

Using International Human Rights to Realize Women's Property and Inheritance Rights in the context of HIV/AIDS in Namibia.

by

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[Namibia at a glance!]

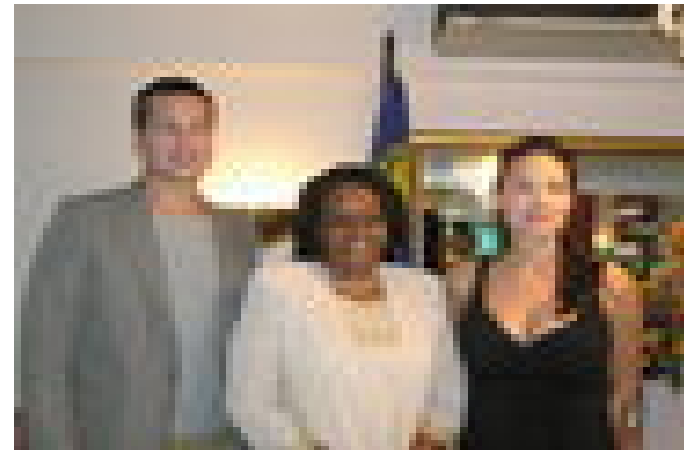


- South-western Atlantic coast
- Windhoek
- 2, 044, 147 million people
- 823, 145 sq. km.
- 67% rural
- 33% urban
- 13 regions with 12 communal areas
- 14 main groups
- One of the highest income disparities in the world.
- Women account for 130, 000 of the 230, 000 HIV infected people

History



- Former Germany colony.
- Mandated to South Africa in 1919.
- 1966 SWAPO launched the liberation war.
- 1988 South Africa ended apartheid in Namibia.
- Gained independence on 21 March 1990.
- Boasts a proud record of uninterrupted peace & stability.



Women in pre colonial Namibia

- Challenges faced are due to historical imbalance of
 - power between women and men,
 - poverty, unemployment & related social problems.
- Held positions of power as chiefs and traditional leaders.
- But the social, economic and political organization of these cultures was and still is that of male dominance.
- Result was that women inherited very little or nothing.

Women in colonial Namibia

- Continued to inherit very little or nothing.
- Colonialist refused to deal with women even if they were leaders.
- Customary laws were
 - used to advance colonial government policies
 - reinterpreted and manipulated.

Women in colonial Namibia

- Changes in customary law frequently included
 - Western ideas of male dominance
 - resulted in discrimination against women.
- Lowest legal and social status than any other system.
- Civil and customary laws defined women as minors.
- Black and white women discriminated against based on their gender
- Black women were further discriminated against based on “race.”

Women in colonial Namibia (con't)

- Laws applicable to the administration of estates were devised along racial lines.
- Administration of Estates Act 66 of 1965 for whites.
- Proclamation 36 of 1941 for Baster estates (people of a mixed race)
- Native Administrative Proclamation 15 of 1928 for blacks.
 - Enforced male dominance and racial discrimination
 - Women felt its impact in area of marriage and succession laws.

Namibia today



■ Constitution

- Bill of Rights.
- Supreme Law.

■ Guarantees:

- Equal protection of the law
- Same rights as to marriage, during and at dissolution of marriage.
- All persons right to property.
- Enacts affirmative action
- Customary law and culture recognized subject to the Constitution.
- Laws before independence remain valid.
- International agreements ratified are part of domestic law.



THE CONSTITUTION
OF THE REPUBLIC OF
NAMIBIA



THE CONSTITUTION
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NAMIBIA

Relevant Laws



- Two types of marriages in Namibia
 - Civil marriages
 - In community of property
 - Out of community of property
- Civil marriages are automatically in community of property.
- Black civil marriages north of the old “Police Zone” are automatically out of community of property,
 - unless a declaration establishing another property regime was made to the marriage officer before the marriage took place.

[Relevant laws (con't)



- Customary marriage
 - Marriage in terms of the customary laws and traditions.
 - Married Persons Equality Act is inapplicable to customary law marriages.
- Customary law
 - Discriminates
 - Gender
 - Women can't inherit significant property,
 - i.e land, buildings, cattle etc
 - Birth status
 - Mostly unwritten.
 - Varies from community to community.

Relevant international human rights & obligations

- Equality between sexes and non discrimination.
- Own, administer and inherit property.
- Adequate standard of living, including housing.
- Protect best interest of the child.
- Education and information.
- Customary marriages recorded and registered
- Modify or abolish existing laws, customs and practices.
- Investigate, prosecute and convict.

Practice that violate women's property rights!

- Property grabbing
- Definition:
 - permanent taking of property', irrespective of claims of ownership, from the spouse and/or children of a deceased upon his or her death.
 - By in laws or traditional authorities



Origin of property grabbing

Traditionally

- Principle of male primogeniture – precludes widows from inheriting substantial property i.e land, homesteads buildings, vehicles etc.
- widow given one year after the death of her husband to cultivate & harvest a crop.
- Widow return to her family with greater security.

Today

- Widows are chased away from the land immediately.
- Some traditional authorities make widow pay.
- Greed coupled with poverty.



Harmful effects on women

- Widows
 - Destitute
 - Lose their ability to support themselves & their families.
 - Remain in a cycle of poverty.
 - Engage harmful sexual practices in exchange for money, housing or education.
- Property grabbing
 - became more common as number of death caused by AIDS skyrocketed.
 - Increases women's likelihood of contracting HIV.
 - Consequently contributes to increase in HIV/AIDS infection.
 - Interferes with treatment efforts.



Prevalence of Property grabbing

- UNAM & LAC - most commonly identified custom that violates women's rights.
- Practiced by Herero, Kavango, Lozi & Ovambo.
- Widely publicized with Ovambo.
- Under reported in Caprivi.
- In Caprivi became more common as number of death caused by AIDS skyrocketed.
- UNFAO study - 44% of widows lost cattle & 28% lost small livestock to in laws.
- National Women's Land Conference.
- LAC women's property and inheritance rights project.

Agnes's Story



- High school girl married a soldier at age 17
- Live with in laws

A portrait of a young Black woman with braided hair, wearing a dark blue top, looking directly at the camera.

When they returned, I was surprised to hear that they had left my husband in Angola. They said they were ..



awaiting the Magistrate's ruling.
If he rules that I must leave, then I have the right to ask the ...

Couple is given land



yet distinctively marked border set up indicating the land that my husband and I were entitled to.

- By her father in law.
- Agnes remains on the land
 - Toils the land and
 - Builds the house by herself.

Agnes' husband dies.



I am not consulted. If she consults with the traditional authorities, I am not aware of that. The traditional ...

- Brother in law asks Agnes to leave or he will kill her.
- Agnes accused of causing the death of her husband & father in law.
- Threw stones at her windows.



I also just want to echo the words of the Chief here that,
in the event that the husband passes away, the house ...

- In laws approach headman for her eviction.
- Headman orders that Agnes be evicted,
- Agnes refused to leave.
- In laws sue Agnes in civil court.

Agnes gets legal assistance



- Agnes is assisted by
 - Chief
 - Ministry of Lands
 - LAC
- Represents Agnes in civil case
- Assist with application for customary land right.
- Advised of rights to lay criminal charges.
 - Malicious damage to property,
 - Domestic violence

[Agnes gets to keep the land!]



again, for they grant the final land allocation rights.
I will appeal for this case to even go as far as the High ...

Government efforts



- National Women's Land Conference
- UNFAO study on property grabbing
- National Policy on Aids
 - Gives communities, especially women and the elderly access to information about laws which protect the legal rights of a surviving spouse to inherit property and on how to enforce these rights.
 - Grants victims of property grabbing and custody disputes access to affordable and timely legal support services to enforce their rights.



Government efforts



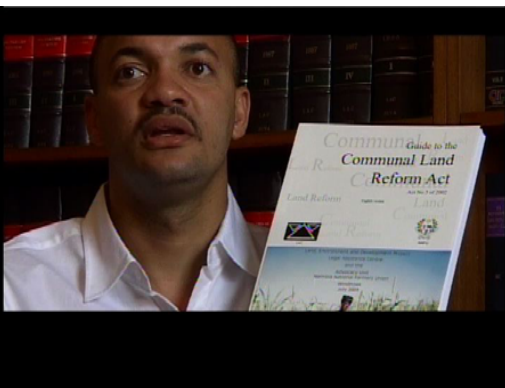
- Various gender oriented laws
 - Estate and Succession Amendment Act 2005
 - Recognition of Customary Marriages Bill
 - Domestic Violence Act
 - Rape Act
 - Maintenance Act
 - Child Status Act
 - Community Courts Act 2003





What the LAC has done!

- Legal Advise & Strategic Litigation
 - e.g. Berendt judgment
 - Lotta Frans case
- Research & Law Reform with all gender oriented laws
- Advocacy and Lobbying
- Public Education & Training
 - Laws simplified & translated into local languages & Braille
 - Workshop laws at grassroots level



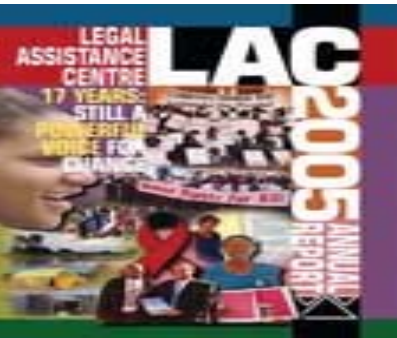
How government and ngo's can respond.

- Undertake vigorous nationwide educational campaign.
- Conduct more strategic litigation to address the inadequacies of the existing legal framework.
- Mandate joint property registration.
- Repeal and harmonize discriminatory laws.
- Criminalize violations of women's rights to property.
- Give more teeth to the customary law system.



How should the international community respond?

- Request information on the practical effect and impacts of new laws on the realization of women's rights to property and inheritance.
- Support research for sex segregated data on women's property ownership.
- Demand Information on the practical strategies Namibia adopted to eliminate discrimination.
- Demand that the Office of the Ombudsman Carry out its Mandate as the protector of human rights.
- Demand that government incorporates international human rights instruments in its legal education workshops.



[How can the US respond?]

- Women rights to property and inheritance violations fuel the HIV/AIDS pandemic. There is a very strong link between HIV/AIDS and cultural practices that violates women's human rights.
- U.S should cooperate with local ngo's that litigate and provide legal education services as a means of preventing the spread of HIV/AIDS.
- Fund continued legal education long after successful strategic litigation.
- Lobby the incoming administration for effective funding policies.
- Fund women's economic empowerment initiatives.

Conclusion



- As a young democracy Namibia should be commented for progress made thus far in terms of law and policy reforms.
- Laws
 - important foundation, but
 - Do not work in isolation.
- The challenge is to
 - Ensure that those laws are effectively implemented.
 - Translate laws from theory into practice at community level.
- Change harmful customs, social practices, attitudes and behaviors of people in society.



THANK YOU