

# Legal Pluralism, Customary Law and Women's Rights

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## ABSTRACT

This article examines the challenges legal pluralism poses in legal systems, especially in relation to conflicts between customary norms and the Bill of Rights and the need to contextualise customary law in order to resolve the need to adapt it to changing societal needs and values. The article focuses on African customary law, African legal systems and women's rights because it is a burning issue in Africa and was the subject-matter in several of the cases that came before the South African Constitutional Court during the time Justice Ngcobo was on the Court. Cases involving conflicts between customary law and gender rights are not unique to South Africa. These are issues that have engaged African courts and those elsewhere in the world. In Africa, the coexistence of customary law and received law is as old as colonial rule. Like all other systems of law, customary law has been influenced by various other forces in an ever-changing world. Justice Ngcobo's approach to resolving conflicts between customary law and the Bill of Rights in constitutions is instructive and makes a significant contribution to the jurisprudence in this area of the law. In his opinions on customary law, especially in the *Bhe* case, he implores us to look at the social context in which customary rules originated and, before discarding them, to examine the possibility of developing them to meet the changing needs and circumstances of society.

**Keywords:** legal pluralism; customary law; African legal systems; Bill of Rights; gender rights

## Introduction

It is fitting to pay tribute to Justice Sandile Ngcobo's immense contribution to constitutional jurisprudence in South Africa and the world by publishing a Special Issue in his honour. I feel privileged to have been given the opportunity to participate in this project. My article focuses on customary law and women's rights. Justice Ngcobo's approach to resolving conflicts between customary law and the Bill of Rights in constitutions is instructive and makes a significant contribution to the jurisprudence in this area of the law. In his opinions on customary law, especially in the *Bhe & Others v*

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# Customary Law And Women

**Godfrey Olebogeng Radijeng**



## **Customary Law And Women:**

*African Women & the Law* Margaret Jean Hay, Marcia Wright, 1982      *Women and Tribal Customary Law Series*, 2017

**Gender, Religion, and Family Law** Lisa Fishbayn Joffe, Sylvia Neil, 2013 Groundbreaking theoretical and legal approaches to resolving conflicts between gender equality and cultural practices      Customary Laws and Women in Manipur Jyotsna Chatterji, 1996 Contributed articles of a seminar organized by the Joint Women's Programme      Customary Law and Women's Rights in a Changing World Amel Aldehaib, 2013 This study analyses the conflicting interests of rights which exist in the new constitution of Southern Sudan the rights of people in Southern Sudan to their culture customary law and human rights particularly as experienced by women Analyses of extensive in depth interviews conducted in Southern Sudan demonstrate how the state's withdrawal from the private sphere and the application of customary law in its current highly patriarchal shape stands in direct conflict with women's rights Within the framework of post conflict reconstruction in Southern Sudan the exclusion of women from access to justice and from equal enjoyment of their rights drastically hinders peacebuilding and development efforts It is vital that concepts of peace and security be reconstructed through a gendered perspective to ensure that post conflict reconstruction is inclusive The legitimization of the patriarchal violent culture which is intrinsically part of customary law coupled with women's low level of consciousness about their rights further perpetuates the violation of women's rights especially in the private sphere      *Zimbabwean Women in Colonial and Customary Law* Joan May, 1983      **The Future of African Customary Law** Jeanmarie Fenrich, Paolo Galizzi, Tracy E. Higgins, 2011-07-18 Customary laws and traditional institutions in Africa constitute comprehensive legal systems that regulate the entire spectrum of activities from birth to death Once the sole source of law customary rules now exist in the context of pluralist legal systems with competing bodies of domestic constitutional law statutory law common law and international human rights treaties This book promotes discussion and understanding of customary law and explores its continued relevance in sub Saharan Africa The volume considers the characteristics of customary law and efforts to ascertain and codify customary law and how this body of law differs in content form and status from legislation and common law It also addresses a number of substantive areas of customary law including the role and power of traditional authorities customary criminal law customary land tenure property rights and intestate succession and the relationship between customary law human rights and gender equality      **Gender, Religion, and Family Law** Lisa Fishbayn Joffe, Sylvia Neil, 2013 Groundbreaking theoretical and legal approaches to resolving conflicts between gender equality and cultural practices      *Customary Law and Gender Equality* Godfrey Olebogeng Radijeng, 2004      **Report on Workshop**, 1999\*      *Customary Versus Modern Laws of Eritrea on Gender Equality* Muluberhan Hagos, 2023-01-26 The research of Muluberhan Hagos compares the customary laws of ethnic groups in Eritrea and the modern laws of the country with a focus on the legal issues in society that emerge understood from a gender perspective These issues include the laws of person and gender abortion family law succession and property the law

of contracts and criminal and civil liabilities in gender related offences Muluberhan Hagos treats customary law as a system that is dynamic and alive and responds to community matters It is an excellent and detailed study on the relevance of customary law today The book which is part of the GAIC Network and African studies series published with Langaa makes an important contribution to the literature on legal studies African studies social protection and governance Muluberhan Hagos served as a Judge at the High Court in Eritrea He is a PhD student at Tilburg University comparing customary law in Africa He holds an LLB degree from the University of Asmara and an LLM degree from the University of Pretoria

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**Business Law Handbook Volume 1 Strategic Information and Basic Laws** IBP USA,2013-08 Lesotho Business Law Handbook Strategic Information and Basic Laws *Customary Law and Women* Adino Vitso,2003 *Women's Rights in African Customary Law* Rachel Iscove,Janine Moolman,Legal Resources Centre (South Africa). Women's Rights Project,Canadian Bar Association,2001\* The Multimedia Encyclopedia of Women in Today's World Mary Zeiss Stange,Carol K. Oyster,Jane E. Sloan,2013-01-09 This e only volume expands and updates the original 4 volume Encyclopedia of Women in Today s World 2011 offering a wide range of new entries and new multimedia content The entries reflect such developments as the Arab Spring that brought women s issues in the Islamic world into sharp relief the domination of female athletes among medal winners at the London 2012 Olympics nine more women joining the ranks of democratically elected heads of state and much more The 475 articles in this e only update accompanied by photos and video clips supplement the themes established in the original edition providing a vibrant collection of entries dealing with contemporary women s issues around the world

**Women and Property** Renee Hirschon,2023-07-21 First published in 1984 Women and Property studies the idea of wealth and property in relation to women in diverse countries It attempts a definition of the term property itself and goes on to look at the relationships and rights associated with these various kinds of property The authors assess the effects of wider economic forces and State intervention indicating the changing contexts in which these systems are set today In some cases life cycle markers such as marriage divorce and widowhood are critical and in many cases it is the organisation of the household residential patterns and kinship rights which are seen to structure the relationships of women men and property Ideological constructs regarding female sexuality and also those in which women and children may be conceptualised as objects are considered in detail Surprisingly little attention has been paid to the significance of property as a critical factor affecting the position of women in society and the original papers presented here provide new dimensions for a neglected area of feminist debate This book will be of interest to students of sociology political science law and gender studies *Encyclopedia of Women and Islamic Cultures* Suad Joseph,Afsāna Nağmābādī,2003 Family Law and Politics Volume II of the Encyclopedia of Women Islamic Cultures brings together over 360 entries on women family law politics and Islamic cultures around the world

**Peasant Women and Access to Land** Indira Juditka Simbolon,1998 *States and Women's Rights* Mounira Charrad,2001 At a time when the situation of women in the Islamic world is of global interest here

is a study that unlocks the mystery of why women's fates vary so greatly from one country to another Mounira M Charrad analyzes the distinctive nature of Islamic legal codes by placing them in the larger context of state power in various societies Charrad argues that many analysts miss what is going on in Islamic societies because they fail to recognize the logic of the kin based model of social and political life which she contrasts with the Western class centered model In a skillful synthesis she shows how the logic of Islamic legal codes and kin based political power affect the position of women These provide the key to Charrad's empirical puzzle why after colonial rule women in Tunisia gained broad legal rights even in the absence of a feminist protest movement while despite similarities in culture and religion women remained subordinated in post independence Morocco and Algeria Charrad's elegant theory crisp writing and solid scholarship make a unique contribution in developing a state building paradigm to discuss women's rights This book will interest readers in the fields of sociology politics law women's studies postcolonial studies Middle Eastern studies Middle Eastern history French history and Maghrib studies

**Normative Spaces and Legal Dynamics in Africa** Katrin Seidel, Hatem Elliesie, 2020-06-09 African legal realities reflect an intertwining of transnational regional and local normative frameworks institutions and practices that challenge the idea of the sovereign territorial state This book analyses the novel constellations of governance actors and conditions under which they interact and compete The work follows a spatial approach as the emphasis on normative spaces opens avenues to better understand power relations processes of institutionalization and the production of legitimacy and normativities themselves Selected case studies from thirteen African countries deliver new empirical data and grounded insights from and into particular normative spaces The individual chapters explore the interrelationships between various normative orders diverse actors and their influences The encounters between different normative understandings and actors open up space and multiple forums for negotiating values The authors analyse how different doctrines institutions and practices are constructed contested negotiated and adapted in translation processes and thereby continuously reshape Africa's multidimensional normative spaces The volume delivers nuanced views of jurisprudence in Africa and presents an excellent resource for scholars and students of anthropology legal geography legal studies sociology political sciences international relations African studies and anyone wishing to gain a better understanding of how legal constellations are shaped by unreflected assumptions about the state and the rule of law

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


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