



ISSUES OF DISCRIMINATION IN WIDOWHOOD IN SWAZILAND

THAT REQUIRE ADDRESSING IN THE CONTEXT OF THE CEDAW

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WPD hopes that this report will assist the Committee in its examination of the Government of Swaziland's report on its implementation and compliance with the articles of the Convention.

As in many countries, especially those in conflict and post conflict situations, the status of their widows – and wives of those forcibly disappeared or missing – is often ignored. Yet it is widows and their children, particularly their daughters, who so often suffer the most discrimination, direct and indirect, and this discrimination, resulting in extreme poverty, marginalisation, and exposure to violence, requires visibility so that it can be addressed by governments.

The Government has inadequately addressed this situation in its current report to the CEDAW Committee. WPD hopes that this brief submission will assist the Committee in its consideration of Swaziland's State Report during its 58th^h Session.

1. Although no official statistics on the number of widows in Swaziland seem to be available, their number is huge, due also to one of the world's most severe AIDS epidemics, and to the practice of early marriages.¹ Polygamy is not recognised under civil law, but it is allowed by customary law and 18% of women, the majority of whom live in rural areas, are into polygamist marriages.²

→ The Government should be required to take all available means, including working with women's and widows' NGOs, to fill this gap in **statistics**, providing official and reliable ones to be used as a basis to design and implement effective policies.

2. Equality between men and women is an issue in Swaziland, as *"there is little legislation that specifically proscribes discrimination on the basis of sex and there are also proportionally very few provisions within the law that punish this nature of discrimination"*. Only the Employment Act specifically prohibits discrimination also on the grounds of sex and marital status.³

→ The Government should be asked to specify if and how it implements Articles 1 and 2 of the CEDAW and ensures that its officials are trained to implement assistance policies without discriminating against widows. It should report on the measures undertaken so far to implement the principle of **equality of rights** between men and women and to face all kind of discrimination, including discrimination that finds its root in patriarchal cultural identity.

→ As underlined in the report,⁴ *"The Marriage Act of 1964 is being reviewed and this process will identify and address the gaps that were observed by the Committee including the age differential in marriageable age of boys versus girls and the marital power that currently rests wholly on men"*. The Government should explain what has been achieved so far in this respect.

3. Women in general, and particularly widows, have to face great difficulties for what concern access to land in Swaziland. Despite the enunciation of the principle of equality contained in Section 211(2) of the National Constitution, and although some relaxation in the traditional rules has been registered, according to the law women still cannot access the Swazi

¹ www.researchgate.net/publication/5394219_Swaziland_widows_fighting_for_their_rights. According to UNFPA reports, girls as young as 13 are married under customary law in Swaziland, and a UNDESA report underlines that in the year 2006, 7% of girls between 15 and 19 years of age were married, divorced or widowed, compared to 0.2% of boys in the same age range. If compared with previous years, the percentage is increasing rather than diminishing (genderindex.org/country/swaziland#_ftn9).

² genderindex.org/country/swaziland#_ftn9

³ CEDAW/C/SWZ/1-2, Part II, par. 2.3.

⁴ CEDAW/C/SWZ/1-2, Part II, par. 5.5.5.

Nation Land (SNL) independently, but only through their male relatives. The purchase of Title Deed Land also constitutes a challenge for women, due to the lack of economic resources and to the requirement of husbands' consent. Women's legal capacity is indeed diminished in certain matrimonial property regimes, which have the effect of their return to minority status in exercising legal capacity,⁵ and control of matrimonial property is thus unequal. For example, communion of property implies that land cannot be registered in the wife's name, but is registered in the husband's one.⁶ Problems arise especially in case of divorce or widowhood,⁷ and for women in rural areas, whose household sustenance depends upon agricultural production, and consequently upon land.⁸ Although the Constitution, in its Section 34, provides that widowers and widows are equally entitled to inherit, irrespective of the existence of a valid will or not, and of the marriage having been celebrated by civil or customary right, property grabbing from widows is still common.⁹

→ Acknowledging that the Government has started the process of reforming the Marriage Bill, the Administration of Estates Bill and the Deeds Registry Bill,¹⁰ but conscious that, as recognized in the Report, "*the review and amendment of laws in accordance with the Constitution has been delayed*" due to resources constraint,¹¹ the Government should be called to explain how the process is proceeding, and which changes are foreseen to ensure women and men's **equal access to land, property and inheritance**, according to Articles 15 and 16 of the CEDAW.

4. Despite the Constitution preventing the society from "*compelling a woman to undergo or uphold any custom to which she is in conscience opposed*", widowhood rites, contrary to women's dignity and self-esteem, are still a reality in Swaziland. Widows may be forced to stay secluded for a period that can go up to one month after their husband's burial, to wear mourning gowns for as long as three years, and then to undergo cleansing rituals. This strongly affects their possibility to work and to provide economical sustainment for their families, and increases their vulnerability. A widow's right to access inheritance may depend on her acceptance to enter into a procreation relationship with one of her deceased husband's younger brothers.¹² Cases are

⁵ CEDAW/C/SWZ/1-2, Part II, par. 15.1.2.

⁶ CEDAW/C/SWZ/1-2, Part I, par. 3.1.

⁷ Women's Legal Rights Initiative (WLR) Southern Africa, *Inheritance and Property Rights. An annotated bibliography*.

⁸ CEDAW/C/SWZ/1-2, Part II, par. 14.8.1.

⁹ genderindex.org/country/swaziland

¹⁰ CEDAW/C/SWZ/1-2, Part II, par. 1.6.2.

¹¹ CEDAW/C/SWZ/1-2, Part II, par. 1.4.

¹² CEDAW/C/SWZ/1-2, Part II, par. 5.3.

reported of widows turned away from voter registration due to them wearing mourning dresses, and of traditional chiefs calling upon culture, law and custom to state that women in mourning shouldn't hold public offices and to ask people to desist from voting for them in case of elections.¹³

→ The Government should be asked to explain the measures (legal and practical) undertaken so far to put an end to **discriminatory widowhood rites**, to increase widows' knowledge of their rights and to empower and support widows who assert their rights. This should be done in synergy with traditional leaders and NGOs.

→ The Government should explain how it is implementing the Article 5 of the CEDAW, which requires State Parties to modify the **social and cultural patterns** of conduct of men and women in order to eliminate prejudices and customary and all 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. It should be asked to clarify what its efforts are to prevent widows from being victim of **stereotypes and social pressures** that impede the full enjoyment of their rights and freedoms. Cooperation with NGOs and traditional leaders is crucial to this end, and should be taken into account.

→ The Government should be held responsible to comply with Article 6 of the CEDAW and impede that widow's **coping strategies** lead them and their families towards illegality, exploitation, marginalization and extreme poverty; both material and psychological support strategies are to be taken into account.

→ The Government should report on the measures put into effect to implement Article 7 of the CEDAW and to ensure that widows can vote and be elected in any kind of election.

5. Access to justice represents a major challenge for widows in Swaziland, due to high expenses for legal representation, that the majority of them cannot afford, and to the lack of a national aid system.¹⁴ As recognised in the Report, customary courts don't accord men and women the same status and the same rights, and they require male members of families to speak for or represent women, particularly when the intervention of the court "*involves a woman's husband or in-laws against whom she has a grievance*", thus making it "*difficult for a woman to get a fair hearing on her matter*".¹⁵

¹³ www.times.co.sz/news/90512-don%E2%80%99t-vote-for-widow-%E2%80%93-chief.html;
swazielections.blogspot.it/2008/06/swazi-widows-excluded-from-poll.html

¹⁴ CEDAW/C/SWZ/1-2, Part I, par. 3.4.9.

¹⁵ CEDAW/C/SWZ/1-2, Part I, par. 2.4.4.

→The Government should indicate which measures it has taken to facilitate **access to justice** for women, and especially for widows who particularly lack of legal support, economical resources and education. In particular, it should be investigated if the Government is attempting to establish a legal aid system, and if the personnel working in courts is adequately trained.

WPD thanks the Committee for inviting it to submit this report. Please contact us if you require any further information.

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