
**Protecting inheritance rights of women and men:
The experience of Herero in the Erongo region**

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The reason for choosing a research topic that specifically focused on the protection of inheritance rights of women and men in Erongo region is to recommend, among other things, possible areas of law and policy reform to the existing inheritance law in the country.

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Dedication:

This work is being dedicated to my late daughter, Shiwaomwenyo Ndilimeke, to my late sister Puyeipawa, my late brother Abraham Shawapala and my sister Hilde Ndilimeke for being the pillars of strength and source of inspiration throughout the duration of my studies.

Acronyms

AIDS acquired immune deficiency syndrome

CEDAW Convention on the Elimination of all Forms of Discrimination Against Women

CRC Convention on the Rights of the Child

DWA Department of Women's Affairs

HIV human immune deficiency virus

LAC Legal Assistance Centre

LDC Law Reform and Development Commission

MWACW Ministry of Women's Affairs and Child Welfare

NDT Namibia Development Trust

NEPRU Namibian Economic and Policy Research Unit

NGO non-governmental organization

NORAD Norwegian Development Agency

OP Office of the President

SADC Southern African Development Community

SASF semi-autonomous social fields

SWAPO South West Africa People's Organization

UN United Nations

UNAM University of Namibia

UNAIDS United Nations Joint Programme on AIDS

WCPU Women and Child Protection Unit

WID Women in Development

WiLDAF Women in Law and Development in Africa

WLSA Women and Law In Southern Africa Research Trust

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List of statutes

The Constitution of the Republic of Namibia
Communal Land Reform Act 5 of 2003
Recognition of Certain Marriages Act 18 of 1991
The Married Persons Equality Act 1 of 1996
The Maintenance Act 9 of 2003
General Law Amendment Act 49 of 1996
Intestate Succession Act 81 of 1987
Administration of Estates Act 66 of 1965 and Will Act 7 of 1953
Traditional Authorities Act 17 of 1995

Age of Majority Act 57 of 1972 (Zimbabwe)

List of regional and international instruments

United Nations Convention on the Rights of the Child
United Nations Convention on the Elimination of All Forms of Discrimination against Women
Universal Declaration of Human Rights
The SADC Gender and Development Declaration
The Protocol to the African Charter on Human and People's Rights of Women
An Addendum to the SADC Gender and Development Declaration

Glossary – Herero terms:

Okukupua to get married

Omuhepundu a widower or widow

Okurumata to inherit items such as clothes

1 Introduction

Erongo region is one of the 13 administrative regions of Namibia. It is situated at the western coastline of the Atlantic Ocean. The region is divided into seven constituencies as Arandis, Daures, Karibib, Omaruru, Swakopmund, Walvis Bay Rural and Walvis Bay Urban. It has a total population of 103,151 of which 49,067 are women. It is one of the most strategic and high-potential regions in Namibia due to its big fishing industry in Walvis Bay and has other coastal towns such as Henties Bay, Swakopmund and the uranium mining sector in Arandis.

This study aims at examining the inheritance rights and treatment of widows and widowers immediately after the death of their spouses. It will examine men and women's roles at this point in the inheritance process; a greater understanding of their needs and involvement in power and decision-making around specific tasks and issues will be actioned and or determined by intervention of non-discriminatory legislation, religious norms, economic status or class, cultural values and ethnicity of their country, community and household.

The proposed approach is to challenge the status quo or address the perceived inequalities between men and women in relation to inheritance rights after the death of their spouses. This could involve, for example: working for a change in laws that discriminate against mostly women; increasing women's access to land and rights to inherit and giving them equal rights with men to take decisions during any social events they might participate in in their communities.

How the issues of inheritance and rights intersect and are actually addressed depend upon the policy and legislation direction envisaged.

Problem statement

Widowers and widows in Erongo region experience problems regarding the protection of their inheritance rights immediately after the deaths of their spouses.

Part of the problem statement is the impact of HIV/AIDS and poverty on the inheritance rights and protection of property.

In some instances, mostly widows may be forced into a levirate arrangement or a second marriage with an infected heir, brother-in-law or any surviving male relative. And in this time of AIDS, there are fears that these customs are costing lives, with the widow at risk of either becoming infected or herself transmitting the virus to her inheritor. In the case of the Herero tribe, this inheritor may in turn transmit it to his other sexual partners who are mostly close relatives or cousins of the deceased spouse. In addition to this state of affairs, there are elder men in Namibia and in the SADC region whose beliefs and myths surround the issue of curing AIDS by having intercourse with a young girl or virgin. These are destructive attitudes for national HIV/AIDS awareness campaigns in the country and, in many instances, result in babies of two months old and girl children under the age of 18 years being raped.

HIV/AIDS and poverty are closely linked and intersected. AIDS leads to a high rate of poverty while at the same time poverty spreads HIV. Widowers or widows may have spent all the family's resources on health care for a dying husband or wife and on the subsequent funeral, and consequently may end up with no money left to pay for drugs should they themselves contract the disease. Widows or widowers also tend to have less access to medical treatment for economic reasons, particularly if resources have been used up in caring for their husbands, wives or other family members.

Objectives of the research

- To investigate the status of women and men regarding inheritance and property rights and entitlements covering the period immediately after the deaths of their spouses and to recommend ways of protecting their inheritance rights.
- To recommend possible areas of law and policy reform within the existing inheritance law.

The sought assumptions have direct relevance to the women's law approach which was not only critical because of its feminist nature, but also due to the legal technique used throughout my research.

It was assumed that there are legal gaps in the area of inheritance rights of women and men, not only in Erongo region but in Namibia as a whole. The study was designed to look at the past, present and future of a new Namibia, especially in the Erongo region.

Intended assumptions and how they changed

- 1 Women and men in both urban and rural areas are unaware of their legal rights.
- 2 Women and men are unable to access their legal rights because of cultural practices and religious norms and thus are not able to take the necessary action to protect their property interests immediately after the deaths of their spouses.
- 3 The law does not adequately address the issue of protecting women and men's inheritance rights and entitlements immediately after the deaths of their spouses.
- 4 Women and men's properties are being grabbed immediately after the deaths of their spouses due to traditional norms and practices at the time of mourning where their movements are restricted and they are too emotionally fraught to take action to enforce their rights.
- 5 Women and men lack access to the law due to:
 - Lack of access and provision of legal aid and legal information;
 - Lack of legal advice;
 - Long distances between their villages;
 - High cost of legal services;
 - Attitudes of some legal personnel;
 - Location of financial institutions, bank accounts and bureaucratic processes.

2 Literature review

The Namibian Constitution has been hailed as one of the best constitutions in the world for its gender neutrality in that it is against discriminatory laws and negative cultural practices. Article 10 of the constitution provides that:

'All persons shall be equal before the law; and no persons may discriminated against on the grounds of sex; race; colour; ethnic origin; religion; creed; or social or economic status.'

But the constitutional guarantees of sexual equality do not work automatically (articles 10 and 144; Hubbard, 2000).

Article 144 of the Namibian Constitution provides that:

'...unless otherwise provided by this constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this constitution shall form part of the law of Namibia' (CEDAW articles 2, 5, 6).

The issue remains as to what extent this has been put into practice and implemented.

Namibia is a signatory to the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), recorded with no reservations so, effectively, it has committed itself to its implementation. But the provision of the constitution which makes these and other conventions automatically domesticated laws of the country remain untouched.

This means that the Namibian Constitution, as well as the UN conventions, are largely statements of aspiration, rather than principles which govern the real lives of Namibians in practical terms and that the law reform on inheritance rights and gender issues is important in bridging the gap between principles and living reality.

The issue of inheritance is another case in point, as both the Namibian Constitution in article 10 and articles 2, 5 and 6 of CEDAW promise men and women equal rights before the law. Again, the equality between men and women provided in both the Namibian Constitution and CEDAW recognizes equal rights during marriage and its dissolution.¹

The government, with its Law Reform and Development Commission of the justice ministry managed to have the Married Persons Equality Bill enacted as Act 1 of 1996. Though not fully implemented, the Married Persons Equality Act abolishes the marital power and allows the matrimonial property law of marriages in community of property to provide for the domicile of married women and the guardianship of minor children. It further regulates the liability for household necessities of spouses married out of community of property.²

To date, however, the proposed inheritance bill has yet to be finalized and or enacted. There are programmes that will address multiple elements of the legal and social contexts that determine women's property ownership and inheritance and identify specific actors and agents of change. These agents of change are, for example, judges and legislators, community institutions that shape inheritance practices on widowers and widows.³

Article 66 of the Namibian Constitution states that:

'Both the customary law and the common law in Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this constitution or any other statutory law'

¹ CEDAW, article 16; Namibian Constitution, articles 10, 14; SADC Gender and Development Declaration section H (iv), 1997.

² Married Persons Equality Act 1 of 1996.

³ Search information @ [http://: www. Usaid. org. na/new. Asp? Art 12](http://www.Usaid.org.na/new.Asp? Art 12).

Sub-article 2 of article 66 states that:

*'Any part of such common law or customary law may be repealed or modified by Act of Parliament, and the application thereof may be confined to particular parts of Namibia or to particular periods.'*⁴

Informal unions, cohabitations and long relationships are yet to be recognized legally, despite their being part of the Recognition of Certain Marriages Act 18 of 1991.⁵ In many instances, these types of unions are severely discriminated against in terms of inheritance and in matters related to property rights of widows and widowers. Relating these unions to inheritance and property rights, there is no process for them to be made known to relatives of the deceased spouse. As a result of this status, the inheritance process will not take place in relation to couples from informal unions.

Ministry of Justice

The Directorate of Law Reform and the Law Reform and Development Commission under the Ministry of Justice are both entrusted to reform laws, undertake research in areas of law and to make recommendations on all branches of the law in Namibia.

Laws aimed at protecting women and children have taken pride of place. A success story on part of the commission has been the project on violence against and abuse of women and children. A major facet of this project was the law pertaining to rape which culminated in three Acts: the Combating of Rape Act, 8 of 2000, the Combating of Immoral Practices Amendment Act 6 of 2000 and the Combating of Domestic Violence Act 4 of 2003. The family law project has a wide scope and priority is being given to the issue of customary law marriages, in respect of which a subcommittee of the commission will soon finalize its recommendations on inheritance and the issue of divorce.

The commission is entrusted also to work on a number of projects which are pertinent to this study and, until such time that these laws are repealed, there will be no quick solution to property rights and inheritance problems. These projects include the inheritance/succession (estates) project and the publications project which involves the issues of pornography and the protection of children.⁶

Legal Assistance Centre as a legal service provider

This is a public interest law centre which collectively strives to make the law more accessible to those with the least access, through education, law reform, research, litigation, legal advice, representation and lobbying, with the ultimate aim of creating and maintaining a culture of human rights in Namibia. It has developed a range of training materials, for example on the rights of women and children, with a view to raising legal awareness, and sensitizing and mobilizing communities, particularly women's groups. The Married Persons Equality Act, the Maintenance Act, and the Communal Land Reform Act 5 of 2002 were lobbied and advocated through the Legal Assistance Centre and other legal agencies. The Legal Assistance Centre has worked on the women's inheritance and property rights project, specifically focused on legal research and analysis of current legislation in order to frame new inheritance legislation.⁷

⁴ Namibian Constitution, article 66.

⁵ Recognition of Certain Marriages Act 18 of 1991.

⁶ UN Convention on the Rights of the Child, articles 2; 4; UN CEDAW article 2 (a; b; c; g), articles 13 and 16.

⁷ Information extracted from the mission statement of the Legal Assistance Centre and a brochure, *AIDS Law Unit of the LAC*.

Namibian Paralegal Association

The Namibian Paralegal Association is a voluntary non-governmental organization and corporate body with limited liability, perpetual succession and capacity to sue and be sued in its own name.

The aims of the association are:

- 1 To provide training, to educate and to undertake rural community empowerment campaigns and to promote legal awareness amongst the needy in both rural and urban communities;
- 2 To simplify and translate laws into local languages whenever needed in order to assist Namibians in understanding the law;
- 3 To provide legal services to the needy in communities;
- 4 To make the services provided by paralegals easily accessible for communities;
- 5 To liaise with both national and international organizations with similar aims and objectives to enhance the service provided for communities;
- 6 To promote and strengthen the culture of human rights within various communities;
- 7 To increase access to legal information and dissemination of Namibian laws;
- 8 The association has also the responsibility to advocate for recognition of paralegals at all levels of the society;
- 9 To advocate for reform of existing legislation and policies, the promulgation and formulation of new legislation and policies consistent with the association's aims and objectives.

The role of paralegals

Paralegals provide many services to the community. Below is a list of some of those services.

- They give legal and other general advice to people;
- They investigate cases that go to lawyers pertaining to inheritance, maintenance, divorce cases, rape and assaults;
- They work as a link between lawyers and the community;
- They help communities gain access to public services and other helpful resources;
- They mediate between communities and authorities;
- They facilitate community legal workshops;
- They assist in the resolution of community and family disputes;
- They simplify bills and laws for the community members to understand them.

The paralegals use simple forms to record cases and in this way facilitate their referral system. The simple forms are critical in recording the type of case to be investigated, the personal details of the client and advice or suggestions given to the client. This research revealed that assistance is provided for clients whose languages differ from the officer on duty. The referral letter is used to refer cases to other legal services such as magistrate courts, the High Court and police stations.

Cases that are handled by paralegals ranged from small cases such as disputes between family members, among community members and between ethnic groups. These disputes are about inheritance or labour issues.

Here again there seemed to be a gap in information sharing and dissemination. Some respondents complained about the way in which the information is availed to some people and not to the whole community in need. This study revealed that some officials serving in these offices lacked customer care skills and unless Namibia

addresses this problem, people (mostly those in rural areas) will continue to lag behind in development issues. Most respondents are knowledgeable about old South African laws but they knew little about their own Namibian statutes. Legal service providers were reported as being reluctant to share legal information, especially on issues pertaining to inheritance rights and human rights.

Inheritance rights and procedures

Most Namibian women and men, like their South African counterparts, have historically suffered colonialism, poverty and oppression under the apartheid administration. Besides this, women have been subordinated culturally and legally because of their gender. Namibian women married in community of property were considered minors in terms of the law before the Married Persons Equality Act came into force in 1996. Article 95 (a) of the constitution stated that women are to be accorded the same status as men with regard to all forms of land rights, whether as individuals or as members of a family land ownership trust. Every widow or widower will be entitled to maintain the land rights she or he enjoyed during the spouse's lifetime. Widows or widowers are all entitled to receive land allocations and inherit land. The government, through the implementation of the Communal Land Reform Act 5 of 2002, is to promote the reform of wills and customary laws which most commonly impede women from exercising rights over land. The National Land Policy (April 1996) also addresses the problems of dispossession, discrimination and inequitable distribution of land that characterized the pre-independence era. The policy is designed to provide for a unitary land system where Namibians have equal rights, opportunities and security across a range of land tenure situations, irrespective of whether the land is in communal or commercial areas. To conclude, it is worth mentioning that both the National Land Policy and the National Resettlement Policy are seen as the beginning of a clearly articulated and well-directed process which will improve the quality of life by enhancing the dignity, wellbeing and empowerment of landless people in Namibia.

Apart from the Intestate Succession Act 81 of 1987, which is still to be repealed, there are other laws of relevance to the research topic. These laws include the following:

- Constitutional provisions article 16 (1 & 2); which stated that:
*'All persons shall 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...'*⁸
- The Recognition of Certain Marriages Act 18 of 1991 which provides for the recognition of marriages contracted in terms of the SWAPO Family Act, 1977, and the adoption of children. Article 53 of the same Act states that in case of dissolution of marriage when the joint property is to be divided, the spouses shall do it on the basis of their mutual agreement as far as this is possible. And Article 49 provides that the property acquired by either spouse in the course of marriage by inheritance and / or gift shall be his or her own property.⁹
- The Married Persons Equality Act 1 of 1996 which abolished the marital power and amended the matrimonial property law of marriages in community of property to provide for domicile of married women, domicile and guardianship of minor children and to regulate the liability for household necessities of spouses.
- Part 1 of the same Act provides that subject to this Act, the effect of section 2(1) is:
'a) to remove the restrictions which the marital power places on the legal capacity of a wife to contract and litigate, including, but not limited to, the restrictions on her capacity:

⁸ Namibian constitution, article 16 (1 and 2;)

⁹ Recognition of Certain Marriages Act 18 of 1991 and SWAPO Family Act, 1977.

i) to register immovable property in her name;

ii) to act as an executrix of a deceased estate;

iii) to act as a trustee of an insolvent estate;

iv) to act as a director of accompany; and

v) to bind himself as surety

b) that the common law position of the husband as head of the family is abolished, provided that nothing herein shall be construed to prevent a husband and wife from agreeing between themselves to assign to one of them, or both, any particular role or responsibility within the family.¹⁰

- The Administration of Estates Act 66 of 1965 and the Will Act 7 of 1953 intend to consolidate and amend the law relating to the liquidation and distribution of the estates of deceased persons, the administration of the property of minors and persons under curatorship, and of derelict estates; to regulate the rights of beneficiaries under mutual wills made by any two or more persons; to amend the Mental Disorders Act, 1916; and to provide for incidental matters.¹¹
- The Traditional Authorities Act 17 of 1995 section 11 provides that any custom, tradition, practice or usage which is discriminatory or which detracts from or violates the rights of any person as guaranteed by the constitution or any other statutory law, or which prejudices the national interest, shall cease to apply;
- Any customary law of a traditional community shall only be applicable to the members of that community and to any person who is not a member of that traditional community but who by his or her conduct voluntarily submits himself or herself to the customary law of that traditional community.

It was established through group discussions that authority over the inheritance rights of a widow or widower regarding land and the matrimonial house rests on individual traditional chiefs who decide and allocate them to the widow, widower or to the children of the deceased spouse. We were informed earlier that the Herero are ‘child-minded’ in that the matrimonial house would usually be inherited by the surviving spouse and children. In some instances, traditional chiefs do request payment from widows and widowers in order for them to remain on their piece of land and in the village. This payment may be made in monetary terms or in kind. A grace period of one year is given for the surviving spouse to settle this payment or else the land will be reallocated to new villagers.

Law reform and practice

Under customary laws the allocation of common property after death or divorce depends on the specific practices of that society but many discriminate against women. In some instances, in traditional societies after the husband’s death or a divorce, all common property goes to the husband’s kin group, leaving the widows without means of support. It is expected that the woman’s adult male children will provide for her or that she will return to her father’s house. This study will contribute to enforcing law reform in that it will identify current areas of discrimination against women in relation to property and inheritance rights and enable policy makers and advocacy programmes to target such discrimination (WLSA, 1995).

The Namibian country report on CEDAW stated that women should have the right to control property and be considered equal to men with regard to property rights (OP–DWA, 1995:151). In the same report, it stated that although parliament passed a resolution in 1992 indicating that traditional leaders should allow widows to stay on their land, discriminatory inheritance practices continue and many cases of inheritance have been reported to be accompanied by violence (OP–DWA ,1995: 145).

¹⁰ The Married Persons Equality Act 1 of 1996.

¹¹ Statutes of the Republic of South Africa – Succession; Administration of Estates Act 66 of 1965 and Will Act 7 of 1953. Please note that some South African Laws are applicable to Namibia, pending their amendment and or reform.

Therefore, this study will help to speed up the implementation of the National Gender Policy, the National Gender Plan of Action, the Married Persons Equality Act and the Combating of Domestic Violence Act based on CEDAW principles. The information collected will be shared and disseminated through seminars and workshops for widows or widowers and civil society within and beyond Erongo region. It is assumed that the proposed Administration of Customary Law Estates legislation will apply to estates which are governed by customary law. Section 10 of the draft legislation abolishes customary law by replacing it with substantive provisions of inheritance which are incongruent with customary law principles or inherent logic and with the living law as researched under the Law Reform and Development Commission's customary law field research project.¹²

Mourning rituals and inheritance conflicts

There have been very few cases coming before the courts in Erongo region dealing with issues directly concerned with widower and widows' inheritance rights. Perhaps the time has not yet arrived and or people lacked legal information and do not know how to pursue their cases through legal services.

The conflicts, however, as mentioned in chapter one, will remain. This is because custom will always play an important role in a traditionally-based society like that in the Erongo region and, in particular, the Herero community, the focus of this study. It will be for the courts to play an important and decisive role in the midst of this conflict, with a view to ensuring that inheritance rights as well as human rights, of men or women, are respected and are not allowed to suffer or be sacrificed because of difference in sex. The above information came about as a result of those men whose wills or testaments had been changed in favour of beneficiaries other than their wives.

This not only has legal implications but also results in social problems in that it creates a lack of confidence and trust in the first chosen beneficiary; in the event that the proposer dies, there will be an inheritance conflict created by the deceased spouse. What is meant here is that the relatives of the deceased partner will have two different texts of the will in their possession. Again, the fact that both patriarchal and matrilineal patterns apply regarding inheritance rights of widowers and widows, it remains the duty of family members to decide what cultural pattern it is best to follow and maintain. The issue of mourning for a week or more becomes expensive for some families to finance both the funeral costs and housing the group of mourners assembled at the deceased's estate. It also is too long a ceremonial period for one to sort out matters at financial institutions, more particularly at insurance companies. At this time in some families, widows or widowers are deprived of their property while mourning their husbands or wives. Being vulnerable during the mourning period allows room for property grabbers to manoeuvre and even cause valuable documents to disappear.

Rights over customary land are vital to the Herero people of Namibia, especially where customary land comprises a larger percentage of the land. In matrilineal families, the women carry with them the rights over land.¹³

Women and Law In Southern Africa Research Trust (WLSA):

Namibia is not a member of WLSA and therefore we suffer from a gap in information and research on legal issues advocated by other countries in SADC region. There is little written information collected at the Women's Law Centre in Harare about laws in Namibia and in particular on related women's legal issues. References made to laws in Namibia are usually about South African laws which are not only outdated but completely different as both countries are busy repealing and reforming their laws to be in line with their constitutions.

¹² Legal Capacity Programme for Namibia, Ministry of Justice, Dr Runger, 1999, Windhoek.

¹³ Lecture on 'Human rights instruments and women, family and culture' by Professor Himonga.

3 Methodology

It would have been commendable if the laws were clear and straightforward. We have seen the ambiguity manifesting itself in the following areas, for example, lack of clear meaning as to the word ‘dependent’ and ‘head of households’ in relation to issues of fair distribution. Another disturbing legal term is ‘being married in and out of community of property’ which people, particularly rural women, often do not understand and is difficult to explain without some confusion. Other problem areas are the lack of specific modalities of distribution of property of a deceased woman under customary law and finally the issues as to the definition of estates to which customary law could apply in the absence of the Will and Inheritance Act. The denial of property rights and the lack of income to pay the legal fees can prevent widows or widowers from accessing legal services when they are most needed. It is hoped that when the Inheritance Bill becomes a law it will provide for the equal status of both men and women in the family, especially in the area of property and inheritance rights.

Aim of the research

As stated, this study will assist policy makers in identifying legal gaps in the area of inheritance and property rights of women and men and build on the current trends to address all aspects of post-apartheid life which discriminates against women. It will also provide the first comprehensive analysis of women’s property and inheritance rights in Erongo, specifically targeting Herero women and men. It will also add value to the implementation process of CEDAW, CRC and other national instruments.

Using the women’s law approach

The grounded theory: It took time to decide on the exact topic of my research and I arrived at this topic only after consultation with the Director of the Women’s Law Centre who fortunately was the supervisor of this study. I valued very much the way each student was assisted and redirected so as to shape each selected research topic. During Professor Stewart’s visit to Namibia, we managed to revisit the research topic, look at the intended assumptions and what came out from the field research and realized that there were variations which departed from the selected research topic. These differences or rather new emerging issues included the inclusion of men (widowers) in the region to be part of the study. Another critical issue relevant to this study was the equal treatment which both widows and widowers receive during and immediately after the death of a one spouse. It was assumed that in many instances, widows are discriminated against on the grounds of their sex, and that only widows’ properties are taken during mourning period. Surprisingly, the field research outcome revealed that widows and widowers are treated equally and variations depended on the attitudes of each spouse’s family, in-laws and close relatives.

‘If I had known that within Erongo region, there is a mining town, I would have advised you to deal with the mining sector,’ (in Arandis, 06/11/03).

The statement by Professor Stewart reflects assumptions based on previous research on inheritance in Zimbabwe by WLSA in 1994. With the mining sector, widows and widowers are well taken care of and inheritance rights are a basic human rights issue rather than wealth-grabbing. In the event of the death of a one spouse who fortunately was employed by the mining sector, the other spouse inherits lawfully and may even be left the house of the deceased partner as his or her own property.

Changing assumptions

The first interviewee was a widower of 80 years, who fortunately was keen to talk about his experience as widower over 25 years. From this interview, I was excited and keen to find more widowers in the area of Omborondo for short interviews. Slowly but surely the research topic changed and I had to change the research questions to include widowers in the region. It was in this village that I began to realize that women themselves can be selfish when it comes to property rights and inheritance. Some women are greater property grabbers than men and appeared to be the main initiators of property grabbing against mostly other women as widows.

Initial research assumptions

- 1 Women in both urban and rural areas are unaware of their legal rights and are thus not able to take the necessary action to protect their property interests immediately after the deaths of their spouses.
- 2 The law does not adequately address the issues of protecting women's inheritance rights and entitlements immediately after the deaths of their husbands.
- 3 Women's properties are being grabbed without their will and or knowledge immediately after the deaths of their husbands due to mourning rituals of their deceased husbands, where women's movements are restricted and they are too emotionally fraught to take action to enforce their rights.
- 4 Women are unable to access their legal rights because of cultural practices and religious norms, which prevent them from claiming their inheritance rights, especially immediately after the deaths of their husbands.
- 5 Women lack access to the law:
 - a) because they receive no appropriate legal advice;
 - b) due to long distances between their villages and legal offices;
 - c) due to the high cost of legal services;
 - d) due to attitudes of some legal officials;
 - e) due to decentralized locations of financial institutions and bank accounts, where they could more easily keep control.

Research questions

- A** Do women in both rural and urban areas know their inheritance rights, entitlements and the law?
- B** Does the law adequately address the protection of women's inheritance rights and entitlements immediately after the deaths of their husbands?
- C** Is women's property being grabbed without their will and or knowledge immediately after the deaths of their husbands due to mourning rituals at the time of their husband's death when women's movements are restricted and they are too emotionally fraught to take action to enforce their rights?
- D** Are women unable to access their legal rights because of cultural practices and religious norms which prevent them from claiming their inheritance rights, especially immediately after the deaths of their husbands?
- E** Do women lack access to the law and appropriate legal advice, due to long distances, high legal costs, attitudes of legal officers, and due to the centralized locations of financial institutions and bank accounts where they could more easily keep control?
- F** Are women in both urban and rural areas unaware of their legal rights and thus not able to take the necessary action to protect their property interests immediately after the deaths of their spouses?

Under the original research topic set into paragraphs as above: *The protecting of inheritance rights of women and men: The experience of Herero in the Erongo Region*, these assumptions changed to:

- A Both women **and men** in both urban and rural areas are unaware of their **legal rights**;
- B That both women **and men** are unable to access their legal rights because of cultural practices and religious norms and thus unable to take necessary action to protect their property **interests** immediately after the deaths of their spouses;
- C That the law does not adequately address the issues of protecting women's inheritance rights and entitlements immediately after the deaths of their spouses;
- D That both women's **and men's** properties are being grabbed immediately after the deaths of their spouses due to traditional norms and practices at the time of mourning of their deceased spouses, where their movements are restricted

And they are too emotionally fraught to take action to enforce their rights;

- E Women **and men** lack access to the law due to:
 - Lack of access to legal **aid and legal information**;
 - **Lack of legal advice**;
 - Long distances between their villages and the courts;
 - High cost of legal services;
 - Attitudes of some **legal personnel**;
 - Location of financial institutions, bank accounts **and bureaucratic processes**.

The bold face parts of both the assumptions and research questions were added due to issues which emerged.

Interview guiding questions

Interview - focus group discussions

Protection

- 1 What are the customs and practices you follow in your culture?
- 2 Do these customs and practices determine how property should be shared immediately after the death of a spouse?
- 3 How were you treated at the time of your spouse's death and during the mourning and funeral period?
- 4 How were the mourning rituals observed during and after the mourning period?
- 5 Did these mourning rituals affect you emotionally?
- 6 How were you assisted and who assisted you?
- 7 Were the children considered part of the inherited property?

Reaction

- 1 Was any of your property grabbed immediately after the death of your husband or wife?
- 2 What happened to the property afterwards?
- 3 Was the division of property done fairly?
- 4 Were you consulted on property division?
- 5 How did you cope with the experience of losing your husband or wife?
- 6 How did your in-laws react regarding the inheritance of the deceased's properties?
- 7 How was the property acquired in your marriage?
- 8 Which property did you own jointly or individually?

Inheritance process

- 1 Did you have rights to dispose or own property in your marriage?
- 2 Who presided over the proceedings on division of property?
- 3 Was there any dispute over the property?
- 4 Where was the property dispute reported?
- 5 Were you assisted satisfactorily and through which authority?
- 6 What happened thereafter? Was the dispute resolved?
- 7 Who were the people involved in pursuing your case?

Results

- 1 Did you think of using the law to protect your inheritance rights?
- 2 Does the law adequately help widows or widowers to protect property immediately after the death of their spouses?
- 3 Would you encourage other widows or widowers to use the law regarding their inheritance rights?
- 4 What do you think should be done to help other widowers or widows who are not aware of their legal rights to inheritance and property entitlements immediately after the death of their husbands or wives?

Knowledge of the law

- 1 Are you aware of any legal aid office in Erongo region where one would seek legal assistance and advice?
- 2 Are these legal aid offices located in towns or in remote areas?
- 3 How far are these offices from your village?
- 4 Are widows or widowers able to access the legal services and financial institutions in your area?
- 5 How are the widows or widowers' complaints treated?
- 6 Are legal costs affordable for the mostly unemployed persons in your area?
- 7 How efficient are the legal procedures regarding inheritance and property rights?
- 8 How is legal information being disseminated? Is the information available and accessible at local levels?

Women

- What would you think other women need to know about these issues and why?

Interview – key informants

(regional councillors, church leaders, headmen, policemen)

- 1 What is the name of your institution?
- 2 What position do you hold in this institution?
- 3 What does your institution do?
- 4 Who is your immediate target group in your work?
- 5 Have you come across widowers and widows in this region?
- 6 Do you know of any study carried out on inheritance rights of widowers and widows in the Erongo region? By which institution and when?
- 7 Are you interested in seeing the research carried out on inheritance rights? Why?
- 8 What are your full names?
- 9 How old are you?
- 10 What is your marital status?
- 11 What is your level of education?
- 12 Where do you live?

Research demarcation

This study is confined to Herero widows and widowers of Erongo region. It looked at the inheritance rights of women and men, especially immediately after the deaths of their spouses. The study explored the period from the death of a spouse up to six weeks after the funeral of the deceased husband or wife.

Research limitations

Due to limited human and financial resources, I managed to research in only six of the seven constituencies in the Erongo region. I must also confess that some remote areas were not reached due to gravel roads and heavy rain during the months of December 2003 and January 2004. Another problem encountered during my field research, was the long distances between towns or villages in that respondents had problems and had to try to use private vehicles as there were not enough public transport services in the region.

Library research

This was carried out at the Women's Law Centre of the law faculty of the University of Zimbabwe, University of Namibia's library, the Legal Assistance Centre's legal library, the resource centre of the Ministry of Women's Affairs and Child Welfare, the Women and Child Protection Unit regional office in Walvis Bay and at the Namibian Economic Policy Research Unit (NEPRU).

Desk research

The source of information was collected and managed at the Directorate of Women, Gender and International Affairs of the Ministry of Women's Affairs and Child Welfare. The issues of widow's property rights and inheritance were pertinent and of vital importance to women, men and children and to the researcher; thus lots of information on international, regional and national instruments and local materials were useful, informative and well used.

Other sources of information

Through the internet, television and the radio service in Oshiwambo, daily newspapers, newsletters of Women and Law In Southern Africa Research Trust, Women in Law and Development in Africa (WiLDAF) and WLSA-Malawi.

Methods of data collection

I was able to collect a lot of information through lectures in women, culture and family law found in the Women's Law Centre library, the Law Faculty library, the Legal Assistance Centre-Namibia library, the Ministry of Women's Affairs and Child Welfare's resource centre and the University of Namibia's library. The methods used are detailed briefly below.

The outcome of the initial field research carried out for four days revealed that the most comprehensive method to use during this research was the focus group discussion. It is the most useful method not only because is very broad-based and comprehensive but also it offers the most direct interaction and a face-to-face approach. All the focus group discussions held were organized through the Evangelical Lutheran Churches in Erongo region. A turn up of about fifteen to forty five women and men made the discussions more fruitful than expected. The participants included church leaders and headmen. I was also fortunate to have a gender liaison officer from the Ministry of Women's Affairs and Child Welfare in the region being seconded to this programme who was not

only an interpreter but also the organizer for all meetings.

In each meeting held, there was a formal introduction of who we were and why we were researching in the Erongo region and not in other regions. I received no resistance from any of the respondents I met regarding this study, and that made my research more encouraging than expected.

Sampling

It was clear from individual interviews conducted in Omborondo village on the 6 November 2003, that the most cost-effective method to employ was group discussions as the individual interviews were too time consuming. Through the group discussions, respondents were able to answer guided questions collectively and satisfactorily.

Table 1 Group discussions/ individual in-depth interview

| Number of widows | Age group | Ethnic group status | Socio-economic standard | Educational | Place of living |
|------------------|-----------|-----------------------|---------------------------|---------------------------------|--------------------|
| 22 | 25-34 | Herero, Damara, Wambo | Mixed/employed/unemployed | Primary/secondary | Urban/rural |
| 20 | 35-44 | Herero/Damara/Wambo | Same as above | Primary | Urban/rural |
| 18 | 45-59 | Herero/Damara/Wambo | Unemployed | Elementary/non-formal education | Rural/semi - urban |
| 9 | 60-80 | Herero/Damara | Unemployed/pensioner | non-formal education | Rural/semi - rural |

Total : 69

a) Widows

Age group

Ethnic group

Socio-economic status

Formal and informal educational standard

Place of living (urban and rural)

Other specify

Table 2 Group discussions/ individual in-depth interviews

| Number of widowers | Age group | Ethnic group | Socio-economic status | Educational standard |
|--------------------|-----------|--------------|-----------------------|----------------------|
| 3 | 45-59 | Herero>Nama | Unemployed | Primary |
| 5 | 60-80 | Herero | Pensioners | None |
| 4 | 35-44 | Herero | Employed | Secondary |
| Total : 12 | | | | |

b) Widowers

Age group

Ethnic group

Socio-economic status

Educational standard

Place of living

Other

Table 3 Structured interview (key informants)

| Constituencies | Governor | Police | Councillors | Church leaders | Headmen |
|------------------|----------|----------|-------------|----------------|----------|
| Aradis | | | 1 | 1 | |
| Omaruru | | 3 | 1 | 1 | 1 |
| Karibib | | | 1 | | 1 |
| Walvis Bay | | 2 | 2 | 1 | 1 |
| Daures | | | 1 | | |
| Swakopmund | 1 | | 1 | 2 | |
| Total: 21 | 1 | 5 | 7 | 5 | 3 |

c) Key informants Interviews:

- Regional Governor
- Headmen
- Church leaders
- Regional Councillors
- Policemen

Key informant; Governor; Councillors; Headmen; Church leaders and Policemen.

Ages ranged between fifty to seventy.

Total number of interviewees / respondents was 102 in seven constituencies of Erongo region.

Table 4 Total population by sex and constituency, Erongo region

| Constituency | Number of households | Population | Females Males | Household size | average |
|----------------------------|----------------------|------------|---------------|----------------|---------|
| Arandis | 1 908 | 7 477 | 3 778 | 3 699 | 3.9 |
| Daures | 2 350 | 10 184 | 4 875 | 5 309 | 4.3 |
| Karibib | 2 940 | 11 784 | 5 750 | 6 034 | 4.0 |
| Omaruru | 1 835 | 6 792 | 3 341 | 3 451 | 3.7 |
| Swakopmund | 7 560 | 25 442 | 12 267 | 13 175 | 3.4 |
| Walvis Bay urban | 7 075 | 27 379 | 12 446 | 14 933 | 3.8 |
| Walvis Bay rural | 3 833 | 14 093 | 6 610 | 7 483 | 3.3 |
| Total household population | 27 501 | 103 151 | 49 067 | 54 084 | 3.8 |
| Special population | 4 478 | | 782 3 696 | | |
| Total population | 27 501 | 107 629 | 49 849 | 57 780 | |

NB: Information extracted from the 2001 Population and housing census, preliminary report, March 2002 Census Office National Planning Commission, Windhoek.

4 Discussion

The issue of women's property and inheritance rights has been at the fore of many recent debates, discussions and advocacy in Namibia.

In some communities the customary norm whereby male relatives grab all property upon the death of a male, as well as the customary practice of most men demanding property from a failed marriage, are beginning to be questioned. Failed marriage means here, the union or family that broke up, or ended unexpectedly, as a result of childlessness, alcoholism or due to domestic violence, sexual assault and rape.

It is assumed that there is little understanding of women's property rights and inheritance, consequently there have been many attempts to research inheritance rights of women but none of these studies were completed. Therefore, this research is not only timely but urgently needed to investigate the current situation of widows or widowers in relation to property and inheritance. (UNAM, 2001)

The law in books is that property rights are protected by articles 16 and 66 of the constitution, the Married Persons Equality Act 1 of 1996, the Intestate Succession Act 81 of 1987 which is under review, the Administration of Estates Act 66 of 1965, the Will Act 7 of 1953, the Traditional Act 17 of 1995 and the Draft Inheritance and Succession Bill which is also under legal review.

The information on the ground with regard to property rights and inheritance of widows and widowers is that there is inadequate access to legal information in the region, even though there are five magistrates' offices and four traditional authorities. The issues of legal aid and legal services should become top priority in the region in order to redress identified legal gaps. Wills and testaments are quite acknowledged in some areas but communities seem to have problems with them in that young relatives tend to cheat legatees and beneficiaries of a large portion of their intended benefits. Some pensioners complained that insurance claims aren't easy to process during the mourning period due to the attitudes of some insurance officials.

Constitutional provisions

Article 66 of the constitution recognizes both common law and customary law in as much as these laws do not conflict with each other. In many instances people use the different law systems as they suit their needs or situations which is a welcome situation for mostly widowers and widows taking inheritance cases to courts under common and customary law in Namibia. Again, the number of unregistered marriages continue to grow, thus the recognition of customary marriages is critical and a priority.

The Constitution of the Republic of Namibia, the supreme law of the country, embodies gender equality and promotes the advancement of women. The constitutional provision on affirmative action enables parliament to enact legislation for policies and programmes to redress past imbalances. It further emphasizes that:

*'Women in Namibia have traditionally suffered special discrimination and they need to be encouraged to play a full, equal and effective role in the political, social and economic and cultural life of the nation.'*¹⁴

Knowledge of law and use of law knowledge:

In many instances, people, in particular rural women and men, make oral wills which are futile, since relatives of the deceased spouse no longer respect them.

Some people in both urban and rural areas write wills and use them for their intended purpose. Is this acceptable in the community? The answer is likely to be no because of negative attitudes and beliefs that one cannot plan

¹⁴ See Articles 10; 16; 23 (2) of the Namibian Constitution.

for death and have a written will. What are the provisions in customary laws if a person has a written will? One problem that was discovered by this research was the legal language in which these wills and testaments are written.

Here is an example of a simple will or testament:

Last Will and Testament

This is the Last Will and Testament of

Hosea Haufiku

(Born on 12-10-1965)

I hereby revoke, cancel and annul all previous wills, codicils and other testamentary dispositions hereto before made by me, either jointly or separately, and declare this to be last Will and Testament.

I nominate, constitute and appoint the nominee of Keller and Neuhaus Trust Co. (PTY) LTD to be the Executor of my Will and Administrator of my estate and trustee of any Trust created herein, granting unto him all such power and authorities allowed in Law, and more particularly the power of assumption.

I direct the Master of the High Court to dispense with the provision of security by my Executor/ Administrator and Trustee as mentioned above.

As Witnesses:

1. _____

2. _____ *Testatrix*

*I bequeath my estate in equal shares to my children **Thomas, Henock and Theofelus** or to the survivors of them should one of them predecease me.*

Should I leave none of the above mentioned beneficiaries, I bequeath my estate in equal shares to Fiku Haufiku and Eric Shangula or to the survivor of them should one of them predecease me.

I direct that should at the time of my death any beneficiary be under the age of 25 (twenty five) years, such beneficiary's inheritance shall be held in Trust by my Trustee, who shall utilize as much of the income as he, in his discretion, may deem necessary for the maintenance, education, general welfare and benefit of the beneficiary. Any surplus income shall be capitalized.

1. _____

2. _____ *Testatrix*

I reserve the right at any time hereafter to make all such alterations and/or additions to this my Will and Testament as I deem fit, either at the foot hereof or in a separate act, desiring that all such alterations and/or additions made under my signature shall be as valid and effectual as if inserted herein.

THUS DONE AND SIGNED AT ... ON THIS ... DAY

OF ... 2004, IN PRESENCE OF THE UNDERSIGNED WITNESSES:

NB: This is only a shortened version of the Will or Testament, which I am sure not many women know about nor make use of it.

Access to law and legal services

It is crucial to introduce human rights in the formal curricula and to launch non-formal programmes for various segments of society aimed at the improvement of the attitudinal environment which militates against the practice of equal rights within the family. There is the need to learn different ways of viewing the status of women in general and in particular married women, recognizing domestic labour as an economic activity and re-evaluating the parental and domestic responsibilities of men.

The African history, traditions and customs as well as the gender dynamics in the region demonstrate the importance of legal norms and structures, not only for the economic empowerment of women but also for equitable and moral considerations.

The structure and complexity of the legal system itself can be an obstacle to its use. The cost of litigation and the absence of a functional legal aid system are cases in point. It is also not always possible to challenge laws that are discriminatory against women on the basis of their inconsistency with the provisions of the constitution. This, coupled with the generally obscure legal language, makes it impossible for the average woman to be aware of her rights and exercise them. Similarly, the attitudes of the agents of law enforcement, including judges, magistrates, the police, and so on, are highly influenced by cultural values which are evident in their interpretation and enforcement of the law vis à vis women.

All this, coupled with the lack of legal information and absence of legal institutions to provide information and or give assistance to women with regard to the legal system and its provisions, constitute major obstacles to the exercise of women and men's legal rights. This approach thus deals with the question of empowerment more intensively beyond the direct supply of legal information. Most legal service providers are situated in Windhoek while three quarters of the population is in remote areas where there are not enough facilities or legal services. There are also people who purposely ignore the legal system; as a result, they prefer to resolve matters within their family set up. These matters include all types of disputes of which inheritance and property rights are just part of the problem. One of the major constraints to the implementation of progressive laws such as those in the constitution, however, is the tendency for people to organize their civil matters according to customs and tradition and therefore to resort to customary law when problems arise.

Legal constraints

In Namibia, as in many African societies, laws and customs act as roadblocks to women's access to resources and inputs to facilitate effective implementation of their roles. A combination of the colonial legal heritage and a diversity of customary laws and customs have contributed decisively to the status quo. Thus, the existing system of hierarchy of courts has jurisdiction over all people and can apply either the law inherited from the colonial administrators or the customary law, depending on what seems to be most beneficial with regard to given cases. Religious law is also not too removed from custom and in fact in some parts of Namibia, religious marriage principles are yet to be modified to incorporate the indigenous customary law. As mentioned earlier, one of the areas in which women are clearly discriminated against under customary law and tradition is that of property ownership, including land tenure, real property and productive resources within marriage, after dissolution of marriage and under inheritance laws. In this regard, women are for the most part prohibited from owning and exercising proprietary rights over real property in Namibia.

The Namibian constitution provides the establishment of courts of law such as the Supreme Court, the High Court, the lower courts and the Master of the High Court. Of these courts, there are only five magistrates' courts in Erongo region. Cases of inheritance and as well as maintenance are usually dealt with by the High Court of Namibia which is over 300kms from the Erongo region. Transport and financial problems continue to be the main constraints to most rural and unemployed women due to their lack of income and their often high level of poverty.

Inadequate resources and funeral arrangements

Funeral arrangements and costs are extremely high and not all relatives of the deceased spouses are rich enough to afford them. Sometimes the process takes a week or two, depending on when the spouse passed away. It is at this time that most widows and widowers lose property as they themselves are unable to take part in funeral-related meetings or are not invited to participate perhaps due to their grief so are completely excluded from making any decisions.

According to the Herero traditional authority, in relation to inheritance, both a widow and a widower are allowed to remain in the house of the deceased spouse. In some instances, widows who have no children are returned to their families but this is rare and a specific arrangement between two families. The customary law provides that when the husband passes away, his widow shall have the right to move freely in and around the house until the end of the mourning period.

This study revealed that most Herero are matrilineal, and a patrilineal system exists only in cases of inter-marriages between Herero and Owambo or Herero and Damara.

The gender perspective I use in my research has also pointed me towards the role of men in legal conflicts. This implies that it is not only necessary to educate women about law but also to focus on men.

The role of semi-autonomous social fields in women and men's living reality

The relevant actors in the semi-autonomous social fields provide counselling to disputing families and partners and, as community leaders, they are expected to facilitate reconciliatory process. The semi-autonomous social fields are important structures which are directly in contact with the people and become the first referral institution to turn to when problems arise. It is these people who decide for each villager where to settle and guide the proceedings of the inheritance process in collaboration with the relatives of the deceased spouse. Women and widows are mostly marginalized as they are not part of these structures and decisions are made for them.

The information gathered is that widows and widowers are treated equally, depending on what family they come from, and that property division is not merely done immediately after the death of one spouse. The only noticeable discriminatory practice between men and women regarding inheritance rights and any other matters that follow the death of one spouse is that, in some instances, widowers remarry after the shortest possible time, while widows do not easily remarry as a result of their widowhood and sometimes are expected to be cleansed by their communities.

An attempt made in place of meetings with individual traditional chiefs was the telephonic interviews, from which no meaningful information was gathered.

5 Legal information dissemination

Generally speaking, laws, customs and economics all prevent women from owning, inheritance and using land. This in turn adversely affects their access to shelter and their contribution to shelter development. In many customary situations, women may have no right to own and inherit land except through fathers, husbands, sons or if unmarried women which makes it very difficult. Even access for married women with sons is dependent on their being on good terms with the concerned males.

The issue here remains to find out how legal information and other information on legal services is rendered or disseminated to people in the region. The region has five magistrates' offices of the Ministry of Justice serving the population of 103,151 in seven constituencies. It was discovered during the research that people in the region live far apart from each other and they are far from centres where information might be readily available. In some areas, communities faced transport problems and high costs of legal services, particularly when one needs to hire a lawyer or take a legal case to the magistrates' court. Interviewees suggested mobile magistrate courts and legal literacy campaigns to raise awareness among the communities in the remote areas.

It is the magistrates' courts in this region that deal with legal aid applications, maintenance cases, theft, rape, assault and dismissals. It is worth mentioning that none of these courts conducted a court session on inheritance during the time of this research study and that it was not possible to peruse court records.

Walvis Bay – Women and Child Protection Unit

There are assistance agencies in Namibia that are qualified to sort out certain problems. Some of these agencies are privately run and some belong to the government, for example, the Women and Child Protection Units. The Women and Child Protection Units were established to assist public and law enforcement personnel to investigate, detect and prevent crimes against women and children. The units are among the many referral agencies found in the country and work in close contact with the ministries of Women's Affairs and Child Welfare, Justice, Health and Social Welfare and Home Affairs.

The issue of funeral services provided by the government was dominant during group discussions and with individual interviewees as a free service rendered to people and something to rely on – they described this as good governance and or taking service to people.

Families, customs and protection in relation to inheritance

In many countries of the developed and developing world, traditional customs, deep-rooted cultural mores and religious beliefs influence and inhibit women's full integration into the mainstream of development and their advancement in all fields of endeavour, even when all legislative measures have been put in place to eliminate discrimination. Articles 2(f) and 5(a) of CEDAW expressly mandate states parties as follows:

Article 2(f): 'to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.'

Article 5(a): [to take all appropriate measures] 'to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.'

Social norms based on customary, cultural and religious beliefs are not changed or eradicated easily, being rooted in centuries of tradition and an inherited value system. The mores of a nation can be traced in some instances to the beginning of its civilisation and handed down from generation to generation. Reversing these

customs and beliefs can be traumatic and cannot be achieved overnight or in the short term. Change has to be gradual and brought about by re-education and acceptance of new values, while preserving the positive aspects of a nation's culture.

The main thrust of article 5(a) of CEDAW is directed at the social and cultural patterns of conduct of men and women, based on the inferiority of women and the superiority of men and which in turn result in stereotyped gender roles. This suggests that states parties should seek to change attitudes by educational process, particularly in the context of family education, having regard to article 5(b) of the women's convention which emphasizes family education and shared parental responsibility.¹⁵

Article 14 of the Constitution of the Republic of Namibia states that men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution.

The article further provides in sub-article 3 that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state.¹⁶

The constitution of Namibia does not allow discrimination on the grounds of sex; hence the interest of neither the husband nor the wife must be sacrificed one for the other, whether by reason of custom or statute law. Yet, the same constitution clearly declares that custom is part of the law of Namibia, with the qualification that it must not conflict with the constitution or Acts passed by parliament.

In order to express any views on the conflicts which may possibly arise on the rights of women in the modern Namibian society, it is important to appreciate first the conflicts presented between traditional and introduced norms on the status of women in Namibia, where traditional values play a considerable role in maintaining what the country now enjoys – peaceful co-existence between the various groups of people in a peaceful country.

There are many countries in the world where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband or father's property at his death than would widowers and sons. In some instances, women are granted the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene CEDAW and should be abolished.¹⁷

Inheritance expectations between widows or widowers and their in-laws

What happens to the woman or the man whose husband or wife dies? What are the duties and rights of widows and widowers in various communities and social groups? What if widows come from social groups that do not allow women to seek gainful employment outside the home? What if widows and widowers are forced to leave their husband or wife's home or are forced off their husband's or wife's land? What if widows or widowers do not have children or have only young children? Where are they allowed to live? Can they remarry? Who can they turn to for support? Although social rules differ widely across cultures, most cultures have rules governing a woman's life. These rules have particular consequences mostly for widows, especially in the absence of social support. In most cultures women and men are restricted in the following domains:

¹⁵ CEDAW Articles 2 (a) and 5 (b).

¹⁶ Namibian Constitution Articles 14 (Family) and 16 (Property).

¹⁷ See Report of the United Nations Fourth World Conference on Women, Beijing 1995; Lecture on Women, Family and Culture: Professor C. Himonga.

- Most marriage and kinship systems dictate where a husband and wife should reside upon marriage. By extension, the rules of post-marital residence affect where a widow or widower should reside after the death of her husband or his wife.
- Many social groups still follow traditional customary laws, which restrict some women and men with regard to their inheritance rights. We were told in this study that there are different tribes in the Erongo region. In these tribes there are inter-marriages, and both patrilineal and matrilineal systems are practised (UNAM, 2001).
- Most marriage and kinship systems have rules about whether widows or widowers may remarry and, if so, with whom. The Herero tradition may dictate that the widow marry a brother of the deceased husband (usually a younger unmarried brother). Again in this instance, the study revealed that due to the HIV/AIDS pandemic, this no longer features.
- Another expectation is employment, about which most women face restrictions or else there are no employment opportunities, relating primarily to the gender division of labour. Aside from these general restrictions, widows face specific difficulties in seeking gainful employment. These include: lack of independent access to productive resources; weak bargaining power *visa à vis* men in economic transactions; frequent absence of a literate member in the household; limited access to institutional credit; and the burden of domestic work.
- Most marriage and kinship systems dictate specific, often stringent, rules to control the dress and behaviour of widows. Here are some examples of how such restrictions affect widows:
 - A widow's in-laws may acquire control over her property by 'managing' it for her or by obtaining guardianship of her children. Or a widow, upon remarriage, may relinquish her own and her children's rights to her deceased husband's property.
 - The in - laws try to legitimize their claim by arguing that they spent money on her husband's death ceremony or on her children's maintenance.
 - The common restrictions on residence, ownership, remarriage and employment place widows in a situation of acute dependence on economic support from others. The extent and nature of family and community support becomes critical to their wellbeing (and the wellbeing of their children).

Despite social ideals of support and protection, widows in many parts of Namibia are the most economically, socially and physically vulnerable group of women within given ethnic groups.

Without data concerning financial transfers between family members, it is impossible to measure directly the extent to which widows receive or are denied support from family members.

Maintenance and children's custody: another burden on widows and widowers

Another responsibility that widows and widowers face after the death of their spouses is that of maintenance and children's custody. It was discovered that children are a problem and double responsibilities for the surviving spouse due to his or her reduced income after the spouse is deceased.

It was also established that maintenance problems often arise when an absent father or mother had remarried due to the death of a spouse and the surviving spouse has the responsibility to look after children. In case of the death of both parents, the responsible person will be relatives of the deceased spouse.

This research revealed no serious problem regarding maintenance and children's custody after the death of one spouse or both parents. In most instances, children are left with the surviving spouse and other relatives of the deceased father or mother. Within the Herero community, maintaining a child is top priority, so although this requires a well-off father or mother, they struggle to get on well with their orphans. What surprised me most was the number of children in each family I interviewed.

Some families include 10 to 13 children who all live in one homestead. According to one respondent, there are no major problems with feeding their children, except when there is a drought, as they survive on cattle farming.

Attitudes towards widows and widowers' inheritance processes

In different parts of the world there are different ways of mourning and different ceremonies for mourning and burying a family member.

In Namibia, and in particular in the Erongo region among the Herero community, there is a slight difference between the widow and the widower in the manner in which mourning rites are observed and in the way the bereaved are treated. Certain myths exist which influence the different mourning rites.

One of such myths is that the widow is accused of being her husband's murderer. Part of the punishment is to inflict certain harmful widowhood rites on her. These practices have been in existence for so long that no one has questioned or challenged them. People have also been genuinely ignorant as to the actual dangers and effects of these rituals. They had no knowledge of their historical significance or meaning. There is also fear of the 'consequences' of not adhering to such practices.

On the other hand, a man who loses his wife is seen as delicate, lonely and in need of company. He is pampered with choice foods, a bed-mate is found for him immediately and he is expected to remarry soon, especially when he is of a reproductive age. In some families of the Herero community, both widow and widower are expected to remarry within his or her deceased spouse's family.

In most instances, it is marriage that enthrones a woman to a position of recognizable status. However, if her husband dies she immediately loses her position. Part of the humiliation she goes through is that she is made to sit on a mattress and sleep all nights facing the same the wall in the same direction; the significance of this is to show that she has now lost that position and is dethroned.

There is the belief that the beauty of a woman is only for her husband. A woman who loses her husband is therefore expected to look dirty and unkempt. This is seen in the varying periods of her not being allowed to bath or take care of her hair and having to wear black or white or a combination of these two colours during the mourning period. She is also seen as defiled and requiring cleansing. This study revealed no details of cleansing rituals, as most widows and widowers who were interviewed did not feel free enough to talk about it, other than saying, '*Omuhepundu*' needs cleansing after the death of her husband.

Inheritance is tied to customary law marriage. Marriage under customary law requires the consent of the parents and the handing over of the bride after the payment of bride price. At the death of husbands or wives the surviving spouses may have their own property as well as their joint property taken away from them.

HIV/AIDS impact on inheritance rights of widows and widowers

In the context of HIV/AIDS, African widows are particularly vulnerable because of harmful traditional practices.

The practices which have a direct relationship to HIV/AIDS are early marriage, widow inheritance and sexual cleansing. These traditional practices are out of fashion in the Herero community with only a small incidence of widow inheritance in some families or clans. Widows may not be informed of the cause of death of their partners, or may not find out until they too become ill. They may be blamed for the death of their husbands or they themselves feel guilt at having survived, irrespective of who transmitted the infection (Armstrong, 1993).²⁴

There are few or no statistics on widows and widowers as a discrete group and as a result there is little analysis of the economic impact of AIDS deaths on widow-headed households, as opposed to single female-headed households or of comparisons to deaths from other causes.

For sociological and biological reasons women are twice as likely to contract HIV through intercourse.

The interview held with one of the Topnaar leaders revealed that widow inheritance is discouraged due to the increased rate of AIDS deaths in the region. The issue regarding the use of condoms was briefly discussed but received no support. Instead, the respondents supported the idea of abstaining from sexual activities that are not safe.

Mourning rituals

It is often argued that by addressing women's rights as basic human rights, the traditions or culture of a society are being tampered with. This is not necessarily the case and the attitudes to equal rights between men and women may be no less traditional than attitudes to class and power.

According to Nhlapo Thandabantu, in his book, *Marriage and divorce in Swazi law and customs*, the danger alluded to lies in assuming that 'reassertion of precolonial values are a return to pure African tradition or a continuation of a cultural system interrupted by colonialism'.

The vast majority of African people live in the rural areas according to tradition-based forms of social organization. This is true of the Herero of Namibia who live in rural areas. For this very particular reason, one might conclude that mourning rituals are observed differently in most rural areas compared to urban areas. In the first instance, both widows and widowers are called '*omuhepundu*' and the expectations of family members of deceased spouses are similar.

A widow or widower is expected to be treated differently from the rest of the mourners during the mourning period and be easily identified by a special dress code – the widow dresses for about a year in black dresses. They are well looked after by relatives during the mourning period and assisted or escorted even to banks to provide signatures where needed. The '*omuhepundu*' are not allowed to change sleeping position, they are to face the wall, until the deceased body is buried.

Funeral meetings that take place during the mourning period are closed gatherings and might be attended only by some of the deceased's relatives. In this instance, the widow or widower might be called to give information on accounts of the deceased husband or wife and also to be consulted on where she or he wants his or her spouse to be buried. Such consultations between the widow or widower and relatives of the deceased spouse are practical only in situations where there are no conflicts or both parties have a sound relationship. A widow or widower is expected to cry loudly at all times as new mourners come in to comfort other relatives. He or she should also sleep on a mattress throughout this period and keep silent as much as possible.

It is during this time that decisions are taken without the consent of the widow or widower. This study revealed that there is always a troublesome in-law who not only disrupts meetings but also has an interest in property grabbing. He or she makes sure will get part of the deceased's property.

In some cases, the relatives of the father's side are to designate the grave of the deceased spouse and this process might delay other mourning rituals or funeral arrangements in the absence of a close cousin at the time of the relative's death.

Loss of property

As stated earlier, the mourning period is not an appropriate time to discuss property-related problems; this however has caused many widows or widowers to lose property as this is usually not a time for negotiations but for arguments. Some women and men are accused of having bewitched their spouses, some are told that they possessed nothing at the time of their marriage; others are told:

'You are the property of the deceased spouse's family and thus you cannot claim any property.'

The study revealed that there is no property other than the estates, cattle, goats and other movable property such as vehicles and land. Children are also regarded as the property of the family of the deceased spouse and in most cases the estate is left to them and the surviving spouse. In cases where there are no children born in the family, the estate is left entirely to the surviving spouse. One widow interviewed was barren and was returned to her relatives after the death of her husband. According to her, she got half of the property and her in-laws were very helpful. When asked about her relationship with them at present, she informed the interviewer that she is cared for by her in-laws, but this is only a one example of a specific situation.

Division of property

The issue of division of property was not as much of a problem to both widows and widowers interviewed. In the first instance, identified properties were the estates, livestock (cattle, goats, donkeys and vehicles).

Estates were reported being inherited by surviving spouses and their children, with other relatives to look after them in the case of aged persons. Other relevant information given was the mix of paternal and maternal formations due to marriages between different tribes in Erongo region. This makes it difficult to tell whether the Herero are mostly patrilineal or matrilineal in property inheritance culture. In addition, there may be a substantial redistribution of family property following the death of the male spouse. Where the relatives of the deceased are more considerate, they only take some of the livestock leaving the rest to the wife or husband and children.

The trauma associated with the death of the husband and lack of resources to hire casual labour may also be factors contributing to the reduction in the intensity of livestock production and other activities. A prominent feature of the affected households where the wife has died is the lack of disruption of production resources and assets. The assets are less affected than when the husband dies and the household grain production levels are usually maintained (Engh, 2000).¹⁸

As stated earlier, the inheritance system in this part of Namibia is highly complex, organized along both matrilineal and patrilineal lines, with a specially convened family gathering deciding on the division of a deceased's estate in cases where no will was left. According to the information given to the interviewer, the inheritance that is transmitted includes not only the deceased's possessions but also his or her status, name and family responsibilities.

Inheritance processes

Inheritance procedures are not in any way happy moments, in that the surviving spouse usually recalls a number of good and bad things which happened or will happen due to the death of the other spouse. At the time of inheritance, the belongings of the deceased spouse are brought into the open space and the relatives are calmly invited to take any item they wish '*to okurumata*' or inherit.

The presiding person also informs members that these inherited items are not for sale and that they are confined to blood relatives. It is on this occasion that relatives and neighbours are asked to inform other fellow mourners about the debts of the deceased spouse. According to an elderly widower interviewed, the widow inheritance is something of the past. According to him and other families of the same tribe, they said that they are no longer interested in inheriting widows or widowers due to the HIV/AIDS pandemic. He said that the issue of inheriting widowers or widows has been a blind cultural norm and practice or a primitive practice by their forefathers. It was recommended to modify this cultural practice as it could cut short the lives of new generations (interview held in Omborondo reservation on 06/11/2003).

¹⁸ Interview held in Omborondo village on 06 November, 2000.

Property grabbing

Although there are written laws and prepared wills or testaments, property grabbing has become a kind of ritual part of the inheritance procedures and attitudes against both widows and widowers. In some areas visited and according to those interviewed this again is slowly vanishing. Some relatives of the deceased spouse are no longer interested in collecting other people's wealth except if they are offered and the essence of protecting widowers or widows is becoming the order of the day during and after the mourning period. In one instance, an attempt was made against the widower who finally succeeded in having the wealth shared between his six children and his mother-in-law. Other relatives were up in arms, accusing him of having bewitched their sister. The matter was resolved through the assistance of the police and the legal office in the area. This is one clear example of non-discrimination in the treatment of a widower or a widow. The study also revealed that there are quite a number of marriages between different ethnic groups such as Herero, Damara – Nama and Ovambo; thus inheritance rights and procedures that go together with mourning rituals and inheritance proceedings are no longer part of the norms and differ from one group to another due to different traditions, customs and practices.

The above case is supported by the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa adopted on 1 July 2003 in Maputo, Mozambique by the Assembly of the African Union. So far have few African Union member states have signed the protocol.¹⁹

Statutory laws

The position of the majority of women and men in Namibia has been especially disadvantaged due to the injustices of the apartheid system, mostly due to the ideology of segregation. Black women suffered more than their men from lack of adequate health care, housing, employment opportunities, training and credit facilities and resources.

There are many legal contradictions between the different sorts of marriage. In civil marriages the woman generally has a right to inherit jointly-owned property on the death of her spouse, or a right to half the value of the property on divorce. However, if the marriage is not registered, the woman may be subject to customary law where frequently it is accepted that the property belongs to the husband's extended family. A woman's right to inherit land in a traditional marriage depends on her staying to cultivate and use it. According to such customs she cannot share land or property on divorce, or inherit on the death of her spouse. Civil law does not recognize these traditions. Under a registered marriage, when a man or woman dies his or her spouse has a right to inherit the property built up during the marriage and to pass it to their children. The traditional practice of taking property on the death of a husband and sharing it among the extended family is a criminal offence.

Voices of respondents

In the course of my fieldwork, I collected oral testimonies about the past and the inheritance but it was far more difficult to find good informants among the Herero than among the intermarried couples of Owambo and Damara-Nama within the Erongo region.

Even senior members of the Herero chieftainship lineages could not trace patrilineal ancestry back more than five or six generations and few had detailed stories to tell about migration. In response to my questions people would say:

'We do not know where we came from and of what are our practical procedures regarding inheritance rights and property protection. There is a possibility that both matrilineal and patrilineal

¹⁹ Article 4 – Elimination of Harmful Practices and Article 20 Widows' Rights – Protocol to the African Charter on Human and People's Rights of Women in Africa, 2003.

systems are both in use regarding inheritance rights. We do not think about those things much any more. This is a difficult time for us as we do not even have any property ... to inherit.'

Complaints and voices of respondents interview held in Omaruru and Usakos constituencies on (22/1/2004)

Below are collected complaints from group discussions of widows and widowers held in Omaruru and Usakos, which form the basis of ideas for follow up and necessary steps for the implementation of recommended actions from this study.

- *'Relatives of deceased husbands/wives do respect and meet with church leaders to find out of whether the late person was a committed Christian and sometimes seek for an urgent Holy Communion for the dying spouse.'*
- *'Christians all over Namibia believe in taking their deceased relatives to their churches in search of spiritual support, memorial services and for benediction.'*
- *'Offerings and or collections that are being collected during burials and memorial ceremonies were assumed to be for the surviving spouse; instead they are being collected for church purposes.'*
- *'Couples intending to marry receive pre-marriage counselling and are encouraged to behave in a more mature way in marriage.'*
- *'After the death of a spouse, there is no religious healing or counselling; widows and widowers are completely isolated and forgotten.'*
- *'There are no platforms to heal them and reintegrate them into the church community.'*
- *'Both widows and widowers lose their status in the family, the community and the church community; they do not know where to turn for comfort and moral support.'*

One respondent concluded saying the following:

'For me it was very important to share with other women and widows the kind of feelings that this experience provoked, both before and after. We were able to understand the entirety of what we had lived through and we all felt the strength of our courage at having been able to take part in these discussions. I think that we will go on from here with a better sense of who we are as widows and with the will to fight for our rights.'

And one said:

'It has been a fundamental human noble experience. It has been a kind of rebirth through the opening of new ideas and perspectives, especially the issues of inheritance and property rights and gender issues. It has been a way of exercising liberty. It means that I feel myself capable of determining the direction of my own life, and that I recognize my duty as a widow to fight for my rights in order to make change possible.'

6 Lived realities

The dilemma of finding a balance between what the audience feel and say they need and what I feel the audience needs, was explored in some depth by the group discussion participants. The distinction between giving people what they want and what they need is a problem area. It was suggested that as an interviewer I often ended up giving people what I felt was necessary but packaging it in such a way as to make them believe that it was what they wanted.

This view provoked some heated discussions with some discussants warning that there was a very real danger of researchers developing arrogance. But there was finally agreement that perhaps I needed a measure of tempered arrogance to push the important agenda forward.

Inevitably, this raised the important question of how to reconcile the very real needs of poverty-stricken communities, and my own agenda for the research on inheritance rights of women and men and widowhood or widower hood in the Erongo region.

Some discussants felt that systematic approaches to dealing with people's most pressing needs should override all other considerations, that is, that poverty alleviation initiatives and the fight against the HIV/AIDS pandemic should be the first order of business.

There was general consensus that there is a critical need to link legal literacy and civic educational programmes to the everyday life struggles of people, otherwise there is a danger of loss of interest and relevance.

It was recognized, however, that sometimes it is difficult to make the connection. For example, if people are hungry, how do you convince them that understanding democracy is relevant to their lives? How do you engage people who do not have a roof over their heads, who may be looking to you to address their most basic needs?²⁰

It was suggested that a step towards addressing this problem is to place greater emphasis on legal research and consultation, because if we know our terrain intimately, it becomes easier to link the needs 'out there' with our particular subject matter. In fact, the development of strategies based on this preparatory research becomes the next step for Namibia as a country.

Another dichotomy is legal education versus information dissemination. Again, two broad questions framed this discussion on the pros and cons of 'hot' and 'cool' channels of communication, that is, face-to-face interaction versus indirect transmission of legal information. What are the essential distinctions between education or training and the dissemination of information? And, what are the cost, time and labour implications of training versus mass dissemination of information? The group saw much common ground, as the basic goal of information dissemination is also to educate.

Justifications

This study has been intentionally chosen to tell about the widows and widowers of the Herero tribe in the Erongo region. It is exclusive of other tribes in the region due to the fact that the Herero have a richer and more deeply-rooted culture than other ethnic groups. In a nutshell, it was purposely narrowed to target widows and widowers due to the limited time of the research, resources, geographical locations and the scope of expectations on the part of both the respondents and the research team of two. What motivated me to write on widowhood and the inheritance rights of women in the Erongo region was that I specifically wanted to know their rights during marriage and after marriage has dissolved on the death of the spouse. In other instances, Herero women are hard-working, more particularly when comes to their being herdwomen and I assumed that if live-

²⁰ Interview held with 28 widows and two widowers (Omaruru and Usakos) Some widows were emotional and could not speak freely but wept throughout the discussions. These were widows aged between 65 and 84. Most of these women knew little or lacked information on legal services and about government affairs and structures.

stock is the main defined property in the Herero community, then widows might be well-off in terms of their inheritance rights.

The situation of women living in the reservation-type of settlements limits their full participation in other development programmes, in that as women they are confined to looking after children and doing all the expected domestic work, such as milking cows and bearing children one after the other – which are the predominant responsibilities of a typical Herero woman.

The three major reasons for undertaking this study were the following:

- To study the three prevailing myths, which have been that widows are elderly women whose children are fully grown.
- To examine the issue of whether those widows can rely on extended family networks for financial and emotional support.
- To recommend the implementation of the supreme law of Namibia – the constitution.

The study examined also a range of specific issues in relation to inheritance rights of women and men in the Erongo region. These were issues such as:

- People's understanding of customs and inheritance laws and the use and or knowledge of the law;
- What measures have been put in place to cope with the situation of widowhood and widower hood;
- The misconceptions and myths about widowhood and widower hood;
- The mourning rituals, inheritance processes and property-grabbing syndrome;
- The intersection between customary law and general law, and the administrative procedures for dealing with the estate of the deceased;
- Religious restrictions in relation to inheritance rights.

Gender dimension

Arguing my case from a gender perspective

Gender and development touches all areas of social, economic and political life. In no society today do women enjoy the same opportunities as men. Despite much progress in the last two decades, gender disparities persist in many fields such as in education, health, the environment and human rights but their access to economic and political opportunities remains limited. The doors to the corridors of power are opening slowly and reluctantly.

In most of our societies we view widows and widowers as minority groups that are at risk of being treated unfairly or not receiving equal rights. In addition, gender bias arises when men and women are treated differently in the family, in society and on the national level simply because of these gender stereotyped views.

The growing evidence on widowhood argues for a full review of the legal, policy and cultural practices contributing to the special deprivations of mostly widows, particularly where they are likely to have dependent children. They experience special difficulties and discrimination connected with the restrictions imposed on them regarding their lifestyles and the persistence of negative social attitudes towards them.

Given that the social ideas of support and protection for widows or widowers are less widely affected in practice than the social rules restricting them, it is important to pay attention to widowhood as a particular cause of deprivation and to undertake public action and policies in support of inheritance rights of widows and widowers.

A recognition of differences – not just between women and men, but also within categories of women and men – makes the concept of 'women's interests' highly contentious. Because women are positioned in their societies through a variety of different means – class, ethnicity and gender – interests they have as a group are similarly shaped in complex and sometimes conflicting ways.

A gender analysis is important because it shows us the life experience of women and their potential for self-realization in relation to men, rather than in isolation as if the 'problem' was women rather than their socio-cultural position relative to men. 'Gender' uncovers inequality and enables us to identify and address the structural reasons for women's social position relative to men's, opening the way for us to denaturalize and, therefore, politicize the subordination of women, the socialization of both genders, gender stereotypes and the status quo vis à vis gender roles. Gender inequality raises questions of justice and morals and must necessarily take our scrutiny into the sphere of human rights and freedom for all humankind.

Planning for gender equity on the basis of social justice, rather than of formal equality, requires recognition of the full weight and implications of the gender division of labour in the lives of women and men, and of the different needs, priorities and possibilities that give rise to gender equality and development.

Power and the decision-making process

At international level: Promoting women's full and equal participation in power structures and decision-making at all levels and in all areas is one of the 12 critical areas of concerns identified in the Beijing Platform for Action at the Fourth World Conference on Women held in Beijing, China in 1995.

At regional level: The SADC member states identified women in power and in the decision-making process as one of its priorities and critical area of common concern.

SADC had set a target of 30 per cent of women being involved in decision-making processes to be attained by year 2005. There has been little progress in this area in that only a few countries have achieved the targeted 30 per cent. There is still much to be done regarding the implementation of the Beijing Platform for Action and its Declaration, the SADC Gender and Development Declaration (1997) and an Addendum to the Declaration on Prevention and Eradication of Violence Against Women and Children (1998).

Power and the decision-making processes in this field, as elsewhere, derive from control over both resources and ideas, and each form of control reinforces the other. Control over resources enables those in power to determine the parameters within which debates and controversies in development can be conducted, which problems are to count within the development agenda, and which subset of solutions will be considered.²¹

At national level: One of the 10 critical areas of the National Gender Policy (1997) and Plan of Action (1998) discusses the integration and status of women in decision-making processes in Namibia. Since independence in 1990, women's participation in decision-making has improve greatly. While this analysis may be true, key decision-making positions continue to be male dominated. In addition, men have always been the key players in politics, economics and other matters of national importance.

In the first instance, it is important for women to play an equal role in decision-making processes.

Secondly, it is a question of human rights. Women constitute 51 per cent of the 1.8 million Namibians, whilst men are the remainder of 49 per cent of the total population.

Thirdly, it is a matter of social justice. Discrimination against women is at its harshest when it comes to decision-making processes, women's inheritance rights and employment.

Fourthly, it is an essential requirement for the acceleration and effectiveness of development, as women are able to contribute their skills and creativity.

And fifthly, women can also ensure a better balance in the allocation of resources and distribution of the benefits of programmes.

²¹ Beijing Platform for Action, paragraph 181-194.

7 Conclusion

This research revealed that Namibia is in a transitional period regarding law reform and the situation remains as to how to deal with the law of inheritance and property rights. It might be that Namibia retains customary law in that people continue to use both common and customary laws. For customary law to be properly implemented, there is a need to strengthen community courts, in terms of their administration, financing and human resources. In this regard there is a need to target men who claim that it is custom to take all the property from a widow, while in fact the customary law provides that the widow or widower and his or her children should be taken care of within the extended family. This suggests that legal education programmes as well as legal action programmes to lobby for legislation could build on values of customary law to promote women and men's rights.

Given that the task of promoting an effective response is largely political, the question arises as to how valuable this research can be to the policy-making process and how women and men in Erongo region can help advance the issue of inheritance rights of widows and widowers in national policy. It is necessary to appreciate that while this study may inform decision-making, it is a minor contributor to the multidimensional and multi-faceted process of policy making. Its role is primarily to help increase levels of legal awareness of the nature, context and response to the problem rather than to provide off-the-shelf technical solutions.

There are three stages of the policy-making process within which the research can play an important role:

- In order to be passed on it has to be finalized and in a form that enhances quick understanding and is easily accessible to communities and concerned academics;
- It can play a valuable role in transforming policy initiatives and goals into programmes, procedures and activities;
- It will also assist in refining interventions and in ensuring that resources are most appropriately allocated and used;
- In most societies, men tend to have broader options, more opportunities and greater access to society's resources than women. This is the result of a framework of legislation, policies, and institutions that incorporate attitudes and practices about what is appropriate to being male and female in a given society.

Cultural norms and practices about 'masculinity' and expectations of men as leaders, husbands, sons and lovers – in other words, gender attitudes – are important in shaping the demands on men and their behaviour. There are thus disadvantages and costs to men in matters of gender differences.

The achievement of equality implies changes for both men and women. More equal relationships will need to be based on redefinitions of the rights and responsibilities of women and men in all spheres, including the family, the workplace and society at large. One of the challenges in moving forward will be to motivate more men to participate as partners in the process of redefining the visions and strategies for a more gender-equal society.

Looking it from a legal perspective

We attempt to engage with just some of the provisions of human rights instruments and shall focus on the two human rights instruments most pertinent to the majority of women in Africa: the African Charter on Human and People's Rights and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), both of which speak of the right of peoples to development and seek to extend the benefits of development to women. Due cognisance will also be taken of the Convention on the Rights of the Child (CRC) which addresses the human rights of the girl child up to the age of 18.

The question must be asked whether article 18 (3) of CEDAW can be used as an effective tool to protect the rights of women in view of the role of women in the African family vis à vis state laws and practices, and the protection of women by other international treaties.²²

Recommendations

From a development perspective, gender is important not only because of differences between what women and men do but also because of inequality between women and men. Women's personal autonomy is more limited than men's; women have less access to economic resources; and women are systematically under-represented in decision-making processes that shape their societies and their own lives. There are differences among women (and among men) in interests and needs, as factors other than gender influence social identity. Nevertheless, there are clear patterns of lesser access by women to resources, opportunities and decision-making than men. This pattern of inequality at all levels of development is a constraint on development because it limits the ability of women to develop and exercise their full capabilities, for their own benefit and for the society as a whole.

My points of recommendation would therefore be to suggest well-structured branches of the Ministry of Justice, decentralized legal services and providers, and putting in place mobile legal clinics to assist the public in dissemination of legal information. In the final analysis, Namibia should have the Inheritance and Succession Bill enacted to suit the present legal system in the country.

Proposed way forward

- Ensuring the enactment of the Inheritance and Succession Bill is a priority;
- Undertaking social and legal reforms to create a positive social identity for widows and widowers in relation to their inheritance rights and protection of property;
- Securing and protecting widows and widowers' rights to inheritance and property;
- Designing and implementing special security schemes for widows;
- Disseminating legal information and undertaking legal education programmes will be necessary, especially through brief consultative meetings with civil society;
- Translating national, regional and international instruments would be a step in the right direction;
- Disseminating legal information about inheritance rights and writing of wills for all people at all levels;
- Strengthening human rights education programmes in Namibia and clearly distinguishing roles played by key agents of the government and the activities by non-governmental organizations and other human rights activists;
- Devoting more resources to the legal aid directorate in the Ministry of Justice in order for it to carry out its responsibilities quite effectively. The budget for this Ministry must be sufficient to enable the policy of legal services and representation to be properly pursued;
- Ensuring adequate manpower levels, including staff with appropriate specialist skills, such as counselling and psychological skills on legal matters pertaining to inheritance rights of widows and widowers who cannot work.

As is true with many initiatives, far more changes are proposed on paper than actually materialized. For activist organizations, improving the quality of data available may enhance the pressure they can exert in favour of both improved service provision and more fundamental changes which may reduce gender inequity and power imbalances between sexes at all levels.

²² See CEDAW Article 18 (3) and the Convention on the Rights of the Child.

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