

WIDOWHOOD RITES AND THE RIGHTS OF WOMEN IN AFRICA: THE UGANDAN EXPERIENCE

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When will 'the period of mourning' be over for our widows?

Culture has laid down this tradition
As some sort of dedication
A time set aside to celebrate the marriage past?
Perhaps an indication of grief on our widows cast!

A month, three months, six months, a year?
Of wearing a prescribed gear
A time to forfeit things held dear
As proof that for their husbands they cared

Often times they endure this custom
Accept it as a necessary symptom
Of their solitude, sadness and sorrow
Of that chasm of pain caused by death's arrow

During the period of mourning they remain melancholy
Having being denied the ethereal bliss of holy matrimony
Hoping that one day they will rise up, then walk, then run
perchance on the wings of healing soar towards the sun
Like a butterfly finally freed from its restrictive cocoon
The end of the period marks the liberation from this gloom

Alas! The end of the period of mourning
ushers in another poignant awaking
A heartbreaking and shattering realization -
The period of mourning is no transitory situation

Of endless wrangling over their husbands' property
Of being treated as just a part of that property
Of endless rituals that signify the loss of a loved one
Or the manifestation of ill luck driven away and gone
Our widows are subjected to all these henceforth
Thus continuously reduced to a life of little or no worth

And thus
They were told that the period of mourning
That outward demonstration of grieving
Lasts but for a season
For a laudable reason

But in their hearts it's a way of life
The dear price to pay for being a wife
The era of dishonour, deprivation, and degradation has come
their way
A sad eerie and unnerving acceptance that come what may

The period of mourning has actually come to stay.

DECLARATION

I, Leda Hasila Limann, hereby declare that this thesis is my own original work and that it has not been submitted for examination for the award of a degree at any other university or institution

Signed
(Student: Leda Hasila Limann)

Date.....

Signed
(Supervisor: Dr Henry Onoria)

Date

DEDICATION

For your faith in my abilities, your support in my pursuits and your love: the greatest propping device ever created, I dedicate this to you – my family.

ACKNOWLEDGMENTS

My utmost thanks goes to God – the author and finisher of this awesome experience.

To the Centre for Human Rights, my profound gratitude for making me a part of this beautiful and special family.

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To the LLM Class of 2003, finally regional integration has begun.....

To my housemates, Abiola and Donna, you were guardian angels par excellence.

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LIST OF ABBREVIATIONS

ACFODE	Action For Development
African Charter	African Charter on Human and Peoples' Rights
African Commission	African Commission on Human and Peoples' Rights
African Court Rights	African Court on Human and Peoples'
AU	African Union
CEDAW Committee	Committee on the Convention on the Elimination of all forms of Discrimination against Women
CEDAW	Convention On The Elimination of all Forms of Discrimination Against Women
CSW	United Nations Commission on the Status of Women
DAW	Division for the Advancement of Women
DEVAW	Declaration on the Elimination of Violence against Women
ECOSOG	Economic and Social Council
EWD	Empowering Widows in Development
FLS	Forward-looking Strategies for the Advancement of Women
HRW	Human Rights Watch
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHRLG	International Human Rights Law Group
INSTRAW	International Research and Training Institute for the Advancement of Women

FIDA	International Federation of Women Lawyers
LAP	Legal Aid Project
Ministry of Gender	Ministry of Gender, Labour and Social Development
OAU	Organization of African Unity
PFA	Platform for Action
The Plan	National Action Plan on Women (1999)
The Ugandan Constitution	1995 Constitution of Uganda
UN	United Nations
UNDW	UN Decade for Women
UNIFEM	United Nations Development Fund for Women
UDHR	Universal Declaration of Human Rights
WILDAF	Women in Law and Development
WLEA	Women and Law in East Africa
Women's Protocol to the African Charter	Protocol to the Africa Charter on Human and Peoples' Rights On The Rights of Women

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CHAPTER ONE: INTRODUCTION

1.1 Background to the study

Human rights instruments have come a long way in the protection of women generally. This is evident in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and more specifically, the Convention On The Elimination of all Forms of Discrimination Against Women (CEDAW).¹ At the regional level, the African Charter on Human and Peoples' Rights (The African Charter) and the Protocol to the Africa Charter on Human and Peoples' Rights On The Rights of Women (The Women's Protocol to the African Charter)², have made commendable strides in protecting the rights of women in Africa. In all of these instruments however, not much attention is devoted to certain specific categories of women. This generalization of the law has created a situation in which certain groups of women, such as widows, are not adequately protected from abuse. This unfortunate observation is further buttressed by the fact that issues concerning widows are rarely on the agenda of most international conferences.³

Interestingly, domestic legislation in many African counties, such as Uganda, have drawn inspiration from international human rights instruments in protecting the rights of women. In many instances even widows seem adequately protected by national legislation.⁴ Ironically, the situation on the ground in most African countries will reveal that notwithstanding all these developments, the rights of widows are actually being violated with impunity.⁵ This is attributable to the fact that most African countries have multiple legal systems where there is an interplay of national statutory law, common law

¹ Articles 1, 2 & 3 of the UDHR, articles 2(2) & 3 of the ICESCR, articles 2(1), 23 & 26 of the ICCPR, articles 1 – 24 of CEDAW, to mention a few.

² For some examples see articles 2 & 18 and articles 2 – 25 of the Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa.

³ See Owen, 'A window on widows' <<http://oneworld.org/empoweringwidows>> (accessed on 4 March 2003).

⁴ See article 22 of the Constitution of Ghana, the Interstate Succession Law 1985, Ghana, the Succession (Amended Act), Uganda, the Administrator General's Act, Cap 140, Uganda, to mention a few.

⁵ For examples of this situation, see Salmon, 'Rights-Kenya: *Customary law leaves widows homeless and destitute*' <<http://www.ipsnews.net/copyright.shtml>> (Accessed on 4 March 2003).

and customary law.⁶ The customary law recognizes traditional and cultural practices, which discriminate against women, and which in the final analysis negates all attempts by international, regional and national legislation that are geared towards the protection of the rights of women.⁷ This is evident from such practices as the customary inheritance practices and rites which widows are subjected to across the entire continent. This situation is further aggravated by the fact that most widows who bear the brunt of these discriminatory practices are those found in rural societies, where illiteracy is high and ignorance of law (particularly written law) is rife.⁸

Uganda, like most African states has an impressive number of legislation that seeks to protect widows. However empirical evidence as to what actually happens in reality proves that these laws are but mere words of paper that have no practical effect.⁹

1.2 Statement of the problem

The problem that this paper seeks to address is whether international, regional and indeed Ugandan domestic law have proven adequate in protecting widows in Uganda against derogatory, dehumanizing and discriminatory customary widowhood practices or rites.¹⁰

1.3 Objectives of the study

The objectives of this paper are as follows:

⁶ Munkner, 'Synthesis of current state and trends in land tenure, land policy and land law in Africa.' <http://www.gtz.de/orboden/muenkner/mun1_2_4.htm> (Accessed 2 September 2003).

⁷ HWR, 'Q &A: Women's property rights in sub-Saharan Africa' <www.hwr.org/campaigns/women/property/index.htm> (Accessed on 2 September 2003).

⁸ BRIDGE 'What about women? Why we need a gender perspective in development policy.' <http://www.id.ac.uk/bridge/Reports/re_20c.pdf> (Accessed on 2 September, 2003).

⁹ Zaloumis, 'Approaches to gender equality under customary law.' <http://www.cba.org/cba/idp/InterDev_PDF/Zaloumis_Paper.pdf> (Accessed on 5 August 2003).

¹⁰ Apart from widowhood rites, the plight of widows can also be measured in terms of succession laws and practices. This paper however does not extend to inheritance and succession issues but is limited to widowhood rites only.

1. To establish, by using Uganda as a case study, that in most African countries customary practices infringe on the rights of women, and more specifically widows.
2. To determine how far Ugandan domestic legislation has gone in harmonizing its laws pertaining to widows with international and regional human rights instruments.
3. To show how certain customary widowhood practices and rites violate the rights of widows.
4. To make recommendations aimed at the protection of widows from dehumanizing widowhood practices and rites.

1.4 Research question and hypothesis

This paper is based on the assertion that some widowhood rites are in violation of the rights of widows. In this regard, this paper is concerned with answering the following questions:

- a. Has human rights law adequately addressed issues pertaining to widowhood rites?
- b. How has Ugandan domestic legislation given effect to human rights instruments that seek to protect the rights of widows?
- c. What role do customary law and cultural practices play in the violation of the rights of widows?
- d. How can widows be protected from dehumanizing widowhood rites in light of prevailing human rights laws.

1.5 Significance of the study

This paper is significant in highlighting the fact that international and regional instruments aimed at protecting the general rights of women have proved inadequate in protecting specific vulnerable groups like widows. It also tries to suggest that human rights instruments must be tailored to suit the peculiarities of widows and the violations they suffer by virtue of their being widows and not women *per se*.

By using Uganda as a case study, this paper is also relevant in pointing out that the plight of widows in many African Countries leaves much to be desired. Recommendations are therefore made at the domestic level with a view to enhancing the protection and promotion of widows' rights in Uganda

1.6 Methodology proposed

Since this paper focuses on Uganda as a case study, use has been made of books, journals, articles and websites that have discussed traditional customs and practices pertaining to widowhood rites in Uganda and other African countries.

This study has also relied on media reports such as newspapers articles that discuss issues related to widowhood rites in Uganda.

Another method has been interviews with governmental and non-governmental institutions that are confronted with the problems of widows such as the Ministry for Gender Labour and Social Development, the Ugandan Human Rights Commission, the Uganda branch of International Federation of Women Lawyers (FIDA) and lawyers in private practice. People from some communities in Uganda were also interviewed about their knowledge of widowhood rites, as they pertain in their various ethnic groups or communities.

There was an examination of some administrative and court records to determine if international, regional and laws pertaining to widows guide the organs of the state in the discharge of their duties. These records also brought to light the manner in which the organs of the state juxtapose the international laws, and regional laws with national laws that relate to the rights of widows in Uganda. Similarly, some of the reports of Uganda before international and regional bodies, such as the Committee of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW Committee) and the African Commission on Human and Peoples' Rights (The African Commission) respectively, were perused. This was to find out what Uganda had to say about the status of widows before these human rights bodies.

1.7 Literature survey – summary or highlights only

The human rights of widows have not been the subject matter of many publications at the international and regional levels. In writing this paper, limited use was made of books. There was however extensive reliance on articles, journals and reports that address legal issues and customary practices pertaining to Ugandan widows. Most of these materials were culled from the internet. The highlights of some of the publications relied on are set out below as follows:

Pietila and Vickers,¹¹ Freeman and Fraser,¹² and O'Hare¹³ have given useful insights to the position of women within the general framework of international human rights law. They have also made recommendations as to how women's rights may be fully enhanced and realized at present and in the future.

Owen¹⁴ draws attention to the fact that widows have been ignored and marginalized by the international human rights regime.

Mhlanga¹⁵ gives examples of how regional human rights laws compliments and supplements international human rights laws. One such example is the manner in which the Protocol to the African Charter on Women compliments the provisions of the Convention on the Elimination of all forms of Discrimination against Women, in Africa.

¹¹ Pietila & Vickers, *Making women matter: the role of the United Nations* (1994). See also Piet, *Engendering the global agenda: the victory of women and the United Nations* (2000).

¹² Freeman & Fraser, 'Women's Human Rights: Making Theory a reality' in Louis Henkin & John Lawrence Hargrove (eds.), *Human Rights: An agenda for the next century* (1994) 104.

¹³ O'Hare, 'Realizing human rights for women' (1999) *Human Rights Quarterly* Volume 21.

¹⁴ Owen (n 3 above).

¹⁵ Mhlanga, 'Consolidating a new African women's right' *The GAD Exchange*, issue no 26, November 2001. <<http://www.sardc.net/Widsaa/Gad/2001/Iss25/>> (Accessed on 19 September 2003).

Odinkalu,¹⁶ touches on the rights of women when he discusses the implementation of economic, social and cultural rights under the African Charter. His paper highlights women's rights within the general framework of human rights in Africa.

Mutua,¹⁷ analyses critically the African human rights system and in the process, discusses whether women have been adequately protected under the African Charter.

Erinosho,¹⁸ discusses some of the rites African women are often subjected to. In the process of examining some of the rites widows in African undergo he observes that most of these rights do not apply to widowers as well.

AFRICANEWS¹⁹ and International Human Rights Law Group (IHRIG)²⁰ shed some light on the plight of widows across the continent in spite of international and regional human rights law.

In her article, Salmon²¹ asserts that the rights of widows are being infringed upon with impunity all over Africa. Munkner²² and Human Rights Watch²³ attribute this to African customary laws, which inherently discriminate against women thus negating most attempts by the human rights laws in the protection of the rights of the African woman.

¹⁶ Odinkalu, 'Implementing economic, social and cultural rights', in Evans and Murray (eds.), *The African Charter on Human and Peoples' Rights* (2002) 193.

¹⁷ Mutua, 'THE African Human Rights System: A critical evaluation' (2002) <<http://www.undp.org/hdro/papers/backpapers/2000/MUTUA.PDF>> (Accessed on 19 September 2003).

¹⁸ Erinosho, 'Rites and women's rights in Africa'. <http://www.peace2.uit.no/hefp/contributions/papers/Erinosho_Layi_5B.pdf> (Accessed on 25 August 2003).

¹⁹ AFRICANEWS, 'News and Views on Africa from Africa' - Issue 40 - July 1999 <<http://lists.peacelink.it/afrinews/msg00019.html>> (Accessed on 19 September 2003).

²⁰ IHRIG, 'Womens Rights Advocacy' <http://www.hrlawgroup.org/thematic_programs/womens_rights_advocacy/default.asp> (Accessed on 3 September 2003).

²¹ Salmon (n 5 above).

²² Munkner (n 6 above).

²³ HRW (n 7 above).

Zaloumis²⁴ contributes to this discussion by stating that Uganda has followed the trend by most African countries in enacting legislation to protect widows but what pertains in reality makes a mockery of those laws.

Women and Law in East Africa (WLEA)²⁵ highlight the plight of women in terms of inheritance laws and practices in Uganda. Their research on this matter discusses some widowhood rites as being incidental to the issues of inheritance practices.

The National Action Plan²⁶ shows the objectives and strategies the government of Uganda has put in place to enhance the rights of women in Uganda. This publication reveals the aspects of the Plan advantageous to widows.

The 1999²⁷ and 2000²⁸ reports before the CEDAW committee and the African Commission on Human and Peoples' Rights respectively, contain the government of Uganda's efforts at emancipating and enhancing the rights of women. The issue of widows' rights is however a glaring omission in both reports.

1.8 Limitations of proposed study

In terms of scope, this study is limited to widowhood rites and of widows in Uganda with reference to international law, regional laws, national laws, customary law and cultural practices.

In terms of difficulties encountered during this study, the most prominent limitation is the availability of material on the subject. The issues of succession and inheritance, as they

²⁴ Zaloumis (n 9 above).

²⁵ WLEA, *The law of succession in Uganda: Women, inheritance law and practices* (2001).

²⁶ The National Action Plan on Women, (1999) Directorate of Gender and Community Development, Ministry of Gender, Labour and Social Development.

²⁷ The 1999 Third Country Status Report on the Convention on the Elimination of all forms of Discrimination against Women.

²⁸ The 2000 Report of the Government of the Republic of Uganda to the African Commission on Human and Peoples' Rights.

affect different categories of women such as widows, have attracted a lot of attention. Whereas there is an abundance of publications on succession and inheritance in relation to widows, there is a dearth of documentation on widowhood practices. Hence chapter 3, which focuses specifically on examples of widowhood rites, relies extensively on a publication by WLEA.²⁹ Although the publication deals with the law of succession in Uganda in relation to women, some widowhood rites in four ethnic communities in Uganda are discussed as ancillaries to the issue of inheritance.

In terms of time, this study is based generally on the present however there are occasional references to the past and future. The past has been compared with the present in ascertaining whether the plight of widows in Uganda has either worsened or improved with time. A comparison between the past and the present has shed light on whether the situation of widows in Uganda has remained static over a period of time. The recommendations made at the end of the study have been targeted at the future.

²⁹ The crux of this research was not widowhood rites. Widowhood rites were only discussed as being incidental to the more popular topic of inheritance and succession laws and practices.

CHAPTER TWO: RIGHTS OF WIDOWS IN THE CONTEXT OF INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW

2.0 Introduction

Until the early 1980s women's human rights were given a back seat in international law. In recent times a culmination of human rights instruments at the international and regional levels have addressed human rights issues concerning women in diverse ways and their relevance cannot be overemphasized. These have however proved inadequate in really protecting and promoting the rights of women, and more specifically widows. This is because although these instruments have made significant progress in improving women's conditions and access to resources, the basic structure of inequality in the relationship between men and women continues to be the Achilles heel to these developments. Women's rights in all spheres thus continue to be neglected.³⁰

2.1 International human rights law context

Women's rights are embodied in the United Nations Charter,³¹ the UDHR,³² the ICCPR,³³ the ICESCR,³⁴ and specific conventions relating to women. Many instruments concerning women have surfaced over the decades. Prominent among these instruments are CEDAW,³⁵ Declaration on the Elimination of Violence against Women (DEVAW),³⁶ and the Optional Protocol to the Convention on the Elimination of Discrimination against Women (Optional Protocol to CEDAW).³⁷

Although all of these instruments have contributed to the advancement of women's rights, the provisions of CEDAW shall be examined briefly because it is the most

³⁰ Freeman & Fraser (n 12 above) 104.

³¹ Available at <<http://www.unhchr.ch/html/menu3/b/ch-cont.htm>> (Accessed on 19 September 2003).

³² Available at <<http://www.unhchr.ch/udhr/index.htm>> (Accessed on 19 September, 2003).

³³ Available at <http://www.unhchr.ch/html/menu3/b/a_ccpr.htm> (Accessed on 19 September 2003).

³⁴ Available at <http://www.unhchr.ch/html/menu3/b/a_ceschr.htm> (Accessed on 19 September 2003).

³⁵ Available at <<http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>> (Accessed on 19 September 2003).

³⁶ See: <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.48.104.En?Opendment](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En?Opendment)> (Accessed on 19 September 2003).

³⁷ Available at <http://www.unhchr.ch/html/menu3/b/opt_cedaw.htm> (Accessed on 19 September 2003).

comprehensive convention which considers women's rights in a multi faceted and holistic manner. It addresses human rights of women in diverse situations such as political, social, economic, cultural and family life.

2.1.1 Convention On The Elimination Of All Forms Of Discrimination Against Women

As stated earlier, until CEDAW was adopted, there was an influx of human rights instruments that ostensibly focused on women. The reality on the ground however disclosed that women were still the victims of many human rights abuses.

The ability of CEDAW to address the inefficiencies of the international human rights regime, stems from the realization that discrimination is the root cause of most human rights violations against women. To this end, article one of the Convention gives a detailed definition of discrimination against women, by taking cognisance of direct and indirect discrimination as follows:

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, civil or any other field

CEDAW is a radical document that aims to change and transform the structural barriers to equality. Rather than just adding to the list of rights already covered by other treaties, it emphasises the importance of changing the system within which women's rights are violated.³⁸

Although CEDAW came into force in September 1981 and could boast of addressing the concerns of women in many areas, there were still massive violations of women's human rights all over the world. This situation was worsened by the fact that women were not even aware of their rights hence seeking legal remedies for the violations of their rights actually a non-starter. An Optional Protocol to the Convention was therefore necessary to address these problems.

³⁸ Community Workers Co-operative (CWC), 'Women's Human Rights and CEDAW'; <A:\Women's Human Rights and CEDAW.htm> (Accessed on 1 September 2003).

2.1.2 The Optional Protocol To The Convention On All Forms of Discrimination Against Women³⁹

On 11 March 1999, the United Nations Commission on the Status of Women⁴⁰ adopted an Optional Protocol to CEDAW.⁴¹ The Optional Protocol is a new complaint mechanism that permits women from the countries that are signatories to CEDAW and the Protocol, to make complaints to the United Nations Committee on the Elimination of Discrimination Against Women (the CEDAW Committee), when domestic remedies have been exhausted.⁴²

The Optional Protocol to CEDAW also provides for an inquiry procedure whereby the Committee is empowered to investigate into serious and systematic abuses of women's human rights in countries that are state parties to it.⁴³ These procedures are important because they supplement the reporting mechanism under CEDAW whereby signatories to CEDAW are required to report regularly to the Committee. Interested NGOs are allowed to submit shadow or alternate reports to either supplement or contradict what states have submitted. Based on these reports the Committee makes concluding observations and recommendations in areas where a country may improve its performance in terms of the Covenant.⁴⁴

These mechanisms are very important and useful because the recommendations and concluding observations made by the Committee supplement the individual communications brought before it. They also make CEDAW accessible to women who are unable to access the Committee's procedures.

³⁹ Optional Protocol to CEDAW (n 37 above).

⁴⁰ The UN Commission on the Status of Women (CSW) was established as a functional commission of the Economic and Social Council (ECOSOC) by ECOSOC Resolution 11(II) of 21 June 1946. Its original mandate was to prepare recommendations and reports to ECOSOC on promoting women's rights in political, economic, civil, social and educational fields.

⁴¹ DAW News Archive <<http://www.un.org/womenwatch/daw/news/archive1999.htm>> (Accessed on 1 September 2003).

⁴² See article 17 CEDAW and article 4 of the Optional Protocol to CEDAW.

⁴³ In terms of article 8, this includes onsite investigations by the Committee.

⁴⁴ CEDAW (n 35 above) article 21.

2.1.3 International human rights conferences aimed at promoting women's rights

Women's issues have also received attention at a series of conferences and subsequent UN actions which have resulted in several activities to wit: the adoption of the Declaration and World Plan of Action for Implementation of the Objectives of International Women's Year (Mexico City, 1975); the naming of 1976-85 as the UN Decade for Women (UNDW) (adopted by the General Assembly in Resolution 3520, 1975); the development of the Programme of Action for the Second Half of the UNDW (Copenhagen, 1980); the setting forth of the Forward-looking Strategies for the Advancement of Women (FLS) for the period 1985-2000 (Nairobi, 1985); and the establishment of the Platform for Action (PFA) (Beijing, 1995).⁴⁵

2.1.4 International bodies advancing the course of women's rights

The UN has also created a number of bodies that have been active in promoting women's issues throughout the UN system. These bodies include the Commission on the Status of Women (CSW),⁴⁶ the United Nations Development Fund for Women (UNIFEM), the International Research and Training Institute for the Advancement of Women (INSTRAW). The Mexico City Conference (Declaration and World Plan of Action for Implementation of the Objectives of International Women's Year) led to the establishment of INSTRAW and UNIFEM. These institutions are to provide the institutional framework for research, training and operational activities in the area of women and development.⁴⁷ The Committee on CEDAW is another body that was established by the 1979 Convention.⁴⁸

In April 2000, the Commission on Human Rights adopted a Resolution on "Women's Equal Ownership of, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing (Resolution 2000/13) More recently, on 23 April

⁴⁵ DAW 'THE FOUR GLOBAL WOMEN'S CONFERENCES 1975-1995: Historical Perspective' <<http://www.un.org/womenwatch/daw/followup/session/presskit/hist.htm>> (Accessed on 1 September 2003).

⁴⁶ (n 40 above).

⁴⁷ Pietila & Vickers (n 11 above) 101-102.

⁴⁸ (n 35 above).

2001, the Commission on Human Rights adopted yet another Resolution (Resolution 2001/34) on the same subject. The Resolution encourages the Special Rapporteur on Violence Against Women to continue to take these findings into consideration in her future work.

The Resolution also invites the Secretary General to encourage all organizations and bodies of the United Nations system, to undertake further initiatives that promote women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, and allocate further resources for studying and documenting the impact of complex emergency situations, particularly with respect to women's equal rights to own land, property and adequate housing.⁴⁹

2.2 African human rights law context

The African human rights system has since the 1980s gradually developed its own jurisprudence in the protection of Africans. A discussion of the various instruments and activities that have taken place within this time will determine how adequately women, particularly widows, have been protected and their rights promoted in Africa.

2.2.1 The African Charter On Human and Peoples' Rights⁵⁰

The African charter on Human and Peoples' Rights (African Charter) was the main regional instrument that protected human rights of women in Africa until very recent times. Apart from the general provisions in the African Charter that apply to all persons, article 18 has been devoted to; *inter alia*, the family, women, children, the aged and the disabled. Article 18(3), which provides specifically for women states:

⁴⁹ Benschop and Lacroux, 'Follow-up to the UN Resolution of April 2001 on "Women's Equal Ownership of, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing" <<http://www.unhabitat.org/istanbul+5/pe72.htm>> (Accessed on 1 September 2003).

⁵⁰ African [Banjul] Charter on Human and Peoples' Rights, adopted African [Banjul] Charter on Human and Peoples' Rights, reprinted in Hamalengwa, Flinterman and Dankwa, *The international law of Human Rights in Africa: Basic Documents and Annotated Bibliography* (1988) 5.

The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions

It has been argued that women's rights have been treated in a cursory and perfunctory manner because not only is it the case that women are mentioned in only one provision, but also, they are lumped together with other 'quite complex and controversial notions of the family, tradition and morality.'⁵¹ Indeed a close look at the provision suggests that women have been subsumed under a provision devoted to the family.

It has even been argued that the Africa Charter could even be used to abuse women's rights. It is believed that the fact that duties are placed on the state and individuals to the family will ingrain oppressive family structures, which marginalize and exclude women from participation in most spheres outside the home. It is also said that this supports discrimination against women on the basis of gender in all areas of activity.

These fears have however been countered with the view that the African Charter must be read in a progressive and holistic manner. Hence it has been suggested that women should be treated in accordance with traditional values and culture, which enhance the dignity of motherhood and women. This is more so because the African Charter itself abhors and guarantees the elimination of all forms of discrimination and this naturally includes discrimination against women. If article 18 of the African Charter is read holistically with the rest of the Charter, all these fears and concerns will be unfounded.⁵² In any case, article 61 encourages the African Commission to take account of African practices consistent with international norms on human and peoples' rights. Whilst culture is not being looked down upon here, this provision ensures that the aspects of it repugnant to international human rights norms must not be encouraged.

This viewpoint has been buttressed by another opinion that 'article 18 can only be understood in the context of the entire text of the African Charter which is also

⁵¹ Beyabi, 'Towards a more effective guarantee of women's rights in the African Human Rights system', in R. Cook (ed.), *Human Rights of Women: National and International Perspectives* (1994) 258.

⁵² Mutua, (n 17 above).

remarkable in its use of asexual, gender-neutral language'. In that case it is actually a manifestation of the African Charter's intention to elevate women in the public sphere and not just relegate them to the private sphere.⁵³

Another laudable achievement by the African Charter in protecting the rights of women is the fact that it must be supplemented and /or complimented with international declarations and conventions in that direction.⁵⁴

Notwithstanding all these developments, there were several calls for the adoption of a protocol to deal exclusively with the protection of women's rights.⁵⁵ This is because quite apart from the controversies surrounding the different interpretations given to article 18 of the African Charter, the inadequacy of the African Charter stemmed from the contention that specific categories of women such as widows were not catered for, and their peculiar needs not addressed.

2.2.2 The Protocol To The African Charter On Human And Peoples' Rights On The Rights of Women In Africa

The Women's Protocol to the African Charter was adopted on 11 July 2003, at the second summit of the African Union in Maputo, Mozambique.⁵⁶ It may be hailed, as the much-needed supplement to the African Charter and other regional instruments in the protection of women's rights in Africa.⁵⁷ This is because it provides specifically for

⁵³ Oloka-Onyango, 'Beyond the Rhetoric: Reinvigorating the struggle for economic and social rights in Africa, (1995) 47.

⁵⁴ Instruments specifically on women rights, such as CEDAW and the DEVAW are indispensable in Africa for the protection of the rights of women.

⁵⁵ Murray, "Report of the 1996 Sessions of the African Commission on Human and Peoples' Rights," 18 Hum. Rts. L. 16, 19 (1997).

⁵⁶ It shall enter into force 30 days after 15 states have ratified it as stipulated by article 29.

⁵⁷ (As above) That this instrument is supplemented by others is evident in the preamble of the Protocol which makes it clear that apart from the Charter, it also reaffirms 'the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions and Decisions, which underline the commitment of the African States to ensure the full participation of African women as equal partners in Africa's development...'

definite categories of women.⁵⁸ Most of the provisions have been tailored in such a way as to suit the needs of all categories of women.⁵⁹ The rights of widows, for example, seem sufficiently protected by article 2(1)(b) which prohibits discrimination that endangers the health and general well being of women. The same point can be made for article 2(2), which deals with the elimination of harmful cultural and traditional practices. Also articles 3 and 4, which handle the rights to dignity, and life, integrity and security of person respectively, ensure that women such as widows are treated in a respectful, humane and non-degrading manner. In spite of these provisions, article 20 and 21(1) address the unique issues associated with widows. Article 20 caters for situations where widows are subjected to all sorts of degrading and humiliating treatment by virtue of their status as widows. It also envisages and seeks to prevent situations where widows are denied custodianship of their children. Other harsh realities such as forced marriages and the inability for widows, from certain societies, to remarry have been recognized and dealt with admirably in article 20, which states as follows:

States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

- a) that widows are not subjected to inhuman, humiliating or degrading treatment;
- b) 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) a widow shall have the right to remarry, and in that event, to marry the person of her choice.

Article 21(1) seeks to tackle the problems associated with inheritance as follows:

A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

⁵⁸ (As above) These include women married women (article 6); divorced women (article 7); women in politics (article 9); women in armed conflict (article 11), career women (article 13); widows (articles 20 & 21) etc.

⁵⁹ (As above). This is particularly obvious from the preamble to article 19.

It is evident from these provisions that the Women's Protocol to the African Charter has therefore made commendable strides in promoting and protecting the rights of all categories of women (such as widows) in a manner that the African Charter and, indeed even, CEDAW has failed to do.

It also boosts up the African Charter's anti-discrimination clause by highlighting the harmful practices, struggles and problems that women are subjected to everyday in Africa, thereby supplementing CEDAW by being region specific.⁶⁰

In a pro-active move to ensure compliance with its provisions by states, the Women's Protocol also commits African governments, if they have not already done so, to include in their national constitutions and other legislative instruments these fundamental principles and ensure their effective implementation.⁶¹ In addition, it obligates them to integrate a gender perspective in their policy decisions, legislation, development plans, and activities, and to ensure the overall well being of women.⁶²

The Women's Protocol to the African Charter appears to be the first step on the road to an era in Africa when women's rights will enjoy greater protection and respect, that is, when it eventually comes into force.

The African Charter has authorized the African Commission to interpret, apply and implement its provisions in the protection and promotion of all rights enshrined therein⁶³ pending the establishment of the African Court on Human and Peoples' Rights (African Court).⁶⁴ It is hoped that the African Court, which is still at its formative stage, shall compliment and enhance the interpretation of the recently adopted protocol on women, with other relevant regional and international human rights instruments, in such a progressive manner that will facilitate the protection of women's rights in Africa. Until that

⁶⁰ Mhlanga (n 15 above).

⁶¹ This is evident from most of the provisions and more particularly in article 26.

⁶² Article 19 (n 56 above).

⁶³ (As above) article 32.

⁶⁴ (As above) article 27.

happens, an examination of the rights of widows in the African human rights context must be restricted to the of the activities of the African Commission that affect women.

2.2.3 The African Commission On Human and Peoples' Rights

The African Charter established the African Commission on Human and Peoples' Rights. The mandate of the African Commission is to promote and protect the rights guaranteed under the Charter.⁶⁵ The African Commission's Secretariat is based in Banjul, the Gambia.

By its mandate, the Commission promotes the rights of women, as with all other rights through the following channels⁶⁶:

- By considering the periodic reports of States on legislative or other measures adopted to give effect to the rights and freedoms recognized and guaranteed in the African Charter.⁶⁷
- By, *inter alia*, collecting documents, undertaking studies and researches on African problems in the field of human and peoples' rights, organizing seminars, symposia, conferences and disseminating information.⁶⁸
- Through recommendations it makes from interstate, individual and NGO communications submitted before it by interpreting and applying the provisions of the Charter.⁶⁹ It draws inspiration from international law on

⁶⁵ (n 50 above) article 30.

⁶⁶ (As above) See article 45 for the comprehensive mandate of the African Commission.

⁶⁷ Guidelines to Periodic Reporting, which states that under Article 62 of the African Charter a state is supposed to include in its initial report what it is doing to improve the condition of women, children and disabled people. <<http://www.achpr.org/html/statereports.html>> (Accessed on 8 September 2003).

⁶⁸ For example, at the 17th Ordinary Session of the African Commission on Human and Peoples' Rights, (12 - 22 March 1995 Lome, Togo) the Session was preceded by a seminar on the African Charter and the human rights of women in Africa. <<http://www.achpr.org/html/aboutus.html>> (Accessed on 19 September 2003).

⁶⁹ See Institute for Human Rights and Development, *Compilation of decisions on communications of the African Commission on Human and Peoples' Rights: Extracted from the Commission's activity reports, 1994-1999 (2002)* for examples of decisions or recommendations of the African Commission which affected women by a finding that article 18 of the Charter had been violated. These include communication 143/95, 150/96 Constitutional Rights Project and Civil Liberties Organization/Nigeria. See also (155/96) Social and Economic Rights Action Center (SERAC), Center for Economic and Social Rights (CESR)/Nigeria in Danwood Mzikenge Chirwa, 'Toward

human and peoples' rights, and other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights. It is also guided by various instruments adopted within the specialized agencies of the United Nations, of which the parties to the present Charter are members.

- Through the promotional and protective work of the Special Rapporteur on women in collaboration with NGOs and other stakeholders.⁷⁰

2.2.4 Regional agreements and conventions that affect women in Africa

Other agreements which enhance the protection and promotion of the rights of women in Africa include the Declaration on the HIV/AIDS Epidemic at the XI International Conference on AIDS and STDs in Africa, 1999⁷¹; Women's Declaration and Agenda for a Culture of Peace in Africa Adopted at the Close of a Pan African Conference in Zanzibar, 1999⁷²; Gender and Development - A Declaration by Heads of State or Government of the Southern African Development Community, 1997⁷³; Draft Additional Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights.⁷⁴

2.3 Adequacy of protection of widows under present international and regional human rights law

It is fair to admit that international human rights law has tried to address the rights of women for several decades. This was done either through legislation that directly

Revitalizing Economic, Social, and Cultural Rights in Africa: *Social and Economic Rights Action Centre and the Center for Economic and Social Rights v. Nigeria*. <<http://www.wcl.american.edu/hrbrief/10/1africa.cfm>> (Accessed on 27 September 2003). In that case, for example, the Commission applied article 14(2) (h) of CEDAW in the protection of the socio-economic rights of some Nigerian women.

⁷⁰ See Motala, 'Non-governmental organizations in the African system' (n 16 above) 271-272.

⁷¹ Available at <<http://www.unfpa.org/gender/ira.htm>> (Accessed on 27 September 2003).

⁷² Available at <<http://www.unesco.org/opi/eng/unescopress/99-113e.htm>> (Accessed on 27 September 2003).

⁷³ Available at <http://www.sardc.net/widsaa/wid_genderdec.htm> (Accessed on 27 September 2003).

⁷⁴ Available at <http://www1.umn.edu/humanrts/africa/draft_additl_protocol.html> (Accessed on 27 September 2003).

touched on women specifically⁷⁵ or those that may be inferred from instruments that dealt with general human rights issues.⁷⁶

Section 25 of the UDHR considers widows as part of vulnerable groups that must be catered for by their states through some sort of welfare or social security system. Apart from this provision, international human rights laws do not expressly cater for widows with specific provisions. However, it may be argued that strict compliance with the provisions of most human rights instruments that preceded and followed the UDHR by state parties, will mean that the rights of widows are also respected, albeit inadvertently.

The two instruments which are most applicable to widows are however CEDAW and DEVAW because they are tailored specially for the needs of women. It may be argued that most of the provisions of CEDAW cater for all categories of women including widows. Article 2 provides a good example and is worth mentioning in this regard. It enjoins state parties to eradicate discrimination against women. By this provision, widows are indirectly being catered for because most, if not all, widowhood practices that infringe on their human rights are incidentally discriminatory and do not apply to widowers as well.⁷⁷ CEDAW also takes cognisance of the right of rural women to rural development.⁷⁸ This is very significant for African women because most African women who bear the brunt of widowhood practices are in rural or indigenous communities. Widows in such an environment have no economic independence; hence their total reliance on men for their survival reduces their chances of resisting widowhood practices that are imposed on them in patriarchal systems.

DEVAW also plays a vital role in the protection of all women including widows. The preamble for instance does not make specific reference to women but it recognizes categories of women 'such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict...'

⁷⁵ Examples of such instruments are CEDAW and DEVAW.

⁷⁶ Examples are the UDHR, ICCPR, and ICESCR etc.

⁷⁷ Erinosh, (n 18 above).

⁷⁸ Article 14.

It may be logically implied that widows are usually found within the group of women listed and recognized in the preamble to DEVAW thus, even if not expressly mentioned, their rights are indirectly protected by it. Another example of the circuitous application of the provisions of human rights instruments to widows can be found in article 4(j) that enjoins states to do the following:

Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

From this provision, the Declaration impliedly makes reference to widows who are usually subjected to inhuman practices because of 'cultural patterns', 'prejudices', 'customary practices' and 'stereotypical roles for sexes' etc⁷⁹

However, it is the case that in spite of all these instruments women all over the world are still facing gross violations of their rights. International Human Rights Law Group (IHR LG) therefore echoes the concerns of many in the following words:

Grave violations of women's human rights continue to occur worldwide with terrifying regularity. Women throughout the world face systematic gender-based discrimination in laws, policies and practices that deny them equal rights as human beings ... too often, governments allow crimes against women to go unpunished, continuing a culture of impunity for family members, state agents and others who discriminate against or commit violence against women.⁸⁰

This occurrence may be attributable to a number of factors, prominent among which is the fact that women are in most cases treated as a homogenous group. The failure to address specific concerns of different categories of women such as widows has contributed to a situation where in theory women seem protected but in practice are still the victims of multiple abuses. CEDAW and DEVAW, which are the instruments that come closest in the protection of the rights of widows, are still woefully inadequate. The nearest CEDAW, for example, comes to mentioning a widow is when it talks about elderly people. Ironically although elderly women are usually considered as being

⁷⁹ Article 4(j) of DEVAW finds similar expression in article 5(a) of CEDAW.

⁸⁰ IHR LG(n 20 above).

vulnerable, they are indirectly mentioned (as a subset of 'elderly people') only in article 11(1)(e) which is in relation to social security.⁸¹

The definition of violence against women is elaborated upon in article 2 of DEVAW to include 'abuse of female children'. There are also references to dowry-related violence and female genital mutilation which give the impression that violence related to older women such as widows were not considered because the situations mentioned in the said article are usually related to girls or women younger.⁸²

It is a pity that both of these instruments sideline widows when they address vulnerable groups of the elderly. In dealing with young vulnerable groups as well, young widows are also not given any recognition whatsoever.

The fact that DEVAW is but a declaration and has no binding force on states does not improve matters. This is because most dehumanising widowhood rites are more usually in violation of the provisions of DEVAW than CEDAW. It therefore means that the only binding instrument that comprehensively protects women against human right violations is CEDAW and it has proven inadequate in bringing the situation of widows to the forefront.

When discussing the plight of widows, particular reference must be made to African widows. This is because African widows, like special categories of women with exceptional needs, suffer for being widows in Africa in addition to just being women. This observation has been vividly captured in an article by AFRICANEWS as follows:

What is common of all widows throughout the world is that they are almost as many as three widows per every widower. In Zimbabwe there are 88 widows for every 12 widowers, and the figure soars to over 70 per cent throughout Africa compared to the 43 per cent in Britain. Yet

⁸¹ Steps to address this omission probably accounts for the fact that when the UN observed 1994 as "International Year of the Family" it centred on the elderly among other groups in the family. It also designated 1999 as the "International Year of the Elderly".

⁸² Article 2(a) of the DEVAW defines the term violence against women as follows: 'Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.'

the widows of Africa are for their part the most neglected of the world's widows. Despite African literature and laws that almost carefully avoids the plight of these widowed women. But again, it is not only the African culture that shuns the plight of the widow. The women's own agreements from the 1995 Fourth World Conference on Women - the Global Platform for action, does not even mention them. Worse still, the Western literature on development, poverty, gender and human rights is a shadow of silence. "Even where violence against women is examined, the particular form it can take against widows is ignored," says Caroline Moorehead a human rights writer (emphasis added).

For these women, the death of a husband is a sentence to abject poverty, and laws whether modern, traditional or religious almost invariably discriminate against them .⁸³

The harsh and grim realities which face the African widow is attributable to the fact that she has peculiar needs and problems which are not experienced by her European counterparts and accordingly, for a long time were not known by the international community. This has been worsened by the fact that the African Charter glossed over various categories of women and did not address their unique circumstances. Another unfortunate occurrence was that although the African Charter, draws inspiration from CEDAW and other international human rights instruments in protecting widows in Africa, those international instruments did not deal with the unique and multifaceted problems associated exclusively with widows in Africa.

The realities on the ground suggest that all the efforts made by the African Commission in its promotional and protective roles have not been of much use to widows in particular.

Happily, as already stated, the Protocol to the African Charter and the establishment of the African Court on Human and Peoples' Rights will address all these lacunae when it comes into force.

The adequacy or otherwise of the Women's Protocol and the Court will not be discussed at this point as they are not yet operative and therefore cannot easily be evaluated.

⁸³ AFRICANEWS (n 19 above).

2.4 Concluding observations

The plethora of human rights instruments and activity at the international and regional levels seem to favour women greatly in current times.

Nevertheless, millions of widows in the third world, who are disinherited, evicted, victims of violence, poverty, property grabbing, and marginalisation continue to remain outside the remit of all these laws. They struggle to survive without legal protection, legal rights or legal aid. Of all women, they are the least empowered to use human rights laws to their benefit.⁸⁴

A complex mix of factors underlies women's property rights violations in African countries. Chief among them are discriminatory laws and customary practices, ineffective enforcement of laws, biased attitudes, unresponsive authorities, inept courts, women's low levels of awareness of their rights, and the social stigma of women being considered greedy or traitors to culture if they assert their rights.

It is for these reasons that although most governments throughout Africa, have ratified treaties promoting the welfare of women, they are the very ones which still hide behind custom as a defence against protecting women's human rights.⁸⁵

The next Chapter examines the situation in Uganda to ascertain the state of the Ugandan widow in the context of international and regional human rights.

⁸⁴ EWD, 'Widows. Law and Human Rights.' <http://www.widowsrights.org/lawfile/index.html> (Accessed on 19 September 2003).

⁸⁵ HRW, 'Women's rights: HIV/AIDS and women's property rights in Africa.' <<http://www.hrw.org/campaigns/women/property/aidsfactsheet.htm#6>> (Accessed on 19 September 2003).

CHAPTER THREE: WIDOWHOOD RITES IN UGANDA

3.0 Introduction

There are numerous widows in Ugandan society. This situation has been caused by a number of factors such as civil war (the fighting continues against the Lords Resistance Army in the North); oppressive dictatorships, massacres, vast social upheavals, internal displacement, the break-up of the traditional family; increasing poverty; escalating violence to women and in the last 20 years the terrible scourge of AIDS.⁸⁶

Unfortunately the widows in Uganda, like their counterparts in most parts of Africa are subjected to widowhood rites. These rites are rituals or ceremonies widows are expected to perform as part of the culture or custom of their communities. Although this situation exists in almost all parts of Uganda, it is particularly prevalent in the rural communities. It is believed that this is because of the low literacy rate in villages as compared with urban areas where women are independent and enlightened.⁸⁷

This Chapter thus focuses on widowhood rites by examining those practiced by four ethnic groups in Uganda.⁸⁸ These ethnic groups are the Baganda, the Iteso, the Bakiga and the Lugbara. It is worthy of mention that apart from these four ethnic groups, many other groups such as the Ankole, the Kigezi and the Toro have similar widowhood rites, however these groups will not be examined.⁸⁹ After studying widowhood rites as practiced among the Baganda, the Iteso, the Bakiga and the Lugbara, this chapter will examine the rationale and relevance of widowhood rites in modern times. Subsequently, there will be a discussion of the implications widowhood rites have on the human rights of widows in Uganda.

⁸⁶ EWD <C:\WINDOWS\Desktop\Empowering Widows in Development 10 Country Report Uganda.htm>

⁸⁷ Kyamutetera, 'Who is most likely to go with a widow'. *The Monitor* 6 – 12 June 2003.

⁸⁸ WLEA (n 25 above).

⁸⁹ Mugarura & Kabona, 'To inherit widows or not: what does culture say? *The Monitor* 6-12 June 2003.

3.1 Some ethnic groups in Uganda and customary perceptions of widowhood rites

3.1.1 The Baganda

The Baganda, the largest tribe in Uganda, can be found in central Uganda. Majority of the Baganda people are Christian in a society that is patriarchal and patrilocal.⁹⁰ Some of the widowhood rites associated with this tribe are as follows:

- Widows are expected to wear a topless garment. This is alleged to be evidence that they are mourning.
- Widows tie of a piece of bark cloth around their waists to indicate their new status as widows. Moslem women are however exempt from this practice.
- Christian widows are expected to weep loudly but Moslem widows are not.
- Widows are prohibited from getting a hair cut.
- Widows sleep on dry banana leaves until the funeral is over.
- Widowhood inheritance was prevalent in the past but is viewed as an outdated tradition no longer practiced.⁹¹

3.1.2 The Iteso

The Iteso inhabit a large area of eastern Uganda that extends across the border into western Kenya. This discussion is based on Kumi district, one of the homelands of the Iteso.⁹²

Some of the widowhood rites practiced by this ethnic group are:

- Mourners including widows are not permitted to bathe, eat or shave their hair for the mourning period of three days as evidence that they are grieving.⁹³

⁹⁰ WLEA (n 25 above) 40 – 41.

⁹¹ (As above) 57 - 60.

⁹² (As above) 70 – 71.

⁹³ Widows are no longer required to fast for three days.

- Widows are guarded and confined to the house for fear that they might commit suicide.
- On the fourth day, to 'cast off evil spirits', widows and close female relatives must bathe in a river or well with a traditional herb called emopin.
- On the seventh day after the burial, widows and their children must sit at the doorway with their backs to the house with legs outstretched whilst senior women pass a calabash of blood (from a slaughtered animal) over their bodies. This is to ward off evil spirits.
- On the last day of the funeral ceremony widows are made to sit in the doorway of the matrimonial home and are smeared with a locally made substance.
- Widows (as well as other mourners) are free to resume normal activities after the ceremony of 'removing ashes' on the last day of the funeral ceremony.⁹⁴
- Widows are taken to the bush and given an axe to cut down a tree signifying that they have now assumed the role of the husband and hence may undertake masculine activities.
- The last funeral rites require widows to wear their deceased husbands' clothes and sit on their stool at the entrance of the matrimonial home whilst feasting, and drinking goes on.
- Stepsons or younger brothers of deceased husbands inherit the widows. Young widows who do not have grown up children to cater for them, are chased away from the home if they refuse to be inherited. At present a widow may choose to remarry a person of her choice however if her choice does not belong to her deceased husband's clan she must leave the matrimonial home and her new husband must refund the bride price that was paid for her at the time of her marriage to the deceased.⁹⁵

3.1.3 The Bakiga

Members of this ethnic group occupy southwestern Uganda and are predominantly found in Kabale district. However many members of this group have migrated to other

⁹⁴ WLEA (n 25 above) page 92. This ceremony entails the removal of ashes by the nephew of the deceased from a bonfire.

⁹⁵ (As above) 90 – 94.

parts of Uganda such as the Rukungiri district in the northwest and Ntungamo district in the northeast. Their society, which is patriarchal, ensures that women are very dependent on their husbands. The large numbers of widows in that area is characterized by the fact that the majority of the women interviewed during the research by Women WLEA were widows.⁹⁶ The customary rites of these people include the following:

- A widow performs a ceremony at a sequester identified by a medicine man. As part of this process he rubs her 'private parts' with leaves from a plant called akatooma. Thereafter she urinates on the plant and is subjected to other rituals by the medicine man. As part of the last funeral rites a medicine man again brushes a thorny plant on the forehead of the widow. A concoction of the plant and other herbs is massaged on the parts of the widow's body including her 'private parts'. The herbs are thereafter forced under her feet symbolizing that here deceased husband no longer has any authority over her. She must also throw some of the herbs at the lower part of her bed. It is believed that if the widow has sexual intercourse with a man before these rituals, he will die.⁹⁷
- The widow moves out of her former bedroom into her children's bedroom.
- Either an adult stepson or a brother in-law inherits a widow as part of the estate of the deceased. This practice has declined in recent years because widows observed that men who inherited them rarely took care of them. They also realized that in-laws who wanted desperately to have access to the estate of the deceased were merely using them by inheriting them as wives. The scourges of AIDS and relative awareness of their rights have also encouraged some widows to reject this practice.⁹⁸

3.1.4 The Lugbara

⁹⁶ (As above) 113 – 116.

⁹⁷ It is noteworthy that due to some reasons such as the permeation of foreign religions into Bakiga culture, these practices have been modified hence women no longer perform all these rituals in detail. The influence of cultural beliefs is however, still so strong that most people still practice these rights, albeit surreptitiously.

⁹⁸ (N 2 above) 137 – 144.

The Lugbara have been described as a Sudanic people found in the northwest part of Uganda. Among these people, women are relegated to the background and until recently were not engaged in any kind of socio-political activity recognized by the community. It has been suggested that this state of affairs is attributable to the fact that the payment of bride price for Lugbara women in the past was very expensive and non-negotiable hence women were perceived as bought commodities.⁹⁹ Widowhood practices documented as being prevalent in this area include the following:

- Widows must stay in the matrimonial home for four days after the burial.
- Should they go out of the house, they can only re-enter by walking backwards into the doorway. It is believed that failure to adhere to this custom will bring ill health to their children.
- Family members of the deceased conduct informal investigations, in the form of discussions, to ascertain the caused of the deceased's death. Widows suspected of having a hand in the death of their husbands are often ostracized by their in-laws.¹⁰⁰
- Wife inheritance among the Lugbara. They do not consider wife inheritance as being tantamount to remarriage. It has actually been described as 'rescuing a women who has been rendered destitute and [this] works like automatic adoption.' Hence a widow is only inherited if she deserves it. She must, for instance, be good mannered or have children before she may be deemed qualified enough to be inherited; otherwise she may be dismissed with no property except hers. The practice of wife inheritance is still prevalent among these people. Widows who have refused to bow down to this custom paid dearly for doing so. They are denied any part of the estate of the deceased and have to fend for themselves.¹⁰¹

Widowhood rites, like many other cultural practices are justified as serving a useful purpose to the societies, which practice them. The next section therefore examines the

⁹⁹ (As above) 156 –158.

¹⁰⁰ (As above) 171 – 173.

¹⁰¹ (As above) 177 – 182.

perceived basis and rationale (if any) for widowhood rites and whether they have outlived their usefulness in this modern era.

3.2 The basis and rationale for widowhood rites in Uganda

Widowhood rites, like many other customary practices form an integral part of the cultural beliefs of most African communities. Like many other customs and cultural practices, widowhood rites serve many useful purposes.

Among the Iteso, for example, women are confined to the house during the period of mourning for fear that they might commit suicide because they may be so aggrieved and traumatized by the death of their husbands.

The felling of a tree by a widow to signify that she has forthwith assumed the role of a husband and must therefore take up his responsibilities, serves as some form of psychological boost to brace a widow for the challenges of a single parent.

Among the Bakiga, the belief that a man will die if he has sexual intercourse with the widow of the deceased before the cleansing rituals are performed, probably discourages adultery and raises moral standards. This practice may also protect widows from falling prey to men who might want to take advantage of their vulnerability during their period of bereavement.

The practice of investigating the cause of death and the subsequent ostracization of widows found guilty of being complicit in that death, among the Lugbara, might deter women, who are so inclined, from having a hand in the death of their husbands.

The importance of cleansing rituals to ward off ill luck, in societies that have superstitious beliefs cannot be overstated. It is therefore not surprising that cleansing ceremonies are prevalent in all the societies studied.

Wife inheritance in most ethnic groups is supposed to ensure that widows are not left destitute without any form of protection for themselves and their children. Hence many people regard people who inherit widows as knights in shining armour who come to the

rescue of destitute women. Its thus not surprising that a Lugbara from Ora clan in Terego county was quoted as having said that men who take over widows in their culture need to have a large heart, proven integrity and generosity.¹⁰²

3.3 Widowhood rites in modern times: an anachronism?

As stated above, there are reasons for widowhood rights. However, although the rationale for some of these rights is laudable, in some instances they actually do not serve any useful purpose. One wonders why half nakedness, starvation or confinement is evidence that a widow is genuinely aggrieved and is in mourning.

The practices associated with customary cleansing seem uncalled for and unnecessary in current times when other religions such as Christian and Islam have infiltrated the traditional belief systems of most communities. Ironically, although some of these practices have been watered down or modified due foreign and religious influence they nevertheless persist in many communities.¹⁰³

It is also quite obvious that although some widowhood rites are supposed to be advantageous to widows, they are ironically being abused for several reasons. These include the psychological domination of women by men because whereas widows are subjected to very degrading widowhood rites among the Bakiga, men are not. This is further buttressed by the assertion among the Iteso that wife inheritance is justified on the basis that a women becomes the property of her husband as soon her bride price is paid. She must therefore be regarded as being a part of his estate.¹⁰⁴ Among the Lugbara, widowhood inheritance is believed to benefit widows who would otherwise be destitute. It is therefore said to work like 'automatic adoption'.¹⁰⁵ In-laws inherit widows ostensibly to protect and provide for them, however the practice in reality shows that widows are often used as stepping-stones for the acquisition of the estate of the deceased. More often than not, the widows are abandoned when the property

¹⁰² Mugarura & Kabona (n 89 above).

¹⁰³ WLEA (n 25 above) 144.

¹⁰⁴ (As above)107.

¹⁰⁵ (As above) 177.

dissipates.¹⁰⁶ It might also be the case that wife inheritance is one of the ways in which men in patriarchal societies deny women their right to property. This is because wife inheritance and property inheritance are intrinsically linked. A society that is ready to give up wife inheritance must be prepared to empower women in several ways, prominent among which is giving them an equitable share in the estate of their deceased. Unfortunately most men in patriarchal African rural communities are reluctant to empower and upgrade their womenfolk hence wife inheritance has always be used as a tool to subjugate women.

Widowhood rites are examples of customary practices that may have served useful purposes in the past. Most of these rites must be abolished because they are no longer indispensable to the societies that practice them, as such they have no place in modern times. Apart from being outdated and anachronistic, most widowhood rites must be eradicated because they constitute gross violations of the human rights of widows.

3.4 Widowhood rites and implications for the human rights of widows in Uganda

Having looked at some examples of widowhood rites in a few communities and the rational for them in contemporary times, this paper will now focus on the implications of these rites on the human rights of widows in Uganda. It is worthy of mention that the human rights discussed below are not an exhaustive list of all the rights of widows that are violated by widowhood practices.

3.4.1 The right to dignity and Freedom from exploitation and degradation

The examples of widowhood rites cited above, are demeaning and degrading because they reduce a widow's self worth in so many ways. These practices therefore violate article 5 of the African Charter, which states as follows:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly ... torture, cruel inhuman and degrading punishment and treatment shall be prohibited.¹⁰⁷

¹⁰⁶ (As above) 182.

¹⁰⁷ This is on all fours with the preamble, article 1 and 5 of the UDHR.

The African Charter has been enhanced by article 20(a) of the Women's Protocol to the African Charter as it specifically enjoins state parties to take appropriate measures to ensure 'that widows are not subjected to inhuman, humiliating or degrading treatment.

The right to dignity, which forms the basis or foundation of other human rights, has been embodied in chapter four of the 1995 Ugandan Constitution.¹⁰⁸

The practice of wife inheritance has stood the test of time because of its exploitative nature. A widow who has no source of income cannot refuse to 'be inherited' for fear of excommunication from the matrimonial home, without any entitlements to the estate of her deceased husband.

3.4.2 The right to equality and freedom from discrimination

The UDHR states that 'all human beings are born free and equal in dignity and rights.'¹⁰⁹ The very essence and core of CEDAW centers on the right to equality. To be able to respect the right to equality one must understand what discrimination against women entails as defined by CEDAW. Discrimination against women has been defined as:

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 the basis of equality of men and women, of human rights and fundamental freedoms in the ... social, cultural or any other field.¹¹⁰(Emphasis added).

The African Charter contributes to the explanation of what the right to equality entails by stating that 'nothing shall justify the domination of a people by another.'¹¹¹ Thus, the right to equality as defined by the African charter, is further breached when one considers the

¹⁰⁸ See article 24. Although the substantive article states that 'no person shall be subjected to any form of torture, cruel or inhuman or degrading treatment or punishment' it is noteworthy that the marginal note of the said article reads: 'Respect for human dignity and protection from inhuman treatment.'

¹⁰⁹ This reiterates the importance this right is given in the preamble and 2 of the UDHR.

¹¹⁰ See article 1 of CEDAW.

¹¹¹ See article 19 of the African Charter. See also articles 2 and 3.

fact that some of these widowhood rites usually facilitate the domination of women by men.¹¹²

The African Commission interpreted the right to equality or freedom from discrimination in communication 159/96 *Union Interafricaine des Droits de l'Homme, Federation Internationale de Ligues des Droits de l'Homme, Organization National des Droits del'Homme au Senegal and Association Malienne de Droits de l'Homme v Angola*. In this case the African Commission held that the mass expulsion of West Africans from Angola without the opportunity to challenge the matter before the domestic courts was a violation of articles 2 and 3 of the African Charter because the victims were expelled on the basis of their origin.¹¹³

In the same token it is submitted that widowhood rites are cultural practices, which facilitate discrimination against women by virtue of their current status as women and their previous status as married women. These rites therefore constitute a violation of articles 2 and 3 of the African Charter.

In addition to the fact that such rights impair on the human right of widows, these practices are usually not imposed on widowers as well.¹¹⁴ In the few instances that men are also required to undergo some 'cleansing rituals' the procedures are much more simple than what their females counterparts experience.¹¹⁵ Widowhood rites are thus illustrations of customary rites and practices that CEDAW recognizes as examples of forms of discrimination against women that violate the principles of equality of rights and respect for human dignity. They are indeed obstacles to the participation of women on equal terms with men in the social and cultural life of their countries.¹¹⁶

¹¹² WLEA (n 25 above) 113-116. Among the Bakiga, for instance, it is always a medicine man and never a medicine women that performs the cleansing ceremony on a widow.

¹¹³ CD-ROM on 'The African Human Rights System' Centre for Human Rights (2002).

¹¹⁴ Erinoshu (n 18 above).

¹¹⁵ (N 2 above) page 143

¹¹⁶ Preamble to CEDAW.

The rights to equality and freedom from discrimination are entrenched in article 21 of the 1995 Constitution of Uganda. The fact that some of these practices have persisted means that the Ugandan government has failed in protecting the rights of widows and is thus in breach of article 6 of the UDHR which states as follows¹¹⁷:

All are equal before the law ... [and] *are entitled to equal protection against discrimination* in violation of this Declaration and against any incitement to such discrimination¹¹⁸ (Emphasis added).

3.4.4 Right to liberty and Freedom of movement

A cultural rite that confines a widow to a house for fear that she might commit suicide seems well meaning. This practice however, infringes on article 13 of the UDHR, which guarantees freedom of movement and residence within the borders of each state.¹¹⁹ Although article 9 of the ICCPR refers to arrests generally, this provision is nevertheless infringed when a widow is confined to the house because this deprives her of her liberty for a period of time.¹²⁰ Section 9(1) states that ‘ ...no person shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.’¹²¹

These rights have also been domesticated in Uganda as they may be found in Chapter 4 of the Constitution.¹²²

3. 4.5 The right to health

¹¹⁷ It must however be mentioned that certain laws have been enacted to protect the rights of widows. These include the Constitution of Uganda, the Succession Amendment Decree 22/72, and the Draft Domestic Relations Bill. The continued presence of these practices in many communities suggests that these measures do not suffice in protecting the rights of widows. This is more so because the African Charter places a positive obligation on states in the promotion of this right.

¹¹⁸ See also article 26 of the ICPR.

¹¹⁹ See also article 12 of the ICCPR and article 12(1) of the African Charter.

¹²⁰ In any case, the Vienna Declaration and Programme of Action (1993) has enhanced the view that all rights, whether civil-political or social- economic etc are universal, indivisible, interdependent and interrelated.

¹²¹ See also article 6 of the African Charter, and article 3 of the UDHR.

¹²² For the rights to liberty and movement, see articles 23 and 29(2) respectively.

Article 12 of the ICESCR recognizes the right to health. It is similar to article 16(2) of the African Charter, which enjoins state parties to take the necessary measures to protect the health of their people. It is noteworthy that both the ICESCR and the African Charter understand health to mean physical and mental health.¹²³

Some cleansing ceremonies or rituals and wife inheritance expose widows to some health hazards. Smearing concoctions from plants on the body of widows (including their 'private parts') might expose them to all sorts of allergies and infections. Aside the fact that many widows have contracted AIDS due to the practice of wife inheritance, the trauma of reluctantly marrying an in law or stepson a widow despises might also adversely affect a widow mentally. Another example of a rite that might affect a widow's mental health is ordeal of wearing her deceased husband's clothes whilst feasting goes on as part of the final funeral rites among the Iteso.

Although the Ugandan Constitution does not expressly provide for the right to health, it is submitted that these rituals may be prohibited by article 39, which guarantees every Uganda the right to a clean and healthy environment. Although the word 'environment' may be equated with the word 'surroundings', it has also been defined as 'all the surrounding conditions which influence growth and development.'¹²⁴ One interpretation that can be given to this article is therefore that all Ugandans, including widows, have a right to healthy conditions. As stated above, widowhood practices are conditions widows are subjected to which do not inure to their mental and physical growth and development.

3.4.6 The right to culture

Several human instruments recognize that people have a right to pursue their cultural development or participate in the culture of their community.¹²⁵ The UDHR for instance states that 'everyone as a member of the society is entitled to ... social and cultural

¹²³ See article 12 (1) of the ICESCR and article 16(1) of the African Charter.

¹²⁴ Longman dictionary of contemporary English (1978).

¹²⁵ Article 27 of the UDHR, article 17(2) and 20(3) of the African Charter, the preamble and articles 1(1), 6(2) and 15(1) (a) of the ICESCR and article 27 of the ICCPR.

rights *indispensable for his dignity*.¹²⁶ These provisions are not to be interpreted as meaning that human rights law condones and encourages cultural practices that infringe on the human rights of some group of persons as happens when widowhood rites are justified as being an intrinsic part of culture. Widowhood practices violate the provisions of CEDAW as they form a basis upon which women are discriminated.¹²⁷ They are therefore one facet of a myriad of factors that necessitated CEDAW to request 'state parties to take all appropriate measure to modify the social and cultural patterns of conduct of men and women, *with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women*.

The Ugandan Constitution provides for the right to culture as one of its fundamental human rights.¹²⁸ The said right has well also been recognized as part of the national objectives and directive principles of state policy.¹²⁹ To prevent this right from acting as a smokes screen behind which the abuse of women's rights is perpetuated, the directive principles of state policy is categorical that only those cultural values which enhance the dignity and well being of Ugandans will be promoted and preserved by the state. Under chapter 4 on the protection and promotion of fundamental freedoms, article 33(6) states:

Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution. (Emphasis added).

All the human rights instruments that promote a person's right to culture apply to both men and women. Ironically cultural practices such as widowhood rites mentioned in the previous paragraphs prevent widows from participating in and enjoying their right to culture on equal terms with their male counterparts.¹³⁰ These practices also deny widows cultural rights indispensable for their dignity.¹³¹ The safeguards, inherent in the

¹²⁶ Article 22 of the UDHR.

¹²⁷ CEDAW (n 116 above).

¹²⁸ Article 37.

¹²⁹ 1995 Constitution of Uganda, page 8.

¹³⁰ CEDAW (n 116 above).

¹³¹ This therefore constitutes a clear violation of article 22 of the UDHR.

Constitution of Uganda, to combat this unfortunate trend have however proved ineffective as the evidence on the ground suggests.

3.4.7 Freedom of opinion

A person's freedom of opinion is guaranteed by the human rights regime.¹³² Where the issue of widowhood rites is concerned, the right to opinion must be read in conjunction with article 31(3) of the Ugandan Constitution. The said article states:

Marriage shall be entered into with the free consent of the man and woman intending to marry.¹³³

Unfortunately the circumstances that usually surround wife inheritance confirms that this right is often denied widows. Widows are penalized for having an opinion as to whether or not they want to marry a relative of their deceased husbands. This is because failure to remarry an in-law automatically disqualifies a widow from having a share in the estate of her deceased husband.. Of the four societies studied, it is only among the Bakiga that in modern times, a widow can marry a brother in-law of her choice without being castigated for it.¹³⁴

3.5 Conclusion

A study by WLEA of four communities in different regions of Uganda has highlighted some widowhood rites prevalent in Ugandan communities. As discussed above, these rites are not only outdated but they also infringe on several human rights of widows and women. The next chapter will thus examine, the legal responses to the plight of widows in Uganda.

¹³² Article 8 of the African Charter, article 19 of UDHR, 19(1) of ICCPR etc

¹³³ See also article 16(2) of the UDHR, the article 10(1) of the ICESCR, articles 16(1) (a & b) of CEDAW, and article 1(1) of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage.

¹³⁴ WLEA (N 25 above) 139 - 140

CHAPTER FOUR: DOMESTIC LEGAL RESPONSES TO WIDOWHOOD RITES IN UGANDA AND THE LESSONS THEREFROM

4.0 National framework in Uganda and regime for the protection of widows' rights

As discussed in the previous chapter, the human rights of widows in Uganda are constantly being abused because of the rites they are expected and made to perform by virtue of their being widows. Most of these rites are as old as the communities that practice them and have stood the test of time. Uganda has been a member of the UN since 1962¹³⁵ and has ratified an impressive number of human rights instruments, including those that are specifically for the protection of women's human rights.¹³⁶ Being a member state of the OAU/AU it is also bound by the provisions of the African Charter. Uganda has also attended and participated in the UN conferences aimed at enhancing the human rights of women. It can even boast of being the first African country to host the International Women's World Congress in 2002.¹³⁷ The theme of all these activities centers either on the protection and promotion of the human rights of all persons or more specifically around the protection of the rights of women. Accordingly, Uganda in fulfilling its obligation to protect and promote the human rights of all persons within its territory must target specific groups of peoples such as widows to ensure that no one is left out.

This chapter sets out to ascertain whether there is a national framework for the protection of rights of widows by examining the efforts the various legal institutions have made in this direction.

4.1 The Constitution and the rights of widows

Chapter Four of the 1995 Constitution of Uganda embodies the promotion and protection of human rights and freedoms. This chapter has domesticated the provisions of major

¹³⁵ See List of Member States of the UN <<http://www.un.org/Overview/unmember.html>> (Accessed on 2nd October 2003).

¹³⁶ It ratified CEDAW in 1985.

¹³⁷ See Desiree Lewis & Elaine Salo, 'A Review of the 8th International Interdisciplinary Congress on Women: Gendered Worlds: Gains and Challenges', <<http://www.gwsafrica.org/activities/women'sworldreport.htm>> (Accessed on 10 October 2003).

human rights instruments including the UDHR, the ICCPR, the ICESCR, CEDAW and the African Charter, to mention a few. Hence as stated in the previous chapter, most widowhood rites infringe on the provisions of the Constitution of Uganda as well.

Article 33 of the Constitution gives effect to CEDAW because it focuses on protecting and promoting the rights of women. Some provisions in chapter four even make specific references to the rights of widows. Article 31(2), for example, seeks to protect the rights of widows, however it is restricted to property and parental rights. Although article 33 does not expressly mention widows, the plight of widowhoods, in relation to widowhood rites has been addressed in the following terms:

... Women shall have the right to affirmative action for purpose of redressing the imbalances created by history, tradition or custom.¹³⁸

Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.¹³⁹

Widowhood rites form an integral part of the cultures, customs and traditions of the communities in which they are practiced. They therefore simultaneously violate the rights of widows and the provisions of the Constitution that guarantees women's rights. Accordingly, not only must these rites be abolished but also the state must take the necessary affirmative action to achieve this end as soon as possible.

These provisions are laudable and they are must be made functional by the activities of the various arms of government. The ensuing paragraphs seek to determine whether mechanisms have been put in place to give effect to the constitutional provisions cited above.

4.2 Statutory law approaches to widowhood rites

Several laws have been enacted to address some peculiar problems which Ugandan women face. The Local Government Act 1997, for instance, provides for women to form one third of the seats of local councils at every level; the Land Act 1988 also ensures

¹³⁸ Article 33(5) (n 129 above)..

¹³⁹ (As above) article 33(6).

ownership of land by women and the Succession Act (Amendment) Decree N0 22 of 1972, has given women a chance to inherit property. The Draft Domestic Relations Bill seems like the perfect answer to the plight of women in domestic relations. It is the only statute that addresses widowhood rites. Unfortunately, in spite of all these impressive developments, the rights of widows are far from being adequately protected. The Draft Domestic Relations Bill that seems like the solitary (statutory) answer to the plight of widows is restricted to the issue of wife inheritance only. It prohibits wife inheritance unless parties to such a practice freely opt for it.¹⁴⁰ Sorry to say, Parliament has failed to give effect to article 32 of the Constitution that enjoins it to enact legislation as one of the measures of affirmative action that the state shall embark on to 'favour groups marginalized on the basis of gender ... or any other reason created by tradition or custom.' A glaring example of this omission by Parliament is the absence of legislation that addresses other dehumanising widowhood rites, apart from wife inheritance, that violate the human rights of widows with impunity.

4.3 Customary law and Widowhood Rites

Customary law may be described as unwritten law by which traditional societies regulate their affairs. In Uganda, 'civil customary law' has been defined as 'the rules of conduct which govern legal relationships as established by custom and usage and not forming part of the common law nor formally enacted by Parliament.'¹⁴¹ Black's law dictionary equates custom with customary law as follows:

*A usage or practice of the people, which, by common adoption and acquiescence, and by long and varying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject-matter to which it relates*¹⁴² (emphasis added).

Customary law differs from community to community. It is also dynamic as it evolves to meet the exigencies of the times.¹⁴³ Customary law in most societies in Uganda recognize and endorse widowhood rites. As such among such indigenous communities

¹⁴⁰ Article 17.

¹⁴¹ Magistrates' Courts Act 1964 (Cap 36) section 37(1).

¹⁴² Black's law dictionary (sixth edition) West Publishing Co (1990).

¹⁴³ Allot, *New Essays in African Law* Butterworth and Co Ltd (1970) 150.

there is no redress for a widow who feels aggrieved by, and needs protection from some widowhood rites. Indeed, as discussed in the previous chapter, widows who dare to defy the status quo are ironically punished instead.¹⁴⁴ Customary law therefore perpetuates the violations of widows' rights by endorsing the practice. However, that customary law is indeed dynamic is evinced by the fact that the incidents of wife inheritance has reduced greatly to address the AIDs pandemic.

4.4 Tensions between customary law and written laws.

The supremacy of the Constitution is entrenched in article 2 of the Constitution. To buttress this provision, article 2(2) states as follows:

If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.

The Judicature Act, Cap 13 recognizes customary law as law that should be observed and enforced on condition that it is not repugnant to natural justice, doctrines of equity and good conscience and is not incompatible with any written law.¹⁴⁵ This principle was applied in the High Court case of *John Tom Kintu Muwanga v Myllious Gafabusa Kintu*.¹⁴⁶ In that case the learned judge held that when parties opt to be governed by customary law in their marriage they are presumed to have made an undertaking to be governed by the same rules before, during and after the marriage. However, these rules or customs must comply with the Constitution. Hence if such rules are against the dignity, welfare or interest of women and undermine their status, article 33(6) of the Constitution prohibits them.

Notwithstanding these provisions, many aspects of customary law, which clash with the Constitution and statutory law, still abound. Widowhood rites are apposite examples of existing customs that infringe on articles 33 (6) of the Constitution. Interestingly, it is

¹⁴⁴ An example is excommunication of the widow by the family of the deceased husband, without any entitlements to the property of the deceased.

¹⁴⁵ Section 15.

¹⁴⁶ *John Tom Kintu Muwanga v Myllious Gafabusa Kintu* (Divorce Appeal NO 135/1989) High court, Uganda.

difficult to say that customary law clashes with statutory law where widowhood rites are concerned because there is currently no statutory law on the subject. Hopefully, the Draft Domestic Relations Bill will be enacted expeditiously to reverse this situation.

4.5 National policies and widowhood rites

There have been a number of national policies aimed at promoting and enhancing the human rights of women.¹⁴⁷ These include the Programme for the Alleviation of Poverty and Social Cost Adjustment and the more recent National Poverty Eradication Action Plan.¹⁴⁸ These initiatives sought to empower women in diverse ways and by so doing promote their human rights. The rights of widows as regards dehumanizing widowhood rites were however relegated to the background until 1999. In that year, the government came up with the National Action Plan on Women to cover a five-year period.¹⁴⁹ Although it does not directly address the issue of widowhood rites, the strategic objectives on reproductive health and rights has a bearing on widowhood rites. One of these objectives is to eliminate socio cultural practices that endanger the health of women. To achieve this, the government (via the Ministry of Gender, Labour and Social Development) (Ministry of Gender) with other stakeholders are *inter alia*:

- to identify and define negative and positive cultural practices in Uganda;
- to strengthen awareness about harmful traditional practices to cultural opinion leaders and other community members;
- and to enforce the Constitutional prohibition against harmful practice through supportive legislation.

Unfortunately as at present, these strategic actions have not targeted widows although widowhood rites affect the health of women in diverse ways.¹⁵⁰ Happily, the Ministry of Gender is in the process of drafting a culture policy. One of its objectives is to 'guide the

¹⁴⁷ Some of these initiatives are not targeted at women only.

¹⁴⁸ The National Action Plan on Women, (1999) Directorate of Gender and Community Development, Ministry of Gender, Labour and Social Development 5 – 6.

¹⁴⁹ (As above)

¹⁵⁰ Interview with Margaret Mabweijano, Assistant Commissioner for Gender and Community Development.

development and implementation of interventions that will seek to understand the values behind traditions and practices while building the capacity of communities to address harmful practices and enhance those that foster people's participation and benefit from culture.¹⁵¹ Most widowhood rites fall within the ambit of 'harmful practices'. It is therefore hoped that this project will help eradicate dehumanising and derogatory widowhood rites. It might however take a considerable period of time for this draft to metamorphose into a Bill presented before Parliament and finally into law. The delay caused by bureaucracy is just one reason for this state of affairs.¹⁵²

Several institutions, governmental and non-governmental have contributed in diverse ways to give effect to the government's policies geared towards promoting the rights of women. These include specialized agencies whose functions affect women's human rights such as Law Reform Commission and the Human Rights Commission.¹⁵³ They supplement the activities of the Ministry of Gender in enhancing the rights of women. At the grass root level, the agencies of the state such as the Administrator General's Department, Probation Offices, and the Local Councils go as far as protecting the rights of widows in so far as such rights have to do with inheritance or succession issues.¹⁵⁴ NGOs such as FIDA, OXFAM, Legal Aid Project LAP and ACFODE are also popular for their interest in the human rights of women.¹⁵⁵

The importance of these institutions in the protection and enhancement of women's rights in Uganda cannot be overemphasized. Sadly, however, their activities have not extended to the issue of widowhood practices

4.6 Common law position and judicial decisions on widowhood rites

The formal courts of Uganda have had the opportunity to develop the common law as it pertains to the property rights of women. Many widows have instituted proceedings in

¹⁵¹ Fourth Draft of the Culture Policy (2003), prepared by the Ministry of Gender, Labour and Social Development.

¹⁵² Interview with Pamela Batenga, Senior Culture Officer, Ministry of Gender.

¹⁵³ (n 1487 above) 18.

¹⁵⁴ WLEA (n 25 above) 244

¹⁵⁵ As above.

the formal courts in pursuit of their property rights.¹⁵⁶ The same assertion cannot be made with reference to widowhood rites. During this research, no case law could be found on widowhood rites. Although the issue of wife inheritance is the only widowhood rite that has aroused a lot of debate in Uganda, no judicial precedent could be found on it as well. Perhaps the case of *Maliyam Adekur and Another v James Opaja and Attorney General*¹⁵⁷ would have been the *locus classicus* on wife inheritance. The First Respondent in this case was to inherit the First Petitioner, who was the widow of his deceased brother, according to Iteso custom. He therefore caused the arrest of the First and Second Petitioners when they got married and had them charged with elopement. The Petitioners subsequently filed this petition against the Respondents on the grounds that their arrests caused by the Respondent and their subsequent prosecution was unconstitutional. In particular, they contended that the custom of wife inheritance infringed upon first Petitioner's rights guaranteed under article 31(2), 31(3), 33(1) 33(4) and 33(6) of the 1995 Constitution of Uganda.

Unfortunately the case was thrown out on a preliminary objection. The court upheld the contention by the Attorney General (the Second Respondent) that he had been wrongly joined to the suit and on that basis struck out the case without making a pronouncement on the issue of the practice of wife inheritance in light of the provisions of the Constitution.

Hence, although most widowhood rites are in violation of the Constitution and the Judicature Act, the courts of judicature in Uganda have not contributed to reverse this trend, by developing the jurisprudence in this area through judicial precedent.

4.7 Adequacy of the legal regime in addressing violations of widows' rights

The Ugandan Constitution, directly¹⁵⁸ and impliedly¹⁵⁹ addresses violations of the rights of widows, as discussed above. The provisions of the Constitution must however be

¹⁵⁶ There are several of such case studies in WLEA, *The law of succession in Uganda: Women, inheritance laws and practices, essays and cases* (1994) WLEA Publications NO 1.

¹⁵⁷ *Maliyam Adekur and Another v James Opaja and the Attorney General* (Constitutional Petition 1/97) Constitutional Court, Uganda.

¹⁵⁸ Article 31(2) (n 129 above).

given effect to by the various organs of government. An examination of the activities of the executive, legislature and the judiciary have shown that the rights of widows are far from being protected as widowhood rites have totally been ignored.

Any discussion about the adequacy of the legal regime in addressing widowhood rights at present is a premature because the legal regime has done absolutely nothing in this direction. One may only talk about the adequacy of the legal regime in addressing the rights of widows when the Draft Domestic Relations Bill becomes law. Ironically, even when the Domestic Relations Act comes into existence, the legal regime will nevertheless be criticized for being derisory in the protection of widows' rights. This is because it addresses the issue of wife inheritance only and completely ignores other widowhood rites, the practice of which also amounts to gross violations of the human rights of widows.

4.8 Conclusion

Widowhood rites have endured throughout the ages as part of the customary law of many communities, although many aspects of those rights infringe upon the human rights of widows. Prominent among the reasons, which account for this lamentable state of affairs, is the fact that the legal regime in Uganda has failed woefully in its obligations in addressing this issue.

It is thus hoped that the recommendations made in the next chapter will be useful in overturning this regrettable trend.

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(As above) article 33(5) & (6).

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

As has been stated in the first chapter of this paper, women's rights in general have gained considerable attention from the UN and the international community. As a result, women's rights all over the world have been given increased recognition and respect. Most human rights instruments, however, do not take cognisance of specific categories of women, with special needs such as widows. One of the reasons for this situation is because more often than not, women are treated as a homogenous group. The plight of widows in Uganda has shown that a lot remains to be done to address the needs of several categories of women in Africa.

The call for a more pro-active approach in this direction is absolutely urgent when one considers the fact that Uganda has made much more progress in the protection of widows' than many other African countries. This assertion is made on the basis that although countries such as Nigeria, Tanzania and Malawi practice very harmful and dehumanising widowhood rites¹⁶⁰ there is no express provision that caters for widows in their constitutions in the manner the Uganda Constitution does.¹⁶¹ To buttress this point further, in April 1999 the Zimbabwe Supreme Court decided in a 5-0-landmark decision that customary law takes precedence over the Constitution. Venia Magaya, a 58 year old seamstress sued her brother for ownership of her deceased father's land, after he evicted her from her home. The court ruled unanimously that African society considers that women are unable to look after their birth family property since on marriage they are committed to a new family. The Court further ruled that according to cultural practices women are not considered as adults within a family but their status is equated to that of teenagers. Interestingly, the Court also held that customary law took precedence over statutory law and the Constitution blessed this sort of discrimination in family matters.¹⁶²

¹⁶⁰ See EWD, 'National Developments: Africa' <C:\WINDOWS\Desktop\EWD News on Widows in Africa - recommendations on widowhood rites.htm> (Accessed on 5 August 2003).

¹⁶¹ Article 31(2) (n 129 above).

¹⁶² Reported in the South African Mail and Guardian, 7 May 1999 as cited in N Barney Pityana, 'The Challenge of culture for human rights in Africa' (n 16 above) 237 - 238.

The implications of such a decision on the rights of widows in Zimbabwe leaves much to be desired. By this decision, widows cannot even get protection from the Constitution since widowhood rites are an integral aspect of customary law, which has been held to supersede the Constitution in family matters.

By using Uganda as a case study, the final chapter of this paper has therefore been devoted to suggestions that may enhance the human rights of women and more particularly widows in Uganda. In making these recommendations, cognisance is taken of the fact that improvements to the enforcement of rights of widows must be made in the international, regional and finally national arenas, if such improvements are to be of any substantial benefit to the Ugandan widow.

5.1 Recommendations at the international level

One of the biggest challenges to the promotion of widow's rights stems from the fact that there seems to be ignorance about or even apathy towards the plight of widows, at the international level. One big step in reversing the prevailing trend of massive violation of widowhood rights is through publicity, so as to raise awareness about the plight of widows in Africa.¹⁶³ To this end the UN may declare a year as the 'International Year of Widows' as it did in the case of the aged, the family and elderly in the years 1982, 1994 and 1999 respectively.¹⁶⁴ During this period, UN agencies such as CSW, the Committee for CEDAW, the Economic and Social Council (ECOSOG), and the General Assembly may call for and monitor the preparations for UN conferences on women that focus on widows. The importance of world conferences in publicizing human rights is evidenced by the successful manner in which the four main conferences on women¹⁶⁵ has brought women's human rights to the fore front. It is therefore hoped that this sort of publicity will bring the plight of widows to the fore and this may mark a starting point for affirmative action to better the lot of widows, particularly in Africa.

¹⁶³ Countries in other continents, such as India and Bangladesh in South Asia, where violations of widows' rights are equally rife will also benefit from this exercise.

¹⁶⁴ (n 91 above) As stated above, the UN has taken this initiative in respect of the family, the elderly and the aged.

¹⁶⁵ See page 13, section 2.1.3 above on UN conferences on women.

Apart from conferences, other programmes may be engaged in to address issues peculiar to widows. The Special Rapporteur on Violence Against Women may be tasked with the responsibility of visiting countries in which widows' rights are violated with impunity. Through these fact-finding visits, the issue of widowhood rights could be brought to the attention of many governments that may have overlooked such practices as one major problem confronting widows. As mentioned above, the findings of the 2000 annual report of the Special Rapporteur on Violence against Women inspired the Commission on Human Rights to adopt a resolution on property beneficial to women.¹⁶⁶ In like manner, a report by the Special Rapporteur on Violence against women that focuses on widows might urge any specialized organ of the UN to call for the adoption of a resolution which enhances the rights of widows worldwide.

When the Committee on the Elimination of Discrimination against Women (Committee on CEDAW) reviews periodic reports by State parties it may come up with recommendations and observations beneficial to widows. The first step in this direction is to ask States such as Uganda to report on the status on widows because they have hitherto failed to do so.¹⁶⁷ Uganda should be encouraged at international fora to ratify the Optional Protocol to CEDAW. The complaint's mechanism and inquiry procedure are avenues that may be used to enhance the rights of widows in Uganda.

As stated in chapter two, there are numerous international bodies that have been created by the UN to advance the promotion of women's rights.¹⁶⁸ These institutions may be urged to concentrate on or give some attention to the plight of widows. INSTRAW, for example, may focus on under-privileged widows such as those in Africa by training them to be self-sufficient. This effort may be supplemented by that of UNIFEM, which concentrates on small-scale income generating projects for women. This will in no small measure improve the conditions of widows in Africa, most of whom are subjected to all forms of abuse on account of their being illiterate, poor and totally reliant on the families of their deceased husbands for survival. Activities of UN bodies aimed at empowering women will therefore play a vital role in emancipating women from some of these

¹⁶⁶ Benschop and Lacroux (n 49 above)

¹⁶⁷ See the 1999 Third Country Status Report to CEDAW (n 27 above).

¹⁶⁸ See page 14, section 2.1.4.

derogatory widowhood practices.

Perhaps O'Hare's assertion is the best way to sum up the role of the international community, in promoting the rights of widows in Africa. She states that to enhance women's rights, the mainstream human rights bodies must 'eliminate the societal attitudes and structures that support the systematic gender-based violence against women and other forms of oppression of women'. To this end, 'the boundaries of mainstream international law must be reoriented to incorporate women's experiences and issues.'¹⁶⁹ It is submitted that if the author's recommendations are taken seriously the UN will devote more time, energy and resources towards advancing the human rights of women in general. This is bound to affect all or most categories of women, such as widows in Africa.

In summary, for the international human rights regime to have a meaningful impact on the protection of widows' rights, widows' issues must be moved 'from the margins to the centre'.¹⁷⁰

5.2 Recommendations at the regional Level

As discussed in chapter 2 above, the African human rights system has contributed in diverse ways in enhancing the promotion and protection of human rights in Africa. It has not only complimented the work of the international human rights system by lightening the latter's load, it has also concentrated on areas peculiar to Africa and which may be easily overlooked by the broader international community.¹⁷¹

Widowhood rites, for example, exist in different parts of the world; however, most African countries have indigenous communities that have practiced dehumanising widowhood rites from time immemorial. Hence, whilst measures to reverse this trend at the international level are being debated, it is only prudent and logical to introduce similar

¹⁶⁹ O'Hare (n 13 above)

¹⁷⁰ (As above) Bunch, 'Transforming Human rights from a Feminist Perspective', in Women's Rights, Human Rights as cited above.

¹⁷¹ The right to development, in article 22 of the African Charter is an example of a right that is not recognized by any other international human rights instrument.

measures within the African human rights system that has mechanisms best suited to deal with the peculiarities of the continent.

The African Charter has proved inadequate in protecting the rights of specific groups of women, such as widows. The Women's Protocol to the African Charter sought to address this issue. Accordingly issues pertaining to widows have been addressed in articles 20 and 21 in a comprehensive manner. However, there is still some room for improvement. The Protocol to the Charter, for example, could have given widows the benefit of the right to welfare and social services within certain circumstances.¹⁷² Many widows will be encouraged to resist certain widowhood rites if their states provided them with some sort of welfare scheme. This is because, for most rural African women, being married is a source of livelihood, as they are totally dependent on their husbands for their upkeep. The practice of widowhood inheritance has fed and survived on this unfortunate situation. The omission of a provision similar to article 25 of the UDHR in the Protocol to the Charter is therefore unfortunate.

It is thus hoped that the African Commission will organize regional conferences seminars and symposia focusing on widows.¹⁷³ Such activities may beef up the Protocol on Women, which still leaves a lot to be desired. To this end, governments should be encouraged to empower rural widows economically. Also states may be encouraged or mandated to provide some sort of welfare scheme that will benefit widows. They may do this by signing declarations relevant to this issue as was done with the Declaration on the HIV/AIDS Epidemic at the XI International Conference on AIDS and STDs in Africa in 1999, and the Declaration on Gender and Development in 1997 by Heads of State or Government of the Southern African Development Community.¹⁷⁴

Additionally, the African Commission may focus on widows when assessing the country reports of states and insist that states puts in place measures to promote and protect the rights of widows. In its latest report before the African Commission, although Uganda highlighted some ways in which the rights of women were being advanced, nothing was

¹⁷² Such a provision would have been similar to article 25 of the UDHR.

¹⁷³ Article 45(1) (a) of the African Charter mandates it to do so.

¹⁷⁴ (n 45) above.

said about the steps the government was taking to protect the rights of widows.¹⁷⁵ Uganda, as well as other African governments should be encouraged to incorporate the legal status of widows in their reports.

It is hoped that the African Commission and later the African Court (when it comes into operation) will adopt a progressive approach in the interpretation of the provisions of the Women's Protocol to the African Charter. This will enhance the Women's Protocol to the Charter in protecting the rights of widows. To achieve this, the African Commission and the African Court are being urged to emulate the example of the Inter-American Court, which held that states may be charged for not living up to their responsibility in protecting the rights of persons even if such rights were abused by non-state actors. This progressive approach to interpretation was applied in the case of *Valasquez-Rodriguez v Honduras* as follows:

An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.¹⁷⁶

Although states may not be overtly responsible for the violation of the rights of widows, decisions such as this will urge them to address issues, such as dehumanising widowhood rites, which are often foisted on widows by members of their communities.

The Special Rapporteur on Women may focus on widows during any promotional visits she embarks on to various African countries. Her reports on what pertains on the ground will go a long way to educating the continent about widow's rights and the need to respect them as human rights.

Any efforts at improving the awareness of the plight of widows at the regional level will be a flash in the pan without the valuable assistance of NGOs. As has been the case

¹⁷⁵ See the 2000 Country Report to the African Commission (n 28 above).

¹⁷⁶ Case 78920, Ser.C, No.4, inter-Am.Ct H.R.35, O.A.S. Doc. OEA/Ser.L/V/III.19, doc.13 (1988) (judgement of 29 July 1988).

with most of the activities of the African Commission, NGOs provide all sorts of technical, material and financial support to enable the Commission to carry out its duties in the protection of human rights on the continent. Motala has highlighted some of the significant activities of NGOs in the African human rights system.¹⁷⁷ These include their contribution to sessions of the African Commission in their role as observers and when they submit shadow reports to either compliment or contradict the reports of states. The publicity and media support that they give to the activities of the African Commission has been described as ‘an important tool for human rights work as it provides the means for the transmission of information about human rights issues.’¹⁷⁸ As with the Protocol on the rights of women and the Protocol to the African Court, it is hoped that NGOs will take the initiative in bringing issues concerning widows to the agenda of the African Commission.¹⁷⁹ It is also hoped that the promotional work of the Special Rapporteur on women will soon be supported by NGOs interested in widows so as to usher the needs of widows to the forefront of the Commission's activities. Hitherto, NGOs such as Empowering Widows in Development, FIDA, WILDAF, INTERIGHTS and IHRLG have contributed in diverse ways to better the lot of widows. It is however submitted that the persisting plight of widows in most African countries is sufficient evidence to suggest that more NGOs are needed to focus on widows at the international and regional levels.

The decisions of the African Court in the interpretation of the provisions of the Protocol on Women will mark a new dawn in the protection of the rights of widows in Africa. It is therefore imperative that the NGOs encourage states to ratify these two protocols as they did with the African Children’s Charter¹⁸⁰

5.3 Recommendations at the national level

The whole essence of advocating for the rights of widows to be recognized and enhanced at the international and regional level is to ensure that at the domestic level, states are pressured into fulfilling their obligations and responsibilities to all groups in the

¹⁷⁷ See Motala, (n 70 above) 246 - 279.

¹⁷⁸ (As above) 255

¹⁷⁹ (As above) 226 & 274.

¹⁸⁰ (As above) 278.

society including widows. Hence apart from ensuring that the human rights of widows are promoted and respected from as far high the human rights hierarchy as the international community, states must take the necessary steps to domesticate these rights in a manner that will affect the widows within their jurisdictions positively.

It is estimated that some 70% of all women in Uganda over 50 years may be widows.¹⁸¹ Although this figure might not be very accurate, it nevertheless depicts that a startling percentage of adult women in Uganda are widows. Consequently, Uganda cannot effectively protect the interests of its women folk if widows are not specifically targeted as part of such an exercise. To this end, dwelling on Uganda as a case study, this paper will make recommendations targeted at the different arms of government and at other stakeholders such as NGOs and Civil society.

5.3.1 The role of the executive arm of government

5.3.1.1 The National Action Plan on Women and widows' rights

The executive arm of the Ugandan government, like all other African states has a duty to protect, respect, promote and fulfill the human rights of widows, whether they are considered as a minority group or not. Hence the executive has an obligation to formulate and implement policy that will be to the advantage of widows by seeking to reverse the current trend of gross violations of widows' rights. The government should therefore increase the empowerment of women through policy. In this vein, as stated earlier, the Government of Uganda through the Ministry of Gender must be applauded for its efforts in coming up with a National Action Plan for Women (The Plan), which has a five year mandate from 1999 to 2004. Honorable Janat Mukwaya,¹⁸² Minister for Gender, at the time of the publication of the Plan, said that its goal is to achieve equal opportunities for women by empowering them to participate in, and benefit from, social, economic and political development.¹⁸³ The government has prioritized four main areas of concern in its efforts to achieve its goal. These are:

¹⁸¹ EWD (n 86) above.

¹⁸² Honorable Janat Mukwaya is currently the Minister of Justice.

¹⁸³ (n 148 above).

- Poverty, income generation and economic empowerment.
- Reproductive health and rights.
- Legal framework and decision-making.
- The girl child and education.

As stated in the previous chapter, although the Plan does not directly address the issue of widowhood rites, the strategic objectives on reproductive health and rights has a bearing on widowhood rites. This is because; the objective of eliminating socio cultural practices that endanger the health of women indirectly implies the elimination of most harmful and dehumanizing widowhood rites. Whilst it is true that the Plan is an important step in enhancing the rights of women, its implementation procedures have still not affected widows in many ways. As at now, no steps have even been taken to document the widowhood rites that widows in the various communities are subjected to.¹⁸⁴ As documentation involves the preliminary stage in a process of this nature, one wonders when any efforts will be made towards the more substantive procedure of actually eliminating the harmful aspects of such practices. It is hoped that during the final year of its mandate the necessary steps shall be taken to ensure that the Plan becomes more beneficial to widows by correcting this important omission.

It is however worthy of mention that some of the activities under the Plan have inadvertently benefited widows. The Plan's objectives and activities on 'Poverty, Income generation and Economic Empowerment' are gradually empowering women economically.¹⁸⁵ As already stated, women who have a source of livelihood to sustain themselves will not be intimidated into performing certain dehumanizing rites. This is contrary to the current situation whereby widows in most communities kowtow to these practices because they are dependent first on their husbands, and when their husbands die, they then become dependent on their in-laws for their survival. Another important aspect of the Plan is its emphasis on 'the girl child and education'.¹⁸⁶ Due to this initiative, many girls, who would never have had the benefit of an education are getting

¹⁸⁴ (n 152 above).

¹⁸⁵ (n 148 above).

¹⁸⁶ (As above) pages 24 – 29.

educated. Even more impressive, is the fact that the Plan has provided for adult literacy programmes and education for women. The importance of these activities cannot be overemphasized. This is because apart from the fact that most widows adhere to dehumanizing widowhood rites because they are economically vulnerable, another major reason is because they are ignorant about their rights and are easily manipulated by the men in their societies.

The objectives and strategies outlined in the Plan are bound to be of great gain to widows, albeit in the future. It is however important that more immediate actions be taken to reverse the plight of widows within the shortest possible time.

5.3.1.2 Legal Aid Scheme and widows' rights

The Ministry of Justice and Constitutional Affairs has provided for a legal Aid Scheme. This Scheme may target widows as one of the vulnerable and disadvantaged groups in need of legal aid. This will assist widows who cannot afford litigation to fight for their rights in court. This will also help develop the case law jurisprudence on constitutionality of widowhood rites. In this connection, the necessary steps should be made to implement the Advocates (Amendment) Act, 2003 which makes the provision of legal aid services an obligation for practicing lawyers. A percentage of these services may be allocated to issues of widowhood inheritance.

5.3.1.3 Governmental and Non- Governmental Organizations and widows' rights

As stated earlier, the Ugandan Human Rights Commission and the Law Reform Commission are specialized agencies of the government that enhance the human rights of women. NGOs such as FIDA, OXFAM, LAP and ACFODE are also popular for their interest in the human rights of women.¹⁸⁷

However, these institutions have not taken any steps to curb the incidents of dehumanizing widowhood rites. It is recommended that these institutions should concentrate on widowhood rites in the fulfillment of their mandate in protecting and

¹⁸⁷ WLEA (n 25 above) 244.

promoting the rights of women.

NGOs, for example, may emulate the example of their counterparts in Malawi. In 1998 Women and Law in Southern Africa (WLSA) and the Malawi Women Lawyers Association started planning for a Malawi national Widows Conference with support from the British Council. The inheritance issue, along with violence and degrading traditional mourning rites was to be on the agenda of this conference.¹⁸⁸

These institutions may also put pressure on the government of Uganda to ratify the Optional Protocol on CEDAW and the Women's Protocol on the African Charter. This will enable widows, with the assistance of International and national NGOs to access the complaint's mechanism under the Optional Protocol to CEDAW. At the regional level, widows will only be able to take advantage of the African Court and the provisions of the Women's Protocol to the African Charter, when they come into force, and when Uganda has ratified them

In Uganda, the decentralized governmental framework is a key issue that cannot be overlooked in the process of enhancing the rights of widows. It has been established in the preceding paragraphs that widowhood rites are prevalent in indigenous communities. Hence decentralized arrangements could provide an excellent framework for enhancing the protection of widows thereby giving effect to the Constitution which states as follows:

Decentralization shall be a principle applying to all levels of local government and in particular, from higher to lower local government units to ensure peoples' participation and democratic control in decision making;¹⁸⁹

Hence government institutions such as the Human Rights Commission may have branches at the local level to supplement the work of the courts. This will bring redress, in the form of government agencies, to the doorstep of widows. As at now, the distance between the Human Rights Commission and some remote villages serves as a deterrent in terms of cost, time and convenience and such many widows cannot take advantage of

¹⁸⁸ EWD, 'National Developments: Africa' <C:\WINDOWS\Desktop\EWD News on Widows in Africa - recommendations on widowhood rites.htm> (Accessed on 5 August 2003).

¹⁸⁹ Article 176(2) (b) (n 129 above).

its facilities.

5.3.2 The role of the legislative arm of government.

Uganda must be commended for having an impressive number of legislation that affects widows in one way or the other. These are the Constitution of Uganda;¹⁹⁰ the Administrator General's Cap 140; Customary Marriages Registration Decree 16/73; Succession Act, Cap 139; and the Succession Amendment Decree 22/72. Since 1999 there has been a Draft Domestic Relations Bill. Unfortunately, as already stated, the Draft Domestic Relations Bill is the only law that focuses on widowhood rites. Worse still, this Bill in its current state, cannot adequately protect the rights of widows because it deals with only wife inheritance to the exclusion of other widowhood rites that infringe on the human rights of widows.¹⁹¹

This paper therefore urges Parliament to outlaw cultural aspects of customary law that infringe on the human rights of widows. To compliment this move, a law which focuses on widows may be passed by Parliament. This law should give effect to international and regional law by outlawing discrimination in domestic relations, for example. The provisions of the Women's Protocol to the African Charter may be incorporated into such a law. The standards raised in the said Protocol may be raised even higher in the domestic legislation on widows. Hence, as discussed above, the domestic law on widows may provide for a social welfare scheme for widows, whereas such a provision is absent in the Women's Protocol to the African Charter. Although the Judicature Act has stipulated that customary law must be compatible with written law, it is further suggested that the proposed law on widows should categorically state that in the event that there is a conflict between customary law and the provisions of such a law on widows, the latter must prevail.

As has been done in Ghana, the practice of dehumanizing widowhood rites should attract severe penalties under the criminal laws of Uganda.¹⁹² The Criminal Code

¹⁹⁰ See the whole of chapter 4 on the 'protection and promotion of fundamental and other human rights freedoms' but more particularly, articles 31,32, 33 and 37.

¹⁹¹ Article 17.

¹⁹² Ghana Criminal Code (Amendment Law) 1984.

Amendment Law 1984 of Ghana has provided for the insertion of sections 88A and 278A into the Criminal Code as follows:

88A (1) Whoever compels a bereaved spouse or a relative of such spouse to undergo any custom or practice that is cruel in nature shall be guilty of a misdemeanour
(2) For the purpose of subsection (1) of this section a custom or practice shall be deemed to be cruel in nature if it constitutes an assault within the meaning of sections 85, 86, 87, 88 of this Act"

Section 278A Whoever compels a bereaved spouse or a relative of such spouse to undergo any custom or practice that is immoral or grossly indecent in nature shall be guilty of a misdemeanour

It is hoped that Parliament will seek inspiration from the Ghanaian criminal law, in coming up with a law or amendment that criminalizes widowhood rites. The fear of criminal sanctions will deter people from subjecting widows to dehumanizing widowhood rites.

Lastly, parliament is encouraged to review legislation that regulates domestic relations regularly. This is an efficient way of dealing with the dynamic nature of customary law, by quelling any developments that may arise to whittle down the effects of legislation aimed at promoting the rights of widows.

5.3.3 The role of the judiciary

The judiciary is also indispensable in enhancing the rights of widows in Uganda. This is because the courts are the organs of the state, most easily accessible to aggrieved persons. Their decisions are also of more binding force than any other pseudo-judicial organ, such as the Human Rights Commission, or NGOs¹⁹³ that have some sort of complaint's mechanism. Judges are also placed in a unique advantageous position of being able to complement the Constitution and other statutory laws through progressive decisions. This advantage may be used to protect and promote the rights of widows, which have been abused for far too long. To utilize this advantage of theirs to the maximum, judges must apply international human rights laws, norms and standards when considering cases pertaining to widowhood rites. Even in situations where

¹⁹³ WLEA 245 (n 25 above). FIDA has been cited as an example of an NGO with a complainant's mechanism for dispute resolution.

statutory law has not expressly watered down the derogatory effects of customary law that infringes on the rights of widows, the courts may seek inspiration from international law to address such lacuna. The Ugandan courts must therefore seek inspiration from the Kenyan judiciary that has been noted for its purposive approach in such matters. In 1996, for instance, the Kenya High Court held that a 29-year old widow, Jane Orimba, had a right to remarry with someone of her own choice, and could not be restrained by customary law on “levirate” since Kenya had ratified the CEDAW. (Kenyan Law Reports 1996)¹⁹⁴

Another issue that indirectly affects widows is a judiciary that is expeditious and effective. Justice delayed is justice denied hence a consideration of a case involving widowhood rites must be decided with promptitude. This is to prevent a situation where a decision, which protects the rights of widows, is not handed down after a widow has been forced to undergo the very rite she sought to avoid by going to court in the first place.

To achieve the same result, courts that deal specifically with matrimonial affairs should also be set up. As already stated, a country like Uganda, which has a decentralized system, can use its arrangements to facilitate the protection of women’s’ rights. Fortunately, the Resistance Committees (Judicial Powers) Statute, 1987 has created the Local Committee Courts. The Statute has therefore established Local Committee Courts at the village, parish and sub county levels.¹⁹⁵ Although these courts have jurisdiction over matters of a civil nature governed by customary law, they only affect widows in terms of inheritance and succession disputes. Widows should be sensitized to use these courts closer to them to seek protection from dehumanizing widowhood rites. A more pro- active step in this direction is to appoint widows to sit as Magistrates of these Local Courts. Having gone through some of the experiences themselves, they will be best suited to appreciate and therefore protect widows from dehumanizing widowhood rites.

¹⁹⁴ See EWD (n 188 above).

¹⁹⁵ WLEA (n 25 above) 293.

Apart from judges, lawyers also have a role to play in the protection of widows in Uganda. Widows, being poor, are one category of persons that need independent public legal aid and assistance. The provision of pro bono services by the Law society and other Bar Associations concerned about women's rights cannot be overemphasized in this regard. Lawyers also have a moral duty to test the existing laws against human rights standards thereby challenging judges to arrive at progressive decisions, aimed at promoting the right of widows in an environment which is hostile to them.

5.3.4 Human rights education and widows' rights

The most dehumanizing widowhood rites occur as a result of the inequalities between men and women. Widowhood rites are thus another classic form of discrimination against women. This state of affairs is attributable to certain perceptions that these practices are an integral part of custom and culture and must therefore be acceptable. To enable any state make any progress in promoting the human rights of widows, there is a need for education. Schuler & Kadirgamar-Rajasingham have described this as 'legal literacy'.¹⁹⁶ The process of legal literacy aims at creating awareness, through human rights education, among different stakeholders in the society. This is to enable them to understand and practice the human rights culture in any given society. Legal literacy may be used to enhance the rights of widows in the society. Prominent among the stakeholders who need education about the rights of widows are the government agencies, the legislature, the judiciary, members of the media, lawyers, teachers, traditional and religious leaders, and most importantly widows themselves. Apart from seminars, workshops and symposia, the media may also be used as a veritable tool in educating the whole of civil society and the masses about widowhood rites and projecting the rights of widows to all facets of the society.

5.4 Conclusion

This paper has used Uganda as a case study to illustrate that the rights of widows in many African countries are constantly being abused through the practice of widowhood rites. It has also been established that notwithstanding this unfortunate situation, widows'

¹⁹⁶ Schuler & Kadirgamar-Rajasingham, 'Legal literacy: A tool for Women's empowerment' <http://www.genderreach.com/pubs/ib4.htm>. (Accessed on 1 August 2003).

rights have been regulated to the background at the international, regional and national levels. It hoped that the recommendations made in this chapter would bring the plight of widows to the fore of human rights activities with the ultimate aim of creating a culture of respect for widows' rights.

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