

# **Women and custom in Namibia: Cultural practice versus gender equality?**

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This book brings together a set of papers on issues relating to women's rights and gender equality in Namibia against the background of the country's constitutional principles and the human rights protected by various regional and international instruments.

In general terms, the book highlights women's lack of access to resources, their unequal treatment compared with men, and the impact on gender equality of gender stereotyping, patriarchy and traditional attitudes. In some of these dominating themes, the book identifies the principal barriers to the achievement of gender equality in a society in which cultural practices and customary law govern the lives of the majority of Africans, especially those living in rural areas. Specific aspects of customary law that are inconsistent with the principle of gender equality are identified, and recommendations on how to deal with their negative effects on women are discussed within an interdisciplinary framework and from different legal and socio-economic perspectives.

A number of chapters identify a yawning gap between women's rights on paper and the actual enjoyment of these rights by women in practice, due largely to the lack of effective enforcement of the paper rights. Among the obstructive factors in this respect are illiteracy and poverty among the communities affected, and the inability or unwillingness of the national government to provide adequate resources and infrastructure to enable citizens to mobilise the law to their benefit. Thus, while law is an instrument of power that women can use to effect real changes to their lives,<sup>1</sup> several papers admit that the achievement of gender equality and the protection of women's rights in practice in Namibia continue to be a real challenge.

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I See Crotty (1996:331): "No matter what type of law is involved or how closely it reflects a nation's culture, law can serve as a first step in transforming social realities and fostering equal rights. It can validate injuries and, in some cases, deter or redress them. It can help redistribute power and increase the number of voices that are heard. Legal rights are means for women to achieve equality, not ends in themselves. If women are to be equal, therefore, all laws are important. And in the interplay between law and culture, changing the law has the potential to change cultural practices".

Compounding the problem of translating women's paper rights into real benefits for women is the coexistence in Namibia – as elsewhere in Africa – of different official and non-official normative systems. This form of legal pluralism turns the legal scene into a complex maze, to the disadvantage of the illiterate and those who are unable to afford legal representation to protect their rights. In recognition of these problems, the book recommends both legal and non-legal measures, as well as the use of research methodologies that facilitate the investigation of women's legal status under customary law, and the identification of appropriate measures for dealing with offensive customary practices within the prevailing normative pluralities.

It may also be interesting to note that all the contributions acknowledge the importance of customary law to the people of Namibia, especially rural communities, and the need to ascertain and reform those aspects of customary law that require alignment with constitutional principles and human rights – rather than abolishing the entire system of customary law.

It is now necessary to highlight major points in the individual contributions.

The paper entitled “Promoting women's rights and gender equality in Namibia” by Anton Bösl argues that, notwithstanding the constitutional guarantees of gender equality and non-discrimination and the government's commitment to the protection of women's human rights, the achievement of equal participation of women and men in politics, the economy and in society at large remains a major hurdle. This is largely due to the Namibian Constitution's recognition of customary law, which in turn limits women's control of resources, including property, and their access to loans. The paper also highlights the interventions of civil society and foreign donor agencies in promoting women's political rights and their socio-economic status.

The paper by Veronica de Klerk entitled “Women's Action for Development: 15 years of experience with customary practice in rural Namibia” expands on civil society's intervention in the fight for women's rights, in addition to identifying specific cultural practices that hamper women's development and contribute to their inferior status. The gap between constitutional rights that benefit women and the reality in practice is also evident in this chapter.

In their paper, entitled “Women and custom in Namibia: A research overview”, Lotta Ambunda and Stephanie de Klerk present a synopsis of their research into women and custom in Namibia. The paper sets out the constitutional and human rights provisions relevant to the protection of women's rights in the country, as well as some legislative measures taken since Namibia's independence to implement gender equality in customary law in the areas of traditional leadership and communal land ownership. A significant part of the paper is also devoted to specific customary practices that undermine gender equality, and the authors address the lack of implementation of women's rights, especially in personal matters and in matters of access to land.

In the paper, “Polygyny among the Ovambadja: A female perspective”, its author, Prisca Anyolo, highlights the difficulties experienced by women due to the non-recognition of customary marriages. She advocates the full recognition of customary marriages as a way of protecting the rights of women in such unions.

The paper by Manfred Hinz entitled “Strengthening women’s rights: The need to address the gap between customary and statutory law in Namibia” identifies pockets of statutory provisions that regulate the application of customary law and promote the protection of women in the areas of traditional leadership and communal land. The gaps relate to the absence of legislation –

- giving full recognition to customary marriages
- reforming the customary law of inheritance, and
- regulating the operation of traditional courts.

Legislative changes in these areas are considered to be long overdue in the light of the constitutional principle requiring the state to –<sup>2</sup>

... actively promote and maintain the welfare of the people ... and to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society.

The paper by Tousy Namiseb, namely “Women and law reform in Namibia – Recent developments”, discusses the following research projects initiated by the Law Reform and Development Commission that have a bearing on the rights of women: succession and estates, divorce, customary law marriages, domestic violence, and cohabitation. The author concludes by emphasising the importance of legislative reforms in dealing with the status of women in Namibia.

The contribution by Kato van Niekerk entitled “Some judicial reflections on women and custom in Namibia” uses anecdotes of cases decided by the High Court to provide a judge’s perspective of issues affecting the status of women under customary law, as well as of the difficulties that courts are faced with when applying customary law, such as the problem of ascertaining the rules of customary law relevant to a given case.

The paper by Oliver Ruppel, Kingo Mchombu and Itah Kandjii-Murangi, entitled “Surveying the implications of violence against women: A perspective from academia”, presents interesting findings on violence against women – including the prevalence of such violence, the location of the violence in Namibia’s social structure, and the forms such violence takes – from a survey of the views of university students.

Drawing from research experience in southern Africa, Julie Stewart’s paper on “Intersecting grounds of (dis)advantage: The socio-economic position of

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<sup>2</sup> Ruppel (2008:105).

women subject to customary law – a Southern African perspective” discusses critical methodological issues and assumptions concerning the analysis and understanding of gender in relation to the status of women under customary law. Furthermore, it identifies appropriate measures to address the gender inequalities and other disadvantages women suffer at the intersections of customary law, custom, practice, religion, and socio-economic conditions.

The last paper, namely “Women and custom: The legal setting” by Wilmary Visser and Katharina Ruppel-Schlichting, gives a broad overview of the constitutional provisions and legislation as well as the regional and international human rights instruments relevant to the issue of conflicts between cultural practices and gender equality. Most of these legal provisions are also discussed by Ambunda and De Klerk in their paper.

In conclusion, in my view, the book makes an important contribution to the understanding of the impact of customary law on the rights of women in Namibia. Therefore, I echo Bösl’s opinion that the publication –<sup>3</sup>

... will be a tool not only for researchers, students, academics, lawyers and stakeholders in the field of women’s rights and customary practices, but also for the public at large. At the same time, this important publication serves as a guide for all those men and women who wish to contribute to the enhancement of women’s rights in Namibia or who wish to empower themselves by breaking the fetters in their thinking.

As many of the issues discussed in the book are similar to those identified in other African countries,<sup>4</sup> the publication also contributes to comparative African studies on the legal status of women.

In my view, the book would have made a greater scholarly contribution to discourses on the rights of women under customary law by including a critical discussion of the following three issues:

- Whether and how changing patterns of customary law affect the rights of Namibian women living in different social and economic conditions
- The increasingly recognised living/official customary law dimension of the protection of African women’s rights,<sup>5</sup> and
- The implications of legislative reforms aimed at replacing customary law with the received English or Roman–Dutch common law for the survival of customary law as part of African legal systems, on the one hand, and the status of women in these systems, on the other.<sup>6</sup>

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<sup>3</sup> Ibid.:20.

<sup>4</sup> See e.g. Banda (2005:86-206); Himonga (2005:82).

<sup>5</sup> See e.g. *Bhe and Others v the Magistrate, Khayelitsha*, 2005 (1) SA 580 (CC); *Mabena v Letsoala*, 1998 (2) SA 1068 (T).

<sup>6</sup> For a discussion of the South African approach in this regard, see Pieterse (2000:35); Himonga & Manjoo (2006:329).

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