



## WIDOWS AND CASE LAW

WRI campaigning with widows groups for 10 years in many countries to raise awareness about and eradicate harmful cultural practices against widows which are the basis for their discrimination against them and their children. In the past year however we have widened our work to advocate at the UN and the Commission on Human rights in Geneva on this issue. We have looked at ways in which the international community has failed to hold member states to account in addressing the widespread abrogation of the rights of widows.

We will be devoting this issue of the newsletter to legal cases in which widows have challenged the imposition of traditional practices and one successful tool in this process is the law. We have also examined in detail the failure at the international level to protect the rights of widows and we include a research paper produced by our trustee Dr. Karen Brewer.

Karen Brewer has been trying to galvanise the international legal and judicial community into action on widows issues. She spoke of the “Rights of Widows” at the Commonwealth Magistrates’ and Judges Association Conference, held in Brighton in September 2011 when she pointed out that widows remain amongst the most vulnerable members of society. They face discrimination across the globe, irrespective of cultures, religion, ethnicity or whether they live in developed or developing countries.

In Hyderabad, India in 2011, following her presentation at the Commonwealth Law Conference on “Widows Rights are Human Rights, Dishonourable Crimes and Forced Marriages”, she received feedback from lawyers across the Commonwealth about the status of widows and their struggle to get their rights recognized.

She also spoke at a Widows Rights International presentation at the House of Lords in London hosted by Baroness Verma on the theme “Windows on Widows”. Other speakers at this event included Jane Opolot, President of Woman of Purpose in Uganda. Jane Opolot called for respect for widows. She wanted more education for widows in her country, 90% of whom are illiterate. Zarin Hainsworth, founder of Naserian, the Masai Widows charity, spoke on the plight of women in African tribal groups. In traditional Masai culture, widows have very few rights. They become part of their late husband's family and their property rights transfer to his family too.

In August 2011, Karen was invited to speak to the International Federation of Women Lawyers (FIDA) meeting held in London on the theme: "The Impact of CEDAW on Human Rights of Women and Children in the New World Order". Karen pressed lawyers attending to campaign for regional, Commonwealth and international conventions to incorporate similar protocols to those found in the African Charter on Human and Peoples' Rights. She also advocated that criminal penalties should be put in place for inhuman, degrading and life-threatening mourning rites and for any traditional cultural practice which restricts the liberty, mobility and financial independence of widows. "*Without justice, women are disenfranchised, disempowered and denied their rightful place*". Ban Ki Moon, Progress on the World's Women"- UN Women Report - July 2011.

## RIGHTS UNDER INTERNATIONAL LAW

WRIs international advocacy is based on the UN charter and the Universal Declaration of Human Rights. **Article 55 of the UN Charter** provides for the "*universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion*".

**Article 2 of the Universal Declaration of Human Rights** states that "*Everyone is entitled to the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion...*"

These rights are also included in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979, the Declaration on the Elimination of Discrimination against Women (1967), the Declaration on the Elimination of Violence against women (1993) and all other human rights treaties.

**Article 2 of the CEDAW** puts a duty on states to "*agree to pursue by all appropriate means and without delay a policy of elimination of discrimination against women*".

**Article 1 of CEDAW** defines discrimination as being "*...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in the political, economic, social, cultural or any other field.*"

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Over the last thirty years, since the adoption of **CEDAW**, the international community has made great strides to improve the status of women around the globe. However, in many countries, a woman continues to be seen as devolving her status from her relationship with the man in her family, be they a father, brother or husband.



Image taken from: <http://reproductions.co.uk/other/371-bronze-statue-lady-justice-gift-for-legal-profession.html>

At their 15<sup>th</sup> Session which concluded on 1 October 2010, the UN Human Rights Council called upon States to fulfil their obligations and commitments to revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice, taking into account that those laws violate their human right to be protected against discrimination. It was also decided to establish, for a period of three years, a Working Group of five independent experts on the issue of discrimination against women in law and practice.

Widows face the daunting challenge of ending many harmful 'traditional' practices if they are to have their human rights as persons, as citizens, as women recognised and respected. One of the tools or strategies that can lead to successfully challenging such practices is the law. But many widows have scant access to the law – through lack of knowledge about the law, of knowing how to present their case to a lawyer, of funds to employ a lawyer and to attend court hearings. WRI believes that by publishing brief summaries of cases brought by widows – many of which have resulted in a positive outcome – in each issue of this e-newsletter, we can be of use to widows and their legal advisers. Knowing the arguments used in such cases can help them prepare their own case, or that of a friend, neighbour or family member.

In many of the cases lawyers make use of international agreements– CEDAW, The Right of the Child, Human Rights conventions. This highlights the importance for widows of demanding that their governments sign such conventions, and equally important, put them into action/make sure they are implemented.

In this issue we will be concentrating on case histories from Sub-Saharan Africa – in other issues we will broaden our coverage to other areas. Each case history gives the source of the information for those who wish to have greater details.

**WRI would very much like to hear from readers of other cases they have been involved in or know about, especially those which establish a positive precedent.**

## CASE PRECEDENCE

### General Rights

**Nigeria: *Okonkwo v Okagbus* (1994), Supreme Court of Nigeria.**

This case eradicated a customary practice in smaller villages of allowing a living woman to be married to a deceased man. Known as the leverate, the woman continues to bear children (fathered by her dead spouse's kinsman) in her husband's name.

**The Court ruled that above all else a marriage is a recognised union between a man and a woman and that both parties have to be alive for the union to be consummated. The marriage is terminated once the husband dies thus making any posthumous ceremonies involving a Nigerian bride or widow invalid.**

*[Source: Without Prejudice: CEDAW and the determination of women's rights in a legal and cultural context]*

**Nigeria: *Yusufu v Okhia* (1976), Supreme Court of Nigeria.**

Under customary law a marriage continues even after the husband dies until the proper burial rites are performed. A widow is then eligible to be 'inherited' by any male relation of the deceased. The original suit was brought against a widow, who refused to accept this practice, by the brother of the deceased. A local Court ruled in his favour. The widow appealed against the judgement to the Supreme Court.

**The Court found that the customary right of a male relative to inherit the wife of a deceased kinsman was in direct contradiction with widows' and gender rights. It therefore found in favour of the widow and banned widow inheritance from continuing.**

*[Source: Without Prejudice: CEDAW and the determination of women's rights in a legal and cultural context]*

### Land Rights

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

This case is an appeal against an original land dispute judgement in a lower court. The appellant appealed this decision, claiming that the judge had made an error in applying the law to this case. The son of the deceased (the appellant), and the deceased's second wife, disagreed about who legally owned 7.44 hectares of land left to the family. The appellant claimed that, as the son of the deceased and his first wife, he was entitled to be sole proprietor and therefore his stepmother, the second wife, could only be a licensee of the land.

**The judge in the original trial ruled in favour of the second wife, granting her control of the land to be shared with the children of her late husband as she so chose.**

**His appeal was dismissed and he was ordered to pay the taxed costs for the land inquiry.**

*[Source: IAWJ Africa Regional Conference, Arusha Tanzania, August, 2009 and Electronic Kenyan Law Review]*

**Tanzania: *Ephrahim vs Holaria Pastory* – Unreported Primary Court, Tanzania. Civil Appeal No. 70 of 1989 AHRLR 236; 22 February 1990.**

In this case Holaria Pastory, the daughter of a recently deceased land owner of the Haya clan, appealed against the judgement given in a Primary Court.

After the death of her father, Pastory inherited the family plot of clan land, which she then sold to Gervaz Kaizilege, a non clan member. The nephew of the deceased, Bernard Ephrahim, stated that under Haya customary law female heirs were not eligible to sell clan land; they only had the right



### Land Rights continued. . .



Image taken from <http://www.telegraph.co.uk/>

to use the land during their lifetime. Furthermore he claimed that women could only inherit clan land if the deceased had no living male relative.

The Primary Court ruled in favour of Ephrahim and Pastory was forced to refund Kaizilege's payment and relinquish control of the land. This decision was overturned by the District Court citing the 1987 Bill of Rights stating that inheritance discrimination based on gender under customary law was a violation of gender and human rights. Ephrahim then appealed to the High Court but was unsuccessful in his appeal.

Source: *Without Prejudice: CEDAW and the determination of women's rights in a legal and cultural context (2010)*

#### Kenya: In re Wachokire, Succession Cause No. 192 of 2000, Chief Magistrate's Court at Thika, 19 August 2002.

Jane Watiri petitioned the court to award her one-half of a parcel of land that had belonged to her deceased father and on which she lived with her four children. Her brother objected, arguing that as he had cultivated a larger portion of the land than she had during the father's lifetime he was entitled to that larger portion.

Senior Principal Magistrate H. A. Omondi found that under Kikuyu customary law an unmarried

woman like Watiri lacked equal inheritance rights because of the expectation that she would get married. Magistrate Omondi held that this customary provision discriminated against women in violation of Section 82(1) of the Kenyan Constitution, which prohibits discrimination on the basis of sex. It also violated Article 18(3) of the Banjul Charter and Article 15(1)–(3) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which provide for legal equality between men and women. Magistrate Omondi awarded Watiri and her brother equal shares of their father's property. [Source [www.iawj.org](http://www.iawj.org)]

#### Tanzania: *Alli v. Elphas*, Civil Appeal No. 21 of 2002, District Court of Mwanga at Mwanga, December 21, 2002.

*Lukio Elphas sought to evict Butuli Alli and Saidi Hassan (the appellants) from their residence on a plot of land that had originally belonged to the estate of Alli's first husband. He claimed that, as a widow, Alli had no right to occupy land belonging to her late husband. The Primary Court ordered that the plaintiffs be evicted from their home. On appeal, Magistrate S.O. Msigiti reversed the lower court's decision, holding that Alli was entitled to the plot of land and residence thereon. Magistrate Msigiti stated that: "the rights of women in owning property and eliminating discrimination are not a Tanzanian issue alone. It is an issue touching the whole international community." The court held that the appellants' eviction violated principles of equality between the sexes as to marriage, residence, and marital benefits found in Articles 13(1) and 16(1) of the UDHR, the Law of Marriage Act of 1971, and the Constitution of Tanzania. Magistrate Msigiti further questioned the standing of respondent Elphas to sue for the eviction of the appellants, explaining that he had not shown that he was the administrator of the estate and noted that "it is not proper for every relative to appear in court for a deceased."*

[Source [www.iawj.org](http://www.iawj.org)]

# NEWS FROM AFRICA

**KENYA**

## WOMENS GROUPS LOBBY FOR INHERITANCE LAWS



A good illustration of the importance of the use of judgements in courts throughout the Commonwealth which WRI has highlighted, is supported by Womens Groups in Kenya for legally binding wills, which can assist widows in their struggle to inherit land and property. This is illustrated by an article in the October 2011 online issue of Kenyan Woman (Issue 22), which highlights the injustice widows face because of inheritance laws. These deprive them from inheriting land and property and the article asserts that whenever a man dies the female beneficiaries are always short-changed.

Despite the fact, that section 40 of the Kenya constitution guarantees the right of every person to own property, and section 60 provides for equitable access by all to land and security, the urgent need now is for husbands and fathers to leave legal wills as well as an inheritance list which includes widows and girl children. The article illustrates two cases of widows who have had to struggle for years to reclaim land and property left to them but which was taken away by family members. Other inheritance issues are also discussed in the article including questions of inheritance under Sharia law.



The full article by Elizabeth Awuor is available at:

<http://www.awcfs.org/dmdocuments/KenyanWoman/Kenyan%20Woman%20022.pdf>

# NEWS FROM AFRICA

MALI

## Neglected and poor widows in Mali

*The lack of data on the numbers and condition of widows worldwide has been a major problem for organisations which work to assist them. In a recent article, a researcher Dominique Van De Walle has stated that the plight of widows in many African countries has been neglected in the work of economists and public policy action because standard databases do not examine the situation within households.*

She adds that if policy is to be properly informed there may be a case to decide whether collecting data on widows or their children independently of poor or malnourished people in general.

In her article, she looks at the situation of widows in Mali and draws on documentation published in an earlier paper that Malian women who have experienced the shock of widowhood, sometimes very young, have lower living standards than other women of the same age. These detrimental effects persist through remarriage and are passed on to their children — possibly more so to daughters — suggesting an intergenerational transmission of poverty stemming from widowhood. Her analysis of household consumption data in Mali indicates that households

headed by widowed women (comprising the vast majority of female headed households) are significantly poorer than all other households even when controlling for an extensive set of household and individual characteristics, including age.

She argues that researchers and policy makers should keep in mind that it may be tricky to target widows: the same conditions that create inequality within households also constrain the ability to target women per se with interventions. But these caveats do not excuse ignoring the problem. More thinking, resources and effort need to go into how best to help these extremely vulnerable groups.

**Full article available at Africa Can... End Poverty:**

<http://blogs.worldbank.org/africacan/neglected-and-poor-widows-in-mali>

*Image of Bambara widow photographed at the Widow's and Children's Cooperative in Bamako where bologan cloth was made. Taken from:*  
<http://homepage.mac.com/melissaenderle/mali/pages/maliwidow.html>



**Widows' Rights International**

Registered charity number: 1069142

# NEWS FROM AFRICA

## GABON

### Gabon widows plundered by in-laws

The first lady of Gabon First Lady Bongo Ondimba sponsored the resolution for the establishment of International Widows Day last year has opened a centre in the capital Libreville to support and assist widows.

Her decision to assist widows is symptomatic of the increasingly active role which non-governmental organizations are playing in many African countries to end the practices which oppress widows. In many parts of Africa including Gabon widows are dis-inherited and forced into poverty. They are also disinherited, marginalized, expelled from the marital homes and even lose their pensions.



Besides opening a Centre the foundation which Madame Ondimba opened has also setup a toll free number to help widows access assistance which the government is now providing. In fact, there is now a draft law before the Malian Government, which if passed will increase criminal penalties for the use of abusive practices and protect widows and orphans.

Full story available at: <http://www.informafrika.com/society-africa/gabon-widows-plundered-by-in-laws/>

### Ending the culture of silence

## NIGERIA



Members of International Federation of Women Lawyers (FIDA), are working to eliminate cultural traditions that affect women in River State, southern Nigeria. The FIDA Chair person for the State Mrs. Florence Fiberesima, pictured, said that her organisation has worked to reach out to several communities which continue to impose these traditional practices on widows. They have also campaigned to end what is described as 'the culture of silence where women were unable to speak up about the problems they were facing.'

She reports that 'they first try mediation to see if issues can be settled in a family and when this fails they go to court'. As a result of these efforts, River State has laws banning these harmful practices including female circumcision.

Full article is available at: <http://www.voanews.com/english/news/africa/west/NGO-Fights-Customs-that-Harm-Women-100439699.html>



# NEWS FROM ASIA

## Indian widows - Legal Ghosts.



An article by **Yamini Deenadaya-Ian** (*Features Correspondent with Tehelka.com*) detailed the findings of a recent report which surveyed 386 women across six states in India—Bihar, Gujarat, Himachal Pradesh, Jharkhand, Maharashtra and Rajasthan. The report entitled, *Are We Forgotten Women?*, released in early October 2011 by the National Forum for Single Women's Rights looks at the challenges of single women, including widows in present-day India.

Harsh cultural superstitions exist which suggest that widows are witches and bring bad luck, such as famine and drought to their villages. In some places it is still considered inauspicious to see a widow first thing in the morning. These women are not recognised in law, or as part of their communities as people who need support. The report estimates that widows receive between Rs200 and Rs500 as a monthly pension which is often irregular and a single source of income.

Susheela, a Rajasthani widow at age 22 explains that "A widowed woman is suddenly left financially responsible for her children, often has to pay off her husband's debts and to make things worse,

she is stigmatised by her family". Now in her her 60s, Susheela was rejected by her maternal family and her in-laws, she survived with the assistance of NGOs and by doing odd jobs.

The report outlines some of the key challenges for vulnerable women:

**Housing:** 40% of widows surveyed lost access to their marital homes. As women are not recognised as heads of families transfer of land ownership documents is almost impossible.

**Social security or pension schemes:** Such schemes only reached a quarter of the respondents. Divorced, unmarried and widowed women younger than 40 years of age are rarely taken into account for any social security schemes run by the government.

**Maintenance and custody:** Most single women seem to be unaware or lack the courage to claim their dues.

The report highlights schemes which provide support for widows and other single women. The Vidhva Sahay and Talim Yojna scheme in Gujarat, help widows between the ages of 18 and 40. The report considers the need for education to enable economic stability for these women and highlights a scheme under the Manav Garima Yojna, which provides Rs3000 on a monthly basis to develop livelihood skills and child maintenance support for widows.

**The full report is available at:**

[http://tehelka.com/story\\_main50.asp?filename=Ws111011Society.asp](http://tehelka.com/story_main50.asp?filename=Ws111011Society.asp)

# NEWS FROM ASIA

## MAHARASHTRA

### Legal heirs benefit if wife is divorcee, not widow.

Under Indian law, when a divorce petition is filed in a family court and one of the spouses dies, the legal proceedings come to a stop. However, the circumstances change when a divorce has been granted by a trial court and an appeal is pending before the HC.

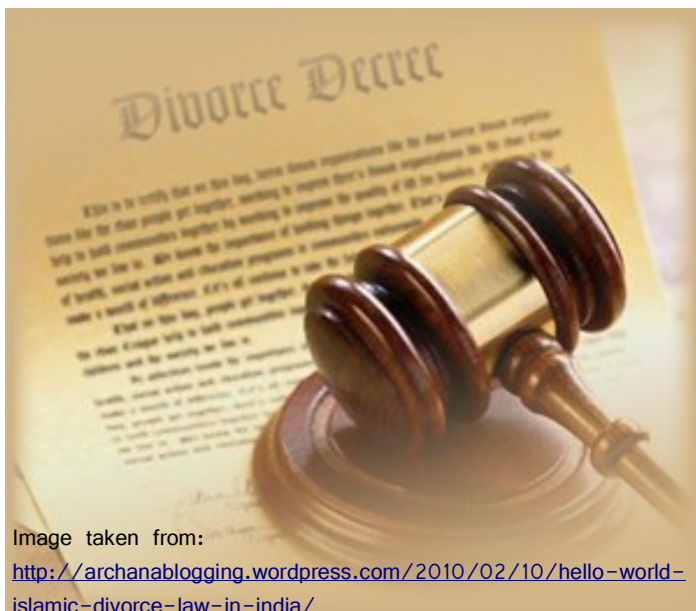


Image taken from:

<http://archanablogging.wordpress.com/2010/02/10/hello-world-islamic-divorce-law-in-india/>

It has recently been argued that in such a situation, the legal heir of the spouse who has died can continue with the litigation due to the status of the marriage changing once a decree for divorce is granted. His legal heirs therefore have an interest in ensuring that his wife remains a divorcee and not a widow and she is not allowed to share with the other heirs the property of her deceased spouse.

A recent case in point has highlighted the issues: Gajanan Bhambare, an 80-year-old father of dead son Nishant from Mumbai, has continued the fight for divorce from Nishant's wife Sheela. In 2009 Nishant filed an appeal in the Bombay

High Court after the Family Court dismissed Nishant's divorce petition, but soon after filing the appeal, Nishant passed away. Earlier this year, his father urged the High Court to substitute his name for his son's so that he could fight the unfinished litigation.

Sheela's lawyers opposed the application, saying that the divorce proceedings were purely a personal cause of action and would abate with her husband's death. They further argued that the dismissal of the divorce petition was right. However, Bhambare's lawyers referred to a Supreme Court judgment and contended that the proceedings could go on.

Justice Chaudhari said the dismissal of Nishant's divorce petition would continue to operate against his legal heirs if the appeal was not heard and "that obviously would be violative of the principles of natural justice". "It is imperative that the said legal heir of the appellant ought to be allowed to prosecute the present appeal and contest the decree which was passed against the husband," the judge said, over-ruling the wife's objections to add her father-in-law's name in the litigation. The case continues. *(Names have been changed to protect the identity of the family).*

[http://articles.timesofindia.indiatimes.com/2011-10-13/mumbai/30275130\\_1\\_divorce-proceedings-family-court](http://articles.timesofindia.indiatimes.com/2011-10-13/mumbai/30275130_1_divorce-proceedings-family-court) originally posted, Oct 13, 2011, 05.38AM IST



# Widowhood rituals worsen pain of death

<http://www.themediaproject.org/article/widowhood-rituals-punish-cameroots-bereaved>

**Sitting on banana leaves on the floor of a smoke filled kitchen, Rosaline Ngum mutters something as I approach her. I stretch out my hand for a handshake, but she politely tells me, "I'm not allowed to shake hands with people."**

A close look at her eyes conveys clearly how much sorrow has encompassed her whole being.

"After moving with my husband from hospital to hospital for close to a month, he died, leaving me and the kids without a word," she laments in [Pidgin](#). She tells me she has not had a change of clothes nor taken a bath for a week now, since the day her husband died.

"She would clean her woman skin (meaning her private parts) on the day of the corpse removal, then we would dress her up with a black gown, which she would wear for one year," said an old woman sitting on a bamboo stool beside the widow.

"We would help her with the cleansing rituals immediately after her husband is buried," she went on. "It's our tradition. Our forefathers practiced it and we must continue. If we do not respect this tradition she would become mad".

Despite the intense campaigns in the media and in churches against the ill-effects of noxious widowhood practices in the North West Region of Cameroon, the practice continues to thrive, imposed by the older women on the younger generation in the name of maintaining tradition.

The wife is often held responsible for her husband's death, even in the case of proven illness. It is still common in most villages to find widows stripped naked, sleeping on bare floor for weeks, being rubbed with unpleasant substances, not shaking hands or sharing items with people except other widows. Widows can also be forced to marry one of their in-laws, to preserve family control of their late husbands' property, and be forced to drink the water that was used in washing the corpse.

According to **Mama Susana Ndandoh** of Awing village, these practices are a test of the woman's fidelity to her late husband and a cleansing ritual to free the woman from the curses that come along with disobedience. Unfortunately the tradition has led to ill treatment and gross psychological torture of women at a time when they need comfort the most.

23 year old **Delphine Andam** says, when she lost her husband she experienced the worst form of torture she ever experienced in her entire life. "For three weeks prior to the final cleansing ceremony I slept on the bare floor and had no bath nor change of clothes. Since then I developed a terrible back ache which has persisted for three years now," she laments.

In Baba Two village, the widow is undressed, and her entire body is shaven clean of hair, using crude tools, such as broken bottles and rusted blades. She then walks bare footed, sleeps on plantain leaves on the floor and eats on leaves. On the day of the final death celebration, she is expected to move on her buttocks round the courtyard of the celebration ground with a loin tied just beneath her breast, singing and crying.

One of the older widows in Baba Two village told me they have decided to modernize the tradition by not making the widow stay stark naked.

In Alatening village the widow is encircled by older widows who dance the "Nkou" by moving around her, gently stripping off her clothing until she is stark naked.

She is then taken to a shrine where a ritual bath is conducted. However some families, influenced by modernity or Christianity, do not go to such extents.

**Clodet Azah** told me she refused performing the widowhood rites when her husband died because she is a Chris

# ABOUT WRI

## PLEASE SUPPORT OUR WORK!

Go to [www.widowsrights.org](http://www.widowsrights.org) and press the button to help us help these disadvantaged women in their struggle for their basic human rights.



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**Widows' Rights International supports organisations in sub-Saharan Africa working for social justice and human rights for widows including:**

- ◆ Right to keep their home and property
- ◆ Right to inheritance and land ownership and possession
- ◆ Right to keep their children
- ◆ Right not to be forcibly married to the dead husband's kin
- ◆ Right to work outside the home

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### **WRI works:**

- ◆ to promote the recognition of widows' special vulnerability
- ◆ to combat negative social attitudes which lead to their isolation, exploitation and poverty
- ◆ to bring these practices to an end:

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### **WRI mobilises action by:**

- ◆ International organisations
  - ◆ National governments
  - ◆ Legal and other civil society organisations
-





Yes, I want to support WIDOWS RIGHTS INTERNATIONAL' s struggle for social justice for widows in sub-Saharan Africa.

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Address .....

Postcode.....

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I would like to give (please tick):£5  £25  £50  £100  Other £.....

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Using Gift Aid means that, if you are a UK taxpayer, for every pound you give, we get an extra 28 pence from the Inland Revenue, helping your donation to go further. To qualify for Gift Aid, what you pay in income tax must be at least equal to the amount we will claim in the year.

Tick the box if you are a tax payer and would like us to reclaim tax on this:

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Davina House  
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London EC1V 7ET  
Tel: 020.7253.5504  
E-mail address: [administrator@widowsrights.org](mailto:administrator@widowsrights.org)

