

## **Women and custom in Namibia – The legal setting**

*Wilmary Visser and Katharina Ruppel-Schlichting*

### **Introduction**

A broad bundle of legal provisions has to be considered when it comes to the question of controversy between cultural practices and gender equality. This section intends to give a broad overview over the most relevant legal instruments and provisions in this regard. The provisions that govern the addressed question relate to the protection of human rights in general and to gender equality rights in particular. In Namibia, many international treaties, the Namibian Constitution, and a multitude of statutory enactments and policies provide for the wide field of human rights and gender equality – of which only the most relevant ones can be introduced here.

The first sections of this publication have shown that, although cultural traditions have to be respected in general and deserve protection under the law, some of these traditions and practices have the potential to violate human rights, especially the rights of women. It has to be underlined that not all customary practices can be considered as affecting women's rights *per se*. Each incident will have to be analysed carefully under the law in order to determine whether or not a violation of human rights can be established and, if so, whether any grounds justify such violation. To this end, the following paragraphs intend to serve as a landmark for evaluating customary practices in the light of the law.

### **Global legal instruments**

Even though this publication focuses on women and custom in Namibia, many international and regional legal instruments binding upon Namibia contain rules that are applicable in addition to those that exist at a national level. The Namibian Constitution's Article 144 provides that general rules of public international law and international agreements binding upon Namibia form part of the law of Namibia without any further transformation or subsequent legislative act. However, as the Constitution is the supreme law of the country, international law has to be in conformity with the provisions of the Constitution in order to apply domestically.

Since the list of international conventions, agreements and similar legal instruments that may be directly or indirectly pertinent to women and cultural

practices is wide-ranging, this overview – not claiming to be exhaustive – can only highlight some of the most important provisions.

The vast number of human-rights-related legal instruments and institutions under the United Nation's umbrella furnish proof that, on the global level, the United Nations undeniably play the most vital role when it comes to the protection of human rights. On the basis of the Charter of the United Nations agreed to in 1945, five major United Nations legal instruments, known as the International Bill of Human Rights, were established to define and guarantee the protection of human rights. They are as follows:

- The Universal Declaration of Human Rights (1948)
- The International Covenant on Economic, Social and Cultural Rights (1966)
- The International Covenant on Civil and Political Rights (1966)
- The Optional Protocol to the International Covenant on Civil and Political Rights, and
- The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty.

The Universal Declaration of Human Rights (UDHR) is a basic international statement of the inalienable and inviolable rights of all members of the human family. The Declaration is intended to serve as the common standard of achievement for all peoples and all nations in the global effort to secure universal and effective recognition of the rights and freedoms it lists. The right to equality can be seen as the golden thread of the Declaration. Inter alia, it is laid down that –

- all human beings are born free and equal in dignity and rights (Article 1)
- everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2)
- everyone has the right to life, liberty and security of person (Article 3), and
- all are equal before the law and are entitled without any discrimination to equal protection before the law (Article 7).

One further provision of specific relevance in terms of specific cultural practices is Article 16. The latter provides that men and women of full age have the right to marry and found a family; that men and women are entitled to equal rights as

to marriage, during marriage, and at its dissolution; and that marriage should be entered into only with the free and full consent of the intending spouses. Although the Declaration implicitly recognises that its rights and freedoms may be subject to limitations, such limitations are obliged to be determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others. Furthermore, any such limitations have to meet the just requirements of morality, public order, and general welfare in a democratic society.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), ratified by Namibia in 1995, provide internal protection for specific rights and freedoms. Both Covenants recognise the right of peoples to self-determination; both have provisions which prohibit all forms of discrimination in the exercise of human rights; and both have the force of law for the countries which have ratified them.

While the ICESCR guarantees the right, among others, to work as well as to just and favourable conditions of work, the right to social security, and the right of everyone to an adequate standard of living, the ICCPR guarantees human rights such as the right to life; to liberty and security of person; to privacy; to freedom from cruel, inhuman or degrading treatment; and to freedom of thought, conscience and religion. Similar to the Universal Declaration of Human Rights, the ICESCR and the ICCPR bar all forms of discrimination. As to gender-related human rights, specific attention has to be given to those provisions that relate to family and marriage. These are of particular relevance when it comes to specific cultural practices that potentially violate women's rights. Article 3 of the ICESCR encourages States Parties to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights as set forth by the Covenant. The protection of the family as the natural and fundamental group unit of society is accorded special protection in Article 10, which – like the UDHR and the ICCPR – states that marriage should only be entered into with the free consent of the intending spouses. Specific rights pertinent to non-discrimination are also contained in the ICCPR and, again, one Article in particular takes up the issue of family and marriages (Article 23). Of equal importance with regard to women and customary practices are the rights to self-determination (Article 1), to be free from torture or cruel, inhuman or degrading treatment (Article 7), and to equality before the law (Article 26).

Apart from the aforementioned legal instruments, which are of a more general nature, further specific gender-related commitments have been formulated under

the United Nations' framework. Those particularly relevant in terms of women and custom include the following:

- The Declaration on the Elimination of Discrimination against Women (1967)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW; adopted in 1979, entry into force in 1981) and the Optional Protocol thereto, and
- The Declaration on the Elimination of Violence against Women (1993).

The Declaration on the Elimination of Discrimination against Women, issued by the United Nations' General Assembly four decades ago, was a crucial step in the process of drafting international gender-specific legal instruments. The Declaration, which – unlike CEDAW – is not binding, states that discrimination against women is fundamentally unjust and constitutes an offence against human dignity (Article 1). The Declaration also calls for the abolition of laws and customs which discriminate against women, for equality under the law to be recognised, and for states to ratify and implement existing UN human rights instruments against discrimination (Article 2). The rights to education, to vote and to enjoy full equality in civil law, particularly in respect of marriage and divorce, are emphasised in the Declaration, while it also calls for child marriages to be outlawed (Article 6).

CEDAW has to be seen as a milestone in gender-related legislation as it is the first legally binding instrument relating to women's rights in particular. As of August 2008, the Convention had 185 members, including Namibia, which ratified the Convention in 1992. CEDAW provides the foundation for realising equality between women and men. States Parties are obliged to take all appropriate measures, including legislation and temporary special measures, to ensure that women enjoy all their human rights and fundamental freedoms.

One of the Convention's mainstays is the definition of the term *discrimination against women* as (Article 1) –

*... 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 a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

States Parties are required to enshrine gender equality into their domestic legislation, repeal all discriminatory provisions in their laws, and enact new

provisions to guard against discrimination against women. They are also obliged to establish tribunals and public institutions to guarantee women effective protection against discrimination, as well as to take steps to eliminate all forms of discrimination practised against women by individuals, organisations, and enterprises (Article 2). One provision specifically relevant for women and custom is Article 5, which states that measures have to be taken 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.*

It has to be noted that CEDAW permits ratification subject to certain reservations, provided that such reservations are not incompatible with the object and purpose of the Convention. A number of states enter reservations to particular Articles on the grounds that national law, tradition, religion or culture are not congruent with the principles of the Convention, and purport to justify the reservation on that basis. Namibia has not reserved any such right under CEDAW.

One specific feature of CEDAW is that each State Party has to submit periodic reports on measures they have taken to comply with their obligations under CEDAW. These reports are examined and commented on by the Committee on the Elimination of Discrimination against Women, established under CEDAW.

In its concluding comments on Namibia's combined second and third periodic reports submitted according to Article 18 of CEDAW<sup>1</sup> with regard to women and custom in Namibia, the Committee expressed its concern about, inter alia, the persistence of strong patriarchal attitudes and stereotypes in regard to the roles and responsibilities of women and men in the family and society. Furthermore, the Committee was concerned that the Traditional Authorities Act,<sup>2</sup> which gives traditional authorities the right to supervise and ensure the observance of customary law, may have a negative impact on women in cases where such laws perpetuate the use of customs and cultural and traditional practices that are harmful to and discriminate against women. The Committee, therefore, called on Namibia to study the impact of the implementation of the Traditional Authorities Act as well as the Community Courts Act<sup>3</sup> so as to ensure that customs and cultural and traditional practices that were in fact harmful to and discriminated against women were discontinued.

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1 CEDAW (2007a).

2 Act No. 25 of 2000.

3 Act No. 10 of 2003.

The Optional Protocol to CEDAW adopted by the United Nations General Assembly in 1999 entered into force in December 2000, and was signed and ratified by Namibia in May 2000. Members to the Optional Protocol recognise the competence of the Convention's monitoring body, the Committee on the Elimination of Discrimination against Women, to receive and consider complaints from individuals or groups within its jurisdiction.

The Declaration on the Elimination of Violence against Women (1993) is a further commitment by the UN that relates to the topic of this publication. It goes without saying that violence against women is not a problem peculiar to women living in traditional settings. Unfortunately, violence against women occurs in all socio-economic and educational classes and cuts across cultural and religious barriers. However, the perception that women are subordinated to their male partners still predominates in large parts of traditional communities, and in many cases, tradition is considered to be a justification for violence against women. Violence against women takes a dismaying variety of forms, from domestic abuse and rape to child marriages and female circumcision. The Declaration defines the term *violence against women* as (Article 1) –

*... any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.*

States are called to condemn violence against women and not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination (Article 4).

Two major documents that have to be mentioned here, namely the *Beijing Declaration* and the *Beijing Platform for Action*, resulted from the UN's Fourth World Conference on Women, titled "Action for Equality, Development and Peace", which was held in Beijing in 1995. The Beijing Declaration embodies the commitment of the international community to the advancement of women and to the implementation of the Platform for Action, ensuring that a gender perspective is reflected in all policies and programmes at national, regional and international levels. The Beijing Platform for Action, on the other hand, sets out a number of actions for national and international implementation for the advancement of women. Both documents contain several sections that relate either directly or indirectly to issues around women and custom. For instance, the Platform for Action states that violence against women, including physical, sexual and psychological violence occurring in the family such as marital rape,

female genital mutilation and other traditional practices harmful to women, have to be prevented and eliminated.

### **Regional legal instruments**

Several legal instruments on gender-related issues have been adopted on a regional level in Africa. For Namibia, the relevant regional institutions in terms of gender-related legal instruments are the African Union (AU) and the Southern African Development Community (SADC). Basic AU instruments include the following:

- The African Charter for Human and Peoples' Rights (1981), and
- The Protocol on the Rights of Women in Africa (2003).

The African Charter for Human and Peoples' Rights was adopted in Nairobi, Kenya, in 1981 and came into force in October 1986. Namibia ratified the Charter in 1992. The Charter contains a large number of civil, political, social and cultural rights. The principle of non-discrimination is recognised by Article 2, while Articles 3 and 4 grant the rights to equality and to bodily integrity, and the right to life, respectively. The family is accorded special protection through Article 18, which in its subsection 3 reads that the –

*... State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.*

A special feature of the Charter is that it explicitly imposes duties upon every individual and the community. Every individual has duties towards his or her family and society. Therefore, the rights and freedoms of each individual have to be exercised with due regard to the rights of others, collective security, morality and common interest (Article 27). A duty is imposed upon the individual to respect and consider his/her fellow beings without discrimination (Article 28), and the community is called to, inter alia, respect the family (Article 29).

Although the African Charter on Human and Peoples' Rights provides for the general protection of the rights of women and the principle of non-discrimination on the grounds of sex, it was considered that these provisions did not sufficiently protect women's rights in Africa. Thus, the Protocol on the Rights of Women in Africa was drafted as the first human rights treaty under the African Union to provide specifically for a range of women's rights. It was adopted in 2003 and came into force in November 2005. Namibia ratified the Protocol in 2004. The



Protocol's Preamble states that –

*... despite the ratification of the African Charter on Human and Peoples' Rights and other international human rights instruments by the majority of States Parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices.*

Traditional cultural practices are considered to be a major impediment to the advancement of women's rights in Africa, as can be taken from the CEDAW Committee's concluding observations on the periodic reports of many African countries.<sup>4</sup>

The Protocol intends to improve this situation by covering a broad spectrum of women's rights such as the rights to life, dignity, integrity and security; to protection from violence; the prohibition of harmful practices; and marriage and marriage-related rights. With its broad list of rights, the Protocol goes beyond the scope of other gender-related instruments such as CEDAW. On the other hand, the Protocol takes less restrictive positions, e.g. on polygamous marriages, which – according to the UN Human Rights Committee (HRC) as well as to the CEDAW Committee – are incompatible with the principle of equality of treatment and have to be seen as inadmissible discrimination against women and should be abolished wherever they continue to exist. In its Article 6(c), the Protocol only states that –

*... monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships[,] are promoted and protected.*

It is for obvious reasons that the wording of the AU Protocol is less restrictive than required by the HRC or the CEDAW Committee, as polygamy is permissible under the customary laws of many African states as well as under Islamic personal law, which applies in many African countries.

It has to be noted that the AU Protocol does not establish a specific body to promote, protect and monitor its effective implementation. This apparently falls within the mandate of the African Commission on Human Rights, established under Part II of the African Charter on Human and Peoples' Rights. This is the body to which periodic reports have to be submitted (Article 26 of the AU Protocol) and to which individual communications alleging a breach of the

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<sup>4</sup> See e.g. CEDAW (2006, 2007b).



Protocol's provisions have to be lodged (Article 55 of the African Charter on Human and Peoples' Rights).

The environment for the promotion of gender equality is enhanced in several SADC instruments. These include the following:

- The SADC Declaration on Gender and Development (1997)
- The SADC Charter on Fundamental and Social Rights (2003), and
- The SADC Addendum on the Prevention and Eradication of Violence against Women and Children (1998).

Besides the Treaty establishing SADC, which defines human rights, democracy and the rule of law as fundamental principles, the Charter on Fundamental and Social Rights is one of the basic documents related to human rights within SADC. Even though this document is of a more general nature, Article 6 refers to the equal treatment for men and women and calls upon member states to ensure gender equity, i.e. equal treatment and opportunities for men and women.

The SADC Declaration on Gender and Development accepts that gender equality is a fundamental human right, and demands the equal representation of women and men in decision-making structures at all levels, as well as women's full access to and control of productive resources such as land, livestock, credit, modern technology and formal employment. However, even though the Declaration has been signed by all SADC member States, it is not a legally binding instrument.

Considering the increasing levels of various forms of violence against women and children in SADC, the SADC Summit signed an Addendum to the 1997 SADC Declaration on Gender and Development known as the Addendum on the Prevention and Eradication of Violence Against Women and Children. In the Addendum, the Summit resolved to ensure the adoption of specific measures by SADC governments, which include the enactment of legislation, public education, training, the raising of awareness, and the provision of services. Like the Declaration on Gender and Development, the Addendum has been signed by all member States but is not legally binding.

The SADC Gender Unit, established in 1996, is responsible for monitoring and evaluation of all gender-related issues within SADC.

## **National legal instruments**

As stated earlier, the Constitution of the Republic of Namibia is the supreme law of the country. Gender equality and culture, as well as the existence of customary law, are anchored within the Constitution. Indeed, the Constitution takes up the issue of gender equality in several Articles. Respect for human dignity, as well as equality and freedom from discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status, are recognised within Chapter 3 as fundamental rights to be respected and upheld by the executive, legislature and judiciary and all organs of the government, as well as by all natural and legal persons in Namibia (Articles 5, 8 and 10, respectively). Within this Chapter dealing with fundamental rights and freedoms, there are further provisions specifically relevant to the rights of women. The family, as the natural and fundamental group unit of society, is accorded special protection in Article 14. This Article also bars child marriages and states that men and women have equal rights as to marriage, during marriage and at its dissolution.

The right to culture is given equal attention in the Constitution. It is a fundamental right comprising the right to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion. The right to culture is restricted, however, in that it is obliged to be consistent with the terms of the Constitution. Furthermore, the exercise of the right to culture may not impinge upon the rights of others or the national interest (Article 19).

Some fundamental rights may be subject to limitations, where such limitation is authorised by the Constitution itself. However, laws providing for such limitation are required to be of general application, may not negate the essential content of the fundamental rights involved, and may not be aimed at a particular individual.

Article 66 of the Constitution recognises that customary law forms part of the law of the land, as long as it does not conflict with the Constitution or any other statutory law.

One provision aimed specifically at enhancing women's rights is contained in the Constitution's Article 95. According to the provision concerned, the state is called to actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society. Specific emphasis is put on the implementation of the

principle of non-discrimination in the remuneration of men and women. To this end, many gender-related statutory provisions have been enacted on the basis of the National Gender Policy of November 1997. Taking the Constitution as a foundation, the policy –<sup>5</sup>

*... outlines the framework and sets out principles for the implementation, coordination and monitoring of gender sensitive issues which shall enhance effectiveness in the continued management and planning of the developmental processes in the different cultural, social and economic sectors of the Namibian Nation.*

Recognising inter alia that due to traditional attitudes and gender stereotyping, women continue to be under represented, the policy addresses various areas of concern such as gender, poverty and rural development; gender and reproductive health; violence against women and children to name but a few. With regard to women and custom, the policy in the context of providing strategies to address issues related to women and health calls on Government to enact legislation to combat and protect women against socio-cultural practices that make them susceptible to HIV/AIDS and contribute to the spread of HIV/AIDS (Section 5.8.15 of the Policy). Reference to traditional practices harmful to women is furthermore made within the Policy's chapter on violence against women and children: The Policy states that –<sup>6</sup>

*violence against women and girls originates essentially from cultural and traditional patterns and harmful practices, language or religion that perpetuates the lower status accorded to women ... .*

Several statutory laws have been enacted and existing laws have been amended on the basis of the 1997 National Gender Policy, which aim at eliminating discrimination against women and promoting gender equality. Indeed, some of the existing laws relating to gender-sensitive issues were enacted even prior to the National Gender Policy coming into being. Enactments that might be relevant when it comes to the issue of women and custom include the following:

- The Children's Status Act<sup>7</sup>
- The Combating of Domestic Violence Act<sup>8</sup>
- The Maintenance Act<sup>9</sup>

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5 Section 2.1, National Gender Policy (RoN 1997).

6 Section 6.6, National Gender Policy (ibid.).

7 Act No. 6 of 2006.

8 Act No. 4 of 2003.

9 Act No. 9 of 2003.

- The Combating of Rape Act<sup>10</sup>
- The Married Persons Equality Act,<sup>11</sup> and
- The Combating of Immoral Practices Act.<sup>12</sup>

The Children's Status Act provides, inter alia, for children born outside marriage to receive the same treatment before the law as those born inside marriage. The Act also provides for matters relating to custody, access, guardianship and inheritance in relation to children born outside marriage. Specific reference to customary law is made in the context of inheritance, either intestate or by testamentary disposition. In this specific regard, a person born outside marriage is to be treated in the same manner as a person born inside marriage, despite anything to the contrary contained in any statute, common law or customary law.

The Combating of Domestic Violence Act provides for protection measures in domestic violence cases. The Act defines the terms *domestic violence* and *domestic relationship*. Various types of relationships are covered, including customary or religious marriages. Whether or not specific traditional practices fall under the definition of *violence* in terms of section 2 of the Act has to be determined on a case-by-case basis. The definition was kept intentionally broad by qualifying acts of physical, sexual, economic, emotional, verbal or psychological abuse, as well as acts of intimidation and harassment, as domestic violence.

The Maintenance Act confers equal rights and obligations on spouses with respect to the support of their children. The Act specifically states that both of a child's parents are liable to maintain that child, regardless of whether the parents are subject to any system of customary law which does not recognise both parents' liability to maintain the child. In the context of customary law, it might be even more complicated to determine whether a person were legally liable to maintain another person. Thus, the Maintenance Act provides that a maintenance court is to have due regard for specific principles – such as the principle that husbands and wives are primarily responsible for each other's maintenance – notwithstanding anything to the contrary in customary law. Furthermore, the petitioning parent can be granted an order to be paid maintenance in kind (goats or cattle) where the father is not employed but owns livestock.

The Combating of Rape Act provides protection to victims of rape and sexual abuse and prescribes stiffer sentences for perpetrators. The offence of rape is committed if a person intentionally under coercive circumstances – including

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10 Act No. 8 of 2000.

11 Act No. 1 of 1996.

12 Act No. 21 of 1980.

physical force, threats of force, or other circumstances where the victim is intimidated – commits or continues to commit a sexual act with another person or causes another person to commit a sexual act with the perpetrator or with a third person.<sup>13</sup>

Even though the customary laws of many communities include explicit rules for the handling of rape cases and stipulate payments for the crime of rape, the perception that marriage is to be seen as justification for rape is still predominant, especially in rural communities. The Act makes it very clear that marital rape is illegal, however, by stating that no marriage or other relationship constitutes a defence to a charge of rape.<sup>14</sup>

The Combating of Immoral Practices Act has been subject to amendments by the Married Persons Equality Act as well as by the Combating of Immoral Practices Amendment Act.<sup>15</sup> The Combating of Immoral Practices Act provides for the combating of brothels, prostitution and other immoral practices and for matters connected with them.

One statutory enactment of specific relevance when it comes to conflicts involving customary law and gender is the Married Persons Equality Act. The intention behind this legal instrument include the abolition of the marital power of the husband over the person and the property of his wife, which power was previously applied in civil marriages, and to amend the matrimonial property law of marriages in community of property. Taking into account the CEDAW Committee's concluding comments with regard to Namibia's report to the Committee, it has to be stated that many provisions of the Act are well suited to enhancing gender equality, even with regard to customary law marriages. Article 14, which gives wives and husbands equal power of guardianship in respect of children, notwithstanding anything to the contrary contained in any law or the common law, can be cited as such example. One further positive effect of the Act is that it fixes the legal age of marriage at 18 years for both boys and girls.<sup>16</sup> The abolition of the husband's marital power<sup>17</sup> can in fact be regarded as fundamental with regard to gender equality. For this reason, the exception to this provision – which reads that the provisions regarding the abolition of marital power and the consequences thereof are not applicable to marriages by customary law – is observed with great concern.

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13 Section 2, Combating of Rape Act.

14 Section 2(3), Combating of Rape Act.

15 Act No. 7 of 2000.

16 This is provided for by section 24 of the Married Persons Equality Act, which amends section 26 of the Marriages Act, 1961 (No. 25 of 1961), as substituted by section 6 of the Marriages, Births and Deaths Amendment Act, 1987 (No. 5 of 1987).

17 Section 2, Married Persons Equality Act.

Notably, one draft legal instrument that will have a substantial effect on women and custom in Namibia if it comes into force is the draft of the Recognition of Customary Law Marriages Bill. The draft of the Bill was proposed by the Law Reform and Development Commission, but it has not yet been submitted to Parliament. It provides, inter alia, for the full legal recognition of marriages concluded under customary law. The draft of the Bill specifies requirements for and the registration of customary law marriages, as well as for the matrimonial property consequences of customary law marriages. According to the draft, customary law marriages will have full legal recognition – as civil marriages do. The minimum requirements for a customary marriage under the proposed Act are as follows:

- Full age (unless consent from both parents as well as from government is obtained)
- Consent of both intending spouses
- The lack of relationship to each other by affinity or blood to such a degree that their marriage would not be valid in terms of applicable customary law
- Neither prospective spouse is party to an existing customary law marriage or a marriage under the common law.

Thus, bigamy (and, naturally, polygamy) will be outlawed once the proposed Act comes into force. The Married Persons Equality Act will subsequently be amended to the effect that the provisions of the Act (including the abolition of marital power) apply to all marriages, whether by customary law or contracted under the Marriages Act.<sup>18</sup>

### **Concluding remarks**

The legal framework relating to gender-sensitive issues in Namibia is wide-ranging on the international, regional and national level. Some of the gender-related instruments take up possible conflicts between gender equality and customary law, and aim at achieving gender integration and equality. This, however, is a long-term process, and many more steps will have to be taken in order to realise the objectives laid down in the various legal instruments. Furthermore, it has to be said that effective implementation, enforcement and monitoring procedures are essential in order to put all these theoretical provisions into practice. In this regard, it is of utmost importance that due awareness is created and that the rationale and contents of gender-related legal instruments are taken down to grass-roots level.

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<sup>18</sup> Act No. 25 of 1961.