

# Polygyny among the *Ovambadja*: A female perspective<sup>1</sup>

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## Introduction

Namibia has two types of marriage systems, namely the civil system, and customary marriage.<sup>2</sup> Civil marriage is solemnised by civil or religious rites, while customary marriage – in this context, polygyny – is based on tradition. As a customary marriage, polygyny is not mere cohabitation and informal union: it is a process, and its specifications differ from community to community. Before this marriage comes into existence, the prospective spouses and their families negotiate the marriage, exchange marriage considerations, establish a matrimonial residence, and perform traditional ceremonies.<sup>3</sup>

*Polygyny* is not on par with civil marriage in terms of legal recognition by the state. Only civil marriages are recorded in the marriage register of the Department of Civic Affairs and are accorded marriage certificates.<sup>4</sup> Perhaps the most significant distinguishing factor between a civil and customary marriage is that polygyny is not only a private arrangement between the couple, but also a union of two families.<sup>5</sup>

Since the inception of the Ministry of Women Affairs and Child Welfare in 2000, which was renamed in 2005 as the Ministry of Gender Equality and Child Welfare, laws that outline the framework that supports the implementation of gender-related constitutional issues have been passed,<sup>6</sup> and policies and programmes that promote and sustain equality for all have been developed,<sup>7</sup> but the question of

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1 The research on which this paper is based was supervised by Prof. MO Hinz of the University of Namibia's Faculty of Law. The author conducted the research in performance of her duties at the Human Rights and Documentation Centre, and in completion of the Specialised Certificate in Customary Law. Moreover, the research outcomes form part of the author's LL B dissertation, which is also being supervised by Prof. Hinz.

2 Friesen (1998:1).

3 (ibid.).

4 Ministry of Home Affairs marriage register.

5 Bennett (2004).

6 For example, the Married Persons Equality Act, 1996 (No. 1 of 1996).

7 The National Gender Policy of 1997.

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polygyny has not yet been successfully addressed. In this regard, experts on the 23-member Committee on the Elimination of Discrimination against Women<sup>8</sup> in 1997 had the following comment on Namibia's first country report:

*Namibia should address the question of polygamy. It is further said that even countries where there were religious sanctions for such marriages, efforts were being made to discourage them.*

They stressed that since a majority of Namibians were Christian, it should be easier to prevent polygynous marriages. According to Tuupainen,<sup>9</sup> except in very traditional areas, polygyny was virtually outlawed in Namibia after the population was converted to Christianity by European missionaries.

So far in Namibia, women<sup>10</sup> in polygynous partnerships are not afforded legal protection under the general law system because, currently, only civil marriages are given full recognition by the state's legislation.<sup>11</sup> For example, the famous legislation<sup>12</sup> which removes the common law principle of a husband's marital power is not applicable to marriages by customary law; hence the abolition of marital power has no effect on women in polygynous marriages. It is presumed, therefore, that the consequences of the non-recognition of polygyny, a practice which is simply left to function in a legal vacuum, may result in the violation of women's rights.

A good suggestion to rectify this situation would be for spouses, whether married under polygyny or civil rites, to be accorded equal rights in terms of marriage law because both are merely simple forms of marriage. Discrimination against one form of marriage and recognition of the other will only create irreconcilable conflicts and legal confusion.

There are several writers on the issue of polygyny who have propounded that it is a violation of women's rights. However, it should be analysed whether and to what extent polygyny, as a traditional practice or marriage, forms the basis of the violation of women's rights.

According to the database compiled by a gender-based violence project developed

8 This is the monitoring body for CEDAW, in accordance with Article 18 of the Convention. According to Article 18, States Parties are required to submit reports within one year after accession, and thereafter at least every four years.

9 Tuupainen (1970).

10 Friesen (1998).

11 Such as the Marriages Act, 1961 (No. 25 of 1961).

12 The Married Persons Equality Act, 1996 (No. 1 of 1996).

by the government with the assistance of the United Nations Development Programme (UNDP) and launched by the First Lady, Penehupifo Pohamba, on 8 March 2006,<sup>13</sup> projects on the abuse of women were conducted in the Caprivi, Hardap, Kavango, Khomas, Kunene, Omaheke, Omusati and Oshikoto Regions. The project was kick-started in the Khomas Region, which entered 550 cases of abuse against women out of 2,800 on record. Within this project, no reference was made to what causes women to be abused, so there is no need to blame polygyny: women's rights are being violated – regardless of their social marital status.

Against the background of the above project results, the current study wishes to enquire whether polygyny has anything to do with the violation of women's rights. If so, the government is advised to take immediate steps to tackle such violation. At present, violence against women in Namibia is more prevalent through domestic violence, followed by rape and the killing of women, especially in urban areas, but none of the cases of violence has so far been attributed to the practice of polygyny. As from the last two quarters of 2005, local women and traditional leaders in the above-mentioned Regions have been trained in the rights of women under the project entitled "Combating gender-based violence through advocacy, training and awareness raising related to legal issues", run by the UNDP in cooperation with the Ministry of Gender Equality and Child Welfare (MGECW) and the Legal Assistance Centre (LAC).<sup>14</sup> One wonders whether there is any sign of positive change in the attitudes of men against women to date, however, if one considers the fact that the media report almost daily on cases of brutality against women.<sup>15</sup> Such violence and social discrimination against women is prevalent in almost all 13 Regions of the country, and even more so in Regions where polygyny does not exist.

It should be understood that, depending on one's sex (male or female) and one's personal morality, people have different views with respect to polygyny when it comes to multiple partners. Some think only about the involvement of these partners in sexual pleasure; others perhaps consider how oppressive polygyny must be. Such stereotypical views relegate polygyny to the cultural realm.

Article 14(1) of the Constitution guarantees both women and men the right to marry – without any limitation. The same Article provides for the right to form a family, and specifically states that the parties to a marriage are entitled to equal rights at marriage, during marriage, and at its dissolution. The question is whether

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13 The data were collected from Women and Child Protection Units run by the Namibian Police (NAMPOL) countrywide during February to November 2005.

14 For more details on the project, see: <http://www.undp.un-na/poverty/combating-gender-based-violence.htm>.

15 See e.g. *The Namibian*, 14 and 15 July 2008, in this regard.

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polygyny – being the oldest form of marriage in Namibia, and one which has long been practised among Namibia’s traditional communities – should not be officially recognised. In this context, it has to be considered that Namibia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1992. CEDAW sets standards for all marriages in terms of Articles 1, 2, 5, 11, 15 and 16. CEDAW<sup>16</sup> has argued that, because polygyny violates gender equality and often has deleterious financial and emotional consequences for women and their dependents, –

*... such marriages ought to be discouraged and prohibited.*

Article 66(1) of the Constitution puts customary law on the same footing as common law as far as its constitutionality is concerned. One could argue here that the Constitution protects polygyny as a tradition recognised under customary law, and that the Constitution places a legal duty upon national lawmakers to treat customary law without discrimination.<sup>17</sup> Article 66(2) further provides that any part of customary law may be repealed or modified by Act of Parliament, and the application of such law may be confined to particular parts of Namibia. Pursuant to Article 66(2), Parliament passed the Traditional Authorities Act<sup>18</sup> to give effect to the right to culture provided for under Article 19 of the Constitution.

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#### *Okalongo Traditional Authority*

In order to understand how polygyny is practised among the *Ovambadja*, some background is necessary. *Ovambadja* are one of the eight *Ovawambo* traditional communities in northern Namibia. Their origins are dated to the immigration of the *Ovawambo* ethnic groups into northern Namibia after their long march from the Great Lakes of Africa.<sup>19</sup> *Ovambadja* royalty extends through matrilineage. Like the other *Oshiwambo*-speaking communities, this traditional community occupies a demarcated communal area known as *Okalongo*. According to the

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16 CEDAW (1994:para. 14). See also Article 5(a) of the CEDAW Women’s Convention: States Parties shall take all appropriate measures: (a) 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 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.

17 Becker & Hinz (1995:20ff.)

18 Act No. 25 of 2000.

19 Williams (1990:6).

census carried out by the government during 2001,<sup>20</sup> the inhabitants of Okalongo were counted to be as many as 75,000. According to Laurmaa,<sup>21</sup> the Okalongo area in Namibia is part of Ombadja, which is situated in Angola. The area of Okalongo is cut off from the main Ombadja area by the colonial borders between Namibia and Angola known as *onaulula*.

During the colonial era, the *Ovambadja* in Namibia were placed under the leadership of the *Oukwanyama* Traditional Authority and was not recognised as a separate traditional community. Since 2002, however, the *Ovambadja* have officially been recognised by government under the name of the Okalongo Traditional Authority, also known as the Ombadja Traditional Authority. With the recognition of the Okalongo Traditional Authority, the total number of recognised *Oshiwambo*-speaking traditional communities amounts to eight.<sup>22</sup> The leadership of the Okalongo Traditional Authority is headed by the Chief,<sup>23</sup> who is appointed by members of his royal family. The Okalongo Traditional Authority is divided into four districts (*oikandjo*), namely Omutundungu, Onandjaba, Ondudu and Onembaba. Ten combined villages (*omikunda*) form a district. These districts are headed by senior traditional councillors. Under the districts there are villages, and every village is headed by a traditional councillor normally referred to as a *headman*. Villages are further subdivided into small sections headed by sub-headmen known as *ookapatashu*.

Okalongo is situated in the Omusati Region in northern Namibia, and lies alongside the Angolan–Namibian border. Okalongo is bordered by *Oukwanyama* to the east, *Uukwambi* to the south, Ombantu to the west, and Angola to the north. The 2001 national census reports that the extent of the Okalongo area is about 1,596.4 km.<sup>24</sup>

#### *Polygyny in Okalongo*

In Namibia, it is noticeable that where colonial administration imposed direct rule at an early stage on traditional practices like polygyny, it has largely broken down; whereas in communities such as the *Ovambadja*, the tradition was merely inflated and slightly manipulated, but remained largely intact. Thus, polygynous marriages are still the order of the day in Okalongo, despite the teachings of Christianity. The practice of polygyny is not uniformly structured, but differs from family to family. In general terms, however, a man initially starts with one

20 NPC (2001).

21 Williams (1990:6).

22 See *Government Gazette* No. 2733 of 30 April 2002.

23 Currently Matias Shikombolo Walaula.

24 NPC (2001).

wife, called his first wife. If, at some stage, he wishes to take a second wife, he discusses this with his first wife. In some cases, she leads the process of choosing a second wife. The first wife plays a pivotal role because she is the most senior. All the wives that follow her are subject to her instructions and decisions.

Research for this study included interviews with women in polygynous relationships residing in different villages within the Okalongo area. The age of those interviewed ranged from 14 to 50, and their level of schooling ranged from zero to Grade 12. When asked why polygyny was still practised, various women responded as follows:<sup>25</sup>

*Polygyny dignifies a woman, and marriage is a status symbol. It prevents immorality in the community and controls diseases. Polygyny is a strategy to ensure that almost all women get married in order to wipe out all evils that accompany the existence of a large population of eligible but unmarried women. It also reduces the large number of men's extramarital affairs. Polygyny offers more children for the security of family life without the stigma of being born out of wedlock.*

One woman, however, also responded that polygyny was a way for men to display their wealth and satisfy their greed.<sup>26</sup>

There are many reasons why the women in this agricultural society practise and value polygyny: human labour is essential, and polygyny provides more hands to work the *mahangu*<sup>27</sup> fields, and so produce more food for own consumption and sale. In this respect, polygyny produces wealth not only for the man, but for the whole family – which is one of the reasons why there is no poverty in societies that practise polygyny.

One of the arguments put forward in favour of polygyny by the women interviewed was that women and children were safer in larger households, because they were protected from aggressors. Another woman said that polygyny provided a form of birth control without using contraceptives that contained chemicals. Furthermore, due to sexual taboos attached to having sex during breastfeeding, the menstrual period or pregnancy, polygyny would allow for the spacing of children. The interviewees commonly acknowledged that polygyny ensured most eligible young women were in fact married off, as men tended to die naturally at an earlier age than their female counterparts.<sup>28</sup>

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25 Interviews, July 2008.

26 Interview, July 2008.

27 Pearl millet.

28 Interview, July 2008.

Other information offered in the interviews<sup>29</sup> involved certain attributes that made women undesirable or unfit for marriage, such as the following:

- **Very large eyes surrounded by black skin:** This feature assumed the woman cried a lot; hence, such a woman could not be married by a young man, otherwise it was said he would die within a year of his marriage.
- **Thick calves (referred to as *elephant legs*):** These were said to be an obstacle to wealth, in that marriage to such a woman would result in the loss of wealth.
- **Corns on the toes:** These were considered to bring bad luck to the family.
- **Unusually long fingers:** These indicated the woman was more likely to steal or had a propensity to give birth to children who would steal.

If women possessed any of the abovementioned features, they were advised to be married to an old man only. In the *Oshimbadja*-speaking community, it became clear that the choice of a wife and the decision as to who should get married to whom involved multiple factors.<sup>30</sup>

Under a polygynous system, marital problems are the responsibility of the spouses' families. A new wife's family becomes intertwined with the husband's families as well as those of his other wives. Divorce, which negatively affects the life of children in most cases, is relatively low. Polygyny also presents itself as an option to provide a childless marriage with a new lease of life by the man taking another wife.<sup>31</sup>

When it comes to the question of inheritance and land use rights, some interviewees responded that *Oshimbadja*-speaking women fared better than their *Ovakwanyama*, *Ovakwambi* and *Ovambantu* counterparts. The *Ovambadja* followed customary inheritance practices, but when the property of a deceased husband was distributed, the widow's *Ovambadja* in-laws left some livestock to the polygynous children, and allocated the common house and land use rights to the widows and their children. However, some of the interviewees contested this, saying that widows without children usually had no right to inherit, and that, in such cases, a young widow might be handed on to one of her deceased husband's male relatives.<sup>32</sup>

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29 Interview with a saleswoman in Oneheke, 15 July 2008.

30 (ibid.).

31 Interview with a school clerk in Onamombe, 18 July 2008.

32 Interview with a craftswoman in Eengwena, 17 July 2008.

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On the issue of custody of the children of a polygynous marriage, it was said that every widow retained custody of her female children, but that custody of the male children was granted to their married uncles.

In the case of divorce, male children remained with their father, and female children with their mother.<sup>33</sup>

When asked whether they were satisfied with polygyny, most of the interviewees answered in the affirmative:<sup>34</sup>

*Our husbands take care of us. Every wife sleeps in a separate room within the same house and has her own place and kitchen. It is a pride to every normal woman to be married; that is why married women are more respected than unmarried ones.*

A widow narrated that the government had declared her late husband's marital status upon his death as "single" on his death certificate because his polygynous marriage was not recognised by the law. She added the following:<sup>35</sup>

*It is evident that government does not care about the well-being of women married under polygyny since it does not recognise their rightful marital status. Women who constitute the majority of the population are thus not accounted for, and are not treated equally in terms of marriage law. Such discrimination denies women the right to choose the type of marriage they wish to contract. Government must look into this as a matter of urgency. Polygyny must be legalised and customary marriages should be registered.*

To the question on why women practised witchcraft, one of the interviewees responded as follows:<sup>36</sup>

*Wives practise witchcraft to eliminate others or to win over the heart of their husbands. Despite the dependence of wives on each other to accomplish the burden of work and bearing of children, there is always unavoidable conflict in polygyny. In my case, I am the first wife of a man whom I married when I was 24 years old. After my husband married a second wife, he started showing a preference for the newcomer. He stopped sleeping with me and showed more love to his other wife, favouring her children over mine. This developed jealousy and a fighting atmosphere between the second wife and me. When I eventually reported the case to my and to my husband's families, my father commanded me to return home. Immediately an argument started, demanding the return of the bride price. The conflict was resolved with the help of a village headman. He found that my husband was the instigator of the problem and because I had a child with*

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33 Interview with a nursery school teacher in Onembaba, 15 July 2008.

34 Interview with a housewife in Epyaliwa, 17 July 2008.

35 Interview, July 2008.

36 Interview held with a woman selling clay pottery in Oupale, 16 July 2008.

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*him, only one cow had to be returned as the bride price. I am now married to another man, being the third wife in that marriage. My second marriage is peaceful.*

When asked what could be done in order to reduce conflicts between wives, the same interviewee answered that men were supposed to rotate in sleeping with their wives; and when purchasing clothes, the same quality and style should be purchased for each wife.<sup>37</sup>

## **Conclusion**

It needs to be acknowledged that polygyny as a form of marriage has long directed the way African people have conducted their marriage lives. Many Namibians in rural areas still conduct their lives in terms of customary law. Polygyny should, therefore, not be abandoned by urban female elites and feminists, who enjoy the privilege of utilising their positions for self-realisation.

Both gender equality and the right to culture are protected by the Namibian Constitution, the supreme law of the land. The question is how conflicts between the principles of anti-discrimination and customary law should be resolved without damaging either of the two systems. Namibia has ratified international agreements that prohibit discrimination on the basis of one's sex or gender. On the other hand, without generalising the situation, African women need to address some of the misleading interpretations of polygyny. It is high time for the government to wake up from their colonial hangover and respond to a living reality: that polygyny exists, and that women in polygynous marriages should enjoy the same legal protection as women in civil marriages.

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37 (ibid.).