

Women and girls in Africa face widespread discrimination in family laws

Research by Equality Now finds reform of discriminatory family law in Africa has been slow, inconsistent and hampered by weak political will and implementation.

NAIROBI, KENYA, May 15, 2024 /EINPresswire.com/ -- Discrimination against women and girls remains widespread in family laws across Africa, finds new research by Equality Now. Analysis of twenty African countries reveals gender inequality in marriage, divorce, custody, and property rights is being perpetuated by sex discrimination institutionalized within legal systems and customary laws.



Photo credit: Equality Now, Tara Carey

While some significant legal reforms have been achieved, progress has been slow, inconsistent, and hampered by setbacks, lack of political will, and weak implementation.

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Discriminatory family laws in Africa curtail women's economic opportunities and decision-making power, putting them at more risk of human rights violations including sexual and gender-based violence.”

Equality Now

The report, '[Gender Inequality in Family Laws in Africa: An Overview of Key Trends in Select Countries](#),' identifies how contradictions and overlap in legal frameworks make the interpretation and application of family laws confusing, creating complex challenges for harmonizing legal systems.

The impacts of discriminatory family laws can be profound, putting women and girls at greater risk of sexual and

gender-based violence and making them more dependent and vulnerable by curtailing their economic opportunities and reducing their decision-making power.

Full equality in family laws has not been achieved in any of the countries reviewed, namely

Algeria, Angola, Botswana, Burundi, Cameroon, Côte d'Ivoire, the Democratic Republic of the Congo (DRC), Egypt, Ethiopia, Kenya, Malawi, Mozambique, Nigeria, Senegal, South Africa, South Sudan, Sudan, Tanzania, The Gambia, and Tunisia.



PRESSING NEED FOR COMPREHENSIVE LEGAL REFORMS

Africa is home to diverse ethnic, linguistic, and religious groups with varied family law structures. Historically, communities developed intricate and deep-rooted systems of customary laws governing family relations. The introduction of European legal systems and religion resulted in a blend of customary, religious, and statutory laws that still shape legislation and practice through legal pluralism.

This complex patchwork is influenced by evolving social dynamics. Civil, customary, and religious law, such as Islamic or Christian canon law, sometimes encroach or conflict, and many provisions in religious and customary laws discriminate against women and girls.

Esther Waweru, report co-author and a Senior Legal Advisor at Equality Now, explains, “Culture and religion frequently act as major impediments in the struggle for family law equality, stalling reforms. Claw-back clauses and retrogressive practices water down the positive impact of progressive laws, and there is backlash from anti-rights movements seeking to reverse hard-won gains in areas such as eliminating child marriage and female genital mutilation.”

“Stagnation is also a problem, with governments pledging to reform discriminatory laws but failing to take meaningful action. In some instances, progressive family codes remain in limbo awaiting enactment.”

PROGRESS ON CHILD MARRIAGE, BUT SHORTFALLS REMAIN

Child marriage is one area of notable progress. Absolute bans on marriage under 18 exist in Côte d'Ivoire, DRC, Egypt, The Gambia, Kenya, Malawi, and Mozambique. However, the persistence of child marriage in certain communities underscores the need for a [multi-sectoral approach](#) incorporating awareness raising about the legal consequences and harms of child marriage.

Concerningly, laws in Cameroon, Nigeria, Senegal, South Sudan, Sudan, and Tanzania still allow child marriage, while in Algeria, Angola, Botswana, Burundi, Ethiopia, South Africa, and Tunisia, the legal age of marriage is 18, but exceptions are permitted.

MARITAL RAPE

Countries need greater protections against gender-based violence, especially intimate partner violence. Marital rape is not prohibited in Algeria, Kenya, Sudan, and The Gambia, while Northern Nigeria's Penal Code allows marital rape and "corrective" assault within marriage.

Marital rape is only criminalized upon separation in Tanzania, and in Burundi, the penalty is under 30 days imprisonment or a fine. Tunisia's law states a wife must fulfill her duties in line with 'usages and customs,' putting women at risk of marital rape as a wife's traditional role includes pleasing her husband sexually.

Malawi's courts have stated that rape does not extend to marriage. Customary law presumes perpetual consent to sex within marriage, and Malawi's civil law appears to support this by providing only limited circumstances in which a wife can deny her husband sex, such as poor health or when legally separated.

Countries like Côte d'Ivoire, Mozambique, and South Africa can be commended for explicitly criminalizing marital rape. It's imperative that all nations introduce bans, accompanied by awareness-raising campaigns and accessible support services for survivors. Effective legal enforcement is also crucial, as is providing comprehensive training for officials in the criminal justice, healthcare, and social service sectors.

DISCRIMINATORY MARRIAGE PRACTICES

In most African countries, registration of civil marriages is a legal requirement governed by specific laws formalizing marriage. Women in customary and religious marriages are at greater risk of discrimination as they don't have the same legal protection as people in civil marriages. Same-sex partners also experience this, as marriages and civil unions are largely reserved for heterosexual couples.

Polygamy is legally permitted in Cameroon, Egypt, Kenya, Senegal, and South Sudan, with men allowed four wives in Sudan and Senegal. Côte d'Ivoire, Mozambique, and South Africa have statutory laws for monogamy, but customary and religious laws and practices continue to recognize polygamy without adequate protections for women in polygamous marriages. Other harmful traditional practices, such as widow inheritance and surrogate marriage, treat women as property.

DISCRIMINATION IN DIVORCE AND CHILD CUSTODY LAWS

Countries such as Sudan discriminate by granting husbands more powers to initiate divorce. In Algeria, women can only request a divorce in cases of abandonment, violation of the marriage contract, or if alimony is unpaid. In both Sudan and Egypt, in some no-fault divorces, a woman must pay financial compensation to her ex-husband.

Child custody laws have been reformed in Angola, Botswana, Burundi, Cameroon, Côte d'Ivoire, DRC, Mozambique, and Senegal, ensuring guardianship rights for both parents, irrespective of marital status.

Sex discrimination remains in countries like Senegal, where the father is the legal guardian regardless of the mother's caregiving role. In Tunisia and Algeria, fathers retain legal guardianship even if the mother has custody. Algeria and Sudan strip a mother's rights to custody upon remarriage, but this doesn't apply to men.

MATRIMONIAL PROPERTY AND INHERITANCE

Matrimonial property laws is another area that has undergone considerable reforms. Côte d'Ivoire, Kenya, Malawi, and South Africa have introduced legal provisions for equitable distribution of matrimonial property. In Ethiopia, Nigeria, South Africa, and The Gambia, laws recognize the right of married women to acquire, own, maintain, and dispose of their property.

However, some customary and religious laws undermine women's inheritance rights. In Algeria, Cameroon, Côte d'Ivoire, Egypt, Nigeria, South Sudan, Sudan, and Tunisia, women and girls receive less inheritance than men and boys.

Women are disadvantaged by cultural biases that influence judicial decisions, with unequal distribution particularly evident in divorce and widowhood. In some countries, wives can be excluded from inheriting their husbands' property. One example is Angola, where customary laws exclude wives from inheriting their deceased husband's property, and widows are sometimes forced from their matrimonial home.

ALIGNING FAMILY LAWS WITH INTERNATIONAL HUMAN RIGHTS STANDARDS

Family laws in Africa must align fully with international human rights standards. Many countries have ratified key treaties like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). However, implementation and enforcement of these treaties remain inconsistent, with discriminatory family laws and policies remaining in statutes and practices.

Waweru concludes, "It's especially concerning that in most countries where national judiciaries and African Union judicial bodies have explicitly called for law reform in their decisions, governments haven't implemented these changes. And even where laws are equitable, enforcement is frequently inadequate and biased against women, and women may not know their legal rights."

"To safeguard women and girls within family law, it is imperative for all African nations to

promptly enact robust legislative and policy frameworks that align with international and regional human rights obligations.”

NOTES TO EDITORS:

Equality Now is an international non-governmental human rights organization that works to protect and promote the rights of all women and girls globally. Our international network of lawyers, activists, and supporters achieve legal and systemic change by holding governments responsible for enacting and enforcing laws and policies that end legal inequality, sex trafficking, online sexual exploitation, sexual violence, and harmful practices such as female genital mutilation and child marriage.

'Gender Inequality in Family Laws in Africa: An Overview of Key Trends in Select Countries' is a critical data source informing legal, policy, and practice reforms to end sexism and discrimination in family laws in Africa. It will be used by Equality Now, the [Africa Family Law Network \(AFLN\)](#), and partners to help facilitate work with the policy and judicial organs of the African Union, particularly the Special Rapporteur on the Rights of Women in Africa to influence change.

AFLN was launched in October 2022 and aims to formulate a regional alliance in Africa amongst national advocates and groups to raise collective action and accelerate organizing and mobilization efforts toward family law reform.

AFLN is led by founding partners Equality Now, The African Women’s Development and Communication Network (FEMNET), Musawah, and the Strategic Initiative for Women in the Horn of Africa (SIHA Network).

AFLN is part of the Global Campaign for Equality in Family Law, which calls on all states to ensure equality for women and men under the law in all matters relating to the family, regardless of religion, culture, and tradition.

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