

INTERNATIONAL FAMILY LAW SYMPOSIUM IAFL WITH EALS AND CLA 2 September 2025

Session Resources Pack Session 1: Gender Inequality in Family Laws in Africa: An Overview Of Key Trends in 20 African Countries

*Tuesday 2 September 2025
09:15 – 09:30*

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During 35 years career in law, Pat Moodley has practised as an attorney, been a Senior Lecturer and Deputy Dean of the Law Faculty at the now University of Kwa Zulu Natal and spent 27-year term with the Department of Justice.

In these 27 years, Pat:

- was the first Black State Law Advisor appointed to the SA Law Reform Commission, responsible for drafting the Child Justice Act and helped draft the Children's Act and Sexual Offences Act
- served as a Family Court Magistrate
- was appointed Provincial Head of the Department of Justice, Kwa Zulu Natal

Pat has completed a Diplomatic Training course (Washington DC); participated in the Child Law programme (London Metropolitan University); trained Judicial Officers (Namibia and Kenya). She has presented papers on Family and Child Law at conferences and is an accredited Family Law Mediator and Arbitrator.

ESTHER WAWERU

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Esther Waweru is a seasoned human rights lawyer and Advocate of the High Court of Kenya with over 14 years' experience, specializing in gender equality, anti-discrimination, and the rights of women and girls. She serves as Senior Legal Advisor at Equality Now's Africa Office, where she leads regional efforts to end sex discrimination in law and advance the implementation of the Maputo Protocol.

Esther also coordinates the Solidarity for African Women's Rights (SOAWR) Coalition, a network of over 70 organizations across 30+ African countries committed to women's rights advocacy. Her work over the years has included strategic litigation, legal reform, and transitional justice, with engagements at national, regional, and international levels—including the International Criminal Court.

She previously held key legal roles at the Centre for Reproductive Rights, the Kenya Human Rights Commission, and in private practice. Esther holds a Bachelor of Laws and a Master's in International Studies.



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<p>Worldwide partnerships</p>	<p>Knowledge is power</p>	<p>Apre-eminent voice</p>	<p>30 years of progress</p>
<p>We have partnered with thousands of grassroots women's groups in over 100 countries and are a member and convenor of multiple coalitions.</p>	<p>Our world-class reports and research provide evidence, call out unfit laws, and articulate roadmaps for model legislation and reform</p>	<p>Our strategic litigation establishes good precedent, while our submissions to UN & other treaty bodies hold governments to account.</p>	<p>Over 30 years we have played a transformative role in the reform of 120 sex-discriminatory laws.</p>



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BACKGROUND AND CONTEXT

1.

BACKGROUND

- There can be no equality in society, without equality in the family.
- Yet discrimination in family law continues to be institutionalised in law, practice, and policy in many countries in Africa

2.

FRAMEWORK AND METHODOLOGY

- Qualitative methodology with Application of intersectional feminist theory (HRBA)
- Desk review of primary and secondary sources
- Surveys and key informant interviews
- Inclusion of lived realities case studies

3.

SCOPE AND PARAMETERS OF THE STUDY

- Focus on 20 African countries based on Geographic and language considerations
- 9 broad family law thematic issues
- Timelines: April 2022-December 2023

4.

LIMITATIONS

- The report is not a definitive representation of the laws in any of the 20 select countries, but rather to show a general overview of family laws in the countries (illustrative not exhaustive)
- There have been post 2024 developments in some countries

LEGISLATIVE FRAMEWORK

GLOBAL

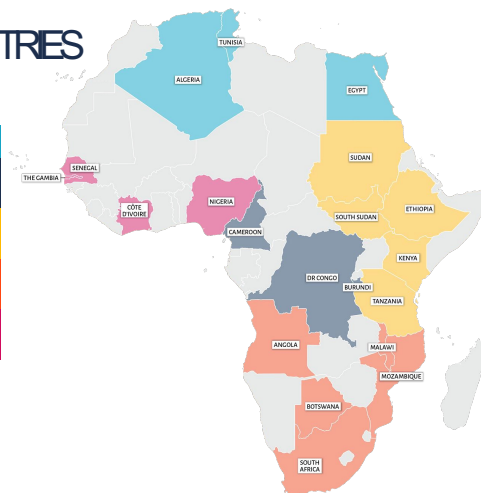
- CEDAW: Articles 1,2,5, 13,14, and 16
- Joint CEDAW and CRC General Comment on elimination of harmful practices
- General Recommendations on elimination of Discrimination, ending GBV, economic consequences of marriage, family relations and dissolution; and equality in marriage

REGIONAL

- African Charter: Article 18(3)
- Maputo Protocol : Articles 1,2, 3, 5, 6,7,8, 14, 17,20,21
- African Charter on the Rights and Welfare of the Child:Article 21
- Joint ACHPR and ACERWC General Comments on Ending Child Marriage
- General Comments on HIV; Sexual and Reproductive Health; Right to Property during Separation, Divorce, or Annulment of Marriage
- SADC Model Law on Ending child marriage

THE SELECT COUNTRIES

Region	Countries
Northern Africa	Algeria, Egypt, and Tunisia
Central Africa	Burundi, Cameroon, and the Democratic Republic of Congo
Eastern Africa	Ethiopia, Kenya, South Sudan, Sudan, and Tanzania
Southern Africa	Angola, Botswana, Malawi, Mozambique, and South Africa
Western Africa	Côte D'Ivoire, Nigeria, Senegal, and The Gambia





LEGAL PLURALISM		
Key Findings	Key Challenges	Key Recommendations
<ul style="list-style-type: none"> Plural legal systems applicable in most of Africa: <i>DRC, Ethiopia, Kenya, Mozambique, South Sudan, and The Gambia</i> Predominant application of customary law in countries that lack statutory law e.g., <i>South Sudan</i> Application of religious laws in the form of Sharia as principal source of legislation e.g. <i>Egypt</i> 	<ul style="list-style-type: none"> Persistence of harmful traditional customs such as child marriage, forced marriage, and wife inheritance. Divorce is often easier for men Women trapped in abusive marriages due to practices such as repayment of bride price, loss of property, loss of custody rights and stigmatisation 	<ul style="list-style-type: none"> Recognition caveats that customary and religious systems are only applicable if consistent with regional and international HR standards. Consolidation of fragmented family law regimes into one system. Sensitizations on the right to a positive religious and cultural context

“We are bombarded by this excuse of “culture” which is rarely called upon except when it is used to enforce sexism-Bene E. Madunagu”

CHILD MARRIAGE

Key Findings	Key Challenges	Key Recommendations
<ul style="list-style-type: none"> ● Absolute bans on marriage under the Age of 18: Côte d'Ivoire, DRC, Egypt, Kenya, Malawi, Mozambique and The Gambia ● Setting the age of 18 as marriage with customary or civil exceptions: Angola, Algeria, Tunisia ● Provisions of marriages under the age 18 with discriminatory provisions allowing girls to marry at lower ages than boys: Cameroon, Nigeria, Senegal, South Sudan, Sudan, Tanzania 	<ul style="list-style-type: none"> ● Child marriage still prevalent even in countries with absolute bans mostly in religious settings ● Societal backlash against the prohibition ● Low enforcement of laws ● Discriminatory provisions allowing girls to be married at a lower age than boys ● Backlash on grounds of culture/religion. 	<ul style="list-style-type: none"> ● Enact Legal reforms setting 18 as the minimum age of marriage including under religious and customary marriages. ● Promote and provide legal avenues for the registration of all types of marriages while removing barriers ● Enhance data collection and monitoring, and mindset change campaigns

"The Tanzania High Court in the landmark ruling of Rebecca Gyumi v Attorney General (2016) directed the Government to set the minimum age of marriage for both boys and girls at 18 and above, but they have not amended the Law of Marriage Act to date."

BARRIERS TO REGISTRATION AND RECOGNITION OF MARRIAGES

Key Findings	Key Challenges	Key Recommendations
<ul style="list-style-type: none"> ● In most countries, registration of civil marriages is a legal requirement ● Some countries recognize registration of customary marriages: Algeria, Botswana, Ethiopia, Kenya and South Africa. ● South Africa recognizes registration of civil unions or marriages of same or opposite-sex partners 	<ul style="list-style-type: none"> ● In most countries, women in customary and religious marriages do not enjoy equal protection of the law compared to civil marriages resulting in discrimination and precarity ● In a majority of the countries, marriages and civil unions are reserved for heterosexual couples thus sexual minorities are excluded ● In some countries, there is a lack of recognition for cohabiting partners 	<ul style="list-style-type: none"> ● Promote registration of all types of marriage ● Ensure equality in customary and religious Marriages: ● Promote legal recognition of civil unions and permanent life relationships.

POLYGAMY

Key Findings

- Strict monogamy: Angola, Burundi, Democratic Republic of Congo, and Ethiopia.
- Recognition of polygamy in customary and religious marriages only: South Africa, Mozambique, Côte d'Ivoire
- Full recognition of polygamy: Sudan, Senegal, Egypt, South Sudan

Key Challenges

- Continued practice of polygamy in where it is legally prohibited.
- Lack of agency and protection of women in polygamous marriages

Key Recommendations

- Encourage monogamy as the preferred form of marriage.
- Prohibit polygamy while protecting the rights of women who are already in polygamous marriages.
- Extend the prohibition of polygamy to religious and customary marriages.

"Kenya's laws emphasise that customary and Muslim marriages are presumed to be polygamous or potentially polygamous."

DIVORCE

Key Findings

- Equal rights to file for divorce: Angola, Burundi, Cameroon, and Mozambique
- Disproportionate divorce conditions for women: Sudan, Algeria, Egypt.
- Time limits for remarriage of women after divorce: Côte d'Ivoire, Democratic Republic of Congo, and Senegal.

Key Challenges

- Discriminatory provisions when it comes to petitioning for a divorce, with men having more power to divorce a woman thus trapping women in abusive marriages.
- Time limits for remarriage stigmatizing women for divorce

Key Recommendations

- Law reform to Countries must reform their laws to grant women equal rights to petition for a divorce
- Removal of time limits for remarriage
- Cultural awareness to destigmatize divorce

"In Algeria, In the event a woman seeks a no-fault divorce where she does not have to prove the conditions, she will have to pay financial compensation to the husband."

CHILD CUSTODY

Key Findings	Key Challenges	Key Recommendations
<ul style="list-style-type: none"> Equal child custody rights: Angola, Botswana, Burundi, Cameroon, Côte d'Ivoire Gender stereotype based automatic custody for women: Egypt, Sudan, Tanzania Legal guardianship vesting with the father: Senegal, Algeria, Sudan 	<ul style="list-style-type: none"> Automatic custody for women based on gender stereotypes increases care burden Sole legal guardianship rights for fathers prevents mothers from making decisions regarding their children. Existence of discriminatory laws depriving the mother of the right to custody in case of remarriage. 	<ul style="list-style-type: none"> Enact laws granting equal custody and legal guardianship rights. Based on the best interest of the child. Repeal clauses on loss of custody rights in case of remarriage

"In countries such as Algeria and Tunisia, the father is still considered as the legal guardian even if the mother has custody."

INHERITANCE

Key Findings	Key Challenges	Key Recommendations
<ul style="list-style-type: none"> Equal inheritance rights: Botswana, Kenya, Democratic Republic of Congo Customary prohibition of inheritance rights for women: Nigeria Unequal inheritance rights for girls & women: Algeria, Cameroon, Côte d'Ivoire, Egypt, 	<ul style="list-style-type: none"> Disinheritance continues even in countries with equal inheritance rights. Difference inheritance regimes for Christian and Muslim women Lack of laws regulating succession in some countries. 	<ul style="list-style-type: none"> Enact equal inheritance laws including harmonization of customary and religious laws with human rights standards. Adopt and enforce sensitisation policies on widows' inheritance rights to safeguard them from family members looking to disinherit them.

"In Angola, despite it being unconstitutional, women are totally excluded from inheriting their deceased husband's property and are sometimes even kicked out of the matrimonial home."

THE DIVISION OF MATRIMONIAL PROPERTY

Key Findings

- Unequal matrimonial property rights regimes: Sudan, Nigeria, Burundi, Cameroon, Egypt
- Equal matrimonial property regimes: Kenya, Malawi, South Africa
- Lack of recognition of indirect /non-financial contributions in most countries.

Key Challenges

- Lack of implementation of equal property rights due to cultural reasons.
- Lack of application of an intersectional feminist perspective to jurisprudence on matrimonial property rights thus the lack of recognition of indirect/non-financial contributions.

Key Recommendations

- Enact or strengthen laws that explicitly recognise and protect women's rights to matrimonial property even in religious/customary contexts.
- Training judges, lawyers, and other legal professionals to adopt a gender transformative approach when adjudicating matrimonial property cases.
- Ensure that women have accessible and affordable avenues to seek legal remedies in cases of matrimonial property disputes.

"In Botswana, the economically weaker spouse (generally, the wife) will be greatly disadvantaged if during the marriage she had, for example, spent her time looking after the family, household and children while her husband worked."

COUNTRY FOCUS: KENYA, NIGERIA, AND SOUTH AFRICA

Kenya

• **Successes:**

- The Recognition of Equality of Spouses at, during, and after dissolution of marriage under Art. 45 of the Constitution.
- The enactment of a Marriage Act and a Matrimonial Property Act consolidating various pieces of statutes.

• **Challenges:**

- The limitation of application of equality provisions to Muslims in matters relating to personal status, marriage, divorce, and inheritance.
- The recognition of polygamy, lack of criminalization of marital rape, lack of recognition of same-sex marriage, and non-gender transformative judicial interpretation of contribution in the adjudication of the division of matrimonial property.

Nigeria

• **Successes:**

- Constitutional guarantees of equal rights to property and non-discrimination.
- Progressive jurisprudence pronouncing gender equality in matters relating to land, housing, property, and inheritance.

• **Challenges:**

- Uneven protection of gender equality in different states as Nigeria is a federal system of government.
- Discriminatory inheritance laws and customary practices
- Discriminatory statutory laws e.g. the use of direct financial contribution as the basis for property division.
- Lack of criminalization of marital rape and lack of criminalization of 'corrective assault' within marriage by some states.
- Prohibition of same-sex marriage.

South Africa

• **Successes:**

- Constitutional recognition of equality and prohibition of discrimination on the grounds of sex, sexual orientation, and marital status.
- Recognition of diverse forms of marriages including customary marriages, same-sex marriages, life partnerships, and religious marriages (recent)

• **Challenges:**

- Recognition of polygamous marriages for men only under customary law.
- Exceptions to 18 as the minimum age of marriage under parental & ministerial consent.
- High cases of GBV within the family including femicide.

COUNTRY FOCUS CONT'D: ETHIOPIA AND MALAWI

Ethiopia

● **Successes:**

- Constitutional protection of equal rights while entering into, during marriage and at the time of divorce.
- Robust Revised Family Law Code guaranteeing equitable distribution of property, custody, and maintenance rights.

● **Challenges:**

- Reservations and interpretative declarations on the right to equality in marriage and the family under Article 6 of the Maputo Protocol.
- Exceptions to 18 as the minimum age of marriage through parental and Ministerial exceptions which is a risk that can encourage child marriages.
- Restriction on women remarrying within one hundred and eighty days (180) of the dissolution of the marriage [by death] on account of avoiding paternity conflicts.

Malawi

● **Successes:**

- Constitutional protection of equal rights between women and men in the family including equal property and custody rights.
- The Marriage, Divorce and Family Relations Act 2015 consolidated previously fragmented legal regimes and recognized various forms of marriages including civil marriages, customary marriages, religious marriages and marriage by reputation or permanent cohabitation.

● **Challenges:**

- Recognition of polygamy in customary and religious marriages.
- Lack of unequivocal prohibition of marital rape and problematic jurisprudence on marital rape.
- Lack of recognition of same-sex marriage.
- Prohibition of child marriage without criminalization thus cases of child marriage continue to be high.

CONCLUSION AND RECOMMENDATIONS

- ❖ The findings of this Report illustrate that the quest for gender equality in family laws in Africa is a *mixed bag characterised by successes, setbacks, and stagnation*. Urgent reform action is thus needed.
- ❖ **Why?** Family law related discrimination is diminishing the lives of women resulting in physical pain, emotional distress, and ultimately death.
- ❖ **Who?**
 - *States*: Enact legal reforms, change societal attitudes, implement progressive judgements, universally ratify, domestic and implement the Maputo Protocol; and lift reservations thereto.
 - *AU policy and judicial organs*: Enact standards such as model laws and general standards
 - *CSCs/MROs*: Research, documentation, and advocacy campaigns.
 - *Donors/Development Partners*: Adequate resourcing of the family law reform campaign.
 - *Lawyers*: Research, litigation, advocacy for legal reform, and countering disinformation/misinformation by anti-rights groups such as the Africa Bar Association.
- ❖ **How?** - Movement building (Africa Family Law Network, Global Campaign for Equality in Family Law, Potential African Academy of Family Lawyers?); and multi-stakeholder advocacy approaches
- ❖ **Where?** - Here, There, Everywhere (Grassroots, National, Regional, and Global levels).

Plenary

- Open for reflections, questions, and clarifications.
- How do we breathe life into the law and ensure implementation?



Thank
you.

