

The Challenges Faced by Widows

© Widows Rights International

Introduction

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 ¹. 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.”

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.

At their 15th 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.

The well-being of a woman continues to be tied to her marital status whether she is single, divorced or widowed.

Widows remain amongst the most vulnerable members of society. It is estimated that the numbers of widows around the world to be in the region of 245 Million, of which 115 Million live in poverty.

¹ ICCPR and IESCR – Article 3

Convention on the Rights of the Child – Article 2

Convention on the Protection of the Rights of Migrant Workers and Members of their Families – Article 1 and 7

Convention on the Rights of Persons with Disabilities – Article 6

Vienna Declaration and Platform of Action and Beijing Plan of Action.

They face discrimination across the globe, irrespective of cultures, religion, ethnicity or whether they live in developed or developing countries.

It is a fallacy to believe that all widows are looked after their sons or daughters. Between 15 and 20% of widows are under the age of 45. Many have young families to look after, or are caring for elderly parents. For example, in Nepal, Woman for Human Rights found that 67% of widows were between the ages of 20-30.²

Widows are excluded from communities and may suffer from harmful, degrading traditional practices.

WIDOWS IN CONFLICT SITUATIONS.

We are all aware that conflicts across the globe have had a detrimental effect on the development of women's rights and have largely contributed to the creation of widows. In Kabul, it is estimated that there are about 50,000 widows³ and in Iraq there are between one to three million widows out of a population of 27 million⁴. Widows are often the target of sexual abuse being deemed "fair game" by soldiers seeking the spoils of war. They are easy targets as they don't have any protection.

War has other economic, social and legal implications especially when husbands are declared missing in action. The widow's right to inherit or receive a pension as a war widow may be affected by the lack of proof of death. The widow and her children may not be able to provide the vital paperwork needed to register children as legitimate or for schooling.

"The worst sufferers are the families of the disappeared souls, who run from pillar to post to ascertain the whereabouts of their kith and kin and in this process, a lot of money gets drained and they are rendered as paupers. The half widows cannot remarry as there is no consensus among the scholars of various schools of thoughts as to when a half widow can be declared as widow although the government has declared seven years as the stipulated time, but still widow remarriage rarely takes place as it is alien to the Kashmiri society as well as fear of maltreatment of their children by step father holds many widows back from remarriage. As soon as the woman becomes a half widow, her status in the family is reduced to a maid and in most cases, she is forced to leave the in laws home. In many cases, the wives were deserted and divorced by their husbands for pursuing the cases of their disappeared brothers or fathers. Many members of the victims's family have lost their mental balance, developed Post Traumatic Stress Disorder (PTSD) and even some have opted for suicide as a way of escapism from the perpetual agony."⁵

*"There is now a growing body of international law to deal with violations of women's rights in conflict, but there is a significant implementation gap, with only a fraction of perpetrators indicted and convicted for their crimes. For the millions of women who have been raped during and after conflict, or who have been internally displaced, losing their land and livelihoods, justice remains out of reach"*⁶

"Refugee and displaced women are important resources for rehabilitation and reconstruction but are not always provided opportunities to participate in these activities.

The UNHCR Handbook on Voluntary Repatriation states that:

² "Nepal Widows"- by Lily Thapa – 8 December 2007 – www.opendemocracy.net

³ Fact Sheet 2008: "Progress for Women Is Progress for All." UNIFEM

⁴ Women for Women International – November 2009

⁵ Widows and Half Widows: Saga of Extrajudicial Arrests and Killings in Kashmir, Afsana Rashid, 2011

⁶ "Progress on the World's Women"- UN Women Report – July 2011

International Protection emphasizes the need to take those issues into account in planning and carrying out repatriation programmes:

“Special attention needs to be paid to the question of access to land for residential and agricultural use by returnee women heads of households. If the local legislation or traditional practice does not grant returnee women the same rights to land as returnee men, UNHCR has to draw the attention of the authorities to this problem and seek to find suitable ways to rectify the situation. If this is not done early enough, there is a danger that returnee women may lose out in the competition for land, either by not getting access or being evicted. This may in turn lead to increased vulnerability and possible internal displacement. In any case, UNHCR has to closely monitor the handling of returnees’ access to land and to ensure, if necessary through intervention, that returnee women have access to land on the same footing as returnee men”⁷

Despite the fact that the UN Security Council has passed numerous resolutions on Women, Peace and Security (Resolution 1325, 1820, 1889, and 1890), widows have never been specifically mentioned. As a consequence very little data, except anecdotal, has been gathered on the situation and the number of widows affected by conflict, including those who suffered violent abuse during conflicts, remains largely undocumented. Widows are usually unrepresented in peace-building processes even though they constitute the majority of any displaced populations. For ex: In Rwanda, the newest member of the Commonwealth, 10 times more widows survived the genocide because the genocidaires targeted able bodied men and boys. One study found that in a sample of 1125 widows in Rwanda, 805 were traumatised in some shape or form and 67% had been infected with HIV/AIDS from violent abuse.

In addition to those who have been declared missing, there are the “disappeared” of the world. Widows and children of the 1200 that disappeared in Chile during the Pinochet dictatorship may have been compensated to a certain extent by the government but they need closure in order to progress with their lives. The Association of Parents of Disappeared Persons, an organisation of the relatives of the disappeared in Kashmir, claims that about 10,000 people have been subjected to enforced disappearances by state agencies, mostly taken by armed personnel. Of the disappeared, they say between 2,000 and 2,500 people were married, and almost all were males. Their widows are unable to claim pensions or to remarry as there is no official confirmation of the death of their husbands.⁸

DISREGARD FOR THE RIGHTS OF WIDOWS

The UN Declaration of Human Rights states in Article 2 that

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The rights include:

- The rights to equality before the law and to equal protection;⁹
- the right to equality with respect to marriage;¹⁰
- the right to own property;¹¹
- and the right to an adequate standard of living, including the right to adequate housing.¹²

⁷ UNHCR, 1996, section 6.2.

⁸ “Kashmir's Half-Widows Struggle for Fuller Life”, By Haroon Mirani, Women’s eNews 14 January, 2007

⁹ Article 7

¹⁰ Article 16

¹¹ Article 17

¹² Article 25 and 25(1)

These rights are further and more explicitly articulated in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

There is evidence that even in countries where there is no conflict and despite all the international provisions protecting the rights of women, the rights of widows, as women and members of the human race are disregarded. There may not be able to inherit land, may be forced to marry, may be subjected to inhumane mourning rights or abuse all in the name of custom, religious or traditional practice.

Penelope Andrews in her article on “Transitional Perspectives in Women’s Rights” points out that *“Almost always, in regarding women’s rights, the question of culture , or rather cultural concerns become crucial in discussing the appropriate status of women”*¹³. The preservation of cultural practice is used by male politicians to justify the status quo though they often forget that culture is not static but evolves.

The CEDAW convention provides in Article 5 that *“States must take ‘all appropriate measures’ to change social and cultural patterns of conduct, and eliminate prejudices and customary practices based on stereotypes or ideas about the inferiority of women “.*

Since the 1990s, most countries which have amended their constitutions have made efforts to incorporate non-discrimination principles. In some states, such as Uganda, the constitution provides that *“laws, cultures, customs or traditions which are against the dignity and welfare and interests of women or which undermine their status are prohibited by this constitution.”*¹⁴

However, the enforcement of these constitutional or legislative provisions remains inadequate and more often than not customary law and traditional practice prevail.

DOWRIES/BRIDE PRICES AND DEPENDENCY

The continued practice of dowry payments for brides affects widows. Historically dowries in some parts of the Commonwealth were a woman’s safety net in case the husband died. This is no longer the case and dowry prices have become a way of “buying” a bride and subjecting her to little more than slavery. Having been “bought”, it is implied that a woman is nothing without a man to support her, that she makes no contribution to the household and therefore is not entitled to any benefit when her husband died. In many instances bride prices or bride wealth has been a family issue, with different members of the family contributing. When the husband dies, they see the claim on the property of the husband as being a reclaim of their investment.

Unfortunately, our social structures still in part reflect that patriarchal view with women continuing to be “dependent” on their husbands- for tax benefits, health insurance and income- ultimately this leaves the women in a weakened position if the husband dies. The situation is exacerbated if a young girl leaves her education to get married as when she is widowed she lacks the necessary skills and education to gain an adequate livelihood. Even those who had a comfortable life end up with a lower standard of income not to mention the emotional trauma that widows suffer on the death of

¹³ “Transitional Perspectives in Women’s Rights”- Penelope E. Andrews, Interights Bulletin 14 (2004)

¹⁴ Article 55 of the Uganda Constitution 1995

their husbands. In the UK, for example, the bureaucratic hurdles involved in settling an estate (in relation to tax and probate) when someone dies can be traumatic for someone who has just lost a loved one and who cannot afford to appoint a lawyer to deal with such issues.

INHERITANCE RIGHTS

By virtue of its General Comment no 28 (entitled ‘**Equality of rights between men and women**’) on Article 3 of the ICCPR, the Human Rights Committee placed an obligation on States to act to ensure women’s inheritance rights:

“States Parties [to the ICCPR] must also ensure equality in regard to the dissolution of marriage, which excludes the possibility of repudiation.... Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.”¹⁵

CEDAW requires states in its General Recommendation 25 (2004) on article 4 of CEDAW to “*take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women*”¹⁶

However, General Recommendation No. 21 on ‘**Equality in marriage and family relations**’ points out that:

“There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband’s or father’s property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased’s property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention [CEDAW] and should be abolished.”¹⁷

Land Rights

In 2005, the United Nations Commission on Human Rights, adopted the resolution on “**Women’s equal ownership of, access to and control over land and the equal rights to own property and adequate housing**”. The Commission also urged state parties to: “*ensure that women are accorded full and equal rights to own land and other property, and the right to adequate housing, including through the right to inheritance, and to undertake administrative reforms and other necessary measures to give women the same right as men to credit, capital, appropriate technologies, access to markets and information.*”¹⁸

“States parties’ obligation is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination – committed by public authorities, the judiciary, organisations, enterprises or private individuals - in the public as well as the

¹⁵ Para. 26 of General Comment No. 28, UN Doc. CCPR/C/21/Rev.1/Add.10 (2000), adopted by the Committee at its 1834th meeting (68th session), on 29 Mar. 2000.

¹⁶ General Recommendation No. 25/ The recommendation explains that such measures are to be used to accelerate the improvement of the position of women to achieve equality with men, in all areas of rights. Special measures in the form of legislation and/or public education programmes on women’s equality play a vital role in furthering women’s rights to inherit housing, land and property.

¹⁷ Para. 35 of General Recommendation No. 21, adopted by CEDAW at its 13th session (1994).

¹⁸ UN Commission on Human Rights, 12 Apr. 2005, E/CN.4/2005/25.

private spheres by competent tribunals as well as sanctions and other remedies. Secondly, States parties' obligation is to improve the de facto position of women through concrete and effective policies and programmes. Thirdly, States parties' obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.”¹⁹

In **Resolution 16/210 (2006)**, the UN General Assembly

“Urges States to design and revise laws that ensure that women are accorded full and equal rights to own land and other property, including through inheritance, and to undertake administrative reforms and other necessary measures to give women the same right as men to credit, capital and appropriate technologies and access to markets and information;”²⁰

However, in many countries, the inheritance laws still favour the patrilineal system. In the 1990s, a number of countries enacted legislation to reform inheritance of land and property so as to enable women to inherit land and property. There were reforms in Ghana, Malawi, Tanzania and Zambia to name but a few. However, discrimination persists when it comes to the practice. Widows continue to be excluded from inheriting land and property and in some cases they are forced to leave their homes by their husband's relatives who lay claim to the property. This has devastating consequences especially in communities which depend on agriculture to survive. In one case described by the Report on the Justice for Widows and Orphans project in Zambia:

Even in those countries that have matrilineal societies where land rights may be inherited by women, such as in the South Pacific, for example, discrimination still persists as Sue Farran explains²¹: *“This is because the management of land and decisions relating to it are invariably the preserve of men... It is not just the management of land or in respect of decision making affecting land that women are disadvantaged. In patrilineal societies it is presumed that a woman, on marriage will acquire the right to use the land of her husband and that therefore it is unnecessary for her to retain land use rights in the land of her own parents.....*

Problems may arise where a woman becomes a widow. In these circumstances her right to remain in the land of her husband's family may become precarious and difficult. She may find herself compelled to marry a member of the same clan or village or she may find that she has to return to her own family although her children may be claimed by her husband's family, especially if a bride price has been paid....”

Land held in custom cannot always be transferred, *“even if a deceased makes a will, this may be challenged on the grounds that it goes against custom or that it makes insufficient provision for certain members of the family”²².*

In India, widows encounter problems of directly managing inherited land due to gender segregation in society (such as purdah) or their duties in relation to childcare. This is compounded by the high rate of illiteracy of women in India. The fact that male members of the family control agricultural technology also disadvantages women farmers and increase their dependence on male intervention.

¹⁹ General Recommendation 25 (2004) on Article 4, paragraph 1 of the Convention (temporary special measures).

²⁰ Article 19 of Resolution 60/210 of March 2006 on Women in Development

²¹ Human Rights in the South Pacific: Challenges and Change” – Prof. Sue Farran, published by Routledge/Cavendish 2009

²² See 19

Often added to this is the threat and practice of violence by male relatives and others interested in acquiring a widow's land, or pressure to sharecrop their land, usually at below market rates.²³

"A Zambian widow told of her in-laws accosting her on a Sunday morning during a church service, dragging her to her marital home and threatening her until she handed over the keys. They then proceeded to throw her personal possessions out of the windows and onto the street below. It was raining that day, and all her things were completely ruined. They did not give her any money, forcing her to beg on the street."²⁴

According to the provincial secretary of the Mozambique Association of Traditional Doctors (AMETRAMO) in Sofala, Gumapedje José Nhone, there are alternative ways of carrying out the purification ceremony.

One of them requires sacrificing an animal, but this is unpopular because of the cost. "People opt for the sexual relations because they don't want to sacrifice their goats," Nhone said.

Another method of purification, involving the preparation of a number of plants and a spiritual blessing ceremony carried out in the presence of the entire family, is even less popular.

Campaigns aimed at stressing the validity of such alternatives have largely failed to convince people that they are as effective as khupita khufa, so AMETRAMO is now carrying out campaigns to encourage the use of condoms during purification rituals.

Even this is not easy. "A lot of people think that if they use a condom the ceremony won't go well," Nhone said. "But although I recognise the stubbornness of those who practice it, I do believe in change."²⁵

The Victims Support Unit (VSU) of the Zambian Police reports over 1,000 property-grabbing cases each year, most involving widows and orphans. According to the Zambian non-governmental organization (NGO) Women and Law in Southern Africa Trust (WLSA), property-grabbing is among the top five most frequently reported legal problems among Zambians.²⁶

In countries where sharia law is practiced, according to COHRE²⁷, Islamic scholars explain that the reason why in most cases, males inherit twice as much as women²⁸, is because of their duty to maintain their families. They are under an obligation to pay for the education of children, the medical expenses and subsistence of their families, they have paid a dowry for their wife to be and are obligated to pay for the wife's housing, food and clothing. Women do not have this obligation under sharia law. Any financial contribution a woman makes to her family is considered superfluous. This combined with the social stigma and family pressure can result in widows giving up their share to male relatives. Women are often threatened with being ostracised and disowned by their families if they don't sign over their rights. In many cases, there is a fear that a widow will marry again and take the property with her to her new husband's family. This would remove the property from the "family". However, if a male inherits, he maintains his duty under sharia law, to provide for his family's well-being and the property is safeguarded for the benefit of future generations of his family.

²³ A SWOT analysis of the Indian Legal System and the issues of people living with HIV in the context of SAATHI's Coalition Based Advocacy Project in West Bengal –JUNE 2009

²⁴ "A Network Approach to Women's Property and Inheritance Rights in the Context of HIV/AIDS: The Case of Justice for Widows and Orphans Project in Zambia"—Report November 2011 – International Center for Research on Women and JWOP.

²⁵ MOZAMBIQUE: Widows Risk HIV in Purification Rites

http://wunrn.com/news/2008/11_08/11_24_08/112408_mozambique.htm

²⁶ See 24 above.

²⁷ "In Search of Equality: A SURVEY OF LAW AND PRACTICE RELATED TO WOMEN'S INHERITANCE RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA (MENA) REGION" - Centre on Housing Rights and Evictions (COHRE) – October 2006

²⁸ Males inherit 100% compared with 15% for females -

Widows living in urban areas, in particular, may find themselves in a difficult position having lost their rights to land in both their birth and their husband's birth place.

Other Property Rights

Widows have been evicted from their communities and stripped of their belongings. The Solomon Island case of *Sasanqo v Beliga*²⁹ illustrates how precarious it can be. In this case, a widow who had seven children sought the return of custom property, including pigs, shell money and porpoise teeth from her late husband's brothers. The widow claimed that some of the shell money and the porpoise teeth were her own personal property and others had been held on trust by her husband for the children. The brother of the deceased, claimed the right to the property and as successor to his brother in custom. The court did not deny this custom but on the facts of this case held that it could not extend to the personal property of the wife or to the property held on trust of the children where the wife was awarded custody of the children.

In Swaziland, the increasing numbers of women widowed by HIV/AIDS and in need of family property on which to raise their children is on the increase. Those who were married through customary law, about 80%, are still considered minors under their parents' tutelage until they go to their husband's home. At the death of the husband the property is inherited by the husband's family. Widows are often left destitute, thrown out of the village and the whole family suffers.

According to Dora Kanabahita Byamukama³⁰, although widows' rights were specifically provided for under the Succession Act of 1906 and the Succession (Amendment) Decree of 1972 of Uganda, many widows continue to be deprived of their property despite the 1995 constitutional provisions. Following a challenge in court of the act, in 2007, certain sections of the act were impugned and declared unconstitutional.

Uganda is not unique in this area, many other countries rely heavily on antiquated inheritance, succession or marriage laws to disinherit women.

Although people have been encouraged to make their wills, many widows, especially in the poorer communities, find themselves having to contend with intestacy laws some of which date back to the colonial era. In many cases where a couple has married according to customary law, statutory protections do not always apply. In Rwanda, to date the Inheritance and Succession Law does not apply to those married under customary law. In Zambia, although the Intestate Succession Act provides that property is divided between the widow and the children, if the land is custom land then the land is deemed to be part of the property of the family.³¹ Other factors, such as lack of documentation for the property, loopholes in the law all contribute to the property grabbing.

POLYGAMOUS MARRIAGES AND THE EFFECT ON WIDOWS

Paragraph 38 of General Recommendation 25 to the CEDAW Convention provides:

²⁹ [1987] SBMC.5.

³⁰ "Effectiveness of Legislation enacted to address harmful practices against Women in Uganda including maltreatment of widows and female genital mutilation" – Hon. Dora C Kanabahita Byamukama, paper for the Expert Group Meeting on good practices in legislation to address harmful practices against women, Addis Ababa, May 2009

³¹ Source: "Un endroit ou vivre – Les Droits a L'Heritage des Femmes en Afrique" – Centre on Housing Rights and Evictions (COHRE) 2005

“States parties are reminded that temporary special measures should be adopted to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour that discriminate against or are disadvantageous for women”.

General Recommendation 21 provides:

“Polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriage ought to be discouraged and prohibited.”³²

Due to the complexity of the legal systems, inheritance issues from polygamous marriages can be convoluted. This is complicated by the fact that in states where polygamous marriages are allowed, there are a variety of marriage systems and in many men use different forms of marriage moving from one system to another, marrying one wife under civil /statutory law and then adding others under common or customary law or vice-versa. Although this constitutes the offence of bigamy, Vanessa von Struensee points out that the offence of bigamy exists only on paper in most African states and there are very few prosecutions if any.³³ In fact in a number of African courts, challenges by widows attempting to exercise their rights in these circumstances is viewed as hostile.³⁴ In most African countries, if one widow has been married under the civil/statutory law, then that widow will inherit, thus disenfranchising all other widows. Such was the case in *Mujawo v. Chogugudza* in which a widow who had married under customary law was denied any interest in the estate of her dead husband because the court found in favour of the second wife married under civil/statutory law.³⁵ Interestingly, the Spanish courts in April 2002³⁶ ruled in a case involving the two widows of a deceased Senegalese national who both claimed for a widow’s pension and orphans allowance for their children born to the Senegalese national. According to Spanish law, the first wife would normally have the right to a widow’s pension and the second wife would not normally be recognised, despite the fact that such rights are recognised in her country of origin, where the marriage was contracted. This judge in this case decided to divide the widow’s pension equally between the two women which is what is stipulated under Spanish law for cases of divorce or separation and also follows the jurisprudence in other European countries when there is a family conflict.

Widows of polygamous marriages risk the same treatment as widows of monogamous marriages in that they may be forced off their husband’s land and may find themselves more prone to infections from HIV/AIDS as husbands with the disease will spread the infection to all their wives. Widows are also forced to share valuable resources with their husband’s other wives and children.

In many cases the lack of registration of marriages perpetuates the problems faced by widows of polygamous marriages. Vanessa van Struensee goes on to point out that prosecutions are rare and courts are often hostile towards widows attempting to raise the issue. Some lawyers advocate for equal protection of all widows of polygamous marriage whatever the regime they have been married

³² General Recommendation 21 on Article 16 – point 14

³³ See “The Contribution of Polygamy to Women’s Oppression and Impoverishment: An Argument for Prohibition”- Vanessa von Struensee – Murdock University Electronic Journal of Law - [2005] MurUEJL 2

³⁴ See “Widows, AIDS, Health and Human Rights in Africa” Vanessa von Struensee – paper available on the Social Science Research Network website: <http://papers.ssrn.com/>

³⁵ Cited by Uche U. Ewelukwa, *Post-Colonialism, Gender, Customary Injustice: Widows in African Societies*, Human Rights Quarterly 24 (2002)

³⁶ Decision of the High court of Galicia of 2 April 2002.

under³⁷. Others support the imposition of a monogamous regime and the banning of polygamy all together. Despite the fact that **General Recommendation 21** (above) urges the prohibition of polygamy, this continues to be the tradition in many communities.

In April 2005, the United Nations Commission on Human Rights adopted a resolution entitled **'Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing'**, urging States Parties to:

*"Ensure that women are accorded full and equal rights to own land and other property, and the right to adequate housing, including through the right to inheritance, and to undertake administrative reforms and other necessary measures to give women the same right as men to credit, capital, appropriate technologies, access to markets and information."*³⁸

This resolution also affirms that discrimination against women with regard to having access to, acquiring and securing housing, land and other property constitutes a violation of their human rights to protection against discrimination. Furthermore, it draws the link between the lack of respect for women's rights to housing and land, and their vulnerability to domestic violence and HIV/AIDS.

THE IMPACT OF HIV/AIDS

At their 45th session, in 2005, the Commission on the status of women concluded inter alia that: *"Full enjoyment by women and girls of all human rights, civil, cultural, economic, political and social, including the right to development which are universal, indivisible, interdependent and interrelated is of crucial importance in preventing further spread of HIV/AIDS. The majority of women and girls do not enjoy their rights... These inequalities begin early in life and render women and girls more vulnerable in the area of sexual and reproductive health thus increasing their risk and vulnerability to HIV infection and their disproportionate suffering from the consequences of the HIV/AIDS epidemic. ... Poverty, negative and harmful traditional and customary practices that subordinate women in the household, community and society render women especially vulnerable to HIV/sexually transmitted infections"*³⁹

Today almost 40% of People living with HIV/AIDS (PLHIV) are women, a large number of whom have only had one partner, usually the husband. Current inheritance laws leave nearly half of these women without the economic means to support themselves and their children when the husband dies. One of the striking features of the HIV/AIDS epidemic is the increase in the number of young widows. There has also been an increase in the numbers that are dependent economically on their birth families after the death of their spouses. Many women are forced to leave the marital home upon being diagnosed HIV positive or after their partners have died of AIDS. Of these widows, 90% no longer live with their husband's families after the death of their husbands, only 9% receive financial support from their husbands' families, and nearly 79% are denied a share of their husbands' property⁴⁰

³⁷ "Government White Paper Again: A Reply to a Reply" - Lovemore Madhuku – Zimbabwe Legal Resources Foundation

³⁸ UN Commission on Human Rights, 12 Apr. 2005, E/CN.4/2005/25.

³⁹ 2005/1 Agreed conclusions of the Commission on the Status of Women on thematic themes – endorsed by the Economic and Social Council.

⁴⁰ Pradhan and Sunder, Gender Impact of HIV/ AIDS in India

Of the 10 of PLHIV case studies documented by SAATHII in their SWOT analysis of the Indian Legal System and the Issues of People Living with HIV, nine were of women, seven of whom were widows of men who died of AIDS. All the women were infected with HIV by husbands. All the women, some with children, were evicted from their marital homes when their husbands died, and were economically dependent on their birth families. Some of them were entitled to land or shops that were in the husband's name, but had no access to them, and no papers to prove their rights. In one case, although the woman and her husband had bought the land in their joint names and had papers to prove it, the in-laws have forcibly occupied the land, and constantly threaten the widow with violence. In December 2009 the Calcutta High Court settled a property dispute in favour of an HIV-positive widow⁴¹ whose husband had run a transport business with his brothers. The latter had denied the widow a share in the business as she had been diagnosed HIV- positive. SAATHII⁴² assisted the widow to take her case to court and the Justice Shankar Prasad Mitra passed an order entitling the widow to her husband's share of the company. This decision has been described as setting "a new bench mark," both because of the outcome of the case and the speed with which a settlement was achieved

In another case, although the widow had occupied the land which was in her husband's name, she had been harassed by a buyer who had illegally been sold the land by her in-laws.

R was happily married to her husband. Although the couple lived with her husband's parents, she and her husband bought a plot of land which was registered in both of their names. The couple went to Mumbai to run a business, leaving the farming of the plot to her father-in-law and her brother-in-law, with the agreement that they would receive Rs. 2000/- per bigha every month as part of their share of the earnings, and on the understanding that they would take over their land on their return. Both husband and wife fell very sick in Mumbai, and had to return home. They were both diagnosed as HIV+, and her husband died soon after. As soon as her husband died, her in-laws evicted her and her four children (two of whom are HIV+) from her marital home, so she rented a house nearby. When she asked for control of her plot of land, her in-laws threatened to kill her if she set foot on the land. LIC is refusing to pay the dues for the life insurance policies in her husband's name.

Today her delicate face bears two long scars on one cheek – she was attacked by a man she had given money to for purchasing some bicycles for her children. When she asked for the money back, he lured her into a dark alley and stabbed her, stole her belongings and has since absconded.

Periodically she makes her way from the district of Murshidabad to meet a lawyer in Kolkata to try and get her land back. Her lawyer tells her that if she files a case against her in-laws, the realities of the Indian court system will ensure that she won't see the land in her lifetime, and advises her to look for political support for her case⁴³.

In **G vs. New India Assurance Co. Ltd**⁴⁴, the petitioner was a widow who had applied to New India Assurance Co. Ltd for employment after her husband died while in employment with the company. The company stated that she was medically unfit following a medical fitness report that found she was found to be HIV positive. Justice Banerjee, observed that the law courts could not be mute spectators where relief is denied to an

⁴¹ See: Canadian HIV/AIDS Legal Network - HIV/AIDS Policy and Law Review – Vol 14- No 3 – June 2010

⁴² Solidarity and Action Against the HIV Infection in India

⁴³ A SWOT analysis of the Indian Legal System and the issues of people living with HIV in the context of SAATHII's Coalition Based Advocacy Project in West Bengal –JUNE 2009

⁴⁴ Bombay High Court, 16 January 2004

employee's family on account of the death of the bread winner. He further ruled that a person cannot be denied employment only on the ground that they are HIV positive.

The 53rd session of the **Commission on the Status of Women** urged governments to:
*“Develop multisectoral policies and programmes and identify, strengthen and take all necessary measures to address the needs of women and girls, including older women and widows, infected with or affected by HIV/AIDS, and those providing unpaid care, especially women and girls heading households, for, inter alia, social and legal protection, increased access to financial and economic resources including microcredit and sustainable economic opportunities.....”*⁴⁵

INHUMANE MOURNING PRACTICES

General recommendation No. 19 of the Committee on the Elimination of Discrimination against Women, states:

“Gender-based violence against women is “violence that is directed against a woman because she is a woman, or violence that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”

“Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.”

In Swaziland, custom dictates that a widow must mourn at least six months, during which time she is forbidden to leave her home and prevented from working to support her children. In Lesotho the mourning period is one and half years and widows cannot leave their houses or stay out at night.

Swazi electoral law bars widows from standing in elections if two years have not elapsed from the death of their husband. Women are not allowed to visit the royal family if they are widowed, for fear of sending bad tidings to the royal family. The most humiliating thing is, they are not allowed to cross the path of a cow they meet on a road until a compulsory two-year mourning period is over. During this period they are supposed to be dressed in black.⁴⁶

Widows are regarded by communities with suspicion. Despite the fact that we live in the 21st century, local superstitions persist and widows are often accused of being witches. In one case in Uganda, an illiterate housewife and mother of 4 children was widowed when her husband was murdered. She was accused of conniving with the killers in order to take over her husband's property. She was

⁴⁵ Article 15 (kk) – of the Agreed conclusions on the equal sharing of responsibilities between women and men, including care giving in the context of HIV/AIDS adopted by the Commission. transmitted to the Economic and Social Council, in accordance with its resolution 2008/29 of 24 July 2008, for adoption and as an input into the annual ministerial review of 2009.

⁴⁶ Swaziland Culture versus human rights *Frank Jomo, Malawi, September 2003* ANB-BIA SUPPLEMENTISSUE/EDITION Nr 464 - 15/10/2003

branded a “witch and a harlot” and was told by her husband’s relatives that since she killed their son, she would not inherit any property. She was then forced to marry a relative of her husband’s.

In India, it is estimated that there are over 35 million widows (2001 figures). When a Hindu woman becomes a widow, she traditionally only wears white. In the past, her hair would be completely cut off and she would not be allowed to wear jewellery or cosmetics. Many modern Hindu families do not adhere to these older customs, but widows are still often considered inauspicious and are not invited to weddings and other celebrations. Widows are often regarded as having the “evil eye” and many are abandoned at temples where they have to eke out a beggar’s life. They are very vulnerable, especially the younger ones, to sexual exploitation. HelpAge International research has revealed that over 500 older women, mostly widows, are killed every year following accusations of being witches.

Widows may lose their rights to custody of their children. In one case in the Cameroon, a widow saw her two sons taken away. When the widow finally managed to get help from a local charity, it was discovered that one of her sons had become severely disabled after the people he had been sent to had physically abused him by kicking him in the knee-caps for helping himself to food when he was hungry.

In Afghanistan, a widow who doesn’t remarry into the same family risks losing her children. The Afghan Civil Code provides that when children have reach the age of nine (in the case of girls) and seven (for boys), guardianship is linked to the father and if he dies, the family of the father. The mother and widow no longer have any say in what happens to their children.⁴⁷

ABUSE OF WIDOWS

In addition to their rights being disregarded, widows, in many traditional communities, may suffer inhumane and degrading mourning rites.

Article 4 of the Declaration on the Elimination of all forms of Violence⁴⁸ against women provides: *“States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.”*

The definition of violence is outlined in Article 1 of this Declaration as: *“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”*

The General Assembly in Resolution 62/133 of 2008, stresses that *“States have the obligation to promote and protect all human rights and fundamental freedoms for all, including women and girls, and must exercise due diligence to prevent, investigate and punish the perpetrators of violence against women and girls, to eliminate impunity and to provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms,”*

⁴⁷ “Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan”, report from UNAMA and OHCHR, Kabul, Afghanistan, 9 December 2010

⁴⁸ Proclaimed by General Assembly resolution 48/104 of 20 December 1993

We are all aware of the hindu practice of sati (the burning of widows) which is the most extreme form of violence against women and which has now been banned in India. Although it was abolished officially in 1829, despite legislation, sati and violence against women still prevail in some parts of India. Not all widows who follow the tradition do so willingly *“In 2002, a 65-year-old widow from Madhya Pradesh died from immolation on her husbands’ funeral pyre. Authorities suspected that the woman, who had separated from her husband, did not commit sati of her own free will because she “did not have good relations with her husband” and “the grown-up sons did not make any attempt to discourage their mother from sitting on their father’s pyre.”*⁴⁹

In Eastern India, young married women who are unable to have children and then become widowed are deemed to carry a contagious disease and anyone associated with them are also tainted.

Those who remain in the village may suffer rape or mental torture sometimes at the hands of “fertile women” in the family⁵⁰

In other parts of the Commonwealth there are other mourning rites which are equally humiliating to widows. The husband may have died but the marriage is deemed to continue.

Widows may be forced to drink the water their dead husbands have been washed in, they may be forced to sit with their husband’s dead body for days on end. They may be forbidden from washing for several days or even months; be forced to sit naked on a mat and to ritually cry and scream at specific times of the day and night. Many customs cause serious health hazards. The lack of hygiene results in scabies and other skin diseases; those who are not allowed to wash their hands and who are made to eat from dirty, cracked plates may fall victim to gastroenteritis and typhoid. Widows who have to wait to be fed by others become malnourished because the food is poorly prepared.

In some part it is considered important for a woman when her husband dies to cry to let everybody know that they have lost someone who is dear to them. So the widow doesn’t cry, the family may force her to cry by putting either pepper or some hot ointment in her eyes to induce her to cry.⁵¹

They may be forced to undergo life threatening cleansing rites in the misguided belief that “the beauty of a woman is her husband” and when he dies the wife has to be “purified”, in some cases this is because the village may be “harmd by the deceased’s ghost”!

These practices constitute human rights violations and compound the physical and emotional trauma that the death of a loved one already brings. It may involve the stripping naked of the widow, clean-shaving her, causing her to sit or sleep on a bare floor for weeks, restricting her movements. In some cases these rites are considered a test of the loyalty of the wife. The widow is isolated and neglected at a time when support and comfort from relatives is needed the most.

In her article “Continuing values in a Changing World”⁵² Pingpoh Margaret Hongwe, on behalf of the Cameroon Association of University Women described the situation as follows:

⁴⁹ “Broken Bodies- Broken Dreams – Violence against Women Exposed. IRIN 2005

⁵⁰ “Widowhood and Violence” Ancil Adrian Paul 5 December 2007 - www.opendemocracy.net

⁵¹ “Widowhood Rites In The Ga Traditional Area Of Accra-Ghana, A Review Of Traditional Practices Against Human Rights”, Michael Martey Tei-Ahontu, Master Thesis 2008, Norwegian University of Life Sciences

⁵² www.widowsrights.org/ArticleCameroon.htm

“From the day a husband dies, his wife is forbidden from wearing clothes, except rags. In some cultures, the widow is expected to undress before men. She is clean shaven wherever there is hair on the body. She is not allowed to bathe; instead she is rubbed with cam wood from head to toes. Rope made from the back of a fig tree is rubbed with cam wood and palm oil and tied around her waist. The poor woman is given a staff made from bamboo which she takes along wherever she goes. Her belongings are taboo to touch except by other widows. She is neglected, dejected and isolated. She is not allowed to cook, but food is served to her on a plantain leave as a plate by older widows. [for fear she will taint the food of the village⁵³]. On the final day of mourning, she is obliged to move her buttocks on the ground round the celebration yard.” This process takes place over a seven week period after which the widow has to wear mourning for one year.

In the Upper East Region of Ghana, the widow “is confined for 4 days with a rope around her neck, chest and days, to signify commencement of the rites. The widow is banned from talking to any man and if she does, she will be coerced to marry him when the rite is over. She is however allowed to communicate with all her children, regardless of sex. She is not allowed to eat from the same pot or drink from any family vessel. After 4 days, the widow is bathed with certain herbs amidst singing and drumming. In addition, she is forced to choose to marry any of her late husband's brothers, in accordance with customary requirements. Failure to do so, subjects her to abuse and being labelled a witch, thief, prostitute, or murderer”.⁵⁴

In some cases the cleansing rites common in Zambia, Kenya, Malawi, Uganda, Tanzania, Ghana, Senegal, Angola, Ivory Coast, Congo and Nigeria, among other countries involve forced sexual contact with a male relative of the husband or a “professional cleanser”, this in itself can lead to other traumas for the widow- who may be infected with HIV/AIDS or even suffer an unwanted pregnancy and increase the ostratisation already felt by the widow in question. “A widow cleanser in Malawi explained that the “tradition dictates that he sleep with the widow, then with each of his own wives, and then again with the widow, all in one night.” He admitted that he never uses condoms and acknowledged that he may be infecting hundreds of women, or even himself. A Kenyan widow cleanser expressed equal disregard for condom use. He said that the widows “wouldn't really be cleanses if the condom was there. Even women who are aware of the risk of HIV infection may submit to cleansing rituals because of community pressure. One woman from Malawi described her feelings of resignation and shame: “I was hiding my private parts. ... You want to have a liking for a man to have sex, not to have someone force you. But I had no choice, knowing the whole village was against me.”⁵⁵

In an effort to avoid HIV/AIDS infections, these cleansing rituals have been modified. In Zambia, a man rubs his private parts against the widow, but does not have conventional sex with her⁵⁶.

Widows may lose their place in society –ie: they are often excluded from politics or positions of power, they are denied access to medical care and become socially and financially isolated.

The children of widows can suffer exclusion, having to abandon schooling to help their mothers financially, having to work at early ages and sometimes, in the case of girls, they are forced into early

⁵³ Clarification added by author

⁵⁴ WRI Newsletter No16 November 2010 – report from the Conference on the Rights of Widows and Orphans held in Ghana, June 2010

⁵⁵ “Broken Bodies- Broken Dreams” Violence against women exposed – published by IRIN, 2005

⁵⁶ “Zambian Widow Defies Custom and Life Amid Graves”, by Carlyn Hambuba- Women's eNews, 26, November 2006

marriage, prostitution or worse to help the family make ends meet or because they cannot turn to their fathers to protect them from what I will call “sexual predators”.

FORCED MARRIAGES

In a number of countries, customary law demands that widows (especially young widows) should marry one of the brothers of the deceased or one of his male relatives or someone nominated by them. This practice is known as the levirate law and is still prevalent today amongst many societies around the world. Traditionalists have argued that the custom offers the widow and her children assurance of security and protection. However, as the practice is compulsory it is a form of gender-based discrimination and sexual abuse. Refusal often leads to persecution (regular beatings or emotional blackmail), but agreement may also bring other traumas into the life of the widow when she becomes little more than a slave for the rest of the family especially if the person is being married into a polygamous family.

The **UNODC Model Law against Trafficking in Persons** provides⁵⁷ definition of forced or servile marriage:

Forced or servile marriage shall mean any institution or practice in which:

(i) A woman [person] or child without the right to refuse is promised or given in marriage on payment of a consideration in money or in kind to her [his] parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family or his clan has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person.⁵⁸

The definition refers solely to the practice of forced or servile marriages in relation to women.”

Article 1 of the **Supplementary Convention on the Abolition of Slavery** states:

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

⁵⁷ This was developed by the United Nations Office on Drugs and Crime (UNODC) in response to the request of the General Assembly to the Secretary-General to promote and assist the efforts of Member States to become party to and implement the United Nations Convention against Transnational Organised Crime and the Protocols thereto. It was developed in particular to assist States in implementing the provisions contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention.

⁵⁸ Derived from the Supplementary Convention on the Abolition of Slavery (1956) article 1.

(iii) A woman on the death of her husband is liable to be inherited by another person;

Although succession law protects widows, widow inheritance is a practice that still exists among many communities in Kenya but has been abandoned to a large extent over time. Where it continues to exist (for ex: in the Kisa community), it is with the consent of the widow. Refusal to marry has led in some cases to disinheritance or widows being kicked out of the matrimonial home. The Luo people, again from Kenya, have for hundreds of years observed the custom of widow inheritance. The younger brother of the dead man inherits the widow and provides her with security, financial support and parental care for her children. For members of the Luo community, inheritance is a way of continuing life in the home of the deceased - where the widow and her children remain. Widows cannot start working the land until they are inherited.⁵⁹ Widows who are kicked off their husband's property for refusing to marry again, can find redress through the courts but many remain ignorant of their rights and aren't able to protect themselves from a life of poverty.⁶⁰

In Nepal, when a woman's husband dies, the loss is acute. They are considered as single women again and they are not allowed to wear jewellery or bright colours, especially red; they are not to eat meat or seasoned food; not allowed to participate in celebrations; and often not even allowed to touch other people. Their increased dependency on living relatives makes them more vulnerable to, and often the victims of, verbal, physical and sexual abuse and frequently their property and inheritance rights are violated.

In 1976, the Supreme Court of Nigeria in the case of *Yusufu v Okhia* dismissed the the customary right of a male relative to inherit the wife of the deceased under the levirate system. This tradition was in direct contradiction with widow's and gender rights. At the time customary law stated that marriage continued even after the husband had died until the proper burial rites were performed. If the widow failed to undertake the burial rites, she was eligible to be 'inherited' by any male relation of the deceased. The original suit was brought against the widow by the brother of the deceased. The local Court ruled in his favour and the widow appealed to the Supreme Court who voted in favour of the widow of this case banning widow inheritance from continuing in Nigeria⁶¹.

According to the Torah⁶², if a man dies without leaving children, his brother must marry his widow. In highly traditional Sephardic Jewish communities, rabbis still encourage the performance of the halitza ritual, in which a man's brother relinquishes all claims to his sister-in-law. In the ceremony, which is meant to be public, the woman kneels before her brother-in-law and removes a special handmade shoe from his foot. She is then required to spit on the ground next to him and recite several verses. The presumption is that the brother-in-law brings disgrace upon himself and his family by refusing to marry his brother's widow.⁶³

As we have seen the war in Afghanistan led to the creation of numerous widows. Widows in Afghanistan are caught between traditional Afghani culture and Islamic Law. Afghan culture dictates

⁵⁹ Changing customary land rights and gender relations in the context of HIV/AIDS in Africa- Marcella Villarreal, *Colloque international "Les frontières de la question foncière – At the frontier of land issues"*, Montpellier, 2006

⁶⁰ FIDA Kenya 7 Feb. 2008a

⁶¹ "Without Prejudice: CEDAW and the determination of women's rights in a legal and cultural context"- Commonwealth Secretariat October 2010]

⁶² The founding legal and religious texts of the Jewish faith.

⁶³ To Remarry, Jewish Widow First Kneels to Custom by Michele Chabin, Women's eNews, 22 September 2010

that widows can only marry relatives of the deceased husband. But the Taliban, although an ultra-conservative regime, decreed that widows should be allowed to marry who they wished. However, since the fall of the Taliban, Afghan traditions seem to have become the norm again and most widows are now forced to marry a brother in law or close relative of the husband's family. Once a woman is married in Afghan tradition, she becomes a member of her husband's household and is therefore subject to the will of her husband's father. If she doesn't marry her brother in law she must stay in her father in law's home or otherwise be considered.⁶⁴ If there are no male adults in the family who are willing or able to marry the widow then the latter may be married off to a young boy in a sham marriage which ensures that the woman and her property remain within the. The minor husband will marry a second wife when he is older – and the first wife, the former widow, will generally be abused by both the underage husband and the second wife.⁶⁵

So what is being done to stop this particular horrendous form of abuse of women?

On a local level, it falls mainly to charitable and non-governmental organisations to deal with the consequences of such abuse as the cases rarely get to court because widows are unaware of their rights under the law or are too traumatised or frightened to protest. Some of these charities, such as Woman of Purpose in Eastern Uganda, provide access to training so that widows can gain new skills, provide homes so that widows and children have shelter and cows so that they have access to food for their families by selling milk at the markets. They also work with local community leaders to increase awareness of the rights of widows but there is still a lot of work to do. The New Delhi-based Guild of Service helps widows claim their pensions, organises classes to teach trades such as spinning and weaving so that widows can support themselves and provides free literacy programmes and medical treatment

Most governments still ignore the issue mainly because there is a lack of data available, except anecdotal, as to the status of widows and their struggle remains invisible. The census records do not provide enough statistical data on the issue. In some cases governments misunderstanding of women's rights have exacerbated the pre-conception that women are nothing without a male to protect them. For example the Nepalese government in December 2009, proposed giving a fee of US\$ 670 to any man who would marry a widow. The women's rights organisations of Nepal protested against this proposal which constituted little more than a state dowry. The Women for Human Rights organisation pointed out that this would encourage men to abuse the situation, marry for the money and then take off leaving the widows without support.⁶⁶

Constitutional and Legislative Provisions

It is recognised that sustainable development and the reduction in poverty across the globe can only be achieved by empowering women and ensuring their rights.

However, the multiplicity of legal systems practiced in many post colonial nations has created complex and confusing legal regimes which hinder the development of women's rights.

⁶⁴ "Tradition Traps Widows" by Shahabuddin Tarakhil, Institute of war and peace reporting 31/01/2005

⁶⁵ "Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan" UNAMA/OHCHR December 2010

⁶⁶ "Nepal's Widows Reject Govt's Remarriage Proposal", By Danielle Shapiro, Women's eNews, 30 December 2009

In the post colonial era there was a resurrection of so called traditional customary practices. However, law is not static and traditional societies in which customary law is practiced have changed. Yet in many jurisdictions around the world, customary or traditional practices still remain in force. This has in part to do with the fact that in the beginning international law focussed on the role of the state and private law, which touches on areas where women are mostly involved (family, subsistence, agriculture etc) was largely ignored.

But it also stems from the fact that in the aftermath of independence, constitutional and legislative documents were drafted in the main by men, so the political structures put in place did not favour women.

Despite the fact that the UN has made it clear that universal human rights (including women's rights) take precedence over customary law and most constitutions since the 1990s have included anti-discrimination measures to enhance equality between men and women, discrimination in the law and in practice still persist.

There are however some positive stories: In Rwanda, following the Genocide in 1994 The Forum of Women Parliamentarians worked with the Women's Ministry to push through the 1999 Law on Matrimonial Regimes, Liberalities and Successions, which established women's right to inherit land for the first time. Since then the National Law Centre has undertaken training to ensure all are aware of women's rights.⁶⁷

International Provisions

Although the CEDAW convention, the Beijing Platform of Action and subsequent instruments have gone a long way to improve gender equality, as we have said the CEDAW convention does not specifically mention widows. Only one of the General Recommendations made by the Committee on the Elimination of all forms of discrimination against women mentions widows specifically (Article 16(1)h)-and this is only in the context of inheritance rights. *"Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished"*.

The only international convention which specifically targets the rights of widows is Article 20 of the Protocol to the African Charter on Human and People's Rights which states:

"State parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following:

- a) That widows are not subjected to inhuman, humiliating and degrading treatment;*
- b) That a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;*
- c) That a widow shall have the right to remarry, and in that event, to marry a person of her choice"*.

It is important that other regional, Commonwealth and international conventions incorporate similar protocols and specifically put in place criminal penalties for inhuman, degrading and life-threatening

⁶⁷ "Progress in the World's Women"- UN-Women Report July 2011

mourning rites and for any traditional cultural practice which restricts the liberty, mobility and financial independence of widows.

Judicial officers also have an important role to play. To date, very few cases have come to court and the perpetrators very often escape punishment. More often than not this is because they do not know their rights or because they have suffered too much violence already. It is essential that all members of society are treated equally whatever the marital status of the person in question. Better understanding is required of the violence endured, the humiliation experienced and the vulnerability and poverty that widows often find themselves in so that when cases do come to court, widows are given the same rights as all human beings. The legal, cultural and social status of widows should be mainstreamed in all discussions on the status of women.

Dr Karen Brewer
September 2011

Bibliography

- “Nepal Widows” - by Lily Thapa – 8 December 2007 – www.opendemocracy.net
- “Progress for Women Is Progress for All.” UNIFEM Fact Sheet 2008:
Women for Women International – November 2009
- “Kashmir's Half-Widows Struggle for Fuller Life”, By Haroon Mirani, Women’s eNews 14 January, 2007
- “Transitional Perspectives in Women’s Rights”- Penelope E. Andrews, Interights Bulletin 14 (2004)
- “Human Rights in the South Pacific: Challenges and Change” – Prof. Sue Farran, published by Routledge/Cavendish 2009
- “A SWOT analysis of the Indian Legal System and the issues of people living with HIV in the context of SAATHI’s Coalition Based Advocacy Project in West Bengal” –JUNE 2009
- “In Search of Equality: A SURVEY OF LAW AND PRACTICE RELATED TO WOMEN’S INHERITANCE RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA (MENA) REGION” - Centre on Housing Rights and Evictions (COHRE) – October 2006
- “The Contribution of Polygamy to Women’s Oppression and Impoverishment: An Argument for Prohibition”- Vanessa von Struensee – Murdock University Electronic Journal of Law - [2005] MurUEJL
- 2 Government White Paper Again: A Reply to a Reply” - Lovemore Madhuku – Zimbabwe Legal Resources Foundation
- “Broken Bodies- Broken Dreams – Violence against Women Exposed. IRIN 2005
- “Widowhood and Violence” Ancil Adrian Paul 5 December 2007 - www.opendemocracy.net
- “Zambian Widow Defies Custom and Life Amid Graves”, by Carlyn Hambuba- Women’s eNews, 26,November 2006
- “To Remarry, Jewish Widow First Kneels to Custom” by Michele Chabin, Women’s eNews, 22 September 2010
- “Nepal's Widows Reject Govt's Remarriage Proposal”, By Danielle Shapiro, Women’s eNews, 30 December , 2009
- “Widows, AIDS, Health and Human Rights in Africa” Vanessa von Struensee – paper available on the Social Science Research Network website: <http://papers.ssrn.com/>