

THE CHILDREN'S STATUS BILL: DOES PUBLIC OPINION MATTER?

February 2006

Something strange is going on with the Children's Status Bill. Government appears to be resolutely and repeatedly ignoring public opinion.

Similar public opinions have been put forward over and over again, in a range of forums, and yet somewhere there are forces in government which are overriding those opinions without explanation.

Let's look at the convoluted course this Bill has taken. Several years ago, the Ministry of Women Affairs and Child Welfare solicited public input on an early draft of this Bill.

After a 3-day workshop on children's issues, the Minister of Women Affairs and Child Welfare appointed a Task Force of persons with expertise in children's issues to refine the draft legislation on the basis of the public input. This Task Force was chaired by the Ministry's Permanent Secretary and included representatives from relevant Ministries and NGOs.

This Task Force, on the basis of further public consultation and study, made recommendations which were incorporated into the draft Children's Status Bill. This Bill went to Cabinet, where it was substantially changed. So the Children's Status Bill which was tabled in the National Assembly did not follow the recommendations drawn from the public, or from the experts the Ministry hand-picked to prepare the Bill.

The Cabinet's version of the Children's Status Bill was tabled in the National Assembly in February 2004 and referred to the National Assembly's *Standing Committee on Human Resources, Social and Community Development*.

This Committee conscientiously consulted the public widely. It held 28 public hearings on the Bill in locations around the country. In October 2004, it tabled a report in the National Assembly which made recommendations for amendments to the Bill. Many of the committee recommendations were based on a submission supported by a total of 19 organisations which work closely with women and children. The Committee report stated: "It is thus the considered view of the Committee that the report is a true reflection of the majority of the people consulted." Not surprisingly, many of these recommendations mirrored the recommendations of the Ministry's Task Force, which had also consulted widely.

Outsiders can never know for sure what goes on behind the scenes, but a second Committee report was tabled in February 2005 after private discussions between the Parliamentary Committee and the then-Minister of Women Affairs and Child Welfare. Many of the key recommendations in this second report were directly contrary to the recommendations in the first Committee report. Yet the second report still stated, unaccountably, that it was "a true reflection of the majority of the people consulted."

The Bill was eventually allowed to lapse in the National Assembly, reportedly as a result of the differences of opinion between the Minister and the Parliamentary Committee.

Cabinet was re-shuffled when President Pohamba took office in March 2005, and a revised Children's Status Bill was tabled by the new Minister of the re-named Ministry of Gender Equality and Child Welfare in November 2005. This revised Bill still ignored public opinion on key issues.

The revised Bill was passed by the National Assembly in November 2005, after very little debate, and referred to the National Council. A letter signed by many NGOs was presented to the Chairperson of the National Council, pleading with the Council to give the Bill further scrutiny.

Another round of committee consultations followed. In December 2005, the National Council referred the Bill to its *Standing Committee on Gender, Youth and Information*. Because of budgetary constraints, this Committee was able to hold

hearings only in Windhoek. But it contacted a host of organizations to make sure that they were aware of the hearings, and there was a good level of participation by grassroots men and women at the 3-day hearings which took place in February 2006.

The Legal Assistance Centre presented a submission joined by a total of 25 organisations which work with women and children. About 40 women and 6 men came to the hearings, most of them representing organisations which supported the group submission. Organisational input was also presented by the National Society for Human Rights and the Law Society of Namibia.

During these hearings, both women and men expressed specific concerns over certain aspects of the proposed Bill. Some women spoke of the special bond between women and children and the importance of breastfeeding. Other women stated that they wanted good fathers to be involved with children, emphasizing that the problem was the absence of safeguards in the cases of bad fathers who do not take care of their children. Examples of child abuse and domestic violence were put forward.

Many felt that absentee fathers should not be able to enjoy equal custody rights. Some were concerned that if a child goes to live with the father, the child will not have stability but will be passed around among his girlfriends and female relatives. There was also a fear that if a surviving parent automatically gets custody when the other parent dies, the child will be taken from a familiar environment to an unknown environment that may be detrimental to the child.

Some people noted that grandparents are often the people who end up caring for children, and were concerned that their rights should receive greater protection in the law.

Several speakers, both male and female, expressed concerns about men who father children through rape, and were afraid that such a rapist could come later and claim the child. One woman felt that allowing rapists custodial rights would actually promote rape.

One man expressed concerns that most men are not participating in the processes to develop legislation in the best interests of children, saying that men are simply "not sensitized" to these issues. Another man noted that inappropriate guardians of a child can abuse their guardianship to obtain or exploit the assets of the child, and felt that children must be protected from property grabbing.

Of all the persons who spoke at these hearings, there were only two submissions in favour of the Bill as it stands – from the National Society for Human Rights, and from one individual man.

After listening to this input from the public, the Committee tabled a report with recommendations very similar to those first put forward by the National Assembly's Standing Committee.

But the National Council as a whole -- after congratulating the Committee on a job well done -- then proceeded to vote against most of the Committee's recommendations.

On the key issues of custody, guardianship and the rights of rapists over children fathered through rape, the Committee recommendations were consistently rejected by votes of 3 to 15. The *only* 3 members of the National Council to support the Committee on these points were the 3 MPs who were members of the Committee. There was very little debate on any of the main issues, with the other members of the National Council seemingly having already made up their minds on which way to vote.

The Minister of Gender Equality has spoken out publicly against those who are "delaying" the Bill, without acknowledging that most of the proposals for amendment are coming from amongst her own Ministry's key constituencies -- grassroots women and respected NGOs which work nationally with women and

children. Efforts made by various NGOs to meet personally with the Minister to discuss concerns about the Bill have so far failed.

Now, contrary to the public opinion overwhelmingly expressed in two separate rounds of public hearings, the Bill is going forward to the National Assembly with provisions mandating equal custody and guardianship for mothers and fathers of children born outside marriage, with no restriction on the parental rights of rapists, and with custody and guardianship to go to the surviving parent automatically when the other parent dies.

This is the case despite the fact that so many people have come forward with personal stories to illustrate how these rules will, in many cases, be completely contrary to the best interests of children. The people have repeatedly said what they want, and the input of the majority has been repeatedly ignored.

Members of civil society cannot help but wonder if there is any point to the committee process in Parliament. It is true that Parliament cannot be expected to follow public opinion on all issues. Yet surely such strongly-expressed public opinion on family matters which will touch the majority of the people in the nation should be given serious consideration, and not simply ignored without meaningful discussion or explanation.

Parliament is supposed to represent the will of the people in a democratic society. Yet who does our Parliament represent?

The group submission presented to the National Council's Committee on Gender, Youth and Information, which was later substantially rejected by the National Council as a whole, was supported by the following 30 organisations:

- Aids Care Trust
- Catholic Aids Action
- Childline/Lifeline
- Church Alliance for Orphans (CAFO)
- Council of Churches in Namibia
- Evangelical Lutheran Church in the Republic of Namibia (ELCRN)
- Evangelical Lutheran Church AIDS Project (ELCAP)
- Gender and Media in Southern Africa (GEMSA)
- Katutura Community Radio
- Khomas Women in Development
- Legal Assistance Centre
- Namibia Girl Child Organisation
- Namibia Media Women's Association
- Namibia Women's Manifesto Network
- Namibia Women's Association (NAWA)
- Namibia Women's Network
- Namibia Women's Voice
- Namibian Centre for Women's Leadership
- Namibian Red Cross Society
- !Nara
- Omaheke San Trust
- Ombetja Yehinga Organisation
- Phillipi Trust
- Sister Namibia
- Tanidare Empowerment Network
- the rainbow project
- Women's Solidarity Namibia
- Women Support Women
- Women's Action for Development (WAD)
- Woman and Child Protection Unit Head Office (WCPU)

It should be noted that many of these organizations represent large numbers of people from all parts of the country. Some of them held national consultations with their members before joining the submissions. The recommendations in the group submission were also discussed

in several workshops with women and men from all regions in Namibia, and with several church groups.

“Raping women and child abuse must be wiped off the surface of the Namibian soil... Not a single healthy minded or **responsible father** can ever think like that. These so-called men who indulge in such immoral practices are not worth being referred to as men. They are monsters. They are mad wild mules. They must not be given any space in the Namibian society. Even the prison is not a final destination for them. They must be completely isolated and a civil war declared against such ill-behaving elements, especially by every sober minded man in Namibia.”

*Hon Hakaye, National Council, 8 March 2000
during the debate on Combating of Rape Bill,
who defended full parental rights for men who have fathered
children by means of rape in the National Council in February 2006.*

This opinion piece is supported by the following organizations and individuals. Other signatories listed in the box above could not be contacted before the press deadline.

- **Aids Care Trust**
- **Evangelical Lutheran Church in the Republic of Namibia (ELCRN)**
 - **Legal Assistance Centre**
 - **LifeLine/ChildLine Namibia**
 - **Namibia Girl Child Organisation**
- **Namibia Women’s Association (NAWA)**
- **Namibia Women’s Leadership Centre**
 - **!Nara Training Centre**
 - **National Women’s Voice**
- **Ombetje Yehinga Organisation**
 - **The Rainbow Project**
- **Women’s Action for Development (WAD)**
 - **Dianne Hubbard, Task Force member**
 - **Helen Mouton, Task Force member**
 - **Liza van Rhyn, Task Force member**