

# Marriage

## Structure:

### PAGE 1: Introduction

- 1 How can marriage affect your rights?
- 2 Scope and purpose of this guide

### PAGE 2: Types of marriage, celebrating a marriage and recognition of marriage:

1. Types of marriage and requirements
- 2 How do I assure I am protected by the law if I entered a customary or religious marriage:
  - 2.1. See if your marriage can be recognised
  - 2.2. What if the recognition of my marriage is rejected?: Civil remedies provided for in the law
  - 2.3 If you had a customary or religious ceremony and there are no laws in your country which enable the marriage to be considered legally valid
  - 2.4 Using other laws to secure similar rights
  - 2.5 Public law challenges
- 2.3. What if you can get your marriage recognised but it affects your rights because you are a woman?
- 2.4 Non statutory marriage in international law
  - 2.4.1 How to use these international law provisions in practice?

### PAGE 3: Equality within marriage

- 1 What is equality within marriage?
- 2 Reduced capacity of the wife and control from the husband over women's engagement in economic activity and important decisions. What can you do?
  - 2.1 Your husband is refusing to give his authorisation. You are seeking to replace your husband's permission for your particular case.
  - 2.2. Civil Remedies provided for in the law:
  - 2.3 Public law challenges against unequal rights between men and women during marriage:
  - 2.4. Non-discrimination laws as a way to challenge discriminatory attitudes towards married women
3. Domestic violence and violence against women during marriage.
4. Reproductive rights during marriage.
5. International/ regional challenges:
- 6 How to use these international law provisions in practice?

### PAGE 4. Forced and child marriage

- 1 Overview and definition
2. Protections against forced and child marriage in national law
- 3 Ways to challenge forced marriage

- 3.1 If marriage has not happened yet: How to stop it from happening?
  - 3.1.1 Going to the Police to start a criminal investigation against attempted forced or child marriage.
  - 3.1.2 Domestic Violence Protection Orders
  - 3.1.3 If your liberty is being restricted as a way of forcing you to get married: Habeas Corpus
  - 3.1.4. An injunction
  - 3.1.5 Seek other forms of help to prevent the marriage from taking place
- 3.2 What can you do if the forced marriage has already taken place?
  - 3.2.1. If your liberty is being restricted after marriage or you are subject to domestic violence
    - 3.2.2.2 How to revert a forced marriage? Annulment.
    - 3.2.2.3 Separation and Divorce:
  - 3.2.3. Criminal sanctions for those that engaged in child marriage and on a forced marriage.
    - 3.2.4.1 Getting compensation for the facts surrounding a forced marriage by using Tort Law and presenting a Civil Claim.
- 4 What if the law in your country allows forced or child marriage, or if practices or attitudes are affecting the rights of women and girls on a broad scale, regardless of what the law says?
  - 4.1 Constitutional challenges to child and forced marriage
- 5. International/ regional challenges:
  - 5.1 How to use these international law provisions in practice?

## **PAGE 5: DIVORCE**

- 1 introduction to divorce.
- 2 Reasons or grounds for divorce.
  - 2.1 How do I prove my ground for divorce?
- 3 How can I obtain a divorce? The divorce process
  - 3.1 Divorce through and administrative body:
  - 3.2. Going to court.
- 4 Important aspects to think about when getting a divorce:
  - 4.1 Custody of children, visitation rights and maintenance for children that will live with you:
  - 4.2 Division of the Assets:
  - 4.3 Economic compensation
  - 4.4 Can I get maintenance after the divorce?
- 5. Customary marriage and divorce
- 6. How to challenge systemic difficulties or disadvantage for women in divorce: Public law or Constitutional challenges.
  - 6.1 Constitutional challenges.
- 7 Regional or international human rights challenges to violations of your right related to divorce.
- 8 How to use these international law provisions in practice?

## **PAGE 6: Widows' rights**

- 1 Overview. What are widow's rights and how can their rights be affected?
- 2 What problems do widows face?

3. If you were married under customary, religious, and polygamous rules. How are your rights as a widow affected?
4. Inheritance rights, evictions and how they affect widows' rights
  - 4.1 What rights do you have and where to find them
  - 4.2 What about widows from customary marriages?
  - 4.3 How to enforce your inheritance rights
  - 4.4 Regularising land that has always been yours.
  - 4.5 What if there is a dispute around the use of customary rules or in the case that there is a dispute with other relatives over a widow's inheritance rights or around the widow's property rights? Civil claims.
  - 4.6 Criminal Law Challenges:
  - 4.7 Public Law Challenge:
5. Custody of children
  - 5.1. What are your and your children's rights?
  - 5.2 What if your relatives want custody of your children?
    - 5.2.1 Challenges through the civil or family courts
    - 5.2.2 Habeas corpus
    - 5.2.3 Public law challenges
6. Widow inheritance
  - 6.1. Going to the Police to start a criminal investigation against attempted Levirate marriage.
7. Public law challenges as a way to defend the rights of widows with regards to inheritance rights, evictions, traditional practices, and custody of children.
8. Widows' rights in international law
  - 8.1 How to use these international law provisions in practice?

**PAGE 7: International law mechanisms to fight for women's rights in marriage.**

1. Where and when can I enforce international law:
  - 2 How to defend women's rights in marriage using international courts or bodies
    - 2.1 A case against a state by an individual or by an organisation in the name of the individual
      - 2.1.1 Before a Regional Commission and Court
- Taking a case as an individual before other international bodies:

**PAGE 8: Seeking support form Women's Rights organisations: Campaigning and advocacy as alternatives or supporting legal actions**

## 1. Page 1: Introduction

Marriage is a formal recognition of a personal relationship between two people. It has historically only been available for relationships between men and women, but a number of countries now recognise same-sex marriage.

## 1.1. How can marriage affect your rights?

Marriage creates a contract with legal, economic, and social implications for those who enter into it. It can provide certain protections, but may also impose restrictions and disadvantages for women in countries where the rights and responsibilities of marriage apply differently to men and women.

In some countries, women are seen to have lower social and legal status than men and this is reflected in the institution of marriage, giving women less rights than men, forcing women into marriage, making it difficult for married women to get a divorce or to get the property and inheritance rights they deserve. There may also be customary limitations which can affect the human rights of women.

Even in countries where there has been legal reform to improve protections for women's rights, new laws which rectify discrimination in some areas can still retain some discriminatory elements in others.

For [example](#), in Mali, a new family code was adopted in 2012 to replace the former Code of Marriage and Guardianship, which had discriminated against women. The replacement code, however, still includes discriminatory provisions related to wife obedience and polygamy.

Even where adequate legal protections are in domestic law, women may not benefit from these protections if these laws are not enforced in practice by domestic authorities.

For [example](#), the CEDAW Committee noted in relation to Albania that the lack of enforcement of Law No. 33/2012, which provides for joint ownership by both spouses of property acquired during marriage, had continued to deepen discrimination against women in matters of inheritance.

## 1.2. Scope and purpose of this guide

There are a number of issues related to marriage which can lead to women's rights being violated. **But there are various ways to fight for women's rights when facing these issues.**

This guide will provide an introduction and thinking steps on different types of claims you could bring, legal strategies that could help you bring such claims, and highlights organisations and other resources that could help on different issues in relation to marriage, including:

- problems having your marriage recognised
- forced or child marriage
- unequal marriage provisions for women during marriage
- problems when divorcing
- problems benefiting from your rights as a widow after the death of the husband.

This guide is general in scope. It looks at examples of laws and cases in different countries, outlines legal developments and provides general tips on legal strategy. **The guide is not a substitute for legal advice.**

To bring a case, you have to **know the law and legal system in your country and the societal reactions against women who take legal action.** If, after reading the guide, you want to explore the possibility of taking legal action, **seek a lawyer** and the support of an organisation that could help you develop your case and support you on aspects that do not specifically relate to legal advice, like psychosocial support.

There are other aspects like domestic violence, reproductive rights and discrimination which may be part of married life, but are specifically discussed in the **Violence Against Women guide**, the **Reproductive Rights guide**, and the **Discrimination guide**.

## 2. Page 2: Types of marriage, celebrating a marriage and recognition of marriage:

### 2.1. Types of marriage and requirements

Most countries have specific laws which set out what requirements must be satisfied in order for a couple to enter into a legally valid marriage. These can include rules relating to where the marriage ceremony takes place, who conducts the marriage ceremony, and other formalities.

There are usually three types of marriages:

**Statutory marriages:** A marriage that is often monogamous and is carried out according to the national law, by a state official who performs the ceremony and is registered before a state body, with certification that all requirements required by national law are met.

National laws may allow religious ceremonies to be performed together with a statutory marriage, but often require that the marriage be still celebrated and registered before a state official and meet with requirements stated by law.

A valid statutory marriage will have different steps and requirements in each country, but generally requires:

- Full consent and capacity of both parties.
- Giving notice to the registrar of the marriage within a certain time limit and providing information to identify the parties.
- Some countries require you to have witnesses.
- Witnesses and the parties to declare that there are no reasons why they could not get married.
- Expressing to the registrar the desire to get married and provide personal information again. Some countries require you to get a certificate from the Registrar which will allow the parties to get married.

- The ceremony to take place before a registrar and with full consent of the parties and witnesses. A second religious ceremony can take place and in many countries this requires the registration of the marriage in a civil registry.

**Religious marriages:** in many countries, religious ceremonies are allowed as long as the marriage complies with an overarching national law on marriage and is then registered as a statutory marriage. However, there are some countries where religious marriages have different rules, registration, and courts than statutory marriages, which are guided by religious rules and principles.

**EXAMPLE: NIGERIA** The Nigerian constitution in sections 260 and 262 states that there is a **Sharia Court of Appeal for the Federal Capital Territory to resolve matters related to Islamic personal law**. There is then the option to appeal to an overarching Court of Appeal.

Each religion will have particular rules as to the requirements of marriage and other important rules that apply to women.

**Customary marriages:** These marriages will vary in nature in each particular country, but they share that they are carried out according to the customs and usages traditionally observed in a particular community. The requirements vary and it may be that they are not always monogamous marriages.

A valid customary marriage will have different steps and requirements in each country and will often not be regulated. Those countries that do regulate it often include requirements such as:

1. Capacity and consent of both parties, often with exceptions regarding age.
2. Consent of the father of the bride or sometimes other family members to the marriage.
3. Payment to the head of the household of the bride, either in money or goods. For example, in South Africa, this is called Lobolo.
4. The handing over of the bride.

**If you want to take legal action, it is imperative that you seek legal advice** from a lawyer in your country who is an expert in the specific religious or customary rules that apply to you and **seek support** from organisations that are aware and can offer advice about how to **protect yourself** from the way your community may react to women taking legal action for their rights.

Some countries recognise customary and religious marriages and others do not recognise them, which may leave women in customary and religious marriages lacking protection.

## **2.2 How do I assure I am protected by the law if I entered a customary or religious marriage:**

### **2.2.1. See if your marriage can be recognised**

It is important that your customary or religious marriage is recognised so you can have proof of marriage. Proof of marriage is important because it will allow you to demand that your rights during and after marriage are enforced.

In countries where customary and religious marriage is common, there may be a law which provides that such marriages are legally valid.

**Example:** In South Africa, the Recognition of Customary Marriages Act 1998 provides that marriages performed according to traditional customary law can be recognised as legally valid **if certain conditions are satisfied**. People who want their marriage recognised must complete a form to register the marriage with enough information to prove existence of the marriage. This is often within a time limit, in this case 3 months. A certificate is issued.

Beyond the time limit, marriages can also continue to be registered and the registering officer must be satisfied that a marriage exists or existed.

Once recognised, it is likely that women and men in customary marriages should be entitled to equal legal protection as other marriages. The detail of this would need to be discussed with a legal professional in your country.

### 2.2.2. What if the recognition of my marriage is rejected?

#### Civil Remedies provided for in the law:

If an officer refuses to recognise the marriage, some countries allow you to go to court to ask for either the declaration of its existence and registration or cancellation or rectification.

This is a case that you would present to a **Civil Court as it is a civil claim**. **Civil claims solve disputes between private parties**, such as two individuals, a couple, two companies or an individual and a company. The purpose of civil claims is for a judge to give you **relief or a remedy**, that is, a **solution** to your individual problem with the other party. This can be:

-compensation or money in the case that you suffered harm

-it can also be an order from the judge to do or not do something, **like this case**. This will often be described in the text of the law that regulates the recognition of marriages, a family law code or a civil code.

-it can also be an order from the judge allowing you to benefit from certain rights. For example, to divide a property in your favour, administer an estate or decide that you are entitled to certain rights.

**BOX: Step 1:** Think about **why** the decision by the registering officer was wrong. Was there missing or wrong **evidence**? Has there been a **mistake**? Has the registering officer been **unreasonable**? Start gathering evidence that supports that there is a marriage, this includes witness statements, photographs, certification, evidence of a common life together, etc.

**Step 2:** Look at **where** the recognition is regulated - for example, in a civil code, or specific legislation such as a recognition of marriage act.

**Step 3:** Seek legal advice on the viability of your case and to take your case to court.

**Claim:** civil claim in a civil court, like the High Court

**By whom:** the affected party (wife or husband or sometimes even relatives affected by the marriage)

**Against:** the involved party in the marriage

**Asking for:** an order to declare the existence and registration of the marriage, its cancellation or rectification

Proceedings will often involve:

1. Going to a civil court and presenting your arguments
2. Providing evidence- In civil law actions, it is the claimant who has the “**burden of proof**”. This means the person bringing a civil claim needs to prove their case. You have to prove your case to a **standard of proof** known as the **balance of probabilities** (which means that you need to prove that there is **more than a 50% chance what you are saying happened**).
3. The judge making a court order replacing the authority of the registration officer

This route is a good option for a case in which the focus is on solving the recognition of one individual marriage, but note that it does not address the systemic issue in the recognition of some marriages and does not apply for future situations.

For more information on civil proceedings please see our **Going to Court** Guide.

### **2.2.3 If you had a customary or religious ceremony and there are no laws in your country which enable the marriage to be considered legally valid**

If a marriage is not legally recognised, this may impede you from benefiting from any protections that are provided for married women in national law - for example, those relating to the equal status of the husband and wife within a marriage or the rights of each party in the event of a divorce.

Women in customary marriages may therefore continue to suffer discrimination even where a country’s formal laws on marriage provide for equal rights.

### **2.2.4 Using other laws to secure similar rights**

It may still be possible for you to benefit from the legal protections of marriage **as if** the marriage were legally valid by using other laws to secure the same rights.

Some countries have laws which give some rights to couples who have cohabited together for a certain time period, regardless of whether or not they are married. Not all countries allow this and some only give you some rights, but not all. You will need legal advice in your country to access more information.

**EXAMPLE:** In **Jamaica**, the 2003 Family Property (Rights of Spouses) Act, recognizes the rights of **women living in a cohabitation** arrangement with a man for at least five years as those of a “spouse”.

Similarly, **Mozambique’s Family Law 10/2004** recognizes de facto unions if they are monogamous relationships where there is cohabitation for at least a year. These de



facto unions allow parties to make claims to shared property once the union ends. These unions do not have benefit to all rights that married couples do, but give you some protection.

Source: OHCHR and UN Women, Realizing Women's Rights to Land and Other Productive Resources, pp. 34, 36, 39

**Step 1:** Think about which rights you want to claim and whether there is a law in your country that gives rights to cohabitations or other unions. This may be an individual law or a civil or family law code, or case law in common law countries which refers to common law, de facto or cohabitation unions.

**Step 2:** Start gathering evidence that supports that there is a long-lasting union. This includes witness statements, photographs, shares property, common home, evidence of a common life together, etc. This is essential as you have the burden to prove this.

**Step 3:** Seek legal advice on the viability of your case and to take your case to court.

This is a case that you would present to a **Civil Court as it is a civil claim. Civil claims solve disputes between private parties**, such as two individuals, a couple, two companies or an individual and a company. The purpose of civil claims is for a judge to give you **relief or a remedy**, that is, a **solution** to your individual problem with the other party. This can be:

-compensation or money in the case that you suffered harm

-it can also be an order from the judge to do or not do something

-it can also be an order from the judge allowing you to benefit from certain rights. For example, to divide a property in your favour, administer an estate or decide that you are entitled to certain rights, like in this case.

Proceedings will often involve:

The process would involve exerting your rights (property, family home, maintenance, etc) before a civil court or a family court.

**Claim:** Civil claim in a civil court, like the High Court or a family court

**By whom:** the affected party in the relationship

**Against:** the involved party in the relationship or sometimes even relatives affected by this. For example, in property issues, a cohabitant may bring a case against the parents of the deceased.

**Asking to:** benefit from rights based on cohabitation in your particular case, for example to benefit from property rights, to have a say over your spouse's health in accidents, etc.

1.Going to a civil court.

2. Provide evidence- remember that it is the claimant who has the “**burden of proof**”. This means the person bringing a civil claim needs to prove their case. You have to prove your case to a **standard of proof** known as the **balance of probabilities** (which means that you need to prove that there is **more than a 50% chance what you are saying happened**).
3. The judge deciding whether you can benefit from the rights of cohabitants.
4. Possibility to appeal

**Example: Jamaica, [THELMA MAY WHILBY-CUNNINGHAM CLAIMANT v. LEROY AUGUSTUS CUNNINGHAM](#)**

Both parties were together and cohabited for approximately thirty years and had two children. After roughly thirty years, the parties married, but after a year, separated.

Thelma May’s lawyers found a law that recognised her rights as a cohabitant, the Property (Rights of Spouses) Act, 2004 which gave cohabitant the status of spouses. Thelma May decided that she had property rights that had emerged over those 30 years, and made a civil claim for 50% share in the dwelling-house. She provided evidence and the judge decided that she was awarded 50% share in the dwelling house.

### 2.2.5 Public law challenges

It may be that your marriage or union is not awarded any protection at all in your country, or that there is legislation or policy which affects your chances to have your marriage recognised. This kind of **systemic issue** that is best addressed through a constitutional or public law challenge.

A public law challenge allows you to contest a law, policy or a decision that denies legal protections to women, **on the basis that these laws, policies or acts go against your fundamental or constitutional rights**.

**How?** The process for such a challenge varies between countries - it may be, among other things, called a “constitutional petition”, or “amparo proceedings”.

For this to work, there must be a right on your constitution or other important law which lays out your fundamental rights that protects you. Most constitutions include a general provision of **equality before the law or non-discrimination**. They also focus on other rights, such as **right to a fair trial, equality within marriage, social and economic rights**.

**Claim:** Constitutional claim in a constitutional court. Some countries allow you to go to a civil court.

**By whom:** the wife (can be supported by civil society organisations) and some countries allow civil societies to represent the public interest and take a case alone.

**Against:** an act by a public authority or in some countries a private institution too, that gives the wife less rights than the husband. In some countries like in Peru ([article 200 of the Constitution](#)), laws are challenged through “unconstitutionality actions”.

**Asking for:** declare the act or law unconstitutional and have it not applied in your case and in some cases it would not apply to all similar cases.

They will require:

-Getting **legal advice** on the likelihood of an amparo proceeding for your specific case.

-Initiating **legal proceedings**

-Finding a **person who has had their fundamental rights affected**: This would be the wife which is affected by the denial of recognition of her rights.

-Establishing **which of your fundamental rights were affected**: the right to equality and/or non-discrimination contained in most constitutions or other national laws can be effective but it could also be that other rights protected by the constitution are affected, such as your property rights, right to work, or others.

If successful, the constitutional courts may provide for an act, law, or policy to be declared unconstitutional. This often means that the act, law, policy **cannot be implemented in an individual case (concrete application)**, but it may in some countries also have the benefit of not being applicable in ANY case (**general application**).

A constitutional challenge is often a good route to challenge a law or policy which itself affects more than one individual, as it can be replicated by others or may change a law and policy for everyone.

**EXAMPLE: [South Africa. Hassam v Jacobs NO and Others 2009 \(5\) SA 572 \(CC\)](#)**

Fatima Hassam was a widow in a polygamous Muslim marriage. She had problems benefiting from her inheritance rights because polygamous marriages were excluded as the [Intestate Succession Act 81 of 1987](#) gave the benefit to the “spouse” not the “spouses”.

She first made a civil claim asking the High Court to recognise her rights as a surviving spouse, arguing that the section of the Intestate Succession Act **was unconstitutional**, as inheritance rights should protect surviving spouses regardless of whether the marriage is monogamous or polygamous. The High Court agreed that the exclusion of widows of polygynous Muslim marriages from the benefits of the Act would be **unfairly discriminatory**.

The **Constitutional Court** confirmed there was an **unfair discrimination**. Section 172(1) of the South African Constitution allows the court to declare that **any law that is inconsistent with the Constitution is invalid** and also make any order that is just and equitable. The Constitutional Court **declared that [section 1 of the Intestate Succession Act 81 of 1987](#) was inconsistent with the Constitution based on religion, marital status, and gender**, violating **section 9 of the Constitution**, which

referred to **equality before the law**. It ordered that that section must be read as though the words “or spouses” appear after the word “spouse”. Thanks to this, Fatima Hassan could **benefit from her inheritance rights** as a surviving spouse.

### **2.3. What if you can get your marriage recognised but it affects your rights because you are a woman?**

It may be in some countries legally recognise customary marriages, but do not give them the same protection of equal rights between spouses, which affect the rights of women.

If a marriage engages practices which constitute child or forced marriage, there are criminal law mechanisms and civil law mechanisms which are relevant. **For more information, see our section on child or forced marriage.**

If a practice during marriage affects your right to equality or other rights, see more information about challenges to that in our **“equality in marriage” section** which focus on specific ways to challenge control from your husband in marriage.

### **2.4 Non statutory marriage in international law**

Provisions in international human rights treaties and conventions also protect the right to equal treatment of women within marriage, which may be relevant to women married under different types of marriage.

#### **What are my rights in international law, examples:**

Article 23(4) of the **ICCPR** provides that states shall ensure equality of rights and responsibilities of spouses in relation to marriage and its dissolution.

Article 2(f) of **CEDAW** provides that states must take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, **customs, and practices** which constitute discrimination against women. This means that states should act to end discriminatory practices **even where they are not part of formal national law**.

[Article 2\(2\)](#) of the **Protocol to the African Charter on the Rights of Women in Africa** that States commit themselves to **modify social and cultural patterns to eliminate harmful practices** based on the idea of the inferiority or the superiority of either of the sexes.

Article 6 states that States Parties are to ensure **equal rights in marriage**, that the law must guarantee the **free and full consent** of parties and that the minimum age of marriage to be eighteen years. **Monogamy is encouraged**, as is **recording marriages in writing**. It also states that during marriage a woman can buy her **own property** and administer it freely.

#### **BOX**

**TIP 1:** You can find a detailed table of international law on marriage [here](#)

**TIP 2:** You can click [on this link and look for your country on the list](#). If your country is party to a **treaty it must comply with the rights and obligations included in them**. Your country may have applied reservations (limitations to the application of the treaty) when they became party to a treaty which you can also read.

**TIP 3:** You can search for cases in your country or in your regional system and see which rights have been most effective to uphold equal marriage rights in the past.

#### 2.4.1 How to use these international law provisions in practice?

These provisions are especially useful for organisations and the community to hold their governments progressively to account particularly towards **systemic change**.

For more information on how to take your case to an international or regional body, please see the section on this guide “**International Mechanisms to protect your rights**”.

## 3. Page 3: Equality within marriage

### 3.1 What is equality within marriage?

Historically, marriage was often rooted in the idea that a woman was to obey her husband. Married women very often have fewer rights than men and in some cases, married women’s rights are also inferior to unmarried women.

There is, however, ongoing progress in changing such laws.

**EXAMPLE:** a 2000 reform of Ethiopia’s Family Code eliminated a husband’s ability to stop his wife from working [SOURCE: Table 1.1, Women, Business and the Law 2018, World Bank Group.

Equality within marriage refers to **women having the same rights as their husbands and the same capacity to make decisions whilst married** and not having the husband control the decisions a wife can make.

### 3.2 Reduced capacity of the wife and control from the husband over women’s engagement in economic activity and important decisions. What can you do?

In some countries, a married woman’s **capacity** or ability to make decisions is reduced by law and she is required to have her husband’s permission or authorisation for various things, including entering into contracts; opening a bank account; applying for jobs; and buying or selling property.

This severely **restricts a woman’s autonomy** and ability to participate in the economy as an independent citizen. This means that even in cases where she is in an abusive or unhappy relationship, a woman may have no choice but to stay with her husband.

**EXAMPLE:** In 37 countries, including Botswana, Pakistan, and Myanmar, women need their husband’s permission to apply for a passport, and in 18 countries, **women**

**cannot apply for a job** without their husbands permission [SOURCE: Table 1.2, Women, Business and the Law 2018, World Bank Group

In Chile, women married under the matrimonial regime of “Conjugal Society” are subject to a more restrictive regime than if not married or married under a different regime. Under the Conjugal Society regime, the wife is unable to administer her own and common property, and the husband is the party that by law is in charge of administration of common property and must carry out transactions of the wife’s own property for her and with her authorisation.

Such discriminatory restrictions **violate equality before the law**, and **various economic and social rights** such as property rights, the right to work, or the right to social security which are in the **constitutions** of most countries.

The sections below will highlight different routes to protecting your rights depending on what you are seeking.

### **3.2.1 Your husband is refusing to give his authorisation. You are seeking to replace your husband’s permission for your particular case.**

#### **3.2.2. Civil Remedies provided for in the law:**

Laws and policies which provide for unequal rights within marriage often themselves provide for a procedure that applies if a woman’s husband refuses to provide authorisation. This may involve applying to a **civil court** for a judge to provide authorisation **instead of the husband**.

**Civil claims solve disputes between private parties**, such as two individuals, a couple, two companies or an individual and a company. The purpose of civil claims is for a judge to give you **relief or a remedy**, that is, a **solution** to your individual problem with the other party. This can be:

-compensation or money in the case that you suffered harm

-it can also be an order from the judge to do or not do something

-it can also be an order from the judge allowing you to benefit from certain rights. For example, to divide a property in your favour, administer an estate or decide that you are entitled to certain rights.

In this case you would ask the judge to **provide authorisation instead of the husband**.

**Claim:** Civil claim in a civil court

**By whom:** the wife

**Against:** the husband

**Asking for:** to replace the husband’s authorisation to allow the wife to carry out specific activities.

**Step 1:** Think about **why** your husband is not giving you authorisation. Is he missing? Have you lost contact with him? Is he being unreasonable? Start gathering **evidence** that your husband is being unreasonable or unable to give authorisation (for example, if he is missing).

**Step 2:** Look at **where the required authorisation is regulated** - for example, in a civil code, or specific legislation related to banking, employment, insurance etc. There is often a provision which allows a judge to provide authorisation if a husband is unreasonably unwilling or unable to do it.

**For example,** [Article 138 of the Chilean Civil code](#) allows a woman to seek authorisation from a judge if she wants to enter into contracts over joint property in the case that the husband is unable to do so due to a long term impediment, absence or disappearance and if it causes damage to the wife.

Article 138 bis of the same code allows a woman to seek authorization from a judge if she wants to enter into contracts over her own property that is usually administered by the husband, in the case that the husband declines to give authorisation with no justification.

**Step 3:** Seek legal advice on the viability of your case and to take your case to court.

**Proceedings will often involve:**

1. Going to a civil court.
2. Provide evidence in support of the application for the judge to give authorisation instead of the husband. For example, evidence that the husband is being unreasonable or unable to give authorisation (for example, he is missing).
3. An opportunity for the other party to object and offer evidence against your claim.
4. The judge making a court order replacing the authority of the husband.
5. Possibility of an appeal

This route is a good option for a case in which the focus is on solving the individual problem, but note that it does not address the systemic issue of the existence of the discriminatory law, and does not apply for future situations.

### **3.2.3 Public law challenges against unequal rights between men and women during marriage:**

In many cases, it is either public policy or the law that discriminate against married women, defining them as lacking capacity, systematically propagating discriminatory policy. This kind of **systemic issue** that is best addressed through a constitutional or public law challenge.

A public law challenge allows you to contest a law, policy or a decision that denies legal protections to women, **on the basis that these laws, policies or acts go against your fundamental or constitutional rights.**

**How?** The process for such a challenge varies between countries - it may be, among other things, called a “constitutional petition”, or “amparo proceedings”.

For this to work, there must be a **right on your constitution or other important law which lays out your fundamental rights that protects you**. Most constitutions include a general provision of **equality before the law** or non-discrimination. Some countries have constitutional provisions specifically referring to equality in marriage - for example, [article 31 of the Constitution of Uganda](#). Some countries may have other laws which refer to equality in marriage, which can be used to challenge unequal treatment of men and women in marriage which violates such protections.

**Claim:** Public law or constitutional claim in a constitutional court. Some countries allow you to go to a civil court.

**By whom:** the wife (can be supported by civil society organisations) and some countries allow civil societies to represent the public interest and take a case alone.

**Against:** in most countries, you can challenge an act by a public authority which gives the wife less rights than the husband. In some countries like in Peru ([article 200 of the Constitution](#)), laws are challenged through “unconstitutionality actions”. In some countries, acts by individuals or private institutions can also be challenged by a constitutional claim.

**Asking for:** declare the act or law unconstitutional and have it not applied in your case and in some cases it does not apply to the cases of other women.

**How?** The process for such a challenge varies between countries - it may be, among other things, called a “constitutional petition”, or “amparo proceedings”.

Proceedings will require:

-Finding a person who has had their **fundamental rights** affected: This would be the wife which is affected by the restrictions of inequality within marriage.

-Establishing **which** of your fundamental rights were affected: the right to equality and/or non-discrimination contained in most constitutions or other national laws can be effective but it could also be that other rights protected by the constitution are affected, **such as your property rights, right to work, or others**.

TIP: Depending on each country, the right to non-discrimination may only apply in relation to the enjoyment of other fundamental rights, rather than as a standalone right.

For example, in the UK, the Human Rights Act requires that discrimination has affected the enjoyment of one or more of the other rights in the Act.

Other countries, like [Peru](#), allow for the right to non-discrimination to be protected as a standalone right.

-Getting **legal advice** on the likelihood of an amparo proceeding for your specific case.



-Initiate legal proceedings showing **which** rights were affected, **how** those rights were affected and **why** it is unconstitutional. You will need to provide **evidence**.

-The other party, the public authority or the Estate will also get a change to argue and give evidence against your claim.

-If successful, the constitutional courts may provide for an act, law, or policy to be declared **unconstitutional**. This often means that the act, law, policy cannot be implemented in an individual case (**concrete application**), but it may in some countries also have the benefit of not being applicable in ANY case (**general application**).

The following checklist may be useful when thinking of a constitutional claim:



#### A4J CHECKLIST: PUBLIC LAW

<u>CHECKLIST</u>	<u>YES/NO</u>
1) Is there a relevant right/law I can enforce?	
2) Do I have the right to bring the claim?	
3) Have I identified the public body responsible?	
4) Have I gathered evidence?	
5) Have I taken the procedural steps to bring a claim?	
6) If I win, what remedies could I get?	
7) Can I take my case to a regional or international human rights body?	

Action4Justice - Public Law Checklist

#### EXAMPLE: Nombuyiselo Sihlongonyane v. Mholi Joseph Sihlongonyane, (470/2013A) [2013]. A case of general application.

In this case, Mrs. Sihlongonyane wanted to sue her husband over some marital joint property. She took the case to a civil court to get the administration of the common property, where the husband argued that a wife did not have the capacity to start legal proceedings

because it was the husband who had to authorise her to do so. The judge in this case raised the question of whether this was constitutional to the High Court to decide.

Following the steps on the checklist above, Mrs. Sihlongoyane and her lawyers argued that:

- 1) She found a relevant enforceable law which was Section 20 of the constitution of Swaziland, which gives equal rights to women.
- 2) found that they had the right ask the high court to decide this constitutional issue under Section 151 (2) of the Constitution which empowers the High Court to generally, 'hear and determine any matter of a Constitutional nature'.
- 3) the public body or law responsible was the common law" marital power" doctrine, which provided that a woman was not able to institute legal proceedings without the assistance of her husband and which was affecting her concrete rights.
- 4) & 5) They gathered evidence and took the procedural steps to make the complaint, which required the wife to be in a court proceeding and to have the constitutional request be part of that proceeding to solve her individual case, rather than a general one.
- 6) The remedy was that the Swaziland High Court held that the marital regime was invalid on the basis that it was inconsistent with sections of the Swaziland Constitution. This meant that Sihlongoyane was granted standing to sue her husband and applied that order of invalidity to all other women in similar situations.

**Kirchberg v Fenster, 450 U.S. 455 (1981)** A case of concrete application, found in this case Joan Feenstra's husband signed a promissory note for \$3,000 to pay for a service. He mortgaged his and Joan's joint property as security without asking Joan. A Louisiana Statute known as the Head-And-Master law allowed the mortgage to be obtained without informing Joan.

The \$3,000 note was not paid which lead to the person who was owed the money to obtain an order from a court to seize and sell their joint property and to ask a civil court (the Federal District Court) to assert that he was not required by law to inform Joan of the mortgage.

Following the checklist above:

Points 1, 2 and 3 of the checklists: Joan argued that the relevant law, the Louisiana law, went against the American Constitution.

Point 4: She presented relevant evidence to show that she had not given consent over the mortgage and presented a legal argument of how the law affected the Equal Protection Clause of the American Constitution and because of that she should not be responsible to pay a mortgage entered into by her husband without her consent.

Point 5: Joan's attempt was rejected, and she appealed to the Supreme court

Point 6: The Supreme Court found that:

1. the mortgage was void- Joan got her individual requests, but also that

2. the Head and Master law was gender-based discrimination which was protected by the US Equal Protection Clause of the US Constitution. and was unconstitutional.

Thanks to this judgement, a few years later the state of Louisiana revised the relevant provisions (art. 2404) to grant equal administration for joint property for spouses.

A constitutional challenge is often a good route to challenge a law or policy which itself affects more than one individual, as it can be replicated by others.

### **3.2.4. Non-discrimination laws as a way to challenge discriminatory attitudes towards married women**

It may be that the law is not the problem, but that an **incorrect belief** that the wife is less of an equal or under the control of the husband may persist among authorities, for example in **local policy**, or among the **policy of private institutions** like banks, private health providers and insurance companies in practice. This may lead to **acts of discrimination**. These acts can also be challenged, including through:

1. An **internal complaint procedure** of the public body or private institution. It may be a good **to use constitutional provisions or other laws in the complaint** as a way of highlighting that they are incurring in unlawful discriminatory activity.
2. **Check** if your country has an **anti-discrimination law** which allows a judge to **order that policy or act by a private body to be reverted**. These kinds of laws sometimes give **fines** to those that are found to have discriminated and **compensation** to those affected.

**Claim:** Discrimination claim in a civil court

**By whom:** the discriminated wife

**Against:** the public or private authority who discriminated against her

**Asking for:** Revert act by public or private authority and a fine/compensation.

**Steps for this measure include:**

1. Collecting **evidence** on how you were discriminated against. This includes, for example, letters by the private or public authority saying that your husband's consent is required to access a service, or to enter a contract, witnesses and even a copy of a company policy that is discriminatory.
2. Seeking **legal advice** on the viability of your case and to take your case to court.
3. Proceedings will vary in each country, but often involve **going to a civil court**, presenting your arguments, and providing evidence in support of the application. The other party will also get a chance to expose their arguments and give evidence against your version of events.

Bear in mind that often these laws require discrimination to have not just discriminated a person, but also affected any other fundamental rights, which can for example be the affected person's property rights, or the right to access justice.

For more information on discrimination, see our **discrimination guide**.

### 3.3. Domestic violence and violence against women during marriage.

If Domestic Violence or any other form of violence against women is taking place in your marriage, you can take legal action and seek support. For more information, please see our **Violence Against Women guide**.

### 3.4. Reproductive rights during marriage.

If your reproductive rights are being affected during marriage, you can take legal action and seek support. For more information, please see our **Reproductive Rights**.

### 3.5. International/ regional challenges:

International human rights treaties and conventions also protect the right to equal treatment of women within marriage.

#### **BOX: What are my rights in international law**

Article 23(4) of the **ICCPR** provides that states shall ensure equality of rights and responsibilities of spouses in relation to marriage and its dissolution.

Article 15 of **CEDAW** requires States parties to take positive steps to ensure women full equality in civil law. States must therefore repeal or amend any laws or instruments which have the effect of restricting women's legal capacity.

Article 16 of **CEDAW** provides that states shall take measures to eliminate discrimination against women in all matters relating to marriage and family relations. This includes, in particular to equal marriage:

- The same rights and responsibilities during marriage and its dissolution.
- The same personal rights as husband and wife, including choosing a family name and profession.
- The same rights for both spouses in respect of ownership and management of property.
- [Article 6](#) of the **Protocol to the African Charter on the Rights of Women in Africa** states that States Parties are obliged to ensure that men and women **enjoy equal rights and are regarded as equal partners in marriage** and that a woman shall have the right to acquire her **own property** and to administer and manage it freely.

TIP 1: You can find a detailed table of international law on marriage [here](#)

TIP 2: You can click [on this link and look for your country on the list](#). If your country is party to a treaty it must comply with the rights and obligations included in them. Your country may have

applied reservations (limitations to the application of the treaty) when they became party to a treaty which you can also read.

TIP 3: You can search for cases in your country or in your regional system and see which rights have been most effective to uphold equal marriage rights in the past.

### 3.6 How to use these international law provisions in practice?

These provisions are especially useful for organisations and the community to hold their governments progressively to account particularly towards **systemic change**.

For more information on how to take your case to an international or regional body, please see the section on this guide “**International Mechanisms to protect your rights**”.

## 4. Page 4: Forced and child marriage

### 4.1 Overview and definition

Child marriage, or early marriage, is any marriage where at least one of the parties is under 18 years of age.

Forced marriages are marriages in which one and/or both parties have not personally expressed their full and free consent to the union.

Organisations such as the United Nations Office of the High Commissioner for Human Rights have [stated](#) that a **child marriage is considered to be a form of forced marriage**, given that one and/or both parties have not expressed full, free and informed consent and that this kind of marriage “*threatens the lives and futures of girls and women around the world, robbing them of their agency to make decisions about their lives, disrupting their education, making them more vulnerable to violence, discrimination and abuse, and preventing their full participation in economic, political and social spheres.*”

Where this guide uses the term “forced marriage”, this is intended to include all forms of child, early and forced marriage. This guide will introduce you to general **legal** steps that can be taken when facing force marriage or helping someone that is.

**Important:** Forced marriage is a complex and **extremely difficult** for the girl or woman involved as it often involves her close relatives or community. It may also be that the girl or woman is under serious danger. Also, many women and girls in these situations may not have the opportunity to seek help or access justice. It may also be economically difficult and emotionally challenging.

It is imperative to get **specialised advice from a lawyer** in your country and organisations that can provide **support** beyond legal advice focusing on the **safety** of the girl or woman involved and **psychosocial support from people that you trust**. **Women’s Rights organisation** could help.

## 4.2. Protections against forced and child marriage in national law

Many countries around the world have constitutional protections that require free and informed consent to be given by both parties to a marriage. Many countries also have laws that set a minimum age of marriage, usually at age 18 - although in some countries it is lower.

**BOX:** In Uganda, the Constitution in article 31 provides that the minimum age of marriage is 18, and that marriage should only be entered into by freely consenting parties.

The constitution of Senegal establishes in its article 18 that forced marriage is a violation of individual liberty. It is forbidden and punished within the conditions established by the law. h

In 2014, Kenya outlawed forced and underage marriage in section 11 of the Kenya Marriage Act and in 2015 Malawi raised the minimum marriage age to 18 in section 14 of the Marriage, Divorce and Family Relations Bill. However, such laws may not necessarily be respected and enforced in practice, even where they do exist.

## 4.3 Ways to challenge forced marriage

### 4.3.1 If marriage has not happened yet: How to stop it from happening?

If the marriage has not yet taken place, the priority is to find **help** and **safety** and **protection** to stop it from taking place.

#### 4.3.1.1 Going to the Police to start a criminal investigation against attempted forced or child marriage.

In **some countries**, forced or child marriage is **criminalised by law**.

There may be provisions in the **Criminal or Penal Code**. Alternatively, there may be **specific separate legislation** relating to forced marriage.

**Examples of criminal liability for facilitating forced marriage:** criminal sanctions

**India, the Prohibition of Child Marriage Act,2006** Section 9 imposes a sanction for anyone who is a male above eighteen years of age who celebrates a child marriage. Punishment may extend to two years or with fine or both.

Section 11 also allows sanctions against parents or guardians that promote or permit the marriage, including any member of an organisation. Punishment may extend to two years and shall also be liable to fine. No woman is punishable with imprisonment and it is presumed that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage.

**BOX Example: In Cameroon a new penal code criminalises forced marriage** in Section 356. Whoever compels anyone to forcibly marry can be punished with 5-10 years in prison, as well as a fine. If the victim is under the age of 18, the punishment may not be less than two years imprisonment, whatever the mitigating circumstances and parents and guardians may be disqualified as parent or guardian by the court.

There are **other criminal offences** that those that forced you to marry committed whilst in the process of forcing you which constitute acts of violence against women. These may include **assault, kidnap, abduction, harassment, false imprisonment, domestic violence, and any relevant sexual offences.**

For more information on these offences, please see our **Violence Against Women section.**

**The Police** are generally the primary authority responsible for guaranteeing our security and investigating crimes. The police may be able to arrest and charge the perpetrators for attempting to force a person into marriage, including the potential groom and/or others who facilitated the marriage.

**Criminal cases** are investigations and prosecutions, usually undertaken by police or public prosecutors, to find out if a crime has been committed. If, after investigation, there is evidence a crime has been committed, this could lead to a **criminal prosecution.**

**BOX Claim:** Criminal Prosecution

**By whom:** the person that was forced and the estate which takes over the prosecution

**Against:** the husband, relatives or others who committed the actions

**Where:** Criminal Court

**Asking for:** The Court to acknowledge a crime was committed and sanction those responsible with a fine or a prison sentence.

**Step 1:** Look at where this is regulated in our country. It will most likely be in a Penal Code or Forced Marriage law.

**Step 2:** Think if you are within the **time limit.** Some countries allow you a specific time limit of 10 years, or others of less time to prosecute a crime. Other countries have no time limit.

**Step 3: Think about whether you have evidence.** In criminal cases, the person alleging a crime has been committed has the **burden of proof.** The person accused will be **innocent until proven guilty.** Examples include evidence to show where you were being held, if you were uncommunicated, communications with friends or relatives, witnesses that may come forward, violence or threats that were inflicted. If you do decide to go ahead a police investigation **may help with obtaining key evidence.**

**Step 4: Seek legal advice and speak to a lawyer** to see if there are good prospects for this in your country, if the police and authorities take it seriously and what are the advantages and the **risks.** You may also wish to get support from a **Women's Rights Organisation** that can advise you on your individual circumstances which led to the forced marriage and how to **protect yourself.**

**BOX IMPORTANT:** In the case of Forced Marriage, check if your country considers it a **public prosecution** case. The case is usually investigated by the police, who will also gather evidence. The case brought by a representative of the State, such as a public prosecutor or state attorney. This means that if you report this to the police and their investigations result in them thinking the crime was committed, they will start

criminal proceedings against those that committed the crime regardless of whether you want them to go ahead or not.

If it is a **private prosecution** case, you will have to take the lead and hire a lawyer to pursue the investigation. You can also drop the case if you do not want to go ahead

**Think if you would like to go ahead and report the case to the police.**

The process varies in each country but usually involves:

1. Going to the police or directly to the public prosecutor who will **investigate the facts**.
2. If convinced, the police will **arrest**, and the public prosecutor will **charge** the person involved, accusing them of committing a crime. **If they are not convinced, they will not arrest or charge**, or if they have, they will **release** the person without charge.
3. The perpetrator will either be held **in detention** waiting for their trial or be released **on bail**. There will be a hearing to decide this and a period of time given to continue preparing for trial.
4. The trial will go ahead, and both the prosecution and defence will provide an outline of their version of the facts, provide **evidence**, and question each other's evidence. Your and other witness statements will be relevant for this. The evidence must show to a high level of certainty, often called "**beyond reasonable doubt**" that specific crimes were committed and were committed by the people accused.
5. After the trial, the judge or the jury will reach a **decision**, which will involve either **acquittal or conviction** of the accused. Some countries have a jury, but other countries do not.
6. If the person is convicted, then there is a **sentencing** which can include a fine, a prison sentence, or other sanctions. In some countries, it can also award compensation to victims of the crime. However, as this is generally not the case, **civil cases** are better suited if compensation is the primary purpose of litigation. If the person is acquitted, they can be released.
7. There is the option to **appeal**.

**This process may be long** and is **focused on sanctioning** those that were involved in forcing you to marry. For more information about criminal proceedings, please see our **Going to Court Guide**.

This is a long process, and you will still need to assure your safety and it may be that you prefer to focus on preventing the forced marriage only. A Domestic Violence Protection Order may help protect you. You can also go ahead with both options.

#### **4.3.1.2 Domestic Violence Protection Orders**

Some countries have a law that protects women from domestic violence allows you to go to the police or directly to a court and ask for a **protection order**. This option can help as a way to protect your safety and remove you from the **physical control and coercion** that can force the marriage to take place.



Some countries, like Kenya consider **forced marriage within the definition of domestic violence**.

**Examples:** Kenya's **Protection against Domestic Violence Act** includes force marriage within the definition of violence in [section 3](#) and allows victims to go to the police or to a magistrate court to seek a protection order.

**India: Protection of Women from Domestic Violence Act, 2005**

This act protects women and children subject to **abuse from a partner and from other relatives**. Abuse can be physical, sexual, emotional, or economic and includes the **threat of forced marriage**. **Section 18** refers to the right to go to court **and ask for a Protection Order** which includes orders to stop him from getting near you, communicate with you, communicate with your relatives, etc. Section 19 of the Act allows you to ask for a residence order to **expel the abuser from your common household**.

**BOX** The process varies in each country, but generally:

**The Claim:** Domestic Violence Protection Order.

**By whom:** the person affected or their representatives if they are children or incapacitated.

**Against:** the husband, relatives or others who committed the actions.

**Where:** before a family court or a civil court.

**Asking for:** The Court to order the aggressor to stay away from you, to restrict his contact with you, change his residence and other options.

Seeking legal advice from a lawyer in your country or a Women's Rights organisation will assist you with how viable this is in your country.

It will generally be:

1. **Quick and not expensive**, often allowing for emergency orders outside of court hours.
2. Require you to **go to the police or directly to a Magistrates, Civil or Family Court**.
3. Ask for a Domestic Violence protection order by presenting a **written statement or completing a form**. You will be asked to provide **evidence** such as evidence of physical harm, threats, and other forms of violence. The level of certainty for these cases is **lower than in criminal cases**, you need to prove that there is more than a 50% chance what you are saying happened, also called the **balance of probabilities**.
4. The court will identify if you or your children are **at risk of domestic violence** and if the **order would prevent harm** to you or your children. If that is the case, it will issue the order.
5. Generally the abuser is only contacted after you present your case.

6. There is the option for the other party to **appeal**.

7. The generally last for weeks or months and can be renovated. If the perpetrator does not follow the order, **he can be arrested**.

The focus of this order is **to protect the victim rather than sanction the perpetrator**. If you choose to change your mind the process will stop. You can also go ahead with this and other options in this section.

For more information on how to protect yourself from an aggressor please see our **Violence Against Women Guide**.

#### **4.3.1.3 If your liberty is being restricted as a way of forcing you to get married: Habeas Corpus**

If you **are being held** in a house, or area **against your will** as a way to force you to get married, you or any individual or organisation that is concerned about your liberty can go to a High Court in your country and ask them **to check that you are not being deprived wrongfully of your liberty**.

If the court finds that you are being deprived of your liberty, it can order that you are **immediately released**.

**Claim:** Habeas Corpus

**By whom:** the forced bride or any concerned individual or organisation in the name of the bride

**Against:** the husband, relatives holding the wife against her will, the police who has ignored her detention.

**Where:** High Court usually, but it depends on your country

**Asking for:** the forced bride be brought before a judge so that the judge can decide if she has been wrongfully held against her will and order her to be set free.

**Step 1:** Think about who can make the request to the court. It may be that the affected forced bride is uncommunicated, and the petition to the court is to be by an organisation or concerned friends.

**Step 2.** Look at where Habeas Corpus is regulated in your country. It is often in the Constitution.

**Step 3:** You will need to start thinking about gathering evidence such as where the forced bride is being held, who is holding her, whether there are any messages or letters she may have sent asking for help, whether she is uncommunicated, etc.

**Step 4:** Although in some countries you do not need a lawyer to present an habeas corpus, seek legal advice or help from a Women's Rights organisation to check this and the viability of your case and to take your case to court.

**Step 5:** Make the petition before a court. Steps vary in each country but will often involve:

1. Going to the High Court.

2. Present a petition for a writ of habeas corpus. Together with the petition, you should present a description of the circumstances around the restraint. Provide as much information as possible about who the person restrained is, where she is, and who is holding her against her will and under what conditions.

3. If the judge is convinced, he or she will ask for the person to be brought to the court to oversee whether she is being held against her will. If she is, then the judge can order for her release.

4. You can also appeal. It should be a quick process, due to its urgency.

This route is an option for a case in which the focus is on **solving the urgent problem of being held against your will**. Cost also should be reduced, although this also depends on the country. Note that it does not address the validity of the marriage. Having freedom will help you deal with the next steps such as seeking support and help and thinking about future steps which will be analysed below.

**Example: In Kalyani Choudhury v State of UP 1978 CriLJ 1003.**

Kalyani Chowdhury was an adult woman who got married. Her family opposed the marriage and forced her to be detained in a protective home for women. She made a petition to the Allahabad High Court describing that she was detained against her will in an illegal manner in a protective home for women. The Court reviewed that detention in protective homes required there to be an offence which the woman committed, which was not the case here. The court decided that the detention was illegal and ordered the liberation of Kalyani Chowdhury ([pg. 21](#)).

#### **4.3.1.4. An injunction**

In some countries, Family Courts can issue an injunction to **stop marriage arrangements**. The injunction can also require the person named in the order to do certain things, for example, handover passports to the court to avoid them from fleeing or ensure a young person attends school.

An injunction is a **legal order from the court ordering people to do or refrain from doing something**. In this context it is an order to preventing the marriage from happening. The specific remedies available and the processes for obtaining them will vary between countries.

Seeking an injunction will normally **following the steps of a civil claim**.

**Civil claims solve disputes between private parties**, such as two individuals, a couple, two companies or an individual and a company. The purpose of civil claims is for a judge to give you **relief or a remedy**, that is, a **solution** to your individual problem with the other party. This can be:

-compensation or money in the case that you suffered harm.

-it can also be an order from the judge to do or not do something, **like in this case.**

-it can also be an order from the judge allowing you to benefit from certain rights. For example, to divide a property in your favour, administer an estate or decide that you are entitled to certain rights.

**BOX Claim:** Civil claim in a civil court

**By whom:** the forced bride

**Against:** the groom and also other people involved in the forced marriage

**Asking for:** an order to preventing the marriage from happening.

**Step 1:** Start gathering **evidence** that your family or others are planning on forcing you to get married. This includes for example, evidence of threats, an appointment for the marriage ceremony, witnesses, etc.

**Step 2:** Look at **where the required authorisation is regulated** - for example, in a civil code, or specific legislation related to marriage.

EXAMPLE in India **The Child Marriage Restraint Act (1929) Section 12(1)** states that a person can:

1. go to court and ask for an injunction
2. **against the person that is trying to marry a child, the person officiating the marriage or the parents of the child.**
- 3.the Court may issue an injunction if **satisfied from information or proof that a child marriage has been arranged or is about to take place.**
- 4.the injunction can involve restraining the actions of the person that is trying to marry a child, the person officiating the marriage or the parents of the child.

**Step 3:** Seek legal advice on the viability of your case and to take your case to court and seek support from a Women's Rights organisation that you trust about the risks involved.

**Proceedings will often involve:**

- 1.Going to a civil court and complete official paperwork and court filings with your arguments and petition asking for an order from the court asking the parties to refrain from celebrating the marriage and other actions which are coercing you into marriage.
- 2.Provide **evidence** in showing the intention to force a marriage or arrange a child marriage.
3. An opportunity for **the other party to object** and offer evidence against your claim.
4. The judge making a court order replacing the authority of the husband.
5. Possibility of an appeal

This route is a good option for a case in which the focus is on **solving the individual problem of avoiding a forced marriage**, but note that it does not address other aspects around a forced marriage such as violence, threats, being deprived of a place to live, etc. You may want to pursue this option together with options mentioned above such as seeking criminal sanctions for those involved, or a domestic violence protection order to protect you from reprisals.

The main obstacles to seeking such remedies **include risk of community pressure and threats**, so it is very important you seek support from organisations that can help you such as women's refuges.

#### **4.3.1.5 Seek other forms of help to prevent the marriage from taking place**

There are several practical sources of assistance which may provide **more immediate protection than legal action**. The types of assistance available will **vary depending on location and the cultural or social contexts**. It should be noted, however, that if forced marriages are common in a particular community, it can be **exceedingly difficult to find practical assistance even from official sources**.

Examples of possible sources of help include:

- **Helplines providing support for abuse against women** - this [link](#) provides the numbers of the relevant hotlines in every country.
- [NGOs or other organisations which provide support](#). Even if a particular NGO is not able to assist, it may be able to assist with finding other sources who can assist. This link provides information on organisations providing support for victims of domestic violence in every country.
- Government support such as social services and **women's refuges/shelter homes**.
- A **health centre** such as a clinic or hospital.

Beyond assistance with preventing or escaping the forced marriage itself, women and girls will likely also need significant **economic support** to move on with their lives.

#### **4.3.2 What can you do if the forced marriage has already taken place?**

##### **4.3.2.1. If your liberty is being restricted after marriage or you are subject to domestic violence**

If you were forced to get married and you are also being held in a house, or area against your will you or any individual or organisation that is concerned about your liberty can go to a High Court in your country and ask them to check that you are not being deprived wrongfully of your liberty.

Think about a **Criminal sanctions, Habeas Corpus petition** or a **Domestic Violence Protection Orders mentioned above**. They will not have the effect of annulling the marriage, but will serve as options to keep you safe and allow you to move onto other legal options to revert a forced marriage.

##### **4.3.2.2.2 How to revert a forced marriage? Annulment.**

In many countries, a marriage may be **annulled** if it has been entered into without the free and full consent of both parties. Annulment means that the marriage is treated as **void**, as if it **never happened in the first place**.

**BOX:** For example, in India, the **Prohibition of Child Marriage Act 2006**, [Section 3](#) states that a child marriage is **voidable** by filing at the district court and asking for the marriage to be declared void by the person who was a child once the marriage took place.

Similarly, [Section 25](#) of the Special Marriage Act, 1954 states that a marriage can be **annulled** if the consent of either party to the marriage was obtained by **coercion or fraud**.

The annulment will normally involve following a **civil claim before a civil or family court following the steps of a civil claim**.

**Civil claims solve disputes between private parties**, in this case the married couple. The purpose of civil claims is for a judge to give you **relief or a remedy**, that is, a **solution** to your individual problem with the other party, in this case, an **annulment**.

**BOX Claim:** Civil claim in a civil court

**By whom:** the forced bride

**Against:** the groom

**Asking for:** an annulment

**Step 1:** Start gathering **evidence** that you were forced to get married. This includes for example, evidence of threats, an appointment for the marriage ceremony, witnesses, etc.

**Step 2:** Look at **where** the annulment is regulated. It could be special law on marriage in your country, a family code, or a civil code.

**Step 3:** Seek legal advice on the viability of your case. It may be that there are **other reasons or grounds apart from force** under which an annulment is given which is easier to prove, like for example, lack of witnesses. Also, check you are within **the time limit** to seek an annulment. Some countries where **customary marriage** is common may have their own rules on how to annul forced marriage and child marriage. Countries with different **religious marriages will also have different rules**. Seek support from a Women's Rights organisation that you trust about the risks involved.

**Proceedings will often involve:**

1. Going to a civil court and complete official paperwork and court filings with your arguments and petition asking for an annulment based on coercion.

2. Provide **evidence** in showing the intention to force a marriage or arrange a child marriage. evidence of the coercion, through witnesses present at the celebration of the marriage, threats, or other kind of evidence.

3. An opportunity for **the other party to object** and offer evidence against your claim.
4. The judge making a court order replacing the authority of the husband.
5. Possibility of an appeal

**EXAMPLE Challenging forced marriage in court – Pakistan. Humaira Mehmood v Sho North Cantt Lahore & Others, 1999, High Court of Pakistan. Administrative/Judicial Review claim.**

In May 1997, Humaira Mehmood secretly married. When her parents discovered her marriage, she was beaten and imprisoned in hospital for two months, then forcibly married and the marriage was backdated to appear as if it were the first. In November 1998, Humaira and her original husband fled. The husband from the second forced marriage alleged to the police that his wife had been abducted. The Punjab police arrested, detained, and beat Humaira, her consensual husband and his family. Humaira brought a petition to the Lahore High Court to judicially review the police decision and refute abduction claims and to quash the charges against her.

The court decided in her favour of Mehmood, as the Constitution grants the right to be treated strictly in accordance with the law, which Mehmood was not. The court also referred to international human rights law, as Pakistan is a party to CEDAW, which requires that states take appropriate measures to eliminate discrimination against women relating to marriage. This includes the **right to choose a spouse and to enter marriage only with full consent**. These rights are also found in the Cairo Declaration on Human Rights in Islam, which Pakistan is also a signatory of. Finally, **the court ruled that Humaira had not given full consent for the second marriage, therefore it was illegal and void**, pending further investigation by a family court. Her first marriage was decided to be valid, and all claims against Humaira were quashed.

This route is a good option for a case in which the focus is on **solving the individual problem of avoiding a forced marriage**, but note that it does not address other aspects around a forced marriage such as violence, threats, being deprived of a place to live, etc. You may want to pursue this option together with options mentioned above such as seeking criminal sanctions for those involved, or a domestic violence protection order to protect you from reprisals.

#### **4.3.2.2.3 Separation and Divorce:**

Another option is to not get an annulment and opt for separation and divorce. This may be because certain countries impose a **time limit** on getting an annulment, certain **requirements for annulment are not met** or **you do not want to get an annulment**.

A legal separation will allow you to live apart from your husband. It will also **count towards the time** that some countries require for the relationship to have broken down to grant you a divorce.

Rules vary in each country, but generally you will have to **fill in a petition and send it to the court**. Other countries may require you to state that you are **separated before a notary**. The reasons or grounds for separation are often the same grounds or reasons as those needed to get a divorce.

This may be an option if you do not want to get a divorce, or if in your country you need certain time to have passed before you can get a divorce.

For more information, see our **divorce section**.

#### **4.3.2.3. Criminal sanctions for those that engaged in child marriage and on a forced marriage.**

In many countries, forced or child marriage is criminalised by law. The police may be able to arrest and charge the perpetrators, including the **husband and/or others who facilitated the marriage**.

For more information see our previous section **Going to the Police to start a criminal investigation against attempted forced or child marriage**.

There are **other criminal offences** that those that forced you to marry committed whilst in the process of forcing you which constitute acts of violence against women. These may include **assault, kidnap, abduction, harassment, false imprisonment, domestic violence, and any relevant sexual offences**. For more information on these offences, please see our **Violence Against Women guide**.

This process may take some time and is focused on **sanctioning** those that were involved in forcing you to marry. For more information about criminal proceedings, please see our **Going to Court guide**.

It may be that you prefer to focus on **reverting the forced marriage only**, or on getting relevant **compensation** rather than sanctions for those involved. In this case, the other options in this guide may be of more use to you. You can also opt for more than one option.

##### **4.3.2.4.1 Getting compensation for the facts surrounding a forced marriage by using Tort Law and presenting a Civil Claim.**

In cases of forced marriage where severe threats or violence or deprivation of your freedom are used, there is the option **of suing** by making a **civil claim** against **those that carried out those actions** either your husband or relative. The relevant torts for forced marriage are **False Imprisonment and Assault**.

**Civil claims solve disputes between private parties**, such as two individuals, a couple, two companies or an individual and a company. The purpose of civil claims is for a judge to give



you **relief or a remedy**, that is, a **solution** to your individual problem with the other party. This can be:

-**compensation** or money in the case that you suffered harm, **as is in this case**.

-it can also be an order from the judge to do or not do something

-it can also be an order from the judge allowing you to benefit from certain rights. For example, to divide a property in your favour, administer an estate or decide that you are entitled to certain rights.

### **False Imprisonment**

A type of tort is false imprisonment. In the context of forced marriage this can happen if a person intends to **confine your boundaries** and the actions of your husband or others aiding to force you to get married result in **your confinement**, and you are aware of this or harmed by it.

You should **show** that:

(i) You were **deprived of your liberty**

As the claimant, you will need to prove that you were imprisoned. This means that you were completely deprived of your liberty. There is no minimum period for detention under this law.

(ii) There was **no lawful authority to justify your detention**

This will be easy as there is no public authority involved in imprisonment for **forced marriage**. Then, those that forced you **must then prove that there was justification for your detention**.

### **Assault**

An assault occurs when the defendant acts **intending to cause a harmful or offensive contact** with the bride, or act in a way that the bride will **think that a harmful or offensive contact will happen**. This includes for example the use of physical violence, but can also be **severe threats** which with other acts make you think that you were under **threat of imminent harm**.

Requirements may vary in each country, but in general someone:

(i) Uses force against you: In many systems, there is no minimum threshold of force that has to be used, but this will be relevant to the level of compensation you receive.

(ii) The use of force was **intentional**: Your husband, relatives or officiating officer must have intended to use force. This is where you can prove that force was used to get you to consent to the marriage.

(iii) The **use of force must be unlawful**: This is where you prove that they had no authority to assault you.

For both of these torts, in theory you do not need to prove that there was harm, but you need to **prove that the false imprisonment or threats took place and often using evidence to prove damage will help to do this**. This evidence will also help to determine how much you should be compensated for. In this context, the damage or harm can be either physical or mental.

**BOX Claim:** Tort claim

**By whom:** the wife

**Against:** the husband, relatives who held her against her will, the police who has ignored her detention if she asked for help.

**Where:** Civil Court

**Asking for:** The Court to acknowledge there was damage and loss due to False imprisonment or to Assault.

**Step 1:** Look at **where** this is regulated in our country. It will most likely be in a **civil code or tort law**. Speak to a lawyer to see if there are **good prospects** and if the expense of the trial is justified.

**Step 2:** If you decide to go ahead, you will need to start thinking about gathering **evidence** such as where you were being held, if you were uncommunicated, communications with friends or relatives, witnesses that may come forward, how that was against your will, violence or threats that were inflicted, and how this generated loss for you.

In civil law actions, it is the claimant who has the **“burden of proof”**. This means the person bringing a civil claim needs to prove their case. In many countries, you have to prove your case to a standard of proof known as the **balance of probabilities** (i.e. you need to prove that there is more than a 50% chance what you are saying happened).

**Step 3:** Make the petition before a court. Steps vary in each country but will often involve:

1. Going to a **civil court**

2. You submit your claim within **the required time period** with an **account of the facts and circumstances**, describing the actions taken by your husband and/or relatives and of **how those actions can be said to be assault or false imprisonment**. Provide an outline of **the evidence** that you have which proves the facts. **State what is it that you want** (for example an amount of compensation)

3. These documents will be shared with the person you are suing, and they will have a chance to present a **defence**.

4. Your complaint must be supported by **evidence** which can include photographs, police complaints, marriage certificate, letters, witnesses etc. The defence will also provide evidence and you can question their evidence. They can also question yours.

5. In some countries there is a trial with a court hearing and in others the judge will decide without seeing the parties.

6. Once the main trial is over, the judge will consider each of the parties' arguments and form a **decision**.

7. If the claim is successful, the judge will generally award a “remedy”. “**Damages**” or **compensation** are usually awarded as a remedy.

This is not a common option, mainly because women are in a situation of vulnerability and opt for **urgent solutions**. **This is a long process and it expensive**. However, this may be an option to be taken **on top of the previous options** for getting economic redress for what happened to you. It will not affect the validity of the marriage, or end with those involved being given a prison sentence. But it could provide you with necessary **economic compensation**.

It is not a quick process and there are costs involved which you should discuss with a **lawyer in your country**. For more information about civil proceedings, please see our **Going to Court guide**

**4.4 What if the law in your country allows forced or child marriage, or if practices or attitudes are affecting the rights of women and girls on a broad scale, regardless of what the law says?**

**4.4.1 Constitutional challenges to child and forced marriage.**

**Rights found in your constitution** or other national legislation may be most useful to challenge laws or practices permitting forced and child marriage more broadly. The laws of a country relating to forced marriage may themselves be discriminatory and fail to accord equal status to men and women within a marriage.

Some countries have constitutional provisions specifically referring to the need of free consent in marriage. For example, [article 31.3](#) of the **Constitution of Uganda** states that “(3) Marriage shall be entered into with the free consent of the man and woman intending to marry”. Also, most constitutions include a general provision of **equality before the law, non-discrimination, the best interests of the child, right to life, bodily integrity, right to liberty and right to dignity**.

**BOX: Claim:** Constitutional claim in a constitutional court, a High court, or some countries allow you to go to a lower civil court.

**By whom:** the wife (can be supported by civil society organisations). Some countries allow civil societies to represent the public interest and take a case alone.

**Against:** an act by the husband, by a public authority or a private authority that affects the wife’s fundamental rights. In some countries like in Peru (article 200 of the Constitution <https://www.constitucionpoliticadelperu.com/>), laws can also be changed through “unconstitutionality actions”.

**Asking for:** declaring the act or law unconstitutional and have it not applied in your case and in some countries it does not apply to the cases of other women.

**How?** The process for such a challenge varies between countries - it may be, among other things, called a “constitutional petition”, or “amparo proceedings”. It will require you to:

-Finding a person who has had their **fundamental rights affected**: This would be the **wife** which is affected by the law or practice of forced marriage.

-Establishing **which of your fundamental rights were affected**: the right to equality and/or non-discrimination contained in most constitutions or other national laws can be effective but it could also be that other rights protected by the constitution are affected, such as the right to life, right to liberty, right to dignity, or others.

-Get legal advice on the likelihood of an amparo proceeding for your specific case.

-Initiate legal proceedings showing **which** rights were affected, **how** those rights were affected and **why** it is unconstitutional. You will need to provide **evidence**.

-The other party, the public authority or the Estate will also get a chance to argue and give evidence against your claim.

If successful, the constitutional courts may provide for an act, law, or policy to be declared **unconstitutional**. This often means that the act, law, policy cannot be implemented in an individual case (**concrete application**), but it may in some countries also have the benefit of not being applicable in ANY case (**general application**).

**A constitutional challenge is often a good route to challenge a law or policy which itself affects more than one individual.**

**EXAMPLE: a case of general application.** [Tanzania: a case of general application Attorney General vs. Rebeca Z. Gyumi of 2017.](#)

In this case, the founder and director of Children’s Rights Organization ‘Msichana Initiative’, Ms Rebecca Gyumi, questioned the fact that **marital age between boys and girls was different**. In various laws, girls could marry at a younger age than boys. Section 13 (1)(2) of the Law Marriage Act stated that marriage is legal for females aged fourteen, males 18. Section 17 allowed a child of 15 to marry with the consent of their parents/legal guardian or the court. She made a **constitutional petition to the High Court** asking for these two sections to be **declared void and null because they were unconstitutional**.

Following the steps on the checklist above, Ms. Gyumi and her lawyers:

1) Found a **relevant enforceable law** which included Article 12, 13 and 18 of the Constitution of the United Republic of Tanzania 1977 which referred to the right of equality, right of equality before the law and freedom of expression and argued that this discrimination negatively affected girls, their development and education.

2) found that **they had the right ask the high court to decide this constitutional issue under Section 30.3 of the Constitution** and that the High Court could declare laws void or ask the government to rectify them if contrary to fundamental rights under section 30.5 of the Constitution.

3) the **public body or law responsible** was the Section 13 (1)(2) of the Law Marriage Act stated that marriage is legal for females aged fourteen, males 18. Section 17 allows a child of 15 to marry with the consent of their parents/legal guardian or the court.

4) They gathered **evidence** and took the **procedural steps** to make the complaint, which required going to the High Court.

6) The **remedy** was that the High Court held that Sections 13 and 17 of the Law of Marriage Act were **unconstitutional** as they violated Article 12, 13 and 18 of the Constitution of the United Republic of Tanzania 1977 which referred to the right of equality, right of equality before the law and freedom of expression and therefore had to be rectified within one year. **The court ordered that this rectification had to be in accordance with international human rights legislation**, including the Maputo Protocol and Article 21 of the African Charter on the Rights and Welfare of the Child.

For more information on public law and constitutional actions, please see **Going to Court**.

**TIP:** A good resource that goes into more detail on how to prepare a case on Child Marriage cases in Africa can be found [here](#).

#### 4.5. International/ regional challenges:

International human rights treaties and conventions also protect the **right to free consent** when getting married.

##### What are my rights in international law

Article 16.2 of the **Universal Declaration of Human Rights**, Article 10 of the **International Covenant on Economic, Social and Cultural Rights**, the **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages** in its Article 1 and Article 23.3 of the **International Covenant on Civil and Political Rights** all state that marriage must be entered into with the free consent of the intending spouses.

**Article 16.1.b of CEDAW** provides that spouses have the same right freely to choose a spouse and to enter into marriage only with their free and full consent and in its **Article 16(2)** it provides that child marriage has no legal effect, and states shall take all necessary action to specify a minimum age for marriage.

**Article 19 of the Convention on the Rights of the Child (CRC)** protects children from all forms of physical or mental violence, including sexual abuse. Its **Article 24** protects the right to health and its **Article 28** protects the right to equal education. All of these rights are affected by child marriage.

In Africa, the **Protocol to the African Charter on Human and People's Rights: Rights on the Rights of Women in Africa**, **Article 6 and Article 6 of the Maputo Protocol** specify that marriage requires free and full consent from both parties, and the minimum age of marriage for women shall be 18 years. **Article 21(2) of the African Charter on the Rights and Welfare of the Child** also specifies that the minimum age of marriage shall be 18 years.

Asia does not have a regional convention, but the **ASEAN declaration** establishes in its **paragraph 19** that Men and women of full age have the right to marry on the basis of their free and full consent

**Article 17(3) of the American Convention on Human Rights** specifies that marriage shall not be entered into without the free and full consent of the intending spouses.

All of these provisions can be used when taking a case before an international body.

**TIP 1:** You can find a detailed table of international law on marriage [here](#)

**TIP 2:** You can click [on this link and look for your country on the list](#). If your country is party to a treaty it must **comply** with the rights and obligations included in them. Your country may have applied **reservations** (limitations to the application of the treaty) when they became party to a treaty which you can also read.

**TIP 3:** You can **search for cases** in your country or in your regional system and see which rights have been most effective to uphold equal marriage rights in the past.

#### 4.5.1 How to use these international law provisions in practice?

These provisions are especially useful for organisations and the community to hold their governments progressively to account particularly towards **systemic change**.

For more information on how to take your case to an international or regional body, please see the section on this guide “**International Mechanisms to protect your rights**”.

## 5. Page 5: DIVORCE

### 5.1 introduction to divorce.

If you are formally married under the laws of any country, the most common way to end the marriage is by divorce. Almost every country in the world now allows married couples to divorce under some conditions. The exceptions are the Philippines and the Vatican: in these places, a marriage can only be ended by annulment.

Some women face **discrimination and difficulties in accessing a divorce**. Some countries have different reasons or grounds for divorce for men and for women, making it more difficult for a woman to get a divorce.

Other countries have laws that **negatively affect women’s property** during marriage or when getting a divorce which may also force women to stay in a marriage. There are also cultural social norms around divorce which may affect the status of a divorced woman negatively.

**This section will focus on** how to get a divorce and also on different problems that may arise for women **from the starting point of accessing a divorce, and how to defend women’s rights through the process of divorce and after**.

### 5.2 Reasons or grounds for divorce.

Although the divorce procedure is different in every country, there are **requirements to get a divorce** which are often shared. These include:

-most countries require there to be a cause or a reason that justifies the divorce, called **grounds for divorce**.

**EXAMPLE** Zambia requires certain grounds to be met including adultery, unreasonable behaviour, and separation/ time living apart. Similarly, India includes adultery, desertion, insanity, conversion, cruelty, renunciation, presumption of death and venereal disease as grounds for divorce.

The most common grounds for divorce include:

-**Disappearance** (if one spouse has been absent for a long period of time without contact, usually at least a year or more)

-**Cruelty or domestic violence**

-**Adultery**- sexual intercourse with another person.

-**Unreasonable behaviour or irretrievable differences** that make it impossible to continue living together- This is a broad category and allows you to include many things as reasons, such as infidelity that did not involve sexual intercourse, financial responsibility, etc.

Most countries require the couple to have been separated for a particular amount of **time** before asking for a divorce. Some countries require separation before divorce for an amount of time and for that separation to include couples living apart. Others, like Chile, allow you to stay cohabitating in the same property as your partner, but declare that you are separated.

You need to know that countries often make a distinction between:

-Distinction between a divorce which is **wanted by only one of the two parties (Unilateral divorce)** or divorce that is agreed by **both parties (mutual consent divorce)**. Some countries such as Colombia, require that if a divorce is only wanted by one of the parties, then you must wait for a certain amount of **time** or for certain conditions to happen for divorce to be allowed.

-Distinction between no fault divorces and fault divorces: Countries that **allow no fault divorces often require a minimum period of time** to take place before asking for a divorce. For example in Mexico- laws differ from state to state, but all have a 'no-fault' divorce option, **as long as the marriage lasted over one year**.

### 5.2.1 How do I prove my ground for divorce?

If you **agree** with your partner about getting divorce and the reasons, it is easier as you can have a **declaration** from each partner on the reasons for divorce.

If **you are not in agreement** about getting divorced or the grounds for divorce, then you will need **stronger evidence**.

Grounds such as **adultery are often difficult to prove** and often require a declaration of infidelity by your partner or otherwise evidence that he is living with someone of the opposite sex, or having a child outside marriage. This is often difficult to prove and **people tend to opt for a ground that is easier to prove**.

Grounds like **cruelty and domestic violence** will require evidence such as medical reports, police reports, witness statements, photographs, and copies of for example messages or emails with verbal abuse. **If you are in an abusive relationship**, you may find advice on finding protection and support under the **Violence Against Women guide**.

**Separation** will require you to provide **evidence of living apart** for the required period of time (6 months, 1 year, or even 5 years in some countries), such as **utility bills, change of address**, etc. In some countries, couples do not have to physically live away from each other for it to be considered that they no longer share a life together and are separated. This often requires a **declaration of separation**.

It is important for you to **seek legal advice** on how to prove grounds for divorce.

### 5.3 How can I obtain a divorce? The divorce process

Although the process may vary in each country, it is often the case that the divorce process is either carried out by an administrative body, such as a Notary or the Civil Registry or that the parties have to go to court.

#### 5.3.1 Divorce through and administrative body:

**Where the parties agree to get divorced and are also in agreement about other affairs** such as **children, property, economic compensation**, etc, some countries allow for divorces to take place before an administrative body.

Steps often include:

1. Agreeing the terms of your divorce (reasons, what will happen to children, to your family home, to your common property, etc) with your partner. Drafting the agreement and checking that you are happy. **You should seek legal advice, independent from your husband to make sure that your rights are being protected properly**. For more information on aspects relevant to the terms of a divorce please see **Important aspects to be decided when getting a divorce** below.

2. Take the drafted agreement or form to a notary, a civil registry or other public body. Include your marriage certificate, pay an administrative fee and after a certain time limit, you should be divorced.

3. You may need to register your divorce in another public body such as a notary public register, the civil register or other body.

4. Overall it should be a brief process.

**EXAMPLES:** Countries such as [Colombia](#) allow for **mutual consent divorces** to be documented in a **joint declaration** which is signed before a notary, without having to start court proceedings or pay legal fees and any division of the assets is agreed on a separate document (unless there are children in which Case a Children's Ombudsman intervenes to see if custody should be decided by a judge).



Similarly, in Nigeria there is a non-judicial divorce and generally, the court will only get involved in this process for administrative assistance or in the case of payment disputes. If this fails, there is a judicial divorce process.

### 5.5.3.2. Going to court.

Some countries require you to go to court when you are not in agreement over getting a divorce or over other aspects such as which grounds are the basis for the divorce, asset division or custody of children. Other countries require parties to go to court for all cases.

#### STEPS

1. File a **petition asking for the dissolution of the marriage**. This can be done by one or both parties if they agree.
2. The court will check basic requirements are met and send the other party the divorce application. The other party will have to review it and provide their arguments agreeing or not to the divorce.
3. If there is **agreement** you can apply for the court to **grant the divorce directly**. Some countries may require a court hearing anyway.
4. Court proceedings often have a stage of **mediation**, where the parties are invited to reach an agreement. Parties **do not have to agree**, in which case the proceedings will continue.
5. If there is **no agreement** there will be a court hearing for a judge to hear the case. This is where show what evidence you have to support not only the grounds for divorce but also **other aspects of relevance** such as division of the assets, maintenance, etc.
6. The judge reaches a **decision** granting the divorce or not and deciding other aspects.
7. There is the possibility to appeal.

**Which option is better?** You should consult with a lawyer that is **independent from your husband**, to find out what the best option is for you. Ideally, agreed divorces are faster, but it is still advisable that you get legal advice to see if the terms of your agreement are **convenient for you** and the steps of your specific divorce proceedings.

### 5.4 Important aspects to think about when getting a divorce:

When getting a divorce, you will need to think about **what will happen with the custody of common children, visitation rights, maintenance, division of common property and economic compensation**.

#### 5.4.1 Custody of children, visitation rights and maintenance for children that will live with you:

If you and your husband have children, the following aspects regarding your children will need to be resolved:

**1. Child custody or care:** who will live with the children in common and have the primary duty to care for them every day. There are several options for divorcing parents:

-**joint custody** of the children which means that the children will live with both parents, sharing their time between both homes in different proportions.

-**sole custody** to only one of the parents. This will also mean the other parent should have visitation rights and provide child support to the children.

**2. Child Support:** this is the amount of money that will be paid by the parent that does not have custody of the children to support the children. This is often a fixed monthly amount, although there may be different rules in each country. Countries often regulate a percentage of a parent's wage that can be destined to child support, but these rules vary in each country.

**3. Visitation rights or regular contact with the children:** this is the time assured to the parent who does not live with the children to visit them. This is often worked out on daily, weekly or monthly terms, but it varies in each country. Visitation rights can also be supervised in the event that one of the parents is considered to need supervision for the benefit of the child.

The rules to these aspects will be included in a special law, like South Africa's Children's Act, [Act 38](#) of 2005, a Family Code or a Civil Code.

In most systems you can **reach an agreement** on who will have custody of the children, child support and visitation rights for the other before a notary public or directly before a judge. You should think about what you want and seek legal advice.

If there is no agreement between both parties, a judge will decide. In all cases, the judge will have consideration for the principle of the **best interest of the child**.

#### **KEY PRINCIPLE [UN Convention on the Rights of the Child](#).**

**The best interest of the Child. Article 3 1.** States that: In all actions concerning children, whether undertaken by public or private social welfare institutions, **courts of law**, administrative authorities or legislative bodies, the **best interests of the child shall be a primary consideration**.

The best interest of the child is applied to each case in particular and will vary in each individual case.

**During your divorce proceedings**, you will have to **provide evidence that supports your requests**. This includes:

**For custody of children and visitation rights:** that you have an adequate place to live, an adequate relationship with your children, economic means to have the children stay with you. Judges should also consider the opinion of children after a certain age. If you are concerned about your children living with your husband you should also provide evidence to support this worry.

**For child support:** You need to provide evidence about the needs that your children have, such as educational, clothing, food, personal development, health, etc.

The importance of legally deciding these aspects of your parental relationship is that **both parties can then enforce these rights legally if they are not complied by either parent.**

For example, you can also take the father of your children to court if they do not comply with paying child support or the parent that does not live with the children can legally enforce their right to visit if visitation rights are not respected.

These are changing aspects of your family relationship and **can be altered after your divorce to if circumstances change**, which will also need to be supported by evidence. You should get legal advice to do this.

**BOX: Important:** If you are concerned about domestic violence in your family, please see our **Violence Against Women guide.**

#### **5.4.2 Division of the Assets:**

It is possible that:

- you had property before you married (such as a car, a house or other goods)
- you bought or received property during the time you were married, or
- you did not have any goods or property before your marriage but that you contributed to your household through other means like by taking care of the home and taking care of your children.

In all these situations, you may have **property rights** that you can claim during your divorce proceedings. This will depend on which rules apply to you.

Most countries have sets of rules on how property is to be distribute if the marriage ends or **property regimes that apply to marriage.** You should check for each specific set of rules in your country. Each set of rules will have a different effect when you get divorced.

#### **BOX Marital property regimes:**

##### **Separation of property:**

-Property and income that was bought by you or given to you **before getting married and during the marriage remain yours.**

-Similarly, **all property bought or given to your husband before or during marriage will be his.**

- At the time of divorce each spouse retains ownership of all their assets.

-This is **beneficial if you have your own property and job income that you want to protect.** This is less beneficial if you do not have your own property and contributed to your husband's chances to buy property in his name only.

### **Partial community of property:**

-Property and income owned **before marriage** will be **owned by the party that bought it or was given it**, but any **increase in value** of the property that took place during the marriage will be **joint property and equally divided** after divorce.

- Property **bought or given after getting married**, will be **joint property** of the couple.

-At the time of divorce, the **joint property will be divided equally** between you and your husband.

This is **beneficial if you do not have your own property** and contribute to your husband's chances to buy property in his name. This is **less beneficial if you have your own property and income** that you want to protect.

**Examples:** Cambodia and Ethiopia provide for a partial community of property as the default regime.

### **Full community of property:**

-**All property and income** from any point before, during or after the marriage **are joint property of the couple**. If the marriage is dissolved, all joint property is **divided equally** between the spouses.

-This is **beneficial if you do not have your own property and contribute to your husband's chances to buy property solely in his name**. This is **less beneficial if you have your own property and income** that you want to protect.

Source: World Bank Group, Women, Business, and the Law 2016: Getting to Equal, p. 52, (Washington, D.C., 2015).

In some countries you can know which set of rules apply to you by **looking at your marriage certificate** and in other countries, this information is held at a Marriages or Civil Register.

In most systems you can reach an agreement on how to divide your assets with your partner before a notary public or directly before a judge. If there is no agreement between both parties, you will need to prove which assets you and your partner have, and a judge will revise this. You should get legal advice to do this.

#### **5.4.3 Economic compensation**

It may be that you had to give up employment possibilities whilst you were married. For example, some women stop working to take care of the common children. This can mean that after the divorce, you are in a worse position in your career or to access employment.

When a judge is deciding how to divide the assets between the two parties getting a divorce, **in some countries it is possible to ask the judge to provide one of the parties to give the other party economic compensation** for the sacrifices you made during the marriage and the **impact those had on your income and opportunities**.

**BOX:** For example, in **Kenya**, Section 7 of the Matrimonial Property Act of 2013 says that matrimonial property in divorce proceedings will be split according to the contributions made during the marriage, this includes any childcare given by the mother if she did not work.

In Cambodia, the Civil Code in Articles 972-973 initially states that property is to be divided equally in a 50/50 split between the parties. However, Judges can give compensation or change the division in circumstances like childcare and its effects on earning.

If there is no agreement between both parties, you can ask the judge for compensation and the judge will decide if to give any and how much.

You will need to prove:

- that you had given up your career to take care of children or to take care of the home, or for example that you reduced your hours to take care of your children, and
- that this had a **real effect** on your career prospects. For example, you left work, or you rejected a promotion. You can do this with emails, witness statements, letters from your employer, etc.

You should get **legal advice** to do this as in some countries it is more common than others.

**Example: Kenya: Nderitu v Nderitu Kariuki [1997] 606 [CAK] Case No. 203 of 1997. Court of Appeal. Source [www.kenyalaw.org](http://www.kenyalaw.org)**

In this case, the **wife was initially awarded 30% of the matrimonial property** in divorce proceedings. The wife argued that she managed two of the family businesses herself bringing the profit to her husband. The judge stated that she did work in the businesses but was weakened by being pregnant and decided that her share should be reduced to 30%. She appealed and the **Court of Appeal recognized the important role played by women in childbearing and increased her share to 50% share**. The Court of Appeal said that childbirth and struggle faced afterwards should not be a reason for deduction but rather evidence to support a 50% share for the appellant.

#### **5.4.4 Can I get maintenance after the divorce?**

Although in most cases the divorce involves a clean break between the parties, there are cases where you can either agree with your partner or have a judge order that you or your ex-partner can get maintenance after divorce.

This happens in cases where one of the parties leaves the marriage with financial difficulties, or where there is a financial imbalance between the two parties.

Bear in mind that:

-Some countries provide for it **exceptionally**, others more commonly.

-Some countries require you to ask for it during divorce proceedings, others give the judge discretion to decide this.

-If circumstances change, for example if you remarry or if your financial circumstances improve, your ex-partner may ask for the maintenance to stop or be reduced. This will vary in each country.

### **BOX: Rights to Maintenance: South Africa and India**

In South Africa, women and men can seek maintenance as an **exception**. The Divorce Act 70 of 1979 in section 7 allows the court to order spousal maintenance if there was a **prenuptial written agreement** which included the right to maintenance, or, the court can decide to order some maintenance considering different facts like **the economic situation of both parties, earning capacity and economic needs, if there are children, duration of the marriage, etc.**

In **India**, different kinds of marriage allow people to seek maintenance after divorce. If you had a **Hindu marriage**, you are entitled to maintenance under Section 18 of the Hindu Adoption and Maintenance Act (1956). If you had a **Muslim marriage**, you are entitled to maintenance before you can remarry under the Muslim Women (Protection of Rights on Divorce) Act (1986) Section 3. If you had a **Christian marriage**, the court may order maintenance under Section 38 of the Indian Divorce Act (1869). If you had a **Parsi marriage**, the court may order the one of the parties to pay maintenance if so asked for by the other party under the Parsi Marriage and Divorce Act (1936) Section 40. If you had a **non-religious marriage**, the court can order maintenance for the wife under Section 125 of the Code of Criminal Procedure (1973), if the wife can prove that she would **be unable to support herself without it and continue living in the common household**.

If there is **no agreement between both parties**, you can ask for it during the divorce proceedings and the judge will decide if to give any and how much. In some countries you can also ask for it after divorce and ask for it to be increased or reduced after divorce too.

Generally, you will need to prove:

- that you are **financially struggling**
- that you have **economic needs** to be met, including expenses for taking care **of children** if there are any
- that you have a **prenuptial agreement** if there is one.
- the **length of your marriage**

Bear in mind that the other party may argue that you are financially safe, that you are planning on remarrying or are living with someone else as proof that maintenance should not be given or reduced.

**Mohammad Ahmed Khan v Shah Bano** (Supreme Court of India) 23 April 1985,

Shah Bano divorced from her husband and she was asked by him to move to a separate residence, after a prolonged period of her living with him and his second wife.

They had been married in a Muslim marriage and had five children together. Shah Bano filed a petition in court **demanding maintenance from her divorced husband.**

Muslim personal law in India only required a man to pay maintenance to his ex-wife for the period of “iddat” (the waiting period a woman must observe after the death of her husband or divorce before she can marry another man), but the Supreme Court of India decided that **the religion of the neglected person could not make any difference to the application of secular law and that** Section 125 of the Criminal Procedural Code was enacted to provide a quick and summary remedy to a class of persons who are unable to maintain themselves **and granted Shah Bano maintenance.**

You should **get legal advice** to do this as the right to maintenance is much more common in some countries and very exceptional in others and specific rules vary.

### **5.5. Customary marriage and divorce**

Generally, if your customary or religious marriage is recognised by a registering officer, it should be regulated by the general rules. If your marriage is not recognised, please see our **section on customary marriage.**

Please bear in mind that **there are specific rules about requirements to get a customary or religious marriage and to terminate customary marriage, for which you will have to enquire with lawyers or civil society organisations in your particular country to find out more details.**

### **5.6. How to challenge systemic difficulties or disadvantage for women in divorce: Public law or Constitutional challenges.**

Most countries allow women to request a divorce. For example, in Vietnam, [Article 51](#) of the 2014 Law No. 52/2014/QH13 on Marriage and Family states that men and women can request a divorce. In some places, women are at a disadvantage to start a divorce, or are under more demanding requirements than men to access or start the divorce procedure.

If divorce is easier to access for men than it is for women or if the grounds for divorce are stricter for women or blame women more than men for the same actions, then this can limit your right to access divorce in a way that is **discriminatory against women in your country.**

#### **5.6.1 Constitutional challenges.**

Most constitutions include a general provision of **equality before the law or non-discrimination.** Some countries have constitutional provisions specifically referring to equality in accessing divorce. If the constitution provides for equality between men and women, this should mean that wives are able to divorce your **husband in the same way, for the same reasons, same time periods** as her husband would divorce her.

For example, [article 31 of the Constitution of Uganda](#) states: "...Men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage **and at its dissolution**".

The laws of a country relating to divorce may themselves be discriminatory and fail to accord equal status to men and women to seek a divorce. In this case, provisions on equality in a country's Constitution or other national human rights legislation may be used to challenge such laws. This means that the law that allows or dictates unequal access to divorce can be **challenged because it goes against the constitution, or is unconstitutional**.

**BOX Claim:** Constitutional claim in a constitutional court. Some countries allow you to go to a civil court.

**By whom:** the affected person (can be supported by civil society organisations) and some countries allow civil societies to represent the public interest and take a case alone.

**Against:** restrictive public policy or legislation which makes it difficult for a woman to access divorce or an act by the husband such as retaining money which the wife needs to initiate divorce proceedings. In some countries like in Peru ([article 200](#) of the Constitution), laws are challenged through "unconstitutionality actions".

**Asking for:** declare the act, policy or law unconstitutional and have it not applied in your case. In some countries it does not apply to all other similar cases.

**How?** The process for such a challenge varies between countries - it may be, among other things, called a "constitutional petition", or "amparo proceedings".

### Steps:

1. Finding a person who has had their **fundamental rights affected**: This would be the **wife** which is affected by the discriminatory disadvantage or difficulty around divorce.

2. Establishing **which fundamental rights were affected**: the right to equality and/or non-discrimination contained in most constitutions or other national laws can be effective but it could also be that other rights protected by the constitution are affected, such as the right to liberty, right to dignity, access to justice, due process or others.

**BOX TIP:** Depending on each country, the right to non-discrimination may only apply in relation to the enjoyment of other fundamental rights, rather than as a standalone right.

For example, in the UK, the Human Rights Act requires that discrimination has affected the enjoyment of one or more of the other rights in the Act.

Other countries, like [Peru](#), allow for the right to non-discrimination to be protected as a standalone right.

3. Get legal advice on the likelihood of an amparo proceeding for your specific case.



4. Initiate legal proceedings showing **which** rights were affected, **how** those rights were affected and **why** it is unconstitutional. You will need to provide **evidence**.

5. The other party, the public authority or the Estate will also get a chance to argue and give evidence against your claim.

6. If successful, the constitutional courts may provide for an act, law, or policy to be declared **unconstitutional**. This often means that the act, law, policy cannot be implemented in an individual case (**concrete application**), but it may in some countries also have the benefit of not being applicable in ANY case (**general application**).

The following checklist may be useful when thinking of a constitutional claim:



#### A4J CHECKLIST: PUBLIC LAW

<u>CHECKLIST</u>	<u>YES/NO</u>
1) Is there a relevant right/law I can enforce?	
2) Do I have the right to bring the claim?	
3) Have I identified the public body responsible?	
4) Have I gathered evidence?	
5) Have I taken the procedural steps to bring a claim?	
6) If I win, what remedies could I get?	
7) Can I take my case to a regional or international human rights body?	

Action4Justice - Public Law Checklist

Example, Challenging lack of equality for women to access divorce in [Case 794-2010 \(Constitutional Court\), 1 June 2010, Guatemala. General application](#)

The Guatemalan Human Rights Ombudsman were not happy that Article 89(3) of the Civil Code of Guatemala allowed men to marry immediately after a divorce, but required women to wait 300 days after a divorce to get married. Following the checklist, they:

- 1) Found a relevant enforceable law which was the constitution of Guatemala, which in its Article 4 refers to the right to equality.
- 2) They also found that they had the right to bring the claim as Article 267 of the Constitution created the constitutional complaint and allowed the Human Rights Ombudsman to bring a claim in Article 134 of the Ley de Amparo, Exhibición Personal y de Constitucionalidad.
- 3) They found the public body or law responsible which was Article 89 (3) of the Civil Code which allowed men to get divorced earlier than women.
- 4) & 5) They gathered evidence and took the procedural steps to make the complaint
- 6) The remedy was that the Court declared the legal provision unconstitutional and not applicable in all divorce cases from then on and ordered the Congress to legislate a new provision which did not discriminate between men and women's right to marry.

It may be that grounds for divorce are simply different for men than for women in a way that discriminates against women.

**EXAMPLE OF CHALLENGING DISCRIMINATORY GROUNDS FOR DIVORCE**  
**:Law Advocacy for Women in Uganda v Attorney General (Constitutional**  
**Petitions Nos. 13 /05 /& 05 /06) [2007] UGCC 1 (5 April 2007)**

Ugandan NGO "Law and Advocacy for Women" **petitioned the constitutional court to strike out laws contained discriminatory rules** which made marriage harder for women. Amongst these laws was **Section 154 of the Penal Code Act** which provided that married men are only liable for the crime of adultery when sexual intercourse takes place with a married woman, while married women are liable for the crime regardless of the marital status of the man.

They made a constitutional petition to the Constitutional Court of Uganda at Kampala **against the State** asking for Section 154 to be struck out as they considered it was inconsistent with the Constitution, in particular, the **violation of the right to property, non-discrimination, equality before the law, prohibition of torture, cruel inhuman and degrading treatment, gender equality and the dignity of women**. The court agreed and mentioned international covenants as an inspiration. It declared that the laws challenged, should be stricken out.

In some countries, the division of common property during marriage and when getting a divorce is discriminatory against women which can have serious economic consequences for women that want a divorce, having them often stay in unhappy or violent marriages due to economic need.

**Gumede (born Shange) v President of the Republic of South Africa and Others**  
**(South Africa Constitutional Court), 8 December 2008.**

Mrs and Mr Gumede entered into a customary marriage in 1968 and had four children. Mrs Gumede was forbidden by her husband to work. Consequently, she was not able to monetarily contribute to the family estate or have any financial independence to rely on when she wanted to get a divorce.

She found that the **law was discriminatory**, as it **stated that the husband had full control of the property and that he was the head of the household** and must be obeyed. Mrs Gumede took her case to the **High Court first and then to the Constitutional Court, against the South African State** arguing that the regulations on customary marriage were discriminatory. The Constitutional Court declared Section 7(1) of the Recognition of Customary Marriages Act (Recognition Act), Section 20 of the KwaZulu Act on the Code of Zulu Law (KwaZulu Act), Section 20 of the Natal Code of Zulu Law (Natal Code) which gave the husband control of all property and Section 22 of the Natal Code which stated that the family owed obedience to the head of the family **discriminatory on the grounds of race and gender, making them unconstitutional and invalid in all cases.**

The court mentioned international human rights commitments such as the **Convention on the Elimination of all Forms of Discrimination Against Women** in addition to sections 9(3) and 9(5) of the Constitution that expressly deal with equality protection. The result for Mrs Gumede was that she was **entitled to the property acquired during her marriage.**

It is worth noting that this constitutional invalidity is limited to monogamous marriages, in other words polygynous marriages will still be regulated by customary law for the time being.

**A constitutional challenge is often a good route to challenge a law or policy which is systemic and affects more than one individual.**

If you are in a hurry to get a divorce, it may be that a constitutional challenge will take too long. It is advisable to **seek legal advice** to decide whether to meet the existing requirements and go ahead with getting divorced instead.

### **5.7 Regional or international human rights challenges to violations of your right related to divorce.**

Although there is not a human right to divorce recognised in human right conventions, there are **practical aspects surrounding a divorce which can negatively and unfairly affect women.**

#### **BOX: What are my rights in international law**

Article 23(4) of the **ICCPR** provides that states shall ensure **equality of rights** and responsibilities of spouses in relation to marriage **and its dissolution.**

To avoid discrimination, **Article 16(1) of CEDAW**, calls on States to take measures to **eliminate discrimination** against women in “all matters relating to marriage and family relations”. This **includes divorce.**

With regards to property, Article 16.1.h of CEDAW calls on States to ensure “The **same rights** for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition **of property**, whether free of charge or for a valuable consideration.”

Article 7 of the **Protocol to the African Charter on the Rights of Women in Africa** [https://www.un.org/en/africa/osaa/pdf/au/protocol\\_rights\\_women\\_africa\\_2003.pdf](https://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf) states that States shall enact appropriate legislation to ensure that women and men **enjoy the same rights in case of separation, divorce or annulment of marriage**, including having the **same rights to seek** separation, divorce or annulment of a marriage, **reciprocal rights and responsibilities towards their children and an equitable sharing of the joint property** deriving from the marriage.

**BOX TIP 1:** You can find a detailed table of international law on marriage [here](#)

**TIP 2:** You can click [on this link and look for your country on the list](#). If your country is party to a treaty it must comply with the rights and obligations included in them. Your country may have applied reservations (limitations to the application of the treaty) when they became party to a treaty which you can also read.

**TIP 3:** You can search for cases in your country or in your regional system and see which rights have been most effective to uphold equality in aspects related to divorce in the past.

## 5.8 How to use these international law provisions in practice?

If your claims and challenges in your national courts are rejected by the highest court, or are not taken seriously, you may be able to take your case to a regional or international body.

These provisions are especially useful for organisations and the community to hold their governments progressively to account particularly towards **systemic change**.

For more information on how to take your case to an international or regional body, please see the section on this guide “**International Mechanisms to protect your rights**”.

# 6. Page 6: Widows’ rights

## 6.1 Overview. What are widow’s rights and how can their rights be affected?

Widows are women whose husbands are deceased. The status of widows varies between different countries and cultures.

In many countries, a woman’s wellbeing and rights are linked with her marital status. Widows can therefore be among the most vulnerable members of society, facing discrimination, abuse, and financial hardship due to their widow status.

## 6.2 What problems do widows face?

Specific areas in which widows may face challenges and violations of their rights include:

- Inheritance rights: unfair laws or practices may mean that women do not inherit their husband's property after his death, meaning that widows are often left destitute, with no means to support themselves. Their husband's family may take over assets such as land and livestock.
- Evictions: a further consequence of discriminatory inheritance rights may be that the husband's family may force a woman to leave their family property, leaving them homeless.
- Custody of children: in some cases, due to either an unfair law or an unfair practice, a widow may face a challenge to keep custody of her children, as guardianship may pass to her husband's family after his death.
- Traditional customs: some cultures may follow customs which impose certain restrictions or obligations on widows which are discriminatory and constitute serious violations of their human rights.

This section will focus thinking steps on different legal options to challenge these problems. Legal options vary in each country and legal systems and do not replace legal advice by a lawyer in your country.

### **6.3. If you were married under customary, religious, and polygamous rules. How are your rights as a widow affected?**

If a marriage is not legally recognised, this may preclude the individuals in the marriage from benefiting from any protections that are provided for in national law - including being considered a surviving spouse and accessing all the rights that surviving spouses can get.

Having your marriage recognised or equated to a marriage can be useful for you to benefit from rights awarded to widows.

#### **EXAMPLE: Amod (born Peer) v Multilateral Motor Vehicle (Supreme Court of Appeal of South Africa), 29 September 1999.**

In this case, Hafiza Amod went to a High Court in South Africa to ask for compensation from Multilateral Motor Vehicle, after her husband's sudden death from a car accident for which they were responsible. She had an Islamic marriage which was not registered as a civil marriage. The High Court decided that she could not seek compensation as she was not in a recognised marriage according to the provisions of the Marriage Act 25 of 1961. Hafiza Amod appealed. The Supreme Court of Appeal argued that legal definitions of marriage should adapt and, even though the marriage was not registered, in the facts it had complied with all requirements of a marriage which gave rise to "marriage like" duties, such as providing support to your wife which had to stop because of her husband's accident. Multilateral Motor Vehicle was ordered to pay compensation to Hafiza Amod as a consequence of her husband's sudden death.

For more information on how to have your marriage recognised or be considered and equated to a surviving spouse, see our section above on **Types of marriage, celebrating a marriage and recognition**.

### **6.4. Inheritance rights, evictions and how they affect widows' rights**

Many countries have laws which provide inheritance rights for widows and entitle them to a fair share of the property. Even where this is the case, however, there may be several obstacles to actually enforcing those rights:

- Where a marriage has taken place under customary or religious law, the relevant statutory protections associated with legal marriage may not apply. See **Types of marriage, celebrating a marriage and recognition**.
- Many widows may not have access to the advice or resources required to enforce their rights through legal means or there may be a lack of documentation relating to the relevant property, making it difficult to evidence the rights.
- Discriminatory attitudes to women (and widows in particular) may persist within their local community, so public authorities are unwilling to enforce laws giving them rights.

In some countries, the law does not provide for the woman to inherit her husband's property after his death. A woman's in-laws (her husband's family) may therefore take control of her property and force her to leave her marital home.

#### **6.4.1 What rights do you have and where to find them**

Inheritance rights are often regulated differently depending on whether a person leaves a will on death, called testate succession or not, called intestate succession.

##### **Your husband had not made a will**

In this case, there are rules which decide who gets his property. Inheritance rights will often be regulated in a civil code, family code or inheritance rights law. These rules have an order of priority which states how the estate will be distributed. Surviving spouses or widows are often at the top or secondly in this order, and sometimes they are after children and parents.

**BOX EXAMPLE:** The Central African Republic's family law (Code de la Famille, 1997) states that the surviving wife or husband is third in line (after the children and parents).

To find this out, look for this order in your country's your civil code or a special succession law or act.

##### **Your husband had left a will**

In this case, his property will be shared following what was stated in the will. He may have given you all his property, some of it to share with others or none.

In some countries, like some Latin American countries, the law protects the spouse and children for a proportion of the property of the deceased even against a will and leaves a smaller portion to be decided by a will.

To find this out, look for this order in your country's your civil code or a special succession law or act.

#### **6.4.2 What about widows from customary marriages?**

In countries where there is also a regime of customary marriage, widows often do not inherit property. However, it is often the case that a will where your husband leaves you property will be applied over all other customary rules. In this case, if you have a good relationship with your husband and there is the option for him to leave you property in the will, this is a reasonable alternative.

Also, some countries require that the customary rules have to comply with certain requirements to be enforceable and some may even require it not go against the constitution.

**Example** In Nigeria, customary law must not be repugnant to natural justice, equity and good conscience as stated in the case of *Agbai V. Okagbue* (1991) 7 NWLR Pt 512, p. 283 CA. Customary rules also have to not go against public policy or be incompatible with the law. <https://lawcarenigeria.com/elsesie-agbai-ors-v-samuel-i-okogbue1991/>

This could mean that you would be able to challenge this in a civil court, or as a public law challenge, as explained in the next section. **It is imperative that you seek legal advice** from a lawyer in your country who is an expert in the specific customary rules that apply to you and what requirements they must comply with.

#### 6.4.3 How to enforce your inheritance rights

You first have to make an **application often called a grant of probate (if there is a will) or grant of administration if there is no will**. Most countries have a public authority that deals with these grants, such as a Probate Office or Civil Register.

The details of this will depend on each country, but common steps include completing a form and providing evidence of those that are entitled to inherit and why they are entitled. You must also have a copy of the will if there is one.

This institution has the duty to check if those making the applications are the right people and if there is anyone missing.

Some countries require you to go straight to a civil or family court to enforce your rights.

#### 6.4.4 Regularising land that has always been yours.

If you had property that was yours prior to the death of your husband, regularising that land is important. Ownership of property such as land or houses is transferred through a deed of transfer which is a document that certifies who is the owner. All deeds and property ownership of a country are often in a national register which is run by a Register Office or Property Register, a public institution that certifies that no one tries to alter who the owner of a property is without meeting specific requirements.

Steps to check:

1. Visit the Land Register or Property Register office and enquire about who is registered as owner.
2. Check what the rules are in your country. This will often be regulated in your Civil Code or a Land Act. These rules are complex and will very probably require you to seek legal advice. Think about what proof you have that you paid for the land or contributed to its payment. It could also be that said house was your parents and pass onto you without a formal process.

3. Speak to a lawyer to see if you have a chance to regularise the registration of your property in your name. The chances of this will strictly depend on the rules of your country and the specific facts of your case.

#### **6.4.5 What if there is a dispute around the use of customary rules or in the case that there is a dispute with other relatives over a widow's inheritance rights or around the widow's property rights? Civil claims.**

If there is a dispute, and for example, your relatives have ignored your rights, you can oppose the grand of probate and challenge it. The process for this will be different in each country but some countries will allow you to do this directly with the institution in charge of registration. However, in most cases you would go to a Civil Court. Similarly, if they are trying to evict you or have forced you out of your land, you can challenge it.

Civil claims solve disputes between private parties, such as two individuals. The purpose of civil claims is for a judge to give you relief or a remedy, that is, a solution to your individual problem with the other party. This can be:

**-compensation or money in the case that you suffered harm**

**- an injunction or an order from the judge to do or not do something, for example to evict someone or to stop an eviction.**

**-to ask for an order from the judge allowing you to benefit from certain rights. For example, to divide a property in your favour, administer an estate or decide that you are entitled to certain rights.**

**BOX: Step 1: Think about why and how your rights have not been respected. Have your inheritance rights not been respected, is there lack of evidence of your marriage, was there missing or wrong evidence? Has there been a mistake? Start gathering evidence that supports that you were married, that you are a widow and that you have certain rights.**

**Step 2: Look at where the recognition of your rights as a surviving spouse are regulated - for example, in a civil code, or specific inheritance law or act. Example: Article 780 of the Code de la Famille confirms the right of the surviving spouse to stay in the main residence for at least two years after the demise of the deceased spouse until succession arrangements have been finalised.**

**Step 3: Seek legal advice on the viability of your case and to take your case to court.**

**Claim: civil claim in a civil court, like the High Court**

**By whom: the widow**

**Against: other relatives who may or may not have inheritance rights, or others.**

**Asking for: an order allowing you to benefit from certain rights. For example, to divide a property in your favour, administer an estate or decide that you are entitled to certain rights.**

**Proceedings will often involve:**

**1.Going to a civil court and presenting your arguments**



**2. Providing evidence-** In civil law actions, it is the claimant who has the “burden of proof”. This means the person bringing a civil claim needs to prove their case. You have to prove your case to a standard of proof known as the balance of probabilities (which means that you need to prove that there is more than a 50% chance what you are saying happened). This includes, for example, proof of marriage, proof of property ownership, witness statements on your occupation of a property, etc.

**3. The judge making a court order granting you the administration of the estate, dividing the estate, granting an injunction ordering others to abandon your property or an order to let you stay in a property.**

This route is a good option for a case in which the focus is on having your inheritance rights enforced. It does not address the systemic issues in case that the law in your country is discriminatory and does not give widows fair inheritance rights.

**BOX EXAMPLE:**

Kenya: [Gituanja vs. Gituanja](#), Nairobi Court of Appeal (1983). Civil Appeal No. 25 of 1982

In this case, the widow was the deceased’s second wife and was **excluded of her inheritance rights** as a widow by the son of the deceased who argued that he was to inherit all land. She made a **claim to a civil court and asked for an order** that the land be registered in the respondent’s and appellant’s names as joint owners in common in equal shares. The son argued that he was the sole proprietor and that the widow could only be the licensee to use the land but not the owner. **The wife proved the marriage with witnesses’ evidence and that she therefore had inheritance rights**, which the court agreed with. The son appealed claiming the judge had made an error in applying the law to this case, but it was dismissed.

**For more information on civil proceedings please see our [Going to Court Guide](#).**

#### **6.4.6 Criminal Law Challenges:**

Some countries have special criminal sanctions for those that try to intervene with the rights of widows.

**EXAMPLE:** Zimbabwe. [Section 10](#) of the Deceased Persons Family Maintenance Act protects the rights of a deceased person’s children and widow to continue occupying the land which they were occupying and using the household. Anyone who interferes with these rights would be committing a criminal offence.

This could also be an option when family members or others are using severe violence or other illegal means to force you out of your property, which may mean that they are committing **other criminal offences such as theft, harassment, assault and battery**.

**The Police** are generally the primary authority responsible for guaranteeing our security and investigating crimes. The police may be able to arrest and charge the perpetrators.

**Criminal cases** are investigations and prosecutions, usually undertaken by police or public prosecutors, to find out if a crime has been committed. If, after investigation, there is evidence a crime has been committed, this could lead to a **criminal prosecution**.

**Claim:** Criminal Prosecution

**By whom:** the widow and the state which takes over the prosecution

**Against:** relatives or others who committed the actions

**Where:** Criminal Court

**Asking for:** The Court to acknowledge a crime was committed and sanction those responsible with a fine or a prison sentence.

**Step 1:** Look at where this is regulated in our country. It will most likely be in a Penal Code or Special law.

**Step 2:** Think if you are within the **time limit**. Some countries allow you a specific time limit of 10 years, or others of less time to prosecute a crime. Other countries have no time limit.

**Step 3: Think about whether you have evidence.** In criminal cases, the person alleging a crime has been committed has the **burden of proof**. The person accused will be **innocent until proven guilty**.

**Step 4: Seek legal advice and speak to a lawyer** to see if there are good prospects for this in your country, if the police and authorities take it seriously and what are the advantages and the **risks**. You may also wish to get support from a **Women's Rights Organisation** that can advise you on your individual circumstances and how to **protect yourself**.

**BOX IMPORTANT:** check if your country considers it a **public prosecution** case. The case is usually investigated by the police, who will also gather evidence. The case brought by a representative of the State, such as a public prosecutor or state attorney. This means that if you report this to the police and their investigations result in them thinking the crime was committed, they will start criminal proceedings against those that committed the crime **regardless of whether you want them to go ahead or not**.

If it is a **private prosecution** case, you will have to take the lead and hire a lawyer to pursue the investigation. You can also drop the case if you do not want to go ahead

**Think if you would like to go ahead and report the case to the police.** The process varies in each country but usually involves:

1. Going to the police or directly to the public prosecutor who will **investigate the facts**.
2. If convinced, the police will **arrest**, and the public prosecutor will **charge** the person involved, accusing them of committing a crime. **If they are not convinced, they will not arrest or charge**, or if they have, they will **release** the person without charge.
3. The perpetrator will either be held **in detention** waiting for their trial or be released **on bail**. There will be a hearing to decide this and a period of time given to continue preparing for trial.

4. The trial will go ahead, and both the prosecution and defence will provide an outline of their version of the facts, provide **evidence**, and question each other's evidence. Your and other witness statements will be relevant for this. The evidence must show to a high level of certainty, often called "**beyond reasonable doubt**" that specific crimes were committed and were committed by the people accused.

5. After the trial, the judge or the jury will reach a **decision**, which will involve either **acquittal or conviction** of the accused. Some countries have a jury, but other countries do not.

6. If the person is convicted, then there is a **sentencing** which can include a fine, a prison sentence, or other sanctions. In some countries, it can also award compensation to victims of the crime, or in this case the restitution of the property. However, as this is generally not the case, **civil cases** are better suited if compensation or restitution is the primary purpose of litigation. If the person is acquitted, they can be released.

7. There is the option to **appeal**.

**This process may be long** and is **focused on sanctioning** those that were involved in forcing you to marry. For more information about criminal proceedings, please see our **Going to Court Guide**.

#### **6.4.7 Public Law Challenge:**

Where:

- There is a customary marriage, and no will and traditional rules may exclude widows
- There are rules on statutory or customary marriage which may be discriminatory towards women with relation to inheritance, then the best option is to pursue a public law challenge.

See **Public law challenges as a way to defend the rights of widows with regards to inheritance rights, evictions, traditional practices, and custody of children, below**.

#### **6.5. Custody of children**

Some widows may face problems with relatives trying to **take custody of their children after the death of their father**. Such practices **discriminate against women** and violate international human rights law standards on **child protection**, which are clear that the **best interests of the child** should be the overriding principle guiding decisions on child custody.

##### **6.5.1. What are your and your children's rights?**

Look at where custody arrangements are regulated within the family law system of your country. This will often be in a civil code, family law code or a family law or children's act. These rules will define **who will live with the children in common and have the primary duty to care for them every day**.

-The default option would be that the surviving parent would **have sole custody of the children**. Unless there are serious reasons, this is the default option and you do not need to go to court to have a judge decide this.

-In the case that there is an issue with the parenting capacity or ability of the surviving parent, relatives can ask a court for **joint custody or even for sole custody**.

In this case, it is important to remember that there are several steps that relatives would have to go through before gaining custody of your children, including:

- 1.They would have to take the case to court and only with a court order proceed to have custody of the children.
2. In court, they would have the burden of proving that you are not capable of raising your children or that you do not want to take care of your children and **provide evidence**. The reasons why you are not capable of taking care of your children must be serious and proved. These include, for example, domestic violence, drug abuse, sexual abuse.
3. They would also have to prove that they are capable to take care of the children.

There is often a provision which requires the court to make decisions based on the best interests of the child.

### **IMPORTANT: BEST INTEREST OF THE CHILD**

**Article 3(1) of the Convention on the Rights of the Child** provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

This is an important principle for courts to consider in deciding on custody arrangements and can be used by widows in keeping custody of their children.

## **6.5.2 What if your relatives want custody of your children?**

### **6.5.2.1 Challenges through the civil or family courts**

In situations where you still have custody of the children, it may be that rather than you bringing a claim to the court it is your husband's family who bring the claim and **they have to argue and prove why they should take custody of the children**. On the other hand, there may be situations where your husband's family have already taken your children away from you - in such cases, you can make a claim before the court to ask for them to be returned to you.

Civil claims solve disputes between private parties, such as two individuals, a couple, two companies or an individual and a company. The purpose of civil claims is for a judge to give you **relief or a remedy**, that is, a solution to your individual problem with the other party. In this case you would ask the judge to order that you keep custody of the child after your husband's death.

**Claim:** Claim in a civil court or family court

**By whom:** the widow and mother of the children

**Against:** the husband's family or any other individual seeking to remove custody from her following her husband's death.

**Asking for:** an order that the wife keeps custody of her children and custody is not awarded to his family.

**Evidence:** the court may require formal evidence of your relationship with the child - for example, the child's birth certificate and other official documents indicating your

relationship. You may also have to show evidence that you have been caring for the child - this could include things such as witness statements and photos.

**Stages of the custody process:** proceedings will often involve:

1. Going to a family or civil court and presenting your arguments.
2. Providing evidence - in civil law actions, it is the claimant who has the “**burden of proof**”. This means the person bringing a civil claim needs to prove their case. If you have brought the claim, you will need to prove your case. Alternatively, if a claim has been brought against you by your relatives, they will have to prove the case.

**Remedies:** The judge can make an order awarding custody of the child to you, and depending on the situation may also be able to make other orders preventing relatives from attempting to take the child.

**BOX: Example BOX: Chilla v. Chilla, Civil Appeal No. 188 of 2000, High Court of Tanzania at Dar Es Salaam, Jan. 6, 2004.** In this case, a claim was brought against Demetria Chilla, a widow, by Ivona Chilla, the sister of her deceased husband. The sister objected to the widow inheriting her husband’s estate, and further argued that she should have custody over the couple’s son, as his mother was a widow and would be dependent on relatives.

The court rejected the sister’s custody claim, holding that under **Article 3 of the Convention of the Rights of the Child (concerning the child’s welfare), the child’s mother was the best person to have custody of the boy as she was his mother and had cared for him since his birth. See judgement [here](#) (page 31).**

#### 6.5.2.2 Habeas corpus

If your child is being held by relatives unlawfully, it may be possible that you or any individual or organisation that is concerned can go to a High Court in your country and ask them to check the legality of this and **order immediate return of the child**.

**Claim:** Habeas Corpus

**By whom:** the mother or any concerned individual or organisation in the name of the child

**Against:** the relatives holding the child

**Where:** High Court usually, but it depends on your country

**Asking for:** to check the legality of this and order immediate return of the child

Step 1: Look at where Habeas Corpus is regulated in your country. It is often in the Constitution.

Step 2. Think about whether the custody hearing is better to regulate the whole custody process. Habeas Corpus will help get the return of the child but will focus on regulating or reaching an agreement over custody or other family law issues. Seek legal advice from a lawyer on this.

Step 3: You will need to start thinking about gathering evidence such as proof of motherhood, identity of the child, where the child is, who is holding the child, etc.

Step 4: Although in some countries you do not need a lawyer to present an habeas corpus, seek legal advice or help from a Women's Rights organisation to check this and the viability of your case and to take your case to court.

Step 5: Make the petition before a court. Steps vary in each country but will often involve:

1. Going to the High Court.

2. Present a petition for a writ of habeas corpus. Together with the petition, you should present a description of the circumstances. Provide as much information as possible about who the child is, where he or she is, and who is holding the child and under what conditions.

3. If the judge is convinced, he or she will ask for the child to be brought to the court to oversee the circumstances and then the judge could order for the release and return of the child.

4. You can also appeal. It should be a quick process, due to its urgency.

This route is an option for a case in which the focus is on solving the urgent problem of getting your child back. Cost also should be reduced, although this also depends on the country. Note that Habeas Corpus will help get the return of the child but will not focus on regulating or reaching an agreement over custody or other family law issues. Think about whether the custody hearing is better to regulate the whole custody process.

**EXAMPLE:** [Subha v State, Madras High Court, India, 2015](#)

In this case, Ms Subha was a woman who had remarried after her first husband passed away. She had a child from her first marriage, and the child's grandmother abducted the child, claiming that it was not appropriate for Ms Subha to retain custody of the child now that she had remarried another man. Ms Subha complained to the police, but they failed to take action to return her child to her.

Ms Subha brought a habeas corpus petition in the High Court under Article 226 of the Indian Constitution to get her child back. The Court noted that the welfare of the child was the paramount consideration and emphasised that merely marrying another person was not something that affected a woman's right to be a suitable guardian for her child. It ordered that the child's grandmother must return custody of the child to her mother.

### 6.5.2.3 Public law challenges

It may be that the law in your country discriminates against widows by permitting a husband's family to make a claim for custody of children. This kind of systemic issue is best addressed through a **constitutional or public law challenge**.

A public law challenge allows you to contest a law, policy or a decision that denies legal protections to women, on the basis that these laws, policies or acts go against your fundamental or constitutional rights.

How? The process for such a challenge varies between countries - it may be, among other things, called a "constitutional petition", or "amparo proceedings".

For this to work, there must be a right on your constitution or other important law which lays out your fundamental rights that protects you. Most constitutions include a general provision of equality before the law or non-discrimination. They also focus on other rights, such as right to a fair trial, equality within marriage, social and economic rights.

Chilla v. Chilla, Civil Appeal No. 188 of 2000, High Court of Tanzania at Dar Es Salaam, Jan. 6, 2004.

In this case, a claim was brought against Demetria Chilla, a widow, by the sister of her deceased husband who objected to the widow inheriting her husband's estate because she was not chosen to do so by her husband's clan. The court decided that this was contrary to the equality provisions of Articles 13, 19, and 26 of the Tanzanian Constitution and Articles 2 and 16 of CEDAW. In addition, the Judge noted that the trial magistrate's gratuitous finding that only male children can inherit was both irrelevant and contrary to the Tanzanian Constitution, which bars gender discrimination in all aspects. [SOURCE](#): at page 31

For more information see **Public law challenges as a way to defend the rights of widows with regards to inheritance rights, evictions, traditional practices and custody of children.**

## 6.6. Widow inheritance

Some traditional customs that widows are required to comply with after the death of their husbands can be discriminatory and violate widow's human rights.

**Definition:** Levirate marriage is "the forced marriage of a widow to the brother of her deceased husband; sororate marriage is the forced marriage of the sister of a deceased or infertile wife to marry or have sex with her brother-in-law, the widower/husband. <https://www.endvawnow.org/en/articles/75-definition-and-forms-of-maltreatment-of-widows.html>

### 6.6.1. Going to the Police to start a criminal investigation against attempted Levirate marriage.

In **some countries**, Levirate marriage is **criminalised by law**. There may be provisions in the **Criminal or Penal Code**.

**Examples of criminal liability for Levirate marriage:** In [NIGERIA](#) the Enugu State enacted **The Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law, 2001** protects the rights of widows and widowers, including the right to not participate in a levirate marriage. It states that "[n]o person for whatever purpose or reason shall compel a widow/widower ... to be re-married by a relative of the late husband/wife". Violation of this law could result in a fine, a two-year jail term, or both.

**The Police** are generally the primary authority responsible for guaranteeing our security and investigating crimes. The police may be able to arrest and charge the perpetrators.

**Criminal cases** are investigations and prosecutions, usually undertaken by police or public prosecutors, to find out if a crime has been committed. If, after investigation, there is evidence a crime has been committed, this could lead to a **criminal prosecution**.

**Claim:** Criminal Prosecution

**By whom:** the widow and the estate which takes over the prosecution

**Against:** the brother in law, relatives or others who committed the actions

**Where:** Criminal Court

**Asking for:** The Court to acknowledge a crime was committed and sanction those responsible with a fine or a prison sentence.

**Step 1:** Look at where this is regulated in our country. It will most likely be in a Penal Code or Special law.

**Step 2:** Think if you are within the **time limit**. Some countries allow you a specific time limit of 10 years, or others of less time to prosecute a crime. Other countries have no time limit.

**Step 3: Think about whether you have evidence.** In criminal cases, the person alleging a crime has been committed has the **burden of proof**. The person accused will be **innocent until proven guilty**.

**Step 4: Seek legal advice and speak to a lawyer** to see if there are good prospects for this in your country, if the police and authorities take it seriously and what are the advantages and the **risks**. You may also wish to get support from a **Women's Rights Organisation** that can advise you on your individual circumstances and how to **protect yourself**.

**BOX IMPORTANT:** check if your country considers it a **public prosecution** case. The case is usually investigated by the police, who will also gather evidence. The case brought by a representative of the State, such as a public prosecutor or state attorney. This means that if you report this to the police and their investigations result in them thinking the crime was committed, they will start criminal proceedings against those that committed the crime **regardless of whether you want them to go ahead or not**.

If it is a **private prosecution** case, you will have to take the lead and hire a lawyer to pursue the investigation. You can also drop the case if you do not want to go ahead

**Think if you would like to go ahead and report the case to the police.** The process varies in each country but usually involves:

1. Going to the police or directly to the public prosecutor who will **investigate the facts**.
2. If convinced, the police will **arrest**, and the public prosecutor will **charge** the person involved, accusing them of committing a crime. **If they are not convinced, they will not arrest or charge**, or if they have, they will **release** the person without charge.
3. The perpetrator will either be held **in detention** waiting for their trial or be released **on bail**. There will be a hearing to decide this and a period of time given to continue preparing for trial.
4. The trial will go ahead, and both the prosecution and defence will provide an outline of their version of the facts, provide **evidence**, and question each other's evidence. Your and other witness statements will be relevant for this. The evidence must show to a high level of certainty, often called "**beyond reasonable doubt**" that specific crimes were committed and were committed by the people accused.
5. After the trial, the judge or the jury will reach a **decision**, which will involve either **acquittal or conviction** of the accused. Some countries have a jury, but other countries do not.
6. If the person is convicted, then there is a **sentencing** which can include a fine, a prison sentence, or other sanctions.
7. There is the option to **appeal**.



**This process may be long** and is **focused on sanctioning** those that were involved in the “widow inheritance”. For more information about criminal proceedings, please see our **Going to Court Guide**.

#### **8. 6.2 Criminal Law and civil law remedies against levirate marriage as a form of forced marriage.**

Levirate marriage is a custom by which a male family member inherits a widow, this is primarily the brother of the deceased. Where there is no consent from the widow, this constitutes an example of **a forced marriage**. The criminal and civil remedies discussed in our forced marriage section are relevant. For more information, please see the **Forced Marriage section**.

There are **other criminal offences** committed whilst in the process of forcing a widow into levirate marriage which constitute acts of violence against women. These may include **assault, kidnap, abduction, harassment, false imprisonment, domestic violence, and any relevant sexual offences**.

For more information on these offences, please see our **Violence Against Women section**.

#### **6.7. Public law challenges as a way to defend the rights of widows with regards to inheritance rights, evictions, traditional practices, and custody of children.**

It may be that widows are not awarded any protection at all in your country, or that there is legislation or policy which affects the rights of widows, either in terms of their **inheritance rights, rights against eviction or inhuman and degrading treatment of widows**. This kind of systemic issue that is best addressed through a constitutional or public law challenge.

A public law challenge allows you to contest a law, policy or a decision that denies legal protections to women, on the basis that these laws, policies or acts go against your fundamental or constitutional rights.

How? The process for such a challenge varies between countries - it may be, among other things, called a “constitutional petition”, or “amparo proceedings”.

For this to work, there must be a right on your constitution or other important law which lays out your fundamental rights that protects you. Most constitutions include a general provision of equality before the law or non-discrimination. They also focus on other rights, such as right to dignity, right to a fair trial, social and economic rights.

Claim: Constitutional claim in a constitutional court. Some countries allow you to go to a civil court.

By whom: the widow (can be supported by civil society organisations) and some countries allow civil societies to represent the public interest and take a case alone.

Against: an act by a public authority or in some countries a private institution too, that gives the wife less rights than the husband. In some countries like in Peru ([article 200](#) of the Constitution), laws are challenged through “unconstitutionality actions”.

Asking for: declare the act or law unconstitutional and have it not applied in your case and in some cases it would not apply to all similar cases.

They will require:

-Getting legal advice on the likelihood of an amparo proceeding for your specific case.

-Initiating legal proceedings

-Finding a person who has had their fundamental rights affected: This would be the widow, a group of widows, or all widows in a country represented by civil society, affected by the denial of their rights. This will depend on the rules of each country.

-Establishing which fundamental rights were affected: the right to equality and/or non-discrimination contained in most constitutions or other national laws can be effective, but it could also be that other rights protected by the constitution are affected, such as your property rights, right to dignity, or others.

If successful, the constitutional courts may provide for an act, law, or policy to be declared unconstitutional. This often means that the act, law, policy cannot be implemented in an individual case (concrete application), but it may in some countries also have the benefit of not being applicable in ANY case (general application).

A constitutional challenge is often a good route to challenge a law or policy which itself affects more than one individual, as it can be replicated by others or may change a law and policy for everyone.

**Example:** *Ephraim v Pastory* (2001) AHRLR 236 (TzHC 1990)

Ms Pastory, a woman from the Haya ethnic group in Tanzania, **inherited clan land from her father** via a valid will, and sold it outside her clan - **her nephew filed a claim against her in the Primary Court on the basis that such a sale was not permitted under Haya customary inheritance laws.** The Primary Court held that the sale was void and ordered Ms Pastory to refund the sale money to the purchaser. The District Court overturned this on appeal, holding that the Bill of Rights 1987 prohibited discrimination on grounds of sex and granted equal rights to female and male clan members. Her nephew appealed to the High Court.

The High Court dismissed his appeal - it held that this custom was discriminatory and **violated article 13(4) of the Bill of Rights of the Tanzanian Constitution and international human rights standards in the ICCPR, CEDAW and ACHPR.** It therefore held that the sale was valid.

## 6.8. Widows' rights in international law

Most protection for widows in international law is derived from protections for women and women in marriage more generally.

### International Legal Protection for widows

Article 5 of **CEDAW** provides that states must take all appropriate measures to change social and cultural patterns which reproduce the inferiority of women. Article 16 (h) of **CEDAW** emphasises that states must take all appropriate measures ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property. As noted above, many laws and practices discriminate against widows in the sphere of their property rights.

The **CEDAW Committee** in its **General Recommendation No. 21** on 'Equality in marriage and family relations' explains that "there are many countries where the law and practice concerning inheritance and property result in serious discrimination

against women”, and that “**Such provisions contravene the Convention [CEDAW] and should be abolished.**”

There are also several regional treaties and agreements which contain relevant protections, including:

***Africa:***

[Article 2\(2\)](#) of the **Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol)** provides that States commit themselves to modify social and cultural patterns through public education, information, education and communication strategies, "with a view to the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for men and women”.

***Americas:***

Article 17(4) of the **American Convention on Human Rights** affirms that States shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.

***Asia:***

Article 19 of the **ASEAN Declaration** provides that the family as the natural and fundamental unit of society is entitled to protection by society and each ASEAN Member State. Men and women of full age have the right to marry on the basis of their free and full consent, to found a family and to dissolve a marriage, as prescribed by law.

**TIP 1:** You can find a detailed table of international law on marriage [here](#).

**TIP 2:** You can click [on this link and look for your country on the list](#). If your country is party to a treaty it must comply with the rights and obligations included in them. Your country may have applied reservations (limitations to the application of the treaty) when they became party to a treaty which you can also read.

**TIP 3:** You can search for cases in your country or in your regional system and see which rights have been most effective to uphold widows’ rights in the past.

### **6.8.1 How to use these international law provisions in practice?**

If your claims and challenges in your national courts are rejected by the highest court, or are not taken seriously, you may be able to take your case to a regional or international body.

These provisions are especially useful for organisations and the community to hold their governments progressively to account particularly towards **systemic change**.

For more information on how to take your case to an international or regional body, please see the section on this guide “**International Mechanisms to protect your rights**”.

## 7. Page 7: International law mechanisms to fight for women's rights in marriage.

### 7.1 Where and when can I enforce international law:

A. Some countries incorporate international law as part of their national law (either directly or by enacting legislation to incorporate it) and it can be used to defend equality within marriage **in your national courts, when making a constitutional claim as described above and also before an international court or an international body.** Examples of this are Malawi, Colombia, and Costa Rica.

**Example of international law protecting equal marriage enforced directly in national courts. Judgment 00302, Case 03-001073-0185-CI (Second Court for Civil Matters Section I), 1 December 2008, Costa Rica.**

Ms. Vindas Umaña's son died in a car accident. She took those found responsible to court seeking compensation for damages. Those responsible argued that compensation had already been given to her husband as he was the "representative" of the marriage, not the wife. The court granted compensation to Ms. Vindas Umaña, because she had **faced discrimination only because of her condition as a married woman.** The court made reference to the existence of **discrimination against women (Article 1 of CEDAW)** and need to take appropriate measures to **eliminate discrimination against women in all matters relating to marriage (Article 16(1)(h))** as well as the **right to a fair trial (Article 8(1) ACHR)** and **equality before the courts (Article 14(1) of the ICCPR).**

B. Other countries do not incorporate international law to be enforced in national courts directly, which means that they can be mentioned in a constitutional claim to strengthen your claim, but **to enforce international law against your state, you will have to go to an international court or to an international body.**

### 7.2 How to defend women's rights in marriage using international courts or bodies:

#### 7.2.1 A case against a state by an individual or by an organisation in the name of the individual

##### 7.2.1.1 Before a Regional Commission and Court

#### Where do I go first?

**In Africa:** If your **country made a declaration** to allow individuals and NGOs to take cases to the court, you can go either to the African Commission or to the African Court of Human Rights. These countries are **Benin, Burkina Faso, Côte d'Ivoire, The Gambia, Ghana, Mali, Malawi, Tanzania, and Republic of Tunisia.** Claims against other countries will need to go to the African Commission first, and the commission can decide to take the case to the court if your country does not follow the recommendations of the Commission.

**In Latin America:** there is a **dual system** for individuals to follow which requires a complaint to go first to the Inter American/African Commission and if the State has not complied with the recommendations made by the Commission, the Commission will refer the case to the Court as a “**last resort**”.

**In Asia:** No comparable system exists in Asia and the Pacific. In Asian countries informal communications and complaints can be submitted to the ASEAN Intergovernmental Commission on Human Rights. The complaint will then be discussed by the AICHR representatives who are designated by the States. **Bear in mind that this has been criticised for lacking independence.** Also, discussion of the complaint by the Commission is not public and there has been currently no action taken by the Commission of a complaint. **Non-regional mechanisms are preferable if you want to hold an ASEAN State accountable. All the ASEAN countries have ratified or acceded to the CEDAW.**

**For both the Commission and the court check that:**

1. Your country is **party** to the International convention that creates the international court or body, for example the African Charter on Human and People’s Rights, or the American Convention and **recognizes the jurisdiction of the Court.** **TIP :** You can click [on this link and look for your country on the list](#). If your country is party to a treaty it must comply with the rights and obligations included in them. Your country may have applied reservations (limitations to the application of the treaty) when they became party to a treaty which you can also read.

2. Think about **which rights** are violated by inequality within marriage in your particular case. It may be the right to equality, the right to property, to access justice, or others.

3. For countries in **Latin America:** Check that these rights are part of any InterAmerican human rights treaty or convention.

For countries in **Africa:** Check that these rights are part of the African Charter on Human and People’s Rights, or of the Protocol to the Charter and **any other** human rights instrument that the States concerned are parties to. This is broad and can include, for example CEDAW. **TIP:** You can find a detailed table of international law on marriage [here](#).

4. That all **local remedies have been exhausted** - this means that all legal avenues within your country have been attempted to the highest court, without an appropriate response which protects human rights or that you have been awaiting a response for an unreasonable amount of time (for example, a decision from a court that has taken 12 years to be resolved).

5. You take your case **as soon as possible or in a reasonable time** since all local remedies are exhausted.

6. You have **proof** of how your rights have been affected.

**Process:**

**At the Commission**

1. The African/Interamerican Commission will first declare if the case is **admissible**, only then to make a final decision. It will also try to reach an agreement between the parties first. **You do not have to agree**. If there is agreement the case ends. If there is no agreement, the commission will reach its final decision.
2. If the case is urgent, before the Commission reaches its final decision it can suggest to the state to prevent further damages to victims and order **interim measures** while it reaches its final decision.
3. If the Commission decides there is a violation of your rights, it can:

**Recommend steps** to be taken by the State party to remedy the violation such as changing the law, allowing acts by a wife to be carried out or monetary compensation.

These measures can **mainly be enforced by sending letters to the State as encouragement in Africa or by publishing the case as pressure in Latin America**. The Commission can also **refer the case to the Court if the state does not comply** with its recommendations.

#### **At the Court:**

1. There will be a **written and an oral phase** where both parties submit their arguments and evidence.
2. The court can give **provisional measures**, which are measures to avoid irreparable damage to one of the parties.
3. Once the court reaches **its decision**, it is **binding**. Within general remedies that the court can decide on are **monetary compensation, reparation, rehabilitation, order an investigation, persecution of perpetrators, changing the law, creating new laws**, amongst others.
4. If a State does not comply, the African Assembly or the American Organisation of States can sanction that State.

**EXAMPLE Asserting women's rights to equal treatment in marriage under regional & international law. Morales de Sierra v Guatemala** (Inter-American Commission on Human Rights), 19 January 2001.

Ms **Morales de Sierra** was a married woman who challenged various provisions of the **Guatemalan Civil Code**. The Code stated that a married woman was not allowed to represent the marital union; administer marital property; represent the children or administer their property; and could only work outside the home with her husband's permission and if it did not prejudice her role as mother and homemaker.

Ms Morales de Sierra **exhausted local remedies** in Guatemala by making a constitutional claim, which was rejected by the Constitutional Court of Guatemala, which said that the provisions were constitutional as they provided judicial certainty on the allocation of roles in marriage. Ms Morales de Sierra identified that the Civil Code affected her right to equality and privacy. She first took her case to the **Inter-American Commission on Human Rights**. The Commission found that the provisions violated the right to be equally protected by the law (Article 24); to equality and balanced responsibilities in marriage (Article 17); and the right to privacy (Article 11) of the **American Convention on Human Rights**. Since the decision, Guatemala has made reforms to its Civil Code, making it possible for women to be heads of household and not require permission to work.

**EXAMPLE: Challenging the law on child marriage before the African Court of Human Rights. 2016, Association Pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and Institute for Human Rights and Development in Africa V. Republic of Mali, 2016, African Court on Human and People's Rights**

The **Mali Family Code** was challenged in 2016 by two African human rights organisations which submitted a **complaint to the African Court of Human Rights**. They argued that the Mali Family Code law violated international human rights instruments that Mali had ratified, including **CEDAW and the Maputo Treaty**.

They argued that the Family Code violated human rights because the Maputo Protocol and the African Children's Charter set the minimum legal age of marriage to eighteen, but Mali's Family Code set the age at sixteen. The Code also allowed for an exemption for girls to be married from the age of fifteen with the consent of the girl's father, essentially legalising child marriage. Also relating to forced marriage, the Code only included a verification of the parties' consent by civil officials, but none for religious ministers, creating ambiguity around consent in marriage.

The African Court ruled that by not setting the minimum age of marriage at eighteen, Mali was in violation of its international obligations to protect children from child marriage, and that discrepancies in regulations relating to consent meant that Mali was violating its obligation to ensure that parties' consent is obtained in a marriage, to prevent forced marriages. **The court therefore ordered Mali to amend the Family Code and harmonize its laws with its international obligations.**

**EXAMPLE: Challenging discriminatory laws in the Interamerican System: CASE OF ATALA RIFFO AND DAUGHTERS v. CHILE (Inter-American Court of Human Rights), 2012.**

Ms Atala separated from her husband and took custody of her children. After openly starting a **same sex relationship**, her husband took her to court for custody. Ms Atala **exhausted local remedies in Chile** by appealing and getting her case to the Supreme Court, which gave custody to her husband as they argued that the development of her children was at risk because of her sexuality. Ms Atala identified that the decision by the court affected her human rights, discriminating her based on her sexuality. **She first took her case to the Inter-American Commission on Human Rights in 2004.** The Commission found that there had been a violation of the right to equal protection and the obligation not to discriminate; the rights to protection of the family and privacy; the rights of the child and the Equal Rights of Spouses Following the Dissolution of a Marriage; and the right to judicial protection and guarantees, contained in the American Convention on Human Rights. **Chile did not comply, to the recommendation by the Commission to revert the decision and to adopt non-discrimination legislation, so the Commission took the case to the Inter-American Court of Human Rights in 2008** and in 2010 the Court ruled that Ms. Atala had been discriminated against in the custody case in ways incompatible with the American Convention. **The court awarded custody and damages of USD \$50,000 damages to Ms Atala.**

**ECOWAS court:**

In Africa, there is another option which is relevant for equality within marriage which is the ECOWAS Community Court of Justice.

**Check that:**

1. Your country is a **member of ECOWAS**.
2. Think about which rights are violated by inequality within marriage in your particular case. It may be the right to equality, the right to property, to access justice, or others.
3. Check that these rights are part of the **African Charter on Human and People's Rights**.
4. **Local remedies do not need to have been exhausted**, so even if a case is pending in the national courts you can take a case to the ECOWAS court, but the case must not be pending on another international court, Committee or Commission.
5. Gather evidence to support your case.

**Process:**

1. The court will first check that basic requirements are met and declare the claim **admissible**.
2. Then, there will be a **written and an oral phase** where both parties submit their arguments and evidence.
3. The court can give provisional measures, which are measures to avoid irreparable damage to one of the parties.
4. Once the court reaches its decision, it is **binding**. Within general remedies that the court can decide on are monetary compensation, reparation, changing the law, creating new laws, amongst others.
5. If a State does not comply, the **African Assembly or the American Organisation of States can sanction that State**.

**EXAMPLE**

In Nigeria, Mary Sunday was subject to domestic violence at the hands of a policeman and the Nigerian authorities had failed to carry out an independent and impartial investigation. Mary and supporting organisations **took the case directly** to the ECOWAS court **against the state of Nigeria** on human rights grounds. The Court established that by not carrying out an impartial investigation, Mary's **right to access to justice, and right to have her cause heard** were affected. The court ordered the State of Nigeria to pay Mary financial reparation.

**Please bear in mind that these processes take time. They are recommended for cases where a structural or systemic change is sought to defend human rights.**

**7.2.1.2 Taking a case as an individual before other international bodies:**

Individuals and organisations on their behalf can also make a complaint against a state for not addressing their individual problem before an **international body**. The relevant bodies for cases related to inequality within marriage include the **Committee on the Elimination of Discrimination against Women (CEDAW)**, the **UN Human Rights Committee** and the **Committee on Economic, Social and Cultural Rights**.



## Think about:

1. Which rights have been affected in your case?

-It may be that your right to work, or social security rights have been affected because your husband has to authorise you to work or to access your social security. In this case, **your economic and social rights are most affected, making the CESCR the best place to make a complaint.**

-It may be that your right to access to justice is restricted when only your husband is able to represent the marriage in court, or other civil and political rights are affected **making the Human Rights Committee most appropriate.**

-Finally, it may be that a mixture of rights are affected which are particularly related to the fact that **you are a woman, or a married woman discriminated against because of it, which makes the CEDAW the most appropriate body.**

2. Check that you are complaining against a **state that is a party** to the conventions and to the to the conventions that regulate each committee.

-For CEDAW: List of Parties [here](#)

For the Human Rights Committee: list of States that are parties [here](#)

For the Committee on Economic Social and Cultural Rights: list of States that are parties [here](#)

3. Check that the **rights** that were affected by the lack of equality in marriage are **included in these conventions.**

4. Check that your request is not **pending** before another international Committee or that it has **not already been reviewed** by another international Committee.

5. Check that you have **exhausted local remedies.**

6. Check that your **request is founded and justified.** Make sure that you have **enough evidence** to prove the existence of inequality in marriage and how that affected you.

7. There is a **time limit of 1 year for the CESCR and 5 years for the HRC** since the exhaustion of local remedies, although you can justify the delay as an exception. There **is no time limit under CEDAW**, although it is recommended to do it **as soon as possible.**

## Process:

1. Generally, each Committee will decide on the **admissibility** and give the state 6 months to respond and the committee will decide.
2. Parties can ask to reach a **friendly settlement, but they can also reject** reaching a settlement.
3. **Interim measures** can be given in the case of urgency and an irreparable harm to the person making the claim.

4. It will make **recommendations and expect the State to report back in 6 months** explaining how it has implemented the recommendations. If the State does not take appropriate action, the case is kept under consideration by the Committee, who follows-up with the State on taking appropriate action.

**EXAMPLE: G. Ato del Avellanal v. Peru (Human Rights Committee), 28 October 1988.**

Graciela owned two apartments in Lima, in 1974. Tenants stopped paying rent, so she sued the tenants in 1978. She won the first case, however on appeal the higher court reversed this decision and argued that Graciela could not sue because Article 168 of the Peruvian Civil Code said that when a woman was married, only the husband could represent matrimonial property in court. Graciela appealed to the Supreme Court of Peru, stating that the Peruvian Constitution in force at the time outlawed discrimination against women. The Supreme Court ruled against Graciela. As she had **exhausted all local remedies**, Graciela took her case to the **Human Rights Committee** of the UN. The Committee decided that Graciela's rights were affected, including **Article 3 of the International Covenant on Civil and Political Rights** to “ensure the equal right of men and women to the enjoyment of all civil and political rights...” and **Article 26**, “**all persons are equal before the law**”. The Committee therefore decreed that Peru was under an obligation to take effective measures to remedy the violations suffered by the victim.

**Example: E.S & S.C v United Republic of Tanzania 2015.**

Two widows were left homeless after their husbands had died - they were evicted from their homes by their husbands' families and were not entitled to inherit any of their husbands' estates. They made a claim before the High Court and claimed that the customary inheritance laws were discriminatory based on their sex/gender.

Although the High Court held that the provisions were discriminatory, it did not grant any relief to the claimants and did not strike down the provisions. It concluded that it was preferable to recommend, rather than order. E.S. and S.C. appealed but the appeal process was subject to lengthy delays and eventually the appeal was dismissed on a technical procedural point. This proved that they had **exhausted local remedies because there was no solution given to their problem.**

The women **submitted a complaint to the CEDAW**. The CEDAW decided that **Tanzania had violated CEDAW**, by not giving **effective protection** of women against any act of discrimination (articles 2(c)), or taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute **discrimination against women**(article 2(f)) and failing to modify the social and cultural patterns of conduct based on the idea of the inferiority of either of the sexes (article 5(a)) of CEDAW, **denied equal economic rights** and opportunities, in violation of article 13(b), **denied equality before the law** (article 15(1)) and **denied their legal capacity** (article 15(2)) and overall not afforded the same rights to women during marriage and at its dissolution (articles)16(1)(c) and 16(1)(h). CEDAW recommended **repealing or amending** the laws were a violation of CEDAW, and providing adequate **compensation and reparations** to the claimants.

Bear in mind it is a **long process that may take several years** before the Committee's final decision. This is a good option if the courts in your country are not open to the protection of human rights and also if you want to make a more systemic change in your country.

**i. Options for Civil Society to hold the State progressively accountable: UN Inquiry Procedures**

**USEFUL FOR:** Cases where the law, policy of public or private authorities negatively impacts most married women in a manner that is **structural and systematic, and change would require a progressive change and reform of many institutions**, individuals and civil society organisations that focus on these issues may decide that **international reporting mechanisms are a better option**.

**Claim:** Inquiry procedure before **CEDAW or the Committee on Economic, Social and Cultural Rights**. More than a claim you are asking the UN Body to review a human rights problem and make recommendations on how to improve.

**By whom:** individuals or civil society organisations.

**Against:** your State

**Asking for: Recommendations** on how to improve human rights standards in a country on a particular topic and tracking of how the state is making changes.

**Best for:** holding the state **progressively accountable** through time and **not** to provide an individual remedy and quick remedy such as compensation or individual response to an affected person.

Check:

1. **Which body to go to:** It is most likely that a mixture of rights are affected by inequality within marriage which are particularly related to the fact that women or married women are discriminated against because of it, which makes the CEDAW the most appropriate body. If it is an issue affecting the right to work, or social security rights more specifically, the CESCR would be a good place to make a complaint.
2. That you have **sufficient evidence** of the laws and policies that impose inequality within marriage, of **how** that affects women and married women.
3. That **your country has accepted this inquiry procedure**. See list of countries [here](#) for the CESCR) and a list of countries for CEDAW [here](#)).

Process:

1. It **does not require an individual victim** to make the inquiry.
2. You **submit information** to the body who then invites the state to submit information. The body may decide to visit the state.

3. Findings by the Committee are reported and recommendations to the state are given.
4. Recommendations are **not enforceable**, but the State will send the Committee a communication within 6 months, explaining how it has implemented the recommendations.

**BOX TIP:** For specific of information on each international body and court, please click [here](#).

## 8. Page 8: Seeking support form Women's Rights organisations: Campaigning and advocacy as alternatives or supporting legal actions

Those fighting for women's rights often have to push for **societal change**. Legislation, approaches, and perspectives need to be pushed to incorporate gender as an element to consider. **Patriarchal practices also take time to change.**

**Campaigning** can be a powerful way to **raise awareness** about this and **put pressure** on a government to change its legislation. **Campaigns can be used to help key litigation.**

You could contact a national or international Women's Rights groups who may want to collaborate with your cause.

Women's Rights organisations in your country may be able to direct you to support and help with your problem.

**Below you can find a list of organisations that support women's rights in various continents:**

### AFRICA

**FIDA Kenya:** FIDA-Kenya is a premier women's rights organization in Kenya that has offered free legal aid to over 3,000,000 women and their children over the course of 34 years. FIDA-Kenya has handled litigation on custody and maintenance matters, land and matrimonial property disputes, labour and economic rights, participated in advocacy around Women in political participation, Sexual Reproductive Health Rights, Female Genital Mutilation (FGM), Child and Forced Marriage, Sexual and Gender-Based Violence among others. Similarly, the organization conducts education and advocacy programs.

**FIDA Uganda:** the Uganda Association of Women Lawyers (FIDA-Uganda) is one of the leading women's rights organizations in Uganda and the pioneer of legal aid and public legal education in sub-Saharan Africa, with a focus on the rights of women with children as beneficiaries of this work. FIDA Uganda uses multiple strategies aimed at advancing law and policy reform for the protection of women including advocacy, public interest litigation and various forms of public engagement. <https://fidauganda.org/>

### Ethiopia

### **Girls Not Brides**

An Ethiopian organisation that specializes in reducing FGM, early marriage, marriage by abduction and Uvulectomy. This is achieved through advocacy with support from national partnerships spread across Africa including UN agencies and governments.

### **Nigeria**

#### **Women for Women**

Advocating for general women's rights triggered by the effect war has had on many women, for example rape being used as a weapon. 'Change Agents' (these are often Lawyers) approach community leaders and the police to request prosecutions for rape and domestic violence.

### **Sierra Leone**

#### **Child Fund**

Tackles gender discrimination by offering family mediation, job training and emotional support. Many girls enroll in vocational programs which are funded by the World Bank.

## **SOUTH AMERICA**

### **Guatemala**

#### **ActionAid**

This is a large charity that started working in Guatemala after the civil war, however it is also set up across several continents. Community Based Anti-Violence Teams help to recognize and report all forms of violence against women by working with the police. Physical and Emotional support is offered to women in 'Safe Spaces', these are camps that are set up in local areas.

### **Haiti**

#### **Beyond Borders**

This charity tackles violence against women. The women's movement works across local organisations and assesses their needs and resources. Following this, they create a network of women's rights centers, host meetings and arrange sponsors. Survivors of domestic abuse are then referred to the appropriate organization where they can receive counsel.

### **Bolivia**

#### **Casa de la Mujer**

Casa de la Mujer is an organisation aiming to promote sexual equality, enabling women of all classes and ethnicities to participate in all aspects of Bolivian life. They have a particular focus on eliminating violence against women. They work in educating women on their rights, ensuring women are included in decisions that will affect them, such as the peace process, and work with other national organisations to ensure they can connect women in need to the correct organisation.

## **ASIA**

### **Afghanistan**

#### **Women For Afghan Women (WAW)**

WAW is a grassroots civil society organization dedicated to protecting and promoting the rights of disenfranchised Afghan women and girls, aiming to help them exercise their rights

to self-determination, and to representation in all areas of life. WAW aims to challenge the norms that underpin gender-based violence to influence attitudes and bring about change. WAW provides programs and services for women and children through our 32 centers in Afghanistan. They help those who have endured human rights violations, including forced marriage, rape, forced prostitution, unlawful imprisonment, and barred access to education/employment.

## **Lebanon**

### **KAFA**

KAFA is a Lebanese NGO aiming to dismantle social, economic and legal patriarchal structures, and help women who are negatively affected by these structures. They advocate for legal reforms, as well as providing female victims of domestic and/or sexual violence with social, economic and legal patriarchal structures. They have created a national hotline for domestic violence in Lebanon.

## **India**

### **Majlis Law/Majlis Manch**

Majlis provides legal support and guidance to women facing domestic violence, women and child victims of sexual violence, and those who have experienced sexual harassment at the workplace. They are also involved in training, research, campaigns, and publications on issues concerning violence against women and children. They work to make laws accessible to ordinary women, as well as judges, lawyers, prosecutors, police, government representatives and NGOs.

## **Kyrgyzstan**

### **Forum of Women's NGOs of Kyrgyzstan**

The Forum of Women's NGOs of Kyrgyzstan is a network of women's groups which aims to promote gender equality and women's empowerment. Its priorities are prevention and eradication of gender-based violence and fostering women's participation in decision-making processes. The Forum conducts research, lobbying, and monitoring of national legislation on gender equality. It also provides women's groups with capacity building, networking, and joint advocacy opportunities in four of the seven provinces.

## **Indonesia**

### **PEKKA**

PEKKA aims to develop resources to empower female heads of households, and through this, the wider community. They aim to make sure that women can exercise their rights through allowing them to actively engage in development cycles and decision-making processes. A major part of this is allowing single mothers to see themselves as having a vital and honourable role, and building a new set of national values towards an inclusive, egalitarian and democratic society. This is all achieved through education, legal empowerment, and providing tools for economic empowerment.

For more information on campaigns, see **Campaigning** on the **A4J Going to Court: Q&A**.

---

**SUGGESTED RESOURCES TO ADD TO RESOURCE BANK:**

Do not worry about formatting. This information will be considered for integration into the website in appropriate – and various - ways.

Widows' Rights International, a UK-based NGO working on widows' rights, has compiled case law from across the world related to different aspects of widows' rights. [<https://www.widowsrights.org/legalchallenges.html>]

[https://www.ohchr.org/Documents/Publications/PractitionerToolkit/WA2J\\_Module2.pdf](https://www.ohchr.org/Documents/Publications/PractitionerToolkit/WA2J_Module2.pdf) - OHCHR guide on access to Justice in relation to Marriage, Family and Property rights

<https://www.girlsnotbrides.org/child-marriage-law/#do-all-countries-have-a-minimum-age-of-marriage>

World Bank report on child marriage  
[http://wbl.worldbank.org/~/-/media/WBG/WBL/Documents/Reports/2017/WBL2017\\_Child\\_Marriage\\_Laws.pdf](http://wbl.worldbank.org/~/-/media/WBG/WBL/Documents/Reports/2017/WBL2017_Child_Marriage_Laws.pdf)

World bank Report “getting to Equal”

<https://openknowledge.worldbank.org/bitstream/handle/10986/22546/9781464806773.pdf?sequence=3&isAllowed=y>

Women, Business, and the Law

<http://pubdocs.worldbank.org/en/999211524236982958/WBL-Key-Findings-Web-FINAL-2.pdf>

OHCHR Report:  
<https://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/WLUML2.pdf>

Info on SA common-law marriages <https://www.golegal.co.za/common-law-marriage-cohabitation/>

Zimbabwe ban on child marriage <https://plan-uk.org/blogs/success-zimbabwe-bans-child-marriage>

<https://www.refworld.org/docid/56d7ffc64.html>

<https://www.refworld.org/docid/45f1472011.html>

For an overview of the steps for divorce in a Ugandan Court click here:  
<http://elac.uls.or.ug/article.php?id=37>

Useful resources: <http://www.gbv.de/dms/sub-hamburg/372579140.pdf>

<http://www.commonwealthlawyers.com/wp-content/uploads/2019/05/CLA-Role-of-the-Law-in-Eliminating-Child-Marriage-T-Braun-2018-FINAL.pdf>

<http://www.gbv.de/dms/sub-hamburg/372579140.pdf>

<https://core.ac.uk/download/pdf/62636322.pdf>

<https://www.humanrights.gov.au/our-work/sex-discrimination/publications/mechanisms-advancing-womens-human-rights-guide-using>

TIP: A good resource for honour crimes in india is  
<https://www.soas.ac.uk/honourcrimes/resources/file141854.pdf>