

**THE IMPACTS OF TRADITIONAL PRACTICES ON THE RIGHTS OF WOMEN**

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November 2011

## **DECLARATION**

I, the undersigned, hereby declare that the work contained in this dissertation for purposes of obtaining my degree of Bachelor of Laws, is my original work and that I have not used any other sources than those listed in the bibliography and or quoted in the references.

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Oreneile Claire Nyambe

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Date

## **SUPERVISOR 'S CERTIFICATE**

I, Mr Clever Mapaure, hereby certify that the research and writing of this dissertation was carried out under my supervision.

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Mr Clever Mapaure

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Date

## ABSTRACT

The violation of women's rights by traditions is one of the world's most spoken topics that have firmed its roots with the dynamic cultures from an imminent into a silent crisis, which thus makes it difficult and almost impossible to realise, overcome, and mitigate.<sup>1</sup> Traditions have already caused widespread devastation and sufferings to women in Namibia. It has recently been observed that culture can strengthen and validate human rights perspectives, however certain cultural practices may also violate human rights principles and there is no enough or a lot of data about the impacts of traditional practices on the rights of women in Namibia. A research on the impacts on traditional practices on the rights of women, initiated in the hope of shedding some light on the problems so as to overcome them.

Qualitative results are shown that some of these traditional practices include polygamy, forced marriages, early marriages, early pregnancies, genital mutilation<sup>2</sup> and forced isolation to mention a few. Consequently this leads to violation of various rights provided for in the Namibian Constitution such as, right to life; right to privacy, right to freedom of speech; right to dignity, right to health; right to culture. It is shown that the most affected group of women is those that stay in rural areas and living traditional lifestyle. There are however some legislation put into place to protect women's rights on international level, regional level and national level.

A theoretical analysis backed by observations, proof is provided to show that even though progress has been made in protecting women's rights and achieving equality among women and men, Namibian women are still struggling. That is only done on paper, but not in action and there is no specific statute dealing specifically with these violated rights and how they can be fulfilled. Besides the principle of non-discrimination, further principles within the framework of the Namibian Constitution are the fundamental right to enjoy, practice, maintain and promote any culture,

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<sup>1</sup> Ruppel OC. 2010a. *Climate change, Human vulnerability and Environmental Rights in Namibia, 2009/10 research report*. Unpublished, p 1.

<sup>2</sup> Most people do not know this but it exists in Namibia, only a small percentage of the Ovaherero speaking community.

tradition or religion, as well as the recognition of Namibian Customary law, which can be regarded as an indispensable tribute to Namibian indigenous people.<sup>3</sup>

The research consequently recommended, among others, discarding of the cultural practices that violate women's rights, putting the talk into action, working hand in hand with international instruments to identify and curb the harmful practices, encouraging women to open up and support each other and report any harmful cases and formulating a legal foundation in Namibia that will deal specifically with women's rights that are violated by traditional practices can be fulfilled and protected.

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<sup>3</sup> Ruppel.O.C. 2008. *Women and Customs in Namibia: Introduction*. In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers, p23



# CHAPTER 1

## INTRODUCTION

### 1.1 BACKGROUND OF STUDY

Women's Human rights are rather still unknown to the traditional people but the effects are largely experienced and although there are no specific customary laws that deals with women's rights because of the different laws in different communities. Thus, customary law does not afford some protection from traditional practices which are harsh. This area of the law has always been criticised for being gender insensitive towards women in particular to women and thus suppresses the rights and freedoms of women within society.

It is against this position that women are accordingly submissive to their husbands<sup>1</sup> the heads of households. However, women are also becoming heads of households resulting in single headed households and will be more vulnerable to the impacts of traditional practices because labour is now concentrated on one person increasing the pressure to prove themselves. Additionally, discriminatory practices will not be able to stand the constitutional dispensation as per article 10 of the constitution forming a platform upon which women may be treated equally in matters such as decision making in order to boost their capacities.

The Constitution of Namibia prohibits gender-based discrimination, but men still dominate in the family domain. Inequalities in the country are aggravated by cultural practices and persisting legal discrimination in both civil and customary (traditional) law.<sup>2</sup>

The Namibian family code contains several measures that discriminate against women. The minimum legal age for marriage is 18 years for both men and women premature marriages do occur, but the incidence is lower than in many other African countries. A 2004 United Nations report estimated that 8% of girls between 15 and

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<sup>1</sup>Hinz MO and Namoonde NE (eds). 2010. *Customary Law Ascertained: the customary law of the Owambo, Kavango and Caprivi Communities of Namibia*. Vol 1. Windhoek: Macmillan Publishers, p 271

<sup>2</sup> Gender and Sexuality in Namibia available at [http:// www.lac.org.na/projects/grap/pdf/unravelling](http://www.lac.org.na/projects/grap/pdf/unravelling) accessed on 30 October 2011.

19 years of age were married divorced or widowed. Polygamy is legal according to customary law in Namibia, and about one Namibian woman in seven is in a polygamous union. The government is discussing a bill to change civil law; under the proposed legislation, existing polygamous marriages would not be legally recognised.<sup>3</sup>

Human rights and traditions are a great force for peace and progress around the world. However, people's belief is that the justification for discrimination against women is on grounds of tradition,<sup>4</sup> is unacceptable. Women share equal rights with men in all aspects.

Harmful traditional practices that violate the human rights of women are pervasive in Namibia, occurring in varying degrees in all communities throughout the country.<sup>5</sup> Some of the traditions that violate human's rights are polygamous marriages, forced premature and arranged marriages, genital mutilation,<sup>6</sup> forced isolation<sup>7</sup> and describes the Government of Namibia's response to these practices and makes recommendations to end such practices.<sup>8</sup> Such practices are widespread, occurring in rural and urban communities, among all ethnic groups and worsened by poverty. Discriminatory views and beliefs about the role and position of women in the society, harmful traditional practices cause pain, suffering, and humiliation and marginalisation for some Namibian women, especially those who live in rural areas with traditional lifestyle.

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<sup>3</sup> Wikigender.org/index.php/Gender-Equality\_in\_Namibia

<sup>4</sup> Cook RJ. 1994. *Women's International Human Rights Law: The Way Forward*. Philadelphia University of Pennsylvania, p5

<sup>5</sup> Ruppel OC. 2008. *women and custom in Namibia: Introduction*. Windhoek: Macmillan Education Publishers. p, 21

<sup>6</sup> Female Genital Mutilation is practised in Namibia, but it affects only a small portion of the population. The few ethnic groups that practise it generally do so as a symbolic act entailing a simple cut. It happens mostly in countries such as Afghanistan or Arab. Available at <http://www.genderindex.org/country/namibia>

<sup>7</sup> Himba women reside in areas where they can look for cattle away from their husbands

As long as women are subject to practices that harm, degrade and deny them their human rights, little meaningful and sustainable progress for women's rights cannot be achieved.<sup>9</sup>

Traditional practices have greater and significant impacts and consequences on women, and they have an impact on rights such as right to life; right to privacy, right to freedom of speech; right to dignity, right to health; right to culture. In response to this, Namibia has initiated significant measures to protect women's rights.

According to a rough and quick interview conducted at UNAM,<sup>10</sup> a female law student aged 22 stated that, "the most affected are those that live in rural areas and their partners live in urban areas, and practice such as female genital mutilation and forced marriages patterns will potentially and disproportionately hurt the poor and the most vulnerable of which maids, farmers and low-wage earners are amongst them."

The consequences and impacts of traditional practices on the rights of women further do not affect women with the same extent and thus distributed unevenly within the communities. This is due to individual and social factors such as, age, education ethnicity, beliefs and geographical position which lead to the differential vulnerability and capacity to adapt to the environment and the traditional lifestyle.<sup>11</sup>

This degradation increases the burden on women due to existing gender inequalities, discrimination and inhabiting gender roles and stereotypes. Additionally, vulnerability is further exarbbated by factors such as the unequal rights to property, exclusion from decision-making. Health opportunities are also negatively affected by polygamy leading to high rates of diseases such as HIV<sup>12</sup>, AIDS,<sup>13</sup> and syphilis and other Sexually Transmitted Infections and infant and child mortality<sup>14</sup> and of which women will then be at the centre of the circle.

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<sup>9</sup> Cook RJ. 1994. *Women's International Human Rights Law: The Way Forward*. Philadelphia University of Pennsylvania, p3

<sup>10</sup> Conducted by the author in march 18 2011.

<sup>11</sup> Cook RJ. 1994. *Women's International Human Rights Law: The Way Forward*. Philadelphia University of Pennsylvania, p3

<sup>12</sup> Human Immunodeficiency Virus

<sup>13</sup> Acquired immune deficiency syndrome

<sup>14</sup> Because of early forced marriages which will lead to early and unplanned pregnancies, by that time young women are not familiar with how to take care of babies.

The 1996 Married Persons Equality Act removed the husband's prerogative to act as the sole head of the family. Parental authority is now shared by both parents, and they have equal child custody rights. But that does not happen; the statute is still violated because of lack of data on what is happening to other women.

The analysis of the situation indicate that there exist an injustice in terms of which the women's rights are the most affected and additionally that only certain women in the society suffer the most due to various identified factors. It can thus be argued that the consequences of traditional practices may give rise to a legal foundation on which these rights are to be respected, protected and fulfilled.

#### **1.4 PROBLEM STATEMENT**

Some cultural aspects of customary law in Namibia are inhuman and discriminatory, and this endangers the existence of customary law as a system of laws that govern the way of life of most Africans.<sup>15</sup> The consequences of these practices on women's livelihood in Namibia have emerged and are causing more harm than predicted. Most African government use African culture and traditions as an excuse for not amending national laws to recognise women's rights. But a closer look shows that many-so called customs have been discarded except those that concern women and are meant to subordinate them. Unfortunately , right now Namibia is faced with a problem of not having enough or a lot of data about the impacts of traditional practices on the rights of women, therefore, given these problems, it is imperative to shed light on these problems so as to overcome them. If the Namibian government continues turning a blind eye to this situation, Namibian women will continue to suffer and it will not only endanger the existence of customary law which is supposed to be the national pride and identity. Also undue suffering of women could lead women's socio economic situation to be deteriorated and there could never be women empowerment.<sup>16</sup>

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<sup>15</sup> Ruppel.O.C. 2008. *Women and Customs in Namibia: Introduction*. In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers, p23

<sup>16</sup> ibid

## **QUESTIONS RAISED**

Which traditional practices exactly in Namibia violate the rights? And how?

Is this the situation that the Constitution wanted it to be?

Is the Namibia government doing anything to overcome this problem?

To what extent has the government gone, if it did to solve the problem?

What can be done to make people more aware of these traditional practices and discard them?

## **1.2 JUSTIFICATION OF THE TOPIC CHOSEN**

The area of research is hardly talked about because it is a very sensitive topic to some people more especially the elders as they are still deep rooted into traditions, it is also difficult to discuss issues of sex and Sexually Transmitted Infections, which are relevant to the research topic, so it is of essence to carry out this research as it will provide a full and clear picture on the impacts of traditional practices on the rights of women and provide more information and new knowledge. Most people seem not to have interest in the area of customary law and how the traditions affect our daily lives, hopefully the research will make them realise how much Namibia or maybe the whole of Africa is so stuck in the past that women suffer badly in the name of culture.

## **1.3 AIMS OF THE RESEARCH**

The research aims at determining the problems brought by traditional practices on the rights of women and whether the legal measures and instruments in place are sufficient and effective enough to strengthen the rights of women in response to the impacts of traditional practices.

In addition the international, regional and national legal frameworks that deal with women's rights will be discussed, to find out whether they have made any changes so far and whether the right to culture should be enjoyed even when it is putting women's lives at a risk and violating their Human Rights. The dissertation will focus on negative impacts, but there will be some highlights on the positives.

The dissertation further aims at shifting the concentration from the impacts of traditional practices on social level to the effects alleviated on individuals and their

livelihoods in order to give a clear indication of the consequences and the urgency to alleviate such impacts.

## 1.5 LITERATURE REVIEW

Article 95(a) of the Namibian constitution states that the government must adopt appropriate policies and legislatures aimed at ensuring the equality of opportunities for women and to enable them to participate fully in all spheres of the Namibian Society. However, Namibia has no Policy in place to combat the impacts of traditional practices nor does it have any legislature in place that was promulgated solely for purposes of alleviating the consequences of traditional practices on women's rights. Meanwhile, most of the potentially affected rights are guaranteed by the Namibian Constitution in addition to the application of international law and customary law to the extent that it does not conflict with its provision. Thus, despite the insufficient legal framework on consequences of traditional practices, the considerable amount of legal instruments on human rights and women's rights that are binding on Namibia can be seen as legal framework that may be used to protect the rights of women.

In respect of human dignity and justice, legislation must recognise the need to respect women's dignity and freedom of choice, the exactions perpetrated in times of war must be regarded as war crimes and must be punished.<sup>17</sup> Marital violence must be deterred and the necessary means set up to help women and men in distress.

Namibian legislation protects women's civil liberties, but discriminatory traditions persist. The Constitution guarantees women's freedom of movement and married women can travel without their husbands' permission.<sup>18</sup> Discrimination persists within customary marriages in that Namibian women are expected to obey their husbands in all areas of daily life.<sup>19</sup>

From my observations, the legislation might be there but it is just a written paper that is not put into practice. Women still ask or rather beg for permission from their husbands to travel. This is not right, it gives men too much power, and we are

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<sup>17</sup> Dennerstein L. 2001. *Women's rights and bioethics*. France:UNESCO Publishers.p,13

<sup>18</sup> <http://www.genderindex.org/country/namibia> accessed on 30 October 2011

<sup>19</sup> Even today it still happens,men always want to control wome's movements and yet women cannot do the same to them.

already living in a male dominant society. However, the question of how to promote equality in an unequal world is a bit difficult and requires more dedication and willpower, so it is up to women to exercise their rights. For all this, culture is to be blamed.

Cook<sup>20</sup> acknowledges that human rights law has not yet been applied effectively to redress the disadvantages and injustices experienced by women by reasons only of their being women. Cook<sup>21</sup> states that in this sense, respect for human rights fails to be “universal.” The reasons for this failure to enforce women’s rights are difficult to understand and vary from area to area. Some of them are, failure to recognise the need to characterise the subordination of women as a human rights violation, and lack of state practice to condemn discrimination against women.<sup>22</sup>

In my view, states, including Namibia are really trying their best to empower women and stop discrimination against women. I believe that rather, the state receives negative energy from men especially because the fight for women's rights is viewed as necessarily involving the disempowerment of men and because men are not provided with alternative ways to re-define and exercise their masculinities they feel threatened and offer up some resistance as a means of clinging to power.<sup>23</sup>

Ambunda and De Klerk<sup>24</sup> mention that cultural practices that denies women the rights to make decisions and views women as ‘second-hand citizens’ may also be attributed to the vulnerability of women to traditional practices which are harmful and degrading. Women are mostly the rape victims; one can ask why women and why they are unable to report such rape case. The answer is, blame culture.

I am of the view that most rape cases are not reported and there are a lot of them. For purposes of this study, Namibia is the main focus but our neighbouring country South Africa is facing the same problem. It is stated that South Africa has less than 5

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<sup>20</sup> Cook RJ. 1994. *Women’s International Human Rights Law: The Way Forward*. Philadelphia University of Pennsylvania, p3

<sup>21</sup> ibid

<sup>22</sup> : Benign accommodation? *Ukuthwala*, ‘forced marriage’ and the South African Children’s Act

<sup>23</sup> La Font Suzanne.2007.Introduction. In La Font Suzanne and Hubbad Dianen (ed) . *An Overview of Gender and Sexuality in Namibia*: Windhoek:John Meinert Printing,p1.

<sup>24</sup> Ambunda L & De Klerk S. 2008. *‘Women and Customs in Namibia: A research Overview*. In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers, p 45

percent for the cases that reach prosecution.<sup>25</sup> Women often do not feel safe to talk about rape cases because sex is a taboo and the woman is always to blame. Sexual violence is very high and women are always at risk, irrespective of what they are wearing or where they are. Grandmothers and two year old babies get raped mostly by people they know or family members. This is a situation that needs immediate attention from the Namibian government.

In most cases, older men like uncles, cousins or even traditional men with power rape women, making it difficult for women to report cases as they are respected as elders in the traditional community. A typical example is Zuma's case.

During his 2005-2006 rape trial, Jacob Zuma the President of South Africa claimed that his accuser gave him sexual signals by wearing only a kanga<sup>26</sup> not wearing any underwear.<sup>27</sup> This is very strange, even traditional wear is one of the things that lead to rape, it clearly shows how much we are confused and we do not know what we want.

Malema, president of the ANC Youth league, outraged the country when he disparaged Zuma's rape case accuser stating that those who had a nice time will wait until the sun comes out, request breakfast and ask you for taxi money. Malema was hauled before the Equality Court and fined R50 000 to a shelter abused women.

Sexual violence is also a very big issue and it's really shocking how people still assume its ok to joke about it, like what Malema did. It also points to a real problem when highly respected and traditional men like Zuma think it is appropriate to do such. On top of that Zuma is a polygamist and he goes on to rape another women, this raises so many questions about our tradition. It is very clear that only women are in the centre of all these.

Jean<sup>28</sup> points out that women's rights must be valued and respected in spite of difficulties and obstacles because it is said that, the quality of a society can be measured by the way in which it treats women. The statement made by Jean above, is a typical example of putting the legislation into practice. As it was mentioned

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<sup>25</sup> Smith.G. *Cosmopolitan* November. Editorial,Raphaely.V. *Cosmopolitan* November 2011,p.136.

<sup>26</sup> A traditional African wrap

<sup>27</sup> *Cosmopolitan*.2011.p.136.

<sup>28</sup> Jean M.2001.*Some reflections in conclusion.In Women's rights and bioethics: Dennerstein L.(ed).* France:UNESCO,p196



below, what it takes is willpower and commitment to ensure that respecting women's rights become a reality. It is upon every responsible citizen to value and uphold our constitution in order to make our beloved country a safe and comfortable place for everyone.

When coming to the issue of polygamy and early marriages, there are different views and it is a very sensitive topic. Leleti khumalo got married to Mbongeni Ngema at a tender age of 22. At the core of her unhappiness was the fact that she had to share her husband with other women and not just his wives, but girlfriends as well.<sup>29</sup>

She went on to say that men say they are polygamist because they do not want to cheat their wives, but we know that is not the truth. It makes women doubt themselves; they usually stay in these marriages to protect their image and the impression that the marriage is strong and untouchable. This really dents the inner self of women.

In Namibia one of the people who practice polygamy and early marriages is the Himba. This proves to have bad consequences as AIDS is threatening to swipe them off. It would be highly appreciated if we could have women like Leleti in Namibia, women who are able to open up and speak the truth, she even spoke about her marriage on television, which gives other women who are still stuck in that situation to hold their heads up and walk away.

Man Marries Two Sisters: storyline in the *New Era*: quoted in *New Era*, 8 January 2007

"I can handle both. The groom went on to say, "Everybody wants more than one car, house or cattle so why can't I desire more than one wife? It is my democratic right to have more than one wife and if the government respects human rights, it should not object to my marriage."<sup>30</sup>

It is clear that polygamy still exists in Namibia and people claim that they do not know about it, they thought it was done in the past. The truth is, it still exists just that

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<sup>29</sup>Leleti Khumalo in: Cekete.N. *Drum* 2011. *Editorial,Drum* 3 November 2011.p9.

<sup>30</sup>La Font Suzanne.2007.*Introduction*. In La Font Suzanne and Hubbad Dianen (ed) . *An Overview of Gender and Sexuality in Namibia*: Windhoek:John Meinert Printing,p1.

traditionally, women have been brainwashed in the name of culture, they have been turned into pleasers, they want to please their husbands all the time but they never get the chance to be please. What they get in return is emotional scars and their rights being stepped onto like a doormat.

Thus, it can be said that Namibia should embrace democratic concepts for women's rights protection. It should be realised that Namibia like the rest of other countries is going through changes for the better. Gone are the days of treating women as subjects.

## **1.6 METHODOLOGY**

Given the nature of the problem question that the research project seeks to address, the most suitable method is the qualitative method as the dissertation is aiming at holistic understanding of complex realities and processes where even the questions and hypotheses emerge cumulatively as the research progresses.

As this is a very controversial topic, open end questions are most preferable as they make it possible for people to give more details or information on their opinions. The subject of research may turn to be sensitive to some people; there are questions that will be of a confidential nature even though asked.

Broad and open-ended questions will develop over time to give answers to differing accounts of reality, unravelling which may be said to be generally true and which are specific and subjective. The research question requires the researcher to engage in a flexible process of data collection and analysis. This method will help the author to answer the research question as the research question requires the author to use a combination of informal interviews, participant observation and more recently visual media like television programmes.

Considering that the area under research involves customary law and traditions, the dissertation takes into account the possibility of lack of resources on the subject matter, different answers and distorted information. The research will be done from the available books, publications, non-published papers, websites, newspapers as well as articles. Materials will mainly be collected from the Human Rights and

Documentation Centre, the University of Namibia Library, main campus and the Northern campus library.

It is of utmost importance to get information and facts from the relevant resources available within the ambit of the dissertation question. International, regional and national data will be collected for analysis purposes. The research will also involve the consultation of various government stake holders' sources such as the websites for Ministry of Justice, specifically concerning women's rights. This is to ascertain the Government's position with regard to the legal framework in place that aims at protecting rights of women from harmful traditional practices. Data will be analysed by focusing on confirming or falsifying existing hypothesis.

## **1.7 SUMMARY OF CHAPTERS**

The dissertation deals with the traditional practices impacts on women's human rights, specifically in Namibia. Chapter one deals with the background of the topic and the problem statement which indicates why the chosen area needs to be researched. It further identifies the methods that will be used to gather the information and the various sources that revealed the need to research this specific area.

Chapter two is aimed analysing the situation with regard to the women's rights scene in relation to traditional practices. It identifies the potentially affected rights that are guaranteed both on an international, regional and national level and further identifies both direct and indirect effects of traditional practices on these identified rights.

Chapter three aims at identifying the obligations upon government in protecting women's rights from the impacts of traditional practices both from an International, Regional as well as National level. It is in this chapter where the position will be stated whether the state has lived up to its expectations or not. The results from all these chapters are then to be analysed in chapter four in order to assess and identify the competency of the legal framework in place and the need for Law Reform in certain areas and alternatively give recommendations on measures that may be adopted to alleviate the impacts of traditional practices on women's rights within Namibia.

## CHAPTER 2

### TRADITIONAL PRACTICES AND WOMEN'S RIGHTS IN NAMIBIA

#### 2.1 SITUATION ANALYSIS AND VULNERABILITY ASSESMENT

Some traditional practices on women can be said to have an effect or effects, whether directly or indirectly, on a person's wellbeing within a certain society. Additionally, it can be understood as the effects that determines the value and standard of a person's wellbeing and their rights and welfare within a society at a certain point in time. This would mean that the normal and expected trend of normal living standards is either deteriorated or dispositioned due to the traditional practices and thus negatively impacted.<sup>31</sup>

Until Namibia gained independence, its society was deeply patriarchal and divided along racial lines. The patriarchal system is one based on that of paterfamilias, i.e. of the man being the head of the household. As such, his wife would be his property and would be subordinate to him.<sup>32</sup> In any case the fact that the man is the head of the family does not mean that he will be the dictator and violator of the female partners' rights. The Married Persons Equality Act also considers this part. The Draft Recognition of customary Marriages Act goes further to realise this right of women in any household. However, discrimination persists within customary marriages in that women are expected to obey their husbands in all areas of daily life.

#### 2.3 TRADITIONAL PRACTICES IN NAMIBIAAND HOW THAT VIOLATE WOMEN'S RIGHTS

The most common traditional practices in Namibia that affect women's encompasses the following polygamy, early marriages, forced marriages early and multiple pregnancies, wife inheritance, ownership rights, restricted movements of women by husbands and genital mutilation. There are quite a lot them but only the ones mentioned which are considered the main ones mentioned, will now be discussed separately.

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<sup>31</sup> Meron T.1989.*Human Rights and Humanitarian Norms as Customary Law*.United States: Oxford University Press.p1

<sup>32</sup> <http://www.genderindex.org/country/namibia> accessed on 30 October 2011

## Polygamy

Namibia has two types of marriage, namely the civil system, and customary marriage. Civil marriage is solemnised by civil or religious rites, while customary marriage is based on tradition.<sup>33</sup> Polygamy is not a mere cohabitation it is a process and its specifications differ from community to community.

Polygamy is legal according to customary law in Namibia, and about one Namibian woman in seven is in a polygamous union.<sup>34</sup> The government is discussing a bill to change civil law; under the proposed legislation, existing polygamous marriages would not be legally recognised.<sup>35</sup>

So far in Namibia women 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. Consequences of the non-recognition of polygyny, a practice which is simply left to function in legal vacuum, may result in the violation of women's rights.<sup>36</sup> Some of the groups that practice polygyny in Namibia are Oshiwambo speaking communities<sup>37</sup> and the Ova Herero.<sup>38</sup>

As for polygamy, the equation is even more complex. There is no doubt whatsoever that it contributes to the violation of women's rights, but it is more or less accepted by African women.<sup>39</sup> It is accepted by rural women because the arrival of a second wife means a certain lightening of their domestic burdens. City women are also coming to a greater acceptance of polygamy because for them it means liberation from the servitude of marriage, a wife can go about her own business when she is not on duty, without having to worry about the care and feeding of her husband.<sup>40</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,

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<sup>33</sup> Anyolo.P. 2008. *Women and Customs in Namibia: A research Overview*. In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers, p 83.

<sup>34</sup> ibid

<sup>35</sup> [http:// www.Lac.org.na/projects/grap/pdf/unravelling](http://www.Lac.org.na/projects/grap/pdf/unravelling) accessed on 30 October 2011.

<sup>36</sup> ibid

<sup>37</sup> Ovambandja, Oshimbandja, Ovakwanyama, Ovakwambi, Ovabalantu

<sup>38</sup> The Ova Herero also practice arranged marriages, and marriages within the family, eg, cousins marrying each other.

<sup>39</sup> Kerr.p.47

<sup>40</sup> Kerr.p.46

laws that outline the framework that supports the implementation of gender related constitutional issues have been passed, and policies and programmes that promote and sustain equality for all have been developed, but the question of polygyny has not yet been successfully addressed.<sup>41</sup> In this regard, CEDAW 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.<sup>42</sup>

### **Premature marriages and multiple pregnancies**

The minimum legal age for marriage is 18 years for both men and women. A 2004 United Nations report estimated that 8 per cent of girls between 15 and 19 years of age were married, divorced or widowed.<sup>43</sup>

In spite of legislation stipulating that girls shall be considered nubile between 15 and 18, young girls continue to be married at early ages while still enjoying their childhood.<sup>44</sup> In this way both their childhood and their future are confiscated. They have early pregnancies and there is a high mortality rate among this group, as they die from complications following pregnancy or labour. It is imperative that we take action quickly against these premature marriages.

### **Forced marriages**

While it was acknowledged that marriages under customary law were deeply bound to arrangements between two families, the draft legislation maintained that what Article 14 of the Constitution of Namibia prescribed as to the full age and free consent of the persons to enter into a matrimonial relationship should also be applicable to customary law marriages.<sup>45</sup>

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<sup>41</sup> Anyolo.P. 2008. *Women and Customs in Namibia: polygyny among the Ovambandja:A female perspective*. In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers, p.84.

<sup>42</sup> ibid

<sup>43</sup> <http://www.genderindex.org/country/namibia> accessed on 30 October 2011

<sup>44</sup> ibid

<sup>45</sup> Hinz.M.O. 2008. *Women and Customs in Namibia: A research Overview*. In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers, p.97

Current Namibian laws all hold that consent is a prerequisite if a marriage is to be considered valid. Namibian social mores reflect that fact? Unfortunately for women, and because of the male dominant world the answer must be no, this is due to resistance of traditional practices to written law. Traditional authorities feel that women should not have anything to say in the matter and should be ready to accept the husband their parents have chosen for them, since it is believed that parents could not make the wrong choice. That belief is deeply embedded in the traditional African psyche.<sup>46</sup>

### **Wife inheritance**

Women and children are often discriminated against in relation to inheritance in Namibia. In the north of the country, tradition dictates that when a married man dies, all his possessions go to his family with the exception that the state retains ownership of the land<sup>47</sup>. In effect, the customary law authorities ignore the widow's right to inherit the use of the land. Furthermore, the husband's death is followed by a rite during which the male heir assumes the deceased's name and becomes the new head of the family; he receives the widow as part of the inheritance.<sup>48</sup>

### **Heading the family and educating children**

Nearly everywhere in Africa, men are not only the nominal heads of households but they are the sole holders of parental power. These provisions clash head on with reality. Because of hard economic times and a certain evolution, women are more and more inheriting the mantle and prerogatives of heads of households. It would only be fair to incorporate that fact into legislation by providing for joint family leadership and replacing paternal power with shared parental power<sup>49</sup>

The 1996 Married Persons Equality Act removed the husband's prerogative to act as the sole head of the family. Parental authority is now shared by both parents, and they have equal child custody rights.

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<sup>46</sup> Hinz.p.45

<sup>47</sup> [http:// www.Lac.org.na/projects/grap/pdf/unravelling](http://www.Lac.org.na/projects/grap/pdf/unravelling) accessed on 30 October 2011.

<sup>48</sup> ibid

<sup>49</sup> Hinz.p. 46

## **Restricted movements of women**

Namibian legislation protects women's civil liberties, but discriminatory traditions persist. The Constitution guarantees women's freedom of movement and married women can travel without their husbands' permission. It is evident that the legislation is doing its best, but it does not mean that is put into action.

## **Divorce**

As for the custody of the children after divorce, most African countries still assign the responsibility to the father or his family. Child custody should instead be determined by a single overriding concern, the best interests of the child. Here again the judge's intervention will act as a counterweight to the traditional customs and practices that tend to deprive women of their children.<sup>50</sup> Traditional divorces, usually the man and his relatives decide on how you share property and obviously the woman will get less and her children will remain with the relatives of the father.

## **Considering women as child-bearers**

It is not only in Namibia but, in most African countries, for the African woman, being sterile is like being a leper. The African woman who does not have children is treated in an inhuman and degrading way. Traditionally, women are considered child-bearers before being considered women. Organisations that defend the rights of women must also take up the defence of sterile women, but those women also need information, many types of sterility can be cured and family planning may help.<sup>51</sup>

Something can be done to stop this scourge. Particular emphasis must be placed on sexual education, we have to struggle to demystify sex and overcome traditional religious taboos in order to provide early sex education to girls and young women, educated or not.<sup>52</sup>

## **Ownership rights**

Namibian women have the same ownership rights as men, but are obstructed by tradition. Women are particularly disadvantaged as regards access to land. The land reform law of 2002 placed all land under state ownership. Local customary

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<sup>50</sup> Ibid.46

<sup>51</sup> Kerr.p.47

<sup>52</sup> ibid



authorities allocate the rights to use this land to individuals and, in theory, men and women have equal access to community plots. However, women's rights are rarely recognised by tribal chiefs.<sup>53</sup>

The Namibian Constitution states that all citizens have the right to acquire and dispose of property. The Married Persons Equality Act grants men and women equal access to property other than land, and allows either spouse to exercise this right without the partner's consent.<sup>54</sup> Discrimination persists in due to men's negative response. This results in culture to appear to be static rather than dynamic as men respond negatively to the necessity of social change and social adaptation.<sup>55</sup>

## 2.4 MOST VULNERABLE GROUP OF WOMEN

The most vulnerable groups to the impact of traditional practices are those exposed to the socio-economic implications as well as those that rely on their husbands (housewives) for their livelihoods and low-wage earners.<sup>56</sup> The vulnerability of women and their capacity to adopt is also determined by the level of social development and local infrastructures. E.g. People living without access to affordable health care, water, electricity and paved roads are more likely to suffer severe human impact than those who have access to these basic services. The effects of traditional practices also vary among regions, and between different generations, income groups and, developing countries and people living in poverty are likely to experience significant impacts.<sup>57</sup> Most of the women who value and cherish culture so much are those who stay in rural areas who are not educated, and do not know most of the legislations put in place to protect their rights.<sup>58</sup>

Since women form a disproportionately large share of the poor in countries all over the world, those in rural areas of developing countries which are highly dependent on local natural resources for their livelihood because of their responsibility to secure water, food and energy for cooking and heating, ends up being at the receiving end of the impacts of traditional practices. Women are more prone to the impacts of

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<sup>53</sup> <http://www.genderindex.org/country/namibia>

<sup>54</sup> *ibid*

<sup>55</sup> *ibid*

<sup>56</sup> *ibid*

<sup>57</sup> Kerr J.1993. *Ours by Right: Women's Rights as Human Rights*. United Kingdom: ZED Books.p.1

<sup>58</sup> On a customary law trip in 2009 (3<sup>rd</sup> year) with Dr Okupa most of the people in the Mukwe area, especially women did not have a clue what a constitution is, they did not even know what is meant by Human rights.

tradition compared to their male counter parts.<sup>59</sup> If somebody does not know what the constitution is, there is no how they can know other legislation because the constitution is the supreme law of the country. Whatever they are being told they believe it, because they are not educated, they cannot read or write.

There seems to be a general understanding that the changes since independence have mostly benefited urban women with formal employment but that very little has changed for rural women.

## **2.5 WOMEN'S RIGHTS THAT ARE POTENTIALLY AFFECTED**

Traditional practices affect the capacity of women to realise their human rights and freedoms which are guaranteed by the Bill of Rights as entrenched in the Namibian Constitution.<sup>60</sup> Most traditional practices in Namibia affect women's rights and freedoms which ranged from right to life, human dignity, health, property, equality, privacy, freedom of movement and association. Each of the mentioned rights will now be discussed separately.

### **Right to life and Human Dignity**

The constitution of Namibia protects the right to life,<sup>61</sup> and respect for human dignity.<sup>62</sup> It can be inferred that the right to life is based on the respect for the right to human dignity. This is framed in the sense that a person's physical and social health, and wellbeing may be jeopardised by events such as unprotected sex, hard labour, rape, and multiple pregnancies and multiple partners due to wife inheritance and giving away of wives for sexual intercourse. The Himba in Namibia, their culture allows loose sex; an old uncle will readily offer one of his many wives to a nephew during visits.<sup>63</sup> This is so wrong and it shows how women are disrespected and considered cheap.

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<sup>59</sup> United Nations. 2010. *The Threats of Climate change are not Gender-neutral*. Available online: [http://www.un.org/womenwatch/feature/climate\\_change/](http://www.un.org/womenwatch/feature/climate_change/). Accessed on 10 August 2011

<sup>60</sup> United Nations Children Education Fund. 2007. *Climate change and children: what are the Risk?* UNICEF. Available online: [http://www.unicef.org/publications/files/Climate\\_Change\\_and\\_Children.pdf](http://www.unicef.org/publications/files/Climate_Change_and_Children.pdf). Accessed on 12 August 2011

<sup>61</sup> The Constitution of Namibia, Article 6

<sup>62</sup> The Constitution of Namibia, Article 8.

<sup>63</sup> <http://www.genderindex.org/country/namibia>

Death may be caused by a number of variables and although the constitution prohibits death penalty as a competent sentence, some of these traditional practices like polygamous marriages and denying women to choose protection during sexual intercourse may as well be seen as an indirect death penalty. The constitution must be given a broad interpretation in this matter. Thus placing an obligation on the government to protect one's right to life. Usually in marriages men refuse to use condoms with their wives even if they have many. It should be noted that sex is still an embarrassing topic and women and men find it difficult to talk about sex that is why they cannot enquire about protected sex and sexually related diseases.

### **Right to Health**

Polygamous marriages threaten to slow, halt or reverse progress towards reducing the spread of diseases and aggravate already enormous health problems, especially in the poorest parts of the country. Marrying younger women and indulging into unprotected sex because they do not have a say, causes sexually transmitted diseases such as HIV/AIDS, Syphilis, gonorrhoea, and Hepatitis. The Himba people have over the years jealously guarded their customs and traditions, but these same cherished values now threaten to wipe them out.<sup>64</sup> Customs such as polygamy and overdependence on cattle as a pillar around which all economic activity revolves are making the Himba particularly vulnerable to HIV/Aids.

Most of the Victims are usually women due to social factors like gender discrimination, which can restrict women's access to health care and age-based susceptibility as they often have weaker immune systems. Even though numerous interventions are underway to improve health and reduce diseases like HIV<sup>65</sup>/AIDS,<sup>66</sup> it looks like traditions are not part of that fight.

African women suffer mostly from malaria,<sup>67</sup> sexually transmitted diseases, and cancer of the uterus, and vaginal fistulas.<sup>68</sup> Women spend many hours each day

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<sup>64</sup> <http://www.news.bbs.co.uk/2/hi/Africa/3119766>

<sup>65</sup> Human immune-deficiency virus

<sup>66</sup> Acquired immune deficiency syndrome

<sup>67</sup> According to WHO-UNICEF World Malaria Report (2008) 247 million Malaria episodes resulting in 880,000 deaths were reported in 2006; 80% of which occurred in Africa. Most of the Victims have been reported to be young children and women due to social factors like gender discrimination,

<sup>68</sup> Kerr. J .1993. *Ours by right: Women's rights as Human rights*. United kingdom, Zed Books Ltd, P,47

farming in the fields or looking for fuel wood in the bush, thus becoming prime targets for malaria transmitting mosquitoes.<sup>69</sup> The Himba culture also encourages older men who are rich in cattle to monopolise the women many of the men marry several young girls whose offspring help in the important task of raising cattle.

They are not the only ones; cholera diarrhoea is also causing extensive damage as well as the plague of this century, AIDS.<sup>70</sup> Himba women often reside at distant cattle posts where grazing is good while the husband remains in the homestead,<sup>71</sup> this gives them an opportunity to have these extramarital relations. This has contributed to the spread of HIV/Aids among the Himba<sup>72</sup> who lead a pastoralist life in north-western Namibia who are who are estimated to number 46,000.<sup>73</sup>

In my view it seems like a disease that kill a lot of people in a very short time does not seem to be a problem in the eyes of grown and mature men in our community. But the hardest task is to convince them about the urgency of the matter. This is the biggest challenge to the government of Namibia. To be able to curb the spread of the HIV/Aids pandemic our community will have some difficult choices to make, but in the end they will no doubt be forced to discard some of their cherished cultural practices and traditions.

### **Right to Equality and Freedom from Discrimination**

Article 10 of Namibian constitution guarantees an individual's right to be equally treated before the law and not to be discriminated against on grounds of sex, race, colour, ethnic, origin, religion, or social or economic status.

The most affected by poverty are those that rely mostly on men and traditional life for their survival. Accordingly, the dependency on men by women for their livelihood has come about due to the limited opportunity that exists for them to forge a decent

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<sup>69</sup> ibid

<sup>70</sup> Acquired immune deficiency syndrome

<sup>71</sup> <http://www.unam.na.faculties/law/documents/ChildrensRightsBook.pdf>.

<sup>72</sup> Mr Verije, adding that last year seven cases of HIV/Aids were reported in the area. In <http://www.news.bbs.co.uk/2/hi/Africa/3119766>

<sup>73</sup> ibid

livelihood and as such limits the capacity to cope with the impacts of those traditional practices. It is thus pointed out that the rationale for differentiating the impacts of traditional practices on men and women is the different roles and responsibilities that the two carry out in various communities. This is thus aggravated by gender inequalities in areas such as household responsibilities, control as well as decision making.<sup>74</sup> This position is clearly against the provisions of CEDAW, being article 15 as well as Article 10 of the Namibian Constitution which prohibits any sort of discrimination.

### **Right to property**

Article 16 bears that all persons have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others.<sup>75</sup> Denying women to own property, which is illegal and in contrary to the legislation causes confusion, leaving hundreds of women homeless and facing possible relocation and displacement of people in several ways, the most dramatic being through forcing women to abandon traditional homelands and to seek shelter or livelihoods elsewhere. People might think that because of the legislations introduced, women are in better position, it is not like that, women still suffer because these kind of cases are not known, rather solved privately due to strong social and traditions pressure.

### **Right to Privacy**

Article 13 entails that no person shall be subject to interference with the privacy of their homes, correspondence or communications unless necessary in the interests of national security, public safety etc. Traditional practices are known to threaten security and cause conflicts and instabilities. Arranged marriages and polygamy intensify negative relations all of which contribute to conflicts and cause jealousy. This can trigger increased competition and hatred amongst women creating situations with a propensity to conflict.

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<sup>74</sup> Vos R, Velasco S, De Labastida E. 1999. *'Economic and social effects of 'El Nino' in Ecuador, 1997-8'*. Inter-American Development Bank . Available online: <http://www.iadb.org/SDS/doc/POV-107.pdf>. Accessed on 12 August 2011.

<sup>75</sup> The full article 16(1) reads: 'all persons have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees; provided that parliament may by legislation prohibit or regulate at it deems expedient the right to acquire property by persons who are not Namibian citizens'

## **Estate Rights**

African traditional laws generally prevent women from inheriting anything at all from their husbands, which causes some very acute and dramatic problems. Worse than that, though, is the fact that women themselves are often considered as chattels of that estate, as though they were cows, houses, or chairs. The law forbids that sort of behaviour and, if conflicts are settled in court, the judge's decision will be made according to law. But customs are powerful and enduring, and often, if not always, women are unaware of their rights and of the possibilities the law offers them.

Women and human rights organisations must mobilise to fight tooth and nail for the complete abolition of these customs and for the enactment of legislation that confirms that women and men have the same rights where inheritances are concerned. The dignity of women is at stake here.<sup>76</sup>

In the north of Namibia, tradition dictates that when a married man dies, all his possessions go to his family with the exception that the state retains ownership of the land, which is then redistributed to the community.<sup>77</sup> In effect, the customary law authorities ignore the widow's right to inherit the use of the land. Furthermore, the husband's death is followed by a rite during which the male heir assumes the deceased's name and becomes the new head of the family; he receives the widow as part of the inheritance.

## **Right to Culture**

Article 19 of the Namibian constitution maintains that every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religious subject to the terms of the constitution and further subject to the condition that the rights protected by article 19 do not impinge upon the rights of others or the national interest.

Traditional communities that rely on traditions and customs as a mark of identity are the people who suffer most from the impacts traditional practices. Traditional authorities over these areas are also thus invested with the power to make

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<sup>76</sup> A report synopsis on: *interrogating, culture, women's Rights and HIV/AIDS in Namibia and Mozambique*. 2009. available at: [http://www.safaids.net/files/changingriverflow\\_NamibiaMozambique.pdf,p,18](http://www.safaids.net/files/changingriverflow_NamibiaMozambique.pdf,p,18). Accessed on 30 October 201

<sup>77</sup> *ibid*

appropriate laws that will govern the community, taking into account the most vulnerable members of society, particularly women.<sup>78</sup> Article 66 of the Namibian Constitution enforces customary law to the extent that it does not conflict with the constitution or any other statute. This means that all customary laws that discriminates or does not afford an individual the right to practice and enforce the rights guaranteed in the constitution will be, to such extent, null and void. The Traditional Authorities Act 25 of 2000 gives the traditional Authorities the power to make laws of which such power should also conform to the provisions of the constitution or any other statutory law.

## 2.6 JUSTICIABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Namibian constitution has been greatly influenced by the writings and jurisprudence of human rights over the decades. Such influence can be seen by the incorporation of internationally recognised human rights under chapter three of the constitution. Human rights are divided into either civil and political rights or secondly as economic, social and cultural rights.<sup>79</sup> Despite the evident acknowledgement and enjoyment of civil and political rights in independent Namibia, the same can however not be said about ESC rights owing to reasons such as the non-entrenchment of ECS in the constitution, the way these rights have been formulated and the perception that they are not enforceable.<sup>80</sup>

What has been ignored however is that fact that ESC rights are those that affect individual's everyday life and determines the standard of living and thus any alteration therein will have greater impacts? This position has been internationally recognised by instruments such as the Universal Declaration for Human Rights and the International Convention on Economic, Social and Cultural Rights and domesticated in regional and national instruments that are aimed at eradicating discrimination and for protecting certain vulnerable groups, like women within the society.<sup>81</sup> Rights such as health<sup>82</sup>, housing<sup>83</sup> and the right to protect the family

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<sup>78</sup> The Traditional Authorities Act 25 of 2000, Article 3(3)(c).

<sup>79</sup> Nakuta J. 2008. *'The justiciability of social, economic and cultural rights in Namibia and the role of the non-governmental organisation'*. In Horn N & Bösl A (eds) *Human Rights and the Rule of law in Namibia*. Windhoek: Macmillan Publishers, p 89-100.

<sup>80</sup> *ibid*

<sup>81</sup> *ibid*

<sup>82</sup> ICESCR, Article 12.

including protection of women and children<sup>84</sup> are amongst those that are affected by traditions and failure to protect such rights may lead to social injustice.

Despite the criticisms on non-acknowledgements from various angles, the situation still remains unchanged in Namibia. The National Society for Human Rights 2007 Annual report points out that over 60% of the Namibian population still live in extreme poverty, do not enjoy adequate standards of living, are unemployed or are extremely poor in a democratic country.<sup>85</sup> This situation will be worsened if the discrimination in the protection and promotion between civil and political rights versus Economic, social and cultural rights continues; the number of those vulnerable is likely to increase.

Nakuta<sup>86</sup> however argues that the ESC rights should be recognised and treated as rights like the civil and political rights and should bring about obligations on the state to protect and respect such rights. Accordingly, the ESC rights may be enforced either directly or indirectly under the Namibian constitution. It was pointed out that the direct application may be through article 144 which makes international law directly applicable unless otherwise provided. The ICESCR is binding upon Namibia, thereby enabling women to seek enforcement of their internationally recognised ESC rights in Namibian courts. It was further maintained that the indirect protection may be through the expansive interpretation of civil and political rights such as right to life, human dignity, equality and security of person.<sup>87</sup>

ESC rights thus have a legal recognition as rights that should be protected and respected. Contrasted to the Constitution of India, wherein ESC rights are also recognised as mere directives of state policies, the court declared in the case of *Francis Caralie Mullin*<sup>88</sup> that:

The right to life includes the right to live with human dignity and with all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing, shelter and facilities for reading, writing and expressing oneself in

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<sup>83</sup> ICESCR, Article 11.

<sup>84</sup> ICESCR, Article 10.

<sup>85</sup> National Society for Human Rights. 2007. Namibia: Human Rights Report 2007. Windhoek: NSHR, p 12-19.

<sup>86</sup> Nakuta . p 89.

<sup>87</sup> Nakuta J.p97.

<sup>88</sup> *Francis Caralie Mullin v The Administrator, Union Territory of Delhi*, (1981) 2 SCR 516 at 529. Cited in Nakuta, p 99.



diverse forms, freely moving about and mixing and comingling with fellow human beings. The magnitude and components of this right would depend upon the extent of economic development of the country.

Deconstructing this judgement would result in various interpretations. The position is therefore maintained that more prominence should be given to ESC rights in order to curb social injustice and most importantly to address the high levels of inequality between men and women, and social exclusion of women in Namibia.<sup>89</sup>

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<sup>89</sup>Nakuta, p 100.

## CHAPTER 3

### TRADITIONAL PRACTICES AND WOMEN'S HUMAN RIGHTS: THE LEGAL FRAMEWORK

#### 3.1 THE DOCTRINE OF STATE RESPONSIBILITY AND WOMEN'S RIGHTS

The Namibian Constitution is one of the friendliest and most accommodating constitutions in the world. This is reflected by Article 144 which accords both the general rules of public international law and international agreements that are binding direct and automatic application in Namibia.<sup>90</sup>

A breach of human rights generates the international state responsibility of states. The examination of the place of human rights with state responsibility should contribute to the acceptance of human rights as an authentic and legitimate branch of international law and through emphasis on responsibility and remedies, to the securing of greater respect for international human rights and the strengthening of their effectiveness.<sup>91</sup>

Certain international agreements require states to provide remedies under national law for individual victims of violations of norms stated in those agreements. Where domestic remedies cannot be obtained, or are inadequate, international redress takes on special importance<sup>92</sup>. Some agreements explicitly address the authority of international bodies to afford relief measures wherever domestic remedies fall short of that required by human rights treaties and fail to redress violations of human rights.

This chapter aims at identifying the legal framework in place both from an international, regional and national level and further identifies the steps that have been taken by the Namibian government in response to its obligations. Ultimately, an analysis will be made at the end to determine whether such framework is indeed competent enough to protect the rights of women.

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<sup>90</sup>Omkemetse Tshosa. 2010. *The Status of international law in Namibian national law: A critical appraisal of the Constitution strategy*. 2010 NLJ, Vol 02, issue 01, p 10.

<sup>91</sup>Meron. T.1989. *Human Rights and Humanitarian Norms as customary law*. Oxford: Oxford University Press.p.136.

<sup>92</sup>Ibid.p.138

### 3.2 INTERNATIONAL LEVEL

The magnitude of women's rights abuses demands international action.<sup>93</sup> There are conventions such as, Universal Declaration of Human Rights(UDHR), The 1951 UN Geneva Convention on Refugees, International Covenant on Economic, Social and Cultural Rights (ICESCR) International Covenant on Civil and Political Rights(ICCPR), Convention on the Elimination of All forms of Discrimination against Women CEDAW), The International Labour Organisation(ILO). Each will now be dealt with separately.

#### **Universal Declaration of Human Rights**

The UNDHR sets the standards appropriately and women should enjoy this status, being equal to their male counterparts in dignity and rights. It guarantees rights and freedoms to all people. According to Bunch,<sup>94</sup>

The notion of human rights is one of the few concepts that speak to the need for transnational activism and concern about the lives for people globally.

This framework of rights promotion, however, does not ensure the rights of women. The ideals and philosophy of the UNDHR, adopted in 1948, is intended to protect the rights of men, women and children around the world. Within this instrument human rights are defined broadly.<sup>95</sup>

Where no distinction should be made on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

However, non-discrimination on the basis of sex does not eradicate gender inequality because of the way in which this convention is interpreted and implemented. The convention does not curb the traditional practices that violate women's rights, so it cannot be said that it is effective in the protection of women's rights. In addition it is not easy for Namibia to adapt to International legislations

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<sup>93</sup> ibid

<sup>94</sup> ibid

<sup>95</sup> Visser .W. 2008. '*Women and Customs in Namibia: The legal setting*. In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers, p 150

because of the outside pressure that can ruin the country and made our traditions fade away.

### **The 1951 UN Geneva Convention on Refugees**

It is a human rights instrument which discriminates against women. Persecuted women who step out of their strict social roles are not offered sanctuary as refugees because gender is not a criterion to gain refugee status.<sup>96</sup> There is an example of an Iranian woman fled to Canada as a refugee after being given 35 lashes and being fired from her job for not wearing a veil within the privacy of her own home. She faced further prosecution in Iran for the offence, yet the Canadian government in a May 1990 decision, did not recognise her as a refugee under the UN definition. She was not sent back to Iran because<sup>97</sup>, according to the refugee hearing board, she risked only prosecution, not persecution, in addition the board said her punishment did not leave permanent injuries and the loss of her job did not deprive her of her livelihood.<sup>98</sup>

This clearly shows that the UN Geneva Convention plays no part in the protection of women's rights in that are violated by traditional practices in Namibia. Instead of giving women some protection, it makes them more vulnerable and exposed to traditional effects. The truth is international community has done precious little to correct these abuses.

### **International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights**

These two instruments embody the right for all peoples to determine their own economic, social and cultural development. Common Article 1(1) of both instruments provides that:

All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

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<sup>96</sup> Kee.J.1993.p.52

<sup>97</sup> Kerr.J.1993.*The context and the Goal: In Kerr.J. (ed) 'Ours by Right:women's Rights as Human Rights*.Canada:Zed Boks.p.5

<sup>98</sup>ibid

This explains that people are free to choose their own culture. It must be noted that this does not mean the constitution and other legislations must be violated, with regards to culture, it is well known that in the constitution it is stated that customary law is only accepted when it is not contrary with the constitution or any other statute. Even though these two instruments promote the practice of culture, they do not have some provisions where they state that harmful traditional practices on women must not be done. The provision in Article 1 is actually a justification why these practices are being done. Thus it can be said the two instruments are trying by all means to protect women, but then more revision should be done to tackle the traditional practices that violate women's rights internationally. The two instruments seem not to be playing a big role in the protection of women's rights in Namibia more particularly those affected by culture.

It is at the national level that the ICCPR has exerted its greatest impact. When today anywhere in the world a national constitution is framed, the ICCPR serves as the natural yardstick for the drafting of a section on fundamental rights. In most countries, the ICCPR has been made part and parcel of the national legal order although there is no general rule of international law that would enjoin States to embrace a specific method of implementation.<sup>99</sup>

### **Convention on the Elimination of All Forms of Discrimination against Women**

One of the instruments that deal with rights of women is the Convention on the Elimination of All forms of Discrimination against Women the 1979 Convention states that:<sup>100</sup>

Parties shall take all appropriate measures to eliminate discrimination against women, particularly in rural areas, to ensure that women enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.<sup>101</sup>

CEDAW acknowledges the fact that women are faced with more challenges, especially in rural areas and thus emphasises on the need to ensure the application of these measures in rural areas. For example, CEDAW calls for "access to

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<sup>99</sup> Kerr,p32

<sup>100</sup> Namibia ratified the Convention on the 23 November 2003

<sup>101</sup> CEDAW, Article 14 (2) (h) .

agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.<sup>102</sup>

The convention specifically acknowledges the extensive discrimination against women that continue to exist. It emphasises that such discrimination violates the principles of equality of rights and respect for human dignity. Despite the value and merit of CEDAW convention and its ratification by 119 governments, it has received little active support. The CEDAW monitoring committee lacks the staff and money required to complete its work and the authority to investigate individual or group claims violations.

Namibia became a signatory to CEDAW on 23 November 2003 and according to the first country report to the committee on the Elimination of Discrimination against Women handed in by Namibia, in 1997,<sup>103</sup> the committee identified problems such lack of public knowledge on human rights and the law and poverty as being obstacles to the fulfilment of the gender equality program. In response to this, the government has implemented a lot of mechanisms to put CEDAW in action. The most and important development was the upgrading of the Department of Women Affairs in the office of the president into a fully-fledged Ministry of Gender and Child Welfare.<sup>104</sup> Secondly, the National Gender Policy was adopted by the Ministry to combat discrimination based on sex. The policy outlines the framework and sets out principles for the implementation, co-ordination and monitoring of gender-sensitive issues which will enhance effectiveness in the continued management and planning of the development process in the different cultural, social and economic sectors of the Namibian nation. It is the same Gender Policy that is currently being revised to include new issues.<sup>105</sup>

This helps Namibia to manage meaningful programming for women one that has at its heart the concept of empowerment programmes that help women gain control over their economic, social and cultural lives. CEDAW seem to be a very active instrument just that it receives little attention in Namibia and most women seem not to know about it. It is significant that Namibia has done a lot to put the instrument into

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<sup>102</sup> CEDAW, Article 14 (2) (g).

<sup>103</sup> UN Doc. A/52/38/Rev. 1.

<sup>104</sup> *ibid*

<sup>105</sup> Ministry of Women Affairs and Child Welfare. 2004. Convention on the Elimination of Discrimination Against Women (CEDAW): Second and third country report. Windhoek: MWACW, p 8

action. Even though CEDAW is helpful it also needs to revise its provisions and be specific about the cultural practices, and identify the violated rights and find a way of fulfilling them.

It seems most women in Namibia are not aware of CEDAW; this puts them in a position where they cannot go and ask for help or say out their problems. Therefore, Good human rights education should include the CEDAW, ensuring that the equal dignity and worth of women, guaranteed under the Human Rights instruments, receives full attention, as deterrence to violent and degrading behaviour towards women.

### **The International Labour Organisation<sup>106</sup>**

This is also one of the instruments dealing with women's rights. It is equivalent to a general Assembly, it is where the states, employer, organisation and workers come together to adopt conventions which deal with workers' rights, they also deal with human rights and women's rights.<sup>107</sup> It's work is not well-known as that of other UN bodies. At the ILO conference, each state is represented by four delegates, two from government, one from the employer's organisations and one representing workers. Article 3 (2) of the ILO constitution provides that when questions affecting women come before the conference, at least one of the two advisers permitted to delegate shall be a woman.<sup>108</sup> But Article 3 (6) goes on to say that advisers shall not speak except on a request made by the delegates whom they accompany and by special authority of the president of the conference, and they may not vote. So a natural question flows from my analysis: why not provide for a woman to be the fifth delegate?<sup>109</sup> Even though the ILO is showing some interest in protecting the rights of women, the above raised question clearly shows that the instrument is discriminating against women; it is failing to empower women.

It should be ensured that women are written in using the jurisprudence of the CEDAW, as well as the best practice securing the representative and active participation of women in all areas of political life and decision making, trade unions

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<sup>106</sup> ILO

<sup>107</sup> Kerr.J.1993. 'Ours by Right: The context and the Goal. In Kerr. J. (ed). *Ours by Right: Women's rights as Human Rights*.p.3.

<sup>108</sup> UN Doc. A/52/38/Rev. 1.

<sup>109</sup> Kerr.1993.p.7.

and non-governmental organisations, should avoid the male centered structures and procedures which are almost universal.

Namibia should reinforce international cooperation and communication, by strengthening international cooperation on promoting public awareness on women's rights; utilizing the experience of international good practice on women's rights

### **3.3 REGIONAL LEVEL**

Some of the instruments under regional level are: The African Charter on Human and People's Rights, Protocol on the Rights of Women in Africa (2003), 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 (19980).

#### **The African Charter on Human and People's Rights**

The Additional Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa<sup>110</sup> and the African Charter on the Rights and Welfare of the child may be the closest to protecting the rights of women. It echoes the sentiment of equality between men and women.<sup>111</sup>

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 Article 3 and 4 grant the rights to equality and to bodily integrity, and the right to life respectively.<sup>112</sup>

The Charter clearly discourages discrimination of women; it sees men and women equal and protects women from being ill-treated, ill treatment includes genital mutilation, forced marriages wife inheritance and being forced to stay in a polygamous marriage.

It is clear that Namibia does a lot to protect its people, the only disappointing thing is the response got from the community which is negative and the people are still stuck

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<sup>110</sup>Article 17-18 is of relevance

<sup>111</sup>Article 2 of the African Charter on Human and People's Rights

<sup>112</sup>Visser .W. 2008. *Women and Customs in Namibia: The legal setting*. In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers, p 155.



with traditions, it would be highly appreciated if they could keep good cultural practices and change the bad ones.

Even though the African Charter provides women with some protection, it does not serve up to the expectations of women, failed to effectively protect women's rights from arbitrary infringements by their government. It does not protect Namibian women from their government which is the greatest violators of women's rights. Further, it does not protect the rights of minorities as per Article 19. This is very unfortunate as Namibia is made up of a number of small ethnic groups. As the Charter currently stands it cannot be said to be protecting women's rights fully.

### **Protocol on the Rights of Women in Africa (2003)**

Although the African Charter on Human and People's 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.<sup>113</sup> Thus the Protocol was drafted as the first human rights treaty under the African Union to provide specifically 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 has taken note of the fact that practices of polygyny will not end simply because the law says it ought to end at a particular point. What the Protocol does is only to oblige member states to encourage monogamy as the preferred form of marriage. The protocol seeks to undo African customary law because of its disadvantages in the lives of the people.

### **The SADC Declaration on Gender and Development (1997)**

It accepts that gender equality is a fundamental human right, and demands that 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

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<sup>113</sup> Ibid

the Declaration has been signed by all SADC member States, it is not a legally binding instrument.<sup>114</sup>

The fact that it is not legally binding says it all, women cannot take their complaints there as the decision will not be legally binding.

### **The SADC Charter on Fundamental and Social Rights (2003)**

It 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.<sup>115</sup>

The inequality still exists even though there is the Charter in place, which is a matter of opinion and indeed, no single response or approach whether administrative, legislative or judicial can adequately or effectively control inequality. It may be too cynical to assume the existence of inequality as the reluctance of the legislation, but there is no doubt that inequality is widespread. Ultimately, however, women themselves have to take responsibility for the level of avoidance and the degree of acceptance of such behaviour that exists at any time in any society. The legislature and the judiciary can play a role in shaping this, but such issues belong, in the final analysis, in the realms of moral and ethical behaviour of people themselves.

### **The SADC Addendum on the Prevention and Eradication of Violence against Women and Children (1980)**

The SADC Summit signed the Addendum in 1997 and it 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. It is also signed by all member states but it is not legally binding.

Thus it can be said that the fact that the legislation is not legally binding, there is no how it will help eradicate violence against women, considering the fact that people are stubborn to change from traditions to modern life.

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<sup>114</sup>Wisser.2008. p.157

<sup>115</sup> Ibid

### 3.4 NATIONAL LEVEL

#### The Namibian Constitution<sup>116</sup>

The Bill of Rights is the first section that protects the rights of women as pointed out earlier. The right to life, property, culture, privacy as well as the social, economic and cultural rights are all guaranteed whether directly or indirectly under chapter 3 of the Namibian constitution.

Anyolo<sup>117</sup> argues that Article 66(1) of the constitution puts customary law on the same footing as common law as far as the constitutionality is concerned. She argued that the constitution protects polygyny as a tradition recognised under customary law, and that it places a legal duty upon national lawmakers to treat customary law without discrimination. She further states that the parliament passed the Traditional Authorities Act No.25 of 2000 to effect the right to culture, which is provided for in Article 19 of the Constitution.

Further, she states that both gender equality and the right to culture are protected by the Namibian Constitution. So a question of how conflicts between the principles of anti-discrimination and customary law should be resolved without damaging either of the two systems arises. She says that:

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.<sup>118</sup>

Criticising Anyolo's statement one argue can that we must wake up from the traditional hangover and face reality, AIDS kills, the government is using a lot of money on AIDS campaigns and providing the victims with medication. In this day and age, polygyny must not be heard of, ignorance is not going to give us the cure for AIDS and the emotional scars left by a man who had more than one wife and could not attend to them all and give them the necessary love and care.

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<sup>116</sup> Chapter 3

<sup>117</sup> Anyolo.P.2008.*Polygyny among the Ovambandja:A female perspective* . In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers, p 86

<sup>118</sup> Anyolo.2008.p91

Not only Namibia is faced with such problems, it seems our neighbours, South Africa has the same problem of polygamy. Leleti Khumalo, an actress in South Africa well known from the film Sarafina,<sup>119</sup> she got married to Bongeni Ngema as the second wife at a tender age of 22. She had no say in the marriage, she explained. There was no love and it was hard to share your husband. She eventually ended the marriage because she could not fool herself any longer, polygamy does not work. She was left with emotional wounds. She further stated that it is hard for a polygamist to be faithful as he has to keep looking for other wives.

From this, it can be inferred that these people are actually not comfortable with what they are doing, they know it is wrong. If it was something to be proud of, no one would ever end such a marriage. Leleti is a typical example of early marriages and polygamy and a woman who was emotionally abused. Credit need to be given where it is due, she made women proud, showed them that it is never too late to do the right thing, she is a traditional woman, but at times we need to discard of our traditions that are not doing good to our lives.

One can argue that some polygamous marriages seem to be well and having no disputes, living examples are King Mswati<sup>120</sup> and Jacob Zuma,<sup>121</sup> from my knowledge they keep taking in more wives but there has never been anything about divorce in their marriages.

### **The Maintenance Act<sup>122</sup>**

It confers equal rights and obligations on spouses with respect to the support of their children. It 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.<sup>123</sup> The petitioning parent can be granted an order to be paid maintenance in kind (goats or cattle) whether the father is not employed but owns livestock.

This instrument provides well for both customary and civil marriages. It is protecting women's rights and not discriminating against a certain group of women. It can be

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<sup>119</sup> Leleti Kumalo on SABC 1 television programme called Late night with Penny on the 12 October 2011

<sup>120</sup> King of Swaziland

<sup>121</sup> The president of South Africa.

<sup>122</sup> Act No. 9 of 2003

<sup>123</sup> Ruppel.K.p.161

said that the Namibia government has tried its best to protect women from being left with a burden of taking care of many children, married or not the instrument offers protection.

### **The Married Persons Equality Act<sup>124</sup>**

The intention behind this legal instrument include abolition of marital power<sup>125</sup> 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. The Act fixes the legal age of marriage at 18 for both boys and girls.<sup>126</sup>

So far in Namibia women 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. This Act removes the common law principle of a husband's marital power,<sup>127</sup> this does not happen in customary marriages because they are not recorded in the marriage register of the Department of Civic Affairs and they are not accorded marriage certificate. So women married under customary law are not protected by this legal instrument and yet they are the ones facing more problems of being married at an early age and being forced to marry.

The instrument fails to protect all women's rights; it is discriminating against women who are married under customary law. The Namibian government needs to revisit the instrument and provide for customary marriages.

### **3.5 POLICIES AND GOVERNMENT PROGRAMMES**

The government is further guided by formally coded basic principles that relate to women's rights. Other institutions that are aimed at protecting the social welfare of the Namibian people include the:

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<sup>124</sup> Act No.1 of 1996

<sup>125</sup> Section 2, Married persons Equality Act.

<sup>126</sup> Section 24, Married Persons Equality Act.

<sup>127</sup> Anyolo.P. 2008. 'Women and Customs in Namibia: A research Overview. In Ruppel OC. (ed). Women and Custom in Namibia: Cultural practice versus Gender Equality. Windhoek: Macmillan Education Publishers, p 84.

## **Ministry of Gender Equality and Child Welfare**

Introduced laws that outline the framework that supports the implementation of gender related constitutional issues, and policies and programmes that promote and sustain equality for all have been developed.

The Constitution itself gives people the rights to practice their culture; this relay makes it difficult to protect women's rights because violating them is claimed as practicing one's culture.<sup>128</sup> It would be great if the laws could specifically stipulate the practices that violate women's rights and find a way of abolishing them. Most of these practices are contrary to the constitution but it seems the government cannot realise that.

Namibia has good laws and policies that only exist on paper, not put into action. No matter how much we preach about equality, it seems to be one of the goals we will never achieve. Even up to today, there are some tasks that are allocated to men and those that are allocated to women, that is not a way of promoting gender equality. In traditional families, usually disciplining children is left for the man, which results in children growing up believing that they are supposed to be in power and intimidate their female counterparts, and the cycle continues.

## **The Law Reform and Development Commission**

The Commission decided to outlaw polygynous marriages and to subject to contraventions to the common law offence of bigamy. Not much is said to justify this move. The Commission has embarked on a number of research projects that have a bearing on the rights of women. As far as the woman's place in the family is concerned, the following are relevant:<sup>129</sup>

**Succession and Estates Project:** this helps women to acquire knowledge on the rights that they have when it comes inheritance and ownership of property.

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<sup>128</sup> Anyolo.P. 2008. 'Women and Customs in Namibia: A research Overview. In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers

<sup>129</sup> Namiseb.T. 2008. '*Women and Customs in Namibia: Women and law reform in Namibia*. In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers, p 109.

Traditions discriminate against women and deny them the right to inherit their spouse's property and yet they are entitled to that.<sup>130</sup>

**Customary Law Marriages Project:** sensitise women about customary law marriages as there are some laws that protect women in civil marriages and not women in customary marriages the reason being that they are not registered. Helps women in understanding the types of marriages being in or out of community of property and problems pertaining to marriage dissolution.<sup>131</sup>

It may be easier for the Government of Namibia to fulfil its legal obligation of ensuring women's rights if it approaches change from a gender perspective. This perspective, with its emphasis on gender as a relational concept, highlights that the legitimacy of women's rights can be more easily ensured if cultural and structural alternatives are provided not only to women, but also to men. Because in the fight for women's rights is viewed as necessarily involving the disempowerment of men and because men are not provided with alternative ways to re-define and exercise their masculinities they feel threatened and offer up some resistance as a means of clinging to power.<sup>132</sup>

Since Namibia's contribution to women's rights is rather minimal, it will be difficult to reduce the effects of traditional practices compared to developed countries. Thus, Namibia opts for adoption measures rather than the mitigating approach in dealing with the effects of traditional practices on the rights of women. This approach should be used to prepare strategies and action plans that can be easily fitted into the national development planning processes.

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<sup>130</sup> ibid

<sup>131</sup> Anyolo.2008.p.91

<sup>132</sup> A report synopsis on: *interrogating, culture, wome's Rights and HIV/AIDS in Namiba and Mozambique*.2009. available at: [http://www.safaids.net/files/changingriverflow\\_NamibiaMozambique.pdf](http://www.safaids.net/files/changingriverflow_NamibiaMozambique.pdf),p,18.

## CHAPTER 4

### 4.1 RECOMMENDATIONS

A huge task is at hand, there is a great deal of work to be done. In order to ensure that women enjoy human rights and freedoms, policy makers must be lobbied, systems must be changed and attitudes must evolve in a positive way to make this a reality. The world will not change just because we put new lenses in our glasses.<sup>133</sup> It will only change if we act and if we are given the means to act. Even, the developing countries also have an obligation to protect the rights of individuals<sup>134</sup> which derives from international customary law, conventions treaties as well as national legislation as discussed above.

The following key recommendations were granted from the study analysis:

#### **Break the silence and get past the noise**

Most of the Namibian good policies exist only in paper. Women and men must start "walking the talk" of women's equality. Without knowledge of their rights, and without active protection of rights, these remain useless in the fight against the epidemic for the people who really need them.<sup>135</sup> It is imperative that the laws and policies which are articulated on paper be enforced; and be enforced in a fair and sensitive manner which is not prejudiced against women.<sup>136</sup>

#### **Keep good cultural practices and change the bad ones**

It would be a matter of urgency to ensure that bad practices are changed. Traditional leaders are in a strong position to help break the silence. Cultural practices and beliefs that discriminate against women and cause them to be vulnerable to HIV can, and should, be changed.<sup>137</sup> Therefore, high-level workshops with traditional,

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<sup>133</sup> Omkemetse Tshosa. 2010. *The Status of international law in Namibian national law: A critical appraisal of the Constitution strategy*. 2010 NLJ, Vol 02, issue 01, p 11.

<sup>134</sup> Ruppel .2009,p45

<sup>135</sup> A report synopsis on: *interrogating, culture, wome's Rights and HIV/AIDS in Namiba and Mozambique*.2009. available at: [http://www.safaids.net/files/changingriverflow\\_NamibiaMozambique.pdf](http://www.safaids.net/files/changingriverflow_NamibiaMozambique.pdf),p,18.

<sup>136</sup> ibid

<sup>137</sup> ibid



religious, and political leaders, especially if held at the local and regional level, can be held to reinforce the best in local culture, as well as to identify and promote a change in those harmful cultural practices and beliefs that currently discriminate against women.<sup>138</sup>

### **Conduct further and action oriented research**

Broaden and replicate the present study to include other major geographic regions and cultural groups, and an additional study regarding prevention and intervention with more male respondents so as to gather baseline data for the preparation of an intervention program targeted at men.<sup>139</sup>

There is need for research, not for papers to be stored in a library, but research that is action-oriented and will make a difference. Example: women's groups have made observations in relation to the selectivity of customs to be discarded or retained, but there are no statistics to back these claims.<sup>140</sup> Women have information and they have the ability to document it.

### **Establishing legal Information and Documentation Centres**

Legal information centres have become commonplace in most African countries but they are still fairly rare in Namibia.<sup>141</sup> The importance of those centres is now an accepted fact, since women must take the lead in defending their rights, they must first of all know those rights.<sup>142</sup> The laws must be explained to women in everyday language for them to be able to understand and that is the role of the legal information centres.

### **Massive literacy campaigns**

More than 80% of African women are illiterate,<sup>143</sup> and yet we live in a technological and scientific world. Women must be able to benefit from technological and scientific progress. They can only do so if they know how to read and write. Consequently,

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<sup>138</sup> A report synopsis on: *interrogating, culture, wome's Rights and HIV/AIDS in Namiba and Mozambique*.2009. available at: [http://www.saf aids.net/files/changingriverflow\\_NamibiaMozambique.pdf,p,18](http://www.saf aids.net/files/changingriverflow_NamibiaMozambique.pdf,p,18). Accessed on 30 October 2011

<sup>139</sup> ibid

<sup>140</sup> Kerr,p.145

<sup>141</sup> ibid

<sup>142</sup> Kerr,p174

<sup>143</sup> ibid

public authorities should launch massive literacy campaigns, putting particular emphasis on women. For women, becoming literate is really the key that will give them access to the modern world and to progress.<sup>144</sup>

### **Transparent Decision Making Processes**

Women are marginalised from decision making process. If they are to be able to participate in the development around them, then they need the voice to influence decision, this can be overcome by approaches such as support, training, and project management with the aim of ensuring that women groups are encouraged to have a say. Angula however points out the challenges to this approach to excluding women from decision making. Even if the information had to be disseminated, most women would prefer to give to the husband to attend while they take care of the household necessities.<sup>145</sup> However, in light of article 10 of the Namibian constitution, it can be argued that women also have an equal right to influence decisions that affects the community and as such; any customary law that prevents them from freely exercising their rights will be null and void in terms of Article 66 of the constitution. This must be put into action.

### **Co-operative Partnership between all relevant agencies**

It is advised that schools and institutions should include the subject of traditions and women's rights in its curriculum in order to educate the students on the adverse effects and perhaps in the alternative, implement exchange programmes to other countries in order to for the students to acquire knowledge and grow up knowing how to promote women's rights.<sup>146</sup>

### **Tying International Aid to Women's Rights**

All international organisations and western countries should make a greater respect for women's rights a condition of any international aid.<sup>147</sup> More efforts should be extended to revising the existing legal instruments, and offer women more protection, more so since Namibia has ratified the international conventions and women are an important driving force in any development in Namibia.

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<sup>144</sup> ibid

<sup>145</sup> Angula, p3.

<sup>146</sup> ibid

<sup>147</sup> Kerr, p 171

### **Formulation of a legal framework**

A legal reform should be formulated specifically to deal with women's rights which are violated by traditional practices in Namibia. It should further provide for the fulfilment of those particular rights. At the national level, all women's organisations and women's rights advocacy groups must come together to create an umbrella organisation which would be responsible for coordinating the various aspects of struggle to defend women's rights. That umbrella organisation should not carry the struggle by itself; good links should be built among African countries and with all other countries of the world.<sup>148</sup>

### **Women support and protection**

Police and security services training to ensure fair treatment of female victims, accused and witnesses, services for raped and battered women, female police and doctors or lawyers, restraints on male perpetrators, rather than connivance with them.

### **Good practice measures**

The lifting of reservations they themselves have entered against the CEDAW and urged home departments to secure the application of the convention within national law.<sup>149</sup>

The active development of information and data bases on methods of prevention of violence and discrimination (e.g. through popular education programmes, social marketing, legislation, counselling) as well as treatment of offenders (e.g. in law, sentencing, custody, counselling, aversion therapy) and of victims (police stations; law procedures shelters, social services, compensation, counselling) for application within different cultures and communities.

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<sup>148</sup> *ibid*

<sup>149</sup> Kerr,p175

## 4.2 CONCLUSION

The legal framework in place is competent enough to protect the rights of women from the impacts of traditional practices. It is clear that there are a lot of legal instruments and mechanisms when it comes to the protection of women's rights in Namibia, but they are not as active as expected.<sup>150</sup> It is a sad truth that people who would never scoff at or belittle human rights do not treat women's rights with the same seriousness. The truth is international community has done precious little to correct these abuses

The legal framework relating to women's rights 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.<sup>151</sup> This however is a long-term process, and many more steps will have to be taken in order to realise the objective 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.<sup>152</sup> In this regard, it is of utmost importance that due awareness is created and that the rationale and contents of gender-related instruments are taken down to grass-roots level.

We have seen that there has been a brief interpretation between the law of human rights and that of state responsibility. Each of these bodies of law deeply affected the other.<sup>153</sup> States can and should take advantage of the already existing institutions and of the emerging principles of state responsibility to take up complaints for breaches of human rights.<sup>154</sup> In conclusion it is a fact that most traditional practices violate the rights of women. The consensus will emerge, and we will develop mechanisms for exposing abuse and for holding the government accountable for it. However, to do so, we will need the support of the community. Women's rights are

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<sup>150</sup> Namiseb.T. 2008. *Women and Customs in Namibia: Women and law reform in Namibia*. In Ruppel OC. (ed). *Women and Custom in Namibia: Cultural practice versus Gender Equality*. Windhoek: Macmillan Education Publishers, p 111.

<sup>151</sup> ibid

<sup>152</sup> ibid

<sup>153</sup> Meron.p.247

<sup>154</sup> Namiseb,p113

human rights, is simply stating the obvious. Yet it requires a concerted effort, both political and intellectual, to make this statement a reality.

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