

## WOMEN’S RIGHTS AND CRITICAL JUNCTURES IN CONSTITUTIONAL REFORM IN AFRICA (1951–2019)

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### ABSTRACT

Women’s rights are being enshrined in African constitutions today to an unprecedented extent. African countries have on average more constitutional provisions addressing women’s rights than any other region of the world. This longitudinal cross-national study shows that constitutional reforms in African contexts are increasingly evident in the areas of gender equality, customary law, discrimination, violence against women, gender quotas, and citizenship rights, and they sometimes reflect gender-inclusive language. By analysing a novel data set of constitutional reforms across all African countries over 68 years (1951–2019), this article identifies four critical junctures when the adoption of women’s rights reforms arose, namely (i) after independence, particularly in Muslim-majority countries; (ii) after political opening in the 1990s; (iii) after the end of major civil conflicts; and (iv) after the 2011 Arab uprisings. At each juncture, women’s movements capitalized on political openings to advance constitutional reforms that are unmatched on a global scale. This article goes beyond the existing explanations of cumulative gains, international influence, diffusion, learning, and borrowing to show that a ‘critical junctures’ approach may help explain when, why, and how women’s rights reforms occur in constitutions.

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WOMEN’S RIGHTS ARE BEING INCORPORATED into African constitutions today to an unprecedented extent. All countries but Liberia have rewritten or revised constitutions since 1990. Africa’s post-1990 constitutions have more women’s rights provisions than constitutions in other parts of the

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world.<sup>1</sup> These reforms are particularly evident in clauses pertaining to gender equality, discrimination, customary law, violence against women, quotas, and citizenship rights. In some countries, gender-inclusive language has been introduced so that constitutions no longer have exclusively masculine pronouns. Overall, the areas of the most change are women's political engagement and labour rights, while the areas with the least reform are customary and family law.

In this article, we examine the evolution of constitution-making trends since 1950 and identify four critical junctures that transformed the landscape for women's rights organizing across the African continent. Critical junctures are short periods of time which heighten the probability that agents can intervene to bring about the desired change, and these windows of opportunity can lead to a long-term institutional transformation.<sup>2</sup> While others have examined women's rights in constitutions of particular countries in Africa<sup>3</sup> and at key moments, such as the period following conflicts,<sup>4</sup> this article contributes to the literature by looking at trends in constitutional women's rights reforms across the continent over 68 years (1951–2019). We argue in this article that many constitutions in Africa were written in the context of critical junctures, specifically (i) around the time of independence; (ii) after the introduction of multipartyism in the early 1990s, although still mostly in non-democratic contexts; (iii) after the end of major conflicts which occurred mainly after 2000; and (iv) after the 2011 Arab uprisings, particularly in Tunisia, Morocco, and Egypt, but even in the context of the 2019–2020 Algerian uprisings. Most recently, the 2019 revolution in Sudan has also resulted in a draft constitution with extensive provisions around women's rights. Women's rights were often hotly contested at these moments of transition, and activists tried to influence these processes. These moments of change created important political opportunities that women's rights activists could employ to their advantage.

This article also explains why constitutional reforms matter, even in cases when they remain more aspirational than implemented. The next section

1. UN Women, 'Global gender equality constitutional database', <<https://constitutions.unwomen.org/>> (1 February 2019).

2. Giovanni Capoccia and R. Daniel Kelemen, 'The study of critical junctures: Theory, narrative, and counterfactuals in historical institutionalism', *World Politics* 59, 3 (2007), p. 348.

3. Anware Mnasri, Estee Ward, and de Silva de Alwis, 'Women and the making of the Tunisian Constitution', *Faculty Scholarship at Penn Law* (2017), p. 61, <[https://scholarship.law.upenn.edu/faculty\\_scholarship/1756](https://scholarship.law.upenn.edu/faculty_scholarship/1756)> (23 September 2020); Saras Jagawanth and Christina Murray, 'No nation can be free when one half of it is enslaved: Constitutional equality for women in South Africa', in Beverley Baines and Ruth Rubio-Marin (eds), *The gender of constitutional jurisprudence* (Cambridge University Press, New York, NY, 2004), pp. 230–255; Susan H. Williams (ed.), *Constituting equality: Gender equality and comparative constitutional law* (Cambridge University Press, New York, NY, 2009).

4. Aili Mari Tripp, *Women and power in postconflict Africa* (Cambridge University Press, New York, NY, 2015).

provides a theoretical explanation of how critical junctures allow for major reforms around women's rights, and it evaluates alternative explanations for these reforms. This is followed by a brief discussion of our original data set and methods. This article then offers an analysis of the data set that we compiled showing the evolution of the adoption of women's rights provisions in African constitutions over these critical junctures. It looks at the various areas in which the reforms occurred. This article concludes with a discussion of the implications of these changes for constitutional law more generally in Africa and legal pluralism more specifically.

*Why constitutional reform matters?*

To be sure, many constitutional reforms around women's rights are aspirational. Moreover, in some countries, they bear little relation to women's rights outcomes. In some countries like Egypt, where the 2014 constitution has extensive provisions referencing women's rights, President Abdel Fattah el-Sisi's government has done little to implement them and has severely repressed women's rights activists. What then do constitutional provisions represent if they are not always measures of or catalysts for women's rights?

Constitutional reform is important to look at as one measure of societal change and a normative statement about how a society sees itself and to what it aspires.<sup>5</sup> It cannot be taken as a sole indicator but as an important gauge of the general direction in reform and a window into when and how changes in rights and norms come to fruition.<sup>6</sup> Even when there is a lack of association between gender equality and constitutional reforms, African constitutions can reflect societal norms, and the battles over wording and substance reflect what might be regarded as contested and changing norms.<sup>7</sup>

The ability of people, especially those who are marginalized, to access the legal system and realize their rights through legal means often remains elusive. Constitutional reform creates a potential tool to access legal instruments to affect change, and it gives activists a standard to which they can hold their leaders accountable. While in countries like Egypt, where the constitution itself does not represent a genuine commitment on the part of the government to ensure that gender equality is advanced, in other countries, constitutional change does facilitate legislative and policy change. In Uganda, constitutional reforms in 1995 led to a series of legislative reforms affecting women around land rights, employment, refugees, disability, violence against women, and many other concerns. In 2021, Uganda passed a

5. *Ibid.*

6. *Ibid.*

7. *Ibid.*

Succession Amendment Act, allowing the spouse (regardless of gender) to inherit 50 percent of the estates of a deceased intestate, up from 15 percent, while the lineal descendants share decreased by 34 percent.<sup>8</sup> Thus, constitutions are a crucial element in the process of achieving women's rights, leading not only to legal reform but also to changes in norms.

*Conceptual framework: timing matters*

Although there are different paths to women's rights reforms, our theoretical contribution in this article is to identify key inflection points called 'critical junctures' that provide important opportunities for advancing and accelerating institutional change. Critical junctures are distinct and major episodes of institutional innovation that result in enduring change as a result of agency.<sup>9</sup> While some scholars have linked women's rights reforms, including constitutional reform, to key moments, such as the period following civil war particularly after the 1990s,<sup>10</sup> we identify three additional critical junctures during which reforms occur. Our contribution is to identify a series of important instances of change, which opened up opportunities for new political actors—women's rights activists—to assert their demands and make unprecedented and long-term gains.

We follow other social scientists who compare critical junctures along different dimensions, such as historical processes, country characteristics, political and social environments, democratization, actors, and challenges.<sup>11</sup> The most analytical leverage in studying critical junctures comes from identifying similar units, such as groups, parties, or countries, and underlying conditions. Variation may occur across similar countries, for instance, when different decisions and interactions among actors lead to different outcomes, such as constitutional reforms.<sup>12</sup> This allows for researchers to identify important processes related to these outcomes while eliminating less relevant details. We use this approach to analyse the rise of women's constitutional reforms across African countries over the past 70 years. In our analysis, we identify characteristics and conditions that

8. Misairi Thembo Kahungu, 'How families will share wealth when spouse dies', *Daily Monitor*, 2 April 2021, <<https://www.monitor.co.ug/uganda/news/national/how-families-will-share-wealth-when-spouse-dies-3345582>> (7 April 2021).

9. David Collier, Gerardo L. Munck, Sidney Tarrow, Kenneth M. Roberts, Robert Kaufman, Taylor Boas, et al., 'Symposium on critical junctures and historical legacies', *Social Science Research Network* (Rochester, NY, 2017), p. 2, <<https://papers.ssrn.com/abstract=3036008>> (29 June 2020).

10. Tripp, *Women and power in postconflict Africa*.

11. See Capoccia and Kelemen, 'The study of critical junctures'; Giovanni Sartori, 'Comparing and miscomparing', *Journal of Theoretical Politics*, 3, 3 (1991), pp. 243–257; Amal Jamal and Anna Kensicki, 'A theory of critical junctures for democratization: A comparative examination of constitution-making in Egypt and Tunisia', *Law and Ethics of Human Rights* 10, 3 (2016), pp. 185–222.

12. Capoccia and Kelemen, 'The study of critical junctures', p. 359.

countries hold in common and diverge on, including religion, regime type, history of conflict, and colonial legacies like legal pluralism. This allows us to examine the critical junctures that opened up possibilities for the adoption of women's rights reforms. By comparing similar junctures, such as those following independence, major conflict, and the transition to multi-partyism, we can focus on important actors like women's rights activists, their strategies, and outcomes during and after these junctures.<sup>13</sup> Taking a comparative approach also has the potential to explain why there might be similar types of junctures but different outcomes, such as succeeding or failing to pass constitutional reforms following a major conflict.

### *Existing explanations*

One might argue that the introduction of women's rights language is a function of the newness of the constitutions since recently revised constitutions might reflect more current sensibilities, especially given the cumulative gains of women's rights movements along with the increased mainstreaming of norms internationally. While newness is one factor in these developments, it is not a sufficient explanation, because since 1990, all but one African country has passed a new or amended constitution, yet not all have adopted women's rights reforms. Moreover, not all new constitutions globally have incorporated such provisions.

It is also possible to argue that this is simply a function of diffusion given that some of the wording is quite similar in the various constitutions.<sup>14</sup> To be sure, constitutions are not written in a vacuum and there is considerable borrowing. Benedikt Goderis and Mila Versteeg have shown, for example, that there is a correlation between the adoption of various constitutional rights provisions and countries that share the same former colonizer, legal traditions, religion, and primary aid donor.<sup>15</sup> Developing countries may be more likely to experience this type of diffusion, although the mechanisms of diffusion differ. Countries with the same legal system or religion tend to learn from each other. Countries with shared development partners and colonial legacies may be responding to similar aid conditionalities and holdover challenges, respectively. Thus, strategically navigating external pressures and learning are two important mechanisms of diffusion. Others include competition and acculturation. The similarities are most clear

13. *Ibid.*

14. Sue Farran, James Gallen, Jen Hendry, and Chris Rautenbach, *Diffusion: The movement of laws and norms* (Ashgate, Surrey, 2015).

15. Benedikt Goderis and Mila Versteeg, 'The diffusion of constitutional rights', *International Review of Law and Economics* 3, 1 (2014), pp. 1–19.

in the first constitution adopted. This reflects the common colonial influences on the initial constitutions in Africa, for example, which had the fewest provisions—if any—relating to women's rights.

This article goes beyond the above explanations of cumulative gains, historical and contemporary international influence, diffusion, learning, and borrowing, to show that a critical junctures approach may help explain when, why, and how women's rights reforms occur in constitutions. This article builds on existing insights but goes farther by identifying particular circumstances and moments under which women's rights reforms have been adopted in constitutions on the continent: around the achievement of independence, political liberalization, the end of major conflict, and contemporary revolutions.

### *Reforms at independence*

We anticipated that one of the critical moments for constitutional reform of women's rights occurred at the time of independence, given that women had fought alongside men in most struggles for independence throughout the continent and had a stake in the future of their countries. However, these reforms would be tempered by colonial legacies and the limited participation of women in the constitution-writing exercises. One major influence on early constitutions was the colonial legacy of legal pluralism, which became one of the enduring features of African legal systems influencing how women's rights are adjudicated to this day. Legal systems under colonialism constituted a mixture of customary, religious, and statutory law. This remained after independence, with the exception of the Maghreb countries and a few others, which adopted unified legal systems.<sup>16</sup> Unified legal systems and laws allowed for national reforms of laws affecting women, such as the Personal Status Code, thus undermining the colonial creation of different separate systems for Amazigh (Berbers), Arabs, and French. Other African countries sought a new allegiance to customary law as an assertion of self-determination.<sup>17</sup>

Thus, independence often reinforced colonial legal systems and practices. These systems built on colonial common law traditions (e.g. in former British colonies) and civil law traditions (e.g. in former French, Portuguese, Belgian, German, Italian, and Spanish colonies). Both legal traditions have coexisted at different levels of comfort with customary law. It was only in

16. Mounira M. Charrad, *State and women's rights: The making of postcolonial Tunisia, Algeria and Morocco* (University of California Press, Berkeley, CA, 2001).

17. Johanna Bond, 'Gender and post-colonial constitutions in Sub-Saharan Africa', in Helen Irving (ed.), *Constitutions and Gender* (Edward Elgar Publishing, Cheltenham, United Kingdom, 2017), pp. 81–106; Martin Chanock, 'Neither customary nor legal: African customary law in an era of family law reform', *International Journal of Law and the Family* 3, 1 (1989), pp. 84–85.

the 1990s that customary law exclusions were overridden by statutory law or by the constitution in cases where there was a conflict between the two legal systems. This had implications for women's rights, which were generally better protected by statutory law or the constitution. Customary law was originally designed to appease male traditional leaders on one hand, so they would aid in colonial political and economic development,<sup>18</sup> and to serve White colonial interests on the other.<sup>19</sup> This system significantly limited women's experiences under the law and any efforts to reform it. For example, only men could own and inherit land, partly because women were expected to marry, so families did not want to lose property to their in-laws and partly because this patriarchal practice 'resonated with British conceptions of family'.<sup>20</sup>

Muslim-majority countries were early adopters of women's rights legislation, leading us to the expectation that these countries would have been among the first to adopt women's rights provisions in their constitutions. Three out of the four countries in which women participated in the constitution-writing exercise at the time of independence were Muslim-majority countries. In other countries, women's rights were imposed in a top-down fashion without much participation from women. For example, Habib Bourguiba, Tunisia's first president (1956–1987), positioned himself as a modernizer and saw women's rights as a way of signalling his new orientation. He introduced a new family code based on gender equality, abolished polygamy, introduced legal divorce, set a legal age for marriage, and gave women equality in the workplace and in gaining an education. By 1961, women had legal access to contraceptives and the right to abortion by 1973.

The five countries with the first women ministers included Muslim-majority countries of Burkina Faso (1958), Egypt (1962), and Sierra Leone (1962). The first ambassadorial appointments in Africa were in Muslim-majority countries. Tanzania's Fatuma Tatu Nuru was the first woman ambassador in Africa with her 1961 appointment to Ethiopia. King Hassan II appointed Lalla Aïcha as ambassador to London from 1965 to 1969, followed by appointments to Italy and Greece (1969–1975). Guinea's Jeanne Martin-Cissé was the first woman from Africa appointed to the United Nations in 1972–1976.

18. Fareda Banda, 'Global standards: Local values', *International Journal of Law, Policy and the Family* 17, 1 (2003), pp. 1–27.

19. Chanock, 'Neither customary nor legal', p. 72; Bond, 'Gender and post-colonial constitutions in Sub-Saharan Africa', pp. 83–84.

20. Bond, 'Gender and post-colonial constitutions in Sub-Saharan Africa', p. 84; Aili Mari Tripp, 'Conflicting agendas: Women's rights and customary law in Africa today', in Susan Williams (ed.), *Constituting equality* (Cambridge University Press, New York, NY, 2009), pp. 173–194.



These early patterns suggest that there would be modest reforms regarding gender equality in the independence constitutions and that Muslim-majority countries would see similar if not more reforms when compared with non-Muslim-majority countries.

### *Reforms in multiparty constitutions*

The second continent-wide critical juncture was the shift towards multi-partyism, which started roughly in the 1990s. At this time, we saw more engagement by women's rights organizations in the constitution-writing processes in countries like Uganda,<sup>21</sup> Kenya,<sup>22</sup> Mali,<sup>23</sup> and Somalia.<sup>24</sup> This reflects the opening of political space at this time, even if limited, that allowed for the expansion of women's movements.

Most cross-national studies that have looked at the impact of democratization on women's legislative representation found that it did not correlate with women's representation, neither globally<sup>25</sup> nor in Africa.<sup>26</sup> Some, however, found that democratization impacted the growth of women's representation over time.<sup>27</sup> Nevertheless, women's descriptive representation is just one measure of women's rights and status in a society, and it does not necessarily reflect other reforms that might have occurred for women's rights. Some country case studies linked democratization and women's rights in Ghana<sup>28</sup> and South Africa.<sup>29</sup> We extend this effort to examine the relationship between women's rights and democratization by looking at

21. Miria Matembe, *Gender, politics, and constitution making in Uganda* (Fountain Publishers, Kampala, 2002).

22. Wanjiku Kabira, *Time for harvest: Women and constitution making in Kenya* (University of Nairobi Press, Nairobi, 2012).

23. Susanna Wing, 'Challenges to inclusion: Constitutionalism and the rights of women', in Susanna Wing (ed.), *Constructing democracy in transitioning societies of Africa: Constitutionalism and deliberation in Mali* (Palgrave Macmillan, New York, NY, 2008), pp. 101–124.

24. Aili Mari Tripp, 'Women's movements and constitution making after civil unrest and conflict in Africa: The cases of Kenya and Somalia', *Politics and Gender* 12, 1 (2016), pp. 78–106.

25. Pamela Paxton, 'Women in national legislatures: A cross-national analysis', *Social Science Research* 26, 4 (1997), pp. 442–64.

26. Melanie Hughes and Aili Mari Tripp, 'Civil war and trajectories of change in women's political representation in Africa, 1985–2010', *Social Forces* 93, 4 (2015), pp. 1513–1540; Aili Mari Tripp and Alice Kang, 'The global impact of quotas: On the fast track to increased female legislative representation', *Comparative Political Studies* 41, 3 (2008), pp. 338–361.

27. Kathleen Fallon, Liam Swiss, and Jocelyn Viterna, 'Resolving the democracy paradox: Democratization and women's legislative representation in developing nations, 1975 to 2009', *American Sociological Review* 77, 3 (2012), pp. 380–408; Pamela Paxton, Melanie M. Hughes, and Matthew Painter, 'The difference time makes: Latent growth curve models of women's political representation', *European Journal of Political Research* 49, 1 (2010), pp. 25–52; Mi Yung Yoon, 'Explaining women's legislative representation in Sub-Saharan Africa', *Legislative Studies Quarterly* 29, 3 (2004), pp. 447–468.

28. Kathleen M. Fallon, *Democracy and the rise of women's movements in sub-Saharan Africa* (Johns Hopkins University Press, Baltimore, MD, 2008).

29. Georgina Waylen, 'Women and democratisation: Conceptualising gender relations in transition politics', *World Politics* 46, 3 (1994), pp. 327–54.



constitutional reforms in the period after the 1990s. Our expectation based on the prior literature is that with democratization there was an increasing impact on reforms over time. The opening up of political space, even if it was limited, did in fact make it possible for women's movements in countries like Kenya, Uganda, Mali, Morocco and elsewhere to influence the constitution-making process.

### *Postconflict impacts*

The most important critical juncture that impacted the adoption of women's rights was the period following major conflicts after the 1990s but especially after the 2000s. Postconflict countries have experienced the most change in their constitutions out of all countries in Africa. This is perhaps because issues like violence against women, access to property, and women's representation became all the more pressing in the aftermath of conflict. Women often suffered more from sexual and other violence during conflict; they lost access to land as a result of the disruptions of war; and they demanded a greater say in the governing of the country, having been excluded from decisions that led to conflict.<sup>30</sup> Countries that emerged from conflict wrote peace agreements with language pertaining to women's rights.<sup>31</sup> Women's rights language has been included in more peace agreements in Africa than anywhere else in the world.<sup>32</sup> These were often precursors to constitutional reforms. Indeed, we have seen extensive provisions for women's rights in postconflict constitutions, thus paving the way for future legislative reforms to incorporate women's rights. Peace agreements with references to women's rights have often allowed for changes in electoral laws to allow for quota systems to be put in place, hence leading to greater women's political representation. The international community, such as UN Women, often provided financial and/or technical support to constitution-writing exercises with the intent of supporting the incorporation of women's rights. Gender disruptions in society allowed for new players on the scene, namely, women, to assert themselves in new ways into the polity.

These large-scale reforms are not solely a function of the newness of the constitutions, but rather of the fact that many countries in Africa

30. Tripp, *Women and power in postconflict Africa*.

31. Miriam Anderson, 'Considering local versus international norms on women's rights in contemporary peace processes' (Conference Presentation, Gender, Peace and Security: Local Interpretations of International Norms, Davis Institute, Hebrew University, Israel, 2010); Miriam Anderson and Liam Swiss, 'Peace accords and the adoption of electoral quotas for women in the developing world, 1990–2006', *Politics and Gender* 10 (2014), pp. 33–61; Åshild Falch, 'Women's political participation and influence in post-conflict Burundi and Nepal, PRIO Paper' (PRIO, Oslo, 2010); Tripp, *Women and power in postconflict Africa*.

32. Tripp, *Women and power in postconflict Africa*.

emerged from conflict and rewrote their constitutions to reflect new sensibilities around women's rights after the 1990s, as Aili Tripp argues.<sup>33</sup> While Tripp showed that postconflict countries were more likely to adopt women's rights constitutional reforms than countries that had not experienced major conflict, we show that these patterns are evident not only in the period right after conflict in the 1990s and 2000s—as important as these moments were—but also at other critical junctures starting with independence involving crises, uprisings, and revolutions as well.

### *Arab uprisings and revolution*

The Arab uprisings in Tunisia, Morocco, and Egypt in 2011 ushered in new constitutional reforms that were hard fought for by women's movements. A similar pattern can be seen in the extensive women's rights reforms in the draft constitution in Sudan following the 2019 revolution. The gains for women in Tunisia were significant, making Tunisia's 2014 constitution one of the most explicit globally in addressing women's rights. Morocco's 2011 constitution extended political rights to women. Egypt's constitutional process was more fraught. In Egypt, some reforms were introduced in the 2012 constitution passed by the government of President Mohamed Morsi and later through a new constitution under President Abdel Fattah Sisi, who ousted Morsi in a 2013 coup d'état. Morsi's constitution provided equality and equal opportunities for men and women and called for respect for women. Article 11 in the 2014 constitution passed under General Sisi contains more specific provisions for women's equality. But it also puts women on par with children, calling for their protection as though they were dependents. More importantly, the way that women's rights activists have been persecuted by the Sisi regime puts the regime's constitutional commitments into question.

In spite of the setbacks in Egypt, the events in Morocco, Tunisia, and Sudan suggest that uprisings in these countries opened up possibilities for women's rights activists to press their claims. At the same time, they challenge the claims that often uniformly dismiss constitutions in Muslim countries as steeped in religious conservatism that limit women's rights. Some scholars have focused on both Islam and authoritarianism as creating a toxic combination of impediments to the realization of women's rights.<sup>34</sup> Dawood I. Ahmed and Moamen Gouda claim that the more that constitutions in Muslim-majority countries are Islamicized, the less they advance

33. *Ibid.*

34. Ronald Inglehart and Pippa Norris, 'The true clash of civilizations', *Foreign Policy* 135 (2003), pp. 62–70; Steven M. Fish, *Are Muslims distinctive? A look at the evidence* (Oxford University Press, Oxford, 2011).

women's rights.<sup>35</sup> Cesari (2017) suggests that the deficit of women's rights in Muslim countries is tied to religiously based legislation.<sup>36</sup> Mala Htun and S. Laurel Weldon link religious devotion of the population to conservative policies, particularly when it comes to family law and doctrinal issues.<sup>37</sup> They also see institutionalized relations between the state and religious institutions as a constraint on women's rights reforms. Changes in women's rights become a referendum on the role of religion in the polity.

While these observations are generally applicable to the Middle East and Africa, they do not tell us enough about the conditions under which change takes place and why we see so much divergence among Muslim-majority countries. Here, one would need to go further to look at the interactions between women's rights movements, the executive, dominant political parties, international actors, and religious authorities.<sup>38</sup>

### Methods

Expanding on the work of Tripp et al.<sup>39</sup> and Tripp,<sup>40</sup> which looked only cross-sectionally at constitutional reforms in Africa, we created an original longitudinal data set of women's reforms in 129 constitutions that were passed or amended from 1951 to 2019 in 54 African countries. We included not only new versions of constitutions but also all amended versions that were available to capture the precise timing of when and where reforms were introduced. We drew on sources such as *Constitute*, UN Women's Global Database of Constitutions, and other websites with archived texts of old constitutions and then coded them for 12 issue areas related to women's rights.<sup>41</sup>

35. Dawood Ahmed and Moamen Gouda, 'Measuring constitutional Islamization: Insights from the Islamic constitutions index', *Hastings International and Comparative Law Review* 38, 1 (2015), pp. 1–76.

36. Joycelyne Cesari, 'Introduction', in Jocelyne Cesari and José Casanova (eds), *Islam, Gender and Democracy in Comparative Perspective* (Oxford University Press, Oxford, 2017).

37. Mala Htun and S. Laurel Weldon, *The logics of gender justice: State action on women's rights around the world* (Cambridge University Press, Cambridge, 2018).

38. Alice Kang, *Bargaining for women's rights: Women's mobilization and politics in an aspiring Muslim democracy* (University of Minnesota Press, Minneapolis, MN, 2015); James Sater, 'Reserved seats, patriarchy, and patronage in Morocco', in Susan Franceschet, Mona Lena Krook, and Jennifer Piscopo (eds), *The impact of gender quotas* (Oxford University Press, New York, NY, 2012); Aili Mari Tripp, *Seeking Legitimacy: Why Arab autocracies adopt women's rights* (Cambridge University Press, New York, NY, 2019).

39. Aili Mari Tripp, Isabel Casimiro, Joy Kwesiga, and Alice Mungwa, *African women's movements: Transforming political landscapes* (Cambridge University Press, New York, NY, 2009).

40. Tripp, *Women and power in postconflict Africa*.

41. *Constitute Project*, <<https://constituteproject.org/>> (1 February 2019); UN Women, 'Global gender equality constitutional database', <<https://constitutions.unwomen.org/>> (1 February 2019); 'Constitutions du Monde', *Digitèque de matériaux juridiques et politiques*, <<https://mjp.univ-perp.fr/>> (29 October 2017); 'International Constitutional Law Project', <<https://www.servat.unibe.ch/icl/index.html>> (29 October 2017).

We grouped provisions that especially affect women and girls under the four broad themes of economic, political, and legal rights, including customary and family law, social rights and violence against women, and international treaties. These were selected based on how women's rights activists in Africa have generally defined women's rights. We recognize that this categorization may blur the many differences and nuances among those who identify as women. We focus on women's rights, in particular, because it is 'a distinct policy area' with patterns that are not necessarily aligned or linked with other groups of rights.<sup>42</sup> We searched the text of constitutions for relevant keywords in specific areas of provisions that fell into these categories and for gender-inclusive language and coded for the presence or absence of each type of provision.<sup>43</sup> We then looked for patterns of when and which African countries were incorporating what types of provisions relating to women's rights, drawing on the aforementioned literature on the adoption of women's rights more generally in Africa.

### *Analysis of findings*

Our major contribution is to identify the main drivers of constitutional reform around women's rights. We found four critical junctures in which these constitutional reforms took place: the postindependence period after which the reforms were relatively weak in the 1960s; the period after the opening to multipartyism in the 1990s; the overlapping period following the decline of major conflicts in the 1990s; and the period after the Arab uprisings in North Africa in the 2010s. These increases are evident in [Table 1](#) and [Figure 1](#). Interestingly, early adopters of women's rights provisions continued to increase provisions, but they do not as a rule come out among the countries with the most provisions by 2019.

### **Independence (1960s–1970s)**

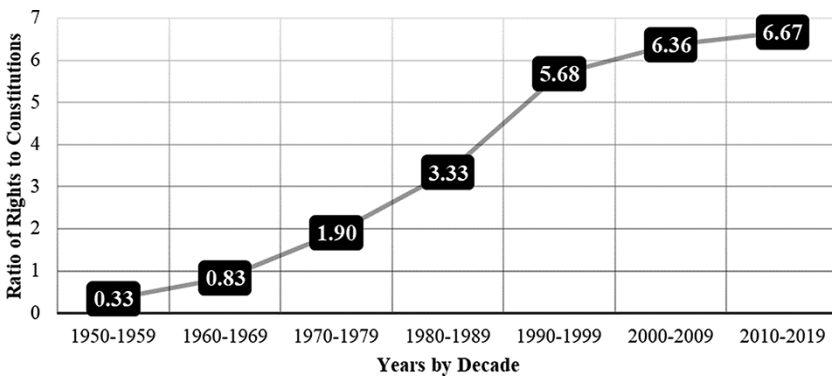
The initial efforts at women's rights reform in constitutions occurred at the time of independence, and they were minimal, with a few exceptions, reflecting the dominant role of European colonial powers in drafting independence constitutions at the end of their rule and hegemonic norms. Eight of the constitutions in this period had gender equality provisions (Algeria, Kenya, Botswana, Central African Republic, Chad, Côte d'Ivoire, Morocco, and Senegal), and two mentioned combatting discrimination against women (Mauritius and Ghana). But many constitutions,

42. Donno and Kreft, 'Authoritarian institutions and women's rights', p. 734.

43. Our codebook and data set are available online: Kaden Paulson-Smith and Aili Tripp, 'Replication data for: Women's rights and critical junctures in constitutional reform in Africa (1951–2019)', *Harvard Dataverse* V1 (2021), <<https://doi.org/10.7910/DVN/DOSEBX>>.

*Table 1* Longitudinal change in the adoption of women's rights provisions in African constitutions, by decade.

Years by decade	Number of countries that revised or wrote constitutions	Number of provisions	Ratio of the number of provisions to the number of constitutions
1950–1959	6	2	0.33
1960–1969	18	15	0.83
1970–1979	10	19	1.90
1980–1989	3	10	3.33
1990–1999	34	193	5.68
2000–2009	22	140	6.36
2010–2019	36	240	6.67



*Figure 1* Ratio of the number of women's rights provisions to the number of revised constitutions, by decade.

while mentioning equality of citizens, did not specify equality between men and women. Even Tunisia did not refer specifically to women in its 1959 constitution, although it had introduced a revolutionary Personal Status Code in 1956, expanded women's rights in the family, abolished polygamy, and gave women the right to work and gain an education.

One reason for the lack of attention to gender equality might have been the lack of women's participation in writing national constitutions. Only a few women were present in the early postcolonial constitution-writing exercises in countries like Ghana, Mali, Nigeria, and Sierra Leone at the

time of independence.<sup>44</sup> In Sierra Leone, women had to petition to be included in the process and eventually got two delegates.<sup>45</sup>

Gender equality was the earliest and most common women's rights reform across all African constitutions, followed by nondiscrimination provisions. One potential explanation for this prevalence is because equality and nondiscrimination provisions tended to have more general and vague commitments, if any. For example, Algeria's 1963 Constitution reads, 'All citizens of both sexes have the same rights and the same duties' (Article 12), and the preamble describes accelerating 'the emancipation of women in order that they may take part in the direction of public affairs and in the development of the country'.<sup>46</sup> Other women's rights reforms in the 1960s constitutions were reflected only in one constitution each during this period, including the areas of property and land (Botswana) and labour and work (Lesotho). One country's constitution specified that all provisions applied to women regardless of wording (Somaliland).

Each constitution in the 1960s had fewer than one women's right reform on average. It is worth noting that during what was the final period of formal colonial rule for many African countries, colonial powers were in charge of writing constitutions, which were largely held over into independence. These original constitutions and modern constitutional states were from the beginning inseparable from global imperial law.<sup>47</sup> In the 1970s, the average of women's rights provisions increased to 1.90 provisions per constitution, although over half of the total provisions passed were still in the areas of equality and nondiscrimination.

### Introduction of multipartyism

The 1990s saw the greatest number of constitutions (34) revised or rewritten, largely due to the shift from single-party rule to multipartyism in the early 1990s and, more importantly, an increase in the decline of conflicts in Africa. Both processes resulted in new political orders that created electoral democracies, even if political liberalization was limited along other fronts, and required new constitutions. We also saw the biggest increase from the 1980s to the 1990s in the ratio of women's rights provisions to the number of new and revised constitutions. In the 1980s, there was an average of 3.33 women's rights provisions for every one new constitution, but by the 1990s,

44. Jane Turriffin, 'Aoua Kéita and the nascent women's movement in the French Soudan', *African Studies Review* 36, 1 (1993), p. 63.

45. LaRay Denzer, 'Women in Freetown politics, 1914-61: A preliminary study', *Africa: Journal of the International African Institute* 57, 4 (1987), p. 450; Tripp et al., *African women's movements*.

46. Paulson-Smith and Tripp, 'Replication data for: women's rights'.

47. James Tully, 'Modern Constitutional Democracy and Imperialism', *Osgoode Hall Law Journal* 46, 3 (2008), p. 468.

*Table 2* Ratio of the number of women's rights provisions to the number of revised constitutions, by regime type.

	T1: 1960–1989	T2: 1990–2019
Autocracies	2.00	7.05
Hybrid regimes	1.40	6.84
Democracies	2.00	5.50

*Table 3* Impact of democratization: average number of women's rights provisions per time period (T1: 1960–1989 and T2: 1990–2019).

	Countries that became more democratic from T1 to T2	Countries that stayed the same between T1 and T2	Countries that became less democratic from T1 to T2
Average number of 'more' women's rights reforms in T2 than T1	4.6	5	5.5
Average number of women's rights reforms in T2	6.2	6.55	8

this proportion nearly doubled to 5.68 women's rights provisions for every new constitution. These provisions resulted from organizing by women's movements and activists, often combined with international pressures from donors who were funding the constitution-writing exercises.

It should be noted that although this was a period of political liberalization, autocratic and hybrid regimes (neither fully democratic nor fully authoritarian) were more likely to incorporate such women's rights reforms in their constitutions than democratic countries in the most recent time period (see [Table 2](#)). Moreover, we see the biggest increase (almost 5-fold) of this ratio among hybrid regimes (classified as 'partially free' by Freedom House) from the period of 1960–1989 (T1) to 1990–2019 (T2). We checked to ensure that the movement of countries between regime types and time periods was not skewing these results. Countries that became more democratic, stayed the same, or became less democratic between T1 and T2 had roughly the same average of women's rights provisions (see [Table 3](#)).

The five countries that became more democratic between T1 and T2 (Cape Verde, Lesotho, Malawi, Mozambique, and Tanzania) implemented new reforms primarily in the area of women being able to pass their citizenship to their children (added by all but Tanzania). Three out of five



of this cohort added reforms related to equality, nondiscrimination, and marriage/motherhood/family and also included mention of an international convention or domestic agency and feminine pronouns.<sup>48</sup> The two countries that became less democratic between T1 and T2 (Egypt and the Gambia) both added gender quotas to their constitutions passed in T2. Additionally, Egypt's 2014 Constitution gained reforms in half of the areas we coded (including the less common and harder fought for areas of labour/property and preventing violence against women), even as it was downgraded from 'partly free' to 'not free' by Freedom House.<sup>49</sup>

Although authoritarian or hybrid countries may adopt constitutional reforms to improve the status of women, they may also be seeking to instrumentalize women's rights by bolstering the economy, modernizing society,<sup>50</sup> improving their international reputation and legitimacy,<sup>51</sup> and/or obscuring nondemocratic aspects of their rule. They may be seeking ways to gain support and votes from women, respond to pressures to comply with international treaties like the Convention on the Elimination of Discrimination of Women, and respond to aid conditionalities. In some autocratic countries, leaders have sought to promote women's rights as a way of extending patronage to women to foster loyalty and build political support.<sup>52</sup> Some countries have advanced women's rights as part of their ideological commitment to egalitarianism, particularly in leftist-leaning nondemocratic countries. Autocratic leaders may also be responding to domestic pressures from civil society, including women's movements and societal coalitions.<sup>53</sup>

### Postconflict dynamics

Of the 10 countries with the most reform in the 1990s, seven were post-conflict countries and three were democratic, and of the four leading

48. We coded whether a constitution consistently uses feminine pronouns in addition to masculine pronouns, or whether there is a provision that states that all parts of the constitution apply to both men and women. While the use of more inclusive referents does not necessarily define new rights for women, we coded for the presence of this language because it reveals the character of a constitution and may be used to lay claims to rights by people historically excluded from the polity. See Darrell Miller, 'Constitutional pronouns', *Duke Journal of Gender Law and Policy* 27, 1 (2020), pp. 230–233.

49. Paulson-Smith and Tripp, 'Replication data for: women's rights'.

50. Mala Htun, 'Reforming women's rights under military dictatorships', in *Sex and the state: Abortion, divorce, and the family under Latin American dictatorships and democracies* (Cambridge University Press, Cambridge, 2003), pp. 58–77.

51. Jasmin Lorch and Bettina Bunk, 'Gender politics, authoritarian regime resilience, and the role of civil society in Algeria and Mozambique' (GIGA Working Paper Series No. 292, German Institute of Global and Area Studies, 2016).

52. Daniela Donno and Anne-Kathrin Kreft, 'Authoritarian institutions and women's rights', *Comparative Political Studies* 52, 5 (2019), pp. 720–753.

53. Alice Kang and Aili Mari Tripp, 'Coalitions matter: Citizenship, women, and quota adoption in Africa', *Perspectives on Politics* 16, 1 (2018), pp. 73–91.

*Table 4* Postconflict countries and non-postconflict countries: ratio of the number of women's rights provisions to the number of revised constitutions.

Countries	Ratio of number of provisions to number of constitutions revised	
	1960–1989	1990–2019
Postconflict	1.40	8.22
Non-postconflict	1.43	5.75
Ratio of all provisions over all constitutions	1.42	6.57

contenders with respect to women's rights reform that had democratized in the 1990s to varying degrees, two of those were postconflict countries. Although it is hard to tease out the impact of regime change from postconflict dynamics because the number of countries is so small, it appears that postconflict dynamics were driving most of the change after the 1990s (see Table 4), thus helping account for the surge in women's rights provisions in autocratic constitutions described above.

The areas where we see the biggest difference between postconflict and non-postconflict countries are in provisions relating to customary law and gender-based violence (see Table 5). There is also greater prevalence of feminine pronouns in postconflict constitutions: 67 percent in post-conflict constitutions compared with 33 percent in non-postconflict constitutions. In other areas, we find that although the gap in provisions is not that great, the differences between countries that have exited major conflict and those that have not are, in fact, quite large. For example, although few countries mention gender quotas in their constitutions, in 2015, in countries that had not experienced major conflict, women had on average 21 percent of the seats in parliament compared with 32 percent in postconflict countries. Of the postconflict countries, 81 percent had adopted quotas, while only 59 percent of non-postconflict countries had quotas.<sup>54</sup>

### Arab uprisings and revolution

The Arab uprisings in North Africa (2011–2012) and the 2019 revolution in Sudan represented a fourth critical juncture that differentiated countries with significant reforms, highlighting the importance of women's rights activism at key moments. Women's rights activists in Tunisia, Morocco, Egypt, and Sudan capitalized on moments of turmoil and the creation of

54. Tripp, *Women and power in postconflict Africa*.

*Table 5* Postconflict countries and non-postconflict countries: ratio of the number women's rights provisions to the number of revised constitutions, by area of provisions (1990–2019).

Area of law	Rights provision	Postconflict countries (%)	Non-postconflict countries (%)	Difference (%)
State & formal markets	Labour rights for women	72	56	17
	Electoral quotas for women	67	47	19
	Equality between men and women	100	92	8
	Antidiscrimination of women	94	75	19
	Women's right to pass citizenship to children	61	44	17
Family law	Customary law overridden by statutory law	56	19	36
	Property rights for women	28	19	8
Others	Gender-based violence	44	22	22
	Feminine pronouns	67	33	33
	Average	65	45	20

constitution-making processes following uprisings to advance their cause. Islamist parties and other leaders in the Maghreb made important concessions to these activists. In Sudan, Islamist elements had diminished in importance. Leaders used women's rights both instrumentally and symbolically to advance their political goals in attempts to sideline religious extremists and to put a modernizing face on their governments in an effort to appeal to European and other trade partners.<sup>55</sup>

However, this was not the first time that Muslim-majority countries were leaders in constitutional reform in Africa, suggesting that these reforms were building on earlier gains. Certain women's rights provisions were more likely to be adopted in Muslim-majority countries in the early time

55. Tripp, *Seeking Legitimacy*.

*Table 6* Patterns of diffusion across Muslim-majority and non-Muslim-majority countries, by area of provisions.

Area of law	Type of provision	T1: 1960–1989		T2: 1990–2019	
		Muslim-majority countries (%)	Non-Muslim-majority countries (%)	Muslim-majority countries (%)	Non-Muslim-majority countries (%)
State & formal markets	Labour rights for women	10	14	68	57
	Electoral quotas for women	0	10	68	46
	Equality between men and women	60	52	100	91
	Antidiscrimination	10	38	79	83
	Woman's right to pass citizenship to children	10	10	32	60
Family law	Customary law overridden by statutory law	0	0	21	37
	Property rights for women	0	10	11	29
Others	Gender-based violence	0	0	42	23
	Feminine pronouns	10	0	37	49
	Average	11	15	51	53

period (1960–1989), such as those pertaining to equality, and these constitutions were more likely to include feminine pronouns. In the later time period (1990–2019), Muslim-majority countries were more likely to include provisions relating to labour rights, electoral quotas, equality, and gender-based violence (see [Table 6](#)). However, when averaging the various provisions, whether a country was predominantly Muslim or not did not make much of a difference, with Muslim-majority countries adopting slightly fewer provisions than non-Muslim-majority countries overall. The later period also saw a rise in conservative Islam in Muslim-majority countries in Africa and the Middle East.

*Table 7* Average ratio of women's rights constitutional provisions to constitutions across all areas.

	T1: 1960–1989	T2: 1990–2019
Muslim-majority countries	1.20	6.47
Non-Muslim-majority countries	1.52	6.63
Total average	1.42	6.57

*Explaining reforms in Muslim-majority countries*

A number of Muslim-majority countries in Africa were among the first to adopt women's rights provisions in their constitutions in the late 1950s and early 1960s, including Egypt (1956), Guinea (1958), Tunisia (1959), Chad (1960), Somalia (1960), Morocco (1962), Algeria (1963), and Senegal (1963). The most common provision that these countries included was related to gender equality. For example, Morocco's 1962 constitution reads, 'Both men and women enjoy equal political rights. Citizens of both sexes are all voters, enjoying their civil and political rights'.<sup>56</sup> Senegal's 1963 constitutional provision on equality reads, 'All humans are equal before the law. Men and women have equal rights'.<sup>57</sup>

If we compare the average ratio of women's rights provisions to constitutions in both major time periods, among Muslim-majority countries and non-Muslim-majority countries, we see that there is little difference between the two groups (see [Table 7](#)). Based on the 12 provisions for which we coded, several of the top performing constitutions in 1990–2019 were from Muslim-majority countries: Somalia (10), Sudan (10 in 2005 Constitution and 10 in 2019 draft Constitution), and Chad (9). There is also the possibility that these Muslim-majority countries' gains may be also associated with a trend we described earlier around postconflict conditions and nondemocratic regimes.

One possible reason for this pattern in the early independence years may have had to do with the influence of Egypt within Africa, particularly President Gamal Abdel Nasser, who served as the prime minister from 1954 to 1962 and president from 1956 until his death in 1970. He was also the secretary general of the nonaligned movement from 1964 to 1970 and chairman of the Organization of African Unity from 1964 to 1965.

Egypt had already become independent from Britain in 1922, although the British influence persisted long after independence. Egypt was a major supporter of the African nationalist movements after 1955, and Nasser

56. Paulson-Smith and Tripp, 'Replication data for: women's rights'.

57. *Ibid.*

himself linked the fate of Egypt to that of the future of the anticolonial movements in Africa. In 1955, Nasser acted as the spokesperson for the African nationalist movements in Bandung, Indonesia, the first large anticolonial conference of Asian and African countries that initiated the nonaligned movement. When Nasser nationalized the Suez Canal in 1956, this had a major impact on African countries and Egypt's standing in Africa.

Cairo became the headquarters of African liberation movements. Cairo Radio was programming in Amharic, Sudanese dialects, and Swahili starting in 1954.<sup>58</sup> Egypt provided thousands of university scholarships to African nationals.<sup>59</sup> They sponsored many conferences, bringing together people from throughout the continent for political, economic, industrial, writers', labour, and rural development and youth conferences. Women's conferences were among these many gatherings.<sup>60</sup>

Not only did Nasser offer a model of a modernizing socialist country to newly emerging African nations, but also he offered a model of women's emancipation. Egypt under Nasser was regarded as the 'golden era' for the advancement of women's rights. The 1956 Constitution and the new electoral law gave women the right to vote and the right to run for public office. Nasser encouraged women to seek employment and instituted equal pay for women and men in government employment, which was the major source of jobs. He expanded girls' education opportunities by adopting universal education and supported family planning. Nasser left the country's regressive Personal Status Laws intact, thus keeping family law unchanged and he suppressed feminist organizations. Nevertheless, he greatly expanded women's economic and political opportunities at the time. This provided a model for all African countries but particularly Muslim-majority countries. His message to Muslim countries was implicitly to put women's issues onto their agendas in ways that would not allow the West to define Muslim states and societies as 'backward'.<sup>61</sup>

By 1961, Egypt's influence was waning as African countries resisted Nasser's insertion of Arab issues into African politics, his strong anti-Western stance, his close cooperation with the Soviet Union, and competition with Ghana's President Kwame Nkrumah.<sup>62</sup> Although Egypt's

58. Tareq Y. Ismael, 'The United Arab Republic in Africa', *Canadian Journal of African Studies* 2, 2 (1968), pp. 175-194.

59. Reem Abou-El-Fadl, 'Beyond Pan-Arabism: Suez and Afro-Asian solidarity in Abdel Nasser's Egypt', *Jadaliyya*, 16 October 2020. <<https://www.jadaliyya.com/Details/41860>> (6 June 2021).

60. Ismael, 'The United Arab Republic in Africa'.

61. Communication with Margot Badran, 6 June 2021.

62. Ismael, 'The United Arab Republic in Africa'.

influence on the continent eventually declined, Nasser's imprint is still evident to this day in Africa. For example, Gamal Abdel-Nasser University in Conakry, Guinea, is named after him.

One factor that has facilitated reforms in African Muslim-majority countries is the fact that most Muslim-majority countries in Africa do not mention *sharia* law as the basis of their family law, as one finds in all Middle East countries except for Lebanon. The changes in the Maghreb were particularly notable. After independence, Morocco, Algeria, and Tunisia rejected the legal pluralism of the French colonial era and opted for unified legal systems and laws, making the constitution the basis of their law rather than the *sharia*.<sup>63</sup> This meant that when it came to family law, they were free to make reforms that improved women's rights to varying degrees for all women, although the Maliki interpretation of jurisprudence (one of the four schools of jurisprudence in Sunni Islam found primarily in West and North Africa) has left its imprint on Maghrebi laws, particularly those pertaining to the family. The only exceptions in Africa are Egypt, Mauritania, Libya, and Sudan up until at least early 2021, where the main source of family law legislation was *sharia* law. In some countries like the Gambia, the Qadi Court only has jurisdiction to apply the *sharia* when the parties are Muslims. These references to *sharia* law in the constitution have implications for family law, in particular, and pose challenges to women's rights more specifically. Sudan, which long had mentioned *sharia* as the basis of its law, rejected this in its draft constitution after the 2019 revolution, and the prime minister announced in 2020 that the country was separating religion from the state because Sudan was a multiracial, multiethnic, multireligious, and multicultural society. The draft constitution has extensive provisions that detail how gender equality is to be attained and promotes gender equality in all areas, including politics, society, the economy, and, most importantly, in the family.<sup>64</sup>

### *Areas of reform*

Constitutional reforms are particularly evident in clauses pertaining to gender equality, discrimination, labour rights, gender quota adoption, violence against women, customary law, and the right of women to pass their citizenship to their children. In some countries, gender-inclusive language has been introduced in constitutions, either by incorporating both masculine and feminine pronouns or by going a step farther and explicitly stating that all parts of the constitution apply to both men and women. Take Ethiopia's 1994 Constitution, which unequivocally states, 'Provisions of

63. Tripp, *Seeking legitimacy*.

64. Paulson-Smith and Tripp, 'Replication data for: women's rights'.



this Constitution set out in the masculine gender shall also apply to the feminine gender' (Article 7) and 'Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men' (Article 35).<sup>65</sup>

The provisions around customary law are especially important in the legal pluralistic framework of most African countries. Some constitutions reference the importance of traditional authorities and customary law but specify that in the event that there is a conflict between the constitution and customary law (sometimes explicitly with respect to women's rights), the constitution overrides customary law. For example, Malawi's 1994 Constitution (and subsequent 1999 and 2010 constitutions) holds that 'in the interpretation of all laws and in the resolution of political disputes the provisions of this Constitution shall be regarded as the supreme arbiter and ultimate source of authority' (Article 10.1).<sup>66</sup> Additionally, it specifies constitutional supremacy and the protocol with regard to women's rights: 'Any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women' (Article 24.2), with other provisions reiterating that this is the case for marriage and cohabitation (Article 22).<sup>67</sup>

In looking at areas of change, the sharpest increase in provisions after 1990 relates to provisions that affect the state and markets (e.g., women's labour rights, electoral gender quotas, gender equality, and antidiscrimination clauses), and the greatest resistance to reform is in the area of customary law and property rights. This fits patterns observed in legislation.<sup>68</sup> We suspect that this is because the provisions affecting the state and formal markets do not impinge as directly on the daily lives of the household economy and on cultural norms and gains for women do not as directly result in losses for men in the household or those in power at the community level. In most areas where we saw change in constitutional provisions, the references either doubled or tripled between the two time periods (see Table 8). The issue of gender-based violence was absent from constitutions prior to 1990 but gained traction after the 1990s, corresponding to both demands particularly in postconflict countries and changing international norms.

These longitudinal and continent-wide trends demonstrate that there has been a wide range of constitutional reforms over the past 70 years on the African continent. This study also presents, for the first time,

65. *Ibid.*

66. *Ibid.*

67. *Ibid.*

68. Tripp et al., *African women's movements*.

*Table 8* Ratio of the number women's rights provisions to the number of revised constitutions, by area of provisions.

Area of law	Rights provision	T1: 1960–1989	T2: 1990–2019	% Increase
State & formal markets	Labour rights for women	0.13	0.61	48
	Electoral quotas for women	0.06	0.54	47
	Equality between men and women	0.55	0.94	40
	Antidiscrimination of women	0.29	0.81	52
	Right of women to pass citizenship to children	0.10	0.50	40
Family law	Customary law overridden by statutory law	0.00	0.31	31
	Property rights for women	0.06	0.22	16
Others	Gender-based violence	0.00	0.30	30
	Feminine pronouns included	0.03	0.44	41
	Average	0.14	0.52	38

substantive areas where reform has met resistance and has not yet been achieved.

### *Conclusions*

African countries have on average more constitutional provisions addressing women's rights than any other region of the world. To better understand when, why, and how these reforms have been adopted to such an unprecedented extent, we use a critical junctures approach. Prior studies have shown that such reforms occurred after civil war in the 1990s and 2000s.<sup>69</sup> We show that there were four critical junctures in which women's rights were incorporated into African constitutions, starting with the period following independence, followed by the movement towards multipartyism in the 1990s and most significantly after major civil conflicts in the 1990s and 2000s. The final critical juncture that resulted in constitutional reforms

69. Tripp, *Women and power in postconflict Africa*.

in the Maghreb countries and Egypt occurred after the Arab uprisings in 2011. The reforms today are especially evident in provisions pertaining to gender equality, discrimination against women, violence against women, electoral quotas for women, and women's rights to pass their citizenship to their children, while change has been more difficult to achieve around customary law and family law.

Existing theories of processes of constitutional reform have focused on cumulative gains, diffusion, learning, and borrowing.<sup>70</sup> They have shown how countries have borrowed from constitutions of other countries based on shared legal systems, religion, former colonizer, and donors. Our study provides an agentic element to the study of constitutional reform, showing how women's rights activists took advantage of critical junctures that resulted in constitution-making processes, allowing them to press for constitutional reforms.

The widespread nature, large scale, and sweeping extent of these reforms highlight the importance of societal disruptions in creating political opportunities for the advancement of women's rights, especially as a result of pressure from social movements. At independence, the movements were at their weakest, and the provisions were therefore more reflective of colonial legacies. By the 1990s, the introduction of multipartyism necessitated the writing of new constitutions, and the political opening that occurred at that time, however small, created enough space for women's organization to press for greater provisions. The end of 17 major civil wars in the years after 1990, especially after 2000, created opportunities for peace negotiations followed by constitution-writing exercises, in which women's movements together with international actors pressed for reforms. Similarly, the 2011 Arab uprisings resulted in negotiations between heads of state, women's movements, and dominant political parties to include more women-friendly provisions in the new constitutions, laying the basis for continued legislative reforms. Going forward, we may see other critical junctures create similar conditions for activists to advance and accelerate institutional change.

70. Farran et al., *Diffusion*; Goderis and Versteeg, 'The diffusion of constitutional rights'.