GENDER AND LAW REFORM IN NAMIBIA: THE FIRST TEN YEARS

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INTRODUCTION

It has been noted time and time again that the Namibian Constitution provides a strong backdrop for sexual equality. [1] But the Constitutional guarantees of sexual equality do not work automatically. For purposes of continuity and clarity, all laws in force at the date of independence remain in force until they are explicitly repealed or amended by Parliament, or declared unconstitutional by a competent court. [2]

Likewise, Namibia is frequently applauded for being a signatory to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the UN Convention on the Rights of the Child, with no reservations – a wholehearted degree of commitment which is rare amongst the countries of the world. But the provision of the Constitution which makes these conventions part of our domestic law remains untested. [3]

This leaves the provisions of the Namibian Constitution and the UN Conventions largely statements of aspiration, rather than principles which govern the daily lives of Namibians in any practical sense – meaning that law reform on gender issues is vital in bridging the gap between principles and reality.

The issue of inheritance is a stark case in point. In virtually identical language, both the Namibian Constitution and CEDAW promise men and women equal rights "during

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[1] The Namibian Constitution is one of the few constitutions in the world that uses gender-neutral language throughout. It forbids discrimination on the basis of sex, provides for equality in all aspects of marriage, and gives special emphasis to women in the provision which authorises affirmative action. Furthermore, it explicitly states that customary law survives only to the extent that it does not conflict with the Constitution, meaning that customary law may not entail any form of sex discrimination. The Constitution also puts men and women in an identical position with respect to citizenship, including the acquisition of citizenship by marriage.

[2] Namibian Constitution, Article 69.

[3] Article 144 of the Constitution states that "unless otherwise provided by this Constitution or Act of Parliament, …. international agreements binding upon Namibia… shall form part of the law of Namibia" -- but the import of this statement has not yet been explored in any actual case.

marriage and at its dissolution". [4] But under customary law, men and women in many communities patently do *not* have equal rights when a marriage is dissolved by death. In the same vein, the Namibian Constitution prohibits discrimination on the basis of "social status" and the UN Convention on the Rights of the Child forbids "discrimination of any kind" on the basis of "birth or other status" [5] , but under Namibian's current civil law children born outside of marriage are discriminated against with respect to their right to inherit from their fathers. Until law reform at the behest of either Parliament or the judiciary applies these promises to practical issues such as inheritance, they will remain just so much useless paper for the average Namibian.

Women or men who believe that they have experienced discrimination on the grounds of sex can bring a court challenge under the Constitution, but the only person to take this route so far in Namibia is a white German male. The majority of the public is apparently content to let Government take responsibility for implementing the Constitutional principle of non-discrimination.

Furthermore, there are many areas where law reform is needed on gender grounds, not because of formal inequality, but because the present laws are simply inadequate to serve gender needs effectively. One of the key examples here is Namibia's law on maintenance, which is completely gender-neutral but nevertheless unsatisfactory to serve the needs of the single mothers who are its primary users. Another dramatic example is domestic violence, where the current criminal and civil law does not meet the needs of the women who are most often injured or killed at the hands of their "loved ones". For these reasons, law reform on gender issues is crucial to the advancement of equity between women and men in Namibia.

There have been some very laudable movements in the direction of greater gender balance in Government. Namibia's Parliament is currently 19% women. [6] The Law Reform and Development Commission was for many years chaired by a woman, with its most active committee being one that focused on women. [7] Most of the legislation initiated by the Law Reform and Development Commission has been gender-related, but most new laws are initiated overall by ministries. And here the gender balance is still not very good. Only 3

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4 Namibian Constitution, Article 14; CEDAW, Article 16.

5 Namibian Constitution, Article 10(2); UN Convention on the Rights of the Child. Article 2.

6 The National Assembly includes 23% women (18 women amongst 72 elected and 6 appointed members). There are only 2 women amongst the 26 members of the National Council, elected from the 13 Regional Councils (7.7%). This means that Parliament as a whole includes just over 19% women. This exceeds the world average of 13,8% considerably, although it is still far from the ideal of a perfect balance. (Sweden comes closest, with a Parliament that is 42.7% female.) Statistics from Inter-Parliamentary Union (www.ipu.org/).

7 The current membership includes has slightly more men than women. Only one of the four recently announced appointees to the LRDC is a woman. A fifth member, the Ombudswoman, is an *ex officio* member and therefore improves the gender balance by accident rather than by design. See Cabinet press release, July 2000.

out of 19 ministers are women, as well as the Director-General of the National Planning Commission. [8] Furthermore, none of the five Standing Committees in the National Assembly or the four Standing Committees in the National Council which deal with legislation of a general nature is chaired by a woman. [9]

It is possible that the new Ministry of Women Affairs and Child Welfare, a recent upgrade from the Department of Women Affairs in the Office of the President, will take responsibility for advancing more gender-oriented law reforms, but it is too soon to assess the impact of this development. Up to now, pressure from civil society has been an important component in focussing attention on the need for gender–based law reforms, and in lobbying for their passage.

Much that is praiseworthy has already been done in the area of law reform on gender issues in the last 10 years. For example, Namibia's new Combating of Rape Act is one of the most advanced laws on rape in the world. This paper will not focus on praise however. It will rather examine in detail what has and has not been done, in order to analyse the topics for law reform to date in terms of which of Namibia's women are affected by them. The paper will then review the law reform process, in an effort to identify steps which can be taken to give the public, and particularly women, greater opportunities for participation in the process.

The paper starts from the assumption that a strong democracy requires a strong civil society, and that effective civil society participation in the law reform process will produce stronger and better laws.

I am writing this paper as an outsider to government processes, but I think that this is a useful perspective. Almost all members of the public are situated as outsiders when it comes to "law reform". I have been involved with the topic of law reform through my work at the Legal Assistance Centre for the last seven years, where one of my goals has been to improve public understanding of, and access to, the law reform process in relation to gender issues. It is this background which informs the present views. [10]

A. THE RESULTS: "PUBLIC" SPHERES AND "PRIVATE" SPHERES

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[8] In addition to the 19 Ministers, there are three other positions which are at Cabinet level: the Director-General of the National Planning Commission (currently female), the Head of National Intelligence and the Speaker of the National Assembly (both currently male).

[9] There are a total of nine Standing Committees in the National Assembly, only one of which is chaired by a woman. The Vice Chair of the Standing Committee on Human Resources, Equality and Gender Development is a woman. There are a total of seven Standing Committee in the National Council, none of which is chaired by a woman. However, since the Standing Committees are drawn from Parliamentary backbenchers, there are limited number of women in the pool.

[10] I would like to thank those people who took their time to read the first draft of this paper and provide comments which improved the final version immensely. Since not all of those persons wished to be acknowledged by name, I hereby thank all of them anonymously.

1. What has been done

There have been many significant law reforms concerning gender in the 10 years since Namibia became independent, but an analysis of these reforms shows that action in the area of the "public" sphere of political participation and formal employment has taken precedence over action concerning the more "private" spheres of household economy and family relationships.

This terminology is used purely for analytical purposes, without any intent to deny that 'the personal is political'. As Beth Goldblatt points out in a recent article on law reform in South Africa, an assumed dichotomy between public and private has been used by liberal thinkers as a justification for "lack of state interference in the family where men control women and children, often with violence". [11] But false dichotomies such as visions of "public" and "private" spheres ignore the interaction between different facets of existence in the lives of individual people.

Public participation and formal employment

Significant progress has been made in the area of affirmative action. An affirmative action provision applied to the first two local government elections, with the result that there are currently 41% women on local councils, as compared to about 3% women on regional councils and 19% women in Parliament, where no affirmative action applied.

It is also noteworthy that the law which provides a procedure for official recognition of traditional authorities requires that they "promote affirmative action amongst the members of that community", particularly "by promoting women to positions of leadership." Although the Act contains no specific monitoring or enforcement mechanisms, it provides a basis for encouraging greater participation by women in traditional leadership positions.

Individual affirmative action provisions have also been made applicable to a number of statutory bodies and boards – ranging from the Social Security Commission to the National Sports Commission. [12] The most significant of these is probably the provision in the draft

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[11] Beth Goldblatt, "A Feminist Perspective on the Law Reform Process: An Evaluation of Attempts to Establish a Family Court in South Africa", 13 SAJHR 373 (1997) at 376, referring to K O'Donovan, *Sexual Divisions in Law* (1985).

[12] The Social Security Act 34 of 1994 requires female representation from government, trade unions and employers' organisations on the Social Security Commission. The Namibia Sports Act 7 of 1995 requires that at least three of the 14 members of the National Sports Commission be women. This Act also specifies that the Sports Development Fund which is established for the promotion of sports in Namibia shall be used "to enhance the sports of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices" - a provision which could be used as the basis for affirmative action for women in this field.

Other examples of such affirmative action are the National Vocational Training Act 14 of 1994, which requires a cross-section of female representation on the Vocational Training Board; the Polytechnic of Namibia Act 33 of 1994, which requires that the Council of the Polytechnic must include one person appointed by the Minister to represent the interests of women; and the Namibia Film Commission Act 6 of 2000, which requires that one-third of the eight members of the board be women.

Communal Land Reform Bill which reserves about one-third of the seats for women on each Communal Land Board. This is significant (although perhaps not adequate) since Communal Land Boards will in future have important supervisory powers over the allocation of customary land rights by traditional leaders. [13]

The Affirmative Action (Employment) Act is intended to improve the representation of blacks, women and disabled persons in the formal workforce, by requiring employers with more than 50 employees to prepare affirmative action plans. The Employment Equity Commission which will monitor the implementation of these plans is made up in part of persons from each of the designated groups. There must be two persons out of the total of 14 members who represent the interests of women, although only one of these two persons must actually be a woman. [14]

One arena in which affirmative action has been applied to women who work outside the formal workforce is through the Co-operatives Act. Any co-operative which has a substantial number of women members must ensure that there is at least one woman on its board, as a means to increase the representation of women in management positions. [15] The Co-operatives Act also allows for women-only co-operatives, as a forum where women can learn to be more comfortable with business management, and there have already been some very successful co-operative initiatives from women. [16]

Working women with incomes high enough to qualify as taxpayers have been further benefited by the removal of discrimination against married women in the income tax laws. [17]

Other law reforms in the field of labour have been aimed at removing discrimination and ensuring that women are not disadvantaged in the labour market by their role in child-

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However, reserving seats for women on public bodies is not standard practice. There are more boards and bodies *without* such affirmative action provisions than vice versa.

[13] The bill promises places for 4 women out of a total of 11 or possibly 12-13 members, depending on how many regions are covered by the Board. Two of these women must be "engaged in farming operations in the board's area", and two must be women "who have expertise relevant to the functions of a board". Communal Land Reform Bill (B.10-'99, as introduced in the National Assembly), section 4.

[14] Affirmative Action (Employment) Act 29 of 1998, section 6.

[15] This provision applies to any co-operative with more than five women amongst its members, or with women numbering more than one-third of its members (whichever is lesser). Co-operatives Act 23 of 1996, section 29(2)(b).

[16] Section 9(b)(i) of the Co-operatives Act 23 of 1996 forbids discrimination amongst members on various grounds such as race and ethnic origin, but sex is not listed so as to allow for single-sex co-operatives as an affirmative action measure for women.

[17] See Act 12 of 1991 (married women), Act 33 of 1991 (removal of gender distinctions regarding age in the provision affecting applicability of exemption of lump sum paid to retrenched employee), and Act 25 of 1992 (removal of remaining distinctions between men and women, and between married and single persons).

bearing. The Labour Act prohibits discrimination in any aspect of employment on the basis of sex, marital status, family responsibilities and sexual orientation (amongst other things), as well as forbidding harassment on the same grounds. It also provides for three months of maternity leave for any woman who has been employed for at least one year by the same employer. [18] This provision has been supplemented by the Social Security Act, which provides maternity benefits (80% of full pay up to a ceiling of N$3000) through a mandatory combined scheme for sickness, maternity and death benefits financed by matching employer and employee contributions. [19]

These reforms will obviously have significance primarily for the minority of Namibian women who are in formal employment – only about one-third of all women who are of an employable age, according to the 1991 Census. [20] And even some women in the most vulnerable forms of formal employment are excluded from full coverage. The Labour Act defines employees broadly to give full coverage to domestic workers, who were excluded from pre-independence labour legislation, but the Social Security Act covers only employees who work more than two days a week for the same employer – thus excluding women who do domestic work in different households on different days of the week. [21]

Family law

The only law enacted since independence in the area of family law is the Married Persons Equality Act, which eliminates the discriminatory Roman-Dutch law concept of marital power that previously applied to civil marriages. Couples married in community of property must now consult each other on certain major transactions (with husbands and wives being subject to identical powers and restraints), while couples married out of community of property have the right to deal with their separate property independently. The symbolic import of this act is probably even more important than its practical provisions, as it sends out a clear message that the law will no longer recognise husbands in civil marriages as "heads of household".

The gender-based inequalities in customary marriage, which stem from a different source, were not addressed by this law -- aside from giving husbands and wives in both civil and customary marriages equal powers of guardianship in respect of children of the marriage. [22]

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[18] Labour Act 6 of 1992. See sections 45 and 107 on discrimination and section 41 on maternity leave.

[19] Social Security Act 34 of 1994. Neither Act makes any provision for paternity leave or parental leave, which reinforces the notion that women bear the primary responsibility for child care.

[20] According to the 1991 Census, of the 517 082 women aged 10 years and older, only 173 032 are formally employed whilst 215 008 are 'economically active'.

[21] See the definition of "employee" in section 1 of the Social Security Act 34 of 1994, compared to the definition of "employee" in section 1 of the Labour Act 6 of 1992.

[22] The Married Persons Equality Act also makes a wife's domicile independent of that of her husband in both civil and customary marriages, and provides that the domicile of children of any marriage will be the place with which they are most closely connected. However, these aspects of the law, although praiseworthy, will be practically relevant to few Namibians.

While the Married Persons Equality Act has been a positive first step, it does not sufficiently address discrimination in the family (as the UN CEDAW Committee noted in its report on Namibia). [23]

Laws pertaining specifically to rural women

The major development for rural women is the Communal Land Reform Bill. After being discussed for years and going through countless drafts, this bill was passed by the National Assembly in early 2000 but then rejected by the National Council. In terms of this Bill, men and women are equally eligible for individual rights of tenure on communal land, and the treatment of widows and widowers is identical – a change from an earlier draft which made a distinction between the two with respect to the consequences of subsequent marriages. The new law will alter the current practice in some areas, whereby a widow can be dispossessed of the communal land she occupies upon her husband's death, or forced to pay an additional occupation fee. While the system of individual land rights which is proposed is gender-neutral in all aspects, it remains to be seen whether or not such neutrality will be sufficient to alter community practices whereby women have access to land primarily through males – be it husbands, fathers or other relatives.

Land reform in the commercial farm sector has preceded communal land reform, with the Agricultural (Commercial) Land Reform Act having been passed five years ago. It is noteworthy here that tenure rights on resettlement farms are apparently being given to couples jointly, on terms of sexual equality. [24]

In general, law reforms in the area of customary law have been slow to come, probably because of the potential political ramifications of imposing change in this area. [25] Customary family law remains virtually untouched. [26]

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[23] Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/1997/II/L.1/Add.2, 14 July 1997 , paragraphs 37 and 59.

[24] Preliminary information collected by the Legal Assistance Centre on visits to resettlement farms for a study of gender aspects of the implementation of the Agricultural (Commercial) Land Reform Act 6 of 1995.

[25] For example, the Act establishing the Council of Traditional Leaders mandated by Article 102(5) of the Constitution came into force some eight years after independence. (The Council of Traditional Leaders Act 13 of 1997 came into force on 31 March 1998 -- GN 64/1998, GG 1828 – following on the heels of the Traditional Authorities Act 17 of 1995, which also came into action fully only with the first designation of traditional leaders in terms of its provisions in March 1998.).

[26] The only exceptions are the provisions of the Married Persons Equality Act discussed above. There have also been a few statutes which have defined terms such as "marriage", "spouse" and "dependent" to include customary marriages for particular purposes. Examples include the Namibian Citizenship Act 14 of 1990, the Regional Councils Act 22 of 1992 and the Local Authorities Act 23 of 1992 (for the purposes of disclosures of conflicts of interest), the Employees Compensation Act 30 of 1941 (as amended by Act 5 of 1995) and the Arms and Ammunition Act 7 of 1996 (concerning possession of a firearm by a "spouse"). The Combating of Rape Act 8 of 2000 (for purposes of removing the marital rape exemption) specifies that "no

Violence against women

Violence against women is a sad leveller in society, affecting urban women, rural women, and women of all races and social classes. As a point of common concern, it has also been a mobilising force for women's organisations in many communities.

Following on years of lobbying from a broad range of groups, a progressive Combating of Rape Act was passed by Parliament earlier this year and came into force in June. This new law treats rape as an extremely serious crime, and gives greater protection to both girls and boys. It contains a new, gender-neutral definition of rape which moves away from the concept of "consent" that has historically made the rape survivor feel as if she were the one on trial. The new law also has a range of provisions aimed at meeting some of the needs of the rape survivor -- such as increased protection for the survivor's privacy and new procedures to make sure that the rape survivor has an opportunity to place information before the court at the bail hearing. [27]

Law reform on domestic violence is also underway, with a draft bill in progress, but with no clear time frame for its finalisation. It is not surprising that law reform on rape has proceeded law reform on domestic violence, since rape is generally considered to be the more "public" of the two problems while domestic violence by definition involves persons in familial or intimate relationships.

2. What has not been done

More telling than the areas where law reform has taken place are the areas where law reform has stalled.

Somewhere in the proverbial pipeline are long-awaited laws on child maintenance, the position of children born outside of marriage and new procedures to protect abused and neglected children (including mechanisms for removing children from the family environment if necessary). These laws have been in draft form for years now without seeing the light of day.

Other issues which have started on the law reform path are inheritance, the recognition of customary marriages, and Namibia's outdated laws on divorce. None of these, however, has progressed as far as draft legislation which is available to the public.

All of these issues in some way cut to the heart of family life. However, there can be no argument that these issues are rightfully beyond the reach of the law. They are all already subject to some forms of legal regulation under either civil law or customary law. Furthermore, the Constitutional provisions on marriage, children and the family clearly

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marriage or other relationship" shall constitute a defence to a charge of rape, thus being worded broadly enough to cover both civil and customary marriage.

[27] Provisions aimed at reducing the trauma for persons who must testify about the details of sexual abuse in court were removed from the draft Combating of Rape Bill, to become part of a more general law on vulnerable witnesses which is expected to be tabled in Parliament soon.

give the state an affirmative responsibility to protect the rights of individuals in the family sphere.

The problem of child maintenance is an interesting case in point. Maintenance emerged as a priority concern shortly after independence. Many women complained about the difficulty of securing maintenance for their children, and about the inefficient operation of the maintenance courts, which fall under legislation inherited from South Africa and dating from 1963. [28] In 1993, the Legal Assistance Centre began carrying out extensive research into the operation of Namibia's maintenance courts, in consultation with the Law Reform & Development Commission. The Legal Assistance Centre's research findings, which included draft legislation, were published in September 1995. [29] This research was considered by a subcommittee appointed by the Law Reform & Development Commission specifically for this purpose. This subcommittee submitted a report on maintenance to the full Law Reform & Development Commission about one year later, in August 1996. Another year passed. In September 1997, the Law Reform & Development Commission published a report based on the subcommittee's recommendations. It contained recommendations for law reform, but no draft bill. [30]

Now, almost three more years have gone by. The draft maintenance legislation got all the way to Cabinet at one stage, but was sent back for more work. It still sits somewhere inside the Ministry of Justice. Meanwhile the South African law which Namibia inherited has already been discarded by South Africa, which enacted a new law on maintenance in early 1998. [31]

The slow progress here is particularly significant because maintenance is a matter which is central to so many other areas of concern. Firstly, although the existing law is completely gender-neutral, maintenance is a woman's problem in Namibia. A survey of five years of maintenance cases did not turn up a single instance where a father sought maintenance from an absent mother, although a few cases were encountered where children sought maintenance on their own. Secondly, securing child maintenance is a problem which affects a broad range of women. The research conducted by the Legal Assistance Centre showed that women in both rural and urban areas use the maintenance courts and are concerned about more effective mechanisms for securing maintenance, and that many women find traditional approaches to maintenance under customary law increasingly inadequate. [32] Remittances such as maintenance payments and pensions can be crucial

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[28] Maintenance Act 23 of 1963.

[29] Legal Assistance Centre, *Maintenance: A Study of the Operation of Namibia's Maintenance Courts* (1995).

[30] Law Reform and Development Commission, *Report on Maintenance* (LRDC 5, September 1997). The reason given for not including draft legislation in the report was that the proposed amendments to the existing Maintenance Act should be consolidated for re-enactment to produce a clearer law. At 1.

[31] Maintenance Act 99 of 1998.

[32] The existing Maintenance Act mechanisms are available to anyone with responsibility for a child, and treats civil and customary marriages in the same way for the purposes of maintenance. See section 5(6).

sources of income for survival in any household, and maintenance can be particularly significant in the 38% of all Namibian households which are headed by women, 71% of which are in rural areas. [33]

Thirdly, far from being a "private" matter, maintenance is connected to a broad range of other issues. For example, fear of not being able to support children independently can keep a woman in a violent relationship. The United Nations CEDAW Committee, reacting to Namibia's first report, stressed the importance of women's economic empowerment to reduce dependency on men which can create increased vulnerability to domestic violence. [34] The lack of maintenance to pay school fees or other school expenses can hamper the ability of the next generation to get an education – which is in turn a factor associated with crimes by young offenders. [35] Thus, access to secure and reliable maintenance payments influences a number of other fundamental issues. A more effective system for securing support from absent fathers would be an important step towards more economic empowerment for women – and for all women, not just for those in the formal workforce. But law reform on maintenance is clearly not a priority issue in the eyes of the Namibian government.

The complementary system of state maintenance grants for children is part of the package of children's legislation which has been stalled somewhere in the reform process since the first draft bill on this topic was put forward by the Ministry of Health and Social Services in 1994. The existing system of state grants, which falls under the Children's Act 33 of 1960, was once administered by the second-tier governments established under the apartheid regime. For six years following independence this grant system had the ignoble distinction of being one of the last vestiges of direct racial discrimination, with grant criteria and amounts being different for different "population groups". This distinction was eliminated in 1996, with "family allowances" now standing at N$100 for the mother and N$100 each for up to three children in cases where the mother earns less than N$500/month and the father is dead, imprisoned or otherwise unable to provide support. [36] With the increase in the number of AIDS orphans – the care of whom falls disproportionately on female family members – this system of state back-ups is likely to become even more important. [37] But the Child Care and Protection Act which would

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[33] Statistics from 1993/94 National Household Income and Expenditure Survey.

[34] Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/1997/II/L.1/Add.2, 14 July 1997 , paragraph 52.

[35] Data collected on 100 young offenders screened by the Legal Assistance Centre's Juvenile Justice Project in Windhoek between January and May 2000 showed that almost 18% of them left school because of financial problems.

[36] Fathers with custody of children can theoretically claim this allowance if they are disabled or of pensionable age, but (not surprisingly) this affects few men in practice. Information obtained telephonically from Ministry of Health and Social Services by Willem Odendaal, Legal Assistance Centre.

[37] A report published in 1998 estimated that well over 120 000 Namibian children would lose their mothers to AIDS during the next 10 years, with an equal (and largely overlapping) number losing their

completely overhaul the state maintenance grant system, like the new Maintenance Act, is not on the priority list.

A rural issue of over-riding concern is access to land. Historically, women's access to land has often been through male relatives. This has meant that the fruits of a woman's labour on the land do not always belong to her or fall under her control. This has affected women's ability to provide an adequate standard of living for all of the members of the household and their access to disposable income (as opposed to mere subsistence). It can also mean that changes in marital status can be catastrophic for a woman – a woman may, for example, endure violence at the hands of an abusive husband rather than risk losing access to land as the result of a divorce. Insecure tenure can also discourage women from investing in long-term agricultural strategies which might be better for the environment – such as planting trees or taking steps to improve the fertility of the soil. [38]

As noted above, the Communal Land Reform Bill has moved slowly but is now well down the path to becoming a law. However, one must question whether or not its formal gender equality will be sufficient to empower women in the face of long traditions of allocation of land to male family members and male control over many of the major decisions concerning the land. This is an area where more innovative approaches to women's empowerment may be required.

The question of access to land is inextricably linked to inheritance. While the Communal Land Reform Bill as it stands will prevent women from being thrown off their land upon the death of their husbands, it does not address other sexual inequalities in traditional systems of inheritance, nor does it ensure that a widow remaining on a piece of land will be able to retain any resources with which to utilise the land. The general topic of inheritance has been investigated by a special subcommittee of the Law Reform & Development Commission, but no proposal for reform has yet been made public.

As already noted above, another aspect of inheritance which involves a different sort of discrimination concerns the position of children born outside of marriage. Under the current civil law, these children can inherit from their fathers only in terms of a written will – even if paternity is formally acknowledged on the birth certificate. Redress of this problem is part of a package of children's legislation which has been stalled "with the legal drafters" for years. [39]

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fathers as well. Ministry of Health and Social Services/UNICEF, *More Than the Loss of a Parent; Namibia's First Study of Orphan Children*, at 1.

This has already proved to be an underestimate, with a recent UNAIDS report stating that AIDS has already left behind 67 000 orphans as well as 6 600 children living with HIV. "AIDS set to decimate Namibia", *The Namibian*, 28 June 2000.

[38] For a further discussion of these issues, see Louise Fortmann, "Why Women's Property Rights Matter". The CEDAW Committee expressed concern in its report that women in rural areas were still unable to own land and encouraged legal change in this area. Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/1997/II/L.1/Add.2, 14 July 1997, paragraphs 34 and 55.

[39] The current law also discriminates against the fathers of such children, by giving all custodial and guardianship powers to the single mother – who can even give up the child for adoption without notifying or

There are a range of other family law issues which are in need of reform. For example, the need to develop a system for formal legal recognition of customary marriages was emphasised by the CEDAW committee in response to Namibia's first CEDAW report presented in 1997. [40] This should be coupled with an examination of the relative rights of husbands and wives in customary marriage, particularly with respect to rights to own and control property. For example, the CEDAW Committee recommended that the government ensure that research is done to identify the customary laws that contravene "the letter and spirit" of sexual equality and make attempts to replace those laws. [41]

Another priority issue is divorce law reform, since Namibia still follows an antiquated system based on "guilt" and "innocence" which is not adequate to meet the needs of either men or women. [42]

Both the recognition of customary marriage and divorce are under the consideration of another special subcommittee of the Law Reform & Development Commission, and both have been the topic of research papers published by the Legal Assistance Centre (in 1999 and 2000 respectively). [43]

The existing system of marital property regimes is another issue which should enjoy a high priority. This is one of the last remaining sites of overt racial discrimination, since the default system for black couples living north of the old "Police Zone" is still different from that for all other married couples in the country. [44] Reform here should be coupled with an

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obtaining the consent of the father. This would appear to be a violation of the constitutional promise that children have a right, subject to legislation enacted in the best interests of children, "to know and be cared for by their parents" (Article 15(1)) as well as the provision on sexual equality and equality before the law (Article 10).

[40] Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/1997/II/L.1/Add.2, 14 July 1997, paragraphs 43 and 57. The Committee was also very concerned about the existence of polygyny. See paragraphs 43 and 56.

[41] Id at paragraph 50.

[42] Divorce is currently governed by Roman-Dutch common law supplemented by the Divorce Laws Amendment Ordinance 18 of 1935, the *RSA Matrimonial Causes Jurisdiction Act 22 of 1939,* the *RSA Matrimonial Causes Jurisdiction Act 35 of 1945* and the Matrimonial Affairs Ordinance 25 of 1955.

[43] Legal Assistance Centre**,** *Proposals for Divorce Law Reform in Namibia* (2000); Legal Assistance Centre**,** *Proposals for Law Reform on the Recognition of Customary Marriages* (1999).

[44] Sections 17 and 18 of the Native Administration Proclamation 15 of 1928, which deal with marriage and succession, did not come into force along with the rest of the Proclamation. However, in 1954, three subsections from these provisions were brought into force in the area north of the Police Zone *only*, with effect from 1 August 1950. These three provisions were section 17(6), section 18(3) and section 18(9). Government Notice 64 of 1954. Section 17(6) provided that civil marriages between "natives" (which took place north of the Police Zone after 1 August 1950) would ordinarily be *out* of community property. This was in contrast to the default system of *in* community of property which applied to all other civil marriages in the absence of an ante-nuptial contract providing otherwise.

There was an important proviso to this arrangement, however:

examination of the property consequences of cohabitation, to ensure adequate protection for women and children in informal relationships.

The item which should probably be at the top of the list of priority matters still to be addressed is domestic violence, since (like rape) this issue cuts across every line of class, culture and ethnicity, to affect women throughout Namibia. And, by its nature, the fear of violence in the home can hamper women's ability to enjoy the other fundamental rights and freedoms guaranteed by the Constitution. How can a woman who fears assault at the hands of her husband have a hope of protecting herself against HIV? How can a woman enjoy the fruits of her labour from her own piece of land if a male family member controls the proceeds of her work through threats of violence? How can an improved law on divorce assist a woman whose spouse says he will kill her if she leaves him? Without adequate protection against such forms of violence, all other law reforms will be meaningless for women. This topic for reform is well on the way to completion, with the Law Reform & Development Commission currently in the final stages of considering a draft bill prepared by one of its subcommittees – assuming that progress is not delayed at some other stage of the reform process.

I have theorised that this issue lags behind rape because it is perceived as being more "private", but I must hasten to add that the perception is actually a false one. Firstly, rape is often perpetrated by someone who is known to the complainant, and is not uncommonly suffered at the hands of a spouse or another family member. The removal of the "marital rape exemption" which made it impossible in the past for a wife to charge her husband with rape is an implicit recognition of the fact that rape is not necessarily a crime between strangers. Secondly, domestic violence, regardless of how it is perceived is in actual fact a very public problem. It affects productivity and development. It burdens society with the costs of medical care. It teaches children that violence is a way of dealing with problems and frustrations, and so perpetuates the general persistence of violence in society. Perceived "public-private" dichotomies for other issues discussed here can be similarly collapsed, but these perceptions have, I believe, influenced the prioritising of the law reform agenda.

> Provided that in the case of a marriage contracted otherwise than during the subsistence of a customary union between the husband and any woman other than the wife it shall be competent for the intending spouses at any time within one month previous to the celebration of such marriage to declare jointly before any magistrate, native commissioner or marriage officer (who is hereby authorised to attest such declaration) that it is their intention and desire that community of profit and loss shall result from their marriage, and thereupon such community shall result from their marriage.

This proviso makes the purpose of the legislation clear. Marriages between "natives" were intended to be *out* of community of property in the areas of the country where polygyny was common, as a means of protecting the rights of existing wives married under customary law to a man who subsequently concluded a civil marriage with another women. However, if there was no pre-existing customary union, then the couple intending the civil marriage could choose to make their marriage *in* community of property. In practice, many civil marriages solemnised in churches after this provision came into force were still *in* community of property (as opposed to the default marital property regime of *out of* community of property), because church leaders favoured the concept of joint marital property.

In looking at what else has *not* been done, it is useful to examine some extremely controversial topics. One of these is the vexed question of abortion. A draft law on abortion was proposed by the Ministry of Health in 1996 and then withdrawn by the Minister in 1999 on the grounds that a majority of the Namibian population did not favour the law. [45] This conclusion on the Minister's part was not supported by any empirical research, however, and the announcement ironically short-circuited research by the Ministry itself on the incidence of illegal abortion and on community attitudes towards the issue. Furthermore, the draft law was withdrawn in the face of a recommendation from a strong statement of concern from the CEDAW Committee about the current law on abortion and the high incidence of illegal abortions. [46]

A second controversial issue is the legal position of prostitutes. Here, in practice it is the prostitutes themselves -- predominately women -- who are prosecuted, while the "pimps" and "johns" who are also covered by the existing legislation are virtually never arrested. [47] A recent High Court judgement in which portions of the Combating of Immoral Practices Act were invalidated on Constitutional grounds may serve as an impetus for law reform here. [48]

Another controversial topic is the question of gay and lesbian rights. For example, since the Combating of Rape Act has now expanded the definition of rape to include forcible sodomy, it would be appropriate to repeal the common law on sodomy which criminalises this act between consenting adults. Such a reform would be largely symbolic in effect, since consensual sodomy is not prosecuted in practice, but it would be an important legal signal on the position of homosexuality. [49] The *Frank* case in which the High Court recently held that a long-standing lesbian relationship between a Namibian citizen and a temporary resident should have been considered as a point in favour of the latter's application for permanent residence has pointed to the need for greater legal clarity on the status of such relationships. [50]

None of these controversial issues is currently on the law reform agenda at all. This is not

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45 See *The Namibian*, 20 April 1999 and 18 August 2000 (*The Weekender*).

46 Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/1997/II/L.1/Add.2, 14 July 1997 , paragraphs 44 and 60. The Committee specifically asked the government to respond in its next report to the questions raised on abortion. See paragraph 60.

47 See *The Namibian*, 16 May 2000.

48 The judgement in the case referred to has been reserved, although newspaper accounts indicate that the Government Attorney and the legal representatives of the persons charged with contravening the law agreed that portions of the existing law are drafted so excessively broadly as to be unconstitutional. See *The Namibian*, 16 May 2000.

49 Such a reform would also remove one objection which has been put forward to the proposal to make condoms available to prisoners to reduce the chances of HIV infection.

50 *Frank and Another v Chairperson of the Immigration Selection Board*, High Court, Case A56/99 (1999-06-24). The court analysed the relationship as being a "universal partnership".

really surprising, since they are issues which would be likely to have a direct impact on only a small minority of the population, in contrast to issues such as domestic violence, marriage, divorce and inheritance which would have an extremely broad impact. However, another explanation may be that controversial issues like abortion, prostitution and homosexuality involve another layer of privacy in Namibia. They go beyond the general privacy afforded to family and sexual matters, to areas which some portion of Namibian society perceives as being "wrong" or "immoral". This involves privacy -- or perhaps one should rather say wilful blindness -- in the sense that many Namibians do not want to acknowledge that such things exist in Namibia, finding it safer to view them as the aberrations of abnormal people.

One of the fundamental functions of a Constitutional Bill of Rights is precisely to protect the rights of an unpopular minority; a person who expresses a popular view will be unlikely to need to rely upon the protection of freedom of speech. But respect for the rights of an unpopular minority, and the willingness to take affirmative steps to enhance and to protect those rights, requires a high degree of political maturity.

3. Summary and recommendations

One can conceptualise gender-related law reform as being arranged in concentric circles. The circle which has seen the most activity is the outer circle of public and political life, including a particularly high degree of protection for the relatively small percentage of women in formal employment. [51]

The next circle would be the less highly visible areas of women's economic activity which are more common in rural areas – subsistence and small-scale agriculture and informal employment, which have seen little law reform to date. Women have been affected in this area by the Co-operatives Act and to some extent by resettlement which has taken place under the Agricultural (Commercial) Land Reform Act. The impact of the forthcoming Communal Land Reform Act will be particularly important here.

The third circle moving inward is the more "private" area of family life (including child maintenance and other legal protections for children in the family). This circle has seen little law reform to date, especially in the area of customary law.

The fourth innermost circle concerns areas of personal life which are controversial and are rejected or disapproved of by many Namibians – and it is here that I have placed abortion, prostitution and the rights of gays and lesbians. These are issues which are largely "invisible" in a political sense.

The problem of violence against women and children cuts across the entire picture, with rape being the outermost more "public" layer of violence, with domestic violence which is considered to be more "private" as a second layer underneath.

The slowness of reform in the "inner circles" probably stems in part from a tension between Namibia's desire to keep in step with the world by being politically progressive

[51] As noted above, this is only about one-third of Namibian women aged 10 and older.

on gender issues, and an inherent social conservatism which characterises a significant portion of the population. This is a problem that is not unique to Namibia. But it is the role of Government – both Parliament and the Executive -- to take the lead in the realisation of fundamental rights such as sexual equality, not to follow the dictates of public opinion.

Much has been done in Namibia's first ten years to improve the legal position of women and to make laws more responsive to the needs of both women and men. Clearly, everything cannot be done at once in a nation with limited human and financial resources. But, just as clearly, it is women at their most vulnerable who are most in need of legal protection – which would argue for making action on all forms of violence against women a top priority, and for working from the innermost circle outward. Life, of course, is never entirely neat, and action for change should and will take place in a variety of areas simultaneously. But this analysis points to the need for more attention to the specific needs of rural women, more urgent attention to family law reform, and more protection for those whose personal attributes or life choices are unpopular ones.

B. TAKING PART IN THE PROCESS OF CHANGE

This section of the paper will argue that there are two major problems with the current law reform process: the absence of a clear agenda, and the inaccessibility of the process for many Namibians and particularly for women.

1. The need for a more predictable law reform agenda

Gender-related law reforms seem to move forward in an unpredictable fashion. For example, the very first law reform on gender after independence was the removal of sex discrimination in the income tax law -- not because it was necessarily perceived as being the highest priority, but because this problem received very pointed publicity shortly after independence when a female Member of Parliament compared her pay cheque with that of her husband, who was likewise a Member of Parliament, and found that they were not the same. To be fair, the law reform in question was neither a complicated nor a controversial one. But would it have been the first in line without the impetus of a notable personal incident?

Another example is the Combating of Rape Bill which was recently passed by Parliament. This is a law reform that a spectrum of groups had been advocating for years, starting even before independence, through petitions, demonstrations and specific demands for change. [52] Finally, in July 1997, a draft Combating of Rape Bill was prepared by the Law

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[52] For instance, numerous appeals for law reform in this area were made to the Ministry of Justice by a diverse spectrum of organisations over the years. In 1989, Women's Solidarity (an NGO which provides education on violence against women and counselling for victims) published a paper proposing law reform in this area, with specific recommendations backed up by comparative research. It continued to lobby relentlessly for these reforms, stating in 1994: "We know of few other law reform issues which have received such a broad range of public support."

A petition which included specific requests for the reform of the laws on rape was signed by ten different NGOs and presented to the Minister of Justice as part of the commemoration of International

Reform and Development Commission and circulated for public comment. The report released by the LRDC gave an interesting explanation as to how action on the topic was finally triggered. The report stated that the Commission had planned to prepare a comprehensive report to accompany the draft bill, but was pressured to release the draft bill before the accompanying report was ready because "*Namibia experienced an increase in cases of the most abhorrent manifestations of rape, mainly on children, even infants. This resulted in a public outcry for urgent action backed up by demonstrations and which culminated in a special debate in Parliament.*" [53]

In actual fact, there was not a sudden increase in the number of reported rapes and attempted rapes, but rather a steady increase of some 30 to 60 cases each year, moving from 564 reported cases in 1991 to a high of 830 reported cases in 1996, followed by a slight *decrease* to 778 cases in 1997 and 714 cases in 1998. Neither was there a sudden increase in the proportion of child victims. The police kept statistics during the first half of 1991 which produced the highly-publicised finding that *one-third* of all reported rape cases involved girls under the age of 16.

What actually happened is that one *particular* case caught the attention of the public and Parliament. A two-year-old child in Tsumeb was raped, resulting in severe injuries. There was a spontaneous public demonstration about this case in Tsumeb, as well as a month-long serious of protests in the nation's capital, organised by the Multi-Media Campaign on Violence Against Women and Children, which is a network of NGOs and government bodies. Members of the public dressed in black and gathered publicly each Friday for a month at lunch hour. Many prominent political figures joined in these demonstrations. This was not the first time that there had been public demonstrations on the topic of rape in Namibia, but it was this series of events which captured the attention of the government in a meaningful way.

Similarly, the government in general and the LRDC in particular gave law reform on domestic violence a higher priority after a particularly horrific case where a man in Swakopmund murdered his wife, and then dismembered her body and cooked some of her

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Women's Day in March 1993. Also in 1993, the Namibia Women's Agricultural Association made a formal request to the LRDC to consider the option of imposing a minimum penalty for convicted rapists. This proposal was supported by the Legal Assistance Centre, which provided the Government with detailed research on the constitutionality of such a step and on approaches to rape sentencing in other countries. Shortly after this, the Namibian Law Society, which represents all practising attorneys, gave its official support to sentencing guidelines as well as a range of other rape law reforms. In May 1994, another petition on law reform, signed by representatives from five government ministries and ten NGOs and again including specific demands for reform of the law on rape, was presented to the Ministry of Justice.

In 1995, in the wake of a brutal attempted rape of a woman journalist in Windhoek, the Namibia Media Women's Association presented a petition to the LRDC that included demands for stiffer sentences and the elimination of bail for accused sexual offenders. Violence against women in general has been the topic of a substantial number of grassroots demonstrations. In 1995 there was even a community-based group of *men* who called for law reform and made a broad range of recommendations on government and community strategies to combat rape.

[53] Law Reform and Development Commission, *Report on the Law Pertaining to Rape*, (LRDC 4), July 1997, at 1.

body parts. This case similarly inspired a highly-visible public outcry, which -- although not the first such case or the first such demonstration -- gave significant impetus to law reforms on domestic violence. [54]

The ability of the government to respond to particular incidents and public sentiments is praiseworthy, but the process is somewhat unpredictable since some "public outcries" seem to capture the government's attention, but not others. This makes it difficult for women's groups and other NGOs to strategise effectively, or to understand how to influence the process.

For example, the Legal Assistance Centre devoted a great deal of energy to a Child Maintenance Campaign during 1998, both as a mechanism for raising public awareness and as a lobbying strategy. This campaign involved a wide range of women's groups, both nationally and at grassroots level. The topic of maintenance was kept in the public eye through televised debates, a series of television advertisements, newspaper articles and an extensive series of radio programmes in all the major Namibian languages. There was an unquestionable groundswell of support for the bill from women all across the nation, but this had no apparent impact on the Maintenance Bill which continues to languish somewhere inside the Ministry of Justice.

Similarly, NGOs which are now lobbying for the passage of the Domestic Violence Bill are trying the same tactics which seemed to help advance the Combating of Rape Bill, but there is no way to calculate whether or not these efforts will be successful a second time.

Of course, government has to be sensitive to many factors in its agenda-setting, with popular demand being only one amongst them. But there is a need for a law reform strategy which will set clear priorities and guide the process.

The *National Gender Plan of Action (1998-2003)* contains the following list of areas where law reform must take place in the section on "Gender and Legal Affairs":

- maintenance
- rape and other sexual offences
- customary law on marriages and inheritance
- children's rights, including protection form abuse and neglect and the status of children born outside of marriage
- divorce
- domestic violence
- affirmative action

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[54] The situation in Namibia is by no means unusual. For example, a recent study of law reform on three issues in South Africa – abortion, customary law and domestic violence – found that "there is no automatic logic as to why any of the three issues should have been dealt with at the time that they were", but that in most of the cases it was a combination of forces from government and civil society which forced the issues onto the agenda. (With respect to customary laws, however, there was little organised civil society activity, with the result that the reform process was more strictly government-led.) Cathi Albertyn, Beth Goldblatt, Shireen Hassim, Likhapha Mbatha and Sheila Meintjies, *Engendering the Political Agenda: A South African Case Study*, Executive Summary at 5-6.

- abortion. [55]

But, in addition to this list, many other broad areas are flagged for legal reform in other sections of the Plan – ranging from "the legal framework for gender equality in education" to the review of all "laws and traditional practices which create barriers for women to ensure equal rights and access to economic resources". [56] These ambitious plans for law reform are admirable, but also overwhelming. They are not prioritised within the Plan of Action, or within the underlying National Gender Policy. Thus, they do not constitute an agenda in the sense that do not give the public a clear idea of what issues will be given the highest priority. [57]

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[55] At page 35-37.

[56] In the section on "Gender, Poverty and Rural Development", the Plan of Action mentions the need to "review and amend/abolish discriminatory legislation/laws", to "review laws and traditional practices which create barriers for women to ensure equal rights and access to economic resources", and to "include provision in disability legislation mandating that all new government and private buildings serving the public are accessible". At page 5-8.

The section on "Gender Balance in Education and Training" makes a commitment to "provide the legal framework for gender equality in education". At page 9.

The section on "Gender and Reproductive Health" discusses the need to review, amend and develop laws, policies and guidelines relating to mental and physical health, to accomplish the "protection of men, women and children", equal access to reproductive health care, and a reduction in the spread of HIV and other sexually transmitted diseases. At page 12.

The section of the National Gender Plan of Action on "Violence against Women and Children" gives more specific targets: to promote the passing of the Combating of Rape Bill, the Domestic Violence Bill, to enforce existing legislation on the confidentiality of child victims of abuse, and to encourage more child-friendly courts. At page 14.

Under "Gender Balance in Power and Decision-Making", there is a plan to lobby and advocate for the passing and implementation of legislation and other measures such as the Affirmative Action Act and quota systems. At page 20.

The section on "Information, Education and Communication" calls for the development of a national policy on the control of obscene material and legislation to protect children against obscene material.

"Law reform related to children" is highlighted in the section on "The Girl-Child", with a view to eliminating all forms of discrimination against girls. At page 32.

[57] The Namibian Women's Manifesto, a document prepared in 1999 in collaboration with women activists from all spheres of society, mentions the following areas as being priorities for law reform:

- the Combating of Rape Bill
- the Domestic Violence Bill
- the Child Care and Protection Bill
- customary law and practices, including polygyny, child marriage and sexual practices involving women and children
- the Sterilization and Termination of Pregnancy Bill
- effective implementation of the affirmative action (Employment) Act
- effective measures to deal with sexual harassment at the workplace
- promotion of women's access to land, livestock and credit
- ensuring representation of women on land boards
- the introduction of a living wage
- the Child Maintenance Bill
- a revised system of child maintenance grants
- adequate benefits for persons with disabilities
- legislation for the protection of the environment.

These are not prioritised overall, but are (as in the *National Gender Plan of Action*) presented as part of an

The Law Reform and Development Commission does not seem to have an overall agenda for action, perhaps because part of its role is to fill in gaps where reform is not undertaken by ministries. [58] It has made concerted efforts to come up with a policy for reform in the area of customary law. Two different consultants (both women from outside Namibia) were employed to come up with a strategy for the reform of customary law. A draft report prepared by the second consultant was presented for discussion at a public workshop held in July 1997. [59] Unfortunately, the draft document did not put forward a clear strategy for reform which could facilitate debate on priorities, and no final report on this topic was ever formally published by the LRDC. So, aside from the fact that work is known to be underway on intestate inheritance and recognition of customary marriage, the future steps towards law reform in the area of customary law are not clear.

What is lacking in these approaches to agenda-setting is a clear plan with priorities and timeframes – or at least target dates. It is, of course not surprising that politicians are reluctant to set agendas of this sort, since this would force them to explain themselves when targets are not met. [60] On the other hand, a clear set of priorities for action might help to head off unrealistic expectations from persons outside government. An agenda for law reform on gender issues would not have to be set in stone – but even a flexible agenda would help to ensure that the needs of the most vulnerable women are not neglected.

2. The need for a more accessible process

It is difficult to lobby effectively and to make strategic inputs into law reform issues because the decision-making process is not fully understood by, or accessible to, NGOs and members of the general public. For example, a recent "Afrobarometer" report based on a survey about democracy in six Southern African countries found that about 51% of Namibians say that they do not have enough information about political life and the actions of government, while almost 55% say that political and government affairs seem so complicated that they cannot "really understand what is going on. [61] (The survey report

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overall set of recommendations topic by topic. Nevertheless, this list is more selective and pointed – probably because the document was intended in part as a lobbying tool. *Words into Action: The Namibian Women's Manifesto* at pages 9, 13, 15, 17, 19.

[58] It should be noted, however, that the lack of a comprehensive agenda may not have been such an obstacle to law reform work by the Commission as a shortage of appropriate staff members.

[59] Effa Okupa, *Project Proposal: Reform and Harmonisation of Family Laws*, Law Reform and Development Commission, 1997.

[60] In all fairness, it should be noted here that the Beijing Platform for Action and the Beijing +5 Outcome Document have also been criticised for failing to set concrete numerical goals or specific time frames.

[61] Robert Mattes, Michael Bratton, Yul Derek Davids & Cherrel Africa, Southern African Democracy Barometer (based at Idasa), *The Afrobaromater Series, Public Opinion and the Consolidation of Democracy in Southern Africa: An Initial Review of Key Findings of the Southern African Democracy Barometer* (July 2000) at 54-55. It may be some comfort to observe that Namibians and Malawians felt more competent to participate in political life than persons in Botswana, Zambia, Zimbabwe and Lesotho. Unfortunately, this

unfortunately did not give a gender breakdown of these findings.)

In order to identify problems with accessibility, let us consider the process as it stands. [62] Laws and amendments to existing laws can be initiated by ministries or by the Law Reform and Development Commission, or as private members' bills by individual members of Parliament (an option which has been utlised only once in Namibia, and then not successfully). [63]

When a new law originates with a ministry, there is seemingly no consistent policy on consultation. Some ministries consult quite widely, while others do not. The ministry in question will generally consult informally with the Attorney General about the general idea for the bill, and then develop a "layperson's draft", which may be a memorandum outlining key issues or an actual draft law. Some ministries release an early "layperson's draft" for comment from interested members of the public, although it can happen that this document is circulated only amongst organisations which are identified by the ministry as being relevant. The Ministry of Health and Social Services, for example, made early "layperson's drafts" quite widely available in the case of children's legislation and abortion.

Even where there is wide consultation, this does not guarantee that women's voices will be adequately heard. The Social Security Act is a case in point. The Ministry of Labour organised tripartite consultations involving government, employers and trade unions while the law was still in draft form, but the under-representation of women in each of these sectors had the result that certain controversial provisions on maternity benefits went unchallenged – until a range of women groups and women's activists "gate-crashed" a tripartite consultation and successfully argued that the benefit level should not be reduced for each subsequent child in a family. [64]

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initial report did not provide any discussion of whether there were significant gender differences on this point.

[62] Thanks to Maryam Montague of the National Democratic Institute for helping to clarify the steps in the process.

[63] The use of private member's bills is understandably not an easy option in a Parliament which is heavily dominated by a single party. A private bill from a member of the ruling party might be viewed as an implicit criticism of the ruling party's official approach, while a private bill from a member of another party might be opposed by the ruling party on principle. It would probably be necessary for women MPs to develop a solid tradition of working together across party lines to smooth the way for a private member's bill on a gender issues.

[64] The original proposal for maternity benefits was based on a sliding percentage which would have been reduced for each subsequent child. The women who "crashed" the consultation pointed out that this made no sense in light of practical child care expenses and other responsibilities such as bond repayments which do not change with the number of children. Those who attended the meeting also stated that they would accept a lower percentage if it were the same for each child in the family. The Social Security Act 34 of 1994 and the accompanying regulations which were adopted at the end of the day incorporated these suggestions and set the benefit level at 80% of normal salary (up to a ceiling of N$3000) for all children.

Similarly, a consultation meeting arranged by the Law Reform & Development Commission around the draft Married Persons Equality Bill in 1995 (attended by the author) was dominated by legal

The National Gender Plan of Action states that there should be gender analysis of all bills before they are passed, but it is not clear if procedures are currently in place to accomplish this effectively, since the Gender Commission envisaged in the National Gender Policy as the highest monitoring mechanism for gender policy has not yet been established. Another step towards greater attention to gender in law is the move to give one of the Standing Committees of the National Assembly explicit responsibility for gender issues. The terms of reference for the Standing Committee on Human Resources, Equality and Gender Development give it the duty to "scrutinise all legislation and policies affecting women and children" and to "ensure that gender is considered in all legislation which passes through the National Assembly" – although here again mechanisms and procedures for this mammoth task must still be established. [65]

New laws also sometimes originate with the Law Reform and Development Commission, which has a broad mandate "to undertake research in connection with and examine all branches of the law of Namibia and to make recommendations for the reform and development thereof". [66]

The statute establishing the LRDC allows room for membership from various sectors of society. In terms of the enabling statute (as amended), the LRDC can comprise up to eight persons: a Chairperson appointed by the President, the Ombudsman, one practising advocate, one practising attorney, one officer of the Ministry of Justice and up to three persons appointed by the President "on account of any qualification relating to the objects of the Commission". These last three appointments need not involve government officials or even members of the legal profession, but could in theory be non-lawyers and/or members from civil society. These three positions can also be used to ensure a good gender balance. Two of these positions are at present vacant, and the current Commission has a slight majority of men (three out of five), and is dominated by government officials (four out of five). [67] Of course, it must be kept in mind that the work of the Commission

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professionals and representatives of banks and insurance companies. Although it would be hard to establish cause and effect, the Bill which went to Parliament is in the view of some excessively sensitive to the interests of third parties, with the result that it does not provide wronged spouses with remedies which are meaningful in practice.

65 Points (d) and (e), Terms of Reference for the Standing Committee on Human Resources, Equality and Gender Development. This Committee is also tasked with the duty to "address women's issues across party lines" (point (b)) and to "promote the women empowerment cause and to raise the status of women in Namibia" (point (c)).

66 Law Reform and Development Act 29 of 1991, section 6.

67 At the time of writing, new appointments to the Commission had just been made after the expiry of the terms of office of previous members. The five persons on the Commission number three men (including the Chairperson) and two women (including the Ombudswoman who is an ex officio member):

- Mr U Nujoma, Chairperson
- Mr A Vaatz (private practitioner appointed by the President)
- Mr G Mutwa (holding the position of officer of Ministry of Justice)
- Ms D Sauls (nominated by the Law Society)
- Ms B Gawanas (Ombudswoman).

also involves a range of committees which prepare recommendations and drafts for the Commission's considerations. These committees have generally involved a broader range of persons, male and female, which compensates to some extent for the more limited range of persons on the actual Commission.

Eight of the nine official reports of the Law Reform and Development Commission which have been published to date involve gender issues in some way, but only three of these reports include specific proposals for law reform. These three reports deal with marriage (which led to the Married Persons Equality Act), rape (which resulted in the Combating of Rape Act) and maintenance. [68] Different consultation processes were followed for each of these three topics.

The broadest consultation was a series of regional workshops and hearings convened by the LRDC on the general topic of violence against women, culminating in a national hearing which collected a range of ideas and information about violence. The consultation was admirably broad, but it preceded the development of specific proposals for reform on rape and domestic violence and therefore did not afford the public an opportunity to discuss the details of possible law reforms. As a result, the input on law reform from the regional hearings was very general, such as calls for stricter sentences and restrictions on bail, or general appeals for "law reform". These general comments from members of the public did not really constitute "consultations" on law reform proposals, since no draft proposals were put to the public in the course of the process, but were rather a backdrop used to guide reform on violence. The LRDC also commissioned several social and legal research papers on aspects of the topic of violence at this stage, but most of these were never published.

One difficulty with the procedure followed by the LRDC is that specific issues are placed before the public only after a relative intensive process of negotiation. An alternative

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Since there are no longer separate legal categories of "attorney" and "advocate". but only "legal practitioners", the statute will soon be changed to reflect this. There is at present one member nominated by the Law Society who also happens to be a government official. Thus, four of the five current members are drawn from government.

The gender of the staff members of the LRDC is also a relevant factor. Its Secretary and most of its researchers are and have been male, although women have been well-represented on some of its subcommittees. The gender of such personnel unavoidably influences some of their perceptions. For example, the gender composition of study delegations may affect their perspectives, and thus influence the information they collect..

[68] The topics of the other six LRDC reports are as follows:

- two look generally at customary law (with one of these being the proceedings of a conference on the ascertainment of customary law and methodological aspects of research into customary law)
- two publish the proceedings of national hearings convened by the LRDC (but were unfortunately published more than two years after the hearings were held)
- one presents the findings of a study of domestic violence cases dealt with by the police (a project initiated by the LRDC which also involved the Legal Assistance Centre at a later stage)
- one proposes a new law on small claims courts.

would be a system similar to that followed by the South African Law Commission, where issue papers laying out key questions and options fairly roughly are published at an early stage, before the position of the Commission itself has crystallised. Public comment is invited, and then the comments received are summarised in a second paper, in which the Commission explains what decisions it has taken on points of debate and why. [69] This procedure allows for public input at a useful stage of the process – after the issues have been articulated in a way which invites meaningful and detailed response, but before complex negotiations and compromises have begun.

No matter where a new law has originated and what degree of public input was invited, the draft law goes from the originating body to the Cabinet Committee on Legislation (CCL). From the point of view of the public, the bill goes "underground" at this point.

The CCL currently consists of seven people, including three women – although it has not always had such an admirable gender balance in the past. [70] The Ministry (or the LRDC) ideally submits a memorandum to the CCL along with the bill, summarising the consultations which took place and the comments received. The CCL meets with the Minister (or with representatives of the LRDC) to discuss the proposed law in detail. Other members of government who will help to explain, motivate and comment on the bill may be invited to attend this meeting.

The primary role of the CCL is to examine proposed laws and highlight key issues clearly and accurately for the consideration of the Cabinet as a whole. It functions as a sort of clearinghouse for law reform proposals which must be considered by Cabinet. However, the CCL may also make recommendations for changes to the bill. For example, the CCL altered the Combating of Rape Bill in several important ways – with some new issues being inserted into the bill at this stage which had never been discussed in previous public forums. (On the other hand, insiders point out that the CCL process around this Bill was not a typical one. Since the CCL at that stage consisted only of the Minister of Justice who was proposing the Bill, the Attorney-General and one other member, the "CCL discussion" was in some senses part of ongoing discussions of the Bill involving the same players.)

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69 As a point of comparison, when the LRDC circulated an early draft of the Combating of Rape Bill to interested groups for comment, written comments were submitted by a few groups and individuals but these comments were never publicly circulated or summarised.

70 As of August 2000, the CCL consisted of the following persons:

- Hon Ngarikutuke Tjiriange (Minister of Justice and Attorney-General)
- Hon Nahas Angula (Minister of Higher Education, Training and Employment Creation)
- Hon Marco Hausiku (Minister of Prisons and Correctional Services)
- Hon Pendukeni Ithana (Minister of Lands, Resettlement and Rehabilitation)
- Hon Sarah Kuugongelwa (Director-General, National Planning Commission),
- Hon Loide Kasingo (Deputy Minister of Home Affairs)
- Hon Dr Gerhard Totemeyer (Deputy Minister of Regional and Local Government and Housing).

The Ministry (or the LRDC) then alters the bill in line with the recommendations of the CCL, or gives a written explanation as to why the suggested alterations have not been incorporated. Cabinet as a whole then reviews the bill, and can make further recommendations. This entire portion of the process is of course closed to the public.

The bill is then sent to technical legal drafters at the Ministry of Justice – who have probably already been involved along the way, at least in an advisory capacity. [71] At this stage, the bill should simply be "translated" into technically correct legal language which harmonises with other existing laws. Yet it sometimes happens that policy issues creep in again at this stage. The ministry in question must then check the bill and write a letter certifying that it conforms to their requirements. This step should serve as a check against policy reform in the guise of technical drafting, but it does not always serve this function – especially in the case of a ministry which does not have experienced in-house legal staff.

The next step is Constitutional certification by the Attorney-General's Office – a process which is now a streamlined one since the Attorney-General is also the Minister of Justice and the Chairperson of the CCL. The Attorney-General is also supposed to certify that the recommendations of the CCL and Cabinet have been adequately dealt with. This step should also be a purely technical one, but in practice it can provide another opportunity for further policy input. This happened, for example, in the case of the Combating of Rape Bill, when some of the comments received from the Attorney-General's Office reportedly concerned matters of policy as well as Constitutional issues.

What might be viewed as "policy" comes in at many stages partly because, as the Minister of Justice remarked in connection with the Combating of Rape Bill, "there are… considerable differences of opinion on what is regarded as a policy issue and what is regarded as detail". [72]

The next step is for the bill to be sent to the Secretary of the National Assembly, where it is proof-read and placed in the correct format for tabling. [73]

So, to re-cap, the general public in most cases will have last had access to an early "layperson's draft". This early draft will have probably been altered on the basis of comments from different parties, changed to reflect input from the Cabinet Committee on Legislation and/or the Cabinet as a whole, re-drafted in technical terms which may produce substantial changes of meaning, and adjusted to take into account input from the Office of the Attorney-General on questions related to constitutionality (or other matters). But it usually does not re-surface into public view until it is tabled in Parliament.

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[71] External consultants may be employed for the purpose of technical legal drafting, as in the case of the Labour Act.

[72] Second Reading Speech by the Honourable Minister of Justice on the Combating of Rape Bill, at page 3.

[73] The legal drafters will sometimes assist informally with proof-reading at this stage, to help weed out any inadvertent errors.

There is no problem, of course, with allowing for any of these "inside inputs", and I do mean to suggest that every single step of the process must take place with open doors. But the problem is that the general public, including persons and groups with a direct interest in the issue at hand, will not usually have any further access to the altered draft until the "final" bill is actually tabled in Parliament. By this stage, there may have been so many compromises that it is difficult for outsiders to influence the bill, even if their suggestions are sound ones; the government players may at this stage be more interested in ensuring that the progress of the bill in question is not de-railed. Another problem is that there may be a very short time for interested groups and individuals to mobilise around a new version of the draft, or to consult their constituencies about new aspects of the law.

The ideal situation would be to identify additional points in the current process at which the revised bill can once again be subject to public scrutiny. For example, if substantial changes have been introduced to the bill at Cabinet level, perhaps the ministry in question (or the LRDC) could take responsibility for initiating another round of public consultation on the altered aspects of the bill. It would also be very helpful if the version of the bill which is to be tabled could in every case be published in the *Government Gazette* one month in advance, to give interested persons notice of precisely what will be considered by Parliament. [74] I would argue that this period of public scrutiny of the "final" bill is so important that it should not be left to chance, but should rather be a requirement enshrined in law – with appropriate exceptions for matters which affect national security or involve other legitimate grounds for haste.

One counter-balance to the current difficulties is the increasing role played by Parliamentary Committees. Not all bills are referred to committees, but many bills of general interest have taken this route. [75] For example, the Parliamentary Committee on Human Resources was responsible for altering the Combating of Rape Bill substantially in light of input from a range of interested groups. [76] The Committee, not surprisingly, did

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[74] If there are technical problems with public release prior to the formality of tabling, the same purpose would be served if the one-month period for public scrutiny of the final bill took place after it was tabled in Parliament but before Parliament actually discussed the bill.

[75] A pamphlet published by the Directorate: Committee Services of the National Assembly lists 21 bills which were referred to committees between the beginning of 1996 and mid-1999. "Bill Enquiry/Examining Process by a Standing or Select Committee of the National Assembly of the Republic of Namibia". (To assist people who wish to make a presentation to a Parliamentary Committee, the National Assembly also publishes a pamphlet entitled "Your Voice Matters at the National Assembly".)

The National Council also makes use of committees which have the power to conduct public hearings. For example, the National Council organised regional hearings on the Married Persons Equality Act.

[76] This Committee held hearings which were announced in the local newspapers about one week in advance, and any member of the public was free to make a written or oral submission. Shortly before the hearings were held, the Legal Assistance Centre convened a preparatory workshop for NGOs with the goal of developing a joint strategy on the public hearings. The group attending this workshop discussed the bill section by section. The points of common agreement were recorded to form a group submission to the Parliamentary Committee, on the theory that a single strong input would be more strategic and more helpful to the committee than a number of individual competing viewpoints which the Committee would have to

not agree with every point put forward by the interested parties, nor did the Minister of Justice who was proposing the Bill agree with the Committee on every point. This is to be expected. But the Bill which was passed by Parliament was a stronger Bill than the one which the Committee started out with, and the result was that the compromise Bill was supported by many different players inside and outside of government.

While Parliamentary hearings or other opportunities to make submissions to the appropriate Parliamentary Committee are very positive openings for the public, there is a question mark over the strength of the committee influence. Up to now, it is fairly rare for bills to be amended once they reach Parliament – partly because the ruling party controls a two-thirds majority of the seats in the National Assembly, and partly because many Ministers and Parliamentarians seem to feel that public debate is an unseemly event which should be avoided at all costs. However, Parliamentary Committees are currently undergoing steps to improve their expertise, so the committee influence is likely to be a part of the process which increases in importance in the future. The Committees' capacity to hold regional hearings could also play an important role in making sure that members of the public outside the capital city are fully involved in the law-making process.

There are other practical problems however. As noted above, once a bill is tabled, and thus available to the public once again, the time for action may be short. Furthermore, past practice has been for Parliamentary Committees to give very short notice of public hearings (about one week in the case of the Combating of Rape Bill). This is a serious problem because a bill will not be digestible to most people in its technical, legal form. In order to get meaningful public input on bills which are of particular public interest, it is necessary to spend a significant amount of energy in explaining the proposals and the background to the proposals in simple language. Ideally, the key tenets of a proposed law should be explained in print and broadcast media, and NGOs and community-based organisations should be armed with tools to help them explain law reform proposals accurately to their members. The recently-publicised proposal to draft laws in plain language may be of help here. [77]

Then, if public hearings or other consultations are held, people will be prepared to offer relevant comments on specific issues, which are likely to be far more helpful than uninformed general statements. Furthermore, simple public notice of public hearings in the media is less effective than a personal invitation to interested groups along with some background information on the bill.

The usefulness of public input should not be underestimated. People with no formal education may have a rich life experience which can be an invaluable source of wisdom. Once people understand a proposal, they can offer a cogent critique – although the

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reconcile and integrate. At the subsequent public hearing in Windhoek, this group submission was in fact the *only* one presented to the Parliamentary Committee.

[77] See "Law drafters must mind their language – Mensah", *The Namibian* , 22 August 2000, quoting National Council Deputy Chairperson Margareth Mensah, who was opening a week-long training workshop for staff members of Parliament on how to summarise and analyse bills.

language of comment may also have to be "translated" into more formal or legal language in order for the comments to be properly appreciated in the context of the law-making process.

It is necessary at this stage to concede that civil society does not always mobilise as effectively as it could and should around law reform issues. Furthermore, communities are not very well-organised, although there has been an increasing degree of organisation by women in recent years. Two examples of useful and effective NGO involvement are the work of the Multi-Media Campaign members on the Combating of Rape Bill and the work of the NGO Committee on Land Reform around the Communal Land Reform Bill. But some groups are wary of becoming too "political" and are reluctant to engage in open debate with Government. Sometimes the culprit is simply bad planning. There is considerable room for improvement on both sides of the dialogue.

While it may be time-consuming to allow for repeated and thorough public consultation, such a process is likely to produce better laws. [78] The consultation process can also be an important step in preparing for the successful implementation of the law. People at large will feel that the law is their own, and the law will be popularised to some extent before it is even passed.

It is important to emphasise that the goal need not be consensus, which will probably be impossible – especially on gender issues which will frequently prove to be controversial. As the Minister of Justice stated in connection with the Combating of Rape Bill, "we should… in a responsible way ensure that we do not end up doing nothing because we cannot agree on everything". [79] Allowing members of the public to air their concerns serves a function in itself. Many concerns about new laws may be based on misunderstandings which can be put to rest by the provision of adequate information – as was true in the case of the Married Persons Equality Act, where misperceptions about the provisions on "head of household" and "domicile" raised unfounded fears in many quarters.

There is a huge public hunger for information about existing and proposed laws. The Legal Assistance Centre produces a great deal of educational material and runs community

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[78] Goldblatt notes: "Consultation can become an endless process and has to be limited in some way. The urgency of delivery is also an important consideration in any law reform process. The need to deliver and the need to consult must be carefully balanced according to the particular circumstances. But this weighing up also needs to be premised on the recognition that consultation not only ensures inclusiveness but also ensures that appropriate policies and practices emerge from the process." Goldblatt at 390.

Similarly, in a recent article on South Africa, Steven Friedman states "as long as the shack dwellers, the poor, single mothers in the townships, and a host of other majority interests remain outside the key public debates, our policy discussions will be distorted…". Steven Friedman, 'Democracy still excludes the poor", *Mail & Guardian*, 28 July-3 August 2000. (Friedman discusses the mobilisation of white interest groups in South Africa against the Property Rates Bill, in contrast to the virtual absence of black opinion aside from that of traditional leaders in the Kwazulu-Natal area, and discusses possible reasons for the non-participation of grassroots civil society.)

[79] Second Reading Speech by the Honourable Minister of Justice on the Combating of Rape Bill, at page 3.

workshops nation-wide, to a high level of demand. For example, one of the most controversial draft laws to be circulated in Namibia was a new Abortion and Sterilization Act that would have allowed abortion on demand during the early stages of pregnancy. The Legal Assistance Centre prepared a discussion document on this law which summarised the existing legal position and the proposed law, as well as providing some comparative information on the situation in other countries and statistics on legal abortion in Namibia. The demand for this simple photocopied document was enormous, and it was even used as a study document in some school classes. This issue was a hotly debated one, but whether members of the public support or oppose a draft law, it is more helpful if they do so on the basis of a clear and accurate understanding of what is being proposed.

The Legal Assistance Centre has for some time now been working together with the National Democratic Institute to prepare bill summaries for Parliamentarians for all pieces of legislation which are of significant public interest. These summaries are brief overviews which explain the key provisions of the proposed law. However, recent feedback indicates that what is really needed is far *more* information – a deeper background on the issues in question, a more thorough explanation of the need for law reform, and, most importantly, examples of how the proposed law would work in practice.

The scope for expanding this kind of endeavour is huge, and should involve a broad range of organisations. The goal should be to encourage more people to have the confidence to present informed opinions on law reform proposals -- and at the same time to help ensure that people will understand their rights under the new laws which are passed.

3. Public participation as a gender issue

The section above has talking about the accessibility of law reform process in general terms, but participation in this process is a very gendered issue.

Practical impediments to public participation may be experienced more dramatically by women, who are less financially independent and more likely to be limited by a "double shift" of household duties on top of income generating activity. Women are less likely to have experience in the political sphere, and fear of violence may inhibit their ability to express their opinions openly. Poor women in Namibia may be even more radically disempowered than women in other countries, because many of them have experienced the triple oppression of sex, race and class. Furthermore, black women's experience of apartheid may leave them distrustful of laws and bureaucratic processes which were in the past used as instruments of subordination. [80]

It is easier for whites, males, and the black elite to intervene in the law reform process, because these groups are by and large more well-represented in positions of power – they have the best contacts and they speak the right language.

And yet, excluding the voices of the majority weakens democracy. A more inclusive law

[80] See Goldblatt at 376-78.

reform process is likely to lead to more appropriate laws which will better serve the needs of all sectors of the nation, and a gender-balanced process is the best way to produce gender-sensitive laws.

4. Recommendations on the law reform process

One of the principles of state policy cited in the Namibian Constitution is "encouragement of the mass of the population through education and other activities and through their organisations to influence government policy by debating its decisions". [81] The law reform process would be a perfect arena for a more robust application of this principle.

In order to have a participatory democracy, people "must be able to engage in public contestation of ideas, offer alternatives to proposed and official policies, and influence decisions that affect them". [82] And yet someone in government once said to me, "It is not good to give the public too much information, it just confuses them." On the contrary, I do not believe that it is possible for there to be "too much information" about the law reform process – including information about how the process works, information about what items are on the agenda and information that makes law reform proposals more accessible to the public.

Here are practical suggestions about what could be done to increase the flow of information on these issues, with a particular emphasis on women's participation:

- Demystify the law-making process by disseminating simple information about how it works through the media, in educational material and in all Namibian languages. Add information on the law-making process to the secondary school curriculum.

- Continue to promote the presence of women in key positions – in Parliament and other elected bodies, as Ministers, as Chairpersons of key Parliamentary Committees and as members of the Law Reform and Development Commission.

- Appoint some members to the Law Reform and Development Commission from outside government, and even from outside the legal profession, to ensure a balanced range of perspectives.

- Require ministries (or the LRDC where it initiates bills) to prepare background information and simple-language summaries of bills which can be made available to interested parties and through the media. Where bills are likely to be of widespread interest, these summaries should be made available in languages additional to English.

- Encourage ministries, the LRDC and relevant Parliamentary Committees to make greater use of the media to disseminate information about proposed laws.

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[81] Namibian Constitution, Article 95(k).

[82] Lene Johannesen, Jonathon Klaaren and Justine White, "A Motivation for Legislation on Access to Information" 112 SALJ 45 (1995) at 47.

- Standardise minimum requirements for public consultation on all new bills and major amending legislation. Require that all "layperson's drafts" be published in the *Government Gazette* for information purposes, to ensure that any member of the public can have access to them. Alternatively, make all "layperson's drafts", and other policy documents which form the background to the legislation, available through a single government official (such as a Parliament or Cabinet Information Officer), since it is difficult for members of the public to know which ministry to approach, or who to approach within the ministry. [83]

- Ensure women's participation by directing particular consultation efforts at women, and utilise existing women's groups to channel information and responses from women. Encourage greater use of local and regional meetings to reach a broader spectrum of the public, and use these forums for the discussion of specific law reform options or proposals. Regional Councils could become more involved in this aspect of consultation.

- Where any government body solicits public input, it should make sure that meetings are scheduled at times and places which are appropriate for working women and for women with child care responsibilities.

- Women should be given opportunities to give input on law reform proposals in a comfortable environment – which means in their own language, in a familiar setting, and in isolation from male relatives and male members of the community.

- Require ministries (and the LRDC) to share all major comments received on draft bills with the public. This could be done in the form of brief reports which summarise public input, such as the papers which the South African Law Reform Commission publishes after it has invited comments on initial "issue papers". The same reports would also be of use to the CCL and to Cabinet, thus accomplishing several purposes at once.

- Encourage ministries (or the LRDC) to circulate draft bills for an additional round of public input before they go to the technical drafters, if Cabinet consideration of the bill has led to substantial changes.

- Require (by law or otherwise) that all bills be published in the *Government Gazette* at least one month before any Parliamentary consideration begins.

- Require (by law or otherwise) that all bills be drafted in the simplest possible language.

- Introduce a single Information Officer at Parliament who could give any member of the public clear and accurate information about where a bill is in the Parliamentary

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[83] One common enquiry received at the Legal Assistance Centre is "Where can I get the draft bill on…?"

process, along with information on how to get access to information about the bill. Introduce a similar Information Officer at Cabinet to answer queries about bills which have not yet been introduced into Parliament.

CONCLUSION

This paper may sound excessively critical. It is not because there is no basis for compliments, it is rather because "things that are not broken do not need fixing". My intention has been to focus constructively on areas where Namibia still has room for improvement, as this seems to be more helpful than mere flattery.

As a small nation with a painful history of multiple forms of discrimination, Namibia has already made great strides towards greater gender equality. The next ten years could see Namibia much farther down the road towards true equality in every sense. I hope that Namibia will also be a more open society ten years from now, with a stronger tradition of respectful public debate involving women and men from every sphere.