

YOU AND YOUR MARRIAGE



Graphic by Bridget Pitt, (IDASA)

Customary Marriages

Are you a woman married by custom? Do you know your rights? *Cathi Albertyn* answers some of the questions about customary marriages...

Customary marriages are recognised by the custom or religion of the husband and wife. At the moment, they are not recognised in South African law. This is because the husbands in these marriages are allowed to have more than one wife. But women in these marriages still have some rights.

What kinds of marriages are customary in South Africa?

There are two common kinds:

- African customary marriages, and
- Muslim marriages.

Are women in customary marriages independent adults in the eyes of the law?

No. If you are an African woman living with your husband (outside of KwaZulu or Natal) in a customary marriage, you are seen to be a "child" or a minor and your husband is your guardian. If you are an African woman living in KwaZulu or

Natal, then you are not a minor and your husband is not your guardian. The law, however, gives your husband legal power (called "marital power") over you. It is almost the same as being a minor. If you are married according to the Muslim religion, then you are not a minor.

What rights do you have in the law?

If you are a woman married in African customary law, you can:

- claim your husband's pension after he dies
- claim Workman's Compensation if your husband is killed in an accident at work
- claim maintenance money from the maintenance court as long as you are married to your husband
- claim money from anyone who kills your husband if it is that person's fault.

How can a woman prove she was married by customary law?

With a certificate

To get a certificate, you must go with your husband and guardian to the Commissioner or Magistrate in the area which is the permanent home of your husband. You will be asked some questions about your marriage and you will have to pay for the certificate you get. You can get a certificate **at any time** during your marriage if *lobola* has been paid.

Without a certificate

If you do not have a certificate, you have to **prove** that you were married by customary law. You can prove this if:

- you can show *lobola* was paid
- you can show you and your husband, and your father, agreed to the marriage
- you were married in a traditional ceremony.

What happens if the husband legally marries a second wife?

Some husbands in a customary marriage later marry again - this time in a civil (legal) marriage. If your husband married again **before 2 December 1988**, then the law says your marriage ended on the day he married his second wife. If he dies, though, you can still inherit from him according to customary law. You have to share the inheritance with his civil wife.

If your husband married again **after 2 December**

1988, then your marriage does not end. The second marriage is illegal and the second wife has no rights.

What does it mean to "inherit according to customary law"?

Customary law says most of the property of the husband must go to the men in his family. A customary wife does have the right to ask the Minister of Justice to give her some of her husband's property. The best way to make sure that you inherit from your husband, is to get him to make a will.

Do women in a civil marriage have more rights than women in a customary marriage?

Yes, they do. But women in all marriages are not equal to their husbands. The law needs to change.

(Cathi Albertyn is a researcher at the Centre for Applied Legal Studies at the University of the Witwatersrand.)

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