

## Legislation, Women and Employment in the Comoros

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### Abstract

*The Comorian population is mainly illiterate in French. Among the problems of gender inequality to the detriment of women is the ignorance of international laws and conventions that the country has ratified. Comorian law as a mixture of Muslim, customary and Napoleonic rights shows a dysfunction. Each of these rights includes factors of disparity between women and men to different degrees. However, all of them drag the Comorian woman into an absolute precarious situation*

**Keywords:** Legislation; employment; women; Comoros

### INTRODUCTION

In the Comoros, the law is made up of three different and contradictory sources, namely customary law, Muslim law and the law inherited from colonization. This mix of legal rules governs the relationships of Comorian citizens.

Modern Comorian law, inspired by the fundamental principles of the Universal Declaration of Human Rights, decrees perfect equality between men and women. The application of this principle of equality encounters difficulties due to the overlapping and competing exercise of Muslim and customary law and the refusal of men to apply it. The elaboration and especially the implementation of the Family Code constitute an eloquent example in this regard.

### **Methodology adopted for this study**

Our study was conducted in the courts of Moroni, Mutsamudu and Fomboni between April 2013 and July 2019. The survey was funded by ourselves and the logistical help of a friend, Dr. Chakir Ismael.

The objective of this survey is to provide some clues to enable all legal actors to act in time to promote full equality of rights between men and women.

Our investigation concerns the problem of gender and the law applicable in the Comoros.

Specifically, our study aims to demonstrate and denounce the ambiguity of the Comorian legal system and the place it reserves for women. We interviewed 19 legal practitioners in our study area, 12 religious leaders and 32 complainants.

Our study also allowed us to obtain information on users of the justice system, their families, court officers, magistrates, administrative and technical staff, and certain judicial authorities who agreed to answer our questions.

### **Data Collection Tool**

During the survey, interviews were conducted with the above-mentioned people using a pre-established questionnaire. It allows for the identification of all the constraints and assets in this area. An individual survey of practicing plaintiffs and lawyers was conducted. We also consulted cases already handled in which the women had filed a civil suit. All the women in our study were identified through their files, and they are between 19 and 40 years old. Nearly 60% of these women live in urban areas and have a level of education equal to or higher than the baccalaureate. This means that rural women are less likely to go to court to assert their rights.

### **The Family Code**

Although the Family Code is modern in its conception, its form, its expression and its codification, its content systematically refer to the "MINHADJ" which is the Code of Muslim law in force in the Comoros. Thus, the marriage concluded after the "consent of both spouses" is left to the moral and material direction of the husband alone, even if the latter does not work.

Article 54 of the Family Code states that the husband is the head of the family with prerogatives that he can exercise even after the breakup of the marriage, especially with regard to the children.

Moreover, the husband always has the right to decide on the separation. The reservation introduced by the Family Code is that the act of separation must now be pronounced before the competent judge, in the presence of the wife or the wali, with transcription of the "twalaka" in the civil status registers, within fifteen days following its pronouncement. On the

other hand, a woman who wishes to break off her relationship with her husband cannot pronounce the "twalaka" herself, but must ask the judge for it. The judge can only pronounce it when it is established that there is a lack of maintenance, a prolonged absence without manifest contact with the wife, insanity or serious illness, faults such as those provided for in articles 73, 74, 76 and 77 of the Family Code, or assault.

Another new element is the fact that the wife has a certain right of recourse and the possibility of requesting arbitration. Indeed, "When the competent judge fails to dissuade the husband from renouncing the "twalaka", he shall draw up the conditions of separation, an act in which he settles the consequences of the separation of the two spouses by fixing, in particular, the maintenance of the children and the wife during the period of legal retirement, as well as the right of access. In case of dispute, the dispute is brought before the judge of appeal of the place of residence or, failing that, the court of first instance. In addition to the power of material and moral direction of the family", and the unilateral power to separate from his wife, the husband also has the power of repudiation in stages, or in the form of irrevocable divorce, pronounced in a single moment by the husband.

### **Muslim law and the status of women**

For the record, it should be recalled that the Comoros are Sunni Muslims, of the Shafiite rite. In matters of law, the *cadi* courts refer to the *Minhadj*. In general, the Muslim religion guarantees equality between the sexes in many areas, including education, skilled jobs, decision-making positions and high political, economic or social responsibilities.

Both men and women are required to conform to personal and socially acceptable standards of behavior and decency, in accordance with Muslim precepts and prophetic traditions.

Nevertheless, in some aspects, the legal status of women is different from that of men. For example, in Muslim law, the testimony of a man and that of a woman do not have the same value, whereas in procedural matters this concept plays a prominent role in establishing the reality of a fact or the existence of a legal act. Muslim contract law recognizes testimony differently. Indeed, the testimony of a man is not equal to that of a woman. For a woman's testimony to be valid and legally recognized, it must be given by two women, while the word of one man is enough for the testimony to be recognized. The word of one man is worth that of two women.

For some Muslim scholars and jurists in the Comoros, this "double testimony" clause required of women excludes them from office.

### **Customary law**

Customary law does not grant equal rights to men and women. It relies on unwritten traditional rules and conventions, passed down from generation to

generation orally, to govern society and, in particular, to settle disputes and conflicts that threaten the customary order.

Customary law varies from region to region and from island to island. In some cases, it opposes and imposes itself on the other laws in use, Muslim law and Napoleonic law.

In general, customary law is applied much more in rural areas than in urban areas where the weight of tradition is less. Given the limited resources of modern institutional justice, customary law is most frequently used to resolve conflicts and to deliver justice in the periphery. The sanction most often applied is individual or collective banishment, depending on the extent of the offence. The judges are then the male notables at the top of the customary society ladder.

Women are excluded from these judicial functions. They are men who decide according to the rules that govern Comorian custom. Thus, the power to decide, to organize and to speak in public is exclusively reserved for men.

When it comes to decisions about community development that require women's financial contributions, women are often involved.

In NGAZIDJA, in matters of inheritance, women are favored as almost exclusive heirs to real estate, in application of a provision of customary law called Manyahuli. In Ndzuwani and Mwali, where Manyahuli does not exist, the inheritance system is somewhat different. In Ndzuwani, women are excluded from agricultural land and have only the houses. In Mwali, women have exclusive rights to houses and access to agricultural land in the same way as men.

The manyahuli is a very old institution, more evident and more applied in Ngazidja than in the other islands of the archipelago. Its introduction in the Comoros probably predates the establishment of Islam. It can be defined as a traditional mode of transmission of property (buildings and land) from mother to daughter. The inheritance benefits not only the first donor, but also all her descendants in the maternal line. The transmission takes place between mothers, daughters, first the eldest, then the others, grandmother, sister, aunt and maternal cousins.

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## **CONCLUSION**

The main issue addressed in this study is gender and legislation in Comoros. It is an innovative and recent topic in the sociology of gender that opens up debates at both national and international levels. The legal framework of Comoros is contradictory to each other. Despite this legal framework which protects women, they are still in the minority in the civil service. It should be noted that 7% of women hold positions of responsibility or political office throughout the country, according to the national report "Gender and Human Development in Comoros 2006". Although the country's constitution provides for full equality between the sexes, there is no guarantee that it will be applied. The weight of custom and misinterpretation of the holy Koran may be the cause.

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