



LEGAL FRAMEWORKS AND WOMEN'S VOICE AND AGENCY AFRICAN DEVELOPMENT BANK

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BACKGROUND AND METHODOLOGY



A desk study commissioned to contribute to pillar one of the AfDB Gender Strategy “Legal Status and Property Rights”.

The **objective** of the study was to provide an overview of Africa’s legal frameworks for more identification of more in-depth studies and entry points for action on pillar one.

The study was based on :

- Women’s Legal and Economic Empowerment Database for Africa (WB)
- Social Institutions Gender Index (OECD/DAC)

LEGAL FRAMEWORKS INTERNATIONAL AND REGIONAL FRAMEWORKS



- CEDAW : ratified by all African countries, except Somalia and Sudan
- Beijing Platform of Action (1995)
- Maputo Protocol of the AU (2005)
- Declaration on Gender and Development (2008)
- ILO conventions

LEGAL FRAMEWORKS

NATIONAL



Constitutions

- All African countries have outlawed discrimination based on sex.
- Some common law countries shield certain areas from constitutional scrutiny and instead apply customary or personal laws even if they are discriminatory.
- Constitutions of civil law countries are often silent on customary laws.
- In many countries the constitutions and statutory law is not harmonized.
- Few countries recognize affirmative action in the constitution.
- Some countries have gender observatories or gender commissions to monitor and challenge constitutions and legal frameworks.

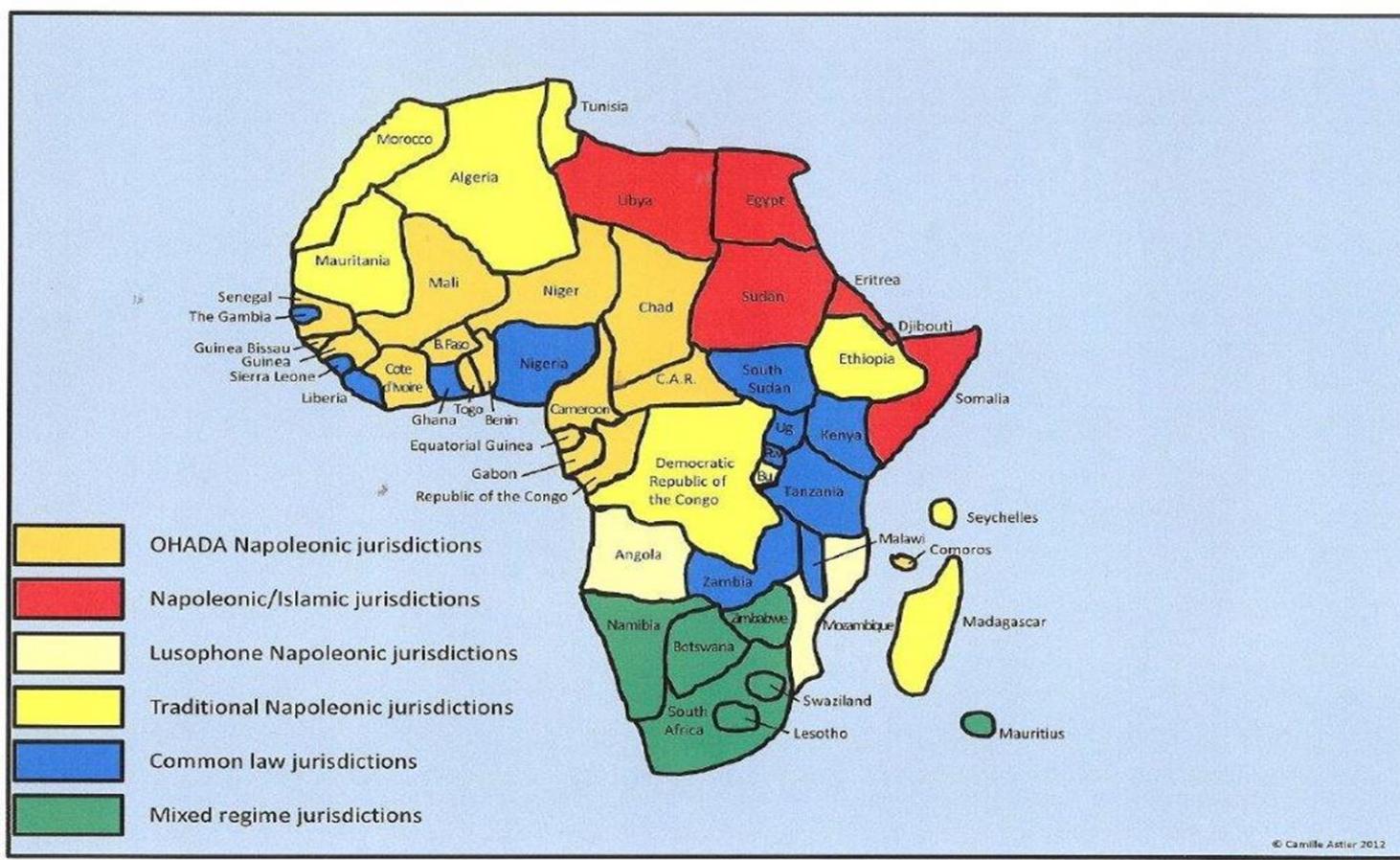
LEGAL FRAMEWORKS

STATUTORY LAWS



- Civil law jurisdictions** (mostly francophone countries)
 - ❖ Discriminatory civil codes restrict women's voice and agency in the family has negative effects outside the family (husband as head of household with marital power over the person and property of the wife).
- Roman Dutch law** (mostly Southern Africa)
 - ❖ Recognises the husbands marital power over the person and property of the wife.
 - ❖ Made more progress than civil law legislations in repealing the marital power of the husband.
- Common law jurisdictions**
 - ❖ Marriage laws do not allow discrimination of women but they are silent on the legal status of married women.
 - ❖ Discriminatory social norms influence women's rights or women are not aware of equal rights with husbands.

CIVIL, ROMAN DUTCH AND COMMON LAW JURISDICTIONS



LEGAL FRAMEWORKS

STATUTORY LAWS



- Challenges to statutory laws**
 - Discriminatory constitutions interfere
 - Some provisions are discriminatory
 - Laws do not exist for all gender equality aspects
 - Statutory laws do not address the actual situation of men and women
 - Customary law and social norms overshadow statutory law
 - Women do not know the laws and are not enabled to use them
 - Courts are inaccessible: distance, cost, discrepancy between formal justice system and local ideas

LEGAL FRAMEWORKS STATUTORY LAWS



Example: Women's property rights in marriage

- Property is central to economic empowerment
- Land is a key resource: Women's rights to land increases women's agency and their productivity.
- About 75 % of land is under customary land tenure.
- Civil law and Roman Dutch jurisdictions have marriage in community of property as default: property is co-owned but husband has sole legal rights.
- After death women loses non-monetary contribution to the property registered in the name of the husband.

LEGAL FRAMEWORK STATUTORY LAWS



- **Women in customary marriages** have no property rights during marriage and upon dissolution by death or divorce.
- **Few African countries have regulated aspects of customary marriages** to protect the rights of women in such unions when they are legally registered:
 - Sierra Leone law allows women in customary marriages the right to own property.
 - South African law recognises all marriages (including polygamous marriages) conducted under customary law as legal and
 - Recognises equality in legal status and capacity between husbands and wives, and the financial relationship between husband and wives is regulated by legal contracts.

SUB-REGIONAL TRENDS



- ❑ **North Africa:** made progress. Restricted civil liberties remain a challenge. Exception Tunisia with a top ranking in the SIGI.
- ❑ In **Southern Africa** a positive correlation between SADC gender equality initiatives and gender-responsive legislation can be seen. Restricted civil liberties remain a problem.
- ❑ In **East Africa** women experience still more discrimination than in North and Southern Africa.
- ❑ **West and Central African countries** do generally not well: discriminatory family codes and social norms are major challenges in civil law countries.
- ❑ A negative correlation between gender equality and (post) conflict is obvious.

CONCLUSION



- ❑ Constitutional guarantees for gender equality do not always apply to customary law and are not applied uniformly to statutory law, such as inheritance law.
- ❑ Statutory law is often overshadowed by customary law.
- ❑ Good laws are not always applied due to lack of knowledge, insufficient access to courts or cultural practice.
- ❑ Legal reform can be pushed successfully by individuals or civil society.
- ❑ Legal reform needs to go hand in hand with legal education.

RECOMMENDATIONS



- ❑ Any law, including customary and religious law, which is inconsistent with the constitution must be invalid.
- ❑ Equality between men and women in marriage and upon its dissolution needs to be affirmed for all types of marriage, including customary marriage.
- ❑ The public needs to be informed about which areas are governed by statutory law and customary law.
- ❑ Civil codes urgently need to be reviewed to comply with constitutions.
- ❑ Equality of men and women needs to be guaranteed in statutory laws which operate outside marriage: land ownership, contract, employment, education, electoral laws.

RECOMMENDATIONS (CONT.)



- Training of judges and staff of formal and informal justice institutions is important.
- Strong regional gender policies and strategies can be instrumental to push legal reform and should be supported.
- Civil society needs to be capacitated to challenge discrimination in law and push for legal reform.
- Gender observatories and gender commissions should be established and capacitated with human and financial resources to gender in laws and monitor implementation.



Thank you for listening!