

Right to Inheritance

POLICY BRIEF



Introduction

It is estimated that more than 500,000 widows reside in Cameroon.¹ Frequently subjected to discriminatory widowhood rites and practices, denied access to portions of their husbands' estate, and often facing financial insecurity, these women represent a particularly vulnerable group within society. We call attention to a new draft code on persons and the family, which poses a new risk to widows. Section 919 of the code outlines a hierarchy of the persons with rights of inheritance to a deceased man's property if he has died intestate. The children of the deceased are prioritized, followed by the parents of the deceased, the siblings of the deceased, the wife, and lastly, the state. Even though it is standard to prioritize the deceased's spouse and children elsewhere, this draft code fails to sufficiently empower widows; this is especially worrisome given the fraught disputes over property that widows often struggle with upon the death of their husbands. Given the other ways that women are systemically disadvantaged in society, the plight of widows—notably including the hurdles they face when attempting to claim property—only adds to the obstacles associated with womanhood more generally. A proper redress of these issues is

necessary for not just the improvement of widows but also for all women in society.

Thus, this advocacy brief will address female autonomy vis-à-vis the human rights framework. We emphasize that the right to property and freedom from discrimination in the political, economic, social, cultural, and civil realms must be guaranteed for women in Cameroon. By restricting a woman's ability to exercise her right to own property or reject abusive traditional rites following the death of her husband, her human rights are effectively being infringed upon. The following brief will, therefore, begin by describing how current human rights standards oppose the differential treatment that women (as well as widows more specifically) experience in their day-to-day lives. We later demonstrate how widowhood rites and practices limit female autonomy and provide guidance for lawmakers who wish to develop strategies to combat these complex webs of issues.

Female Autonomy and Human Rights

Throughout the years, international human rights instruments have emphasized the States' obligation to actively work against institutional and societal forms of discrimination against women. This pursuit should naturally be of interest to the people of Cameroon, considering that the Preamble of the Constitution emphasizes equality amongst all citizens and pledges to uphold human rights. The following clauses of the Preamble are particularly relevant:

- All persons shall have equal rights and obligations. The state shall provide all its citizens with the conditions necessary for their development;
- every person has a right to life, to physical and moral integrity and humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment;
- the Nation shall protect and promote the family, which is the natural foundation of human society. It shall protect women, the young, the elderly and the disabled;
- the state shall guarantee all citizens of either sex the rights and freedoms outlined in the Preamble of the Constitution.

Also, Cameroon has ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which describes discrimination against women in Article I:

“the term “discrimination against women” shall mean 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 ”

The CEDAW urges States parties to fully acknowledge the right of women to freely participate in all areas of economic and social life through access to financial services and credit (including mortgages and bank loans), access to adequate health care facilities and living conditions, the right to participate in development planning and other community activities, and access to educational opportunities and social services that provide financial support, among other rights they must enjoy alongside their male counterparts.

These other forms of women's rights are also formally recognized in other international human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. What is, therefore, particularly concerning the notion of relegating women to an inferior or dependent status with regards to property ownership is that such forms of discrimination restrict female autonomy. Social, economic, and political limitations in daily life results in women (and those who are dependent on them) being unable to exercise the full range of their human rights.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (also known as the Maputo Protocol) similarly recognizes that discrimination against women stands in the way of their human rights being fully realized. Article 1 (f) defines discrimination against women as the following:

“Discrimination against women’ means any distinction, exclusion, or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment, or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.”

The Maputo Protocol likewise emphasizes that widows’ rights are especially important to secure. Article 20 mandates that States parties guarantee the following:

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

Furthermore, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child submitted a joint General Recommendation in 2014 intended to offer guidance on policy measures for States parties who were reworking their laws after the passage of the CEDAW. This General Recommendation explicitly states the obligation that States parties have to reject “harmful practices,” which is described below:

“Harmful practices are therefore grounded in discrimination based on sex, gender, age and other grounds and have often been justified by invoking socio-cultural and religious customs and values as well as misconceptions related to some disadvantaged groups of women and children.”

This General Recommendation stated that widowhood rites are included in this classification of harmful practices. Section 6.2.22 also describes the act of pressuring a widow to marry a relative of her late husband as a harmful practice. The Committees stressed the need to combat harmful practices through implementing strong prevention measures and constructing rights-based social and cultural norms. They also urged States to “prioritize the regular collection, analysis, dissemination, and use of quantitative and qualitative data on harmful practices” disaggregated based on indicators such as age, sex, education level, and location.

Notably, Article 21 of the Maputo Protocol explicitly calls for States parties to take the necessary legal measures to ensure the following with regards to property rights:

- 1) 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.
- 2) Women and men shall have the right to inherit, **in equitable shares**, their parents' properties.¹

Section 919 of the draft code on Persons and the Family contradicts these principles by mandating the following:

Section 919: Intestate succession shall devolve by application of the law to the parents and the surviving spouse in the following order:

- a) descendants;
- b) forebears;
- c) collaterals;
- d) surviving spouse; and,
- e) the state.

Rather than promulgating a law that will further subordinate widows, Cameroonian lawmakers ought to elevate widows by propounding a law that will reflect or copy in verbatim the rights accorded to widows under international law. We must reject the notion that widows are not entitled to be administrators and heirs over the estate of their deceased spouse, of which often these estates are joint properties. The cultural disadvantages that widows often face in the country, which will be further discussed in the next section, are forms of discrimination that must be addressed appropriately.

SECTION III

Discriminatory Widowhood Rites and Practices

The treatment of widows in many parts of the country suppresses female autonomy. Harmful widowhood rites and practices are present throughout the country, although they vary widely from region to region based on identities and affiliations such as ethnicity and religion. Regardless, many of the practices are patently discriminatory, inflicting a significant degree of pain and humiliation onto widows during an already sensitive time in their lives. Pemunta and Alubafi (2016) refer to such practices as “socially institutionalized patriarchal domination.”

The discriminatory treatment of widows is not only socially institutionalized. The discriminatory treatment of widows has also been woven into the country's legal frameworks. For instance, the 1981 Civil Status Registration Ordinance explicitly called for a mandatory mourning period for widows who wish to remarry someday (while failing to require the same for men):

“ She [the widow] may provided that she observes the period of widowhood of 180 days from the date of the death of her husband, freely remarry without anyone laying claim whatsoever to any compensation or material benefit for dowry or otherwise, received either at the time of engagement, during the marriage or after marriage ”

It is not uncommon for widows to be forced to prove that they were not responsible for their husband's death through undergoing several rituals. Some women may be suspected of causing the death of their spouse to attempt to gain access to his property or as revenge for being unfaithful. The Balengou widowhood ritual, for example, involves tests of innocence, purification baths, and scarifying the woman's body before she is deemed unsuspecting. Unlike their male counterparts, widows are also frequently required to observe mourning days. Regarded as taboo by the rest of the community, widows are often secluded for extended periods. In these instances, they are often not permitted to cook, leave the house, or work. Even if a community determines through their traditional rites that a woman is not guilty of her husband's death, she is still effectively being punished under her status as a woman.

In the Northwest Region, a woman named Hajaratou Chanteh recalled that when she had been widowed, her late husband's family had taken all of his possessions and prohibited her from accessing the house that they had previously shared with their children. She spent more than 16 years fighting for her right to inherit land and described how her husband's family forced her to give them all the money she had because it was "family property." The only way she could support herself and her children was by receiving a small amount of money in exchange for tilling land. Her experience is a familiar one for widows who find themselves without financial, familial, and emotional support following the death of their husbands.

There have also been many reported instances of widows across the country "being forced to have sexual relations with husbands' relatives, being shaved, being forced to sleep on the floor, [and] being publicly unclothed," in addition to experiencing isolation from society and even facing the risk of homelessness and destitution. To prove that they did not kill their spouse, some widows are forced to drink the water that was used for bathing their deceased husband's body. Degrading widowhood rites and practices have been justified as necessary to protect a widow from being cursed by her deceased husband. While a few communities are progressing by making compromises in widowhood rituals (such as agreeing to allow women to be clothed in various public rites), far too many widows are still experiencing degrading treatment that interferes with their human rights. The Committee for Assistance to Needy Women of Cameroon reported that they received over 1,843 complaints from widows who said that they were "beaten, sent off their matrimonial homes, or at times, forced to remarry either their brothers-in-law or fathers-in-law" under traditional widowhood customs.

Such practices are a significant setback in the pursuit of securing female autonomy and protecting human rights as a whole. Additionally, as exemplified in the stories of women who were shunned by their families or communities after the death of their husbands and were suddenly left without financial support and a sense of security, discriminatory widowhood practices are a preventable perpetrator of intergenerational poverty. Thus, adopting an inheritance

succession law that further solidifies the societal inferiority of widows actively perpetuates the violation of women's fundamental human rights.

These concerns become increasingly relevant for women who become widowed amid dangerous situations. For instance, women in conflict (and post-conflict) environments are in vulnerable situations, so the risk is higher that the loss of a husband is tantamount to increased poverty, alienation, and exposure to violence. Furthermore, as explained in The Loomba Foundation's 2015 *World Widow Report*, the children of widows often have to enter the workforce to provide a source of income for the rest of their family, frequently resulting in "lost education, high risk of harm through hazardous employment, heightened risks associated with child labour such as physical and sexual abuse, and other special child risks such as abduction and prostitution gangs." This demonstrates how the detrimental effects of restricting female autonomy are not just felt by the woman herself, but also by those around her. The empowerment of women—which includes laws that adequately recognize and provides an enforcement mechanism for women's right to possess and inherit property—therefore becomes a human rights concern that must be carefully addressed.

SECTION IV

Widowhood and Property Rights and Policy Implications

If section 919 of the draft code on persons and the family is not amended, then the succession order of an intestate (which prioritizes children, the parents of the deceased, and the brothers and sisters of the deceased before recognizing the wife as the rightful inheritor of her husband's property) risks alienating women. This also means that Cameroon would be in breach of its obligations to international human rights instruments such as the CEDAW and Maputo Protocol. Housing (as well as land ownership more generally) is a uniquely valuable asset that, in other countries, widowed spouses traditionally are the first to inherit. Widows who do not have to worry about land or housing costs after the death of their husbands are better able to cover other expenses—food, clothing, school fees, etc.—with their supplemental income. The unfortunate reality is that many women face a great deal of difficulty when attempting to access the property left behind by their deceased husbands. Currently, separate or joint property ownership is the only viable option for a woman who wants to be assured that she will retain ownership over her husband's estate and her property.

Since parts of the law (like Section 362(2) which states "A spouse who claims that the profession of the other spouse puts the family interest in jeopardy" can have the court intervene on the matter) give the husband the power to stop a woman from working, a woman can be prevented from enjoying full control over the proceeds she generated herself. Furthermore, a woman's housewife responsibilities, as outlined in section 350 of the code, barely leave her with time to do income-generating work. Customary law practices likewise often come into conflict with public laws and international conventions that lay the platform for women to own properties. In the current environment, there are many hurdles for women to exercise their right to own property, and section 919 is yet another obstacle.

When the late husband's family and community members refuse to regard his widow as someone who has a legitimate claim to a piece of land, a home, or other properties, the widow is placed in a distressing situation. If she refuses to submit to the preferences of others (whether it's marrying the husband's family member, giving up property, or other non-consensual acts), the widow may be thrust into economic insecurity and social marginalization.

To combat this, firm measures must be implemented:

REJECT DISCRIMINATORY PROPERTY SUCCESSION PRACTICES

The government must amend bills and any existing laws that explicitly or implicitly place widows at a disadvantage. These actions would be taken following Article 15 of the CEDAW, which states that States parties “shall give women equal rights to...administer property and shall treat them equally in all stages of procedure in courts and tribunals.” As stated earlier, the Maputo Protocol explicitly outlines a widow’s right to inherit an equitable share of her deceased husband’s property; furthermore, the Protocol urges States parties to take “all appropriate measures to promote women’s access to and control over productive resources such as land and guarantee their right to property.” It is thus crucial to establish practices that normalize women’s ownership of property. The spouses of deceased persons should be prioritized so that we can create societal and legal norms that recognize widows as rightful inheritors of a portion of their husband’s estate.

ACTIVELY COMBAT HARMFUL WIDOWHOOD RITES AND PRACTICES

Many traditional widowhood rites and practices prevent women from being able to exercise their full range of human rights. Articles 1 and 5 of the CEDAW call on States parties to take all appropriate measures to reform discriminatory social and cultural practices that draw on stereotypical or otherwise prejudicial views of women. This includes, but is not limited to, rites and practices that dehumanize and degrade women, such as forced undressing and shaving, isolation, scarification, and rituals that force a widow to prove she did not cause her husband’s death. Article 5 of the Maputo Protocol similarly urges States parties to promote public awareness (through a variety of formal and informal education and outreach programs) about the damaging effects of harmful practices targeting women.

Furthermore, the mandatory mourning periods that many widows are subjected to are quite disruptive, often interfering with women’s right to work (described as an inalienable right in Article 11 of the CEDAW). Article 16 of the CEDAW declares a woman’s right to “freely choose a spouse and to enter into marriage with their free and full consent,” which is in direct conflict with the practice of forcing a widow to marry a male relative of the deceased husband. Article 6 (a) of the Maputo Protocol echoes this sentiment by stating that marriages may only take place with the free and full consent of both parties involved. The government should work with NGOs, local leaders, and widows themselves when developing policies to combat the discriminatory treatment of widows in a way best suited for each respective culture (and their associated religious/cultural traditions).

OFFER A RANGE OF SUPPORT SERVICES FOR WIDOWS

The loss of a spouse is an incredibly traumatic experience for anyone; discriminatory widowhood practices often only serve to increase the pain during this time. Moderate to severe post-traumatic stress disorder (PTSD) has been observed in widows in Cameroon, with one study indicating that 82.4% of a sample of young Bansa widows (aged 18-46 years) suffer from PTSD. Their mental state was worsened by accusations of being responsible for the death of their husbands, the loss of property, financial insecurity, harsh mourning rites, and a lack of support from their in-laws or family members. Widows who are experiencing marginalization, violence, or other forms of abuse from their community members must have a support network. These measures would be taken under Article 12 (d) of the Maputo Protocol, which calls for states to “provide access to counseling and rehabilitation services to women who suffer abuses and sexual harassment.”

The government must work with local communities to develop widows groups that provide a supportive environment, advice, counseling, and financial and even legal support for widows. The leaders of such groups may also guide conflict de-escalation with regards to property succession disputes among family members. Widows can also benefit significantly from having access to mental health services, which are unfortunately present in limited numbers.

As vulnerable members of society, the welfare of widows must be addressed with the utmost of importance. By ignoring the cultural and legal forms of discrimination against these women, we are allowing their human rights to be violated without providing sufficient support, empowerment, and justice. We must take the necessary steps to protect and encourage female autonomy for the betterment of women's lives as well as for society as a whole.

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