

# Enhancing legal empowerment

## Working with Customary Justice Systems: Post-Conflict and Fragile States

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Paper No. 3

Gender Equality on the  
Horizon?

The Case of Uukwambi  
Traditional Authority,  
Northern Namibia

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International Development Law Organization  
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## IDLO CUSTOMARY JUSTICE WORKING PAPER SERIES

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# Gender Equality on the Horizon: The Case of Uukwambi Traditional Authority, Northern Namibia

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Janine Ubink

## EXECUTIVE SUMMARY

Legal development cooperation increasingly emphasizes that legal empowerment can only be achieved when reforms incorporate customary justice systems. This brings to the fore pertinent questions regarding the alignment of these systems with human rights standards. A typical concern is that customary justice systems often lack gender equality. The dominance of men in all three interwoven domains of customary rule — leadership, dispute settlement and normative content — raises questions on how the inclusion of women in customary structures of administrative and judicial decision-making might be facilitated, and how customary norms can be modified so that they better protect women and their livelihoods. To gain insight into these questions, this chapter explores a range of activities undertaken by the Traditional Authority of Uukwambi in northern Namibia to eliminate the severe gender inequality inherent in its system of customary justice and administration. These activities include the installation of women traditional leaders, the promotion of women's active participation in traditional court meetings, and the modification of customary norms that were detrimental to the position of women. The research data collected indicates that these steps led to certain positive changes in customary practice, including the near complete eradication of 'property grabbing' and increased participation of women in traditional courts. Although the shift in mindsets needed for gender equality is still incomplete, the initiatives undertaken have enhanced the fairness and equity of traditional rule and customary dispute settlement.

# 1. Introduction

Customary justice systems form the dominant legal arena for most people in the developing world. Recognizing this, agents in legal development cooperation have increasingly emphasized that the goal of empowerment through legal reforms can only be reached when they incorporate these systems.<sup>1</sup> At the same time, these agents struggle with the negative aspects of customary systems and seek ways to improve their functioning in terms of equality, accountability, predictability and individual rights protection. A typical concern is that customary justice processes often lack gender equality and their outcomes violate the right to non-discrimination. Customary systems are also widely regarded as patriarchal and therefore favoring men's interests over those of women. This critique is leveled both against processes of customary dispute settlement and customary administration. Dispute settlement issues include the lack of women judges in courts, cultural impediments to women's participation in court debates, and in some cases, the requirement to have their interests represented by their husbands or male relatives. Some of the principal customary administration issues are that most leadership positions are held by men and that land ownership is often vested in men while women exercise only derived rights.

These norms and practices operate to create a gender bias, for instance, in cases of inheritance and divorce. Some studies criticize the gender bias of customary law as an incorrigible trait and advocate for a complete disengagement with customary law.<sup>2</sup> Others reason that customary systems are unlikely to disappear in the near future and that an agenda of reform should be prioritized.<sup>3</sup> The latter position raises the pertinent question on how to facilitate the inclusion of women in customary structures of administrative and judicial decision-making and, relatedly, how to modify customary norms so that they better protect women and their livelihoods.

To generate new knowledge concerning the possibilities and limitations of introducing gender equality into male-dominated processes, this chapter will explore the activities led by the Traditional Authority of Uukwambi in northern Namibia to combat the severe gender imbalance inherent within its system of customary justice and administration.<sup>4</sup> First, under the leadership of Chief Herman Lipumbu,<sup>5</sup> the Traditional Authority of Uukwambi embarked on a process to increase the number of women traditional leaders and women members of the traditional leaders' committees. Second, the Traditional Authority formally opened up traditional dispute settlement meetings and actively encouraged women's participation on an equal basis as men. Third, it modified a number of customary norms that were detrimental to the position of women and sought to create broad local awareness of these changes.<sup>6</sup>

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<sup>1</sup> See, for instance, E Wojkowska, *Doing Justice: How Informal Justice Systems Can Contribute*, United Nations Development Programme (UNDP), Oslo Governance Center, (2006); UNDP Bangkok, *Programming for Justice: Access for All. A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice*, Asia-Pacific Rights and Justice Initiative (2005). Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, Report of the Commission on Legal Empowerment of the Poor Volume 1 (2008); United Kingdom Department for International Development (DFID), *Non-state Justice and Security Systems*, DFID Briefing (2004).

<sup>2</sup> L S Khadiagala, 'The Failure of Popular Justice in Uganda: Local Councils and Women's Property Rights'. *Development and Change* 32 (2001) 55-76; Whitehead and Tsikata, 'Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Return to the Customary', 2003.

<sup>3</sup> C Nyamu-Musembi, *Review of experience in engaging with 'non-state' justice systems in East Africa*, report commissioned by Governance Division, DFID (2003) 27.

<sup>4</sup> Traditional leadership has always been a predominantly male domain in Namibia and was even more exclusively defined as such during the colonial period (H Becker, 'New Things after Independence': Gender and Traditional Authorities in Postcolonial Namibia' (2006) 32(1) *Journal of Southern African Studies* 34, 47).

<sup>5</sup> The word 'chief' was an invention of the colonial rulers, which has been reproduced in the *Traditional Authorities Act 1995*. The term has been internalized in Uukwambi and is now commonly used to refer to *Tate Lipumbu* by villagers and other traditional authorities alike.

<sup>6</sup> Similar developments have been described with respect to Ongandjera Traditional Authority (H Becker, 'A Concise History of Gender, "Tradition" and the State in Namibia' in C Keulder (ed), *State, Society and Democracy: A Reader in Namibian Politics* (2000) 171-99. Keulder describes the first stages towards the

Critically, the progress made in Uukwambi resulted from a bottom-up process undertaken by the Traditional Authority, with the active involvement of the Chief, grafted onto a broader effort by the combined Owambo Traditional Authorities to harmonize and modernize their customary laws. Another critical ingredient was that the changes facilitated were in no small part promoted by the national government.

In Namibia, a country where both opponents and proponents of gender equality believe that women's rights and traditional rule are "eternal foes",<sup>7</sup> the measure of success achieved by the Uukwambi Traditional Authority is remarkable. The complementarity of local and national efforts is one of the factors that sets this case apart from other attempts at enhancing the position of women under customary law. Similarly, the broad range of changes encompassing all three domains of traditional rule — leadership, dispute settlement and substantive norms — distinguishes this legal reform process from others, and seems to have enhanced the effectiveness of individual measures. A very important aspect of the success of the reforms in the Uukwambi Traditional Authority is the timing of the changes, in a period characterized by a strong momentum for change resulting from the birth of an independent Namibia. These three factors need to be considered when advocating comparable change processes in customary legal systems in other regions of Africa and elsewhere.

This chapter begins with an overview of the legal and institutional framework of Traditional Authorities in Namibia. It then provides a concise description of the Owambo kingdoms of northern Namibia and the position of women within their administrative and judicial structures. It subsequently turns to a more specific presentation of the Uukwambi Traditional Authority and an analysis of the research findings in the critical areas of investigation: women's traditional leadership; women's participation in traditional courts; and the modification of customary norms that were detrimental to women's interests. It analyzes whether these processes have led to improvements in the representation and participation of, and legal protections offered to, women under the Uukwambi customary system.

Through the research data collected, it is clear that the steps taken by the Uukwambi Traditional Authority led to certain positive changes in customary practice, including the near complete eradication of the practice of 'property grabbing' and the increased participation of women in the traditional courts. Although the changes in social attitudes required for women to take an equal role in traditional leadership and customary justice is not complete, it seems that the initiatives undertaken have enhanced the fairness of and strengthened equity in traditional rule and customary dispute settlement. An analysis of this case study can help to determine under which conditions these types of normative changes can occur, and whether such conditions can be found or created in other places where similar concerns of gender inequality in customary justice systems need to be addressed.

The arguments presented in this chapter draw on field research conducted in the Uukwambi tribal area between September 2009 and February 2010. Data were collected principally through qualitative data collection methods, which included semi-structured interviews (with women, women leaders, traditional leaders, farmers, governmental

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inclusion of women in Tradition Councils of the Nama at all levels including the Nama Traditional Leaders Council (C Keulder, *Traditional Leaders and Local Government in Africa: Lessons for South Africa* (1998) 25).

<sup>7</sup> H Becker, 'We want women to be given an equal chance. Post-independence rural politics in northern Namibia', in Meintjies, Pillay and Turshen (eds), *The Aftermath: Women in Post-conflict Transformation* (2001) 225, 233. Becker points out that both proponents and opponents of gender equality in Namibia start with the presumption of traditional gendered identities and therefore perceive traditional rule and women's rights as irreconcilable. "Rather, the contestations revolve around the moral values attached to these chosen versions of a strictly patriarchal past. The traditionalist discourse contests reforms to promote gender equality with nostalgia for the imaginary past. Proponents of gender equality, on the other hand, ascribe gender discrimination in Namibia to the very same 'century-old traditions'."

authorities, academics, and the staff of non-government organizations (NGO), focus group discussions with women and NGO staff, and participant observation of traditional court meetings. In addition, structured interviews on the basis of a survey were conducted in 216 rural households to explore issues associated with access to, participation in, and satisfaction with, the customary justice system.

## 2. The legal and institutional framework of Traditional Authorities in Namibia

The *Constitution of Namibia 1990* mentions neither Traditional Authorities nor traditional courts; their recognition can only be deduced from articles 66(1) and 102(5) of the *Constitution of Namibia 1990*. The first article stipulates the validity of the customary law and common law in force on the date of independence, subject to the condition that they do not conflict with the Constitution or any other statute.<sup>8</sup> The latter article calls for the establishment of a Council of Traditional Leaders whose function is to advise on communal land management and on other matters referred to it by the President.<sup>9</sup>

Despite the limited debate on the traditional administration in drafting the first Constitution — which, according to Hinz, indicates that “the political minds behind the Constitution did not envisage much of a role for the traditional authorities”<sup>10</sup> — only a year later, President Sam Nujoma established the Commission of Inquiry into Matters Relating to Chiefs, Headmen and other Traditional or Tribal Leaders and Authorities (the Kozonguizi Commission), chaired by Dr Fanuel Jariretundu Kozonguizi (then Ombudsman of the Republic of Namibia). The Kozonguizi Commission was tasked to inquire into rules and practices relating to the appointment and recognition of traditional leaders, their powers, duties and functions, and in particular, their identity and their degree of acceptance by the population.<sup>11</sup>

The Kozonguizi Commission’s proposals guided the development of the *Traditional Authorities Act 1995* (Act 17 of 1995), which were largely reproduced in the *Traditional Authorities Act 2000* (Act 25 of 2000), which currently regulates traditional leadership. It provides for the establishment of traditional authorities in traditional communities. Each traditional authority comprises a chief or head, senior traditional councilors and traditional councilors.<sup>12</sup> It confirms that the designation and tenure of the office of Chief shall be regulated by customary law,<sup>13</sup> and defines the powers, duties and functions of Traditional Authorities. Their main functions, according to the Act, relate to the promotion of peace and welfare in the community, the administration and development of customary law, and the supervision of its observance, and the preservation of local culture.<sup>14</sup> Section 14(a) of the *Traditional Authorities Act 2000* states that “any custom,

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<sup>8</sup> In addition, article 19 of the *Constitution of Namibia 1990*, guaranteeing the right to culture and tradition, is understood to include the right to live according to one’s customary law.

<sup>9</sup> The lack of reference to Traditional Authorities is a reflection of their omission in the ‘Blue Bible’, a bulky blue-covered report entitled, *Namibia: Perspectives for National Reconstruction and Development*, published in 1986 by the United Nations Institute for Namibia, located in Lusaka. This publication, which was drafted as a blueprint for an independent Namibia, does not mention Traditional Authorities (M O Hinz, ‘Traditional Governance and African Customary Law: Comparative Observations from a Namibian Perspective’, in Horn and Bösl (eds), *Human Rights and The Rule of Law in Namibia* (2009) 59, 68-69). This policy document included a short note on customary law and customary courts, including the following statement, referenced on page 69: “In order to uplift the status of customary law, a proper structure of the court hierarchy should be considered and appropriate legislation allowing its application should be provided.”

<sup>10</sup> Ibid 69.

<sup>11</sup> Ibid 69–70; Keulder, above n 6, 65–66.

<sup>12</sup> *Traditional Authorities Act 2000* s 2(1). Section 17 notes that the number of councilors is to be determined by the chief or head, but allowances will be paid to a maximum of six senior traditional councilors and six traditional councilors, in addition to the chief or head and a secretary.

<sup>13</sup> The *Traditional Authorities Act 2000* first mentions that the designation and recognition of chiefs are regulated by the Act itself (section 2(1)(a)), but then repeats the text from the *Traditional Authorities Act 1995*, confirming customary law as the regulating order (s 4).

<sup>14</sup> *Traditional Authorities Act 2000*, s 3(1).



tradition, practice, or usage which is discriminatory or which detracts from or violates the rights of any person as guaranteed by the *Constitution of Namibia 1990* or any other statutory law" shall cease to apply.<sup>15</sup> Article 10 of the Constitution, which prohibits discrimination on the grounds of, *inter alia*, sex, therefore renders redundant any customary law that violates norms of gender equality.<sup>16</sup> In line with these provisions, section 3(1)(g) of the *Traditional Authorities Act 2000* requires Traditional Authorities to promote affirmative action "in particular by promoting gender equality with regard to positions of leadership".<sup>17</sup> This provision is worded as an obligation of best intents, rather than as a duty to achieve a given result, and no quotas or sanctions of any kind are stipulated. According to officials of the Ministry of Local and Regional Government and Housing, the government agency responsible for the regulation of Traditional Authorities:

...This legislation was based on the assumption that the Ministry would not interfere with the internal policies of Traditional Authorities; rather, educational measures were expected to promote the appointment of women to positions of traditional leadership.<sup>18</sup>

### 3. Traditional authority and the position of women in the history of Owambo

#### 3.1 Owambo kingdoms

The Owambo people constitute the largest population group in Namibia.<sup>19</sup> Their home was called Owamboland during the colonial period, but today is divided into the Omusati, Ohangwena, Oshana and Oshikoto regions. Almost half of the total population lives here on less than seven percent of the Namibian territory.<sup>20</sup> With the exception of the Uukolonkadhi, the Owambo societies were politically organized as kingdoms.<sup>21</sup> Colonial rule seriously affected the indigenous Owambo polities. During the last decade of German occupation, the Germans started to conclude treaties with traditional leaders in the areas north of the Police Zone<sup>22</sup> for the recruitment of contract labor for German-owned mines and commercial farms.<sup>23</sup> This changed the relationship between traditional leaders and their people since "(t)he chiefs soon realized the potential material benefits of this for them personally and they employed their absolute authority to maximize their

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<sup>15</sup> *Traditional Authorities Act 1995*, s 11(1)(a).

<sup>16</sup> In some other African countries, customary law is exempted from the constitutional obligation for gender equality. See, for instance, art 27 (4)(e) of the *Constitution of Sierra Leone 1991*, which stipulates that the protection from discrimination does not apply in the case of the administration of customary law.

<sup>17</sup> *Traditional Authorities Act 1995*, s 10(1)(g).

<sup>18</sup> Becker, above n 4, 33.

<sup>19</sup> Owambo is a collective name for 12 tribal groups that live in northern Namibia and southern Angola. Seven of these closely-related societies – linguistically and culturally – live in present-day Namibia: the Ondonga, Oukwanyama, Ongandjera, Uukwambi, Ombalantu, Uukwaluudhi and Uukolonkadhi (C H L Hahn, 'The Ovambo' in C H L Hahn, H Vedder and L Fourie, *The Native Tribes of South West Africa* (1966); G Töttemeijer, *Namibia Old and New: Traditional and Modern Leaders in Ovamboland* (1978); F Williams, *Precolonial Communities of Southwestern Africa: A History of Owambo Kingdoms 1600–1920*, National Archives of Namibia (1991).

<sup>20</sup> According to the 2001 Population and Housing Census, 780,000 people, or 43 percent of the country's population were living in Owambo.

<sup>21</sup> In early times, the King was the highest authority and ruled with his Council. The King's Council acted as the chief executive, judicial and legislative body. Usually, the kingdom was divided into districts or wards, headed by district heads or under-councillors (C Keulder, 'Traditional Leaders' in C Keulder (ed), *State, Society and Democracy: A Reader in Namibian Politics* (2000) 150, 155–6).

<sup>22</sup> The Police Zone spanned the southern two-thirds of the territory of South West Africa/Namibia, in which the Germans established effective police control in the early 20<sup>th</sup> century. In this area, most tribal land was expropriated for white settlers and the indigenous communities were forcibly resettled in "native reserves". Indigenous groups living north of the line were prohibited from entering the Police Zone except for contract labor.

<sup>23</sup> The Germans decided to turn to the north to recruit migrant labor after the Herero and Nama revolts in the south had almost decimated the Herero and Nama populations (Keulder, above n 6, 39–40).

rewards.”<sup>24</sup> In addition, when contract laborers returned home, influenced by the European way of life, they increasingly came to question the local political, social and economic order, which induced a gradual but irreversible process of breaking down the traditional norms and authority.<sup>25</sup>

South Africa, succeeding Germany after the First World War under the mandate system of the League of Nations, continued and elaborated the German system of indirect rule for the northern Namibian territories including Owamboland.<sup>26</sup> In both Uukwambi and Uukwanyama, the South African administration forcibly removed the King and replaced him with a Headmen’s Council.<sup>27</sup> The main tasks of these Councils were maintaining law and order, and ensuring a steady supply of contract migrant workers to the Police Zone.<sup>28</sup> Indirect rule, characterized by the extensive use of indigenous political institutions, closely aligned most of the Owambo Chiefs with the South African colonial regime. This “transformed the indigenous polities into local administrative organs dependent on the colonial state”.<sup>29</sup> This collaboration with the colonial regime cost the traditional leaders in the north much of the respect of the population.<sup>30</sup> From the 1960s, Ovamboland became the centre of Namibia’s independence struggle and the scene of severe fighting between the South West African People’s Organisation (SWAPO) and the South African army, during which thousands of lives were lost. From the 1970s until independence, SWAPO and the churches<sup>31</sup> were seen as the main sources of authority by the population, rather than the chiefs or the Owambo (homeland) authorities.<sup>32</sup>

Notwithstanding the loss of influence suffered during the colonial period, traditional leaders play an important role in present-day rural Namibia. In 1991, the Kozonguizi Commission concluded that despite regional differences and individual dissatisfaction, traditional leadership was a necessary and viable institution, and recommended its retention “within the context of the provisions of the Constitution of the Republic of Namibia and having regards to the integrity and oneness of the Namibian nation as a

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<sup>24</sup> Ibid 40. He gives the example of King Negumbo of Uukwambi who “compelled all young unmarried men to serve as contract workers in the south before he would give them permission to wed. He furthermore demanded that they present him with gifts of cattle upon conclusion of their contracts” (Ibid 84). See also Siiskonen, who mentions that in addition to gifts from returning workers, kings were also presented with valuable gifts from labor recruiters (H Siiskonen, *Trade and Socioeconomic Change in Ovamboland, 1850-1906* (1990) 229–236).

<sup>25</sup> I Soiri, *The Radical Motherhood: Namibian women’s independence struggle* (1996) 40-42; Töttemeyer, above n 19, 42.

<sup>26</sup> Keulder, above n 6, 42; Becker, above n 4, 33.

<sup>27</sup> King Mandume of Uukwanyama was killed by colonial troops in 1917 (Keulder, above n 6, 156). In 1932, heavy military equipment was used to capture and deport King Iipumbu of Uukwambi.

<sup>28</sup> L Berat and R Gordon, ‘Customary Law in Namibia: What Should Be Done’ (1991) 24 *Vanderbilt Journal of Transnational Law* 637, 641.

<sup>29</sup> Becker, above n 4, 33.

<sup>30</sup> Ibid 33. Not all traditional leaders were on the side of colonial government. Certain influential traditional leaders — mostly living in the Police Zone — were heavily involved in the struggle against colonialism. The two main nationalist movements, SWAPO and the South West Africa National Union (SWANU), aligned themselves with these and other progressive leaders (Keulder, above n 6, 47).

<sup>31</sup> White missionaries are seen as another important force that undermined the authority of traditional structures (Keulder, above n 6, 84).

<sup>32</sup> Becker, above n 5, 33; Töttemeyer, above n 19, 104–105; Soiri above n 25, 50. In the 1970s, the South African Government had to introduce several proclamations to “protect the Ovambo tribal authority and its traditional leaders against the growing discontent of the nationalist movement”. These proclamations made it an offence to, *inter alia*: undermine the authority of the Owambo Government, chiefs and headmen; fail to obey any lawful order given by a chief or headman; and treat them [chiefs and headmen] with disrespect. In addition, any political opponents arrested by the colonial government were handed over to the tribal authorities to be dealt with, often through severe flogging. The chiefs’ already diminished popularity and legitimacy further waned due to their involvement with reconnaissance work, the reporting of strangers to the colonial authorities, and the drafting of people for the South West African Territorial Forces, which was formed in 1977 in response to the military successes of SWAPO. The results were serious, as Keulder describes: “Chiefs and headmen were often identified as soft targets to be eliminated (by both sides) in order to strike back at the enemy. Many chiefs and headmen accordingly lost their lives” (Keulder, above n 6, 49, 52).

priority".<sup>33</sup> Two empirical studies in the mid-1990s showed a positive attitude towards traditional authority among respondents in both the north<sup>34</sup> and south<sup>35</sup> of Namibia. The first study, by Hinz and Katjaerua, included the Ondonga and the Oukwanyama communities in Owambo. In these communities, 25 out of the 27 respondents felt positive or very positive about the institution of traditional leadership. Similar figures were found in other northern communities and in six Nama communities in the south. Keulder emphasized, however, that people's support for the institution of traditional leadership did not preclude negative feelings toward the incumbent traditional leaders.<sup>36</sup> In line with these data, Becker concludes that in 2006 "while during the colonial era the Owambo chiefs were poised against the local population and SWAPO, they appear to have been remarkably resilient and to have redeemed popular support."<sup>37</sup>

### 3.2 Women in Owambo polities

The role of women in pre-colonial Owambo is not easily ascertained. According to Becker, "the general assumption of women's traditionally inferior position is highly disputable".<sup>38</sup> She points out that, in many communities: women had access to property; the matrilineal system tempered the control of men over women and especially of husbands over wives; women played important roles as healers and ritual leaders; and there were also women traditional leaders, although they were a minority.<sup>39</sup> She concludes that, in the pre-colonial era, "[w]omen and men were ... conceived of as inhabitants of different spheres in a complementary social duality rather than as beings ranked hierarchically according to gender".<sup>40</sup>

Gender relations changed fundamentally during the colonial period. The colonial rulers' gender ideology was not in consonance with the existence of powerful women. Further, they perceived a strong need to maintain the authority of male elders over women and youth to ensure social order and stability. This extended to the colonial governments' relations with traditional leaders: women leaders were all but purged from the local traditional arena; women were largely excluded from participation in traditional courts; the emerging structures of colonial tribal authority "evolved into all-male domains".<sup>41</sup> Simultaneously, the emergence of male contract labor and the resulting introduction of a male-controlled cash economy weakened the financial position of women *vis-à-vis* men and increased their burden because all work traditionally assigned to men was added to women's workload when men were away on contract.<sup>42</sup> The influence of Western

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<sup>33</sup> Commission of Inquiry, 'Report by the Commission of Inquiry into Matters relating to Chiefs, Headmen and other Traditional or Tribal Leaders', Windhoek: Government of the Republic of Namibia (1991) 73; Hinz, above n 9, 70.

<sup>34</sup> M O Hinz and Katjaerua, *To Promote Peace and Welfare: The Political and Economic Sustainability of Traditional Authority* (1998).

<sup>35</sup> C Keulder, *Traditional Authorities and Regional Councils in Southern Namibia* (1997).

<sup>36</sup> Keulder, above n 6, 22. The author proposes several tentative reasons for why most people in Nama communities felt positively about the institution of traditional leadership, including: a) the institution forms an integrated part of the communities' social memories; b) the traditional leaders were elected at popular and open meetings; c) traditional leaders were not incorporated into illegitimate colonial structures; and d) they have done much for the well-being of their communities. He specifically emphasizes a fifth reason, "that support for the institution of traditional leadership is strong because there is no effective institutional rival present or active in the local communities". Whereas the second and third reasons mentioned by Keulder do not apply to the situation in Owambo, and the fourth can be considered questionable, the fifth could be an important argument to be applied in Owambo. This is also indicated by Hinz and Katjaerua. Although they do not analyze the reasons for people's positive feelings about traditional leaders, Hinz and Katjaerua contend that nine of the 13 traditional leaders interviewed believed that traditional courts should be strengthened because "it is the only dispute settling organ in rural areas" (Hinz and Katjaerua, above n 34,79).

<sup>37</sup> Becker, above n 4, 47.

<sup>38</sup> Becker, above n 7, 177.

<sup>39</sup> *Ibid* 177.

<sup>40</sup> *Ibid* 177–178.

<sup>41</sup> *Ibid* 178. Becker describes this process in the Owambo Kingdom of Ongandjera, which had a strong tradition of female rulers (Becker, above n 4).

<sup>42</sup> B Hango-Rummukainen, *Gender and Migration: Social and Economic Effects on Women in Owambo (1890-1940)* (2000) 79.

missionaries and Christianity also contributed to and deepened the subordinate position of women in society. It is these combined factors that determined gender relations during the colonial period and created a widespread belief in Namibia that traditional rule could not and would not accommodate women's rights.

## 4. Uukwambi Traditional Authority

Uukwambi is divided into five<sup>43</sup> districts (*oshikandjo*), four of which are headed by a senior headman and one by a senior headwoman (*mwene gwoshikandjo*). Each district contains a substantial number of villages, up to 70, headed by their own headman/headwoman (*mwene gwomikunda*). At each level, leaders are supported by their councils. Chief Iipumbu is the Chairman of the Uukwambi Traditional Council, which comprises the senior headmen/headwomen as well as several other traditional councilors.

In Uukwambi, there was a weak presence of women traditional leaders during the colonial period. In the current research, interviews revealed that many people believed that there had not been any women traditional leaders during that period. Others, however, were aware of the existence of a particular headwoman or female traditional councilor. According to Chief Iipumbu,<sup>44</sup> at the level of the Traditional Council, there have been women leaders since the reign of his grandfather, King Iipumbu Ya Thsilongo (1907–1932). When he succeeded his father as Chief in 1985, there were also women in the Traditional Council, although they were not official councilors. "At that time the men all worked under the red line,<sup>45</sup> so the women were taking care of the houses and the villages. Women were acting on behalf of their husbands, also on the Traditional Council."<sup>46</sup> Women were also largely excluded from active participation in the traditional courts. In some villages, although women could come and attend court meetings, they were not allowed to speak. In other villages, even their presence was prohibited, unless they were involved in a dispute or crime. Not surprisingly, the traditional system dominated by male leadership and dispute settlement included norms that were detrimental to women's rights. A salient example is the customary inheritance norm that states that upon a man's death, his estate is inherited by his matrilineal family. Despite a customary obligation of the husband's family to support needy widows and children, widows and their children were often chased out of the house, back to her own matrilineal family (a practice often referred to as 'widow chasing' or 'property grabbing').

In the last decades, the Uukwambi Traditional Authority has undergone change in three key areas: the participation of women in leadership, the participation of women in traditional court processes, and substantive change in customary rules that better protect women's rights. Before discussing these changes and their impact on the people of Uukwambi, it is useful to highlight that the achievements in Uukwambi were inextricably intertwined with change processes occurring in Namibia at large. When Namibia gained its independence in 1990, the country experienced a tremendous momentum for change, including in gender relations. Women had played a prominent

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<sup>43</sup> In February 2010, when the author left the field, the Uukwambi Traditional Authority was about to announce the reorganization of the districts and the creation of a sixth district, led by a man.

<sup>44</sup> Unlike Uukwanyama, where a King was reinstated in 1998, the Uukwambi kingdom has not been restored. After the deportation of King Iipumbu, his son was selected to chair the Council of Senior Headmen. In 1986, he was succeeded again by his son, the current leader Herman Iipumbu, who is commonly referred to as Chief Iipumbu. Since the Uukwambi practise matrilineal succession, the latter is not and can never become King of Uukwambi, which can logically be regarded as one of the factors explaining the limited enthusiasm for the restoration of the Kingdom by the Uukwambi Traditional Authority.

<sup>45</sup> The red line is a disease control fence that separates northern Namibia from the central and southern parts of the country. Cattle are prohibited from crossing this line, and cattle from the area north of this line cannot be sold overseas, due to European Union conditions relating to food safety. Since the landscape south of the red line is dominated by white-owned commercial farms as opposed to communal farmland of black communities in the north, the red line has become highly controversial since independence, particularly in the current meat market boom. The line also coincides with the northern boundary of the Police Zone during the colonial period (see Keulder, above n 21).

<sup>46</sup> Interview 55 with Chief and Former Secretary (19 January 2010).

role in the period before independence, both as freedom fighters and in the functioning of the rural localities when men were away fighting in the war of independence or working on labor contracts at white-owned farms and companies. The notion of 'women's rights' entered Namibian politics when women freedom fighters not only expressed their opposition to colonial occupation, but also to contrived custom and tradition.<sup>47</sup> The collaboration of traditional leaders in indirect rule of the apartheid government, which cost them the respect of the population, was a determining factor in this articulation. The *Constitution of the Republic of Namibia*, adopted in February 1990, reflected the demand for gender parity in guaranteeing equality and freedom from discrimination on a number of grounds including sex (section 10(2)).<sup>48</sup>

The following sections examine how the Uukwambi Traditional Authority capitalized on this national momentum for change. Considering the dominance of men in all three interwoven domains of customary rule — leadership, dispute settlement and normative content — the transition towards gender equality was not an easy one. It is thus important to understand how such change was facilitated, both from the perspective of expanding reforms to greater Namibia, and the potential for recreating the conditions supporting such processes in other customary contexts.

## 5. Women traditional leaders

### 5.1 Promoting women's leadership

The Uukwambi Traditional Authority and Chief Iipumbu in particular, have actively promoted women's leadership, both in public speeches and by appointing women at various levels of traditional leadership. This included the appointment of a woman deputy, *meme* [Mmes] Lahya Shivolo, in the Traditional Council to preside over its meetings in the absence of the Chief. She recounted the active role of Chief Iipumbu in promoting women's leadership:

The chief went to tell the people that women can also be leaders. He referred to Queen Elizabeth. The chief called the senior headmen to tell their people that this is what it should be now. He also organized meetings from one village to the other, trying to make people understand. He was everywhere in Uukwambi, up to the most remote villages. The chief was really working hard, trying to bring women at the same level as men. The chief is very hardworking. He brought men and women together, united them.<sup>49</sup>

As a result, Uukwambi has seen a significant rise in women traditional leaders. Currently, one of the five district senior councilors is a woman, and in the three districts where interviews were conducted, the proportion of women ranged from approximately one out of four (in Onamega District) and one out of five (in Ogongo District), to a mere one out of 19 (in Otuwala District). According to one headman in Onamega District: "the senior headman tells people around him that if they see a woman capable of leading, she must be the first choice."<sup>50</sup> Although still heavily outnumbered by headmen, this represents a significant change from traditional rule of ten years ago.

### 5.2 The flexibility of traditional leadership positions

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<sup>47</sup> Becker, above n 4, 47.

<sup>48</sup> Article 10 of the *Constitution of the Republic of Namibia 1990* provides that all persons shall be equal before the law and that no one may be discriminated on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. With this Article, the Constitution follows Article 1 of the *Universal Declaration of Human Rights 1948* ('UDHR') as well as Article 2 of the *African Charter on Human and Peoples' Rights 1981*.

<sup>49</sup> Interview (16 November 2009).

<sup>50</sup> Interview 47, with a headman (18 December 2009).

A number of forces facilitated the introduction and acceptance of women's traditional leadership, including the general relaxation of the rules regarding the selection of traditional leaders in the Uukwambi Traditional Authority, at least at the lower levels of the traditional hierarchy. Traditionally, a successor was selected from the family of the last leader. Originally, there was a preference for a member of the former headman's matrilineal family, but it was not uncommon for the son of a traditional leader to succeed his father if no matrilineal family members were deemed eligible. Over time, it became common for a headman to nominate one of his sons or grandsons. Today, the criterion of belonging to the same family is no longer decisive (although it is still often preferred if a suitable candidate is available). One elder explained that a village's preference for someone unrelated to the former headman might be linked to the likelihood that a family member will take over the preferences and hostilities of the former headman.<sup>51</sup>

The new flexibility of traditional leadership positions is combined with an increased space for female leadership, for various reasons and in different ways. First, it increased the eligibility of a headman's widow, because they "have been around their husbands and have witnessed him as headman..."<sup>52</sup> In other situations, headwomen were not appointed because they were related to the former headman, but because their personal commitment and accomplishments made them popular candidates for the position of village leader. A third situation was where there was a lack of men with the necessary leadership qualities.

Another interconnected gradual change observed in Uukwambi is that villagers are demanding to have more influence in the selection of a new headman/woman, which was traditionally a privilege of the chief and the senior headmen.<sup>53</sup> For instance, in Oshandumbala, a process of election was being negotiated after the death of an unpopular headman. In another village, the fact that the headman was not selected by the people was offered as explanation for his unpopularity.<sup>54</sup> The survey showed that these feelings were widely shared among the population: 93 percent of 161 Uukwambi respondents agreed or strongly agreed with the statement, "It would be a good idea if headmen and headwomen would be elected by the people".

### 5.3 Acceptance of women traditional leaders

Women appointed to leadership positions around the time of independence recall a difficult start: men were reluctant to accept their new role and largely excluded them from traditional court and village meetings. This seems to have changed over time: headwomen and the senior headwoman who took up their positions more recently have not reported overt resistance. During interviews, these women stated that people were happy when they became the new leader and that many came to congratulate them.

A number of respondents opined, however, that women had a restricted scope of operation compared to their male counterparts. For instance, while a new headman can select his own council, a new headwoman must select her councilors in consultation with male elders. In addition, men still find it difficult to agree to a decision made by women only, whereas women do accept decisions made by men only. To be able to operate effectively, it is therefore strategically important for a headwoman to include men in her committee and ensure that headmen from neighboring villages attend her court meetings.

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<sup>51</sup> Interview 44, with an elder (17 December 2009).

<sup>52</sup> Interview 47, above n 50.

<sup>53</sup> The trend to allow non-family members of a headman/headwoman to become the new village leader is also found in other traditional authorities, such as Ondonga Traditional Authority. Here, however, the power to select is shifted from the headman/woman to the senior headman/woman rather than to the community. Community influence regarding the selection of new headmen/women is still very much in its infancy in this Traditional Authority (Interviews 31, group discussion with women (11 November 2009); Interview 51, with headman (5 January 2010); Interview 52, with headman (8 January 2010); Interview 53, with a senior traditional councilor, Ondonga Traditional Authority (8 January 2010).

<sup>54</sup> Interview 49, group discussion with women (29 December 2009).

It is to be expected, and was often suggested during interviews, that the acceptance of women traditional leaders is linked to their performance. In the survey, therefore, several questions were asked regarding the performance of men and women leaders. These data indicate that a large majority believed that their headwoman was doing her job well, with no significant difference between male and female respondents. There was a slight, but insignificant difference in how the performance of headmen was regarded (Table 1). In the same vein, respondents in villages with women leaders described the relationship with their village leader almost identically to respondents in villages with men leaders (Table 2). Here also, the gender of the respondents did not account for a substantial deviation in opinion. The statistical data regarding the senior headmen/woman reveal similar opinions: leaders of both sexes were assessed similarly<sup>55</sup> and received strong support from men as well as women (Table 3).

Table 1. "My headman/headwoman does his/her job well"

	The village leader is a woman (n=51) (%)	The village leader is a man (n= 101) (%)
Strongly agree	23.5	28.7
Agree	56.9	53.5
Neutral	7.8	7.9
Disagree	11.8	9.9
Strongly disagree	0	0

Table 2. "The relationship between you and your headman/woman"

	The village leader is a woman (n=54) (%)	The village leader is a man (n=108) (%)
Very good	33.3	34.3
Good	40.7	40.7
Neutral	11.1	10.2
Bad	13.0	13.0
Very bad	1.9	1.9

Table 3. "The senior headman/headwoman does his/her job well"

	Ogongo (SHW) Women (n=15) (%)	Ogongo (SHW) Men (n=17) (%)	Onamega (SHM) Women (n=21) (%)	Onamega (SHM) Men (n=11) (%)	Otuwala (SHM) Women (n=41) (%)	Otuwala (SHM) Men (n=35) (%)
Strongly agree	26.7	17.6	28.6	36.4	31.2	34.3
Agree	66.7	76.5	57.1	54.5	56.2	57.1
Neutral	0	0	4.8	0	3.1	5.7
Disagree	0	5.9	9.5	9.1	9.4	2.9
Strongly disagree	6.7	0	0	0	0	0

SHW = senior headwoman; SHM = senior headman

One interesting finding from the survey data is that, while men and women assessed headwomen more or less similarly, and that this assessment did not substantially differ from women's assessments of headmen, these same headmen were assessed

<sup>55</sup> When the answers are given based on a five-point scale from 1 (strongly agree) to 5 (strongly disagree), the means per district are: 1.94 (Otuwala District – senior headman); 1.91 (Onamega District – senior headman); 1.94 (Ogongo District – senior headwoman). These differences are not significant.

significantly more positively by male respondents (Table 1b).<sup>56</sup> With regard to senior traditional leaders, the senior headwoman and the senior headman of Onamega District were assessed almost identically by male and female respondents. Only Otuwala District showed a significant difference between male and female respondents, again indicating that men assessed their male leader more positively than did women (Table 3b).

Table 1b. “My headman/headwoman does his/her job well”

	Villages with headwomen (mean)	Villages with headmen (mean)
Men	2.05	1.78
Women	2.10	2.11
Total	2.08	1.99

Table 3b. “My headman/headwoman does his/her job well”

	Otuwala district (SHM) (mean)	Onamega district (SHM) (mean)	Ogongo district (SHW) (mean)
Men	1.77	1.82	1.94
Women	2.07	1.95	1.93
Total	1.94	1.91	1.94

#### 5.4 Gendered leadership *in abstracto*, an incomplete change in mentality

The performance, and relatedly, the acceptance, of specific female traditional leaders should be distinguished from people’s opinions on male and female leadership *in abstracto*. In the research, therefore, several questions addressed people’s opinion on the suitability of men and women as leaders, and people’s gender preference.

The interviews highlighted that the shift in mindset required for women to occupy a fully equal role in traditional leadership functions is not nearly complete. Many headmen still saw their sons as the preferred candidate to succeed them, and their daughters as substitutes if sons were absent or unsuitable. They often referred to tradition as the reason for their opinion. Others also favored a male leader, either pointing to tradition or to what they considered character traits of men and women. The latter provides an insight into the characteristics deemed important for traditional leaders, and in the interviews, these centered on the dichotomies patient/impatient, forgiving/resentful, active/lazy, and powerful/weak. In the survey, the respondents listed the following character traits of a good headman/woman: he/she needed to be fair and honest (mentioned by 80 respondents); he/she needed to listen to and solve problems (49 respondents); he/she needed to treat people equally (41 respondents); he/she needed to be strong and powerful (39 respondents); and he/she needed to be educated and intelligent (33 respondents).

When respondents were then asked whether men and women have these above character traits in equal measure, a large minority of the women and more than half of the men answered that men possessed these qualities in larger measure than women (Table 4). This is consistent with the recorded preferences for male or female leadership. Headmen were preferred over headwomen by a majority of the male respondents as well as a large minority of the female respondents (Table 5). In a similar vein, only 21 percent of male respondents and 43 percent of female respondents supported the statement that more traditional leaders should be women (Table 6). The answers to the statement “Men generally make better leaders than women” similarly show that men were still regarded as the most suitable leaders (Table 7).

<sup>56</sup> Villages with headmen display a significant, albeit small, relationship between the gender of the respondent and the performance assessment of the village leader ( $r = .181$ ,  $p$  [one-tailed]  $< .05$ ). Such a correlation is not found in villages with a woman leader.



Table 4. "Do women and men have the necessary qualities for leadership in equal measure?"

	Women (n=89) (%)	Men (n=66) (%)	Total (n=155) (%)
Yes	41.6	36.4	39.4
No, men more	40.4	53.0	45.8
No, women more	15.7	9.1	12.9
Do not know	2.2	1.5	1.9

Table 5. "If you could vote for a new traditional leader in your village, would you prefer a headman or a headwoman?"

	Women (n=92) (%)	Men (n=66) (%)	Total (n=158) (%)
Headman	37.0	57.6	45.6
Headwoman	26.1	7.6	18.4
No preference	37.0	34.8	36.1

Table 6. "It would be good if more traditional leaders were women"

	Women (n=90) (%)	Men (n=67) (%)
Strongly agree	12.2	3.0
Agree	31.1	20.9
Neutral	7.8	16.4
Disagree	47.8	44.8
Strongly disagree	1.1	14.9
<b>Mean</b>	<b>2.94</b>	<b>3.48</b>

Table 7. "Men generally make better leaders than women"

	Women (n=92) (%)	Men (n=67) (%)	Total (n=159) (%)
Strongly agree (1)	27.2	41.8	33.3
Agree (2)	17.4	20.9	18.9
Neutral (3)	3.3	1.5	2.5
Disagree (4)	42.4	25.4	35.2
Strongly disagree (5)	9.8	10.4	10.1
<b>Mean</b>	<b>2.90</b>	<b>2.42</b>	<b>2.68</b>

With regard to the latter two statements, "It would be good if more traditional leaders were women" and "Men generally make better leaders than women", the gender of the respondents accounts for a substantial deviation in opinion.<sup>57</sup> When the gender of the village leader was taken into account, the data show that male respondents living in villages led by a headman were significantly more negative towards increased women's leadership than the female respondents in the same villages,<sup>58</sup> and more negative than male respondents in villages headed by women<sup>59</sup> (Table 6b). Similarly, with regard to the statement "Men generally make better leaders than women", both male and female

<sup>57</sup>  $r = .222$ ,  $p$  (one-tailed),  $< .01$  for the statement "It would be good if more traditional leaders were women";  $r = .156$ ,  $p$  (one-tailed)  $< .05$  for the statement "Men generally make better leaders than women".

<sup>58</sup>  $r = .274$ ,  $p$  (one-tailed)  $< .01$ . There is also a small but non-significant effect ( $r = .148$ ) between the gender of the respondent and their opinion in villages with headwomen.

<sup>59</sup>  $r = .214$ ,  $p$  (one-tailed)  $< .05$ .

respondents in villages headed by women scored significantly higher (indicating a lower agreement with the statement) than respondents in villages headed by men,<sup>60</sup> with significantly lower scores from male respondents (Table 7b).<sup>61</sup>

Table 6b. "It would be good if more traditional leaders were women"

	Villages with headwomen (mean)	Villages with headmen (mean)
Men	3.21	3.63
Women	2.83	3.00

Table 7b. "Men generally make better leaders than women"

	Villages with headwomen (mean)	Villages with headmen (mean)
Men	3.00	2.09
Women	3.03	2.84

When aggregating the data discussed above, two patterns become visible. First, in villages led by a headman, male respondents had a significantly more negative view of female leadership than female respondents,<sup>62</sup> a difference that was not found or that was much less than in villages with headwomen. Second, male respondents showed a more positive general attitude towards female leadership *in abstracto* when living in a village led by a woman compared to males living in a village led by a man.<sup>63</sup> The latter indicates that men's opinions about gendered leadership — whether based on traditional values or preconceived opinions regarding the character traits of men and women — undergo significant change as a result of exposure to successful female leadership.

## 6. Participation of women in traditional courts

Customary courts in Uukwambi, as elsewhere in Owambo, play a major role in the resolution of local disputes. Dispute settlement is by far the most time-consuming task of traditional leaders in Namibia. During the colonial period, women were largely excluded from active participation in the traditional judicial arena. Today, both men and women are free to participate, and women do so to a large extent. This section narrates how this change was brought about, and to what extent the opening up of traditional dispute settlement proceedings to women combined with the introduction of women traditional leaders have led to women's empowerment. It tries to answer the questions: Do women feel they can speak up and actively participate? Do they have an influence on the proceedings? Are they satisfied with the performance of the courts?

### 6.1 Stimulating women's participation

In 1993, an important event in the gender mainstreaming of participation in traditional courts took place at a Customary Law Workshop of Owambo Traditional Authorities in Ongwediva. At this meeting, it was unanimously decided that women should be allowed to participate fully in the work of community courts. According to Becker,<sup>64</sup> this resolution, which was subsequently incorporated into Uukwambi's written customary laws,

<sup>60</sup>  $r = .152$ ,  $p$  (one-tailed)  $< .05$ .

<sup>61</sup> Male respondents living in villages with male leaders agreed significantly more with the statement, "Men generally make better leaders than women" than male respondents in villages headed by a female leader ( $r = .254$ ,  $p$  (one-tailed)  $< .05$ ).

<sup>62</sup> In villages led by a headman, the gender of the respondent was significantly related to the respondents' view on female leadership ( $r = .242$ ,  $p$  (one-tailed)  $< .01$ ).

<sup>63</sup> There is a significant relationship between the answer of male respondents to the statement "Men generally make better leaders than women" and the gender of the village leader,  $r = .254$ ,  $p$  (one-tailed)  $< .05$ . A similar relationship exists with regard to the question "Do women generally make better leaders than men",  $r = .204$ ,  $p$  (one-tailed)  $< .05$ .

<sup>64</sup> H Becker, *Community Legal Activator Programme, Evaluation Report*, CASS Papers No. 35 (1995) 7.

gave momentum to a process to involve women more actively in political and judicial decision-making. Following the 1993 workshop, the Uukwambi Traditional Authority called a meeting of all Uukwambi headmen, where they were told that a female representative and advisor had to be selected in each village. It was also communicated that women were to be encouraged to actively participate in traditional court meetings. Further, the new representatives were expected to actively participate in hearings of customary courts and generally act as deputies to the headmen in order to enhance the equal representation and treatment of women in the customary arena.<sup>65</sup>

As noted above, the resolution of the Owambo Traditional Authorities on women's participation in traditional courts and the installation of women representatives in Uukwambi<sup>66</sup> need to be placed within their temporal context, including the prominence of women's rights in Namibian politics and the inclusion of gender equality provisions in the Namibia Constitution (1990). As one headwoman recounted:

The idea to install women representatives came after independence. The news of the law [the Constitutional provision on gender equality] was spread all over the country. It was passed on to the kings and chiefs, and from them to the senior headmen, the headmen and the villagers. Then the chief [of Uukwambi] decided that every village was to have a women representative.<sup>67</sup>

In 1992/1993, in Uukwambi, another initiative was carried out with the aim of improving women's involvement in judicial decision-making, by the Centre for Applied Social Sciences (CASS) Legal Department. Research conducted in the three northern areas of Uukwambi, Ombalantu and Oukwanyama Traditional Authorities revealed that women had limited knowledge of, and lacked access to, the customary justice system.<sup>68</sup> Many women felt that customary law and the customary judicial system neglected their concerns. They particularly complained that they were excluded from active participation in customary courts. Since the research project showed a clear need for community-based legal education, it was followed by a training program for Community Legal Activators (CLA) with a strong emphasis on gender relations.<sup>69</sup> The aim was that CLAs would: i) assist traditional leaders and customary courts; ii) provide information about and advice on law to community members; and iii) help solve disputes between community members without going to the traditional court.<sup>70</sup> Uukwambi was chosen as the area for the CLA project, on the basis of logistic as well as political considerations, including that the Uukwambi Traditional Authority had made significant progress promoting "indigenous reform of customary law and the status of women" and showed an overt interest in cooperating in a project to improve the administration of justice in customary courts and the legal status of women.<sup>71</sup> The Chief of Uukwambi and the Secretary of the Traditional Authority were among the participants of the course and still have their certificates nailed to their office walls. A number of the women participants in the CLA course were among the first women representatives elected at the village as well as the district levels.

## 6.2 A mixed response

There was a mixed response to this changed situation from village headmen. A number of them welcomed the idea and encouraged the women to discuss their problems with the women representatives. Other headmen, however, felt insecure and threatened. As

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<sup>65</sup> Ibid 271.

<sup>66</sup> A similar increase in women's participation in traditional court meetings has been described with respect to Botswana, by Chief Linchwe II (quoted in Keulder, above n 6, 9).

<sup>67</sup> Interview 36 with headwoman (20 November 2009).

<sup>68</sup> Namibia Development Trust (with assistance from SIAPAC Namibia and CASS), *Improving the Legal and Social-Economic Situation of Women in Namibia: Uukwambi, Ombalantu and Uutwanyama*, (1994) ES 9

<sup>69</sup> This program was carried out between July 1994 and May 1995 by the CASS.

<sup>70</sup> Becker, above n 64, 15.

<sup>71</sup> Ibid 6-7.

one traditional councilor explained, "In some villages, the headmen think the women representatives want to take over the village. Those old men, it is not easy to make them understand something."<sup>72</sup> But it was not only headmen who resisted the new role of women. Criticism and gossip came from many sides, including from other women. Female representatives sometimes dropped out or became inactive due to criticism, or because they did not know what to do due to a lack of training and education. Those who persevered currently play an active role in traditional court and other village meetings, and appear to serve as important role models, encouraging other women to participate in community affairs. At the level of the district court and the chief's court, women also play a prominent role.

### 6.3 Women in traditional courts today

The scene of the traditional justice domain in Uukwambi has changed dramatically since independence in 1990. There are an increasing number of women traditional leaders and representatives at court cases at the village, regional and Traditional Authority levels. These women are active participants in representing and discussing cases, questioning parties and witnesses, and deliberating on the actions and decisions of the court. Ordinary women are also present in large numbers and even outnumber the men in many villages. This should be understood, however, within the specific context of the high out-migration which characterizes the rural areas of northern Namibia. This phenomenon, caused by the poor economic situation in rural areas, has resulted in a high percentage of women-headed households.<sup>73</sup> A concomitant of this out-migration is that the majority of the men who do remain in the villages are generally very young or very old. Also, with regard to the rest, it was felt that they were not of the most enterprising character. The adult men are largely regarded as 'good-for-nothings', often addicted to alcohol and spending much of their days in the local bars (*shebeens*). Despite their limited presence at traditional court meetings, men seem to accept the decisions taken by these traditional courts. According to a traditional councilor, "they can't resist. When we tell the men, 'the law says...' they will comply. There is nothing else they can do. The law is clear."<sup>74</sup>

At many court meetings, women are expressly encouraged to actively participate in the proceedings. At one of the senior traditional councils, the chairman always addresses the women at the beginning of a court session: "You women have been neglected. Now it is time for change. So if you see something you don't like, speak up. Everyone now, watch carefully. Stand up and speak if you think something is not right, or if you don't understand something."<sup>75</sup> In addition, observations during court meetings indicate that many women in fact do so: women as parties and as witnesses speak plainly, seemingly unafraid to vent their anger and irritation with the opposing party, and occasionally sternly refuse to cooperate towards reaching an amicable settlement that involves a compromise. There does not seem to be an easily discernable difference of style in behavior and speech between men and women as parties and as witnesses.<sup>76</sup> Many claim, however, that this is not the case for all women. Older women in particular still believe that only men can make sound decisions and therefore remain quiet during court proceedings.

At higher levels of the court hierarchy, men continue to make up the majority due to the still skewed number of men compared to women traditional leaders. Nevertheless, change is also profound at this level. As Chief Iipumbu states: "there has been a big improvement for women since the mid-1990s. Now at every traditional court proceeding,

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<sup>72</sup> Interview 32 with traditional councilor (16 November 2009).

<sup>73</sup> A 1994 study shows that 86 percent of the women married to out-migrants see their husband 0-3 times per year (Namibia Development Trust, above n 69).

<sup>74</sup> Interview 32 with traditional councilor (16 November 2009).

<sup>75</sup> Interview 47, above n 50.

<sup>76</sup> Personal observation during court meetings.

you see many women. Also in higher positions. See this court. It was not like this before.”<sup>77</sup> At these higher court levels, women are said to be more active than men. A woman’s representative describes the present-day practice at the senior headman’s court: “the headwomen come. Many headmen fail to come. Men don’t do their job properly. Men don’t care. Only women are prepared to take responsibilities. In fact, the senior headman encourages women to take over as village leader[s].”<sup>78</sup>

#### 6.4 Women’s empowerment

At the beginning of section 6, the question was raised whether the changes in practice have had an empowering impact on women. This subsection analyzes whether the opening up of traditional courts has resulted in a positive perception of women and their role in them; and further, whether such perceptions are influenced by the gender of the traditional leader in the respondent’s village. When discussing perceptions of the traditional courts, it is important to highlight that approximately two-thirds of respondents had never attended a traditional court meeting in their village. Thirty-two percent of the respondents had participated in court meetings, but only 8 percent reported to have attended “many times” or “almost always”. Traditional court meetings therefore do not engage the majority of the adult population of a village.

The 51 respondents who answered that they had attended court meetings showed high satisfaction with traditional court performance: only 18 percent reported a need to improve the performance of traditional courts.<sup>79</sup> Male respondents reported a slightly higher need to improve the performance of traditional courts led by headwomen, compared to those led by headmen. Female respondents, on the other hand, were more negative about the performance of traditional courts led by headmen than by headwomen.

When these same respondents were asked whether they felt they could actively participate in proceedings, 72 percent of female respondents and 92 percent of male respondents answered positively, and 28 percent of female respondents felt that they could not actively participate. Women were more positive about participation in villages led by headwomen than by headmen (Table 10).

When confronted with the question of whether men or women were more influential in the traditional court in their village, 56 percent of female respondents and 60 percent of male respondents believed that power was equally divided, with most of the others claiming that men enjoyed more power than women. Opinions of male respondents did not differ with the gender of the village leader; however, female respondents believed that there was more equal power-sharing in villages with headwomen (Table 11).

When all respondents — including those who had never attended a traditional court meeting — were asked their opinion about the statement, “Men and women are treated equally in traditional courts”, only 9 percent did not agree. Both male and female respondents were slightly more positive about this statement where the traditional courts were headed by women as opposed to men. Similarly, only 6 percent of respondents disagreed/strongly disagreed with the statement “In the traditional court, women and men have an equal chance to get a fair decision or settlement”.

Almost half of all respondents stated that they found it difficult to speak up and give their opinion at a traditional court meeting. These data show a significant difference between men and women (women reporting more difficulty than men).<sup>80</sup> When disaggregated by

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<sup>77</sup> Interview 23 with Chief Iipumbu and Former Secretary (21 October 2009).

<sup>78</sup> Interview 29 with women representative (6 November 2009).

<sup>79</sup> 75 percent stated that there was no need to improve the performance of traditional courts as they are operating very well; 8 percent answered that they did not know.

<sup>80</sup>  $r = .057$ ,  $p$  (one-tailed)  $< .05$ .

court attendance, the data indicate that respondents who had never attended a traditional court felt that it was much more difficult to speak up than did respondents with actual court experience (Table 12).<sup>81</sup> Of those respondents who had attended a traditional court, 80 percent of the male respondents and 68 percent of the female respondents disagreed or strongly disagreed with the statement; 28 percent of the female respondents strongly agreed, compared to 4 percent of the male respondents (Table 12b). Further, the data indicate that male respondents found it easier to speak up in traditional courts in villages led by women compared to those led by men.

Table 10. “Do you feel that you can actively participate in traditional court proceedings?”

	Women (n=25)	Men (n=25)
<b>Villages with headwomen</b>		
Yes	5 (83.3%)	10 (100%)
No	1 (16.7%)	0
Don't know	0	0
<b>Villages with headmen</b>		
Yes	13 (68.4%)	13 (87.7%)
No	6 (31.6%)	0
Don't know	0	2 (13.3%)

N=51, missing=1

Table 11. “In the traditional court in your village, who do you think are more influential, men or women?”

	Villages with headwomen (%)	Villages with headmen (%)
<b>Women</b>		
Men	1 (16.7)	7 (36.8)
Women	0	0
Equal	5 (83.3)	9 (47.4)
Don't know	0	3 (15.8)
<b>Men</b>		
Men	3 (30)	4 (26.7)
Women	1 (10)	1 (6.7)
Equal	6 (60)	9 (60)
Don't know	0	1 (6.7)

N=51, missing=1

Table 12. “I find it difficult to speak up and give my opinion at a traditional court meeting”

	Never attended court (n=99) (%)	Sometimes (n=37) (%)	Many times (n=13) (%)
Strongly agree	31.3	18.9	7.7
Agree	32.3	8.1	7.7
Neutral	11.1	2.7	0
Disagree	20.2	51.4	46.2
Strongly disagree	5.1	18.9	38.5

<sup>81</sup> When the respondents were divided into two groups, those who attended a traditional court hearing and those who had not, there was a significant relationship between court attendance and perceived difficulty to speak up,  $r = .397$ ,  $p$  (one-tailed)  $< .01$ .

Table 12b. "I find it difficult to speak up and give my opinion at a traditional court meeting"

	Women who have attended court (n=25) (%)	Men who have attended court (n=25) (%)
Strongly agree	28	4
Agree	4	12
Neutral	0	4
Disagree	48	52
Strongly disagree	20	28

In summary, respondents generally perceived the treatment of men and women by the traditional courts as equal, as well as their chances of receiving a fair decision. At the same time, whereas a majority of respondents felt that women and men were equally influential in decision-making, there was a substantial minority who believed men to be more influential than women. Respondents who had never attended a traditional court meeting felt that they would find it difficult to speak up and give their opinion in court. Respondents with experience in traditional court meetings, however, were much more positive about their ability to speak up and participate. There was a marked difference between respondents in villages with a headwoman and those with a headman. Female respondents were significantly more positive about traditional court proceedings in female-headed villages, in terms of overall satisfaction, ability to participate in the proceedings, and the equal division of power among the sexes. Male respondents were slightly more positive about traditional courts in men-headed villages, but indicated that they spoke up more easily in courts in female-headed villages.

## 7. Ending 'property grabbing'

Substantive norms constitute the third gendered domain of traditional rule. Not surprisingly, the traditional system dominated by male leadership and dispute settlement included norms that were detrimental to women's rights. A salient example is the customary practice of the matrilineal family inheriting the deceased husbands' estate, which leaves the widow dependent on her husband's family unless she chooses to return to her own matrilineal family. Despite a customary obligation on the husband's family to support needy widows and children, widows and their children were often chased out of the family home. A related norm states that when women remain on the land they had occupied with their husbands, they are required to make a payment to their traditional leaders for the land in question. This section discusses the steps taken to adjust these customary norms and their effectiveness, specifically the extent to which people are aware of the new norms, and whether they have led to effective behavioral change.

### 7.1 Adjusting the norms

At the May 1993 Customary Law Workshop of the Owambo Traditional Authorities, leaders of six Owambo traditional communities came together to make recommendations for the various councils with the aim of harmonizing their customary laws. The traditional leaders present unanimously decided that widows should not be chased from their lands or out of their homes, and that they should not be asked to pay for such land again. This resulted in the following provision in the written *Laws of Uukwambi 1950–1995*: "Traditional law give[s] provision that, if one spouse dies the living spouse shall be the owner of the house" (section 9.2). Section 9.4 adds: "Any widow [who] feel[s] treated unfairly during the inheritance process has the right to open up a case against those with the headmen/women or senior headmen/women or to the women and child abuse center." The draft<sup>82</sup> version of *The Laws of Uukwambi Traditional Authority 1950–2008*

<sup>82</sup> This draft was still being discussed by the Traditional Council when the author left the field in February 2010.

reiterates these rights of the widow<sup>83</sup> and explicitly acknowledges that this right does not require any payment.<sup>84</sup> The Laws also physically complicate 'property grabbing' by stipulating in clause 9.4 that "[t]he widow or any other member of the bereaved family should feel free to walk around the house during the mourning period as it was before [the husband died]."

This normative change reflects a widely felt need among society members to enhance the position of widows, both at the local and national levels. Research carried out in 1992–1993 in Uukwambi found that when respondents were asked whether they agreed or disagreed with the statement "The husband's family should inherit all the property when the husband dies", 96 percent disagreed;<sup>85</sup> when asked whether "Women should be allowed to inherit land without having to pay", 97 percent agreed.<sup>86</sup> In line with this, in 1993, more than 100 women demonstrated against discriminatory inheritance laws at the highest court of the Oukwanyama Traditional Authority.<sup>87</sup> Another high-profile proponent of change was President Sam Nujomo, whose strong feelings on the topic were well-known to the traditional leaders assembled at the 1993 Customary Law Workshop of Owambo Traditional Leaders. Such local and national action combined to create strong pressure for normative change, which was taken up by the Traditional Authorities. Later, the protection of widows was also enshrined in national legislation: section 26 of the *Communal Land Reform Act 2002* (Act 5 of 2002) provides that upon the death of a holder of a customary land right, this right will be transferred to the surviving spouse. Section 42 adds that for this re-allocation, no compensation may be demanded or provided. These sections thus confirm the above-mentioned provisions in the written *Laws of Uukwambi 1950–1995* and other Owambo Traditional Authorities.

## 7.2 Legal awareness and behavioral change

Interviews conducted under the current research indicated that the changed norms have become widely known and enforced in Uukwambi. Many people were familiar with the new rules, and it was generally stated that there was a drop in the number of cases of 'property grabbing', both in traditional courts<sup>88</sup> and at Communal Land Boards (CLBs).<sup>89</sup> Widespread awareness was corroborated through the survey data, which show that, of the 162 respondents in Uukwambi, 82 percent were aware of the norm prohibiting 'property grabbing', and 81 percent, of the norm prohibiting payment to the headman/woman. Of the 132 respondents who were aware of the norm prohibiting 'property grabbing', 92 percent stated that they were unaware of any case of 'property grabbing' in their village in the past three years, compared to 8 percent who had heard of such a case. These figures are particularly striking when compared to another research project carried out in 1992–1993 in Uukwambi. In this research, when asked about property and inheritance in a customary marriage, 51 percent of the 600 female respondents answered that they were convinced that on the death of their husbands, all of the belongings of the husband would be transferred to his family.<sup>90</sup>

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<sup>83</sup> Clause 9.2: "The law states that (the/a) house belongs to the husband and wife and if the husband dies, then the house will belong to the wife."

<sup>84</sup> Clause 9.1.

<sup>85</sup> Namibia Development Trust, above n 68, 63.

<sup>86</sup> *Ibid* 63.

<sup>87</sup> Becker, above n 4, 48.

<sup>88</sup> At the court of one of the senior headmen of the Uukwambi Traditional Authority, they received only one case regarding 'property grabbing' in 2009.

<sup>89</sup> CLBs were established in 2003 in line with the *Communal Land Reform Act 2002* and tasked, *inter alia*, with dispute resolution on certain land matters. At the Omusati CLB, one of its members recounted that, in the first three-year term (2003–2006), they had received many cases on 'property grabbing'. In the second three-year term, this number was significantly reduced, and now, in the third term, they had not received any cases (Interview 35, with CLB member, Omusati Region, 18 November 2009). A member of the Oshana CLB confirmed this trend. They also did not receive any cases on 'property grabbing' in the third term of this CLB (Interview 48, with Headman/CLB member, 21 December 2009).

<sup>90</sup> Namibia Development Trust, above n 68, 62. The study revealed that, even when men write wills, their wishes are not taken into consideration upon their death (Namibia Development Trust, above n 68, 72).



As stated, 'property grabbing' and payments by widows to headmen to retain land were first outlawed in the written *Laws of Uukwambi 1950–1995* and later in statutory law. During interviews, both customary law and statutory law were referred to as sources of the new norm, and both institutions — the Uukwambi Traditional Authority and the Government — were perceived as enforcing agencies. It is difficult to clearly deduce which regulatory system has contributed most to the awareness of the norm. On the one hand, the data of the CLBs show that these institutions still received many 'property grabbing' cases in 2003–2006, and then saw a gradual decline up to the present, where there have been few cases. This coincides with the introduction of the *Communal Land Reform Act 2002*, rather than with the abolishment of the customary norm by the Owambo Traditional Authorities in 1993. On the other hand, the quantitative data show that 21 percent of respondents who were aware of the norm attributed its basis to statutory law, with 5 percent specifically referring to the *Communal Land Reform Act 2002*; 64 percent referred to customary law as the source; 14 percent did not know. A further important point is that respondents often noted that when both parents die, the inheriting child is not exempted from making a payment to the headman to retain the land. The fact that this practice contravenes the *Communal Land Reform Act 2002*<sup>91</sup> but not the written *Laws of Uukwambi 1950–1995*<sup>92</sup> suggests that knowledge of the content of the Act is at best incomplete<sup>93</sup> and that awareness of statutory norms may be stronger when they reflect customary norms.

## 8. Conclusion

### 8.1 Assessing impact

Gender mainstreaming of customary justice systems in Namibia presents formidable challenges since male dominance is visible in three interconnected domains: leadership, dispute settlement and normative content. All three domains need to be transformed if the ideal of gender equality is to be realized, as guaranteed under Namibia's Constitution. This chapter shows that the measures adopted by the Uukwambi Traditional Authority prompted certain positive changes in customary practice. The number of women traditional leaders has risen slowly but steadily since independence. These women are generally assessed as good leaders, and resistance by the population to their leadership role has decreased. Although *in abstracto* both men and women still regard men as the most qualified for traditional leadership roles — either due to tradition or the possession of certain character traits — the research data demonstrate that current women traditional leaders are assessed positively and that men living in villages led by a woman leader are significantly more positive about female leadership than are men living in villages led by a male traditional leader. This is important for legal development activities aimed at increasing gender equality because it suggests that exposure to relatively successful female traditional leadership may modify men's opinions about female leadership more generally.

The scene of traditional court meetings has changed enormously since independence. Women traditional leaders, women representatives and ordinary women are present in large numbers, often outnumbering men. These women are encouraged to play an active role in the proceedings, and many of them do. The transformation is not complete, however; some women still feel inhibited and perceive the traditional court as a male arena. Only approximately one-third of respondents stated that they attended traditional court meetings in their village. The majority of these people were positive about the performance of the court and their ability to participate. A large majority of total

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<sup>91</sup> Section 42 of the *Communal Land Reform Act 2002* prohibits the payment of any consideration for the allocation of any customary land right excluding registration costs.

<sup>92</sup> Section 9 of the *Laws of Uukwambi (1950–1995)* mentions only the surviving spouse.

<sup>93</sup> Limited public awareness of the *Communal Land Reform Act 2002* is reported by L Ambunda and S de Klerk, 'Women and Custom in Namibia: A Research Overview' in O C Ruppel (ed) *Women and Custom in Namibia: Cultural Practice versus Gender Equality?* (2008) 43, 80.

respondents felt that men and women were treated equally and had an equal chance to obtain a fair decision or settlement. However, there was a marked difference between villages with headwomen and with headmen. Female respondents were significantly more positive about proceedings in villages led by women, in terms of their ability to participate and the equal division of influence between sexes. Male respondents did not make a distinction between the gender of their leader with regard to participation and influence, but they did indicate that they found it easier to speak up in villages led by women.<sup>94</sup>

In 2002, a new norm prohibiting 'property grabbing' by a deceased male's family was promulgated in the written customary laws of the Uukwambi Traditional Authority as well as in the *Communal Land Reform Act 2002*. Its content is widely known among Uukwambi village members and traditional leaders alike. Both at traditional courts and at the CLBs, the number of disputes dealing with 'property grabbing' has steadily diminished over the last decade. This case study thus presents a successful example of normative change, with far-reaching impact on women's lives in rural areas.

## 8.2 Success factors

Three important factors can be identified in the Uukwambi case study that set it apart from many other attempts to enhance the position of women regulated by customary law in Africa. The first is the simultaneous change undertaken in all three domains of traditional rule, *viz.* leadership, dispute settlement and normative content. These three domains are interconnected in such a way as to suggest that any effort to promote normative change needs to be holistic. Progress in one field stimulates progress in another, and lack of development in one field may inhibit positive change in others. The second factor is the complementarity of local and national efforts. The changes in traditional rule in Uukwambi neither resulted from direct state intervention, nor formed an isolated local initiative of the Traditional Authority or its chief. The change processes in Uukwambi were part of a broader effort in Owambo to harmonize customary laws and align them with the new national Constitution. This harmonization process was encouraged, legitimated and, at least in part, driven by the Namibian Government. Although officials were careful not to impose direct normative change, they made their ideas and normative views on some topics well known. The Owambo Traditional Authorities, in a bid to assert their relevance in independent Namibia, took heed of these 'suggestions'. The decisions made by the Owambo Traditional Authorities in turn legitimized change processes in Uukwambi. The active engagement of the Uukwambi Traditional Authority and the personal involvement of Chief Lipumbu greatly influenced the success and vigor of the reforms. It was therefore the concerted efforts at the national, regional (Owambo Traditional Authorities) and local levels that enabled the changes. The third factor was the momentum for change in Namibia following its independence. In particular in Owambo, where the high involvement in the liberation struggle created an intense identification with the new independent Namibia, the inclusion of women in national and regional government as well as the gender equality discourse in nationalist politics opened up possibilities for women in traditional rule.

## 8.3 Conclusion

This chapter demonstrates that the representation and participation of women can be connected to specific actions taken in Uukwambi. Although greater representation and participation *per se* do not automatically lead to more gender-sensitive administration of justice and politics,<sup>95</sup> this study suggests that both men and women assessed several aspects of traditional dispute settlement more positively in villages led by headwomen

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<sup>94</sup> Female respondents found it equally easy/difficult to speak up in villages led by women and by men.

<sup>95</sup> Keulder, above n 6, 7; D LeBeau and E M Lipinge (eds), 'Beyond Inequalities 2005: Women in Namibia', in *Beyond Inequalities 2005: Women in South Africa*, UNAM/SARDC (2005) 30-31. This study on government power shows that women's increased political representation in Namibia has not seen a corresponding increase in levels of political influence and in the quality of life for women.

than by headmen, and that both groups believed that the measures taken resulted in increased rights protection for women.

Overall, the actions taken to introduce gender equality seem to have enhanced the fairness and equity of traditional rule and customary dispute settlement in Uukwambi, and thus present a successful attempt at women's legal empowerment. Of special importance is the finding that living under female leadership has led to more positive feelings in Uukwambi men towards female traditional leadership in general. Moreover, three factors had a decisive impact on the nature and success of change processes initiated by the Uukwambi Traditional Authority: simultaneous efforts in all three domains of traditional rule; concentered efforts at the local, regional and national levels; and the momentum for change in the new independent Namibia. These factors should be taken into account when replication is contemplated in other areas of Namibia or other countries that are similarly struggling to overcome gender biases in customary norms and practices.