

The Politics of Gender Reform in West Africa: Family, Religion, and the State by Ludovic Lado

Primrose Z. J. Bimhaⁱ

SHORT BIO

Dr. Primrose Z. J. Bimha is a Postdoctoral Research Fellow in the Department of Sociology and Social Anthropology at Stellenbosch University. Bimha is a gender studies and international relations scholar. Her research interests include global governance, peacemaking, gender and the politics of development, and queer inclusion.

INSTITUTIONAL AFFILIATION

Stellenbosch University
pzjbimha@gmail.com

ORCID

<https://orcid.org/0000-0002-2490-291X>

SUBMISSION DATE

17 June 2023

ACCEPTANCE DATE

10 July 2023

Introduction

The allocation of household headship roles to men is a dominant practice that serves the heteropatriarchal values enshrined in religious scripture, customary laws, and colonial-era civil laws. At the international level, feminist efforts to ensure gender equality in all spheres of life led to the United Nations (UN) General Assembly adopting the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. Ratifying CEDAW and adopting relevant reforms reflects a commitment to gender justice.

According to Article 87 of Côte d'Ivoire's constitution, any international treaty or convention the state ratifies has authority over domestic legislation.¹ Côte

¹ Marie Agathe Bahi, "The justice system and women's rights in Côte d'Ivoire," in *In Search of equality: Women, law and society in Africa*, ed. Stefanie Röhrs, Dee Smythe, Annie Hsieh, and Monica de Souza (Cape Town: UCT Press, 2014), 159.

d'Ivoire ratified CEDAW in 1995 but waited until 2013 to adjust its national legislation in accordance to Article 16 of CEDAW (on Marriage and Family Life) that requires the government to ensure women have equal rights to men in marriage, particularly in regard to parental responsibilities, choice of profession, and the acquisition, ownership, and management of property.² Some Ivorians suspect that the government rushed the adoption of the 2013 reforms to attract Millennium Challenge Corporation funds,³ while other analysts suggest that the law was passed to meet the demands of global development goals and the World Bank requirements for external financing.⁴

Globalized ideals of marriage are most applicable to heteronormative, monogamous, nuclear family setups from Western contexts where, to a large extent, men and women have equal economic opportunities. Family dynamics in Côte d'Ivoire are regulated by the practice of both monogamy and polygamy. Both models require men to take up the role of matrimonial headship thereby promoting women's subordination in line with cultural expectations and religious prescripts that have been in place for decades. Thus, the development of family codes requires introspection regarding the significance of religious and customary values.⁵

The secular state and Côte d'Ivoire's 2013 family code

Notably, prior to the colonization of Côte d'Ivoire by the French in 1893, marital practices were based on uncodified customs adopted by a wide range of ethnic groups. From 1893 until the early 1960s, French statutory law co-existed with diverse customary practices. However, when Côte d'Ivoire became a modern state in 1964, the state abandoned customary laws.⁶ The 1964 amendment of the civil code prohibited the practice of bride

² United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), "Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)," accessed, 10 May, 2023, <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>

³ Ludovic Lado, *The Politics of Gender Reform in West Africa: Family, Religion, and the State* (Indiana: University of Notre Dame Press, 2023), 123.

⁴ Jeanne Maddox Toungara, "Women in Côte d'Ivoire," in *Oxford Research Encyclopedia of African History*, accessed 20 May, 2023. <https://doi.org/10.1093/acrefore/9780190277734.013.650>.

⁵ Lado, *The Politics of Gender Reform in West Africa*, 1.

⁶ Bahi, "The justice system and women's rights in Côte d'Ivoire," 151.

wealth despite its social significance in facilitating customary matrimonial union. The amendment required marriages celebrated before religious officials to be first approved by the court registrar.⁷ It also outlawed polygamy, thereby privileging the Western ideal of a state presiding over monogamous citizens and nuclear family units.

Participants identified three types of marriage and their different purposes: Customary marriages unite families, religious marriages represent holy matrimony, and civil marriages provide the legal recognition of the state.⁸ While the notion of civil rights implies legality, sociocultural and religious legitimacy shapes individuals' and couples' relations with their families and communities. As such, most Ivorians continue to ignore the outlawing of bride price⁹ and the amended Family code.¹⁰ Reforms require consultative deliberation with communities. Considering the widespread perception that civil laws imply the importance of Western ideals, sustained multistakeholder engagement with conservative constituents is vital.

The book notes two specific provisions of the family code that were adopted in 2013 without prior consultation of multiple stakeholders. Significant changes that sparked outrage related to Articles 58 and 59. Article 58 "specified that the husband, as family head, fulfils this role in the joint interest of the household and the children", while Article 59 stated that "marriage expenses were mainly borne by the husband".¹¹ The revised version of the family code stipulated that both spouses are to ensure "the moral and material direction of the family, provide for the children's education, and prepare for their future".¹² Article 60 of the original version gave the husband the sole right to choose where his family would reside, however, the revised version urged common agreement, "with disagreements to be decided by a judge, taking into consideration the interest of the family".¹³

⁷ Bahi, "The justice system and women's rights in Côte d'Ivoire," 156.

⁸ Lado, *The Politics of Gender Reform in West Africa*, 82.

⁹ Risa Ellovich, "The law and Ivorian women," *Anthropos* 80 (1985): 188.

¹⁰ Ellovich, "The law," 192.

¹¹ Lado, *The Politics of Gender Reform in West Africa*, 25.

¹² Lado, *The Politics of Gender Reform in West Africa*, 25.

¹³ Lado, *The Politics of Gender Reform in West Africa*, 26.

Christians and Muslims interviewed by the author posited that the amendments to Articles 58 and 59 were incompatible with religious and customary values. They collectively expressed the worry that such principles would lead to conflicts and undermine men's designated role to lead and provide. A participant representing the legal fraternity echoed the same sentiments, although they recognized that the law was attempting to place husbands and wives on the same footing.¹⁴ Male participants unanimously agreed that it was a man's divine prerogative to be the head of the family.¹⁵ While most men contended that the proposed shift was too sudden and did not consider social realities, Catholic men seemed more open to sharing household financial responsibilities, especially when both spouses have incomes.¹⁶

Article 67, which permitted women to work in professions different from their husbands unless the exercise of that profession was contrary to the interest of the family, was amended to give women and men the right to exercise any profession of their choice unless a judge "legally established that the exercise of such was contrary to the interest of the family".¹⁷ Participants noted that marital relations required collaborative decision-making regarding issues such as professional commitments and where to live. However, they maintained that men should retain their principal status as "the authority of the family".¹⁸

The 2017 annual statistics from the Ministry of Interior and Security of Côte d'Ivoire indicated an increase in the demand for marriage under civil law despite the costly application fee of around US\$100.¹⁹ Understandably, demand arose mostly in the capital city of Abidjan, which accounted for 60% of civil law marriages registered from 2015 to 2017.²⁰ Similar to customary and religious marriages, which are initiated by men, the uptake of civil

¹⁴ Lado, *The Politics of Gender Reform in West Africa*, 80.

¹⁵ Lado, *The Politics of Gender Reform in West Africa*, 82.

¹⁶ Lado, *The Politics of Gender Reform in West Africa*, 87.

¹⁷ Lado, *The Politics of Gender Reform in West Africa*, 26.

¹⁸ Lado, *The Politics of Gender Reform in West Africa*, 79.

¹⁹ Lado, *The Politics of Gender Reform in West Africa*, 43.

²⁰ Lado, *The Politics of Gender Reform in West Africa*, 43.

marriages depends on a man proposing to his female partner. Key benefits of a civil marriage include the legal recognition of spouses and children for estate management purposes. It is worth noting that inheritance practices in Côte d'Ivoire, especially in rural areas, continue to be dictated by family, community, and religious leaders. Some observers noted that the extension of the family code to customary and religious unions could potentially ensure equal access to property.²¹ Since civil marriages award women the right to legal recourse, extending such provisions seems favorable. However, many women cannot not afford the costs of judicial procedures. Furthermore, as most women participants noted, they try to avoid marital conflict, thus taking matters to the courts is not considered ideal.

State officials did not consult the Ivorian population during the reform process. When a bill requesting the revision of the code was first tabled in November 2012, most lawmakers supported the principle of a single head of the family. Then head of state, Alassane Ouattara, dissolved the government coalition citing breach of loyalty.²² Amadou Soumahoro, the chairman of the *Rassemblement des républicains* (RDR), swiftly urged members of the alliance to vote for the new law to ensure political survival.²³ Therefore, in addition to the state's exclusionary approach towards citizens, some law makers were coerced into endorsing what is now known as the 2013 amended family code. In this case, the state did not act in the interest of the people.

As it stands, citizens whose marriages are not legally recognized are deprived of access to resources and rights available to those in civil marriages.²⁴ The state missed the opportunity to engage with civil society representatives on the benefits associated with inheritance rights, especially for widows and children. They could have deliberated on how best to mitigate challenges perpetuated by dominant marital practices. For instance, several

²¹ Juliana Nnoko-Mewanu, "Côte d'Ivoire Marriage Reform a Step for Women: Law Could Spur Change Throughout Africa," accessed 30 May, 2023. <https://www.hrw.org/news/2019/07/24/cote-divoire-marriage-reform-step-women>

²² Lado, *The Politics of Gender Reform in West Africa*, 28.

²³ Lado, *The Politics of Gender Reform in West Africa*, 28.

²⁴ Fareda Banda, "The United Nations Working Group on the Issue of Discrimination against Women in Law and Practice," 1, accessed 1 June, 2023. https://eprints.soas.ac.uk/21258/1/united_nations_working_group_on_the_issue_of_discrimination_against_women_in_law_and_practice.pdf

participants noted that there were little to no consequences for spouses who neglected the responsibilities associated with their defined roles in marriage.

The civil code does not extend to customary and religious marriages. Therefore, the state's hyperfocus on the promotion of gender equality in civil unions reinforces the exclusion of those who are not in legally recognized unions. It becomes clear that adopting reforms in line with CEDAW with no regard for the population serves as a mere tick-box practice. That is to say, "CEDAW was ratified, and laws were amended accordingly". Amending the law as a public relations act for the international community does more local harm than good. Since the 1960s, citizens have taken a *fait accompli* approach²⁵ but continuously refer to customary and religious institutions for recourse, to the detriment of women.

Comparative perspectives: Senegal, Mali, and Niger

Civil marriages in post-colonial African states are more common in urban settings, as reflected by the book's reference to the cases of Côte d'Ivoire, Senegal, Mali, and Niger. Consequently, family law reforms in these countries manifest as urban processes, with little impact on rural citizens. While CEDAW recognizes plural family forms, countries like Côte d'Ivoire have adopted the civil marital unit as the ideal state-sanctioned model.²⁶ Since independence in 1960, Mali and Senegal have replaced the colonial family laws with their own national marriage codes. State parties that have ratified CEDAW are obliged to discourage and prohibit polygamy as it constitutes a direct violation of women's rights to equality.²⁷ Accordingly, Côte d'Ivoire have outlawed polygamous marriages although they are still being practiced in the country. Unlike Côte d'Ivoire, Mali and Senegal's family codes integrated customary law and colonial law in which polygamous and monogamous marriages have civil legal status.²⁸ It is worth noting that

²⁵ Jeanne Maddox Toungara, "Inventing the African family: Gender and family law reform in Cote D'Ivoire," *Journal of Social History* 28, no. 1 (1994): 38.

²⁶ Banda, "Gender Equality and Family laws in Africa," 4.

²⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), "The Human Rights Council Working Group on the issue of Discrimination against Women in law and in practice," accessed 20 May, 2023, <https://www.ohchr.org/en/statements/2015/04/human-rights-council-working-group-issue-discrimination-against-women-law-and>

²⁸ Lado, *The Politics of Gender Reform in West Africa*, 96.

the African Union's Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (better known as Maputo Protocol) recognizes monogamy as the preferred model, but in the event of polygyny, the rights of women should be promoted and protected.²⁹ The protocol acknowledges social realities and the need to address their impact. For example, in the event of the death of a polygynous husband, all wives and their children will receive inheritance, despite falling outside the ideal civil family code.

Due to religious contestation, Niger has yet to adopt a codified family code. Marriages within the country have either civil or customary status. To pave way for future reforms, Nigerien politicians have adopted a comprehensive approach aimed at implementing gender reforms in areas that are likely to gain support, such as health care and education. The increased participation of women in politics is expected to inspire further changes to family law. Concepts such as equity are subject to interpretation. While equity may imply equal sharing before the law, religious and customary authorities may prescribe that equity requires women to receive less because they do not have the same status and obligations as men.³⁰ This ties in with the book's reference to complementarity, a popular notion where participants are defined as representative of equal dignity and partnership in marriage.³¹ Collaborating with multiple stakeholders to develop contextual meanings and solutions for gender justice is important. For instance, the state of South Africa had to remedy its failure to recognize Muslim marriages by awarding maintenance and allowing for inheritance in situations involving polygyny.³²

Mali represents a case of consensual reforms informed by various religious, political, and social stakeholders. As a result, important innovations regarding marital regimes, filiation, kinship, inheritance, and divorce were introduced. Despite popular acceptance, some Islamic groups, including the National Muslim Women Association of Mali opposed reforms such as the description of marriage as a secular act, the establishment of a minimum marriage age at eighteen years for women, and the legitimization of children

²⁹ Banda, "Gender Equality and Family laws in Africa," 8.

³⁰ Banda, "Gender Equality and Family laws in Africa," 1.

³¹ Lado, *The Politics of Gender Reform in West Africa*, 92.

³² Banda, "Gender Equality and Family laws in Africa," 8.

born out of wedlock.³³ The code was referred to the National Assembly and a joint commission made up of members of the *Haut Conseil Islamique* and parliamentary legal experts engaged further to develop the code, which was adopted in December 2011. It prevailed due to low levels of public contestation likely because the *Haut Conseil Islamique* got most of the changes they wanted.³⁴

The book notes that, while Senegal, Mali, and Niger seem to be more consultative, they have yet to legally address the discrimination of women with regards to “choice of profession, processes of divorce, custody of children in the event of a divorce, inheritance, choice of residence, and polygamy”.³⁵ Thus, from a CEDAW perspective, Côte d'Ivoire's family code is more progressive. What remains is for it to be adapted.

Conclusion

Although the book notes that reforms such as the family code are widely perceived as measures to weaken traditional forms of family life, and favor the emergence of new ones, such as homosexual marriages,³⁶ this theme was underexplored. Since Islamic faith and Catholicism (and Christianity more broadly) are dominant in Côte d'Ivoire, the focus on participants from these sects provided relevant insights on attitudes towards modernity. The author referred to participants' suspicions that the liberal legal amendments represented a step towards the legalization of homosexuality and homosexual marriage.³⁷ A sentiment that is echoed in parliamentary discussions and media reports.³⁸ Considering that homosexuality is not illegal in the country, it is understandable that heteropatriarchal conservatives, threatened by the legal disregard for male headship, anticipate that, in the long run, marriage will cease to preserve the heteropatriarchy. Further studies should investigate activism and state efforts towards queer inclusion.

³³ Lado, *The Politics of Gender Reform in West Africa*, 109.

³⁴ Lado, *The Politics of Gender Reform in West Africa*, 111.

³⁵ Lado, *The Politics of Gender Reform in West Africa*, 112.

³⁶ Lado, *The Politics of Gender Reform in West Africa*, 19.

³⁷ Lado, *The Politics of Gender Reform in West Africa*, 81.

³⁸ Hannane Ferdjani, “Ivory Coast's controversial polygamy bill: All you need to know,” accessed 30 May, 2023, <https://www.aljazeera.com/features/2022/7/19/ivory-coasts-controversial-polygamy-bill-all-you-need-to-know>

While the book places emphasis on the resilience of customary marriage and dominance of Islamic principles, it does not provide in-depth insights on polygynous sects of society and how they have adapted, if at all. The researcher relied on urban informants who reside in contexts where civil marriage rates are higher. The book did not shed light on insights from rural participants with insider information on polygyny. Nevertheless, the emphasis on urban citizens' exercise of customary rituals such as bride wealth³⁹ demonstrates a lacklustre adoption of civil law principles across the country. As such, rural-based studies could provide more context-specific knowledge that is currently under researched.

Marginalized groups, such as rural women, lack the power and means to organize and articulate their positions on human rights issues.⁴⁰ This remains a major challenge for reform-seeking feminist agents across the African continent. The urban-rural divide in the uptake of civil law poses a barrier to engagement. Inaccessible legal jargon and challenges in interpretation present an additional challenge. Thus, in countries where most of the population reside in rural areas, such as Mali (70%), legal reforms have minimal impact.⁴¹ While Islam is not a state religion, it plays a central role in the regulation of Malians' marital practices. Although contexts with lower rural populations have experienced an increase in civil marriages, married couples still customize their unions according to male headship principles. Customary practices remain the domain of families and communities. According to Côte d'Ivoire's 2014 general census results, 71.9% of married respondents were married customarily, 28.4% religiously, and only 8.4% civilly.⁴²

Given that culture is never static, provisions for equality within marriage are practicable. Political actors, local feminist groups, and religious leaders, among others, should engage in sustained efforts to ensure the legal recognition of customary and religious marriages and establish relevant

³⁹ Lado, *The Politics of Gender Reform in West Africa*, 112.

⁴⁰ Lado, *The Politics of Gender Reform in West Africa*, 124.

⁴¹ Lado, *The Politics of Gender Reform in West Africa*, 107.

⁴² Lado, *The Politics of Gender Reform in West Africa*, 25.

reforms to ensure gender justice. Otherwise, women's legal status will continue to be characterized by "equality in law and inequality in practice".⁴³

⁴³ Bahi, "The justice system and women's rights in Côte d'Ivoire," 148.

References

- Bahi, Marie Agathe. "The justice system and women's rights in Côte d'Ivoire." In *In Search of equality: Women, law and society in Africa*, edited by Stefanie Röhrs, Dee Smythe, Annie Hsieh, and Monica de Souza, 121-148. Cape Town: UCT Press, 2014.
- Banda, Fareda. "Gender Equality and Family laws in Africa. Paper presented at The United Nations working group on the issue of discrimination against women in law and practice". Accessed 1 June, 2023.
https://eprints.soas.ac.uk/21258/1/united_nations_working_group_on_the_issue_of_discrimination_against_women_in_law_and_practice.pdf
- Ellovich, Risa. "The law and Ivorian women." *Anthropos* 80 (1985): 185 – 197.
- Ferdjani, Hannane. Ivory Coast's controversial polygamy bill: All you need to know. Accessed 30 May, 2023.
<https://www.aljazeera.com/features/2022/7/19/ivory-coasts-controversial-polygamy-bill-all-you-need-to-know>
- Ludovic Lado. *The Politics of Gender Reform in West Africa: Family, Religion, and the State*. Indiana: University of Notre Dame Press, 2023.
- Nnoko-Mewanu, Juliana. "Côte d'Ivoire Marriage Reform a Step for Women: Law Could Spur Change Throughout Africa." Accessed 30 May, 2023. <https://www.hrw.org/news/2019/07/24/cote-divoire-marriage-reform-step-women>
- Office of the United Nations High Commissioner for Human Rights (OHCHR). "The Human Rights Council Working Group on the issue of Discrimination against Women in law and in practice." Accessed 20 May, 2023, <https://www.ohchr.org/en/statements/2015/04/human-rights-council-working-group-issue-discrimination-against-women-law-and>

Toungara, Jeanne Maddox. "Inventing the African family: gender and family law reform in Cote D'Ivoire." *Journal of Social History* 28, no. 1 (1994): 37 – 61.

Toungara, Jeanne Maddox. "Women in Côte d'Ivoire".In *Oxford Research Encyclopedia of African History*. Accessed 20 May, 2023. <https://doi.org/10.1093/acrefore/9780190277734.013.650>

United Nations Entity for Gender Equality and the Empowerment of Women. (UN Women). "Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)." Accessed 10 May, 2023. <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>