

Transgender Rights in Mozambique

Rights under the Constitution of Mozambique

Title III (Articles 35-95) of the **Constitution** sets out the fundamental rights and freedoms of the individual. **Article 35** does not include gender or sexual orientation as prohibited grounds of discrimination. However, the reference to “sex” should be interpreted to include protection from discrimination based on gender identity – which is a prohibited ground in international law. Furthermore, **article 36** states that men and women should be treated equally in all aspects of the law.

Article 43 reaffirms that the rights under the Constitution must be read in conjunction with the rights set out in the Universal Declaration of Rights and the African Charter. They must also be read in conjunction with the International Covenant on Civil and Political Rights.

Fundamental Human Right	Where is it in the Constitution?
Fundamental rights and freedoms	Title III
Right to life	Article 40
Right to personal liberty and security	Article 59(1)
Protection from torture, cruel or inhuman treatment	Article 40(1)
Right to privacy	Article 41
Rights of an accused person	Article 59(2)
Freedom of expression	Article 48
Freedom of association and assembly	Article 52
Protection from discrimination	Articles 35 & 44
Right to equality	Article 36
Right to dignity	Article 41
Right to education	Article 88

Changing your Gender Marker

There is no specific law that allows transgender persons in Mozambique to change the gender marker in their identity documents or passports. **Section 77** of the **Código do Registo Civil 2004** indicates that, in general, there should be no alteration of details entered into the registration records kept by the Civil Registrar. However, **section 85(1)(m)** states:

*“85(1) Ao assento de nascimento são especialmente averbados:
(m) em geral, todos os factos juridicos que modifiquem os elementos de identificação ou o estado civil do registado.”*

This section gives the Civil Registrar general authority to make changes when there is a change of facts which alter the legal identity or status of the person registered. Transgender people could possibly use this section to change the sex description on their identity document.

If an application in terms of section 85(1)(m) is rejected, applicants could also rely on their fundamental human rights that are guaranteed under the Constitution – as well as the international human rights documents discussed earlier.

Your Rights in the Workplace

- **Section 4(1)** of the **Lei do Trabalho 2007** specifically outlaws discrimination based on sexual orientation, race and HIV/AIDS.
- **Section 13** indicates that the Constitution and other international treaties and conventions are the source of law inspiring the **Lei do Trabalho**. Because of this, it should be interpreted to forbid discrimination based on sex codified in **articles 35 and 36** of the **Constitution**. Furthermore, “sex” should include protection from discrimination based on gender identity, which is a prohibited ground in international law.
- Transgender individuals can find further protections in **sections 5 and 6** – which protect employees’ right to privacy. These articles forbid employers from requiring personal information from employees.
- Transgender employees might also turn to **section 11**, which outlines the special rights of female employees. These include respect, dignity, and non-prejudicial treatment.

Criminalisation and Harassment

Consensual same-sex sexual acts are not criminalised in Mozambique’s new **Penal Code enacted in 2015**.

However, transgender individuals still face other legal hurdles in Mozambique. **Section 7** of the **Family Law Statute** defines marriage as a union between a man and a woman. Furthermore, only married couples or opposite sex couples in a *de facto* union are allowed to adopt. Depending on the legal recognition of a transgender person’s sex, this could create obstacles to legally protecting your family.

The government must be able to justify, in terms of the law, any discriminatory treatment of transgender people – otherwise acts by its officials will be arbitrary and illegal.

The **Law on Domestic Violence Committed against Women 29 of 2009**, proscribes domestic violence committed against everyone, and particularly domestic violence against women. **Section 6** of the Act provides for a range of remedies, including apprehension of the weapons used by the perpetrator; placing the perpetrator under supervision and surveillance; and ensuring the safe return of the victim to the home where the violence occurred. Where the victim is a child, the perpetrator may lose parental rights over the child.

Access to Sexual and Reproductive Health

The **National Strategic HIV and AIDS Plan 2015-2019** includes key populations – including MSM and sex workers.

There is no access to gender reassignment surgery or hormone replacement therapy in Mozambique. Some transgender people go to South Africa to access these services but the high cost of treatment may prevent this option.