

MODULE 2:

Marriage, Family and Property Rights



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PUBLISHED BY:

The United Nations Entity for Gender Equality and the Empowerment of Women

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(OHCHR), Palais Wilson, 52 rue des Paquis, CH-1201 Geneva, Switzerland

UN Women: ISBN-13: 978-1-63214-116-3

OHCHR: HR/PUB/18/2

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A Practitioner’s Toolkit on Women’s Access to Justice Programming

MODULE 2:

Marriage, Family and Property Rights



*Empowered lives.
Resilient nations.*



THE TOOLKIT AT A GLANCE

The Toolkit comprises an Introduction and five Modules:

INTRODUCTION	MODULE 1 The Theory and Practice of Women's Access to Justice Programming	MODULE 2 Marriage, Family and Property Rights	MODULE 3 Ending Violence Against Women	MODULE 4 Women in Conflict with the Law	MODULE 5 Programming at the Country Level
Summary	Summary	Summary			Summary
Women's access to justice	Understanding the overall country context	Creating an enabling environment for women's access to justice			New generation of UNDAFs
Overarching commitments underpinning women's access to justice	Creating an enabling environment for women's access to justice	Creating effective, accountable and gender-responsive justice institutions			The programming cycle of UNCTs
Justice needs of women who face multiple and intersecting forms of discrimination	Creating effective, accountable and gender-responsive justice institutions				Cross-cutting issues to consider during implementation
Programming principles, approach and methodology	Legally empowering women	Legally empowering women			APPENDICES
Purpose and scope	Considerations for crisis-affected contexts	Considerations for crisis-affected contexts			ENDNOTES
About the Toolkit	APPENDICES	APPENDICES			
ENDNOTES	ENDNOTES	ENDNOTES			

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Above: Mongolia. Child and her adoptive parents. © UNICEF Mongolia/Andy Brown.

1.0 Summary

1.1 Why marriage, family and property rights?

The family domain is among others, a space in which women's rights are violated. Women assume various roles and responsibilities as wives, mothers and daughters and in these contexts, hold multiple identities as single women, adolescent, pregnant and young mothers, women in polygamous or monogamous marriages, elderly women and widows. Unequal power relations between men and women are accentuated at the family level and affect the extent to which women are empowered to make choices and exercise agency. Areas of concern include the patriarchal structure of society, which also entails the perception that women are dependents of male household members; the exercise of male authority in the household (e.g., where the law recognizes a husband's right to demand obedience from his wife, control her movements or enter into contracts on her behalf); inheritance practices that favour males over females; and discriminatory marital property arrangements.

This Module elaborates on programming in the context of Article 16(1) of the [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW), which seeks to advance "appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations". In this Module, the concept of "property rights" is discussed in the limited context of marriage and family relations, in contrast to the broader context of property acquisition. For this purpose, "property" includes both movable property (e.g., bank accounts and personal effects) and immovable property (e.g., land and buildings).

Data from countries such as Colombia, Jordan and Peru demonstrates that women tend to be the largest cohort of claimants in family-related court cases (see Section 3.1). Marriage, family and property rights cut across a range of economic, social, cultural, political and civil domains that can considerably impact upon women's ability to access justice. These rights include equality of rights in marriage, divorce, parental authority and responsibilities; women's ability to acquire, change and retain their nationality in marriage, or transfer it to their spouses and children; equality before the law; equal rights to choose a domicile or residence; recognition of women's unpaid care work; and legal capacity to conclude contracts and to own and administer property.¹ Furthermore, marriage, family and property rights often overlap with other rights, such as the right of protection from various forms of violence (e.g., early marriage, widow inheritance and domestic violence), food security and girls' education.²

Falling under the umbrella of personal law, forms and concepts of marriage and family can vary by country as well as by geographical area within a country.³ This Module highlights programming considerations for enhancing women's access to justice to enforce rights that international standards afford in the domain of family law. Similar to Module 1, guidance is presented through the lens of the three programming entry points of: (1) creating an enabling environment for women's access to justice; (2) creating effective, accountable and gender-responsive justice institutions; and (3) legally empowering women.

There is growing evidence showing that women tend to represent the highest proportion of claimants in family disputes. Family law is, therefore, a critical avenue for transforming women's lives

This Module unpacks subtle violations of women's rights in the private domains of marriage and family. It also examines property relations as a cross-cutting issue for married and unmarried women within the context of the family

1.2 Definitions

Alimony: Financial provision from one spouse or partner to another, based on an order of a court or other justice institution.

Civil law system: Civil law States adopt a system in which national and international law are viewed as a single entity. Accordingly, once ratified, treaties automatically become part of domestic law and can be applied by the courts, without precluding the enactment of legislation. The constitutions of several States that are influenced by the civil law (e.g., France and Senegal) take one step further and declare that international treaties prevail over domestic law and, in case of conflict between the two, the former takes precedence. This is linked to the “monist approach” (see Module 1) in which international human rights treaties are regarded as an integral part of the legal system.

Common law system: Common law States do not automatically incorporate treaties such as CEDAW into domestic law. Treaties are first approved by their respective parliaments and following that, specific legislative measures are taken to reflect the principles and content of treaties in the domestic legal system. This is known as the “dualist approach” (see Module 1) because it involves a two-tier process of treaty ratification and actual legislative reform. The courts of such States are also not bound to apply treaties in their decisions, although an increasing number do so.

In loco parentis: Standing in for a parent or in the place of parent.

Land tenure security arrangements: A set of interventions by formal State structures or informal community/traditional institutions that seek to protect different types of interests in land that a person may possess. This may include situations where an individual or group of individuals are outright owners through purchase or inheritance from a purchaser; a person who has leased the land for a period of time; a person who enters into a profit or crop sharing arrangement; or a person who has been granted rights of access to land by virtue of being a member of a land-owning family or lineage.



Above: Morocco. The village of Ait Sidi Hsain, near Meknes. © World Bank/Arne Hoel.

Lineage system: A lineage refers to the line through which a person's descent (ancestry) is traced. A lineage system refers to the operation of the lineage and how it relates to its members and vice versa. In functional terms, the lineage defines the roles, duties, responsibilities, privileges as well as the manner in which property is distributed among and between members and non-members of the lineage.

1.3 Different forms of marriage

Programming must be informed by the different forms in which marriages and marital property regimes exist, in view of their legal implications on attaining equality in marriage, family and property relations. In no hierarchical order, marriages and related property regimes are presented below and in Box 2.1 respectively.

Statutory/civil marriages: Statutory/civil marriages are contracted under State laws, which set out the conditions that must be met for a marriage to be valid. These conditions may include the minimum age at which prospective parties can marry; different modalities for formalizing the marriage; marital property regimes; maintenance, upbringing of children and parental obligations; divorce; and property distribution and child custody arrangements upon divorce. Such marriages vary from one jurisdiction to another depending on the cultural, traditional, religious and historical experiences of a country, and can imply State recognition of a diversity of marriages—including monogamy, polygamy and same-sex marriages. An essential feature of statutory/civil marriage is the guarantee of official supporting documentary evidence of its fact or existence. Statutory/civil marriages tend to be more common among educated, urban and elite women and men, due to the costs associated with arrangements and documentation.

Traditional and religious marriages: Traditional and religious marriages are contracted in accordance with specific customary practices or religious rites, respectively, which define the conditions and processes of the marriage. In many parts of the world, traditional as well as certain religious marriages are potentially polygamous in nature. State recognition and regulation of such marriages may also vary by country, including in monogamous and polygamous contexts. Whether or not contracted under statute or religious or traditional arrangements, polygamy has been described by CEDAW [General Recommendation No. 21: Equality in Marriage and Family Relations](#) (CEDAW GR 21) as a contravention of a woman's right to equality with men, in view of the serious emotional and financial consequences for a woman and her dependents.⁴ Additionally, CEDAW [General Recommendation No. 27 on Older Women and Protection of their Human Rights](#) (CEDAW GR 27) provides that: "Older wives are often neglected in polygamous marriages once they are no longer considered to be reproductively or economically active."⁵ In CEDAW [General Recommendation No. 29 on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women \(Economic consequences of marriage, family relations and their dissolution\)](#) (CEDAW GR 29), the Committee was careful to note that polygamy must be abolished through a two-pronged approach: firstly, by protecting the rights of women in existing polygamous marriages and secondly, by discouraging future polygamous marriages.⁶ The Committee's view is consistent with the African Union's position in the [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (Maputo Protocol), that "monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage

Marriage is not a linear or monolithic institution. Its different forms present both opportunities and challenges for women

and family, including in polygamous marital relationships are promoted and protected”.⁷ Although registration of traditional and religious marriages is being encouraged by State law and regional instruments, such as the Maputo Protocol,⁸ CEDAW GR 29 cautions against using registration as the sole means of proving their existence, since they may also be “substantiated by production of a marriage contract, witness accounts of the rituals or other means, as appropriate in the circumstances.”⁹

Informal, de facto or common law unions: Informal, de facto or common law unions refer to arrangements in which the parties involved cohabit over a period of time without formalizing their relationship through one or more of the steps described above. Such unions tend to be officially recognized in most parts of Europe and the Americas and less in Africa and Asia. CEDAW GR 21 and CEDAW GR 29 point out that such unions are protected under the ambit of the marriage and family life provisions of Article 16 of the Convention.¹⁰ This is because, as stated in CEDAW GR 29 “women may be exposed to economic risks when a cohabiting relationship ends, including when they have contributed to maintaining a household and to building other assets.”¹¹

Article 2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (c): To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

Article 16(1). States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) 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.

Source: CEDAW, Arts. 2, 16

Other forms of marriages: Diverse forms of marriages may exist outside of the scope of any of the above. They include seasonal marriages contracted by some agricultural communities primarily for securing conjugal/spousal labour during agricultural peak periods.¹²

Although distinct in themselves, marriage arrangements can also be fluid, allowing for individuals to lawfully occupy more than one marital space at a given time.

BOX 2.1 Marital property regimes

Separation of property: All assets and income acquired by the spouses both before they marry and during the marriage remain the separate property of the acquiring spouse. At the time of divorce or the death of one of the spouses, each spouse retains ownership of all assets and income brought to the marriage or acquired during marriage by that person and any value that has accrued to that property.

Partial community of property: Assets acquired before marriage are regarded as the separate property of the acquiring spouse, and assets and income acquired after marriage, with a few exceptions specified by law, are regarded as joint property of the couple. This regime also applies to cases where assets acquired before marriage and assets acquired during marriage are regarded as the separate property of the acquiring spouse but the accrued value of the property acquired by any of the spouses is considered joint property. At the time of dissolution of the marriage, the joint property or its accrued value is divided equally between the spouses.

Full community of property: All assets and income whether brought into the marriage and acquired during the marriage, with a few exceptions specified by law, become the joint property of the couple. If the marriage is dissolved, all joint property is divided equally between the spouses.

Deferred full or partial community of property: The rules of full or partial community of property apply at the time the marriage is dissolved; until then, separation of property applies.

Other: This occurs in economies where the default property regime does not fit any of the four descriptions above.

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

Marital property regimes determine the proportions in which property acquired prior to and during marriage will be distributed on the termination of the marriage

2.0 Creating an enabling environment for women's access to justice

2.1 International law

International legal frameworks and policy guidance on marriage, family and property rights call on countries to set standards of equality of treatment between men and women in marriage, family and property relations. In addition to CEDAW, United Nations General Assembly Resolution 2200A(XXI), [International Covenant on Civil and Political Rights](#) and [International Covenant on Economic, Social and Cultural Rights](#); United Nations General Assembly Resolution 1040(XI), [Convention on the Nationality of Married Women](#); United Nations General Assembly Resolution 1763A(XVII), [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#); and related United Nations General Assembly resolutions and recommendations represent the key international human rights treaties.¹³ The African region relies on the Maputo Protocol in addition to these global instruments.

A total of nine general comments and general recommendations of treaty bodies provide global guidance on issues that are explored in this Module. They consist of the following: the CEDAW Committee—CEDAW GR 21, CEDAW GR 27, CEDAW GR 29, CEDAW [General](#)

International legal standards on the protection of women's equal rights in marriage, family and property relations serve as a solid foundation for national law and policy-setting

[Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict situations](#) (CEDAW GR 30), [CEDAW General Recommendation No. 33 on Women's Access to Justice](#) (CEDAW GR 33), [CEDAW General Recommendation No. 34 \(2016\) on the Rights of Rural Women](#) (CEDAW GR 34); CEDAW and the Committee on the Rights of the Child—[Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices](#); the Human Rights Committee—[General Comment No. 19: Article 23 \(The Family\) Protection of the Family, the Right to Marriage and Equality of the Spouses](#); and the Committee on Economic, Social and Cultural Rights—[General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights](#).

Targets and Indicators of the [Sustainable Development Goals](#) (SDGs) which broadly relate to marriage, family and property rights, as well as those of CEDAW GR 30 and CEDAW GR 33, are highlighted in Table A.2.1 in the Appendices.

2.1.1 Typical programming challenges/opportunities

- The implementation of relevant human rights standards can be hindered by reservations to human rights treaties (see Module 1). An estimated 30 States have expressed reservations to a core obligation under CEDAW, namely Article 2 (eliminating discrimination against women) and Article 16 (eliminating discrimination against women in all matters relating to marriage and family relations).¹⁴ For example, Algeria's reservations to these Articles ensure that the Convention does not supersede the provisions of its Family Code.¹⁵ Israel has similarly expressed a reservation to Article 16 "to the extent that the laws on personal status which are binding on the various religious communities in Israel do not conform with the provisions of that article."¹⁶
- Provisions of international conventions are not automatically incorporated into the domestic laws of a State. In dualist legal systems, international treaties require approval, adoption and translation into law by parliament (see Module 1). Extensive consensus-building on the legislative process, although beneficial in itself, could suffer from weak political support for particular standards.

2.1.2 Programming considerations and options

Advocate for the withdrawal of reservations to CEDAW and other international standards by:

- Monitoring the status of State reservations to Article 2 and Article 16 of CEDAW, as well as the concluding observations and recommendations of the CEDAW Committee to States on the withdrawal of such reservations.
- Reservations to CEDAW impact upon every aspect of women's rights. It is critical therefore to work in close partnership with women's advocates, ministries of justice, national women's machineries and other stakeholders to develop proposals and time-bound roadmaps for the withdrawal of all such reservations. Where resources and country context permit, such proposals could also include relevant women's rights-related reservations which have been expressed in relation to other human rights treaties.

Reservations to Article 2 and Article 16 of CEDAW hamper the realization of women's equal rights in marriage and family life, as well as in respect to property

Programming interventions must prioritize the withdrawal of reservations to CEDAW and other standards and norms



Above: Sudan. Lawyer from Nyala. © UN Photo/Olivier Chassot.

- Sharing best practice success stories on the withdrawal of reservations through South-South and North-South cooperation and utilizing entry points afforded by regional bodies such as the African Union, ASEAN and the League of Arab States to place this issue on various agendas.¹⁷
- Supporting CSOs (including those at grass-roots level) to advocate for the withdrawal of reservations, and report on progress from their perspective, through their Alternative Reports to the CEDAW Committee.

2.2 Domestic law

2.2.1 Constitutions

Provide explicit constitutional protection for formal and substantive equality and for non-discrimination in the public and private spheres, including with regard to all matters of personal status, family, marriage and inheritance law, and across all areas of law

Source: CEDAW GR 33, para. 42(a).

Broad constitutional provisions on non-discrimination and equality before the law serve as important legal foundations for rights related to marriage, family and property. To date, 182 out of 195 constitutions (93 per cent) contain provisions on marriage and family life.¹⁸ These provisions generally relate to the protection of maternity and the family as the basic unit of society. Similarly, 183 constitutions (94 per cent) contain provisions on the right to own property and inherit, as well as provisions on land tenure security arrangements.¹⁹ Recognition of unpaid domestic work is expressed in the constitutions of Bolivia, Cambodia and Ecuador (see Table 2.1). This is supported by the right to social security, which represents a breakthrough in the recognition of this type of work in which women tend to be invisible in systems of national accounts, both within and outside the context of marriage.

Efforts must be made to domesticate international and regional standards through constitutional reforms

Constitutions provide the legal foundation for equality in marriage, family and property rights

TABLE 2.1 Examples of constitutional provisions on the value to be placed on unpaid care work (with emphasis added)

Constitution of the Kingdom of Cambodia 1993 with amendments through 2008	Constitution of the Republic of Ecuador 2008 with amendments through 2015	Constitution of the Bolivarian Republic of Venezuela 1999 with amendments through 2009
The work of housewife at home shall have <i>equal value as the remunerated work</i> done outside the home. Khmer citizens of both sexes shall have the <i>right to enjoy social security</i> and other social benefits as determined by law. (Excerpt of Article 36)	The State shall guarantee and ensure the full and effective exercise of the <i>right to social security, which includes persons who carry out unpaid work in households</i> , livelihood activities in the rural sector, all forms of self-employed and who are unemployed. (Excerpt of Article 34)	The State guarantees the equality and equitable treatment of men and women in the exercise of the right to work. The State recognizes <i>work at home as an economic activity that creates added value and produces social welfare and wealth. Housewives are entitled to Social Security</i> in accordance with law. (Article 88)

2.2.1.1 Typical programming challenges/opportunities

- Although wide-ranging constitutional provisions impact on marriage, family and property rights, an in-depth analysis is yet to be undertaken to determine their impact on gender relations and women’s rights.
- Discriminatory marriage and family provisions are also evident in constitutions. The CEDAW Committee has been concerned by the references to women as mothers in several constitutions.²⁰ Eleven constitutions exclude marriage, divorce and inheritance from constitutional guarantees on equality and non-discrimination.²¹ Through “claw back” clauses, matters of marriage, divorce and inheritance can be fully determined by customary and personal laws, regardless of whether the latter discriminates against women. For example, Article 33(1) of the [Constitution of the Republic of The Gambia 1996 with amendments through 2004](#), recognizes that “*all persons shall be equal before the law.*” However, by Article 33(2), it also notes that “*subject to the provisions of subsection (5), no law shall make any provision which is discriminatory either of itself or in its effect.*” Sub-section 5(c) of the same article states that Article 33(2) shall not apply to any law in so far as that law makes provision with “*respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.*”²²
- Women’s legal rights in marriage, family and property can be further compromised when constitutions are overridden by customary law and personal law.
- Legal equality in marriage and family signals a major shift in gender relations. For this reason, broad support for such provisions may be limited.

Constitutions may subject equality and non-discrimination clauses to customary and personal laws that discriminate against women



Above: Thailand. A family of women at Mae Salong, H'mong hill tribes. © UN Photo/Kibae Park.

- Gender advocates focus on major normative provisions at the expense of other important substantive rights and protections. Although important protections can be drawn from broader provisions, such as on equality and non-discrimination, this may be insufficient since “less sought-after provisions”, such as those on citizenship and marriage and family, can impact women more directly.

2.2.1.2 Programming considerations and options

Women possess rights in “private domains”. These must be amplified in constitutions and constitutional reform processes through actions such as:

- Undertaking an analysis of the marriage, family and property rights dimensions of relevant constitutions from a gender perspective.
- Supporting women’s CSOs in advance of constitutional reform processes to identify opportunities and entry points for strengthening existing marriage, family and property rights in constitutions or through the introduction of new provisions.
- Advocating for existing and new provisions to recognize women as rights-holders rather than passive recipients of State protection. This could, for example, involve the inclusion of texts that emphasize childcare as a joint parental obligation, or explore new grounds in such areas as constitutional recognition of unpaid care work.
- Reviewing the World Bank’s biennial data on the relationship between constitutional provisions on non-discrimination or equality and (a) customary law and (b) personal law.²³ Given the influence of customary and personal laws in shaping marriage, family and property rights, an appreciation of their status in constitutions, particularly in relation to equality and non-discrimination provisions, will be important considerations for constitutional reforms.
- Advocating for the repeal of “claw back” clauses and other discriminatory provisions that impact upon women’s rights in marriage (e.g., citizenship) and ensuring the

Undertake an analysis of the implications of existing constitutional provisions that directly or indirectly impact upon equal rights in marriage, family and property relations

Constitutional provisions on equality and non-discrimination must prevail over those that relate to customary, personal and religious laws

Formal laws related to marriage, family and property rights consist of a range of codes and statutes as required by the particular legal system

Legal discrimination against women in marriage, family life and property permeates through such matters as male guardianship, citizenship, divorce, child custody and maintenance and distribution of property

supremacy of equality and non-discrimination clauses over customary law and personal law.

- Ensuring the creation and sustained capacity of constitutional review bodies, which play the role of safeguarding women's equal rights in relation to marriage, family and property, including ensuring that constitutions are interpreted and enforced in accordance with human rights standards.
- Promoting the full and inclusive participation of women from all walks of life in constitutional reform processes (including rural, urban, poor and young women) to ensure that their lived experiences in all contexts of marriage and family life are heard and that these catalyse and shape reform processes and their content.

2.2.2 Formal and informal laws

2.2.2.1 Formal laws

Adopt written family codes or personal status laws that provide for equal access to justice between spouses or partners irrespective of their religious or ethnic identity or community, in accordance with the Convention and the Committee's general recommendations

Source: CEDAW GR 33, para. 46(a).

Whereas a constitution may contain broad language that mandates gender equality or non-discrimination on the basis of sex, legislation would further elaborate on what gender equality and non-discrimination mean in the context of marriage (e.g., ownership of marital property, rights to divorce and choice of residence). In practice, laws relating to marriage, family and property rights are reflected in domestic frameworks, which are shaped by the legal system in question. They include frameworks such as family codes, civil codes and personal status laws in civil law systems, as well as matrimonial causes, marital property laws and inheritance legislation in common law systems. The courts have also been influential in interpreting both formal and informal laws in relation to women's rights in this field where discrimination in law is common. Below are some of the most problematic areas of law:

- **Male guardianship over women:** Women are accorded guardianship status in a number of legal systems on the assumption and harmful stereotype that they are subordinate to and will be cared for by a man—by a father, uncle, brother, son and husband—throughout their lives. In such contexts, men are deemed to be heads of households, breadwinners and owners and managers of family productive assets.
- **Citizenship and nationality:** Although 74 constitutions defer to domestic legislation in citizenship matters,²⁴ women do not always have the legal right to pass on their nationality to their spouses and children in legislation. Twenty-five countries discriminate against women in their ability to confer nationality to their children. In addition, over 50 countries deny women equal rights with men to acquire, change or retain their nationality, or confer their nationality on their non-national spouse.²⁵ Statelessness can arise when a woman's experience of conflict intersects with discriminatory nationality rights. Stateless women and girls face heightened risks of abuse in times of conflict because they do not enjoy the protection that flows from

citizenship, including consular assistance, access to social services and participation in political processes.²⁶

- **Impact of male authority on marriage and divorce:** Male authority assumes that husbands are the heads of households, or legal representatives of households, and possess the authority to make decisions on behalf of the family or to exclusively administer property without consulting or seeking spousal consent.²⁷ Such power can be transferred to a son or other male family member in the absence of a husband. The exercise of male authority in domestic settings can be sanctioned by law and extends to State sanction of male household supervision, wife obedience, the right of a husband to grant his wife permission to leave the house, the husband's right to choose the family residence, object to the wife's choice of profession and enter into contracts on the wife's behalf.²⁸ Discriminatory divorce laws can leave women impoverished and at risk of violence and exploitation, particularly where the wives and children have no means of sustenance outside of the family. Fault-based divorce regimes draw a direct link between grounds for divorce and the financial consequences of divorce. As a result, women deemed at fault in divorce are generally not provided alimony or other forms of financial support. Apart from being used by husbands to eliminate any financial obligation towards their wives, in many legal systems, fault-based divorce regimes may include different standards of fault for wives and husbands, such as requiring proof of greater infidelity by a husband than by a wife. Fault-based economic frameworks therefore frequently work to the detriment of the wife, who is usually the financially dependent spouse.²⁹
- **Management of marital property:** Marital regimes determine spouses' rights to the marital home and access to other property (e.g., money, securities, vehicles, retirement income or businesses income) during and after a marriage or relationship breakdown. A woman's right to property depends on the marital property regime, which may exist by default or which the parties may be able to choose by contract (see Box 2.1). Some countries do not acknowledge a woman's right to own an equal share of property with her husband during a marriage or when that marriage ends. Even when that right is recognized, legal precedent or custom may limit a woman's right in practice. Sometimes, property that is owned by a woman or jointly owned with her husband can be managed by him and in such situations, he may not have a legal obligation to consult her prior to or after disposing of or entering into a transaction in respect of that property. To determine a woman's share in marital property, some countries place greater emphasis on financial contributions that she has made to the acquisition of that property and diminish other non-monetary contributions, such as raising children, caring for elderly relatives and discharging household duties. This is discriminatory because such contributions often enable the husband to earn an income and increase his assets, overlooking the unpaid contributions that women make in and outside of the household. Non-recognition of unpaid care work, which is primarily done by women, is a structural barrier to women's human rights in the family and contributes to women's poverty.³⁰ Financial and non-financial contributions should therefore be accorded the same weight.³¹
- **Child custody and maintenance:** Article 7(1) of United Nations General Assembly Resolution 44/25, [Convention on the Rights of the Child](#), recognizes that every child has a right to know and be cared for by both parents. Under CEDAW, women are accorded the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children.³² In practice, however, women's

parental rights in the context of divorce may depend on lineage rules governing status and family relations. Due to the tracing of lineage membership through the female line, matrilineal societies tend to provide women with greater rights over children compared to patrilineal, which limit such rights to fathers, based on male lineage. In some Islamic settings, three principles guide child custody on divorce: (1) the mother possesses priority child custody rights as long as she does not remarry; (2) in situations where both parents profess different religions, child custody will be granted to the parent who follows the Islamic faith; and (3) when the child is past the age of minority (7 years), that child will be given the option of choosing which parent she/he would prefer to have custody.³³

- **Inheritance:** While discriminatory practices relating to inheritance are often rooted in informal or customary law (see Section 2.2.2.2), legislation can also limit women's rights to inheritance through preference for male family members over females. Section 103 of the [Tunisia Personal Status Code of 1956](#), for example, states that: "there are three cases that apply to immediate daughters: (1) a sole daughter inherits half of the estate; (2) two or more daughters collectively inherit two thirds of the estate; (3) where there are any sons, the male inherits twice as much as the female."³⁴ Furthermore, lack of knowledge of property rights and inheritance rights are often major obstacles to protecting the property rights of widows.³⁵ This is compounded by the high costs of legal proceedings, long distances to courts and cumbersome court procedures, all of which place widows in vulnerable situations.³⁶

2.2.2.1.1 Typical programming challenges/opportunities

- All legal domains (e.g., constitutional, civil, family, criminal, administrative—see Module 1) are interrelated, and reforms in one area of law may not have the desired impact if other areas of law continue to discriminate against women. For example, women may have an equal right to divorce, but may be deterred from exercising that right if the law that determines how marital property is distributed upon the dissolution of marriage discriminates against them.
- In plural legal systems, reforms in marriage, family and property laws through formal legislation are often contested by different religious and traditional sects, which sanction patriarchal marital and property norms in such contexts.

2.2.2.1.2 Programming considerations and options

Advocate for the reform of existing discriminatory laws and the enactment of new laws. Reforms must prioritize:

- The repeal of discriminatory laws that are rooted in the notion of male power and dominance. These include: provisions on male marital power and heads of household; restrictions on equal inheritance rights; restrictions on women's movements; free choice of domicile; the ability for women to acquire, change or retain nationality, or transfer it to their spouses and children; practices of child marriage, widowhood rites and widow inheritance; fault-based divorce laws; and any legal impediments to alimony, child custody and child maintenance. Where applicable, advocate for a unified family/marriage/inheritance regime that provides for a common means of protection to women of all backgrounds.

Legal domains may be disconnected, legislative reform processes are often slow, laws may reflect discriminatory norms and there may be insufficient political will for reforms

Programming should advocate for legal reforms that protect women's marriage, family and property rights holistically by addressing all interrelated laws



Above: Myanmar. Woman walking home from work along the road from Naypyitaw. © World Bank/Markus Kostner.

- Full or partial community of property as the default marital property regime. Ensure the joint administration of marital property, particularly as it relates to immovable property, and ensure that clear informed written consent of spouses is a requirement for the transfer or sale of such property.³⁷
- The enactment of anti-discrimination and protective laws to reduce human rights violations against diverse groups of women. For example, the OHCHR and Joint United Nations Programme on HIV/AIDS [International Guidelines on HIV/AIDS and Human Rights](#) recommends that “laws should be reviewed and reformed to ensure equality of women regarding property and marital relations and access to employment and economic opportunity, so that discriminatory limitations are removed on rights to own and inherit property, enter into contracts and marriage, obtain credit and finance, initiate separation or divorce, equitably share assets upon divorce or separation, and retain custody of children.”³⁸ The Joint Programme also recommends that “the age of consent to sex and marriage should be consistent for males and females and that the right of women and girls to refuse marriage and sexual relations should be protected by law.”³⁹
- Equal rights of spouses and partners under any of the marital arrangements discussed in Section 1.3. In particular, women in customary or de facto unions should enjoy the same property and inheritance rights as women married under civil law.⁴⁰
- Institutionalization of marriage contracts as a protective mechanism to enable women to contract out of discriminatory personal laws and practices that might otherwise apply.
- Proposals for laws on will-making (testamentary dispositions) to allow individuals to decide who inherits their self-acquired property. Such dispositions could be an important safeguard against inheritance discrimination.⁴¹

Programming should also support the implementation of laws that are designed to fully protect women's rights

- The full legislative recognition of unpaid work performed by women in households and family enterprises. Such contributions, although of a non-financial nature, should be considered in property distribution upon termination of the marriage, whether by death or divorce.
- Language that ensures that equal rights between men and women in marriage are not subordinated to religious or customary norms or practices. In addition, ensure that women are allowed the option to select the type of marriage and marital regime of their choice in the protection of their rights.
- Mechanisms that protect women from harmful divorce regulations. For example, Section 7 of Pakistan's [Muslim Family Laws Ordinance, 1961](#) provides that a man wishing to divorce his wife must, after the pronouncement of *talaq* (repudiate) three times, provide written notice of his actions to the Arbitration Council with a copy to his wife. With this, the Council attempts reconciliation within 30 days and if this fails, the divorce takes effect 90 days after the serving of the initial notice or at a later date if the wife is pregnant at the time.⁴²
- Equal property tenure rights for women and men, including the right to inherit and bequeath these rights. This may require removing all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity and lack of access to economic resources. Such State actions should be consistent with their existing obligations under relevant national law and legislation and international law and with due regard to voluntary commitments under applicable regional and international instruments.⁴³ An important justification for policy reinforcement includes the need for women to protect property acquired from family sources through government land tenure security interventions, which may include land title registration and certification.

In promoting legal reform, consider factors that strengthen the implementation of laws:

- Reflect on the means of enforcement and clearly spell out the institutions that are responsible for their implementation. The CEDAW Committee's concluding observations and recommendations to Albania for instance, noted that the lack of implementation of Law No. 33/2012, which provides for joint ownership by both spouses of property acquired during marriage, was continuing to deepen discrimination against women in matters of inheritance.⁴⁴
- Be realistic and distinguish between different types of individual and group entitlements. For example, as an individual, a woman can lay claim to only self-acquired property, jointly-acquired property or property handed down to her as a gift or through inheritance. She may also be allowed limited user rights to her own extended family/lineage immovable property, while in the case of her husband's family/lineage property she would generally exercise the right of usage of such property on behalf of her children. Nevertheless, it is also important to explore progressive developments taking place globally. The [Fiji Family Law Act, 2003](#) for instance, provides that in matters of divorce, where land is held under native laws, the husband, his family or *mataqali* (a Fijian clan or landowning unit) must compensate the woman to the extent of its value had it been commercially available land.⁴⁵
- Consider the circumstances of women in monogamous, polygamous and de facto unions as well as the complex interactions between nuclear and extended family

settings. Women's views on how their rights must be protected under these circumstances may differ; legal remedies sought should, as far as possible, be guided by the women directly affected.

BOX 2.2 An example of discriminatory divorce law

Under Sharia law, only husbands have the right to divorce (by *talaq*). This gives him unilateral power to divorce his wife without giving any reason, whereas the woman must assign good reasons as a basis. Women have three limited options open to them in divorce: *mubarah*, whereby the husband has leverage and is not bound to consent to her release; *khul*, whereby she buys her release by returning her dower; and *talaq-e-tafwaz*, which confers upon her the right to divorce her husband if he delegates such power to her. Fault-based divorce therefore results in economic frameworks that frequently work to the detriment of women who are usually the financially dependent spouse and who are then subject to discriminatory rules on child custody and the right to remarry.

Source: Niaz A. Shah, "Women's Human Rights in the Koran: An Interpretive Approach", Human Rights Quarterly, vol. 28, No. 4, pp. 892-893, (2006).

- Promote education and awareness of laws relating to marriage, family and property, and in particular laws pertaining to women's rights, protections and avenues for accessing justice. This should include national awareness campaigns preceding, during and after constitutional and legislative reforms, to build awareness on their purpose and content across all sectors of society.

2.2.2.2 Informal laws

In settings in which there is no unified family code and in which there exist multiple family law systems, such as civil, indigenous, religious and customary law systems, ensure that personal status laws provide for individual choice as to the applicable family law at any stage of the relationship. State courts should review the decisions taken by all other bodies in that regard.

Source: CEDAW GR 33, para. 46(c).

Marriage, family and property relations are impacted by issues beyond those described in Module 1. Under both customary and religious laws, lineage systems serve as a basis for rights, privileges and duties within the family, including identity, decision-making in lineage affairs, property distribution, child custody and child maintenance. Although lineage systems may differ by country, the two most well-known are the matrilineal and patrilineal. The first traces descent through a female ancestor and the second through a male ancestor. Women tend to wield influence through lineage and as political leaders in matrilineal descent systems and are often able to access lineage lands with greater ease compared to women of patrilineal systems. In the latter, women rarely feature as leaders or wield political influence.

The differences between the opportunities and restrictions that women face in matrilineal and patrilineal communities often disappear once women marry. Regardless of lineage, marriage can result in an automatic subordination of the status of the woman to that of the man, primarily because it is common for a woman to migrate from her lineage to join her husband's lineage or place of residence. As a "stranger" to her husband's

Lineage systems dictate status, opportunities, privileges, roles and responsibilities for both male and female family members

Under customary law, marriage is a defining moment for a woman because she is deemed a “stranger” from the perspective of her husband’s family and lineage

Consensus on reforms can be hindered by the diversity of informal norms

Exploring potential harmonization between formal and informal sources of law can serve as an important step towards reform

Effective justice and security sector policies and budgets must be multidimensional in scope and impact

lineage, a wife does not acquire absolute user rights to her husband’s lineage land or to his personal property.

Under some customary law settings, wives are also under an obligation to assist their husbands in their economic pursuits without remuneration. Upon his death, she is not automatically entitled to property that she may have assisted in acquiring through her labour, unless she can prove financial contribution. Under both lineage systems, the extended family of a deceased man holds greater rights over his property to the disadvantage of the nuclear family. In the same manner, sons and nephews possess superior inheritance rights over family and lineage property compared to daughters and nieces. For example, in Nigeria, the practice of *Nnewi* dictates that “where a man dies without sons but has daughters ... a daughter must remain unmarried and bear children who effectively become her dead father’s heirs to inherit and carry on the male lineage.”⁴⁶

In some cases, women are considered chattel themselves. This is exemplified in practices such as levirate marriage, which involves a woman being passed on as “property” to another man (usually her brother-in-law) on the death of her husband.

2.2.2.2.1 Typical programming challenges/opportunities

- The diversity of customary and religious norms that govern marriage and family can impact upon the ability of a State to build consensus on reforming those aspects that hinder women’s rights.

2.2.2.2.2 Programming considerations and options

Mediate the concerns and interests of formal and informal justice institutions in plural legal systems through interventions such as:

- Advocating for the codification of customary and religious marriage and family laws to facilitate alignment with national law and international human rights standards. Starting points could be commentaries already produced by scholars and clerics. This codification exercise should feed into the process of designing and adopting unified family codes and property regimes that take both formal and informal normative frameworks into account.
- Contesting discriminatory informal laws in formal courts through strategic litigation (see Box A.2.9 in the Appendices).
- Documenting positive customary and religious principles and practices that are supportive of women’s rights in relation to marriage, family and property and fostering continued dialogue aimed at harmonizing formal and informal laws.

2.3 Justice sector policies and budgets

Justice and security sector policies and budgets can support the enforcement of marriage, family and property rights and the protections enumerated in legislation and constitutions. To ensure effectiveness, there must be mutually reinforcing linkages between justice and security sector policies and budgets and other sector policies. For example, property rights in marriage can be reinforced by justice and security sector policies as well as policies on land tenure, land administration, food security and agriculture (see Figure 2.1). Policy harmonization between the justice and security

sector and land tenure and administration is necessary for mitigating discrimination in land tenure arrangements, including those resulting from change of marital status, lack of legal capacity and lack of access to economic resources.⁴⁷

By way of example, [The Uganda National Land Policy](#) includes a commitment to protect the rights of women to inherit and own land through equality or property ownership between women and men before, during and upon the dissolution of the marriage. Three key elements of this commitment are as follows:

1. Design and implement a regime of matrimonial property law aimed at the protection of spouses.
2. Make legal provision for joint or spousal co-ownership of family land and the matrimonial home.
3. Amend the 1906 [Succession Act \(Cap. 162\)](#) to provide for the right to succession and inheritance of family land by women and children.⁴⁸

FIGURE 2.1 Protecting women’s property rights through cross-sectoral policy linkages



Marriage, family and property rights cut across different policy domains

2.3.1 Typical programming challenges/opportunities

- The marriage, family and property rights components of justice and security sector strategies may be viewed as the responsibility of one State agency (e.g., the national women’s machinery), rather than a shared obligation among several institutions.



Above: Nepal. Father holds his crying 22-day-old son, in a building in the earthquake-affected town of Singati. © UNICEF/Brian Sokol.

Marriage and family issues may be relegated as social issues and therefore, less of a national priority

- Marriage, family and property rights may be perceived as a “women’s issue” and therefore not attract sufficient political will among policymakers for effective translation of legislation into policy.

2.3.2 Programming considerations and options

Justice and security sector policy design must include the following:

- Respect for the rights and needs of women in diverse family contexts.
- Situating marriage, family and property rights in the national context as an issue of central importance to the implementation of the SDGs.
- Budgeting for the accelerated enforcement of equitable family and property laws through the strengthening of relevant justice, law and order and social service institutions in a cross-sectoral manner.
- Intersectoral capacity development interventions that bring together all relevant stakeholders (e.g., justice, land title, land administration and agricultural extension officers) and through these, the promotion of continuous dialogue and collaboration across sectors.

Policy design must consider marriage, family and property rights as matters of central importance to sustainable development

3.0 Creating effective, accountable and gender-responsive justice institutions

The full realization of women’s rights in the context of marriage, family and property relations as provided for by international law, constitutions, legislation and policy will

require an effective and systematic application of such standards and norms across the justice chain. The ways in which justice institutions enforce these rights will have far-reaching consequences on women’s ability to access justice for violations that occur across varying contexts within a country. Module 1 outlines the six dimensions of access to justice—justiciability, availability, accessibility, good quality, the provision of remedies for victims and the accountability of justice systems.⁴⁹ It highlights that these six overlapping dimensions provide a structured framework for comprehensive analysis of women’s access to justice generally and help in assessing the extent to which justice institutions are effective and accountable to women. This Section highlights how five out of the six dimensions are applicable within the context of marriage, family and property relations.⁵⁰

3.1 Availability

The availability of justice institutions, judicial or quasi-judicial mechanisms across a State’s territory⁵¹ to deal with family disputes takes on even greater urgency as a growing number of studies demonstrate that poor women tend to be the larger cohort of claimants in family law. In Jordan, for example, 71 per cent of legal aid cases involve women and this rises to 94 per cent in cases of family law (see Table 2.2).⁵²

TABLE 2.2 Breakdown of legal aid cases by type and sex in Jordan

	Administrative	Criminal	Civil	Family	Total
Male	41%	40%	65%	6%	29%
Female	59%	60%	35%	94%	71%

Source: Paul Prettitore, [Delivery of Justice Sector Services to the Poor. How are Middle East Governments Addressing Gaps?](#), p. 7. (Washington, D.C., The World Bank, 2013).

Similarly, a study of the justice sector in Peru found that there was a significant impact on poor families, with 73.3 per cent of child support cases presented by women and 67 per cent of domestic violence cases not reaching a judgement in the courts.⁵³ This led the World Bank to include the strengthening of the operational capacities of family courts and referral systems in a review of its project design.⁵⁴ Another study on access to quality family justice in Indonesia on general and religious courts found that the poorest sections of Indonesian society face significant barriers in bringing their family law cases to court. Nine out of 10 female heads of household living under the Indonesian poverty line were unable to access the courts for their divorce claims, mainly due to financial reasons such as court fees and transportation costs.⁵⁵ A more recent household survey of legal needs in Colombia also found that family cases affect women more than men by 11 percentage points (26 per cent of women and 15 per cent of men).⁵⁶

3.1.1 Typical programming challenges/opportunities

- Being within the lower hierarchy of the court system, family courts, generally, cannot compete with higher level courts (particularly those which generate income such as commercial courts) for State resources.

Institutions that protect and enforce marriage, family and property-related laws should be available and well-resourced across a State’s territory because they address women’s most common justice needs

Family courts cannot compete with higher courts for State resources

Innovative approaches, such as multiple purpose courts, can address several issues affecting women in one setting

Women who are deprived of financial support for themselves and their children will most likely be unable to pursue claims in court due to cumulative and overlapping financial burdens

3.1.2 Programming considerations and options

Generate knowledge and evidence on the extent of availability of justice institutions for settling marriage, family and property disputes by:

- Utilizing country assessments and situation analyses (see Module 1 and Module 5) to generate data on the distribution of lower level justice institutions and local courts and the ratio of relevant populations by sex to these courts. Determine from this analysis the impact that their lack of availability would have on women's ability to seek justice and protect their rights.
- Using such data to advocate and lobby among local and national government partners (including ministries of justice and ministries of finance) for the establishment of courts that can address multiple and interrelated issues, such as marriage, family, domestic violence and property disputes.

3.2 Accessibility

Consider the creation, within the same institutional framework, of gender-sensitive family judicial or quasi-judicial mechanisms to deal with issues such as property settlement, land rights, inheritance, dissolution of marriage and child custody

Source: CEDAW GR 33, para. 46(b).

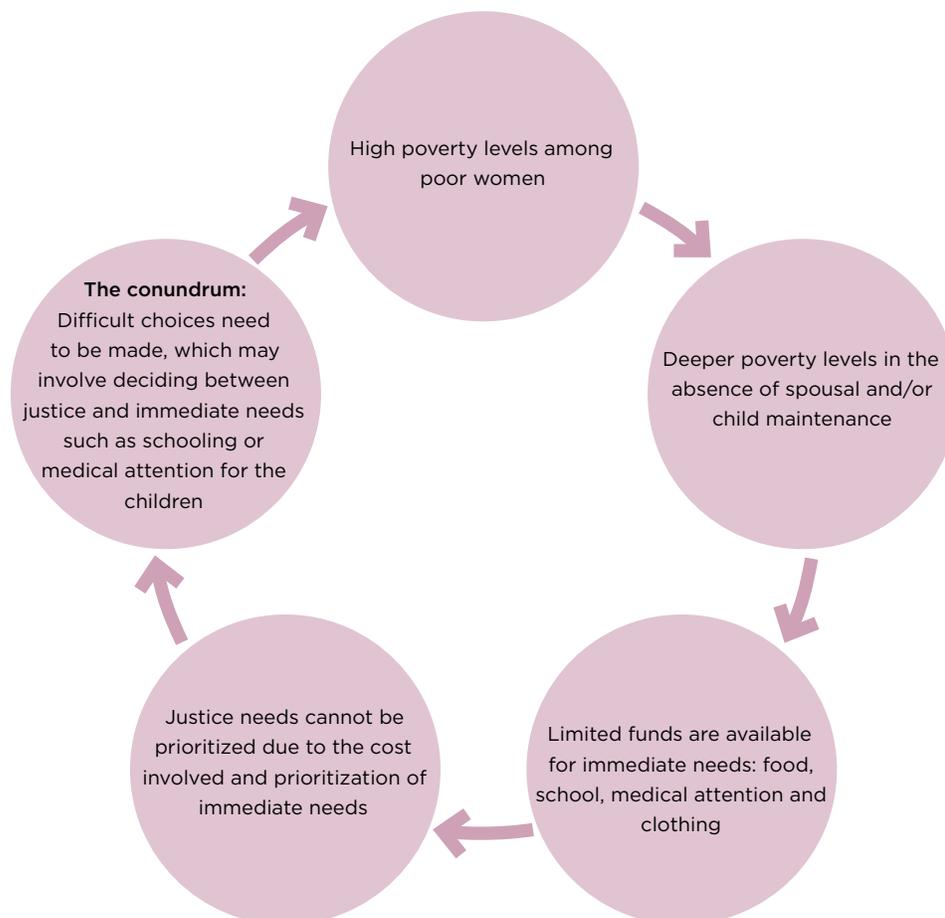
Accessibility in the context of marriage, family and property rights is paramount, because women may face the double burden of lack of financial resources to access the justice system and lack of child and/or spousal maintenance and alimony (see Figure 2.2). In some instances, women claimants may also be survivors of violence, and in this context, may need to access multiple points across the justice chain. To address the potential challenges of navigating the justice system, streamlined processes and procedures



Above: Haiti. Woman at home with her daughter. © World Bank/Dominic Chavez.

should be devised to limit the necessity of frequent trips, particularly where economic or time constraints make such trips a burden in themselves.

FIGURE 2.2 The cycle of deprivation and economic barriers to accessing justice



3.2.1 Typical programming challenges/opportunities

- Women who are “doubly burdened” and lack the resources to address both household and justice needs will experience additional barriers to accessing justice if they live in hard to reach areas (e.g., mountainous or hilly regions and locations with poor road infrastructure) and/or belong to a particular ethnic group and for such reasons are confronted by both geographical and linguistic barriers in pursuit of their rights.

3.2.2 Programming considerations and options

Address economic inaccessibility through special funds and legal aid by:

- Advocating for national social protection schemes that provide financial assistance to women who cannot afford to go to court. Such schemes should cover the cost of transportation to judicial and quasi-judicial institutions and provide waivers on fees and filing costs.
- Supporting the provision of legal aid in the family law context. This should be accompanied by a means testing eligibility criteria that is based on a woman’s real

Legal aid and other forms of social protection must be available to poor women and administrative processes should not present additional barriers

income or disposable assets, and an administrative process to obtain legal aid that is free and simple.⁵⁷ A broad range of legal services, such as legal information, legal advice and legal representation should be available (see Module 1).

- Ensure that facilities are “family-friendly” since women are most likely to attend court proceedings with their children. Appropriate waiting areas must therefore be provided to mothers (and other women standing in locus parentis, such as grandmothers), including those who are pregnant or lactating. Such facilities must also be “child-friendly” to ensure the safety and security of children who have accompanied their mothers or other relatives as claimants or witnesses.

3.3 Good quality

Justice institutions that deal with marriage, family and property rights must adhere to international standards of competence, efficiency, independence and impartiality. CEDAW GR 33 recommends the adoption of indicators to measure women’s access to justice as well as innovative and transformative justice approaches, including, when necessary, broader institutional reforms. This includes the protection of privacy, the use of technology for capturing evidence remotely, making proceedings available in written form to claimants and the protection of all persons involved in proceedings.⁵⁸

3.3.1 Typical programming challenges/opportunities

- Even where laws prohibit discrimination against women, they may still be interpreted in a discriminatory manner due to personal bias among justice personnel. Eliminating such discriminatory attitudes is a long-term process, which requires long-term investments.
- Family courts are perceived to belong to the chain of “social welfare” institutions and stand the risk of not receiving adequate State funding to function effectively (e.g., by fixing dysfunctional docket systems).
- Timeliness of both processing and enforcement of remedies as well as lack of privacy can also impact on women’s access to quality services. Delays can result from inadequate human resource capacity, the challenge of transmitting information across the justice chain, difficulties associated with collecting evidence and overlaps or gaps in institutional mandates.

3.3.2 Programming considerations and options

Tackle systemic issues by:

- Addressing delays in the administration of justice, particularly in the hearing of cases by the courts. This can be done by improving record management skills of administrative and finance departments; fast-tracking cases involving special groups such as pregnant women and lactating mothers; and strengthening the use of ADR mechanisms to reduce delays.
- Ensuring ease of referrals within and across family courts, violence courts, social welfare institutions and probation services, and promoting effective coordination between them.

Benchmarks that ensure competence, efficiency, independence and impartiality of family and other related courts must be promoted

The quality of justice services can be negatively impacted by prejudice, delays and lack of privacy for women claimants and their witnesses

Measures that simultaneously address the capacity gaps of rights-holders and duty-bearers can result in systemic change

- Exploring the integration of dispute resolution, legal aid, child custody orders, protection orders and social services to minimize referrals along the justice chain.

Assess capacity gaps in the delivery of quality services. Interventions could include:

- The provision of training to formal and informal justice actors, including to those whose mandates bear on women’s property rights (e.g., agencies responsible for housing, land titling, land administration, agricultural extension, immigration and asylum).
- Where law reform processes are slow, promote judicial activism among justice actors and support women’s legal and human rights organizations to pursue public interest litigation to enforce international standards.

3.4 Remedies

The broad range of remedies that CEDAW GR 33 recommends include restitution or reinstatement, compensation (financial or in-kind) and maintenance and rehabilitation, which may include medical and psychological care or other social services.⁵⁹ In matters related to marriage, family or property rights, the understanding of appropriate remedies should be sufficiently broad to include incidental costs (e.g., transportation and childcare) that women may incur in the process of pursuing justice. Furthermore, “remedies for civil damages and criminal sanctions are not mutually exclusive”.⁶⁰ Additional steps that ensure the safety of women and their families must be considered by strengthening family law remedies and protection and restraining orders.

3.4.1 Typical programming challenges/opportunities

- Legislation may not specifically provide for remedies that are appropriate for women whose rights in marriage, family and property relations have been violated.
- When respondents fail to comply with orders to pay alimony or maintenance, women and children can be left destitute in the absence of a State-specific fund to pre-finance outstanding claims (see Box A.2.13 in the Appendices).
- Formal and informal courts may reinforce customary and religious norms that deny women’s rights in marriage, family and property arrangements.

3.4.2 Programming considerations and options

Within the context of formal and informal justice proceedings, consider:

- The domestic and unpaid care work of women in assessing damages, alimony and property distribution.⁶¹
- Advocating for and supporting the creation of women-specific funds to pre-finance monetary awards to women from individuals and/or entities who are either unwilling or have delayed in discharging their legal obligations.⁶² Such interventions can serve as workaround social protection measures to protect women from hardship in the event of delayed or unenforced monetary awards.

Remedies secure transformative change for women through enforcement of rights in marriage, family and property laws, as well as through rulings

Legislation and rulings may not always be enforced due to resource constraints among justice institutions

Programming should support the creation of women-specific funds to pre-empt delays in payments from relevant parties



Above: Moldova. Joint Information and Services Bureau representative consults elderly women on their social entitlements in district of Singerei. © UN Women/Janna Sofroni.

Accountability sustains investments made in family law justice institutions and ensures their integrity

Delays and corruption are serious considerations in rural settings

Work to institutionalize oversight mechanisms, complaints procedures and administrative data collection

3.5 Accountability

Accountability establishes systems to promote availability, accessibility, good quality and the provision of remedies.⁶³ For this to be effective, justice institutions must be audited to establish their independence, efficiency and integrity.⁶⁴ In their regular operations, complaints mechanisms that have been established within justice institutions (see Module 1) should treat matters of marriage, family and property disputes with urgency and ensure that the tendency for women to represent the majority of claimants in such situations is not used as a basis for dismissing such complaints. The collection and publication of data on case management, completion rates and outcomes will also be essential for ongoing policy design and advocacy.

3.5.1 Typical programming challenges/opportunities

- In rural settings, delays and corruption could be escalated by the absence of an effective system of decentralization that ensures adequate resourcing for data collection, supervision and monitoring of justice institutions.

3.5.2 Programming considerations and options

To promote accountability among family law and related justice institutions:

- Advocate for the creation or strengthening of existing local level justice institutions that deal with family, violence and property disputes among local government partners through adequate resourcing, the establishment of oversight mechanisms and the collection and analysis of data.⁶⁵
- Agree on national indicators for monitoring types of cases disaggregated by the sex of the complainant, frequency of adjournments and average duration of a case; use such data to rectify anomalies and improve justice service delivery.

- Given the potential magnitude of family law cases instituted by women, equip and support quasi-judicial bodies and CSOs with the means of addressing a percentage of the disputes as first responders.
- Produce resource materials for judges on good practice case law involving marriage, family and property rights. These can include case books, consolidation of relevant statutes, rules of procedure and evidence and details of customary and religious laws that impact on women in these areas. Such resources may also include examples of good practices adopted by courts in handling marriage, family and property cases in a time-sensitive manner.

3.6 Women participate in justice institutions

Undertake gender-sensitive and gender-responsive security sector reform that results in representative security sector institutions that address women's different security experiences and priorities

Source: CEDAW GR 30, para. 69(b).

As the majority of claimants in marriage and family disputes in many instances, women must be provided with meaningful opportunities to participate in the delivery of justice in this field, as well as in all other areas of justice administration.

3.6.1 Typical programming challenges/opportunities

- Belonging to families themselves, women in justice institutions contend with the challenges of unequal power relations as it relates to their own marriage, family and property dealings.
- Cultural and religious norms may exclude women from public sector employment or restrict their ability to preside over cases involving men, or issue orders and rulings against them.
- Women may not be in a position to accept postings to rural communities where the majority of lower courts are situated, due to cultural and religious views that do not allow women to lead men (in this case male household members) in migration.

3.6.2 Programming considerations and options

Promote family-friendly and inclusive work environments in justice institutions, including by:

- Advocating for human resource and affirmative action policies that support equal representation of women in public sector family courts at all levels, and ensuring that personnel who are posted to rural areas are provided with childcare and other forms of assistance to ensure that they can maintain in regular contact with their families.
- Consensus-building among chiefs, elders and religious leaders aimed at achieving the effective participation of women in lineage affairs and dispute resolution.

Women are best placed to appreciate and address issues that affect them the most

Women in justice institutions face the challenges of restrictions on their agency and on their autonomy

Human resource and affirmative action policies can address the particular problems that women justice actors face

4.0 Legally empowering women

4.1 Women participate in legal reform processes

The participation of women in legal reform processes and legislative bodies can be an effective trigger for reforms in marriage, family and property rights because women are best placed to articulate issues that affect them. In Rwanda, female parliamentarians have been credited with reforms in inheritance and property (the 1999 Succession Act), equality in land ownership (the 2004 National Land Policy and 2005 Land Law) and the criminalization of marital rape.⁶⁶ Similarly, in Tanzania, where women comprise 31 per cent of parliamentarians, a 2004 amendment to the Land Act granted women equal access and rights to loans, credit and land.⁶⁷

4.1.1 Typical programming challenges/opportunities

- In countries where diverse ethnic and religious groups exist, acceptance of change, including the legal empowerment and increased participation of women, may not be forthcoming. This is because gender equality in marriage, family and property relations through law reform can be one of the most contentious social issues in many societies and if achieved, can represent a seismic shift in gender relations.

4.1.2 Programming considerations and options

Ensure women's meaningful and active engagement at all stages of reform processes. Programming interventions could include:

- The participation of women in the analysis of existing laws, policies and programmes and how these impact their daily lives.
- Securing consensus on language and content in laws and policy formulation with the involvement of broad coalitions of women's groups.
- Leveraging support for and from women parliamentarians, and providing them with evidence of the legal needs of women and the effects that the lack of enforcement of women's rights in marriage, family and property relations can have on the achievement of gender equality, as well as the well-being of families and society.

4.2 Support and partner with civil society organizations

As noted in Module 1, CSOs play a significant role in the provision of legal aid to indigent women in need of legal assistance. Their wealth of knowledge on the key issues that affect women on a daily basis should be recognized and harnessed to inform programming, and CSOs should be partnered with and supported in carrying out programmes. As described by the example of Pemberdayaan Perempuan Kepala Keluarga (PEKKA), an Indonesian women's CSO (see Box A.2.15 in the Appendices), such organizations often undertake a range of activities to advance marriage, family and property rights. PEKKA collects data on marriage and divorce, coordinates a network of trained paralegals who help marriages and divorces gain legal standing and advocates for reforms at both the local and national levels.

Women should be included in legal reform processes for both normative and strategic reasons

Reforms that result in significant shifts in gender relations will be resisted

Safe spaces, created for women to participate in the shaping of laws that impact their everyday lives, can prove very beneficial

CSOs possess a wealth of experience in securing women's marriage, family and property rights and are therefore important allies

4.2.1 Typical programming challenges/opportunities

- CSOs which specialize in marriage and family settlement disputes are often based in urban areas and do not possess the human or financial means of extending their services into rural communities.

4.2.2 Programming considerations and options

Strengthen the capacities of CSOs to engage as effective actors in transforming laws and policies related to marriage, family and property relations, through such measures as:

- Identifying strategic entry points for drawing domestic and international attention to the challenges and opportunities of enforcing women's rights in the areas concerned.
- Enhancing the capacities of CSOs to appreciate global and regional standards and norms relating to women's marriage, family and property rights, including the nature and scope of reservations to human rights treaties and advocating for their removal.
- Active monitoring of CEDAW Committee and other treaty body concluding observations and recommendations in these priority areas and reporting on progress in their Alternative Reports.
- Supporting CSOs, including women lawyers associations and bar associations with financial resources to scale up and expand legal aid to women claimants (see Module 1).

4.3 Education on women's rights

While legal literacy rates are often low for both women and men, the former tend to be more severely impacted by limited knowledge of their rights and the institutions that have been established to protect and enforce them. A study of the extent of legal literacy among women and men in Kazakhstan, Kyrgyzstan and Tajikistan found that awareness of the official legal requirements of a religious marriage was limited among both groups.⁶⁸ However, the impact was more pronounced on women whose rights to pursue marital property and parental-related claims upon the breakdown of the marriage depended on legal recognition.⁶⁹ For changes in the legal environment and institutions to be transformational for women in marriage, family and property rights, women must be aware of both their rights and how these rights can be protected, exercised and enforced. Legal awareness interventions should be geared towards making such rights easy to understand for women and communities.

4.3.1 Typical programming challenges/opportunities

- Education on women's rights cannot be effective where existing laws on specific rights are discriminatory.
- Rights in marriage, family and property relations may not be embodied in one single law. Where such rights are scattered across different laws, the absence of simplified versions that consolidate all relevant aspects into one single text could render such laws inaccessible to women, especially when they are illiterate.
- Furthermore, existing laws may not be available in the local languages of various ethnic groups.

CSOs are nevertheless limited by constraints in human and financial resources

Create strategic entry points within the human rights system that are relevant to CSOs

Promoting awareness on women's rights and legal literacy can generate greater demand for justice among women

Laws should be made accessible to different population groups and audiences through simplification and translation into multiple languages and through local channels

Conflict can often result in significant shifts in gender roles in the context of marriage and family

Marriages that take place during conflict may not be lawful as these may occur within the context of SGBV

4.3.2 Programming considerations and options

Support strategies to strengthen awareness about laws and ways for making them more accessible by:

- Ensuring that women receive appropriate information on their rights as enshrined under international law, emphasizing the importance of reforming discriminatory marriage, family and property laws.
- Publishing and disseminating texts relating to marriage, family and property laws in simplified forms and in local languages; working to promote a better appreciation of these laws through channels such as local theatre, community radio, television and social media; leveraging platforms such as community events and national and local celebrations (e.g., International Day of Families, International Women’s Day) which could provide entry points for reinforcing key messages.
- Engaging with and seeking commitments from community and religious leaders to reform customary and religious norms that reinforce the subordination of women in marriage, as well as within the broader context of family and property relations.

5.0 Considerations for crisis-affected contexts

Ensure that economic recovery strategies promote gender equality as a necessary precondition for a sustainable post-conflict economy and target women working in both the formal and informal employment sectors; design specific interventions to leverage opportunities for women’s economic empowerment, in particular for women in rural areas and other disadvantaged groups of women; ensure that women are involved in the design of those strategies and programmes and in their monitoring; and effectively address all barriers to women’s equitable participation in those programmes

Source: CEDAW GR 30, para. 52(b).

(a) Prevent, investigate and punish gender-based violations such as forced marriages, pregnancies, abortions or sterilization of women and girls in conflict-affected areas; (b) Adopt gender-sensitive legislation and policies that recognize the particular disadvantages that women face in claiming their right to inheritance and their land in post-conflict contexts, including the loss or destruction of land deeds and other documentation owing to conflict.

Source: CEDAW GR 30, paras. 65(a)-(b).

Households and communities are transformed by conflict-related displacement, conscription and casualties, frequently leaving women as the head of the family in what are often deeply patriarchal societies.⁷⁰ Assumptions regarding women’s inferior status within the family adversely impact their security during periods of conflict and post-conflict. Women and girls may be forced into marriage to placate armed groups, for protection or for financial security.⁷¹

At the same time, while the absence of a male head of household due to conflict increases care burdens and vulnerability for women and girls, these demographic shifts

also present new and important opportunities for women's engagement in spheres and activities typically dominated by men, including male-dominated economic activities.

It is challenging but necessary to consolidate and build upon gains made in gender equality and women's empowerment and to prevent a reversion to pre-conflict norms that relegate women to the domestic sphere and reinforce gender stereotypes. This is especially important as peacebuilding and post-crisis recovery efforts have tended to focus on building the economic space for men, rather than for both men and women, to reengage and reintegrate into their communities through job creation and expansion of opportunities.⁷² Disruption of social relations in conflict can also impact existing social safety nets. Women are therefore placed in vulnerable situations if no attempt is made to replace such safety nets with institutions and mechanisms that would ensure the provision of security and justice.

Without productive assets, such as land, credit, tenure, skills training or information, women's power to build peace and promote recovery from conflict is seriously impaired. In the context of displacement and return, family loss or separation, they are often only able to access their land and other property through the men in their family.⁷³ Young, widowed, single or divorced women are particularly likely to experience difficulties in accessing land and sustaining such rights. Women ex-combatants suffer stigmatization, especially if pregnant from sexual violence. Even when laws provide for equal rights to inherit property, women may be unaware of this or lack the legal documentation to claim such property. In addition, few women will possess the social and economic resources that they require to pursue legal claims in formal or informal institutions.⁷⁴ Especially in instances where many of the survivors of conflict are women, it becomes urgent to reform land titling and address issues with land inheritance.

Marriage, family and property interventions for women affected by conflict must therefore include efforts at securing their land tenure, the provision of other economic empowerment support (such as access to credit, access to land and housing and reforming land titling), strengthening the legal environment to protect women from domestic violence and other acts of impunity and continuing rehabilitation programmes for both male and female war combatants.

Gains in gender equality should be consolidated during the transition to post-conflict

Securing women's economic empowerment and policy formulation that aims to protect women from protracted impunity are critical in post-conflict contexts

APPENDICES

Appendix I

TABLE A.2.1 Policy and human rights considerations related to marriage, family and property rights in the SDGs, CEDAW GR 30 and CEDAW GR 33

SDG Targets and Indicators	CEDAW GR 30	CEDAW GR 33
5.1 End all forms of discrimination against all women and girls everywhere 5.1.1 Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex 5.2.2. Proportion of women and girls aged 15 years and older subjected to sexual violence by persons other than an intimate partner, in the previous 12 months, by age group and place of occurrence 5.3. Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation 5.3.1 Proportion of women aged 20-24 years who were married or in a union before age 15 and before age 18 5.3.2 Proportion of girls and women	Creating an enabling environment for women's access to justice	
	65(a) Prevent, investigate and punish gender-based violations such as forced marriages, pregnancies, abortions or sterilization of women and girls in conflict-affected areas; (b) Adopt gender-sensitive legislation and policies that recognize the particular disadvantages that women face in claiming their right to inheritance and their land in post-conflict contexts, including the loss or destruction of land deeds and other documentation owing to conflict.	46(a) Adopt written family codes or personal status laws that provide for equal access to justice between spouses or partners irrespective of their religious or ethnic identity or community, in accordance with the Convention and the Committee's general recommendations; 66 In view of the fundamental importance of women's access to justice, the Committee recommends that States parties withdraw their reservations to the Convention, in particular to articles 2 (c), 5 (a), 15 and 16.
	Effective, accountable and gender-responsive justice institutions	
	52(c) Ensure that sexual and reproductive health care includes access to sexual and reproductive health and rights information; psychosocial support; family planning services, including emergency contraception; maternal health services, including antenatal care, skilled delivery services, prevention of vertical transmission and emergency obstetric care; safe abortion services; post-abortion care; prevention and treatment of HIV/AIDS and	46(b) Consider the creation, within the same institutional framework, of gender-sensitive family judicial or quasi-judicial mechanisms to deal with issues such as property settlement, land rights, inheritance, dissolution of marriage and child custody;

<p>aged 15-49 years who have undergone female genital mutilation/cutting, by age</p> <p>5.4. Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate</p> <p>5.4.1 Proportion of time spent on unpaid domestic and care work, by sex, age and location</p> <p>16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels</p> <p>16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all</p>	<p>other sexually transmitted infections, including post-exposure prophylaxis; and care to treat injuries such as fistula arising from sexual violence, complications of delivery or other reproductive health complications, among others;</p> <p>(d) Ensure that women and girls, including those who may be particularly vulnerable to HIV, have access to basic health services and information, including HIV prevention, treatment, care and support;</p> <p>69(b) Undertake gender-sensitive and gender-responsive security sector reform that results in representative security sector institutions that address women’s different security experiences and priorities; and liaise with women and women’s organizations;</p>	
<p>Legally empowering women</p>		
	<p>52(b) Ensure that economic recovery strategies promote gender equality as a necessary precondition for a sustainable post-conflict economy and target women working in both the formal and informal employment sectors; design specific interventions to leverage opportunities for women’s economic empowerment, in particular for women in rural areas and other disadvantaged groups of women; ensure that women are involved in the design of those strategies and programmes and in their monitoring; and effectively address all barriers to women’s equitable participation in those programmes;</p>	<p>46(c) In settings in which there is no unified family code and in which there exist multiple family law systems, such as civil, indigenous, religious and customary law systems, ensure that personal status laws provide for individual choice as to the applicable family law at any stage of the relationship. State courts should review the decisions taken by all other bodies in that regard.</p>

Appendix II: Country case studies

Creating an enabling environment for women's access to justice

Constitutions

BOX A.2.1 Examples of constitutional clauses which support gender equality in marriage, family or property

The Constitution of **Bolivia** 2009 provides that the State has the obligation to “promote policies aimed at eliminating all forms of discrimination against women in the access to, ownership and inheritance of land.” In **Brazil**, the 1988 Constitution as amended in 2017 and Law 8629 of 1993 state that both women and men, regardless of their marital status, can be allocated property rights or concessions under the agrarian reform, either individually or jointly. The Constitution of the Republic of **Ecuador** 2008 with amendments through 2015 provides that “the State shall guarantee equal rights and equal opportunity to men and women in access to property and decision-making in the management of their common marital estate.” The Constitution of **Japan** 1946 provides that “with regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.” The Constitution of **Paraguay** 1992 with amendments through 2011 provides among the fundamental principles of the agrarian reform, for women's participation in reform plans on the basis of equality with men and support for rural women.

Sources: [Constitution of the Plurinational State of Bolivia 2009](#), Art. 402; [Constitution of the Federative Republic of Brazil 1988 with amendments through 2017](#), Art. 189; Brazil, Law 8629/93, Art. 19, (25 February 1993); [Constitution of the Republic of Ecuador 2008 with amendments through 2015](#), Art. 324; [Constitution of Japan 1946](#), Art. 24; and [Constitution of the Republic Paraguay 1992 with amendments through 2011](#), Art. 115.

Formal laws

BOX A.2.2 Examples of male authority provisions in the Family Code of the DRC

Law 87-010 on the Family Code of the **DRC**:

- Article 444. The husband is the head of household. He must protect his wife; she must obey her husband.
- Article 448. The wife must obtain the permission of her husband on all legal acts which require her to provide a service that must be given in person.
- Article 450. Subject to the exceptions below and those contained in the matrimonial regime, the wife cannot appear in court on civil matters, acquire, sell or undertake commitments without the authorization of her husband. If the husband refuses to authorize his wife, authorization may be given by a judge. The husband can give general authorization, but he still retains the right to revoke it.
- Article 454. The wife is obliged to live with her husband and follow him wherever he sees fit to reside; the husband is obliged to accommodate her.
- Article 497. Property acquired by the wife in the exercise of a profession separate from that of her husband and resulting savings constitute assets that she manages and administers. If the management and administration of such property by the woman affects the harmony and the

pecuniary interests of the household, the husband can undertake them. The woman may appeal the decision at the peace court.

Source: DRC, [Law 87-010 on the Family Code](#), (1987).

BOX A.2.3 Examples of marital property regimes in Brazil, Cambodia, Ethiopia and South Africa

The 2002 Civil Code of **Brazil** provides for the equality of rights and duties of spouses and for the application, in the absence of prenuptial agreements, of a regime of partial community of property, with each spouse having equal rights to administer common property and to administer her or his own separate property. **Cambodia's** Marriage and Family Law of 1989 also provides for partial community of property as the default regime, noting that a wife and husband have equal rights to use, obtain benefits and manage joint property. Each spouse is allowed to use the joint property in accordance to need and joint property may be sold or donated only with the consent of both spouses. The law also provides that a woman has equal rights with her husband in divorce and that wives and husbands have equal rights to common property after marriage.

The Revised Family Code (2000) of **Ethiopia** provides for partial community of property, as well as joint administration of marital property. Consent of both spouses is mandatory for the transfer of common property. The law also provides that, in the event of dissolution, common property will be divided equally between the spouses. The Matrimonial Property Act of 1984 radically reformed **South Africa's** law of marital property. Prior to its passage, a husband's "marital power" and both the community of property and separation of property regimes existed in South Africa. As the South African Law Reform Commission clarified, under this system, "courts were given a discretion in distributing marital estates to avoid the inequity (that is especially likely to arise in cases of separation of estates) of one spouse leaving the marriage empty-handed." The Act prescribes a default marital property regime of community of property for all civil marriages, in the absence of an antenuptial contract stating otherwise. Under a community of property regime, all of a couple's assets and liabilities are pooled and shared equally by the spouses, irrespective of whether they were acquired before or during the marriage, unless expressly excluded by a donor or testator. All profits and losses are borne equally by the spouses and each spouse assumes joint control with his or her partner over the estate. Significantly, even where couples choose to opt out of the default marital property regime of community of property by antenuptial agreement, they are automatically subject to a default marital property regime of "accrual" (also referred to as a "community of gains"), unless they also expressly exclude such a regime.

Source: OHCHR and UN Women, [Realizing Women's Rights to Land and Other Productive Resources](#), pp. 34-35, (Geneva and New York, United Nations, 2013).

BOX A.2.4 Examples of legal reform on cohabitation and male authority in Botswana, Jamaica, Mozambique, Namibia, Trinidad and Tobago and Turkey

Botswana's Abolition of Marital Power Act of 2004 provides for equality of marital powers for couples married within community of property. In **Jamaica**, the 2003 Family Property (Rights of Spouses) Act, which entered into force in 2006, recognizes the rights of women living in a cohabitation arrangement with a man for at least five years. Legislation has also been adopted via **Mozambique's** new Family Law of 2004, which established gender equality in all aspects of family law. On customary marriages more generally, Mozambique's Family Law of 2004 stipulates the obligation to register customary or religious marriages with civil authorities and recognizes de facto marriages, or common-law marriages. It also recognizes customary law marriages and non-formal unions, and women married under custom can claim marital property. **Namibia** took a similar

approach in its Married Persons Equality Act of 1996, which abolished the marital powers of the husband and placed spouses on an equal footing. **Trinidad and Tobago's** Cohabitation Relationships Act of 1998 also provides for the jurisdiction of courts to make orders in respect of interests in property and maintenance for a man or woman who are or have lived together as husband and wife on a bona fide domestic basis, even though they were not married to each other. Cohabitants have similar rights to property as married spouses. Under **Turkey's** Civil Code of 2001, the husband is no longer considered to be the head of the household, and husband and wife have equal status within marriage.

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

BOX A.2.5 Examples of legal reform on inheritance in Andorra, Malawi and Zambia

The Qualified Marriage Act of **Andorra** abolishes the requirement for widowed and divorced women to wait for a 300-day period before remarrying, as recommended by the CEDAW Committee in its concluding observations. In **Malawi**, the Deceased Estates Act of 2011 declares any property-grabbing by a deceased spouse's relatives to be a criminal act and subject to criminal prosecution. **Zambia's** Intestate Succession Act of 1989 imposes criminal penalties on those who wrongfully deprive rightful heirs of their property. Zambia also established a special victim support unit within its police force to protect women from property-grabbing after the death of a spouse and enforce their rights. This unit has been described as “an innovation that has helped to curb incidences of property-grabbing. The dissemination of its activities through women's NGOs, ... and the media, is enabling women to realize that they are not completely helpless when confronted with such situations.”

Sources: United Nations, CEDAW Committee, [Concluding Observations on the Combined Second and Third Periodic Reports of Andorra](#), para. 5, 28 October 2013, CEDAW/C/AND/CO/2-3 and OHCHR and UN Women, [Realizing Women's Rights to Land and Other Productive Resources](#), p. 27.

BOX A.2.6 Recommended reforms by the CEDAW Committee for Afghanistan and the United Kingdom

Afghanistan: The Committee is concerned about the existence of multiple legal systems with regard to marriage and family relations in the State party and their discriminatory impact on women. It is concerned that, despite the amendments to the Shia Personal Status Law, discriminatory provisions remain, such as the requirement of the husband's authorization for his wife to leave home. It is also concerned about discriminatory provisions under civil law and customary practices, such as the husband's legal right to authority over his wife and children. It is also concerned at unequal and limited rights for women to divorce and obtain guardianship of children under the Civil Law. It is concerned that women are deprived of their inheritance rights owing to their subordinate role in society and domination by their male relatives. It is concerned at the low registration of marriages and divorces, which prevents women from claiming their legal rights. The Committee is concerned at the persistence of child and forced marriages and that the minimum age of marriage for girls is set at 16. It is also concerned that polygamy is permitted under certain circumstances. In line with its General Recommendations No. 21 and No. 29, on Article 16 of the Convention, the Committee recommends that the State party: (a) Repeal discriminatory provisions against women in the Shia Personal Status Law and the Civil Law; and amend relevant legislation to raise the minimum age of marriage for girls to 18 years; (b) Ensure that the draft family law provides equal rights for women and men in all matters relating to marriage and family relations, in particular with regard to their

responsibilities within the family, property and inheritance, divorce and custody of children; (c) Conduct awareness-raising campaigns targeting women to make them aware of their rights with regard to family relations and marriage; (d) Take measures to facilitate the procedure to register marriages and divorces, and ensure that marriage and family law cases are adequately handled and heard by civil or family courts; (e) Take the legislative and policy measures necessary to abolish polygamous marriages.

United Kingdom: The Committee recalls its previous concluding observations and notes the proposals set out in the report of the Law Commission entitled “Cohabitation: the financial consequences of relationship breakdown”. The Committee is concerned at the lack of progress made in this area and that the rights of women in de facto relationships with regard to matrimonial property and benefits may, therefore, not be adequately safeguarded. The Committee urges the State party to expedite efforts to undertake reforms with a view to protecting the property rights of women upon the breakdown of marriage or of de facto unions, in line with general recommendation No. 29, on the economic consequences of marriage, family relations and their dissolution and article 16 of the Convention.

Sources: United Nations, CEDAW Committee, [Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan](#), paras. 42-43, 30 July 2013, CEDAW/C/AFG/CO/1-2 and United Nations, CEDAW Committee, [Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland](#), paras. 64-65, 30 July 2013, CEDAW/C/GBR/CO/7.

BOX A.2.7 UNDP, UNICEF and UN Women support family courts in Morocco

The adoption of **Morocco's** new Family Code in 2004 led to the creation of a new family court system. UN Women, UNDP and UNICEF developed a joint programme to assist the Moroccan Ministry of Justice to ensure its effective implementation. A professional unit was created within the Ministry to provide continuous on-the-job training for family court personnel and a new information management system was created within the family section courts. The programme established a mediation and reconciliation system within five pilot family section courts and recruited social workers to link women seeking justice with the court system.

Source: UN Women, “Analysis of Country Annual Reports”, (2015). (Unpublished).

Informal laws

BOX A.2.8 Women's land rights and traditional leaders in Namibia

In **Namibia**, much of the rural population lives on communal land owned by the State and customarily allocated to members of the community by traditional leaders. Under pre-independence customary law, women's access to land was primarily through their husbands, fathers or some other male relative. Under the Communal Land Reform Act of 2002, there are no bars to gender equality in the allocation of communal land—but there is no direct articulation of the principle of non-discrimination, nor any affirmative action for women. Land continues to be allocated by traditional leaders, with the allocations being ratified by community land boards, about one third of whose members should be women. A study of 10 villages under the jurisdiction of a single community land board found that 40 per cent of the applications for land rights originated from single, widowed or divorced women, with the average age of the female applicants being about 60. The study noted that both the community land board and the local traditional authorities in this particular location were actively encouraging women to apply for land rights.

Source: OHCHR and UN Women, [Realizing Women's Rights to Land and Other Productive Resources](#), p. 22.

BOX A.2.9 Reforming discriminatory informal laws in formal courts: Case studies from Botswana, Kenya, Nigeria, South Africa and Tanzania

The courts have been a vehicle for challenging discriminatory customary laws. Most recently, in October 2012, in the case of *Mmusi and Others v. Ramantele and Another*, the **Botswana** High Court ruled that the customary laws which provided for male-only inheritance of the family home were discriminatory and illegal under the Constitution. In **Kenya**, in the *Ntutu* case (2008), the High Court heard arguments by the sons of the deceased that *Masai* customary law of succession does not recognize the rights of daughters to inherit the estate of their fathers. However, in rendering its decision, the Court applied international human rights treaties ratified by Kenya, as well as previous case law. The Court upheld the right of the daughters to inherit equally from the assets of the estate. In *Mojekwu v. Mojekwu*, the Court of Appeal of **Nigeria**, similarly held that the *Nnewi* custom of *Oli-ekpe* (prohibiting the inheritance rights of females and providing that the eldest male in the family will inherit) was discriminatory and any form of societal discrimination on grounds of sex was held unconstitutional and against the principles of an egalitarian society. In the *Bhe* case, the Constitutional Court of **South Africa** found that the practice of male primogeniture (the custom of the firstborn male inheriting the entire estate), as provided for under customary law, was discriminatory and classified as unconstitutional all legislation that allowed such discriminatory laws to be applied. Following this decision, South Africa enacted the Reform of Customary Law of Succession and Regulation of Related Matters Bill, which gave customary widows and daughters and widowers and sons equal inheritance rights. Another similar example is the case of *Epharrahim v. Pastory & another*, in which the High Court of **Tanzania** invalidated customary norms preventing women from selling land.

Source: OHCHR and UN Women, [Realizing Women's Rights to Land and Other Productive Resources](#), p. 29.

Justice sector policies and budgets

BOX A.2.10 Budget increases and fee waivers for religious courts in Indonesia

In response to a study in **Indonesia**, the Access and Equity Study, the Religious Courts' budget was increased by Rp 23 billion (3 million USD) for court fee waiver schemes (prodeo cases) and more circuit courts in order to assist those living in rural and remote areas to access courts for family law cases. A further Rp 12 billion (1.5 million USD) was granted in the 2009 State budget allocation for the Religious Courts, despite an overall reduction in the Supreme Court budget due to the global financial crisis. This represented an 18-fold increase over the previous two years in the Religious Court budgets for court fee waiver schemes and the holding of circuit courts. In 2009, the State Ministry of National Development Planning launched the National Access to Justice Strategy. Action plans outlined in the Strategy have been integrated into the Medium-Term Development Plan 2010–2014.

Source: Cate Sumner and Tim Lindsey, [Courting Reform: Indonesia's Islamic Courts and Justice for the Poor](#), Paper No. 31, pp. xx, 30, (New South Wales, Lowy Institute for International Policy, 2010).

BOX A.2.11 The Justice, Law and Order Sector Investment Plan III (2012-17) in Uganda

The JLOS in **Uganda** includes 17 government agencies that have justice and law enforcement mandates. Many policy shifts envisaged in the JLOS plan are relevant to women's rights and family law, including a legislative emphasis on impact through improvements in enforcement; seeking innovations to bridge the gap between formal and informal justice systems as a majority of the populace observe the latter; specifically prioritizing land justice, family justice, transitional justice,

gender-based violence and workers' rights; and prioritizing and funding special programmes to target groups vulnerable due to gender, age, poverty, etc. Key process shifts in the justice sector strategy include investing more funding at the of lowest levels of justice service delivery in order to increase the physical and functional presence of JLOS primary institutions in all districts for faster, rights-based service delivery. Another shift is a commitment to strengthen work with the civic actors like NGOs and communities, the "demand" side of justice.

Source: Uganda, JLOS, "[Strategic Investment Plan \(SIP III\)](#)", (2015), (accessed 15 March 2018) and [The Third JLOS Strategic Investment Plan \(SIP III\) 2012/13-2016/17](#), pp. xi-xiii, (Kampala, 2013).

Creating effective, accountable and gender-responsive justice institutions

Good quality

BOX A.2.12 UN Women support for training on women's human rights, family law and land rights

UN Women provided training to government staff and civil society groups in **Kyrgyzstan** and **Tajikistan** to improve gender-sensitivity and increase understanding about women's human rights, especially women's land rights. The Convention on the Elimination of All Forms of Discrimination against Women was used as a key reference to discuss State obligations to remove discrimination against women and empower them and show how this could translate into actions in the national context. Laws governing land rights were examined in detail to illustrate their different impact on men and women and show how they could directly or indirectly give rise to inequalities and discrimination. Local government was an especially important target for capacity development activities. In Kyrgyzstan, almost 400 heads of village councils attended workshops to discuss the Law on Agricultural Land Management and provisions in other laws such as the civil, family and land codes that were relevant to women's property and inheritance rights. These local officials also heard directly from women whose land rights had been violated and learned about the State's obligations to women under the Convention. In addition, 70 village and district-level land specialists were trained in women's land rights and data collection techniques to better enable them to respond to rural women's concerns and give them accurate information and advice on land issues.

Source: UN Women, "Analysis of Annual Country Reports".

Remedies

BOX A.2.13 Examples of alimony funds from Egypt and the State of Palestine

The ability of justice systems to provide meaningful remedies for women is especially important in the area of family law where women often have limited access to legal representation. Innovative programming can include strategies that guarantee the payment of alimentary support. Alimony funds, such as those developed in **Egypt** and the **State of Palestine**, ensure that alimony and child support are paid in situations where court decisions are not enforced.

Programme Summary

Mandate

To provide payments for alimony and child support when court decisions are not enforced

Reason for Establishment

There are numerous problems with the enforcement of judicial decisions in a timely and effective manner

Funding

- Reimbursement from debtor, with financial penalties, through automatic salary reductions for civil servants, and liens on bank accounts and motor vehicles
- Administrative fees levied on registration of births, marriages and divorces
- Government contributions
- Private donations

Beneficiaries

- West Bank and Gaza – 150 beneficiaries (2007-2009); 400 beneficiaries (2009-2010)
- Egypt – official data is unavailable; anecdotal information points to a limited number of beneficiaries

Source: Prettitore, [Delivery of Justice Sector Services to the Poor. How Are Middle East Governments Addressing Gaps?](#), p. 17.

Legally empowering women

Women participate in legal reform processes

BOX A.2.14 Women parliamentarians in Rwanda promote legal reform

In **Rwanda**, the presence of women in parliament has been a pivotal factor in achieving progressive legal reform on land, marriage and inheritance. At 51 percent, the level of women's parliamentary representation in Rwanda is the highest in the world. Rwanda's Forum of Women Parliamentarians brought women together to develop strategies for change. Working with the Women's Ministry and women's civil society organizations, the Forum pushed through the 1999 Law on Matrimonial Regimes, Liberalities and Successions, which established women's right to inherit land for the first time. The legislation includes the principle that women may own and inherit property on an equal basis with their brothers, and requires that couples registering their marriage make a joint commitment to shared ownership of marital property.

Source: UN Women, [Progress of the World's Women 2011-2012: In Pursuit of Justice](#), p. 41, (New York, 2011).

Support and partner with civil society organizations

BOX A.2.15 CSO in Indonesia promoting rights education and helping women formalize marriages and divorce

In **Indonesia**, the women's NGO Pemberdayaan Perempuan Kepala Keluarga (PEKKA) has worked to help women formalize marriages and divorces through the religious court system. In a survey of their members, PEKKA found that fewer than 50 percent of respondents had marriages that were legally recognized, and that the high fees and lack of rural courts were a disincentive for women to seek divorce. Through the provision of rights education and the development of a network for trained paralegals, PEKKA helps women access the religious courts to formalize their marriages and divorces. They have additionally lobbied the government and have contributed to decisions by the Supreme Court increasing the number of circuit courts in remote areas and waiving court fees for the poor.

Source: UN Women, [Progress of the World's Women 2011-2012: In Pursuit of Justice](#), p. 75.

BOX A.2.16 The positive impact of partnerships with CSOs in India and Uganda

In **India**, single women have organized across the country, resulting in the formation of the National Forum for Single Women’s Rights. The National Forum has advocated for the rights of single women to enjoy their land and property rights with respect to both their natal and marital homes, and have advocated that single women should be allotted land to build a house. In **Uganda**, UN Women support for the work of the Uganda Association of Women Lawyers (FIDA Uganda) since 2011 has contributed to building the capacity of cultural leaders in two post-conflict sub-regions of the country, Acholi and Karamojong, to administer family justice through a gender-responsive lens. It has funded the documentation of cultural gender principles and land tenure customary principles supporting women’s land rights and the development of a case management handbook for traditional leaders and local councils; facilitated training in case management and documentation; and supported the documenting of the application of this knowledge by the informal justice institutions. This guidance in the adjudication of family and land cases by customary institutions has contributed to bridging the gap between formal and informal justice systems and advancing understandings of women’s human rights in the latter, resulting in more women winning land and family cases in these rural communities.

Sources: OHCHR and UN Women, [Realizing Women’s Rights to Land and Other Productive Resources](#), p. 20 and Uganda Association of Women Lawyers, “Annual Report to UN Women Uganda”, (2016). (Unpublished).

Appendix III: Additional resources

- OHCHR, [Human Rights and Traditional Justice Systems in Africa](#), (2016)

ENDNOTES

- 1 United Nations, General Assembly, Resolution 34/180, *Convention on the Elimination of All Forms of Discrimination against Women*, Arts. 2, 9, 14, 15, 16, 18 December 1979, A/RES/34/180.
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- 8 *Ibid.*, Art. 6(d).
- 9 CEDAW/C/GC/29, para. 20.
- 10 *Ibid.*, para. 30 and A/49/38., para. 18.
- 11 CEDAW/C/GC/29, para. 30.
- 12 See Beatrice Duncan, *Changing Access Rights in Some Cocoa Growing Communities in Ghana: Changing Land Access Rights in Matrilineal and Patrilineal Communities in Ghana*, (LAP LAMBERT Academic Publishing, 2011).
- 13 See United Nations, General Assembly, Resolution 217A(III), *Universal Declaration of Human Rights*, 10 December 1948, A/RES/3/217A(III) and United Nations, General Assembly, Resolution 2018(XX), *Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, 1 November 1965, A/RES/2018(XX).
- 14 For more information on Article 2 as a core obligation under CEDAW, see CEDAW/C/GC/28.

- 15 Note that the actual year of the Family Code is not cited in the text of the reservation. In addition to Article 2, Algeria has also expressed reservations to Article 9, para. 2; Article 15, para. 4; Article 16; and Article 29 of CEDAW. See UN Women, “Declarations, Reservations and Objections to CEDAW”, available from <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (accessed 15 March 2018).
- 16 Ibid.
- 17 See CEDAW/C/GC/29, para. 55.
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- 19 Ibid.
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- 31 A/49/38, para. 32.
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- 38 See OHCHR and the Joint United Nations Programme on HIV/AIDS, *International Guidelines on HIV/AIDS and Human Rights*, p. 35, (United Nations publication, Sales No. E.06.XIV.4).
- 39 Ibid.
- 40 OHCHR and UN Women, *Realizing Women's Rights to Land and Other Productive Resources*, p. 39.
- 41 Ghana, Wills Act, 1971 (Act 360), sect. 13 stipulates that where a will does not provide for the maintenance of any father, mother, spouse or child under 18 years of age of the testator, and that hardship will thereby be caused, the High Court may, taking account of all relevant circumstances, notwithstanding the provisions of the will, make reasonable provision for the needs of such father, mother, spouse or child out of the estate of the deceased. Such reasonable provision may include “(a) payment of a lump sum, whether immediate or deferred, or grant of an annuity or a series of payments; (b) grant of an estate or interest in immovable property for life or any lesser period.”
- 42 Pakistan, Muslim Family Laws Ordinance, VIII of 1961, sect. 7.
- 43 See Food and Agriculture Organization of the United Nations, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, (Rome, 2012).
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