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Zimbabwe: The custom of wife "inheritance"; the government's attitude towards this custom; protection available to women who refuse to observe this custom (2004 - January 2006)

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Various international sources reported that in Zimbabwe, the traditional practice of wife inheritance or "kugara nhaka," calls for the wife of a deceased man to be inherited by the man's male relative, usually his brother (FHI 2005, 7; UN 17 Aug. 2004). Some sources have also noted that traditional customs such as wife inheritance have exacerbated the transmission of HIV and AIDS (FHI 2005, 7; UN 17 Aug. 2004; see also IPS 18 Apr. 2005).

In 13 January 2006 correspondence, a representative for the Harare-based non-governmental organization (NGO) Women's Action Group (WAG) provided the following information about wife inheritance in Zimbabwe:

Women's Action Group conducted a situation analysis in some wards in a district in Mashonaland East province to find out if wife inheritance was still prevalent. The findings were that the custom is still taking place though cases are going down.

There is no specific legislation prohibiting wife inheritance. The recourse which a widow can take will depend on the actions taken by in-laws if she refuses to abide by custom.

If she is beaten or treated with violence, she can go to the police. The perpetrators of the violence will be prosecuted and the police can also help her to obtain a peace order from the civil courts prohibiting her in-laws from harassing her.

In some cases relatives seize property and children from a widow who refuses to accept inheritance. The mother of children born within a marriage automatically becomes their guardian and sole custodian when the father dies. So a widow whose children have been forcibly taken by relatives can approach the civil courts for an order for the children to be returned to her.

The Deceased Person Family Maintenance Act was enacted to specifically address cases of property grabbing where relatives of a deceased seize property from the surviving spouse. The Act gives the surviving spouse the

right to continue staying at the house where the couple was staying, to use the property which they were using including fields, livestock and crops up to the time that estate is legally distributed. A widow whose property has been taken for refusing inheritance can utilize this Act to obtain a spoliation order for the property to be returned to her.

The widow can also make a report to the police because the Act make it a criminal offence for anyone to forcibly take property from a surviving spouse and her children.

In 27 January 2006 correspondence, a representative of the Zimbabwe Women Lawyers Association (ZWLA) corroborated much of the preceding information. However, she also noted that while the law does not address the custom of wife inheritance, a woman can "choose to remain in the homestead by giving to her child the symbolic token without being inherited" (ZWLA 27 Jan. 2006). Details about options to avoid wife inheritance could not be found by the Research Directorate within time constraints.

The ZWLA representative further stated that many women feel financially compelled by their late husband's male relatives to comply with wife inheritance; for example, unless a woman marries her late husband's male relative, support for her children may be withdrawn (ibid.). This is especially true for women in unregistered marriages, who "are particularly vulnerable as they rely on the husband's relatives in registering and administering the estate" (ibid.). In these cases, legal recourse in the form of the Deceased Persons Family Maintenance Act, and new inheritance laws afford some protection to the woman and her children; "[h]owever, in instances where there is a rural homestead which does not have title deeds, the woman [is] more vulnerable" (ibid.).

Various sources also mentioned that the country's dual legal system of customary and civil laws has tended to limit women's marriage rights (WeNews 15 Feb. 2005; Genderlinks 8 Dec. 2004; *Country Reports 2004* 28 Feb. 2005, Sec. 5). In particular, legal rights were reportedly restricted for women who marry under customary law (ibid.; Freedom House 11 Aug. 2005). For instance, customary law marriages reportedly assign a lower legal status to women, especially with regard to property ownership and inheritance, and child custody (WeNews 15 Feb. 2005; *Country Reports 2004* 28 Feb. 2005, Sec. 5).

With regard to wife inheritance, the United Nations (UN) Integrated Regional Information Networks (IRIN) reported in November 2004 that under customary law, "[a] young widow... who refused to be physically 'inherited' by a male relative of [her] late husband, often a brother," would likely be expelled from the home she had shared with her deceased spouse (3 Nov. 2004). Although the 1997 Administration of Estates Act was intended to provide protection for widows married under customary law, the Act is reportedly uneven and "does not offer women and children complete security" (UN 3 Nov. 2004). Moreover, barriers such as alleged police insensitivity, threatening behaviour on the part of the deceased husband's family, entrenched cultural attitudes, and women's lack of knowledge about their rights further exacerbate the situation of a widow married under customary law (ibid.). Moreover, according to an advocacy officer with the Women and Acquired Immune Deficiency Syndrome (AIDS) Support Network (WASN), "the more economically disadvantaged the woman, the more prone she [is] to wife inheritance" (UN 17 Aug. 2004).

This Response was prepared after researching publicly accessible

information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

References

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Additional Sources Consulted

Efforts to obtain information from the Legal Resources Foundation and the Zimbabwe Women's Resource Centre and Network (ZWRCN) were unsuccessful.

The Musasa Project was unable to provide information within time constraints.

Internet sites, including: Amnesty International, BBC News, European Country of Origin Information Network (ECOI), Factiva, Kubatana, Human Rights Watch, International Commission of Jurists, PeaceWomen, Southern Africa Regional Poverty Network, United Kingdom Immigration and Nationality Directorate, United Nations CEDAW, World News Connection, World Organization Against Torture (OMCT), *The Zimbabwe Standard*.

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