

# Strengthening Women's Right to Property Acquired During Marriage: A Study of Ghana's Legal Framework

PRISCILLA AKUA VITOH\*

## ABSTRACT

Over the past ten years, inclusive capitalist discourses have promoted land privatisation and individual land ownership as a means of empowering women and fostering economic prosperity. This paper draws on feminist arguments that the law, as experienced by women, cannot be adequately explained by focusing exclusively on male-centric state law. It situates these arguments within the context of the progress of the Ghanaian Supreme Court in advancing a presumption of equitable ownership of property acquired during marriage and the spousal provisions in Ghana's Lands Act 2020 (Act 1036), which codify the presumption established by the Courts. The paper highlights social reproductive labour, public awareness, and the snail-paced legal system as structural, traditional, and historical issues that may impact Ghanaian women's right to property acquired during marriage. It argues that while legislation is vital in harmonising and providing a baseline of women's rights, law reforms alone are not enough to close the gender gap regarding women's matrimonial property rights. Stakeholders must recognise women's gendered position in these different contexts and how norms and values at different levels combine to situate their claim to resources. Such a holistic approach may successfully achieve an encompassing legal, regulatory, and social framework that safeguards women's marital property rights.

*Keywords:* joint ownership, women's marital property rights, African feminism, sustainable development goals, landed property rights

\* PhD Candidate, University of Warwick; BA, LLB, LLM (BPP). I am grateful to Ann Stewart, Serena Natile, Maame AS Mensah-Bonsu, and Araba Nunoo for their comments on earlier drafts.

## I. INTRODUCTION

Over the past ten years, inclusive capitalist discourses have promoted land privatisation and individual land ownership as a means of empowering women and fostering economic prosperity.<sup>1</sup> According to these narratives, equalitarian property rights for women impacts their well-being, decision-making ability in the home, and agency.<sup>2</sup> It also leads to an increase in children's welfare in a household.<sup>3</sup> The United Nations (UN) Sustainable Development Goals ('SDGs') follow this notion under Goal 5, which targets access to ownership and control over land and other forms of property to give women equal rights to economic resources.<sup>4</sup> Property acquired through marriage is one of the channels by which women are said to obtain access to property and one of the channels that require an adequate legal framework to protect the rights of married women.<sup>5</sup>

On this basis, international development policies and treaties have progressively sought to enhance women's rights to property acquired during a marriage (marital property). Marital property regimes are classified under four categories, according to researchers.<sup>6</sup> The first is 'full community of property', where all assets are regarded as the joint property of a spouse. The second option is 'partial community of property', which implies joint ownership of marital assets but still permits spouses to keep assets they obtained before marriage. The third is 'separation of property', in which every property, including those obtained through

<sup>1</sup> Abena D Oduro, Louis Boakye-Yiadom, and William Baah-Boateng, 'Asset Ownership and Egalitarian Decision-Making among Couples: Some Evidence from Ghana' (2012) 14 *The Gender Asset Gap Project*, Indian Institute of Management Bangalore Working Paper No 14, 9 <[http://landwise-production.s3.amazonaws.com/2022/03/Oduro\\_Asset-ownership-and-egalitarian-decision-making-among-couples\\_2012.pdf](http://landwise-production.s3.amazonaws.com/2022/03/Oduro_Asset-ownership-and-egalitarian-decision-making-among-couples_2012.pdf)> accessed 15 March 2023; Abena D Oduro, Carmen Diana Deere, and Zachary B Catanzarite, 'Women's Wealth and Intimate Partner Violence: Insights from Ecuador and Ghana' (2015) 21 *Feminist Economics* 1, 2–3; Isis Gaddis, Rahul Lahoti, and Hema Swaminathan, 'Women's Legal Rights and Gender Gaps in Property Ownership in Developing Countries' (2022) 48 *Population and Development Review* 331, 332.

<sup>2</sup> Oduro, Boakye-Yiadom, and Baah-Boateng (n 1); Oduro, Deere, and Catanzarite (n 1); Gaddis, Lahoti, and Swaminathan (n 1).

<sup>3</sup> Gaddis, Lahoti, and Swaminathan (n 1); Oduro, Deere, and Catanzarite (n 1); Cheryl Doss, 'The Effects of Intrahousehold Property Ownership on Expenditure Patterns in Ghana' (2006) 15 *Journal of African Economics* 149.

<sup>4</sup> United Nations, 'THE 17 GOALS' (*Sustainable Development Goals*) <<https://sdgs.un.org/goals>> accessed 18 April 2021.

<sup>5</sup> Gaddis, Lahoti, and Swaminathan (n 1); Oduro, Deere, and Catanzarite (n 1); Oduro, Boakye-Yiadom, and Baah-Boateng (n 1).

<sup>6</sup> Carmen Diana Deere and Cheryl R Doss, 'The Gender Asset Gap: What Do We Know and Why Does It Matter?' (2006) 12 *Feminist Economics* 1; Carmen Diana Deere and others, 'Property Rights and the Gender Distribution of Wealth in Ecuador, Ghana and India' (2013) 11 *The Journal of Economic Inequality* 249, 256–262; Gaddis, Lahoti, and Swaminathan (n 1).

marriage, is owned individually.<sup>7</sup> The last regime is known as a 'deferred community of property regime', in which property is considered privately owned until the marriage is dissolved; at this point, a full or partial community of property rule will apply.<sup>8</sup>

In Ghana, the issue of women's rights to co-own marital property has been a subject of debate and progressive judicial interpretation over the years. Marriage in Ghana is a contract between the man's and the woman's family and is surrounded by 'definite customs and laws' for the security of both parties.<sup>9</sup> This definition is in line with the Ghanaian court's emphasis that marriage is a union not just between the man and woman but also between their two families.<sup>10</sup> Although marriage joins the two families together, the man and woman remain members of their lineage and do not become entitled to any rights the other spouse can claim through their family.<sup>11</sup> Accordingly, Ghanaian women retain their legal identity after marriage as the woman's legal status is not subsumed into her husband's.<sup>12</sup>

Spouses maintaining their separate identities and individuality in marriage raises the question of whether couples must share whatever property they acquire during the marriage. The progressive steps towards protecting women's rights over matrimonial property have come from concerted efforts, through legislation and judicial reform, to thrust women's issues from the shadows into the forefront of national discourse. The current position of the Ghanaian Supreme Court is that there is a presumption of equitable ownership of property acquired during marriage.<sup>13</sup> In 2020, the Ghanaian parliament passed the Ghana Lands Act (Act 1036). The Act contained spousal provisions in sections 34 and 47, which legislate the presumption established by the Courts. Feminist activists and legal practitioners heralded the spousal provisions in the Act as a giant step in protecting women's rights to marital property.<sup>14</sup>

<sup>7</sup> World Bank Group, *Women, Business and the Law 2016: Getting to Equal* (World Bank 2015) <<https://openknowledge.worldbank.org/handle/10986/22546>> accessed 15 December 2022; Gaddis, Lahoti and Swaminathan (n 1).

<sup>8</sup> World Bank Group (n 7); Gaddis, Lahoti and Swaminathan (n 1).

<sup>9</sup> JWA Amoo, 'The Effect of Western Influence on Akan Marriage' (1946) 16 *Africa* 228, 228.

<sup>10</sup> *Yaotey v Quaye* [1961] GLR 573 (HC Ghana).

<sup>11</sup> Amoo (n 9) 228.

<sup>12</sup> *Acheampong v Acheampong* [1967] GLR 34 (HC Ghana); Gaddis, Lahoti and Swaminathan (n 1) 3.

<sup>13</sup> ; *Boafo v Boafo* [2005] SCGLR 705 (SC Ghana); *Gladys Mensah v Stephen Mensah* [2012] GHASC 8 (SC Ghana); *Quartson v Quartson* [2012] SCGLR 1077 (SC Ghana); *Patience Arthur v Moses Arthur (No 1)* Civil Appeal No J4/19/2013 (SC Ghana, 13 July 2013).

<sup>14</sup> JoyNews, 'Newsfile on Joy News' (*Youtube*, 10 April 2021) <<https://www.youtube.com/watch?v=NiZtZJDqaq8&t=6950s>> accessed 7 June 2021; ClearwayLaw Law School Series, 'The New Land Act Ghana' (*ClearwayLaw*, 28 February 2021) <<https://clearwaylaw.com/the-new-land-act-ghana/>> accessed 7 June 2021.

This article draws on feminist arguments that the law, as experienced by women, cannot be adequately explained by focusing exclusively on male-centric state law.<sup>15</sup> Feminist scholars argue that women belong to and are influenced by different social, economic, and political orders within a State.<sup>16</sup> Moore terms this as semi-autonomous social fields.<sup>17</sup> Ghana's legal regime on land rights is pluralistic and based on the 'co-existence of different regulatory systems, consisting of a hybrid of English common law principles, Ghanaian customary law principles, constitutional provisions, and statutory provisions.'<sup>18</sup> These laws are not mutually exclusive but overlap and interact in different contexts and represent women's social, political, and economic constructions.<sup>19</sup> Therefore, understanding how laws affect women and bringing about social change that improves women's access to landed property cannot be done by evaluating the rights guaranteed by State law in isolation.<sup>20</sup> The paper situates these arguments within the context of the progress of the Ghanaian Supreme Court in advancing a presumption of equitable property ownership and the provisions in the Ghana Lands Act 2020 codifying the judicial precedent. This research draws on data from primary legal sources—legislation, case law, and non-legal sources—radio and television interviews.<sup>21</sup> Cases selected are precedent-setting cases resolved after the coming into force of the 1992 Constitution.<sup>22</sup>

This paper adds to the body of literature on women's property rights in Ghana. Extant literature has examined inheritance laws and their implications on women's property rights.<sup>23</sup> Women's property rights after divorce have also been

<sup>15</sup> Ambreena S Manji, 'Imagining Women's "Legal World": Towards a Feminist Theory of Legal Pluralism in Africa' (1999) 8 *Social & Legal Studies* 435, 450; Anne Hellum and others, *Human Rights, Plural Legalities, and Gendered Realities: Paths Are Made by Walking* (SEARCWL with Weaver Press 2007).

<sup>16</sup> Manji (n 15) 450; Hellum and others (n 15); Anne MO Griffiths, 'Making Gender Visible in Law: Kwena Women's Access to Power and Resources' in Anne Hellum and others (eds), *Human Rights, Plural Legalities, and Gendered Realities: Paths are Made by Walking* (SEARCWL with Weaver Press 2007) 139; Ambreena Manji and Ann Stewart, 'I Built This House on My Back' in Sam Adelman and Abdul Paliwala (eds), *Beyond Law and Development: Resistance, Empowerment and Social Injustice* (1st edn, Routledge 2022).

<sup>17</sup> Sally Falk Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study' (1973) 7 *Law & Society Review* 719.

<sup>18</sup> Lennox Agbosu and others, *Customary and Statutory Land Tenure, and Land Policy in Ghana: Paper Prepared for the Land Tenure and Land Policy Research Project* (Institute of Statistical, Social & Economic Research, University of Ghana 2007) 32–33.

<sup>19</sup> Ann Stewart, *Gender, Law and Justice in a Global Market* (Cambridge University Press 2011) 59–60.

<sup>20</sup> Manji (n 15); Griffiths (n 16); Griffiths, *Transformations on the Ground: Space and the Power of Land in Botswana* (Indiana University Press 2019) 30.

<sup>21</sup> Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 183.

<sup>22</sup> See *Peter Adjei v Margaret Adjei* [2021] GHASC 5 (SC Ghana) 9.

<sup>23</sup> Henrietta J'AN Mensa-Bonsu, 'The Intestate Succession Law of Ghana: Practical Problems in Application' (1994) 8 *Jahrbuch für afrikanisches Recht* 105; C Dowuona-Hammond, 'Ensuring Equity in the

the subject of other research.<sup>24</sup> A few studies have combined women's legal and traditional property rights in urban and rural locations.<sup>25</sup> By addressing the historical and structural reasons that affect women's property rights and result in latent gender biases in legislation, this study adds to the body of work in this area.

First, the paper discusses the discourses on co-ownership of marital property as a tool to promote women's economic rights and the international law regime protecting these rights. Second, it discusses Ghana's regime on landed property, and looks briefly at the Ghanaian Supreme Court's progression to equitable right to marital property and the sections in the Ghana Lands Act, which codify some aspects of the Court's precedent. Finally, the paper highlights social reproductive labour, public awareness, and the snail-paced legal system of Ghana as the structural, traditional, and historical issues that may impact Ghanaian women's right to property acquired during marriage. It argues that while legislation is vital in harmonising and providing a baseline of women's rights, law reforms alone are not enough to close the gender gap regarding women's matrimonial property rights. Stakeholders must recognise women's gendered position in these different contexts and how norms and values at different levels combine to situate their claim to resources. Such a holistic approach may be successful in a holistic approach to achieving an encompassing legal, regulatory, and social framework that safeguards women's marital property rights.<sup>26</sup>

Distribution of Matrimonial Property upon Divorce: Preparing the Path for Legislation' (2005) 2 University of Botswana Law Journal 101; Akua Kuenyehia, 'Women, Marriage, and Intestate Succession in the Context of Legal Pluralism in Africa' (2006) 40 UC Davis Law Review 385; Takyiwa Manuh, 'Wives, Children, and Intestate Succession in Ghana' in Gwendolyn Mikell (ed), *African Feminism* (University of Pennsylvania Press 2010) 77; Ama Hammond, 'Reforming the Law of Intestate Succession in a Legally Plural Ghana' (2019) 51 The Journal of Legal Pluralism and Unofficial Law 114.

<sup>24</sup> Dowuona-Hammond (n 23); Ama Fowa Hammond, 'What Man Has Put Together-Recognising Property Rights of Spouses in De Facto Unions' (2008) 24 University of Ghana Law Journal 231; Henrietta JAN Mensa-Bonsu, 'Ensuring Equitable Access to Marital Property When the Holy Estate Becomes an Unholy Ex-State: Will the Legislature Walk the Road Paved by the Courts' (2011) 25 University of Ghana Law Journal 99; Maame Yaa Mensa-Bonsu and Maame AS Mensa-Bonsu, 'To Win Both the Battle and the War: Judicial Determination of Property Rights of Spouses in Ghana' in Josephine Jarpa Dawuni *Gender* (ed), *Judging and the Courts in Africa* (1st edn, Routledge 2021).

<sup>25</sup> Ellen Bortei-Doku Aryeetey, 'Behind the Norms: Women's Access to Land in Ghana' in C Toulmin, Deville P Lavigne, and S Traoré (eds), *Managing Land Tenure and Resource Access in West Africa* (James Currey Ltd 1997); Christine Dowuona-Hammond, 'State Land Management Regime: Impact on Land Rights of Women and the Poor in Ghana' (GTZ Legal Pluralism and Gender Project 2003); S Minkah-Premo and C Dowuona-Hammond, 'Review of Land and Gender Studies and Identification of Resources in Ghana' (Ghana Land Administration Project 2005); Deere and others (n 6); Akua O Britwum and others, *Gender and Land Tenure in Ghana: A Synthesis of the Literature* (ISSER, Institute of Statistical, Social & Economic Research, University of Ghana 2014); Sheila Minkah-Premo, 'Report Of Desktop Study On Gender Equality And Social Inclusion Issues Relating To The Land Sector In Ghana' (NETRIGHT 2018) <<https://www.star-ghana.org/learning-2/publications-and-resources/reports/137-netright-study-on-gender-equality-and-social-inclusion-issues-relating-to-the-land-sector-in-ghana/file>> accessed 18 May 2021.

<sup>26</sup> Griffiths (n 16) 139.

## II. JOINT OWNERSHIP OF MARITAL PROPERTY: A PATHWAY TO PROPERTY OWNERSHIP

Extant literature points to the importance of legal property rights for women.<sup>27</sup> According to development policies, land title formalisation and individual land ownership in developing countries promote economic growth and poverty alleviation.<sup>28</sup> Development policies identify property rights as critical for achieving gender equality, women's empowerment and bridging the financial gap for women globally.<sup>29</sup> The World Bank reports that 'resources, agency, and achievements' are three central components of empowerment.<sup>30</sup> Agency in this context refers to people's ability to act upon plans and lead the lives they desire.<sup>31</sup> Researchers who link women's empowerment with agency argue that the two have an interdependent relationship.<sup>32</sup> Empowering women increases agency, which increases the likelihood of successful development outcomes, and vice versa.<sup>33</sup> The World Bank's conceptualisation of agency is similar to Kabeer's conceptualisation. Kabeer points to agency as the second pathway under which empowerment emerges.<sup>34</sup> Kabeer links agency with the condition of choice, where the person can appraise and choose options or pre-conditions that suit them. The rationale for the link between agency and empowerment is that when women are given external resources, such as land and credit and internal resources, like self-confidence and knowledge, they can enjoy integrity, bodily autonomy, and personal freedoms.<sup>35</sup> Research finds that women's participation in household decision-making increases

<sup>27</sup> Oduro, Boakye-Yiadom, and Baah-Boateng (n 1); Oduro, Deere, and Catanzarite (n 1); Gaddis, Lahoti, and Swaminathan (n 1).

<sup>28</sup> Dowuona-Hammond (n 23); Doss (n 3); Mensa-Bonsu, 'What Man Has Put Together-Recognising Property Rights of Spouses in De Facto Unions' (n 24); Oduro, Deere, and Catanzarite (n 1); Hammond (n 23); Mensa-Bonsu and Mensa-Bonsu (n 24); Gaddis, Lahoti and Swaminathan (n 1).

<sup>29</sup> See for example United Nations (n 4).

<sup>30</sup> *ibid.*

<sup>31</sup> World Bank Group, 'Profiting from Parity: Unlocking the Potential of Women's Business in Africa' (World Bank 2019) 38 <<https://openknowledge.worldbank.org/handle/10986/31421>> accessed 15 December 2022.

<sup>32</sup> Gita Sen and Avanti Mukherjee, 'No Empowerment without Rights, No Rights without Politics: Gender-Equality, MDGs and the Post-2015 Development Agenda' (2014) 15 *Journal of Human Development and Capabilities* 188.

<sup>33</sup> Naila Kabeer, 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment' (1999) 30 *Development and Change* 435, 457-461; Sen and Mukherjee (n 31); Bougema Theodore Ntenkeh, Dobdinga Cletus Fonchamnyo and Denis Nfor Yuni, 'Women's Empowerment and Food Security in Cameroon' (2022) 56 *The Journal of Developing Areas* 141.

<sup>34</sup> Kabeer, 'Resources, Agency, Achievements' (n 32); Sen and Mukherjee (n 31); Ntenkeh, Fonchamnyo, and Yuni (n 32).

<sup>35</sup> Naila Kabeer, 'Gender Equality and Women's Empowerment: A Critical Analysis of the Third Millennium Development Goal 1' (2005) 13(1) *Gender & Development* 13.

<sup>36</sup> Sen and Mukherjee (n 31) 190.

when marital property is distributed equally.<sup>36</sup> It has been argued that women's equal access to property within marriage gives them more substantial bargaining power as they have options outside of the marriage.<sup>37</sup> Similarly, other research finds that women have more security and are less likely to suffer violence when they are not structurally dependent on men for access to resources.<sup>38</sup> Therefore, joint ownership of marital property is linked to empowering women by improving their agency.

On the international front, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ('Maputo Protocol')<sup>39</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW')<sup>40</sup> provide overlapping and yet divergent protection for the right to joint ownership of marital property. CEDAW and the Maputo Protocol place the duty on State Parties to use 'appropriate legislative, institutional and other measures to fight against all forms of discrimination against women'.<sup>41</sup> Both treaties provide equal rights to property acquired during marriage. Article 16 of CEDAW provides that state parties are to ensure the elimination of discrimination against women 'in all matters relating to marriage and family relations' and to ensure that women have the same rights in 'respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. On the regional level, the Maputo Protocol brings specificity to the African reality and places CEDAW within the context of the issues that concern African women.<sup>42</sup> The Protocol emphasises under article 2 that 'positive action' is required to ensure the realisation of women's rights within the private domain and recognises the precarious situation that married women in Africa face regarding equal rights to matrimonial property upon divorce or death intestate of their spouses. Significantly, the Protocol recognises a right to culture while challenging and weeding out negative norms and practices justified through culture. 'Positive African cultural values' are defined within the Protocol as values 'based on the principles of equality, peace, freedom, dignity, justice,

<sup>36</sup> Oduro, Boakye-Yiadom, and Baah-Boateng (n 1) 18; Gaddis, Lahoti, and Swaminathan (n 1).

<sup>37</sup> Oduro, Boakye-Yiadom, and Baah-Boateng (n 1); Gaddis, Lahoti, and Swaminathan (n 1).

<sup>38</sup> Minkah-Premo (n 25) 41.

<sup>39</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003 (adopted 1 July 2003, entered into force 25 November 2005) ('Maputo Protocol') <[www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf)> accessed 19 March 2023.

<sup>40</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 ('CEDAW').

<sup>41</sup> CEDAW, art 2(1).

<sup>42</sup> Frans Viljoen, 'An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice* 11, 22.

solidarity, and democracy'.<sup>43</sup> It might be argued that the Protocol's structure suggests a restriction on cultural plurality because it only acknowledges cultural values that are regarded to be founded on the standards it established. Nonetheless, the acknowledgement of culture within the framing of the Protocol symbolises a recognition that African women do not have to 'strip themselves' of their culture and forego their identity before they can access their rights.<sup>44</sup> As Musembi argues, policymakers should not view 'culture' and 'rights' as 'polar opposites', where culture is perceived 'largely as a negative force that impedes the realisation of rights'.<sup>45</sup> Women have, in some instances, used culture as a medium to assert their rights.<sup>46</sup> Therefore, any legislation on women's rights must acknowledge the influence of culture and social norms on women's life.<sup>47</sup>

Within the current inclusive capitalist policy discourse, the right to equal co-ownership of marital property is addressed under the SDGs adopted by the UN member organisations.<sup>48</sup> Goal 5 includes '...empower all women and girls' as its gender equality objective.<sup>49</sup> To emphasise the importance of 'empowerment' in the SDGs, some researchers assert that even though women's empowerment is stated in Goal 5, women's empowerment is a crucial element in accomplishing all the other SDGs.<sup>50</sup> Target 5a focuses on access to ownership and control over land and other forms of property to give women equal rights to economic resources.<sup>51</sup> This target is measured by 'the proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control'.<sup>52</sup> The SDGs targets do not specifically mention joint ownership of marital property. Nonetheless, subsequent international financial institution reports include equal ownership of marriage as a life event and equal rights to property

<sup>43</sup> Viljoen (n 42) 18.

<sup>44</sup> Celestine Nyamu Musembi, 'Pulling Apart? Treatment Of Pluralism In CEDAW And Maputo Protocol' in Anne Hellum and Henriette Sinding Aasen (eds), *Women's Human Rights: CEDAW in International, Regional, and National Law* (Cambridge University Press 2013) 204–205. See also Celestine I Nyamu, 'How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries' (2000) 41 *Harvard International Law Journal* 381, 391–393.

<sup>45</sup> Musembi (n 44) 204–205. See also Nyamu (n 44) 391–393.

<sup>46</sup> Abdullahi Ahmed An-Na'im, 'Introduction' in Abdullahi Ahmed An-Na'im and Jeffrey Hammond (eds), *Cultural Transformation and Human Rights in Africa* (Zed Books Ltd 2002); Celestine Nyamu-Musembi, 'Are Local Norms and Practices Fences or Pathways: The Example of Women's Property Rights' in Abdullahi Ahmed An-Na'im and Jeffrey Hammond (eds), *Cultural Transformation and Human Rights in Africa* (Zed Books 2002).

<sup>47</sup> Musembi (n 44) 203–204.

<sup>48</sup> United Nations (n 4).

<sup>49</sup> *ibid.*

<sup>50</sup> Jummai Othniel Yila and Almamy Sylla, 'Women Empowerment in Addressing Food Security and Nutrition' in Walter Leal Filho and others (eds), *Zero Hunger* (Springer 2020); Ntenkeh, Fonchamnyo and Yuni (n 32).

<sup>51</sup> United Nations (n 4).

<sup>52</sup> *ibid.*



acquired during marriage as one of the three pathways for women to acquire land.<sup>53</sup>

Ghana ratified the Maputo Protocol in 2007 without reservation.<sup>54</sup> However, the country does not have explicit laws protecting the joint ownership of marital property. The following section briefly discusses Ghana's current regime on co-ownership and the structural and historical challenges that make solely focusing on legislation inadequate to address women's matrimonial property rights.

### III. APPROACHING THE ISSUE OF WOMEN'S MARITAL PROPERTY RIGHTS HOLISTICALLY

In the preceding section, this paper highlighted the arguments that equal ownership of property acquired during a marriage is significant for enhancing women's empowerment and economic growth. Joint ownership of marital property is argued to increase women's household decision-making, strengthen their bargaining power, and release economic resources that all combine to enhance women's economic growth. This section briefly discusses Ghana's current regime on marital property.

The responsibility of adapting the legislation pertaining to women's rights to marital property to fit societal changes has fallen on the shoulders of the Ghanaian Supreme Court.<sup>55</sup> In doing this, it has relied predominantly on the entrenchment of the right to equal opportunities and people's social, economic, and cultural rights regardless of gender under Ghana's 1992 Constitution<sup>56</sup> and the automatic enforceability of human rights guaranteed by international treaties in the Ghanaian Courts.<sup>57</sup> The Court has moved steadily from its initial approach, where women had no claim to matrimonial property, to equal ownership of the same.<sup>58</sup> This approach reinforced the traditional hierarchical family structure, with the man as the head and the woman and children as subordinates.<sup>59</sup> The Court currently advances the 'equality is equity principle'. The Court has asserted that where the spouses have no contrary agreement, any property acquired during the subsistence of the marriage is deemed joint property to be shared equally on

<sup>53</sup> Oduro, Boakye-Yiadom, and Baah-Boateng (n 1); Gaddis, Lahoti, and Swaminathan (n 1).

<sup>54</sup> Executive Council of the African Union, 'Report on the Status of OAU/AU Treaties' (EX.CL/728(XXI), African Union 11 July 212) <[www.peaceau.org/uploads/ex-cl-728-xxi-e.pdf](http://www.peaceau.org/uploads/ex-cl-728-xxi-e.pdf)> accessed 7 April 2020.

<sup>55</sup> Mensa-Bonsu and Mensa-Bonsu (n 24); Dowuona-Hammond (n 23); Mensa-Bonsu, 'What Man Has Put Together-Recognising Property Rights of Spouses in De Facto Unions' (n 24).

<sup>56</sup> Constitution of the Republic of Ghana 1992, art 12.

<sup>57</sup> Constitution of the Republic of Ghana 1992, art 33(5).

<sup>58</sup> *Quartey v Martey* [1959] GLR 377 (HC Ghana).

<sup>59</sup> Stefano Boni, 'The Encompassment of the Autonomous Wife: Hierarchy in Akan Marriage (Ghana)' (2002) 97 *Anthropos* 55.

divorce.<sup>60</sup> The basis of this decision was that ordinary incidents of commerce have no application in marital relations between husband and wife who jointly acquire property during the marriage.<sup>61</sup> Despite this, the Court has been mindful of respecting the fundamental right given to each person under the Constitution to own property solely.<sup>62</sup> Nevertheless, the equitable maxim of ‘equality is equity’ does not mean that the Court favoured equal sharing of joint property in all circumstances.<sup>63</sup> The Court determines what is ‘equitable’ and the proportions each spouse is entitled to, purely on a case-by-case basis.<sup>64</sup>

Apart from the provisions within the 1992 constitution, the Lands Act<sup>65</sup> passed in 2020 is heralded as one of the legislative interventions protecting women’s right to matrimonial property.<sup>66</sup> The Act legislates the principle established by the Ghanaian Supreme Court that unless the spouses express a contrary intention, there is a presumption favouring equitable ownership of all properties acquired during marriage. In that respect, the law will deem spouses to be parties in conveying an interest in land. Thus, the presumption will apply unless the spouses expressly disclose on the face of the conveyance that the property being registered belongs solely to one spouse.<sup>67</sup> Although the Registrar of Lands will only register the interest in land in the joint name of both spouses,<sup>68</sup> registration in only one spouse’s name no longer poses an issue. The spouse with the legal title holds the property in trust for themselves and the other spouse.<sup>69</sup> The combined effect of these provisions is that a spouse cannot unilaterally transfer the interest of landed property through sale, exchange, lease, or mortgage, without the other spouse’s express agreement.

From the above discussion, it can be inferred that Ghana follows the ‘partial community’ of property regime. Although the Ghanaian Constitution does not define what constitutes a ‘jointly acquired property’, the Ghanaian Supreme Court has formulated a working definition. According to the Court, where the spouses have no contrary agreement, any property acquired during the subsistence of the marriage is deemed joint property to be shared equally on divorce.<sup>70</sup> Thus property acquired before marriage does not count as marital property. By presuming that any landed property acquired during marriage belongs to both spouses, this law protects an individual’s right to own property while ensuring the protection

<sup>60</sup> *Mensah v Mensah* (n 13).

<sup>61</sup> See also *Patience Arthur v Moses Arthur (No 1)* (n 13) 559.

<sup>62</sup> Constitution of the Republic of Ghana 1992, art 18.

<sup>63</sup> *Boafo v Boafo* (n 13).

<sup>64</sup> *ibid* (Dr Date-Bah JSC).

<sup>65</sup> Ghana Land Act 2020 (Act 1036).

<sup>66</sup> JoyNews (n 14); ClearwayLaw Law School Series (n 14).

<sup>67</sup> ClearwayLaw Law School Series (n 14); Ghana Land Act 2020, s 47.

<sup>68</sup> Ghana Land Act 2020, s 97(4).

<sup>69</sup> Ghana Land Act 2020, s 38(4).

<sup>70</sup> See also *Patience Arthur v Moses Arthur (No 1)* (n 13) 559.

and valuation of the labour that spouses put into the development and sustenance of the family.

In sum, Ghanaian women are protected in different planes by international and regional treaties and national laws that protect the property rights of all citizens and the particular laws that specifically protect women's property rights. While further legislation is needed, particularly a revised Matrimonial Causes Act to deal with the specificities of the distribution of property upon divorce, that discussion is beyond the scope of this article. The final sections of this paper focus on the impact that social reproductive labour, the snail-paced Ghanaian court system, and sociocultural norms, such as polygamy, have on women's marital property rights.

### A. SOCIAL REPRODUCTIVE LABOUR AS NON-MONETARY CONTRIBUTIONS

Under colonialism, the law significantly contributed to the construction of gender relations with differentiation between male and female labour and a devaluation of women's labour.<sup>71</sup> The 'patriarchal coalition'<sup>72</sup> formed between the colonial government and the traditional chiefs and elders aimed at socially controlling women<sup>73</sup> further ingrained the existing inequality between African men and women.<sup>74</sup> Women were excluded from men's economic activities as men were engaged in meeting their colonial tax obligations. The men's work in mines, commercial farms, and construction was characterised as in the 'public sphere' and was connoted with economic value.<sup>75</sup> In contrast, women controlling agricultural produce and performing reproductive and social care were connoted in the 'private' sphere and had no monetary value.<sup>76</sup> These colonial gender constructions

<sup>71</sup> Stewart, *Gender, Law and Justice in a Global Market* (n 19) 105.

<sup>72</sup> Jane L Parpart and Kathleen A Staudt, 'Women and the State in Africa' in Jane L and Staudt Parpart (eds), *Women and the State in Africa* (Lynne Rienner Publishers 1989).

<sup>73</sup> Martin Chanock, 'Making Customary Law: Men, Women, and Courts in Colonial Northern Rhodesia' in Margaret Jean Hay and Marcia Wright (eds), *African Women and the Law: Historical Perspectives* (Boston University Papers on Africa 1982) 67; Manji (n 15) 445.

<sup>74</sup> Margot L Lovett, 'Gender Relations Class Formation and the Colonial State in Africa' in Jane L and Staudt Parpart (eds), *Women and the State in Africa* (Lynne Rienner Publishers 1989) 25; Parpart and Staudt (n 72); Chanock (n 73).

<sup>75</sup> Lovett (n 74); Marjorie J Mbilinyi, "'This Is an Unforgettable Business": Colonial State Intervention in Urban Tanzania' in Jane L and Staudt Parpart (ed), *Women and the State in Africa* (Lynne Rienner Publishers 1989); Catherine Marshall and Gary L Anderson, 'Rethinking the Public and Private Spheres: Feminist and Cultural Studies Perspectives on the Politics of Education' (1994) 9 *Journal of Education Policy* 169.

<sup>76</sup> Stewart, *Gender, Law and Justice in a Global Market* (n 19) 101.

continue to resonate in post-colonial Africa.<sup>77</sup> Presently, African women's property rights and consequent economic status continues to be affected by 'discriminatory laws, cultural and/or religious norms, and traditions that perpetuate their exclusion from access, and control over resources'.<sup>78</sup> Gayoye captures this position clearly when she asserts that African women's exclusion from access to property has a colonial legacy that has had a lasting and stubborn impact.<sup>79</sup>

Ghana's property rights of women in marriage do not follow the British colonial doctrine of 'couverture'. Under the doctrine of coverture, the legal status of women was subsumed into their husbands' upon marriage.<sup>80</sup> The Ghanaian Courts have maintained the customary law position that there is no 'legal fiction' in a marriage that a husband and wife are one in law.<sup>81</sup> Both parties retain their separate identities and individuality.<sup>82</sup> This customary separation of spouses as separate entities is arguably one of the starting points of the issues women face in asserting their rights to matrimonial property. Where there is no legal fiction of oneness, the Courts have had to determine whether property acquired during a marriage is jointly owned.

Gender gaps in economic opportunities and earnings may impact women's ability to acquire market-based property.<sup>83</sup> Ghanaian women's increased participation in the formal and informal sectors<sup>84</sup> of the economy does not mean they no longer perform socially productive roles of domestic chores, childbearing, and child-raising, which are traditionally ascribed to women within the family. Studies show that while women increasingly join the labour force in formal or informal employment, women still bear the traditional responsibility of social reproductive work.<sup>85</sup> Studies also show that married women are more likely to have a higher

<sup>77</sup> Sally Engle Merry, 'From Law and Colonialism to Law and Globalization' (2003) 28 *Law & Social Inquiry* 569, 582.

<sup>78</sup> Meskerem Geset Techane, 'Economic Equality and Female Marginalisation in the SDGs Era: Reflections on Economic Rights of Women in Africa' (2017) 1 *Peace Human Rights Governance* 333.

<sup>79</sup> Martha Gayoye, 'Why Women Judges Really Matter: The Impact of Women Judges on Property Law Outcomes in Kenya' (2021) 31 *Social & Legal Studies* 72.

<sup>80</sup> Gaddis, Lahoti and Swaminathan (n 1); Deere and Doss (n 6).

<sup>81</sup> *Acheampong v Acheampong* (n 12).

<sup>82</sup> Amoo (n 9).

<sup>83</sup> World Bank Group, *World Development Report 2012: Gender Equality and Development* (World Bank 2011) <<https://openknowledge.worldbank.org/handle/10986/4391>> accessed 15 December 2022; Gaddis, Lahoti and Swaminathan (n 1).

<sup>84</sup> Loretta Agyemang, 'Women's Work: Labor Market Outcomes and Female Entrepreneurship in Ghana' (2017) 3 *Butler Journal of Undergraduate Research* 2, 8.

<sup>85</sup> Janet Momsen, *Gender and Development* (2nd edn, Routledge 2009) 3; Clara Osei-Boateng and Edward Ampratwum, 'The Informal Sector in Ghana' (Friedrich-Ebert-Stiftung 2011) <<https://library.fes.de/pdf-files/bueros/ghana/10496.pdf>> accessed 21 March 2023; Gaëlle Ferrant, Luca Maria Pesando and Keiko

purchasing power if both spouses work.<sup>86</sup> Nevertheless, research finds that the urban married woman's purchasing ability is negatively affected by her work.<sup>87</sup> Studies have offered various explanations for this discrepancy in the impact of women's employment on their purchasing power. According to some studies, women's unpaid work may prevent them from entering the workforce and lowers their earning potential, particularly in their reproductive stages.<sup>88</sup> Other research finds that women's unpaid labour constrains the choice of paid work available to them both in the formal and informal sectors of the economy.<sup>89</sup> Although studies find that social reproductive labour plays a vital role in the State economy and household sustenance,<sup>90</sup> this labour continues to be unpaid and economically devalued.<sup>91</sup> As a result, although the Ghanaian family has largely moved away from the traditional idea of the man being the family's only earner, women's labour is increased, undervalued, and generates less revenue. The result is that married women may suffer the most negative impact if legislation and case law do not adequately address non-monetary contributions.<sup>92</sup>

The Ghanaian Supreme Court, in recent years, recognises that a spouse undertaking the household's various tasks to relieve the partner and enable them to acquire property is a contribution to the marriage.<sup>93</sup> Nonetheless, such

Nowacka, 'Unpaid Care Work: The Missing Link in the Analysis of Gender Gaps in Labour Outcomes' (OECD December 2014) <[https://www.oecd.org/dev/development-gender/Unpaid\\_care\\_work.pdf](https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf)> accessed 15 December 2022; United Nations, 'UN Women Annual Report 2015–2016' (UN Women 2016) <<https://annualreport.unwomen.org/en/2016>> accessed 12 September 2022; Mariama Awumbila, Joseph Kofi Teye, and Joseph Awetori Yaro, 'Of Silent Maids, Skilled Gardeners and Careful Madams: Gendered Dynamics and Strategies of Migrant Domestic Workers in Accra, Ghana' (2017) 82 *GeoJournal* 957; Mariama Awumbila and others, 'Please, Thank You and Sorry—Brokering Migration and Constructing Identities for Domestic Work in Ghana' (2019) 45 *Journal of Ethnic and Migration Studies* 2655; Manji and Stewart, 'I Built This House on My Back' (n 16) 104.

<sup>86</sup> Gaddis, Lahoti, and Swaminathan (n 1) 7.

<sup>87</sup> Gaddis, Lahoti, and Swaminathan (n 1) 7.

<sup>88</sup> Naila Kabeer, 'Gender Equality, Inclusive Growth, and Labour Markets' in Kate Garantham, Gillian Dowie and Arjan de Haan (eds), *Women's Economic Empowerment: Insights from Africa and South Asia* (Routledge 2021) 21.

<sup>89</sup> Shahra Razavi, 'The Political and Social Economy of Care in a Development Context: Contextual Issues, Research Questions and Policy Options' (Gender and Development Programme Paper No 3, UNRISD 2007) <<https://cdn.unrisd.org/assets/library/papers/pdf-files/razavi-paper.pdf>> accessed 21 March 2023; Ferrant, Pesando and Nowacka (n 85); Merike Blofield and Merita Jokela, 'Paid Domestic Work and the Struggles of Care Workers in Latin America' (2018) 66 *Current Sociology* 531.

<sup>90</sup> Diane Elson, 'Labor Markets as Gendered Institutions: Equality, Efficiency and Empowerment Issues' (1999) 27 *World Development* 611.

<sup>91</sup> Catherine Hoskyns and Shirin M Rai, 'Recasting the Global Political Economy: Counting Women's Unpaid Work' (2007) 12 *New Political Economy* 297, 306; Stewart, *Gender, Law and Justice in a Global Market* (n 19) 16.

<sup>92</sup> Gaddis, Lahoti, and Swaminathan (n 1).

<sup>93</sup> *Boafo v Boafo* (n 13); *Gladys Mensah v Stephen Mensah* (n 13) 12; *Peter Adjei v Margaret Adjei* (n 22) 23. See also *Beauty Katey v William Kwadwo Katey* Suit No H1/176/2015 (CA Ghana, 14 July 2016) 6

contributions are seen as non-pecuniary/non-monetary because no financial value is attached to social reproductive labour. The court accepts the woman's role as a substantive contribution to property acquired during marriage because it gives the spouse the 'free hand to engage in economic activities.'<sup>94</sup> Thus, to the courts, social reproductive labour is not an economic contribution. It is viewed as a contribution because of the help it offers to the partner to pursue what the court sees as actual economic activity. According to the Court's reasoning,

a partner who performs various household chores for the other... such that the other partner has a free hand to engage in economic activities must not be discriminated against in the distribution of properties acquired during the marriage when the marriage is dissolved. This is so because it can safely be argued that the properties' acquisition was facilitated by the massive' assistance that the other spouse derived from the other.<sup>95</sup>

Again, joint ownership does not mean equal ownership of marital property under the Ghanaian regime. According to the Supreme Court, the equitable maxim of 'equality is equity' the courts apply does not mean equal ownership. To the Court, 'the question of what is "equitable", in essence, what is just, reasonable and accords with common sense and fair play, is a pure question of fact, dependent purely on the particular circumstances of each case'.<sup>96</sup> Consequently, to avoid manifest injustice to one party, the issue of proportions would be dealt with in accordance with the equities of each case and not by a blanket application.<sup>97</sup>

In the recent case of *Peter Ajei v Margaret Adjei*, the Supreme Court expressed that it is a 'judicially created presumption' that properties acquired during a marriage are the joint property of the spouses, which does not confer substantive rights.<sup>98</sup> The Court's treatment of the rights to joint ownership of marital property as a non-substantive right means that judges can weigh the social reproductive work and decide if it is beyond what is customarily expected of a spouse within a marriage. With this approach, judges have an unfettered free hand to determine how much value can be attached to social reproductive work. In the same case, the Court decided that a wife could not be held to be a joint owner because 'seriously speaking', she did not give any indication of the husband's work, how he made his earnings and acquired the properties.<sup>99</sup> Accordingly, the court decided that she was not entitled to the marital residence or the assets acquired because

<sup>94</sup> *Gladys Mensah v Stephen Mensah* (n 13) 7.

<sup>95</sup> *ibid* 8.

<sup>96</sup> *ibid* 13; *Mensah v Mensah* [1993] 1 GLR 111 (CA Ghana) 714.

<sup>97</sup> *Gladys Mensah v Stephen Mensah* (n 13) 13; *Mensah v Mensah* (n 93) 714.

<sup>98</sup> *Peter Adjei v Margaret Adjei* (n 22) 12.

<sup>99</sup> *ibid* 13.

she was unaware of her spouse's business dealings.<sup>100</sup> The wife's contribution to the family through her social reproductive labour was discounted as unimportant and did not substantially contribute to purchasing the properties in question.<sup>101</sup> Consequently, the Court holds that even while a wife is not professionally active in the same occupation as her husband, she is nonetheless obliged to be fully informed of his business affairs in addition to engaging in social reproductive work or other economic activities. This added burden that the Court has placed on women's right to marital property undertones an implicit bias and treatment of social reproductive labour as non-economic contributions to the household. With this reasoning, the Court reinforces the deep-seated belief that social reproductive work alone, regardless of its extent, is insufficient.

The Supreme Court's method of treating questions of marital property on a case-by-case basis is not unreasonable since it gives the courts room to take the intricacies of each case into account. However, it is crucial that the courts assign economic value to women's social reproductive labour rather than seeing it as non-pecuniary contributions. Deere and Doss argue that giving non-pecuniary value to women's social reproductive labour reinforces the gender economic gaps<sup>102</sup> As such, it is essential that social reproductive work is assigned an economic value in determining marital property matters. This approach will require legislative backing and a well-researched guidelines framework. It may present some early challenges because States do not currently account for domestic work when calculating their Gross Domestic Product (GDP).<sup>103</sup> Nonetheless, nations and international bodies have, in recent years, recognised the economic value of domestic work.<sup>104</sup> Currently, Ghana's Labour laws provide safeguards for those who conduct domestic work as a kind of employment, recognising them as workers.<sup>105</sup> Consequently, with further research, Ghana can develop guidelines to calculate the economic value of the social reproductive labour of spouses in a just and equitable manner.

<sup>100</sup> *ibid.*

<sup>101</sup> *ibid.*

<sup>102</sup> Deere and Doss (n 6) 9.

<sup>103</sup> Diane Elson, 'The Economic, the Political and the Domestic: Businesses, States and Households in the Organisation of Production' (1998) 3 *New Political Economy* 189, 202; Hoskyns and Rai (n 91) 299–300.

<sup>104</sup> Elson (n 103); Blofield and Jokela (n 89); Awumbila and others (n 85); UNICEF Office of Research Innocenti, 'Gender, Paid Domestic Work and Social Protection. Exploring Opportunities and Challenges to Extending Social Protection Coverage among Paid Domestic Workers in Nigeria' (*UNICEF-IRC*, 20 January 2020) <[www.unicef-irc.org/article/1961-gender-paid-domestic-work-and-social-protection.html](http://www.unicef-irc.org/article/1961-gender-paid-domestic-work-and-social-protection.html)> accessed 20 March 2022.

<sup>105</sup> Labour (Domestic Workers') Regulations (LI 2408) 2020.

## B. THE SNAIL-PACED LITIGATION SYSTEM

For the country's civil litigation system to be improved in terms of women's property rights, it must be shorter and less expensive. Unfortunately, myriad obstacles swarm the Ghanaian litigation system and hinder women's full participation in the justice system. The issue of the length of litigation is not peculiar to only women. In describing the Ghanaian litigation system, Atuguba asserts that:

Ghana's justice system is not just slow. It is also expensive and sometimes even harsh. Initiation of an action through the wrong processes or a lack of funds to sustain even the most legitimate cases could mean that a person is denied their day in court. This could explain why some frustrated people are seeking justice outside the law.<sup>106</sup>

The high financial burden and cost of time attached to seeking justice in the unfair distribution of matrimonial property further widens the economic gap between the sexes and diminishes gains in protecting women's marital property rights.<sup>107</sup> This is particularly so in cases where the women are economically unequal to their spouses and inhabit vulnerable positions within marriages.<sup>108</sup> While it is true that Ghana's 1992 constitution, the Lands Act, the 'equality is equity' principle of the Courts, and the international instruments protect women's matrimonial property rights, progress can only be felt where justice is easy and speedy to access. The length of time and the costs associated with asserting their rights may deter women and hinder them from fully participating in the justice system.

For instance, the women who have brought cases to the Ghanaian courts for review were in a less favourable economic position than their spouses.<sup>109</sup> In the cases of *Arthur*<sup>110</sup> and *Quartson*<sup>111</sup>, the claimant wives were homemakers, while the husbands were a sailor and an international footballer, respectively. In *Arthur*, the wife alleged she had given up participating in economic activity to be a homemaker and her husband's driver because he could not drive.<sup>112</sup> The husband in *Katey v Katey*<sup>113</sup> was a geodetic engineer, while his claimant wife was a beautician.

<sup>106</sup> Raymond Atuguba, 'Ghana's Justice System Needs a Major Overhaul: Here's What Should Be Done' (*The Conversation*, 4 January 2018) <<https://theconversation.com/ghanas-justice-system-needs-a-major-overhaul-here-what-should-be-done-88724>> accessed 8 June 2021.

<sup>107</sup> Deere and others (n 6); Mensa-Bonsu and Mensa-Bonsu (n 24) 46–47.

<sup>108</sup> Deere and others (n 6); Mensa-Bonsu and Mensa-Bonsu (n 24) 46–47.

<sup>109</sup> Mensa-Bonsu and Mensa-Bonsu (n 24) 46.

<sup>110</sup> *Patience Arthur v Moses Arthur (No 1)* (n 13).

<sup>111</sup> *Quartson v Quartson* (n 13) 14.

<sup>112</sup> *Patience Arthur v Moses Arthur (No 1)* (n 13) 2.

<sup>113</sup> *Beauty Katey v William Kwadwo Katey* (n 93) 1.



Regarding the unbalanced economic positions of the parties in *Katey v Katey*, Acquaye JA stated, 'all things being equal, the ability of a geodetic engineer to earn income will be greater than that of a beautician selling second-hand clothes.'<sup>114</sup> While their counterparts in the Supreme Court in England and Wales have taken a maximum of two years to resolve cases on matrimonial causes,<sup>115</sup> the Ghanaian Courts have taken between six and sixteen years to resolve similar cases.<sup>116</sup> While there may be other reasons for the delays in the judicial processes in Ghana, the inherent inefficiencies in Ghana's judicial system contribute to the length of litigation.<sup>117</sup> The wheels of justice grinding slowly in cases where the woman may already be economically and socially vulnerable does not augur well with protecting women's matrimonial property rights. Legal protections favouring women's equality are useless if women cannot easily access the courts or choose not to pursue litigation because they cannot afford the cost, do not trust the court system, or are frustrated by the amount of time it takes for cases in the court system to be determined. There must be an administrative, infrastructure and technical reform of the court system. Practical strategies, such as e-justice systems, and specialised women's courts, may improve the pace of the litigation process and reassure women of gender justice.

### C. SOCIOCULTURAL NORMS THAT AFFECT THE EFFICACY OF LAWS

The task of regulating the property rights of spouses and entitlements in the event of dissolution has proven to be very challenging.<sup>118</sup> This, perhaps, is a testament to the patriarchal norms that remain deeply ingrained within the fabric of Ghanaian society and the cultural norms of individuality.<sup>119</sup> Moore avers that 'the law (in the sense of state-enforceable law) is only one of several factors that affect the decisions people make, the actions they take and the relationships they

<sup>114</sup> *ibid* 4.

<sup>115</sup> *Anthony Victor Obeng v Mrs Theresa Henrietta Obeng* [2015] GHASC 112 (SC Ghana) took the longest to decide, sixteen years in all from trial to the Supreme Court. The petition for divorce in *Mensah v Mensah* (1993) (CA Ghana) (n 96)—which eventually set the precedent on the equality is equity principle—was filed in 1990 and resolved in the Supreme Court eight years later in 1998. The recent case of *Peter Adjei v Margaret Adjei* (n 22), settled in 2021, commenced its journey at the High Court six years earlier in 2015. From the findings, the case with the shortest duration to resolution is *Grace Fynn v Stephen Fynn and Christiana Osei* [2014] GHACA 129 (SC Ghana), which commenced and resolved in four years: 2010–2014.

<sup>116</sup> *White v White* [2001] 1 AC 596 (HL), which set the sharing principle, and *Miller v Miller* [2006] UKHL 24, [2006] 2 AC 618, which clarified the principle years later, were decided in two years and one year, respectively.

<sup>117</sup> Atuguba (n 106).

<sup>118</sup> Dowuona-Hammond (n 23) 102.

<sup>119</sup> Dowuona-Hammond (n 23) 107.

have'.<sup>120</sup> Within the Ghanaian State, women 'belong' to and are regulated by a 'different smaller organised social field'<sup>121</sup>, with their own customs and rules that coerce and induce compliance. Rather than legislation, the norms of these social fields form the principal impetus that drives their behaviour, particularly in rural communities.<sup>122</sup> Consequently, the pluralistic nature of the Ghanaian property rights regime increases the arduous nature of this task because any legislation passed must reflect the peculiar situations of different customs of different communities and the different forms of marriage that the Marriages Act recognises.<sup>123</sup>

One such sociocultural norm is polygamy. Polygamy is a creature of African cultural and societal beliefs. In contrast to the CEDAW committee, the Maputo Protocol recognises the ingrained nature of the religious and customary norms surrounding polygamy. Thus, the Protocol does not follow CEDAW's route of requiring all State parties to take 'all legislative and policy measures needed to abolish polygamous marriages'.<sup>124</sup> Instead, the Protocol engenders State parties under Article 6 (c) to enact legislation signalling that monogamy is the encouraged and preferred form of marriage. In Ghana, both the Mohammedan and the customary law marriages, recognised under the Marriages Act, are potentially polygamous. Fourteen per cent of Ghanaian women continue to be in polygamous marriages.<sup>125</sup> In polygamous marriages, more than one woman may simultaneously be entitled to marital property. The issue then becomes how such property will be divided and which woman is entitled to which proportion. Again, the distribution of property presents a significant challenge for the Courts in the case of a divorce within the polygamous unit. To holistically protect women's matrimonial property rights, policies and legislation must consider the women in polygamous marriages. Such policies and legislation must explicitly outline how they must be applied within the context of polygamous marriages. From the Court's approach to protecting the right to own property, it may be inferred that women may be entitled to property purchased when they join the polygamous unit.<sup>126</sup> Nonetheless, it is essential that legislation and policies clearly state how they will be applied within the context of polygamous marriages. The advantages of legislation will be uniform in this way because it will address the intersectionality of factors that

<sup>120</sup> Moore (n 17) 743.

<sup>121</sup> Moore (n 17) 721.

<sup>122</sup> Moore (n 17) 730.

<sup>123</sup> Dowuona-Hammond (n 23) 104.

<sup>124</sup> CEDAW, art 16; CEDAW Committee, 'General Recommendation on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women' (CEDAW/C/GC/29, 26 February 2013) para 28 <[https://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1\\_en.pdf](https://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1_en.pdf)> accessed 12 December 2022.

<sup>125</sup> Ghana Statistical Service, Ghana Health Service and ICF, 'Ghana 2017 Maternal Health Survey: Key Findings' 4 (2017) <<https://dhsprogram.com/pubs/pdf/SR251/SR251.pdf>> accessed 12 December 2022.

<sup>126</sup> *Mensah v Mensah* (n 93) 1; *Peter Adjei v Margaret Adjei* (n 22) 11.

combine to discriminate against women's property rights and ensure that the law is equitable for women in all circumstances.

#### IV. CONCLUSION

This article has used an African feminist lens to examine the gaps that arise in protecting women's matrimonial property rights when State legislative reform does not reflect African women's peculiar experiences and values. It has done this by first discussing a plethora of national, regional, and international laws and policies that harmonise women's rights and provide a baseline of rights to which women are entitled. The author identifies and examines three key issues that lead to implicit gender biases that seemingly gender-neutral laws on women's matrimonial property rights may reinforce if left unaddressed. These are non-monetary contributions through social reproductive labour, Ghana's slow-paced litigation system, and sociocultural norms like polygamy.

Effective protection of women's rights to matrimonial property requires a holistic approach to law-making and regulation. Achieving this protection will require efforts on multiple fronts—public education to progress norms, deliberate institutional action to stand for commitments made in both domestic and international legal documents and an approach to broad-based legislation that considers multiple actors and contexts focused on Ghanaian women's experiences. Ultimately, political will and broader societal commitment to going beyond tokenism when it comes to equity for women are what will give true meaning to all the legal provisions and doctrines crafted and evolved in recent decades.