

Uneasy Alliances: Traditional Leaders and the Promotion of Women's Rights Policies in
Namibia

By

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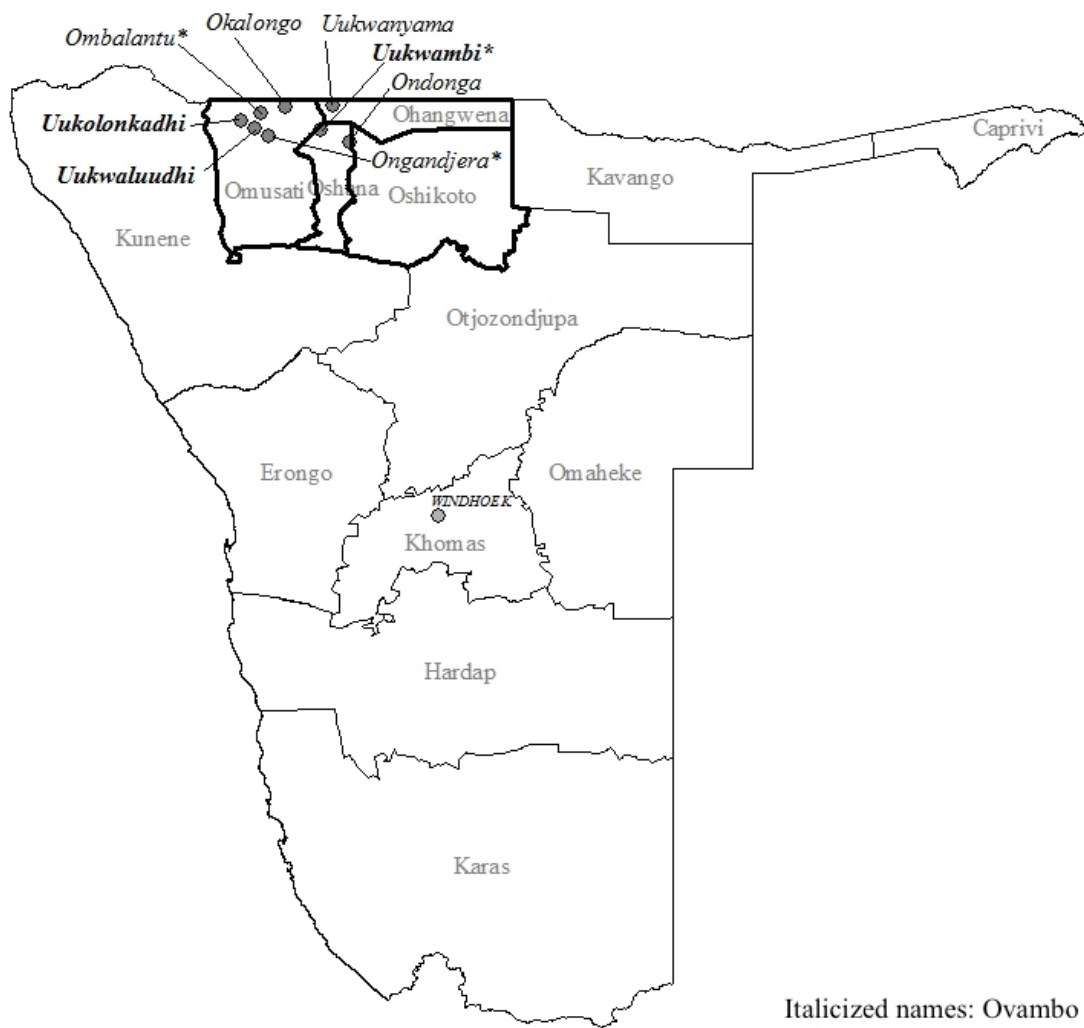
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ACRONYMS

ART	Anti-Retroviral Treatment
CACOC	Constituency AIDS Coordinating Committee
CCA	Community Courts Act of 2003
CDVA	Combating of Domestic Violence Act of 2003
CLB	Communal land board
CLRA	Communal Land Reform Act of 2002
CoTL	Council of Traditional Leaders
CRA	Combating of Rape Act of 2000
DHS	Demographic and Health Survey
ELCIN	Evangelical Lutheran Church in Namibia
GBV	Gender-based violence
LAC	Legal Assistance Centre
MGECW	Ministry of Gender Equality and Child Welfare
MJ	Ministry of Justice
MoHSS	Ministry of Health and Social Services
MRLGHRD	Ministry of Regional and Local Government, Housing and Rural Development
MTPI-III	National Strategic Mid-Term Plans on HIV/AIDS I-III
NPAGBV	National Plan of Action on Gender-Based Violence
NPHA	National Policy on HIV/AIDS
OVC	Orphans and Vulnerable Children
PEPFAR	President's Emergency Plan for AIDS Relief
PLWHA	People living with HIV/AIDS
SPWC	SWAPO Party Women's Council
SWAPO	Ruling party of Namibia (formerly South West Africa People's Organization)
TA	Traditional Authority
TAA	Traditional Authorities Act of 2000
WCPU	Women and Child Protection Unit

Regional Map of Namibia (2012)



Italicized names: Ovambo TAs
Bolded italicized names: Sites of interviews
Names with asterisks: sites of survey villages
Dark black outline: former Ovamboland regions

CHAPTER ONE INTRODUCTION

On November 12, 2005, in the small northern Namibian village of Omhedi, the new leader of the Kwanyama¹ people was crowned during a small but remarkable ceremony. The coronation was hailed for symbolically restoring traditions suppressed under German and South African rule. It was praised as well for embracing “modern”² values by crowning a woman, Mwadinomho Martha Kristian Nelumbu, as the traditional authority’s new leader. In its more than two centuries of recorded and oral history, the patriarchal Oukwanyama chieftaincy had never before had a female leader.

The large public celebration that followed brought together elements of Namibia’s “old” and “new” worlds. The old world was exemplified by the coronation itself, a ceremony for a member of a royal bloodline centuries old. The selection of the queen, however, was guided by decidedly contemporary principles. Her late uncle, King Mwetupunga Kornelius Shelungu, had appointed the 75-year-old widow as his successor prior to his death. King Shelungu named his niece as his successor both because he believed she demonstrated the necessary leadership traits and because he wanted to act in accordance with “the government’s policy of having more women in positions of authority and leadership” (Gordon 2008, 10–11).

Following the private coronation, the new queen traveled to a public celebration thrown

¹ Namibia contains more than a dozen ethnic groups. Nine of these groups—Caprivi, Damara, Herero, Kavango, Mbanderu, Nama, Ovambo, San, and Tswana—have government-recognized traditional authorities that officially handle all matters related to customary practices and laws within their communities. The Kwanyama kingdom is one of eight traditional authorities of the Ovambo people.

² This dissertation examines at length the contested concepts of modernity and tradition. For the sake of readability, I do not use quotation marks around any subsequent mention of these concepts, but their status as complex and contested terms is implied.

in her honor. In attendance were 10,000 of her subjects, dozens of kings and traditional leaders from across Namibia, and Sam Nujoma and Hifikepunye Pohamba, the first and current presidents, respectively, of the then-15-year-old republic. The public ceremony opened with an amalgam of symbolic gestures, including the Namibian national anthem, the European Union anthem, and a prayer led by an Anglican bishop (Shivute 2005), which highlighted Namibia's independence war against South Africa, its three decades under German rule, and the pre-colonial influence of Christian missionaries. The queen then delivered a speech that encapsulated the delicate and evolving position of traditional leaders in post-independence southern Africa.

Queen Martha, as she is known to her subjects, began by calling upon all Kwanyama traditional leaders to obey traditional law and work in the best interests of their subjects, two charges that would not have been out of place in an inauguration speech 200 years ago. The rest of the queen's speech, however, highlighted issues that have gained attention since the end of South African rule in 1990. She decried alcohol abuse among her subjects and traditional leaders because drunkards were more likely to beat their wives and children (Mbangula 2005). Echoing the message of a recently-launched government campaign against gender-based violence (GBV), the queen warned that domestic abuse against women and children would not be tolerated in her kingdom (Mbangula 2005). While Queen Martha's denunciation of domestic violence matched the campaign's talking points, her solution for combating drunkenness and abuse departed dramatically from the government's recommendations. The queen did not mention the importance of involving police or referring victims to newly-established Women and Child Protection Units in cases of GBV. Instead, she called upon parents to "make use of evening sessions around the fire to teach [their] children about the rich cultural heritage of their forbearers" (Mbangula 2005), implying that a return to traditional values could prevent domestic

abuse. Although a key platform of the government's anti-GBV campaign called for the eradication of many traditional beliefs contributed to the frequency of GBV, none of the state officials that spoke at the celebration mentioned her potentially problematic advice.

Since Namibia gained independence from South Africa in 1990, the small country has struggled to define the role of traditional leaders—a term that refers to kings, queens, chiefs, and headmen/women—within the democratic state.³ In the early 1990s, government officials treated chiefs as a relic of a bygone era. Unelected chiefs could not continue to rule fiefdoms according sexist, undemocratic principles, went the popular argument, so the institution of traditional leadership should be allowed to “die a natural death” (Keulder 1998, 53). The collaboration of many chiefs with the apartheid regimes in indirect rule arrangements bolstered the widespread belief that Namibians would welcome the demise of these rural despots. By the mid-1990s, however, a presidential commission on the status of traditional leaders and laws had released a report that suggested the system “be retained with certain modifications” (Kozonguizi 1991, 11). Foremost among the modifications was the requirement that traditional leadership structures open their ranks to women and promote gender equality within their communities, paving the way for Queen Martha's rise to power.

A series of bills passed in the late 1990s and early 2000s clarified chiefs' status by creating a system for state recognition of traditional leaders and a presidential advisory body called the Council of Traditional Leaders. Namibia's laws on traditional leaders are the most restrictive in southern Africa (Düsing 2002): they bar chiefs from holding public office, restrict

³ I use the terms “traditional leader” and “chief” interchangeably, in keeping with common Namibian usage and for the sake of readability. These terms refer to traditional leaders at any level of authority—kings, junior/senior traditional councilors, and headmen/women (distinctions described in chapter 2). When discussing specific interview subjects or differences among leaders at different levels of authority, I use official titles.

their influence to the “preservation of culture” within their communities, nullify customary laws that conflict with constitutional or civil laws, and remove their control over communal land—a bedrock of traditional power across Africa. Moreover, the laws challenge the exclusion of women that had long characterized many chieftaincies by mandating that these bodies promote affirmative action “in particular by promoting gender equality with regard to positions of leadership” (Traditional Authorities Act no. 25 of 2000, sec. 3(1)). The government’s message to traditional leaders was clear: chieftaincies may only continue to exist if they do so on the state’s terms. Unlike in neighboring South Africa and Botswana, appeals to tradition would not supersede Namibia’s constitutional commitment to democratic principles, particularly gender equality.

Despite strict controls on chiefs’ activities, the government has begun enlisting traditional leaders as partners in the implementation of laws in traditional communities. To the surprise of many, given the patriarchal values held by most traditional communities, the government has consistently partnered with chiefs to implement women’s rights policies, primarily within the areas of widow inheritance and communal land allocation, gender-based violence (GBV), and HIV/AIDS education and treatment. The story of Queen Martha’s coronation highlights patterns of support among traditional leaders for many women’s rights policies, such as measures to combat domestic violence. The queen’s recommendation that families combat GBV by teaching children traditional values, however, hints at the deep tensions that surround the involvement of chiefs in women’s empowerment campaigns.

The Argument

Since 1990, nearly 44 African countries have passed new constitutions. Over 95 percent of these constitutions mention gender equality, and 86 percent have antidiscrimination clauses that include gender (Tripp 2015). The continent-wide effort to improve women's lives that accompanied the democratization wave of the 1990s produced some of the most sweeping and progressive legal reforms in the world. While these reforms have yielded a some visible improvements for women—such as Rwanda's 2013 achievement of 63.8 percent female representation in its lower house, the highest proportion of women in parliament in the world—overall, the status of women in African countries with progressive laws on gender equality has not improved dramatically. Since strong legal frameworks exist in many of these countries, the failure of these laws must occur after the legislation has been passed, in the implementation phase. An understudied process in African states, policy implementation is the essential step at which good laws can fail by virtue of their incorrect or incomplete realization. Strong laws that protect and further the rights of women have important symbolic significance, but make little practical impact if they are not fully and properly implemented.

It is thus the politics and process of policy implementation in rural Africa to which this dissertation turns. The southern African country of Namibia represents this project's primary case. Namibia has one of the world's most gender-progressive constitutions (Cooper 1997), with provisions that recognize the historical subjugation of women and allow for affirmative action for them in all spheres of public and private life. Strong laws on gender-based violence, rape, communal land allocation and inheritance, and policies on HIV/AIDS targeting women have further augmented the constitution's protections for women in the 25 years since its passage. Yet, as with many of their neighbors, Namibian women remain plagued by high rates of domestic

violence, rape, and HIV infection. Why has the strong legal framework for women's rights promotion failed at the implementation stage?

The answer, I argue, lies in part with a powerful but often-overlooked institution—the chieftaincy—and set of actors—traditional leaders—that wield significant influence across many rural African communities. Nearly 70 percent of Namibians recognize the authority of a traditional leader, according to Afrobarometer data (Logan 2008). Article 66 of the 1990 constitution allows customary and common law to remain in force, providing that neither conflicts with constitutional law. The government must individually repeal each conflicting customary and common law, however. This repeals process continues more than 25 years after Namibia gained independence. Although Namibian traditional leaders have a legally-circumscribed role in public and political life, they remain powerful in rural areas, where poor transportation and communication infrastructure render state influence weak, a situation that repeats itself across the African countryside (Herbst 2000). The enduring influence of traditional leaders has vexed newly-minted governments, which fear they will undermine the democratic consolidation process. Of particular concern is how chiefs respond to state efforts to promote women's rights since many chieftaincies, and the values they represent, are rooted in patriarchal values and ruling structures.

Given the significant influence of traditional leaders on every aspect of life in rural areas, where state presence is often weak or nonexistent, it is important to understand the conditions under which chiefs will support women's rights policies. It is this dynamic from which the dissertation's central question is drawn. Examining the gender-related elements of three sets of policies—HIV/AIDS education and treatment, gender-based violence (GBV) prevention, and communal land allocation and inheritance—I ask, under what conditions will traditional leaders

support women's rights policies? To answer this question, I compare the implementation processes for three sets of policies between 1990-2014 that focus primarily or in large part on improving women's lives.

I find that two factors shape chiefs' participation in women's rights policy implementation: 1) whether traditional leaders frame an issue as communal—a matter that affects an entire community's wellbeing—rather than private or individual; and 2) whether institutionalized state oversight of chiefs' policy implementation activities exists. This “communal logic” is essential to understanding how politics operate across Africa because “relations of power are predicated on the shared belief that the political is communal” (Chabal and Daloz 1999, 156). Indeed, it is such an entrenched fact of life in these societies that it is taken for granted and often left unsaid, something that “everyone already knows.” In accordance with this shared belief, chiefs' patterns of women's rights support align with the “community welfare principle,” a widely-shared belief in traditional communities across Africa that prioritizes the promotion of community wellbeing over the needs or desires of any individual (Williams 2010, 54). (As I discuss below, however, politics and gender norms factor significantly into how traditional leaders frame public and private interests.) I also present evidence that consistent state oversight of chiefs' implementation activities can compel them to implement policies as requested, even when traditional leaders believe the policy addresses a private, rather than communal, interest.

When traditional leaders frame an issue as communal—of public interest—and consistent state oversight is in place, chiefs implement the policy as requested by the state, as in the case of communal land allocation and inheritance. I use chiefs' issue frames as a proxy for their support or opposition to a policy because, as I describe in the research design and data section below,

they often claim to support policies that they have, in fact, failed to implement or actively undermined. By contrast, when chiefs frame the issue as private—affecting only individuals—and state oversight is absent, traditional leaders ignore the task of implementation, as the case of domestic violence policies, a subcategory of anti-GBV policies, illustrate. In the case of rape policies, some aspects of the issue are framed as private—like marital rape—and state oversight exists for a few legal provisions related to these policies. In this instance, chiefs implement only those policies subject to supervision. In situations in which no state oversight exists but traditional leaders have framed the issue as affecting community wellbeing, policy implementation will occur but may not follow state directives, as in the case of HIV/AIDS education and treatment policies. Table 1.1 outlines the cases and outcomes.

Table 1.1 Case Selection: Women’s Rights Policy Areas

Policy area	Do chiefs frame issue as communal?	Do chiefs support policy intervention?	Is there institutionalized state oversight?	Do chiefs implement policies as requested?
Land allocation and inheritance	Yes	Yes	Yes	Yes
HIV/AIDS education	Yes	Yes	No	No
Rape (GBV)	Partially	Partially	Partial (for select policies)	Partially
Domestic violence (GBV)	No	No	No	No

Traditional leaders as semi-formal street-level bureaucrats

This project’s findings demonstrate that, contrary to prevailing theories and political rhetoric, traditional leaders neither oppose dogmatically the empowerment of women nor support equally all government policies. I draw a comparison between chiefs and the concept of street-level bureaucrats, borrowed from American public policy literature (Lipsky 1980), to

contextualize this unexpected finding. In Namibia, laws have standardized the composition of traditional authorities (TAs), the structures that roughly approximate the pre-colonial leadership hierarchies of some chieftaincies and kingdoms. TAs must undergo an authorization process by the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD)⁴ and be approved as the “legitimate” body and official voice of a given traditional community. In exchange for performing duties in accordance with the Traditional Authorities Act of 2000—duties that include assisting all levels of government in executing state policies—the state provides monthly allowances to the 14 highest-ranking members of each TA.

Although government officials are quick to note that chiefs are not state employees, the institutional position of traditional leaders, and the principal-agent problems that arise from this positioning, closely resemble that of street-level bureaucrats: chiefs serve as agents tasked by the principal (in this case, the state, through the MRLGHRD) with providing a range of services to citizens living in traditional communities. The services that the state expects chiefs to render include public education forums on HIV/AIDS prevention, assistance to domestic violence victims with filing protection order requests, adjudication of civil cases in customary courts, and allocation of communal land. Much like the unelected civil servants that provide government services with a high level of personal discretion and limited managerial oversight to citizens, traditional leaders consider a complex set of factors when deciding if and how they will participate in the policy implementation process, a point that the literature has previously failed to recognize.

Like the teachers, police officers and social workers studied in the context of American street-level bureaucrats (Maynard-Moody and Musheno 2003, 2000, Feeley 1979), chiefs weigh

⁴ The MRLGHRD was renamed the Ministry of Urban and Rural Development in March 2015.

several personal and professional considerations when deciding whether to support a state policy: whether they believe their positions require them to intervene, whether their personal value systems align with the policy, and whether noncompliance is likely to be discovered and punished by their “principals.” Unlike other types of street-level bureaucrats, traditional leaders must also evaluate whether the requested policy implementation activities could compromise the legitimacy that they derive from both their subjects and the state. Also unlike other street-level bureaucrats, the TAA has positioned chieftaincies on the cusp of the state, as a type of semi-formal institution with very minimal ministerial oversight of their policy implementation activities. This positioning allows chiefs to often ignore state requests when they believe doing so might harm their traditional legitimacy in the eyes of their communities. In historically patriarchal chieftaincies like the Ovambo, promoting women’s rights policies could seriously undermine a chief’s claims to legitimacy as the final arbiter of what constitutes “authentic” customs. As semi-formal street-level bureaucrats, traditional leaders must carefully balance concerns about how implementing a state policy could affect their local legitimacy against their obligations to the state.

Traditional leaders in democratic states: prevailing perspectives

This dissertation’s central findings directly challenge two prevailing theories of traditional leaders’ role in, and impact upon, democratic states. This section presents a stylized overview of both accounts, examines their explanatory weaknesses, and outlines how my framework improves upon existing theories. Chapter 3 explores the theoretical underpinnings of traditional leadership in more detail.

The literature on traditional leadership in democratic African states can be roughly divided into two perspectives. The first, more pessimistic, perspective holds that chiefs are generally antagonistic toward democratic principles and harmful to the process of democratic consolidation. Those that regard the chieftaincy as detrimental to democratizing states make two claims: first, they argue that legitimacy and authority are zero-sum games. Chieftaincies, having existed for centuries before democratic regimes, are often regarded by citizens as more trustworthy and legitimate than the newly independent states in which they reside. Governments are threatened by the continued existence of these traditional leadership structures and want to minimize their influence or eradicate them entirely to enhance their own authority with citizens. Supporters of this zero-sum view of legitimacy and power argue that chiefs have incentives to undercut government initiatives, believing that can enlarge their own sphere of influence by undermining the state's power. Additionally, governments may want to punish chiefs for their collusion in administering rural areas with colonial and/or apartheid officials (Becker 2006, 2002). Traditional leaders, in turn, resent losing a significant portion of their power and becoming ordinary citizens in the eyes of the state. According to this account, resentful chiefs ignore constitutional law and continue to rule their communities as rural despots, far from the eyes and influence of the state (Mamdani 1996).

Second, those that characterize chieftaincies as harmful to democracies note the decidedly undemocratic principles upon which these bodies operate. Most traditional leaders ascend to power by virtue of hereditary ties. While communities can usually hold these leaders accountable to some extent, the notion of "one person, one vote" simply does not exist in chieftaincies that accept the Weberian model of tradition as an inner legitimation of domination—the notion that a patriarch has the right to rule by virtue of custom, the "eternal

yesterday” that suggests this is how rulers have always been selected and is thus in harmony with history and the will of ancestors (Weber 2006). Since traditional leaders derive their right to rule from the shared belief that they are governing according to some objective understanding of tradition, they will hesitate to support any democratic policies that contradict their communities’ “authentic” traditions.

In southern Africa, fights between chiefs and the state have frequently arisen over the responsibility of the former to support gender equality. Traditional leaders in South Africa went as far as to call for customary law and the practice of male primogeniture to be exempted from the country’s new bill of rights, particularly its equality clause (Albertyn 1994). While that appeal failed, chiefs in South Africa and across the region continue to prioritize the preservation of often-patriarchal traditional values over the empowerment of women (Campbell 2010, Albertyn 2009, Cooper 1997, Walker 1994). Chiefs frame this struggle as a matter of state respect for their traditional cultures, while constitutional scholars note that the rights of individuals supersede cultural protections in the legal systems of most African countries (Albertyn 2009). Traditional leaders’ refusal to support the promotion of gender equality is, according to their critics, a clear indication that their continued presence is harmful to democratic states.

The second, more optimistic, perspective asserts that traditional leaders are largely supportive of democracy as a concept and are uniquely positioned to bolster the state-building process. To the first point, scholars have found cases of traditional leaders promoting democratic principles within their communities, often without government prompting. J. Michael Williams (2010, 2004) observed traditional leaders in South Africa educating their communities about the importance of voting in local elections as well as the mechanics of registering to vote and casting

their ballots. Barbara Oomen (2005), also writing on South Africa, found traditional leaders teaching their communities about the process of contacting government officials with grievances. In northern Namibia, Heike Becker (2006, 2002) learned that Owambo chiefs had begun appointing women to leadership roles in traditional authorities. They cited their desire to comply with the new constitution's principle of gender equality in explaining the recent democratization of a previously all-male organization. Taken together, these reports from traditional communities across southern Africa suggest that traditional leaders support key principles of the democratic states in which they live, such as participating in the political process, voicing grievances, and promoting gender equality.

Richard Sklar (2005, 1999), like most scholars writing from this perspective, believes traditional leaders serve as an important source of continuity in periods of social and political upheaval. Indeed, he argues that traditional leaders contribute to the success of democratizing states by filling in the gaps in governance and service provision. Evidence from Afrobarometer public opinion surveys in Africa supports this camp's main arguments as well. The approval ratings of traditional leaders and democratic states are positively correlated, a finding attributed to popular opinion among Africans that chiefs are important actors at the local government level (Logan 2009). These findings directly contradict the other approach's argument that legitimacy between states and chiefs is a zero-sum game.

In my fieldwork, I found Namibian government officials to be strong supporters of this optimistic interpretation of chiefs' involvement in democratic promotion. Officials often took the conclusions outlined above a step further by arguing that traditional leaders had fully accepted

the supremacy of the constitution and its democratic principles.⁵ Such a claim bolsters the perceived strength of the state over TAs and Namibia's reputation as progressive on human rights issues. However, as my research demonstrates, their characterization of traditional leaders as supporting state policies across the board is incorrect.

Shortcomings of prevailing approaches

While both of the approaches described above have their merits, they fall short in their ability to predict variation in traditional leaders' policy support. According to the pessimistic perspective, one should expect traditional leaders to oppose all policies that contradict customary laws and principles, including the promotion of women's rights, but that is not observed in the Namibian case. As the story of Queen Martha that began this chapter illustrates, most TAs in Namibia have begun admitting women to positions of leadership, a practice that is entirely new for some authorities and a return to pre-colonial custom for others. Several Ovambo TAs—the chieftaincies from which this project draws its case studies—publicly and voluntarily changed their customary laws to allow women to stay on their land in traditional communities after their husbands die. This measure challenges directly a centuries-old norm of forcing women to return to their parents' homes when their husbands die. While traditional leaders have resisted supporting other women's rights policies on grounds of traditional patriarchal values, this interpretation cannot account for the aforementioned high-profile cases in which TAs amended customary laws.

The optimistic approach falls short in its explanatory power as well. This account predicts that traditional leaders will support equally all state policies that promote democratic principles

⁵ Interview with MRLGHRD civil servant, Windhoek, November 30, 2011; interview with MRLGHRD civil servant, Windhoek, March 6, 2012.

like gender equality. In fact, the Namibian government claims that this is the case. However, although TAs have made great strides in opening their leadership structures to women and in protecting the property rights of widows, they have failed to promote women's rights on other issues. Traditional leaders have done a poor job addressing the issue of domestic violence, for example. Indeed, most Ovambo traditional leaders that I interviewed reported that the government did not want them involved in domestic violence matters at all, despite having attended government and NGO training sessions that explained their obligations to rape and domestic violence victims. On the topic of HIV/AIDS, I found that traditional leaders regarded its eradication as vital to community welfare, but they eschewed the prevailing national message that emphasizes the epidemic's disproportionate impact on women.

The framework that I present in this dissertation explains the variation in chiefs' policy support. It arises from the assumption that traditional leaders are interested both in maintaining support and legitimacy of their citizen-subjects as well as in maintaining peace, unity and wellbeing within their communities. Additionally, it assumes that chiefs may understand and consequently frame some problems and policies differently than the national government, as in the case of HIV/AIDS prevention policies. Even when chiefs agree with the state on the importance of policy intervention, they will often ignore national efforts to frame policies as crucial to the improvement of women's lives. In the eyes of traditional leaders, issues affecting family relationships represent private concerns, and under the community welfare principle, it would be inappropriate for them to address such matters.

This project's framework also assumes that the state prioritizes and is able to oversee the implementation of some policies better than others. This assumption of varying levels of power and capacity across ministries and issue areas is a more dynamic depiction of the state as

compared to the monolithic characterizations of the state used by the prevailing approaches described above. Following this assumption, I hypothesized that the government would be more successful in compelling traditional leaders to implement policies as requested, even when those measures address private concerns and/or challenge existing gender roles, when state oversight of the implementation process existed. I find strong supporting evidence for this hypothesis. Careful process tracing further demonstrates that the introduction of state oversight can improve policy outcomes even in situations in which chiefs have already begun implementing policy measures for an issue they support but which previously lacked government management.

Contributions

This dissertation contributes to the literatures on women and politics and traditional leadership, as I discuss in this section. The findings have practical implications for policymakers as well: when a women's rights policy addresses a problem that chiefs believe affects the entire community, traditional leaders can be powerful allies in the promotion of women's rights. Even when they believe a policy does not align with their traditional duties, chiefs can still be useful participants if institutionalized state oversight of the implementation process exists. Understanding the logic that motivates traditional leaders' support or rejection of a particular policy will help policymakers write and frame laws in ways that maximize support and minimize the chance of chiefs going "off message" when implementing these policies in their communities.

Women's rights policies: Moving from adoption to implementation

In the past decade, scholars have begun investigating the conditions under which governments across the world adopt women's rights policies (Weldon and Htun 2013, Htun and Weldon 2010, Waylen 2007, Blofield and Haas 2005, Taylor-Robinson and Heath 2003, Hipsher

and Darcy 2000, Thomas 1991). A few broad lessons have emerged from these studies: strong women's movements, strong states, and the strong presence of transnational advocacy networks are all positively correlated with the adoption of women's rights policies. On the other hand, passage of "doctrinal policies" that challenge a country's prevailing religious or codified traditions is unlikely because such policies threaten the very social order that keeps women subordinate (Htun and Weldon 2010).

While much remains to be learned on the topic of policy adoption, even less has been done to examine what happens once these policies have been passed. Many African countries with strong legal frameworks have seen measures of women's empowerment fall short of anticipated improvements, which suggests that issues exist at the implementation level. This study offers a social scientific analysis of policy implementation as it is conceived of at the national level and executed at the local level, often with the assistance of purported enemies of women's rights, traditional leaders. A strong body of literature on adopting women's rights policies in Africa and the world has provided crucial insights into these policymaking processes (e.g., Kang 2015; Weldon and Htun 2013; Htun and Weldon 2010; Simmons 2009; Hassim 2006; Berensztein 1996). Several of these scholars conclude their studies with calls to look at what happens after policy adoption, in the implementation phase. Studying policy implementation is challenging, especially in Africa, where laws in this area are generally very new, and monitoring and evaluation processes are often lacking or nonexistent. Nonetheless, lessons from the implementation process merit examination as they can help policymakers frame smarter statutes for the next generation of women's rights policies.

Traditional leadership

The growing recognition in the mid-1990s that traditional leaders were not disappearing from democratic states as originally predicted has contributed to a renewed discussion of traditional authorities in political science (Logan 2008, Sklar 2005, Englebert 2002, Keulder 1998). As I discussed above, many have framed this discussion as a question of whether traditional leaders are “good” or “bad” for democracy (Sklar 1999, 2005, Logan 2008, 2013). My project moves beyond this question, which is problematic because it incorrectly depicts the possible outcomes of traditional leadership as a dichotomous variable. I instead start from the assumption that there are positive and negative aspects to chiefs’ influence on the state, and from there, ask what motivates the actions that lead to these varied outcomes. Following Williams (2010), I find that maintaining unity and preserving community wellbeing are viewed as central to the duties of traditional leaders by their citizen-subjects and by the leaders themselves. While this point is central to who traditional leaders are and what they do, it is often drowned out by discussions of political calculations.

To the study of traditional leadership, I contribute a new application of an old concept: street-level bureaucrats. Many states have tightened their grip on the powers of traditional leaders in the last decade, including South Africa and Botswana. As chiefs in these countries fall under more government control, understanding chiefs as street-level bureaucrats that have allegiances to both the government and the communities that they serve, and in which they are also entrenched, will become an increasingly useful analytic tool. While this model is useful for helping to understand the behaviors and incentives of traditional leaders, it fails to capture the entrenchment of chiefs within their communities or the legitimacy that they derive from their position as the paramount arbiters of their traditions. I therefore offer a modified concept for

making sense of traditional leaders as semi-formal street-level bureaucrats. As this project demonstrates, tradition affects the ways in which chiefs understand and implement policies, but their long-term relationships with and standing in their communities figure just as heavily into the implementation process.

Research design and data⁶

With a few notable exceptions, the literatures on women's rights policies and traditional leadership adopt either a top-down approach that focuses primarily on national-level dynamics or a bottom-up approach that studies village-level politics. This dissertation, on the other hand, examines both perspectives: it tells the story of a state's struggle to engage an old institution in new democratic processes, and it examines the historical conditions that shaped the formalization of chieftaincy leadership and continue to constrain effective state involvement within chieftaincies. It also examines experiences at the grassroots by studying a traditional institution's struggle to maintain relevance and authority in a modern democratic dispensation. To maintain legitimacy, chiefs in democratic states must balance citizen-subjects' expectations that they support traditional values with new demands for "development, participation and accountability" within these traditional communities (Williams 2010, 221). In Namibia, chiefs must also balance demands made by the state. After all, the Traditional Authorities Act of 2000 (TAA)⁷ requires the members of TAs to assist police in the prevention and investigation of crimes and to assist representatives from all levels of government in executing policies within traditional

⁶ See Appendix 1 for an expanded discussion of the methods used in this project.

⁷ The TAA of 2000 makes traditional leaders the official cultural ambassadors of their communities. They are barred from participating in governance in their own communities or holding public office. The *de jure* and *de facto* positions of traditional leaders are explained in chapters 2 and 3.

communities. The demands of citizen-subjects and the state rarely overlap and occasionally clash. This dissertation offers the first account of how traditional leaders balance these competing expectations when addressing a range of women's rights policies.

The sheer number of perspectives, policies, actors, and levels of analysis involved in this story necessitated the triangulation of several types of data, including interviews, documentary evidence, a survey of citizens living under traditional leaders, and participant observation. Taken together, I believe these data provide persuasive support for my conclusions.

Cases

This project's unit of analysis is women's rights policy area. Following Wolbrecht (2000), I define women's rights policies as laws, state campaigns, and decrees that are intended to improve women's lives. In Namibia, government officials, the general public, and the laws themselves use the terms "women's rights" and "gender equality" interchangeably. Gender equality policies, however, refer specifically to those policies that endeavor to modify gender roles, something that only some of the policies under examination in this project do explicitly.

The project focuses upon policy areas, rather than individual policies, because the former approach better represents the way that traditional leaders and communities engage with these issues in Namibia. For example, none of the traditional leaders with whom I spoke discussed their implementation of the Combating of Rape Act of 2000, Combating of Domestic Violence Act of 2003, the Zero Tolerance for Gender-Based Violence National Campaign, or the National Gender Plan of Action, all of which offer different provisions for, and address different facets of, gender-based violence. Instead, chiefs talked about how the state expected them to handle cases of domestic abuse by sending victims to the police and by holding public forums that denounce harmful cultural beliefs that promote GBV, like the widespread belief that husbands can show

love for their wives by beating them. As I demonstrate throughout this dissertation, traditional leaders think about the issues as a whole, rather than the individual policies. The distinctions among the laws matter to national policymakers and international stakeholders, but chiefs and villagers alike referred to these constellations of policies as “the law on violence” or “the government’s AIDS plan.”

The three policy areas under examination—communal land allocation and inheritance, HIV/AIDS education and treatment, and GBV—were selected because they represent the three major issues that involve both the empowerment of women as part of the government’s stated policy goals and engage traditional leaders as key stakeholders in the implementation process. If either of the prevailing theories of traditional leaders’ impact upon democratic consolidation is correct, one would expect chiefs to consistently support or oppose the campaigns and laws in all three policy areas. As this dissertation demonstrates, however, traditional leaders’ support varies significantly across policy areas. I leverage this variation in policy support among the same group of actors to identify the conditions under which chiefs will participate in the policy implementation process in their communities.

Measuring support

The concept of chiefs’ support for various policies is central to this dissertation. To measure support, I focus on implementation activities, those actions the government has asked traditional leaders to carry out in support of stated policy goals. For each policy area under study, I examined the universe of laws, policies and campaigns in which traditional leaders are named as stakeholders by the state, identified directives explicitly assigned to them. Most of the policies under study tasked chiefs with educating their communities about the new laws and related government resources, which I evaluated by asking chiefs and villagers about the frequency of

workshops and meetings on these matters. I also turned to media reports to learn about larger gatherings involving community education. The policies often require traditional leaders to denounce harmful traditional beliefs that validate the subjugation of women and cease traditional ceremonies and practices that put women at risk of contracting HIV. In some instances, chiefs are asked to do more than hold public forums: in the case of communal land allocation, for example, they must review applications for communal land plots and decide whether to approve or deny each request (these decisions are later reviewed by a communal land board comprised of government and community representatives). Using information from interviews, government and NGO reports, and newspaper articles, I was able to compare what chiefs were actually doing with what the policies required them to do. When the requested activities closely aligned with reports of chiefs' actions, I say that chiefs support the policies. When chiefs ignore or take actions that contradict stated policies, I characterize chiefly support as low.

This process for measuring support has its shortcomings. First, I cannot isolate the effect of traditional leaders on the implementation process from the activities of other actors and institutions. I am also likely missing variation in chiefly activities across communities, especially the most remote villages that reporters and NGOs rarely reach. I expect that there are some headmen/women that are ignoring most policies entirely and others that are going above and beyond what the policies require of them. I tested my theories in several villages within three Ovambo traditional authorities, for reasons described below. While I have some information about policy implementation in non-Ovambo traditional authorities, I cannot make claims about chiefs' activities outside of Ovamboland with the same level of confidence as I can in the Ovambo context. Moreover, my ability to verify my findings was limited by the unreliable information that I sometimes received from traditional leaders and state officials, although I

attempted to minimize this problem by cross-referencing their claims with contemporary newspaper reports and secondary sources. Nonetheless, this research represents the first systematic analysis of traditional leaders' participation in policy implementation processes of any kind in Namibia. More research remains to be done, however, in the most remote communities and in non-Ovambo traditional authorities.

Interviews

This project draws upon in-depth, semi-structured interviews that I conducted in communities across central and northern Namibia between October 2011 to June 2012. In all, I interviewed more than 80 stakeholders in the policy areas under study in civil society and at the national, regional, and local levels of government. I wanted to understand how the government interacted with traditional leaders and how it felt about this partnership, so I spoke with civil servants that worked for the traditional authorities directorate within the MRLGHRD and civil servants at all levels in the Ministry of Gender Equality and Child Welfare (MGECW). To get a sense of how the policies under study were written, I spoke with academics, attorneys and policy experts that had consulted on, and in some cases authored, the legislation. At the regional level, I spoke with social workers at regional offices of the MGECW, women's groups representatives working in Ovambo-majority regions of northern Namibia, and the governor of an Ovambo-majority region.

At the local level, I interviewed 16 traditional leaders and 40 citizens living in traditional communities. Among those interviewed in Ovambo communities were two chiefs⁸, three

⁸ The TAA of 2000, sec. 1, uses the term "chief" to refer to "the supreme traditional leader of a traditional community," which is why I use the term here. In the rest of dissertation, however, I refer to these individuals by their preferred titles (e.g. *Elenga*, King, *Omukwaniilwa*) and use "chief" interchangeably with "traditional leader" to refer to individuals of any rank within a traditional authority.

traditional secretaries, eight traditional councilors and headmen/women, and 15 women.

Additionally, I interviewed one chief, two headmen/women, and more than 30 men and women living in a San traditional community. Interviews with traditional leaders asked about several topics, including the relationship between their TAs and the government, the policies under study and the relevance of these policies to their communities (including perceived prevalence of GBV, property-grabbing, and HIV/AIDS), how they became leaders, and what they viewed as their chiefly responsibilities.

Following my first few interviews with traditional leaders and government officials, I realized that I would need to “trust, but verify” the information shared with me. Civil servants and traditional leaders, groups notoriously wary of outsiders, especially white, western foreigners like myself, almost uniformly painted a rosy picture of government-chief relations, even as disputes between traditional authorities and the MRLGHRD were making front-page news. Similarly, several traditional leaders began interviews by affirming their full support of and compliance with all state directives but later denied responsibility for activities with which they had been explicitly tasked by various laws and national plans of action. I further realized that, despite the claims being made by various ministries, traditional leaders were not implementing every policy as promised. Thus, I turned to documentary evidence, participant observation, and survey data to verify information and fill in the patterns that emerged once I left the field and began analyzing data closely.

Documentary evidence

In preparation for entering the field, I gathered and analyzed more than 100 newspaper articles from Namibian newspapers to identify an initial pool of traditional leaders and related stakeholders to contact for interviews. Once I began conducting interviews in the field, however,

it quickly became clear that the stories I was hearing from traditional leaders and public officials aligned with neither the news reports I had read nor with the stories I had been told by women's rights stakeholders in the NGO community. I realized that, before I could determine the conditions under which traditional leaders will support women's rights policies, I first had to ascertain independently which policies they were supporting. To determine if and how traditional leaders supported a given policy, which I operationalize as following a given law/policy as written, I combined information gained in interviews with newspaper articles that reported on traditional leaders' activities. I gathered more than 350 newspaper articles from the websites and archives of Namibia's three largest English language newspapers that discussed traditional leadership, HIV/AIDS, GBV, communal land allocation and/or inheritance, women's rights, gender equality, and any combination of these topics. The availability of articles varied by newspaper. For The Namibian, the country's largest independent newspaper, I obtained all relevant articles for the periods of 1985-1990 and 1998-2014. For government-owned New Era and independent Namibian Sun, articles were available for the period covering 2004-2014.

A close reading of these articles led to the realization that chiefs across communities and ethnic groups talked about policy issues in very similar terms, and the ways in which they framed these issues emerged as well in my interviews with Ovambo leaders. It became clear that a relationship existed between how chiefs talked about, or framed, the issues under study and whether they implemented the related policies as requested by the state. Although I must take chiefs' reported implementation activities with a grain of salt, I allow them to speak for themselves in this dissertation by highlighting their intersubjective understandings of how issues like HIV/AIDS and widow's property loss affect their communities.

To understand the creation, adoption, and implementation of the women's rights policies under study, I collected the transcripts of 56 parliamentary debates that occurred in the National Assembly, Namibia's lower house, between 1990 and 2011. These transcripts include the debates for every gender-related policy and law examined in this dissertation, all laws surrounding traditional leadership, and every discussion that involved gender or traditional leadership, such as debates about the state of morality in Namibia and adoption of the Millennium Development Goals. The government gazettes containing the official text of all laws under study along with all available educational materials and all government-sponsored conferences related to the relevant policy areas. I carefully read all of these transcripts, recording the main actors, arguments, and themes that emerged from each.

To verify and augment my conclusions, I gathered dozens of reports on traditional authorities and/or women's issues from a now-defunct University of Namibia research group that are nearly impossible to obtain outside the country. Colonial and apartheid-era documents from the National Archives of Namibia provided important historical context for understanding the evolution of Namibian chieftaincies and their customary laws on gender. Government reports in the archives from the late 1980s through early 1990s also assisted me in charting the evolution of chief-state relations over time.

Participant observation

My institutional home in Namibia was the Legal Assistance Centre (LAC), one of the country's largest NGOs, a non-profit organization that provides free legal services to citizens and conducts research on policy gaps and efficacy in Namibia. I served as a gender consultant for two of the LAC's research centers: the Gender Research and Advocacy Project, which conducts nationwide surveys on rape, domestic violence, and customary marriage and played a leading

role in drafting the Combating of Gender-Based Violence and Rape Acts; and the Land, Environment and Development Unit, which conducts research into communal land reform and inheritance practices in Namibia. Additionally, and crucially for my research, LAC attorneys write many pieces of national legislation and consult frequently with the government on legal matters. The LAC afforded me valuable access to policy documents and minutes from meetings with government officials unavailable to the public and allowed me to witness firsthand the behind-the-scenes negotiation involved in bringing gender-related legislation to the parliament floor.

Through my affiliation with the LAC, I had the opportunity to attend several conferences at which I observed interactions between traditional leaders and government officials and heard directly from members of both groups. Most importantly, I attended the annual Council of Traditional Leaders meeting in November 2011 as a representative of both the LAC and the MGECW, a notoriously private gathering at which I was the only guest not affiliated with the government, traditional authorities, or media. At this conference, I assisted a social worker from the MGECW with the ministry's presentation to the chiefs. This experience yielded important insights into how employees of the ministry tasked with promoting gender equality view and interact with traditional leaders.

Survey

After a year of analyzing the data gathered in the field, and presenting initial findings at various workshops and conferences, I designed a survey to fill in the gaps and answer questions raised by my fieldwork, including whether residents of traditional villages regarded the policies under study as public or private matters and whether they believed chiefs should intervene in them. The survey was administered in June 2014 to 210 men and women living in six randomly-

selected villages under the authority of Owambo traditional leaders. The survey also included a control group of 68 individuals living in the region's main urban area, which does not fall under the jurisdiction of traditional authorities. This survey gives voice to the people most affected by the opinions and activities of traditional leaders, Namibians living in rural areas. Further, the survey tests the validity of several components of the initial analysis as well as alternative explanations for variation in chiefly support for women's rights in different policy areas.

Why Namibia?

In the context of traditional leadership in southern Africa, Namibia represents a least-likely case. That is, because Namibia has the region's most restrictive laws governing the rights and responsibilities of traditional leaders, one can expect that patterns of resistance to or support for state policies seen in Namibia are likely to be even more pronounced in other countries. Namibia is also a useful case due to its strong record of constitutional protections for women's rights and several progressive laws that promote gender equality. There is no question that Namibia has a strong and comprehensive legal framework for advancing women's rights, many of which have been in place for 25 years. These facts suggest strongly that the relative lack of improvement in women's lives is a consequence of failure at the implementation phase.

Relative to its neighbors—economic giant South Africa, success story Botswana, and basket case Zimbabwe—Namibia receives little attention from social scientists. Namibia offers an interesting comparative case that has been underutilized on a variety of measures, including a similar land tenure arrangement to Zimbabwe that ended quite differently, and a shared history of apartheid with South Africa that has led to divergent social and political outcomes. Although it had HIV infection rates rivaling those of South Africa and Botswana in the early 2000s, rates of new infections have dropped precipitously in the last five years, an accomplishment that no

other country in the region has achieved. In other words, Namibia has strong historical, cultural, political, and economic similarities to its neighbors, yet it has experienced success where other states have seen failure. Throughout this dissertation, I make the case that Namibia is worth studying on its own merits and also provides illuminating comparisons with its better-known neighbors.

Why Ovambo traditional authorities?

Namibia recognizes 50 traditional authorities drawn from nine ethnic groups. I selected three Ovambo TAs in which to conduct my survey and interviews with traditional leaders. I chose this set of TAs for testing my central framework because the ruling party in government, SWAPO, was formed in Ovamboland in the late 1950s and still draws much of its membership from Ovambo communities. By selecting a traditional group whose members generally support the party in power, I minimize the chance that policy conflicts between the state and traditional leaders are motivated by political or ethnic differences. Second, the eight Ovambo TAs officially recognized by government boast long histories: the royal bloodlines of the leaders of these authorities can, in most cases, be traced to the pre-colonial period, and some to the beginning of the 18th century or before (Wallace and Kinahan 2011). The relatively long history of traditional leadership among the Ovambo allows for the sidestepping of concerns about traditional communities' acceptance of chiefs' claims to legitimacy on the basis of ancestral ties. By contrast, several other ethnic groups did not have institutionalized traditional leadership structures prior to independence in 1990. Within these communities, conflicts periodically erupt over a given chief's right to rule. Finally, recent research suggests that members of Ovambo-majority communities have been slow to embrace the principle of gender equality, a position that is often justified with reference to the incompatibility of traditional values and women's rights

(e.g., Ministry of Gender Equality and Child Welfare 2009; Gender Research and Advocacy Project 2006).

Organization of the dissertation

The dissertation proceeds as follows. Chapter 2 traces the historical position of traditional leaders in Namibia, paying particular attention to the collusion of chiefs and colonial administrators in the creation of gender roles that subjugated women and banished them from public life, particularly in northern Ovambo communities. It offers an account of how political and historical conditions in the years immediately before and after Namibia's 1990 independence from South Africa constituted a critical juncture for the institutionalization of traditional leadership. Widespread anger toward traditional leaders that had ruled homelands under the South African apartheid regime, combined with concern that Namibia's fragile new government could not compete with the authority of chieftaincies, motivated calls for their abolition. A 1991 presidential commission concluded that most Namibians wanted to keep their chiefs. The commission's report, combined with growing recognition of the government's limitations on power broadcasting, resulted in an institutional arrangement in which the state retains tight control of traditional authorities on paper, but in practice rarely sanctions—or even supervises—chiefs' activities. The history of this institutional arrangement explains how traditional leaders can ignore state directives without sanction despite stringent laws governing their behavior. Chapter 2 concludes with a review of the major laws on traditional leadership, which structure the ways in which chiefs interact with the government and their communities. Chapter 3 builds upon and expands the framework for chiefs' policy implementation activities outlined earlier in this chapter.

Chapters 4, 5, and 6 represent the empirical heart of this study, with each chapter focusing on one set of policies. Chapter 4 examines the most successful case of traditional involvement in women's rights policy implementation: laws governing the inheritance for widows and communal land allocation in traditional communities. It begins by tracing the history of policies intended to protect the inheritance and communal land rights of widows, which were supported by Ovambo traditional leaders for at least a decade before independence. Combining interviews and documentary evidence, I demonstrate that chiefs consistently frame the care of widows and their children as essential to community wellbeing while ignoring national framing of these issues as intimately connected to women's economic and social empowerment. Despite chiefs characterizing this issue as a matter of public interest, however, cases of widows being chased off their land persisted after Ovambo traditional authorities amended customary laws to protect widow's inheritance rights in 1993. It was not until state-supervised land boards were established in traditional communities a decade later that reports of these abuses dropped nearly to zero. This set of policies represents the greatest success story in my project: they have been effectively implemented in rural communities in the former Ovamboland thanks, in large part, to traditional leaders that have framed the protection of widows' inheritance and property rights as a matter of community concern for more than 30 years. The introduction in the early 2000s of state land boards that oversee chiefs' decisions on communal land allocation have further reduced discrimination against women traditionally not allowed to stay on communal land or inherit property after their husbands die.

In chapter 5, I apply my framework to the case of HIV/AIDS prevention policies, in which high levels of chiefly support combine with their disagreement over state framing of the epidemic and a lack of state oversight, leading to unanticipated policy outcomes that deviate

from national goals. Namibia's approach to combating HIV/AIDS is shaped by the global public health community's focus on young women as the group most biologically and socially vulnerable to infection. By contrast, traditional leaders across Namibia frame the epidemic as a disease that harms the entire "body" of the community. While chiefs have been strong allies in the fight against HIV/AIDS, they have ignored policies that ask them to address harmful traditional beliefs and practices that increase women's vulnerability to infection. Instead, chiefs have called on young people to return to the "traditional way of life," including traditional gender roles, as the best strategy for curbing the epidemic. Traditional leaders have thus reshaped national policies to reaffirm their relevance at the local level while directly contradicting national goals and ignoring measures intended to improve women's lives. The chapter concludes by examining the infrastructural and personnel challenges that led the regional committees overseeing AIDS policy implementation to delegate all activities in rural areas to traditional leaders.

Chapter 6 examines gender-based violence (GBV) laws, the least-successful case of policy implementation collaboration between traditional leaders and the Namibian state. I apply my framework to traditional leaders' (lack of) involvement with policies addressing two categories of GBV, domestic violence and rape. Traditional leaders and citizens alike regard domestic violence as a private matter in all but the most extreme circumstances, such as the death of a victim. Following customary law and Roman-Dutch common-law traditions, chiefs regard "real" rape cases—meaning assaults in which women have little or no connection to the rapist and struggle throughout the attack—as crimes against the community and address them in customary court by ordering attackers to pay compensation to victims' families. Chiefs generally ignore a national law criminalizing marital rape, however, arguing that a husband cannot rape a

wife. I demonstrate that the framing of domestic violence and marital rape as private matters is rooted in colonial-era constructions of public/private spheres of life and the relegation of women to the private/domestic realm as a tool for economic and political control. Traditional leaders are careful to note that they do not address GBV because it falls outside of their job description, not because it is an issue that primarily affects women. Nonetheless, the origins of this characterization derive from patriarchal constructions of what constitutes community wellbeing and reinforce power dynamics that favor men.

Turning to the second element of the framework, I use institutional analysis to highlight the influence of state oversight on policy implementation. No supervisory bodies exist to monitor chiefs' compliance with domestic violence policies, and as a result, most traditional leaders deny that they have any obligation to address this issue. On the issue of rape, by contrast, the Ministry of Justice has had some success in preventing the traditional courts over which chiefs reside from hearing civil claims for compensation in rape cases before criminal courts rule on them. Comparing the divergent policy outcomes for domestic violence and rape lends weight to my argument that institutionalized state oversight can compel traditional leaders to support the implementation of policies addressing "private" issues, even when such policies violate the community welfare principle by privileging the protection of individuals.

Throughout chapters 4, 5, and 6, I leverage data from my original survey, along with recent rounds of the Afrobarometer and Demographic and Health Surveys (DHS) in Namibia, to examine the opinions of citizens living in traditional Ovambo communities. I demonstrate that citizen-subjects share understandings of policies that closely reflect those of traditional leaders. The similarity in beliefs explains why citizens are not lobbying their chiefs for change. Indeed, as I argue, citizens believe that traditional leaders are generally carrying out their expected duties

well. It also tests alternative explanations for variation in chiefly support for women's rights in different policy areas.

The final chapter concludes the dissertation by discussing how the lessons of traditional leadership involvement in the implementation of women's rights policies in Namibia may be applied to other countries and contexts. It considers as well the lessons that policymakers should draw when crafting laws in which traditional leaders represent important stakeholders. It then summarizes the project's main findings and looks ahead to future research endeavors that arise from these results.

CHAPTER TWO

SITUATING TRADITIONAL LEADERSHIP IN NAMIBIA

Introduction

Discussions of traditional leadership rarely avoid references to history. This is because chiefs predicate their right to rule upon tradition as an inner legitimation of domination (Weber 2006). Specifically, traditional leaders justify the decisions they make with the claim that their ancestors have used the same body of customary law to rule since “time immemorial.” Leaders often justify controversial decisions by referencing stories of past kings that reached the same decisions when faced with similar problems. In less controversial circumstances, chiefs usually cite congruence of their pronouncements with their customs and traditions.

A key assumption of this project is that “traditional” beliefs and customary law are not static but rather dynamic and often strategically employed to retain or enhance power. Sometimes, chiefs or other elites have altered traditions consciously for political purposes, particularly during the period of South African rule in the case of Ovambo authorities. In other instances, shifting norms and social pressures have subtly reshaped traditions over time. The power of tradition lies not in the historical accuracy of contemporary practices but rather in the shared belief that current incarnations of tradition mirror closely those of their ancestors. As Terence Ranger argued in the follow-up to his famous 1983 piece on the invention of tradition in Africa, traditions take hold when they capture the imaginations of many, regardless of the origins of these practices (Ranger 1993, 1983). I accept that in some communities, some customs and beliefs were minimized or largely eliminated, and others emphasized, during the colonial period. Often, these changes to tradition were made under the direction of traditional leaders after consultation with colonial powers.

Despite the assumption that traditions are fluid and shifting, it is still important to review several aspects of tradition, gender relations and chieftaincies in Namibia in the pre-colonial, colonial and apartheid periods. As discussed above, chiefs draw upon historical precedent to justify their support or rejection of government policies. To understand the sources of traditional leaders' continued influence in Namibia as well as the origins of their attitudes on the proper roles of women, thus, key elements of the chieftaincy through time must be considered. In this section, I provide a brief overview of the history of traditional leadership and the state in Namibia, with a focus on Ovambo authorities and the experiences of women within them. This section is not intended to provide a comprehensive account of any period in Namibian history but rather to contextualize this study's central research question and the empirical chapters that follow.⁹

Pre-colonial Ovambo communities

I begin by briefly examining the status of women in Ovambo communities prior to German colonization in order to compare what is known about this period with claims made by traditionalists in the last few decades. The area referred to as Ovamboland in pre-colonial and

⁹ For a comprehensive overview of Namibian environmental, political and social history from the prehistoric period to independence, see Wallace and Kinahan (2011). On Ovambo communities in the pre-colonial and German rule periods, see Williams (1991), Eirola (1992), and Nampala & Shigwedha (2006). Bley (1996) ably covers the entire period of German colonial rule. Soggot (1986) and Katjavivi (1988) offer comprehensive overviews of war in Namibia, beginning with the Nama and Herero uprisings at the turn of the 20th century and continuing through the struggle for independence from South Africa that ended officially in 1990. The edited collection from Hayes et al. (1998a) addresses the political, gender, and economic implications of Namibia's experiences under South African rule prior to the introduction of apartheid. For northern Namibia, Mckittrick (2002, 1999) writes on social change among the Ovambo prior to 1950. Becker's (1995) study of the women's movement from 1980-1995 is an invaluable resource for anyone interested in the evolution of gender politics in Namibia at the end of the independence struggle. Forrest's (1998) study of the founding year (1993) of regional institutions offers an unparalleled history of the implementation of Namibia's decentralization policy.

colonial periods consisted of a group of kingdoms and polities generally known as “Ovambo,” was situated on a floodplain along what would be the Angolan-Namibian border. Communities that identified as Ovambo were scattered throughout the region.

Life in pre-colonial Ovambo societies revolved around agriculture, supported secondarily by cattle raising (Eirola 1992, 32). Men, in a strict division of labor, had exclusive responsibility for the cattle, hunting, and in most communities, political decisions. Women were responsible for nearly all of the agricultural production, domestic work, and pottery and basket making. Becker argues that women were quite visible in their communities due to their primary responsibility for agricultural activities. The assertion made by many chiefs, beginning in the colonial period, that women’s rightful place has traditionally been in the private/domestic sphere is therefore not supported, according to Becker. Women had duties that situated them within the private homestead, but their agricultural responsibilities ensured that they were consistently visible within their villages.

Pre-colonial histories of kingdoms across Namibia recount stories of their “good” and “bad” rulers. Kwanyama tradition, for example, refers to cruel King Haita, who allowed agricultural production to drop and forced subjects to destroy their flour stores (Williams 1991, 121). These histories also praise rulers that demonstrated “positive royal characteristics: care for their subjects...reverence for ancestors, bravery in battle and energy in promulgating laws to establish order in the realm” (Wallace and Kinahan 2011, 82). The attributes of “good” pre-colonial traditional leaders bear a striking resemblance to modern conceptions of expected behavior from chiefs. Indeed, a close reading of the oral histories of these early leaders suggests that many of the attributes of the community welfare principle were considered desirable traits for chiefs to have in the pre-colonial period.

Ovambo societies adhered to a matrilineal system. This system is often incorrectly regarded as an indicator of a society in which women exercise a great deal of authority. In reality, under this system of descent, husband and wife are not regarded as relatives and are married out of community of property.¹⁰ While this arrangement made divorce easy to obtain and tempered the degree of control a husband could exercise over his spouse(s) and children, it also implied potentially devastating consequences upon his death. When a man died, his siblings, sisters' children, mother, and mothers' siblings inherited his property, with his "main wealth," such as cattle, inherited solely by men (Becker 1995, 63). Widows and their children usually returned to the women's families. The tracts of communal land allocated to Ovambo men by the chief, and on which the homesteads and agricultural plots were situated, reverted back to the chiefs' control upon a man's death. This practice persisted into the late 1980s in a similar form in Ovambo communities (as chapter 3 discusses).

A common assertion made by male traditional leaders and villagers in the early 1990s held that Ovambo societies had never had women in positions of leadership. Appointing women to positions within the chieftaincies would harm the integrity of their communities' traditional cultures and defy the way their ancestors had intended their societies to be run. It appears that were indeed prevented from assuming positions of leadership in several kingdoms, including in Oukwanyama and Ondonga (Namuhuja 2002). But at least one kingdom, Ongandjera, had a long tradition of women rulers from the pre-colonial period through the 1860s (Williams 1991). In addition to these female *aakwaniilwa*, or queens, that headed the entire kingdom, women also served as traditional councilors and headmen under both kings and queens. Women also held important and visible positions within every Ovambo society, even those that barred queens and

¹⁰ In marriage out of community of property, spouses do not combine assets brought to the marriage and are responsible for their own debts.

headwomen. Women exerted power as healers and ritual leaders of important initiation ceremonies (Becker 2000), and the mothers of kings retained a place of authority as advisors to their sons (Totemeyer 1978). Although women were constrained in the political roles they could take in most Ovambo chieftaincies and kingdoms, openings existed for them to engage in important traditional rites that offered them a real measure of power and visibility that, as we will see shortly, disappeared with colonization.

This brief sketch of pre-colonial Ovambo communities is inadequate to provide definite conclusions about the nature of power and gender during the period, but “the general assumption of women’s traditionally inferior positions is highly disputable” (Becker 2000, 177). The “productive/public/male vs. reproductive/private/female dichotomy” that became explicitly entrenched in Ovamboland during South African rule was absent in the pre-colonial era, and Becker contends that men and women were regarded generally as inhabiting “different spheres in a complementary social duality rather than beings ranked hierarchically according to gender” (2000, 177–178). Becker’s claim is challenged by other historians, however, including Wallace and Kinahan, who argue that women held relatively high status in northern Namibian matrilineal societies but that “overall these polities were patriarchal, and male dominance was established and reinforced through a range of social and legal practices” (2011, 82).

Colonial rule under Germany and South Africa, 1885-1946

Germany claimed Namibia, then called South West Africa, in the Berlin Conference of 1884-5. By the early 1890s German *Schutztruppe* (elite cavalry units) had begun incursions into central and southern Namibia that eventually displaced the indigenous populations. Uprisings against German control continued throughout the 1890s as colonial administrators established state ministries in the capital of Windhoek. The settler colony grew relatively quickly: in 1896,

the white population stood at 2000; by 1903, it had more than doubled to 4700 (Wallace and Kinahan 2011, 149).

The expansion of the settler population pushed indigenous peoples, particularly pastoralist Hereros, further away from their land. In early 1904, in response to these displacements, long-simmering tensions erupted into wars of resistance by Herero forces against their German colonizers. By October of the same year, the Nama in southern South West Africa had also declared war on the Germans. The four years of conflict that followed devastated both the Nama and Herero populations. The devastation was due in large part to the proclamation made by German military commander Lothar von Trotha in late 1904 that all Herero people found within German boundaries, including women and children, should be shot (Wallace and Kinahan 2011, 165). Trotha's proclamation is regarded as proof of genocide, the first of the 20th century. By 1908, at least half the Herero population (with some estimates placing the figure at closer to 80 percent) and at least one-third of the Nama population had been killed, along with a substantial, but unknown, number of San and Damara speakers (Wallace and Kinahan 2011, 177–181).

Northern Namibia, including Ovambo communities, remained almost entirely untouched by the conflict that raged in the central and southern portions of the colony. This is due to the establishment of the Police Zone, the southern and central areas inhabited by German settlers, in 1896-97. Originally established as response to the *Rinderpest* (cattle virus) epidemic that swept through the region, the Police Zone cut off the north, along with parts of western and eastern Namibia, from German protection for settlers (Wallace and Kinahan 2011, Totemeyer 1978). The establishment of the Police Zone meant that German colonial efforts affected Ovambo societies minimally. Instead, the story of colonization in what was to become Ovamboland

begins in 1915, when South Africa, under British rule, invaded the German colony. Following Germany's defeat in World War I, the League of Nations designated the colony a Class C mandate—the category assigned to colonies regarded as incapable of self-governance—which South Africa had the responsibility of administering.

Unlike its predecessor, South Africa sought to establish a presence in the area north of the Police Zone shortly after its 1915 invasion. At the same time, Portuguese troops in southern Angola established military control of northern Ovambo areas (Hayes 1996, 364). Thus, 1915 represented for Ovambo communities a dramatic break with the past. Some Ovambo kingdoms, weakened significantly by a two-year drought and resulting famine, welcomed the arrival of representatives from South Africa's Native Labor Bureau. In Ondonga, King Martin allowed Bureau Director Stanley Pritchard to establish a South African base within the kingdom in exchange for aid (Wallace and Kinahan 2011, 208). Other polities did not receive the South Africans so warmly. Most famously, King Mandume of Oukwanyama mounted an attack on South African forces in 1916 that killed 19 troops. South Africa responded a few months later, in early 1917, in a confrontation that defeated Mandume's army and left the king dead (Williams 1991). After Mandume's defeat, South Africa dismantled the Kwanyama kingship and installed in its place a council of compliant headmen (Wallace and Kinahan 2011, 210).

Once the League of Nations confirmed the mandate at the end of 1920, officials moved quickly to establish a colonial order within Namibia that would directly benefit the South African economy. The new colonial administration began implementing a system of native reserves divided by 'tribe' and intended to engineer racial segregation following the same policies South Africa was using within its own borders at the same time (Silvester 1998). The colonial administration combined their segregationist policies with the passage of a body of laws that

controlled the movement of African men and required them to have employment to create a new pool of migrant labor.

Throughout the 1920s, “the experience of colonialism remained shallow in Ovambo,” with no attempts to disarm or tax the population (Wallace and Kinahan 2011, 229). Instead, Native Commissioner C.H.L. “Cocky” Hahn laid the beginnings of an indirect rule system by “governing through nominally compliant councilors, headmen or kings in each of the Ovambo polities” (Ibid). In 1928, a five-year drought began that resulted in famine throughout Namibia. Colonial officials capitalized upon the famine as a way to gain more control over Ovambo communities by establishing food-for-work projects, including building dams across the region. It was also during this “famine of the dams” that colonial administrators began pushing in earnest a model of Ovambo that was “a contained, agriculturally self-supporting rural populace, dominated by traditional leaders and male lineage elders” (Hayes 1998b, 134).

The domination by traditional leaders in colonial Ovamboland had important and enduring consequences for women and understandings of tradition in these societies. Native Commissioner Cocky Hahn was particularly involved in recording and championing traditional practices that he, like most colonial administrators at the time, regarded as fixed and timeless (Wallace and Kinahan 2011, Hayes 1996). Of course, it was the colonial state that forced complex, contested and flexible practices and norms into a “closed, static, structured, and simple” system (Hamilton 1998, 128). Studies by Hayes argue convincingly that Hahn and other colonial officials structured this static system in a “profoundly gendered” manner (Hayes 1996, 364). In particular, officials formed alliances with, and constructed the colonial state based upon the cultural insights of, extremely conservative male traditional leaders and elders (Hayes 1996, 1998b).

These alliances between conservative chiefs and colonial officials were beneficial to both sets of actors. With the backing of a colonial state that institutionalized their practices and beliefs, traditional leaders were able to regain the authority that had been slowly eroding since the arrival of Christian missionaries in what would become Ovamboland more than 50 years prior. By endorsing a “traditional” social order that kept women in the home and stripped them of leadership and decision-making powers, South African officials controlled the mobility of women and promoted the labor migration of young men. Indeed, according to Hayes (1996), encouraging migrant laborers to work in the mines of southern Namibia and South Africa was the primary goal of the Ovamboland native administration. Young men were extracted from Namibia for the enrichment of South Africa as aggressively as its natural resources.

While men were away from Owambo on labor contracts, women assumed all responsibility for the cultivation of crops while continuing to care for children and the elderly. Now, more than ever, they were essential to the continued survival of their communities, and their mobility was thus regarded as threatening to the continued existence of the “traditional order” upheld by traditional leaders with the backing of the colonial state. Women that were captured while trying to escape to the Police Zone were often publically flogged by their traditional leaders upon their return. The severity of their punishment “highlights the fact that African women were designated not only as the bearers of agriculture but also as the bearers of culture” (Hayes 1996, 371). Colonial officials feared that migrant laborers would “detritalize” during their work contracts and thus attempted to seal off Ovamboland from the rest of the country. The colonial vision of Cockey Hahn and the rest of the native administration involved women preserving and embodying the “traditional way of life” while men were on contract and “re-tribalize” them once they returned. Officially, however, traditional leaders and colonial

officials prevented women from leaving their “tribal areas” because doing so ostensibly violated traditional customs.

As more men left Ovamboland on migrant labor contracts, women became increasingly central to the agricultural and cultural survival of Ovambo communities. The centrality of women to the endurance of Ovamboland was rewarded only with further restrictions on their role in society. Becker describes the changes made by colonial-traditional leadership alliances throughout the 1930s and first half of the 1940s:

The colonial construction of gender...led to essentialist gender images, as it isolated the category of ‘women’ from other social categories with which they had been intertwined in earlier representations. The colonial representation of gender negated social differences among women as well as among men ... The idea was that women comprised a social group whose place...was in the ‘tribal areas,’ where they generated agricultural or animal husbandry produce to subsidize the system of cheap male migrant labor. They were to be kept under the control of male ‘traditional’ authorities. Women’s place...was to be in the domestic and ‘traditional’ spheres of society, whereas men were to enter the public sphere, predominantly as migrant laborers... ‘Traditional’ politics and jurisdiction were redefined as exclusively male domains (2000, 181).

As the colonial construction of gender progressed and the acceptable spaces for women became more clearly delineated, female traditional leaders were displaced. For example, in Ongandjera, the traditional authority in Ovamboland that had a pre-colonial tradition of women leaders, female *omalenga* (traditional counselors or headmen) remained in power during the early years of South African rule. Oral history suggests, however, that female leaders were replaced with exclusively male *omalenga* by the late 1930s (Becker 2002). Similar stories are told in Kavango, the region bordering Angola and the eastern boundary of Ovamboland. Also outside of the Police Zone, colonial officials and traditional leaders in Kavango communities had a cooperative relationship and followed the same process of alliance creation that restricted the social and physical movement of women. Unlike in Ovambo, however, women served in positions of leadership past the 1930s. The Kwangali traditional authority had a female chief, Kanuni, until

1941, at which time she was deposed by the native commissioner for Kavango and replaced with her brother (Becker 2000, 179).

To summarize, the period of German colonial rule barely touched the Ovambo traditional authorities that are the subject of the rest of this study. Herero, Nama, Damara and San communities, however, were devastated by mass displacements and genocides wrought by German forces in the first decade of the 20th century. Dramatic social, cultural, economic and demographic ruptures began instead under South African rule for Ovambo. To facilitate the colonial extraction economy designed to benefit South Africa, native commissioners struck up mutually-beneficial alliances with conservative traditional leaders that pushed young men into accepting migrant labor contracts. At the same time, the social position of Ovambo women was dramatically circumscribed and rigidified to ensure they kept communities running in the absence of younger men. As the following sections describe, colonial constructions of women's spaces have persisted into the independence period and are now widely thought of as part of a timeless division of gender roles that has existed since time immemorial. In fact, they resulted from the manipulation of flexible or wholly invented tenets of traditional culture at the hands of conservative male chiefs eager to regain authority and support that was being lost to Christian missionaries in the decades prior to colonial rule.

Apartheid and independence struggles: 1946-1989

The lead-up to apartheid rule: 1946-1959

When the United Nations replaced the League of Nations in 1945, it transferred responsibility for mandated territories, including South West Africa, to a trusteeship council (Silvester 2015). South African Prime Minister Jan Smuts requested that the UN allow his

country to incorporate Namibia into his country as its fifth province. To lend support to this request, he held a referendum in early 1946 that asked Africans in Namibia whether they supported incorporation into South Africa. The vote passed by a huge margin, with 208,850 voting in favor of incorporation and 33,250 against (Wallace and Kinahan 2011, 244). The vote, however, had consisted not of individual ballots but of community meetings held in the native reserves by chiefs and headmen at which residents were asked “not whether they backed incorporation, but rather, whether they wanted ‘any other nation to rule them,’ suggesting they had a choice between South Africa and Germany” (Wallace and Kinahan 2011, 244). The sham referendum sparked anger among several traditional leaders that had previously cooperated with colonial authorities, including Herero paramount chief Hosea Kutako, and he was supported by chiefs in Botswana and Dr. A.B. Xuma, leader of the African National Congress in South Africa (Ibid). This marks one of the first times that opposition groups within Namibia had gained international attention.

The United Nations rejected South Africa’s incorporation request in 1946. Two years later, the National Party (NP) came to power in South Africa and began the process of implementing apartheid within its own borders. Ignoring the decision of the United Nations, the NP announced it would stop filing reports on Namibia and began implementing apartheid within the territory as the party took steps to make it the fifth province of South Africa. The implementation of apartheid in Namibia was “slower and less elaborate” (Ngavirue 1997, 237) than in South Africa, but laws throughout the 1950s and 60s steadily restricted African men’s movement, keeping them out of urban areas and preventing northerners, including women, from entering the Police Zone without rarely-granted permits.

These events sparked the beginning of new strands of resistance within Namibia. The churches began to radicalize, and around the same time, formal nationalist movements were being established, the result of “the success of contract workers from the north organizing themselves and converting deep-seated discontent with the status quo into a sustained mass movement” (Wallace and Kinahan 2011, 246). The most important group to arise from this period of mass organization was the Ovamboland People’s Organization, founded in 1959 by Sam Nujoma. The following year, the OPO renamed itself the South West Africa People’s Organization, SWAPO. It was to become the self-proclaimed leader of Namibia’s liberation movement and the party that has dominated every level of government since 1990.

Throughout this period, migrant labor continued to impact life and gender roles in the “native areas.” In Ovamboland, men were forced to take longer migrant labor contracts, with the length changed to two years from 18 months in 1941. As men left for longer periods of time on contract, women’s workloads increased. Although gender roles temporarily shifted as women took on “men’s work” like tending the cattle, they were generally still barred from major household decision-making and instead relied their husbands’ remaining family members to make decisions of importance (Becker 1995). At the same time, mission churches gained influence in Ovamboland and began more strictly prohibiting divorce, banning polygamy (which led to the abandonment of second and third wives), and supported patrilineal inheritance practices. In this period, “the men’s work of reproducing the settler economy was thus built on the further exploitation of women’s and children’s labor” (Wallace and Kinahan 2011, 256).

The Odendaal Commission, Homelands and Second-Tier Authorities: 1960-1981

In 1962, the South African government convened the Odendaal Commission, the purpose of

which was to determine ways to address the welfare and social progress of South West Africans. The commission's report, released the following year, outlined the character that apartheid would take in Namibia. Not surprisingly, given that South Africa hoped to incorporate the territory as its fifth province, the commission suggested that apartheid in Namibia take essentially the same form as in South Africa, with ethnically-divided, independent homelands for blacks. White areas would fall into South African territory. The ten homelands¹¹ were largely congruent with the native reserves already in place but did involve forced relocations for some groups within the Police Zone. Resistance to these forced moves prevented this piece of the apartheid plan from being fully implemented (Wallace and Kinahan 2011).

As we have seen before, Ovamboland was less affected by the creation of homelands than groups to the south. With the implementation of these homelands, however, traditional leaders gained more power. Because apartheid officials intended these homelands to become independent territories eventually, they installed homeland governments that each had an executive and a legislative assembly populated with "ethnic authorities"—chiefs and headmen. Residents of these homelands usually viewed these ethnic authorities as "political puppets of Pretoria...[and] in most policy matters of significance, such as security, land use, and water resources, Pretoria assumed direct control" over the their affairs (Forrest 1998, 33).

By the mid-1970s, residents in most of the homelands had come to view traditional leaders as enforcers of the apartheid regime, rather than protectors of their communities. In Ovamboland, contempt for chiefs was fueled by their response to a 1973 election boycott by the

¹¹ In addition to Ovamboland, the four other homelands north of the Police Zone were: Kaokoveld for Himba and Tjimba groups, Eastern Caprivi for several different groups, Bushmanland for the San, and Okavangoland for five different groups. In the Police Zone were Damaraland for the Damaras, Hereroland for the Hereros, Namaland for the Namas, Tswanaland for the small Tswana population in eastern Namibia on the border with Botswana, and Rehoboth Gebiet (Wallace and Kinahan 2011, 263).

Swapo Youth League. Ovambo traditional leaders responded to the boycott by arresting and publicly flogging dozens of boycott organizers, both men and women. Residents of Ovamboland regarded the floggings as inappropriate and illegitimate actions by chiefs. The brutal beatings underscored local-level perceptions of chiefs as prioritizing the South African regime over the wellbeing of their own people (Jones 2015).

A survey conducted in 1975 among elites in Ovamboland, including teachers, administrators, religious leaders, and traditional leaders, provided quantitative evidence of the loss of support for chiefs underscored by the public floggings that had occurred two years earlier. In Ovamboland, 85 percent of traders, 82 percent of religious leaders, and 70 percent of nurses said that they were unsatisfied with the people currently serving as traditional leaders, while 96 percent of traditional leaders expressed their satisfaction with themselves (Totemeyer 1978, 59). When asked how important the continued existence of “traditional tribal authorities” was for the maintenance of authority in Ovamboland, 61 percent of all respondents said it was less important or unimportant, while 79 percent of traditional leaders characterized their continued existence as “very important” (Totemeyer 1978, 60). Exceptions to this general pattern of disdain for chiefs existed: for example, Ondonga King Immanuel Kauluma Elifas came to power with the approval of the South African government in 1975 and is today a popular leader of both his traditional authority and the Council of Traditional Leaders. For the most part, however, citizens had come to accept SWAPO and the churches as their main source of authority, particularly in the Ovambo homeland.

In 1980, as SWAPO fought South African forces in Angola and northern Namibia, and in response to United Nations pressure to grant Namibia independence, South Africa created a system of second-tier authorities replaced the homeland governments. These second-tier

authorities were based on administration by ethnic group rather than geographic region (the basis for homelands). In effect, the second-tier authorities system granted “each of the major ethnic groups of Namibia...its own minigovernment” (Forrest 1998, 35). The establishment of these authorities was intended to convince the international community that South Africa was moving toward multi-racial democracy, but in reality, they varied little from the homelands they had replaced. They remained puppet governments “staffed by compliant chiefs and headmen who, at all times, remained entirely under the military authority of the South African army and the political authority of the South African parliament” (Forrest 1998, 35). These second-tier authorities remained in place until Namibia’s independence in 1990.

SWAPO and Women’s Rights: 1969-1981

As South Africa began implementing apartheid in the late 1960s, SWAPO ramped up its guerrilla attacks on South African forces with its military wing, the People’s Liberation Army of Namibia (PLAN) while also creating wings to appeal to specific segments of the population, including the SWAPO Women’s Council (SWC). While SWAPO is central to this section, a recitation of the liberation struggle that it led is not. Instead, this section highlights the nascent women’s rights movement within SWAPO and PLAN in the 1970s-1980s and the role of the UN in bringing about independence and enshrining gender equality in the 1990 constitution.

During its independence battle, members of SWAPO often spoke about the inferior position conferred to women in pre-colonial Namibian society. This discourse was particularly prominent in its official literature. SWAPO’s Department of Information and Publicity took particular pains to promote this idea:

...there are traditional customs which served to oppress women...The Namibian Woman is realizing that she should be actively involved in the national struggle for liberation to

free her country from the yoke of colonialism and at the same time, free her and her male counterpart of the wrong practices and customs which served to keep them both “un-liberated.” Thus she ensures that there is a revolution within a revolution...we realize that what SWAPO fights for should be explained to the masses and should become part of them... (SWAPO 1981, 290–291).

SWAPO’s focus on women’s rights as they related to the overarching goal of Namibian freedom points to a larger issue. Collins has argued that SWAPO embraced a policy of gender equality in the early years of the independence struggle as one strategy for creating a broad potential base of support for the party. By promoting itself as “theoretically and practically...relating to people at the grassroots,” SWAPO also used its commitment to gender equality as a technique for garnering support specifically from women (Collins 1977, 42). Viewing women as the most effective politicizers of children and families, SWAPO developed policies that contrasted sharply with the South African state’s treatment of rural women.

In 1969, the SWC became an official SWAPO wing with its own constitution in 1976 (Cleaver and Wallace 1990). Although the SWC represented an unprecedented opportunity for female leadership within a Namibian political party, the SWC limited the potential influence of women leaders on SWAPO by delegating all “women’s issues” to one council within the party. By compartmentalizing women’s needs into one wing, SWAPO’s main leaders rarely had to deal with these issues directly. SWC leaders had little power because they could not act without the approval of the central leadership. Despite the marginalization of women’s interests, the SWC provided the most concrete strategies for women’s involvement in the independence struggle. Additionally, the SWC helped foster, in parts of the country, a new societal perception of women as capable, intelligent equals. In rural areas, this image of women stood in stark contrast to the second-class status to which traditional leaders and the colonial state had relegated women.

Although the political wing of SWAPO created the policy of gender equality, it became a reality most quickly within the People's Liberation Army of Namibia (PLAN), the military wing of SWAPO. PLAN, which operated both inside Namibia and in neighboring countries like Angola, required all unmarried female exiles to undergo military training and serve in the army for one year. One female PLAN soldier said that, during the independence war, "women had the same role as men. If we were attacked then we had to shoot. If something had to be done then there were no preferences. Women were just as important as the men. When we were at war, the men respected us...they saw us as equals, but this was not the case when we were not at the battle front" (Lush 1993, 298).

Some women soldiers disagreed with the view and believed that women did receive different treatment. One PLAN fighter said that women did not go to the front lines during when the fighting got "really bad" (Shikola 1998, 142). Off the battlefield, women did not experience the same sense of gender parity. Male platoon commanders often resented the presence of women in their units, and they treated the female soldiers harshly (Lush 1993). Further, allegations of sexual assault of female combatants by their male counterparts have circulated for decades (Akawa 2014).

Gender Equality and the United Nations: 1982-1989

The UN had been involved in Namibia's fight for independence for more than a decade when the Western Contact Group (WCG) formed in 1977. US Ambassador to the UN Andrew Young gathered a group of officials from foreign ministries and UN representatives from Canada, France, United Kingdom, United States, and West Germany. Young believed that the group could make inroads into the "situation in Namibia" because the five countries in the WCG

were all serving on the Security Council at the time and therefore could quickly act on threats and diplomatic developments made in the negotiation process in the UN. Its primary goal was to secure UN-supervised, free and fair elections for Namibia in accordance with UN Security Council Resolution 435 of 1978, which outlined arrangements for Namibia's transition to independence.

In 1982, the UN Security Council began pressing the WCG to make progress in negotiations between SWAPO and the South African government. In response, the WCG drew up and presented "Principles Concerning the Constituent Assembly and the Constitution for an Independent Namibia" to both sides. The document outlined procedures for a Constituent Assembly election in accordance with UN Security Council Resolution 435. Additionally, the section entitled "Principles for a Constitution for an Independent Namibia" represents the first mention of gender equality in relation to national law in independent Namibia. Principle five established the fundamental rights that the Namibian constitution would recognize:

There will be a declaration of fundamental rights, which will include the rights to life, personal liberty and freedom of movement; to freedom of conscience; to freedom of expression, including freedom of speech and a free press; to freedom of assembly and association, including political parties and trade unions; to due process and equality before the law; to protection from arbitrary deprivation of private property without just compensation; and to freedom from racial, ethnic, religious or sexual discrimination. The declaration of rights will be consistent with the provisions of the Universal Declaration of Human Rights. Aggrieved individuals will be entitled to have the courts adjudicate and enforce these rights. ("Constitutional Principles (S/15287)" quoted in Cliffe et al. 1994, 244–246).

This first occurrence of gender equality in a document that later became the basis of the independence constitution was thus generated not by SWAPO but by members of the WCG. Leaders of SWAPO originally fought against acceptance of these constitutional principles because, in an early draft of the principles, the WCG outlined an electoral process with a proportional representation system that would select half of the Constituent Assembly seats

through proportional representation and half through single-member district votes (Jabri 1990). While proportional representation has been established as the best electoral system for bringing women into office, SWAPO rejected the proposed system on the grounds that it would undermine its electoral support and allow more whites to enter the Constituent Assembly. Despite the resistance from SWAPO, the party accepted the WCG's constitutional principles in July 1982.

As the "lost decade" of the 1980s drew to a close (Wallace and Kinahan 2011, 296), South Africa finally began negotiations to implement UN Resolution 435 in May 1988.¹² Terms were agreed to quickly, and a free and fair election in December 1988 created a Constituent Assembly that was tasked with writing a new constitution. Negotiations surrounding the constitution happened quickly and with relatively little input from civil society, traditional leaders, or anyone outside of the elected members of the assembly. It was a very different process from the one that South Africa would experience just a few years later. In both cases, the writing of the new constitution and the transition to independence represented critical junctures that shaped governing institutions in enduring ways. But in the case of Namibia, the agreement that the constitution would be based on the WCG's 1982 principles and the speed with which the constitution was written meant that there were few openings for outside voices to bring their demands to the table. Moreover, Namibian traditional leaders did not have the political power to threaten to derail an election as their Zulu counterparts in South Africa did (Williams 2010). As a

¹² Explanations regarding the timing of South Africa's acceptance of Resolution 435 have been covered elsewhere and are beyond the scope of this study. Standard explanations of South Africa's withdrawal have centered on international developments like the Brazzaville accords that provided for the withdrawal of Cuban troops from Angola in December 1988 and the willingness of the USSR to engage in negotiations on regional conflicts (Cliffe et al. 1994, Deutschmann 1989). Internal politics mattered as well: protests by laborers and civil society groups became ever more common and contentious, creating increasing difficulties for South Africa (Wallace and Kinahan 2011, Smuts 1987).

result, traditional leaders were not regarded as a powerful interest group requiring accommodation and were largely ignored in the 1990 constitution.

To summarize the tumultuous apartheid and independence struggle periods, the apartheid regime afforded a great deal of authority to compliant traditional leaders. Some chiefs retained the support of their communities, protecting them as much as they could while toeing the line enough not to be removed from power by Pretoria. Most traditional leaders in positions of power in the homeland governments and second-tier authorities engendered only the resentment and mistrust of their communities as the leaders prioritized South Africa's demands over the wellbeing of their communities. The traditional leaders' participation in the implementation of apartheid led widespread mistrust among SWAPO officials. As the next section discusses, this mistrust and antipathy contributed to the restricted role of chiefs in independent Namibia.

Post-independence trends, 1990-present

In the early 1990s, two common themes in the rhetoric surrounding traditional leadership were punishment and death. As the preceding sections have detailed, the collusion of chiefs and colonial powers engendered significant antipathy toward the former in the decades prior to independence. In the first years of independence, this antipathy persisted, at least at the national level, with comments from parliamentarians that chiefs should be allowed to "die a natural death." In the same vein, elected officials argued that chiefs should be excluded from the democratic regime as punishment for their collaboration with South African officials. Two events during this period changed government rhetoric and popular attitudes toward traditional leaders, however. In this section, I examine key events in the early 1990s that shaped state policy on traditional leaders and the legislative battles that followed.

The first event that affected governmental and public perceptions of chiefs occurred in 1991 when the Kozonguizi commission, headed by Ombudsman Fanuel Kozonguizi, released the findings of its investigation “into matters relating to chiefs, headmen and other traditional or tribal leaders” (Kozonguizi 1991). The commission had been charged by the president with making recommendations about “the viability or otherwise of traditional or tribal authorities, regard being had to the provisions of the Namibian Constitution” (Kozonguizi 1991, 1), which it did by holding hearings across the country and accepting written submissions on the question of whether traditional leadership should be allowed to exist in Namibia and, if so, in what form.

The conclusions outlined in the commission’s report struck many as contradictory. The report emphasized how unenthusiastic Namibians outside of communal areas were about the continued existence of chieftaincies. It also criticized traditional leaders for exacerbating tribalism and ethnic divides by politicizing “tradition.” Despite these damning claims, the commission recommended that “the system should be retained with certain modifications” (Kozonguizi 1991, 11), a conclusion it based upon the important role traditional leaders continued to play in the lives of rural citizens. Four years later, when the first Traditional Authorities Bill finally came before the National Assembly, the recommendations of the Kozonguizi Commission were visible in its emphasis on chiefs as community peacekeepers and cultural protectors.

The second event that shaped state officials’ attitudes toward traditional leaders began in 1992. A severe drought that began early that year made the “threat of human catastrophe” in the form of famine and water shortages so likely that it “provoked state leaders, ministry technicians, traditional leaders, and regional councilors to forge working relations in the creation of a new policy bureaucracy” (Forrest 2000, 311). Food aid and other forms of drought relief were

distributed inefficiently through mid-1993, providing aid to some households without need and missing some of the neediest families entirely. The difficulties with early drought relief efforts were exacerbated in the former Ovamboland by the exclusion of traditional leaders from the distribution process (Forrest 2000, 319). The distribution process became much more efficient, able to identify and target households with the most pressing needs, once the national drought relief committee agreed to turn the management of these tasks over to traditional leaders, particularly in north-central Namibia.

The drought relief response represents one of the first post-independence events in which traditional leaders were able to demonstrate their unique value in a democratic state. Chiefs, as members of “decentralized organizational nodes with popular local legitimacy,” were eventually offered “substantial behavioral autonomy” (Forrest 2000, 308) in the process of food aid distribution and thereby contributed to a successful drought relief policy outcome. The drought emphasized to the state the continued importance of chiefs to the success of policy implementation in rural areas, despite its previous efforts to marginalize these actors. This is a lesson that repeated itself across postcolonial Africa (Buur and Kyed 2007a, Englebert 2002). Traditional leaders also cultivated important networks with regional councilors that had been elected in December 1992.

The 1994 parliamentary debate in the National Assembly over the passage of the Traditional Authorities Bill illustrates well the popular sentiments of elected officials in the early years of independence. In his opening remarks about the bill introduced by his ministry, the Minister of Regional and Local Government and Housing highlighted the inherent problems in allowing the chieftaincy to continue in a democratic state with specific reference to the institution’s “conservative nature...in relation to the treatment of women” (Debates of the

National Assembly 1994, 234). Moreover, the minister noted, a monarchy could not coexist with a republic. Despite concerns over allowing an institution that discriminates against women survive within the context of a democratic constitution, the minister concluded that chiefs were important for the upholding of traditions and culture. Further, he implied that the regional and local government structures that had been established just a year earlier would keep the chiefs in check.

The way that the Minister of Regional and Local Government and Housing spoke about traditional leaders and the institutional of traditional leadership reflects the prevailing attitude of government officials and other urban elites toward these entities in the early-to-mid-1990s: an outdated institution, potentially inimical to the consolidation of democracy, that nonetheless had an important cultural role to play in the newly-independent state (under the watchful gaze of local government bodies). Nonetheless, as the following section demonstrates, traditional leadership died neither a natural death from lack of support, nor was it killed through legal prohibitions. Traditional leadership in Namibia remains the most tightly regulated in southern Africa (Düsing 2002), but it endures and, as the following chapter explains, continues to find new ways to exercise and expand its influence.

The legal landscape for traditional leaders

The history reviewed above provides important context for Namibia's uniquely restrictive traditional leadership laws. Three national laws spell out the activities and leadership structures of chieftaincies in Namibia: The Council of Traditional Leaders Act of 1997, the Traditional Authorities Act of 2000, and the Community Courts Act of 2003. This section provides an overview of these laws and pertinent constitutional provisions as they relate to the policy areas under study in the following chapters.

Article 66 of the constitution allowed colonial-era customary and common law to remain in force at independence provided that the laws do not conflict with constitutional or statutory law. Laws that do conflict with the constitution must be repealed by parliament, however, which has led to a slow, piecemeal process of repeals. Indeed, the process of repeals is so tedious and cumbersome that several laws from the early years of South African rule that apply only to black Namibians remain in force, including, famously, a marital law that requires Africans north of the former Police Zone to marry out of community of property unless they specifically request otherwise. Most traditional authorities have, at least according to the Customary Law Ascertained Project at the University of Namibia, repealed traditional laws that conflict with constitutional and statutory law (Hinz 2014, Hinz and Namwoonde 2010).

Article 102(5) of the constitution, which outlines structures of regional and local government, provides for the establishment of a chieftaincy body:

There shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament in order to advise the President on the control and utilization of communal land and on all such other matters as may be referred to it by the President for advice.

The Council of Traditional Leaders (CoTL) described here was not established until 1997 in the Council of Traditional Leaders Act. The CoTL is a body located within the office of the president tasked with advising the president on matters related to communal land or any other issue referred to it by the president. Made up of the chief of each government-recognized traditional authority and one additional member of each of these authorities (usually the longest-serving traditional councilor), the CoTL meets usually only once a year. Many of the traditional leaders that I interviewed described the CoTL as a toothless advisory body. Often, the president did not take the recommendations of chiefs, they told me (but due to the secrecy that surrounds

most of these recommendations, I was unable to verify this assertion). The frequent demands made by the CoTL leadership for additional power had gone unanswered.

Traditional Authorities Act of 2000

The Traditional Authorities Act of 2000, hereafter referred to as the TAA, is the foundational and most important law governing the framework, duties, and powers of government-recognized traditional authorities. It replaced the Traditional Authorities Act of 1995, which included controversial definitions of some terms relating to traditional leadership and addressed the Council of Traditional Leaders, which became the subject of a 1997 law of its own. Here, I highlight the two features of the TAA that relate directly to this project: the organization of traditional authorities and the duties of traditional leaders as outlined in the law. Both facets of the act reveal important things about the aspects of chieftaincies over which government wants to exercise control, those for which it wants to avoid any responsibility, and those in which the law and reality are entirely at odds.

The TAA defines a traditional community as:

an indigenous homogeneous, endogamous social grouping of persons comprising of families deriving from exogamous clans which share a common ancestry, language, cultural heritage, customs and traditions, who recognizes a common traditional authority and inhabits a common communal area, and may include the members of that traditional community residing outside the common communal area (Traditional Authorities Act No. 25 of 2000, sec. 1).

A traditional authority, following from this definition, refers to the leadership structure of a TA. Although chieftaincies across different Namibian communities have very different leadership structures, the TAA requires traditional authorities that want government recognition (and the attendant monthly allowances) to appoint for official purposes:

- (1) one head of the traditional community that is referred to as a chief;
- (2) a traditional secretary¹³;
- (3) up to six senior traditional councilors; and
- (4) up to six traditional councilors.¹⁴

The law states that these traditional officials should all be selected in accordance with the “customary law” of their respective communities, a term that is circularly defined as “the customary law, norms, rules of procedure, traditions and usages of a traditional community in so far as they do not conflict with the Namibian Constitution or with any other written law applicable in Namibia” (Traditional Authorities Act No. 25 of 2000, sec. 1). However, the law requires the Minister of Regional and Local Government, Housing and Rural Development (MRLGHRD) to review the applications of every traditional authority that applies for recognition and approve new appointments to positions after the authority has been recognized. Therefore, although the MRLGHRD disavows any involvement in the intra-group affairs of traditional authorities, it has the final say in whether the existence of a traditional authority and its members is legitimate. The MRLGHRD says that unrecognized authorities and leaders are still allowed to exist and simply do so without state recognition, implying that the ministry does

¹³ Traditional secretaries do not necessarily have any claim to a hereditary leadership position. Often, they are the confidantes of traditional leaders and are used as a sort of personal assistant by the head of the traditional community. They are often the contact point for the MRLGHRD and, I believe, were established as paid members of traditional authorities specifically to facilitate timely communication and information-sharing between traditional authorities and the line ministry. In my experience, traditional secretaries tended to be the youngest and best educated members of their traditional authorities, more likely to speak English, and the people charged with all of the technological obligations of the authority, including faxing, emailing, occasionally maintaining websites, and telephone communication, mostly with MRLGHRD officials.

¹⁴ Traditional councilors are usually referred to as “junior councilors” by both traditional leaders and MRLGHRD officials.

not interfere with the traditional way of selecting leaders and defining leadership bodies.¹⁵ In reality, however, the allowances, infrastructure like buildings, computers and fax machines and institutional support provided by the ministry mean that unrecognized traditional authorities usually collapse quickly, with its members absorbed by nearby, recognized authorities.

The second part of the law of interest in this study is the list of powers, duties and functions assigned to traditional authorities and their members. This section of the law is worth quoting at some length:

3. (1) Subject to section 16, the functions of a traditional authority, in relation to the traditional community which it leads, shall be to promote peace and welfare amongst the members of that community, supervise and ensure the observance of the customary law of that community by its members, and in particular to-
 - (a) ascertain the customary law applicable in that traditional community after consultation with the members of that community, and assist in its codification;
 - (b) administer and execute the customary law of that traditional community;
 - (c) uphold, promote, protect and preserve the culture, language, tradition and traditional values of that traditional community;
 - (d) preserve and maintain the cultural sites, works of art and literary works of that traditional community;
 - (e) perform traditional ceremonies and functions held within that traditional community;
 - (f) advise the Council of Traditional Leaders in the performance of its functions as provided under Article 102(5) of the Namibian Constitution, the Council of Traditional Leaders Act, 1997 (Act No. 13 of 1997), or under any other law;
 - (g) promote affirmative action amongst the members of that traditional community as contemplated in Article 23 of the Namibian Constitution, in particular by promoting gender equality with regard to positions of leadership; and
 - (h) perform any other function as may be conferred upon it by law or custom.
- (2) A member of a traditional authority shall in addition to the functions referred to in subsection (1) have the following duties, namely-
 - (a) to assist the Namibian police and other law enforcement agencies in the prevention and investigation of crime and, subject to the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), the apprehension of offenders within their jurisdiction;
 - (b) to assist and co-operate with the Government, regional councils and local authority councils in the execution of their policies and keep the members of the traditional community informed of developmental projects in the area...

¹⁵ Interview with MRLGHRD civil servant, November 8, 2011.

Several elements of this section of the law require discussion. First, it is no coincidence that Section 3(1) begins its listing of chiefly duties with the promotion of peace and welfare among its community members, even before the obligation of chiefs to observe customary law. The placement of this obligation reinforces the centrality of the principle of community welfare to the duties of chiefs. The rest of the duties outlined in section 3(1) assist with the state's efforts to position traditional leaders as cultural ambassadors and actors without political affiliations or rights to governance. Section 3(1)(g) references article 23 of the constitution by obligating traditional authorities to promote gender equality, among other forms of affirmative action, within their communities by putting women in positions of leadership. Besides the constitution itself, no other act in Namibia obliges an institution to promote gender equality. I believe the gender equality stipulation in this law reflects government concerns about the incompatibility of traditional authorities with its vision of a democracy.

It is also interesting to note the duties of traditional leaders outlined in section 3(2). The requirement that traditional authorities assist the police in preventing and investigating crimes and assisting government, regional and local councils in the execution of policies and informing their communities about development projects in the area represent the only involvement with governance allowed to traditional leaders. Moreover, it is this part of the law in which the government has involved traditional leaders in the implementation of the policies discussed in chapters 4, 5 and 6 of this study.

Community Courts Act of 2003

In his introduction to the bill in the National Assembly, Deputy Minister of Justice Kawana explained the necessity of the Community Courts Act (CCA):

...the modern system of our courts has failed the people of Namibia. It is because, unlike

customary courts, modern courts put too much emphasis on the rights of the accused. A victim in most cases is left penniless. Therefore, government's aim of bringing justice nearer to the people can only succeed if traditional courts are brought within the mainstream of the system of the administration of justice. These courts cater for the overwhelming majority of our citizens...The Community Courts Bill aims at streamlining courts presided over by traditional leaders...one of the main purposes of recognizing and establishing Community Courts is to bring the courts, presided over by traditional leaders, into the mainstream of our courts system. This will enable the Ministry of Justice to guide and supervise Community Courts in the carrying out of their functions in line with our Constitution" (Debates of the National Assembly 2001, 29).

The Community Courts Act of 2003 formalizes the traditional courts that have been used in some version since the pre-colonial period in many traditional communities across Namibia. Traditional authorities are allowed to apply to the Ministry of Justice to establish a community court which, in Ovambo authorities, is treated as a supreme court to which village-level and ward-level traditional courts can refer difficult or disputed cases. The Minister of Justice officially appoints the courts' justices, who cannot hold elected office or lead political parties. Generally, the minister accepts the recommendations of the traditional authority for these appointments.

The act allows the Minister of Justice to make any regulations s/he deems appropriate with respect to the operation of the court, including the proceedings, procedure, and manner of procuring witness attendance in community courts (CCA 2003, sec. 32(1)). Community courts may, as part of their judgments, order the party found responsible to pay compensation, damages, or "specific performance according to customary law" (CCA 2003, sec. 22(1)(a)). The focus of the act, like traditional courts, is on providing restorative justice in the form of compensation for wronged parties. One of the key intentions of the act was to resolve a problem related to domestic violence and rape cases that I describe in chapter 6. Many people were under the mistaken understanding that they could either bring charges against their attackers in magistrate court or traditional court, but not both. Often victims chose to bring their cases to traditional

courts, knowing they would be likely to receive compensation, something a magistrate court could not provide (Gender Research and Advocacy Project 2006). Women's rights activists and the Ministry of Justice wanted victims to first press criminal charges to punish attackers with jail time and then, once the criminal trials had concluded, bring their cases to traditional courts to receive compensation.

The CCA, like the other laws discussed in this section, gives the government far more control over these TA-led proceedings than in the past. Chiefs have complained about the toothlessness of their rulings and difficulty in compelling witnesses and defendants to even attend the hearings because they lack enforcement mechanisms. Moreover, they have complained about their inability to try criminal cases in traditional courts, arguing that cases involving murder and violence are the types of cases that most require compensation to restore harmony and peace within their communities. The legal community and government are unhappy with the act as well. As a member of the government's Law Reform and Development Commission told me, the law was so flawed that he believed it should be repealed entirely and replaced with a law that created a parallel system of customary government that would have its own enforcement mechanisms and appellate courts.¹⁶

Despite widespread dissatisfaction with the CCA, it has become a key source of formalized power for traditional leaders. It is particularly important for disputes involving women's issues. As chapter 4 discusses, cases involving property and communal land inheritance for widows almost always begin in community courts (Ubink 2011a). Although widespread misconceptions about the law exist, many rape victims eventually seek compensation from their attackers' families as well, as covered in chapter 6 (Gender Research and Advocacy Project

¹⁶ Interview with Law Reform and Development Commission member, Windhoek, May 14, 2012.

2012). Although traditional courts offer a much more affordable and accessible option than magistrate courts for rural residents, especially women, significant cultural and procedural barriers disadvantage women seeking legal redress (Peters and Ubink 2015). Chapters 4 and 6 discuss these barriers to women's community court access as they relate to inheritance, land and GBV cases.

Conclusion

This chapter identified the origins of traditional beliefs and gender roles, particularly among the Ovambo. Despite rhetorical claims that women belong within the private/reproductive sphere, research traces this positioning of women to the period of South African colonial rule that began in the early 1920s. The demonstrably false claims that women have been confined to traditional villages and barred from political positions since time immemorial represent important examples of chiefs' manipulation of "tradition" in service of their own interests. The chapter further traced the historical origins of traditional leaders' restricted legal position in independent Namibia. Traditional leaders' sacrifice of community welfare in favor of the demands of the colonial state engendered antipathy toward chiefs that was clearly reflected in the constitution and subsequent laws. The next chapter examines how these historical legacies influence contemporary understandings of chiefs' roles within their communities and their ability to dictate the terms of women's rights policy implementation.

CHAPTER THREE THEORIZING WOMEN'S RIGHTS POLICY IMPLEMENTATION

Introduction: Two Stories from the Council of Traditional Leaders Annual Meeting

In November 2011, about a month after my arrival in Namibia, I was invited by the Legal Assistance Centre (LAC) to serve as its representative at the annual meeting of the Council of Traditional Leaders (CoTL). The LAC's Gender Research and Advocacy Project had assisted the Ministry of Gender Equality and Child Welfare (MGECW) in writing a child care and protection bill. It had stalled in the National Assembly for a couple of years, but there were rumors circulating that it might be passed before the end of the year. Now that its passage appeared imminent, the LAC and MGECW had decided to use the latter's allotted hour at the conference to introduce the bill to the traditional leaders and appeal for their participation in its implementation.¹⁷ Just a week before I received the LAC's invitation to attend, I had tried without success to secure an invitation from the Traditional Authorities Directorate within the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD). The meeting was an important, private affair, I had been told by a civil servant. Most government conferences were open to the public, but the civil servant was adamant that it would be inappropriate for anyone outside of government to attend for vague reasons related to decorum surrounding traditional leaders.

The day of the presentation, I noticed that Laimi,¹⁸ the MGECW social worker who was delivering the presentation to the chiefs, was agitated. The relationship between the MGECW and the chiefs in the former Ovamboland had been strained in the past, she explained to me. They did not like some of the ministry's efforts to abolish traditional beliefs that were harmful to

¹⁷ The Child Care and Protection Act was passed in March 2015.

¹⁸ Name has been changed.

women. Laimi was concerned about how her ministry's request for assistance with the implementation of this law would be received by the chiefs. It was important that we convinced the chiefs to support this law in their communities, she told me.

“We [MGECW employees] are too few. We cannot do this without the chiefs. They know which children need help in their communities. They must just ask us when they need help,” Laimi said. “We work in the cities and come to the villages when [traditional leaders] need our help,” she said, illustrating an instance in which a ministry expected chiefs to serve as street-level bureaucrats by taking on social work duties.

At the conference venue, three hours behind schedule, Laimi and I walked onstage to explain the Child Care and Protection Bill to the chiefs. I handled the PowerPoint slides while Laimi told the chiefs about the aspects of the law that they would implement. Among the responsibilities of chiefs under the law would be reporting students not going to school to the Ministry of Education, helping parents obtain birth certificates for infants, mediating meetings before custody hearings, and reporting cases of child abuse.

Much to our surprise, the audience of chiefs responded warmly and enthusiastically to the bill and their proposed role in it.

“We support this bill!” boomed one chief when Laimi asked for questions from the audience. “We should render assistance to the Ministry for this bill,” said another.

After the presentation, everyone adjourned to eat dinner on the lawn. Five or six chiefs approached Laimi and the Deputy Minister of the MGECW during the meal, each offering his support of the bill.

“It is a very good bill,” said one chief. “We have a responsibility to our youth. We as traditional leaders have this responsibility to our people.”

“We have to go back to our tradition and culture to protect the children,” said another.

I was surprised by the positive response to the bill, given the antagonistic relationship between chiefs and the MGECW that Laimi had described earlier in the day. Toward the end of dinner, as the crowd thinned, I asked the MGECW Deputy Minister about the chiefs’ reactions to the bill as she had seemed unfazed by the response.

“They want to help the children,” she explained, echoing a phrase used by the Deputy Minister of Education earlier that day during his ministry’s presentation to the chiefs: “A child belongs to the whole community.”

I understood her explanation to mean that traditional leaders would engage with a ministry with which they usually had an antagonistic relationship if doing so would help the community. In this comment, the importance of community welfare as a guiding principle for traditional leaders became apparent.

Another experience during the CoTL meeting highlighted the divergence between the formal and informal aspects of traditional authorities. During the brief period I was allowed to sit in the audience, I heard two speeches, one by Attorney General and Minister of Presidential Affairs Albert Kawana, and one by CoTL Chair and Ondonga King Immanuel Elifas, that, I later came to realize, encapsulated the complicated and often-misunderstood relationship between chiefs and the state. Kawana explained the role of traditional leaders in his speech in this way: “You yourselves are government. We have the national leader, regional councils, local councils, then traditional leaders. Don’t exclude yourselves from this title called ‘government’...you are part and parcel of government. Amen.”¹⁹

¹⁹ Albert Kawana, Annual Meeting of the Council of Traditional Leaders, November 14, 2011.

Kawana's speech was revealing in its factual incorrectness: as explained in chapter 2, traditional leaders are not part of government, a point that most government officials go out of their way to emphasize. Although chiefs often assume governing responsibilities, on paper, the law clearly situates them outside of the state as actors with no political or administrative power. However, Kawana's description of chiefs as the level of government closest to the people accords with the way citizens and traditional leaders often see them as fitting into the state.

These points were reinforced by the speech given shortly before Kawana's by King Elifas. Whereas Kawana situated traditional leaders as part of the state, Elifas instead played up the position of chiefs as outside of government and appealed to the government to make space for them within the state. He asked for the provision of seats for traditional leaders to serve in the National Assembly, the lower house of government, and he requested assistance from the police with maintaining discipline and order within traditional communities. Elifas justified these requests for increased influence within the state by arguing that traditional values and norms were fading among youth, leading to a situation of increasing crime, poverty, and violence across the country. Underlying his request was the assumption that the re-adoption of traditional values would instill discipline and solve Namibia's pressing problems.

My experiences at the CoTL meeting shaped the theoretical framework that motivates this project and that this chapter explains in detail. First, the story of the MGECW's presentation to the CoTL exemplifies the logic of support that shapes chiefs' decisions to support or challenge a given policy. Chiefs articulated the responsibility they felt toward children and described their welfare as a matter of concern to the entire community. The second story highlights the complicated institutional position of traditional leaders. Kawana's mistaken description of traditional leaders as part of the state accords with the role they sometimes take as de facto civil

servants or village-level government. Like King Elifas, most traditional leaders feel the loss of power and duties brought by independence acutely and are always advocating for increased responsibilities and influence. Because the formalized institutions surrounding traditional leadership do not align with reality in many instances, chiefs are often able to seize more power for themselves within their communities. In only a few instances does the government have institutionalized oversight bodies in place to monitor the actions of traditional leaders within their communities.

This chapter provides theoretical context for the empirical chapters that follow. First, it interrogates the definition and role of traditional leaders within democratic states. I examine the prevailing definitions of traditional leadership and discuss the strengths and shortcomings of each. The chapter then turns to the project's motivating question, under what conditions will traditional leaders support women's rights policies? It offers an account of why the Namibian government has engaged chiefs as stakeholders in the implementation of multiple women's rights policies despite their historical and often public opposition to the promotion of gender equality. Using the framework presented in chapter 1, I explain the importance of the concepts of the community welfare principle and institutionalized state oversight.

Defining traditional leaders: perspectives on chiefs in democratic states

In this section, I examine a variety of concepts that scholars have used to describe traditional leaders: syncretic leaders, stationary bandits, rural despots, and civil servants. Finding these models to fall short, I propose my own concept for understanding the incentives and behavior of traditional leaders: semi-formal street-level bureaucrats.

I define traditional leaders, following Baldwin (2015, 21) as “rulers who have power by virtue of their association with the customary mode of governing a place-based community.” Reference to the “customary mode” of governance highlights the fact that traditions rarely, if ever, endure entirely unchanged over generations and that many traditions are relatively recent inventions (Ranger 1983). In Namibia, this point is particularly important in post-1990 discussions of traditional leadership because the state system of traditional recognition has required communities to completely forgo their traditional leadership structures in favor of a standardized model outlined in the Traditional Authorities Act of 2000. The terms “traditional leaders” and “hereditary leaders”—that is, leaders that have been conferred titles on the basis of familial inheritance—are often used interchangeably (Baldwin 2010), but I avoid the latter because it applies with decreasing frequency in democratic states. Reference to a place-based community emphasizes the importance of traditional leaders’ control over land tenure as a basis for their authority. Beyond this basic definition, scholars have struggled to define how chiefs and chieftaincies fit into democratic states, particularly when they remain outside of governing structures or when their legal positions vary markedly from the informal roles. In this section, I discuss the influential ways in which scholars have characterized traditional leaders and the institution of traditional leadership, an exercise that illuminates both important features of these actors and the reasons they continue to defy easy categorization.

The edited collection from van Dijk and van Rouveroy van Nieuwaal (1999) on the resurgence of traditional leadership in post-colonial Africa was one of the earliest surveys on the state of the chieftaincy after the democratization waves of the 1990s, and it remains among the most influential on the topic. In the introduction, the editors make a compelling case for understanding post-colonial chiefs as syncretic leaders. Scholars, they argue, can no longer

conceptualize chiefs as the embodiment of their communities' traditional practices or cultural beliefs. Rather, chiefs have incorporated the needs of villagers living in democratic states into their leadership repertoires, blending "old" responsibilities like protecting the traditional way of life with "new" ones like accessing state services.

This definition of traditional leadership offers a compelling explanation for the persistence of chieftaincies in post-colonial states. As Galvan (2004) notes, syncretic institutions are much more culturally sustainable than entirely "new" or "old" ones because they better address contemporary issues while remaining familiar and meaningful to their audiences. Galvan (2004, 26) defines traditional culture as imagined, residual, contested, and in a process of constant recreation. The result of these processes is a syncretic institution that draws upon idealized recollections of traditional culture in support of a particular version of tradition. Various versions of tradition may circulate in postcolonial states until one eventually gains dominance.

The problem with van Dijk and van Rouveroy van Nieuwaal's account of syncretic chieftaincies is that it implies that every institution with precolonial roots becomes syncretic in the postcolonial period if one accepts Galvan's model of traditional culture as contested recollections of idealized versions of tradition. How does the observation that chiefs are blending traditional and contemporary community needs explain their persistence as an institution when other precolonial institutions have withered? This account of traditional leadership fails to answer that question.

Several scholars have also described the syncretic nature of contemporary traditional leaders but have focused upon the complementary roles they play within democratic states rather than the phenomenon of syncretism itself. A popular set of descriptions of traditional leaders

positions them between their rural communities and the urban state, which emphasizes their positions as gatekeepers, intermediaries and/or translators. Forrest (2000, 1998), in his studies of the establishment of Namibia's regional councils, highlights the gatekeeping role of traditional leaders. When droughts and resulting famine struck Namibia shortly after independence, Ovambo chiefs managed the state's food aid response by identifying the families in their communities that needed assistance and distributing the food through a network of headmen. Writing on South Africa, Oomen (2005) describes chiefs in the Transvaal as helping their citizen-subjects to navigate the complex modern state bureaucracy to access public services. Williams (2004) depicts Zulu headmen as intermediaries and translators that have taught their communities how to vote and how to behave while casting their ballots. These chiefs also served as gatekeepers by assisting the electoral commission with identifying and setting up polling stations within their villages.

Baldwin (2015, 21), writing on Zambia, conceives of chiefs as stationary bandits, "leaders who expect to rule the same community for life and who are therefore less exploitative of the local population [because] they have an interest in promoting the socioeconomic advancement of their communities." Using this model, Baldwin argues that chiefs work to secure the provision of public goods to their communities because they too benefit as entrenched residents of the communities they oversee. The problems with Baldwin's account are first that she assumes traditional leaders have no fear of losing office based on poor job performance and second that traditional leaders' incentives vary from elected officials only in that they have longer time horizons and are entrenched in the communities they rule. Baldwin's account, while pointing out the important factor of community entrenchment that shapes chiefs' incentive structures, overlooks the increasingly democratic principles traditional community members

have been applying to their chiefs since the democratization wave of the 1990s swept through Africa (Logan 2008). Citizens living under traditional leaders have become more vocal about demanding traditional leaders listen to them and have launched protests and referendum efforts in causes of serious misconduct. Chiefs are still less likely to lose office for making unpopular decisions than elected officials, but their “king for life” status is far from guaranteed.

Additionally, as I discuss later in this chapter, Baldwin’s characterization of chiefs as stationary bandits overlooks local understandings of what a traditional leaders’ obligations are to their communities. The self-interested rural despots described by Baldwin simply do not accord with the community-welfare-focused chiefs that other scholars describe and that I encountered.

Mamdani (1996) most strongly argues that chieftaincies’ authority is inextricably linked to the power of the central state. He contends that the perversion of tradition and custom by colonial states means that chiefs no longer have legitimate power. Now, their authority comes from central states and they rule without the support of their local populations. Mamdani’s characterization of chiefs as “decentralized despots” that rule the African countryside “shorn of rule-based restraint” has been rightly criticized by many (1996, 43). His account ignores the persistence of traditional leaders in the face of “overt and extended state attacks” (Logan 2013, 356) such as those seen in Mozambique and Uganda, along with Namibia. Moreover, his account of traditional leaders’ unshorn power cannot explain the changes in chiefs’ policy preferences over time, something that my framework does.

Another popular thread in the literature identifies traditional leaders as either civil servants or the lowest, village level of government. In northern South Africa, Oomen (2005, 116) finds that villagers speak of their chiefs as civil servants. These traditional leaders, by virtue of the Traditional Governance and Leadership Framework Act of 2003, have frequent contact with

the central government and understand it far better than the average citizen. When members of traditional communities need to obtain identification documents, apply for birth certificates, or contact an elected official, they generally turn to their chiefs, whom they view as their “main road to the government,” for assistance.

Buur and Kyed (2007b) and Zeller (2007) also depict traditional leaders as civil servants, pointing specifically to the gaps that they fill in the provision of public services. In “brown zones,” areas in which states do not have the capacity to implement laws and project authority (O’Donnell 1993), traditional leaders sometimes step in to fill the gaps. In Mozambique and Namibia, these gaps include community policing. Baldwin (2015) finds that chiefs in Zambia lead projects for building or restoring schools and boreholes when the state fails to do so. She argues that chiefs fill these gaps, acting as development brokers, because they are so entrenched within the communities they lead and their time horizons are so long. In other words, because chiefs reside in the communities they rule and because they expect to do so indefinitely, their quality of life will suffer if public services are absent or inadequate.

Entrenchment within their communities is a common theme among scholars trying to explain the role of chiefs in democracies. Like street-level bureaucrats, traditional leaders in many states work with a great deal of discretion and little oversight one-on-one with citizen-subjects to help them obtain state services (Sorg 1983, Lipsky 1980). Unlike bureaucrats of all stripes in advanced industrialized countries, however, traditional leaders in Africa are almost always deeply entrenched in their communities, and they derive legitimacy not only from their association with the state but more importantly from their standing in their communities as paramount arbiters of traditional culture since “time immemorial.” Additionally traditional

leaders take on this civil servant role but are not in fact officially part of the state in many countries, including Namibia.

Chiefs as semi-formal street-level bureaucrats

Having analyzed other models of traditional leadership and found them lacking for my case, I now present my own model for situating chiefs within Namibia. I begin by making a comparison between chiefs and street-level bureaucrats (Lipsky 1980). As chapter 1 discussed, the TAA has positioned chiefs as accountable to the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD). In exchange for performing duties that support the state, the 14 highest-ranking members of each TA receive monthly allowances from the MRLGHRD.

Although chiefs are not state employees, the TAA's positioning of traditional leaders within the state gives rise to the same type of principal-agent problems that impact "classic" street-level bureaucrats like teachers, social workers, and police officers (Maynard-Moody and Musheno 2003, 2000, Lipsky 1980, Feeley 1979). The TAA obligates chiefs to assist the government in providing a range of services to community members. Some services, like allocation of communal land and adjudication of community court cases on compensation to rape victims, accord with chiefs' understandings of their responsibilities and reinforce their authority within their communities. Other activities requested of chiefs, however, conflict with the traditional values that their subjects expect them to uphold. For example, domestic violence is regarded by a majority of Ovambos as a family matter in which outside intervention would be inappropriate, but the recent violence prevention policies obligate chiefs to offer mediation in cases of suspected violence and assist victims in obtaining protection orders. In such instances, traditional leaders must weigh the consequences of ignoring a state request against the damage

intervening in a “private” matter could do to their legitimacy and authority in the eyes of their communities.

The “semi-formal” element of the concept of semi-formal street-level bureaucrats matters to the outcomes of chiefs’ decisions. As discussed later in this chapter, the Namibian government has intentionally positioned traditional leaders on the cusp of the state, neither fully within or fully outside of it. Historical animosities toward traditional leaders (discussed in the previous chapter) shaped the state’s decision to exercise control of chiefs’ involvement in formal institutions while preventing them from holding too much power. What this means in practice is that traditional leaders weigh a set of considerations related to informal institutions outside the state—such as the community welfare principle—along with their formal obligations under the TAA when deciding whether to support a state policy. The MRLGHRD’s informal policy of non-interference in the affairs of TAs allows chiefs to often avoid implementing policies as requested, unless additional oversight bodies exist for a particular policy.

The fledgling literature on African street-level bureaucrats has identified an important issue not observed in the American context. In Africa, these civil servants often live in the communities they serve and as such must balance the demands of the state with their interests and social positions within their villages (Shear 2012, Blundo 2006, Walker and Gilson 2004, Kaler and Watkins 2001), along with long leadership time horizons, as they can expect to hold their chieftaincy positions for life (Baldwin 2015). A study of community healthcare workers in western Kenya found that they provide more care than is required by their job description in many instances while disobeying national guidelines in others (Kaler and Watkins 2001). The authors concluded that, because the healthcare workers were socially entrenched in the

communities they served, they often made decisions driven by concern for their personal reputations or social standing in the long term.

This dissertation finds that chiefs make similar calculations when balancing upward accountability to the state that pays their wages and downward accountability to the communities that expect them to promote the authentic traditions of their ancestors while also serving as their guides to state services. In historically patriarchal chieftaincies like those under examination in this project, promoting women's rights policies could seriously undermine a chief's claims to legitimacy as the final arbiter of what constitutes "authentic" customs. On the other hand, chiefs must consider the consequences of disobeying a state directive when they rely upon the national government for official recognition and salaries. Thus, traditional leaders, unlike teachers and police officers, must balance concerns about how obeying a state directive may affect their reputation and legitimacy in their communities against their obligations to the state.

Why Involve Chiefs in the Implementation of Women's Rights Policies?

As chapter 1 discussed, many scholars and policymakers believe that traditional leaders oppose the principle of gender equality and the promotion of women's rights. In southern Africa, this assumption is informed by the patriarchal practices and beliefs woven into the fabric of many traditional groups. Merry explains well the logic connecting the traditional cultures embodied by many chiefs to resistance to women's empowerment:

Women's rights are often opposed by those who claim to defend culture. Challenging women's subordinate position in the family or the work place threatens to disrupt a wide range of patriarchal privileges. Those who stand to lose will often argue that providing these rights will cause social chaos and disturb established hierarchies (Merry 2006, 14).

Writing specifically on customary law, Tripp et al. (2009) note that constitutional gender equality provisions in sub-Saharan Africa—especially those that provide for statutory law to

override customary law—and subsequent policies are “extremely profound challenges because they are...efforts to legitimize new legal-based sources of authority for rights governing relations between men and women and family relations...This is no small matter, but one that will take time to realize even with legislative and constitutional reforms, because customary norms are so deeply entrenched and customary law so widely practiced” (108).

The desire not to disrupt these patriarchal privileges or customary norms is seen in the actions and behaviors of Namibian traditional leaders. I offer two examples to illustrate: in 2007, at the First National Conference on Combating Gender Based Violence, an Ovambo traditional leader took umbrage with a presentation that identified cultural causes of violence against women. The chief argued that the real cause of GBV was allocating women economic and political rights in the new constitution. It had thrown the natural power relationship between men and women out of order, he said. The next chief to speak warned government officials to be careful about what they defined as GBV because some forms of domestic violence were part of Namibian cultures, such as the allegedly widespread belief across northern Namibian communities that men could beat their wives as a way to demonstrate love and discipline of his family to the rest of the community.²⁰

Another example concerns HIV/AIDS policy in Namibia. The Namibian government, following the lead of the global public health community, focuses many of its education and treatment initiatives on women because they are more vulnerable to infection than men for physiological and social reasons described in chapter 5. In the many educational sessions on HIV/AIDS prevention that have been provided to chiefs in the last decade, the notion that women are especially vulnerable to HIV is consistently emphasized, and chiefs are requested to

²⁰ From author’s field notes, Windhoek, June 19, 2007.

address particularly harmful traditional gender roles that exacerbate women's vulnerability. However, across most traditional communities, chiefs have eschewed any mention of women's disproportionate vulnerability, instead focusing on ways in which the entire community is harmed by the virus.

These examples illustrate some of the challenges the Namibian state faces in partnering with chiefs to implement a women's rights policy. Why, given these challenges, would the state bring traditional leaders in as stakeholders in the implementation of these policies? One reason is practicality. While Namibia is a democratic state that falls into the middle-income country classification, it still lacks full penetration of the state in all areas of the country (Herbst 2000). A decentralization policy has established regional and local councils in all 14 administrative regions of the country, but vast distances still separate neighboring villages. In many cases, traditional leaders are the only ones with post office boxes, fax machines, transportation, or other materials necessary to learn about a new policy from the government and then share that policy with their communities. Moreover, traditional leaders still maintain cultural legitimacy in most communities and are seen as the closest connection to the important ancestors of a community. The traditional authority of chiefs is often needed to affect cultural change. Citizens may be wary of a state trying to push dramatic cultural changes upon them. Traditional leaders lend policy changes involving important traditions the weight of ancestral approval and cultural legitimacy.

The second reason for involving traditional leaders in women's rights policies is strategic and closely tied to the theme of traditional leaders as interpreters that was discussed in the last section. Many of the women's rights policies that Namibia is implementing have their roots in western law. The passage of laws is not the end of the road for norms entrepreneurs (Keck 1998). For "universal women's rights" to become accepted in local contexts, the norms connected to

these rights, laws or policies must be framed or translated into terms that resonate with the power structures and cultural matrices of these groups (Merry 2006). Due to their gatekeeping function, traditional leaders may prohibit norms translators from outside the communities from introducing women's rights policies to their traditional communities.²¹ In some instances, then, chiefs may be the only ones with the ability to introduce these policies to their communities on a wide scale because they prevent anyone else from addressing them.

Another motivation for the state's decision to involve traditional leaders in the implementation of women's rights policies has to do with the demographics of rural areas in Namibia. As chapter 2 explained, the South African colonial state restricted the movement of women outside of traditional communities while forcing younger men to leave for long stints as migrant laborers working in South African mines (Silvester 2015, Wallace and Kinahan 2011, Hayes 1998b). The legacies of this arrangement can be seen today across rural Namibia, where women still make up a majority of the population in every region that comprises the former Ovamboland, the site of this project's case studies. Additionally, rates of gender-based violence and HIV among women are higher in rural areas (Gender Research and Advocacy Project 2012, MoHSS and Macro International 2008). Traditional leaders are therefore important to the implementation of women's rights laws because they operate in areas in which the majority of the population is female and more likely to be suffering from the problems addressed by the policies under study.

Finally, traditional leaders can be effective stakeholders in the promotion of women's rights policies due to the fact that they are mostly self-interested, like most politicians. Unlike most politicians, the expectations of how traditional leaders are supposed to make decisions are

²¹ Interview with women's empowerment NGO leader, Omusati region, April 26, 2012; interview with women's empowerment NGO leader, Oshana region, May 2, 2012.

very different from expectations for politicians. Chiefs are expected to follow the community welfare principle, a concept explained in detail in the following section. In brief, the principle holds that chiefs should act in ways that preserves or restores the balance, harmony and order of everyone in the community. What constitutes community interest, versus individual interest, is a murkier and contested issue.

I conceive of chiefs as self-interested, rational actors. What separates them from the average politician is that they are socially embedded in their communities and their interests are inextricably linked to the community welfare principle. These two features of traditional leadership in Namibia mean that chiefs will support women's rights policies when doing so supports achievement of community welfare. Even when women's rights threaten to erode patriarchal privileges or undermine social hierarchies, chiefs can be important and effective stakeholders in the implementation of these policies if they regard a policy as promoting the community welfare principle.

I conclude this section with two caveats. First, traditional leaders exist and exercise authority outside of rural areas across Africa, and it is not my intention to paint them as an exclusively rural phenomenon. However, although chiefs exist in some urban areas in Namibia, they have far more relevance to and influence over "day-to-day governance" in rural areas (Baldwin 2015, 40). Relatedly, residents of traditional communities can exit rural areas and thus evade the influence of traditional leaders in their daily lives (Hirschman 1970), but that is not a realistic option for most villagers, especially women. Many lack the ability to leave due to poverty or familial obligations to children, spouses, or parents. Moreover, most Namibians remain connected to their villages throughout their lives, regardless of how long they live in an urban area. They come back for weddings, holidays, and funerals, and communal land can stay

in the family for generations. Few with ties to a traditional area ever truly, permanently leave, and as such, traditional leaders continue to exert some influence in their lives. Perhaps urban women are not getting HIV/AIDS education from the chiefs, but the leaders may be responsible for deciding if their grannies get to stay on their land once their husbands die, or whether they can receive their own tracts of land before they marry.

Second, my focus on traditional leaders does not imply that they are the only actors that matter to policy implementation at the village level. Civil servants, regional and local authority councilors, and civil society groups all participate in the policy implementation process to varying degrees. As the following sections discuss, however, chiefs maintain final authority over traditional beliefs and customs in many communities and are thus in a unique position to effectively challenge those practices and attitudes that contribute to harm to women. Additionally, traditional leaders have a significant amount of control over who may enter their communities and what shape governance takes within them. Indeed, as the case of HIV/AIDS prevention policies demonstrates, elected officials sometimes delegate all responsibility for these policy implementation campaigns to traditional leaders with no oversight. Traditional leaders therefore inhabit a unique institutional position and as such, their role in the implementation of many sets of policies is worth examining more closely than it has been.

Theorizing Women's Rights Policy Support

In chapter 1, I offered a framework to explain the conditions under which traditional leaders will support women's rights policies by participating in implementation activities as requested by the state. I identified two factors integral to this process: first, whether chiefs frame the policy issue as communal, that is, a matter that affects the entire community; and second,

whether any consistent state oversight of chiefs' implementation activities exists. This framework gives rise to three hypotheses that I test in the next three chapters:

1. **Community welfare hypothesis:** When traditional leaders frame an issue as communal—that is, affecting the wellbeing of the entire community—they are more likely to implement policies addressing that issue.
2. **State oversight hypothesis:** When institutionalized state oversight responsible for monitoring the implementation activities of traditional leaders exists in any form, they are more likely to implement a policy as requested by the state.
3. **Both conditions hypothesis:** When traditional leaders frame an issue as communal and institutionalized state oversight of their activities exists, they are more likely to implement policies addressing that issue as requested by the state.

Other scholars have discussed the importance of privileging the communal or group over individual rights and interests in traditional societies across the world (Williams 2010, Mattes and Bratton 2007, Holder and Corntassel 2002, Okin 2002, Thompson 2001, Chabal and Daloz 1999, Kymlicka 1995). This “communal logic” is essential to understanding how politics operate in southern Africa because “relations of power are predicated on the shared belief that the political is communal” (Chabal and Daloz 1999, 156), yet it is such an entrenched fact of life in these societies that it is taken for granted and often left unsaid, something that “everyone already knows.” Similarly, others have addressed the importance of institutional oversight to successful policy implementation (Olinyk, Gibbs, and Campbell 2014, Matland 1995, Ingram and Schneider 1990, Sorg 1983) and the difficulty states face in managing implementation in contexts of weak institutionalization or strong informal institutions (Campbell 2010, Blundo 2006, Walker and Gilson 2004, Kaler and Watkins 2001, Weissert 1994, Lipsky 1980). What sets my study apart from this existing literature is its disaggregation of policies: whereas other studies of policy implementation in Africa focus on just one policy or group all women's rights policies together, I disaggregate these policies into smaller sets and look at how incentives differ

by policy area for a range of actors at the local, regional and national levels. Additionally, my study takes seriously the temporal dimension of these policies by assuming that support for a given area can and does change over time.

Table 3.1 A framework for chiefs' policy implementation activities

Policy area	Do chiefs frame issue as communal?	Do chiefs support policy intervention?	Is there institutionalized state oversight?	Do chiefs implement policies as requested?
Land allocation and inheritance	Yes	Yes	Yes	Yes
HIV/AIDS education	Yes	Yes	No	No
Rape (GBV)	Partially	Partially	Partial	Partially
Domestic violence (GBV)	No	No	No	No

Community welfare principle

A key finding of this project is that chiefs support policies that promote women's rights when they perceive these policies as benefiting the community as a whole. I refer to the normative logic underpinning this finding as the "community welfare principle." By contrast, when chiefs regard a policy as addressing issues of individual or private concern, they generally do not support it. This finding extends similar conclusions made by scholars studying traditional leadership in other parts of Africa. Williams' (2010) description of this principle (which he refers to as the unity principle) is worth quoting at some length because it operates in nearly identical ways in Ovambo chieftaincies and kingdoms:

The concept of unity, or in Zulu, *simony* (we are one), is the dominant cultural and political theme structuring chieftaincy-societal relations in KwaZulu-Natal...decisions must appear to achieve or maintain unity if they are to be 'acceptable' or 'thinkable' to the community at large...[However, this principle] is too ambiguous to help resolve everyday political issues or disputes. Rather communities rely on a set of more concrete principles that help to give meaning to the idea of unity...

(1) the maintenance of order;

- (2) community consultation and participation in decision making;
- (3) impartial and unbiased decision making by rulers; and
- (4) promotion of community welfare before individual gain (Williams 2010, 40-42).

The notion of the communal versus the individual, the public versus the private, have long stood as important dichotomies in discussions of African tradition. The principle of privileging the needs of the community over the individual is referred to by different words in different languages, but *ubuntu* is perhaps the best known. *Ubuntu* describes a “relational, interdependent view of the self” (Mkhize 2008, 40) that acknowledges the importance of defining the self within and through the community. It is a concept captured by the phrase “I am because we are, and since we are, therefore I am” (Mbiti 1969, 214).

Harmony (Mkhize 2008), order (Karenga 2004), and unity (Williams 2010) are all key components of *ubuntu*. Moreover, maintaining community harmony, order and unity represent the core obligations of traditional leaders across sub-Saharan Africa. In Namibia, the Traditional Authorities Act of 2000 begins its list of chiefs’ duties and functions by obligating them to “promote peace and welfare amongst the members of that community...” (Republic of Namibia 2000, section 3(1)). Traditional leaders in every authority in Namibia—and, indeed, in nearly every kingdom, clan, and authority in Africa—privilege the protection and promotion of the wellbeing of their communities, the wellbeing of the many, over the interests of the individual. The norm of chiefs as protectors of the community is well-established in most of Namibia, particularly in the Ovambo communities on which my case studies focus.

While this study discusses the community welfare principle with reference to traditional leadership, it is not limited to chiefs or chieftaincies. The privileging of group wellbeing over individual destiny pops up all over, including within the state. However, it is particularly pronounced as a logic guiding life and the conduct of chiefs in traditional areas, and it is

legitimate and expected that traditional leaders will use this logic to make decisions. By contrast, it is not acceptable in most cases for elected officials and state representatives to use this logic when the emphasis within the state is on individual rather than group rights. As Mbembe (1992, 5) notes, the postcolony is not made up of a single organizing principle. The state and traditional spheres have their own separate logics that become entangled with other logics. Hence we see the logic of community welfare at work in the halls of government ministries and also see demands for gender equality from traditional leaders in rural villages.

Determining community welfare

How do chiefs determine whether an issue affects community wellbeing? The answer is not straightforward. Each traditional leader defines community welfare slightly differently, although the definitions are remarkably consistent across Ovambo authorities. Some matters, such as the allocation of communal land and development projects, have for so long been under chiefs' purview as to render their involvement in these matters completely natural. For example, the chief of one Ovambo kingdom explained his traditional authority's decision in 1993 to radically increase women's inheritance rights, breaking with long-held practice, thusly:

When the country became independent, human rights became clear...human rights were not for everybody in the past. We saw that this was wrong for people to be chased out. The previous government that colonized us didn't consider traditional leaders. They didn't consider that poor woman [sic] didn't have money. [Colonial] government made us destroy the relationship between us and our communities. This law was a way to care for our communities. Now our communities like us and respect us [compared to past years] because we respect them and their rights...These laws help people know traditional leaders work for them now.²²

²² *Elenga Enene* Herman Iipumbu, Chief of Uukwambi Traditional Authority, Oshana region, May 2, 2012.

This piece of my framework is essential to understanding policy implementation behavior but it is not predictive. Justifications for what is and is not in a community's best interest are shaped by myths and values along with the personal interests of chiefs. Issues that traditional leaders could easily frame as matters of "community welfare" have instead been consistently characterized as "private" issues affecting individuals and appropriately dealt with by couples or families.

Domestic violence is a prime example: chiefs could argue that the isolation and fear experienced by a domestic abuse victim upsets the harmony of the entire community or that violence against one person hurts the entire community "body." Additionally, children in the home are likely to witness and experience abuse. The welfare of children was framed as a matter for the entire community's concern when discussing changes to inheritance laws in the early 1990s.

Nonetheless, traditional leaders in Ovambo have resisted using similar justifications to intervene in cases of domestic violence in their communities, arguing that it is a private matter that should be handled by individual families. Consciously or not, chiefs tend to deem issues that affect women disproportionately as private and thus outside the scope of their authority while similar issues that are not associated with a particular gender are likely to be deemed of interest to the entire community. Thus, chiefs continue to dismiss or minimize some women's issues by labeling them as matters for individuals best dealt with in private.²³

The community welfare principle shapes what chiefs and their communities consider legitimate, or thinkable (Schatzberg 2001), actions of the former. Thus traditional leaders must make the case to their communities that a matter is within or outside of the scope of community interests. I found few instances, however, in which chiefs were compelled to redefine an issue as

²³ I thank Myra Marx Feree for this insight.

communal or individual at the insistence of their subjects. Traditional leaders, as the moral and cultural authorities of their communities, rarely have their decisions challenged by their subjects.

To summarize, traditional leaders and their subjects in Namibia, as well as across sub-Saharan Africa, agree nearly uniformly on the importance of ruling in ways that uphold the principle of *ubuntu* by preserving harmony, order and unity within their communities. Moreover, they consider their domain to be the community and its welfare. Chiefs therefore should make decisions that preserve or achieve the group's wellbeing and privilege it over the interests of individuals. In Ovambo traditional communities, these principles are regarded as so obvious and commonsensical as to hardly merit mentioning. Within this moral matrix, it makes sense that traditional leaders would lend their support to women's rights policies that they view as likely to improve the entire community's wellbeing, even these policies also appear to challenge traditional gender roles or beliefs.

State Oversight and Ambivalence in Traditional Leadership Policy

The second part of my framework predicts that traditional leaders are more likely to implement a women's rights policy in the manner requested when some sort of institutionalized state oversight of their implementation activities exists. The nature of state oversight is left purposefully vague because my research suggests that the form it takes matters minimally. It seems that simply having some sort of consistent review of chiefs' activities is enough to persuade them to implement policies as the state has requested. This section examines the types of state supervision being used in the execution of women's rights policies. It then discusses an underlying tension informing the state oversight process, or lack of it, in some cases. I argue that

the state has constructed deliberately vague and often-unenforced policies regarding traditional leaders due not to institutional weakness but instead to its own interests.

State oversight: variation by policy area

As the following chapters demonstrate, the nature of state oversight for chiefs' implementation activities varies significantly by policy area. The variation results from the strength and funding of the ministry in charge of particular policies as well as the state's assessment of the importance of each issue.

The implementation of gender-based violence (GBV) prevention policies is managed by both the MGECW and the Ministry of Justice. The cultural aspects of GBV prevention policies in which chiefs are key stakeholders, including identifying and publicly denouncing traditional beliefs that normalize or endorse domestic violence and mediating for couples with a history of violence, are handled through the MGECW. This ministry was created in 2005 and lacks both institutional continuity and funding. It has no oversight mechanisms in place to monitor chiefs' activities. Indeed, as the story of Laimi at the beginning of this chapter illustrates, MGECW social workers are too overwhelmed with work to make it to rural villages in northern Namibia. Social workers have developed an informal arrangement with traditional leaders in which the latter are expected to handle issues related to children and women. Only in complex cases do social workers from the ministry get involved.

Policies related to rape, on the other hand, have one mechanism in place. Community courts are not allowed to hear rape cases for compensation until they have been settled in magistrate court. This is enforced, at least in theory, by having Ministry of Justice officials review traditional court documents for violations of this policy. While many traditional courts do

not consistently keep records, the threat of this oversight seems to be enough to have nearly eradicated the once-common practice of victims' families seeking compensation from rapists in traditional courts without ever bringing the matter to police or magistrate court.

HIV/AIDS activities are supposed to be overseen by regional committees staffed by Ministry of Health and Social Services employees, elected regional officials, and traditional leaders. However, as chapter 5 explains, these committees are overwhelmed by the distances between villages and lack of resources in many regions. The supervisory provisions that had been put into place to ensure traditional leaders were implementing policies as requested have been ignored. Instead, in many regions, chiefs have assumed control over all implementation efforts in rural areas while elected and ministry officials handle prevention and education initiatives in the larger towns and cities. Traditional leaders continue to engage in public education forums about causes, treatments, and prevention strategies for HIV/AIDS in most communities, but my research demonstrated that they are not sharing the messages about HIV disproportionately affecting women or denouncing traditional beliefs that exacerbate infection risk as requested by the state.

Policies related to the allocation of communal land are the most closely monitored, as chapter 4 describes. Traditional leaders are allowed to decide whether community members may receive plots of communal land and whether widows may remain on their deceased husbands' land (Harring 2002). The Communal Land Act of 2002 obligates chiefs to allocate communal land to women, which contradicts long-held land tenure practices across much of the country, including the former Ovamboland. The act also prevents traditional leaders from evicting widows from their land or requiring them to pay chiefs to remain on the land, an initiative that

the Ovambo communities had pioneered nearly ten years before the Communal Land Act was adopted.

Land boards in each region, comprised of elected officials, Ministry of Lands employees, community members and a traditional authority representative, gather at least quarterly to review chiefs' land allocation decisions. The land board rejects those decisions that contravene land allocation policies, including those that discriminate against women by upholding traditional inheritance and land allocation practices. While this number was relatively low in Ovamboland following the 1993 change to inheritance practices for widows, it dropped to nearly zero only after the land boards were convened. Given the violence that has broken out over competing land claims in Kenya and Zimbabwe and the value of the land, it is not surprising that the state allocates significant resources to the oversight and administration of communal land. That doing so has improved the lives of widows in traditional villages is a byproduct rather than central goal of communal land management.

Ambivalence and confusion in traditional leadership policies

In my interviews with civil servants, I was repeatedly struck by comments they made that contrasted markedly with the official policies their ministries were charged with implementing. This is illustrated by an interview I had with an official in the Subdivision Secretariat to the Council of Traditional Leaders, the body within the MRLGHRD that handled all government-chief interactions. At the beginning of the interview, the official repeatedly emphasized the importance of democratizing TAs to increase transparency and gender equality within the leadership structures. For example, he explained, if a traditional leader makes a decision with which community members disagree, an election can be convened through which citizens can vote to replace the chief, or they can bring a lawsuit against him/her. He further emphasized the

circumscribed role for traditional leaders in post-independence Namibia: “traditional leaders are just there to exercise their customary rights and to practice their culture,” he explained.²⁴

Despite his emphasis on the pattern of democratization within TAs and their primary focus on the promotion of traditional culture, the rhetoric started to shift as our interview continued. After explaining the “constant contact” his ministry had with traditional leaders and the power of the MRLGHRD to step in to solve territorial or leadership disputes when necessary, I asked what happened if a traditional leader or authority refused to comply with the ministry’s decisions. The civil servant shook his head and explained that there was no “process of punishment” for traditional leaders that disobeyed laws or ministry directives. What if traditional authorities were ignoring the clause in the Traditional Authorities Act of 2000 that required that women be brought into positions of leadership? Even then, he replied, lack of women’s representation was not “a problem until the community says it is a problem...we cannot deal with that matter...the ministry must let traditional authorities do what they want.”²⁵

An interview with a high-ranking civil servant in the Ministry of Gender Equality and Child Welfare echoed the idea that traditional communities simply did not follow the same rules as the rest of the country: “Our grassroots backbone is with the traditional culture and norms. You cannot pretend you are subject to the constitution there. Go back to where you parents, grandparents are, you are subject to these [traditions and norms].”²⁶ Like the MRLGHRD official, the MGECW civil servant also viewed traditional communities as areas in which civil law and constitutional protections simply did not apply. The unstated assumption reflected in both of these interviews, along with those of dozens of other civil servants, elected officials, and

²⁴ Interview with MRLGHRD civil servant, Windhoek, March 6, 2012.

²⁵ Ibid.

²⁶ Interview with MRLGHRD civil servant, Windhoek, May 24, 2012.

attorneys and policy experts, is that regardless of the constitutional and civil laws that prohibit it, the authority of traditional leaders and customary law prevail in rural areas. Although the law subjugates chiefs to the authority of national, regional and local government, even high-ranking elected officials observe the unwritten rule that chiefs wield ultimate authority in traditional communities.

My experiences at the 2011 CoTL meeting reveal the same logic at work. Laimi's assertion that it was the job of chiefs to handle issues of child welfare in their communities unless they needed help implies that she thought of them as the lowest level of government rather than as cultural ambassadors for their communities, as they are positioned in the law. Attorney General Kawana's claim that chiefs were "part and parcel of government" explicitly describes traditional leaders as situated within the lowest level of government. These stories and interviews encapsulate an important point for this project: lawmakers chose not to include sanctions in the TAA, and civil servants have chosen not to pursue chiefs that break the law or refuse to implement policies as requested. This is despite the fact that the laws governing traditional leaders are the most restrictive in southern Africa, and although they have the structures and employees necessary to regularly monitor the activities of traditional leaders.

These state actions are surprising given that the top 14 members of each traditional authority receive monthly stipends from the government. It would therefore be easy to punish noncompliant traditional leaders by withholding or docking their pay, or by removing them from the payroll entirely. However, as state officials were quick to remind me, traditional leaders are not government employees. These stipends are not given to chiefs for the services they render the state but rather for the services they provide their communities. Nonetheless, the Traditional Authorities Act of 2000 requires traditional leaders at all levels to assist state official with

several tasks, including assisting police in the prevention and investigations of crimes (sec. 3(2)a) and assisting with the execution of all government policies and development projects (sec. 3(2)b). In short, traditional leaders have legal obligations to the state in addition to their communities.

The vague, contradictory policies and practices regarding the institutional position of traditional leaders are not the result of a weak, fragmented state or competing political interests. Rather, I argue that the deliberately vague institutional positioning of traditional leaders as partially formal and within the state, and partially formal and outside of the state, is intentional. By legally positioning traditional leaders within a semi-formal, gray area that is neither wholly within nor without the state, policymakers have created a situation that allows them to control the political threats traditional leaders may pose, capitalize upon their local knowledge and legitimacy to better penetrate rural communities and fill gaps in public service delivery, and minimize their involvement in fights within and among traditional authorities.

Alternative and additional explanations

This study focuses upon the role of traditional leaders in the policy implementation process as an influential and understudied set of local-level actors. However, traditional leaders do not operate in a vacuum. Many other factors influence the fate of women's rights policies as well, and it is not my intention to discount or ignore their impact. Indeed, chiefs are important in aspects of implementation at the local level but are just one piece of a much larger policy implementation framework that by necessity includes the involvement of ministries and actors from across government and civil society. Further, in choosing to emphasize the influence of the community welfare principle and institutional oversight upon the implementation activities of

traditional leaders, I must be careful not to ignore or downplay alternative explanations chiefs' support of women's rights policies. Throughout this study, I highlight other actors and processes that shape the implementation of the policies under examination at all levels of government.

Demographic characteristics of chiefs

Could the resistance to women's rights policies be driven by the age, education or income level, or sex of the average chief? Cross-national studies have found that particular demographic characteristics make individuals more likely to support the concept of gender equality (Inglehart 2005, Inglehart and Norris 2003, Inglehart, Norris, and Welzel 2002). These arguments suggest that, as societies "modernize," they begin to emphasize self-expression values, which in turn lead to public demands for civil liberties and gender equality, among other democratic principles (Inglehart and Welzel 2005). Bringing these findings to the level of the individual, one can extrapolate that individuals that have higher levels of education, higher incomes, are relatively young, and less religious are more likely to support values like gender equality. Perhaps, then, younger, better-educated, wealthier and less religious traditional leaders are more likely than their older, less-educated, poorer and more religious counterparts to support women's rights policies. Given that the median traditional leader in Ovambo communities is an elderly man with low educational attainment, this theory is reasonable.

The gender of the traditional leader may play a role in policy implementation activities as well. In the US context, women representatives are much more likely to introduce and support legislation of specific interest to women than their male counterparts (Taylor-Robinson and Heath 2003, Thomas 1991). Women parliamentarians are similarly strong advocates for women's issues in sub-Saharan Africa (Devlin and Elgie 2008, Britton 2005). Gretchen Bauer (2014, 11), writing on Botswana, finds that women chiefs substantively represent the interests of

women and are far more likely than male chiefs to address the causes of women's suffering. In my own research, I found that headwomen were more likely than their male counterparts to acknowledge gender-based violence as a serious problem for women in their communities.

The research design of this study did not allow for a systematic evaluation of traditional leaders' demographic characteristics, so I cannot speak definitively to the correlation between age, sex, education level and policy preferences. I refer to other studies and surveys that examine traditional leaders where applicable. I also present documentary evidence from interviews and newspaper articles to support my position that demographic characteristics of chiefs, particularly gender, correlate weakly with levels of support for women's rights policies. Nonetheless, throughout this dissertation, I highlight individual traditional leaders whose actions and opinions run counter to my framework, particularly the community welfare principle.

Women's movements

Women's movements have been instrumental in affecting policy change on topics ranging from the adoption of CEDAW (Kang 2015, Stetson 1995) to gender violence (Weldon and Htun 2013, Britton 2006). Far less research exists on the role of women's advocacy groups in implementing women's rights policies. The distinction between policy *adoption* and policy *implementation* is important in this discussion because each stage of the policymaking process potentially requires different types of women's groups. Fights for the adoption of women-friendly policy usually necessitate the involvement of women's groups with a strong national presence, located in capital cities, that can sustain pressure on lawmakers throughout the legislative process. In contrast, once laws have been passed and ministries have written the regulations and procedures, implementation of women's rights policy generally requires local-

level women's groups that can lobby regional and local councilors and traditional leaders to implement the laws and/or educate communities themselves about these policies.

The women's rights movement in Namibia is quite fragmented at the national level, a process that began shortly before independence. The most significant women's group in Namibia in the 1980s was the Namibian Women's Voice (NWX). It had chapters in every region of the country that organized economic and community empowerment projects for women, and it was beginning to take on national issues as well, including a forced sterilization program. In 1989, the group disbanded. While the reasons for its dissolution remain contested, it appears that SWAPO officials felt threatened by the group's ability to mobilize action by rural women in every region (Hubbard and Solomon 1995). The ruling party in waiting also felt that the NWV leaders were trying to compete with the SWAPO Women's Council (Becker 1995). After the collapse of the NWV, the SWAPO Women's Council represented the only major national women's organization in Namibia. This pattern of fragmentation and government co-optation of women's movements around elections has been observed around the world (Walsh 2011).

Since independence, a few feminist groups have had success organizing women's rights coalitions around particular policy issues including the 1996 Marriage Equality Act. Most advocacy groups that address women's rights issues are located in the capital city, Windhoek. These groups' campaigns rarely reach rural women. Instead, these groups usually focus on income-generating projects and church activities and are decidedly apolitical (Hubbard and Solomon 1995, 177). The nature of rural women's groups means that village-level lobbying for women-friendly policy implementation is uncoordinated and uncommon.

Despite the challenges women's groups face in pushing for the implementation of women's rights policies in rural areas, they can make a difference. As chapter 4 describes,

Ovambo women protested outside of chiefs' homesteads in the early 1990s to demand changes to inheritance practices (Ubink 2011a; Gordon 2008). These protests appear to have contributed to the 1993 changes to Ovambo customary law concerning the fate of widows. Additionally, one national group with chapters in every region, Women and Development, has had some success with sending representatives from its regional chapters to educate women in traditional villages about new laws. However, as I discuss in the following chapters, representatives from these groups in northern Namibia reported that traditional leaders often barred them from entering their communities.

Women's advocacy groups are unquestionably important in policy adoption fights at the national level. Their influence on policy implementation at the local level is less clear. In the chapters that follow, I highlight the role of women in policy implementation processes. However, in the Namibian case, women's advocacy groups appear to be neither a necessary nor sufficient condition to chiefs' implementation of women's rights policies as requested by the state.

Conclusion

To understand the success or failure of women's rights policies, I offer a theory of policy implementation that focus upon the role of traditional leaders in implementing these policies within rural communities. Their willingness to implement policies as required by the state is impacted, I argue, by the community welfare principle, which shapes chiefs' and citizens' understandings of the formers' obligations to their communities. Traditional leaders' policy implementation behavior is also affected by the presence of state oversight for a given policy area. When oversight exists, traditional leaders are more likely to implement a policy as requested, and the addition of a supervisory body can improve adherence to policies even when

chiefs already support them. Having outlined this theory of policy implementation as it pertains to traditional leadership, I now turn to the policy areas themselves, which are the subjects of chapters 4, 5 and 6.

CHAPTER FOUR

PROTECTING WIDOWS: THE UNLIKELY SUCCESS OF COMMUNAL LAND POLICIES

Introduction

This chapter examines the set of women's rights policies most strongly supported by traditional leaders and implemented as requested by the state, in the area of communal land allocation and inheritance. Control over communal land, defined as territory that belongs collectively to a community with administration vested in the leader (Gyasi 1994, 391), represents a significant source of power for chiefs across Africa. It is arguably the most important source of influence and legitimacy for chiefs in Ovambo communities, even as laws have weakened their authority over land. It is therefore unexpected that traditional leaders not only embraced changes that enhanced women's access to communal land but also dramatically redefined inheritance practices to improve widows' lives. Even more surprising is the fact that, in Ovambo traditional authorities, chiefs and kings themselves formally enacted these changes to customary law in the early 1990s, a decade before national laws on communal land allocation came into force.

Many scholars have similarly held that cultural norms and practices, particularly those with traditional bases, contribute to the oppression of women and their continued failure to achieve gender equality (see, e.g., Inglehart 2005, Inglehart and Norris 2003). The case of communal land inheritance and allocation in Ovambo TAs challenges this popular claim. In the case of Ovambo TAs, traditional leaders initiated changes to their own customary law in 1989 to protect widows from asset stripping by their in-laws. A few years later, in 1993, the Ovambo TAs further strengthened protections for widows by prohibiting the requirement of paying their headmen to stay on their deceased husbands' land. The state, in contrast, did not address women's land rights until 2002, when the Communal Land Reform Act (CLRA), no. 5 of 2002

was passed. The CLRA provided for the creation of regional communal land boards (CLBs) that must review every land right granted by traditional leaders. In the decade since the establishment of the CLBs, reports of land grabbing from widows and headmen illegally charging widows to remain on their land have dropped to nearly zero in Ovambo communities.

Table 4.1: A framework for chiefs' policy implementation activities

Policy area	Do chiefs frame issue as communal?	Do chiefs support policy intervention?	Is there institutionalized state oversight?	Do chiefs implement policies as requested?
Land allocation and inheritance	Yes	Yes	Yes	Yes
HIV/AIDS education	Yes	Yes	No	No
Rape (GBV)	Partially	Partially	Partial	Partially
Domestic violence (GBV)	No	No	No	No

In this chapter, I make the case that traditional leaders changed customary inheritance laws because they viewed the widespread practice of chasing widows off their deceased husbands' land as a community concern on which they had an obligation to act. Further, I argue that the timing of these legal changes matters because they occurred at a critical juncture in the transition to independence, when previously unthinkable actions were suddenly possible. Chiefs' desire to regain the favor of their communities and the new government after decades of collaboration with South African officials made these legal changes logical from a public relations perspective. That the changes promoted gender equality was a distant concern for chiefs, although they later began framing the legal changes in terms of women's rights.

Timing is crucial in establishing the influence of institutionalized state oversight upon the implementation activities of traditional leaders. A decade after the Ovambo TAs changed their customary laws, the passage of the CLRA and the introduction of CLBs brought institutionalized

oversight of chiefs' land allocation decisions to traditional communities. These boards measurably improved traditional leaders' adherence to inheritance laws and also enforced a state provision that guaranteed women the right to their own plots of land. The case of communal land allocation and inheritance policies supports my "both conditions" hypothesis described in the previous chapter: when traditional leaders frame an issue as communal and institutionalized state oversight of their activities exists, they are more likely to implement policies addressing that issue as requested by the state.

I begin with a caveat: while this chapter takes land and inheritance policies as its primary focus, these issues are not so neatly separated in reality from HIV/AIDS and gender-based violence, the topics of chapters 5 and 6, respectively. Deaths from AIDS have increased dramatically the number of inheritance cases involving widows, and some scholars consider matrilineal inheritance practices as they exist in southern and eastern Africa to be a form of gender-based violence (Izumi 2007). The causal arrow points the other way as well: when women have secure land rights, their socioeconomic position is often strengthened by their ability to farm the land and sell excess crops. Women in more secure land arrangements are better able to negotiate with their partners, including their sexual practices, without fearing homelessness or destitution, and they are better positioned to leave violent relationships if necessary (UN Women and OHCHR 2013). Throughout this chapter and the chapters that follow, I note the intersections and impacts of each policy area upon the others under study in this project.

Communal land and traditional leadership

In her recent book on the paradox of traditional leadership in democratic Africa, Kate Baldwin (2015, 41–44) addresses the widely-held view of traditional leaders as "constructs of

customary land tenure.” Indeed, the claim that chiefs’ power stems from and is sustained by their control of land is so pervasive that it underpins every other (mis)conception examined by Baldwin. This section reviews major scholarly approaches to the relationship between traditional leadership and control of communal land. To fully grasp the significance of chiefs’ changes to customary inheritance laws, it is important to understand the extent to which their connection to and authority within their communities rests on land management. It then elucidates the relationship between land, tradition, and women.

The importance of land to the power of traditional leaders has varied across time and space. In much of pre-colonial Africa, land was plentiful and population densities low. Subjects expressed dissatisfaction with chiefs by moving to the territory of another ruler. Thus, the power of chiefs was measured in the population of their kingdoms, not the size or characteristics of the territories they administered (Ayittey 1991, Bourdillon 1987). To keep subjects from exiting their territories, chiefs had to act in ways that ensured the wellbeing of their communities.

During the colonial era, customary land tenure practices became more rigid as colonial administrators sought to standardize chieftaincies and their territories (Baldwin 2015). In indirect rule arrangements, like that of Namibia north of the Police Zone, traditional leaders were frequently granted increased power over land allocation, which they in turn could use as incentives or punishments to maintain control of their subjects (Boone 2014). Moreover, as chapter 2 discussed, the mobility of subjects decreased significantly under many colonial regimes. With subjects no longer able to express dissatisfaction by exiting a polity, chiefs were no longer downwardly accountable to their communities but instead upwardly accountable to the colonial state. Therefore, while traditional leaders’ control of land strengthened considerably

during the colonial era, it was far less important to their persistence than the support of colonial states.

The power and legitimacy of modern traditional leaders are now inextricably linked with their control of land. Ntsebeza (2005) goes so far as to claim that chiefs would have no power in independent Africa were it not for their ability to allocate land to their constituents. Herbst (2000) similarly argues that states with the power to wrest control of land away from chiefs will see their influence fade quickly. While the control of communal land allocation remains important to the continued relevance of traditional leaders, Herbst, Ntzebeza, Boone (2014), and others in this camp overstate the importance of land to chiefs' survival. For example, control of land has been entirely taken away from chiefs in Botswana and instead vested with government land boards. Nonetheless, chiefs remain extremely influential in Botswana. For example, 90 percent of Batswana respondents to the 2012 Afrobarometer survey agreed with the statement that "*Bokgosi* or chieftainship is part of our value system and our culture and helps to strengthen our democracy" (Molomo 2014, 5).

Control of land remains an important source of power for Namibian traditional leaders, particularly in communities in which most depend upon cultivation for their livelihoods, as in Owambo. However, land hardly represents the only basis of power for chiefs, as Botswana's experience illustrates. In the case of Namibia, the state now controls officially communal land, and government land boards review allocation decisions, while chiefs remain key in the administration process. What is more important is that their connection to land keeps them in the public eye and entrenched in their communities. The process of land allocation presents numerous opportunities for chiefs to engage in dispute resolution between neighbors, within

families, and between citizens and the state. Traditional leaders' association with land, in other words, complements and reinforces many of their other duties.

Communal land and women's rights

In much of Africa, women are the primary cultivators of land. Despite their central role in agricultural production, women's access to land is mediated through men—first their fathers, and then their husbands (Fafchamps and Quisumbing 2005; Yngstrom 2001). Women's inability to secure land rights for themselves, particularly in rural areas, leaves them vulnerable to a variety of threats. Given that the majority of households in Namibian communal areas rely upon subsistence farming for their primary source of income, insecurity of land access can have serious economic consequences for women that stand to lose their main source of food and money. Land tenure inequalities affect power dynamics between men and women as well: women are more likely to stay with abusive partners and enter into transactional sexual relationships when they lack secure land rights (UN Women and OHCHR 2013).

In much of Africa, people view communal land and gender equality as eternal foes, despite the devastating consequences that lack of land access can have for women. Land and inheritance are particularly difficult issues on which to pass legislation in Africa because they represent family, rather than state, institutions, and strong feelings of ownership exist over the latter (Tripp et al. 2009, 115). Delicate matters of government influence over tradition come into play as well. As chapter 3 discussed, many states, including Namibia, want to avoid any appearance of meddling in traditional affairs. Attempts to legislate greater access to land for women therefore meets with strong resistance in many countries.

More informal attempts to improve women's land access often face resistance as well. Because the authority of traditional leadership was tied for so long to communal land allocation,

particularly in Ovamboland, requests from civil society groups for inheritance and land changes were considered challenges to the chieftaincy as an institution. Similarly, as Tripp (2004) observes, because women have always accessed land through men, recent attempts to assert their rights to land on their own terms have been “perceived as an attempt to disrupt gender relations, and society more generally” (2).

Ovambo communities follow matrilineal inheritance practices. This type of inheritance practice is regarded as particularly harmful to women and children in contemporary Namibia due to the breakdown of social orders that used to ensure most young widows and the male relatives of the widows would care for their children. In matrilineal societies, children belong to the mother’s family. Men are responsible for their siblings and sisters’ children. When men in these societies die, the norm was that wives and children returned to the women’s families. They inherited nothing—land, houses and homesteads, farming implements, and cattle all went to the maternal relatives of the deceased. In some matrilineal communities, women were not allowed to take even their own belongings, such as cooking pots. As deaths from AIDS began to increase the number of young widows in the early 1990s, stories of homeless widows and children began receiving significant media coverage.

Land Policies and Women’s Rights: Examining Namibia’s policy landscape

Communal land allocation and inheritance policies represent an important case in this study because, despite the fraught relationship between land, tradition and women’s rights, chiefs changed and implemented customary laws protecting widows a full decade before the state acted. This event offers a significant rebuttal to critics that characterize chieftaincies as the “official rural patriarchy” (Walker 1994, 347), unwilling to support any policy that might improve the

status of women and thereby disrupt traditional gender roles and relations. Because the timing of customary and statutory law changes is critical to the argument being made in this chapter, I discuss events in chronological order in the remainder of the chapter. In this section, I outline the policy issues and national laws relevant to the rest of the chapter.

Depending upon the sources consulted, between 50 and 70 percent of Namibians live on communal land (Matthaei and Wolf 2013, Malan 2009, Harring 2002). Twenty percent of Namibian land is considered state land, which includes national parks and protected environments. Communal land, which is overseen by TAs, constitutes 36 percent of Namibian territory.²⁷ Article 100 of the Namibian constitution states that all land, water and natural resources not “otherwise lawfully owned” belong to the state. This provision stripped traditional leaders of their centuries-long control and effective ownership of lands within the former homelands (and before that, within their territorial spheres of influence).

In Namibia, national laws have addressed two interrelated sets of communal land issues. They apply to every region and TA, although these issues do not affect women equally across traditional groups. The first relates to land and property inheritance for widows. The second involves the allocation of communal land to women. Below, I review each of these issues as they affect Namibian women before examining state policies intended to address them.

Land and property inheritance

When a man died in matrilineal communities like those within the former Ovamboland and Kavangoland, property like cattle, farming implements and cash passed traditionally to his eldest living brother or his eldest sister’s eldest son, if he had no brothers. In the absence of

²⁷ Commercial and private land does not exist in traditional communities, and so it is outside the scope of this study.

siblings, the eldest male descendant of his mother's sisters would inherit (Lebert 2005, 75). If a man were living in a community within a traditional authority, the land that he and his wife farmed and lived on together would revert back to the control of his village headman upon his death. This land and the crops in the ground would usually be given to the deceased's brothers or parents, if they wanted it. In some instances, the in-laws would allow the widows to remain on the land for a short period to harvest their crops. Ultimately, the widow and children of the deceased were expected to leave the homestead and return to the woman's ancestral village to live with her parents or a brother.

Forcing women to return to their parents became less and less viable throughout the 20th century. South African laws that restricted the movement of women exacerbated the problem of homelessness and poverty for widows pushed off their land by in-laws. Urbanization and a widespread shift away from maternal family obligations to nuclear families made these widowhood practices more intractable still. The situation for women living under patrilineal inheritance practices was only marginally better. In these communities, male children inherited from their fathers and so would be cared for, but widows were treated as "outsiders" that would remarry and thus should not be allowed to keep any property that they would eventually bring to the homes of their new husbands (Banda 2005).

As the next section explains in detail, traditional leaders in one Ovambo TA announced in 1989 that they were amending the customary, unwritten law of their kingdom to allow widows to forgo some aspects of the mourning process so that they could secure their property from marauding in-laws (though in-laws were still entitled, under customary law, to the movable assets of the deceased). The TA also declared that widows would have the first right of refusal to keep the communal land. If a widow chose to stay, she could do so by paying her headman a

“consideration.” Amounts varied by the size and features of the land, but most reports said that widows had to pay between R300 and R600 (Namibia Development Trust 1994). In 1993, all seven Ovambo TAs agreed to eliminate the “consideration” requirement, instead allowing all widows to gain control of their husbands’ customary land right without payment.

Communal land rights for women

Prior to independence, Namibian women could access land only through men. In Ovamboland, women lived with their parents on land allocated to them by their villages’ headmen, and once they married, they cultivated and lived on land allotted to their husbands. On rare occasions, older widows that had been allowed by their in-laws to remain in their homes would be allowed to pay a fee to their headmen to remain on the land. This practice was formalized in Ovambo customary law in 1989.

After independence, unmarried women began asking for their own plots of land. Traditional leaders refused most of their requests by citing the need to uphold customary law as it had handled land allocation for centuries. (They apparently missed the irony in this justification, given the radical changes made by their TAs to widow inheritance during the same time period.) They argued that allowing single women to have their own plots of land would disrupt the balance and order of their communities. One common justification by Ovambo traditional leaders for refusing single women’s land requests was that the women might become prostitutes if they had their own homesteads to which they could bring men; another was that allocating them land would allow parents to become lazy and shirk their obligation to care for their daughters until they married (Werner 2008, 20).

Communal Land Reform Act of 2002

The CLRA was intended to alleviate poverty and secure land tenure for Namibians by standardizing and democratizing the communal land allocation process. It is also widely regarded as a potent law in the fight for women's empowerment due to its implications for widows and single women trying to secure land. Prior to the 2002 passage of the act, traditional leaders retained full control of the land within their communities, and their allocation decisions were final. Under the CLRA, citizens living in communal areas must still apply to their traditional leaders—usually headmen/women at the village level—for land. The leaders decide whether to confirm or deny the application, but all decisions made must be forwarded to the communal land board (CLB) in their region for review and approval.

With respect to widows' inheritance rights, the CLRA, in large part, simply formalized the amendments to Ovambo customary law passed in 1989 and 1993. Section 26 of the act outlines what is to happen after the holder of a land right dies. It is, like most of Namibian law, highly prescriptive: upon the death of the right holder, the land immediately reverts to the headman or traditional authority representative responsible for communal land allocation in the area. Although the land right is under the control of a traditional leader, his/her options for reallocation are curtailed severely by the act. The surviving spouse has first right of refusal, after which a child must be offered the land right (Malan 2009). This provision was included expressly to halt the practice of "widow chasing." Further, the CLRA allows the holder of a parcel of communal land, referred to as a land right, to transfer it to another person. This means that, for the first time, women may acquire a communal land right in perpetuity (Conradie and Odendaal 2005, 21). Section 42(1) augments section 26 by prohibiting traditional leaders from accepting payment of any kind as compensation for the allocation of a customary land right.

In addition to provisions that protect widows, the CLRA also guarantees women's equal access to obtain customary land rights. This is an important change that Ovambo traditional leaders did not include in their customary law amendments. However, only single women benefit from this provision—married women are effectively unable to register for land in their own names. This is because the CLRA does not allow more than one person to register as the land right holder, and traditional leaders in northern Namibia reportedly will not allow married women to put the right in their name, even with their husbands' consent (Werner 2008). Thus, customary practices and a bureaucratic quirk have conspired to keep women except for widows from obtaining communal land in their own names.

“Asset stripping” refers to the practice of a late husband's family members taking his property shortly after his death, often while his widow is still observing mourning traditions that confine her to one location on the homestead. This practice represents a significant problem for widows that marry out of community of property.²⁸ Unlike the inheritance of land, the Communal Land Reform Act does not address the problem of asset stripping. The 1993 amendments to Ovambo customary laws address the matter partially. Traditional leaders will often attempt to negotiate with families of the deceased when they try to take assets purchased or brought to the marriage by widows. Overall, however, responses at the state and chieftaincy levels to asset stripping have lagged behind their actions on communal land allocation. Asset stripping is discussed throughout this chapter, but because no laws address the practice, I do not assess the implementation activities of traditional leaders on this issue. Reports suggest that families of the deceased often leave widows, particularly those with dependent children, some

²⁸ North of the former Police Zone, couples enter into marriages out of community of property by default. In this type of marriage, spouses do not share assets, and upon the dissolution of the union, no consideration is given to the growth of the spouses' estates during the marriage.

portion of their husbands' assets (Werner 2008). High-profile cases in which in-laws tear the zinc roofs of off houses and take the widows' clothing are increasingly rare and often motivated by preexisting conflicts between the widows and husbands' relatives (Lebert 2005).

Land and Inheritance Reform in Ovambo TAs

This section traces the series of events that led to major changes to Ovambo customary law that benefited widows. The first amendments were implemented in 1989 and the second in 1993. I argue that the reforms were driven not by a desire to challenge social and gender relations, even though they did so. Instead, I make the case that traditional leaders viewed the plight of landless widows and children as a matter of community concern. Under the community welfare principle, they therefore had the authority and obligation to act to protect this vulnerable part of the community's "body." I also outline the role that the timing of Namibia's transition to independence and chiefs' concerns about their place within a democratic state had on the passage of these laws.

Widow chasing in Owambo: 1946-1989

The prevailing narrative about widow chasing holds that widows and their children began to experience extreme suffering from traditional inheritance practices only in the decade or two before independence. Some scholars, particularly Becker (2006), have suggested that support of women's rights by traditional authorities are not due to state intervention but rather due to "a new local discourse on gender that has emerged largely independently of the state, although it is certainly informed by...[the state's] gender equality discourse" (36). I agree with Becker that the moves made by Ovambo traditional authorities in the late 1980s to mid-1990s concerning

women's rights were not driven by the state, a case that I make in this chapter. I disagree with her assertion that a local gender equality discourse drove the changes to customary law.

Gordon argues compellingly that the changes to Ovambo customary law in 1989 and 1993 were not the result of "enlightenment induced by contemporary human rights activism" as many scholars have suggested, but instead a long-awaited response to a practice that stretched back at least a century (Gordon 2008, 1). In the period of South African rule, Christian missionaries operating in Ovamboland identified matrilineal inheritance practices as harmful to widows. The Finnish Missionary Society asked Ondonga King Martin in 1920 to change inheritance norms for Christian widows so that they could inherit their husbands' property, a request that the king refused due to strong local resistance. In 1950, the superintendent of the Finnish Mission made a similar request of Native Commissioner Cocky Hahn to address the inheritance practices that often left women and children destitute and landless (Becker 2005). In 1960, senior headmen from Uukwambi held a public meeting at which they decided to modify inheritance law to prevent widows and children from being expelled from their homesteads, as did Oukwanyama leaders in the same year (Gordon 2008). It appears that the changes to these laws impacted inheritance practices very little.

In 1975, Gerhard Totemeyer, then a doctoral candidate in political science at the University of Stellenbosch (and Deputy Minister of the MRLGHRD from 2000-2004), conducted a survey of Ovambo elites on a variety of topics, including inheritance matters. He found that 88 percent of elites living in Ovamboland felt the present system of inheritance no longer served its purpose and needed to be changed (Totemeyer 1978, 146). All teachers, traders, religious leaders and nurses surveyed said that the inheritance system needed to be changed, while 63 percent of traditional leaders felt that it still served its intended purpose. In subsequent

in-depth interviews with a subset of the respondents, Totemeyer found that nearly two-thirds rejected “the matriarchal system in favor of the patriarchal principle” in which the surviving spouse and children inherited land and property of the deceased (Totemeyer 1978, 146). Both systems of inheritance, however, are problematic for widows as both ensure that the families of deceased husbands receive most or all of their property. Totemeyer’s survey sample was not random, which makes generalization to the entire Ovambo population impossible. Nonetheless, his findings are worth considering as the only survey of its sort during the pre-independence era. They suggest that prevailing matrilineal inheritance practices were widely regarded by Ovambo residents as problematic and in need of reform, while traditional leaders were more intransigent in their support of traditional practices. The dramatic social and political upheavals of the late 1980s, however, were to change their minds.

The late 1980s represented a time of transformation across Namibia. By May 1988, South Africa had accepted UN Resolution 435, which set in motion negotiations for Namibia’s first free, fair, and universal election. Transitions to independence like Namibia’s represent a type of critical juncture, a “brief phase of institutional flux...during which more dramatic change is possible” than in the preceding periods of “path-dependent institutional stability and reproduction” (Capoccia and Kelemen 2007, 341). Dramatic change brought about by Namibia’s new constitution, however, was tempered by a commitment to adopt the 1982 principles developed by the Western Contact Group, as chapter 2 discussed. Interest groups thus had very limited ability to lobby for their demands during the constitution-writing stage, unlike South Africa’s famously open process a few years later.

Within this context of dramatic but controlled institutional change, traditional leaders in the Ovambo kingdom of Ondonga in 1989 implemented dramatic changes to their own

institution. They announced these changes in *Ooveta (Oompango) Dhoshilongo Shondonga*—The Laws of the Ondonga, in English. The Evangelical Lutheran Church in Namibia (ELCIN) published this small booklet containing “those parts of the laws of Ondonga which the King’s Council felt to be of particular importance...” (Traditional Authority of Ondonga 1994, 27). The most important break with past laws concerned the protection of widows. Responding to the long-running concerns of their subjects, the Ondonga Traditional Authority introduced a significant change to traditional mourning rituals for widows so they could stop asset stripping by their late husbands’ families. Prior to the introduction of this new law, widows were restricted to a small area of their homesteads—their own huts or kitchens—for up to several months as part of the traditional mourning observance in Ondonga. Relatives of the deceased would often use this period to tour the homestead and remove any property they wanted. (According to matrilineal inheritance practices, the relatives of the deceased are only entitled to his property, not to the widow’s belongings, such as her clothing or cooking implements. Nonetheless, these items were reportedly frequently seized as well while wives were restricted to their huts.)

The new law, section 10 of the *Ooveta*, declared that widows now had the right to “move freely in and around the homestead and hence to secure its integrity until the end of the mourning period” (Traditional Authority of Ondonga 1994, 29). It also prohibited property distribution from taking place until after the funeral and also granted widows the right to remain on their husbands’ land for a payment to their headmen of around 600 rand (approximately US\$230 in 1989, a nearly impossible amount for most widows to pay). This new law explicitly changed a traditional practice in a way that empowered women by allowing them to protect their property and stay on their land (albeit for a price). Traditional leaders did not address the gender equality

component of this law, however, but instead framed the legal change as necessary to protect the most vulnerable members of their communities, widows and orphans.

Amending the Laws of the Ondonga: 1992-1993

Four years later, the leadership councils of the seven Ovambo traditional authorities convened to revisit the changes to the *Ooveta*. The traditional leaders agreed to strengthen widow protections by, for the first time, changing customary laws related to communal land inheritance. Challenging an “immutable” customary practice, every Ovambo TA amended their traditional laws to allow widows to inherit their deceased husbands’ tracts of communal land without having to pay their headmen. This unprecedented decision, involving a primary source of authority and legitimacy for traditional leaders—land—warrants careful examination.

It appears that a series of protests and public statements prompted Ovambo TAs to revisit the 1989 amendments. Some accounts attribute the chiefs’ actions to protests of traditional authority offices in Ondonga and Oukwanyama by women unhappy with inheritance practices. The Namibian newspaper reported on 100 women protesting discriminatory traditional inheritance practices outside the Oukwanyama TA’s highest court (The Namibian, 11 and 13 August 1993, quoted in Becker 2006, 48). However, the articles date to August 1993, more than three months after the meeting at which the laws were changed concluded. It is impossible to say if the protestors had not yet heard about the changes to inheritance practices, or if the reporter had details of the story wrong. It appears that a series of media reports published shortly after independence may have had an important impact as well. The reports about widows and children being left homeless in both the former Ovamboland and Katutura, the township bordering Windhoek, caught the attention of President Sam Nujoma. President Nujoma decried the reports

of widow dispossession and appealed to the public to halt mistreatment of these women and their children (Gordon 2008, 31). A few months after Nujoma's appeal, the National Assembly took up the treatment of widows and orphans for the first and last time before the 2001 debates on the Communal Land Reform Bill.

Manfred Hinz, a law professor at the University of Namibia that has studied traditional leadership in Namibia for nearly four decades, has written about the origins of the 1993 Ooveta revisions in several publications (Hinz and Namwoonde 2010; Hinz 1997; Traditional Authority of Ondonga 1994). According to his accounts, a few months after President Nujoma's public appeal to stop widow dispossession, Hinz found himself in Ondonga conducting research. He describes the events that led to the legal change in the introduction to the second edition of *The Laws of the Ondonga*:

On 16 November 1992, a historic meeting of the Ondonga King's Council took place at which [Hinz] was requested to give an opinion on land inheritance. After intense discussions, the decision was reached to delete the provision dealing with payments for the land from the *Ooveta*: widows should not only be allowed to reside on the land after the death of their husbands, they should be allowed to remain there without any payment (Traditional Authority of Ondonga 1994, 35).

In a subsequent retelling of this event, Hinz includes an important detail missing from the above account: namely that he was the person that suggested widows be allowed to stay on their land without having to pay headmen for the privilege (Hinz 1997). It is, however, highly unlikely that Hinz was the first person to suggest eliminating payments for widows to remain on their land. Regardless of the origin of the idea, the Ondonga leaders at the November 1992 meeting agreed that they would again amend their customary law to ban payments by widows for the right to remain on their land.

In May 1993, 79 representatives from six Ovambo traditional authorities gathered in Ongwediva to attend a customary law workshop organized by Hinz through the University of

Namibia. Representatives of the various traditional authorities discussed the amendments the Ondonga had passed seven months before. Up for debate was whether the other TAs would make the same changes to their customary laws. The minutes of the workshop detail the discussion that the traditional leaders had on the issue of inheritance:

The workshop discussed the problem of widows being chased out of their homes. All traditional councils were united in their bid to protect the widows. It was also revealed that the relatives of the deceased are often the ones who suppress the widows. One of the women participants stated that women contributed much to the deplorable situation. They inherit from their relatives, but complain when their husbands' relatives inherit his property (Minutes from the Customary Law Workshop of Ovambo Traditional Leaders, quoted in Traditional Authority of Ondonga 1994, 89).

At the end of the discussion, the leaders agreed to adopt the laws of the Ondonga, which included allowing widows to stay on their husbands' land and outlawing the practice of requiring widows to pay headmen for the privilege. The Uukwambi TA, the only authority from which no representatives were present, announced shortly after the conference's conclusion that they would adopt the laws as well.

Explaining the customary law changes: Community welfare and strategic interests

The 1989 revision of the Laws of the Ondonga and the 1993 amendments were unprecedented and unexpected. Land is the basis of authority and legitimacy for traditional leaders. Improving women's property rights is therefore contentious as it challenges customary laws built upon patriarchal social and economic orders. Why would every Ovambo TA voluntarily and publicly alter customary laws that reinforced larger gender roles and social structures within their communities?

According to traditional leaders and some scholars, the former were so moved by the spirit of the "new Namibia" and its commitment to promoting gender equality that they wanted

to contribute. I, on the other hand, argue that traditional leaders had two primary motivations for these legal changes, and in this section, I present evidence based upon the timing of the changes and the words of Ovambo traditional leaders themselves. First, chiefs understood and subsequently framed the issue of widow displacement as a matter of community concern and a practice that hurt the community as a whole. As this was a public matter that affected the entire group, it was appropriate in the eyes of their subjects and the chiefs themselves to intervene. Second, changing practices related to inheritance, particularly in the 1989 version of the *Ooveta*, was inevitable and strongly favored by Ovambo villagers. Chiefs could use the change strategically to begin making amends to their communities for their collusion with South African officials while also asserting their ability to harmonize with the new democratic state. Below, I examine each of these explanations for the customary law amendments.

Treatment of widows as a community concern

An episode from my field notes during my interview with the head of the Uukwambi TA illustrates well the intersection of national-level framing of women's communal land rights with local-level discourses and understandings of the issue:

Turning to the topic of inheritance laws, I mentioned to Chief [Herman] Iipumbu that a headman I had interviewed recently said that Uukwambi TA had changed the law so that widows would be allowed to keep their land after their husbands died. Chief Iipumbu nodded, and before I had a chance to ask my question, he turned around and pulled a book off of the table behind his desk.

“This is true what Tate Ephraim²⁹ says,” he replied.

He gave the book—*Ascertaining Customary Law* (Hinz and Namwoonde 2010)—to [my research assistant] Martha. The chief told Martha to turn to page 267 and read to me the section 10 of the ascertained laws of the Uukwambi. It states, “In the 1993 amendment to traditional law it was agreed that widows shall no longer be removed from their deceased husbands' land and/or asked to pay for the land.”

“Why was this change to customary law made?” I asked.

²⁹ Name has been changed.

“When the country became independent, human rights became clear...human rights were not for everybody in the past. We saw that this was wrong for people to be chased out,” the chief explained. “The previous government that colonized us didn’t consider traditional leaders. They didn’t consider that poor woman [sic] didn’t have any money. Government made us destroy the relationship between us and our communities. This law was a way to care for our communities. Now our communities really like us and respect us compared to past years because we respect them and their rights...in the colonial past, if they [colonizers] want certain land, they would tell [traditional leaders] to chase people away. This made people hate them. These laws help people know traditional leaders work for them now.”³⁰

In this passage, Chief Iipumbu frames the law as motivated by a new concern for human rights. Although he has a reputation as a strong supporter of women’s rights (Ubink 2011b), he does not explicitly reference gender equality or women’s empowerment concerns. Instead, his language emphasizes the vulnerability of “that poor woman [who] didn’t have any money.” Chief Iipumbu also describes the law as “a way to care for our communities.” His language supports the argument that an understanding of widow chasing as a public concern motivated these customary law amendments. This, in turn supports this project’s community welfare hypothesis, which holds that when traditional leaders frame an issue as communal—that is, affecting the wellbeing of the entire community—they are more likely to implement policies addressing that issue. By acting to protect widows, Ovambo TAs demonstrated care for and commitment to their communities.

Chief Iipumbu also acknowledges that the involvement of traditional leaders with the colonial state harmed the standing of chieftaincies in their communities. Indeed, he goes so far as to claim that people hated their traditional leaders because of things that they were forced to do by colonial officials, such as run people off of their land. He then connects the 1993 amendments to customary law with improved relations between chiefs and their communities. The chief’s description of these laws as a way of proving that traditional leaders now “work for [their

³⁰ Interview with Chief Herman Iipumbu, Oshana Region, May 2, 2012.

subjects]” supports the argument that improving community relations motivated the customary law changes, at least in part.

Like Chief Iipumbu, villagers living in Ovambo traditional communities consider the plight of widows a matter for public concern. In a survey of 210 Namibians living in villages overseen by one of three Ovambo TAs, I found that the overwhelming majority of men and women (80.1 percent) agreed or agreed strongly with the statement that “ensuring widows and their children are protected from property grabbing is a matter of concern for the whole community.” This finding lends further support to the assertion that Ovambo TAs’ reform of customary inheritance law was regarded by subjects as legitimate in terms of the community welfare principle.

Table 4.2: Attitudes of Ovambos on Property Grabbing (percentage)

	Strongly agree	Agree	Disagree	Strongly disagree	Neither/Don't know
Rural women	32.0	34.2	10.9	3.0	5.5
Rural men	26.7	55.6	11.1	0.0	6.7
Urban women	34.2	42.1	2.6	0.0	2.6
Urban men	30.0	46.7	23.3	0.0	0.0
Totals					
Rural	31	49.5	11	2.4	5.7
Urban	32.4	44.1	20.6	0.0	1.4
Combined	31.3	48.2	13.3	1.8	5.0

Question: Do you agree with the following statement: ensuring widows and their children are protected from property grabbing is a matter of concern for the whole community? Source: Traditional Communities Survey (Appendix 2).

While this overwhelming response is compelling, caveats apply: first, I cannot establish causality with this finding. It is possible that public attitudes toward protection of widows’

inheritance rights changed as a result of the TAs' customary law revision. I therefore must rely upon the triangulation of these data with other evidence in the following sections to make my case. Additionally, I cannot conclusively demonstrate that villagers and their traditional leaders hold the same opinions on treatment of widows. Perhaps TA leaders were driven to make these changes solely as a strategy for regaining the favor of their subjects during a period of great uncertainty about their fate in democratic Namibia, while their subjects supported them on the basis of the community welfare principle.

My interviews with residents of traditional communities support both the survey findings and the community welfare hypothesis. A women's empowerment group founded under the auspices of a church applied for a leasehold on communal land in 2010. When I met with them at their five hectare plot in Oshana region in May 2012, they had just begun clearing away the brush and building a shelter on the land. They planned to create the necessary infrastructure for women, particularly "orphans, widows, single mothers, and pensioners" to engage in the creation of small-scale projects, such as pot making, that they could sell to become financially self-sufficient.³¹ Throughout the interview, the women repeatedly emphasized their obligation to help widows and orphans as a matter of "community support." They reported that Chief Iipumbu had approved their application for land without hesitation and had promised he would allocate them another five hectares if the organization outgrew its current space.

"What can we achieve if we don't get our own land?" asked the coordinator of the group. She reported that traditional beliefs were holding women back. Men and women both believe women are not capable of doing anything. "The community is resistant to change. The traditional leaders are doing their best to change their communities. Especially with the widows. Now

³¹ Interview with women's group, Oshana region, May 4, 2012.

because of the [chiefs] you can't take her [a widow's] property anymore. This thing is not there," she said.

Two members of another women's church group spelled out the logic of land issues even more clearly: "Us as women, we are different. Sometimes I will take a problem to a headwoman but mostly we keep our problems to ourself [sic]," said the first woman, who was in her 30s and wearing a long brown dress.

"There are certain problems that can be taken to headwoman and some cannot...if I'm a widow and someone tries to chase me off my land, I can get help with that from headwoman," added a second, older woman wearing a vibrant wax print dress.

The observations of these women suggest that a shared understanding exists of what types of matters are appropriate to take to a traditional leader and what types of matters are private and should therefore be kept to themselves. Land was clearly understood as a public matter. The first women's group viewed land as an essential component of support for widows, while the second women's group characterized land as an appropriate issue for chiefly intervention.

As chapter 1 emphasized, the ways in which traditional leaders understand and therefore frame an issue is not always clear or consistent, and it can change over time. For that reason, I do not claim to provide a causal explanation for why chiefs frame some issues as related to public interests while others are categorized as private matters. In the case of inheritance for women in Ovambo communities, it appears that public opinion and chiefs' desire to reestablish themselves as legitimate leaders in the eyes of their communities factored significantly into their customary law changes.

National framing of land issues

Prior to independence, religious leaders and chiefs framed the displacement of women from their deceased husbands' land as a moral issue. Both groups focused upon the suffering of landless widows and children—and a general obligation to alleviate that suffering—to justify changes to matrilineal inheritance practices. Shortly after independence, the language surrounding the issue shifted. At the national level, in keeping with the 1990 constitution's focus on gender equality, policymakers began to frame widow chasing as harmful to the achievement of women's rights (Namibia Development Trust 1994). When the Women and Law Committee of the Law Reform and Development Commission (LRDC) visited the Ondonga King's Council on May 19, 1993, to consult with the council about the changes they made at their November 1992 meeting, framing of the law reform began to include women's rights for the first time.

It is therefore clear that concern for the welfare of widows and children as a matter of public interest originally motivated changes to customary law. Framing by traditional leaders of the inheritance reforms came later. In the case of the 1993 changes to Ovambo laws, written accounts only mention improvements “to the legal status of women in line with the requirements of the Constitution of Namibia” (Traditional Authority of Ondonga 1994, 85) after the May 19, 1993 visit of the Women and Law Committee's visit to the Ondonga King's Council. In the previous section, I presented evidence that traditional leaders regard widows' inheritance of communal land primarily as a matter of community concern rather than a women's rights issue. In this section, I examine the frames employed by various state actors in their discussions of widows' inheritance rights. I find that most officials and ministries have characterized communal land allocation as important for women's empowerment since the early 1990s, though dissenting voices have been present as well.

Although the state did not act on communal land issues officially until the introduction of the National Land Policy in 1998, it made its commitment to improving women's rights through more secure land tenure clear from the first national conference on "the land question" in 1991. The prime minister opened the conference by emphasizing the importance of gender equality in the promotion of land rights:

[Gender equality in landholding] is most urgent in the case of female-headed or de facto female-headed households in which the male is absent most of the year. A woman should be as eligible to have the land use title in her name as the man, even if she and her husband live together, and to inherit and bequeath land. This would appear to be required by the Constitution (Republic of Namibia 1991a, 16).

At the conclusion of the conference, participants agreed that, because women represented the majority of agricultural producers in communal areas, they should have the right to own and inherit the land on which they farm and should be represented fairly on land boards. They further agreed that statutory and discriminatory laws should be abolished (Republic of Namibia 1991b). These conference outcomes did not lead directly to laws or policies, but the frames used by state actors at this conference emphasized communal land reform as crucial to the promotion of women's rights, a message that has remained a cornerstone of state land policies.

National Assembly Motion on the Treatment of Widows and Orphans

In August 1992, the National Assembly discussed the treatment of widows and orphans. This discussion in the National Assembly is worth examining in detail because it exemplifies the dominant arguments and themes with which the government was framing "the land issue." Minister of Youth and Sport Pendukeni Iivula-Ithana motivated the discussion by highlighting the suffering of Namibians in the wake of a major drought. She also framed the discussion in terms of the country's recent ratification of the Convention on the Elimination of All Forms of

Discrimination Against Women (CEDAW). Every other MP that spoke on the motion mentioned their obligations to end discrimination against women as a constitutional and/or CEDAW obligation as well.

Minister Iivula-Ithana further alluded to media coverage of widows and their children, saying that the “trauma” of “the revelations in two of our local newspapers of the harassment of widow and orphans by relatives of the deceased husbands, particularly in the northern part of this country” had forced her to bring the matter to parliament (Debates of the National Assembly 1992, 192). She blamed urbanization, modern family structures, and a loss of traditional values for the increases in cases of widows being chased off their land and stripped of their property. Like traditional leaders, she framed the protection of these weak and vulnerable Namibians as a matter for public concern and intervention. Further, she called upon traditional leaders, regional commissioners and politicians to implement the following measures in their communities as part of drought aid:

1. while the drought situation is still on, immovable properties, particularly the fields and the dwellings there on, of the deceased persons should not be taken away from the widow or widowers and orphans;
2. fees payable to headmen as transfer payments on land inherited by the widow and children should cease to be paid meanwhile;
3. all food related items should not be taken from the surviving spouse and children (Debates of the National Assembly 1992, 194).

Representatives of minority political parties were explicit in their support of land reform as a strategy for promoting gender equality. Hon. Eric Biwa of the United Democratic Front, for example, characterized the call for inheritance reform as “a challenge to the foundations of our traditional society...[and] an open revolt against the tradition of male superiority” (Debates of the National Assembly 1992, 196).

Language similar to that employed by traditional leaders was also on display in Parliament. Minister of Foreign Affairs Theo-Ben Gurirab, for example, defended his support of the motion on the grounds that he did not view it as a “women’s motion, but as a motion that speaks to what ought to be the national character of our society, a character by which we should be known and respected all over the world. The list of things which our assembly is being called upon to consider and—it is hoped—act upon, are modest and non-controversial” (Debates of the National Assembly 1992, 198).

Minister of Local Government and Housing Libertina Amathila told the assembled parliamentarians that she had talked to Ovambo traditional leaders about the plight of widows shortly before this motion was introduced in the National Assembly. Although she had hesitated to raise the issue for fear of “stepping on some people’s corns,” she learned, much to her surprise, that chiefs had “long stopped” the practice of “throwing the widows out” of their homes and land once their husbands had died (Debates of the National Assembly 1992, 279). She specifically mentioned Chief Elifas of the Ondonga and Chief Taapopi as discussing the matter with their headmen and agreeing to stop the practice. Knowledge of the customary land reforms undertaken by these TAs was very low among National Assembly members, a theme that reemerged in later parliamentary debates.

National Land Policy of 1998

The National Land Policy of 1998 was written as a model for the impending CLRA, then in the works. The policy is explicit in its support of communal land access for women through allocation and inheritance. Indeed, this policy was written with the goal of improving the socioeconomic status of women. This point was made by Conradie and Odendaal (2005, 20–21),

who note that the policy commits the state to “promot[ing] practices and systems that take into account women’s domestic, productive and community roles, especially in regard to housing and urban development, agricultural development and natural resource management.” The land policy thus explicitly framed communal land allocation as an issue that affects women’s rights and through which the state intended to promote those rights.

National Assembly Debate on the Communal Land Reform Bill

In spite of the National Land Policy’s clear stance on the relationship between land and women, the debate in the national assembly over the CLRA was contentious on issues of gender. A major point of controversy involved the distribution of CLB members. Of the 12 members on each board, the bill called for at least four to be women, including two from traditional communities and two involved in agricultural production. Opposition parliamentarian and Ovambo headman Philemon Moongo challenged this arrangement. He argued that because in Ovambo communities “the overwhelming majority of women are landless wives...very few women, if at all, are experts in farming operations” (Debates of the National Assembly 1999b, 209). He called for a reduction in the number of women on the board to make room for actual agriculture experts. At the same time, he called for the influence of traditional leaders over the CLBs to increase, and he denounced the bill for “rob[bing] chiefs of their powers” (Debates of the National Assembly 1999b, 210), a request that was quickly rejected by male and female MPs that noted women did the majority of the farming in many traditional communities.

Women’s Land and Property Rights and Livelihood Conference

A 2005 conference on the topic of “Women’s Land and Property Rights and Livelihood, with a Special Focus on HIV/AIDS” reinforced and built upon the state’s earlier emphasis on land access as critical to gender equality achievement. Throughout the conference, government officials framed custom as harmful to women’s rights. First Lady Penexupifo Pohamba, for example, said in her speech that the conference was needed to “sensitize traditional leaders to protect land and property rights for Namibian women and children” (Ministry of Gender Equality and Child Welfare 2006, 8). The Minister of Gender Equality and Child Welfare described the conference as “crucial in the context of overall women’s emancipation and gender equality and at the same time highly sensitive because it deals with deeply ingrained preconceptions of custom, culture and tradition” (Ministry of Gender Equality and Child Welfare 2006, 4).

The state framing of customary law and traditional leaders was not monolithic, however. There were defenders of traditional leaders at the conference as well. Minister of Lands and Resettlement Jerry Ekandjo said that bias against women in inheritance and allocation of community land was now “a thing of the past” and that TAs “exercised this land allocation function with diligence, honor and in accordance with our customary laws and tradition” (Ministry of Gender Equality and Child Welfare 2006, 10). University of Namibia Professor Manfred Hinz also defended Ovambo TAs by recounting the history of the 1989 and 1993 customary law amendments. He asserted that “If one compares the customary inheritance law after this really revolutionary change with the provisions of the Communal Land Reform Act, 5 of 2002, customary law can be seen as being more in favor of women than the provisions in the said Act. Differently from customary law according to which the land remains with the widow, in the Act, the land reverts to the traditional authority before it is reallocated to a surviving

spouse” (Ministry of Gender Equality and Child Welfare 2006, 25). He closed his presentation with the observation that, despite the changes to customary and statutory law and the buy-in of traditional leaders, there were still come cases of widow chasing that had to be addressed. He suggested hat this could by done by monitoring the implementation of the customary law amendments.

In review, national framing of communal land allocation and inheritance has emphasized the importance of communal land to women’s rights. Some state representatives have persisted in framing custom and traditional leaders as impediments to this progress. In Ovambo TAs, however, the evidence does not support this argument. By most accounts, traditional leaders were protecting widows’ property rights using these customary laws a decade before the passage of the CLRA.

Introducing Institutionalized State Oversight: The Communal Land Boards

A year after the passage of the CLRA, the Ministry of Lands and Resettlement began setting up CLBs, which were to prove crucial to the success of the Namibia’s communal land policies, particularly the provisions involving women. This section discusses the impact of the CLBs upon the full implementation of the 1993 Ovambo customary law amendments and the 2002 CLRA. While cases of widows being chased off their land and/or forced to pay to remain on their land had dropped throughout the 1990s, they were far from extinct. At the same time, many Ovambo traditional leaders refused to allocate land to women other than widows. By serving as an institutionalized check on the decisions made by traditional leaders, CLBs improved traditional leaders’ compliance with the CLRA dramatically. In just a few years after the boards’ establishment, cases of widow chasing dropped nearly to zero, while the number of

land rights allocated to women increased significantly. CLBs thereby improved chiefs' performance in implementing women-friendly land policies. The efficacy of the CLBs supports both the state oversight and "both conditions" hypotheses outlined in chapter 3. This section begins with a brief overview of the CLBs. It then examines their impact on CLRA implementation as well as some of its shortcomings.

Communal Land Boards

Each region with communal land has its own CLB. At the time of my research, these boards existed in 12 of 13 regions of Namibia.³² CLBs serve as a veto point for the allocation decisions made by traditional leaders. In most Ovambo communities, headmen/women, who oversee individual villages and are the lowest-ranking members of TAs, control the land within their areas with relatively little interference from high-ranking traditional leaders. The decisions of these headmen/women are then sent onto the offices of the respective TAs, where the allocations are often recorded in inconsistent ways before being sent to the CLB for review (Mendelsohn 2008, 76). CLBs have the power to execute investigations of any allocation decision made by a traditional leader. They will also hear appeals of villagers whose applications for land were rejected.

One of the important features of the CLBs is that at least four women must serve on every board: two women that are engaged in agriculture within the CLB's region, and two of whom have "expertise relevant to the functions of a board" (sec. 4(1)(d) of the Communal Land Reform Act of 2002). One representative of each TA within the board's region also serves, as do

³² In 2013, the Kavango region was divided into two regions, Kavango East and Kavango West. Each has its own CLB. Khomas region, in which the capital Windhoek is located, does not have a CLB because it does not contain any communal land.

one farming community representative, the regional council officer, and four staff members from relevant ministries (those that handle land, environment, regional government, and agriculture). The intention of lawmakers was to balance the interests of stakeholders by including women, traditional leaders and farmers while enforcing the CLRA by including ministry and local government officials.

Impact of CLBs on customary law and CLRA implementation

Following the 1993 amendments to Ovambo customary law, reports of widows in these communities being chased from their land or forced to pay to stay slowly declined. No data exist on “widow chasing” or illegal demands for payment by traditional leaders. The consensus in the literature, however, is that instances of widow eviction dropped significantly by the end of the 1990s, while demands for payment to remain on land were more common. The customary law changes improved traditional leaders’ treatment of widows, but they were not a panacea. Headmen (and a few headwomen) have very little oversight from higher levels of traditional administration, and as a result, the new laws were unevenly implemented across TAs.

The introduction of CLBs dramatically improved rates of compliance with the CLRA and nearly identical customary laws. Data that Ubink (2011a) obtained from CLBs in Ovambo regions reveal that they had many land-grabbing cases referred to them during the CLB members’ first term, which ran from 2003-2006. During this first term, reports of land grabbing slowly fell, as did complaints from widows being illegally forced to pay to remain on their deceased husbands’ land. From about 2008 onward, however, widow chasing decreased to almost zero reported cases in Ovambo (Ubink 2011a, Werner 2008). This drop in complaints following the establishment of the CLBs supports my state oversight hypothesis, which posits

that when institutionalized state oversight responsible for monitoring the implementation activities of traditional leaders exists in any form, chiefs are more likely to implement a policy as requested by the state.

With respect to communal land allocation to single women, the 2007 study cited earlier found that applications from women were increasing across Ovambo traditional communities. Uukwaluudhi King Taapopi affirmed during an interview with the study's author that single women were allowed to apply for land, and the number of women doing so had begun to increase after the passage of the CLRA (Werner 2008, 20). In 2012, King Taapopi reported that women were "definitely" applying for their own land rights, although he declined to provide further information, explaining that he as a king was "not really in charge of land—that is the headmen's job. Even when people ask me for land, I tell them, 'go to your headman to see if there is land [available].'"³³

The traditional secretary of another Ovambo TA reported that applications for communal land were split 50/50 between male and female applicants. In some villages within his TA, "95 percent of the households are women-headed, while only 5 percent are male-headed," he said.³⁴

Although the land allocation process has become friendlier to women since the implementation of the CLRA and CLBs, bias against them remains. A headwoman in the Uukolonkadhi TA reported that a woman that left her husband would not be entitled to any of the land for which he held a land right, nor would she be allocated her own plot within the village.³⁵ The other traditional leaders in the room with this headwoman nodded in agreement as she

³³ Interview with King Taapopi, Omusati region, April 27, 2012.

³⁴ Interview with traditional secretary, Omusati region, April 25, 2012.

³⁵ Interview with headwoman, Omusati region, April 25, 2012.

described this situation. This practice is worrisome because women might be less likely to leave abusive relationships in communities in which they know they will not be able to secure their own land if they do so. It is discriminatory as well in that married men in Ovambo almost always hold the land rights, so only women stand to lose property when they leave their spouses.

Oshana Region Governor Clemens Kashiupulwa pointed to another source of bias that was not mentioned by traditional leaders in my interviews. He criticized traditional leaders for their strategies of land allocation, in which he said “there is no fairness at all—women are given small plots of land” when they apply for their own customary land rights, while men receive much bigger plots. The discrepancy, he explained, was due to the fact that men had more money, and “it’s money that talks.”³⁶ Overall, however, he agreed with traditional leaders and researchers that the treatment of widows had improved, though he attributed the change to national, rather than local, factors: “that practice [of widow chasing] is no more there because of the constitution...[women] are no more chased away from land.”

Explaining the influence of CLBs

Like every policy regulating traditional authorities, no penalties exist for traditional leaders that disobey the CLRA. Simply having an oversight body in place has been effective at lowering rates of land dispossession to nearly zero and increasing the number of women applying for communal land rights. Given the lack of punishment associated with making allocation decisions vetoed by land boards, why has the introduction of these boards coincided with a decrease in cases of widow chasing and an increase in land rights for women?

³⁶ Interview with Oshana Governor Clemens Kashiupulwa, Oshana region, May 2, 2012.

A few mechanisms are likely at play. First, recall that headmen/women have responsibility for making land allocation decisions. Only in cases of complex conflict will these village-level leaders escalate the cases to junior or senior councilors that oversee clusters of villages. Headmen/women have almost no contact with the state, and are, on average, less educated than the kings, chiefs and senior councilors that lead the TAs and receive government allowances. Headmen/women do not receive the same training on legal issues from relevant ministries or NGOs as their superiors and often lack printed copies of the laws to reference. Moreover, given that customary law is, by its very nature, flexible and constantly evolving, headmen/women often make decisions without any grounding in civil or constitutional law. Land allocation decisions vetoed by the CLBs may serve as important learning opportunities for headmen/women. Over time, then, they learn the nuances of Namibia's highly prescriptive land policy, leading to fewer decisions that marginalize women.

A related explanation is that citizens have learned about their rights under the CLRA and are now more forceful in asserting their legal rights with traditional leaders. A study conducted by Ubink in early 2010 in villages under the Uukwambi TA found that nearly 86 percent of respondents knew of the prohibition on taking land from widows (2011a, 328). Interestingly, only a quarter of respondents that knew about the ban on "widow chasing" attributed its source to statutory law; nearly two-thirds (64.4 percent) cited customary law as the origin of policy (Ibid). The Legal Assistance Centre's 2008 study of the impact of the CLRA on women in Ovambo areas reported many village-level chiefs were still requesting payments from widows to stay on their husbands' land, but they backed down when widows challenged the legality of that request (Werner 2008). Fewer cases may be reaching the land boards because headmen are changing allocation decisions when challenged by widows or applicants for land rights.

Even if the mechanism driving improved implementation of the CLRA and National Land Policy is learning processes, rather than fear of punishment by the CLBs or MRLGHRD, the end result is the same. The introduction of the CLBs is correlated with the chiefs better implementing these policies as requested by the state, which in turn has increased the security of land tenure for women living on communal land.

By July 2013, 41.5 percent of Namibian women had registered secure land use rights. Ovambo regions are generally outperforming other regions of the country in terms of percentage of female land rights holders. As table 4.3 shows, the Ovambo regions, indicated in bold, have by far the most land rights holders, between 13,526 and 5986. No other region has more than 3800 land rights holders. This is due to the placement of customary land, the central importance it plays in the lives and livelihoods of Ovambo communities, and the population density of regions in which Ovambos are concentrated.

Table 4.3: Percentage of female land rights holders by region (2013)

Region³⁷	Percentage female land rights holders	Percentage male land rights holders	Total number of land rights holders
Zambezi	45	55	3827
Oshana	44	56	13526
Ohangwena	43	57	10373
Oshikoto	42	58	5986
Kunene	41	59	2802
Erongo	39	61	2535
Omusati	38	62	15453
Karas	35	65	1847
Omaheke	31	69	1300
Hardap	29	71	1208
Otjozondjupa	28	72	1982

Source: Matthaei and Wolf (2013), using data from the Ministry of Lands and Resettlement. Regions that constitute the former Ovamboland and are the sites of Ovambo communities are in bold.

³⁷ Khomas region does not contain any communal land and therefore is not included in this table. The regions of Kavango West and Kavango East were newly created when this information was gathered in 2013 and did not have land boards established. Caprivi region was renamed Zambezi region in 2013.

Limitations of the Communal Land Boards

Although the CLBs have improved women's access to communal land by strengthening chiefs' adherence to CLRA provisions, problems with women's rights to land remain. A major challenge of the CLBs specifically, and inheritance reform for women generally, is that the CLRA does not address moveable property inheritance. Thus, CLBs will not handle complaints related to the distribution of cattle, farming implements, money, or other items that impact widows' survival. Headmen/women will occasionally try to serve as mediators between embattled widows and in-laws over property. The 1989 changes to Ovambo customary law allow women to secure their property during the mourning period but do not make any statements about protection for women's property. Namibian civil law does not address asset inheritance either for black Namibians living north of the Red Line that died without wills.

Another problem is that knowledge of the CLRA and the CLBs remains limited. In a 2010 survey, 82 percent and 81 percent of Uukwambi TA villagers knew, respectively, about the prohibitions on land grabbing and payment to headmen/women to remain on communal land (Ubink 2011a, 327). Of the people that knew about these prohibitions, however, less than 27 percent knew that these norms were tied to specific statutory laws—only 5 percent mentioned the CLRA (Ubink 2011a, 328). By contrast, nearly two-thirds of respondents cited customary law as the source of these rules (Ibid). In other words, low levels of knowledge of the CLRA may lead to widows unfairly charged for or run off their land to believe they have no recourse beyond their TAs. The CLBs can only help those that bring cases to them.

Results from my survey revealed similar patterns. As table 4.4 shows, only 2.4 percent of women surveyed across rural villages within three Ovambo TAs believed that their communal land boards were likely to help widows reclaim property, including land. Instead,

headmen/women were identified as most likely to help widows reclaim their property, at 54.3 percent for all respondents. No other actor or institution came close to this level of consensus. It therefore appears that traditional leaders, particularly headmen/women that oversee communal land allocation at the village level, continue to be viewed widely as the most influential actors in matters of inheritance.

Table 4.4. Group or person most likely to help a widow get back her property

	% women	% men	% total
Communal land board	2.40	4.3	2.8
LAC/legal organization	14.00	6.5	12.9
Local authority councilor	6.70	4.3	6
Police	17.0	17.4	17
Headman/woman	54.9	52	54.3
Family	3.70	8.7	4.7
Other	1.20	4.3	1.9

Question: If a deceased man's relatives take his property without his widow's permission, who is the most likely to help the widow get her property back? Source: Question 34 in Traditional Communities Survey (Appendix 2). N=210.

Additional and Alternative Explanations

Other explanations have been advanced to account for Ovambo TAs' support of changing inheritance practices to improve the status of women. The first involves lobbying by women's groups to affect policy change. In the case of land rights, however, strong evidence does not exist to support this possibility. In 1989, when the first set of changes to the Laws of the Ondonga (*Ooveta*) were passed, the largest women's group, the Namibia Women's Voice (NWX), had just disbanded and had not been challenging inheritance practices in the north prior to its dissolution (Becker 1995). No coherent women's groups had assembled to fill the vacancy left by the NWV by 1993, the year in which the second set of changes to the *Ooveta* (and quickly passed by the other Ovambo TAs). Women's groups in rural areas remained even scarcer and less likely to

pressure traditional leaders for policy change than urban groups (Hubbard and Solomon 1995). Furthermore, women's organizing around land issues remained scarce throughout the 1990s, even in urban areas. At the Consultative Conference on Communal Land Administration in 1996 at which the draft CLRA was discussed, nobody representing a women's group attended, according to the conference's attendance registers (Werner 2008, 12). This fact is striking because the conference was held in Windhoek, the city with the highest concentration of women's groups by far. However, many women were present to lobby on behalf of farmers. It is certainly likely, though not verifiable based upon available materials, that they advocated for rights as both women and agricultural producers.

It does appear that the May 1993 visit of the Women and Law Committee to the Ondonga King's Council influenced how the latter framed the changes to customary law, as discussed earlier in this chapter. Prior to the committee's visit, traditional leaders emphasized their moral obligation to protect widows and their children as vulnerable members of their communities. After their visit, by contrast, chiefs' rhetoric shifted dramatically and began to frame the legal changes as driven by their commitment to gender equality in line with the 1990 constitution. This group is affiliated with the state rather than civil society, but it consistently advocates for law reform that promotes gender equality.

Women's civil society groups, working mostly from the capital, played an important role in publicizing the plight of widows that had their assets stripped and/or property grabbed beginning in the mid-1990s and continuing through the 2000s. Sister Namibia, a women's advocacy group that distributes a quarterly magazine was particularly involved in sharing the stories of widows that had been displaced (e.g., Hubbard 2008, "Women Claim Their Right to Property and Inheritance" 2005, Matambanadzo 2005, "Women Work the Land, Men Own It"

1999, “Women on the Land” 1989). The LAC, particularly the Gender Research and Advocacy Project, also brought stories of widow mistreatment to the public’s attention through a series of reports (Odendaal 2011, Werner 2008, Conradie and Odendaal 2005, Haring 2002).

Another possible explanation for the timing of the changes to customary inheritance law centers on the traditional leaders that made the changes. Perhaps major changes in leadership shortly before the legal changes accounts for the dramatic shift in policy.

Table 4.5: Dates of designation for Ovambo Chiefs

Traditional Authority	Leader’s name	Year of Designation
Uukwaluudhi	Hosea Shikongo Taapopi	1960
Ongandjera	Japhet Malenga Munkundi	1971
Ondonga	Immanuel Kauluma Elifas	1975
Ombalantu	Oswin Shifiona Mukulu	1983
Uukolonkadhi	Daniel Shooya	1985
Uukwambi	Ndilimani Herman Ipumbu	1991
Oukwanyama	Cornelius Mwetupunga Shelungu	1998
Ombadja ³⁸	Kaunashoto Matias Walaula	2001

Sources: Hinz and Namwoonde (2010) and author’s interviews with traditional leaders

Table 4.5 lists Ovambo traditional leaders and the years in which they came to power. It does not support this theory. Ondonga King Immanuel Kauluma Elifas, the leader of the traditional authority that proposed both sets of changes, came to power in 1975, nearly 15 years before the 1989 amendments were introduced. Only Uukolonkadhi leader Daniel Shooya and Uukwambi chief Ndilimani Herman Ipumbu came to power within five years of the amendments’ passage. While Chief Iipumbu is known as the most supportive of women’s rights among the Ovambo TA heads, he is not described as having done anything to propose or facilitate the amendments’ adoption. Chief Daniel Shooya, who does not have strong reputation on women’s rights, similarly is not reported to have played an integral role in the 1989 or 1993 amendments.

³⁸ Ombadja was not designated as a TA until 2001.

This table does offer circumstantial evidence to support the claim that chiefs were motivated to change customary inheritance laws as a way of regaining the support of their communities. All but two Ovambo chiefs were in power prior to independence. They were therefore cooperative enough with the South African apartheid administration to maintain their positions and were viewed with disdain in most communities. Those chiefs had a great deal to gain by changing a customary law that was almost universally disdained.

Conclusion

In a period of great upheaval, low approval ratings, and uncertainty about their future in a democratic state, traditional leaders in the former Ovamboland amended their customary law to protect widows—namely, by allowing widows to stay on communal land without paying to do so. Changing customs to allow women to stay on their land and protect their property from in-laws during the traditional mourning period was a way of attempting to win back the support of their communities. It was, as Chief Iipumbu explained, “a way to care for our communities. These laws help people know traditional leaders work for them now.”³⁹

Traditional leaders justified the dramatic changes made to inheritance practices in 1989 and 1993 in terms of the community welfare principle: land is a public issue, the allocation and use of which affects the lives and livelihoods of everyone in traditional villages. Protecting the most vulnerable members of these communities is likewise regarded as obligatory for traditional leaders. This became an even more pressing obligation for chiefs as changing social practices rendered widows’ returns to their parents’ homes increasingly untenable, rendering many of them homeless.

³⁹ Interview with Chief Herman Iipumbu, Oshana Region, May 2, 2012.

Although widows were chased off their land or forced to pay for it with less frequency as the 1990s wore on, implementation of the law was far from universal in all Ovambo villages. Headmen/women's lack of understanding of the customary law amendments, desire to keep earning money from widows' financial considerations, and resistance to changes that impacted traditional and gender norms drove uneven implementation at the village level. CLBs brought to these villages state oversight of communal land allocation laws. In the five years that followed the CLBs' 2003 introduction, complaints of widow chasing, discrimination against women applying for land, and illegal requests for considerations to stay on deceased husbands' land dropped nearly to zero. The timing of these events emphasizes the crucial role that the community welfare principle played in rendering the 1989 and 1993 customary law changes acceptable to Ovambo traditional leaders and their communities and that state oversight exerted in compelling full implementation of communal land allocation policies. The case of communal land allocation and inheritance policies supports the hypothesis that when traditional leaders frame an issue as a matter of community concern and institutionalized state oversight exists, chiefs are more likely to implement policies as they are written. The following chapter demonstrates the ways in which policy implementation can fail if traditional leaders view an issue as a matter for community concern, but consistent state oversight of their activities does not exist.

CHAPTER FIVE

UNINTENDED CONSEQUENCES: THE IMPLEMENTATION OF HIV/AIDS POLICIES

...[S]tructures [to combat HIV/AIDS] are in place, the policies are there, plans are on the table to supplement one another, but what is the problem that we are now just stabilizing the prevalence, but the infection rate is still increasing...is it a problem again of the implementation issue? It seems the policies there, the structures are also there, the database is provided. Then if we are not making significant progress in reducing new infections, then the problem lies with implementation, monitoring and evaluation.

-Asser Mbai, Motion on HIV/AIDS Epidemic in the National Assembly (23 February 2010, 199)

Introduction

Like many other countries in southern Africa, Namibia was hit hard by the AIDS epidemic. The first case of HIV in Namibia was documented in 1986, and rates rose steadily throughout the 1990s and into the mid-2000s. After HIV prevalence rates among adults aged 15-49 peaked in 2006 at 22 percent, however, infection rates began dropping steadily and are now estimated at 13.4 percent of the adult population, markedly lower than neighboring South Africa (19.1 percent), Botswana (21.9 percent), and Swaziland (27.4 percent) (UNICEF 2013). Public health experts have praised the Namibian government for its prompt and effective response to the virus, which has prominently featured the inclusion of civil society and other non-governmental actors, including, since the late 1990s, traditional leaders.

Traditional leaders have participated in HIV/AIDS programs in many African countries, including Malawi (Dionne 2012), South Africa (Campbell 2010), Botswana and Uganda (Swidler 2006), which draws upon a history of chiefly involvement in public health efforts. During the colonial and apartheid periods, traditional leaders were frequently responsible for monitoring and reporting outbreaks of illnesses like malaria to colonial and apartheid officials. Despite the historical precedence, however, many expressed surprise at the government's decision to include traditional leaders in HIV/AIDS treatment and prevention programs. The customs of many TAs prevent their leaders from discussing issues related to sex with their

communities. Moreover, many questioned whether chiefs would agree to participate in the policy implementation process at all, given that most of the activities asked of traditional leaders by these campaigns require them to identify harmful traditional beliefs, practices and attitudes—particularly those related to women and traditional gender roles—and work to eradicate these beliefs from their communities.

This chapter begins with a review of the scholarship on the AIDS pandemic's impact on governance and policy in Africa. It focuses upon the pandemic's impact on women and gender equality achievements as well as the complicated relationship between international-, national-, and local-level AIDS policy preferences. It then traces the evolution of policies and programs governing AIDS policies in Namibia. It next analyzes the ways in which HIV/AIDS treatment and prevention are framed at the international, national, and local levels in Namibia. The chapter concludes with a discussion the implications of the national-local divide on AIDS issue frames.

AIDS policy in Africa: history and literature

Fifteen years ago, Catherine Boone and Jake Batsell (2001, 4) noted that “political science as a discipline...has been slow to grapple with the AIDS crisis. It seems that the HIV-AIDS issue has been conceived of as too private, too biological, too microlevel and sociological, too behavioral and too cultural to attract the attention of many political scientists.” Studies of AIDS' impact on politics and governance blossomed as scholars began moving away in the late 1990s from a definition of AIDS in Africa as “a health problem with a behavioral solution” (Boone and Batsell 2001, 18) and towards an understanding of the pandemic as a development and security problem. The volume of work on the impact of HIV/AIDS on governance and democracy in the developing world has increased significantly in the last decade. It is not my

intention to provide a comprehensive overview of the literature here, as it is enormously diverse, but rather to touch upon two strands of research that inform this project: the impact of HIV/AIDS on development and women's rights, and the influence of local-level understandings of the disease upon policy implementation.⁴⁰

The impact of HIV/AIDS on development and women's rights

The extent to which AIDS has retarded political and social development, particularly in African countries, is a major focus of scholarly attention as well as a persuasive argument for international financial and technical assistance to countries hit hard by the pandemic. AIDS deaths among legislators have created significant financial burdens for states that must hold frequent special elections to fill empty seats (Strand and Chirambo 2005). Deaths among voters increase opportunities for “ghost voting” and other forms of electoral fraud (Commission on HIV/AIDS and Governance in Africa 2008). The loss of expertise and institutional memory within developing countries' bureaucracies is particularly worrying to experts, as these bureaucratic features enable efficient decision-making and policy implementation (Poku and Sandkjaer 2007).

Driven by concerns over AIDS' impact on democratization, donor organizations have given generously to the countries hardest hit by the pandemic. Such monetary assistance usually comes with strings attached. In the case of AIDS interventions, donors generally expect recipients to adhere to the global public health understandings of and responses to behavioral, biomedical, and structural drivers of infection. Many interventions are predicated upon interpretations of sexuality and sexual behavior, gender roles, and traditional beliefs considered distinctly “Western” by many Africans. While these interpretations derive from epidemiological

⁴⁰ Paxton (2012) provides a comprehensive review of HIV/AIDS research in political science and is especially useful for his discussions of the pandemic's impact on state and human security.

studies intended to minimize behaviors and attitudes tied to elevated HIV infection risk, they strike many as a form of recolonization of previously-dominated countries and peoples (Swidler 2006). Indeed, suspicion of western science and health policies contributed in part to the development and support of President Thabo Mbeki's disastrous AIDS policy in South Africa (James 2006, Parkhurst and Lush 2004).

The impact of the AIDS pandemic upon efforts to empower women represents another important concern, often situated within the human rights discourse, in international development circles. By the early 1990s, experts had realized that biological⁴¹ and social factors made women more susceptible to HIV infection than men and that the prevailing 'ABC approach'⁴² was unlikely to work for women with little power to negotiate with their sexual partners (Heise and Elias 1995, de Bruyn 1992, Ulin 1992). In the quarter-century since, the global public health community has emphasized the importance to the HIV prevention process of addressing factors that exacerbate women's vulnerability to infection (Joint United Nations Programme on AIDS, United Nations Population Fund, and United Nations Development Fund for Women 2004). Programs have focused on empowering girls through structural interventions like leadership training and comprehensive HIV/AIDS education. Biomedical interventions have included creating and promoting contraceptive barrier methods that women control, most notably the female condom.

⁴¹ Women are more than twice as likely to contract HIV from a male carrier as a male is to contract the infection from a female carrier. This increased susceptibility is due to the larger surface area of the female reproductive system, high concentrations of HIV in semen (compared to concentrations in vaginal secretions), and the ease with which vaginal tissues can be damaged, increasing the number of infection entry points.

⁴² The ABC approach is an acronym that refers to a behavioral intervention strategy intended to decrease an individual's risk of HIV infection. "ABC" stands for: **A**bstinence, **B**e Faithful, **C**ondoms.

Understandings of vulnerability have become more nuanced as well: women are on average more likely to have HIV than men, but within the female population, infection risk is unequally distributed. Socioeconomic, marital and employment status, age, race, migration patterns and geographic location all affect a woman's likelihood of contracting HIV (Baylies 2002). For AIDS prevention and treatment interventions to reach the most vulnerable women, taking a gendered approach is not enough. The ways in which individual circumstances interact and intersect to raise or lower infection risk must be considered as well.⁴³

Gender inequality is a driver of AIDS infection, but some scholars argue that the causal arrow points the other way as well. That is, AIDS reverses progress already made toward gender equality and women's empowerment (Whiteside and Lee 2006, Albertyn 2003). As women bear the brunt of caretaking responsibilities in sub-Saharan Africa, it usually falls to them to care for family members in the end stages of the disease. These caretaking patterns are particularly pronounced for women residing in rural areas on ancestral farmland or homesteads: family members in the end stages of the disease will often return home from the cities in which they work and live to die. Similarly, care of children that have lost their parents to AIDS is delegated to women, especially grandmothers. For young women, the opportunity cost of caretaking duties is the chance for paid employment and greater financial security. Older women, studies in South Africa suggest, spend their pensions or savings on the sick and orphaned, often to their own detriment (Raniga and Simpson 2011, Ogunmefun and Schatz 2009).

The added caretaking burdens the AIDS pandemic creates harm the achievement of gender equality measures by limiting women's opportunities. Women consumed with caretaking responsibilities for family and orphans have little time to further their educations, participate in

⁴³ The concept of intersectionality comes from Crenshaw (1991).

community organizations, or pursue any other activity that would improve their socioeconomic status. Women tethered to a rural location by nursing duties are also less able to migrate to cities where employment opportunities are more plentiful. Economically insecure women are more likely to engage in transactional sex or quid pro quo intimate relationships in which women exchange sexual favors for financial support from men (James 2006, Siplon 2005, Albertyn 2001). Such relationships render women more vulnerable to intimate-partner violence, a phenomenon that contributes to the continued suffering of many African women.

The AIDS pandemic also sets back the achievement of gender equality with its disproportionate prevalence among young women: in sub-Saharan Africa, young women aged 15-24 are infected with HIV at twice the rate of their male counterparts (UNAIDS, n.d.; Joint United Nations Programme on AIDS 2013). The pandemic has decimated the next generation of women's rights leaders, scholars, and activists. The damage done to the next generation of female politicians is particularly worrisome: studies show that female legislators place a higher priority on women's rights issues than their male counterparts (e.g., Schwindt-Bayer 2006, Taylor-Robinson and Heath 2003, Thomas and Welch 1991). Smaller populations of young women may lead to lower numbers of women at all levels of government, which could negatively impact the volume and quality of women's rights policies across the continent for decades to come.

Local-level reception of national AIDS policy

In the last decade, the AIDS and governance literature has seen a shift from large-N, cross-national studies to smaller-scale, single-country case studies. This new generation of studies has uncovered a divide in attitudes toward HIV/AIDS policy and spending between stakeholders at the international and national levels, and the program beneficiaries at the local

level. The international organizations that shape global public health responses to HIV/AIDS rarely see how their policies are understood, experienced, and reshaped by local-level officials and targeted populations (Seckinelgin 2008), but community-level dynamics are crucial to the success or failure of policy implementation. The global public health community's lack of consideration for communities' reshaping of policies led to some unexpected successes—like Uganda—and even more surprising failures—like South Africa (Parkhurst and Lush 2004).

The disconnect between national- and local-level leaders' prioritization of funding for HIV/AIDS initiatives represents one important example of how local-level understandings shape public health policy. International organizations like the United Nations have defined the treatment and prevention of HIV/AIDS as a top priority globally and have devoted considerable time and resources to these goals. National governments and health ministries have followed suit by crafting national AIDS policies, launching countrywide prevention campaigns, and donating or accepting enormous amounts of money to fund these efforts. Many scholars have taken their cue from the rhetoric of these international organizations and assumed that HIV/AIDS intervention is a top priority for stakeholders and citizens in affected countries. Recent studies suggest, however, that this assumption may not hold at the local level in the African states hardest hit by the pandemic.

A crucial issue in discussions of HIV/AIDS policy implementation is the principal-agent problem. Lieberman (2011) attributes the intractable nature of the principal-agent problem to the polycentric governance structure used to address infectious disease across most of Africa. He defines polycentric governance as “the coincidence of multiple, autonomous authorities, overlapping in jurisdictions, within a single sector and territory” (Lieberman 2011, 676) and argues that this arrangement has created numerous principal-agent problems in South Africa.

Because every principal has multiple agents in HIV/AIDS interventions, and because few enforcement and oversight mechanisms exist to monitor local-level implementation of AIDS policy, agents can easily shirk their responsibilities entirely. In contexts of polycentric governance, voters and officials alike struggle to assign blame and punish responsible parties for policy failure.

In a related finding, Kim Yi Dionne (2010) demonstrates that the failure of many HIV/AIDS interventions resulted from the scores of principal-agent relationships that these internationally-led missions involve. Dionne has extended this argument in subsequent studies by examining one mechanism through which the principal-agent problem leads to intervention failure: the misalignment of preferences across levels of governance (2012, 2468). In her study of rural Malawian villagers and headmen, Dionne finds that both groups assigned relatively low priority to HIV/AIDS interventions when presented with a range of issues with which the government or international organizations could assist. The headmen justified the low importance they assigned to AIDS interventions by noting that infrastructural improvements, like bringing clean water to rural areas or creating vegetable gardens, would improve the health and quality of life for entire communities. HIV/AIDS treatment, on the other hand, would only help those infected individuals able to secure it. Dionne's finding that village-level leaders place low priority on HIV interventions appear to hold at the regional level as well: Lieberman's (2012) survey of local councilors in South Africa's Eastern Cape Province found that only 13.9 percent of councilors listed HIV or AIDS as one of the three most important problems facing citizens in their municipality (163), which put it well behind unemployment, infrastructure, poverty, housing, crime and water concerns.

When states have low levels of oversight for AIDS policy implementation, policymakers must consider how local-level agents and the policies' intended beneficiaries understand and accept these measures. If agents and audiences regard AIDS policies as unimportant or otherwise incompatible with local values, implementation is likely to fail. Thus, policymakers must consider the priorities of target populations at the local level, not just those of the global health community.

Traditional leaders

Traditional leaders are often mentioned as actors crucial to the success (or failure) of AIDS interventions at the local level. The few studies that examine specifically the impact of traditional leaders on any aspect of HIV/AIDS policies highlight the importance of traditional leaders to successful policy implementation, perhaps because programs that “culturally match” political and social conditions are more likely to be successful than the one-size-fits-all approach employed by many international AIDS organizations (Swidler 2006).

In Namibia's northeastern Kavango region, Joel Busher (2010) finds that traditional leaders became more involved in HIV/AIDS prevention efforts beginning in the mid-2000s by developing culturally acceptable ways to educate their communities about the illness. Headmen had been hesitant to participate in HIV/AIDS programs due to a strong taboo against elders talking about sex, especially with youth. In the mid-2000s, however, AIDS became so widespread that everyone, including traditional leaders, had seen family members and friends either die from the disease or “come back from the dead” with the help of antiretroviral therapy (ART) (Busher 2010, 32). Witnessing the ravages of AIDS and the possibility of redemption in ARTs moved even the most conservative leaders to take action.

Chiefs' increasing familiarity with ARTs provided new opportunities for them to engage with the government's prevention and education programs in ways they deemed culturally appropriate. Busher recounts a public meeting in Kavango in which an HIV-positive headwoman taught community members about ARTs: "...in the headwoman's speech to the village meeting there were no condoms, no female condoms, no abstinence, no 'ABC', just the fact that there were pills that could keep you alive and a place where you could find out if you needed those pills..." (2010, 33). Leaders in the Kavango traditional authorities believed that public discussions of sex, which could be "ripe with connotations of illicit sex, and moral and social degeneration" (Ibid) flouted cultural norms. By teaching subjects about clinics and ARTs, traditional leaders have created a culturally appropriate way to educate their communities without contravening behavioral expectations for high-ranking elders.

In South Africa, Suzanne Campbell's (2010) study of one rural Zulu village asserts that a chief's participation in a long-term project to create an "AIDS-competent community" contributed significantly to its failure. The chief supported enthusiastically a foreign NGO's plan to train volunteers in peer education and nursing skills and to empower women through increased access to community decision-making opportunities (Campbell 2010, 1638). His support led to achievements in volunteer training and peer education, but his adherence to a "highly conservative interpretation of culture and tradition" (Campbell 2010, 1640) informed the ways in which he, and in turn, the community, engaged with the project. Crucially, the chief publicly emphasized the social importance of controlling and dominating youth and women, a stance that clashed with the project's goal of empowering these populations (Campbell 2010, 1640). Campbell also contends that the chief became involved with the project in part to consolidate his political power within the village, in which nothing could happen without his consent. Her study

suggests that many chiefs' willingness to promote HIV/AIDS projects may be motivated in part by their own power calculations. Moreover, the study highlights a finding echoed in my research: traditional leaders may pick and choose the elements of HIV/AIDS programs that they want to support while resisting measures intended to empower women, citing the clash with traditional values.

Women, HIV/AIDS, and traditional leaders in Namibia: explaining the connections

Much of the literature on HIV/AIDS policy in Africa concerns the processes by which policies are developed, negotiated, and approved at the international and national levels. While this dissertation examines these processes, its main contributions arise from insights into HIV/AIDS policy implementation and traditional leaders' involvement with this process. AIDS policy implementation is overseen by the Ministry of Health and Social Services (MoHSS) at the national level, and by the MRLGHRD at the regional and local levels. Within each administrative level, dozens of stakeholders have hundreds of plans, strategies, and programs to implement. Like South Africa, Namibia manages its AIDS response with a polycentric governance model. Given the many actors involved, what is the value of examining the comparatively small role of traditional leaders in HIV/AIDS policy implementation?

Traditional leaders are critical to the success of policy implementation in rural villages, where women are especially vulnerable to HIV. In the four regions that contain Ovambo traditional authorities, the group from which this project's case studies come—Ohangwena, Omusati, Oshana, and Oshikoto—the rural populations constitute 90 percent, 94 percent, 54 percent, and 87 percent, respectively, of the regions' total populations (see table 5.1). Officially, all rural areas in these regions recognize the authority of a traditional leader. Therefore, nearly

298,000 women—27.3 percent of Namibia’s total female population—live under the authority of an Ovambo traditional leader.

Table 5.1: Percentage of population living in rural areas, by region, in 2011

Region	% rural	Female pop.	Male pop.
Caprivi	69	46497	44099
Erongo	13	70986	79823
Hardap	40	38935	40572
Karas	46	38014	39407
Kavango	71	118591	104761
Khomas	5	172469	169672
Kunene	74	43253	43603
Ohangwena	90	133316	112130
Omaheke	70	34016	37217
Omusati	94	133621	109545
Oshana	54	96559	80115
Oshikoto	87	94907	87066
Otjozondjupa	46	70001	73902
Namibia (total)	57	1091165	1021912

Source: Namibia population and housing census (Namibia Statistics Agency 2011)

Considered together, these statistics suggest what any rural Namibian will confirm: traditional leaders matter. In some of the Ovambo communities I studied, traditional villages were located several kilometers from the nearest road, requiring a two-to-three-hour walk before waiting for a taxi to travel to the nearest town, more than an hour away. In these areas, traditional leaders are often the only authorities seen with any regularity by their communities. The government has tried to ensure appropriate implementation of AIDS policy in areas that lack state authorities by creating regional and constituency AIDS coordinating committees (RACOCs and CACOCs). These committees coordinate the multi-sectoral epidemic response at the regional and constituency levels, respectively. RACOCs draw their membership from elected officials, including the regional governor, representatives from all relevant ministries, NGO and CBO representatives, and high-ranking traditional leaders, while CACOCs include mayors, public sector and elected officials, and traditional leaders. Committee membership, which includes

state-and non-state stakeholders, is designed to exemplify the state's commitment to multi-sectoral involvement in the epidemic response while also ensuring that state officials control RACOCs' and CACOCs' actions.

Despite the careful design of these committees, the local-level AIDS response is only marginally state-controlled in many parts of the country. In 2012, only 7 of 13 RACOCs and 35 of 107 CACOCs met three or more times, falling far short of the quarterly meetings required of both sets of committees (MoHSS 2014). Namibia's 2014 UNAIDS country progress report noted that "many key actors remain unclear about their roles and responsibilities [on RACOCs and CACOCs]...and many regions... face challenges in getting line ministries and government agencies to participate in RACOC activities" (MoHSS 2014, 42). Even in regions with relatively active RACOCs, traditional leaders hold a great deal of authority over policy implementation within their own communities. As the governor of Oshana Region, Clemens Kashuupulwa, explained, "the [Oshana RACOC] is concentrating on towns, while the traditional leaders are in charge in the rural areas."⁴⁴ The Oshana RACOC has delegated far more responsibility to chiefs for AIDS interventions than the government intended. Similar situations are common on committees across the country. Lack of infrastructure, interest, and knowledge among government stakeholders, along with a widespread desire among state officials to not step on chiefs' toes, has led to a situation in which traditional leaders control the vast majority of the HIV/AIDS education and policy implementation occurring within their communities.

Having established the importance of traditional leaders in the rural AIDS policy implementation process, I now turn to the Demographic and Health Survey (DHS) to illuminate the vulnerability of rural women to HIV. The DHS is a nationally-representative study of health

⁴⁴ Interview with governor, Oshana region, May 2, 2012.

levels, trends, and knowledge. It was most recently conducted in Namibia in 2006-7 and provides important insights into levels of knowledge of HIV/AIDS.⁴⁵ Residents of rural areas nationwide have a lower overall understanding of issues related to HIV/AIDS than those living in urban centers. For example, comprehensive knowledge of HIV/AIDS⁴⁶ is lower among women living in rural areas—84.7 percent of rural women knew that a healthy-looking person could have AIDS, compared to 90.1 percent of urban women (MoHSS and Macro International 2008, 197). In terms of prevention knowledge, fewer rural women understand how mother-to-child transmission (MTCT) occurs and how it can be prevented (73.4 percent of rural women versus 77.7 percent of urban women) (Ibid, 198). These statistics demonstrate that a knowledge gap exists among urban and rural women about how to protect themselves and their children from HIV, a gap that traditional leaders are responsible for closing.

The DHS also uncovered beliefs in cultural norms that rendered women more vulnerable to infection. In rural areas, 82.2 percent of women and 86.3 percent of men believed it was acceptable for a wife to refuse sex or ask her husband to use a condom if he has an STI, compared to 89.1 percent of women and 90.6 percent of men in urban areas (Ibid, 202).⁴⁷ These statistics suggest that it is less socially acceptable for women to negotiate sexual relations with their husbands in rural areas.

⁴⁵ All differences between rural and urban women cited in this discussion are significant at $p < .001$.

⁴⁶ “Comprehensive knowledge” of HIV/AIDS is defined in the DHS knowing that “a healthy-looking person can have the AIDS virus and who, in response to prompted questions, correctly reject local misconceptions about AIDS transmission or prevention, and the percentage with a comprehensive knowledge about AIDS by background characteristics” (MoHSS and Macro International 2008, 196).

⁴⁷ The difference in attitudes is statistically significant for both urban vs. rural men and urban vs. rural women at $p < .001$.

All of these findings highlight the importance of educating rural women to protect themselves from HIV infection by improving knowledge of the virus, methods of transmission and MTCT, and by addressing social norms that prevent women from negotiating safer sexual relations with their partners. As chapter 3 explained, traditional leaders maintain significant control over access to their communities, and as this chapter has demonstrated, many HIV/AIDS prevention activities have fallen to them. Traditional leaders are thus faced with the serious responsibilities of making up this rural knowledge gap and changing patriarchal beliefs that make their female subjects more vulnerable to HIV infection. And because the government largely lacks the infrastructure to assist with these tasks and the political will to interject themselves into traditional communities, chiefs are often the only people from whom rural citizens learn about HIV/AIDS on a regular basis. Thus, the prevention and education activities undertaken by traditional leaders are likely to significantly impact rural citizens' understandings of the virus and the steps they take to prevent or treat the virus.

From theory to implementation

In this section, I apply the foregoing theories to the Namibian context. I trace AIDS policies from their conception and framing at the national level, through regional intermediaries, to their implementation by traditional leaders at the local level. I find that, rather than embracing the state's framing of the AIDS epidemic as particularly detrimental to women, both in terms of number infected and secondary burdens, traditional leaders instead emphasize AIDS' damage to the social fabric of communities. Where the government identifies gender inequality and harmful cultural practices as key epidemic drivers, chiefs blame "moral decay." These divergent assessments of the problem (diagnostic frames) yield opposing solutions (prognostic frames) as

well. The national government focuses on reducing new infections by promoting women's rights and eradicating harmful traditional practices, while traditional leaders emphasize the importance of halting moral degradation by returning to the observation of traditional practices and beliefs. These findings are based upon my case studies in the former Ovamboland, but secondary data suggest that they hold in traditional authorities across the country.

Table 5.2. National versus local framing of HIV/AIDS policies

	National level (government)	Local level (traditional leaders)
Diagnostic frame	The AIDS epidemic is largely driven by the unequal social, economic and political status of women in Namibia.	The AIDS epidemic is driven by moral decay caused by a widespread departure from traditional beliefs and practices.
Prognostic frame	Harmful traditional practices, including patriarchal cultures and beliefs, must be changed or eradicated.	People must return to the observation of traditional beliefs and practices.
Intended beneficiaries of policies	Many interventions are specifically intended for women, because they are disproportionately vulnerable to, and harmed by, HIV/AIDS.	Interventions are intended to target and benefit everyone equally, because the welfare of the entire community is harmed if even one person has HIV.

By asking traditional leaders to implement HIV/AIDS policies through measures that threaten their legitimacy and social standing, the state has put them in a difficult position. If traditional leaders engage in a public process of redefining cultural norms and traditions, they jeopardize the basis of their authority, which is legitimated by the notion that it has always existed and been informed by the same customs and beliefs. Public redefinition of culture would throw into sharp relief a break with the "eternal yesterday" described by the Weberian notion of traditional authority. As the legal rights of traditional leaders have been circumscribed while their position as ambassadors of their cultures has been emphasized, it is more important than ever that chiefs assert their authority and differentiate themselves from the state by claiming unique and ultimate authority over customs.

How do traditional leaders ‘get away’ with addressing the epidemic in ways that contradict the government’s intended policy messages and outcomes? As I demonstrate in the rest of the chapter, the monitoring and evaluation (M&E) process for HIV/AIDS policies does not include oversight of chiefs’ activities. Although the government has essentially positioned traditional leaders as street-level bureaucrats (Lipsky 1980) for the purposes of AIDS policy implementation, a combination of polycentric governance structures and the politically sensitive chief-state relationship resulted in the decision not to monitor chiefs’ activities. Despite the potential challenges to their authority, and the absence of M&E, traditional leaders reported feeling obliged to address the epidemic because it harms peace and wellbeing in their communities. The lack of state oversight allows these leaders to address the on their own terms, in ways that undermine the state’s focus on female empowerment and related strategies for infection reduction.

The national perspective: HIV/AIDS plans, policies and frameworks since 1990

The first four cases of HIV in Namibia were identified in 1986. By 1987, the South African-run apartheid government had established an AIDS advisory committee to address the rapidly-increasing number of infections. Shortly after independence in 1990, President Sam Nujoma established the National AIDS Control Program, which was tasked with coordinating treatment and prevention activities, with the financial and technical support of governments across the industrialized world (MoHSS 1999).

The government, led by the MoHSS’s Directorate for Special Programs, developed a series of five-year plans—the National Strategic Medium-Term Plans on HIV/AIDS, I, II, and III (MTPI, II, and III)—designed to bring the epidemic under control, locate and treat people living

with HIV and AIDS (PLWHA), and inform citizens of prevention tactics.⁴⁸ These plans were stopgaps, designed to address a new, fast-moving, and relatively mysterious pandemic in any way possible. As knowledge of the virus improved, new plans have been released that reflect updated science on and understanding of the pandemic.⁴⁹ In 2010, following the end of the MTPIII, the government released the National Strategic Framework for HIV and AIDS Response in Namibia, 2010/11-2015/16 (NSFHA). The NSFHA is considered a more permanent, evidence-based policy to replace the “stopgap” MTPs. It remains the guiding framework for all government programs related to HIV/AIDS treatment and prevention.

In addition to the NSFHA, the National Policy on HIV/AIDS (NPHA), released in 2007, currently directs the national response to the epidemic. The NPHA is a companion document to the NSFHA, intended to “guide current and future health and multi-sectoral responses to HIV/AIDS in Namibia, to encourage all Namibian institutions to fulfill their obligations for responding to HIV/AIDS and to serve as a guiding frame for a coherent and sustained approach enhancing political commitment and participation of civil leadership at all levels” (MoHSS 2007b, 1). It outlines the policy principles and objectives that all future HIV/AIDS programs across government agencies should follow.

Before describing Namibia’s policies, a brief primer on HIV/AIDS interventions is needed. The public health literature divides AIDS prevention activities into three categories (UNAIDS 2010): Biomedical interventions employ medical and public health methods to prevent and reduce susceptibility to infection. Donated blood screenings, pre- and post-exposure

⁴⁸ The MTPI was in effect from 1994-1999, the MTPII from 1999-2004, and the MTPIII from 2004-2009.

⁴⁹ See table 4.3 at the end of this chapter for a complete list of Namibia’s HIV/AIDS plans and policies, including the passages and provisions related to traditional leaders.

prophylaxis, prevention of mother-to-child transmission (PMTCT), and voluntary male circumcision are among the most common biomedical interventions used in southern Africa. Behavioral interventions target individuals' knowledge, attitudes, and beliefs to discourage activities that elevate their risk of HIV contraction. The ABC strategy is the best-known set of behavioral interventions in Africa. Structural interventions acknowledge that social, cultural, political and economic norms affect risk levels for particular populations and attempt to lessen vulnerability through policies and programs that create conditions allowing the adoption of safer behaviors. Namibia's HIV/AIDS interventions combine all three types of interventions, but traditional leaders have been asked to participate only in structural, and to a lesser extent, behavioral, prevention activities.

Defining audiences and framing causes: Gender and tradition in HIV/AIDS policies

As understandings of HIV/AIDS have improved, public health policies governing prevention and treatment of the virus have evolved as well. Tracing the evolution of Namibia's AIDS plans and policies through content analysis illuminates the role of the international community in shaping national approaches to the epidemic. This analysis is also useful for tracking changes in conceptions of women's vulnerability to HIV and incorporation of traditional leaders into the policy implementation process. Before discussing the particulars of the policies, it is important to understand why Namibia's HIV/AIDS policies target so many of their interventions at women. In short, AIDS policies focus on women because the majority of infected people are female. In low- and middle-income countries, 52 percent of PLWHA are female (UNAIDS 2013). Among young people, the gender divide is much starker: in sub-Saharan Africa, young women aged 15-24 are infected with HIV at twice the rate of their male

counterparts (Ibid). The disparity is even worse in Namibia, where 73 percent of newly-infected 15-19-years-olds are female (MoHSS 2010). In 2013, 130,000 Namibian women over the age of 15 were infected, compared to 90,000 men (MoHSS 2014).

Conceptions of vulnerability and traditional leadership in the MTPs

The MTP II and MTP III require particular attention for the marked differences in how each plan addresses vulnerable populations, gender inequality, and the role of traditional leaders in combating the epidemic. Content analysis of the two plans reveals a sea change in the MTP III's policy approaches to gender and traditional leadership that aligned Namibia's epidemic response with recommended global public health interventions.

The MTP II did not use the "vulnerable group" terminology that predominates in all of the later documents. Further, this plan privileged children and orphans as the groups most deserving of special attention and prevention measures, with three mentions of both populations. Women, on the other hand, were addressed only once as a population likely to be disproportionately impacted by the pandemic. The MTP II's prevention and treatment strategies targeted the entire population, with little consideration given to the notion that the virus might impact certain populations differently or more seriously than others. Traditional leaders had limited involvement in the prescribed interventions: the only activity in which chiefs were expected to take part was a counseling training program intended for all community leaders.

The MTP III departed from the MTP II with its characterization of vulnerable groups and the role of traditional leaders in implementation activities. Unlike its predecessor, the MTP III discussed vulnerable groups extensively, noting that women, the disabled, youth, orphans and vulnerable children (OVCs), prisoners, and several other groups experienced a higher-than-average risk of infection. In another departure from the MTP II, discussions of women's

vulnerability to infection dominated the MTP III with 12 mentions of women as a population particularly susceptible to HIV. This is in marked contrast to four mentions apiece for the second-most-discussed groups of OVCs and youth. Moreover, the MTP III identified gender inequalities and certain cultural practices as key infection drivers in Namibia, the first official government document to do so.⁵⁰

National prognostic frames for the epidemic response

In keeping with the MTP III's emphasis on the relationship between HIV/AIDS, gender, and cultural beliefs, this plan also paid more attention to the role of traditional leaders in addressing the epidemic than does the MTP II. Along with its identification of harmful traditional practices as a driver of AIDS, the third plan prognostically frames the eradication or reconfiguration of harmful customs as essential to halting and reversing the virus's spread. The third plan identified 11 activities with which traditional leaders across various regions were asked to engage, including five activities in which all chiefs nationwide are requested to participate:

1. Attending events run by the MoHSS and related government groups that "raise awareness and understanding of the human rights based response to HIV/AIDS among political, traditional and religious leaders and decision makers through social mobilization campaigns and targeted [information, education, and communication]" (34);
2. Participating in HIV, TB, and STI prevention activities using "awareness creation, social mobilization and personal speeches" such as art and cultural programs, public meetings, pamphlets, and personal testimony about loved ones lost to AIDS (47);

⁵⁰ The relevant text in the MTP III reads, "Women and girls are particularly at risk due to their previously disadvantaged status and some cultural practices" (MoHSS 2004, 41).

3. With the Ministry of Women's Affairs and Child Welfare,⁵¹ "conduct[ing] and disseminat[ing] research on the role of traditional and cultural practices, values and beliefs in the transmission of HIV, sexual violence and abuse" (53);
4. Under the direction of regional councils and the MoHSS, establishing constituency and village HIV/AIDS committees and training themselves and other committee members in "HIV/AIDS advocacy, local response development, and program management" (68);
5. Taking steps to abolish "traditional inheritance practices which might be harmful to OVC, especially concerning inheritance" (133); and
6. Advocating for reduction in discrimination and stigma for PLWHA, access to treatment care and support, and behavior change in their communities (34).

Many of the MTP III's interventions for women were premised on the diagnostic framing of "gender inequalities...[and] certain cultural practices" (MoHSS 2004, 3) as key infection drivers in Namibia. As the MTP III was the first government document to explicitly link cultural beliefs and practices to women's increased vulnerability to HIV, it was short on specifics. Instead, it noted that research on "the role of traditional and cultural practices, values and beliefs in the transmission of HIV, sexual violence and abuse" would be carried by 2009 (MoHSS 2004, 53). The next section discusses these findings.

What accounts for the government's decision to prioritize women as a vulnerable group and to create a larger policy implementation role for traditional leaders in the MTP III? Two related explanations present themselves. First, the timing of the plans matters: the MTP II was written before many international protocols and commitments on HIV/AIDS had been created. By the time the MTP III was published in 2004, however, Namibia had made commitments to many international agreements, including the UN Millennium Declaration and Development Goals (2000), Abuja Declaration and Framework Plan of Action on HIV/AIDS, TP and ORID

⁵¹ The Ministry of Women's Affairs and Child Welfare was renamed the Ministry of Gender Equality and Child Welfare in 2006.

(2001), and the UNGASS Declaration of Commitment on HIV/AIDS (2001). All of these declarations emphasize the vulnerability of women and girls to infection and the harm the pandemic does to the achievement of gender equality. The MTP III's preface underscored the plan's international influence by listing the organizations that provided financial and technical assistance on the project, including the European Union, German government-run GTZ, Centers for Disease Control, UNAIDS and USAID (MoHSS 2004, ii). The President's Emergency Plan for AIDS Relief (PEPFAR), additionally, was signed into law in 2003, with Namibia designated as one of 15 "focus countries," among which \$15 billion was distributed for prevention and treatment activities.⁵² The significant increase in the number of international frameworks and the nature of global public health discourse in the early 2000s clearly influenced the focus on women's vulnerability and the relationship to traditional practices in later policy documents.

Second, the MTP III's focus on traditional customs as a structural driver of infection—a focus driven by the international responses to HIV/AIDS—necessitated the broader inclusion of chiefs in epidemic response. The emphasis on traditional beliefs and customs derives from the international declarations, particularly the UN General Assembly's 2001 Political Declaration on HIV/AIDS, in which all UN member states committed to:

ensuring that national responses to HIV and AIDS meet the specific needs of women and girls... Commit to ensuring that national responses to HIV and AIDS meet the specific needs of women and girls...by strengthening legal, policy, administrative and other measures for the promotion and protection of women's full enjoyment of all human rights and the reduction of their vulnerability to HIV through the elimination of all forms of discrimination, as well as all types of sexual exploitation of women, girls and boys, including for commercial reasons, and all forms of violence against women and girls, including harmful traditional and customary practices, abuse, rape and other forms of sexual violence, battering and trafficking in women and girls... (UN General Assembly Resolution 65/277 2011, 13).

⁵² PEPFAR remains closely involved in prevention and treatment activities in Namibia.

The increased attention on traditional leaders in the 2004 document also stems from the fact that the 2000 Traditional Authorities Act clarified the role of traditional leaders in the newly democratic state. As chapter 2 discusses, the contentious debate surrounding the passage of the act had contributed to a general policy of state silence on the role of traditional leaders. With the passage of the TAA, however, the powers, duties and functions of traditional authorities and their members were clearly defined, making it easier for policymakers to engage them within the parameters of their roles as cultural representatives of their traditional communities.

After the MTPs: Conceptions of gender and tradition in the NPHA and NSFHA

The opening lines of the NPHA powerfully reinforce the MTP III's assertions that women were disproportionately harmed by HIV/AIDS and that traditional beliefs play an important role in the epidemic's spread:

...social, political and economic conditions create and sustain vulnerability to the risk of HIV infection including: the unequal position of girls and women in society and the fact that, due to biological, social, cultural and economic factors women are more likely to become infected and are more adversely affected by HIV/AIDS than men...[and] tradition, culture and religion have a strong influence on lifestyle and choices" (MoHSS 2007b, 1).

The NPHA also tries to strike a slightly more inclusive tone with its observation that the epidemic "directly affects the health of large numbers of people in society and reduces the overall health status and well being of the nation" (MoHSS 2007a, 1). Overall, however, the national policy prioritizes women as the population in greatest need of specialized interventions, as illustrated by the document's 10 mentions of women as a vulnerable group, compared to five for the second-most-discussed group, children.

Bolstered by findings from the 2006 DHS, the policy offers a detailed list of harmful traditional practices that the MTP III could reference only in general terms. The NPHA identifies

the practices of death cleansing, widow inheritance, dry sex, and forced sex for boys and girls in initiation ceremonies as the traditional customs that put individuals at highest risk of contracting HIV (MoHSS 2007b, 14). The NPHA designates traditional leaders as the actors responsible for sensitizing their communities to the danger of these practices and stopping or modifying them (Ibid). It further identifies several other widespread cultural practices that put women at increased risk of infection but are common in urban and rural areas alike, including multiple and concurrent sexual partnerships, low marriage rates, rape and other forms of sexual violence, and alcohol abuse (MoHSS 2007b, 16).

The NSFHA, which replaced the MTP III when it ended in 2009, echoed the NPHA's stance on women as "the most affected people by HIV and AIDS" (MoHSS 2010, 71). It diagnostically frames the epidemic in a way that directly implicates traditional beliefs and, by extension, the leaders that disseminate and enforce them:

Gender inequality is among the contributing factors to vulnerability associated with HIV and AIDS. The root cause of gender inequality is predominantly due to women's low status in society. At the household level, the UN Common Country Assessment identified cultural perceptions regarding the role and status of women and cultural and traditional practices that result in their impoverishment and economic dependency (MoHSS 2010, 71).

The NSFHA and NPHA represent the primary policy and implementation framework currently guiding the government's response to the AIDS epidemic. Together, these documents paint a clear picture of the government's policy preferences: women are consistently identified as the group most vulnerable to infection; gender inequality and harmful traditional beliefs are diagnostically framed as key epidemic drivers; chief-led cultural change and education are prognostically framed of as crucial epidemic interventions.

National frames in public discourse

Beyond the plans, policies and frameworks that constitute the state position on HIV/AIDS, elected officials frequently reiterate national policy frames in their public statements. The contention that women bear disproportionately the burdens of HIV/AIDS is one of the most popular narratives among politicians. President Hifikepunye Pohamba has made several public statements that identify women as disproportionately harmed by HIV. In 2008, speaking at a conference on increasing men's involvement in HIV/AIDS activities, the president scolded the nearly-all-male audience for refusing HIV testing and leaving women "to carry out this fight alone," which will ultimately leave them "weakened by the virus and demoralised by [Namibian men's] inadequate support for them," according to a newspaper article on the conference (Maletsky 2008). In a newspaper article about the same conference, Pohamba also alluded to the social dynamics that make women more vulnerable to infection:

He said women cannot even disclose their HIV status in many instances because of fear of rejection and violence that have often followed such moves. 'In unity we are stronger than the virus. Therefore, let us all join hands to fight stigma and discrimination. Let us stop violence against our women and rather care and support them in the fight against the virus,' the President said (Maletsky 2008).

The president's call to arms emphasized the importance of unity between the sexes in order to successfully combat the epidemic. While Pohamba stressed the importance of men and women participating equally in the fight against AIDS, he clearly framed women as the group unfairly burdened by the illness.

Similar arguments were present in Pohamba's 2012 address to the Swapo Women's Council (SPWC) central committee meeting. The president called on council members to continue searching for solutions to the many problems facing Namibian women, including HIV infections, gender-based violence, and rape (The Namibian Sun 2012). As in 2008, Pohamba

explicitly connected the suffering of Namibian women with HIV/AIDS and the related problems of rape and gender-based violence. The president also spoke about the importance of unity in this search:

‘...As a Women’s Wing, the Council cannot afford to be spectators while Namibian women are confronted by these problems.’ The President also called on men to fully join the fight against all forms of violence against women. ‘We must not allow a small minority of individuals to give all Namibian men a bad name,’ said Pohamba. The women were also requested to reject all tendencies that may cause disunity with the Wing or Swapo, adding that they should maintain unity under the motto of “One Namibia, One Nation” (The Namibian Sun 2012).

Although the messages shared at the SPWC were much more partisan than those at the 2008 men’s conference on HIV/AIDS, Pohamba employed the same frames in both settings. Men were identified as important partners—and, implicitly, the perpetrators of these problems—in the fight against HIV and GBV, but it is women that are suffering because of them. Additionally, most HIV prevention programs use the engagement of men in discussions of male behavior and masculinity norms as a crucial piece of the overall strategy for decreasing women’s vulnerability to infection (Office of the US Global AIDS Coordinator 2006).

Many other national politicians publicly endorse the women’s burden frame as well. National Council Chairman Asser Kapere, for example, denounced the “physically and mentally unbearable” conditions under which rural women work, holding primary caretaking responsibilities for their families while their communities view them as inferior to men (Kapitako 2014). Speaking at the Second Rural Women’s Parliament with Male Partners in February 2014, Kapere also noted that rural women face the highest risk of HIV/AIDS, gender-based violence, and harmful cultural practices. He attributed the risk level to the persistence of “harmful gender stereotypes” in Namibia (Kapitako 2014).

One theme that arises more often in public discourse than the government policies and frameworks is the connection between HIV/AIDS and gender-based violence (GBV). Studies have found that women's fear of GBV by partners and/or family members prevents them from getting tested, disclosing their status, and seeking treatment and social support services (MoHSS 2010, 71; Ministry of Gender Equality and Child Welfare 2007; Gender Research and Advocacy Project 2006). GBV is linked to lower rates of sexual autonomy for victims, which is associated with greater vulnerability to HIV infection (Maman et al. 2000). GBV in Namibia is widespread and culturally informed. In Owambo areas, for example, traditional attitudes toward GBV—including the notions that such violence is a private family matter and that men can demonstrate love for their wives by beating them—contribute to social conditions that encourage the spread of HIV and that could be mitigated by the intervention of traditional leaders (Ministry of Gender Equality and Child Welfare 2009, 2007). Nonetheless, the tripartite relationship between GBV, HIV, and gender inequality features only briefly in the NSFHA and is absent from earlier plans.

National discourse makes up for the policies' silence on the GBV-AIDS connection. A review of all newspaper articles from the dataset described in chapter 1 found that, of all articles dealing with HIV/AIDS that mention causes of transmission, 80 percent (24 of 30 articles) explicitly linked GBV and to increased risk of HIV infection.⁵³ MoHSS representatives have made public statements about the connection (The Namibian 2011), as has President Pohamba

⁵³ While 30 newspaper articles addressing HIV/AIDS and gender in a seven-year period may seem like a small number, other research suggests that southern African newspapers, including those in Namibia, rarely write about the topic of HIV/AIDS at all. In a survey of southern African print media published between July 2006 and February 2007, for example, media scholar Christian Keulder found that only 1.5% of all articles focused on HIV/AIDS (Isaacs 2007). Thus, the relatively small number of articles that located through internet and archival searches for this database appears to be in keeping with print media trends across the region.

(Maletsky 2008). Namibian celebrities like music star The Dogg have also drawn attention to the public health consequences of GBV (!Hoaes 2011).

Moral decay as a competing diagnostic frame

The frames in table 5.2 represent the government's official stance on HIV/AIDS, but another, competing diagnostic frame is also popular among national-level politicians. The twin epidemic of HIV/AIDS and GBV have contributed to a "moral decay" narrative about the disintegrating of social order, which, according to this discourse, has normalized rape, adultery, alcohol abuse, and other behaviors that put people at higher risk of infection. Debates in parliament have tied the beginning of this decline in morals to the arrival of German colonizers in the late 19th century and the accompanying destruction of black Namibians' dignity (Debates of the National Assembly 2007).

This moral decay frame appeals to the sense of disruption and upheaval that many Namibians experienced during the end of apartheid and transition to a democratic state. At the national level, the notion of social upheaval caused by degradation of values is most frequently invoked by MPs in debates of the National Assembly. While few Namibians would say that their country was better off during apartheid, many believe that democracy's emphasis on personal freedoms and individual rights is harmful to social order. Specifically, the moral decay narrative holds that the longstanding privileging of the community welfare principle over individual concerns has been eroded by born-frees and the opportunistic that now think only of themselves. A statement by Hon. Moongo during the 2007 National Assembly debate on "The State of the Nation's Morality with Regard to the Respect of Elders and the Social Obligation towards Them

by Younger Members of Their Families” highlighted the logic behind the arguments of the moral decay frame:

It is a fact that our youth and the children of nowadays, are misbehaving and do not want to be guided by the parents. They misunderstand their rights and the protection of the Namibian child stipulated in Article 15(2)(5) and they misunderstood the Act preventing the child to be beaten up, we need to respect the customs, and correct discipline...I do not suggest harming the child, but a proper discipline of children is necessary in order to respect their parents. Let the tree be bent while it is young, then you will have the youth full of discipline and obedience. Only the children who are brought up from the parents' home with a respectful future will obey the traditional and Namibian law of the country” (Debates of the National Assembly, 28 February 2007, 120-121).

Several parliamentarians have prognostically framed traditional leaders as the solution to Namibia's loss of morality and the attendant problem of HIV/AIDS calling upon “the traditional leaders who are the custodians of our old wisdom, culture and tradition, to revive our rich African culture of shaping good behavior of our youth, of solving disputes amongst ourselves and bringing peace and good morals amongst ourselves” (Debates of the National Assembly 2007, 184). Many regard traditional leaders, particularly those that lived north of the police zone during the colonial and apartheid periods (including Ovambo chiefs), as embodying ‘authentic’ Namibian values unsullied by western influences. A common line of reasoning in Africa goes that formerly-colonized countries experience violence, war, famine and other ills because of the lingering western influence. The solution, according to Hon. Kasingo, is to reclaim the traces of “...the good moral values and respect we still maintain...from the reserves where our homes are...These cultural values resort under the custodianship of the Chiefs and Headmen” (Debates of the National Assembly, 28 February 2007, 192).

While the moral decay narrative is popular among some national elites, particularly elderly MPs, this discourse does not inform any aspect of Namibia's AIDS response. It is important to mention, however, to demonstrate that the government does not operate as one unit.

Within the national government, competing understandings of and preferred solutions to the AIDS epidemic are common. Nonetheless, all elected officials, civil servants, and other government representatives are obliged to carry out the NPHA and NSFHA's directives. As we will see shortly, however, it is clear that the moral decay narrative has supporters on the local level as well, including traditional leaders.

The regional connection: Information sharing with and oversight of traditional authorities

Once policies involving traditional leaders are passed on the national level, they must be shared with members of all 50 state-recognized traditional authorities. Relevant information in the MTPs, NPHA, and NSFHA was disseminated to traditional authorities through several channels. Traditional authorities likely first received information about these plans via fax, phone call, or letter from the MRLGHRD, the government body tasked with communicating with traditional leaders on all government matters.⁵⁴ Once the messages reached traditional authorities' offices, they were most likely read by traditional secretaries and possibly by the chiefs and some junior or senior councilors, depending upon their levels of literacy and the languages in which the messages were written. Councilors brought the messages back to their headmen/women, and these village-level leaders finally returned to their communities to share the news of new HIV/AIDS policies and plans with their communities.

In addition to this top-down transmission of information, traditional leaders have had several opportunities to gather information on HIV/AIDS to share with their communities. The

⁵⁴ The civil servants that I interviewed in the MRLGHRD could not recall how traditional leaders had first learned about the above-mentioned policies and plans, as several of these plans had been implemented in the 1990s and early 2000s, but they surmised that the standard practice of contacting traditional secretaries with information via telephone call, fax message or letter had been used.

annual CoTL meetings represent one important opportunity for the government to educate the top-ranking leaders in government-recognized traditional authorities across the country on the topic of HIV/AIDS. Other opportunities have taken the form of national or regional conferences that either focused specifically on HIV/AIDS (like a 2008 national conference on men and HIV/AIDS) or that extensively addressed the virus within the context of a related topic (like the 2007 First National Conference on Combating Gender-Based Violence).

Along with government sources of information, traditional leaders also receive HIV/AIDS education from several NGOs. This information often touches upon the government's policies and plans as well. Women's Action for Development (WAD), for example, is an NGO that operates in every region of the country and is best known for its training programs and economic empowerment projects for women. Additionally, WAD provides training programs to rural communities on the causes of HIV and how to prevent transmission through use of the female condom (Women's Action for Development 2012). In former the Ovamboland, WAD representatives reported that they sometimes presented the former portion of these programs to traditional leaders, though they had in recent years shifted their focus to gender-based violence training.⁵⁵

Several AIDS NGOs provide training to chiefs and villagers in rural areas as well. In an interview with a director of a large organization with branches throughout the country, I was told that traditional leaders are one of the most important groups with which the organization works because they are the gatekeepers for their communities. The success or failure of the project depends upon the support of chiefs.⁵⁶ HIV/AIDS NGOs that operate within rural communities have an advantage over government programs in that they can educate many more citizens and

⁵⁵ Interview with women's rights NGO representative, Oshana Region, April 26, 2012.

⁵⁶ Interview with AIDS NGO director, Windhoek, January 12, 2012.

lower-ranking headmen/women than the government can reach. The downside for these organizations is that, to be welcomed in traditional communities, they generally must operate in accordance with the demands of their leaders.

The director I interviewed explained that, each time his organization established a branch of his NGO in a new community, they had a series of “sensitization meetings” designed to convince traditional leaders that their work was worthwhile and would not threaten the chiefs’ authority. Often the meetings led to strong shows of support from the traditional leaders. As the organization leader put it, “chiefs are good at framing [the organization’s] activities for the rest of the community to ease [our] transition into the community” (Ibid). In exchange for access to communities and assistance from chiefs with assimilation into the community and referral of citizens needing AIDS NGOs’ services, organizations like the director’s were careful not to challenge the cultural beliefs and practices of the communities.

This tradeoff between accessing communities and advocating for cultural changes was a common theme among the NGO workers I interviewed. Among those interviewed, there was a sense that helping infected individuals was a more pressing concern than affecting structural changes in gender norms and beliefs. Because traditional leaders held ultimate authority over village access for these groups, the NGO workers were careful not to do anything that might offend the leaders or result in their expulsion from working in these communities. Those that did try to share messages about the importance of denouncing harmful traditional beliefs met resistance: two representatives from women’s empowerment groups wanted to speak with Ovambo villages about the importance of denouncing customs that made women vulnerable to HIV infection. When they went to the villages’ headmen to ask permission to hold a meeting, as custom requires, the leaders asked the representatives to give their presentations to headmen and

leave their materials with them.⁵⁷ They did not receive permission to present to some communities, nor they did not know what information was ultimately shared with them.

Of course, transmission of information is never exclusively passed from one level to the next, nor are rural-dwelling Namibians confined to their villages, unable to leave and travel to the largest towns in their regions. Information on current events and government activities, even in the remotest areas of the country, is still widely available through broadcast and satellite television—although only for the wealthiest citizens—local-language radio stations, newspapers, and increasingly, Twitter, Facebook, and websites of Namibian newspapers and news channels, all of which are accessed by nearly-ubiquitous mobile phones. Additionally, government clinics and hospitals, which are located throughout the country, even in the most remote corners of the state, ensure that Namibians have the chance to receive information on HIV/AIDS from medical professionals. Despite the many channels through which Namibians can access information on the science and public policy related to HIV/AIDS, however, my survey results demonstrate that the majority of rural-dwelling Namibians in Ovambo traditional communities have adopted the frames used by traditional leaders. As the table below demonstrates, the majority of Ovambos living in traditional villages regard HIV/AIDS as a matter of community concern, rather than a private or individual issue.

Table 5.3 Attitudes on HIV/AIDS

	%men	%women	%total
Agree with statement 1	73.3	55.5	59.3
Agree with statement 2	26.7	44.5	40.7

Which of the following is closest to your view? Select statement 1 or 2. Statement 1: HIV/AIDS is an illness that hurts the well-being of the ENTIRE COMMUNITY. Statement 2: HIV/AIDS is an

⁵⁷ Interview with women's group representative, Oshana region April 26, 2012; interview with women's group representative, Omusati region May 2, 2012.

illness that only affects the FAMILY OF AN INFECTED PERSON Source: Traditional Communities Survey (Appendix 2). N=209.

Monitoring and evaluation

Monitoring and evaluation (M&E) is a management tool used to track and assess the efficacy and impact of HIV/AIDS programs across all sectors of government and society. Measures of population health, such as HIV prevalence among pregnant women and TB and STI infection rates, are constantly monitored as part of M&E for HIV/AIDS programs. Additionally, the multi-sectoral epidemic response, which is responsible for creation of an enabling environment, preventing new infections, access to treatment and support for people living with HIV/AIDS, and integrated program management, is tracked using a variety of data sources and measures (MoHSS 2006). No metrics exist that directly monitor traditional leaders' participation and efficacy in implementing policies as requested by the government.

M&E can minimize principal-agent problems by identifying areas of policy failure and holding free riders responsible. The polycentric nature of the AIDS intervention makes it impossible to always identify agents failing to carry out their assigned duties, but most of the street-level bureaucrats involved in AIDS policy implementation—health care workers, social workers, and teachers—have supervisors that oversee them and ensure compliance. Although these state employees have a great deal of discretion in how they interact with and apply policy, the threat of punishment is very real for those employees that consistently contradict directives. As semi-formal street-level bureaucrats, traditional leaders are given broad discretion without the same threat of sanction as bureaucrats in the MoHSS and MGECW. On HIV/AIDS implementation, the plans require chiefs to act as counselors, public educators, and social workers for their communities. They are officially responsible to the MRLGHRD, but, as I have

argued throughout this dissertation, TAs are mostly left alone by the ministry, with a great deal of one-way communication from ministry to TA. Moreover, on the subject of HIV/AIDS, the reporting chain has traditional leaders answering to RACOCs and CACOCs, who report in turn to the MRLGHRD (MoHSS 2006, 33).

RACOCs and CACOCs are responsible for monitoring the local-level coordination of prevention activities. As several reviews have made clear, however, these committees lack the funding and infrastructure to properly supervise the local-level efforts. As the midterm review of the MTP III noted, “regional and constituency level monitoring capacity for ensuring that activities take place, that they are of good quality and that problems get identified in a timely fashion constitute a big challenge. Many institutions lack transport for monitoring and/or do not have sufficient staff to undertake regular monitoring” (MoHSS 2007a, 21).

In response to these challenges, it appears that some RACOCs and CACOCs have turned the epidemic response over entirely to traditional leaders in the rural areas. Oshana region’s governor reported that the Oshana RACOC had developed a divide-and-conquer approach to addressing the epidemic: the RACOC members (excluding chiefs) focused on activities in urban areas, while traditional leaders controlled the response in the rural areas. The governor even suggested, while discussing the RACOC’s urban-rural division of labor, that the government approved of the arrangement: “the government provides transport to the king...because the government wants them to go as far as their communities are. [With the vehicles given to the kings] now they should easily reach everyone.”⁵⁸ The vehicles were given to the king/paramount chief of every TA so that they could more easily access all of their subjects, not to single-handedly implement AIDS policy.

⁵⁸ Interview with governor, Oshana region, May 2, 2012.

The division of labor employed by the Oshana RACOC is almost certainly not unique. At approximately 8600 km², Oshana is the smallest of Namibia's 14 administrative regions. The neighboring regions of Omusati (26,500 km²), Ohangwena (10,700 km²) and Oshikoto (38,700 km²) all suffer from the same financial and infrastructural issues, but their RACOCs have 3 to 4.5 times as much area to cover. Although I could not verify it, I strongly suspect that most, if not all, RACOCs use the same delegation of duties, with traditional leaders managing the AIDS response in rural areas and elected officials and bureaucrats handling the urban response. Across much of Namibia, then, the AIDS policy implementation activities of traditional leaders persist with little to no oversight. The next section demonstrates support for my state oversight hypothesis, which holds that any institutionalized oversight of chiefs' implementation activities makes it more likely that they will implement the policy as requested. In this case, we see a lack of oversight in practice (though it exists in theory), and chiefs have taken on activities other than those requested by the state.

'If one part of the body suffers, everyone is affected': Local-level framing of HIV/AIDS

In July 2004, the first educational conference on HIV/AIDS involving traditional leaders was held at the Uukwaluudhi traditional offices in Omusati region (New Era 2004). Organized by Uukwaluudhi King Josia Shikongo Taapopi, the meeting was remarkable both for the prominent role a traditional leader played in organizing it and for its blending of Christian and traditional symbolism. The conference, jointly hosted with the Evangelical Lutheran Church in Namibia (ELCIN), was intended to educate attendees about HIV/AIDS, discuss the impact of the virus on local communities, and brainstorm ways to address the problem (Shivute 2004). The king was reportedly inspired to convene the conference following an 'awareness-raising

meeting' that the government had held for traditional leaders a few months before (New Era 2004).

The day of the conference, King Taapopi blended AIDS education with solemn ceremonies. He began the event by covering his suit in a sack, spreading ash across his face, and inviting everyone in attendance to do the same. The ash, he explained to the audience, humbled him in the eyes of God. He “pled to God that more people would not be infected, so that the disease will decrease, and so that youth will not go out [and have unsafe sex].”⁵⁹ After the ceremony, and with the help of American representatives from PEPFAR, King Taapopi “informed [attendees] on AIDS because we don’t want people to stigmatize and hate those with the virus.”⁶⁰

The king’s participation in the conference cemented his reputation as an “active leader” in the fight against HIV/AIDS (Mwandingi 2008) and inspired other Ovambo leaders to begin education efforts within their authorities. Uukolonkadhi Chief Daniel Shooya adapted King Taapopi’s conference performance for his own community. He designated September 24 as an annual “commemoration day” on which he orders his subjects to fast and leave their cattle in their kraals. In a special ceremony, he puts ash on himself as a “sign of HIV” that follows the example of King Absalom.⁶¹ In my interviews with them, the kings said that their ceremonies promote awareness of the epidemic and help to heal the collective psyche of communities devastated by the presence of AIDS among residents.

⁵⁹ Interview with King Taapopi, Omusati region, April 27, 2012.

⁶⁰ Ibid.

⁶¹ Interview with traditional leaders, Omusati region, April 25, 2012.

Most Namibians know well the stories of the Ovambo kings covering themselves in ash and pleading to God to stop the epidemic. Such tales have convinced urban and rural residents alike that traditional leaders regard HIV/AIDS as a serious problem. Indeed, in my interviews, both in Windhoek and in northern Namibia, Ovambo traditional leaders were consistently characterized as committed allies in the fight to end AIDS. What was never discussed or interrogated in these interviews—or by the government—was what chiefs were doing to combat the virus. This section takes up the discrepancy between perceptions of chiefs' commitments and their actual behavior.

As the foregoing sections have explained, national HIV/AIDS policies call on traditional leaders, in their capacity as the custodians of their communities' customs, laws and traditions, to identify traditional customs that contribute to the spread of HIV/AIDS and work with communities to eradicate or change these harmful behaviors. State-recognized leaders are expected to carry out these activities as intermediaries between their communities and the state. However, my research found that, while chiefs are actively engaged in educating their communities about HIV/AIDS, they are not doing so according to the MoHSS's policies and strategic frameworks. Where national leaders depict HIV as disproportionately affecting women and girls, traditional leaders characterize the virus as affecting entire communities with uniform severity. Where national and international research identify gender inequalities as an important structural driver of HIV infection, local-level discourse, led by chiefs, highlights moral decay and the abandonment of traditional values as the root causes of the virus's spread. Traditional leaders have framed the solution to the epidemic as returning to the observation of traditional beliefs and customs, thereby embracing the very patriarchal values, behaviors and practices that the state has asked traditional leaders to eradicate. These findings lend support for both my

community welfare hypothesis and both conditions hypothesis. Traditional leaders have framed HIV/AIDS as a matter that affects the entire community and are therefore engaging in policy implementation activities, as the community welfare hypothesis predicts. However, because state oversight of their activities does not exist, chiefs are not implementing the policies as requested, which is in line with the both conditions hypothesis.

Local-level framing of policy beneficiaries

Whereas the national government, in line with the global public health community, has framed HIV/AIDS as disproportionately harmful to women, both in terms of number infected and care giving burdens, traditional leaders understand the epidemic's impact very differently. Traditional leaders do not teach their subjects about women's vulnerability to infection, as the national AIDS policies emphasize. Indeed, almost none of the chiefs I interviewed even acknowledged that women suffer from more infections and greater care giving responsibilities than men. Instead, interviews and content analysis of newspaper articles reveal that traditional leaders frequently employ the metaphor of the community as a body and suggest that the presence of HIV/AIDS in any community members weakens and sickens the body of the community as a whole.

In my interviews with kings, senior and junior councilors, and headmen/women, I tried to measure their adherence to and understanding of the government's AIDS policies in part by asking whether women were disproportionately harmed by AIDS.⁶² With the exception of one traditional councilor, whom I discuss below, none of the traditional leaders with whom I spoke

⁶² The wording of the question, which varied slightly from interview to interview, was based upon the following question from my semi-structured interview protocol: "Some people have told me that AIDS is a women's disease because more women than men are infected and because it is usually the women that care for the sick. Do you agree?"

agreed with the suggestion that HIV disproportionately affected women. Interestingly, after dismissing this assertion, several male leaders went on to provide justifications for their response that seemed to contradict the claim that both sexes were affected equally. One junior traditional councilor theorized that people might incorrectly characterize HIV as disproportionately affecting women because “women are soft people, they are caring people. They are the ones that care for the sick [people with AIDS].”⁶³ Despite claiming women did not face unique challenges, this junior councilor identified one of the major burdens that falls almost exclusively to women: caring for infected family members, especially in the end stages of the disease. Scholars that work within the “devaluation” perspective on care work argue that cultures that denigrate women undervalue stereotypically female work as well (England 2005). The headman’s apparent dismissal of the notion that nursing infected family members burdens women indicates a lack of appreciation for the time, energy, and lost wages that such end-of-life care requires. Alternatively, he may believe that women, as “caring people,” derive intrinsic rewards from tending to the sick, and as a result, negate the sense that they are doing work (England and Folbre 1999).

The king of another traditional authority dismissed the idea that women suffered disproportionately from HIV/AIDS by arguing that “men are the ones that brought the virus to the community” by having unprotected sex while away from the village and then “[brought] the disease back to women here [in the villages].”⁶⁴ A third headman and his traditional secretary similarly agreed that AIDS was not more burdensome to women by offering the justification that one must “look at both sides [of the argument]. Men bring it to women because they work in far-

⁶³ Interview with junior councilor, Oshana region, April 30, 2012.

⁶⁴ Interview with king, Omusati region, April 27, 2012.

off places,” including urban areas like Windhoek and the mines in Southern Namibia, “and they get new girlfriends that infect them.”⁶⁵

These traditional leaders’ statements are premised on the assumption that men suffer in equal measure to women because they contract the virus from women in the first place. It is common in northern Namibia for partnered men to leave rural areas to work, and they frequently find girlfriends in their new locations, sometimes starting second families. In other cases, rural men—particularly truck drivers and miners—visit the prostitutes that are ubiquitous in mining towns and at border crossings. It is from these girlfriends and prostitutes that Namibian men most often contract HIV and have contributed to the widespread perception among Oshiwambo speakers that the most common vector of transmission is “from urban male migrant to rural wife.” Female prostitutes are frequently characterized as particularly insidious and prolific spreaders of HIV.

The leaders’ statements also underscore the well-documented Ovambo social norm that says wives cannot refuse sex or ask their husbands to use protection (LeBeau 2001; MoHSS and Macro International 2008; Ministry of Gender Equality and Child Welfare 2009; LeBeau and Yoder 2009). In the observations above, the chiefs disregarded the gendered power imbalance present in most heterosexual relationships that facilitates male-to-female infections. They implicitly attributed the origins of HIV infections in their communities to urban women and prostitutes while overlooking the fact that men bring the infections home to their wives. By denying that women are more vulnerable to HIV and its consequences than men, the traditional leaders highlighted the dynamics of gender inequality that contribute to the virus’s disproportionate burden on women.

⁶⁵ Interview with headman and traditional secretary, Oshana region, May 4, 2012.

Because the vast majority of Ovambo traditional leaders—and my sample of those leaders—are male, I also interviewed women living in villages under Ovambo traditional authorities,⁶⁶ along with two Ovambo female traditional leaders, to see if they spoke of HIV/AIDS in different terms than male traditional leaders. In interviews with the women, I asked if they considered HIV/AIDS to be a woman's disease and immediately clarified that, by women's disease, I meant that it burdened women more than men. I did not specify what I meant by "burden" so as to understand what the women felt were problems without injecting my assumptions into the discussion. All of the female respondents said that they believed women were indeed more affected by HIV. They discussed the many HIV-positive women they knew, the infected grandchildren they cared for while parents worked in larger cities, and the stories of men that knowingly infected their wives by refusing to use condoms when they returned from work in mines in southern Namibia and South Africa.⁶⁷

Only one of the women interviewed (discussed in the next section) drew a connection between HIV/AIDS and gender inequalities within households and villages. I found the lack of connection surprising, given that these women were sensitive to the gender-driven inequalities within their homes and villages. If women could identify and articulate these inequalities, why could they not connect them to HIV/AIDS? Their failure to link HIV and gender inequality lends credence to the assertion that traditional leaders are not discussing the impact of traditional gender norms and cultural beliefs on HIV/AIDS infection rates with their communities. My interviews reflect the findings of a 2009 study by the MGECW, which found that, when prompted, women could offer many examples of how gender-based violence and risk of

⁶⁶ I conducted three group interviews with a total of 16 women, 15 of whom were unaffiliated with traditional authorities.

⁶⁷ Interview with village women's group and headwoman, Oshana region, May 3, 2012.

contracting HIV were related, but failed to make this connection themselves (Ministry of Gender Equality and Child Welfare 2009).

Framing the community as one body

My interviews with traditional leaders, NGO representatives, church leaders and rural citizens clearly established how seriously traditional leaders took the duty of educating their communities about HIV/AIDS. Each Ovambo TA had a slightly different way of handling the task, but village-wide public meetings led by headmen or TA-designated “AIDS experts” were a fixture in all Ovambo villages I visited. Some TAs went as far as to mandate that AIDS education took place at every public gathering within their territory, regardless of the meeting’s original purpose.⁶⁸

Instead of talking about vulnerable groups in these public meetings, traditional leaders framed HIV/AIDS as hurting the wellbeing of the entire community by virtue of its existence within even one community member. A church leader in the Ovambo area explained the logic of traditional leaders’ framing thusly: “if one part of the body suffers, everyone is affected...some [people] are *infected*, others are *affected*.”⁶⁹ In an interview the following day, I asked a group of traditional leaders in the same TA what they thought of the church leader’s explanation—was it correct? The group strongly affirmed the accuracy of his statement, with one headwoman explaining that “there is no family or household that is not touched by this disease.”⁷⁰ The traditional secretary of this TA expanded on observation by adding, “People make up the

⁶⁸ Interview with traditional leaders, Omusati region, April 25, 2012.

⁶⁹ Interview with church leader, Oshikoto region, April 24, 2012.

⁷⁰ Interview with traditional leaders, Omusati region, April 25, 2012.

community. Without people, there is no community. You need a healthy community.”⁷¹ Taken together, these comments encapsulate the understanding of HIV/AIDS’ effect upon communities that was expressed by almost every Ovambo traditional leader I interviewed. To these leaders, the impact of the epidemic could only be understood by examining its effect on the entire community. Considering the epidemic’s varying influence on individual lives seemed to be unthinkable to most of the leaders.

Diagnosing causes of HIV/AIDS: Moral decay and youths

The only member of the Ovambo traditional authorities that identified a connection between gender inequalities, traditional practices, and the AIDS epidemic was Meme Angela,⁷² a middle-aged traditional councilor and community court judge in a TA with a reputation for being particularly progressive on matters of women’s empowerment. In the following excerpt from the transcript of our interview, Meme Angela discusses the relationship between traditional customs and HIV/AIDS:

Interviewer: Is [your traditional authority] involved in any HIV/AIDS programs right now?

Meme Angela: There are lots of programs which educate us. We attend the workshops. They are eye-openers for us traditional leaders. We realize there are traditional laws that hurt [contribute to] HIV. There is the example of a man dying and someone else inheriting the wife. We also see the chief having six wives is wrong but one could bring the virus.

Interviewer: Have those laws been changed now that you know they can contribute to HIV?

Meme Angela: You won’t really find it or men married to two wives [now].

Interviewer: Some have said that HIV affects women more because they get the virus more often and they care for those that have it. Do you agree?

Meme Angela: According to my own opinion, I might agree, but health-wise, that might not be the case. In the past, men would marry four wives and infect all of them. Then

⁷¹ Interview with traditional leaders, Omusati region, April 25, 2012.

⁷² ‘Meme Angela’ is a pseudonym.

more women have it. When you take care of patients, you could accidentally get infected. But that is according to my own opinion. There are a lot of women that have passed away. A lot of women in my community have died due to that virus.⁷³

Meme Angela was the only Ovambo traditional leader, out of the 17 interviewed, who linked traditional customs and women's increased risk of HIV, despite the government's many programs designed to educate chiefs about this relationship. What might explain the silence from the other 16 chiefs on this topic? A few explanations present themselves. Taken as a whole, my interviews with traditional leaders, local government, church and NGO representatives, and "everyday" women in northern Namibia suggest that women are more attuned than men to the inequalities and burdens that females face. Moreover, given the strong sense of gender roles and stigma that surrounds AIDS in most rural Ovambo communities, it is likely that women share their positive status with women more often than with men, particularly well-respected elders like chiefs. As ART use spreads, the physical signs of HIV become less visible as well. Because women constitute a minority within TAs, and only three of the traditional leaders interviewed were female, the lack of women's voices in my sample likely contributed to respondents' overwhelming rejection of the claim that women are disproportionately burdened by and vulnerable to infection.

The type of HIV/AIDS training traditional leaders received may have contributed to their understanding of the relationship between gender and AIDS as well. Of the 17 traditional leaders that I interviewed across three TAs, Meme Angela was one of only three leaders of a high enough rank to have attended government programs on HIV/AIDS education (which she refers to as "the workshops" in our interview). The rest received their training from these government-recognized leaders in more informal settings, such as gatherings of senior and junior councilors

⁷³ Interview with Traditional Councilor Meme Angela, Oshana region, May 2, 2012.

with the headmen/women of the villages they oversee. Either higher-ranking leaders jettisoned or misunderstood the message that women are a vulnerable group while relaying this information to village-level headmen/women, or these things happened at the village level. The government cannot control the frames highly-ranked present to lower-ranking leaders or the frames that these village-level rulers share with their communities.

The gendered differences in perceptions of AIDS that I observed are consistent with other scholarship on female officials at various levels, including Lieberman's (2012) study of local-level politicians in South Africa. He found that female councilors perceived the risks of HIV as far more serious than their male counterparts. Lieberman argues that the concept of descriptive representation, the reflection of population characteristics in a governing organization, helps to explain the gendered difference in perceptions of HIV risk. Since South African women are infected with HIV at much higher rates than men, it makes sense that female councilors would be more sensitive than their male counterparts to the virus and its risks. My findings also align with studies from across the world that have found female legislators place a higher priority on women's rights issues than on matters traditionally concerning men (e.g., Schwindt-Bayer 2006, Taylor-Robinson and Heath 2003, Thomas and Welch 1991).⁷⁴

Meme Angela's diagnostic framing of HIV/AIDS was consistent with the national policy framing, but it was not a frame shared by many in the former Ovamboland. How, then, did most traditional leaders explain the causes and drivers of the epidemic? To contextualize the ways in which chiefs diagnostically framed HIV/AIDS, I return to the story of King Taapopi's 2004

⁷⁴ Although it is outside the scope of this discussion, some studies suggest that other identities, such as race and caste, may intersect with gender to affect female representatives' policy preferences in various ways (Crenshaw 1991, Clots-Figueras 2011). In the South African case, Lieberman (2012) did not find a statistically significant difference among black, coloured, and white female councilors' HIV risk perceptions.

conference that began this section. Using newspaper articles and interviews with traditional leaders that attended that conference, I identified two main themes that the event addressed and that are illustrative of the diagnostic frames employed by traditional leaders across the former Owamboland. Repentance for sin and wrongdoing figured strongly into the conference's opening ceremony. King Taapopi's appeals to God for an end to new HIV infections fit with the moral decay diagnostic frame discussed above. A church leader that assisted with the king's conference told me that the king had covered himself in ash publicly prayed because "when the nation sins against itself, it is the job of the king to be humble before God."⁷⁵

Second, the narrative of ill-disciplined youth as the population driving infection was present in both King Taapopi's ceremony and discourse from other traditional leaders across Namibia. Asking for divine intervention to stop youth from having unprotected sex resonates particularly strongly with the symbolism of ill-disciplined "born-frees"⁷⁶ discussed earlier in this chapter. My interview with King Taapopi, eight years after this conference, reinforced the diagnostic framing of youth as driving the epidemic. The king observed that, "now, the disease is decreasing—there are very few new infections, and those infected have been infected for a long time. [Members of the TA] are happy that youth are aware of this disease and have been really careful [to avoid contracting it]."⁷⁷ King Taapopi attributed the public conferences and meetings by TAs to youths' new understanding of HIV/AIDS as "not good."

Diagnostic frames that attribute the spread of HIV/AIDS to moral decay and ill-behaved youths are popular among traditional leaders in other parts of the country as well. Felicity

⁷⁵ Interview with ELCIN church leader, Oshikoto region, April 24, 2012.

⁷⁶ "Born-frees" are Namibians born after independence in 1990.

⁷⁷ Interview with King Taapopi and traditional secretary, Omusati region, April 27, 2012.

Thomas (2007), working in Namibia's northeastern Caprivi region, found that elders and traditional leaders in Caprivian TAs held young women responsible for the spread of HIV in their communities. They argued that democracy had given women too many rights, which allowed them to engage in "immoral behavior" that led to widespread HIV infection. Caprivian traditional leaders also offered the more general observation that the increase in number of AIDS deaths had increased significantly since independence, a fact that they attributed to the glut of rights democracy had given to young people (Thomas 2008). The timing of independence coincided with the arrival of HIV in Namibia. Diagnostic frames used by many traditional leaders (and some national leaders) have wrongly blamed the uptick in HIV infections and AIDS deaths that began in the mid-1990s to the introduction of individual rights in the newly-democratic state.

Framing solutions: Returning to traditional customs

Like members of parliament at the national level, chiefs have diagnostically framed the epidemic as resulting from "moral decay," a concept closely tied to the country's subjugation and loss of dignity under colonization and apartheid. At the local level, "moral decay" is also rhetorically connected to the advent of independence, a belief that is reflected by elders all over Namibia. In a departure from the national-level "moral decay" frame, however, traditional leaders have prognostically framed the solution with the argument that AIDS will only be eradicated when Namibians reembrace the traditional values and practices preserved by chiefs. Thus, chiefs are calling on their communities to embrace many of the values, behaviors and practices that the state has asked traditional leaders to eradicate.

Across Namibia, traditional leaders have publicly made calls for citizens to re-embrace traditional cultural values as they existed prior to the arrival of Europeans—values that include

the subjugation of women and their exclusion from the public sphere. The most comprehensive account of traditional leaders' and elders' rationale for this call to return to traditional values comes from the Caprivi region. Here, traditional leaders called for the "proper cultural training for girls to curb the increasing levels of HIV/AIDS in the region. This means that girls should be encouraged to go back to their cultural roots regarding how they should behave when they become mature disciplined women" (Gaomas 2006). The reasoning of Caprivian traditional leaders is tied to their widespread belief, documented by Thomas (2007, 2008) that young women have spread the virus by having premarital sex and engaging in other "immoral" behaviors.

In Ovambo TAs, leaders have demonstrated their support for the revival of pre-colonial values through their actions, rather than through public statements, like their Caprivian counterparts. Ovambo chiefs have showcased their importance to citizens by positioning themselves as indispensable actors in their communities' fight against HIV/AIDS. There is a clientelistic aspect to these actions, as chiefs often highlight the goods they can provide their subjects. Many have organized vegetable gardens to provide nourishment for food-insecure PLWHA so that they can take their ARTs without becoming nauseated.⁷⁸ When the gardens cannot produce enough food, headmen will write letters to RACOCs on behalf of hungry PLWHA asking for food donations or financial assistance.⁷⁹ Traditional leaders also help the caretakers of children orphaned by AIDS apply for state benefits.⁸⁰

⁷⁸ Interview with headman, Oshana region, April 30, 2012; interview with church director, Oshikoto region, April 24, 2012.

⁷⁹ Interview with headwoman, Oshana region, May 3, 2012.

⁸⁰ Interview with MGECSW social worker, Ohangwena region, November 15, 2011.

Most recently, Ovambo leaders demonstrated their support for a return to patriarchal traditional values by reviving a girls' initiation rite called *olufuko*. Traditional leaders and other supporters argued that the ceremony, in which young women between the ages of 10 and 25 are sent to a traditional homestead to prepare for marriage by learning domestic activities and appropriate behaviors for wives, would slow the spread of HIV by teaching women to adhere to traditional sexual norms.⁸¹ Organizers staged the ceremony for the first time in decades because “something has to be done to address the moral decay prevailing today,” according to a festival organizer (Kadhikwa 2012).

In response to the revival of *olufuko*, Namibian churches and human rights groups filed a request with the United Nations Special Rapporteur on Violence against Women to criminalize the practice, arguing that the tradition of *olufuko* supported forced marriages of young women to much older men, a practice that puts girls at increased risk of sexually transmitted diseases and HIV infection (Sasman 2012). The *olufuko* ceremonies were carried out in traditional homesteads across Ovamboland in December 2012, despite objections, and have since become an annual event that grows in size every year. Although the *olufuko* ceremony represents the very sort of traditional practice that the government asked traditional leaders to halt, chiefs have actively participated in these initiations by lighting the ancestral fires that begin the ceremony, among other traditional activities (Andima 2014).

⁸¹ Traditionally, girls were shunned or punished if they fell pregnant prior to completing the *olufuko* initiation. Traditional leaders reasoned that reviving the ceremony would convince girls to delay sexual relationships until after they had completed the initiation. There were also suggestions that women that completed the ceremony would behave in more ‘traditional,’ modest ways than ‘modern’ women with too much sexual freedom.

Conclusion

Traditional leaders have found themselves in a delicate position. The government has asked them to participate in the campaign against HIV/AIDS by denouncing the very traditions and from which they derive their legitimacy. But, traditional leaders want HIV to be eradicated as much as anyone else. Positioning themselves as leaders in the fight against the virus may help them assert their relevance in a democratic dispensation and possibly extend their influence over their communities. The position of chiefs within their communities has allowed them to control the information that reaches their communities. It appears that, in Ovambo TAs, chiefs have mastered this precarious position with great skill.

This chapter has demonstrated that chiefs are working on HIV/AIDS-related activities in which they are not named as stakeholders or are seen as minor players. At the same time, they are ignoring the government's requests that chiefs address women's vulnerability to the virus and eradicate harmful cultural beliefs and practices. The current frameworks for thinking about the role of traditional leaders within democratic states would suggest that chiefs are ignoring the government's demands either because they are trying to undermine the state's authority or because they are opposed to the advancement of women's rights. When the incentives of chiefs are considered, however, a different explanation for their frame shifting emerges.

This chapter has made the case that traditional leaders participate in HIV/AIDS policy implementation because they see its eradication as important to community wellbeing. Because institutional arrangements have allowed HIV/AIDS policy implementation within TAs to go unmonitored, however, traditional leaders are educating their communities about the victims, causes, and solutions to the epidemic in ways that directly contradict the goals of the national HIV/AIDS campaigns, which focus on improving the socioeconomic status of women as a way

to reduce their vulnerability to infection. The case of HIV/AIDS policies illustrates the unintended outcomes that result from a situation in which traditional leaders believe they have an obligation to participate in policy implementation and do so without government oversight.

CHAPTER 6

VIOLENCE AS A FAMILY MATTER: GENDER-BASED VIOLENCE POLICIES

Namibia now has a strong legal framework to address various forms of gender-based violence and sexual exploitation through the Combating of Rape Act No. 8 of 2000 and the Combating of Domestic Violence Act No. 4 of 2003. However, problems with ineffective implementation and inconsistent criminal enforcement remain significant barriers to protecting Namibian women from all forms of GBV.

–Namibian National Gender Policy 2010-2020 (14)

Introduction

In June of 2007, following a spate of high-profile cases of rape and domestic violence, the MGEWCW convened a conference in Windhoek on the topic of combating gender-based violence (GBV).⁸² Members of the legal and medical fields joined government and civil society representatives to try to find explanations for why such violence was continuing unabated, despite the passage of progressive laws intended to prevent and harshly punish domestic violence and rape. Throughout the weeklong conference, speakers repeated the observation that the anti-GBV laws had failed at the implementation stage and suggested ways to address the breakdown.

These discussions of implementation failure frequently cited patriarchal traditional beliefs and practices as a major hurdle to full realization of the laws. The 35 traditional leaders present from TAs all over the country took umbrage at this claim. One chief argued that the real cause of GBV was the constitutional provision establishing gender equality, which had disturbed the natural power relations between men and women. Another chief explained that, in Ovambo communities, it was acceptable for husbands to beat their wives as a way of demonstrating their

⁸² GBV is an umbrella term defined by Namibia's National Gender Policy as "all forms of violence that happen to women, girls, men and boys because of the unequal power relations between them" (Ministry of Gender Equality and Child Welfare 2010, 29).

control over and love for their families. “How can men show their wives they love them if they do not beat them?” he asked through an interpreter.⁸³

The apparent clash of values between the state and traditional leaders did not appear to affect the official recommendations of the 2007 conference, which called on chiefs to begin trying rape compensation cases in community courts and receive training on GBV so that they could in turn educate their communities about their rights in cases of violence (Ministry of Gender Equality and Child Welfare 2007, 36). As a conference attendee, I wondered how effective traditional leaders could be in challenging traditional beliefs that condoned GBV. When I returned to Namibia four years later, I discovered that chiefs’ record on rape and domestic violence policy implementation had been mixed. In stark contrast to their behavior on issues of land and HIV/AIDS, when it came to GBV traditional leaders were implementing some rape policies as requested while ignoring marital rape provisions. On domestic violence policies, chiefs in Ovambo TAs were doing almost nothing, a situation that persisted due to lack of state oversight.

In this chapter, I examine the least successful case of women’s rights policy implementation by traditional leaders: laws addressing gender-based violence prevention. The most common forms of GBV in Namibia, according to the MGECW, are rape and domestic violence. Each crime has a law specifically addressing it, but the rest of the policies and plans of action address both types of GBV. I examine chiefs’ treatment of domestic violence and rape separately, as table 6.1 illustrates. I do this because traditional leaders view particular types of rape as matters of community concern and will therefore intervene in cases of “legitimate” rape.

⁸³ Author’s field notes, Windhoek, June 19, 2007.

However, they treat other types of rape—particularly rape within a marriage—as private, family matters in which chiefly intervention would be inappropriate.

With respect to “state oversight”—a key piece of this dissertation’s framework—the Ministry of Justice (MJ) provides sporadic supervision of chiefs’ implementation of rape prevention policies. Specifically, the MJ has asked traditional leaders to change their customary laws to align with the Combating of Rape Act of 2000. Further, the MJ now requires customary courts to refrain from hearing compensation cases for rape or sexual assault until after the criminal proceedings have concluded. The MJ enforces TAs’ compliance with the latter policy through reviews of customary court documents and upon appeals processes in magistrate courts. I demonstrate that chiefly framing of some types of rape as matters of communal concern and the partial enforcement of rape prevention policies have in turn led to partial implementation of these policies.

I compare rape prevention policies with domestic violence policies. Unlike rape, traditional leaders frame all but the most outrageous instances of domestic violence as private matters to be addressed within families and not by chiefs. While NGOs and ministries have provided education to chiefs on addressing GBV, no state bodies oversee the educational activities carried out by traditional leaders. As a result, chiefs have mostly avoided involvement in cases of domestic violence in their communities. Chiefs’ differing approaches to domestic violence and rape are shaped by customary and Roman-Dutch common-law legacies as well as by insecurities of men losing ground to women in independent Namibia.

Table 6.1: A framework for chiefs' policy implementation activities

Policy area	Do chiefs frame issue as communal?	Do chiefs support policy intervention?	Is there institutionalized state oversight?	Do chiefs implement policies as requested?
Land allocation and inheritance	Yes	Yes	Yes	Yes
HIV/AIDS education	Yes	Yes	No	No
Rape (GBV)	Partially	Partially	Partial	Partially
Domestic violence (GBV)	No	No	No	No

GBV in Namibia

Gender-based violence is a human rights issue that leaves no country or region untouched. It established a central place in the fight for women's rights in the 1990s, thanks in large part to international and regional agreements like the UN Declaration on the Elimination of Violence Against Women (CEDAW), the Beijing Declaration, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Weldon and Htun 2013, Tripp et al. 2009, Weldon 2006, Merry 2006). The World Health Organization estimates that 35 percent of women worldwide have at some point experienced physical and/or sexual violence by a partner or sexual violence by a non-partner (2013, 2). Although gender-based violence is universal, each country struggles with a different set of problems. In Namibia, as in most of southern Africa, the two most prevalent types of GBV are rape and domestic violence.

It is important to note in any discussion of GBV that accurately measuring rates of rape, sexual assault and domestic abuse is notoriously difficult. Shame, silence, and varying understandings of what constitutes rape or abuse contribute to the underreporting of these crimes (Jewkes et al. 2000). In countries with large rural populations like Namibia, the sheer logistics of getting to a police station or hospital also contributes to underreporting.

A 2013 survey found that 31.5 percent of Namibian women ages 15-49 have experienced physical violence in their lifetimes, approximately 80 percent of which occurred at the hands of a current or past partner (MoHSS and ICF International 2014, 298-299). Among ever-married women ages 15-49, one-third have experienced physical, sexual or emotional abuse committed by a husband/partner (MoHSS and ICF International 2014, 307). These statistics have remained steady over the last decade: a 2001 World Health Organization survey found that 36 percent of women reported having experienced sexual and/or physical violence by partners during their lifetimes (Gender Research and Advocacy Project 2012, 16).

Few representative studies have been conducted in Namibia on the incidence of rape. South Africa serves as a useful point of comparison however, given that the two countries shared the same common law legal system, apartheid regime, and now have similarly progressive laws on the prosecution of rape and domestic violence. A 2011 study found that 27.6 percent of South African men between the ages of 18-49 had raped a woman at some point in their lives (Jewkes et al. 2011). Incidence of rape is believed to be somewhat lower in Namibia than South Africa, but reliable statistics simply do not exist for Namibia to allow such a comparison. However, a 2006 LAC report found that 1100-1200 rapes per year occurred in Namibia between 2003-2005, which is approximately 60 reported rapes per 100,000 people. This is significantly lower than the 117 rapes per 100,000 people in South Africa (Gender Research and Advocacy Project 2006, iv). The reported cases likely falls far short of the actual number of rapes that occurs in each country annually.

State discourses on GBV

Having established the scope of the problem of GBV in Namibia and neighboring countries, the focus now turns to the ways in which state representatives frame and address it. This section reviews the major debates that surrounded the passage of the Combating of Rape Act of 2000 (CRA) and Combating of Domestic Violence Act of 2003 (CDVA) in the National Assembly, Namibia's lower house of parliament. It also examines debates that occurred after these laws came into force as concern about rates of GBV continued to mount through the 2000s. These debates are notable because, unlike in the case of HIV/AIDS, the majority of parliamentarians framed GBV in the same terms as traditional leaders, the topic of the following section: many questioned the existence of marital rape, for example, and considered a nationwide "return to traditional values" and focus on traditional leaders to be the best strategies for combating GBV.

In the debates on rape and violence against women, MPs frequently drew on stereotypes of "real" rape and "real" victims. For example, during the debate on the Combating of Rape Bill, Ovambo headman and MP Philemon Moongo made a comment that became infamous among women's rights groups. In his discussion of the causes of rape, Moongo accused Namibian women of "...also misbehaving. You see women walking in the streets at 2 o'clock at night where the situation is not safe...some women are still ignorant of the unsafe situation at the moment. I appeal to the Namibian women to behave well and not to wear mini dresses. Sometimes it provokes the men" (Debates of the National Assembly 1999a, 79). Victim-blaming is hardly a phenomenon unique to Namibia, but it is useful to emphasize the pervasiveness of the rhetoric about how seriously to treat a rape based upon the victim's actions. In fact, this logic is

found in Roman-Dutch common law, which allows a victim's behavior and sexual history to be considered at trial.

In the same debate, the Deputy Minister of Higher Education, Vocational Training, Science and Technology called for “degrees of rape” to be added to the text of the bill. He said that degrees of rape should have different punishments associated with them on the basis of their severity: “Where rape takes place in a marriage, where the complainant is a partner in marriage with the accused...where the complainant was a willing partner in sexual foreplay, that cannot be the same degree of rape as when an animal in human form rapes a woman unknown to him” (Ibid, 81).

In the introduction of the Combating of Rape bill, the Minister of Justice acknowledged but rebuked this widespread skepticism of marital rape:

Subclause (2) deals with the abolition of the so-called marital rape exception, i.e. the common law rule that a husband cannot be convicted of raping his wife—that is if this rule still forms part of our law. I know that people's first reaction to this proposal is often shock. There are people who think that wives must simply accept what their husbands want in the field of sex. I have no sympathy for the people with such a view. Women do not lose their rights when they get married (Debates of the National Assembly 1999a, 70).

The opinion expressed by the Minister of Justice ultimately carried the day when the CRA passed with a marital rape clause. Nonetheless, many raised concerns about it in their remarks during debate on the bill. Several MPs cautioned against the inclusion of the marital rape clause because they believed women would use it to punish their husbands unfairly. The Deputy Minister of Youth and Sport decried the clause, claiming “There is no rape in marriage. The two [spouses] agreed to come together and they know what will take place through thick and thin. When you are on honeymoon you will never talk of rape, but when marriage turns sour, that is when one could talk about rape” (Debates of the National Assembly 1999a, 115). Another

minister agreed, “I do not support that Namibian married couples should resort to reporting their bedroom affairs to the police...” (Ibid, 98).

These comments reflect both the widespread skepticism of MPs about criminalizing rape within marriage and the influence of the common-law concept of “degrees of rape.” They also highlight the notion of a “real” GBV victim, one that is attacked by an animalistic stranger, not a woman that withdraws consent or dresses in a provocative manner and walks around in public.

The parliamentary debate surrounding the Combating of Domestic Violence Bill in 2002 illuminated popular thinking and myths surrounding GBV. Many members of parliament (MPs) confronted the widespread attitude that domestic violence is a private affair. Two MPs noted that even the police frequently declined to intervene when called to handle such cases (Schimming-Chase 2002, 101–102). A few MPs countered that the bill would allow the state, through the police or other security forces, into the bedrooms across the country. This argument resonated deeply with Namibians that had lived through the South African apartheid regime, which frequently used state surveillance to monitor the private lives of black Namibians (Nyamu 2002). MP Doreen Sioka, however, powerfully rebuked the arguments that hearkened back to apartheid rule:

...domestic violence against all of us does occur in our homes, committed by our family members or loved ones...Domestic violence is seldom reported to the police because of fear of no law in place which can protect the police themselves and the complainants. When one seeks advice from elders, all they tell you is, ‘it is a private matter, don’t go and report it.’ That is the advice we are getting. It discourages women to go to the police and report...What private matters are they talking about if people are dying, old-aged women are being raped, children are being raped? What private matter is this? (Sioka 2002, 215).

Ministries like the MGECW have struggled to address the popular belief that domestic violence is a private family matter as well. The nationwide campaigns on GBV, awareness-raising initiatives launched in 2009 and 2011 that both operated under the theme of “Zero

Tolerance for Gender-Based Violence: Report It and Stop It” focused on public education of issues related to passion killings⁸⁴ and human trafficking (Angula 2009). Although the latter two issues are generally considered related to, but not themselves actual forms of gender violence, the campaign characterized all three as types of GBV. This framing exemplifies one of the government’s strategies for increasing support for state intervention in domestic violence situations—linking issues already deemed matters of state responsibility to GBV. Additionally, by labeling baby dumping and human trafficking as types of GBV, the state is trying to illustrate its claim that this type of violence affects and harms the entire nation, not just one woman or family. This strategy reflects broader conversations among African women’s rights activists, many of whom have argued that the public/private divide that western feminists have used to describe divisions of power in their contexts do not work in Africa, where living arrangements and closely-built, permeable housing mean that the sights and sounds of domestic violence are never truly “private” (Bassadien and Hochfeld 2005).

In 2004, a year after the passage of the CDVA, the National Assembly returned to the topic of domestic violence in a motion on escalating violence against women. Throughout the debate, MPs repeatedly identified traditional leaders as actors critical to stopping GBV. MP Ben Ulenga argued that rates of domestic violence and rape had increased because the state had dramatically circumscribed the power of traditional leaders through laws like the TAA:

A lot has been discussed about the roles and functions of a very important institution and a permanent institution, for that matter, in our beloved country. That is the institution of traditional leaders. Whether we like it or not, at Independence our Government has also joined the colonial regime, trying to put up mechanisms to control the workings of the institution of the traditional leaders...as long as we are trying to prescribe to the institution of traditional leaders and limit their environment under which they have to

⁸⁴ “Passion killing” is the term used to describe a murder committed by the victim’s spouse or partner (or former spouse or partner), usually in the aftermath of a fight or revelation of infidelity.

operate amongst their people, the crime rate would never go down” (Debates of the National Assembly 2004, 107–108).

Ulunga concluded that traditional leaders would have prevented the epidemic of GBV if the government had allowed them to keep more of their pre-colonial and colonial-era powers:

“When I grew up during the fifties and sixties, I was told by my parents that when you rape a woman, your punishment by the Traditional Leader of that time, could only be the death penalty...” (Debates of the National Assembly 2004, 106).

Causes of increasing rates of GBV were framed by parliamentarians largely in terms of moral decay and social breakdowns prompted by a departure from traditional values. This framing is very similar to the explanations provided at the national and local levels for the HIV/AIDS epidemic in Namibia, as chapter 5 discussed. An interesting tension exists among the frames used to talk about GBV. On the one hand, “traditional culture” is frequently referenced as a cause of GBV. For example, MP Rosa Namises said in her contribution to the motion that “violence against women is deliberately trivialized because society, especially men, fear giving women the power and control they should have by right over themselves. Violence against women is also still regarded by some as a private rather than a public issue” (Debates of the National Assembly 2004, 120). She called for the government to conduct research into “harmful cultural practices” that contributed to GBV. The government and TAs would need to work together to “transform the oppressive gender regime” that had led to the “decay of our values and norms” (Ibid, 123).

Other MPs emphasized the silence and treatment of GBV as a private family matter as well. Minister of Finance Saara Kuugongelwa-Amadhila, for example, bemoaned the practice of mothers telling their daughters, ““when you husband beats you up, you do not have to shout to the whole village, they do not have to know, they have their problems, so you have to keep your

secrets.’ Therefore, you keep this secret, when you are beaten and your face is all swollen up...when you go to tell your mother that you have been beaten up, she will tell you to go back to your marriage” (Debates of the National Assembly 2004, 40).

On the other hand, many framed greater engagement with chiefs and a return to traditional ways of life as solutions for reducing rates of GBV. MP Gende illustrated both of these points with his comments during the debate. He called upon “the fathers and mothers of our Namibian society to go back to the drawing board and teach our young children, both girls and boys, in the values of our traditions and customs” (Debates of the National Assembly 1999a, 112). He further asserted that “...historically, especially in my communities from the Kavango region, raping a girl or a woman was taken very seriously those days when the traditional leaders had the power to deal with rapists and murderers...[rape] was taken very seriously and the only punishment for a rapist was the death penalty...” (Ibid, 113). Gende, like many of his colleagues, viewed traditional leaders as better able than the state to punish rapists and deal with them as harshly as they deserved.

National debates surrounding GBV underline the continuing influence on lawmakers and government officials of Roman-Dutch common law, which recognizes “degrees” of rape and views rape victims as potentially partially responsible for their assaults. Additionally, like both common law and customary law, MPs expressed reservations toward the concept of marital rape, arguing both that it simply could not exist and that women would use the new crime to punish their husbands. As in the case of HIV/AIDS prevention, traditional leaders were identified consistently in these debates as important and effective stakeholders in the campaign to end GBV. This characterization of traditional leaders appears to have influenced the responsibilities of chiefs in anti-GBV policies, as the next section explains.

Gender-based violence interventions: the legal context

This section provides an overview of National Assembly debates over two GBV laws: the Combating of Rape Act of 2000 and the Combating of Domestic Violence Act of 2003. It then discusses the GBV-related policies derived from these laws as well as related plans of action that traditional leaders have been asked to implement in their communities. It establishes that many harmful beliefs about GBV held by Namibians have their roots in Roman-Dutch common law and customary law.

Combating of Rape Act of 2000

The CRA is widely regarded as one of the most progressive rape laws in the world, particularly for the act's implicit recognition "that rape is not a sexual crime, but that it is a crime of violence and power which uses sex as a weapon to humiliate and destroy" (Bohler-Muller 2001, 74). It broadened the legal definition of rape beyond "the insertion (to even the slightest degree) of the penis of a person into the vagina...of another person" to include the penetration of any orifice or any other form of genital stimulation (Combating of Rape Act of 2000, sec 1(1)). It additionally makes rape within a relationship or marriage illegal. The CRA also expanded the definition of victims to include men, women, boys and girls.

The CRA is particularly revolutionary when considered in the context of the legal system from which it originates, Roman-Dutch common law. The treatment of rape under common law principles was dramatically altered by the CRA, but the assumptions and treatment of this crime under former iterations of the law have clearly shaped popular understandings of what rape is and how victims should behave. First, under common law, only women could be victims of rape. Second, prior to 2000, courts were required to follow a "special cautionary rule" when ruling on

sexual assault causes based upon the false but widely-held belief that rape allegations were more likely than any other type of claim to be untrue (Schwikkard 2009). Moreover, in the common-law tradition, rape is treated as a crime against the state rather than a crime against an individual. The harm of rape was therefore considered in terms of damage to the community rather than injury to the victim (Britton and Shook 2014, 164). As subsequent sections of this chapter demonstrate, the idea that rape harms the community is reflected in traditional leaders' framings of the crime as collectively damaging because it disrupts social order and harmony among subjects.

Common-law traditions also distinguished between different "degrees" of rape, as the National Assembly debates demonstrate. Some types of rape were regarded as more serious than others, and victims needed to follow particular behavioral scripts in order to be considered "real" victims. Specifically, "real rape" was understood as being perpetrated by a stranger against an innocent, unassuming woman that physically struggled against her attacker (Britton and Shook 2014, Temkin 2002, Estrich 1986). The CRA challenges this common-law characterization of rape by abolishing the cautionary rule, prohibiting the court from "drawing any inference only from the length of the delay between the commission of the sexual or indecent act and the laying of a complaint" (sec. 7), and by allowing evidence of the psychological effects of rape to be introduced at trial (sec. 8(1)).

The treatment of rape under common law as a crime against the state evaluated in terms of its harm to the community has shaped contemporary understandings and discourses around this crime. Customary laws in TAs across Namibia address rape and provide for compensation for victims' families. The emphasis in customary and common law on rape as a community concern reflects patriarchal conceptions of women's bodies. Specifically, both sets of law regard

rape as stealing and despoiling the property of another man, either a victim's father or husband (Estrich 1986).

The CRA also makes rape within marriage a crime. Roman-Dutch common law, upon which Namibian law is also based, does not recognize any situation in which sexual relations between a husband and wife is unlawful and therefore does not acknowledge the existence of marital rape. The Roman-Dutch legal system assumes that a woman provides lifelong consent to sexual intercourse to her husband upon marriage. But, as a report from the LAC observes, "it is obviously absurd to interpret the marriage vows as an agreement to sexual intercourse at any time, under any circumstances, for years to come – regardless of whether the husband is drunk, violent, or abusive" (Legal Assistance Centre 1999, 1). This, however, is exactly how the legal system thought of sex within marriage prior to the passage of the CRA in 2000. By making marital rape a crime, the CRA strengthens protections for women within marriage in accordance with Article 124 of the 1990 constitution, which states that men and women "are entitled to equal rights as to marriage, during marriage, and at its dissolution." Further, the marital rape provision of the CRA fulfills Namibia's obligation under the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to protect women from this form of GBV.

In short, the CRA is one of the most progressive rape laws in the world due to its expansive definition of rape and victims, its prohibition on marital rape, and its elimination of courtroom practices that previously treated victim's claims with suspicion.

Combating of Domestic Violence Act of 2003

Three years after the passage of the CRA, the Combating of Domestic Violence Act of 2003 (CDVA) came into force. Like the CRA, the CDVA is written in gender-neutral language,

meaning that men, women, boys, and girls are regarded equally as potential victims or perpetrators of domestic violence. The act has three primary purposes: first, it expands and clarifies the legal definition of domestic violence. In the context of a domestic relationship, “domestic violence” refers to physical, sexual, economic, emotional, verbal, and psychological abuse, along with harassment and intimidation. Second, it introduces a simple process by which an individual can obtain a protection order (often referred to as a restraining order in the US). The law also allows anyone “who has an interest in the well-being of the complainant” to bring a protection order on his or her behalf (sec. 4(2)). This section includes a list of people particularly likely to apply for a protection order on behalf of a complainant. The list includes traditional leaders, along with family members, police officers, family members, teachers, and religious leaders. Third, the law characterizes the domestic violence crimes listed above as “domestic violence offenses,” which are subject to special provisions that offer unique victim privacy protections in the courtroom and media. It also encourages the victims to provide input on bail and sentencing decisions for their attackers (Gender Research and Advocacy Project 2012, 8).

Obligations for traditional leaders

To determine whether traditional leaders are implementing anti-GBV policies as requested by the state, I must first establish what their obligations are. The policies that the state has asked traditional leaders to implement within their communities are not as clearly defined as in the cases of communal land allocation and HIV/AIDS education. In the case of GBV, the initiatives to be undertaken by chiefs come from a variety of ministries, laws, and national plans of action. Confusion and rapidly-changing policy goals have characterized the state’s attempts to curb cases of GBV. The number of high profile, gruesome murders of women at the hands of

their boyfriends and husbands in the last decade has prompted the state to try a variety of approaches that are quickly tweaked or abandoned after a few more cases of appalling domestic violence make the news.

In this section, I outline the aspects of GBV prevention policy for which the state has requested the participation of traditional leaders. These interventions are based on the government's assessment of the causes of GBV, which a statement by the Namibian police in 2014 summarizes well:

Although the causes of gender-based violence (GBV) varies, according to researchers, the notable motives of such heinous crimes range from customs, traditional beliefs, illiteracy and limited education, unequal power relations and low status of women...one of the challenges associated with GBV is that the crime is committed in the private sphere of the home, while gender inequality is the root cause and the premature withdrawal of GBV cases by some complainants is an additional contributing factor (Nunuhe 2014).

Currently, the National Plan of Action on GBV 2012-2016 (NPAGBV) provides an overarching national framework for the state's response to rape and domestic violence, along with related issues like human trafficking. Prior to the NPAGBV, the state response was guided by a 2008 set of recommendations that were compiled by the National Advisory Committee on Gender-Based Violence. The state's policy on GBV prevention prior to 2012 was led by a 2009 campaign called "Zero Tolerance for Gender Based Violence." The obligations of traditional leaders in all of these campaigns, laws and policies have remained relatively consistent. The basic implementation activities of traditional leaders are obligated to undertake are as follows:

- Assist community members in obtaining protection orders, or apply for the orders on behalf of victims of domestic violence when necessary (CDVA 2003)
- Revise customary laws to align with those of the CRA and CDVA (National Advisory Committee on Gender-Based Violence 2008)

- Enter into dialogue with communities about how to reduce social and cultural tolerance of gender-based violence using education and awareness campaigns and small-group discussions. Chiefs are especially encouraged to engage men and boys in these efforts by “targeting male notions of entitlement that perpetuate GBV” (Ministry of Gender Equality and Child Welfare 2012, 25–26)
- Assist in reducing the number of rape and domestic violence criminal case withdrawals by:
 - Informing rape complainants of the societal benefits of continuing with criminal cases rather than accepting compensation to withdraw their cases;
 - Educating victims about their rights when laying charges to discourage withdrawal of GBV cases, including information on privacy protections and vulnerable witness provisions during court appearances;
 - Informing their communities about the possibility of both receiving compensation for GBV through community courts and laying a criminal charge with the police for the same crime. Encourage community members to report perpetrators of GBV to the police (National Advisory Committee on Gender-Based Violence 2008, 58).

The policy responsibilities of traditional leaders with respect to GBV are in many ways similar to those addressing HIV/AIDS, as described in chapter 5. As in the case of HIV/AIDS education, GBV policies use chiefs as street-level bureaucrats to assist their subjects with accessing state services such as protection orders. Because the state attributes GBV in large part to harmful customs and traditional beliefs, it has engaged chiefs to carry out public education campaigns within their communities at which they are expected to denounce those aspects of traditional

culture that are linked to violence. These include the male sense of entitlement over women's bodies and lives and the belief in some communities that men can demonstrate love for their wives by beating them. The next section evaluates the GBV policy implementation record of traditional leaders.

Traditional leaders' framing and implementation of GBV policies

Following the passage of the CRA in 2000 and the CDVA in 2003, various government ministries and NGOs began holding workshops to teach traditional leaders from every TA about their obligations under these laws.⁸⁵ Workshops on HIV/AIDS prevention and the Community Courts Act of 2003 (CCA) also touched on various issues related to GBV. While the content of these meetings varied based upon the location, audience and teachers, they generally covered causes of GBV, strongly emphasizing the harmful customary practices and beliefs that their traditions promoted. Chiefs were told they had a legal obligation to stop these practices and work to change attitudes toward violence and the treatment of women within their communities.

The LAC played a prominent role in organizing and leading these workshops. Given the center's focus on law, its workshops emphasized the legal definitions of rape and domestic violence, state resources for helping victims, and how and when they could hear community court cases on GBV incidents. The LAC also distributed informational booklets that summarized this information in simple terms in a variety of local languages. During my interviews in Ovambo TAs, I saw several copies of these booklets in the offices and briefcases of traditional leaders, from kings all the way down to headmen and women.

⁸⁵ The information on the GBV workshops for traditional leaders draws upon more than a dozen interviews with government and NGO representatives whose organizations participated in one or more of these meetings.

As in the case of HIV/AIDS education for traditional leaders, both state ministries and NGOs provided these workshops only to high-ranking members of TAs due to costs and travel times for both the presenters and attendees. The workshop organizers expected the traditional leaders that received training to take the information and materials provided at the meetings and share them with the rest of the councilors and headmen/women within their TAs. These lower-ranking leaders, in turn, were told to bring this information to their own communities to implement and share in public meetings.

In this section, I compare the ways in which traditional leaders talk about rape and domestic violence policies and what actions they have taken to implement them. I begin by examining rape policies, some of which chiefs are implementing as requested, before moving to domestic violence policies, none of which traditional leaders are implementing as requested. Chiefs' implementation of some rape policies and very few domestic violence policies supports my community welfare hypothesis, which holds that when traditional leaders frame an issue as communal—that is, affecting the wellbeing of the entire community—they are more likely to implement policies addressing that issue. I then offer an explanation for why traditional leaders continue to frame domestic violence as a private concern despite nearly a decade of state campaigns that characterize it as a burden upon and source of shame for the entire country.

Implementation of Rape Policies

Traditional leaders' obligations vis-à-vis rape policies fall into three categories: aligning customary law on rape with statutory law; preventing rape victims from withdrawing their cases with the police by educating them about their legal rights, especially their ability to seek compensation from rapists in community court after their criminal cases have concluded; and

teaching their communities about harmful traditional beliefs that make rape more likely or socially acceptable, particularly marital rape. I consider each of these obligations below.

Customary laws on rape

The ascertained laws of the Ovambo TAs, which were collected and published in 2010 as part of a University of Namibia project, offer important insights into traditional understandings of GBV and the appropriate role of traditional leaders in handling these cases. All eight TAs have added or brought into line their customary laws on rape with the CRA. They all follow the same basic wording as the following from the Laws of the Ombadja TA:

Rape is when two people have sex without the consent of one of them. Any woman raped shall be taken to the nearest doctor or police officer before the clothes that she had on during the incident are taken off. The complainant shall not be washed because it can jeopardize medical examinations. A person found guilty of rape by the Traditional Authority shall pay six oxen plus one for the council (Hinz and Namwoonde 2010, 40).

Some of the Ovambo TAs' laws on rape, unlike that of the Ombadja, use gender-neutral language when referencing victims. Beyond this difference, most of the laws emphasize the importance of immediate police involvement and evidence investigation. Traditional leaders do not become involved until after the police and magistrate court systems have completed their handling of a case. While the language of customary rape laws has changed in recent years, chiefs have been involved in the punishment of rapists and negotiation of compensation for victims' families since at least the 19th century, and likely before. Ovambo customary law, like common law, sees rape as a crime against the community. Therefore, it is appropriate and expected that traditional leaders participate in the punishment and compensation processes intended to restore peace and social harmony to their societies.

My survey of Ovambo viallgers supports this argument. As table 6.2 illustrates, an overwhelming majority of both men and women agree with the statement that "rape is a matter

of concern to the entire community.” In total, nearly 90 percent of respondents called rape a community concern. I cannot make a causal argument about whether the opinions of traditional leaders shaped those of villagers on this issue, or vice versa. I agree with Kate Baldwin’s observation that “when traditional leaders are deeply embedded in the culture and history of their communities, there are likely to be strong correlations between their attributes and those of their broader communities, making it difficult to determine how much independent effect these leaders have on administrative and political outcomes” (2015, 14). This survey result is nonetheless useful for providing suggestive evidence that villagers and traditional leaders in Ovambo communities share an intersubjectively constructed understanding of appropriate responses to rape.

Table 6.2. Attitudes on Rape

	Men	Women	Total
Agree with statement 1	17.8%	11%	12.6%
Agree with statement 2	82.2%	89%	87.4%

Which of the following is closest to your view? Select statement 1 or statement 2.

Statement 1: Rape is a private matter that only the victim and the victim’s family should address.

Statement 2: Rape is a matter of concern to the entire community.

Source: Question 26 in Traditional Communities Survey (Appendix 2) N=207.

Changing the rules on community court cases

One of the most significant issues hindering proper implementation of the CRA is the issue of compensation to rape victims. Because traditional leaders often play a role, formal or informal, in mediating these compensation arrangements, they are instrumental to changing these practices to conform to the CRA and the NPAGBV. A study conducted by the LAC in 2006 found that more than one-third of complainants in rape cases requested to have their cases withdrawn (Gender Research and Advocacy Project 2006). A follow-up study of victims’

motivations for withdrawing their cases revealed that the most common reason for withdrawal requests was that the rape victims had received compensation, usually from the rapists or their families (Gender Research and Advocacy Project 2009). One prosecutor estimated that some form of compensation is made to rape victims in 80 percent of all withdrawn cases (Gender Research and Advocacy Project 2009, 9).

Compensation to rape victims—or, more frequently, their families—has a long history in traditional communities across Namibia, as the codified laws of TAs demonstrate (Hinz 2014, Hinz and Namwoonde 2010). Focus groups conducted in Ovambo villages as part of the 2009 LAC study found that compensation was connected with forgiveness of the perpetrator. Focus group participants frequently reference the Ovambo maxim that translates as ‘today my child, tomorrow yours,’ which emphasizes the importance of community reciprocity and restoring peace and social order (Gender Research and Advocacy Project 2009, 26).

A major hurdle to implementing rape policies properly has to do with the way the Community Courts Act of 2003 was written. The CCA states “a community court shall have jurisdiction to hear and determine any matter relating to a claim for compensation, restitution or any other claim recognized by the customary law” (Community Courts Act of 2003, sec. 12). The focus on compensation is intended to complement criminal punishment. For cases of rape, the MJ wants victims to first go through the magistrate courts so that perpetrators can be held criminally liable for their actions. Victims may then bring claims for restitution to community courts only once the criminal trials have concluded.

This system appears not to be well understood by many Namibians, who believe that they can only take their case to one type of court.⁸⁶ Taking rape cases to community courts is widely preferred in rural areas for several reasons: trials move much more quickly than in magistrate courts, where the backlog of GBV cases was three years long in 2012. Customary courts require much less travel time and are regarded as far less intimidating than magistrate courts that may be located hundreds of kilometers away and be held in a language with which victims are not familiar (Peters and Ubink 2015). Victims know they are likely to receive compensation in the form of cattle or money. Cultural norms emphasize the importance of going through these restitution processes to “wipe away the tears” of the victims and their families, as a common saying goes, so that they can return to living peacefully in the same community.

Incentives to accept compensation in return for withdrawing the case are strong, especially when very poor women could benefit enormously from compensation (often in the range of N\$500-N\$1000). Moreover, pressure is strong on women to accept compensation to restore good relations between the victims’ and perpetrators’ families. Accepting compensation in lieu of pursuing a criminal case has many downsides, however. A story from the 2009 LAC study highlights several of the most significant problems:

As reported in the [Ovambo region] focus group, one woman went to a traditional court to seek compensation for her rape. After an amount was determined, the rapist refused to pay and instead raped her again. When she went to report this second rape to the police, the police informed her that the man had been charged with the rape of another woman who had subsequently withdrawn her complaint. Moreover, the rapist was known by the police to be HIV-positive and to have infected his previous victim (Gender Research and Advocacy Project 2009, 31)

⁸⁶ Interview with Namibian attorney, Windhoek, November 9, 2011; interview with NGO director, Windhoek, January 19, 2012.

While this case is extreme, reports have circulated for years about wealthy men that rape women in rural areas with impunity (Ministry of Gender Equality and Child Welfare 2007). When they get caught, they pay off the victims' families and avoid police detection.

Despite the confusion surrounding customary versus magistrate courts and the timing of bringing cases to each, it appears that traditional leaders in Ovambo TAs have been trying to educate their communities about the dual court system and ensure that they follow MJ policies. In an interview with a traditional secretary, for example, he reported that he and his fellow leaders always involved the police in cases of rape. Later, he said, the families would come together to decide payment, but not until the magistrate court had punished the rapist. After that, the victim's family could get money from the traditional court.⁸⁷ Similarly, King Taapopi of Uukwaluudhi TA said, "cases like rape, those are not for us. Normally only police are involved in cases of rape. [The TA] has nothing to do with it. There are those cases that the traditional court can deal with, but murder and rape are strictly for [the magistrate courts]."⁸⁸ Traditional courts, he explained only hear rape cases if a victim wants to be compensated, but this compensation process can only be initiated after the case has gone through the magistrate courts, at which point the victim must ask if she can take the cause back to the traditional leaders.

In addition to traditional leaders viewing rape as a community concern in some cases, the MJ sporadically oversees their implementation activities. The Customary Law Ascertained project verified TAs' compliance with the required changes to their customary rape laws. The MJ lacks the resources to provide consistent supervision of all cases that come before community courts to ensure that cases for rape compensation are not heard before the criminal trials have

⁸⁷ Interview with traditional secretary, Omusati region, April 25, 2012.

⁸⁸ Interview with King Taapopi, Omusati region, April 27, 2012.

ended or in lieu of filing a criminal case. However, community courts must keep records of every case brought to them, which MJ representatives can and occasionally do review for such problems. Additionally, the CCA allows parties unhappy with the outcomes of their cases to appeal to magistrate courts. Civil courts carefully review appeals of this nature. It appears that these oversight arrangements, erratic though they may be, have contributed to the successful implementation of a dual-trial system for rape cases, although reports of rape victims negotiating for compensation without going to the police, sometimes with the help of traditional leaders, persist.

Failure to address harmful cultural beliefs and practices, including marital rape

Assessing the activities of traditional leaders related to community education on, and punishment of, marital rape is difficult because almost no data exist on the issue. In this section, therefore, I discuss some national findings on marital rape and explain why I believe chiefs are not educating their communities about the issue as required by the state.

Rape within marriage remains a rarely reported crime in Namibia. A survey by the LAC in 2005 found that only 3 of 409 cases of rape dockets drawn in a national sample were marital rape cases. No other data on marital rape cases exist. However, extensive searches of Namibia's three largest English language newspapers from 2004-2014 returned zero articles mentioning a case of marital rape in the country.

What accounts for the silence surrounding rape in marriage when the other parts of the CRA have met with little resistance to implementation? Intersubjective understandings of marital rape appear to play an important role in the explanation. Researchers say that, in some traditional communities, such as the Himba and Herero, the concept of rape does not exist at all (Talavera 2002). A study conducted in 1999 revealed that men and women in Ovambo

communities did not believe women had the right to refuse sex in the context of a marriage or relationship (LeBeau, Fox, and Mufune 2000, 326–327). These attitudes mirror the arguments made by many parliamentarians during the National Assembly debates on the Combating of Rape Bill discussed above.

Although marital rape provisions exist within the CRA, I believe that Namibians understand it as a type of domestic violence rather than an archetypal rape with a stranger that attacks a woman as she walks down the street. Despite the efforts of the MJ and MGECW, evidence suggests that most Namibians, traditional leaders included, still think about marital rape as a type of private violence between partners in the privacy of their home. As no body exists to oversee chiefs' denunciation of marital rape as a private, secretive matter or as acceptable within relationships, the policy remains unimplemented. Taken together, the case of rape supports the hypotheses laid out in chapter three: those types of rape viewed as "real" are framed as communal, and chiefs' support of policies is bolstered by partial state oversight of their implementation. In contrast, types of rape framed as private are being ignored by traditional leaders, and the lack of state oversight allows chiefs' inaction to persist.

Implementation of Domestic Violence Policies

As in the case of rape policies, the responsibilities of traditional leaders vis-à-vis domestic violence policies fall into three categories: assisting community members in obtaining protection orders or applying for the orders on their behalves; revising customary laws to align with the CDVA; and entering into dialogue with communities about how to reduce social and cultural tolerance of gender-based violence using education campaigns, especially by "targeting male notions of entitlement that perpetuate GBV" (Ministry of Gender Equality and Child

Welfare 2012, 25-26). Unlike in the case of rape policies, however, traditional leaders have done very little to implement these policies as requested.

Customary laws on domestic violence

State directives require TAs to bring their customary laws into line with constitutional and statutory law. Despite this policy, no Ovambo TA has a law addressing domestic violence (Hinz and Namwoonde 2010). As discussed earlier in this chapter, for more than a century Ovambo TAs have claimed that rape is a crime that demands their involvement. The common law system introduced by South Africa in the 1920s reinforced this framing of rape as an issue of community welfare and state interest (Schwikkard 2009). By contrast, neither common law nor Ovambo customary law conceive of domestic violence as a matter of community or state concern. Chapter 3 emphasized the deliberate institutional positioning of traditional leadership as partly within and partly outside the state. As a result, the state has a tight grip on the activities of TAs on paper, but in practice do very little to intervene in their internal affairs. That matters with respect to customary law changes because, as a high-ranking official in the MRLGHRD, the ministry tasked with overseeing the activities of TAs, told me, “we cannot deal with that matter” of compelling them to amend their customary laws. “We must let them do what they want,” he added.⁸⁹ There is no basis in the law for the official’s claim that the ministry cannot do anything, but his comment illustrates the calculated decision of the state not to intervene in this matter.

Protection orders and community education on domestic violence

The CDVA, as discussed above, outlines a simple process through which anyone may obtain a protection, or restraining, order, against another individual. Any concerned individual may apply for a protection order on behalf of another person as well. The CDVA names

⁸⁹ Interview with MRLGHRD civil servant, Windhoek, March 6, 2012.

traditional leaders as one set of actors likely to apply for a protection order on behalf of one of their subjects. As of 2012, however, 92 percent of protection orders had been applied for and issued in urban areas (Gender Research and Advocacy Project 2012). Training of traditional leaders in applying for protection orders by the LAC and MJ, along with step-by-step instructions from the LAC, suggests that at least high-ranking chiefs know how to apply for these orders. Lower-ranking chiefs should have heard of protection orders and at least be able to direct their subjects toward these applications.

People are probably not bringing concerns about domestic violence to their traditional leaders. Chiefs, in turn, are not talking about protection orders with their subjects. When I asked traditional leaders about their role in helping subjects to obtain protection orders and other state services, they denied that domestic violence was a problem in their communities in most cases. Therefore, I can only discuss where this denial comes from—understandings of domestic violence by subjects and traditional leaders as private matters inappropriate for chiefly intervention in most cases.

As I demonstrate in this section, chiefs disavow responsibility for intervening in suspected cases of domestic violence by asserting that domestic violence is not a matter for community concern and thus outside of their purview. Moreover, my interviews suggest that many chiefs justify their inaction on GBV by claiming that men are the true victims of abuse at home, and it should thus be up to them, as the primary victim group, to decide whether intervention is needed or appropriate.

Traditional framing: GBV as private matter

In my interviews in Ovambo traditional communities, most people characterized domestic violence as a private matter in which chiefly involvement would be inappropriate. Most traditional leaders and women with whom I spoke accepted secrecy as the only thinkable⁹⁰ way to handle domestic violence. As one traditional leader explained, even when neighbors know that abuse is taking place within a home, “you stay with it in your heart and try to be patient, to keep it a secret.”⁹¹ The other traditional leaders in the room nodded earnestly at this statement.

Comments from a group interview of eight women living in a village lead by a headwoman reflected similar sentiments. Although the women, between the ages of 30 and 60, and all married, experienced several kinds of violence at home, they rarely disclosed the abuse to anyone. As two middle-aged women explained:

Meme Martha: Us as women, we are different. Sometimes I will take a problem to a headwoman but mostly we keep our problems to ourself [sic].

Meme Pene: There are certain problems that can be taken to headwoman and some can't. If I'm a widow and someone tries to chase me off my land, I can get help with that from headwoman.

Interviewer: What kinds of questions can't be taken to the headwoman?

Meme Pene: Household problems. If it's a [headman], I'm too shy [to take my problems to him], and if it's a [head]woman, she has her own problems.⁹²

The comments of these women demonstrate a norm that permeated my interviews with members of Ovambo TAs, from villagers to head chiefs. Subjects can take some issues to traditional leaders, like being chased off their communal land, but “household problems,” which seemed to be a euphemism for marital problems or spousal abuse, should not be taken to these leaders. The

⁹⁰ I borrow this phrase from Michael Schatzberg (2001).

⁹¹ Interview with traditional leaders, Oshana region, April 25, 2012.

⁹² Interview with village women's group and headwoman, Oshana region, May 3, 2012.

other women in this group agreed with woman 2's assessment of appropriate and inappropriate matters for chiefly involvement. Only one woman out of the eight present reported that she had ever taken a problem related to domestic violence to a traditional leader. However, the headwoman said that her village was very large, and many women bring problems to her. "Namibians are very shy," she said, "but people bring problems to me, maybe just not the people here. Even if women are abused by men, they bring that problem [to me]." ⁹³

As the table below illustrates, my survey supports the claim that domestic violence is framed as a private matter in these communities, with a total of 58.8 percent of respondents in Ovambo villages under TAs calling domestic violence a private matter. When compared with the same question asked about rape on page 218, the differences in intersubjective understandings of the two types of GBV become even more apparent. That being said, a divide clearly exists among respondents, as more than 40 percent called domestic violence a community concern. Opinions on this issue are far more divided than on land or HIV/AIDS, or rape, each of which more than 80 percent of respondents called public matters. Both my interviews and the survey support this project's central hypotheses: domestic violence is framed as a private matter, so traditional leaders do not intervene as requested by the state, and intervention is not enforced due to lack of state oversight for chiefs' implementation activities.

Table 6.3. Attitudes toward spousal abuse as a private or public concern

	Men	Women	Total
Agree with statement 1	48.9%	53.7%	58.8%
Agree with statement 2	51.1%	46%	41.2%

*Question: Which of the following is closest to your view? Select statement 1 or statement 2.
Statement 1: A husband hitting or beating his wife is a private matter and is only business of the victim and the victim's family.*

⁹³ Ibid.

Statement 2: A husband hitting or beating his wife is a matter of concern to the entire community.

Source: Question 25 in Traditional Communities Survey (Appendix 2). N=187.

Violence against men

Since the implementation of GBV measures began in the mid-1990s with the opening of the first Women and Child Protection Units—spaces within state hospitals that contain all of the legal documents and medical equipment needed to assist GBV victims, along with law enforcement and medical professionals trained in handling these types of cases—some Namibians have asserted that the protection and empowerment of women has contributed to the marginalization of men. Assertions that government has abandoned the male half of the population in its efforts to protect women have led to widespread resentment and public criticism of GBV legislation and policies (Ministry of Gender Equality and Child Welfare 2012). One of the most popular claims among critics of the government’s anti-GBV measures is that incidents of domestic abuse against men have increased since the passage of the Combating of Domestic Violence Act in 2003 (Mbangula 2006). Although all available data from southern African countries with domestic violence prevention laws refute this claim—studies in Namibia suggest that 90 percent of all victims of GBV are female (Gender Research and Advocacy Project 2012)—it is persistent. The narrative of a Namibian political scientist provided an explanation for the rise in passion killings that exemplifies this narrative of women’s political and social gains made at the expense of male decline:

The emphasis on women’s empowerment was inadvertently accompanied by an unsaid disempowerment of men in society. The more we place premium [sic] on the role of women in society, the more we sound as if we are saying that men’s role is either negative and must be discontinued or transformed into something we are not even certain of. The emphasis on women and the girl child has unarguably led to the growth of low esteem in young men... (Diescho 2014).

Interviews with traditional leaders and church officials in northern Namibia suggested that men in positions of power in Ovambo communities subscribe to the narrative of male marginalization and victimization that has been documented at the national level as well. A male church leader in his 70s that worked closely with Ovambo traditional leaders criticized the government's discriminatory approach to GBV: "Me as a man, I cannot report [to the WCPU] that my wife is doing this to me because it would bring me shame...Man suffer like a sheep or even a lamb, but the woman suffer like a goat,"⁹⁴ by which he meant that goats cry loudly and with little provocation, while sheep keep quiet even while being slaughtered. Women can make a lot of noise "and not be in serious problem, while men keep quiet, even when they are in extreme pain."⁹⁵

A village headman in one traditional authority quantified the prevalence of violence against men to which the church leader alluded, stating that "around 83 percent of men are abused in [my village]. Women treat us like monsters."⁹⁶ He said that common forms of domestic abuse against men included wives refusing to feed their husbands and women turning their children against their fathers. He also mentioned that, in cases of domestic abuse, men will slap their wives in anger, but "the anger of a woman is much worse. She will get a knife or a panga [machete] and attack" her husband with the weapon. Women's methods of abusing their husbands are very dangerous, the headman stated.

Other traditional leaders adopted similarly expansive views of what constituted violence against men. A traditional secretary asserted that domestic violence against men often takes the

⁹⁴ Interview with church leader, Oshikoto region, April 24, 2012.

⁹⁵ Ibid.

⁹⁶ Interview with headman, Oshana region, May 4, 2012.

form of emasculation. He recounted the story of a woman in his traditional authority that had more money than her husband. She owned a car and would take the keys away from him in front of his friends. He complained that that men were afraid to seek help from the closest WCPU, located at a large state hospital, because “people [there] will laugh at you. It is called the Women and Child Protection Unit. It should be changed to the Men, Women and Child Protection Unit so men are able to go there too.”⁹⁷ Similarly, a traditional secretary reported that “the problem with men is a thing of shame. We are too shy to say we are beaten” (Ibid).

While women disagreed with the claim that violence against men was a widespread problem in the area, nearly every male traditional leader with whom I spoke reported that men were the true, but hidden, victims of domestic abuse in the former Ovamboland. Assertions that men are the “true” victims of domestic violence, and defining what constitutes GBV, serve a strategic purpose for traditional leaders, particularly village-level headmen. The next section interrogates the widespread myth that men experience more domestic violence than men.

Explaining GBV implementation patterns

Throughout this dissertation, I have made the case that traditional leaders are not uniformly opposed to the promotion of women’s rights. Indeed, they have proven to be useful allies in the promotion of some rights, including communal land allocation and inheritance. Why, then, have chiefs done so little to implement policies intended to protect women from violence?

As in the case of HIV/AIDS, the state has put chiefs in a difficult position by asking them to engage with domestic violence policies. Traditional leaders may jeopardize the basis of their authority if they engage in a public process of redefining traditional beliefs related to gender-

⁹⁷ Group interview with traditional leaders, Omusati region, April 25, 2012.

based violence. Doing so would underscore the distance of chiefs from the customs of “time immemorial” on which they predicate their legitimacy. Moreover, as this chapter has argued, a majority of citizens regard domestic violence as a private, family affair in which the intervention of traditional leaders would be inappropriate. Asserting that violence against women does not exist within their communities, or that violence against men is the real problem, allows traditional leaders to avoid being seen as shirking their responsibilities to the state.

Beating or hitting women to “maintain discipline” or “keep them in line” represents a visible form of control over rapidly-shifting and destabilizing gender relations brought by the 1990 constitution with its guarantee of gender equality. Increasing rates of violence against women and the extreme brutality of these acts are often attributed to the improving status of women in society. Men feel threatened by their changing status and dwindling power and use violence to try to assert control over women as proxy for a social order over which they increasingly have no control (Britton and Shook 2014, 170-171). Although the state has now launched several campaigns to try to reduce rates of GBV, I argue that domestic abuse remains common because it represents a deeply-entrenched, widely-recognized method of maintaining control over wives, and by extension, families. In the next section, I examine some of the narratives that use understandings of discipline or control to justify “wife beating.”

Justifications for “wife beating”

At the 2007 national conference on combating GBV I described at the beginning of this chapter, several Ovambo traditional leaders noted that wife beating was a way for husbands to demonstrate their love of and control over their wives and was therefore condoned within their communities (Ministry of Gender Equality and Child Welfare 2007). During my interviews in 2012, I asked traditional leaders whether they considered domestic violence an acceptable way

for men to show love for their wives. Male chiefs from all three TAs in which I conducted interviews laughed at the mention of this custom and denied that anyone accepted wife beating as a show of love any longer. The chief of one traditional authority said that “that sort of thing happened in the past, in the 1950s and before, but not in this current generation”.⁹⁸ A village headman said, “we totally disagree [with that claim], but because we were raised in our parents’ houses, we see that a lady’s beaten out of anger.”⁹⁹

Although traditional leaders expressed attitudes toward wife beating that differed significantly from those shared by some at the 2007 national GBV conference, they still reported that domestic violence was acceptable in certain situations. This finding echoes the conclusions of a 2007 nationwide survey of attitudes toward GBV that found that, in the former Ovamboland, over 60 percent of men believed they could beat their spouses in one or more of the following situations: when the woman burns dinner, neglects her children, argues with her husband, goes out without her husband’s permission, refuses sexual relations with her husband, or has sex with other men (MoHSS and Macro International 2008).

A traditional secretary summed up the attitude shared by many chiefs: “I don’t believe you can beat a woman to show her love...but, if a woman does something wrong, then she can be beaten, to be corrected.”¹⁰⁰ A good example of when it is ok to beat a woman has to do with women going to shebeens (bars) while leaving their small children home alone, he said. “Why would a woman not be beaten when she has done something wrong?” he concluded.

In a group interview of five traditional leaders from the same authority, two examples of situations in which violence against women may be justified were shared. The secretary to the

⁹⁸ Interview with traditional leader, Oshana region, May 2, 2012.

⁹⁹ Interview with headman, Oshana region, May 4, 2012.

¹⁰⁰ Interview with traditional secretary, Oshana region, May 4, 2012.

chief noted that highly mobile northern Namibians often left spouses at home while traveling to Windhoek for government posts or the southern regions for mining jobs. These living arrangements frequently created conditions that fostered domestic violence: “A man works away from home, and while he is away, the wife will become pregnant by the neighbor. When the husband comes home and finds this out, the wife will be abused because she hurt the man, the family, but it’s kept quiet,” the traditional secretary explained.¹⁰¹ A headman added that women are beaten after their husbands visit witchdoctors that tell them their wives have bewitched them. “Since people go to witchdoctors, the wife [will get a potion to] control the husband, which is emotional abuse. The wife will bewitch the husband so that he gives her all of his paychecks.”¹⁰²

While traditional leaders claim to have left behind the belief that men could beat their wives to demonstrate their love for them, they still believe that domestic abuse is acceptable in certain situations. When a woman is seen as behaving inappropriately or in a way that could bring harm to the family, such as by bewitching her husband or having an affair, the traditional leader with whom I spoke felt that wife beating in these circumstances was acceptable to regain control of the household.

During my fieldwork, I had an experience that illuminated in a very small way the vulnerability that many rural women experience in their daily lives. In February 2012, I spent a week conducting interviews of community leaders for a study on the socioeconomic status of the San people for the LAC. A few days into the work, I went with two other researchers from the LAC to the village’s only *cuca* shop, a bar that also sold groceries. The shop was filled with

¹⁰¹ Interview with traditional leaders, Oshana region, April 25, 2012.

¹⁰² Interview with traditional leaders, Oshana region, April 25, 2012.

people we had already interviewed, including the village's headman. I greeted the headman, and he grabbed my hand in reply.

“We are a rainbow nation now,” he told me, and I realized he was intoxicated. “We share now, America and Namibia. Black and white, women, we share everything.”

He began to pull me in the direction of the front door. It took me a moment to process what the headman was saying.

“No!” I said, as I realized what was happening. “I have to leave,” I said, craning my neck around the group of drunken young men that stood between my colleagues and me.

The headman shook his head, grabbed the hand I had tried to wrest away and smacked it, hard. Then he shoved it away from him and turned his back to me. I walked quickly out of the shop, hopped into the car with my colleagues, and we drove away. During the drive, I told the passengers about the incident. A female colleague that had grown up in the region made a telling point: “You see, something like that,” she said, “you have so much power as a white westerner. You command more respect than nearly any woman in that village. But now you see how powerless a woman would be to stop a man here. If the headman would do that to you, imagine how many other times he has done this to other women.”

Competing narratives

In my interviews, the attitudes of traditional leaders on GBV were not monolithic. Chiefs expressed opinions on violence against women that tended to be informed by understandings of Namibian law and research on causes of violence against women. The variation in attitudes is possibly due in part to the training offered to these government-recognized leaders by the Legal Assistance Centre and the Ministry of Gender Equality and Child Welfare. One junior councilor

who, in his position as part of the government-recognized leadership of his traditional authority, had attended several training sessions on the legal and social dimensions of GBV, observed that this type of violence “is something that happens all the time in your house. You think you are not abusing your wife, but men make women do the work in the house, while men work in the morning.” Men come home at 10 a.m. to take a nap, while the woman keeps working, and “making women do the majority of the work is abuse.”¹⁰³ This traditional leader, a married man in his late 50s with a third-grade education, estimated that 70 percent of all domestic violence victims in his constituency were female. Forms of violence against men were not as dire as those experienced by women, he noted. Abuse against men tended to include denying a man “his right to food or sex in the house.”

In another example of the differences between the attitudes of traditional leaders in high-profile positions and those of lower-ranking headmen, the deputy chairperson of the Council of Traditional Leaders, in response to several high-profile cases of domestic abuse in 2012, issued a public statement in which he called on other traditional leaders to “speak out against this ‘demon’ that is ripping apart Namibian society” and criticized them for “remain[ing] quiet while they should be making their voices heard since they represent these victims” (Nunuhe 2012).

Additionally, as mentioned above, I found that women were more likely than men to report that domestic violence against women was common within their communities. As a village headwoman reported:

Violence against women is here in [village]. Men abusing women, they are here. People gather at this tree when there is a problem. If it can’t solve it here, it take it to the traditional authority court... Women abusing men is actually there, but mostly in the form of women leaving the house because she won’t sleep with him. The man is alone in the

¹⁰³ Interview with traditional councilor, Oshana region, April 30, 2012.

house with nobody to cook. That is a form of abuse. Maybe they [men] are not telling me [about violence against them].¹⁰⁴

In the next section, I discuss the implications of this gender divide.

Alternative and additional explanations

Other explanations have been advanced to account for Ovambo traditional authorities' variable support of rape laws and lack of support for domestic violence policies. For example, studies have found that the most critical factor driving national policy change on GBV is feminist activism (Weldon and Htun 2013). Perhaps this type of activism has a similar effect on the implementation of GBV policies, and it was absent in the Namibian case. Little evidence exists to support this explanation, however. Indeed, in the case of communal land allocation efforts, women's groups were involved in lobbying for government action on GBV from the earliest days of independence and remained involved in the implementation phase (Khaxas 2000, "Real Men Don't Rape! Say the Namibian Men for Change" 2000, "Speak out about Violence against Women" 1996, Becker 1995, Lotter 1993).

At the local level in Ovambo communities, however, I found that most of the women's groups involved in implementation processes were stymied by chiefs acting as gatekeepers to their communities. The leaders of two regional chapters of a women's group with outposts in every region of the country complained about the lack of access to villages under the authority of TAs. The chairperson of an Ovambo region chapter reported that traditional leaders in her area had begun to attend training sessions on the causes of GBV and state resources for victims. She also said, however, that attempts by her organization to bring similar education programs on GBV to traditional communities were blocked by Ovambo TAs. Her organization, following local norms, asked the chiefs for permission to hold meetings in local churches or TA offices to

¹⁰⁴ Interview with headwoman, Oshana region, May 3, 2012.

which all community members would be invited to learn about GBV. The chiefs denied these requests, instead asking the women's group to present the information to just one or two TA members. The chiefs would later meet to discuss the information that had been shared by the women and then hold public forums in their villages to share this information. Because traditional leaders blocked direct access to their communities, the chairperson would not evaluate how accurately, if at all, they relayed the information about causes of and help for GBV to their subjects.¹⁰⁵ The chairperson from another regional chapter of the same group relayed similar experiences in her interactions with Ovambo traditional leaders.

Within Ovambo traditional communities themselves, many women's groups exist. It appears that very few of these groups, however, take the advancement of women's social or political status as their primary goals. Indeed, every group that I met or was told of had formed either for purposes of economic advancement or as a women's association at a church. These groups did not have the advancement of women as their primary goal, nor, in the case of the church groups, were they autonomous. This point matters because research shows that autonomous feminist movements are more effective at achieving their policy demands than those affiliated with other organizations, like political parties or churches (Weldon 2002). The women's association representatives with whom I spoke had not engaged in lobbying chiefs on GBV or any other matter. Instead, they were interested in first aid training and starting small-scale income-generating projects.¹⁰⁶

¹⁰⁵ Interview with women's group chairperson, Oshana region, April 26, 2012.

¹⁰⁶ Interview with women's church group member, Oshana region, May 4, 2012; Interview with women's church group, Oshana region, May 3, 2012; interview with women's group, Oshana region, May 4, 2012.

It is certainly possible that autonomous women's groups that take the empowerment of women as their primary goal exist within other Ovambo villages, but I did not encounter any in my interviews, fieldwork visits, or reviews of Namibian newspaper articles. I cannot, however, discount the possibility of their existence. Overall, however, my research suggests that a strong, autonomous women's movement against GBV at the national level has not met with the same success in local-level implementation as it did in the policy adoption process. This seems to be due to social norms that frown upon open discussion of domestic violence within the home as well as the gatekeeper function of traditional leaders that are keeping direct educational opportunities by women's groups from reaching their communities.

Demographic characteristics of traditional leaders

Although my sample size was too small to draw any definitive conclusions, interviews with an Uukwambi TA headwoman and a women's group within her village, discussed above, suggest that victims of domestic violence may be more likely to ask for the help of headwomen than headmen. The headwoman said, "I know how many women have brought problems to me. Namibians are shy, but people bring problems to me...even if women are abused by men, they bring that problem. [I] might get another woman to witness for counseling. I can sometimes bring peace to the couple myself."¹⁰⁷ By contrast, the other headmen that I interviewed in Ovambo TAs asserted that domestic violence was very rare. It is possible that women are more comfortable bringing intimate problems like spousal abuse to another woman than to a man. In her study of female chiefs in Botswana, Gretchen Bauer (2014) concluded that these traditional leaders substantively represented the interests of women. For example, a woman *kgosi* (chief) appointed to the national house of chiefs pushed for the establishment of shelters for women

¹⁰⁷ Interview with headwoman, Oshana region, May 3, 2012.

fleeing abusive partners. This proposal was met with derision by many of her male colleagues: one male *kgosi* told her, “you don’t get anything—whatever motion you raise—unless it will help men” (Bauer 2014, 9). Although anecdotal, Bauer’s findings and mine suggest that the substantive impact of female chiefs on the advancement of women’s interests merits further study.

Conclusion

Policies intended to reduce rates of GBV represent the set of women’s rights policies that has been least effectively implemented at all levels, including within rural communities by traditional leaders. The implementation of policies designed to combat domestic violence in traditional communities is most problematic. By comparing traditional leaders’ actions and comments on rape and domestic violence, I demonstrate that they are more faithfully, though not fully, implementing rape policies based upon their framing of particular rape cases as damaging to the entire community. Further, sporadic oversight of community courts by the MJ has pushed traditional leaders to only hear compensation cases for rape once they have been through the criminal justice system. By contrast, chiefs and their communities regard marital rape and other forms of domestic violence as private, family matters that do not involve the entire community. Traditional leaders’ involvement in cases of domestic violence would therefore be inappropriate and overstepping the bounds of their roles. While I note many communities and traditional leaders that have become involved in domestic violence matters, the majority of chiefs in this study ignored their obligations to educate their communities about and challenge harmful traditional beliefs that exacerbate GBV. Every TA in the study has also failed to align customary

law on domestic violence with the CDVA. The lack of enforcement by the MGECW and MJ allow chiefly inaction on these policy implementation goals to persist.

CHAPTER SEVEN CONCLUSION

In this dissertation, I have sought to understand the conditions under which traditional leaders will support women's rights policies. In contrast with prevailing approaches to traditional leadership that characterize the institution and its actors as uniformly beneficial or harmful to the achievement of democratic principles, I have demonstrated that the impact of chiefs varies by policy area. This finding holds even when those policies promote women's rights, an issue widely regarded as inimical to the interests of traditional leaders. By examining the ways in which traditional leaders framed various women's empowerment issues, a framework emerged that explains traditional leaders' activities vis-à-vis the implementation of women's rights policy. I argue that chiefs support women's rights policies when they believe the issue that a given policy addresses affects the wellbeing of the entire community. Institutionalized state oversight matters as well: when oversight exists, traditional leaders are more likely to implement a policy *as requested*, and the addition of a supervisory body can improve adherence to policies even when chiefs already support them.

In moving beyond debates about chiefs' impact upon democratic consolidation in African states, this dissertation contributes to the literature on traditional leadership. It offers a more nuanced account of community and state demands that traditional leaders must consider when deciding whether and how to engage with a given policy. By examining their obligations to the state as semi-formal street-level bureaucrats that are accountable to both the state and their communities, I illustrate the delicate tightrope traditional leaders walk between implementing state policies as requested and preserving cultural legitimacy within their communities. Analyzing the implementation of women's rights policies within traditional communities helps to fill an important gap in the literature on women and politics, which has recently benefited

from many excellent studies of women's rights policy adoption but remains lacking in work on the implementation of these policies.

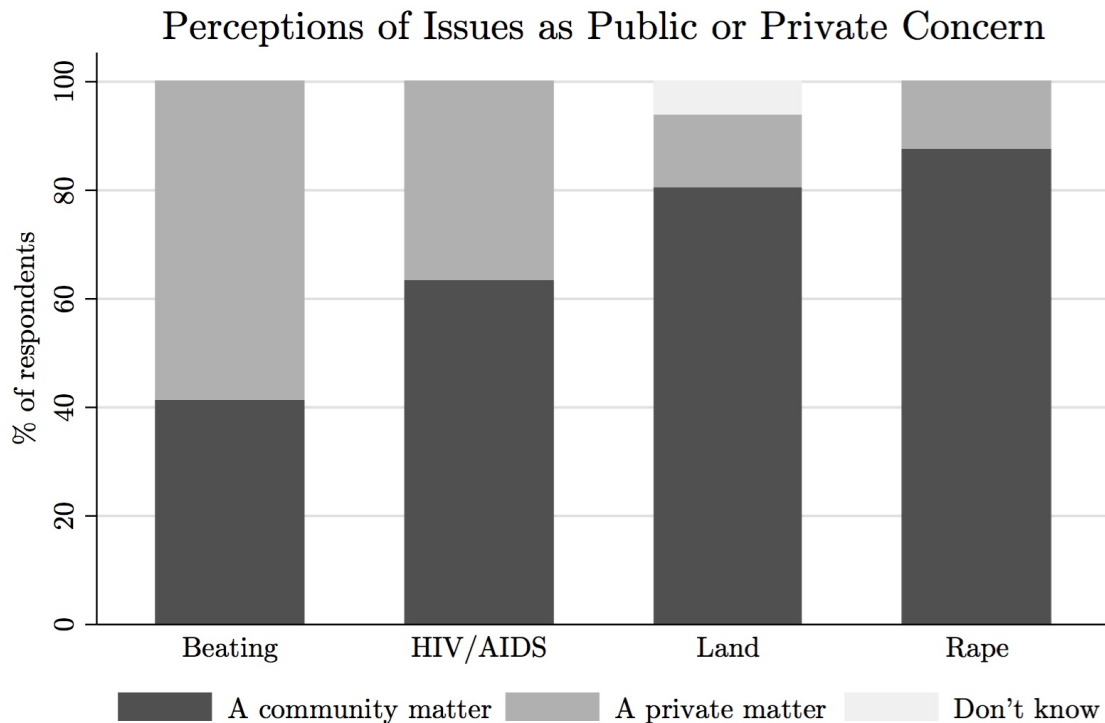
Main Findings

Traditional leaders

A key finding of this project is that chiefs support policies that promote women's rights when they perceive these policies as benefiting the community *as a whole*. I refer to the normative logic underpinning this finding as the "community welfare principle." By contrast, when chiefs regard a policy as addressing issues of individual or private concern, they generally do not support it. This finding extends similar conclusions made by scholars studying traditional leadership in other parts of Africa, including the Zulu in South Africa (Williams 2010). Chabal and Daloz (1999) refer to this concept in African politics as "communal logic" and suggest that it permeates nearly every corner of sub-Saharan Africa as a taken-for-granted principle by which all communities and states operate. Within this moral matrix, it makes sense that traditional leaders would lend their support to women's rights policies that they view as likely to improve the entire community's wellbeing, even though these policies also appear to challenge traditional gender roles or beliefs.

I do not, however, believe that support for gender equality motivates the policy activities of traditional leaders. Instead, I have made the case in this dissertation that chiefs weigh their obligations to the state against the welfare of their communities and their own legitimacy and support. Calculations like these resulted in Ovambo TAs amending customary law to allow widows to stay on their land without paying, but generally refusing to grant communal land to single women until compelled to do so by Communal Land Boards. Moreover, their inaction on

some policies, like domestic violence, and reframing of other policies, like HIV/AIDS prevention, appears to be supported by their subjects. The ways in which respondents in my survey understood each policy issue as public/communal or private/individual corresponded very closely with the frames used by chiefs.



State oversight

The second part of my framework predicts that traditional leaders are more likely to implement a women's rights policy in the manner requested when some sort of institutionalized state oversight of their implementation activities exists. My research suggests that the form this oversight takes matters minimally. Simply having some sort of consistent review of chiefs' activities is enough to persuade them to implement policies as the state has requested, it seems.

The vague, contradictory policies and practices regarding the institutional position of traditional leaders do not result from a weak state or dueling political interests. Rather, I suggest that the vague positioning of chiefs as partially formal and within the state, and partially informal and outside of the state, was an intentional policy choice. By positioning traditional leaders within a semi-formal, gray area that is neither wholly within nor outside the state, policymakers have created a situation that allows them to control the political threats traditional leaders may pose—a concern that has lessened in the last 15 years but one whose institutional fingerprint will remain—while also capitalizing upon their local knowledge and legitimacy to access rural communities and fill gaps in public service delivery.

Beyond Namibia: Applying the framework to other contexts

Does this project's central explanatory framework, developed and tested in the Namibian context, apply elsewhere? In this section, I examine evidence that my framework works in other countries and policy contexts. An important caveat applies, however: this dissertation takes seriously the language used by the study's subjects and draws conclusions based upon the ways in which state officials, Ovambo traditional leaders, and villagers framed the communal land allocation, HIV/AIDS, gender-based violence, and women's rights more generally. To conduct the same type of research in other contexts, one would need to similarly study the ways in which actors talk about and make sense of these issues. Therefore, while I expect the framework to travel, social, political, and historical factors contribute to different understandings of what constitutes community interest in a given state or community. What chiefs frame as a matter of community welfare in one country or region may be framed quite differently in another.

GBV in Botswana

In 2008, Botswana passed the Domestic Violence Act. It has augmented the law with a number of national policies and plans of action. A 2012 study by the Women's Affairs Department and Gender Links found that 67 percent of women in Botswana had experienced intimate partner violence in their lifetimes. In response to these survey results, Botswana joined with 9 UN agencies in 2014 to implement a nationwide program to educate Botswana on GBV and law enforcement, courts, and political and traditional leaders on strategies for reducing this type of violence. The anti-GBV campaign in Botswana, as in Namibia, focuses on traditional leaders as important stakeholders in combating violence. This position is due in large part to the state's position that "socially and culturally-constructed norms and roles have shaped gender relations, leading to unequal power relations" ("UN Teams up against Gender-Based Violence in Botswana" 2014).

Chiefs' treatment of gender-based violence is very similar to that of their counterparts in Namibia. Mogopodi Lekorwe describes how *dikgosi* (chiefs) talk about domestic violence:

Traditional leaders also do not intervene at the appropriate time since they normally insist that such cases should be dealt with by the relatives within the household before it reaches them. Different tribes in the country treat wife-battering differently. In some areas, it is argued that wife-beating is allowed as long as it is not excessive and it is done in private. Those who said custom allows wife-beating said it was meant to discipline a disobedient woman and it served that purpose (2011, 261).

Thus, it appears that in Botswana have framed domestic violence as a private matter in which their intervention, either in traditional court or one-on-one, would be inappropriate. Moreover, as Botswana's 2014 country report on the implementation of the Beijing Platform for Action stated, traditional leaders "perceived that gender equality was intended to undermine culture and male leadership" (Gender Affairs Department 2014, 20). In addition to framing domestic violence as a private matter outside the scope of community wellbeing, the state has not instituted any

supervisory bodies to oversee the implementation of the Domestic Violence Act or the anti-GBV campaign they are running with the UN. Batswana chiefs, in summary, have framed GBV as a private matter inappropriate for chiefly involvement, and no oversight bodies exist to monitor chiefs' adherence to the Domestic Violence Act, leading to its incomplete implementation.

HIV/AIDS in South Africa

Like Namibia, South Africa struggles with some of the highest HIV infection rates in the world. UNAIDS estimates that 18.9 percent of South Africans ages 15-49 are living with the virus (UNAIDS 2016). Also like Namibia, South Africa frames HIV/AIDS as disproportionately impacting women in terms of both infection rates and burden of care for those afflicted with the disease.

South Africa has engaged traditional leaders in a variety of efforts to combat HIV/AIDS, many of which focus on empowering women as a strategy for reducing new infections. In one rural Zulu village, a chief's participation in a long-term project to create an "AIDS-competent community" contributed significantly to its failure, according to one study (Campbell 2010). The village's chief supported efforts to combat AIDS, but his commitment to a "highly conservative interpretation of culture and tradition" (Campbell 2010, 1640) harmed project outcomes. In community meetings, the chief advocated for controlling and dominating youth and women. The chief thereby undermined the main goal of the project, which was to reduce HIV infection rates by empowering women as community decision makers. Of course, the scope of this study is too small to draw any broader conclusions about the policy implementation behavior of Zulu chiefs in South Africa. The pattern of chiefly involvement that includes reframing the policy and

negatively impacting outcomes resembles the pattern seen in Namibia and warrants further investigation, however.

Implications for policymakers

As this dissertation has taken policy implementation as a central concern, it seems appropriate to offer some thoughts on how policymakers might construct women's rights statutes in ways that increase the chances of compliance by traditional leaders. Two lessons are particularly salient. First, the ways in which policymakers frame laws matters. As the case of domestic violence illustrated, traditional leaders ignored policy directives that requested they educate their communities in public forums about the causes of domestic violence. The MJ and MGECW particularly wanted chiefs to publicly denounce traditional beliefs and practices that exacerbated rates of GBV. This framing appeared to make chiefs uneasy because these actions seemed likely to disrupt already-unsteady power relations and gender dynamics in many communities. Traditional leaders also resisted engaging with domestic violence policies because domestic violence is understood in Ovambo communities as a private matter, and traditional leaders therefore have no obligation or standing to intervene in the eyes of their communities.

To increase chances of implementation compliance by traditional leaders, policymakers should consider framing laws in public statements, literature and presentations to chiefs using concepts that resonate with the community welfare principle. In the case of domestic violence laws, for example, those in charge of educating traditional leaders about their obligations under the statute might have seen more support if they had talked about domestic violence as a public issue due to the emotional and physical harm it caused vulnerable women and children. Similar

rhetoric was employed by traditional leaders in their justifications for amending customary laws to grant widows greater communal land rights in 1989 and 1993.

Second, this study finds that oversight has a significant and positive impact on the likelihood that traditional leaders will implement a policy as requested. Scholars of public administration have drawn similar conclusions in the American government context. Helen Ingram and Ann Schneider (1990, 82) make a case for tailoring laws to maximize their chances of effective implementation: “statutes need to be designed in such a way as to bias the implementation process toward supplying the values crucial to successful implementation, defined in terms of the production of desired consequences, increased knowledge, and increased political support.” In situations in which traditional leaders will likely oppose a particular law, policymakers can increase chances of compliance by making policy goals clear and unambiguous. Additionally, policymakers should make provisions for oversight bodies to which traditional leaders will be held accountable for their policy implementation responsibilities. Even in cases in which chiefs already support a law, such as the Communal Land Reform Act of 2003, supervisory bodies in the form of communal land boards further improved already-impressive compliance rates by traditional leaders.

Next Steps

As I mentioned in chapter 1, studying the implementation of a law or policy can be uniquely challenging in developing countries. Nonetheless, it represents an important next step in research on women’s rights policy adoption. Future studies might examine the implementation of one policy across many sites within a state to capture variation in policy outcomes and identify factors critical to success or failure. I did not have the opportunity in this dissertation to conduct

pre- and post-implementation surveys to measure the impacts of given policies upon the issues they targeted. Careful countrywide studies of individual policies from their nascent stages could yield important factors for policy outcomes and also better isolate and measure the impact of traditional leaders on the success or failure of a given law.

It would also be useful to test whether my framework applies to traditional leaders that are accountable only to the state or to those with no hereditary or traditional claim to rule. Do chiefs without traditional claims to legitimacy follow the same logic of support for women's rights policies as those with royal bloodlines? If so, what drives this logic of support? This line of inquiry would be useful for examining long-running debates about the importance of legitimacy and claims to proper lineage. Perhaps, as discussed in chapter 1, and echoed by Kate Baldwin in her recent book (2015), what matters to traditional leaders' support of particular women's rights policies is not concerns about how a given law challenges the customs and "eternal yesterday" that they embody, but instead their entrenchment in a community.

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APPENDIX ONE

METHODS DISCUSSION

The data for this dissertation come from fieldwork conducted in Namibia between October 2011-June 2012 and follow-up survey conducted in August 2014. Chapter 6 also draws briefly on my experiences working as a research assistant for an American professor conducting research on state responses to GBV in Namibia in June 2007.

This section outlines the strategies that I used to conduct research in a data-poor country and with opaque organizations. I then explain the case selection for TA interviews. I conclude by explaining the development and administration of the original survey referenced throughout this dissertation. Taken together, these strategies allowed me to gather information from a variety of sources against which I could check claims in interviews and government documents and gain a clearer picture of the role of traditional leaders in the implementation of women's rights policies.

Research challenges

When I arrived in Namibia at the beginning of October 2011, I began my research by speaking with lawyers and researchers at the Legal Assistance Centre (LAC), with which I had established an institutional affiliation. They warned me that I would have difficulty obtaining interviews from government officials or traditional leaders but that my LAC affiliation would open many doors. The LAC, after all, had provided legal training on various issues to nearly every TA in Namibia and had written many of the laws that I was studying in this project.

Despite these warnings, however, I was unprepared for the number of rejections for interview requests I received. I estimate my rejection rate for interview requests to have been about 60-70 percent. For example, of the 14 people I contacted in the Ministry of Regional and Local Government, Housing and Rural Development, only two replied to my repeated emails

and phone calls. My attempts to track down nonresponsive civil servants by waiting outside their offices—a strategy Hannah Britton used in research with South African parliamentarians and dubbed “squatting” (Britton 2005)—were thwarted by the tight security in the ministry buildings. Every corridor and staircase in the MRLGHRD’s building was locked. My first attempt at waiting outside the offices of nonresponsive civil servants ended with a long wait in a locked stairwell until I could find a security guard to let me out.

I had originally planned to focus a great deal more attention in this project upon the Ministry of Gender Equality and Child Welfare. Having worked with the MGECW in November 2011 on the presentation to the meeting of the Council of Traditional Leaders, as described in chapter 3, I expected access to the ministry to be relatively easy to obtain. I received the permission of a high-ranking civil servant at the ministry to speak with anyone in the MGECW, and I began contacting every employee in the gender equality directorate. Several employees rejected my interview requests before I could finish asking them. Others asked me to call them back and never returned my calls or emails. Among those that refused an interview was the ministry’s IT employee, whom I mistakenly called.

Colleagues at the LAC that had worked with the MGECW attributed these refusals to talk to problems of understaffing at the ministry. Additionally, some colleagues suggested, they might be suspicious of me as a foreigner. Indeed, I found that many Namibians were suspicious of my motives as a white westerner studying a topic related to the government. In a country in which party allegiance is paramount and race relations remain shaky after decades of systematic discrimination, their suspicion was not surprising, but it did require me to find other sources of data.

The interviews that I did obtain were not as illuminating as I had hoped. As I described in chapter 1, many of the civil servants and traditional leaders with whom I spoke told me things that were verifiably untrue. For example, several traditional leaders told me that they were implementing HIV/AIDS education policies exactly as the government had requested, but I had newspaper articles in which they were quoted as saying that the epidemic could be stopped if men and women returned to traditional gender roles, a message that directly contradicted state policy. Nonetheless, I continued to request interviews from everyone I could identify from newspaper articles, reports, and recommendations from other interviewees that might have any involvement in any aspect of traditional leadership or the women's rights policies under study.

Types of data gathered

Using snowball sampling, I eventually gathered more than 80 semi-structured interviews with Namibians in government, traditional leadership, law, academia, civil society, religious groups, and traditional villages. Interviews with members of San TAs and villages were gathered in February 2012 as part of a multi-country research project on the socioeconomic status of the San with which I helped the LAC as a gender consultant. With the exception of the regional governor and head chiefs/kings of TAs, whose identity cannot be reasonably protected and who granted me permission to use their names, I protect the confidentiality of my informants and use pseudonyms for all other sources. The types and numbers of informants I interviewed are as follows:

Type of informant	Number
Head chief/king of TA (Ovambo and San)	3
Traditional councilor	8
Headman/woman	6
Traditional secretary	3
Woman living in TA villages (Ovambo and San)	35
HIV/AIDS and women's group representative	8
Church leader	3
Academic/policy expert	7
Civil servant (MGECW, MoHSS, MRLGHRD)	6
Legal expert (attorney and government legal review board)	4
Regional governor	1

In addition to interviews, I gathered a variety of documentary evidence, including every debate of the National Assembly between 1990 and 2010 related to traditional leadership and/or gender, more than 350 newspaper articles on traditional leadership and the policies under study in this project, and dozens of reports from the University of Namibia and various ministries. Additionally, I obtained colonial and apartheid-era documents from the National Archives of Namibia. Details of documentary evidence are discussed in chapter 1.

Case and Site Selection

After three months of fieldwork, I began to make arrangements to travel to the former Ovamboland, made up of Ohangwena, Omusati, Oshana, Oshikoto regions, to conduct interviews with traditional leaders in Ovambo TAs, along with elected officials, church leaders, NGO representatives, and citizens of traditional villages. I identified three traditional authorities in which to conduct interviews. I selected the Uukwambi TA, headed by *Elenga Enene* Herman Iipumbu, the Uukolonkadhi TA, headed by *Elenga* Daniel Shooya, and the Uukwaluudhi TA,

headed by *Omukwaniilwa* Josia Shikongo Taapopi. The case selection was guided by several factors:

- Information from interviews with gender experts, NGO representatives working in rural Owambo communities, and Namibian academics. In every interview that I conducted, I asked the interviewee which traditional authorities and/or leaders they considered to be especially supportive of or hostile to women's rights. The Uukwambi TA was by far the most-cited TA for progressive treatment of women. Previous ethnographic work within Uukwambi supported this claim (Ubink 2011).
- Information gathered from Namibian newspaper articles.
- Varied regions in which TAs were located, in case regional governments were affecting outcomes. In Omusati region, I interviewed representatives from Uukwaluudhi and Uukolonkadhi TAs. In Oshana region, I interviewed representatives from Uukwambi TA.
- Dates of designation of the head chiefs/kings of each TA, with one after independence (Iipumbu in Uukwambi, designated in 1991), one decades before independence (Taapopi in Uukwaluudhi, designated in 1960), and one in the midst of the transition to democracy (Shooya in Uukolonkadhi, designated in 1985). This is reflective of the overall distribution of Owambo chief designations: three were designated after independence, two in the mid-1980s, and three in the 1960s-70s.

As is often the case when doing fieldwork in Africa, practical considerations played a role in my site choices as well. For example, I tried for months to secure an interview with Uukwanyama TA head Martha Christiaan Nelembo, the queen whose coronation began this dissertation. She, however, fell ill before my arrival, and I was unable to interview her. Further, the significant

distances between villages and TAs constrained my choices. Nonetheless, I found differences in how traditional leaders and villagers across TAs talked about issues to be negligible. This outcome is not surprising given that Ovambo TAs have coordinated their customary laws and were ruled as one polity under South African rule.

Survey development and administration

My research did not gain real momentum until my last two and a half months in Namibia, at which point I had several interviews or appointments at various ministries or archives every day. This left me with less time than I would have liked each evening to do much with the new data I had gathered than transcribe the day's interviews. Therefore, I missed some of the important themes that emerged from my interviews until after I left the field and had the chance to review each line in great detail, paying close attention to the ways in which interviewees talked about policies and institutions. Chief among these themes was the community welfare principle that plays a central role in this dissertation. While I had noticed recurring references in interviews with traditional leaders to the community as a body and the importance of maintaining harmony and order in the community, I did not fully grasp the significance of these themes until several months after leaving Namibia.

I had conducted my interviews based on the assumption that "...there are multiple perceived and/or experienced social 'realities' concerning what happened, rather than a singular 'truth' [and that] event narratives are likely to vary depending on the perspective (political, cultural, experiential, etc.) of the persons being interviewed" (Schwartz-Shea and Yanow 2012, 4). It took several months of analyzing my data and further reading, however, before I realized that the discussions of community concerns represented exactly this concept of "*intersubjectively* constructed 'truths' about social, political, cultural, and other human events" (Ibid, 71).

Once I refined the basic arguments and framework of this dissertation through seminar and conference presentations, I developed a survey to test the reach of my theories. Specifically, I wanted to know if residents of traditional villages under the control of Ovambo TAs thought about the women's rights policies and issues under study in the same way as their traditional leaders. I randomly selected three Ovambo TAs in which to administer the survey: Ombalantu, Ongandjera, and Uukwambi. With the assistance of a research firm in Windhoek, two villages in each TA were randomly selected, along with two residential areas within northern Namibia's largest urban center, Oshakati to determine whether differences existed in the ways in which urban and rural residents of the area thought about the issues under study.

Following a pilot survey of eight respondents, the survey was carried out in June 2014 over one week by survey enumerators that were all university students from the area. In each village, enumerators worked from aerial photographs showing the homesteads in the area, which were randomly selected for visits by enumerators and used to locate the homesteads. A total of 278 people were surveyed, 210 in rural areas and 68 in urban areas.

APPENDIX TWO
TRADITIONAL COMMUNITIES SURVEY

1. Is the interviewee male or female? [do not ask]	Male Female
2. What is your age? [fill in number]	
3. Are you married?	Yes No
4. Are you the head of the household?	Yes No
5. Which language is your home language? [write in]	
6. What is your religion?	Christian Other
7. Does your household have a mobile phone?	Yes No

8. What is the highest level of education that you have completed?	
No formal schooling	0
Primary school	1
Some secondary schooling	2
Completed secondary school/high school	3
Some post-secondary training (university or non-university qualifications)	4
Completed university	5
Post-graduate	6

Next, I would like to ask you about some roles that people play in their communities.

9. Are you an official leader, active member, or inactive member of any of the following:					
	No	Inactive member	Active member	Official leader	Don't know
A religious or church group that meets outside of regular worship services	0	1	2	3	9
Any other community group or voluntary association	0	1	2	3	9

10. During the past year, how often have you contacted any of the following people about some important problem or to give them your views:					
	Never	Once	A few times	Often	Don't know
a. Local authority councillor	0	1	2	3	9
b. Regional councillor	0	1	2	3	9
c. Headman/woman	0	1	2	3	9
d. An official of a government agency	0	1	2	3	9

e. Member of the National Council or National Assembly	0	1	2	3	9
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11. For each of the following statements, please tell me whether you agree or disagree.					
	Disagree strongly	Disagree	Neither agree nor disagree	Agree	Agree strongly
a. It is the duty of headmen/women to maintain peace and wellbeing in their communities	1	2	3	4	5
b. It is the duty of headmen/women to bring development projects to their communities	1	2	3	4	5
c. It is the duty of headmen/women to uphold the customs and beliefs of their communities	1	2	3	4	5
d. It is the duty of headmen/women to empower women	1	2	3	4	5

12. For each of the following statements, please tell me whether you agree or disagree.					
	Disagree strongly	Disagree	Neither agree nor disagree	Agree	Agree strongly
a. My headman/woman is doing a good job of maintaining peace and wellbeing in my community	1	2	3	4	5
b. My headman/woman is bringing development projects to my community	1	2	3	4	5
c. My headman/woman is doing a good job of upholding the customs and beliefs of my community	1	2	3	4	5
d. My headman/woman is doing a good job of empowering women	1	2	3	4	5

13. Which of the following is closest to your view? Select statement 1 or statement 2.			
Statement 1: Headmen/women should always MAINTAIN THE CUSTOMS AND PRACTICES of the traditional authority.		Statement 2: Headmen/women should CHANGE CUSTOMS AND PRACTICES of their traditional authority if they conflict with the constitution.	
Agree very strongly with statement 1 1	Agree with statement 1 2	Agree very strongly with statement 2 3	Agree with statement 2 4
Agree with neither			5
Don't know			9

14. Which of the following is closest to your view? Select statement 1 or statement 2.			
Statement 1: Women should have equal rights and receive the SAME TREATMENT AS MEN		Statement 2: Women have always been subject to traditional laws and customs, and THAT SHOULD REMAIN SO.	
Agree strongly with statement 1 1	Agree with statement 1 2	Agree strongly with statement 2 3	Agree with statement 2 4
Agree with neither			5
Don't know			9

15. Do you agree with the following statement: HIV/AIDS is a problem in my community	
Agree strongly	1
Agree	2
Neither agree nor disagree	3
Disagree	4
Disagree strongly	5
Don't know	9

16. In your opinion, are there more women or men infected by HIV/AIDS in your community, or are the numbers of infected men and women about the same?	
Men	0
women	1

About the same	3
Don't know	9

17. Do you agree with the following statement? It is the responsibility of headmen/women to inform their communities about how HIV/AIDS can be prevented	
Agree strongly	1
Agree	2
Neither agree nor disagree	3
Disagree	4
Disagree strongly	5
Don't know	9

18. How often have headmen/women leaders shared information about preventing HIV/AIDS with your community?	
Never	0
Rarely	1
Sometimes	2
Often	3
Don't know	9

19. Which of the following is closest to your view? Select statement 1 or statement 2.			
Statement 1: HIV/AIDS is an illness that hurts the well-being of the ENTIRE COMMUNITY.		Statement 2: HIV/AIDS is an illness that only affects the FAMILY OF AN INFECTED PERSON.	
Agree very strongly with statement 1 1	Agree with statement 1 1 2	Agree very strongly with statement 2 3	Agree with statement 2 4
Agree with neither			5
Don't know			9

20. Looking back, how would you rate the problem of HIV/AIDS in your community compared to the past few years?	
Much better	1
Better	2
Same	3
Worse	4
Much worse	5
Don't know	9

Next, I would like to ask you some questions about domestic violence in your community.

21. Do you agree or disagree with the following statements?						
	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Don't know
a. Violence against women is a problem in my community	1	2	3	4	5	9
b. Violence against men is a problem in my community	1	2	3	4	5	9
c. Rape is a problem in my community	1	2	3	4	5	9

22. Who do you think should have the main responsibility in your community for helping victims of gender-based violence, including rape and domestic violence? [wait for response before prompting]	
Central government	1
Police	2
Headmen/women	3
Local government	4
Women and Child Protection Unit	5
Other/Don't know	9

23. How well or badly would you say the central government is addressing gender-based violence, including rape, wife beating and passion killings?	
Very badly	1
Fairly badly	2
Neither badly nor well	3
Fairly well	4
Very well	5
Don't know	9

24. How well or badly would you say your headmen/women are addressing gender-based violence, including rape, wife beating and passion killings?	
Very badly	1
Fairly badly	2
Neither badly nor well	3
Fairly well	4
Very well	5
Don't know	9

25. Which of the following is closest to your view? Select statement 1 or statement 2.	
Statement 1: A husband hitting or beating	Statement 2: A husband hitting or

his wife is a PRIVATE MATTER and is only business of the victim and the victim's family		beating his wife is a matter of concern to the ENTIRE COMMUNITY	
Agree very strongly with statement 1 1	Agree with statement 1 1 2	Agree very strongly with statement 2 3	Agree with statement 2 4
Agree with neither			5
Don't know			9

26. Which of the following is closest to your view? Select statement 1 or statement 2.			
Statement 1: Rape is a PRIVATE MATTER that only the victim and the victim's family should address		Statement 2: Rape is a matter of concern to the ENTIRE COMMUNITY	
Agree very strongly with statement 1 1	Agree with statement 1 1 2	Agree very strongly with statement 2 3	Agree with statement 2 4
Agree with neither			5
Don't know			9

27. Do you agree or disagree with the following statements?						
	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Don't know
a. Headmen/women should intervene to stop domestic violence when it is happening in their communities	1	2	3	4	5	9
b. Husbands may hit or beat their wives to show that they love them	1	2	3	4	5	9
c. A husband may hit or beat his wife if she has been unfaithful	1	2	3	4	5	9
d. A husband may hit or beat his wife if she neglects the children	1	2	3	4	5	9
e. A husband may hit or beat his wife if she argues with him	1	2	3	4	5	9
f. A woman that experiences gender-based violence is more vulnerable to contracting HIV	1	2	3	4	5	9

28. Looking back, how would you rate gender-based violence in your community compared to a few years ago?	
Much worse	1
Worse	2
Same	3
Better	4
Much better	5
Don't know	9

29. In your opinion, are men or women more often the victims of gender-based violence?	
Men	0
Women	1
About the same	3

Don't know	9
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Next, I would like to ask about some issues related to inheritance and land in your community.

30. Do you agree or disagree with the following statements?						
	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Don't know
a. In the past, when a man died his relatives usually took his property without his widow's permission.	1	2	3	4	5	9
b. Today, when a man dies his relatives usually do not take his property without his widow's permission. (Today, when a man dies his relatives ask the widow's permission before taking his property.)	1	2	3	4	5	9
c. Today, when a man dies in my community, his widow is allowed to stay on his land	1	2	3	4	5	9
d. Today, when a man dies in my community, his widow will often marry one of his brothers or cousins	1	2	3	4	5	9
e. Today, women have more rights to land and property than in the past	1	2	3	4	5	9

31. Who do you think SHOULD BE responsible for allocating communal land? [wait for response before prompting]	
Central government	1

Land board	2
Headmen/women	3
Regional or Local government	4
Ministry of Lands and Resettlement	5
Other/Don't know	9

32. Who do you think ACTUALLY IS responsible for allocating communal land? [wait for response before prompting]

Central government	1
Land board	2
Headmen/women	3
Regional or Local government	4
Ministry of Lands and Resettlement	5
Other/Don't know	9

33. In your community, do widows have to pay the headman/woman to stay on their land after their husbands die?

Never	0
Rarely	1
Sometimes	2
Often	3
Always	4
Other/Don't know	9

34. If a deceased man's relatives take his property without his widow's permission, who is the most likely to help the widow get her property back?

Land board	1
Legal Assistance Centre or other legal organization	2
Local authority councilor	3
Police	4
Headmen/women	5
Family members	6
Others	9

35. Do you agree or disagree with the following statement: ensuring widows and their children are protected from property grabbing is a matter of concern for the whole community.

Agree strongly	1
Agree	2
Neither agree nor disagree	3
Disagree	4
Disagree strongly	5
Don't know	9

36. In your opinion, is it easier for men or women to be granted a plot of land by a headman/woman?	
Men	0
Women	1
About the same	3
Don't know	9

37. Do you have a CERTIFICATE that proves that this land is yours?	
No	0
Yes	1
Applied for and was denied a land right	2
Land right is in spouse's name	4
Don't know	9

For the enumerator to fill out after the interview:

What is the name of the village and region in which this interview took place?

To what traditional authority does this village belong?

What is the name of the headman or headwoman that is in charge of this village? Is the person male or female?

Name: _____ Circle one: Male Female

38. Did the residence of the interviewee have electricity?	Yes	No
39. What was the main material of the floor?		
Earth, sand or dung	0	
Wood planks	1	
Vinyl or asphalt strips	2	
Ceramic tiles	3	
Cement	4	
Other	9	

End of interview:

How many calls were made to the household where the interview actually took place?	
Date of interview: write day, month and year	

Time interview started: write hour and minute, using 24 hour clock	
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Finally and importantly, page through all the pages to check that all the questions were covered and that the answers have been clearly marked or noted.

Questionnaire checked by supervisor: _____