article 13 bars discrimination based on sex and addresses only the de jure (the letter of the law) and not the de facto (the law's practical effect on the intended population). This falls short of the definition of CEDAW, which requires State parties to address both law (de jure) and practice (de facto).⁶⁴

According to Article 13(5) of the Constitution, the Definition of Discrimination is as Follows:

“...the expression ‘discriminate’ means to satisfy the needs, rights or other requirements of different persons based on their nationality, tribe, place of origin, political opinion, colour, religion, sex or station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications except that the word ‘discrimination’ shall not be construed in a manner that will prohibit the Government from taking purposeful steps aimed at rectifying disabilities in the society.”⁶⁵

This definition is based on international conventions such as CEDAW and regional protocols such as the Maputo Protocol. Article 1 of CEDAW states that; *“...the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁶⁶*

Despite the definition and prohibition of discrimination in CEDAW and the Constitution of the URT, gender discriminatory laws still exist in

Tanzania.

The Constitution of the URT, through several amendments, provides for affirmative provisions as an attempt to address historical gender imbalances in electoral participation. Article 66, for example, spells out temporary special measures for members of parliament, meaning that at least thirty per cent of the seats in the National Assembly shall be held by women in a special seats arrangement, with qualifications mentioned in Article 67, elected by political parties in accordance with Article 78, on the basis of proportional votes.

Such women must be nominated by their political parties, to be determined by the size of seats won for parliament for every political party winning more than ten (10) per cent of the constituency seats in Parliament. This means that through this arrangement, small parties are not given a chance of nominating women members. In addition, women who enter Parliament in a special seat cannot be appointed by the President as Prime Minister, as stipulated in Article 51(2) of the Constitution.

Furthermore, this category of Members of Parliament (MPs) is not entitled to the constituency development fund. The constituency development fund is an additional means of financing (sourced from domestic revenue) for community-driven development that is managed at the constituency level by MPs.⁶⁷ Women who enter parliament through special seats do not enjoy the same rights as those who go through constituency seats. The Government could consider enacting a constituency development fund law, learning from neighbouring Kenya, which would ensure a fair distribution of funds and therefore lead to more even-handed development throughout the constituencies. Kenya enacted its Constituency Development Fund Act in 2003 (and the CDF (Amendment) Act 2007), which *“aims to promote equitable development and alleviate poverty at the constituency level.”*

Chapter Two, Part I, II and III of the Constitution of

the URT defines the executive arm (President, Vice President, Prime Minister, Cabinet and other senior government officials) and spells out the powers, functions, qualifications and duties. It is silent on the gender equality principle in nominating the above positions. It is practice in URT that if the President is female, then the Vice President is automatically male. This practice needs to be reflected in the Constitution of the URT. The same rule above should apply for appointment of the cabinet and other senior government officials under Chapter Two, Part III of the Constitution.

Article 20 of the Constitution provides for freedom of association, including the right to political participation, as linked to Article 9 of the Maputo Protocol. Despite Article 20 of the Constitution of URT, the Political Parties Act 1992 and the multi-party system, the participation of women and youth (male and female) is inadequate and affected by the laws and structures of political parties and discriminative norms and customs. *'The issue is whether the one-party political system allows free and unimpeded participation in public decision-making. It is argued that this legacy has not been done away with by the post-1992 reforms.'*⁶⁸ The right to participation in the political and decision-making process is provided for in Article 9 of the Maputo Protocol. However, Article 20 of the Constitution of URT does not explicitly provide for equal participation of women in the political and decision-making process at all levels.

Recommendations:

- Amend the Constitution of the URT to include equal participation of women in political life through affirmative action and enabling national legislation.
- Allow women to participate without any discrimination in all elections, including equal representation of women and men at all levels in all electoral processes, in line with Article 9 of the Maputo Protocol.⁶⁹
- Amend the Constitution of the URT, Articles 51(2), 66, 67 and 78 to ensure women who

enter parliament through special seats enjoy the same rights as those who go through constituency seats.

- Review Chapter Two, Part I, II and III of the Constitution of the URT to include gender equality principles in nominating the President, Vice-President, Prime Minister, Cabinet and other nominated senior government officials.
- Consider enacting a constituency development fund act, learning from neighbouring Kenya, which would ensure an equitable distribution of funds and therefore lead to more even-handed development with consideration to gender issues.

4.2.2. The Law of Marriage Act, 1971

The Law of Marriage Act, 1971 still sanctions the marriage of girls below 18 years, contrary to several international human rights instruments on the rights of women and girls. Sections 13 and 17 of the Law of Marriage Act, 1971 provide the minimum age as 18 years for males and 14 years for females.

Section 63 of the Law of Marriage Act, 1971 provides for the duty of spouses to maintain each other during their marriage. As per Section 63(a), it is the duty of a husband to maintain his wife or wives and provide food, clothing and accommodation according to his means. Section 63(b) stipulates that a wife has a duty to maintain the husband if he is incapacitated wholly or partially by injury or ill health and cannot earn a living.⁷⁰ The law also sanctions polygamy and is silent on domestic violence, a highly prevalent cultural practice.⁷¹

Custody and maintenance of children are provided for under Sections 125-137. According to Section 125, it is within the power of the court to make an order for custody.⁷² The consideration of customs of the community has, in some cases, affected gender equality.⁷³ The requirements for courts to have regard to the customs of the community to

which the parties belong when deciding custody issues is in some cases discriminatory against women. For instance, the Local Customary Law Declaration Order 1963 states that a child born out of wedlock belongs to the father.⁷⁴ To ensure that women are protected from harmful cultural and traditional practices as enshrined in the Maputo Protocol (Article 2.2), and are not deprived of their right to positive aspects of customs and culture of their community, the application of this section should be subject to express provisions of fundamental rights principles enshrined in the Constitution, which protects women from all forms of discrimination.

Section 101 of the Law of Marriage Act 1971 provides that: *“No person shall petition for divorce unless he or she has first referred the matrimonial difficulty to a Board and the Board has certified that it has failed to reconcile the parties.”* There is a problem with the composition of these boards, which have a legislative guarantee of women’s representation. Section 103(1) provides that, *“Every Board shall consist of a Chairman and not less than two and not more than five other members.”* Composition of the board may be biased in the husband’s favour in some circumstances, as outlined below.

The law does not fix a time limit within which a board may reconcile the parties and if it fails to reconcile them, refer the matter to court. It has been suggested that there must be a time limit within which the board must deal with a matrimonial difficulty.⁷⁵

Furthermore, Section 103(2) provides:

- (2) The Board having jurisdiction for the purposes of this Act shall be—
- (a) the Board or any one of the Boards established for the ward within which the husband or intended husband resides, or where the husband or intended husband is not resident in Tanzania, the Board established for the ward within which the

wife or the intended wife resides;

- (b) where both parties belong to the same community, the Board, if any, designated to be the Board for that community.

The above provision favours husbands as far as the jurisdiction of the Board is concerned; that is, the Board may exercise jurisdiction over a dispute where the husband resides, which is discriminatory toward women.

Section 160 of the Law of Marriage Act provides that where it is proved that a couple has cohabited as husband and wife for at least two years, there shall be a rebuttable presumption that the two are married. Where such presumption is rebutted, the woman shall be entitled to apply to the court for an order of maintenance (and other relief) for herself and any children of the union. The interpretation that courts have given to the above section is not clear and could lead to confusion.⁷⁶ This is mainly because courts have not drawn a distinction between the two different types of presumption, one dealing with long cohabitation where parties have not gone through any ceremony of marriage (Section 160), and the second, where parties have gone through a ceremony of marriage and the presumption relates only to the validity of that ceremony (Section 41). Unfortunately, this has the effect of denying financial benefits to many women cohabitees and their children. The wording of the section does not permit any other interpretation. Given the fact that today a number of people are cohabiting without ceremony, the Act ought to provide for registration of such unions after the requirements of Section 160 have been satisfied.⁷⁷

Recommendations:

- Amend Sections 13 and 17 to establish the minimum age of marriage of 18 years for both boys and girls in and out of school.
- Section 63 on spousal maintenance needs to be amended and establish reciprocal duties, regardless of sex.

- Amend Section 125(2)(c), which stipulates the power of the court to make an order for custody considering the customs of the community to which the parties belong.
- Section 103(1) of the Law of Marriage Act should be amended to provide for guaranteed representation of women on the Board. The law should also provide that the persons eligible for appointment to these boards must be mature enough, and not include young men and women with no family experience, in order to win the confidence of the parties with matrimonial difficulties before them.
- The marriage conciliatory boards should be provided with a time limit from receipt of the complaint to finalising their proceedings by amending Section 101 of the Law of Marriage Act.
- Section 103(2) of the Law of Marriage Act should be amended to provide that a board will be established at a place where a petitioner resides or whenever convenient for both parties, and not necessarily where the husband resides.
- The Act ought to be amended to provide for registration of unions of couples who have cohabited for at least two years after the requirements of Section 160 have been satisfied.

4.2.3 The Local Customary Law (Declaration) Order 1963

The Local Customary Law (Declaration) Order 1963 is a set of codified rules derived from various tribes. The rules are discriminatory towards women as they do not recognize joint property ownership during marriage. Rule 71A provides that on divorce, a peasant's wife is only entitled to a quarter share of crops in the year of her divorce. This assumes that a divorced woman would re-marry or be taken care of by her family.⁷⁸ In addition, other gaps in the law relate to unequal property rights for male

and female children, as males are given priority. The widow of a deceased man is at risk of losing her share of inheritance since she is expected to inherit property through her male children.

Rule 71A⁷⁹ should be construed to include the wife's contribution and the fact that in agricultural society, women do most of the farm work and shoulder the burden of unpaid domestic care work; hence assets should be divided equally. The rule is superseded by Section 114 of the Law of Marriage Act, 1971 on joint efforts. Rule 74 states that a husband shall pay maintenance to his former wife only if the husband is the guilty party to the marriage breakdown.⁸⁰

Rule 71A does not recognize the right of a wife to share matrimonial assets and should be amended to remove the element of fault. The case of *Robert Aranja v Zana Mwijuma*⁸¹ held that there is no provision in the Law of Marriage Act requiring the court to take into account the apportionment of blame for the marital breakdown to determine the division of marital assets. The Law of Marriage Act, therefore, supersedes this rule and needs to be drawn to the attention of courts. More importantly, it is necessary to constantly raise the public's awareness on the provisions of the Law of Marriage Act, 1971, in particular on the division of assets acquired jointly during marriage.⁸²

Under the Local Customary Law (Declaration) Order, males inherit movable and immovable properties absolutely, but females inherit immovable property only for use during their lifetime. They cannot sell such immovable property unless there are no male members in the family. However, the High Court of Tanzania, in the case of *Bernado Ephrahim Vs. Holaria Pastory and Gervazi Kaizirege*, declared this custom as being discriminatory and unconstitutional.⁸³

Under Rules 27 and 28 of the Local Customary Law, 1963, widows are excluded from inheriting clan land.⁸⁴ It stipulates that the widow has no right to a share of the inheritance should the deceased have

living relatives of his clan. Her share of inheritance is to be cared for by her children, just as she cared for them. Furthermore, following the death of a father, a daughter is placed in the third degree (the lowest grade) for inheritance. Daughters cannot be primary heirs unless there are no male offspring.⁸⁵ The girl and/or woman is not equally protected by the rules when compared to her male counterparts. During the third cycle of the Universal Periodic Review of Tanzania (March 2022), the Human Rights Council (HRC)⁸⁶ made a recommendation to revoke and annul customary laws that undermine women's land rights, such as the local customary declaration order, and strengthen institutions dealing with land administration.

Recommendations:

- Overall, the Local Customary Law (Declaration) Order of 1963 is an ancient law that does not fit the current context. It should be repealed and replaced with a uniform law of inheritance⁸⁷ that takes into consideration gender equality, unlike the current situation where customary, statutory and Islamic laws can also govern issues of inheritance.⁸⁸ To ensure that women are protected from discriminatory and uncertain laws, due to the fluid nature of customary law, it is recommended to develop a comprehensive law on inheritance rights. The application of customary law should be subject to the principle of non-discrimination as enshrined in Articles 11, 12 and 13 of the Constitution of URT. The 2022 Universal Periodic Review (UPR) Report recommends among other that the State should *“Consider revising inheritance laws in order to ensure equal inheritance rights for women with regard to their husbands and parents”*.⁸⁹

4.2.4 The National Election Act, 2015

The National Election Act is the main legislation that regulates presidential and parliamentary elections in Tanzania Mainland.

The law uses gender-biased language throughout its various sections. Yet the preliminary section, which defines concepts, does not include a definition of gender-related concepts. This factor is a reflection of the degree to which patriarchal ideology is internalized in Tanzanian society. In Chapter One of the National Election Act, under preliminary provisions, gender-specific concepts are not defined, while some definitions have used gender-biased language, e.g., chairman instead of chairperson, he instead of he/she. Gender-biased language is further evidenced in providing for the commission's composition: Section 4.1(a) states that *“a chairman who will be a judge, (b) Vice-chairman or the temporary chairman presiding the meeting.”*

The Act has provisions that are silent on the gender composition of key positions, including the commission's composition under Section 4. Sections 6, 7 and 8 are further silent on the gender composition of the various office bearers, including returning officers and other staff (Paragraph 7), as well as appointments of regional election coordinators (Paragraph 8).

Electoral nominees for President and Parliament are required to deposit certain sums of money as a condition for the validity of their nominations, as may be determined by election authorities. Section 33 of the Elections Act spells out the conditions for depositing sums of money for presidential candidates. This money will not be refunded if the candidate withdraws her/his candidature or if they get less than one-tenth of the votes. Section 38 of the Elections Act spells out the requirement for a parliamentary candidate to deposit a certain sum of money as a condition of nomination and provides additional conditions under which the deposited sum of money will be forfeited to the government if the candidate withdraws her/his name on election day or if the total votes counted are less than one-tenth of the total. This discriminatory clause works against female aspirants or those who cannot afford the stated sum. Withholding

money on the condition that a candidate does not get a certain prescribed number of votes can deter potential female candidates from contesting for parliamentary seats for fear of losing their deposits.

The higher the position/level, the greater amount required as a deposit. For a presidential candidate, the 2015 National Elections (Presidential and Parliamentary Elections) Regulation 2015, Section 28(3) set a limit of one million Tanzania shillings as surety. This would be forfeited to the government if the candidate gets less than 10 per cent of the total votes casted, or if the candidate dies before collection of the surety. For parliamentary seats, the candidate will deposit five hundred thousand shillings. The financial requirements deter capable persons, particularly women, from aspiring to be nominated for these electoral positions. In addition, the Elections Expenses Act, 2010 does not contain targeted measures for addressing women, youth and persons with disabilities' specific financial challenges when seeking to participate in electoral processes.

Section 38(2) gives the commission the power to refuse the nomination of a candidate if convinced that such candidate has been disqualified according to election expenses law. No specific reference is made to an article of this law. This article can be abused and, in some cases, victimize female candidates.

The procedures for nomination provided in the Elections Act have some restrictive clauses that are a barrier to women's rights in qualifying for nomination as a candidate. The electoral positions require individuals to be nominated by their respective political parties, since the electoral laws do not provide room for independent candidates. All electoral positions, including President, Member of Parliament as well as Council, must be members of a political party that nominates them to contest for the relevant positions. The National Elections (Presidential and Parliamentary Elections) Regulations 2015, Section 28(2c)

requires certification by the Secretary General of a political party that the candidate belongs to. Similar conditions apply to a parliamentary candidate as indicated in the same regulations in Section 31(1), which states:

Any person wishing to contest for parliamentary elections shall submit to the Returning Officer a letter of introduction from Regional, District Secretary of his political party and obtain from the returning Officer

This requirement for party membership of candidates for electoral positions conflicts with the equality principles detailed in constitutional provisions, since non-party members are disqualified from participating in electoral positions. This is a double disadvantage for women who struggle to access this right because of male dominated political parties, while independent candidacy might offer an alternative means for some women of getting through competitive election processes.

The Elections Act does not task political parties to apply any gender equality principle or the constitutional affirmative provision in nominating their electoral candidates. The political parties' internal procedures for nominating electoral candidates are not clearly stipulated in the electoral laws. Each of the participating political parties applies its own rules, which are, in some cases, not made known to the contestants. The above nomination practices within the political parties, which are not obliged by law to adhere to gender equality principles, have resulted in discriminative practices in which women have always constituted a minority of nominees for electoral positions.

The URT uses a first past the post electoral system, supplemented by proportional representation that is applied to filling special seats with women candidates. Though the first past the post electoral system generally allows both men and women to vie for electoral seats, a body of research points to it being uncongenial in terms of enabling

women to vie for and win elections.⁹⁰ Under this electoral system, one candidate must win, pushing the political parties to field the safest and most mainstream candidate who will appeal to a wide range of voters.

Under a first past the post electoral system, both men and women are viewed as enjoying the same political parties' and voters' privileges and acceptance. Moreover, the electoral system presumes that men, women, youth and persons with disabilities equally enjoy the same status, acceptance and privileges by the voters and the political parties. The system makes no effort to recognize and address historical injustices that have long pushed such groups out of politics, elections and decision-making spaces.

Part III, Section 86A of the Elections Act spells out the procedure for nominating women's special seat candidates. It provides for women's special seat nomination modality and conditions, including names proposed by political parties and participating in elections. There is no uniform procedure to guide political parties' selection of women for special seats, as required under Article 81 of the Constitution of the United Republic of Tanzania. Consequently, the seats are sometimes tainted with manipulation, conflicts, corruption and nepotism, affecting the quality of women candidates occupying the seats.

Chapter Three of the Elections Act spells out the qualifications for presidential candidates, nomination procedures and election procedures. It is silent on the gender equality principle in nominating a president and vice president. It is a practice in URT that if the President is female, the Vice President would automatically be male, and vice versa. This practice needs to be reflected in both the Constitution of URT and the Elections laws of the URT.

Recommendations:

- The law should eliminate gender-biased language and review some discriminatory

clauses that might discourage female candidates from contesting parliamentary positions. The law should further review conditions for nominating women members for special seats, which presently have some discriminatory elements.

- The Elections Act would benefit from amendment of Section 4, as well as Sections 6, 7, and 8 to include gender composition of key positions, including the Electoral Commission's composition and appointments of various office bearers, including returning officers and regional election coordinators.
- The financial requirements for electoral nominees for President and Parliament deter capable persons, particularly women, from aspiring to be nominated for these electoral positions. The government should amend Sections 33 and 38 of the Elections Act, as well as the National Elections (Presidential and Parliamentary Elections) Regulations 2015, Section 28(2c) and Section 31(1) to remove the financial requirement for female candidates.
- Amend the Election Expenses Act, 2010 to include specific measures for addressing women, youth and persons with disabilities' unique financial challenges to enable full participation in electoral processes.
- Amend the Elections Act to task political parties to apply the gender equality principle or the constitutional affirmative provision in their internal procedures when nominating electoral candidates.
- Amend Section 38(2) of the Elections Act, which gives the commission the power to refuse the nomination of a candidate if convinced that such candidate has been disqualified according to election expenses law.
- Amend Section 86A of the Elections Act

to include a uniform procedure to guide political parties' selection of women for special seats, along with a procedure for their nomination.

- Amend Chapter Three of the Elections Act to include a gender equality principle in nominating president and vice president and reflect the practice already in place, whereby if the President is female then the Vice President would automatically be male, and vice versa.
- Review the existing electoral system of first past the post, which poses several challenges to women to be nominated and win elections. Transition from a first past the post electoral system to an equality-based proportional representation electoral system will create a more conducive environment for realising equal representation of men and women in decision-making spaces.

4.2.5 The Political Parties (Amendment) Act, 2019

The Political Parties (Amendment) Act requires political parties to take into account a gender inclusion threshold in fielding candidates. Section 6A(2) states: *“A political party shall be managed by adhering to the Constitution of the United Republic, the Constitution of Zanzibar, this Act, its constitution, principles of democracy and good governance, non-discrimination, gender and social inclusion.”*

Section 6A(5) states: *“A political party shall promote the union of the United Republic, the Zanzibar Revolution, democracy, good governance, anti-corruption, national ethics and core values, patriotism, secularism, uhuru torch, national peace and tranquillity, gender, youth and social inclusion in the – (a) formulation and implementation of its policies; (b) nomination of candidates for elections; and (c) election of its leaders.”*

Notwithstanding the above, the Act does not stipulate the threshold i.e., the number or

percentage of women and persons with disabilities the political party should have as its members and leaders and/or candidates to demonstrate its compliance with gender and social inclusion provision. It is also noted that the Political Parties (Amendment) Act does not include requirements for data disaggregation based on sex, age and disability in political parties' registers.

Further, the Act contains no rewards or penalties and does not include effective monitoring mechanisms to render compliance by political parties, thus making enforcement by the Registrar of Political Parties challenging. In addition, the Act does not contain specific language on how political parties' subsidies from the Government can be used to advance the participation of women within political parties and in election related activities. Effective and meaningful inclusion of women in internal political parties' governance structures and in elections will not be attained if the political parties, a majority of whose leaders are men, are left to apply discretion as to the extent of compliance with gender equality principles.

Recommendations:

- The Government should enforce the gender equality and social inclusion principles in the Act.
- Amend the Political Parties (Amendment) Act to stipulate the threshold i.e., the number or percentage of women and persons with disabilities the political party should have as members, leaders and/or candidates to demonstrate its compliance with the gender and social inclusion provision.
- The Act and its regulations should be amended to include the requirements for data collection and disaggregation based on sex, age and disability in political parties' registers.
- Amend the Political Parties (Amendment) Act to include rewards, penalties and

effective monitoring mechanisms for compliance by political parties, and to ensure enforceability by the Registrar of Political Parties.

- Lastly, the Act should be amended to contain specific language on how political parties' subsidies from the Government can be used to advance the participation of women, both within political parties and in election related activities.

4.2.6 Local Authorities (Elections) Act, 2015

This is the primary legislation governing elections at the local government level, including appointing and coordinating election officers at lower levels. This legislation has been amended several times,⁹¹ and all such amendments have been considered in this analysis.

Gender-biased language is used throughout the Act, which reflects the degree to which patriarchal ideology is internalized. Several sections in the Act only make reference to males, and 'he' is included in the Act 127 times, including in Sections: 9, 10, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 26, 27, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44, 45, 49, 51, 52, 57, 58, 61, 62, 63, 64, 66, 70, 84, 87, 90, 92, 99, 101, 106, 111, 115 and 118.

The law grants the commission powers to appoint election staff for local government elections, but does not oblige the office to adhere to gender equality principles under Sections (2), (4) and 10(2). This scenario can result in a situation where the majority of electoral staff will be of the same sex, resulting in a lack of awareness of the gender-specific issues in management of local government elections.

The law in Section 55 obliges each candidate with responsibility for meeting all personal expenses during the whole period of elections. What constitutes personal expenses needs to be unpacked because the Election Expenses Act, 2010 obliges political parties to conduct and use their own funds during campaigns. Under this law,

individuals can use their own funds whenever the need arises.

Section 86A spells out the procedure to nominate women for special seats, which is done by political parties in order of priority and endorsed by the Electoral Authority, which informs political parties of the elected names. There is no uniform procedure to guide political parties' selection of women for special seats as required under Article 81 of the Constitution of the URT. Consequently, as it is with national elections, the local level elections for women's special seats are sometimes tainted with manipulation, conflicts, corruption and nepotism, affecting the quality of women candidates occupying the seats.⁹² The law is, however, silent on the rights of these women and their status in the council. In practice, some councils have denied these category of women certain rights, for instance chairpersonship of committees.

Sections 87-106 of the Act spell out offences related to local authorities' elections. These sections list election-related offences, including those related to official discouragement from contesting, offences related to election officers' misconduct, offences related to ballot forms, as well as miscellaneous offences. The Act further details the penalties for the offences, but is silent on sexual related offences, including sexual corruption.

Recommendations:

- In light of international standards, the Act should be reviewed to include gender-sensitive language. Specifically, Sections 9, 10, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 26, 27, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44, 45, 49, 51, 52, 57, 58, 61, 62, 63, 64, 66, 70, 84, 87, 90, 92, 99, 101, 106, 111, 115 and 118 should be amended.
- Sections 9(2)(4) and 10(2) should be amended to ensure the office is obliged to adhere to gender equality principles by providing gender considerations in

appointments for local government elections.

- Amend Section 55 of the Act to oblige the candidates to use their political parties' own funds, and not personal funds, during the whole period of elections, ensuring specific measures for addressing the unique financial challenges faced by women, youth and persons with disabilities when participating in local electoral processes.
- Amend Section 86A to include a uniform procedure to guide political parties' selection of women for special seats, along with the procedure for their nomination. The law should further define the rights of women in special seats and their status in the council.
- Amend Sections 87-106 of the Act to include sexual related offences, including sexual corruption and a corresponding penalty as per the Prevention and Combating of Corruption Act 2007, with amendments.

4.2.7 Local Government (District Authorities) Act, 2002

The Local Government (District Authorities) Act uses gender-biased language throughout. For example, in Chapter 1 on Preliminary Provisions under Article 3 (Interpretation), the use of the word "Chairman". The word 'Chairman' is repeated 54 times in the Act and specifically in Sections 3, 13, 29, 31, 36, 39, 41, 42, 44, 46, 49, 54, 56, 57, 59 and 61.

Section 4(b) of the Act also grants the Minister for local government with the responsibility to foster sound principles of democracy enshrined in the Constitution of the URT. By implication, the responsible Minister is accountable for the realisation of gender equality principles in local governing structures.

Section 31 provides for the establishment of a ward committee in the area of each district council. The law is silent on consideration of gender equality principles in the ward committee, and yet one of

the functions of the ward committee as detailed in Section 32 of this law includes, among others, the promotion of gender issues.

Sections 35–62 outline the composition of local government authorities, including district councils, village councils and township authorities, providing procedures for elections of local government chairpersons and vice chairpersons and authorities (district and village councils). However, the sections do not provide for the application of equality principles in electing chairpersons and vice chairpersons and provide party membership as criteria for eligibility for election, except in village council, which is in most cases restrictive for women.

The Act partially acknowledges the constitutional provisions provided in the URT, yet there are areas where the constitutional requirements are not strictly adhered to. For example, under Section 56 on composition of village councils, Section 56.1(c) provides election procedures for electing special seats representatives constituting a quarter of the total number of all the members of the village council. This is lower than the one-third constitutional affirmative provision. Additionally, affirmative provision is limited to electoral positions, hence other areas, such as management of elections, are not applicable. The law is silent on the rights and privileges of this category of councillors.

Membership on a district council includes MPs representing a constituency within the area of the district council (Section 35). This means MPs from special seats belonging to the district are not eligible for membership on district councils. The district council is a body that makes decisions on all affairs of the district, including: coordination; supervision of implementation of plans; monitoring and control of performance of staff; collection and utilisation of resources/revenue and making by-laws (Section 118). There is a need to expand membership of district councils to include MPs representing special seats.

Recommendations:

- The Act should be reviewed to include gender-sensitive language considering international standards. Specifically, Sections 3, 13, 29, 31, 36, 39, 41, 42, 44, 46, 49, 54, 56, 57, 59 and 61 should be amended.
- Amend Section 4(b) to make specific reference to grant the minister responsible for local government accountable for fostering gender equality principles in local governing structures. It is currently implied in this section.
- Amend Section 31 of the Act to ensure it spells out gender equality principles in the ward committee establishment.
- Amend Sections 35–62 to provide application of the equality principle in electing chairpersons and vice chairpersons, and other members of the district and village councils of the local authorities, and to provide for membership in the local government authority beyond political parties. The Elections Commission could further provide guidelines for the nomination process to comply with the constitutional equality principle, e.g., where the chairperson is a woman, the vice chairperson is to be a man and vice versa. A guideline that instructs filling of vacant positions of deceased female candidates with other female candidates to ensure gender balance should also be provided.
- Amend Section 56 of the Act on composition of village councils to ensure the constitutional provision stipulates that at least one-third of the total number of members of the village council are women. Additionally, the affirmative provision should not be limited to electoral positions and should also focus on other areas, including elections management. The law should define the rights and privileges of this category of councillors.

- Amend Section 35 of the Act to expand membership of district councils to include MPs representing special seats within the area of the district council.

4.2.8 The National Education Act, R.E 2002

The URT has ratified the most important regional and international treaties protecting the right to education, but has yet to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,⁹³ of which the right to education is one of the central tenets. It has also not ratified the Optional Protocol to the Convention on the Rights of the Child on a communication procedure; the right to education is also a key right of children. Both optional protocols allow individuals to make formal complaints to the relevant UN treaty body.⁹⁴

In implementing international and regional commitments, Tanzania is obliged to offer equal rights to both men and women and eliminate all forms of discrimination against women in accessing education. This is deemed to include girls if a broader and more progressive legal interpretation is undertaken. Article 12(c) of the Maputo Protocol stipulates that “*States Parties shall take all appropriate measures to..... protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices.*” It is noted that making a schoolgirl pregnant is a criminal offense liable to 30 years imprisonment. Girls out of school may not be as adequately protected as girls within the school system when they get pregnant.⁹⁵

Both the Constitution of Tanzania (1977) and the Education and Training Policy (2014) guarantee the right to education for children in Tanzania, irrespective of their gender or parental status.

Section 35 of the Education Act provides that “*it shall be compulsory for every child who has attained the age of seven years but has not*

attained the age of thirteen years to be enrolled for primary education." The Act was amended in 1995, increasing the compulsory school age to 15 years. Though not explicitly stated, the 2002 Educational Regulation (Regulation No. 4), Section 4 notes that individuals who commit an *"offence against morality"* can be expelled from primary and secondary school. This phrase has been interpreted by school and government officials alike to include adolescent pregnancy.

The Government, through a circular, has allowed students who drop out of school for various reasons to return to school. The provision needs to be included in the Education and Training Policy (2014), Education Act and in the 2002 Educational Regulation No.4 for sustained and long-term impact. The 2022 Universal Periodic Review (UPR) for Tanzania had nine recommendations addressing the re-entry of pregnant girls to school and quality education, all of which were accepted and enjoyed the support of the State.

Recommendations:

- The Government should ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communication procedure, both of which allow individuals to make formal complaints to the relevant UN treaty body.
- The Government of the URT needs to address social stigma associated with teenage pregnancy through awareness raising and appropriate services that promote reintegration into the education system. This is further one of the recommendations in the 2022 UPR for Tanzania. Girls who get pregnant in and out of school should be able to freely access education.
- Amend the Education and Training Policy (2014), Education Act and the 2002 Educational Regulation No.4 to include a provision that allows students who drop

out of school for various reasons to return to school and provide a more detailed definition and interpretation of *"offence against morality"*.

4.2.9 The Citizenship Act, R.E 2002

The Citizenship Act is the law that guides all matters of citizenship in Tanzania.

Tanzania's Citizenship Act does not afford equal rights to women and men to confer citizenship to their spouses, as a married woman cannot pass nationality to her foreign/stateless spouse on an equal basis with a married man. Section 11(1) provides that *"... a woman who is married to a citizen of the United Republic shall at any time during the life-time of the husband be entitled, upon making an application in the prescribed form, to be naturalized as a citizen of the United Republic."*⁹⁶ Therefore, while noncitizen women are entitled to naturalization upon marriage, noncitizen men are not. Gender inequality in nationality laws may lead to statelessness and can threaten family unity.

Children born out of wedlock and posthumous children shall be given the citizenship of the father, as per Sections 19 and 20 of the Citizenship Act 1995. This law should apply equally to both father and mother.

Furthermore, gender discriminatory provisions exist in Section 6 of the Act regarding acquisition of citizenship by descent. Although one can become a citizen by descent if either the father or mother is a citizen of Tanzania, this does not apply if the parent's citizenship was solely descent-based. The Act provides that where one's father was a citizen by descent, the child can acquire citizenship through naturalization. This reneges on the gender-neutral aspects of the primary provision on descent-based citizenship, since a person born outside Tanzania to a Tanzanian mother who is a citizen by descent would not be covered under this provision. Accordingly, citizenship does not transmit to the second generation born outside the country, creating risks of statelessness if the child

does not acquire the citizenship of the country in which they were born.

Recommendations:

- Amend the nationality law where discrimination on the basis of gender persists, including Section 11, to ensure women and men enjoy equal rights to confer nationality to spouses and to children when the parent is a citizen by descent.
- Amend Sections 19 and 20 to permit women to pass on their citizenship to their children born out of wedlock and posthumously.
- Amend Section 6 of the Act to provide that where a person's father or mother was a citizen by descent, the child can acquire citizenship through naturalization.

4.2.10 Births and Deaths Registration Act, R.E 2002

The Births and Deaths Registration Act provides Tanzania's legal framework for registration of births and deaths. It has complied with international and regional conventions mentioned herein below by ensuring that a child is registered at birth and acquires the right to the name and nationality of the parent.

However, Section 12 of the Act specifies conditions such as consent of the father for his name to be registered for purposes of registration of the birth of the child. The situation is different for children born out of wedlock, contrary to international and regional frameworks about birth and death registration. Due to discriminative customs and norms within patrilineal societies, the right to a family name is not guaranteed if a child is born out of wedlock. In Tanzania, the right to a name for a child born out of wedlock is not guaranteed, especially the use of the father's name without the father's consent. The father is not bound to register the child, and the mother cannot enter and register the name of the father of the child without him acknowledging himself to be so by signing or affixing his mark on the register. This

discriminates against the child by denying him/her a right to know the father and hence affects the child's inheritance rights. In certain cases, this has led to discrimination concerning the status and forced separation from parents.⁹⁷

Recommendation:

- Section 12 of the law should be amended to give both women and men the right to give a child a family name.

4.2.11 Employment and Labour Relations Act, 2004⁹⁸

The Employment and Labour Relations Act (ELRA) emphasizes equality between men and women in employment. Section 7(1) of the Act prohibits discrimination of any kind, and Section 7(4) mentions sex, gender, marital status, age and disability, among other factors, prohibited to be used as a basis for discrimination. The Act has made it mandatory for employers to have an employment policy that states explicitly how the workplace will provide equality in employment in the labour market.⁹⁹

Section 19 of the Employment and Labour Relations Act defines ordinary working hours. It stipulates that '*Normal working hours in Tanzania are 9 hours a day, 45 hours a week and not more than six days a week.* Sections 23 and 24 of the Employment and Labour Relations Act provide for rest periods. These sections provide for three kinds of rest periods: daily break, daily rest and weekly rest. Provisions are also made for compulsory holidays.¹⁰⁰

The literature review noted that domestic workers do not have daily breaks except when employers are not present. Weekly rest is deemed unpredictable because it depends on the employer's decision. Most domestic workers can only observe compulsory holidays when the employer has had no visitors or when children are away. A few mentioned being paid for working over compulsory holidays, but mostly in kind.¹⁰¹

In unpaid care and domestic work (UCDW), the

right to leave, as with other aspects of formal employment rights, does not benefit the majority of domestic workers who are, in many cases, young women. According to an International Labour Organisation (ILO) report, despite ELRA providing for working hours and rest, 70 per cent of domestic workers indicated that they were never given annual leave. This may also be evidenced by cases filled to the Conciliation, Mediation and Arbitration (CMA) board, in which the employees state that their employers, on account of termination of employment, should pay them for the accumulated annual leave they were entitled to but never given during employment.¹⁰²

Sections 31-34 of the ELRA provide for different types of leave, including maternity and paternity; however, paid maternity leave does not meet the ILO minimum standard of 14 weeks. Paternity leave is only 3 days and should be equalized with maternity (or parental leave introduced) to encourage the sharing of childcare responsibilities. Section 33(8) of the Act further limits paid maternity leave to four terms, which may hinder family aspirations.

Recommendations:

- The Employment and Labour Relations Act, 2004 should be amended to recognize unpaid care work and flexible hours. Recognition of unpaid care work and special consideration for domestic workers within the legal framework can inspire recognition of the contribution of unpaid care work within the economy and ensure incorporation of the legal framework commitments already made by Tanzania under CEDAW Article 11 and Maputo Protocol Article 13.
- Amend Sections 31-34 of the Act to meet the ILO minimum standard of 14 weeks for paid maternity leave. Paternity leave should be equalized with maternity leave (or parental leave introduced). The best

practice with regard to paid leave, for example, from countries such as Angola and Burkina Faso, is where the government pays for the benefits rather than the employer. If employers must pay for leave benefits as well as replacement staff when women are on leave, it disincentivizes them from hiring women.

- Amend Section 33(8) of the Act to remove the term limitation for maternity leave.
- The Government should take steps to ensure that all employers have an employment policy that states explicitly how the workplace will provide equality in employment in the labour market. There should be systems to monitor implementation of such policy.

4.2.12 Penal Code 2002

The Penal Code Section 169A prohibits FGM. This was revised through the Sexual Offences Special Provisions Act 1998, Section 21. The law prohibits FGM from being performed on girls under 18, but it does not protect women aged 18 or older. According to the 2010 Demographic and Health Survey, 15 per cent of women and girls aged 15 to 49 were subjected to FGM, and 7 per cent aged 15 to 19 had been subjected to the practice. FGM was found to be most common in the northern and central zones. In Manyara, the prevalence rate among women and girls 15 to 49 years old was 71 per cent; in Dodoma, 64 per cent; Arusha, 59 per cent; Singida, 51 per cent; Mara, 40 per cent; Kilimanjaro, 22 per cent; Morogoro, 21 per cent; and Tanga, 20 per cent.

Under Sections 130-132, the law provides for life imprisonment for persons convicted of rape, including spousal rape, during periods of legal separation. The law stipulates that a woman wishing to report a rape must do so at a police station before seeking medical help. She may be admitted to a hospital after obtaining a release form from the police. This process contributes

to medical complications, incomplete forensic evidence and failure to report rape incidents. Victims often fear that cases reported to the police will be made public. Furthermore, the law prohibits assault but does not specifically prohibit domestic violence. In establishing grounds for divorce, the Law of Marriage Act 1971, Section 107(2)c states that “cruelty, whether mental or physical, inflicted by the respondent on the petitioner or on the children, if any, of the marriage...”. Domestic violence may serve as grounds for divorce. Domestic violence against women remains widespread, and police rarely investigate such cases.¹⁰³ It is noted that the issue of marital rape is omitted as an offense in the Penal Code. A gender-based violence (GBV) law does not exist in Tanzania; instead, provisions are scattered in various laws that focus on harmful practices such as forced widow inheritance, forced marriage, human sacrifice and others. There is need to have a comprehensive law that penalizes acts of GBV, such as: emotional and psychological abuse; marital rape; defilement; gang rape; economic abuse or deprivation; coercive control; online abuse and revenge porn; and domestic violence. During the third cycle of the UPR (March 2022), the Human Rights Council (HRC)¹⁰⁴ made 252 recommendations and noted 65 recommendations. One HRC recommendation is to ensure that all victims of marital rape receive necessary assistance. The State noted the recommendation and stated that marital rape is yet to be defined in State policies. The HRC further recommends enacting a stand-alone law on sexual and gender-based violence, ensuring inclusion of those living with disabilities.¹⁰⁵

Recommendations:

- Amend the Penal Code Section 169A and the Sexual Offences Special Provisions Act 1998 Section 21 to extend protection against the practice of FGM to women above age 18.
- The State should consider enacting GBV legislation that includes definitions of all forms of domestic violence in line with

international standards and principles.

- In addition, there is a need to consider incorporating marital rape as a criminal offense under Sections 130-132 of the law.

4.2.13 Persons with Disabilities Act, 2010

Tanzania Mainland has specific legislation protecting the rights of persons with disabilities. It gave effect to its National Policy on Disability, 2004 by enacting the Persons with Disabilities Act, 2010. The Act guarantees rights to social support, healthcare, education, employment, accessibility and rehabilitation for persons with disabilities, including children.¹⁰⁶ This makes the Act compliant with the Convention on the Rights of Persons with Disabilities (CRPD) and the CRC. However, since the Act does not have provisions that account for or provide specific rights to women and girls with disabilities, considering their different gendered needs, the Act is not compliant with CEDAW.¹⁰⁷

The legal frameworks to protect the rights of persons with disabilities fail to adopt an intersectional lens that addresses the diverse needs of marginalized groups within the disability spectrum, such as women, older adults, children, people with intellectual impairments, rural dwellers, etc., and thus fails to guarantee rights to education, employment, healthcare and social support to all persons with disabilities.

Recommendations:

- Review the National Policy on Disability, 2004 and/or adopt a new disability policy in line with CEDAW principles.
- Amend the Persons with Disabilities Act, 2010 to include provisions that account for and provide specific rights to women and girls with disabilities.



5

PART V:

THE LEGAL SYSTEM AND CONTEXT OF ZANZIBAR

THE LEGAL SYSTEM AND CONTEXT OF ZANZIBAR

5.1. Introduction and Overview of the Legal System of Zanzibar

The Revolutionary Government of Zanzibar (RGoZ) has authority in Zanzibar, i.e., the territory composed of the islands of Unguja and Pemba, over all matters that are not Union Matters. In this respect, RGoZ has a separate legislature known as the House of Representatives, and a judicial structure that functions from the primary court level to the High Court of Zanzibar. All are provided for under the 1984 Constitution of Zanzibar, Sections 93 and 100.

Zanzibar has a dual legal system with both common and Islamic law, the latter sources of law being called upon in personal family matters. The judiciary is formed by the various courts of judicature and is independent of the executive. The RGoZ adheres to and respects the constitutional principles of separation of powers.¹⁰⁸

5.2. Context of the Legal System of Zanzibar

The context of the legal system is based on the Constitution of Zanzibar and has been shaped by political, religious and sociocultural influences, which are embedded in some of the laws enacted, such as the Kadhi's Court Act. The judiciary is independent, as per the Constitution of Zanzibar. Cases with landmark judgments from higher courts, such as the High Court and Court of Appeal, are binding to the lower courts, including regional, district and primary.

5.3. The Judicial System in Zanzibar

5.3.1. The Court System in Zanzibar¹⁰⁹

The Zanzibar court system is quite similar to that of Tanzania Mainland, except that Zanzibar retains Islamic courts, such as the Kadhi's Court. These

adjudicate Muslim family cases such as divorce, child custody and inheritance.

Court of Appeal of the United Republic of Tanzania:

The Court of Appeal of the United Republic of Tanzania handles all matters from the High Court of Zanzibar except for a few issues, including those matters relating to the interpretation of the Zanzibar Constitution, Islamic matters which started at the Kadhi's Courts and other matters provided in the Zanzibar Constitution or any other law enacted by the House of Representatives.¹¹⁰

High Court: Section 93 of the Constitution of Zanzibar establishes the High Court of Zanzibar. It has the same structure as the High Court of Tanzania Mainland, and handles all appeals from the subordinate courts, including appeals from Kadhi's Appeal Court. The High Court of Zanzibar's decisions are final for appeals from the Kadhi's Appeal Court and other matters provided in the Constitution and relevant laws.¹¹¹ The High Court of Zanzibar is headed by the Chief Justice of Zanzibar.

Magistrate's Courts: These courts have jurisdiction over the majority of cases, with the exception of those under Islamic law, which are tried in the Kadhi's courts. The Magistrates courts include Regional Magistrate courts, District Magistrate courts and Primary Magistrate courts.

Appellate Kadhi's Court:

The main role of the Kadhi's Appellate Court of Zanzibar is to hear all appeals from the District Kadhi's Court, which adjudicates Islamic law.¹¹²

District Kadhi's Court¹¹³: These are the courts in Zanzibar that adjudicate all Islamic family

matters such as marriage, divorce, distribution of matrimonial assets, custody of children, and inheritance, but only within Muslim families. However, non-Muslims can further submit a claim against Muslims on matters in which the Kadhi's Courts have jurisdiction.¹¹⁴ The District Court has the same status as the District Kadhi's Court.



6

PART VI:

**GENDER ANALYSIS OF
NATIONAL LAWS IN
ZANZIBAR**

GENDER ANALYSIS OF NATIONAL LAWS IN ZANZIBAR

6.1. Overview of the Analysis of National Laws in Zanzibar

Although it is part of the Union, Zanzibar has its own government with a president, court system and legislature, and exercises considerable autonomy.¹¹⁵ This part of the report focuses on a review of the following laws in Zanzibar from a gendered perspective:

- 1) The Zanzibar Elections Act, 2018
- 2) The Zanzibar Children’s Act, 2011
- 3) The Employment Act, 2005
- 4) The Penal Act, 2018
- 5) The Kadhi’s Court Act, 2017
- 6) The Persons with Disabilities (Right and Privileges) Act, 2006
- 7) The Spinsters and Single Parent Children Protection Act, 2005

6.2 The Zanzibar Constitution of 1984 with Amendments

The Constitution of Zanzibar provides for the right to equality before the law, equality of all human beings and non-discrimination,¹¹⁶ all of which are directly relevant to issues of gender equality (see table 4).

Table Four: Gender Equality Rights and Relevant Articles in the Constitution of Zanzibar

ARTICLE	PRESCRIBED RIGHT
11	Equality of people
12	Equality before the law
13	Right to life
14	Right to individual freedom
15	Right to privacy and personal security
ARTICLE	PRESCRIBED RIGHT
16	Protection of freedom of movement
17	Protection from deprivation of property
18	Freedom of expression
19	Right to freedom of religion
20	Protection of freedom of assembly and association
21	Freedom to participate in public affairs, right to work and receive remuneration
22	Duty to participate in work
23	Duty to abide by the laws of the land, duty to safeguard public property and defence of the nation
24	Limitations to rights and freedoms and safeguards on rights and obligations
25	Fundamental rights and individual freedoms

6.3 Gender Analysis of Zanzibar National Laws

6.3.1 The Zanzibar Elections Act, 2017

The Zanzibar Elections Act is the main legislation that regulates presidential, House of Representatives (ZHoR) and councillor elections in Zanzibar and defines the functions of the Zanzibar Electoral Commission (ZEC).

Section 3 of the Act provides definitions and interpretation of concepts used in the Act. Gender-specific concepts are not defined, and some definitions have used gender-biased language, e.g., “chairman” instead of chairperson.

Part Two, Chapter III establishes nomination procedures for candidates’ qualifications for president, ZHoR and councillors, objection against validity for a nominated candidate and nominating particular sets of candidates. All eligible candidates must be nominated by their respective political parties. This disqualifies non-party members from enjoying their rights to represent. The Act does not oblige political parties to apply gender equality principles in candidate nominations.

Sections 53 and 54 of the Elections Act spell out the procedure for nominating women’s special seat candidates. They provide for women’s special seat nomination modalities and conditions, including names proposed by political parties and participating in elections. There is no uniform procedure to guide political parties’ selection of women for special seats.

The financial requirement for deposits as a surety for nominations and conditions for refund deter women from contesting for electoral positions (Section 49). The modality of nominating special seat candidates tends to favour big political parties, which negatively impacts women’s performance in constituency competition, and has not resulted in levelling the playing field, as per CEDAW.

Chapter Six lists election-related offenses and penalties. Gender-related offenses are implied, not articulated and penalties do not match with some gender-specific electoral offenses, such as sexual

corruption.

Recommendations:

- Review the law to remove the gender gaps observed, including the use of gender-biased language.
- Amend Part Two of Chapter III on nomination procedures for candidates, for the president, ZHoR and councillors to consider nominations outside political parties, including independent candidates, which have favoured women in several jurisdictions.
- Review conditions for nominating women members for special seats, which have some discriminatory elements. It is recommended to amend Sections 53 and 54 of the Elections Act to include uniform procedures that guide political parties’ selection of women for special seats, along with the procedure for their nomination.
- The financial requirements for electoral nominees for president and parliament deter capable persons, particularly women, from aspiring to be nominated for these electoral positions. The Government should amend Section 49 of the Elections Act to remove the financial requirement for female candidates.
- Amend the list of election-related offenses and penalties in Chapter Six to include gender-related offenses, such as sexual corruption.

6.3.2 The Zanzibar Children’s Act, 2011

The Zanzibar Children’s Act (2011) provides for the rights and best interests of the child. It establishes the Children’s Court; consolidates and expands on provisions relating to the care and protection of vulnerable children and children in conflict with the law; outlines custody, guardianship, access to maintenance, foster care and adoption of children; and lists special protection measures in respect of medical intervention for children. It details

guidance and standards concerning Approved Schools, residential establishments and day care centres; and provides for matters incidental thereto.¹¹⁷

Part II of the Zanzibar Children's Act provides for the child's best interests and rights, which are in line with international conventions such as Article 3 of the CRC, 1989. Some of the rights provided for in the CRC that are not explicitly provided for in the Zanzibar Children's Act include i) the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development,¹¹⁸ and ii) the right for a mentally or physically disabled child to enjoy a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate the child's active participation in the community.¹¹⁹

Recommendations:

- The Zanzibar Children's Act should be amended to incorporate other additional rights of children as per the CRC, which would make a difference in the lives of children.
- The Government should take steps to increase awareness of violence against children, including child marriage, and put in place adequate mechanisms for reporting violence cases; protecting identities of persons who report such cases; and providing shelters for victims of violence, including child marriage and rape, who may become ostracized within their communities for reporting and seeking legal assistance.

6.3.3 The Employment Act, 2005

The Employment Act prohibits discrimination as per Section 10, which covers fundamental rights and protection. Forced and the worst forms of child labour are prohibited under Sections 5 and 7, respectively. Section 6 restricts the employment of children. Part VIII of the Act considers gender-related issues by highlighting special categories

of employment, such as pregnant and nursing employees,¹²⁰ engagement of female employees at night¹²¹ and equal rights for the employment of the disabled. The exemption of female employees from working at night¹²³ is a gender restriction and can prevent women from entering the labour force and accessing higher paying jobs.¹²⁴

It was noted that the Employment Act (2005) does not provide for unpaid care work, which women and girls mainly undertake. Enacting gender-sensitive laws recognizing unpaid care work would contribute to freeing up the time spent for women to engage in informal economic activities.

Recommendations:

- This law should be amended to include unpaid care work, which women and girls mainly perform, since this has not been adequately provided for in the Act. The amendment of the law should include the concept of recognition and redistribution of unpaid care work for the benefit of women, the girl child and the welfare of families, and specifically safeguard the rights of care workers and give guidelines to employers.
- Amend Sections 85 and 86 of the Act that provide an exemption for female employees from working at night, since it can prevent women from entering the labour force and accessing higher paying jobs.

6.3.4 The Penal Act, 2018

The Penal Act, 2018 contains some sections related to criminal offenses linked to gender-based violence affecting women, girls, men and boys, as seen in Part 13 of the Act, which provides penalties for offenses against morality. These offenses include, but are not limited to, rape (Sections 108-111), abduction of women, girls and boys (Sections 112 and 113), defilement of boys (Sections 115 and 119), defilement of a person with mental disability (Section 116) and assault as provided for under Sections 229-232. As per Section 150, desertion of a child or person with a disability is

a criminal offense. A 2008 study on laws related to violence against women found that Zanzibar legislation does not define sexual violence or domestic violence. Marital rape is not prohibited under Zanzibar legislation, and no law provides a minimum marriage age.

The law provides life imprisonment for persons convicted of rape, including spousal rape, during periods of legal separation. The law also stipulates that a woman wishing to report a rape must do so at a police station before seeking medical help. Only after obtaining a form from the police may she be admitted to a hospital. This process has contributed to medical complications, incomplete forensic evidence and failure to report rape. Victims often fear that cases reported to the police would be made public.

Recommendations:

- Consider enacting specific gender-based violence legislation that includes definitions of all forms of domestic violence in line with international standards and principles, including a minimum age of marriage.
- Incorporate marital rape as a criminal offense under part 13 of the Act.

6.3.5 The Kadhi's Court Act, 2017

The Kadhi's Court has exclusive jurisdiction over all matters and proceedings concerning Muslims on marriage and divorce, personal issues, custody of children, religious and charitable trusts, wills and inheritance and distribution of matrimonial assets, as per Section 5. The Kadhi's Court Act also allows the parties to opt for mediation. A study by the Zanzibar Widows Organization (ZAWIO) noted that the Act did not define a widow and proposed that the definition of a widow ought to be included in the Kadhi's Court Act.¹²⁵ The Act does not include the definition of a mediator or the role of women in the mediation process. In addition, the Act does not explicitly provide for widows to have custody of children or maintenance.¹²⁶ In addition, there is a need to harmonize the provisions of the Children's

Act and the Kadhi's Court Act concerning the rights of a child in maintenance and custody issues. Finally, appeals of Kadhi's Court decisions are not subject to constitutional equality provisions and use a hierarchy separate from statutory courts, which may allow discrimination to flourish.

Recommendations:

- The Act ought to be amended under the definition section to include a definition of "widow."
- Amend Part 3 (Sections 19-27) of the law to define a mediator and the role of women in the mediation process.
- Explicitly provide for widows to have custody of children and maintenance.
- It is recommended that appeals of Kadhi's Court decisions are subject to constitutional equality provisions and the referral system is linked to the statutory courts. The application of Sharia law through the Kadhi's Court should be subject to the principle of non-discrimination as enshrined in Articles 11 and 12 of the Constitution of Zanzibar.
- Kadhis should be trained in women's rights, as well as standards and principles associated with gender equality.

6.3.6 The Persons with Disabilities (Rights and Privileges) Act, 2006

Zanzibar has specific legislation for protecting the rights of persons with disabilities. It gave effect to its Zanzibar Disability Development Policy of 2004 by enacting the Persons with Disabilities (Rights and Privileges) Act, 2006. The Act guarantees rights to social support, healthcare, education, employment, accessibility and rehabilitation for persons with disabilities, including children.¹²⁷ This makes the Act compliant with CRPD and CRC. However, the Act has no provisions that account for or provide specific rights to women and girls with disabilities. Considering their different gendered needs, the Act is not compliant with CEDAW.¹²⁸

The rights of people with disabilities as provided for in Sections 5–20 of the Persons with Disabilities (Right and Privileges) Act, 2006 include the following: The right to care and maintenance, which has to be provided by relatives; the right to employment; the right to education; the right to judicial equality and protection; and the right to education in an integrated setting. People with disabilities also have a right to health as per Section 11 of the Act. Under Section 7, employers must offer employment to qualified people with disabilities. Section 12 provides for accessibility and mobility to enable people with disabilities to access public buildings. Section 20 stipulates that people with disabilities are entitled to access government recreational or sports facilities free of charge.

Section 22 provides for offenses: if any parent or guardian conceals or discriminates against a person with disabilities, that offender shall, on conviction, be liable to a fine of 50,000 shillings or imprisonment for a term of not less than five months, or both incarceration and fine. In addition, according to Section 43, ridiculing a person with disabilities is an offense under the Act. Lastly, negligently causing disability to a person is an offense with a penalty of five million shillings, five years imprisonment or both.

Although the Government mandates access to public buildings, transportation and government services for persons with disabilities, few public facilities are accessible. New public buildings are being built in compliance with the law, but funds to retrofit existing structures remain unavailable. The law provides for access to information and communication, but not all persons with disabilities have such access.¹²⁹

Recommendations:

- Amend the Persons with Disabilities (Rights and Privileges) Act to include provisions that account for and provide specific rights to women and girls with disabilities. The

failure to adopt a gendered lens makes the laws non-compliant with CEDAW.

- Ensure enforcement of the rights and protections provided for persons with disabilities in the legal framework, including education, employment, healthcare, access to public buildings, transportation, government services and social support to all persons with disabilities.

6.3.7 The Spinsters and Single Parent Children Protection Act 2005

The Spinsters and Single Parent Children Protection Act is an old law that needs to be repealed altogether as it does not fit the current context. The law was enacted to provide protection of spinsters and single parent children. On a positive note, the Act provides a court exemption fee for the plaintiff that institutes a suit for maintenance.¹³⁰ The Act further provides protection for the rights of education for girls and young women. A girl or young woman suspended from school due to pregnancy may be reinstated in the next academic year following her delivery or at any time deemed most appropriate by the education authority.¹³¹ However, the education authority may withhold permission to re-instate a spinster on account of her apparent “unreformed behaviour” (unreformed behaviour is not defined by the law).¹³²

The name of the Act is problematic and needs to be revisited to ensure the language used is not discriminatory. The definition of a single parent child is misleading. Instead of focusing on a child being brought up by a single parent, it introduces a notion of morality, i.e., makes reference to a child who is born out of marriage. The Act contains some discriminatory provisions against young women: it criminalizes pregnancy of a spinster in stating that “a spinster who is found pregnant will be guilty of an offense”.¹³³ Further, a spinster who does not disclose the name of the person who caused the pregnancy is guilty of an offense, denying the right to privacy of the young woman. The Act does not cover the protection of the

widow, which was covered in the repealed Act of Spinsters, Widows and Female Divorcee Protection Act 1985. According to the Act, proof of paternity does not automatically lead to inheritance rights for children born out of wedlock, hence denying this group of children inheritance rights.¹³⁴ There is a need for legislation that will guide family and inheritance matters for practicing Muslims in Zanzibar.

Recommendations

- Repeal the Spinsters and Single Parent Children Protection Act 2005 to ensure

gender considerations and develop a new law considering other existing laws covering the same themes, for instance issues of maintenance, which are also covered in the Zanzibar Children's Act (2011). The law should protect all girls in and out of school from teen pregnancy and all forms of abuse, including sexual harassment. The law should further ensure protection of widows and children born out of wedlock.

- Enact a law that guides family and inheritance matters for practicing Muslims.



PART VII:

7

**THE ROLE OF THE
JUDICIARY IN THE
ENFORCEMENT OF GENDER
EQUALITY NORMS AND
STANDARDS**

THE ROLE OF THE JUDICIARY IN THE ENFORCEMENT OF GENDER EQUALITY NORMS AND STANDARDS

7.1 Overview of The Role of the Judiciary in the Enforcement of Gender Equality Norms and Standards

This part of the study highlights the role of the judiciary in advancing and reinforcing gender equality.

According to the Constitution of URT, as amended, the Judiciary has a key role in the dispensation of justice through the High Court of the United Republic. The Judicial Service Commission is responsible for administrative matters, the High Court of Zanzibar, the Court of Appeal of the United Republic and the Special Constitutional Court of the United Republic.¹³⁵ The regional, district and primary courts also have a role in access to justice, in addition to the tribunals, such as district land and housing tribunals. The judiciary is also instrumental in contributing to gender equality by interpreting provisions of international and regional instruments and national laws through court cases, thereby setting precedents that impact perceptions of gender equality within society. This is evidenced by some landmark cases decided by the judiciary.

Article 107A(1) of the Constitution of the URT states that *“the Judiciary shall be the authority with the final decision in the dispensation of justice in the United Republic of Tanzania”*. Article 107A(2): *“In delivering decisions in matters of civil and criminal issues per the laws, the court shall observe the following principles, that is to say (a) impartiality to all without due regard to one’s social or economic status; (b) not to delay dispensation of justice without reasonable*

ground; (c) to award reasonable compensation to victims of wrongdoings committed by other persons, and following the relevant law enacted by the Parliament; (d) to promote and enhance dispute resolution among persons involved in the disputes; and (e) to dispense justice without being tied up with technicalities that may obstruct the dispensation of justice.

According to Article 107B of the Constitution of the URT, *“In exercising the powers of dispensing justice, all courts shall have freedom and shall be required only to observe the provisions of the Constitution and those of the laws of the land.”*

With the above mandate, the roles and functions of the Judiciary include:

- 1) Interpreting diverse laws and executing administrative decisions;
- 2) Hearing and deciding cases filed before the courts of law;
- 3) Educating members of the public about their rights and obligations under the laws of Tanzania; and
- 4) Facilitating maintenance of peace and order through good governance and the rule of law.¹³⁶

Although courts have ruled on legislation that discriminates against women with different degrees of success, matters such as tradition and culture remain unpredictable when subject to a lawsuit. In Tanzania, the judiciary has gradually begun recognizing that discrimination on a prescribed ground cannot be justified. However, this principle has not stopped some judges from

maintaining that gender discrimination based on customary rules can still be justified despite international, regional and national human rights laws prohibiting it. It is contended that the judiciary has a significant role to play in ensuring that customary law and harmful traditional practices are reformed and advanced to comply with human rights legislation and ensure equality between men and women in Tanzania.¹³⁷

7.2 Court of Appeal and High Court Cases Showcasing Gender Equality Principles

Selected court cases from Tanzania Mainland have portrayed gender equality and gender inequality based on legal provisions. Judicial precedent in favour of gender equality has not been consistent in Tanzania. In the case of *Scolastica Benedict v Martin Benedict*,¹³⁸ for example, the Court of Appeal decision of 1989 ordered the widow to vacate the matrimonial home as it was held that the wife inherited no share from her late husband's estate. The court awarded the house to the defendant, the son of the deceased by another wife. The widow was ordered to live where her daughter had been allocated to live or return to her people if she was not inherited. The outcome demonstrates the necessity of putting in place adequate mechanisms to monitor courts to ensure gender responsiveness.

The cases below, however, demonstrate progress in the interpretation of discriminatory customary laws on daughters and widows inheriting and selling clan land, as well as a landmark case on women's matrimonial rights. This illustrates the recognition of a spouse's domestic services (housework) rendered during the subsistence of the marriage as amounting to contribution and entitlement to the distribution of matrimonial property.

Rubuka Nteme v. Bi Jalia Hassan and Another: In this matter, the Court of Appeal overturned the decision of the High Court, which had decided that a female member of the clan could not sell clan land to a stranger, which is prohibited under Haya

customary law. The Judge ruled that a customary law that bars daughters from inheriting has no place in current Tanzania, as it is discriminatory.¹³⁹

*Bernado Ephraim v. Holaria Pastory and Gervas Kaizilege*¹⁴⁰: Holaria inherited some land from her father by a valid will. She then sold this land to the second respondent. She needed the money for upkeep. Shortly after the sale, her nephew filed a suit in the primary court to have the sale annulled. The primary court did so based on the customary law that women had no right to sell clan land. The district court (on appeal) invoked the Bill of Rights and held that Holaria did not have the right to sell clan land, and the appellant was at liberty to redeem it upon reimbursing the purchase price. An appeal was then made to the High Court, and the judge found that the principles enunciated in various human rights conventions provided a standard below which any civilized nation would be ashamed to fall. The judge further found that Rule 20 of the Customary Law (Declaration) Order was discriminatory and inconsistent with Article 13(4) of the Constitution. The court declared that females all over Tanzania could inherit and dispose of the same as they like.¹⁴¹

*Bi. Hawa Mohamed v. Ally Sefu*¹⁴²: This is one of the landmark cases that set an important precedent in women's matrimonial rights in Tanzania. Ally Sefu was married to Bi. Hawa Mohamed per Islamic law in 1971. The couple resided in Mombasa, Kenya before moving to Dar es Salaam in 1975. Ally bought a house the previous year. They legally divorced in 1980 and obtained a divorce decree in the District Primary Court. The former wife then applied for the distribution of matrimonial property. The court answered it in the negative. On appeal to the High Court, the same position was upheld that 'housework' did not amount to a "contribution" within Section 114 of the Law of Marriage Act, 1971. Bi. Hawa then appealed to the Court of Appeal of Tanzania. The court held that a spouse's domestic services, rendered during the subsistence of the marriage, amount to an "effort"

and “contribution” within the provisions of Section 114 of the Law of Marriage Act, which entitles one to the distribution of matrimonial property.

The case below further demonstrates the role of judicial activism in bringing reform to legislation, which is key to guaranteeing access to justice for women, and thereby protecting their ability to seek redress for violations of their rights in courts of law.

The case of *Rebeca Gyumi v Attorney General* was ground-breaking in that it resulted in the High Court of Tanzania’s declaration that Sections 13 and 17 of the Tanzania Law of Marriage Act violate the Constitution.⁷¹ The above mentioned sections authorized young girls to marry at the age of 15 with parental permission. They also allowed girls aged 14 to marry after obtaining the court’s permission.

“This case was a significant step forward in the country’s efforts to end child marriage. It was held that these provisions violate young girls’ fundamental rights, including the right to dignity, equality, and access to education. The provisions contradicted the Law of the Child Act of Tanzania, which regarded a person below the age of 18 as a child.⁷² In arriving at a decision, the Court pointed out that while the Law might have been enacted with fine objectives in 1971, those objectives were no longer relevant because the current legislation was biased against girls, as it denied them significant opportunities. The Attorney General was given a year from the date of the decision to prepare a modification of that law and make 18 the minimum age for everyone to enter into the contract of marriage,” (NH Msuya, 2019).¹⁴³

The High Court held that the Maputo Protocol encourages State parties to enact legislative measures to ensure that no marriage takes place without the free will and full consent of both parties and that the minimum age of marriage for women should be 18 years. *“Tanzania having ratified the said Regional Instrument, it is high time*

*that it takes the appropriate legislative measures to ensure that all realize the rights guaranteed under Article 21(2) of the Constitution.”*¹⁴⁴

The decision was upheld by a Court of Appeal decision in October 2019, but the Law of Marriage Act has yet to be reviewed by the responsible ministry.

The highlighted cases demonstrate the need to sensitize the judiciary on gender equality standards and principles and to further apply these in the interpretation and application of the law. UN Women collaborated with the Tanzania Women Judges Association (TAWJA) to develop a Gender Bench Book (GBB), on women’s rights for judicial officers, including judges and magistrates, which was launched in 2021. This valuable guide includes details regarding international principles, norms and standards, as well as the introduction of good practices to guide rulings. The purpose of the GBB is to provide judicial officers with an easily accessible and user-friendly compendium of gender-related legal knowledge to assist them to make decisions and issue rulings and judgments that reflect gender equality norms and standards. The GBB also supports the initiation of legislative reviews to remove or reform gender-discriminatory laws and policies due to the sound evidence and analysis detailed in the compendium.

Recommendations:

- Continuous legal training for judges, magistrates and other justice actors on gender equality standards and principles is required, including on the interpretation and application of international and regional women’s rights commitments. Precedent from the Court of Appeal has the possibility to damage women’s rights; hence the role of judicial activism is critical for the full and effective realization of women’s rights in Tanzania.
- The Government should take steps to ensure legal literacy for community members, including women, to raise awareness on

women's rights and increase appetite to access justice services. It should also provide legal aid and psychosocial support and carry out sensitization aimed at women and girls in rural settings on legal aid and the means of obtaining legal assistance.



8

PART VIII:

**RECOMMENDATIONS
BASED ON LEGAL
ANALYSIS**

RECOMMENDATIONS BASED ON LEGAL ANALYSIS

8.1 Overview

This section highlights the specific provisions within selected laws that need to be amended and repealed based on the legal and gender analysis of laws in Tanzania Mainland and Zanzibar.

8.1.1 Laws and Provisions to be Revised/ Amended

TANZANIA MAINLAND

1. The Constitution of the United Republic of Tanzania, 1977

- Amend the Constitution to include equal participation of women in political life through affirmative action and enabling national legislation. Allow women to participate without any discrimination in all elections, including equal representation of women and men at all levels of the electoral process, in line with Article 9 of the Maputo Protocol.
- Articles 51(2), 66, 67 and 78 should be amended to ensure women who enter parliament through special seats enjoy the same rights as those who go through constituency seats.
- Chapter Two, Part I, II and III should be amended to include the gender equality principle in nominating the President, Vice President, Prime Minister, Cabinet and other nominated senior government officials.

2. The Law of Marriage Act, 1971

- Amend Sections 13 and 17 of the Law of Marriage Act to establish the minimum age of marriage as 18 years for both boys and girls in and out of school, without

exceptions.

- Section 63 of the Law of Marriage Act on spousal maintenance needs to be amended and establish reciprocal duties regardless of sex.
- Domestic violence should further be addressed in the law.
- Section 125(2)(c) should be amended to stipulate the power of the court to make an order for custody considering the customs of the community to which the parties belong.
- Section 103(1) of the Law of Marriage Act should be amended to provide for guaranteed representation of women on the board. The law should also provide that the persons eligible for appointment to these boards must be mature enough and not consist of young men and women with no family experience to foster the confidence of the parties with matrimonial difficulties before them.
- Section 101 of the Law of Marriage Act should be amended to specify a time limit for the marriage conciliatory boards from receipt of the complaint to finalise their proceedings. Section 103(2) of the Law of Marriage Act must be amended to provide that a board is established at a place where a petitioner resides or whenever convenient for both parties, and not necessarily where the husband resides.
- The Act should be amended to provide for registration of unions of couples who have cohabited for at least two years after the requirements of Section 160 have been

satisfied.

3. The National Election Act, 2015

- Eliminate gender-biased language from the law and review some discriminatory clauses that might discourage female candidates from contesting for parliamentary positions. The law should further review conditions for nominating women members for special seats, which have some discriminatory elements.
- The Elections Act will benefit from amendment of Section 4, as well as Sections 6, 7 and 8 to include gender composition of key positions, including the Electoral Commission's composition and appointments of various office bearers, including returning officers and regional election coordinators.
- The financial requirements for electoral nominees for President and Parliament deter capable persons, particularly women, from aspiring to be nominated for these electoral positions. The Government should amend Sections 33 and 38 of the Elections Act, as well as the National Elections (Presidential and Parliamentary Elections) Regulations 2015, Section 28(2c) and Section 31(1) to remove the financial requirement for female candidates.
- Amend the Elections Expenses Act, 2010 to include specific measures for addressing women, youth and persons with disabilities' unique financial challenges to participating in an electoral process.
- Amend the Elections Act to task political parties to apply the gender equality principle or the constitutional affirmative provision in their internal procedures when nominating electoral candidates.
- Amend Section 38(2) of the Elections Act, which gives the Commission the power to refuse the nomination of a candidate if

convinced that such candidate has been disqualified according to election expenses law.

- Amend Section 86A of the Elections Act to include a uniform procedure to guide political parties' selection of women for special seats, along with the procedure for their nomination.
- Amend Chapter Three of the Elections Act to include the gender equality principle in nominating President and Vice President to reflect the practice already in place, whereby if the President is female then the Vice President would automatically be male, and vice versa.

4. The Political Parties (Amendment) Act, 2019

- Amend the Political Parties (Amendment) Act to stipulate the threshold, i.e., the number or percentage of women and persons with disabilities the political party should have as its members, and leaders and/or candidates to demonstrate its compliance with gender and social inclusion provisions.
- Amend the Political Parties (Amendment) Act to include rewards, penalties and effective monitoring mechanisms for compliance by political parties, and to ensure enforceability by the Registrar of Political Parties.
- The Act should be amended to contain specific language on how political parties' subsidies from the Government can be used to advance the participation of women within political parties and in election-related activities.

5. The Local Authorities (Elections) Act, 2015

- In light of international standards, the Act should be reviewed to include gender-sensitive language. Specifically, Sections 9, 10, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 26, 27, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42,

44, 45, 49, 51, 52, 57, 58, 61, 62, 63, 64, 66, 70, 84, 87, 90, 92, 99, 101, 106, 111, 115 and 118 should be amended.

- Sections 9(2), (4) and 10(2) should be amended to ensure the office is obliged to adhere to gender equality principles by providing gender considerations in appointments for local government elections.
- Amend Section 55 of the Act to oblige the candidates to use political parties' own funds during the whole period of elections, ensuring specific measures for addressing the unique financial challenges women, youth and persons with disabilities' face when participating in local electoral processes.
- Amend Section 86A of the Local Authorities (Elections) Act to include a uniform procedure to guide political parties' selection of women for special seats along with the procedure for their nomination. The law should further spell out the rights of women's special seats and their status in the council.
- Amend Sections 87-106 of the Act to include sexual offences, including sexual corruption, and corresponding penalty as per the Prevention and Combating of Corruption Act, 2007 with its amendments.

6. The Local Government (District Authorities) Act, 2002

- The Act should be reviewed to include gender-sensitive language in light of international standards. Specifically, Sections 3, 13, 29, 31, 36, 39, 41, 42, 44, 46, 49, 54, 56, 57, 59 and 61 should be amended.
- Amend Section 4(b) to grant the minister responsible for local government to foster realisation of gender equality principles in local governing structures. It is currently only implied in this section.
- Amend Section 31 of the Act to ensure it

spells out gender equality principles in the Ward Committee establishment.

- Amend Section 35 of the Act to expand membership of district councils to include members of parliament (MPs) representing special seats within the area of the district council.
- Amend Sections 35-62 to provide application of the equality principle in electing chairpersons and vice chairpersons, and other members of the district and village councils of the local authorities and provide for membership in the local government authority beyond political parties. The Elections Commission could further provide guidelines to oblige the nomination process to comply with the constitutional equality principle, i.e., where the chairperson is a woman, the vice chairperson shall be a man, and vice versa.
- Provide a guideline that instructs the filling of vacant positions of deceased female candidates with other female candidates to ensure gender balance.
- Amend Section 56 of the Act on composition of village councils to ensure that the constitutional provision to ensure one-third of the total number of all the members of the village council are women. Additionally, affirmative provisions should not be limited to electoral positions and should also focus on other areas, including management of elections. The law should further define the rights and privileges of this category of councillors.

7. The National Education Act, 2002

- Amend the Education and Training Policy (2014), Education Act and the 2002 Educational Regulation No.4 to include a provision that allows students who drop out of school for various reasons to return and provide a more detailed definition and interpretation of "*offence against morality*".

8. The Citizenship Act, 1995

- Amend Section 11 to ensure women and men enjoy equal rights to confer nationality to spouses and to children when the parent is a citizen by descent.
- Amend Sections 19 and 20 to permit women to pass on their citizenship to children born out of wedlock and posthumously.
- Amend Section 6 to provide that where one's father or mother was a citizen by descent, the child can acquire citizenship through naturalisation.

9. The Births and Deaths Registration Act, 2002

- Section 12 of the law should be amended to give both women and men the right to give a child a family name. Due to discriminative customs and norms within patrilineal societies, the right to a family name is not guaranteed if a child is born out of wedlock. In Tanzania, the right to a name for a child born out of wedlock is not guaranteed, especially the use of the father's name without consent.

10. The Employment and Labour Relations Act, 2004

- The Employment and Labour Relations Act, 2004 should be amended to recognize unpaid care work and flexible hours. Recognition of unpaid care work and special consideration for domestic workers within the legal framework can inspire the incorporation of the contribution of unpaid care within the economy and the legal framework.
- Amend Sections 31-34 of the Act to meet the ILO minimum standard of 14 weeks for paid maternity leave. Paternity leave should be equalized with maternity leave (or parental leave introduced).
- Amend Section 33(8) to remove the term limitation for maternity leave.

11. The Penal Code, 2002

- Amend Section 169A and the Sexual Offences Special Provisions Act 1998, Section 21 to extend the protection from female genital mutilation (FGM) to women above age 18.
- Adopt comprehensive gender-based violence legislation and incorporate marital rape as a criminal offense under Sections 130-132 of the law.

12. The Persons with Disabilities Act, 2010

- Amend the Persons with Disabilities Act, 2010 to include provisions that account for and provide specific rights to women and girls with disabilities.

ZANZIBAR

1. The Zanzibar Elections Act, 2018

- Review the law to remove the gender gaps observed, including the use of gender-biased language.
- Amend Chapter Three, Part II on nomination procedures for candidates, President, ZHoR and councillors to consider nominations outside political parties, including independent candidates, which have favoured women in several jurisdictions.
- The law should further review conditions for nominating women members for special seats, which have some discriminatory elements. It is recommended to amend Sections 53 and 54 of the Elections Act to include a uniform procedure that guides political parties' selection of women for special seats, along with a procedure for their nomination.
- Amend Section 49 to remove the financial requirement for female candidates.
- Amend Chapter Six of the list of election-related offenses and penalties to include gender-related offenses, such as sexual corruption.

2. The Zanzibar Children's Act, 2011

- It is recommended that the Zanzibar Children's Act is amended to incorporate other rights of children as per the CRC. Some of the rights provided for in CRC that are not explicitly provided for in the Zanzibar Children's Act include 1) the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development, and 2) the right for a mentally or physically disabled child to enjoy a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

3. The Employment Act, 2005

- Include unpaid care work, which women and girls mainly perform, since this has not been adequately provided for. The amendment of the law should include measures to recognize and value unpaid care and domestic work, as well as the redistribution of unpaid care work for the benefit of women, the girl child and the welfare of families.
- Amend Sections 85 and 86, which provide for the restriction on female employees from working at night, since it can prevent women from entering the labour force and accessing higher paying jobs.

4. The Penal Act, 2018

- Amend the law to incorporate marital rape as a criminal offense under Part 13.

5. The Kadhi's Court Act, 2017

- Amend the Act to include a definition of "widow."
- Amend Part 3 (Sections 19-27) of the law to define a mediator and the role of women in the mediation process.
- Explicitly provide for widows to have custody of children and maintenance.

- Amend the Act to ensure appeals of Kadhi's Court decisions are subject to constitutional equality provisions and that the referral system is linked to the statutory courts.

6. The Persons with Disabilities (Right and Privileges) Act, 2006

Amend the Persons with Disabilities (Rights and Privileges) Act to include provisions that account for and provide specific rights to women and girls with disabilities. The failure to adopt a gendered lens makes the laws non-compliant with CEDAW.

8.1.2. Laws to be Repealed

TANZANIA MAINLAND

The Local Customary Law (Declaration) Order, 1963

Overall, the Local Customary Law (Declaration) Order of 1963 is an ancient law that does not fit the current context and should be repealed and replaced with a uniform law of inheritance that takes into consideration gender equality. Under the current legislative framework, customary, statutory and Islamic laws can also govern issues of inheritance.

ZANZIBAR

The Spinsters and Single Parent Children Protection Act, 2005

Repeal the Spinsters and Single Parent Children Protection Act, 2005 to ensure gender considerations and develop a new law considering other existing laws covering the same themes, for instance issues of maintenance, which are also covered in the Zanzibar Children's Act, 2011.

8.1.3. Proposals for New Laws

TANZANIA MAINLAND

- Develop a comprehensive law on inheritance rights to ensure that women are protected from discriminatory and uncertain laws, due to the fluid nature of customary law.
- Enact gender-based violence legislation that includes definitions of all forms of domestic

violence in line with international standards and principles.

- Enact a constituency development fund act, which would ensure an equitable distribution of funds with consideration of gender issues.

ZANZIBAR

- Enact gender-based violence legislation that includes definitions of all forms of domestic violence in line with international standards and principles, including the minimum marriage age. Enact a law that guides family and inheritance matters for practicing Muslims.

8.1.4. Social Policy and Related Actions

General recommendations

Temporary special measures

The Government, through the gender and justice machinery, should increase awareness raising on women's rights and conduct civic education programmes to educate people on the positive effects of including women in decision-making at all levels and in all sectors.

Judicial decision-making

Continuous legal training for judges, magistrates and other justice actors, including Kadhis, on gender equality standards and principles is required. This should include training on interpretation and application of international and regional women's rights commitments. Precedents from the Court of Appeal can have damaging effects on women's rights; thus, the role of judicial activism is critical for the full and effective realization of women's rights in Tanzania.

Protection for survivors and persons reporting violence

The Government should take steps to increase awareness raising on violence against children, including child marriage, and put in place adequate mechanisms for reporting violence cases and take action on them. It should also protect

the identities of persons who report such cases to avoid retaliation; and provide shelters for victims of violence, including child marriage and rape, who may become ostracized within their communities for reporting and seeking legal assistance.

Legal aid and legal literacy

Take steps to ensure legal literacy for community members, including women, to raise awareness on women's rights and increase appetite to access justice services. Provide legal aid, psychosocial support and carry out sensitization aimed at women and girls in rural settings on legal aid and the means of obtaining legal assistance.

TANZANIA MAINLAND

The National Election Act, 2015

- Review the existing first past the post electoral system, which poses a number of challenges to women to be nominated and win elections, and transition to an equality based proportional representation electoral system.

The Political Parties (Amendment) Act, 2019

- The Government should enforce the gender equality and social inclusion principles in the Act.
- The Act and its regulations should include requirements for data collection and disaggregation based on sex, age and disability in political parties' registers.

The National Education Act, 2002

- The Government should ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communication procedure, both of which allow individuals to make formal complaints to the relevant UN treaty body.
- The Government should address the social stigma associated with teenage pregnancy through awareness raising and appropriate

services that promote reintegration into the education system.

Employment and Labour Relations Act, 2004

The Government should take steps to ensure that all employers have an employment policy that states explicitly how the workplace will provide equality in employment in the labour market. There should be systems to monitor implementation of such policy.

The Persons with Disabilities Act, 2010

Review the National Policy on Disability, 2004 and/or adopt a new disability policy in line with the UNCRPD principles.

ZANZIBAR

The Persons with Disabilities (Right and Privileges) Act, 2006

Ensure enforcement of the rights and protections provided for persons with disabilities in the legal framework, including education, employment, healthcare, access to public buildings, transportation and other social services.



9

PART IX: **CONCLUSION**

CONCLUSION

The gender analysis of national laws in Tanzania Mainland and Zanzibar was commissioned to ascertain the compliance of existing laws with Tanzania's international and regional obligations to protect women and girls from discrimination.

The analysis shows various steps that need to be taken by URT to bring its laws in line with the provisions of CEDAW, the Maputo Protocol, the Solemn Declaration on Gender Equality in Africa, the recommendations of the CEDAW Committee and other applicable instruments to eliminate all forms of discrimination against women and girls. It reveals that a total of 18 laws need to be revised or amended, 2 laws must be repealed in whole or in part and 5 new laws must be enacted to ensure full compliance with these instruments.

It is also clear that existing laws in URT require thorough review to ensure consistency with its own instruments, including the Constitution. Towards this end, in Tanzania Mainland, the Ministry of Constitutional and Legal Affairs (MoCLA) is in the process of tabling an amendment before the National Assembly to raise the minimum age of marriage to 18 years for both boys and girls and implement some of the recommendations

entailed in this report. In Zanzibar, the Law Review Commission (ZLRC) is in the process of conducting a comprehensive review of laws discriminating against women, especially geared towards violence against women, which is a steppingstone for review of discriminatory legislation.

It is also hoped that Tanzania, in addition to repealing and amending existing discriminatory legislation, will invest resources in adopting and implementing the other social and policy recommendations stated in the report, particularly with regard to increasing the legal literacy of its population, continuous capacity building of judicial and non-judicial officials, protection for survivors and persons reporting violence and legal aid and psychosocial services to women, especially in rural areas. One of the key challenges identified in the report is the deeply rooted patriarchal culture of the people of Tanzania, which continues to impede the effective implementation of progressive laws for the protection of women and girls. Thus, adequate and sustained sensitization and awareness on the importance of these laws and their benefits to the lives of women and girls is critical for enforcement.

ANNEX 1: SUMMARY OF RECOMMENDATIONS

LAWS OF TANZANIA MAINLAND TO REVISE OR AMEND

LAW UNDER CONSIDERATION	ACTION CTION TO BE TAKEN
The Constitution of the United Republic of Tanzania, 1977	Amend Articles 51(2), 66, 67, 78 and Chapter Two (2), Part I, II and III of the Constitution to promote gender equality in all aspects.
The Law of Marriage Act, 1971	Address and prevent child marriage. Address discriminatory provisions under Section 63, 103(1), (2), 125(2)(c) and 160.
The National Election Act, 2015	Eliminate all gender-biased language and review some discriminatory clauses that might discourage female candidates from contesting for President and parliamentary positions. Review conditions for nominating women members for special seats, which have some discriminatory elements.
The Political Parties (Amendment) Act, 2019	Amend to ensure enforceability of gender equality principles and to stipulate the threshold for women.
The Local Authorities (Elections) Act, 2015	Eliminate all gender-biased language. Amend Sections 9(2), (4) and 10(2), 55, 86A and 87-106 to promote gender equality principles.
The Local Government (District Authorities) Act, 2002	Ensure gender-sensitive language. Revise Sections 4(b), 31, 35 – 62 and 56 of the Act to promote gender equality principles. Spell out gender equality principles in the Ward Committee establishment.
The National Education Act, 2002	Amend the Education and Training Policy (2014), Education Act and the 2002 Educational Regulation No. 4 to include a provision that allows students who drop out of school for various reasons to return.
The Citizenship Act, 1995	Include gender equality principles and amend Sections 6, 11, 19 and 20.
The Births and Deaths Registration Act, 2002	Amend Section 12 to give both women and men the right to give a child a family name.
The Employment and Labour Relations Act, 2004	Recognize unpaid care work and flexible hours for domestic workers. Amend Sections 31-34 of the Act to meet the ILO minimum standard on paid maternity and paternity leave. Remove the term limitation for maternity leave under Section 33(8).
The Penal Code, 2002	Extend protection from female genital mutilation to women above age 18. Incorporate marital rape as a criminal offense under Sections 130-132 of the law.
The Persons with Disabilities Act, 2010	Include provisions that account for and provide specific rights to women and girls with disabilities.

LAWS OF ZANZIBAR TO REVISE OR AMEND

LAW UNDER CONSIDERATION	ACTION TO BE TAKEN
The Zanzibar Elections Act, 2018	Ensure gender-sensitive language. Review some discriminatory clauses that might discourage female candidates from contesting for President and parliamentary positions. Review conditions for nominating women members for special seats, which have some discriminatory elements.
The Zanzibar Children’s Act, 2011	It is recommended that the Zanzibar Children’s Act is amended to incorporate other rights of children as per the CRC, including the right for a mentally or physically disabled child to enjoy a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.
The Employment Act, 2005	Include in the Act measures to recognize and value unpaid care and domestic work, as well redistribute unpaid care work for the benefit of women, the girl child and the welfare of families.
The Penal Act, 2018	Amend the law to incorporate marital rape as a criminal offense under Part 13 of the Act.
The Kadhi’s Court Act, 2017	Ensure appeals of Kadhi’s court decisions are subject to constitutional equality provisions, and that the referral system is linked to the statutory courts.
The Persons with Disabilities (Rights and Privileges) Act, 2006	Include provisions that account for and provide specific rights to women and girls with disabilities in line with CEDAW.

LAWS OF TANZANIA MAINLAND TO REPEAL

LAW UNDER CONSIDERATION	ACTION TO BE TAKEN
The Local Customary Law (Declaration) Order, 1963	Repeal entirely. Overall, the Local Customary Law (Declaration) Order of 1963 is an ancient law that does not fit the current context and should be repealed and replaced with a uniform law of inheritance that takes into consideration gender equality. Under the current legislative framework, customary, statutory and Islamic laws can all govern issues of inheritance.

LAWS OF ZANZIBAR TO REPEAL

The Spinsters and Single Parent Children Protection Act, 2005	Repeal entirely. Repeal the Spinsters and Single Parent Children Protection Act, 2005 to ensure gender considerations and develop a new law considering other existing laws covering the same themes, for instance issues of maintenance, which are also covered in the Zanzibar Children's Act, 2011.
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ENACT NEW LAWS: TANZANIA MAINLAND

LAW UNDER CONSIDERATION	ACTION TO BE TAKEN
Inheritance law	Enact a gender-sensitive inheritance law that looks at property distribution.
Gender-based violence legislation	Enact legislation that addresses and penalizes all gender-based violence, which also unifies existing laws.
Constituency development fund legislation	Enact gender-sensitive constituency development fund legislation supporting equitable distribution of funds.

ENACT NEW LAWS: ZANZIBAR

Gender-based violence legislation	Enact legislation that addresses and penalizes all gender-based violence, which also unifies existing laws.
Family and inheritance legislation	Enact a law that guides family and inheritance matters for practicing Muslims.

POLICY AND OTHER MEASURES

GENERAL RECOMMENDATIONS (URT)	
LAW UNDER CONSIDERATION	ACTION TO BE TAKEN
Temporary special measures	Increase awareness on women's rights and women's participation in decision-making at all levels.
Judicial decision-making	Continuous capacity building of judiciary, including Kadhi's on gender justice.
Protection for survivors and persons reporting violence	Take steps to increase awareness-raising on violence against children and put in place adequate mechanisms for reporting violence cases, including protecting identities of persons who report such cases.
Legal aid and legal literacy	Ensure legal literacy/sensitization, provide legal aid and psychosocial support.
TANZANIA MAINLAND	
The National Election Act, 2015	Transition from a first past the post electoral system to an equality-based proportional representation electoral system.
The Political Parties (Amendment) Act, 2019	Enforce the gender equality and social inclusion principles in the Political Parties (Amendment) Act. Invest in gender-responsive data availability, disaggregated by sex, age and disability.
The National Education Act, 2002	Ratify and comply with the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child. Address social stigma associated with teenage pregnancy.
Employment and Labor Relations Act, 2004	Put systems in place to ensure all employers have and implement an employment policy that states how the workplace will provide equality in employment in the labour market.
The Persons with Disabilities Act, 2010	Adopt a new disability policy in line with the UNCRPD principles.
ZANZIBAR	
The Persons with Disabilities (Rights and Privileges) Act, 2006	Ensure enforcement of the rights and protections provided for persons with disabilities.

ANNEX 2: LIST OF STAKEHOLDERS IN VALIDATION MEETING

S/N	TITLE	ORGANIZATION	UNITED REPUBLIC OF TANZANIA
1	Director	Barefoot College Zanzibar	Zanzibar
2	Programme Officer	Tanganyika Law Society (TLS)	Mainland
3	Senior Economist	Ministry of Agriculture	Mainland
4	Senior Legal Officer	LANDESA (Center for Women's Land Rights)	Mainland
5	Senior Legal Officer	Women in Law and Development in Africa (WILDAF)	Mainland
6	Programs Manager	Tanzania Network of Legal Aid Providers (TANLAP)	Mainland
7	Senior Community Development Officer	Ministry of Community Development Gender Women and Special Groups (MoCDGWSG)	Mainland
8	Magistrate	Tanzania Women Judges Association (TAWJA)	Mainland
9	District Resident Magistrate in Charge (DRM I/C)	Tanzania Women Judges Association (TAWJA)	Mainland
10	Advocate/Lawyer and Consultant	Hadasa Associates	Mainland
11	Legal Officer	Ministry of Industry and Trade (MIT)	Mainland
12	Program Analyst- Zanzibar Office	UN Women	Zanzibar
13	Program Specialist (Presenter & Facilitator)	UN Women	Mainland
14	Senior Program Officer	Zanzibar Legal Services Centre (ZLSC)	Zanzibar
15	Programme Manager	Tanzania Women Chamber of Commerce (TWCC)	Mainland
16	Member of Parliament	Hon. Member of Parliament for the Zanzibar House of Representatives and Association of Women Members of the Zanzibar House of Representatives (UWAWAZA)	Zanzibar
17	Legal Officer	President's Office-Constitution and Legal Affairs Public Service and Good Governance	Zanzibar
18	Legal Aid Manager	Women's Legal Aid Clinic (WLAC)	Mainland
19	State Attorney	Prime Minister's Office Labour, Youth, Employment and Persons with Disability (PMO LYEPD)	Mainland

20	Legal Officer	Msichana Initiative	Mainland
21	Legal Officer	Zanzibar Female Lawyers Association (ZAFELA)	Zanzibar
22	Senior Advocate	Zanzibar Law Society (ZLS)	Zanzibar
23	Senior Economist	Ministry of Lands, Housing and Human Settlements Development (MLHSD)	Mainland
24	Member/Representative	Tanzania Federation of Disabled People's Organizations (SHIVYAWATA)	Mainland
25	Legal Officer	Tanzania Federation of Disabled People's Organizations (SHIVYAWATA)	Mainland
26	State Attorney	Ministry of Constitution and Legal Affairs (MOCLA)	Mainland
27	State Attorney	Ministry of Constitution and Legal Affairs (MOCLA)	Mainland
28	Media and Gender	Tanzania Media Women's Association (TAMWA)	Mainland
29	Legal Officer	Tanzania Media Women's Association (TAMWA)- Zanzibar	Zanzibar
30	Secretary, Law Review Commission - Zanzibar	Zanzibar Law Review Commission (ZLRC)	Zanzibar
31	Principle Economist	Ministry of Lands, Housing and Human Settlements Development (MLHSD)	Mainland
32	Senior Community Development Officer	Ministry of Community Development Gender Women and Special Groups (MoCDGWSG)	Mainland
33	Senior Community Development Officer	Ministry of Community Development Gender Women and Special Groups (MoCDGWSG)	Mainland
34	Communication Officer	UN Women	Mainland
35	State Attorney	President's Office-Constitution Legal Affairs Public Service and Good Governance	Zanzibar

ANNEX 3: TECHNICAL REFERENCE GROUP

THE REFERENCE GROUP (INSTITUTIONS/ ORGANIZATIONS) INCLUDES GOVERNMENT, MPS AND CSOS.

NO.	INSTITUTION/ORGANIZATION	TANZANIA MAINLAND	ZANZIBAR
GOVERNMENT			
1	Ministry of Constitutional and Legal Affairs (MoCLA)	X	
2	President's Office – Constitution, Legal Affairs, Public Service and Good Governance (PO-CLAPSGG)		X
3	Ministry of Community Development, Gender, Women and Special Groups (MoCDGWSG)	X	
4	Zanzibar Ministry of Community Development, Elderly, Gender and Children (MoCDEGC)		X
5	Zanzibar Law Review Commission (ZLRC)		X
MPs			
6	Zanzibar House of Representative (Representative from the Women's Caucus)		X
7	Parliament of Tanzania (Representative from the Women's Caucus)	X	
CSOs			
8	Zanzibar Female Lawyers Association (ZAFELA)		X
9	TAMWA Zanzibar	X	
10	Msichana Initiative	X	
11	LANDESA	X	
12	SHIVYAWATA	X	

ANNEX 4: CHECKLIST FOR UNDERTAKING A LEGAL ANALYSIS FROM A GENDER PERSPECTIVE



Checklist for undertaking a legal analysis from a gender perspective

1.0 Introduction

Over 2.5 billion women and girls around the world are affected by discriminatory laws and the lack of legal protections, often in multiple ways.¹ The spaces in which laws have been designed, implemented or even studied as a profession have historically excluded women and girls. As a result, their voices and perspectives continue to be largely absent from laws and legal practices. Discrimination in law is commonplace, including different standards for women and men in applying for a passport, choosing employment, transferring nationality to a child or foreign spouse, participating in court proceedings, receiving inheritance and deciding when and whom to marry.

Laws that promote gender equality can yield multiple dividends: among other potential benefits, a law that enables women to inherit on an equal basis with men could empower mothers to invest in the education of their daughters. This increases women's average age of marriage, because girls who stay in school are less likely to be married off. On the other hand, lower levels of gender equality in national laws are associated with fewer girls enrolled in primary and secondary education, fewer women in skilled work, fewer women owning land, fewer women accessing financial and health services and more women facing domestic, family and sexual violence.² The McKinsey Global Institute recently estimated that women's equality in wages and labour force participation would boost global gross domestic product by an astonishing \$28 trillion by 2025.³

Law reform more broadly, and the repeal or revision of discriminatory laws specifically, are inherent to the achievement of gender equality—a requirement for realizing the transformative ambitions of the 2030 Agenda for Sustainable Development. They are also among the specific commitments of States enshrined in relevant international conventions and United Nations standards and norms. Yet progress in eliminating discriminatory laws has been uneven.⁴ In many cases, global, regional and national sources of support have not been fully harnessed to accelerate reforms. Key propellers have included the monitoring role of the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), country visits of the United Nations Working Group on the issue of discrimination against women in law and in practice, the policies of regional and interregional bodies, statements of political will from national governments, ongoing investments in analysis of laws from a gender perspective, continued education of the judiciary on domestic application of international law, judicial activism in striking down unconstitutional

¹ McKinsey Global Institute. 2015. *The Power of Parity: How Advancing Women's Equality Can Add \$12 Trillion to Global Growth*. McKinsey & Company, p. 75.

² Natasha Scott Despoja. 2016. "Advancing Legal Gender Equality Under the SDGs." *Women Deliver*, 7 May. <http://womendeliver.org/2016/advancing-legal-gender-equality-under-the-sdgs/>.

³ McKinsey Global Institute. 2015. *The Power of Parity: How Advancing Women's Equality Can Add \$12 Trillion to Global Growth*. McKinsey & Company, p. 1.

⁴ United Nations. 2014. "Review and appraisal of the implementation of the Beijing Declaration and Platform for Action and the outcomes of the twenty-third special session of the General Assembly." Report of the Secretary-General. E/CN.6/2015/3.

or discriminatory laws, the active engagement of civil society organizations (CSOs), campaigns to galvanize awareness and the collection of data to track specific aspects of discriminatory laws.

Against this background, UN Women, the African Union, the Commonwealth, the Inter-Parliamentary Union, the Organisation Internationale de la Francophonie and Secretaría General Ibero-Americana have issued *Equality in Law for Women and Girls by 2030: A Multistakeholder Strategy for Accelerated Action* as a roadmap for the elimination of laws that discriminate against women and girls. The Strategy seeks to fast track the repeal of discriminatory laws in 100 countries between 2019 and 2023, focusing on six areas which will address the legal needs of over 50 million women and girls over the time frame.⁵

2.0 Overall goal and targets

The strategy presented in *Equality in Law for Women and Girls* focuses on the repeal or revision⁶ of discriminatory laws as an important part of a broader legal reform agenda that supports the achievement of gender equality. In this broader context, it seeks to ensure the elimination of all discriminatory legislation by 2030. An evaluation to be conducted in 2024 will serve as a basis of reporting on lessons learned and promising practices that will be fed into various processes such as periodic reviews of the Beijing Declaration and Platform for Action, and High-level Political Forums. Within this context, regional, interregional and national bodies such as parliaments, judiciaries, law reform commissions, ministries of justice, national women's machineries, CSOs and the private sector will design, lead and own a reform agenda which advances the repeal of discriminatory laws. The strategy's six areas of focus are as follows:

1. **Comprehensive reforms:** Repeal discriminatory laws that directly and indirectly impact women and girls in 20 countries.
2. **Promote women's economic empowerment:** Repeal laws that undermine equal pay, recognition of unpaid care work, protection of domestic workers, parental leave and freedom of choice of employment in 15 countries.
3. **Eliminate harmful and discriminatory minimum age of marriage provisions:** Promote 18 years as the minimum age of marriage, equalize the age of marriage between women and men and eliminate related exceptions as appropriate in 15 countries.
4. **End gender discrimination in nationality laws:** Uphold women's rights to equality in nationality and citizenship laws in 25 countries.
5. **Address discriminatory rape laws:** Revise provisions that exempt perpetrators from rape charges if they marry the survivor in 10 countries.
6. **Promote equality in family relations:** Repeal gender discriminatory personal status laws (one or more of the following: marriage, divorce, parental rights and inheritance) in 15 countries.

⁵ See: <http://www.unwomen.org/en/digital-library/publications/2019/03/equality-in-law-for-women-and-girls-by-2030>

⁶ References to repeal of the law include both partial revision and/or replacing the text or the entire law.

Targets under each area of focus

Comprehensive reforms	Women's Economic Empowerment	Minimum Age of Marriage	Nationality Laws	Rape Laws	Family Laws
Complete elimination of laws which directly or indirectly discriminate against women	Employment segregation, remuneration, unpaid care work, domestic workers	>In age of marriage to 18, removal of exceptions, equality between sexes	Ensure women can passing on their nationality to their children and foreign spouses	Repeal and replace prosecution exemptions	Marriage, divorce, inheritance and withdrawal of reservations

3.0 Undertaking a legal analysis from a gender perspective

Gender-sensitive legislation assumes “the integration of a gender perspective into all components of the legislative process—design, implementation, monitoring and evaluation—in order to achieve the ultimate objective of equality between women and men.”⁷

The CEDAW Committee’s General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention), highlights that laws can discriminate against women and girls in a direct or indirect manner.⁸ Direct discrimination takes place when the law explicitly treats women and men or girls and boys. Indirect discrimination occurs when a law appears to be neutral on its face but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure.

A legal analysis from a gender perspective consists of a comprehensive mapping of the entire legal landscape of a country for purposes of capturing all forms of legal frameworks (the constitution, statutes, legislative instruments, executive orders, administrative regulations, case law and other relevant and related government texts) and not only those which reference gender, women or girls.

The legal frameworks in question must cover all fields and sectors of law covered by the Convention and must not be limited to only legislation that is specifically related to women, girls or children. Each legal text is to be analyzed and a determination made as to how the provisions impact upon the achievement of gender equality.

⁷ Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights, *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation*, p. 13, (Warsaw, 2017).

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4.0 A checklist for comprehensive and thematic legal analysis

Elements
Process
Have you secured buy-in from the Government, CSOs and UNCT?
Have you engaged relevant committees of Parliament, including the gender caucus? Have you sensitized the Speaker and Deputy Speakers about the overall plan to repeal discriminatory laws?
Since women are generally thinly represented in Parliament, do you have a plan in place to obtain buy-in from a male-dominated House? Have you identified your allies?
Have you specifically engaged the national gender machinery, national law reform commission and Attorney General and Minister of Justice?
Have you specifically engaged the Chief Justice, women judges, women lawyers and the National Bar Association?
Have you specifically engaged traditional and religious leaders (if relevant)?
Have you included various forms of joint national consultations in your reform plan?
Content/outline of analysis
Begin with the mono/plural legal, political, social, economic and cultural context of country
If the country in question is a federal state, describe the extent to which the different regions are complying with federal laws on gender equality (or the specific thematic law under review), different patterns across regions if any and why
Which gender equality commitments at global, regional and sub regional levels has the government ratified or not ratified?
Are there any Concluding Observations and Recommendations of UN Treaty Bodies (e.g. CRC, CEDAW) and UPR in relation to discriminatory laws that you need to take note of?
Have commitments and recommendations been translated into domestic law? What are the identifiable gaps in the law (including implementation gaps) and the reasons for such gaps?
Which enacted laws are specifically designed to address issues affecting women and girls?
Are there sectoral laws (e.g. employment, banking) which directly or indirectly impact on the achievement of gender equality?
Since there could be several sectoral laws in place, is your review being guided by the provisions of CEDAW, CRC, relevant ILO Conventions and regional protocols? ⁹
Where a thematic review (in contrast to a comprehensive review) is under consideration, are all interrelated laws being mapped? E.g. a review of a violence law will necessarily entail a review of the criminal code, criminal procedure code, rules of evidence, family laws, labour laws, and other violence laws (e.g. sexual offences, human trafficking etc)
How have formal, informal and semi-formal courts: (a) advanced gender equality; (b) reinforced gender inequality or (c) both. Provide examples of landmark decided cases
Analysis of each law
What is the objective of the law? What issues/gaps in the law was it designed to address?
Were those issues fully addressed in the law? If not, what are the gaps?

⁹ For example, see: ([Equal Remuneration Convention No. 100](#)), [Discrimination \(Employment and Occupation\) Convention No. 111](#)), equality of opportunity and treatment of workers with families ([Workers with Family Responsibilities Convention No. 156](#)), maternity rights and protections ([Maternity Protection Convention No. 183](#)) and the protection of domestic workers ([Domestic Workers Convention No.189](#)).

Are there any aspects which discriminate ¹⁰ against women and girls and if so which aspects and how?
Annex to the report, a Table which reflects: (1) the titles and dates of all the laws under investigation; (2) the sections which are explicitly or implicitly discriminatory; (3) existing gaps in the law (4) the basis for arriving at this conclusion and (5) recommended actions to Parliament for repeal/and or replacing the law.
Include a comprehensive conclusion and a set of summary recommendations to the report
Annex to the report a suggested roadmap (time line) for the reforms to take place.

¹⁰ The Convention defines the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

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