
Final SHUR Conference:

“Human Rights in Conflict – the role of civil society”

4-6 June, 2009, Rome, Italy

‘Gender issues in conflict with culture: some concerns and constraints – the case of Botswana’

Author: Dr. Patrice Cailleba
IRMAPE
Groupe ESC Pau, France
patrice.cailleba@esc-pau.fr

Author: Dr. Rekha A. Kumar
Department of Law
University of Botswana, Botswana
kumar@mopipi.ub.bw

Panel aimed:

“4. Gender issues in conflict: what role for civil society?”

Short biographies:

Rekha A. Kumar is Professor of Human Rights Law in the Department of Law of the University of Botswana in Gaborone, Botswana. She holds a Doctorate of Law. Her researches are focused on Human Rights Law, public policy and HIV/AIDS.

Patrice Cailleba is Professor of Political Sciences in the Department of Strategic Management at Groupe ESC Pau, France. He holds a Doctorate of Philosophy (Paris IV-Sorbonne) and a Master in Commerce (ESCP-EAP). His researches focus upon political science, ethics and CSR.

500 word abstract for Panel 4: “Gender issues in conflict: what role for civil society?”

In Botswana, the society, like most other African countries, continues to operate under a dual legal system: an indigenously based customary legal system and the received law based on that of the former colonial state. Since the independence, indigenous peoples’ laws have continued to receive due recognition but they were not incorporated into the general law of the country. They should however be compatible with the written law and should not be contrary to morality, humanity or natural justice.

Yet, even when customary law passed these standards, the attitudes and methods adopted by the customary courts sometimes led to distortions. Customary law differs from tribe to tribe and is restrictive in its definition, acceptance and practice by each tribe. The contemporary customary courts fall under the Local Government unlike the common law courts which come under the Administration of Justice. The Courts are more accessible to citizens than the Received Courts because they are free since lawyers are not allowed to appear in court. Trials are often conducted in the local tongue. So courts generally reflect the traditions and attitudes of the local community and they often throw out quicker judgments because the cases are heard by the local chief or the presiding officer. They have both civil and criminal competence. Consequently, at least 80% of cases are handled in customary courts with the proportion estimated to be as high as 90% of civil and 85% of criminal cases.

The fact that constitution places a prominent status on custom in a range of contexts is of particular significance for women’s rights. In its application it reinforces the social order by determining the obligations of men, women and children, their entitlement to resources, property ownership, marriage and divorce. It formulates such matters as the status of widows, child custody and inheritance. In the absence of a guarantee that equality between men and women takes precedence over custom, traditional practices that discriminate against women may be lawful in some circumstances.

There are a number of regional and international human rights instruments ratified by Botswana. The Government has assumed an obligation to ensure that at all its levels of administration basic rights of the people will be respected and protected. How far these legally bind Botswana in its domestic application of customary law is a legitimate question not clearly settled so far.

This paper will examine how customary law may be contrary not only to the country’s obligations but also to basic human rights of people. Doing so, the paper will investigate the role of some civil society organizations which act as promoters of democracy and defenders of human rights. It will finally assess Botswana’s level of current legislative compliance with international obligations in order to identify priorities for working towards greater compliance in the future.

Introduction

Located north of South Africa, Botswana is a landlocked country of 582,000 square kilometers (bigger than France) with an estimated population of 1.8 million people (less than Paris). The population of Botswana¹ is mainly indigenous Africans, the majority being Tswana, speaking *Setswana*. There are also small minorities of *Kalanga*, *Basarwa*, *Kgalagadi*, and other peoples, but the name Batswana is an all embracing term used to refer to all citizens of the country. When it became independent in 1966, Botswana was one of the poorest nations of the world. After 40 years of terrific annual growth (an average of 9% between 1966 and 1999 – the highest growth rate on earth), Botswana had the third African GDP per capita in 2007. The same year, Batswana people were richer than South African people (World Bank, 2009). Botswana has made history by graduating from being classified as one of the least developed countries in the world to a middle income developing country (Muchiru and Ekpo, 2006). Furthermore, in comparison with other African countries, Botswana is considered a 'shining liberal democracy', with elections held every five years, an independent judiciary system, and low levels of corruption (Carbone, 2005).

Nevertheless, what has been a tremendous economical success since 1966 has been accompanied by a gigantic curse in the health field. Since Botswana's first case of HIV/AIDS was reported in December 1985, the epidemic has progressed rapidly. Botswana ranks second in the world for HIV/AIDS prevalence (Muchiru and Ekpo, 2006)². Gender matter is at the heart of this health catastrophe. Conservative views of women based on tradition and deep-seated institutional cultures have fostered the development of the disease among urban and rural areas. Moreover, like most other African countries, the society continues to operate under a dual legal system: indigenously based customary legal system and the received law, based on that of the former colonial state.

In Botswana the core of personal law is very much the domain of customary law, in particular for women's rights. Since the majority continued to live a traditional manner of life, customary law continues to reign supreme in the areas of family and inheritance. In its application it reinforces the social order by determining the obligations of men, women and children, their entitlement to resources, property ownership, marriage and divorce. In the absence of a guarantee that equality between men and women takes precedence over custom, traditional practices that discriminate against women may be lawful in some circumstances.

There are a number of regional and international human rights instruments ratified by Botswana. The Government has assumed an obligation to ensure that at all its levels of administration basic rights of the people will be respected and protected. How far these legally bind Botswana in its domestic application of customary law is a legitimate question not clearly settled so far.

¹ If "Botswana" represents the country, "Batswana" is used for the people as a whole and "Motswana" is used for a person. The official languages are "Setswana" and English. But there are many others. Some other Setswana words used in this paper: Kgosi = Chief (pl. dikgosi); Morafe = Tribe (pl. Merafe); Bogosi = (Chieftainship – the institution); Kgotla = (Village Assembly, can also mean the court where cases are heard).

² According to 2004 Botswana MDG Report, the adult HIV prevalence rate has remained above 30% since 1995. Women are primarily the victims of HIV/AIDS. The 2002 HIV sentinel survey, conducted in all health districts, shows that in 2002 HIV prevalence rates among women aged 15-19 was about 21% and for women aged 15-49 years, it was above 35.4% (UNDP, 2004).

The paper neither intends to give a detailed picture of all customary practices ending up in human rights violations, nor to reflect negatively on the government of Botswana. Based primarily on NGOs and UN reports, it will first examine how customary law may be contrary not only to the country's obligations but also to basic human rights of people. Doing so, it may end up raising questions about some norms that pose a threat towards the full achievement of human rights of the most vulnerable group, while customary law is applied. Then, it will investigate the role of some civil society organizations which act as promoters of democracy and defenders of human rights. This paper will finally assess Botswana's level of current legislative compliance with international obligations in order to identify priorities for working towards greater compliance in the future.

I - Customary law and gender equality

Even if the Constitution and law ratified in 1966 prohibit governmental discrimination on the basis of sex¹, it does not prohibit discrimination by private persons or entities. The law prohibits rape but does not recognize the concept of spousal rape. It does not specifically prohibit domestic violence against women either. Prostitution was illegal but was widespread. The law does not prohibit sexual harassment in the private sector, although sexual harassment committed by a public officer is illegal. Nevertheless, since the end of the 1990s, the Government has increasingly demonstrated its political will to gender mainstreaming (Muchiru and Ekpo, 2006):

- The National Policy on Women and Development was implemented in 1996;
- The Convention on the Elimination of all forms of Discrimination against Women was ratified in 1997;
- The Botswana National Council on Women was established in 1999;
- The Gender Advocacy and Social Mobilization Strategy was developed in 1999;
- A Study on the socio-economic impacts of violence against women was completed and disseminated in 1999;
- Gender focal points persons for various ministries were identified in 2000;
- A "Step by Step Guide to Gender Mainstreaming" was published in 2002;
- Study tours were conducted in all the country;
- Support was provided for the commemoration of Sixteen Days Activism on Violence against Women and the International Women's Day;
- A disaggregated gender database for senior management positions in the public and private sectors was developed.

However, it has not been enough. The Constitution may be strictly followed in application of any law. The courts' independence may be enshrined in the Constitution. Anyway, there is no explicit provision making the constitution the supreme law of the land in Botswana. As Booie observed (2006), "this is assumed". According to the 2007 Country Reports on Human Rights Practices released by the Bureau of Democracy, Human Rights and Labor of the USA (2008), sexual discrimination persisted although women legally have the same civil rights as men. Clearly many traditional laws enforced by tribal structures and customary courts restricted women's property rights and economic opportunities. Traditional tribal law, also called customary law still limits gender equality.

Long before the establishment of the British Bechuanaland Protectorate in 1885, a variety of indigenous legal laws existed. They depended on the different tribal areas and were collectively

¹ Section 3, 1966 Constitution.

called customary law. Customary laws differ from tribe to tribe and are restrictive in their definition, acceptance and practice by each tribe. They all are unwritten. Knowledge of the customary law and its application is passed from Kgosi to Kgosi and to members of a particular community. The Customary Courts are more accessible to citizens than the Received Courts because they are free since lawyers are not allowed to appear in court¹. Furthermore, trials are often conducted in the local tongue². They have both civil and criminal competence³. At least 80% of cases are handled in the 500 customary courts spread across the country with the proportion estimated to be as high as 90% of civil and 85% of criminal cases⁴. Customary courts are administered by non-legally-trained individuals, without a codified guide. Therefore, it is more likely to reflect discriminatory perceptions – such as the second-rate place of women in society.

The definition of customary law is given under section 2 of the Customary Courts Act, 1969 and section 4 of common law and Customary Act (Booi, 2006)⁵. The 1966 Constitution of Botswana gave them legal recognition in its Chapter IV (Parliament), Part IV (Powers of Parliament):

“88 - Introduction of Bills

(2) The National Assembly shall not proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the person presiding, would, if enacted, alter any of the provisions of this Constitution or affect (...)

- (b) the organization, powers or administration of customary courts;
- (c) customary law, or the ascertainment or recording of customary law;
- (c) tribal organization or tribal property, (...)

The indigenous peoples' laws have not been incorporated into the general law of the country whereas they still constitute some of their fundamental bases.

Normally, customary law should be compatible with the Constitution and should not be contrary to morality, humanity or natural justice⁶. Yet, even when customary law passed these standards, the attitudes and methods adopted by the customary courts sometimes led to distortions⁷. This is not uncommon when traditional justice meets with the post-colonial (Roman-Dutch) system of justice.

Indeed, Customary Law continues to affect the personal and property rights of women. Men continue to be treated as the head of the family with guardianship rights over women and

¹ Section 32, Customary Law Act, Cap. 16:01.

² In Botswana, the official languages are Setswana (spoken by more than 70% of the Batswana) and English (spoken by a minority).

³ Sections 11-12, Customary Law Act. Courts adjudicate minor criminal offences under the Penal Code.

⁴ According to Integrated Regional Information Network (IRIN), Botswana. See also “*National Development Plan*”, Paragraph 20.6. Accessed at <http://www.ditshwanelo.org/bw/botswana.html>

⁵ The official definition of customary law is hard to find. The internet government site dedicated to law does not give access to such definition (in May 24th, 2009): “Access Forbidden. Access to the Laws of Botswana Online was mistakenly opened to the public between 4-14th May 2006 by the webmaster. The online format of the laws, in its present form, is only intended for use within the Government network. The issue of making Botswana Legislation available through the Internet is currently under active consideration. It is hope to make accurate and up-to-date electronic versions of the laws accessible to the public through the Internet in the foreseeable future. We sincerely apologise for any misunderstanding and inconvenience caused to the public”. Accessed on May 24th, 2009 at: <http://www.laws.gov.bw/Docs/Principal/Volume2/Chapter16/Chpt16-01%20Customary%20Law.pdf>

⁶ Section 2, Customary Law Act, Cap. 16:01.

⁷ See also Montle David Sekonpelo vs. Sebedi Keetile 1958 HCTLR 88.

children. The law does not specifically prohibit domestic violence against women, then abuse of women in Botswana is widespread. Customary law allows husbands to treat their wives in the same manner as minor children. Husbands may use corporal punishment to discipline their wives, which is common in rural areas. Greater public awareness and improved legal protection has resulted in increased reporting of domestic violence and sexual assault¹. But women stayed in abusive marriages for many years, because of their perception of the abuse, and the social factors that constrained them from leaving (Maundeni, 2002). In spite of the introduction of the Abolition of Marital Power Act (2004), women married under Customary Law are not covered by the legislation on abolition of marital power. The Government does plan to address marriages under Customary Law in the future, but there is opposition to the Abolition of Marital Power Act within the *Ntlo ya Dikgosi* (House of Chiefs²).

A mother has no maintenance rights under Customary Law when children are born out of wedlock. The father should pay the mother's father compensation for damaging the family reputation, but has no duty to support the child. The child's maternal grandfather has the duty of supporting the child of his unmarried daughter. This situation reflects the view that a woman remains her father's 'property' until marriage, when she becomes her husband's property³. Women in particular were constrained by the norm that compensation is available for first pregnancy only. Although it is possible to negotiate reduced compensation for second and subsequent pregnancies, bargaining during negotiations takes place 'in the shadow' of this norm, and places women in a position of disadvantage (Gallanter, 1981). A nyatsi (concubine) cannot claim any share from her boyfriend's estate⁴. In April 2008, a national daily newspaper reported:

"Traditionally, a man is like a bull. He can jump over the fence and mate with cows in the next kraal. Bonyatsi, or the keeping of concubines, has been part of the lives of most Batswana from time immemorial; it is one practice that has survived the test of time."⁵

Under Customary Law, if parents are married and separated, the custody of the children is traditionally granted to the father's family, with the mother only having the right to visit⁶. Where there is no written will (which is typically the case), male children's rights to inheritance under Customary Law take precedence over female children's rights, the latter sometimes being disinherited.

The underlying customary norms promote and maintain men's control of productive resources, primarily land. Inheritance is through the male line, thus further excluding women from gaining control of land (Molokomme, 1994). The ownership rights of a wife depend on the system under which she was married. A woman married under traditional law or in common property is viewed as a legal minor and requires her husband's consent to buy or sell property and land, apply for a bank loan, and enter into legally binding contracts. Women married under community of property

¹ Botswana Country Reports on Human Rights Practices - 2007. Released by the Bureau of Democracy, Human Rights, and Labor, 11th March, 2008.

² The House of Chiefs is a purely advisory institution. It has no legislative powers but it has much influence.

³ Accessed at <http://www.ditshwanelo.org/bw/gender.html#gencust>

⁴ Official statistics in Botswana suggest very high numbers of extramarital births and female-headed households. Botswana Central Statics Office, 2008, *Census 2001* Report, Table 14, total no. 136,698 (Country-wise).

⁵ Is bonyatsi relevant in contemporary society?, Mmegi 20th April 2007; Concubines, adultery through the eyes of the Kgotla, Mmegi, 25th April 2008.

⁶ Mokomane, Z., Laws affecting Unmarried and Married Women in Botswana: A Theoretical Review, Communication at the International Colloquium Gender, Population and Development in Africa, 2001 UEPA /UAPS /INED/ENSEA/IFORD, Abidjan. Internet document Accessed at:

http://www.wikigender.org/wiki/index.php?title=Gender_Equality_in_Botswana

are permitted to own immovable property in their own names and the law stipulates that neither spouse can dispose of joint property without the consent of the other. Under traditional law, unmarried women fall under the guardianship of their father and upon his death under the guardianship of his heir, who is then also granted ownership of any assets. Some traditional systems have relaxed this rule and now grant unmarried women legal capacity to varying degrees. Sedentarization has also undermined the former egalitarian gender relations in other ways. Shifting their subsistence resources to animal husbandry and crop planting, sex roles become more rigidly defined and women's work is seen as "unworthy" of men.

Botswana law does not recognize rape within marriage. However, studies in the area reveal the high level of abuse and rape within marriage in rural areas, most of which go unreported¹. Indigenous women experience an increase in domestic violence and sexual abuse. Alcohol contributes to spousal and child abuse, and alcohol-related violence, in general, a major cause of social conflict. The drop-out rates of young girls from schools is high, in part because of teen pregnancy and fear on the part of girls about remaining in what they see as exploitative situations².

The enrolment of girls in primary and secondary institutions is on par with that of boys (UNDP, 2004). Although the education system is based on gender equality, there continues to be socio-economic influences for girls being more likely to drop out, including looking after sick relatives, pregnancy (government policy allows girls to return to school after 84 days of leave, but in practice they rarely do)³ and forced into marriages under Customary Law. Although Common Law does not allow persons below the age of 18 to marry, under Customary Law a child can be married, which often results in girls being forced into marrying someone against their will. When married, they are also forced to leave school⁴.

Eventually, the effect of traditional culture which prefers negotiation as a solution to problems as opposed to court action, leads to unfair treatment of women perpetuating their minority status.

Customary law is often tribe-specific. When traditional culture does not effectively promote and defend gender equality⁵, then human rights can't be compatible and they threaten some part of these traditional cultures. A research study, which analyzed 25,110 news items produced during September 2002, found that news in Botswana, in various media channels was rendered primarily through the voices and perspectives of men. There are few women sources quoted in reports, other than stories relating to issues such as gender violence. The issues which female journalists allowed to cover were also limited, for example entertainment and the courts⁶. Such a strong influence of men on public views is likely to result in biased reporting and continue to reinforce

¹ Interestingly, after much debate, the issue of marital rape was left out because it was not compatible with the Penal Code. Domestic Violence Bill In The Offing, *Mmegi*, 23rd April 2007.

² Accessed at http://www.iwgia.org/sw9942.asp#516_10206

³ The Education Act, Chapter 58: 01.

⁴ Child marriage occurs infrequently and is largely limited to certain ethnic groups.

⁵ "Culturally, women had no say; they were supposed to be seen but not heard. Culture relegated women to a subordinate position where they were expected to respect men at all costs, and to know their boundaries as women. Cultural traditions made women overly humble. Cultural proverbs such as Mosadi, mosalagae ('a woman's place is in the home') perpetuated the under-representation of women in leadership and decision-making positions" (Peters, 2004).

⁶ The "Gender and Media Baseline Study", conducted by MISA and Gender Links. Internet document Accessed at <http://www.misa.org/genderandmedia/accountability.html>

the gender stereotypes in Tswana society. It clearly indicates that despite changes in Common Law, gender inequality continues to be strong in practice, especially in more traditional and rural areas. Women's subordination is deeply ingrained in the consciousness of both men and women. That's why feminist associations had to face many difficulties and challenges at the beginning.

II - The role of Civil Society Organizations

When using the concept of civil society, we refer to the realm of “voluntary self-generating and organized non-state organizations” (Molutsi, 1995). Civil Society Organizations are considered by the United Nations Development Program (UNDP) as partners who are complimenting development efforts government provides to its citizens. They represent the best organizations to understand local problems and needs as well as sometimes the only legitimate and credible local actors to implement policies and change conservative gender practices.

There were only two Non-Governmental Organizations existing in 1990 with the ability to analyse official policies and lobby the government. In 1991, there were 18 NGOs engaged in the formal policy-making arena (Osei-Hwedie et al., 2004). A study conducted by Holm, Molutsi and Somolekae in 1993-94 concluded that civil society in Botswana was weak in spite of the multiparty system and the development of private media (Holm *et al.*, 1996). In fact, Civil Society Organizations were primarily concerned with promoting the interests of their members and not so much with their relationship with the state (Somolekae, 1998). Ten years later, Carbone proposed the same analysis: “civil society in Botswana was rather weak” (Carbone, 2005). He provided four main reasons. First, authority was hardly questioned due to cultural reasons. The former royal family still incarnated power and authority within the leading BDP (Botswana Democratic Party). The role and dignity of Kgosi at national and local level kept on limiting volitions of emancipation. Second, yet a liberal and democratic state, the clientelistic governments nurtured a culture of dependency. From the first Botswana President Seretse Khama who ruled between 1966 and 1980 to his son Seretse Ian Khama who is ruling since 2008, the same party and within this party the same family seem to lead the nation. Third, the Government has for a long time denied the role of civil society as a legitimate player in the development process. Civil Society Organizations were labeled either as promoting foreign interests, or as infiltrated by the opposition (whose influence still remains weak). Then the State used the law to frustrate or to make difficult the initiatives and activities of these groups (Somolekae, 1998). Fourth, civil society was not a cohesive group and lacked funds. As the Government of Botswana was the primary source of finance for these organizations during years, it could define and circumscribe the role and influence of each of them.

Since the late 90s, one must observe that the availability of donor resources (inside and outside Botswana¹) has provided the means for the CSOs to mobilize and strengthen their capacity. The increased flow of funds to NGOs has been facilitated by Botswana's reputation as the model of democracy in Africa. Among those organizations, the women's groups had been excluded and isolated by the Government for years. Traditionally women's organizations were essentially

¹ In 2001, the worldwide famous rock group UB40 staged a special concert in their hometown of Birmingham to celebrate their 21st anniversary. As a result of an invitation to UB40 to join the United Nations' ongoing campaign to stop the alarming spread of HIV/AIDS, the group has released an amount of US\$ 75,000 [seventy-five thousand dollars] from the proceeds of that concert, to UNDP Botswana to disburse to deserving organizations in the area of HIV/AIDS (source: UNDP in Botswana). Accessed at: http://www.unbotswana.org/bw/undp/news_220604.html

welfare-oriented. But during the mid 1980s, radical women's groups appeared on the political scene. Furthermore, since 2000, numerous associations have championed particular interests. The growth of civil society in terms of numbers, membership, formal structures, has been outstanding (Osei-Hwedie, 2004).

First, the *Emang Basadi* Women's Association was formed in 1984 to lobby against laws which were discriminatory against women in Botswana. Some years before, the 1982 Citizenship Amendment Act had denied women married to non-citizen men the right to pass their citizenship to their offspring. Even if the reception was bad at the beginning, with other CSOs *Emang Basadi* began to organize and network Botswana's society step by step. Switching to a political agenda in the 1990s, it launched the Women's Manifesto. This manifesto promoted equal political participation and representation in public decision-making for women. Its launch occurred at the same time when political parties were drafting manifestos in preparation for the elections. Given that women were a natural majority among citizens and political parties considered the women's vote as a good opportunity to extend their electoral base, *Emang Basadi* helped to increase women's representation after the historic 1994 elections (from 5% to 11% of parliament seats). Then it tried to develop a longer term strategy of sustained political mobilization. In the 1999 party primaries and national elections, there were more women candidates than the total number for all previous elections¹. Nevertheless, women mobilization has obtained limited results so far. First, like most African political parties, Botswana's women politicians are most of the time spouses and associates of male politicians. They tend to support their partner – according to the so-called “First Lady” syndrome – rather than representing women's interests. Second, the “winner-takes-all” electoral system reduced the possibility for women to seat in the Parliament. Even though 45% of the electorate voted for the opposition, the latter only gained 18% of parliamentary seats. Third, the opposition parties are segmented into meaningless fragments² which prevent them from being represented at the Parliament.

Women acting in politics from all parties in Botswana founded the *Botswana Caucus of Women in Politics* (BCWP), a spin-off from *Emang Basadi*. The BCWP is a non-partisan organization constituted to provide a forum for solidarity and support as well as a united voice on gender issues. This is achieved through training, research, lobbying and networking for politically active women. The BCWP is committed to a society in which women and men have equal opportunities to participate in all spheres of public and private life (Peters, 2004).

The *Metlhaetsile* Women's Information Centre was created in 1991. At the beginning it was a village-based education and information center in Mochudi (40 km from the capital city of Gaborone) operating with a volunteered staff and board. With the approval of the local Chief Kgosi Linchwe II, the Center established a resource, counseling, and advice center. It conducted workshops, organized public meetings and published educational materials so as to introduce gender inequality into the country's consciousness (Andreopoulos, 1997). In 1998, its founder was appointed as a judge. Since then it kept on addressing complex dilemmas for women and their family to reduce the gender inequality gap.

¹ Onalenna Doo Selolwane, *The Emang Basadi Women's Association*, Feminist Africa, National Politricks, 2004. Accessed at <http://www.feministafrica.org/index.php/emang-basadi>

² For instance, the main opposition party, Botswana National Front, underwent a new split in the run-up to the 1999 elections.

The Botswana Centre for Human Rights, *Ditshwanelo*, is another CSO which has tried to influence human rights policy in Botswana. It was established in 1993 and since then has remained the only organization in Botswana dealing with all aspects of human rights. Most of the information available about gender inequality in Botswana are centralized and diffused by *Ditshwanelo*. It works to advocate for changes in laws, policies and practices, and to raise public awareness of rights and responsibilities. In 2000, together with women's NGOs, it lobbied for the adoption of the domestic violence bill to protect women and children. Jointly with the Women's NGO Coalition, *Ditshwanelo* publishes the "Know your Law" booklet on inheritance rights, which is particularly relevant to women in Botswana (*Ditshwanelo*, 2004). It participates to the University of Botswana Gender Policy & Programme Committee workshop on the establishment of the Gender Study Centre at the University. Moreover, it takes part to different projects like the Women's Shelter project established in 1998. In recognition of the magnitude of domestic violence, this project aims to assist women and their children who are survivors of domestic violence by providing them with temporary shelter, support and rehabilitation 24 hours a day (*Ditshwanelo*, 2004).

All NGOs dealing with the empowerment of women in Botswana joined up to form the *Women's NGO Coalition* as their umbrella body, representing them vis-a-vis the government. Women's NGO Coalition (WNGOC) is a network of non-governmental organizations, nonprofit making organizations that are concerned with the empowerment of women, particularly rural women. It promotes solidarity and facilitates lobbying and advocacy, through collaboration, networking and capacity building. Many organizations are part of the WNGOC. Besides those presented above, there are the Botswana Federation of Trade Union, the Cooperation for Research, Development and Education (CORDE), the Society of Women against AIDS in Botswana, the Women's Finance House Botswana, the Women Against Rape, the Women and Law in Southern Africa Research and Educational Trust (WLSA), etc. Particularly, the Botswana Federation of Trade Union aims to empower women on issues that affect them in and outside the workplace. It focuses on educating women on gender issues both at work and outside the workplace. As for the Women Against Rape (WAR) organization, it provides counseling, legal support and moral support to raped women. It lobbied for harsher sentences for rapists. As testimony to these CSOs achievements, tougher laws against rape were voted in 2004 and the 2004 Marital Power Bill abolished the common law rule that gave a husband power over his wife (Transparency International, 2007).

Since the early 90s, some things have changed as regards CSOs. Their number really flourished: they were estimated to include 150 indigenous NGOs, around 50 Community Based Organizations, about 23 Trade Unions and a handful of business associations (Transparency International, 2007). At the beginning of the millennium, they started being funded by international donors and private sources. Their impact on gender equality has been real: some women now hold a number of key positions and even female priests have been ordained by the Dutch Reformed Church¹. Some legal changes have been made as well (*Ditshwanelo*, 2003):

¹ Out of the 2005 Cabinet of 19 members, five are women. Of Botswana's 61 elected Members of Parliament, 11 are women. Of the 15 members of the 'Ntlo ya Dikgosi' (House of Chiefs), three are women.

Women hold a number of other key positions, including: The Central Bank Governor of Botswana: Dr Linah Mohohlo; The first woman Attorney-General – Dr Athaliah Molokomme, appointed 2005; The new role of Director of Public Prosecution – Ms Leatile Dambe, appointed in October 2005, following the enactment of the constitutional Amendment Act which created the post; University of Botswana Deputy Vice Chancellor for Student Affairs – Professor Lydia Nyathi-Ramahobo, appointed in 2005.

- The Citizenship Act was amended to enable Botswana women married to non-citizens can pass on their Botswana citizenship to their children (after the famous case of Unity Dow v Attorney-General in 1995).
- In 1998, the Penal Code was amended to have a gender-neutral definition of rape.
- The Abolition of Marital Powers Act of 2005 now gives both partners in common law marriage equal powers in the family. Prior to this legislation, women who were married were regarded as minors and policies in government departments and financial institutions demanded that a married woman obtained the consent of her husband to carry out any transactions and gave the husband all the property rights.
- The Deeds Registry Act has since been amended to enable women to register immovable property in their own names.
- The Mines and Quarries Act now allows women to work underground.

But as economic grew, international funding (private and corporate) have decreased and Botswana's State is now once again becoming the main sponsor of non-political activities. And much remains to do.

III - Botswana's legislative compliance with international obligations.

Botswana's Constitution guarantees the equality of all persons irrespective of their sex. This equality has been reconfirmed by Vision 2016¹ (2003), which also states the aim that by 2016:

“There will be no stereotypes associated with gender (...). There will be respect of human rights and no abuse of children and women”

Botswana's international commitment to basic human rights, thus, requires some adaptation of customary law. For instance, by virtue of its subsections 4 (c) and (d) under section 15 of the Constitution, the prohibition of discrimination on basis of ethnic origin or tribe does not apply in matters of personal and customary law, and subsection 9 authorizes implementation of discriminatory laws in force before entering the main spring of the Constitution². These exceptions cannot be justified under the International Convention on the Elimination of All forms of Racial Discrimination (ICERD) ratified in 1974.

On 17 July 1986 Botswana ratified the African Charter on Human and People's Rights (ACHPR), which seeks to eliminate discrimination against women and equality before the law. Ten years later, in addition to the Beijing Declaration and Platform of Action adopted at the Fourth World Conference on Women in 1995, Botswana signed and ratified on 13 August 1996 the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). This is the only human rights treaty that affirms the reproductive rights of women and targets culture and tradition as influential forces that shape gender roles and family relations. This Convention requires countries to take all appropriate measures to modify their constitution and legislation to accord with the articles of CEDAW or abolish existing laws,

Botswana also has ordained female priests in some of the major Christian denominations such as the Dutch Reformed Church. The decision to appoint a female priest within the Dutch Reformed Church was met with some hostility. (Ditshwanelo, 2007)

¹ Vision 2016 is Botswana's strategy to propel its socio-economic and political development into a competitive, winning and prosperous nation. Seven key goals have been developed to achieve this (Vision 2016, 2003).

² See the UN Treaty: http://www.unhchr.ch/html/menu3/b/d_icerd.htm

customs and practices that discriminate against women. The government signed and ratified it in 1996.

The following year, the Southern African Development Community (SADC) Declaration on Gender and Development was signed and ratified by Botswana. This Declaration included a commitment to having achieved at least 30% women in political and decision-making structures by the year 2005. Unlike some of the other SADC countries, Botswana has not introduced a quota system. According to the United Nations Development Programme 2005 report, women constituted 11% of parliamentary seats in Botswana.

Whilst public institutions are bound by the anti-discrimination provisions, there is no explicit extension to protect women from discrimination by any person, or organization under customary law. Article 14 of CEDAW obligates States Parties to put in place measures to ensure the equality of rural women. Country folk (women), in Botswana play a significant role in the economic survival of their families and communities although they are frequently disadvantaged in areas such as land ownership, health, education and housing to name a few. The achievement of substantive equality for rural women and compliance with CEDAW requires special measures to be incorporated into both the Constitution and legislation. Botswana, however, has not done so yet.

Similarly, Article 16 of CEDAW obligates to remove discrimination in family and personal laws including marriage, separation, divorce, maintenance, child custody, property division, paternity and inheritance¹. In General Recommendation 21 (1994), the CEDAW Committee states that the right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence². Women in Botswana do not enjoy equality in relation to the ownership, administration, enjoyment and disposition of property since patrilineal inheritance is given legislative status leaving men in control of land and property. The Article further requires that inheritance laws should apply for both sexes. Inheritance laws apply equally to males and females in Country under the Common law, but customary rules of inheritance may lawfully operate in conflict with the formal law. Unfortunately there is no national human rights machinery charged with promoting and protecting human rights including women's rights or funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women as required under Article 3.

Botswana is a party to the International Covenant on Civil and Political Rights (ICCPR) following its accession on September 8, 2000. Under Article 50 of the ICCPR Treaty³, the country has agreed to apply the provisions of the Covenant to all sectors without limitation or exception. Nevertheless, Botswana has not ratified the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women, which came into force on 22 December 2000. This Protocol provides international access to justice for women by allowing women who have been denied access within their own countries to have their claims reviewed by a committee of independent experts.

¹ See the UN Treaty: <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>CEDAW

² See the Gen. Recommendation n°21: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

³ See the UN Treaty: <http://www2.ohchr.org/english/law/ccpr.htm>

On a note about the status of children under customary law, recently introduced, Children Bill 2007, the government of Botswana has called, for the first time, increased involvement of parents and children in decision-making. The object of the Bill is to give effect to Botswana's obligations in terms of the Convention on the Rights of the Child (CRC¹) ratified in 2003 and the African Charter on Rights and Welfare of Child (ACRWC²). The Bill is currently under debate (Barbara, 2009). There is still widespread ignorance about CRC and child rights in Botswana (Godisang, 2009).

The extent to which customary law must conform to existing international human rights norms raises complex policy issues for the government. The international instruments are not directly applicable in domestic law, and not all rights provided for in the Covenants are addressed in the Constitution and legislation. The courts are required to interpret domestic law in a manner consonant with international treaties; the knowledge of the rights contained therein by the legal profession is limited³.

At the policy and legislative levels, substantial progress has been made towards gender equity. The substantive challenge lies in bridging the gap between progressive policy and legislative reforms on the one hand and tradition and deep seated institutional cultures that stand in the way of equal rights of citizenship for men and women on the other. The key challenge is therefore transformational (UNDP, 2004). It is one of aligning institutional and personal attitudes with progressive policies and laws. Such a transformation will require, amongst others:

- Putting in place a mechanism for monitoring gender inequalities

Effective action to promote gender equality requires an appreciation of the magnitude of the problem by a broader range of stakeholders. At present, critical information for gender related analysis is out of the public domain. An effective system of monitoring gender-related developments is essential. A number of institutions - the courts, the police, labour department, educational institutions, NGOs etc, generate raw gender related data. This should be pooled to generate a credible database and information that supports gender related policy analysis and advocacy.

- Changing social attitudes on the role and status of women within the community

Botswana's policies and laws do not discriminate on the basis of gender. At worst, some could be faulted for benign neglect but there are many that actively promote gender equality. Often, women suffer discrimination only because institutional practices and social attitudes respond to progressive policy and legislative reforms with a lag.

Public education to transform practices is thus a critical imperative for gender equality. Gender based discrimination is a human rights violation. Tougher measures, with due sensitivity where culture and tradition are concerned, should be employed where institutions engage in discriminatory practices or retain discriminatory provisions in their official documents – application forms etc. Mobilisation and sensitisation campaigns should be implemented to encourage women to participate in political, social and economic activities. Incorporating gender equality into rights publications, like teaching materials for schools and creating specific

¹ See the UN Treaty: <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

² See the UN Treaty: <http://www.un.org/children/conflict/keydocuments/english/africancharteron22.html>

³ See also Attorney General vs. Unity Dow, [1992] 1 BLR 158.

publications for women, such as Ditshwanelo's Guide on the Rights of Domestic Workers is a good idea.

- Promoting the ascent of capable women to positions of leadership

There is a connection between life outcomes for particular groups of society and their influence on leadership. Women's empowerment requires women in positions from which they can influence policy. Botswana has built significant momentum towards women's participation in political, corporate and civic leadership. The government should recognize women's roles and rights through affirmative action by having mandatory procedures to ensure a minimum quota of representatives being women. Many women already lead powerful institutions. The trend towards having more women in leadership should thus continue.

- Sustaining the trend towards greater diversity of education and training for women

The challenge is to facilitate the entry of men and women into disciplines that are traditionally dominated by the other sex, for instance, more women in engineering and more men in nursing. A second but no less important priority would be to eliminate gender specific constraints on learning. The girl child should be relieved of the burden of household responsibilities beyond normal chores essential for her wholesome development. And no child should have to sacrifice his/her opportunity for schooling in order to work.

- Developing micro finance to rural women

Rural women are involved in many income-generating activities (Joshi and Kirjavainen, 2002), such as buying and selling agricultural products, and are using modern agricultural technologies such as planting improved seed and using new machinery (e.g., grinding machines, and cassava slicing machines). The Government should increase women's access to revolving loan schemes, either as individuals or as a group.

Conclusion

Unlike in Western democracies, where there is a relatively close collaboration and even an electoral alliance between interest groups and political parties, the same is not true in Botswana. There is virtually no such relationship, by virtue of the fact that elections and representation are largely determined by 'ethnic loyalties' rather than "issues, government performance or even the personality of the candidates". This means that because interest groups are issue oriented, like Emang Basadi (women's rights), the labour movement (workers' rights) or Ditshwanelo (human rights), they have little leverage over rural politicians, who make up 80% of parliament and 90% of BDP MPs, because it is in rural areas that ethnic loyalties are strongest.

Party loyalty has in fact compromised the efforts of organizations such as Emang Basadi so far. Although these organizations appeal to women and parties in general to have more women in political office, it is difficult for women to vote for a candidate who does not belong to their party simply because she is a woman. Party membership seems to be a stronger commitment (Osei-Hwedie, 2004).

Like other government institutions, customary courts have been affected by the rapid transformation that Botswana has gone through since independence. It is a matter of contention now for the traditional courts that citizens are now more assertive and will not compromise on their rights. To deal with these complex problems, the government should continually adjust its

strategies as the circumstances dictate. The extent to which human rights under the traditional system of law can be merged into Constitutional legislation is limited. Clearly, this age-old system continues to fling the rule of law, undermining the dignity of Batswana. It is high time customary court system employed trained personnel in law; it is high time Batswana had their constitutional rights observed and respected. But as Morapedi noted (Morapedi, 2002), even though an opposition party were to take political power, abolishing bogosi would seem impossible as Batswana still cherish the institution, however weak.

References

Joshi A., Kirjavainen L. M. (2002), The economic role of women in agricultural and rural development: revisiting the legal environment, Report of a Seminar, ACP-EU Technical Centre for Agricultural and Rural Cooperation, Kampala, Uganda, February 19-23, 2001.

Andreopoulos G. J., Claude R. P. (1997), *Human rights education for the twenty-first century*, University of Pennsylvania Press, Philadelphia.

Barbara R. (2009), *Botswana Children's Rights vs. Human Rights: Is There A Difference?*, UNICEF Representative, ORD SEMINAR, University of Botswana, Gaborone January 28th.

Booi L. (2006), "Botswana's Legal System and Legal Research", URL Document (downloaded on 25 may 2009) <http://www.nyulawglobal.org/globalex/Botswana.htm>

Bureau of Democracy, Human Rights and Labor (2008), *Country Reports on Human Rights Practices – 2007*, US Department.

Carbone M. (2005), "Weak civil society in a hard state: Lessons from Africa", *Journal of Civil Society*, Vol. 1, Issue 2, September, pp.167-179.

Ditshwanelo (2004), *Annual Report 2004*, The Botswana Center for Human Rights, Gaborone.

Ditshwanelo (2007), Human rights, not human wrongs, The Botswana Center for Human Rights, 2007, accessed at <http://www.ditshwanelo.org/bw/gender.html>.

Gallanter, M., (1981), Justice in Many Rooms: Courts, Private Ordering and Indigenous Law. *Journal of Legal Pluralism*, 19, pp. 1-47.

Godisang M. (2009), To know and have access to both biological parents: gender, policy and family in contemporary Botswana, ORD SEMINAR, University of Botswana, Gaborone, February 4th.

Holm J.D., Molutsi P., Somolekae G. (1996), "The development of civil society in a democratic state: the Botswana model", *African Studies Review*, vol. 39, n°2, pp.43-69.

Maundeni T. (2002), Wife Abuse Among a Sample of Divorced Women in Botswana: A Research Note, Sage Journals Online, Violence Against Women, Vol. 8, No. 2, pp. 257-274, 2002.

Morapedi W.G. (2002), Demise or Resilience, Customary Law and the Changing Order in Africa: The Case of Botswana, Paper Prepared for CODESRIA's 10TH General Assembly on "Africa in the New Millennium", Kampala, Uganda, 8-12 December 2002.

Muchiru S., Ekpo I.A., (2006), *Evaluation of UNDP's role and Contributions in the HIV/AIDS response in southern Africa and Ethiopia, Botswana Country Study*, UNDP.

Molokomme, A., 1994, 'Customary Law in Botswana: Past, Present and Future', in Botswana in the 21st Century (Proceedings of a Symposium organised by the Botswana Society, Gaborone, 1994) pp. 347-369.

Molutsi P. (1995), "The Civil Society and Democracy in Botswana" in "Civil Society and Democracy in Botswana Proceedings of a Conference held from the 25-27th October 1995, Oasis Motel, Gaborone.

Osei-Hwedie B., Sebudubudu D. (2004), *Botswana Country Report*, The South African Institute of International Affairs' Strengthening parliamentary democracy in SADC countries, Pretoria.

Peters A. (2004), *The situation regarding Gender in Southern Africa and Best Practices of the Friedrich-Ebert-Stiftung*, A regional workshop report, Friedrich-Ebert-Stiftung, Prime Press, Windhoek.

Somolekae G. (1998), "Democracy, Civil Society and Governance in Africa: the case of Botswana", United Nations Public Administration Network (UNPAN), Botswana.

Transparency International (2007), *Country Study Report – Final Report – Botswana 2006/7*, National Integrity Systems Country Study.

UNDP & Government of Botswana (2004), *Botswana Millenium Development Goals Status Report 2004*.

Vision 2016, Annual Report 2003, Government of Botswana, Accessed at <http://www.vision2016.co.bw/PDF%27s/Pubs/Vision%202016%20Annual%20Report.pdf>

World Bank (2009), *World Development Indicators 2007*, World Bank, Revised April 24th.