

A question of culture

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CHAPTER 1

Constitutional and legal rights

Articles 4-11



Ama Buruxa cultural group - Maltahohe.

Photo: Colleen Lowe Morna

KEY POINTS

- Overall women and men rated government's performance towards achieving the targets set for 2015 on constitutional and legal rights at 55% based on the citizen scorecard based on perceptions.
- Namibia has signed and ratified the SADC Gender Protocol and other key regional and international instruments on gender equality and women's rights.
- The constitution guarantees equality before the law and prohibits discrimination based on sex or gender
- Women's activists are lobbying for the adoption of a 50/50 legislated quota at regional and national level elections as a measure to increase women's representation in political decision-making positions.

Table 1.1: SGDI and CSC scores for Constitutional and legal rights sector

	SGDI	CSC
Score	N/A	55%
Rank	N/A	10

Table 1.1 shows that with a citizens score of 55%, women and men perceive that Namibia still has a significant way to go to reach targets

in the SADC Gender Protocol on constitutional and legal rights to be achieved by 2015. The women and men's scores are close, 57% and 52% respectively. Unlike most SADC countries, men were more critical compared to women in their perceptions of the country's progress. This is probably because Namibia is considered to have one of the most progressive constitutions in the world with regard promoting gender equality.

Constitutional and affirmative action provisions



The Protocol provides that by 2015, all countries shall endeavour to enshrine gender equality and equity in their Constitutions and ensure that these are not compromised by any provisions, laws or practices. State parties are to implement legislative and other measures that eliminate all practices which negatively affect the fundamental rights of women and men. They are also to introduce affirmative action measures.

The Namibian Constitution is regarded as one of the most progressive in the world with regard to its provisions on gender equality. It is one of the few constitutions in the world that uses gender-neutral language throughout, and it explicitly forbids discrimination on the basis of sex. It provides for equality in all aspects of marriage, and gives special emphasis to the women in the provision which authorises affirmative action.

Furthermore, it explicitly states that customary law survives only to the extent that it does not conflict with the Constitution, meaning that customary law may not entail any form of sex discrimination. The Constitution also puts men and women in an identical position with respect to citizenship, including the acquisition of citizenship by marriage.

Article 23 of the Namibian Constitution provides for “Affirmative Action”. The article states that laws can be passed to advance Namibians who were disadvantaged by past discriminatory laws and practice. Table 1.2 sums up the gender provisions of the Constitution.



Participants learn how to claim their rights using the SADC Gender Protocol as part of the roll out of the Centres of Excellence for gender mainstreaming - Berseba local council, September 2012.
Photo: Laurentia Golley

Table 1.2: Analysis of gender equality clauses in the Constitution

Provides for non-discrimination generally	YES	Article 10: 1) All persons shall be equal before the law.
Provides for non-discrimination based on sex specifically	YES	The Namibian Constitution guarantees equality in Article 10 2) No person may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.
Provides for non-discrimination on the basis of sex and others e.g. marital status, pregnancy	YES	Article 14 provides for equal rights between women and men during and dissolution of marriage. Article 10(2), Sex, race, colour ethnic origin, religion, social economic status.
Provides for the promotion of gender equality	YES	The Constitution is gender blind. It does not mention men or women, but all people shall be equal before the law. But the Married Person Equality Act 1996 and the Children's Status Act of 6 of 2006 do have clauses on this matter Article 10 (2), 14 (1), 14 (2).
Has other provisions that relate to gender	YES	Article 8, Respect of Human dignity Article 8 (2) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.
Has claw back clause	NO	
Addresses contradictions between the Constitution, law and practices	YES	Article 19 Rights protected by this article do not impinge upon the rights of others or the national interest.
Provides for affirmative action	YES	Article 23 of the Namibian Constitution Sub-Article 3, thereof, it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered especially from discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in political, social, economic and cultural life of the nation.

Source: *Namibian Constitution (1990)*.

Affirmative action

Significant progress has been made in the area of affirmative action and labour law. An affirmative action provision applied to the first two local government elections, with the result that women make up 42% of local councillors. However this law does not apply to the national elections.

The Southern Africa Gender Protocol Alliance led by the focal network, NANGOF Trust has made a formal submission to the Law Reform and Development Commission calling for 50/50 quota at national level as part of public consultations in March 2012. Read Chapter 2 on Governance for the detailed case study.

Individual affirmative action provisions have also been made applicable to a number of statutory bodies and boards - ranging from the Social Security Commission to the National Sports Commission -- with the most significant of these being the regional Communal Land Boards which will in future have important supervisory powers over the allocation of customary land rights by traditional leaders.

Parliament passed an Affirmative Action Employment Act (AAA) in 1998. This Act requires employers with more than 50 employees to prepare affirmative action plans setting forth steps to improve the representation of blacks, women and disabled persons in the workforce. No quotas will be set by the state, but employers will be expected to set their own numerical goals and timetables, in light of the availability of suitably qualified or trainable persons in the designated groups.

Employers who hire non-Namibian citizens will be obliged to provide a Namibian "understudy" to ensure the transfer of skills. Progress in implementing affirmative action measures is monitored by an Employment Equity Commission comprising representatives of government, trade unions and employers, as well as persons representing the interests of each of the designated groups. Non-compliance will disqualify employers from state contracts and concessions, including potentially valuable mining and mineral rights.



Legislated quotas for local elections have facilitated women's entry into politics at this level. ALAN holds march at 55th Annual congress - Windhoek, July 2011 . Photo: Sarry Xoagus-Eises

Discriminatory legislation



The SADC Protocol provides that by 2015 SADC countries shall have reviewed, amended or repealed all discriminatory laws and specifically abolish the minority status of women:

While there has been no overall audit of discriminatory legislation in Namibia, there have been many significant law reforms concerning gender since Namibia became independent.

Family law¹



A happy family.

Photo: Trevor Davies

The abolition of the minority status of women has been advanced by the passing of the Married Persons Equality Act of 1996. Before the Married Persons Equality Act was passed in 1996, a common law concept of 'marital power' gave the husband the right to control the joint estate of the marital couple. Even though half of the estate belonged to the wife, the husband had the authority to administer the estate on behalf of the couple. The wife could not buy or sell most kinds of property without her husband's property.

The Married Persons' Equality Act 1 of 1996 changed this situation, providing that a husband and wife married in community of property must theoretically agree

when they sell, give away or borrow against important joint assets such as the house, household furniture or livestock. They must also agree before taking out a loan which is secured by joint property.

A marriage out of community of property means that the husband and the wife each have their separate belongings and debts. Everything that belonged to the husband before the marriage remains his, and everything that belonged to the wife before the marriage remains hers. Before the advent of the Married Persons Equality Act, 'marital power' gave the husband the right to control the wife's separate property during marriage, as well as his own property. Now, the Married Persons Equality Act provides that a husband and wife married out of community of property will each control their own belongings. The Act also makes it clear that both husbands and wives in marriages out of community of property bear responsibility for making contributions to household necessities in proportion to their resources. (*Women's Property and Inheritance Rights in Namibia, 2004*)

The Married Persons Equality Act, 1996 (Act 1 of 1996) aimed to abolish the marital power; to amend the matrimonial property law of marriages in community of property; to provide for domicile and guardianship of minor children; to further regulate the liability for household necessities of spouses married out of community of property; to amend laws to give effect to the abolition of marital power.

The Act unequivocally abolished all and any remnants of marital power. The removal of this provision removes all restrictions that existed because of it. It removes 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

- To register immovable property in her name;
- To act as an executrix of a deceased estate;
- To act as a trustee of an insolvent estate;
- To act as a director of a company; and
- To bind herself as surety; and
- That the common law position of the husband as head of the family is abolished, provided that nothing in the Act 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.

¹ Adapted and updated from information in Gender and Law Reform in Namibia, Dianne Hubbard, paper prepped for Consultation Meeting on Gender and Governance, Royal Tropical Institute, Amsterdam, 23-24 September 1999.

Practices and laws that discriminate against women

Article 66 of the Constitution provides that both customary law and the common law in force at the time of independence will be recognised, but only if they do not conflict with the Constitution or any other statutory law. This provision marked a key Constitutional breakthrough in gender jurisprudence for Southern Africa, and underscores the highly contested provision in the Protocol that gender equality in Constitutions should not be contradicted by any laws or practices.

In reality, gender discrimination is present in many practices, but this has never been contested in Court.

CEDAW takes the position that **polygamy** is a form of discrimination against women: ("Polygamous marriage contravenes a woman's right to equality with men, and can have serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited." - General Recommendation No 21, 13th session, 1994).

In its report on Namibia² the CEDAW Monitoring Committee expressed concern about the "prevalence of polygamous marriage and that customary marriages

were never registered" and urged the government to address the issue with "an intensive programme to discourage polygamy."

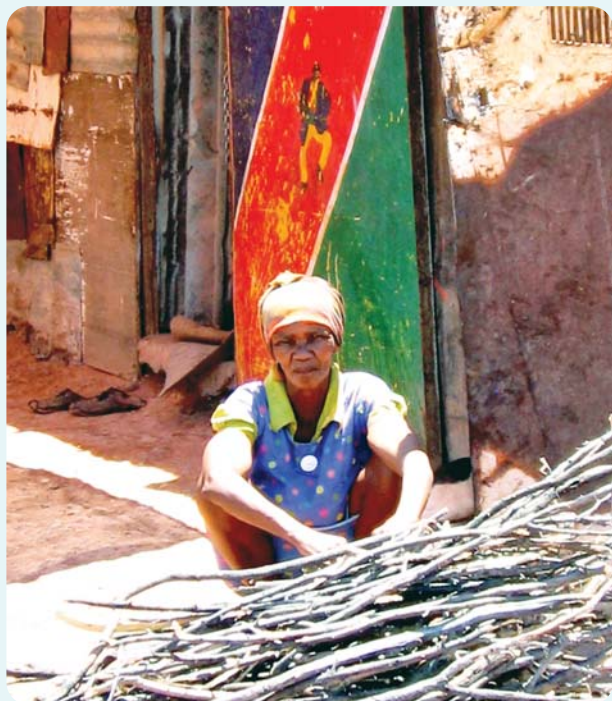
A related issue is the non-recognition of **customary marriages** (all customary marriages are potentially polygamous), is in turn closely linked to inheritance. Civil marriages take place before a magistrate or church official, and are registered. Customary marriages take place according to the traditions of the community, and in Namibia they are not registered. According to the 2001 census, of the Namibians aged 15 or above, 56.2% were never married; 19.2% were married in civil marriages; 9.4% were married in customary marriages; 7.4% were cohabiting; 2.8% were divorced or separated and 4% were widowed.

While the CEDAW Monitoring Committee praised Namibia for passing the Married Persons Equality Act (see next section) it also stated that this did not "sufficiently address discrimination in the family" and needed amendment.³

In 1997 the Legal Assistance Centre put forward Proposals for Law Reform on the Recognition of Customary Marriages (similar to the law passed in South Africa). This calls for a unified marriage law with the same substantive rules for customary and civil marriages. It also calls for the recognition of polygamous marriages as valid marriages to protect the rights of vulnerable parties but 1) would require the consent of any existing wives to subsequent customary marriage by the husband and 2) require equitable distribution of marital property between all interested parties before allowing the registration of the subsequent customary marriage. The underlying rationale is that polygamy will gradually die out as it becomes too expensive and complicated.

The government anticipates that a new and more comprehensive law covering all forms of marriage will be enacted to replace the Married Persons Equality Act. A Bill on the Recognition of Customary Marriages has been developed by the Law Reform Commission; this bill would set the minimum age for customary marriage at 18 as for civil marriages.

In partnership with the civil society organisation the Legal Assistance Centre, the Law Reform and Development Commission is investigating the status of cohabitation in Namibia and considering proposals for law reform.⁴



Women in rural communities find difficulties in accessing justice. Women from Maltahohe. Photo: Colleen Lowe Morna

² CEDAW/C/1997/L1?add2, 14 July 1997, para 43 and 56.

³ CEDAW/C/1997/L1?add2, 14 July 1997, para 37 and 59.

⁴ See the Legal Assistance Centre website at: <www.lac.org.na/projects/grap/grapcohab.html> Last accessed 7 February 2011. See also the Law Reform and Development Commission website at <www.lawreform.gov.na/pdf/Project9CohabitationInvestigations.pdf> Link broken when accessed 7 February 2011.

The **Communal Land Reform Act 5 of 2002** protects widows' rights to communal land tenure by allowing them to remain on communal land allocated to their deceased husbands if they wish, even if they should later remarry. (The same protections are extended to widowers.)

Currently, despite existing law reforms, widows still suffer instances of property-grabbing and discrimination. A 2005 national conference on women's land and property rights heard testimonies from women who had been stripped of all their livestock, homes, household goods and personal belongings by relatives of their deceased husbands. There is an urgent need to reform laws on inheritance, and traditional authorities need training to understand and enforce women's and children's rights to a home, land, property and livelihood. Some 45% of households in Namibia are headed by women, most of whom do not receive maintenance for their children from the absent fathers.

The Native Administration Proclamation (1928) made different rules for civil marriages in the North. In June 2003, racially discriminatory provisions in the Native Administration Proclamation 15 of 1928 were challenged in the High Court (*Berendt & Another v Stuurmann & Others* 2003 NR 81 (HC)). The High Court declared specific sections of this law to be in conflict with the Namibian Constitution.⁵ The High Court ordered that the Proclamation be repealed or amended by Parliament. Parliament enacted the **Estate and Succession Amendment Act of 15 of 2005**. The Act allows for small estates to be handled by the Magistrates Court, thus increasing accessibility for many people, particularly women, whilst giving the Master of the High Court ultimate authority over all estates, thus removing the race discrimination which previously marked the procedure for administering estates. The Act repeals other problematic sections of the Proclamation but provides that the previous rules of intestate succession in the Proclamation "continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said Proclamation not been repealed".⁶ Therefore further law reform is required in this area, and the Law Reform and Development Commission is in the process of working on the topic.

The **Community Courts Act 10 of 2003** came into operation in 2003 although some of the provisions pertaining to these courts are not yet fully operational. The Act provides for the recognition and establishment of community courts and the application of customary law by these courts.⁷ Community Courts must be courts of record operating within the overarching constitutional framework. The Act states that a party to any

proceedings before a community court shall appear in person and may represent him- or herself or be represented by any person of his or her choice. This means that women cannot be represented by traditional male "guardians" (i.e. fathers or husbands) without their consent. The Act includes a right of appeal to the magistrates' courts.



Headwoman, Rebecca Kambundu from Shambyu is one of the few women in traditional leadership structures. Photo: Gender Links

The **Maintenance Act (2003)** provides that both parents have a legal duty to maintain their children, regardless of whether the children were born inside or outside marriage or whether one or other of the parents is subject to customary law that might not recognise a parent's liability.

Other law reforms affecting working women

After independence, the very first law reform pertaining to sex discrimination was the removal of discrimination against married women in the income tax laws.

The Labour Act passed in 1992 prohibits discrimination in any aspect of employment on the basis of sex, marital status, family responsibilities and sexual orientation (amongst other things), as well as forbidding harassment on the same grounds. Also important to women is the fact that domestic workers, who were excluded from pre-independence labour legislation, are fully covered by the provisions of the new labour law.

The first Labour Act provided for three months of maternity leave for any woman who has been employed for at least one year by the same employer. This provision has been supplemented by the Social Security Act, which provides maternity benefits (80% of full pay up to a ceiling of N\$3000) through a mandatory combined scheme for sickness, maternity and death benefits

⁵ The court ruled that the following provisions were discriminatory: 18(1), 18(2) and 18(9) and the regulations made under section 18(9).

⁶ Estate and Succession Amendment Act of 15 of 2005, section 1(2).

⁷ Legal Assistance Centre. (2010). Namlex. Index to the Laws of Namibia. 2010 Update. Windhoek, Namibia: Legal Assistance Centre. At page 141. Available at: <<http://www.lac.org.na/laws/namlex.html>> Last accessed 14 February 2011.

financed by matching employer and employee contributions.

The **Labour Act 11 of 2007** (which came into force in 2009) provides improved provisions for maternity leave for women. Women who have worked for more than 6 months for the same employer are entitled to maternity leave (previously a woman had to work for her employer for 12 months), and discrimination on the grounds of present, past or future pregnancy is forbidden. Both male and female employees are entitled to compassionate leave in the case of the death or serious illness of a close family member. Discrimination on the grounds of pregnancy and HIV status is now

prohibited, in addition to discrimination on the basis of sex, marital status and family responsibilities (which were covered by the previous law). Sexual harassment in the workplace is defined and prohibited.

Violence against women

Following on years of lobbying from a broad range of groups, parliament passed a Combating of Rape Bill (2000). This defines sexual acts that previously did not meet the legal definition of rape. The new act also makes marital rape illegal. The Combating Domestic Violence Act (2003) has a broad definition of domestic violence that includes physical, sexual and economic abuse (see GBV section).

Table 1.3: Summary of law reform agenda

Discriminatory legislation	Comments
Customary marriages	Bringing customary marriages in line with the Namibian Constitution: The Law Reform and development Commission is in the process of considering reforms to customary marriages to ensure that customary marriages are treated with the same degree of respect as civil marriages and to bring them in line with the provisions of the Namibian Constitution on equal rights.
Inheritance Rights promoted by patriarchy and cultural aspects	Currently, despite existing law reforms, widows still suffer instances of property-grabbing and discrimination. A 2005 national conference on women's land and property rights heard testimonies from women who had been stripped of all their livestock, homes, household goods and personal belongings by relatives of their deceased husbands. There is an urgent need to reform laws on inheritance, and traditional authorities need training to understand and enforce women's and children's rights to a home, land, property and livelihood.

Source: Constitution of Namibia.

Difficult areas of law reform

There are many difficult areas of law reform that are not specifically addressed by the SADC Gender Protocol. As in all SADC countries, there remain a number of what the LAC calls "Topics at the far edge of the political agenda."

Abortion

This is currently covered by the Abortion and Sterilisation Act (1975). This outlaws abortion in most circumstances, unless the pregnancy endangers the mother's life or is a threat to her physical and mental health; there is a serious risk that child welfare will suffer from a serious, permanent physical or mental defect or the pregnancy results in rape or incest.

The Ministry of Health and Social Services (MoHSS) conducted a study in 2006 to assess service provision for emergency obstetric care. The report showed that

20.7% of direct complications and 8.3% of deaths were attributed to abortion.

The legislation on abortion has not changed. To address the wider issues associated with unwanted pregnancy, the Child Care and Protection Bill includes a provision which would allow children above the age of 14 to independently access contraceptives, although this proposal is expected to be controversial in Parliament.⁹

The Ministry of Education has also implemented a new policy for the prevention and management of learner pregnancy. The government hopes that the new policy will help to reduce the number of young people attempting illegal abortions through its provisions on sex education and its flexible options for continuing education for learner mothers.¹⁰ However due to funding constraints, the implementation of the policy has been slow.

⁸ Unravelling Taboos, Gender and Sexuality in Namibia, LaFont S, and Hubbard D, edited, Gender and Advocacy Project, Legal Assistance Centre.

⁹ Child Care and Protection Bill. (2010). Revised final draft. June 2010. Provision 204.

¹⁰ For a discussion on how the previous guidelines may have impacted on the incidence of illegal abortion, see Legal Assistance Centre. (2008). School Policy on Learner Pregnancy in Namibia: Background to Reform. Windhoek, Namibia: Legal Assistance Centre. Available at: <www.lac.org.na/projects/grap/Pdf/learnerpregnancyfull.pdf> Last accessed 14 February 2011.

NGOs continue to lobby for more liberal choice of termination of pregnancy legislation. The Ministry of Gender Equality and Child Welfare has indicated that it might be willing to put the matter on the Cabinet agenda again.

Baby dumping and infanticide

Infanticide is not a specific crime, therefore baby-dumping and infanticide is usually recorded as a charge of concealment of birth combined with a charge of abandonment, manslaughter or murder. The Child Care and Protection Bill includes a provision that will allow a parent to leave a child at a designated safe place without committing an offence of abandonment.¹¹ The Legal Assistance Centre has proposed enacting a separate law, similar to the Zimbabwe Infanticide Act. It has also proposed a number of strategies, including steps to prevent unwanted pregnancies; providing information on legal abortion, non-judgmental support for pregnant women; safe havens for unwanted infants; adoption and fostering arrangements.

Sex work

Sex work is governed by the Combating of Immoral Practices Act 21 of 1980 which criminalises a range of activities around prostitution without actually making sex for reward directly illegal. In practice only women are prosecuted. A High Court judgment in the 2002 Hendricks case found some of the legal prohibitions on sex work to be unconstitutional but left prohibitions intact. The Legal Assistance Centre has argued that the current law is likely to be unconstitutional on several counts - respect for human dignity, freedom from sexual discrimination, right to privacy in the home and communications; freedom of speech and expressions; association and to practice any profession, carry out any trade or business. The LAC has recommended decriminalisation combined with a policy of compassionate discouragement.¹²

Sexual orientation

Homosexuality is illegal in Namibia.

Access to justice



The Protocol provides for:

- *Equality in the treatment of women in judicial and quasi-judicial proceedings, or similar proceedings, including customary and traditional courts and national reconciliation processes;*
- *Equal legal status and capacity in civil and customary law*
- *The encouragement of all public and private institutions to enable women to exercise their legal capacity.*
- *Positive and practical measures to ensure equality for women in complainants in the criminal justice system.*
- *The provision of educational programmes to address gender bias and stereotypes and promote equality for women in the legal systems.*
- *Equal representation by women on and in the courts, including traditional courts, alternative dispute resolution mechanisms and local community courts.*
- *Accessible and affordable legal services for women.*

Free legal aid is provided but evidence suggests that legal education needs to be strengthened. For example, a survey done by the LAC found that while many women said they had heard of the Married Persons Equality Act, few actually understand what it means. Responses

included, "maybe it is a law to protect women against their husbands; "it gives women a greater share of property in divorce" and "it tells men to cook and clean."¹³

¹¹ Child Care and Protection Bill. (2010). Revised final draft. June 2010. Provision 210.

¹² "Whose Body is It", Commercial Sex Work and the Law in Namibia, 2002, Legal Assistance Centre, funded by Austrian development Foundation.

¹³ Marital Property in Civil and Customary Marriages, LAC, p 60.

Marriage and family laws; widows and widowers; the girl and boy



The Protocol requires that State Parties enact and adopt appropriate legislative, administrative and other measures to ensure that women and men enjoy equal rights in marriage and are regarded as equal partners in marriage. Existing legislation on marriage shall therefore ensure:

- No person under the age of 18 shall marry;
- Every marriage takes place with free and full consent of both parties;
- Every marriage to be registered;
- Reciprocal rights and duties towards the children of the family with the best interests of the children always being paramount; and
- An equitable share of property acquired during their relationship.

State Parties must also put in place laws and other measures to ensure that parents fulfil their duties of care towards their children, and enforce maintenance orders. Married women and men should have the right to choose whether to retain their nationality or acquire their spouse's nationality through legal provisions. However, there is no period within which these measures should be achieved.

There are two kinds of marriages in Namibia: civil marriage and customary marriage. Civil marriage takes place when a man and a woman are married by a marriage officer. Civil marriages are registered and the couple will have a marriage certificate.

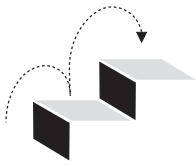
Customary marriage takes place when a man and a woman are married according to the customs of their community, without a marriage officer. Customary marriages are potentially polygamous and are not registered. As mentioned in earlier sections, this raises several issues, summarised also in Table 1.4.

Table 1.4: Marriage and family laws; the boy and girl child

Provision	Yes/No	Explanation
Marriage		
No person under the age of 18 shall marry.	Yes	The Namibia law is based on the idea of "minors" and "majors". Anyone under the age of 21 is a minor and people become "majors" on their 21st birthdays. International Law and Convention on the Rights of the Child defines a Child as anyone under the age 18 (The Namibian)
Every marriage takes place with the full consent of both parties.	Yes	The Marriage Equality Act and Family Law say both men and women must freely consent to the marriage. People may not be forced to marry, or pressured into a marriage that they do not really want. But for people under 21 years of age, they need the consent of both their father and mother to marry (if both are still alive). People under the age also need special permission from the State to marry.
Every marriage including civil, religious, traditional or customary is registered.	NO	There are two kinds of "marriages" in Namibia. Civil (registered) and Customary (not registered).
Parties have reciprocal rights and duties towards their children including when spouses separate, divorce or have marriages annulled.	Yes	The Married Persons Equality Act says that a husband and wife have a mutual duty of support. It further states that husband and wife in civil marriages have equal powers of guardianship over their children. Guardianship is the power to make important legal decision on behalf of the child. This is being re-inforced by the Child Maintenance Act.
Maintenance orders are enforced.	Yes. But not always implemented	The High Court may make an order on guardianship and custody of children of the marriage. This order may also contain rules about the other spouse's access to the children. In practice custody of young children is often awarded to the mother. The parent who is not given the custody is usually expected to make regular payments towards the child's basic living expenses.

Provision	Yes/No	Explanation
Married women and men have the right to decide whether to retain their nationality or acquire spouse's nationality.	No	Not in law, but in practice. Women have now embarked upon double barrel surnames.
Widows and widowers		
Widows are not subjected to inhuman, humiliating or degrading treatment.	No	Some traditions discriminate in customary marriages. A single surviving widow in some communities may lose marital property to the husband's relatives. Law reform in this area may take place soon. For example the Communal Land Reform Act will give widows and widowers equal rights to stay on communal land which was allocated to the diseased spouse.
A widow automatically becomes guardian or custodian of her children, unless otherwise determined by a court of law.	No	In law but not in practice as family members can inherit children and even wife upon her husband's death.
A widow shall have the right to live in the matrimonial house after her husband's death.	Yes/no	Property grabs in some communities like the <i>Oshiwambo</i> tribes continue to happen.
A widow shall have access to employment and other opportunities.	Yes	
Widows shall have the right to an equitable share in the inheritance of her husband's property.	Yes	In laws, but not in practice, especially if this is a polygamous marriage.
Widows shall have the right to remarry any person of their choice.	No	In some communities the practice is that widows are inherited by the brother such as in the <i>Otjiherero</i> tribe
Widows shall be protected from all forms of violence and discrimination.	Yes	
Girl and boy child		
Eliminating all forms of discrimination against the girl child.	Yes	The Children's Act of 33 of 1960 has been replaced by a new Child Care and Protection Act. The Ministry of Gender Equality and Child Welfare should ensure that this new law contains a provision explicitly addressing consent to medical to minors.
Girls have the same rights as boys and are protected from harmful cultural attitudes.	Yes and No	Even if the law is there, early marriage without consent is a rampant practice in most of the tribes in Namibia.
Girls are protected from all forms of economic exploitation, trafficking, violence and sexual abuse.	No, in general	There is no Human Trafficking law; but the Child Care and Protection Act on child trafficking the United Nations Convention on the Right of the Child and a number of other International agreements say that child trafficking should be prevented. In line with these agreements, Child Care and Protection Act makes trafficking of children a crime. The ILO convention addresses (1) slavery and similar practices, including the sale and trafficking of children (2) using children for prostitution or pornography; (3) involving children in unlawful activities and (4) work that is likely to be harmful to children. Protocol on the Convention Against transnational organized crime, to prevent , suppress and Punish Trafficking in persons, especially Women and children 2000, This Convention is aimed at ensuring that persons with disabilities can enjoy full human Rights without discrimination. It calls for respect for the evolving capacities of children with disabilities.
Girls have access to information, education, services and facilities on sexual and reproductive health and rights.	Yes/no	Need for youth friendly facilities.

Source: Gender Links 2012.



Next steps

Although Namibia's legal system offers considerable protection to women and girls, the laws are often not effectively implemented and there is limited awareness of them. Furthermore, the dual legal system means that when abuses occur under customary laws, there is little or no opportunity for redress.

- There needs to be a review of legislation on abortion.
- Legal aid needs to be available to the poor to increase equality in access to justice.
- Workplaces need to address sexual harassment.
- Civil society and government need to create awareness about all laws that promote gender equality so that citizens can use these to claim their rights.
- There is need to educate rural communities and involve community leaders in harmonising customary laws with the formal laws.
- Innovative strategies are required to address harmful cultural and traditional practices.
- Implementation remains a challenge; there is a need for costing and budgeting to implement gender-related laws and policies.