

Appendix B

Comparison of Databases on Women and the Law

Table B.1 Comparison of databases on women and the law

Indicator	Women–LEED–Africa (47 countries)	Women, Business, and the Law 2010 (28 countries)	Food and Agriculture Organization Land Rights Database (28 countries)
Sources of law	Constitutions, international conventions, and statutes, each reported separately	Constitutions, international conventions, and statutes, but database does not identify source of law determining each indicator	Constitutions, international conventions, and statutes, each reported separately
Treatment of customary law	Recognition in constitution, statutes, or both; extent of limitations on gender-based nondiscrimination protections	Not included	Recognition in constitution, statutes, or both
Property and land rights	Property rights in marriage, divorce, and inheritance; land rights	Gender equality in movable and immovable property	Land rights
Legal capacity	Statutes and recognition of customary and religious law; equality in conducting economic transactions independently (for example, opening a bank account or working outside the home)	Indicator shows whether legal capacity is “equal” or “unequal” but does not identify which transactions trip the indicator (future editions may provide this information)	Not included
Labor	Provisions based on International Labour Organization (ILO) conventions, national constitutions, and statutes, each reported separately	Provisions based on ILO conventions, national constitutions, and statutes; includes parental leave	Not included
Database of laws	Yes	Yes	Yes
Additional material	Examples from case law where conflicting or overlapping sources of law apply to illustrate how women’s economic rights are interpreted in practice	Information on credit bureaus and small claims courts	Statistics on land ownership

Appendix C

Database of Court Cases

Table C.1 Database of court cases

Country/case	Date	Court	Citation	Source	Ruling
Botswana					
<i>Molomo v. Molomo</i>	1979	High Court	[1979–80] B.L.R. 250	Griffiths (1983)	Litigants were sophisticated people with business acumen (school teachers who traveled and lived in the capital). The court awarded the wife half the value of the cattle, a house, and custody of the couple's young children, rejecting the application of customary life on the basis of the mode of life exemption.
<i>Moisakamo v. Moisakamo</i>	1980	High Court	MC 106	Griffiths (1983)	The court ruled that there is no automatic right to equal division of property and looked instead at the sources of the couple's assets. Because their income was produced by the wife's efforts, she was theoretically entitled to more than half of their assets, but pleadings stated that both parties contributed equally. The mode of life provision was not applied, because the marriage took place after passage of the Married Women's Property Act.
<i>Busang v. Busang</i>	1982	Customary Court, Chief's court	MO 378/82	Griffiths (1983)	The chief's court made no award to the wife, on the grounds that she had practiced witchcraft and deserted her husband. It accepted the earlier decree of divorce from the High Court based on these allegations.
<i>Seitshiro v. Seitshiro</i>	1982	Customary Court, Tswana Chief	—	Griffiths (1983)	The court awarded the wife four head of cattle plus the cattle jointly acquired. She was not awarded estate cattle. Customary law allows a wife to acquire property on divorce, but customary property is excluded.
<i>Rabantheng v. Rabantheng</i>	1988	High Court	[1988] B.L.R. 260	Quansah (2009)	The court awarded the wife one-third of the value of the marital home, which was in the sole name of the husband, because she had made a direct financial contribution. The court did not recognize the wife's nonmonetary contributions.
<i>AG of the Republic of Botswana v. Unity Dow</i>	1995	Court of Appeal	[1994] (6) BCLR 1	Lambert and Scribner (2008)	The court ruled that the citizenship laws, which did not allow women married to nonnationals to pass their nationality on to their children, was discriminatory and unconstitutional. Although discrimination on the grounds of gender was not specifically addressed in the Constitution, the court held that such a provision could be implied in order to give effect to the objectives of the Constitution. The court's interpretation thereby expanded the ambit of the constitutional clause on nondiscrimination.

<i>Mbenge v. Mbenge</i>	1997	Court of Appeal	[1997] B.L.R.142	Quansah (2009)	The court ruled that the principle of universal partnership created a right of the cohabiting woman to 50 percent of the couple's assets upon divorce. The ruling affirmed the common law right to property for women in consensual unions or quasi-customary marriages.
<i>Bodutu v. Motsamai</i>	2006	High Court	[2006] 2 B.L. R. 252	Quansah (2009)	The court affirmed the common law right to property for women in consensual union or quasi-customary marriages, indicating that universal partnership can arise through a tacit agreement.
<i>Mogorosi v. Mogorosi</i>	2008	Court of Appeal	[2008] BWCA 18	Hubbard (2010)	The court applied the principle of universal partnership in recognizing the woman's nonmonetary contribution to the business run by the man with whom she had cohabited for 15 years. The case originated in the customary courts. The woman had worked for the business and performed household duties, including caring for the couple's children. The court awarded her a 20 percent share of the man's estate, valued at the date on which the cohabitation broke down. The ruling affirmed the common law right to property for women in consensual unions or quasi-customary marriages.
Cameroon					
<i>Alice Fodje v. Nadans Kette</i>	1986	Court of Appeal	[1986] BCA/45/86	Ebi (2008)	The court recognized the property rights of a wife in a customary marriage on divorce. Judge Florence Arrey held that the wife had the right to occupy the marital home and to collect rent from two other houses.
<i>Ashu v. Ashu</i>	1986	High Court	BCA/62/86	Ngwafor (1999)	The court ruled that a wife is not entitled to a share of the marital estate because she herself is property according to customary law.
<i>Affaire Succession Lonla Kuete</i>	1991	Court of Appeal West Province	Arret No. 2/ Coutume of 24 October 1991	Ebi (2008)	The court rejected primogeniture in favor of male heirs.
<i>Chibikom v. Zamcho Florence</i>	1993	Supreme Court	No. 14/L of 4 February 1993	Ebi (2008)	The court ruled that any custom that deprives women of succession rights to their parents' estate is unconstitutional and contrary to public order. The custom that a married woman did not have the capacity to administer her father's estate was overruled.

continued

Table C.1 Database of court cases *continued*

Country/case	Date	Court	Citation	Source	Ruling
<i>Gboron Yaccoumba v. Anemena Suzanne v. Mbombo Asang and Ndam Emile</i>	1997	Court of Appeal Bafoussam	Arret No. 002/c 23 October 1997	Ebi (2008)	The court rejected a widow's claim to entitlement from her deceased husband's estate under Islamic law on the grounds that under local customary law, a wife does not inherit.
<i>Baba Iyayi v. Hadija Aninatoou</i>	2000	Supreme Court	Arret No. 083 of 32 March 2000	Ebi (2008)	The court ruled that French law supersedes Muslim law if the deceased contracted a civil marriage. If he did not, Islamic law applies.
Ethiopia					
<i>Ms. Kedija Bashir</i>	Constitutional Court	House of Federation	Cassation Division Case No. 12400	Ashenafi (2005)	The court ruled that under the Constitution, the party had the right to choose between a civil court and sharia court. Sharia courts have jurisdiction only when all the parties consent. Article 34(5) of the Constitution states: "This Constitution shall not preclude the right of parties to voluntarily submit their dispute for adjudication in accordance with religious or customary laws. Particulars should be determined by law."
Gabon					
<i>P.E.N. and F.E.O. v. D.N.B.</i>	1996	Court of Cassation (highest Court)	Case no.13/95-96 La revue de CERDIP, 131 (2002)	Odinkalu (2005)	The court ruled that the Nkodje clan's custom known as Ntounou precludes civic intermarriage among clan members whether or not consanguinity or affinity between them is established.
The Gambia					
<i>Saika Saïdy v. Theresa Saïde, Albert Henry Shrubsole and Jukba Saïdy</i>	1973	Supreme Court	Civil Suits 1972-A-147 NS 148	Journal of African Law (1974)	The court restricted testamentary discretion in a case involving a Gambian Muslim who willed all his property to his wife. His brother challenged the will. The court ruled that the deceased could not dispose of his property under the Wills Act 1837, that sharia law governed his estate. The repugnancy test applied only to customary law, not sharia.
Ghana					
<i>Quartey v. Martey and Anor</i>	1959	High Court	Ghana L. Rep. 377	Fenrich and Higgins (2002)	The court ruled that assets acquired through the joint effort of a man, his wife, and their children and any property the man acquired as a result are, by customary law, the individual property of the man. The wife's nonmonetary contribution is not recognized under customary law. A different decision would have been reached if there had been a direct financial contribution by the wife.

<i>Gyamaah v. Buor</i>	1962	High Court	[1962] 1 G.L.R 196	Kuenyehia (2008)	A widow who assisted her husband in developing and cultivating 11 cocoa farms sought a court order declaring that she was entitled to a share of the farms following his death. Ownership of the farms had passed to the heirs based on Akan customary laws of inheritance. The lower court held in favor of the widow's right to a share of the property on the grounds that she had assisted in cultivating the farms. On appeal, the High Court overturned the lower court order, holding that the widow had no right to the property and could receive a share of the property only because the heir had previously agreed to share an unspecified portion of the property with her. The court held that, based on the custom of the parties, the wife was not entitled to any specific share of the property but would receive whatever the defendant heir chose to give her. Significantly, the High Court stated that had the widow's assistance been in the form of a substantial financial contribution, she would have been "entitled as of right to a share in the properties acquired by her husband."
<i>Essellie v. Quarcoo</i>	1992	Court of Appeal	[1992] 2 Ghana L. Rep. 180	Fenrich and Higgins (2002)	Chief Justice Georgina Wood held that a marriage can be recognized even if customary rites and ceremonies were not fully performed if (a) the parties agreed to live together as man and wife and they did in fact so live; and (b) they obtained the consent of their two families to the marriage. Consent, the court rule, can be implied by conduct.
Kenya					
<i>I v I</i>	1971	High Court	[1971] EA 278	Baraza (2009)	The court held that the Married Women's Property Act applied to marriages solemnized in Kenya.
<i>Karanja v. Karanja</i>	1976	High Court	(2008) 1 KLR (G&F) 171; [1976-80] 1 KLR 389	Baraza (2009)	The court rejected the argument that under Kikuyu customary law women do not own property because they are under their husbands. It rejected discriminatory customary law regarding division of property on divorce, applying statutory law (the Married Women's Property Act) to award the wife one-third of the couple's property.
<i>Otieno v. Ougo</i>	1987	Court of Appeal	(2008) 1 KLR (G&F)	Stamp (1991)	The claim of the widow and children to determine the burial arrangements for the deceased (with resulting implications for the division of the estate) were set aside in favor of the customary laws of the husband's clan.

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Table C.1 Database of court cases *continued*

Country/case	Date	Court	Citation	Source	Ruling
<i>Kivuitu v. Kivuitu</i>	1991	Court of Appeal	1991 2 KAR 241	Baraza (2009)	The court applied the principle of nondiscrimination and equal protection of the law in recognizing the wife's nonmonetary contribution in the form of domestic chores and labor on their subsistence farm.
<i>Essa v. Essa</i>	1996	High Court	(1996) EA 53	Baraza (2009)	The court relied on the Married Women's Property Act to award property to a divorced woman who had married under Islamic law. The court reiterated the holding in <i>I v. I</i> that the Married Women's Property Act applies equally to Muslims and non-Muslims.
<i>Omar Said Jaiz v. Naame Ali</i>	—	—	—	Baraza (2009)	The court took <i>Kivuitu</i> one step farther to rule that, even without clear evidence of the extent of the actual contribution made by both spouses, the property is considered joint property because it was acquired through a joint venture. The ruling thus recognized the nonmonetary contribution of the wife.
<i>Estate of Lerionka Ole Ntutu</i>	2000	High Court	[2008]eKLR	Killlander (2010)	The court overruled the application of the Maasai custom that disentitles daughters from claiming their father's inheritance in ruling that the daughters of a Maasai man who died intestate had a legitimate claim to inherit his property. The court overruled the application of sections of the Succession Act that require application of customary law in inheritance of agricultural land in certain areas to the extent that it discriminated against the daughters. The judge noted that it would violate human dignity and gender equality to construe the Constitution as allowing discrimination against women.
<i>In re Wachokire</i>	2002	Chief Magistrates Court Thika	Succession Cause No. 192 of 2000	Partners for Gender Justice Report of the Accra Conference (2008)	Magistrate H. A. Omondi ruled that under Kikuyu customary law, an unmarried woman lacked equal inheritance rights because of the expectation that she would marry. The court held that this customary provision discriminates against women, in violation of Section 82(1) of the Kenyan Constitution. It also violates Article 18(3) of the Banjul Charter and Article 15(1)-(3) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which provide for legal equality for men and women.
<i>Andrew Manunzyu Musyoka (Deceased)</i>	2005	High Court	eKLR 1, 7 (High Court] at Machakos)	Ndulo (2011)	The court relied on the principles of equality and nondiscrimination in CEDAW to safeguard women's property rights against discriminatory Kamba customs that held that a daughter is not supposed to inherit from her father's estate. Justice Lenaola used CEDAW to declare the custom repugnant to natural justice and the doctrines of equity.

<i>Mary Rono v. Jane Rono and another</i>	2005	Court of Appeal	(2008) 1 KLR (G&F)	Ndulo (2011)	The deceased died intestate, leaving behind a vast tract of land and other properties. The court held that there was no reasonable basis for drawing a distinction between sons and daughters in determining inheritance, that the principles of equality and nondiscrimination prevailed over customary law, which disinherits women. The court applied international law directly to Kenya, a dualist state, basing its action on contemporary thinking on common law theory, which allows application of international and treaty law even where they are not domesticated where there is no conflict. Constitutional principles of equality and nondiscrimination trumped customary law.
<i>Echaria v. Echaria</i>	2007	Court of Appeal	[2007] Eklr; [2007] KECA 1 (2 February 2007) [Federation of Women Lawyer's Kenya (FIDA) and Georgetown University Law Center (2008)	A five-judge bench overturned earlier decisions of the High Court and Court of Appeal on the recognition of nonmonetary contribution, holding that division of property in marriage is determined by the general laws of contract in Kenya and that a woman must demonstrate having made a monetary contribution. The court rejected the principle of nonmonetary contribution. This decision applies to all similar cases in the future, unless they can be distinguished on the facts or overturned by a full bench of the Court of Appeal.
Lesotho					
<i>Shuping v. Motsaahae</i>	1977	High Court	[1977] LLR p.174	Cotula (2006)	The court held that family property is administered exclusively by the husband, upholding the alienation of a joint estate without the wife's consent. This decision may be affected by the Legal Capacity of Married Persons Act 9 of 2006, which applies to civil but not customary marriages.
Malawi					
<i>Poya v. Poya</i>	1979	High Court	Civil Appeal No. 38 of 1979 N.T.A.C.	Mwambene (2005) a	The court ruled that the marital home built by the husband in the wife's village belongs to the wife. Customary law benefited women in this instance.
<i>Malinki v. Malinki, Mtegha v. Mtegha</i>	1994	Magistrates Court	MC 9MLR 441	Women and Law Southern Africa (2009)	The court ruled that a spouse wishing to claim a share of property not in his or her name must demonstrate having made a financial contribution to its acquisition. Contributions to maintenance of property items, housekeeping, and child care are not sufficient.
<i>Sinalo v Sinapyanga and others</i>	1995	High Court	Civil Cause No. 544/1995	Women and Law Southern Africa (2009)	The court awarded a widow 20 percent of the business that formed part of the estate of her deceased husband based on evidence of the financial contribution she had made to it but rejected her claim to a proprietary interest in her deceased husband's house after refusing to recognize her nonmonetary contribution without evidence of domestic labor.

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Table C.1 Database of court cases *continued*

Country/case	Date	Court	Citation	Source	Ruling
<i>Georgina Mazunyane v. Rodney Chalera</i>	2004	Magistrates Court	Civil Case No. 75 of 2004, Mulunguzu Magistrate Court (unreported)	Mwambene (2005)	The court divided marital property equitably on customary divorce.
<i>Nyangulu v. Nyangulu</i>	—	High Court	10 Malawi Law Reports 435	Women and Law Southern Africa (2009)	The court did not recognize the wife's nonmonetary contribution, ruling that "inference of joint ownership of property is not to be made from a mere fact of marriage."
<i>Barnet Phiri v. Fanny Phiri</i>	2006	High Court	Civil Appeal Cause No. 15 2006	Women and Law Southern Africa (2009)	The court held that on dissolution of a customary marriage, all marital property, not just property officially held jointly, must be divided equitably.
Mauritius					
<i>Bhewa v. Government of Mauritius</i>	1990	Supreme Court	[1991] LRC (Const)	http://www.endvawnow.org/en/articles/764-family-law-and-marriage-laws.html	The court ruled that a Muslim couple's right to apply certain Islamic laws on marriage, divorce, devolution of property, and polygamy is not guaranteed by the Constitution, because these practices violate civil laws that protect the common good and prevent discrimination against women. The appeal by the petitioners from the lower court was dismissed. The ruling established that civil law principles prevail over parties in a religious marriage.
Namibia					
<i>Myburg v. Commercial Bank of Namibia</i>	2000	Supreme Court	NR255 (SC)	Hubbard (2005)	The court ruled that unconstitutional common laws are automatically invalidated by the provisions of the Constitution. It indicated that customary law in force at the time of independence would survive only if it were not in conflict with the Constitution.
<i>Mofuka v. Mofuka</i>	2001	High Court	2001 NR 318 (HC)	Hubbard (2005)	The court ruled that an unregistered oral prenuptial agreement, express or implied, was valid. Such an agreement binds only the husband and wife, however, not a third party.
<i>Berendt v. Stuurman</i>	2003	High Court	Unreported Judgment Case No (P) 105/2003	Hubbard (2005)	The court declared several sections of Native Proclamation 15 of 1928 unconstitutional and gave the legislature a deadline for replacing the offensive sections. Reform of the offending provision has not yet been carried out. Provisions relating to the administration of estates were changed to give a choice to the indigenous population.

Nigeria					
<i>Nezianya v. Nezianya</i>	1963	—	1963 NLR 352	Women Aid Collective (2008)	The court held that under the native law and custom of the Onitsha, a widow's possession of her deceased husband's property is not that of a stranger, is not adverse to her husband's family, and does not make her the owner, however long she holds the property.
<i>Adesubokan v. Yinusa</i>	1971	Supreme Court	[1971] N.N.L.R. 77	Oba (2011)	The court upheld the right of a Muslim man to write an English statutory will.
<i>Egunjobi v. Egunjobi</i>	1976	Western State Court of Appeal	[1976] 2 F.N.R. 78	Women in Law and Development Africa—Nigeria (2002)	The court awarded the wife a third of the marital property after she provided evidence of her actual contribution, including receipts for the construction of the building acquired during the marriage. The case recognized the wife's nonmonetary contribution but required proof of contribution to establish the share to which she was entitled.
<i>Adeyemi v. Adeyemi</i>	1985	—	[1985] Suit No CB/354D/85	Women in Law and Development Africa—Nigeria (2002)	The court held that the failure of the wife to provide receipts in evidence of her monetary contribution to the property acquired during the marriage disentitled her to the property upon divorce. Her nonmonetary contribution was not recognized.
<i>Kaffi v. Kaffi</i>	1986	Court of Appeal	[1986] 3 Nigeria Weekly Law Report (NWLR); part 2; p. 175.	Women in Law and Development Africa—Nigeria (2002); IFHR (2008)	The court held that the wife's contribution need not be financial in nature. The fact that the wife took care of her husband and family and that the husband had the peace of mind to acquire the property gave the wife an interest in such property. It recognized her nonmonetary contribution under the just and equitable provision in the Matrimonial Causes Act 1970.
<i>Amadi v. Nwosu</i>	1989	Supreme Court	[1992] LPELR-SC.14/1989	IFHR (2008)	The Supreme Court upheld the High Court's decision that in a customary law marriage, where a wife does not have a right to property ownership, she must prove her monetary contribution to family property before she can invoke other laws to claim joint ownership of property. Under customary law, nonmonetary contribution is not recognized.
<i>Nzekwu v. Nzekwu</i>	1989	Supreme Court	[1989] 2 NWLR P. 373	IFHR (2008)	The court held that a widow's dealings with her husband's property must receive the consent of his family, that she cannot claim the property as her own. It ruled that she cannot administer her husband's estate on her own and has no ownership rights to that estate.

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Table C.1 Database of court cases *continued*

Country/case	Date	Court	Citation	Source	Ruling
<i>Onwchekwe v. Onwuchekwe</i>	1991	Court of Appeal	(1991) 5 NWLR (pt. 197) 739	IFHR (2008)	The court held that the wife did not make a direct financial contribution to the marital home and that her labor was not sufficient to entitle her to a share of the marital assets. It also upheld that the Isikwuato custom in which a wife is owned with her properties by her husband as chattel is not repugnant. According to the ruling, "Because the court is dealing with a customary law, which is peculiar to the people, the determining factor or factors should not be the English Common Law but must be Nigerian Law. It is good law that customary law cannot be said to be repugnant to natural justice, equity and good conscience merely because it is inconsistent with or contrary to English law, as the test of the validity of customary law is never English law."
<i>Nkeaka v. Nkeaka</i>	1994	Court of Appeal	5 NWLR (Part 346) 599	IFHR (2008)	The court ruled that daughters cannot inherit land under customary law but can inherit money.
<i>Akinnubu v. Akinnnubi</i>	1997	Supreme Court	(1997) 2 NLWR 144	Nwabueze (2010)	The court confirmed the legal legitimacy of the Yoruba practice in which daughters but not widows can inherit from men who die intestate, ruling that "under Yoruba customary law, a widow under intestacy is regarded as part of the estate of her deceased husband to be administered or inherited by the deceased family. She could neither be entitled to apply for a grant of letters of administration nor appointed as co-administratrix."
<i>Mojekwu v. Mojekwu</i>	1997	Court of Appeal	(1997) 7 NWLR; Pt 512; 283	International Federation of Human Rights Nigeria NGO Coalition Shadow Report (2008)	The court set aside the Oliekpe custom that disentitles a daughter from inheriting the property of her father where no son survives him.
<i>Mojekwu and others v. Ejikeme and others</i>	1999	Court of Appeal	5 NWLR 402,	Women in Law and Development Africa—Nigeria (2002)	The two great-grandsons and the granddaughter of a man who died intestate appealed the ruling of a lower court in favor of five male members of the family of his brother. The case involved the practice of Nnewi, which pertains when a man leaves behind daughters but no sons. Under these circumstances, the daughter must remain unmarried and bear children who effectively become her dead father's heirs to inherit and carry on the male lineage. The appellants claimed that Nnewi had been performed for the deceased's daughter (the appellants' mother and grandmother),

which entitled her and her children to inherit the property. The respondents claimed that the custom of Nnewi had been performed for the deceased's other daughter, Comfort, entitling her and any of her children to inherit the property. Because Comfort had died childless, however, under customary law, the deceased died without a surviving male heir, thereby causing the property to pass to the deceased's brother or the brother's male issue. On appeal, the court found that these customs discriminated against women and were "repugnant to the principles of natural justice, equity and good sense." The court concluded that the appellants, as blood relations, were entitled to inherit the estate of the deceased and that it would be inequitable to throw them out of their home. Although not explicitly stated, the court based its ruling on the fundamental rights guaranteed to women under Nigeria's constitution and an international convention to which Nigeria was a party.

<i>Mojekwu v. Iwuchukwu (appeal of Mojekwu v. Mojekwu)</i>	2004	Supreme Court	(2004) NWLR Pt 883 pg. 196	Nwabueze (2010)	The Supreme Court overturned the earlier decision of the Court of Appeal that there was no justification for the lower court to have pronounced the Ibo custom of Nnewi repugnant to natural justice, equity, and good conscience, as its repugnancy was not part of the issues joined by the parties. Justice Uwaifo ruled that the language used in the lower court made the pronouncement so general and far-reaching that it seemed to undermine, and was capable of causing strong feelings against, all customs that failed to recognize a role for women. The undermining of customary law in this way was not justifiable.
<i>Obusez v. Obusez</i>	2001	Court of Appeal	[2001] 15 N.W.L.R. 377	Nwabueze (2010)	The brothers of the deceased argued that they—and not the man's widow and infant children—were entitled to administer his estate. They based their argument on Agbor customary law 25, which deems a widow to be chattel to be inherited and therefore, they claimed, unqualified for letters of administration. They invoked the fact that the widow had been married under Marriage Act 27 rather than customary law. The trial court held that a widow who had been married under statute is not a chattel and is entitled to letters of administration. In affirming this decision, the Court of Appeal suggested that the opposite would be true of a widow in the same position who had been married under customary law, in which case Agbor customary law would apply.

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Table C.1 Database of court cases *continued*

Country/case	Date	Court	Citation	Source	Ruling
<i>Uke v. Iro</i>	2001	Court of Appeal	11 NWLR 196	International Federation of Human Rights Nigeria NGO Coalition Shadow Report (2008)	The court overruled on constitutional grounds discriminatory customary law relating to inheritance, ruling that any law or custom that seeks to relegate women to the status of second-class citizens, depriving them of their invaluable and constitutionally guaranteed rights, is unconstitutional and should be consigned to history.
<i>Ukeje v. Ukeje</i>	2001	Court of Appeal	11 NWLR 196	International Federation of Human Rights Nigeria NGO Coalition Shadow Report (2008)	The court voided the Igbo law and custom disentitling a daughter from sharing in her father's estate on the grounds that it violates the provisions of Section 42 (2) of the 1999 Constitution.
<i>Amusan v. Olawumi</i>	2002	Court of Appeal	FWLR 1385	International Federation of Human Rights Nigeria NGO Coalition Shadow Report (2008)	The court held that under Yoruba customary law, both sons and daughters are entitled to inherit their parents' land.
<i>Hon. Emokpae and Three Others. v. Mrs. Nekpen Idubor</i>	2003	—	12 NWLR Part 849	IFHR (2008)	The court ruled that the widow of an intestate man who had been married under Bini native law and custom and who was therefore not entitled to inherit can commence an action against the administration of the estate to protect the interest of her children, who are beneficiaries of the estate, and her personal interest, where it is affected by the administration of the estate.
<i>Muhammadu v. Muhammadu</i>	2003	—	[2003] 6 WRN 36	IFHR (2008)	The court ruled that female heirs are allowed to share in an inheritance like male heirs, in a modified manner. Inheritance is determined by Sharia law.
<i>Mgbemere v. Mgbemere and Oyigboku Suit</i>	2004	—	No/WD/143/04	International Federation of Human Rights Nigeria NGO Coalition Shadow Report (2008)	In divorce proceedings, the court granted the wife ownership of one of the properties acquired during the marriage.

South Africa					
<i>Mabuzo v. Mbatha</i>	2003	High Court	[2003] (4) SA 218	Lambert and Scribner (2008)	The court ruled that customary law can regulate marriage, as long as it does not contravene the equality clause in the Constitution.
<i>Nonkululeko Letta Bhe and Others v. Magistrate Khayelitsha</i>	2003	Constitutional Court	Case CCT 49/2003	Fenrich, Higgins, and Tanzer (2007)	The court invalidated a codified customary law of succession as unconstitutional. Bhe, who had been cohabiting with the deceased, and her two daughters were declared the only heirs. The court claimed that the ruling was just and equitable based on the provisions of the South African Intestate Succession Act.
<i>Elizabeth Gumede v. President of the Republic of South Africa</i>	2008	Constitutional Court	Case CCT 50/08 [2008] ZACC 23	Hirschl and Shachar (2009)	The court declared unconstitutional the customary law in which the husband is the family head and owner of all family property, which he may use in exclusive discretion. It held that customary law that implied that women were not fit or competent to own and administer property violated their right to dignity and equality under the constitution.
<i>Hassam v. Jacobs</i>	2008	High Court	Case No. 5704/20045	Osman-Hyder (2011)	The court ruled that a polygamous widow in an Islamic marriage could inherit under the Intestate Succession Act, that there was no justification to exclude her.
<i>Shilubana and Others v. Nwamitwa</i>	2008	Constitutional Court	http://www.constitutionalcourt.org.za/uhtbin/cgisirsi/nMq9DS8Vwd/MAIN/0/57/518/0/J-CCT3-07C	Lambert and Scribner (2008)	The Constitutional Court upheld the decision of the traditional court to allow the daughter of the deceased chief to succeed to his title. The traditional court's decision represented a break with earlier rulings, which restricted succession to male heirs. The Constitutional Court upheld the jurisdiction of traditional courts to evolve customary law in line with contemporary social values.
Swaziland					
<i>Mary-Joyce Doo Aphane v. Registrar of Deeds, Minister of Justice and Constitutional Affairs and the Attorney General</i>	2010	High Court	Civil case No. 383/2009	IRIN (2010a)	The attempt by a woman, who was married under a community of property regime, to register property jointly in her name and the name of her spouse was not allowed under a provision of the Deeds Registry Act. The court upheld her claim that the provision was discriminatory and therefore unconstitutional. Significantly, the judge (the first woman appointed to the High Court) used her powers under the Constitution to change the wording of the offending provision so that it would allow registration of community property by women. Under Section 151 (2) of the Constitution, the High Court has jurisdiction to enforce fundamental human rights and freedoms guaranteed by the Constitution, including the right to equality, which is guaranteed by the Constitution.

continued

Table C.1 Database of court cases *continued*

Country/case	Date	Court	Citation	Source	Ruling
<i>Attorney General v. Aphane</i>	2010	Supreme Court	[2010] SZSC 32	IRIN (2010b)	The Attorney General appealed the <i>Mary-Joyce Doo Aphane</i> case to the Supreme Court. The Supreme Court in May 2010 upheld the unconstitutionality of the discriminatory provision, but overturned the High Court Judge's decision to "severe" and "read in" the Act on this occasion. It suspended the declaration of illegality for a year, allowing married women to register property in the interim, and allowing for Parliament to amend the legislation in the meantime. However, two years later, Parliament has not amended the legislation.
Tanzania					
<i>Bi Hawa Mohamed v. Ally Sefu</i>	1983	Court of Appeal	(9 of 1983) [1983] TZCA 1	Ellis (2007)	The court recognized the domestic role of a housewife as a legitimate contribution to marital welfare entitling her to part of that property on the dissolution of the marriage.
<i>Mohamed Abdallah v. Halima Lisangwe</i>	1988	High Court	TLR 197 Tanzania	Rwebangira (1996)	The court recognized the clearing of the site by the wife where a house was built as nonmonetary contribution. It also observed that during the course of the (Islamic) marriage, during which the house was built, the wife bore children, reared them, and took care of the marital home, freeing her husband to engage in economic activities. She was therefore entitled to the fruits of her efforts on the dissolution of her marriage.
<i>Keticia Bgumba v. Thadeo Maguma and another</i>	1989	High Court	High Court, Mwanza, Mwalusanya J., Civil App. No. 8/89 (July 18 1989)	Rwezaura (1991)	The court recognized the nonmonetary contribution of a woman during the two years she had cohabited in a consensual union with her husband. The court held that the woman had established the existence of a marriage by cohabitation and repute and that she could therefore claim a share or interest in a house in dispute by virtue of section 160(2) of the Law of Marriage Act.
<i>Richard Wilham Sawe v. Waitara Richard Sawe</i>	1992	Court of Appeal	Civil Appeal No. 38 of 1992, TZCA, 9 June 1994	Peter (2007)	The court held that division of marital property at divorce should be done on a 50:50 basis regardless of the mode of acquisition.

<i>Scholastica Benedict v. Martin Benedict</i>	1993	Court of Appeal	Mwanza Court of Appeal Cil. App. No. 26/88	Rwezaura (1991)	The court upheld discriminatory customary law relating to supremacy of rights of the male heir. The second (junior) wife, who had one daughter by the deceased, had appealed the decision of the lower court upholding the application of customary law in favor of the inheritance rights of a male heir, the eldest son of nine children by the first (senior) wife, over the second wife's rights to reside with her unmarried daughter in the home in which they had lived with the deceased for more than 15 years. The court held that any marital right the second wife had to reside in the house in which she had lived with the deceased was contingent on whether her daughter had a right to the property that was superior to the male heir's right. Because the male heir's right took precedence, even though he, the first wife, and eight other children resided in another house, the court upheld the lower court decision evicting the second wife and her daughter from the home.
<i>Pulcheria Pundugu v. Samuel Huma Pundugu</i>	1995	High Court	TLR 7	Quansah [2004]	The court disregarded Sukuma customary law and awarded the wife part of the marital property based on her nonmonetary contribution on dissolution of the marriage.
<i>Bernado Ephraim v. Holaria Pastory and Another</i>	2001	High Court	(2001) AHRLR 236	Ellis (2007)	The court set aside Haya customary law in favor of the principle of nondiscrimination, ruling that women can inherit land, including clan land under Haya customary law, and are capable of disposing of such land.
<i>Ndossi v. Ndossi</i>	2001	High Court	Civil Appeal No. 13 of 2001	Global Justice Center (n.d.)	Judge E. Munuo, a woman, held that the widow was entitled to administer the estate on behalf of her children under the Constitution, which provides that "every person is entitled to own property and has a right to the protection of that property held in accordance of the law." She further held that Article 9(a) and (f) of the Constitution recognize human rights by requiring "that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights," explaining that this clause generally domesticates human rights instruments ratified by Tanzania, including the antidiscrimination principles of CEDAW, Articles 2(b) and (f), and the best interest of the child principle found in Article 3 of the Convention on the Rights of the Child.

continued

Table C.1 Database of court cases *continued*

Country/case	Date	Court	Citation	Source	Ruling
Uganda					
<i>Muwanga v. Kintu</i>	1997	High Court	Divorce Appeal No. 135	Ministry of Justice and Constitutional Affairs of Uganda (2008)	The court ruled that a wife in a customary marriage was entitled to marital property, which she had earned through her nonmonetary contributions.
<i>Uganda Association of Women Lawyers v. AG Constitutional Petition No.2 of 2002</i>	2002	Constitutional Court	Constitutional Court, 10 March 2002	Ellis (2006)	The court repealed sections of the Divorce Act that discriminated against women. When a woman sought a divorce, she had to prove adultery and show that her husband had deserted her, been cruel to her, or failed to maintain her. In contrast, a man had to prove only adultery to obtain a divorce. The Strategic Litigation Coalition brought the case. The court declared the discriminatory provisions unconstitutional.
Zambia					
<i>Chibwe v. Chibwe</i>	2000	Supreme Court	Appeal No. 38/2000 SCZ (Zambia)	UN-Habitat (2005)	The court ruled that the wife, who had been married under Ushi customary law, was entitled to property following her divorce. It awarded her the house built by her husband on a plot registered in her name, and ordered the husband to pay her damages for having attempted to defraud her of the house.
Zimbabwe					
<i>Khoza v. Khoza</i>	1997	High Court	HH 106	UN-Habitat (2005)	The couple had been married under customary law for 23 years, during which time the wife had built and maintained the matrimonial homestead, which was on communal land. Upon dissolution of marriage, the court denied her any right to the matrimonial home and residence on the grounds that the marriage was patrilocal. She was awarded the family's town house in Bulawayo, even though her means of subsistence was farming.
<i>Chapeyama v. Matende and Another</i>	2000	High Court	(2) 356 (s)	Government of Zimbabwe (2009)	The spouses were married in 1990 under customary law. During their marriage, they had two children and acquired several properties jointly, including a house registered in both their names. Upon the breakdown of the marriage, the husband made an application to the court to have the wife's name removed from the deed of assignment. The wife counterclaimed for a fair distribution of all assets in the house. The High Court decided in favor of the wife, holding that the application of the concept of a tacit universal partnership was fully justified. In dismissing the husband's appeal, the Supreme Court recommended a review of marriage laws to specifically recognize unregistered customary law marriages, as was done under the Administration of Estates Act.

Note: — Not available.

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