

**From minors to equals? Kalanga women and marriage legislation  
in post-colonial Botswana, 1966–2005**

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**Abstract**

This article examines rural Kalanga women's reactions to marriage legislation in Botswana between 1966 and 2005. This legislation, it could be argued, fails to challenge the broader inequality which exists between women and men in Botswana. This becomes even more apparent when women are identified as belonging to a minority ethnic group and are resident in rural spaces. This article discusses how modernity, tradition-custom, and the law in Botswana converge today. It aims to demonstrate how some women reacted to the abolition of marital power, with a focus on how they perceive marriage. Focusing on rural Kalanga women, the study investigates reactions to Botswana's constitution of 1966, to the marriage laws of 1967, and the 2004 Abolition of Marital Power Act. Finally, it investigates the gendered impact of these laws – as well as the complex discourses surrounding marriage and human rights – on the lived experiences of Kalanga women. The article reflects on the divergent ways in which many women negotiated their struggle for recognition within their ethnic groups – while also circumventing their inferior position as wives under Botswana law and a patriarchal system. Some women in this study preferred to support a more 'traditional' form of inequality within the household. While this study cannot purport to represent all Kalanga women, it does ask important questions about the Botswana gender agenda and in so doing, raises questions of both the perpetuation of patriarchy and women's agency in Botswana.

**Keywords:** Botswana; 2004 Abolition of Marital Power Act; marriage; women's agency; Kalanga women; patriarchy.

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## Opsomming

Hierdie artikel bestudeer plattelandse Kalanga vroue se reaksies op huwelikswetgewing in Botswana tussen 1966 en 2005. Daar kan aangevoer word dat dié wetgewing nie daarin geslaag het om die breër ongelykheid tussen mans en vroue in Botswana uit te daag nie. Dit word selfs duideliker wanneer vroue geïdentifiseer word as lede van 'n etniese minderheidsgroep wat in die platteland woon. Hierdie artikel bespreek die wyse waarop moderniteit, tradisie en gebruike, en die wet, vandag in Botswana byeen kom. Die doel is om te wys hoe sommige vroue gereageer het op die afskaffing van huweliksmag, met 'n fokus op hul perspepsies van die huwelik. Met 'n fokus op Kalanga vroue, stel die studie ondersoek in na reaksies op Botswana se grondwet van 1966, die huwelikswette van 1967, en die Afskaffing van Huweliksmag Wet van 2004. Laastens word daar ondersoek ingestel na die geslagtelike impak van hierdie wette – sowel as die ingewikkelde diskoerse rondom die eg en menseregte – op die geleefde ervaring van Kalanga vroue. Die artikel besin oor die uiteenlopende wyses waarop vroue hul stryd om erkenning binne hul etniese groepering onderhandel het, en terselfdertyd ook hoe hulle hul minderwaardige posisie as vroulike eggenote onder beide Botswana se wetgewing en 'n patriargale orde omseil het. Sommige van die vroue in hierdie studie het verkies om 'n meer “tradisionele” vorm van ongelykheid binne die huishouding te steun. Alhoewel hierdie studie nie daarop kan aanspraak maak om om alle Kalanga vroue te verteenwoordig nie, stel dit wel belangrike vrae oor Botswana se gender agenda, en daardeur word verdere vrae gestel oor die voortsetting van die patriargie en vroue se agentskap in Botswana.

**Sleutelwoorde:** Botswana; 2004 Abolition of Marital Power Act; vroue se agentskap; Kalanga vroue; patriargie.

Botswana is often portrayed idealistically as a model African state in terms of its political and economic development, as having a flourishing multi-party parliamentary democracy, and enjoying relatively good governance, stable rule of law and smooth regional cooperation with its neighbours.<sup>1</sup> This picture, however, is contested by scholars such as Kenneth Good and Ian Taylor.<sup>2</sup> They, and similar other critics, suggest that the agenda for freedom and tolerance in Botswana is carefully orchestrated by the patriarchal state.<sup>3</sup> As such, its policies, it can be argued, uphold gender imbalances, with significant repercussions for the people who live under its laws.

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1. For example, see P. Fawcus, *Botswana: Road to Independence* (Gaborone: Pula Press and The Botswana Society, 2000), xi. See also A. Cook and J. Sarkin, 'Is Botswana the Miracle of Africa? Democracy, the Rule of Law, and Human Rights versus Economic Development', *Transnational Law & Contemporary Problems*, 19 (2010), 469.

2. K. Good and I. Taylor, 'Botswana: A Minimalist Democracy', *Democratization*, 15, 4 (2008), 763.

3. B. Maripe, D. Sebudubudu and M.Z. Botlhomilwe, 'Limited Freedom and Intolerance in Botswana', *Journal of Contemporary African Studies*, 29, 3 (2011), 331.

At independence in 1966, Botswana adopted a constitution which in theory promoted equality for all.<sup>4</sup> Until 2004, however, most of Botswana's laws denied women equal rights to those of men, including denying them the right to own land, the right to have their own money, and the right to enter into formal agreements such as legal contracts. In addition, marriage laws gave husbands sole authority over their wives, children and assets.<sup>5</sup> This patriarchal system was reinforced by the passing of the Citizenship Act of 1984 which limited the generational transfer of Tswana citizenship to male descendants. While this Act was amended eleven years later (in 1995) to include both men and women, it took another decade before the Abolition of Marital Power Act (AMPA) was passed in 2004. This was an effort to emancipate women married under Botswana Law and the oppressive marital laws passed at independence. These developments unfolded within two broader, and related contexts: firstly, growing international criticism of Botswana's human rights transgressions (which included its slow pace of entrenching gender equality) and secondly, and of special significance to this article, the treatment of marginalised ethnic groups in the country, more specifically, rural women, such as the Kalanga, who continue to find themselves adversely affected by both ethnicity and gender.<sup>6</sup>

Legislation and its enforcement are but one level of analysis in investigating gender and society. Discrimination has far-reaching consequences. Amongst the list of accolades widely associated with good governance in Botswana is respect for human rights. Yet, contentiously, Botswana continues to uphold the death penalty.<sup>7</sup> The International Court and various human rights organisations such as Amnesty International and the Ditshwanelo Human Rights Organisation have repeatedly criticised this policy. Even so, scholars such as Peter Fawcus and many other analysts

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4. Government of Botswana, *Constitution of Botswana 1966*, Chapter 2 (Gaborone: Government Printer, 1966).

5. T. Maundeni, 'Property Issues in the Dissolution of Marriages: Experiences of Some Divorced Mothers in Botswana', *Botswana Notes and Records*, 35 (2003), 35.

6. While I refer to specific ethnic/linguistic groups in this article, I am fully aware that these are socially constructed categories which were entrenched in the colonial era. These categories are employed in this study as a conceptual tool to demonstrate how they relate to law and social misconceptions that continue to entrench fictional dichotomies.

7. In Botswana, the death penalty is the presumptive sentence in cases of murder unless extenuating circumstances allow for deviation from the prescribed sentence. See A. Novak, 'Guilty of Murder with Extenuating Circumstances: Transparency and the Mandatory Death Penalty in Botswana', *Boston University International Law Journal*, 27, 1 (2009), 175. See also 'The Death Penalty Should Always be Condemned', F. Nsikeleo-Moya, accessed 28 June 2021, <https://spotlight.africa/2018/02/23/death-penalty/>; '277/03 Spilg and Mark & Ditshwanelo on behalf of Lehlohonolo Bernard Kobedi versus Botswana-277/03', African Commission on Human Rights, accessed 1 July 2021, <https://www.achpr.org/sessions/descions?id=202>.

of post-colonial Botswana tend to romanticise Botswana's approach to human rights and the rule of law. Moreover, Botswana's remarkable economic growth and relatively good governance often shroud controversy regarding human rights issues.<sup>8</sup>

In addition, gender-based violence is a form of human rights abuse, as outlined for example by activist scholars such as Maria Nieves Rico of the Council of Europe. Such writers point out that in the Universal Declaration of Human Rights, gender-based violence is a serious violation of these guiding principles and that the right to be free of gender-based violence is one of the most basic human rights. They write that it is a constant attack on human dignity because it erodes one's 'sense of self-worth and self-esteem'.<sup>9</sup> Central to the discussion on eradicating violence against women is the way in which law and society function and serve as platforms which entrench and challenge the most extreme forms of patriarchal and gender-based violence.

Moreover, scholars of Africa such as Bugalo Maripe, David Sebudubudu and Mokganedi Botlhomilwe have argued that despite Botswana being hailed as a unique example of a functioning democracy in the continent, the lethargic pace of addressing the issue of women's rights raises a question mark over what has been described as an 'African miracle'.<sup>10</sup> In part, these criticisms are levied against legal frameworks which continue to entrench misogynistic cultural practices. Onalenna Selolwane, for example, expresses her displeasure at the way Botswana laws continue to entrench patriarchy. Men, she writes, are 'sovereigns in their private lives and liberal democrats in their public lives of politics and public decision making', whilst women are expected to maintain their dual roles, be submissive at home, and yet to exercise their rights in public.<sup>11</sup> More alarmingly, no legal provisions have been made to eradicate gender violence in marriage. Indeed, Refilwe M. Nasha has argued that although the Botswana government enacted the Domestic Violence Act in 2008, it was silent on the issue of

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8. Fawcus, *Botswana: Road to Independence*, ix; Cook, and Sarkin, 'Is Botswana the Miracle of Africa?', 455.

9. See 'Gender-based Violence: A Human Rights Issue', M.N. Rico, accessed 24 June 2021, [https://repositorio.cepal.org/bitstream/handle/11362/5860/1/S9700545\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/5860/1/S9700545_en.pdf); 'Gender Identity, Gender-based Violence and Human Rights', Council of Europe, accessed 24 June 2021, <https://rm.coe.int/chapter-1-gender-identity-gender-based-violence-and-human-rights-gende/16809e1595>; 'Gender-based Violence', accessed 24 June 2021, <https://www.unfpa.org/gender-based-violence>; 'Gender-based Violence a Violation of Human Rights', accessed 24 June 2021, <https://sustainabilityx.co/gender-based-violence-a-violation-of-human-rights-ecf1295bc925>.

10. Maripe, Sebudubudu and Botlhomilwe, 'Limited Freedom and Intolerance', 346.

11. 'Ethnic Structure, Inequality and Governance of the Public Sector in Botswana', O.D. Selolwane, accessed 3 November 2020, [https://www.unrisd.org/unrisd/website/document.nsf/\(httpPublications\)/C9BAF6926799077AC1256E9E00447A6F?OpenDocument](https://www.unrisd.org/unrisd/website/document.nsf/(httpPublications)/C9BAF6926799077AC1256E9E00447A6F?OpenDocument).

marital rape. The very act which claims to protect survivors of domestic abuse, neglects to outlaw one of the most devastating kinds of assault in a domestic environment.<sup>12</sup> This creates the impression that married women are frequently treated as second-class citizens, with their rights generally overlooked because of their marital status.

In Botswana, state-sanctioned cultural hegemony is most discernible in the ways non-Tswana groups are accommodated within the national script. Subsumed in such superficial narratives, however, when new laws are promulgated, there is a tendency to ignore cultural differences between the various groups settled in the country. Scholars such as Rhoda Howard have expressed their concern over the use of legislation to abolish recognition of cultural pluralism. Howard points out that Kalanga women, for example, like other women in Botswana, must be allowed to follow their own cultural scripts – pointing out that this right is enshrined in the constitution, chapter 2, subsection 3 (b).<sup>13</sup>

There are many ethnic groups in Botswana, with the Tswana forming the majority of the population. Among others, Lydia Nyathi-Ramahobo, a professor of applied linguistics, shows that British colonial officials in Bechuanaland inculcated a belief in Tswana superiority among its subjects – a position sustained by the post-colonial government. Consequently, the post-independent Constitution of Botswana reinforced the colonial dichotomy of Tswana superiority and non-Tswana marginality. The marginalisation of Kalanga speakers during colonisation has been perpetuated in the independence era.<sup>14</sup>

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12. R.M. Nasha, 'Criminalising Marital Rape in Botswana: The Need for Legal Reform' (LLM Dissertation, University of Cape Town, 2020), 19.

13. R. Howard, 'Human Rights and Personal Law: Women in Sub-Saharan Africa', *A Journal of Opinion*, 12, 1/2 (1982), 45. See also, *Constitution of Botswana 1966*, Chapter 2 (s3) b. Every individual in Botswana is 'entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his or her race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each', freedom of conscience, of expression and assembly and association.

14. L. Nyathi-Ramahobo, 'From a Phone Call to the High Court: Wayeyi Visibility and the Kamanakao Association's Campaign for Linguistic and Cultural Rights in Botswana', *Journal of Southern African Studies*, 28, 4 (2002), 689. See also, J. Solway, 'Culture Fatigue: The State and Minority Rights in Botswana', *Journal of Global Legal Studies*, 18, 1 (2011), 214.

Most of the Kalanga-speaking people, also referred to as the Bakalanga, live in the North East district, the second smallest district of the nine districts in Botswana.<sup>15</sup> Despite accounting for 17.9 per cent of the country's total population, the constitution does not recognise them as a majority ethnic group: instead, they are defined constitutionally as a minority group.<sup>16</sup> Culturally, it could be argued that little is done to acknowledge their presence. Kalanga is considered a minority language, is not taught in schools and is rarely used in the media. It is not admissible for use in courts of law except in remote villages, and there is hardly any published material in Kalanga.<sup>17</sup>

This lack of official visibility contributes to what is termed the 'politics of recognition' by Paddy McQueen, in which ethnic groups are viewed as 'minorities' by the state and find it difficult to claim respect for their language, histories and ways of life.<sup>18</sup> Generally, it is claimed that these minorities are likely to be less publicly assertive and to refrain from pushing for recognition in the public sphere.<sup>19</sup> For the Kalanga of Botswana, however, the situation is somewhat different. Importantly, the term 'minority' has little numerical importance in Botswana, but it has significant political meaning. As anthropologist Richard Webner notes, Kalanga people are prominent in politics and are well-educated despite the fact that they are not taught formally in their mother tongue. Instead, they maintain their language at home and adhere to Kalanga customs. They are proud to regard themselves as high achievers.<sup>20</sup>

Yet, and despite these achievements, as Nyathi-Ramohobo has argued, the international community regards Botswana as a mono-ethnic society of Setswana-speakers. In fact, not all Tswana-speakers belong to Tswana ethnic groups. The Tswana language serves as a symbol of a constructed national hegemonic Tswana culture, used especially during the nation-building process of independence. Nyathi-

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15. There are numerous minority groups in Botswana, including the Wayeyi, Hambukushu, Basarwa, Bakgalahari, Baherero and Basubiya, to name but a few. I make use of the homogenised term simply as a way of reflecting exclusion from the state discourse, but I recognise their diversity.

16. See A. Gapa, 'Identity Management: The Creation of Resource Allocative Criteria in Botswana', *African Studies Quarterly*, 17, 1 (2017), 5-6.

17. W.M.J van Binsbergen, 'Minority Language, Ethnicity and the State in Two African Situations: The Nkoya of Zambia and the Kalanga of Botswana', in *African Languages, Development and the State*, eds R. Fardon and G. Furniss (London: Routledge, 1994), 152-153.

18. R. Werbner, *Reasonable Radicals and Citizenship in Botswana: The Public Anthropology of the Kalanga Elites* (Bloomington: Indiana University Press, 2004), 14. See also, P. McQueen, *Subjectivity, Gender and the Struggle for Recognition* (London: Palgrave Macmillan, 2015), 18-40.

19. McQueen, *Subjectivity, Gender and the Struggle for Recognition*, 18-40.

20. R. Webner, 'Cosmopolitan Ethnicity, Entrepreneurship and the Nation: Minority Elites in Botswana', *Journal of Southern African Studies*, 28, 4 (2000), 738.

Ramahobo makes a rather controversial claim that the minority groups have accepted their marginalised status in order to preserve national unity.<sup>21</sup> In other words, for the sake of national peace, the Bakalanga may be reluctant to emphasise their ethnic marginalisation. As alluded to by McQueen, they may well be hesitant to voice their dissatisfaction about being perceived in Botswana as a minority because they are already in a constitutionally vulnerable position.<sup>22</sup>

Through the lens of a small sample of rural Kalanga women, this article investigates the intersections of gender, ethnicity, and cultural practices in rural areas of Botswana when the state embarked on its campaign to reform marriage laws. It firstly positions Kalanga women within a broader gendered context of Botswana; it then delineates the legislative reforms regarding marriage between 1966 and 2004; and finally, it interprets the oral accounts of some women who experienced these changes.

This article reflects upon the divergent ways in which many women negotiate their struggle for recognition within their ethnic groups – while also circumventing their inferior position as wives under Botswana law and a patriarchal system. But it is also relevant that some women who participated in this study prefer to support a more ‘traditional’ form of non-equality within the household. While the sample of this study was as inclusive as possible of different views and opinions, it cannot purport to represent all Kalanga women. It does however ask important questions about the gender agenda in the context of broader ethnic marginalisation against non-Tswana speakers.

### **Women still ‘caged’ under patriarchy**

The Abolition of Marital Power Act 34 of 2004, ‘provides for the abolition of marital power, amends the matrimonial property law of marriages, provides for the domicile of married women, provides for the domicile and guardianship of minor children, and provides for matters incidental thereto’.<sup>23</sup> This legislation was enacted to ensure that spouses have legal rights to property ownership. Women were also given equal guardianship of minor children. In addition, the Act also abolished the husband’s status as the family’s head.<sup>24</sup> Until the ascendance of the AMPA in 2004, married women in Botswana were considered minors who could not sign legal documents, acquire loans or even apply for their own national identity cards (ID) without their husband’s permission. If the woman’s husband was unavailable at the time, a male

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21. Nyathi-Ramahobo, ‘From a Phone Call to the High Court’, 690.

22. See also McQueen, *Subjectivity, Gender and the Struggle for Recognition*, 18-40.

23. ‘The Abolition of Marital Power 34 of 2004’, accessed 30 June 2021, <https://www.law.cornell.edu/women-and-justice/location/botswana>.

24. ‘The Abolition of Marital Power 34 of 2004’.

member of the husband's family had to be in charge of the household.<sup>25</sup> For this reason, the government formulated laws inscribed in the 2004 AMPA to improve women's participation in decision-making fora.<sup>26</sup>

In pre-colonial indigenous social structures in Botswana, Zambia, Namibia and Zimbabwe, men's and women's rights and their respective duties in the home and society at large, varied, rendering them unequal in family and state affairs. Rhoda Howard, for example, has observed that this gender disparity across the colonial and post-colonial era culminated in social and material inequalities between men and women.<sup>27</sup> Undeniably, today there are certain rights and freedoms that women in Botswana enjoy as constitutional rights, but other embedded cultural practices have also sustained women's exclusion. These inequalities were inscribed in customary law, and are long-standing customs and beliefs that eventually found their way into codified common law.<sup>28</sup> These cultural norms were buttressed by the Botswana legal system which considered married women to be minors; implying that their rights were comparable to those of a child.

Patriarchy comprises established systems of masculine superiority which can be characterised as a set of materially based social interactions between genders that promote or foster male's independence and unity, allowing men to oppress women.<sup>29</sup> Men were long considered the guardians of minor children, the heads of families and even heads of villages. They also had the liberty to discipline their wives. In Botswana, many saw these practices as unchangeable and unchallengeable truths.<sup>30</sup> Most elders

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25. Anon., 'Botswana: Women Still Minors', *Off Our Backs*, 23, 11 (1993), 4.

26. Botswana National Archives (hereafter BNA), Ministry of Home Affairs (hereafter MHA) 18/6, 'Forging Stronger Links for the Integration of Women in Development (WID) Project into National Planning Priorities', ABD Workshop on Women Affairs for Ministers and Senior Officials, Abuja, Nigeria, 26-27 May 1989.

27. Howard, 'Human Rights and Personal Law', 45.

28. In Botswana, 'Customary law' describes the laws of tribes and tribal communities while 'common law' refers to other laws, including Acts of Parliament, judicial precedent (decisions of the Industrial Court, High Court and Court of Appeal), and the Roman-Dutch 'common' law which remains in force. Customary law is unwritten, evolves and changes over time and in principle is a plural body of law in that its content varies among tribal communities. See L. Hoctor, S Ratjen and A. Jernow, *Women's Access to Justice in Botswana: Identifying the Obstacles and Need for Change* (Geneva: International Commission of Jurists, 2013), 28. See also, BNA, MHA 18/6, 'Terms of Reference for a Consultancy on Empowerment and Advancement of Women'.

29. A. Sultana, 'Patriarchy and Women's Subordination: A Theoretical Analysis', *The Arts Faculty Journal* (2010), 3.

30. U. Dow and P. Kidd, *Women, Marriage and Inheritance* (Gaborone: Women and Law in Southern Africa Trust, 1994), 1.



who were interviewed in this study, especially in areas such as Jackalas No. 1, Moroka and Ramokgwebana in the North-East district of Botswana, disagreed with an Act that brought about equality between men and women. They believe, they said, that the Act tarnished the ‘natural order of things’.<sup>31</sup> This is hardly surprising and reflects the intergenerational conflict which often arises when traditions are challenged. As Siphon Showa points out, there are Botswana traditionalists who believe in the old proverb, ‘it is a sad house where the hen crows louder than the cock’.<sup>32</sup> The state, however, is now clear in its purpose. In 2004, Margret Nasha, Minister for Local Government, stated:

I believe some aspects of our culture have outlived their usefulness. During traditional pre-marital counselling by elderly women, a young bride-to-be was encouraged to be subservient and submissive to her husband. Marriage after all is supposed to be a union of equals, bound together by reciprocal love and mutual respect.<sup>33</sup>

According to Dianne Hubbard, national states should enter into a partnership with the people to breach these outdated gender disparities.<sup>34</sup> Clearly not all members of that nation are willing to challenge entrenched patriarchal roles, however. This, in many instances, is due to the lack of acknowledgement of women’s labour. Arundhati Bhattacharyya, who writes about rural women in India, for example, claims that women are ‘silent labourers’ who work from sunrise to night to fulfil their domestic chores and are frequently chastised within the family for not being serious in their work.<sup>35</sup> Yet, if family members had to pay for the entire household’s work as well as the free labour of women, then their true value would be acknowledged. In some respects, many Botswana women are, I would argue, comparable to rural Indian women. They work so hard for their families yet receive little in return. Furthermore, during the ploughing season, the men’s main role is to plough and fence the fields. The weeding, chasing of birds and rodents, harvesting, storing and milling of the grains were and are still the responsibility of women. The women are also

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31. C. Machokoto, ‘Women have Strived for Justifiable Cause’, *The Botswana Guardian*, 4 October 1991.

32. The proverb is Scottish. See S. Showa, ‘Women’s Emancipation Calls for More than a Change in Law’, *Mmegi/The Reporter*, 15 December 2004.

33. M. Nasha, *Madam Speaker Sir! Breaking the Glass Ceiling: One Woman’s Struggle* (Gaborone: Diamond Educational Publishers, 2014), 36-49.

34. D. Hubbard, *Guide to the Married Persons Equality Act* (Windhoek: Legal Assistance Centre, 2009), ii.

35. ‘Rural Women in India: The Invisible Lifeline of Rural Community’, A. Bhattacharyya, accessed 30 June 2021, <https://www.ohchr.org/Documents/HRBodies/CEDAW/RuralWomen/ArundhatiBhattacharyya.pdf>.

homemakers.<sup>36</sup> But, Bhattacharyya adds, even though women remain poor in India's financial system, rural women are crucial, productive employees.<sup>37</sup> The plight of the Kalanga women and the similarities shared between marginalised women in Botswana is best described by Fedilis Nkomazana:

The traditional Kalanga status quo, which was governed by certain laws and norms was biased against women. The place of women is socially constructed in the same way, whether it be Bakgatla, Barolong or Bakalanga. They are socially inferior and subject to men. Women are not only disfigured and categorised as less capable than men, but are also seen as playing a menial role in the society.<sup>38</sup>

According to R. Mookodi, prior to independence, better-paid jobs were reserved primarily for expatriates and Botswana male citizen rather than for women.<sup>39</sup> After independence, under the new constitution, women were guaranteed equal access to education and equal participation in the social, economic, cultural, and political spheres of life in Botswana. Education and employment opportunities increased, with more women enrolling as students and becoming employed as teachers and administrators.<sup>40</sup> Yet, in Botswana, the gendered experience was similar to that in other sub-Saharan African countries in the twentieth century, as illustrated for example by Jane Parpart, who showed that following Zimbabwe's independence in 1980, men had greater opportunities than women to be educated, find employment, own property, and enjoy other privileges. Moreover, in Botswana, most women who had been accepted into tertiary institutions were enrolled in the humanities and social sciences, and they ended up with jobs that paid less and had fewer opportunities of advancement. The majority of African women continued to work as unpaid family members on small farms or in communal areas for little pay.<sup>41</sup> This is a clear manifestation of 'hegemonic masculinity', a term coined by Raewyn Connell in

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36. Author's own observations. The author was brought up in such an environment and experienced these practices.

37. Bhattacharyya, 'Rural Women in India: The Invisible Lifeline of Rural Community'. See also, Y.I. Ogunlela and A. Mukhtar, 'Gender Issues in Agriculture and Rural Development in Nigeria: The Role of Women', *Humanity and Social Science Journal*, 4, 1 (2009), 25.

38. F. Nkomazana, 'The Experiences of Women within Tswana Cultural History and its Implications for the History of the Church in Botswana', *Studia Historiae Ecclesiasticae*, 34, 2 (2008), 1-2.

39. R. Mookodi, 'Women's Life in Botswana', *Canadian Journal of African Studies*, 2, 6 (1972), 357.

40. Mookodi, 'Women's Life in Botswana', 357.

41. 'Gender, Patriarchy and Development in Africa: The Zimbabwean Case', J. L. Parpart, *Women in Development*, Working Paper no. 254, Michigan State University, 1996, 7-8, accessed 2 July 2021, <https://gencen.isp.msu.edu/files/6914/5202/7078/WP254.pdf>.

1982, in which men are inclined to secure the interests of other men, which is clear evidence of underlying masculine hierarchy.<sup>42</sup> This story is not new and transcends national boundaries. Indeed, the plight of Kalanga women and women in Botswana is part of a much broader conversation about the unequal access to resources and gender disparities that exist globally and across time. Legislatively, however, the new marriage laws in Botswana have ignited a much-overdue discussion. Even so, the Botswana state had to be challenged by civil society to embark on this process.

### **Winds of change in marital relations**

In their study of gender and inequality in Botswana, Kussum Datta, Elsie Alexander and Banu Khan point out that prior to the legal restrictions on marital power, women had almost no rights in their marriages with husbands ‘ordained’ to be heads of the household, as they were in many African societies, such as in Eswatini (formerly Swaziland) and Namibia to mention two.<sup>43</sup> These authors point out that traditionally, husbands have control over crucial assets such as land, livestock and other types of property. Women were seen as the property of their husbands and were dependent on male protectors.<sup>44</sup> In her study of urban as opposed to rural conditions for gender equality in Zambia, Pamela Pozarny found that women who live in cities with a diverse population tend to be less tolerant of restrictions on their agency and thereby promote support for gender equality.<sup>45</sup> By contrast, she observed that ‘in rural areas limited exposure to alternatives can discourage contestation of gender norms and confidence in possibility of social change’.<sup>46</sup> Botswana is a largely rural and agrarian society.

According to Athalia Molokomme, from the 1960s onwards, many women in Botswana continued to internalise their subordination, thus allowing the government to maintain the status quo. This was despite the efforts of human rights organisations that attempted to ‘liberate them’ by advocating for equal rights between men and women.<sup>47</sup> In addition, women who wished to marry had to comply with both customary and common law, both of which entrenched gender differentiation. For example, males could get married from the age of 16 whilst young women became eligible at the age of 14. As stipulated by the Marriage Act, until the age of 21, it was

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42. R. Jewkes, R. Morrell, J. Hearn, E. Lundqvist, D. Blackbeard, G. Lindegger and L. Gottzén, ‘Hegemonic Masculinity: Combining Theory and Practice in Gender Interventions’, *Culture, Health & Sexuality*, 2, 17 (2015), 113- 115.

43. K. Datta, A. Elsie and K.A. Banu, *Beyond Inequalities: Women in Botswana* (Harare: Southern African Research and Documentation Centre, 1998), 47.

44. Datta, Elsie, and Banu, *Beyond Inequalities*, 47.

45. P. Pozarny, ‘Gender Roles and Opportunities for Women in Urban Environments’, GSDRC Helpdesk Research Report 1337, University of Birmingham, January 2016, 3.

46. Pozarny, ‘Gender Roles and Opportunities for Women in Urban Environments’, 3.

47. A. Molokomme, ‘Emang Basadi (Botswana)’, *Signs*, 16, 4 (1991), 851.

the father who would be required to give consent for marriage. The father was thus the sole legal guardian of children under common law.<sup>48</sup>

In the 1980s, there was an emergence of women's non-governmental organisations in Botswana. These were created by Botswana women, with mandates to address the plight of women in the country. Emang Basadi, a civil society action group was established in 1986 with its main goal being 'to develop action-oriented strategies and mobilise women to take steps that help change their social, political, economic and legal positions in Botswana'.<sup>49</sup> Furthermore, it aspired to empower women by educating them about the laws that affected them and counselling them on how to build better lives. Women were encouraged to stand up for themselves, and to take part in the development of the country.<sup>50</sup> Emang Basadi challenged the politics of Botswana by questioning laws that discriminated against women. However, many Botswana viewed these efforts as disruptive. Botswana does not have a history of protest politics and it is through civil society groups such as this that the state was challenged to reconsider its outdated laws.<sup>51</sup>

In March 1984, Unity Dow, a citizen of Botswana born to Botswana parents, married Peter Nathan Dow, a citizen of the United States of America (USA). Peter and Unity had their firstborn, Cheshe Dow out of wedlock in 1979. They subsequently had two more children, Tumisang Dow (born 1985) and Natasha Dow (in 1987). Tumisang and Natasha were born after the 1984 Citizenship Act, which stated that children would acquire their father's citizenship. As a result, Tumisang and Natasha were US citizens, despite the fact that they lived in Botswana with their parents. The law made it impossible for them to inherit their mother's citizenship.<sup>52</sup> This had a negative impact on the children. In court, Unity Dow stated: 'my family and I have established our home in Raserura Ward in Mochudi and all the children regard that place and no other as their home' and pointed out that this was going to have an impact on what they considered to be a normal life.<sup>53</sup>

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48. BNA, MHA 18/7, 'Review of the Laws that Affect the Status of Women in Botswana, Inception Report', *Law and Literature Review*, September 1997.

49. Emang Basadi (EB), accessed 29 January 2021, <https://www.devex.com/organizations/emang-basadi-eb-106919>.

50. S. Rathapo, 'The State of Gender Information in Botswana', *Libri*, 50, 14 (2007), 304.

51. A. Ngoma-Leslie, *Social Movements and Democracy in Africa: The Impact of Women's Struggle for Equal Rights in Botswana* (New York: Routledge, 2006), 58.

52. U. Dow, ed., *The Citizenship Case: The Attorney General of the Republic of Botswana vs Unity Dow – Court Documents, Judgements, Cases and Materials* (Gaborone: Lentswe La Lesedi, 1995), 108. See also High Court of Botswana, 'In the High Court of Botswana Held at Lobatse', *Human Rights Quarterly*, 13, 4 (1991), 614.

53. Dow, ed., *The Citizenship Case*, 30.

As indicated above, Sections 4 and 5 of the Citizenship Act of 1984 stipulated that it was only fathers who could pass citizenship on to their children. The same courtesy was not extended to Batswana women, unless such children were born out of wedlock to a foreign father.<sup>54</sup> Moreover, if a child was adopted under the age of three years, he/she could instantly become a citizen of Botswana provided that the adopter (in the case of a joint adoption) was a male Motswana. Section 13 of the Act discriminated further against women, because it granted full citizenship by naturalisation in just two and half years to women married to Batswana men (if they complied with certain stated conditions) as compared to the ten-year qualification period for foreign husbands.<sup>55</sup>

In 1990, with the support of Emang Basadi, Unity Dow filed a lawsuit against the government of Botswana claiming that the 1984 Citizenship Act discriminated against married women.<sup>56</sup> In 1995, Dow won her case and this victory served as a catalyst for further legislative change to the Citizenship Act. In 1997, following the successful court challenge of the 1984 Citizenship Act by Dow, along with pressure from lobbyists, the Botswana government established a commission of enquiry to review all laws discriminating against women. The objective of the commission was to make recommendations on how the national laws could be brought in line with international conventions and policies such as the United Nations Convention on the Elimination of Discrimination against Women (CEDAW), to which Botswana was a signatory. As a result, a number of laws were revised immediately, while others required further investigation.<sup>57</sup> One of these laws was the Marriage Act.

This slow pace of change in gender equality can also be attributed to the lack of women in positions in the state legislature. After the 1994 elections, for example, The Botswana Parliament, which was responsible for passing legislation for women's empowerment, had only 4 women out of 46 members. In addition, there was an all-male High Court and Court of Appeal. Similarly, the House of Chiefs, loosely translated as '*Ntlo ya dikgosi*,' a body that advised the National Assembly on matters of national interest, particularly matters that affect culture and tradition, as defined by the Botswana Constitution, was also exclusively male in 1994.<sup>58</sup>

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54. L. Pfothenauer and U. Dow, 'An Interview with Unity Dow', *Botswana Notes and Records*, 23 (1991), 101.

55. BNA, MHA 18/7, 'Review of the Laws that Affect the Status of Women in Botswana' *Law and Literature Review*, September 1997.

56. Dow, ed., *The Citizenship Case*, 6-7.

57. R.A. Kumar, 'Customary Law and Human Rights in Botswana: Accredited Survival of Conflicts', *City University of Hong Kong Law Review*, 2, 2 (2010), 283-285.

58. See 'Who are we?', accessed 23 June 2021, <https://www.parliament.gov.bw/index.php/about-ntlo-ya-dikgosi/who-are-we>; and Datta, Elsie, and Banu, *Beyond Inequalities*, 47.

Researchers such as Dominique Meekers write that in Zimbabwe, as is also the case in Botswana, educated professional women have begun to take the initiative to challenge their husbands' authority and gain greater influence in family decision-making. In many cases, husbands did not believe that women should have this right and thought that women who stood up for their rights were 'big headed' and 'uncontrollable', a situation which led to a spate of divorces.<sup>59</sup> However, as Doreen Gaura notes, while the legislative changes were set up to empower women and give them control over all aspects of their lives, rural women were often left out of the discussions. Gender activist movements, mainly comprised of middle class academic women, found themselves in a position of opposition against the traditional moralists.<sup>60</sup> Kenneth Koma, president of the Botswana National Front (BNF) and leader of the opposition parties in parliament, argued that it was irrelevant who drove the process because the men in power would continue to ignore their plea unless women with some authority spoke on behalf of the majority and as a united front.<sup>61</sup> As he put it, '...even the legislation that bridges gender discrimination will be unsuccessful if not backed by the voices of the ordinary, non-elitist women'.<sup>62</sup> As in any revolution, a united front was absolutely necessary.

The network of female parliamentarians and women's civic organisations from Botswana, Namibia and South Africa applied fairly effective and consistent pressure inside and outside parliament to translate international conventions into national laws and to repeal discriminatory legislation.<sup>63</sup> In the view of Anne Griffiths, compared to women, men in Botswana still had greater control over access to resources. Women generally occupied a subordinate position in management and had very little control over economic resources. This also applied to their sphere of authority in family life.<sup>64</sup> The elimination of discrimination in property rights was essential as it gave power to women as citizens and afforded them equal status to their husbands.<sup>65</sup> Faced with the constraints of a patriarchal society, women found themselves differentially situated in terms of their power and ability to pursue property claims.<sup>66</sup>

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59. D. Meekers, 'The Noble Custom of Rooro: The Marriage Practices of the Shona of Zimbabwe', *Ethnology*, 32, 1 (1993), 35.

60. D. Gaura, 'Sexualisation of Women in the Media: Freedom of Expression or Oppression?' *Gender and Media Diversity Journal*, 10, (2012), 29.

61. L. Tutwane, 'Segokgo Calls for Women Empowerment', *Mmegi/The Reporter*, 24 February 2004.

62. Tutwane, 'Segokgo Calls for Women Empowerment'.

63. O.D. Selolwane, *Gendered Spaces in Party Politics in Southern Africa: Progress and Regress since Beijing 1995* (Geneva: UN Research Institute for Social Development, 2006), 29.

64. A. Griffiths, 'Women's World, Siblings in Dispute over Inheritance: A View from Botswana', *Africa Today*, 49, 1 (2002), 63.

65. T. Kachika, *Women's Land Rights in Southern Africa: Consolidated Baseline Finding from Malawi, Mozambique, South Africa, Zambia and Zimbabwe* (Denmark: Niza and Action Aid International, 2009), 20.

66. Griffiths, 'Women's World, Siblings in Dispute over Inheritance', 62.

Botswana society is highly complex and contradictory in terms of gender relations, as illustrated by the incongruity of discriminatory legislation such as the marital acts in relation to a non-discriminatory constitution. Ultimately, the constitution prevailed because it provided the necessary legal platform to challenge discriminatory laws in Botswana and to agitate for greater gender equality.<sup>67</sup> It allowed for the achievement of substantive equality for rural women and was in compliance with the CEDAW special measures to be incorporated into the constitution and legislation.<sup>68</sup> However, despite constitutional provision and other reforms, customary law continued to affect the personal and property rights of women. Men continued to be treated as the head of the family, with guardianship rights over women and children's rights.<sup>69</sup> It was through the drafting of the AMPA Bill that a host of discussions about gender equality unfolded in Botswana.

### **Legislation and marital status**

The Botswana Government's decision in 2004 to adopt policies that would bring about equality and social justice to all its citizens regardless of gender, race, religion or creed, legally liberated many women. The 2004 legislation followed four set principles, namely, democracy, development, self-reliance and unity. This would allow women to attain rapid economic growth, social justice, economic independence and sustained development. Finally, all government policies had to acknowledge that both men and women were important agents for economic, social and political development.<sup>70</sup> This is enshrined in the constitution of Botswana which stipulates that, '[...] every person in Botswana is entitled to the fundamental right and freedoms of the individual, that is to say, the right, whatever his or her place of origin, political opinions, colour, creed or sex'.<sup>71</sup> As such the Abolition of Marital Power Act, passed in 2004, was a vital step by the Botswana government to create a fair and equal society.

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67. F. Kalabamu, 'Patriarchy and Women's Land Rights in Botswana', *Land Use Policy*, 23 (2006), 241-242.

68. According to CEDAW, General Recommendations 28: 'In addition to constitutional protections, states should adopt legislation guaranteeing equality and prohibiting discrimination in all fields of women's lives. [It is necessary] to take steps to address the wide range of social and practical factors that may impede women's ability to claim their rights including the status of women, their lack of independent access to resources, and prejudices and norms in operation in a society'. See also Hoor, Ratjen and Jernow, *Women's Access to Justice in Botswana*, 21.

69. R.A. Kumar, 'Customary Law and Human Rights in Botswana', *Human Rights & Human Welfare*, Working Paper, No. 52 (2009), accessed 9 April 2014, <http://www.du.edu/korbel/hrhw/workingpapers/2009/52-kumar-2009>.

70. BNA, MHA 18/6, Forging Stronger Links for the Integration of women in Development (WID) Project into National Planning Priorities, ABD Workshop on Women Affairs for Ministers and Senior Officials, Abuja, Nigeria, 26-27 May 1989.

71. *Constitution of Botswana, 1966*, Chapter 2.

The Abolition of Marital Power Act (2004) addressed the tangible acts of discrimination suffered by Botswana women. Upon tabling the Bill on the Abolition of Marital Power to Parliament in 2004, Moeng Pheto, the Minister of Labour and Home Affairs, pointed out that, 'in terms of existing laws men were endowed with the marital power over their wives, hence [this was in effect the] subjection of women to the marital power of their husbands'.<sup>72</sup> The taskforce leading the process was steered by Athaliah Molokomme, a former law lecturer at the University of Botswana and Botswana's attorney general. The team embarked on a journey around the country consulting the Botswana on all laws that discriminated against women following the Dow victory in 1995.<sup>73</sup>

The AMPA, therefore, was the government's way of clearing the statute books of all the common law provisions that discriminated against women. The minister highlighted that:

...the main thrust lies in the introduction of a fair marital property regime, to provide for domicile of choice for married women as well as to provide for equal capacity between spouses in all matters concerning the conduct of their marital affairs.<sup>74</sup>

Botswana shares a common law tradition with South Africa. The Republic of South Africa abolished marital power in 1997 through the Justice Laws Rationalisation Act No. 18 of 1996.<sup>75</sup> This move by the Botswana government was an attempt to align matrimonial property law in line with what was happening in southern Africa and the rest of the world.<sup>76</sup> It also served as example to other states. The Eswatini High Court, for example, also abolished the marital power system in August 2019. Arguments tabled by Georgetown Law's International Women's Human Rights clinic and numerous court cases involving women who were advocating for equal marital rights,

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72. National Assembly of Botswana, Hansard No. 146, Part 4-6 (December 2004), Moeng Pheto.

73. Showa, 'Women's Emancipation Calls for More than a Change in Law', *Mmegi/ The Reporter*, 15 December 2004. Dow's victory in this context refers to how she prevailed in her fight against the Botswana government following the Citizenship Act (1984) discrimination case.

74. L. Galeage, 'Pheto Presents Abolition of Marital Power Bill', *Botswana Daily News*, 2 December 2004. See also National Assembly of Botswana, Hansard No. 146, Part 4-6 (December 2004), Moeng Pheto.

75. The Justice Laws Rationalisation Act 18 of 1996, extended operation of the Matrimonial Property Act of 1984 over the re-integrated country, thus bringing to an end the exercise of the marital power in South Africa. See E.K. Quanash, 'Abolition of Marital Power in Botswana: A New Dimension in Marital Relationship?', *University of Botswana Law Journal*, 1 (2005), 8.

76. Quanash, 'Abolition of Marital Power in Botswana', 8.



led to a decision being made to abolish marital power. Just as in Botswana, Eswatini was said to be violating its constitution through the marital power system imbedded in its common law.<sup>77</sup>

According to Pheto, after the abolition of marital power, spouses would be considered equal in dealing with joint estates and the disposal of assets and their administration. Both the husband and the wife would have to seek mutual approval or consent when dealing with such matters. In addition, the 2004 Act provided spouses with the option of marrying in community-of-property or out of community-of-property.<sup>78</sup> Spouses married in community-of-property had to reach mutual consent but also shared debts incurred during their union. In all instances, women could choose their domicile and secure guardianship of minor children. They thus acquired equal status to men in matters concerning minor children.<sup>79</sup>

When the Bill was tabled in parliament, traditional views collided with those enshrined in the constitution. Some traditionalists opposed the Bill. For instance, the Member of Parliament (MP) for Tonota South, Pono Moatlhodi, disagreed with the erosion of men's position as the heads of their families. This, he insisted, was an insult to 'nature's way of family life',<sup>80</sup> and against the bible: '...[just] as Christ was head of the church, the husband would always remain head of the family'.<sup>81</sup> Pelonomi Venson, the minister of Communications, Science and Technology, speaking for her fellow

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77. Eswatini remains a monarchy. The 2005 constitution guarantees basic human rights. Section 20 states that 'a person shall not be discriminated against on the grounds of gender, race, colour, ethnic origin, tribe, birth, religion or social or economic standing, politics opinion, age or disability'. Section 28 stipulates that 'women have the right to equal treatment with men ... in all political, economic and social activities'. See 'Constitution of the Kingdom of Eswatini 2005', accessed 28 June 2021, <https://constitutions.unwomen.org/en/countries/africa/eswatini>; and S.D. Mavundla, A. Strode and D.C Dlamini, 'Marital Power Finally Obliterated: The History of the Abolition of the Marital Power in Civil Marriages in Eswatini', *Potchefstroom Electronic Law Journal*, 20, 2020, 12-14. See also 'Unfair Marital Power System in Africa Negated Thanks to International Women's Human Rights Clinic', accessed 2 March 2021, <https://www.law.georgetown.edu/news>.
78. The Abolition of Marital Power Act, 2004, Parts iii and iv (Gaborone: Government Printer, 2004).
79. National Assembly of Botswana, Hansard No. 146, Part 4-6, December 2004, Moeng Pheto.
80. The Editor, 'Educate the Masses on Marital Power', *Mmegi/The Reporter*, 8 December 2004. See also National Assembly of Botswana, Hansard No. 146, Part 4-6 (December 2004), Pono Moatlhodi.
81. T. Nkhoma, 'Moatlhodi against Abolition of Husband as Family Head', *Botswana Daily News*, 2 December 2004. See also M. Phia, 'Moatlhodi Angers Women MPs', *The Botswana Guardian*, 3 December 2004.

women, was quick to add, ‘God created male and female’. However, Moatlhodi continued to point out that besides the new law being contrary to the bible, it was also against the tradition and culture that had ‘always held people tightly together’.<sup>82</sup> He believed that the new law would destroy families because it was against religion, tradition and culture. In response, Richard Richard, a columnist for *The Botswana Gazette*, was quick to portray alternative religious interpretations of marriage:

Christianity is a faith that emphasises justice, righteousness and the highest standard of mutual appreciation between spouses. It is inconceivable that righteousness or justice exist in the arbitrariness that is intrinsic to marital power. The abuse that our mothers and sisters endure under marital power is the main reason it has to be abolished.<sup>83</sup>

Additionally, Shaw Kgathi, MP for Bobirwa, reminded fellow MPs that culture was dynamic and that essentially, a narrow reading of the bible disregarded its broader message of equality.<sup>84</sup> Margaret Nasha added her voice, pointing out that Botswana was after all a signatory to the UN CEDAW and therefore it could not use culture as an excuse for subjecting women to unfair treatment.<sup>85</sup> Lot Moroka, a judge of the High Court in Botswana, declared that many married women could not differentiate between being married in community-of-property and out of community-of-property.<sup>86</sup> He argued that marital law, if changed, would not protect these women even if they had a choice.

Nor was this all. The parliamentary discussion continued unabated. The MP for Boteti South, Thanda Lebonaamang Mokalake, made it clear that women had long suffered at the hands of the power imbalance in marriage; some were treated like children whilst others lost everything when their husbands passed away since the relatives would take everything.<sup>87</sup> Charles Tibone, a Kalanga man and MP for Tati West (a constituency in North-East district) agreed with the Bill and commended Botswana for an attempt to emancipate women. He said that in 38 years of independence, Botswana was moving in the right direction. By way of comparison, he gave the example of the United Kingdom, where ‘it was only in 1951 that it [had]

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82. Phia, ‘Moatlhodi Angers Women MPs’, *The Botswana Guardian*, 3 December 2004.

83. R. Richard, ‘Marital Power Unchristian?’, *The Botswana Gazette*, 15 December 2004.

84. National Assembly of Botswana, Hansard No. 146, Part 4-6 (December 2004), Shaw Kgathi.

85. National Assembly of Botswana, Hansard No. 146, Part 4-6 (December 2004), Margaret Nasha.

86. L. Moroka, ‘What Animal is Marital Power? Part 1’, *The Botswana Guardian*, 11 February 2005.

87. National Assembly, Hansard No. 146, Part 4-6 (December 2004), Thanda Lebonaamang Mokalake.

managed to achieve universal adult suffrage'.<sup>88</sup> Despite Tibone's attempts at drawing parallels between Britain, former colonial protector, and Botswana (and the factual inaccuracy because the UK attained universal adult suffrage in 1928) he strongly supported the proposal but added that the law was still not empowering women economically. He said, 'we are abolishing marital power without creating infrastructure that will ensure that wives are similarly empowered economically ... to ensure that they will also be equal in the marketplace'.<sup>89</sup> In a somewhat patriarchal manner, he commended women who had always advocated for equality, even at a time when it was unheard of, and he applauded men who stood by these women and supported their ideas.<sup>90</sup>

Despite the contestations, the Minister of Labour and Home Affairs, Moeng Pheto, was pleased with the reception of the Bill on the Abolition of Marital Power, saying that it was a 'resolut[ion] of balance, justice and equality'. Pheto suggested to MPs that by abolishing the position of the husband as the head of the household, husband and wife could consult each other in decision making.<sup>91</sup> However, Showa was quick to warn that in his view the struggle to change the attitude of men towards women, was not going to be as successful as many hoped.<sup>92</sup> Showa was quite correct. Moreover, what he failed to consider is that resistance would also come from within women's circles. The site of greatest contention, as this author determined in the course of her research, was encountered in rural regions, in predominantly Kalanga areas. This observation, which is discussed in more detail below, allows for complex reflections on urban/rural, gender, ethnic cleavages and traditional values.

### **Kalanga women's attitudes and experiences towards the Abolition of Marital Power Act**

The findings discussed in this section are drawn from a series of interviews conducted between 2014 and 2021 with rural Kalanga women of the North-East district. Fifteen women of various ages were interviewed in Kalanga and Setswana, their ages ranging from their early twenties to their early eighties. These women were all from rural villages. They included women who were formally educated, some who had no formal education, some who were identified as being housewives and others who were self-

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88. National Assembly, Hansard No. 146, Part 4-6 (December 2004), Mbiganyi Charles Tibone.

89. National Assembly, Hansard No. 146, Part 4-6 (December 2004), Mbiganyi Charles Tibone.

90. National Assembly, Hansard No. 146, Part 4-6 (December 2004), Mbiganyi Charles Tibone.

91. Galeage, 'Minister Happy with MPs Support', *Botswana Daily News*, 6 December 2004.

92. Showa, 'Women's Emancipation Calls for More than a Change in Law', *Mmegi/The Reporter*, 15 December 2004.

employed. Women of different marital status were interviewed, including single women, widowers, divorcees and married women. All these marriages were monogamous.

The names of the women who were interviewed by this researcher have been changed in this study for ethical reasons. For similar reasons, the exact location where interviews were conducted is not specified. Use has also been made of the findings of interviews held in 2005 by the independent newspaper, *Mmegi*.<sup>93</sup> These were held in Borolong, a village in the central districts of Botswana predominantly populated by Kalanga speakers, at a time when the gender debate on the AMPA legislation was in full swing.<sup>94</sup>

Interviewed by *Mmegi*, Tootle Ketswenyegile was quick to point out that the Act's purpose was merely to formalise the reality of what was already happening in most families. She said that women were, and had always been, the backbone of families.<sup>95</sup> She did not however distinguish between legal rights and social practice in her circles. She also dismissed the government intervention by indicating that a change in the legislation would have no bearing on a couple's daily interactions. However, she pointed out that some Kalanga women had always been 'firm', refusing to be subordinated by their husbands.

In contrast, another respondent, Segametsi Motswagole, a 34 year-old woman, was of the view that:

Educated career women want to be viewed as equals with men but the reality is men have been built stronger than woman, not just physically but psychologically as well. Every man wants to be the provider, whether his wife is educated or not. And it is the duty of the woman to be submissive.<sup>96</sup>

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93. *Mmegi/The Reporter* is an independent commercial newspaper established in Botswana that has been publishing since 1968. Despite the fact that most newspapers covered the debates on the AMPA's enactment, *Mmegi* spoke with those who were directly affected by the Act and were probably unaware of the legislative proceedings. The newspaper was interested in hearing the thoughts on the Act from people on the periphery.

94. I acknowledge that interviews with other minority ethnic groups would have enhanced these observations as would conducting interviews with Kalanga women in urban settings. However, these were not feasible within the scope of the project. The approach here was to record some of the reactions in more traditional settings expecting some measure of resistance towards the new legislation. There was also an expectation that Kalanga traditions would be central in some of these reflections.

95. T. Setsiba, 'Villagers React to Abolition of Marital Power Bill', *Mmegi/The Reporter*, 11 January 2005.

96. Author interview with Segametsi Motswagole, 17 March 2021.

Motswagole, an accountant by profession, went on to say that ‘being seen and heard in a marriage’ is how she defined equality. As a result, in her view the man was created to lead, and the wife was created to be his support; this support, she said, should of course be accompanied by respect.<sup>97</sup> Consequently, she suggested that AMPA is to be appreciated, but went on to add that women should not disrespect their husbands because of their newfound power under the law.

Privilege Keikanetswe, a 32 year-old Kalanga woman, admitted that before the legal abolition of marital power, women were often put in what she described as a ‘difficult position’. They could not even make basic decisions because that ‘special’ authority was reserved for men. But, she told me, ‘we now live in times where women can afford to stand up for themselves because the AMPA has liberated them’.<sup>98</sup> Another young professional woman, Gugulethu Gumede, expressed similar sentiments, saying that women ‘nowadays are more outspoken, regardless of the spaces they occupy’.<sup>99</sup>

In an interview with *Mmegi*, Kebaeditse Podile supported this view of the impact the new law was having. She told the *Mmegi* correspondent that both men and women were capable of providing for their families; and asked, rhetorically, why then one should have more power than the other. She said women had been oppressed in the past and it was high time the law was rectified to accommodate the rights of both men and women. Yet, in another interview conducted by the newspaper, a respondent named Tlholego Atamelang, voiced the strong opinion that some young people wanted to modernise Botswana society and this held the danger that it might ‘destroy the country and forget about the culture’. According to her, the government of the day was too weak to lead the country on the right path: ‘I pity the young people of this country because they will not enjoy the peace of marriage’, she alleged. Echoing Segametsi Motswagole’s opinions, Atamelang said that in her experience in every institution, ‘there is a leader’ and there are ‘followers’, and that this same principle also applied to a marriage.<sup>100</sup> Her views give credence to continued patriarchy, as espoused by many of the elderly village leaders. Indeed, *Mmegi* interviewee Lefhoko Keleke Kgang, a Borolong village resident who was also an elder, rejected the new legislation. Kgang stated that ‘the husband is the provider of the family’, and therefore it was ‘unreasonable’ to try to give women financial powers in the family.<sup>101</sup>

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97. Author interview with Segametsi Motswagole, 17 March 2021.

98. Author interview with Privilege Keikanetswe, 23 February 2021.

99. Author interview with Gugulethu Gumede, 23 February 2021.

100. Setsiba, ‘Villagers React to Abolition of Marital Power Bill’, *Mmegi/The Reporter*, 11 January 2005.

101. Setsiba, ‘Villagers React to Abolition of Marital Power Bill’.

In another interview a housewife called Motlalepula Ramajane told *Mmegi* that the 2004 Act would give women the platform to ‘abuse’ their husbands. In her statement, she inadvertently pointed towards a reversal of gender roles. She was not against the legislation per se but did make the point that in her view more organisations and action groups ought to focus their attention on the needs of rural people rather than concentrating on the debate about gender roles in urban areas.<sup>102</sup>

Some Kalanga women revealed how their husbands ignored their responsibilities while insisting on being the family's head. Kudzani Tagana, a self-employed Kalanga woman with a basic education, expressed her frustration with men's public claims of being the breadwinner while failing to fulfil their responsibilities in private. She recounted:

I taught myself to drive without my husband's knowledge. People on the outside used to look at me and think I have the perfect marriage and my husband does everything for me. I sometimes imagine the things I could have done for myself if I had not got married and had to ask for permission to do anything.<sup>103</sup>

Tagana understood the daily obstacles of being a woman in rural Botswana. However, she continued to recognise her husband as the family head while seeing her position in the family as one who had to protect his image by supplementing the family income in secret. A strong believer in ‘tradition’, she claimed to admire independent women and applauded those who stood up to their spouses and upheld what she understood as being cultural norms. This is an example of a personal choice of maintaining the façade of tradition while at the same time supporting other women who choose to demand equal marital rights with those of their husbands. Chabo Nleya, a middle-class Kalanga woman in her early fifties is one such woman who railed against being powerless to experience her own agency. In my interview with her, Nleya said that she was relieved when her marriage ended. She said:

I am a proud divorcee. My husband believed so much in marital power and he made it clear to me that he was the man of the house. He had the nerve to embarrass me in whatever way in front of my friends. We had one bank account, which he controlled.<sup>104</sup>

Nleya is a courageous woman and she had had the strength to challenge both her husband and her ‘culture’. The collapse of a marriage in Kalanga culture is most usually attributed to the inadequacies of the female spouse.

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102. Setsiba, ‘Villagers React to Abolition of Marital Power Bill’.

103. Author interview with Kudzani Tagana, 5 February 2014.

104. Author interview with Chabo Nleya, 14 February 2014.

Generally, among those interviewed, elderly women thought the AMPA legislation was misguided because, according to their view of their traditions, a husband should be respected, and his actions ought not to be questioned because this compliance would lead to what they deemed a ‘successful’ marriage. This did not, however, mean that it would be a happy relationship. Moreover, in the elder women’s opinion the new legislation could allow wives to have a legal ‘exit strategy’, which could lead to many unsuccessful marriages. A point somewhat neglected here is the overwhelming social pressure placed on women by both men and women not to divorce even the most abusive of husbands. Despite legislative change, the reputation of the entire family and the expectations of the community still prevail.

In my interviews with them, Elizabeth Mbotho and Eckenia Sekai, elderly Kalanga women from North-East, also rejected the Bill and did not view the dominance of husbands as discrimination. Sekai pointed out that ‘what you now call oppression and abuse is what we called respect for our husbands. We reported everything to our husbands and every decision [we made] was made with his consent’.<sup>105</sup> This, I suggest, is uncomfortable for feminist analyses but may be seen as an ontological understanding of what constitutes marriage amongst many people across varied ethnic groups.

In an interview I conducted in February 2004 with Taboka Pheko, a middle-aged woman and housewife, it emerged that she felt that despite legislative change, ‘traditional practices’ would continue. Both she and her husband were fully aware of the legislative changes but he stood firm in his cultural belief that women were minors in the family structure.<sup>106</sup> Pheko was resigned to the fact that her husband, a staunch advocate of patriarchy, would never consider equality between them.

Most of the Kalanga women, of all ages and occupations, interviewed for this study indicated that they had utmost respect for their husbands. They had been brought up to ‘know that men are the head’ of the household and society at large and were brought up to believe that men ought to be in control of the family and that women, by contrast, were subordinates. It is therefore not surprising that married women were not the only ones affected by this dependence on men. Even single women had become accustomed to relinquishing power over property and personal matters to their partners. Nonetheless, the enactment of the AMPA in 2004 was a first step towards creating gender consciousness for many in Botswana.<sup>107</sup>

These women reacted in a variety of ways to the legislation, owing primarily to their personal relationships with their husbands, their age, and the society and

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105. Author interview with Eckenia Sekai, 10 February 2014.

106. Author interview with Taboka Pheko, 3 February 2014.

107. Author interview with Taboka Pheko, 3 February 2014.

tradition in which they lived. Gender equality is in large part opposed by the elderly, who believe it violates their cultural norms. Some argue that even though the 2004 legislation has been enacted, a man and a woman cannot be considered equals. Nevertheless, many young women believe that patriarchy oppresses women and that it is time for them to stand up for themselves and rid themselves of the abuse many have endured at the hands of men who regard themselves as the head of families and the dominant force in most respects. What is significant is the way the interviews conducted by *Mmegi* in 2005 show similarities with my own in 2014, almost ten years later. This shows that not much change had occurred at a community level. Those inter-generational differences of opinion are likely a reflection of the gradual ways the younger generation are better educated on the progression of gender laws in the country.

## **Conclusion**

This article has, not unsurprisingly, revealed that Kalanga women have different views concerning marital relations. Despite being informed of contemporary legislation and knowing their rights in terms of the law, most of the women interviewed chose – or felt they had no option but to live lives as subordinate to their husbands. This raises difficult questions about freedom of choice in terms of the type of life they want to live.

Some of these Kalanga women were so respectful of and concerned about what they saw as an ‘unchanging’ culture that they believed that to raise issues of equality would be to defy their husbands as heads of their families. They felt it was inappropriate to regard men and women as equals, and that the new law was misplaced. Some believed strongly that the AMPA would cause problems in family life in the longer term and that women should remain subordinate to their husbands. But this is not peculiar to Kalanga culture. In a broader perspective, Heike Becker, for example, makes the observation that African women have often been defenders of tradition and in so doing may appear to be the ‘architects of their own oppression’.<sup>108</sup> Indeed, similar observations may be made about conservative societies (in both the social and political sphere), around the world, including those in the West. For Botswana, we might ask whether in a socio-political structure which already marginalises the Bakalanga, this is a strategy to preserve the group’s ethnic identity.

However, some Botswana women, including a number of those whose interviews have been discussed in this article, believe that conventional marital power is just another way for men to continue ill-treating women and hold on to

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108. H. Becker, ‘Making Tradition: A Historical Perspective on Gender in Namibia’, in S. LaFont and D. Hubbard, *Unravelling Taboos: Gender and Sexuality in Namibia* (Windhoek: Legal Assistance Centre, 2007), 24.



values they claim to be traditional. Such individuals believe that these values have passed down to them from their forefathers. Furthermore, most local studies on women in Botswana have focused primarily on those living in cities, but this study has shown that women living in rural areas are no different, as evidenced by their perspectives in the interviews conducted for this research.

The Botswana government has played a key role in defining the status of women. Official definitions of their status include certain implications concerning gender-sensitive laws meant to protect women's rights.<sup>109</sup> Findings made by the Law Reform Committee prompted the government to enact the Abolition of Marital Power Act of 2004. The committee found that the marriage law discriminated against women and that they had lived under the authority of their husbands for decades. However, marriage in Kalanga society was not only regarded as a matter between the couple but concerned the whole society; it was not a union between two individuals but the two families in their entirety and as such, women were placed under pressure to prove their worth to everyone and earn the respect of their husbands.<sup>110</sup>

When formal marital power of the male partner was abolished in 2004, this came as a shock to traditionalists, who never believed that a husband and wife could be equal partners in marriage. This was evident in the interviews about the AMPA with some Kalanga women conducted in 2005. Some elderly traditionalists pointed out that they wanted to hold on to their culture as this is what had kept them in in what they described as happy marriages for a very long time. They predicted that the new 2004 Act would bring chaos to marriages. Evident from the interviews in 2014 and 2021, however, was that although the law had been passed, there was still minimal change in domestic affairs.

The state, politicians, bureaucrats and policymakers tend to overlook voices of rural people in the making of laws that affect their daily lives. As argued by Pozarny, rural communities are often perceived as 'backward', uneducated and therefore not capable of expressing their aspirations.<sup>111</sup> This may need to be reimagined. Rural women do articulate their aspirations, although these are often dismissed if they do not subscribe to contemporary viewpoints. State institutions have tended to draft and impose laws and policies without adequate consideration of rural women's interests. At worst, these bureaucrats and policymakers demonstrate no interest in non-urban social and economic affairs. This situation is exacerbated when it comes to issues that involve women. Not centring women, a key pillar of the rural social and

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109. Setsiba, 'Villagers React to Abolition of Marital Power Bill'.

110. M.P. Seng, 'In a Conflict between Equal Rights for Women and Customary Law, the Botswana Court of Appeal Chooses Equality', *University of Toledo Law Review*, 24 (1993), 563 and 566.

111. Pozarny, 'Gender Roles and Opportunities for Women in Urban Environments', 3.

economic landscape, in processes that shape their lives, will keep them perpetually vulnerable. Rural women should be given solid platforms to express themselves and to imagine the trajectories of their lives. They are at a disadvantage compared to urban women who have, for example, better access to paid employment, information, and health facilities, among other things.

Although restricted by social, economic and historical factors, rural women are beginning to raise their voices and take advantages of modest platforms such as the *kgotla*<sup>112</sup> – where they were previously not allowed to participate – to drive their agenda. Exposure to formal education and interaction with ‘privileged’ women in urban areas has made some rural women more vocal about some of the outdated beliefs on the issue of marriage, as this article has shown. Their opinions clearly illustrate that they are willing to challenge laws and traditions that have hindered their progress in comparison to their male counterparts, even if this is nominal. The perception of women as inferior is beginning to change, particularly as more households are being led by women, and women compete for paid jobs with their male counterparts. These challenges are not unique to Botswana but shared by other southern African countries such as Eswatini, South Africa, Namibia and Zambia.

During the course of this research, it became clear that it is critical to educate rural communities about changes in legislation and involve them in the process, but it becomes equally evident that irrespective of the drive by the state, if an ethnic group perceives itself to be vulnerable, this will slow the pace at which the community assumes the vision of the state. While the Botswana government has made significant legislative change for the rights of women in marriage, its approach to gender equality and the delay in broaching this gender disparity has had a significant impact on the speed with which these policies are embraced by local communities. In many respects, this modern, successful country continues to lag behind in the feminist movement towards equality for all, despite its best efforts.

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