

GENDER & THE LAW GENDER SCORECARD 2002

Dianne Hubbard, Coordinator of the Gender Research & Advocacy Project at the Legal Assistance Centre, gives her annual overview of legal developments on gender in 2002.

Regular readers of the annual "Gender Scorecard" may have noticed that there was no scorecard in 2001, for the simple reason that there were few developments to report in the field of gender and the law. This past year was a little more encouraging, although missions accomplished are still outnumbered by hopes for things to come.

Improved land rights for women

The long-awaited **Communal Land Reform Act** finally passed by Parliament this year contains some very important gender-related provisions. This act provides for two kinds of land tenure in communal areas: customary land tenure and leaseholds for up to 99 years. The allocation of both kinds of tenure rights will fall under the supervision of Communal Land Boards.

The good news for women is that the Act provides for affirmative action for women on these Land Boards. Each board will be made up of at least 10 members, and possibly more (depending on number of regions covered by the communal area and the number of conservancies affected). The Act mandates that each board must have at least four women – two who farm in the area and two who have some expertise relevant to the functions of board. This is a strong entry point for women in an area of decision-making traditionally dominated by man.

The new Act also contains provisions on inheritance which will provide increased protection for widows. In terms of the new law, if a husband dies, his widow has a right to remain on the land if she wishes. She is entitled to keep the land even if she re-marries. This is a welcome form of protection for women, but Communal Land Boards must be vigilant to make sure that widows do not come under pressure from their extended families to "decline" their right to the land. If there is no surviving spouse when the holder of the land right dies, then the land will be re-allocated to a child of the deceased identified by the Chief or Traditional Authority as being the rightful heir.

Maintenance

Another long-awaited law, the **Maintenance Bill**, is under consideration by the National Assembly. This Bill seeks to make the existing maintenance court system more efficient with improved techniques for dealing with slippery respondents and better mechanisms for enforcing maintenance orders. The Bill was referred to the Parliamentary Committee on Human Resources, Equality and Gender Development, which held hearings throughout the nation.

The Committee's report, tabled in Parliament just before the session ended in November, makes a range of recommendations for fine-tuning the bill which must be considered when Parliament re-opens next year.

Debates on domestic violence

Another work in progress is the **Combating of Domestic Violence Bill** which reached the second reading stage in the National Assembly shortly before the session ended. The unruly debate which ensued showed that gender stereotypes are alive and well inside Tintinpalast. Namibian statistics indicate that 93% of domestic violence incidents reported to the police are perpetrated by men, while 86% of domestic violence victims are women or girls.

But some men worried that the gender-neutral bill does not do enough to protect men -- especially against forms of "violence" such as wives who deprive their husbands of sexual relations or use "witchcraft" to interfere with their husband's sexual functions. The real issues seemed in danger of getting lost when the Bill was referred to the Committee on Governmental Affairs for further consideration. The women and men who support the Bill hope that this move will not prove to be a dead end.

What's in a name?

Remember the case of Mr Müller, who wanted to take his **wife's surname** when they married? She could have simply started using his surname if she wished, but the law required Mr Müller to go through a formal name change procedure. This was challenged in the Namibian courts as being unconstitutional discrimination against men, but the Supreme Court ruled in 1999 that the distinction between husbands and wives was not an unfair one, noting that it is unusual for men to take on their wives' surnames. The matter was then referred to the Committee which oversees the International Covenant on Civil and Political Rights. This Committee ruled in March this year that the different procedures do amount to unfair sex discrimination in terms of the International Covenant and gave the Namibian government 90 days to report on what it has done to rectify the problem. Mr Müller has already changed his name to Mr Engelhard, but the world continues to await news from Namibia on what has been done to eliminate the discrimination in the law.

Women and children who fell off the agenda

One big disappointment in 2002 was the disappearance of the **Vulnerable Witnesses Bill** from the national agenda. This is a short piece of legislation designed to make court appearances less traumatic for children, victims of sexual offences and other persons who may be particularly intimidated by the court process. The draft bill was nearly ready for introduction into Parliament when it suddenly dropped out of sight. It would affect a mere five sections of the Criminal Procedure Act, but it could make a profound difference in the prosecution of crimes against women and children. Let's hope it re-surfaces in 2003.

Rape and innocent men

One hot issue during 2002 arose when several men charged with **rape** were found innocent, inspiring some to say that this proves that the new law on rape is misguided. On the contrary, it can also be seen as proof that the law is working – the men in question were ultimately found innocent and released. False charges are difficult to get away with. Furthermore, a finding of "not guilty" means that there was not enough evidence for a conviction, and does not necessarily prove that the charge was false. In respect of rape and all other crimes, the law is biased to protect the innocent, even if this means that a guilty person sometimes goes free. The burden of proof in criminal cases is the very high standard of "beyond a reasonable doubt", and the evidence of a single witness must be approached with great caution if there is no corroborating evidence. This continues to be true in the case of rape, as well as for all other crimes. It is of course terrible when an innocent person is held in custody without bail awaiting trial for an extended period – but this happens in respect of many crimes, not just rape. And it is a problem that could best be overcome across the board by addressing the backlogs in our courts.

Rape and HIV

The heaviest minimum sentence applies to a rapist who knowingly exposes a rape victim to HIV, but the increased punishment alone will be cold comfort to someone who contracts HIV as a result of a rape. Deputy Minister of Health Richard Kamwi announced in December 2001 that

the Ministry of Health would be providing preventative medication for all rape survivors, to reduce their chances of acquiring HIV from the rape, in the very near future. This course of medication (often referred to as PEP, for "post-exposure prophylaxis") must be commenced as soon as possible after the rape and continued for 28 days. The policy announcement was widely welcomed, but the reality on the ground has not yet materialized. PEP is not yet available in most parts of the country.

Developments on the horizon?

Turning from the past to the future, there are some interesting bills on the way. Two pieces of children's legislation, the **Child Care and Protection Bill** and the draft **Children's Status Bill** are expected to be introduced into Parliament by the Ministry of Women Affairs and Child Welfare in 2003. These bills will deal with children in need of protection or care, as well as eliminating discrimination against children born outside of marriage. The Law Reform and Development Commission is reportedly busy considering possible laws on **inheritance**, the **recognition of customary marriage** and civil and customary **divorce**.

The National Gender Plan of Action (1998-2003) identifies as a national goal "equal representation of women and men at all levels of decision-making structures". To this end, groups of women nationwide are lobbying for the introduction of a **50/50 Bill** which would provide affirmative action measures for women at all levels of government, although some prominent women believe that Namibia should move towards a 30% target for women's representation first, as an interim measure.

A number of important studies on gender issues were completed this year – including a hospital-based study on abortion (recently published by the Ministry of Health), a national study on commercial sex work with an accompanying documentary (launched in October by the Legal Assistance Centre) and a study on domestic violence as a health issue in two regions (to be disseminated by the Ministry of Health in early 2003). The information from these studies may give us insight into some controversial legal issues affecting women.

Gender and HIV

It is not possible to discuss gender issues, or any issue in Namibia, without mentioning HIV/AIDS -- an issue so enormous that it underpins everything else. In 1999, women already accounted for 54% of all new infections. A recent comparative study of three Namibian communities clearly shows that gender inequality and women's independence are the main variables influencing the incidence of HIV/AIDS, sexual coercion and condom use. According to UNAIDS, 86% of women in Namibia are aware that use of a condom can prevent HIV transmission, but only 38% manage to act on this. Women and children are often unable to choose safer sex. Only improvements in gender equality in Namibia can make women less vulnerable to HIV, and improved laws on matters such as maintenance, domestic violence and other family matters will help move our nation towards this goal.

Another issue of great concern to women in particular is the problem of mother-to-child transmission of HIV. This can be prevented in most cases by the drug nevirapine, which is currently available only at the Katutura and Oshakati state hospitals. Let us hope to see this medication rolled out more widely in 2003.

Namibia's international score on gender

In 2002 Namibia was ranked 101st out of 146 countries on the United Nations Gender Development Index, behind South Africa at 88th place but slightly ahead of most of our other neighbours (such as Swaziland at 103, Botswana at 104^t and Zimbabwe at 107). This index

looks at overall human development indices and makes adjustments on the basis of gender disparities in respect of life expectancy, educational attainment and income. Much room for improvement, but at least we are not at the bottom of the heap.

And that's a quick overview of gender and the law in 2002. Till next year...

wishes for a new year filled with peace, joy and equality.