



**IHRDA – CFJ Litigation Surgery in advance of the ACERWC CSO Forum,  
21 – 22 April 2023  
Concept Note**

**Background**

Available data on domestic legal frameworks surrounding child marriage in Africa shows that over 40 of the 55 African Union (AU) Member States lack adequate legal protections against child marriage. For example, many States do not set a general legal minimum age of marriage preventing girls below 18 from marriage, allow customary or civil law to displace statutory minimums, or grant exemptions for parental or judicial consent. At least a dozen Member States prescribe younger minimum age of marriage laws for girls than for boys, underscoring the problematic gender stereotypes about female maturity that lead to such high rates of child marriage. This has devastating consequences for girls’ developmental trajectory: girls who marry before 18 are more likely to experience domestic violence, teen and high-risk pregnancies, and contract HIV or other sexually transmitted diseases. They are less likely to continue their education, and by extension, to become financially independent from their spouse or have the resources to assert their legal rights.

Divorce is often the primary recourse for girls and women subjected to child marriage. However, discriminatory divorce laws across the AU limit women’s access to divorce; our research shows that at least 19 AU countries have laws discriminating against women seeking divorce or against divorced women.<sup>1</sup> Marriage is also often the sole basis for women’s access to social and economic rights—rights which are lost upon divorce.

Though challenging inadequate or non-existent legal provisions may be difficult in domestic legal contexts, there are some important success stories. In Tanzania, for example, following years of public and legal advocacy by Tanzanian organizations, the Supreme Court of Appeal [upheld](#) in 2019 a ruling banning parents from marrying girls under the age of 18. And in Zimbabwe, several years after the Constitutional Court [banned marriage](#) for all under the age of 18, the government

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<sup>1</sup> Algeria, C. Af. Rep. Comoros, Djibouti, Egypt, Eswatini, Gabon, Guinea, Guinea-Bissau, Liberia, Libya, Mauritania, Morocco, Niger, Somalia, South Sudan, Sudan, Tunisia, Uganda.

passed a marriage act in 2022 officially outlawing child marriage and [extending greater rights](#) to girls and women.

Where domestic legal challenges may not be possible or practicable, or where implementation and enforcement of domestic laws is uneven, there are also regional judicial mechanisms such as the African Court on Human and People's Rights and the ECOWAS Court of Justice that can provide powerful remedies. For example, in 2019, the ECOWAS Court of Justice ruled that Sierra Leone's policy of expelling pregnant girls from school was discriminatory and ordered the government to overturn the ban; Sierra Leone's government subsequently repealed the law in 2020 and adopted a policy of "radical inclusion" to ensure all girls are welcome and supported in school. Similarly, in a landmark case in June 2021, the ECOWAS Court of Justice found that Niger had failed to uphold its legal obligation to protect a woman from slavery and sexual- and gender-based violence and urged Niger to pay reparations amounting to nearly \$115,000 USD. In October 2021, following this decision, Niger paid reparations worth about \$53,000 USD.

### **Litigation Surgery**

Recognising that the ECOWAS Court of Justice and other regional mechanisms provide an opportunity to bring forward cases focused on the rights of women and girls and build a strong foundation for further national and regional litigation, the Clooney Foundation's [Waging Justice for Women Initiative](#) (WJW) and IHRDA will host a **two-day litigation surgery on teenage mothers' access to education, child marriage and/or divorce as a remedy for child marriage**. We are seeking in particular participants working in ECOWAS countries for cases that could be pursued at the ECOWAS Court of Justice, but individuals and organisations with cases that could be brought before the African Court on Human and Peoples' Rights, African Commission, or other regional mechanisms are also invited to attend.

The litigation surgery will be held on 21-22 April 2023, **in advance of the CSO Forum at the 41<sup>st</sup> Ordinary Session of the African Committee of Experts on the Rights and Welfare of the Child in Lesotho**. Participants will be drawn from states that permit child marriage, restrict pregnant girls' right to education or their right to file for divorce. Participation is open to:

- Legal practitioners who have previously litigated, or are currently litigating, cases related to teenage mothers' access to education, child marriage and/or divorce as a remedy for child marriage
- Representatives of human rights organisations which work directly with individuals subjected to child marriage or pregnant girls and teenage mothers who face barriers to pursuing continuing education.

Participants will be limited to 20 organisations and/or individuals. The Clooney Foundation for Justice will cover accommodation for participants traveling to attend the CSO Forum as well as lunch and refreshments during the litigation surgery. Interpretation will be provided for participants as needed.

The litigation surgery will likely be structured as follows:

Day 1	<ul style="list-style-type: none"> <li>▪ Elements of holistic strategic litigation</li> <li>▪ Regional mechanisms, in particular, the ECOWAS Court of Justice as an avenue for strategic litigation</li> <li>▪ Applicable international and regional law</li> <li>▪ Case checklist: elements for identification and analysis of prospective cases before regional mechanism, in particular, the ECOWAS Court of Justice</li> </ul>
Day 2	<ul style="list-style-type: none"> <li>▪ Presentation of potential cases/issues by participants</li> <li>▪ Small group workshopping of cases and readout</li> <li>▪ Assessment of other elements of strategic litigation (advocacy, etc.)</li> <li>▪ Next steps</li> </ul>

**Applications**

Organisations or individuals seeking to participate are encouraged to submit a short email on a case or issue that they are litigating/propose to litigate that could be discussed during the litigation surgery.

The deadline for application is **07 April 2023**. Please send an email to Oludayo Fagbemi at [ofagbemi@ihrda.org](mailto:ofagbemi@ihrda.org) and Nadine Reiner at [nr@amalclooney.co.uk](mailto:nr@amalclooney.co.uk) with details about:

1. Yourself and your professional background
2. Your organisation (if applicable)
3. A specific case or issue that you would like to discuss during the litigation surgery (the more detailed the (anonymized) information about the case is, the higher the chances that the application will be accepted)

Approved participants will be notified on a rolling basis and at the latest 2 weeks before the 41<sup>st</sup> Ordinary Session takes place.

**About IHRDA**

The Institute for Human Rights and Development in Africa (IHRDA) is a pan–African non-governmental organization (NGO) working to promote awareness of human rights in Africa and improve the effectiveness of the African Human Rights system. It was established in Banjul, The Gambia by two human rights lawyers, Julia Harrington and the late Alpha Fall, who formerly worked for the Secretariat of the African Commission on Human and Peoples’ Rights. IHRDA envisions an African continent where all have access to justice via national, African and international human rights mechanisms. IHRDA’s determination in defending the human rights of Africans has been its motivating force ever since.

## **About the Clooney Foundation for Justice and its Waging Justice for Women Initiative**

The Clooney Foundation for Justice is a nonprofit organization dedicated to fighting systematic injustice against vulnerable communities, including journalists, women and girls, democracy defenders, LGBTQ persons and minorities. The *Waging Justice for Women* initiative aims in particular to use data-driven legal advocacy to reform discriminatory laws and increase accountability for gender-based violations. Working with local partners, we pursue strategic litigation to challenge laws and practices, obtain remedies for survivors, and trigger accountability for abusers. The *Waging Justice for Women* initiative also seeks to amplify and bolster the work of grassroots advocates through partner-driven storytelling and public advocacy.