

IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS, ARUSHA

REQUEST FOR ADVISORY OPINION NO. 001 OF 2026

**IN THE MATTER OF A REQUEST BY THE PAN AFRICAN LAWYERS UNION
(PALU) FOR AN ADVISORY OPINION ON THE OBLIGATIONS OF STATES WITH
RESPECT TO WOMEN'S INHERITANCE RIGHTS**

**Made under article 4 of the Protocol to the African Charter on Human and
Peoples' Rights on the establishment of an African Court on Human and
Peoples'
Rights, Rule 82(1) of the Rules of the African Court on Human and Peoples'
Rights and all enabling provisions of the law**

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3) Summary of facts

1. For women and girls across the African Union (AU), inheritance rights are a critical source of economic independence. Inheritance refers to the transfer of assets, such as property, land, and wealth, from one generation to the next, usually upon the death of a family member.¹ Many African countries have developed constitutional or legal provisions that guarantee women's right to inherit property, and existing human rights frameworks promote equal inheritance rights for women. However, women's inheritance rights remain a complex issue influenced by plural legal systems and existing power dynamics. For example, approximately twenty AU member states retain legal frameworks that allow for discrimination in inheritance in some form.² Often, strong statutory protections for women and girls are undermined by customary and religious practices, which typically privilege male heirs by transferring land and resources through patrilineal lines.³ Customary laws position women as culturally unfit to own or manage property, and in some cases, women's inheritance is viewed as a threat to traditional family structures or religious doctrines. As a result, equality in inheritance is denied in many jurisdictions, and women and girls continue to experience violations of their rights to non-discrimination and access to justice.
2. This submission begins by establishing the factual basis for the significance of inheritance to women and girls' rights across the AU. It then sets out the legal matters at issue, including relevant provisions and four questions for the Court's consideration. The accompanying argument is broken into three

¹ Zahara Nampewo, *Article 21: Right to inheritance*, in *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary*, 443 (Annika Rudman, Celestine Nyamu Musembi & Trésor Muhindo Makunya ed. 2023) ("Nampewo" hereafter).

² Annexure 2. See also *Women, Business and the Law 2.0 Data for 2026*, World Bank (last visited 3 March 2026), <https://wbl.worldbank.org/en/wbl-data> (downloading "Full Data (Excel Format)" under "WBL 2026 Dataset" heading and then filtering for AU member states and for questions pertaining to inheritance on sheet titled "9. Assets").

³ Elizabeth Cooper, *Women and inheritance in Sub-Saharan Africa: Opportunities and challenges for policy and practice change*, Chronic Poverty Research Centre, 2 (March 2011), <https://www.files.ethz.ch/isn/128343/WP182%20Cooper.pdf> ("Cooper" hereafter).

segments that address the current state of inheritance laws across African jurisdictions, the historical development of these legal frameworks, and the accretion of jurisprudence on women's inheritance rights before domestic, regional, and international bodies.

3. The African Court on Human and Peoples' Rights has previously examined economic discrimination and family rights in the case of APDF & IHRDA v. Mali, which set a critical precedent on equality in inheritance.⁴ The Court found that Mali's Family Code, which enshrined discriminatory customary and religious law as the principal legal regime for matters of inheritance in the absence of a notarised will, violated the African Charter, Maputo Protocol, and Children's Charter.⁵ Here, PALU seeks an advisory opinion from this Honourable Court in order to further develop the legal principles that shape all member states' approaches to inheritance, to elaborate on discrimination within the context of inheritance, to address ongoing violations across the region, and to clarify state obligations regarding the promotion and protection of women and girls' inheritance rights.⁶

A. Inheritance is foundational to the transfer of wealth and assets within families and throughout societies.

4. Inheritance is central to maintaining family lineage and property.⁷ It operates not only as a vehicle for wealth transfer but also as a means of stabilizing social and economic structures and influencing the distribution of resources

⁴ ACtHPR, *Association pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v. Mali*, Application No. 046/2016, Judgment (11 May 2018), https://www.african-court.org/cpmt/storage/app/uploads/public/5f5/215/dbc/5f5215dbcd_90b917144785.pdf ("APDF & IHRDA v. Mali" hereafter).

⁵ *Id.* at paras 110-115.

⁶ It is PALU's contention that the Court should extend and deepen its reasoning from the *Mali* decision in analyzing a wider variety of legal frameworks across the AU, including those that do not contain *explicit* statutory discrimination but instead *allow* discriminatory customary and religious laws to displace or supersede statutory protections. This submission also invites the Court to examine the broader bundle of rights that are impacted by discriminatory inheritance laws, including women's access to financial security.

⁷ Ronald Dworkin, *Taking rights seriously* (1978).

across communities.⁸ Consequently, inheritance rights are crucial to upholding the welfare of individuals, families, and society at large.

5. Inheritance patterns are built on notions of family protection, fairness, and social justice.⁹ As the primary means of transferring assets and wealth, inheritance also contributes to social status, power, and community standing.¹⁰ However, the rules of inheritance vary across cultures, impacting both testate and intestate succession frameworks.¹¹ Religious and customary laws often shape the rights to inherit and control assets, in addition to more formal laws and regulations. As will be explained in this submission, across Africa, gender disparities and structural challenges continue to permeate these different legal systems. Whether as widows or as daughters and relatives of the deceased, women who seek to secure inheritance rights are often forced to confront these barriers to their rights.

B. Discriminatory inheritance practices interfere with women and girls' rights.

6. As the most common gateway to property ownership, inheritance rights are essential tools for the economic independence and social empowerment of women.¹² Beyond legal entitlements, inheritance rights are transformative for women: they promote financial autonomy, reduce vulnerability to violence and poverty, and foster broader economic development.

⁸ Samuel Bowles and Herbert Gintis, *The Inheritance of Inequality*, 16(3) J. Economic Perspectives 3, 3 (2002), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/089533002760278686>.

⁹ Linda Lewin, *The New Family and the New Property* by Mary Ann Glendon, 6 B.C. Int'l & Comp. L. Rev. 361 (1983), <https://lira.bc.edu/works/publication-article/dcxq2-41015>.

¹⁰ *Framework and Guidelines on Land Policy in Africa*, African Union, African Development Bank & Economic Commission for Africa (2010), <https://www.afdb.org/en/documents/document/framework-and-guidelines-on-land-policy-in-africa-27129> (*AU Land Policy Framework* hereafter).

¹¹ Testate succession describes scenarios in which the deceased leaves a will, whereas intestate succession occurs without a will, and distribution proceeds instead by the applicable law of the state. See, e.g., Rebecca Emiene Badejogbin and Vicki Lawal, *Juxtaposing the Efficacy of Testacy and Intestacy to Inheritance Rights*, in *Intersectionality and Women's Access to Justice in Africa*, 333 (2022).

¹² Elizabeth Cooper, *Inheritance practices and the intergenerational transmission of poverty in Africa: A literature review and annotated bibliography*, Chronic Poverty Research Centre, 10 (December 2008), https://www.files.ethz.ch/isn/127252/WP116_Cooper-annotatedbib-litreview.pdf (reviewing research that asserts that the “major mode of land acquisition in most African countries is inheritance”).

7. First, ownership of property promotes financial autonomy as it empowers women by enabling them to generate income, access credit, and profit off the land. For example, in Tanzania, women with strong land rights earned up to 3.8 times more income and were more likely to have individual savings.¹³ In another study in Rwanda, land titles for women led to a 12 percent increase in access to loans.¹⁴
8. Second, secure inheritance rights lead to improved outcomes for women, reducing their vulnerability to poverty and violence.¹⁵ Female asset ownership has been tied to stronger investments in health and education; for example, increase in land allocation to women in Ethiopia was found to have decreased household food insecurity by 36 percent.¹⁶ Secure inheritance rights also correlate with less exposure to sexual and gender-based violence, with studies finding that property ownership is one of the strongest predictors for reduced risk of domestic violence.¹⁷ Inversely, research shows that women and girls who face disinheritance are more likely to experience poverty, homelessness, and economic vulnerability after the death of a husband or father.¹⁸ This denial of land and property rights,

¹³ *Fact Sheet: Land Tenure and Women's Empowerment*, U.S. Agency for International Development, 2 (2016), <https://landportal.org/library/resources/12585/fact-sheet-land-tenure-and-women%E2%80%99sempowerment>.

¹⁴ Florence Santos, Diana Fletschner & Giuseppe Daconto, *Enhancing inclusiveness of Rwanda's land tenure regularization program: Insights from early stages of its implementation*, 62 *World Development* 3041 (2014), <https://www.sciencedirect.com/science/article/abs/pii/S0305750X14001193>.

¹⁵ *7 reasons for Land and Property rights to be at the top of the global Agenda*, World Bank (2019), <https://blogs.worldbank.org/en/voices/7-reasons-land-and-property-rights-be-top-global-agenda>.

¹⁶ *Fact Sheet: Land Tenure and Women's Empowerment*, U.S. Agency for International Development, 3 (2016), <https://landportal.org/library/resources/12585/fact-sheet-land-tenure-and-women%E2%80%99sempowerment>.

¹⁷ *Property Ownership & Inheritance Rights of Women for Social Protection– The South Asia Experience: Synthesis report of three studies*, International Center for Research on Women, 5 (2016), <https://www.icrw.org/wp-content/uploads/2016/10/Property-Ownership-and-Inheritance-Rights-of-Womenhttps://www.icrw.org/wp-content/uploads/2016/10/Property-Ownership-and-Inheritance-Rights-of-Women-for-Social-Protection-The-South-Asia-Experience.pdf>.

¹⁸ See generally Elizabeth Cooper & Kate Bird, *Inheritance: A Gendered and Intergenerational Dimension of Poverty*, *Development Policy Review* (August 2012), <https://onlinelibrary.wiley.com/doi/10.1111/j.1467-7679.2012.00587.x>.

including through disinheritance, is linked to the "feminization of poverty and stunted economic development."¹⁹

9. Third, when women cannot inherit property, the development of communities and countries, and therefore broader economic development, is significantly hindered, considering that women's financial empowerment spurs the growth of economies.²⁰ Research indicates that gender equality increases economic diversification, grows the labour force, and could ultimately infuse seven trillion dollars into the global economy.²¹
10. But securing women's rights to inheritance is more than an economic question; it is about respect, choice, and equality of women.²² Ownership of resources helps women make choices without being dependent, and as a result, they contribute positively to the family and society over a longer time.²³ Recognizing and securing these rights establishes a foundation for equal treatment under the law. However, if the law is not strong enough to counter patriarchal customs, many women remain disinherited, homeless, and poor.²⁴

¹⁹ Abby Morrow Richardson, *Women's Inheritance Rights in Africa: The Need to Integrate Cultural Understanding and Legal Reform*, 11(2) Human Rights Brief, American University Washington College of Law, 1 (2004), <https://corteidh.or.cr/tablas/r38906.pdf> ("Richardson" hereafter).

²⁰ International Monetary Fund, Policy Paper: Pursuing Women's Economic Empowerment, International Monetary Fund, 5 (2018), <https://www.imf.org/en/Publications/Policy-Papers/Issues/2018/05/31/pp053118pursuing-womens-economic-empowerment>.

²¹ See, e.g., *Facts and figures: economic empowerment*, UN Women (last visited 3 March 2026), https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures#_ednref2; Daniela M. Behr et al., *Women's Land Rights in Sub-Saharan Africa: Where do we Stand in Practice?*, Global Indicators Brief No. 23, World Bank Group (October 2023), <https://documents1.worldbank.org/curated/en/099432211092367495/pdf/IDU0afeba6800588804d2a0ad290368a53e64004.pdf>; *Securing Women's Land and Property Rights: A Critical Step to Address HIV, Violence, and Food Security*, Open Society Foundations (2014), <https://www.opensocietyfoundations.org/publications/securing-womens-land-and-property-rights>.

²² See Nisha Arekapudi & Nayda L. Almodóvar-Reteguis, *Women's property rights are the key to economic development*, World Bank (24 February 2020).

²³ *Women's Land Rights: Infographic*, Landesa (December 2015), <https://www.landesa.org/resources/womens-land-rights-and-the-sustainable-development-goals/>.

²⁴ *Insecure land rights for women threaten progress on gender equality and sustainable development*, U.N. Working Group on the issue of discrimination against women in law and in practice (July 2017), <https://www.ohchr.org/en/special-procedures/wg-women-and-girls/insecure-land-rights-women-threat-progress-gender-equality-and-sustainable-development>.

4) Legal Matter(s)

11. Discriminatory inheritance laws stand in direct opposition to some of the aims of the AU as set out in its Constitutive Act, undermining efforts to promote equality and justice. Namely, these laws contradict the following aims: 1) ensure the effective participation of women in decision-making, particularly in the political, economic and socio-cultural areas; and 2) promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.²⁵
12. Accordingly, the Pan African Lawyers Union (PALU) respectfully asserts that discriminatory inheritance laws contravene the following legal provisions:
 - a) African Charter on Human and Peoples' Rights, Articles 2, 3, 18(3), and 21(1) ("African Charter" hereafter).
 - b) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Articles 2, 3, 8, 20(a), and 21 ("Maputo Protocol" hereafter).
 - c) African Charter on the Rights and Welfare of the Child, Articles 3 and 21(1)(b).
13. Based on the above, PALU therefore respectfully submits to this Honourable Court the following issues for determination:
 - a) ***Whether, in line with the Court's ruling in APDF & IHRDA v. Mali, member states that retain statutory inheritance laws that explicitly discriminate against women and girls violate the following human rights instruments:***

²⁵ See *About the African Union*, African Union (last visited 3 March 2026), <https://au.int/en/overview>.

- i. The right to the enjoyment of enumerated rights and freedoms without distinction on the basis of sex, as protected under Article 2 of the African Charter and Article 3 of the African Charter on the Rights and Welfare of the Child.
- ii. The right to equality before the Law and equal protection of the Law, as protected under Article 3 of the African Charter and Article 8 of the Maputo Protocol.
- iii. States' obligation to combat and eliminate every form of discrimination against women and to ensure the protection of the rights of the women and the child, as provided under Article 18(3) of the African Charter and Article 2 of the Maputo Protocol.
- iv. States' obligation to take appropriate legal measures to ensure that widows enjoy all human rights and are not subjected to inhuman, humiliating or degrading treatment under Article 20 of the Maputo Protocol.
- v. States' obligation to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child particularly those customs and practices discriminatory to the child on the grounds of sex or other status, as provided under Article 21(1)(b) of the African Charter on the Rights and Welfare of the Child.
- vi. The right to freely dispose of wealth and natural resources, which in no case shall a people be deprived of it, as protected under Article 21(1) of the African Charter.
- vii. The rights of widows to an equitable share in the inheritance of their husbands' property and of women and men to equitable

shares in the inheritance of their parents' properties, as protected by Article 21 of the Maputo Protocol.

viii. The right of women to dignity inherent in a human being, and the states' corresponding obligations, as protected under Article 3 of the Maputo Protocol.

b) *Whether member states that allow discriminatory customary and religious laws to supersede or displace equal protections under statutory law on matters of inheritance, including on the basis of legal pluralism, violate the following human rights instruments:*

- i. The right to the enjoyment of enumerated rights and freedoms without distinction on the basis of sex, as protected under Article 2 of the African Charter and Article 3 of the African Charter on the Rights and Welfare of the Child.
- ii. The right to equality before the Law and equal protection of the Law, as protected under Article 3 of the African Charter and Article 8 of the Maputo Protocol.
- iii. States' obligation to combat and eliminate every form of discrimination against women and to ensure the protection of the rights of the women and the child, as provided under Article 18(3) of the African Charter and Article 2 of the Maputo Protocol.
- iv. States' obligation to take appropriate legal measures to ensure that widows enjoy all human rights and are not subjected to inhuman, humiliating or degrading treatment under Article 20 of the Maputo Protocol.
- v. States' obligation to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child particularly those

customs and practices discriminatory to the child on the grounds of sex or other status, as provided under Article 21(1)(b) of the African Charter on the Rights and Welfare of the Child.

- vi. The right to freely dispose of wealth and natural resources, which in no case shall a people be deprived of it, as protected under Article 21(1) of the African Charter.
- vii. The rights of widows to an equitable share in the inheritance of their husbands' property and of women and men to equitable shares in the inheritance of their parents' properties, as protected by Article 21 of the Maputo Protocol.
- viii. The right of women to dignity inherent in a human being, and the states' corresponding obligations, as protected under Article 3 of the Maputo Protocol.

c) *Whether states that fail to enforce and implement non-discriminatory inheritance laws violate the following human rights instruments:*

- i. The right to the enjoyment of enumerated rights and freedoms without distinction on the basis of sex, as protected under Article 2 of the African Charter and Article 3 of the African Charter on the Rights and Welfare of the Child.
- ii. The right to equality before the Law and equal protection of the Law, as protected under Article 3 of the African Charter and Article 8 of the Maputo Protocol.
- iii. States' obligation to combat and eliminate every form of discrimination against women and to ensure the protection of the rights of the women and the child, as provided under Article 18(3) of the African Charter and Article 2 of the Maputo Protocol.

- iv. States' obligation to take appropriate legal measures to ensure that widows enjoy all human rights and are not subjected to inhuman, humiliating or degrading treatment under Article 20 of the Maputo Protocol.
 - v. States' obligation to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child particularly those customs and practices discriminatory to the child on the grounds of sex or other status, as provided under Article 21(1)(b) of the African Charter on the Rights and Welfare of the Child.
 - vi. The right to freely dispose of wealth and natural resources, which in no case shall a people be deprived of it, as protected under Article 21(1) of the African Charter.
 - vii. The rights of widows to an equitable share in the inheritance of their husbands' property and of women and men to equitable shares in the inheritance of their parents' properties, as protected by Article 21 of the Maputo Protocol.
 - viii. The right of women to dignity inherent in a human being, and the states' corresponding obligations, as protected under Article 3 of the Maputo Protocol.
14. The remainder of this request is structured as follows. Section A describes the current landscape of inheritance laws and policies across the AU, highlighting how pervasive this issue remains; section B describes how modern inheritance laws have arisen out of a complicated interplay of customary, religious, and colonial influence; section C surveys the growing legal consensus across domestic, regional, and international courts regarding states' obligations to ensure equality in inheritance.

A. Prevalence of Discriminatory Inheritance Laws in Africa

15. Discriminatory legal frameworks remain widespread in Africa. According to comprehensive annual research from the World Bank, 18 AU member states do not grant sons and daughters equal rights to inherit assets.²⁶ Another 19 member states retain laws that do not grant widows and widowers equal rights to inheritance.²⁷ These discriminatory frameworks take a variety of forms, from statutes that explicitly reduce a woman's inheritance share to implementation failures and lacunas where the law fails to protect vulnerable groups.

i. Member states retain inheritance laws that explicitly discriminate against women and girls.

16. At least seven AU member states retain laws that are discriminatory on the face, providing via statute that women and girls inherit less than men.²⁸ These countries include Algeria, Madagascar, Mauritania, Morocco, Sudan, Tunisia, and Western Sahara.²⁹ Explicit discrimination of this sort principally occurs in countries that have codified interpretations of Muslim family law to govern inheritance and other related matters, such as division of marital assets and maintenance at divorce.
17. The systems with codified Islamic jurisprudence – as described further in Section 4(B)(ii) of this submission – interpreted the Qur'an to state that women can only earn half of a man's allotment, as a general rule. For example, Article 103 of the Personal Status Code in Tunisia follows the "principle [that] the heir of the male sex has a double share of that allotted

²⁶ Algeria, Botswana, Burundi, Comoros, Djibouti, Egypt, Eswatini, The Gambia, Libya, Madagascar, Mauritania, Morocco, Niger, Senegal, Somalia, Sudan, Tanzania, Tunisia. Please see Annexure 2.

²⁷ Algeria, Burundi, Comoros, Djibouti, Egypt, Eswatini, The Gambia, Kenya, Libya, Madagascar, Mauritania, Morocco, Niger, Senegal, Somalia, South Sudan, Sudan, Tanzania, Tunisia. Please see Annexure 2.

²⁸ These countries fall most directly under issue (a) posed in paragraph 13 above.

²⁹ Please see Annexure 1 for a chart of relevant statutory provisions for each state.

to an heir of female sex.”³⁰ The same is true in Mauritania, where Articles 244 – 310 of the Personal Status Code state that the most a widow can inherit is one fourth or one eighth of the estate, while a widower is entitled one half or one fourth.³¹ Despite changes to family structures and nascent efforts to reform the law in these settings, state actors have also expressed an unwillingness to grant women and girls full equality under Muslim family law.³²

18. The above provisions are set out in more detail in Annexure 1.

ii. Pluralistic legal systems perpetuate violations of women and girls' inheritance rights.

19. Unlike the states mentioned in Section 4(A)(i) above, a second, much larger category of states has gender-neutral statutory laws and/or constitutional protections for gender equality but also grant customary or religious law recognition over or alongside statutory protections, creating conflicting regimes.³³ As discussed further in Section 4(B) of this submission, this legal pluralism creates a patchwork of overlapping provisions when it comes to gender equality and inheritance.³⁴ These provisions, which are often

³⁰ Tunisia, Personal Status Code (1956), Art. 103.

³¹ Mauritania, Personal Status Code (2001), Arts. 253-256. See also *Mauritania: Overview of Family Law & Practices*, Musawah, 19-20 (last updated 31 May 2017), <https://www.musawah.org/wp-content/uploads/2019/03/Mauritania-Overview-Table.pdf>.

³² See, e.g., Monia Ben Jemia, *Legal Barriers to Gender Equality in Inheritance in the Maghreb Region (Algeria, Morocco, and Tunisia)*, International Federation for Human Rights (FIDH) (December 2021), https://www.fidh.org/IMG/pdf/heritage_en_web_pages.pdf; Safae El Yaaqoubi, *How is Morocco Navigating Backlash to Family Law Reform?*, Enheduanna (11 July 2024), <https://www.wilsoncenter.org/blog-post/how-morocco-navigating-backlash-family-law-reform>.

³³ These countries fall most directly under issue (b) posed in paragraph 13 above.

³⁴ *Empowering Women: Legal Rights and Economic Opportunities in Africa*, Africa Development Forum, World Bank, 76 (2011), <https://openknowledge.worldbank.org/server/api/core/bitstreams/239f6d2e-d99f-54e9-a7e4-011a34ee6293/content>.

referred to as clawback clauses, can be found in member states such as Botswana,³⁵ Tanzania,³⁶ and The Gambia.³⁷

20. In Tanzania, customary and Islamic laws are the two predominant systems of intestate succession and limit women's inheritance on the basis of their gender.³⁸ In The Gambia, the Constitution states that the right to non-discrimination does not apply "with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law."³⁹ The Women's Act reinforces this further, stating that a widow's rights are "subject to personal law," which applies to over 90% of the population.⁴⁰ In Burundi, no codified law on inheritance or succession exists,⁴¹ meaning that

³⁵ Various statutes in Botswana contain exemptions for personal status and/or customary matters. Civil litigation in the High Court and Court of Appeal has suggested that these clawback clauses cannot be interpreted to allow for discrimination in inheritance; however, they have not been explicitly overturned. Government of Botswana, Constitution, Section 15(4)(c-d); Administration of Estates Act, Ch. 31:01, Sec. 3; Customary Law Act, Ch. 16:01, Sec. 4 (setting up conflict on rights of sons and daughter to inherit equally). But see Court of Appeal of Botswana, *Ramantele v Mmusi* [2013] BWCA 1; High Court of Botswana, *Mmusi v Ramantele*, 2 BLR 590 HC (2012) (in which the Court of Appeal upheld the lower court's ruling granting aggrieved women access to inheritance, but rejected the lower court's finding that the customary law principle of male primogeniture was unconstitutional).

³⁶ United Republic of Tanzania, Local Customary Law (Declaration No. 4) Order, Schedule 2 (1963) (codifying that "[i]nheritance follows the patrilineal side" and that men administer the deceased's estate). See also Anna Meela Kulaya, *Gender-Responsive Inheritance Laws: A Missing Opportunity for Industrializing Tanzania's Economy*, Landesa (last visited 3 March 2025), <https://www.landesa.org/who-we-are/blog/gender-responsive-inheritance-laws-a-missing-opportunity-for-industrializing-tanzanias-economy/> <https://www.landesa.org/who-we-are/blog/gender-responsive-inheritance-laws-a-missing-opportunity-for-industrializing-tanzanias-economy/economy/> (discussing how "Tanzania's women still suffer with discrimination in both laws and practices" due to the Customary Laws of Inheritance of 1963).

³⁷ Republic of The Gambia, Constitution, Art. 33(5)(c).

³⁸ United Republic of Tanzania, Local Customary Law (Declaration) (No. 4) Order (1963), <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC179737/> (codifying a patrilineal succession scheme that limits women's ability to inherit customary land or serve as administrators of an estate); Succession (Non-Christian Asiatics) Act (2002), Section 6(1), <https://tanzlii.org/en/akn/tz/act/ord/1923/12/eng@2002-07-31> (establishing that succession in certain instances shall be regulated by the law of the religion of the decedent). See also Tamar Ezer, *Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters*, 7 Georgetown J. of Gender & L. 599, 601 (2006) (explaining how the overall statutory scheme on inheritance leads to customary law being applied to nearly all non-Muslim Tanzanians of African descent).

³⁹ Republic of The Gambia, Constitution, Art. 33(5)(c).

⁴⁰ See Committee on the Elimination of Discrimination against Women, *Sixth periodic report submitted by the Gambia under article 18 of the Convention*, U.N. Doc. CEDAW/C/GMB/6 (6 October 2021), paras 25, 38 and 40.

⁴¹ Annex: Detailed Family Laws, in *Gender Inequality In Family Laws In Africa: An Overview Of Key Trends In Select Countries, Equality Now*, 6 (May 2024), <https://equalitynow.storage.googleapis.com/wp-content/uploads/2024/05/13104616/Gender-Inequality-In-Family-Laws-In-Africa-ANNEX->

discriminatory custom continues to govern generational land transfer.⁴² Despite calls from civil society and constitutional guarantees of gender equality, the government has allowed a bill on inheritance to stall for nearly two decades.⁴³

iii. Implementation gaps also frustrate women and girls' equal inheritance rights.

21. In a third category of states, no statutory discrimination remains on the books, but governments fail to effectively implement laws, and women struggle to vindicate their claims to inheritance.⁴⁴ Implementation efforts face several significant challenges, particularly in regions where customary practices and patriarchal norms are deeply entrenched.⁴⁵
22. One major obstacle is the weak legal infrastructure in many African countries, making it difficult for women to access justice or enforce their rights effectively.⁴⁶ This issue is compounded by the high cost of legal representation and by a lack of legal awareness, especially in rural areas, where women may not even know that their inheritance rights have been

[EN.pdfcontent/uploads/2024/05/13104616/Gender-Inequality-In-Family-Laws-In-Africa-ANNEX-EN.pdf](#).

⁴² Burundi, Code Civil, Préliminaires (Ordonnance du 14 mai 1886 de l'Administrateur Général du Congo), Art. 1 (establishing that disputes not governed by decree, ordinance, or statute will be determined in accordance with local customs, the general principles of law, and equity).

⁴³ See, e.g., Alphonse Yikeze, *Droit de succession: Ndabirabe soulève un tollé chez les militantes de la cause féminine*, Iwacu (15 November 2021); *Au Burundi, les femmes veulent pouvoir hériter de leur terre*, Iwacu via Courrier International (27 November 2021), <https://www.courrierinternational.com/article/vidéhttps://www.courrierinternational.com/article/vidé-juridique-au-burundi-les-femmes-veulent-pouvoir-heriter-de-leur-terrejuridique-au-burundi-les-femmes-veulent-pouvoir-heriter-de-leur-terre>; Alexandre Ndayishimiye, *Burundi: Des défenseurs des droits humains plaident pour une loi sur la succession*, Shikiriza (14 June 2023), <https://www.shikiriza.org/burundi-des-defenseurs-des-droits-humains-plaident-pour-une-loi-sur-la-succession/succession/>.

⁴⁴ These countries fall most directly under issue (c) posed in paragraph 13 above.

⁴⁵ See, e.g., Joy Imbuye, *Implementing progressive laws can accelerate securing women's land rights in Francophone Africa*, LandPortal (20 September 2021), <https://landportal.org/bloghttps://landportal.org/blog-post/2021/10/implementing-progressive-laws-can-accelerate-securing-women's-land-rightspost/2021/10/implementing-progressive-laws-can-accelerate-securing-women%E2%80%99s-land-rights>; *Safeguarding inheritance: challenges and opportunities in African societies*, Chronic Poverty Research Centre (2011), <https://www.files.ethz.ch/isn/127201/PB%2019.pdf>.

⁴⁶ See Cooper, *supra* note 3, at 13-14.

enshrined. In some societies, widows are required, by custom or tradition, to marry their deceased husband's male relative to keep the inheritance within the brother's family, or they are stripped of inheritance upon remarriage, whereas a man's right to inheritance is absolute.⁴⁷

23. Women are further discouraged from pursuing legal action due to fear of social stigma or backlash from their communities.⁴⁸ Traditional gender norms that prioritise male inheritance are deeply ingrained in many communities, and women who challenge these norms often face hostility. In some societies, women are discouraged from pursuing inheritance claims by their families, who may prioritise maintaining familial peace over legal justice.⁴⁹
24. These biases extend to the justice system. The familial dynamics of inheritance mean that disputes are often resolved to the woman's disadvantage, at the interpersonal or community level.⁵⁰ But in the rare instances when women seek to access the courts, cultural biases have been known to influence judicial decisions.⁵¹ In inheritance-related matters, courts across Africa have failed to apply the appropriate body of law or have reached decisions that reinforce patriarchal structures and perpetuate stereotypes that women are incapable of owning property.⁵²
25. Societal resistance is also a major barrier to the full implementation of inheritance laws that protect women. Additionally, the intersection of

⁴⁷ *Id.*

⁴⁸ Thoko Kaime, *Book Review: Customary Law in South Africa*, by T. W. Bennett, 48(2) *Journal of African Law* 271–273 (2004), <http://www.jstor.org/stable/27607923>.

⁴⁹ *Id.*

⁵⁰ Cooper, *supra* note 3, at 8-9.

⁵¹ *Challenges in Litigating Women's Land and Property Rights*, ISLA Manuals, Initiative for Strategic Litigation in Africa, 20-21 (February 2023), <https://www.the-isla.org/wp-content/uploads/2023/02/CHALLENGES-IN-LITIGATING-WOMENS-LAND-AND-PROPERTY-RIGHTS-20230219.pdf> ("ISLA" hereafter).

⁵² See, e.g., Swaziland Court of Appeal, *Mkhatshwa v The King* (316 of 2018) [2019] SZHC 275 (16 January 2019); Constitutional Court of Lesotho, *Masupha v The Senior Resident Magistrate for the Subordinate Court of Berea and Others*, Constitutional Case No. 5/2010 [2013] LSHC 9 (03 May 2013) (upholding a provision of the Chieftainship Act that denied girls customary chief titling on basis of gender).

religious and customary laws often places women in a subordinate position, making it difficult for statutory laws to be fully implemented when they conflict with deeply rooted cultural practices.⁵³ A good example here is the case of *APDF & IHRDA v Mali*, previously litigated before this Honourable Court.⁵⁴

iv. Legal lacunas leave women and girls vulnerable to discriminatory inheritance practices.

26. Fourth and finally, gaps or lacunas in statutory inheritance laws in several AU member states often fail to protect particular groups of women and girls who face unique challenges due to their marital status and family structure.⁵⁵ For example, women in polygamous households, cohabitation, customary unions, and women without sons, or with children born out of wedlock face additional vulnerabilities.⁵⁶
27. In states like Kenya and Rwanda, statutory inheritance law has procedural requirements for registration and formalisation of marriages which results in the exclusion of women in customary, informal, or cohabiting unions from statutory regimes.⁵⁷ These scenarios arise when there is a contestation in court over property rights, and the court then has to make a determination on who is a legal wife by strictly applying the provisions on the law that requires registration. Without an official record of marriage, widows either lose their right to inherit their late husband's estate entirely, or they must undergo a preliminary inquiry to prove that they were indeed married to the deceased. In such situations, widows depend on witnesses to verify the existence of their marriages, but often, those best placed to testify to the validity of the marital bond are in-laws, who have the greatest incentive to

⁵³ See Nampewo, *supra* note 1, at 442.

⁵⁴ *APDF & IHRDA v. Mali*, *supra* note 4.

⁵⁵ These countries also fall most directly under issue (c) posed in paragraph 13 above.

⁵⁶ Nampewo, *supra* note 1, at 441-442.

⁵⁷ See Cooper, *supra* note 3, at 10.

deny such existence in protection of their late relative's estate.⁵⁸ Children, and especially girls, born out of wedlock face similar obstacles to inheritance.⁵⁹

28. Another group that commonly suffers from inconsistencies in the law are those in polygamous marriages. In many African countries, women in polygamous unions continue to experience discrimination in inheritance. For example, in Nigerian or Ugandan societies, where such polygamous unions are legal, women continue to encounter challenges when claiming inheritance after the husband's death.⁶⁰
29. The women and girls in these categories are in a vulnerable position: the failure to close legal loopholes allows negative practices to continue, and as a result, many are only able to gain access to resources through their linkage to men.⁶¹ To fully understand the prevalence of discriminatory inheritance laws and the existing inheritance frameworks, their context, evolution, and development must be duly considered.

B. Development of Inheritance Laws in Africa

30. Existing inheritance frameworks across AU member states have not developed in a vacuum; throughout history, the law's approach to succession has been influenced by a variety of factors, including cultural traditions, historical frameworks, and external forces such as colonisation. Inheritance rules and practices in the precolonial era were largely guided by customary norms and religious teachings that provided insights into societal

⁵⁸ Nampewo, *supra* note 1, at 443.

⁵⁹ See generally Obonye Jonas and Patrick Gunda, *Children born out of wedlock and their right to inherit from their fathers under customary law in Botswana: Baone Kealeboga & Anor v Tidimalo Mercy Kehumile*

⁶⁰ P. Mufune, *Polygamy and Inheritance Rights in Southern Africa*, Southern African J. of L. Studies (2020).

⁶¹ Nampewo, *supra* note 1, at 442.

values, power dynamics, and economic systems.⁶² But under colonisation, occupying powers often imposed their own formal systems of statutory law over these existing practices. Since independence, African states have worked to reconcile these different bodies of law, and today, family matters across Africa are governed under a blend of constitutions, statutory family laws, and customary or religious laws. The three main sources for existing inheritance law in Africa – customary, religious, and statutory law – are described below.

i. Customary Inheritance Schemes

31. In pre-colonial Africa, inheritance practices were governed by customary law, which is rooted in local community norms and kinship systems.⁶³ Different societies or tribes had rules that regulated human behaviour and social interactions across different levels of social hierarchy, from the family and clan, to community and kingdom. The rules for inheritance developed within these contexts and were closely tied to rites at death and ancestral relationships.⁶⁴
32. In many AU countries to date, these customary systems have persisted, manifesting throughout the structures and institutions of society, including formal law and the court system.⁶⁵ For instance, more than thirty African states provide for recognition of customary law in their constitutions;⁶⁶ in

⁶² Sandra Fullerton Joireman, *Inherited legal systems and effective rule of law: Africa and the colonial legacy*, 39(4) J. of Modern African Studies 571 – 596 (2001), <https://doi.org/10.1017/s0022278x01003755>.

⁶³ D. Asiedu-Akrofi, *The Position of Women in African Customary Inheritance Law*, African Studies Review (1989).

⁶⁴ See Nelson Tebbe, *Inheritance and Disinheritance: African Customary Law and Constitutional Rights*, 88 J. Religion 466 (2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1278056 (“Tebbe” hereafter).

⁶⁵ *Id.*

⁶⁶ See Katrina Cuskelly, *Customs and Constitutions: State recognition of customary law around the world*, IUCN, 6-7 (2011), <https://portals.iucn.org/library/efiles/documents/2011-101.pdf> (indicating that a 2011 analysis of African constitutions found that 33 states referred to customary law in some form).

Tanzania, for example, customary laws have been codified and included in the laws of the country.⁶⁷

33. The continued relevance of customary law extends to matters of inheritance, land use, and housing, as the transfer of these assets between generations remains regulated by traditional norms in many communities. When conflicts arise, indigenous customary law is more likely to be applied at the community level, “on account of being long embedded in social and cultural norms.”⁶⁸ In addition, the logistical and financial barriers to accessing formal justice systems drive women to turn to customary law.⁶⁹
34. The customary law of succession is often regarded as intestate and universal – meaning that it applies to all in the community. It typically follows the patrilineal line and cannot be deviated from via a will, meaning that “property devolves according to a rule of male primogeniture.”⁷⁰ Consequently, women are often not granted inheritance rights.
35. The exclusion of women from property ownership and inheritance under customary systems is based on the assumption that a woman’s needs will be met by her marital family if married, or her natal family otherwise.⁷¹ These societies elevate sons over daughters and leave widows or other female dependents in a state of vulnerability or dependency, as wards of the heir.⁷² Women and girls are often not permitted to inherit clan land without

⁶⁷ United Republic of Tanzania, Local Customary Law (Declaration) (No. 4) Order (G.N. No. 436/1963), <https://faolex.fao.org/docs/pdf/tan179737.pdf>.

⁶⁸ See Nampewo, *supra* note 1, at 442.

⁶⁹ See, e.g., *Issue Brief: Navigating Complex Pathways to Justice: Women and Customary and Formal Justice Systems*, IDLO, 9 (2020), <https://www.idlo.int/sites/default/files/pdfs/publications/idlo-issue-briefhttps://www.idlo.int/sites/default/files/pdfs/publications/idlo-issue-brief-women-cij-final-web.pdfwomen-cij-final-web.pdf> (posing a list of reasons why women continue to rely on customary and informal law).

⁷⁰ Under the rule of male primogeniture, bloodlines and corresponding rights flow through male relatives. It is worth noting that a minority of tribes across Africa are matrilineal in nature, though inheritance is often still vested in male relatives. See Tebbe, *supra* note 64, at 472-473.

⁷¹ Nampewo, *supra* note 1, at 441. The resistance to women’s inheritance is also predicated on the idea that a woman who marries may pass her assets on to her marital family, thus threatening the “continuity of clan land.”

⁷² *Id.*

limitations on use or oversight from male counterparts.⁷³ In order to remain in her home or in control of her assets after her husband's death, a woman often must rely on the goodwill of male relatives who take the estate, such as her eldest son or her in-laws.⁷⁴ As a result, "women who are orphaned, unmarried, separated, divorced, or widowed can be significantly disadvantaged."⁷⁵

36. In addition, in countries such as Zambia, the phenomenon of "property-grabbing" has recently re-emerged, due to lack of public education on the law and corruption within the justice system.⁷⁶ Property-grabbing is a common practice in some ethnic groups in Africa, where as soon as the male head of household dies, his relatives come to the home and either seek to evict the widow or to strip her of possessions.⁷⁷
37. However, as legal scholars have noted, customary systems have the capacity to adapt to changing economic and social conditions, since they are not as rigidly codified as statutory law.⁷⁸ Indeed, in *Bhe and Others v. Magistrate Khayelitsha and Others*, the Constitutional Court of South Africa asserted that "[t]rue customary law will be that which recognises and acknowledges the changes which continually take place."⁷⁹ In striking down the principle of male primogeniture under customary law, the court in *Bhe*

⁷³ Norah H Msuya, *Challenges Surrounding the Adjudication of Women's Rights in Relation to Customary Law and Practices in Tanzania*, 22 Potchefstroom Electronic L. J. (2019), <https://www.saflii.org/za/journals/PER/2019/18.html>.

⁷⁴ Richardson, *supra* note 19, at 1.

⁷⁵ Nampewo, *supra* note 1, at 441.

⁷⁶ See, e.g., Zanzi Sinkala, *Pandemic Property Grab: Coronavirus Leaves Widows in Zambia Homeless, As In-Laws Claim Their Homes*, 100 Reporters (December 2020), <https://100r.org/2020/12/propertygrabs/>.

⁷⁷ See Misheck Dube, *The ordeal of "property stripping" from widows in a peri-urban community: the case of a selected ward in Binga District, Zimbabwe*, 53(3) Social Work/Maatskaplike Werk 340 (2017), <https://www.scielo.org.za/pdf/sw/v53n3/05.pdf>.

⁷⁸ See, e.g., Olivia Lwabukuna, *Africa neglects women's property rights at its own economic peril - but it's not the only culprit*, SOAS University of London (15 May 2023), <https://www.soas.ac.uk/about/blogs/africa><https://www.soas.ac.uk/about/blogs/africa-neglects-womens-property-rights-its-own-economic-peril-its-not-only-culprit>; Helen Swinger, *Dynamic, not static*, University of Cape Town News (25 March 2015), <https://www.news.uct.ac.za/article/-2015-03-25><https://www.news.uct.ac.za/article/-2015-03-25-dynamic-not-static> (quoting Professor Chuma Himonga).

⁷⁹ See Constitutional Court of South Africa, *Nonkululeko Letta Bhe v Magistrate Khayelitsha* (1) SA 580 (CC) para.86 (2005).

continued that “[c]ustomary law has . . . been distorted in a manner that emphasises its patriarchal features and minimises its communitarian ones.”⁸⁰

38. The case of *Ramantele v. Mmusi & Others*⁸¹ also illustrates the potential for customary practices to adapt. In affirming four sisters’ rights to their homestead in a customary land dispute, the Botswana Court of Appeal set an important precedent, recognising that customary law is not static and that “there is no rational and justifiable basis for sticking to the narrow norms of days gone by when such norms go against current value systems.”⁸² Cases like Mmusi demonstrate that traditional systems can evolve to address modern rights concerns. This suggests that customary law need not be displaced entirely when it comes to matters of inheritance; instead, states must clarify that discriminatory customary practices cannot supersede constitutional gender equality protections and that custom should be given latitude to adjust to current value systems.

ii. Religious Inheritance Schemes

39. Religious teachings have also had a longstanding influence on how assets are distributed within families, often intertwining with local customs. These religious frameworks, particularly Christianity, were further reinforced during the colonial era, as occupying powers often sanctioned religious laws as part of a plural legal system.⁸³ This allowed religious inheritance norms to coexist alongside statutory and customary laws, adding on another layer of complexity to women’s inheritance rights.

⁸⁰ *Id.* at para.89.

⁸¹ See Court of Appeal of Botswana, *Ramantele v Mmusi* (2013) BWCA 1; High Court of Botswana, *Sesana and Others v. The Attorney General* (2006).

⁸² *Id.* at paras 77, 80.

⁸³ See, e.g., Patricia Kimeri-Mbote, *Gender Dimensions of Law, Colonialism and Inheritance in East Africa: Kenyan Women’s Experiences*, 35(3) *Verfassung und Recht in Übersee* 7-8 (2002), <https://www.ielrc.org/content/a0205.pdf> (“Kimeri-Mbote” hereafter).

40. Today, in AU member states, the most applied religious law is Islamic law (derived from Shari'ah), particularly in countries and communities with significant Muslim populations. Islam is one of the most prevalent religions in Africa: more than 45% of the African population is Muslim,⁸⁴ and at least eleven AU member states (likely many more) have either codified or recognized Muslim family law.⁸⁵ Shari'ah provides for the right to equal dignity and for the right to inherit property. However – as discussed in Section 4(A)(i) – according to interpretations of the Qur'an, men take double the share of women relatives “in a similar degree of relationship to the deceased.”⁸⁶ For example, a son takes twice the share of a daughter. Even when a daughter is the only surviving heir, she can only inherit half of the estate, whereas standalone sons can claim the entirety.⁸⁷
41. Interpretations of Islamic law also provide that widows with children receive one-eighth of the net estate of their deceased husband; where there are no children, the widow receives one quarter of the estate.⁸⁸ These practices subject widows and orphaned daughters to different outcomes based on gender and sometimes fertility, as the number of children in the family influences a mother's inheritance allocation. Although some Muslim theologians and scholars have offered alternative readings of the Qur'an that provide for greater equality in inheritance,⁸⁹ Muslim family law

⁸⁴ *Factsheet: Muslims in Africa*, United States Commission on International Religious Freedom (2021), <https://www.uscifr.gov/sites/default/files/2021-10/2021%20Muslims%20in%20Africa%20Factsheet.pdf>.

⁸⁵ Mark Hill, *Religious Courts and Tribunals in Africa: an Overview*, 14 Notre Dame J. Int'l & Comp. L. 1, 4 (2024), <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1211&context=ndjicl> (arguing that while the precise number of African countries that implement Shari'ah is disputed, Islamic courts are common throughout Africa, mainly in family law disputes, and are often given more legitimacy than other religious courts and tribunals).

⁸⁶ Nampewo, *supra* note 1, at 443.

⁸⁷ See, e.g., Amir Elshamy, *The Law of Inheritance Regarding Women and Principles Concerning the Genders in Islam*, Penn State L. R. Forum Blog (April 2021), <https://www.pennstatelawreview.org/the-forum/the-law-of-inheritance-regarding-women-and-principles-concerning-the-genders-in-islam/forum/the-law-of-inheritance-regarding-women-and-principles-concerning-the-genders-in-islam/>. ⁸⁸ Moza Ally Jadeed, Thesis, *The inheritance rights of Muslim women in Kenya: reality or rhetoric?*, University of Nairobi, 121 (2020), <https://erepository.uonbi.ac.ke/handle/11295/154363>.

⁸⁸ Moza Ally Jadeed, Thesis, *The inheritance rights of Muslim women in Kenya: reality or rhetoric?*, University of Nairobi, 121 (2020), <https://erepository.uonbi.ac.ke/handle/11295/154363>.

⁸⁹ See, e.g., Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*, 87-88 (1999).

provisions in AU member states have generally codified the traditional interpretations.

42. Traditional Christian practices, including the rejection of polygamy and the prioritization of a sole male heir, also influence inheritance rights to some extent, but they are less formalised or demarcated within legal systems because of the extent to which Christian religious values have already blended with statutory and customary laws.⁹⁰

iii. Statutory Inheritance Schemes

43. During the main period of colonial oppression beginning in the 1870s, Europeans “imposed their countries’ systems of law and placed them above existing traditional and religious legal approaches.”⁹¹ These secular laws originally prioritised male heirs, “cementing the system of patriarchy” and marginalising women and girls.⁹²
44. This influence remains, with nearly all formerly colonized countries adopting European legal principles after gaining independence.⁹³ In the approximately twenty-five AU states that comprise Francophone Africa,⁹⁴ the civil law system typically regulates inheritance through codified statutes that prescribe inheritance rules. The English common law, which impacts more than twenty states,⁹⁵ also emphasises codification but tends to be

⁹⁰ Kameri-Mbote, *supra* note 83, at 8 (discussing how “western principles and ideas of marriage and the family were smuggled into tribunals dealing with succession matters”).

⁹¹ Kameri-Mbote, *supra* note 83, at 8 (discussing how “western principles and ideas of marriage and the family were smuggled into tribunals dealing with succession matters”).

⁹² AU Land Policy Framework, *supra* note 10, at 8.

⁹³ Sandra F Joireman, *Inherited legal systems and effective rule of law: Africa and the colonial legacy*, 39(4) *Journal of Modern African Studies* 571 – 596, 576 (2001), <https://doi.org/10.1017/s0022278x01003755> (asserting that “[w]ithout exception in Africa, colonies adopted the legal system of the metropole [the colonizing nation] at independence”).

⁹⁴ See, e.g., *Les acteurs de la coopération francophone*, Organisation Internationale de la Francophonie (last visited 3 March 2026), <https://www.francophonie.org/qui-sommes-nous-5> (providing a map of states affiliated with the OIF, a multilateral organization for countries where French is a lingua franca).

⁹⁵ See *Member countries*, Commonwealth of Nations (last visited 3 March 2026), <https://thecommonwealth.org/our-member-countries> (listing more than twenty African states as ongoing members in the Commonwealth, a multilateral organization of former British colonies).

more flexible, allowing court precedents to shape inheritance norms.⁹⁶ However, in immediate post-independence Africa, AU states did not merely retain the legal infrastructure of colonizing nations; they also retained discriminatory European legal norms regarding intestate succession, which stipulated that wives could only inherit a portion of their husband's estate.⁹⁷

45. Many member states have since enacted national laws to strip away this discrimination and provide formal guidelines on intestate and testate succession. In general, while some modern statutory laws aim to promote fairness, they may still struggle to address gender inequality in inheritance, as customary and religious practices continue to hold significant influence, especially in rural and conservative areas.⁹⁸ For example, in some societies in Ethiopia, many community members know of statutory laws, but continue to adhere to customary practices, as they believe the “age-old system of customary inheritance of family property was good for maintaining harmony and stability among family members.”⁹⁹
46. However, courts are increasingly recognizing that statutory and constitutional guarantees of equality must take precedence over discriminatory customary practices when conflicts arise. As mentioned above, in the case of *Bhe and Others v. Magistrate Khayelitsha and Others*, the Constitutional Court of South Africa found that while “customary law should be accommodated, not merely tolerated, as part of South African law,” those laws must “first and foremost answer . . . to the contents of the Constitution.”¹⁰⁰ Because the customary principle of male primogeniture violated women's and children's rights to equality and dignity under the

⁹⁶ Joireman, *supra* note 93.

⁹⁷ Nampewo, *supra* note 1, at 443.

⁹⁸ Carol J. Greenhouse, *Book Review: Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia by Martin Chanock* (1985), <https://doi.org/10.2307/743840>.

⁹⁹ Wondale Temesgen Tedla & Kasahun Desyalew Mekonen, *Inheritance-induced familial disputes in northwest Ethiopia: the role of legal-policy gaps and aggravating socio-economic dynamics*, 10 *Humanities and Social Sciences Communications*, 6 (2023), <https://www.nature.com/articles/s41599-023-01558-5>. ¹⁰⁰ Constitutional Court of South Africa, *Nonkululeko Letta Bhe v Magistrate Khayelitsha* (1) SA 580 (CC) para.47 (2005).

¹⁰⁰ Constitutional Court of South Africa, *Nonkululeko Letta Bhe v Magistrate Khayelitsha* (1) SA 580 (CC) para.47 (2005).

Constitution, the Court struck down the relevant provisions.¹⁰¹ Courts in Kenya have consistently used similar reasoning to strike down discriminatory inheritance practices within customary systems;¹⁰² other states, such as Mozambique and Togo, have enshrined in their constitutions and/or statutes that the principles therein take precedence over customary law.¹⁰³

C. Legal Recognition of Women's Rights to Equal Inheritance in Africa

47. The legal consensus on equal rights to inheritance in Africa has developed strongly over the past two decades, evolving mainly through women-led advocacy and reform efforts, as well as the growth of regional and international human rights regimes.¹⁰⁴ In the post-independence period, many African nations have sought to reform the laws and customary practices that discriminated against women, owing to the need to secure women's property and inheritance rights as a means of socioeconomic equality.¹⁰⁵ This aligned with a broader trend across Africa to denounce gender discriminative practices and harmonise domestic laws with principles of equality as enshrined in constitutions. This section summarizes this movement towards legal recognition of equality in inheritance by first describing the relevant principles in human rights instruments and then analysing jurisprudence from international, regional, and domestic courts.

¹⁰¹ *Id.* at paras 105-109.

¹⁰² See, e.g., High Court of Kenya, Succession Cause 451 of 2014, [Thomas Tito Nyachawo v Judith Akinyi Ndege](#) KEHC 1813 (KLR) (2016) (citing a string of Kenyan cases to support a finding that disinheritance of a married daughter was "a retrogressive custom which cannot supersede the Constitution and the law").

¹⁰³ David Pimentel, *Legal Pluralism in Post-Colonial Africa: Linking Statutory and Customary Adjudication in Mozambique*, 14 Yale Human Rights & Development L.J. 59, 62 (2014), <https://openyls.law.yale.edu/handle/20.500.13051/5755> (citing Article 4 of the Mozambican Constitution); Republic of Togo, Le Code des personnes et de la famille modifié par la loi organique N 2014-019 du 17 Novembre 2014, Art. 403 (stating that "La loi reconnaît en matière de succession la coutume du défunt et les dispositions du présent code. Toutefois, la coutume ne sera appliquée autant qu'elle est conforme aux droits humains et aux principes fondamentaux de la Constitution").

¹⁰⁴ UN Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice*, U.N. Doc. A/HRC/29/40, paras 42-47 (2 April 2015), <https://documents.un.org/doc/undoc/gen/g15/070/03/pdf/g1507003.pdf>.

¹⁰⁵ Muna Ndulo, *African Customary Law, Customs, and Women's Rights*, 18 Indiana J. of Global L. Studies 87-120 (2011), <https://scholarship.law.cornell.edu/facpub/187/>.

i. Human rights instruments enshrine the rights to non-discrimination, access to justice, and equality in inheritance law.

48. Existing discriminatory inheritance laws in Africa contradict international standards and breach AU member states' obligations under several human rights instruments. This includes both general obligations concerning human rights standards such as discrimination or access to justice, as well as specific commitments concerned with inheritance and property.
49. The African Charter on Human and Peoples' Rights (hereinafter the "African Charter") enshrines the right to freedom from discrimination (including on the basis of sex) in its Article 2, the right to equality before the law in its Article 3, and the state's obligation to eliminate discrimination against women in its Article 18(3).¹⁰⁶ These rights are also protected in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter "Maputo Protocol"),¹⁰⁷ the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"),¹⁰⁸ the International Covenant on Civil and Political Rights ("ICCPR"),¹⁰⁹ and the International Covenant on Economic, Social and Cultural Rights ("ICESCR").¹¹⁰ These additional instruments have achieved widespread recognition: the Maputo Protocol is ratified by 44 AU member states,¹¹¹ the

¹⁰⁶ African Charter on Human and Peoples' Rights, African Union (1986), <https://au.int/en/treaties/african-charter-human-and-peoples-rights> ("African Charter" hereafter).

¹⁰⁷ African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2005), Arts. 2, 3, 8, <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa> ("Maputo Protocol" hereafter).

¹⁰⁸ Convention on the Elimination of All Forms of Discrimination Against Women (1979), Arts. 2, 15, <https://www.ohchr.org/sites/default/files/cedaw.pdf> ("CEDAW" hereafter).

¹⁰⁹ International Covenant on Civil and Political Rights (1966), Arts. 3, 26, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

¹¹⁰ International Covenant on Economic, Social and Cultural Rights (1966), Arts. 2(2), 3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> and <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

¹¹¹ African Union, Status List: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (last updated 19 September 2023), <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa> (downloadable at link).

ICCPR by 53,¹¹² the ICESCR by 51,¹¹³ and CEDAW by all but two member states.¹¹⁴

50. As described by the African Commission on Human and Peoples' Rights ("ACHPR"), "the non-discrimination principle generally ensures equal treatment of an individual or group of persons irrespective of their particular characteristics," and that principle extends to the protection of women.¹¹⁵ This aligns with the definition of discrimination in Article 1 of the Maputo Protocol, which refers to "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."¹¹⁶
51. The second general obligation that bears on women's inheritance rights is access to justice. Like non-discrimination, access to justice is also consistently enshrined in human rights instruments; for example, according to Article 8 of the Maputo Protocol, "women and men are equal before the law and shall have the right to equal protection and benefit of the law."¹¹⁷ The CEDAW Committee has described access to justice as a "fundamental element of the rule of law and good governance."¹¹⁸ In another general recommendation, the Committee describes how legal empowerment is key for a woman to be seen as an "independent, responsible and valued member of her community" and how "[w]hen countries limit a woman's legal capacity by their laws, or permit individuals or institutions to do the same,

¹¹² UN Treaty Body Database, [Ratification Status for ICCPR](#) (last visited 3 March 2026).

¹¹³ UN Treaty Body Database, [Ratification Status for ICESCR](#) (last visited 3 March 2026).

¹¹⁴ UN Treaty Body Database, [Ratification Status for CEDAW](#) (last visited 3 March 2026).

¹¹⁵ African Commission on Human and Peoples' Rights, [Egyptian Initiative for Personal Rights and Interights v Egypt, Communication 323/06](#), Combined 32 and 33 Annual Activity Report, para.119 (2013).

¹¹⁶ Maputo Protocol, *supra* note 107, Art. 1.

¹¹⁷ Maputo Protocol, *supra* note 107, Art. 8. See also African Charter, *supra* note 106, Art. 3.

¹¹⁸ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 33 in women's access to justice*, U.N. Doc. CEDAW/C/GC/33, para.1 (2015).

they are denying women their rights to be equal with men and restricting women's ability to provide for themselves and their dependents."¹¹⁹

52. Together, these two general principles of non-discrimination and access to justice bind states parties to secure equal rights for women and to provide legal redress in the event of violations.
53. Under the Maputo Protocol and CEDAW, AU member states have made even more specific commitments related to inheritance rights. Article 21 of the Protocol expressly states that women have the right to inherit equitable shares, whether as widows or as daughters.¹²⁰ Article 20 specifically addresses the rights of widows, protecting their freedom from inhuman, humiliating, or degrading treatment, their right to take custody of children, and their right to remarry.¹²¹ Under the Protocol, States are also obliged to not only combat discrimination through legislative reform, but to take corrective action where discrimination continues to exist (both in law and in fact), to support local and national initiatives, and "to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies."¹²² CEDAW also contains assurances of the "same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property."¹²³ These provisions create a justiciable obligation in many of the African states who are party to these instruments, particularly those that are monist (often Francophone civil systems).¹²⁴

¹¹⁹ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 21: Equality in marriage and family relations*, para.8 (1994).

¹²⁰ Maputo Protocol, *supra* note 107, Art. 21.

¹²¹ Maputo Protocol, *supra* note 107, Art. 20.

¹²² Maputo Protocol, *supra* note 107, Arts. 1(d)-(e), 2. See also CEDAW, *supra* note 108, Art. 5 ("States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women").

¹²³ CEDAW, *supra* note 108, Art. 16(h).

¹²⁴ For example, Burundi's monist system indicates that all treaties ratified, such as CEDAW, are of automatic effect in domestic law. See CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention: Combined fifth and sixth periodic reports of Burundi (continued)*, U.N. Doc. CEDAW/C/SR.1436, paras 11-12 (2 November 2016) (noting an exchange between members of

ii. Treaty interpretations by regional and international bodies prohibit discriminatory inheritance frameworks.

54. Interpretations of these treaty provisions within the human rights system have upheld the importance of women's inheritance, finding that discriminatory frameworks infringe on women's rights to equality. Regional and international human rights protection bodies have made decisions and observations on member states' violations of inheritance rights and on the scope and nature of state obligations to eliminate all forms of discrimination against women and children. In fact, in *APDF & IHRDA v. Mali*, this Honourable Court held that states violate international and regional standards when their inheritance frameworks apply discriminatory customary and Islamic law to intestate succession.¹²⁵ In calling for the repeal of Mali's Family Code, the Court noted that "in matters of inheritance a predominant place is accorded to the rights of the woman and the child [... which] guarantee equality of treatment [...] without any distinction."¹²⁶
55. Each of the major human rights bodies in Africa have addressed how states must uphold their human rights obligations when those rights come into conflict with discriminatory or abusive customary practices. This includes the ACHPR,¹²⁷ the African Committee of Experts on the Rights and Welfare of the Child,¹²⁸ the African Court,¹²⁹ and the ECOWAS Community Court of

the Burundian delegation and CEDAW members regarding the justiciability of CEDAW under domestic law).

¹²⁵ See *APDF & IHRDA v. Mali*, supra note 4, at paras 96-115 (finding that Mali's Family Code, which applies customary and religious rules in cases of intestate succession, had "legalis[ed] discrimination against women and children born out of wedlock.")

¹²⁶ *Id.* at para.110.

¹²⁷ See, e.g., ACmHPR, *Curtis Francis Doebbler v. Sudan*, Communication 236/00 (4 May 2003), <https://achpr.au.int/en/decisions-communications/curtis-francis-doebbler-sudan-23600> (finding the penalty of lashes – permitted under Islamic law for serious crimes – in violation of the ACHPR).

¹²⁸ ACERWC, *The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine Pour La Defense Des Droits De L'Homme (Senegal) v. Government of Senegal*, Communication 001/2012, (15 April 2014), <https://www.acerwc.africa/sites/default/files/2022-10/Decision-on-Talibes-case.pdf> (finding the cultural practice of instructors (marabouts) in Qur'anic schools forcing students to work on the street as beggars in violation of the ACHPR and Senegalese legislation).

¹²⁹ *APDF & IHRDA v. Mali*, supra note 4.

Justice.¹³⁰ For example, in another case pertaining to the state of Mali, the ECOWAS Community Court of Justice ordered the government to put an end to the violation of the rights of four women, who had been denied the inheritance of their father's land, and to take all appropriate measures to guarantee their property and inheritance rights.¹³¹

56. Beyond regional case law on contentious matters, there is broad consensus among AU member states on the need for equality in inheritance. The AU Strategy for Gender Equality and Women's Empowerment (2018 – 2028) asserts that one key outcome is widespread development of “national laws and judicial systems [that] protect and fulfil women's ownership and inheritance rights.”¹³² The ACHPR has urged states parties via resolution to strengthen legal protections of widows facing eviction, ensure their right to inheritance, and provide access to justice.¹³³ And the Framework and Guidelines on Land Policy in Africa, as adopted by AU Assembly of Heads of State and Government in 2009,¹³⁴ critiques systems of law that perpetuate unequal inheritance before concluding that “it is necessary to deconstruct, reconstruct and reconceptualise existing rules of property in land under both customary and statutory law in ways that strengthen women's access and control of land while respecting family and other social networks.”¹³⁵

¹³⁰ ECOWAS CCJ, *Farimata Mahamadou & 3 Autres v. Etat du Mali*, Application No. ECW/CCJ/APP/39/15, Judgment No. ECW/CCJ/JUD/11/16 (17 May 2016), <https://caselaw.ihrda.org/entity/p8a106vcz1zlf2k2cz3erk9?page=10&file=1560345383382nzfaoufp94.pdf>

¹³¹ *Id.*

¹³² African Union, AU Strategy for Gender Equality & Women's Empowerment: 2018 – 2028, 10 (February 2019), https://au.int/sites/default/files/documents/36195-doc-52569_au_strategy_eng_high.pdf.

¹³³ ACHPR, *Resolution 262 on Women's Right to Land and Productive Resources*, ACHPR/Res.262(LIV), para.6 (2013), <https://achpr.au.int/index.php/en/adopted-resolutions/262-resolution-womens-right-landand-productive-resources-achpres262liv>.

¹³⁴ Assembly of the African Union, *Declaration on Land Issues and Challenges in Africa*, Assembly/AU/Decl.1(XIII) Rev.1 (July 2009), https://au.int/sites/default/files/decisions/9560-assembly_en_1_3_july_2009_auc_thirteenth_ordinary_session_decisions_declarations_message_congratulations_motion_0.pdf (committing to “strengthen security of land tenure for women” and to devote resources to implementation of the Framework).

¹³⁵ AU Land Policy Framework, *supra* note 10, at 8.

57. This consensus extends to the international level as well. United Nations human rights stakeholders such as the Human Rights Committee,¹³⁶ the Committee on Economic, Social and Cultural Rights,¹³⁷ the Special Rapporteur on Housing,¹³⁸ and the Working Group on Discrimination Against Women and Girls,¹³⁹ have each affirmed that states must take action to protect women's rights to inheritance, even within the context of customary or religious systems. Peer human rights bodies from other regions, such as the Inter-American Commission on Human Rights, have also called on states to prohibit discrimination in inheritance.¹⁴⁰
58. Among international bodies, the Committee on the Elimination of Discrimination Against Women (the CEDAW Committee) has developed the most robust body of law, through concluding observations on state reports, general comments, and individual communications on inheritance-related violations. The CEDAW Committee has even specifically addressed how equality in inheritance must supersede customary law where conflicts exist.¹⁴¹

¹³⁶ Human Rights Committee, General Comment 28: Article 3 (Equality of rights between men and women), U.N. Doc. CCPR/C/21/Rev.1/Add.10, para.26 (29 March 2000) (stating that "[w]omen should... have equal inheritance rights to those of men").

¹³⁷ See, e.g., Committee on Economic, Social and Cultural Rights, *General comment No. 26 (2022) on land and economic, social and cultural rights*, U.N. Doc. E/C.12/GC/26, paras 13-15 (24 January 2023). The General Comment makes reference to several AU member state reports, in which the Committee calls for the state to improve gender equality within customary systems, and states that "[e]nsuring that women enjoy the rights enshrined in the Covenant on an equal basis to men requires the removal of traditional land regulations and structures that discriminate against women. This could be achieved by a combination of traditional and modern land governance regimes."

¹³⁸ UN Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik*, U.N. Doc. A/HRC/19/53, para.24 (2011) (stating that "To be excluded from the process of inheritance reinforces women's lack of autonomy and equality, and jeopardizes in a very direct way their right to adequate housing.")

¹³⁹ Working Group on discrimination against women and girls, *Inputs on the Committee on Economic, Social and Cultural Rights' Draft General Comment No. 26, 2* (August 2021) (discussing the frequent denial of women and girls' inheritance rights on the basis of custom and calling for the abolition of unequal practices related to inheritance and for the introduction of strong accountability mechanisms to sanction violations).

¹⁴⁰ See, e.g., Inter-American Commission on Human Rights, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, Doc. No. OEA/Ser.L/V/II.143, paras 308 – 311, 331 (2011) (discussing ongoing legal obstacles to women's equality in inheritance and corresponding state obligations to "rigorously review any laws and policies that might have a discriminatory impact on women").

¹⁴¹ CEDAW's General Comment No. 29 expounds on state obligations under that instrument. It states that "States parties are obligated to adopt laws of intestate succession that [...] ensure: [e]qual treatment of surviving females and males, [t]hat customary succession to use rights or title to land cannot be

59. For example, in *E.S & S.C. v. United Republic of Tanzania*, two widows were evicted from their matrimonial properties, denied the right to inherit any of their husbands' estates under customary inheritance, and denied relief under domestic courts in Tanzania before seeking recourse before CEDAW. The Committee held that "although the State party's Constitution includes provisions guaranteeing equality and non-discrimination, the State party has failed to revise or adopt legislation to eliminate the remaining discriminatory aspects of its codified customary law provisions with regard to widows."¹⁴² Because this system denied the widows' rights to equality, to economic autonomy, and to access justice, the Committee concluded that Tanzania must grant compensation to the applicants, as well as undertake a variety of legal reforms to "[e]nsure that all discriminatory customary laws [...] are repealed or amended and brought into full compliance with the Convention and [...] with a view to providing women and girls with equal administration and inheritance rights."¹⁴³

iii. Domestic courts have increasingly recognized that discriminatory inheritance frameworks violate women and girls' rights.

60. Judicial pronouncements at the domestic level in Africa have also recognized women's rights to inheritance and the need to balance respect for customary law with state commitments to gender equality. Even in pluralistic legal contexts such as Botswana,¹⁴⁴ Kenya,¹⁴⁵ Nigeria,¹⁴⁶ South

conditioned on forced marriage to a deceased spouse's brother (levirate marriage) or any other person, or on the existence or absence of minor children of the marriage, [t]hat disinheritance of the surviving spouse is prohibited, and [t]hat 'property dispossession/grabbing' is criminalized, and that offenders are duly prosecuted." See Committee on the Elimination of Discrimination against Women, General recommendation No. 29 on Article 16 (Economic consequences of marriage, family relations and their dissolution), U.N. Doc. CEDAW/C/GC/29, para.53 (2013).

¹⁴² Committee on the Elimination of Discrimination against Women, Communication No. 48/2013, *E.S & S.C. v. United Republic of Tanzania*, U.N. Doc. CEDAW/C/60/D/48/2013 (13 April 2015), para.7.6.

¹⁴³ *Id.* at para.9.

¹⁴⁴ High Court of Botswana, [Mmusi and others v Ramantele and another \(2012\) 2 BLR 590 HC](#) (11 October 2012).

¹⁴⁵ Court of Appeal of Kenya, [Rono v Rono and Another \(2005\) AHRLR 107](#); High Court of Kenya, *Re the Estate of Andrew Manunzyu Musyoka*, Succession Cause 303 of 1998.

¹⁴⁶ Supreme Court of Nigeria, [Ukeje v Ukeje](#), 11 NWLR (PT.1418) 384 (2014).

Africa,¹⁴⁷ and Tanzania,¹⁴⁸ courts have found that women and girls' inheritance rights cannot be infringed upon in the name of perpetuating customary systems. In *Ukeje v. Ukeje*, the Supreme Court of Nigeria held that, "no matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate".¹⁴⁹ Consequently, the Igbo customary law, which had disentitled a female child from partaking in the sharing of her deceased father's estate, was ruled to be void and in breach of Section 42(1) and (2) of the Constitution, two fundamental provisions guaranteed to every Nigerian.¹⁵⁰

61. A similar position was held by the High Court of Kenya in *Thomas Tito Nyachawo v. Judith Akinyi Ndege*, where the petitioner had invoked the Luo Customary Law to deny his sister (protestor) an inheritance from her father's estate, on the basis that she was married and had established her family elsewhere.¹⁵¹ In its decision, the Court emphasized that the spirit under Section 35(5) of the Law of Succession Act is equal distribution of the intestate estate amongst the surviving children of the deceased.¹⁵² And in the case of *Law & Advocacy for Women in Uganda v Attorney General*, the Constitutional Court held that certain provisions of the Succession Act were discriminatory against women and were therefore found unconstitutional.¹⁵³

iv. Under the African Charter, states have an obligation to respect, protect, and fulfil the equal inheritance rights of women and girls.

¹⁴⁷ Constitutional Court of South Africa, *Nonkululeko Letta Bhe v Magistrate Khayelitsha*, (1) SA 580 (CC) para.48 (2005) (invalidating the rule of male primogeniture under customary law, emphasizing the need for equality in inheritance rights.)

¹⁴⁸ High Court of Tanzania, *Ndossi v Ndossi, Civil Appeal 13 of 2001* (Unreported).

¹⁴⁹ Supreme Court of Nigeria, *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418), [Judgement](#) (11 April 2014).

¹⁵⁰ *Id.*

¹⁵¹ See High Court of Kenya, *Thomas Tito Nyachawo v. Judith Akinyi Ndege* (Succession Cause 451 of 2014) [2016] KEHC 1813 (KLR) ([Judgment](#)) (12 May 2016).

¹⁵² *Id.*

¹⁵³ See, Constitutional Court of Uganda, *Law & Advocacy for Women in Uganda v. Attorney General*, Constitutional Petitions Nos. 13 of 2005 and 05 of 2006, <https://www.law.cornell.edu/sites/www.law.cornell.edu/files/women-and-justice/Law-Advocacy-for-Women-in-Uganda-v-Atty-General.pdf>

¹⁵⁴ African Charter, *supra* note 106.

62. Under Article 1 of the African Charter, states parties assume an obligation to “adopt legislative and other measures” needed to give effect to the human rights protected by the Charter.¹⁵⁴ When it comes to abuses committed against women, the African Charter binds states parties to protect women and children by ensuring the elimination of every form of discrimination and safeguarding their rights.¹⁵⁵
63. The Maputo Protocol further deepens the foregoing obligations and instructs states to undertake appropriate legislative, institutional, and other measures and to modify the social and cultural patterns of conduct of women and men through public education, information, education, and communication strategies.¹⁵⁶
64. Thus, member states who fail to align national laws to these standards and who allow application of harmful customary or religious laws neglect their sovereign duty to uphold human rights. The result is significant socio-economic disadvantages for women and their children, perpetuating gender inequality and extending cycles of poverty.
65. In ensuring women rights to inheritance are respected in accordance with the African Charter and other relevant human rights instruments, the African human rights regional mechanisms on several pronouncements¹⁵⁷ have directed member states to align their domestic legislations to the standards provided under the African Charter and the Maputo Protocol regarding the protection of the right to inheritance for women and all children. Despite these efforts, approximately twenty AU member states still retain discriminatory legal frameworks and practices that disinherit women and girls based on gender.¹⁵⁸

¹⁵⁴ African Charter, *supra* note 106.

¹⁵⁵ *Id.* at Art. 18(3).

¹⁵⁶ Maputo Protocol, *supra* note 107, Art. 2(1) – 2(2).

¹⁵⁷ See *APDF & IHRDA v. Mali*, *supra* note 4.

¹⁵⁸ See Annexure 2.

66. In this regard, this honourable Court, in accordance with its consultative mandate, is respectfully invited to provide an Advisory Opinion on this fundamental issue so as to clarify to states their obligations under the African Charter and other relevant human rights instruments and lay out the standards and principles applicable to AU Member States to facilitate their understanding of the nature and scope of the legal obligations they should comply with.

5) Are there proceedings pending before the African Commission on Human and Peoples' Rights?

67. PALU submits this Request for an Advisory Opinion under Article 4 of the Protocol on the Establishment of an African Court on Human and Peoples' Rights and Rule 68 of the Rules of Court.

68. Article 4 of the Court Protocol empowers the African Court to issue Advisory Opinions "on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission."

69. PALU therefore respectfully submits that this request for an Advisory Opinion is a legal matter relating to whether women's unequal inheritance in most member states violate certain provisions of the African Charter and other African human rights' instruments.

70. PALU further submits that the present request for an Advisory Opinion does not relate to any application pending before the African Commission as per Rule 68(3) of the Rules of the African Court.

71. Rule 68(1) of the Rules of Court provides that a request for an Advisory Opinion may be filed by an African Organization recognized by the AU. This Honourable Court has defined "organization" to include a non-governmental organization and has defined "African organization" to refer to an organization that is registered in an African State, has structures at the sub-

regional, regional or continental levels, or undertakes its activities beyond the territory where it is registered.¹⁵⁹ PALU therefore respectfully submits that it meets all the above criteria to be classified as an African organization.

72. This Honourable Court has further established that recognition of nongovernmental organisations by the AU is through the granting of observer status or the signing of a Memorandum of Understanding between the AU and those organisations.¹⁶⁰ PALU respectfully submits that by virtue of having signed an MoU with the AU [**Annexure 3**] and having illustrated above tangible examples of its engagement with the Africa Union Commission (AUC) and various AU organs and institutions, it is accordingly formally recognised by the AU, thus meeting the criteria set forth by this Honourable Court.

73. Therefore, PALU respectfully submits that it is an African organisation recognised by the AU, pursuant to the Rules of the Court, and as defined by the Court in its jurisprudence, as having demonstrated the requisite locus standi to file the present request for an Advisory Opinion.

6) Summary of the Request

74. Inheritance laws in many African states do not comply with the African Charter, the Maputo Protocol, and other relevant human rights instruments. Discriminatory inheritance frameworks continue to interfere with women and girls' rights across many African Union member states and are rooted in traditional customs, religious norms, and patriarchal colonial legacies. These practices result in significant socioeconomic disadvantages for women and their children, perpetuating gender disparities and poverty despite existing regional and international standards.

¹⁵⁹ Request for Advisory Opinion by Socio-Economic Rights and Accountability Project (SERAP), Request No. 1/2013, Advisory Opinion of 26 May 2017, at 46 and 48.

¹⁶⁰ Request for Advisory Opinion by Centre for Human Rights, University of Pretoria, and Others, Request No. 1/2016, Advisory Opinion of 28 September 2017, at 47.

75. Unequal inheritance laws and practices violate the principles of non-discrimination, access to justice, and right to property. These principles are enshrined in key instruments like the African Charter and Maputo Protocol; courts at the international, regional, and domestic level have consistently recognized that states are obliged to protect women and girls' equal right to inherit.
76. However, cultural biases continue to influence inheritance schemes and judicial decisions. A number of AU member states retain explicitly discriminatory laws, while others allow the applicability of customary or religious laws that undermine women economically. Another subset of states has enshrined gender-neutral laws but fail to implement or to address inheritance in certain situations, such as cohabitation, polygamy and unregistered marriages. This denial of inheritance rights marginalises women and girls, stripping them of the resources and support systems necessary for dignity and well-being, which stands in opposition to the African Charter's fundamental principles.
77. We respectfully submit that discrimination against women and girls in inheritance violates the African Charter, the Maputo Protocol, and other international instruments that set standards for gender equality and non-discrimination.

7) Preferred language of correspondence:

English

Dated at: Arusha, this 13th day of March 2026.

(Signature)

AUTHOR/REPRESENTATIVE

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