

GENDER SCORECARD 2004

This annual analysis of developments in gender and the law is by Dianne Hubbard, Coordinator of the Gender Research & Advocacy Project at the Legal Assistance Centre.

2004 marked the first celebration of Namibian Women's Day on 10 December, causing some men to complain because there is no Namibian Men's Day. Get with the picture, guys – there is no need for a men's day because it is not men who are dishonoured on most days of the year by gender-based violence and discrimination.

The year did not see much progress in legislation for women, although some positive gender provisions were incorporated into the new Labour Act.

LAWS ON GENDER IN 2004

In March, women's groups marched to Parliament and handed over an open letter appealing for labour law provisions prohibiting sexual harassment and discrimination on the basis of pregnancy or HIV status. Women's groups also promoted special leave to deal with the serious illness or death of close family members, as the burden of care and responsibility in such circumstances often falls upon women. These appeals were not initially successful in the National Assembly, but the National Council recommended amendments on these points after holding a series of public hearings. The National Assembly obliged, so the two houses working together produced a new Labour Act which is stronger on gender issues than ever before. The new law was passed at the end of 2004, but has not yet come into force.

Another law in progress which is of great interest to women is the Children's Status Bill. This law deals with the position of children born outside of marriage, as well as guardianship of children whose parents have died.

After considering concerns from women's groups about shortcomings in the bill, the National Assembly referred it to the Committee on Human Resources, which held some 33 hearings around the country. Many women expressed concern about provisions which would *automatically* give custody or guardianship to absent parents, thus including both responsible and irresponsible parents in one fell swoop. Many organisations argued that this approach could actually act against the best interests of children.

A range of interested groups came together in advance of the Parliamentary hearings for a briefing from the Legal Assistance Centre about the bill's provisions, and the Parliamentary Committee subsequently reported an unprecedented level of participation by women. A joint submission on the bill signed by 18 organisations was submitted to the Committee, and women's groups are now eagerly awaiting the tabling of the Committee's report.

IMPLEMENTATION OF RECENTLY-ENACTED LAWS

Women celebrated at the end of 2003 when the Maintenance Act, the Combating of Domestic Violence Act and the Criminal Procedure Amendment Act dealing with vulnerable witnesses all came into force. But this jubilation might have been somewhat premature, as the effectiveness of some of these laws has been undermined by problems with implementation.

For example, during 2004 the Legal Assistance Centre received reports of serious problems with implementation of the Combating of Domestic Violence Act. Some people tell us that they have been turned away by public officials who do not have

the necessary forms or seem not to understand the law – even though it has been in force for over a year now.

The same is true of the Maintenance Act. Spot interviews conducted by the Legal Assistance Centre with magistrates, maintenance officers, clerks of court and attorneys indicate that many people are still ‘using’ the old law – which is no longer valid – because they are not familiar with the new one. The new law provides for the appointment of maintenance investigators to assist with the tracing of parents and their assets, but as far as we can find out, not a single maintenance investigator has yet been appointed in Namibia.

The *Boois* case, which took place prior to the vulnerable witness reforms, overturned a rape conviction involving a 10-year-old victim – largely because of technical problems which the recent legal changes should alleviate. But we do not yet have sufficient feedback to assess the effectiveness of the new rules on testimony by children.

Implementation of the Communal Land Reform Act which provides for more secure land tenure for widows is still gearing up and must be assessed as time goes by.

Speaking in Parliament during the debate on the domestic violence law, Hon Kawana stated that “there will be a need for more training; for specialisation; for sufficient staff and other resources; as well as improved social services and medical facilities”. We could not agree more. Passing new laws on gender issues is not the end of the road – in most cases it is just the first step.

PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA

On 26 August 2004, Namibia became one of only five members of the African Union to ratify the Protocol to the African Charter on the Rights of Women in Africa.

The Protocol takes a strong stand on violence against women and condemns all “harmful practices” against women and girls -- including “*all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls*”.

The Protocol stops short of prohibiting polygamy, but it states that “*monogamy is encouraged as the preferred form of marriage.*” Men and women are to be regarded as “equal partners in marriage”, and women are promised the right during marriage to acquire their own property and to administer and manage it freely.

Men and women are also promised the same rights to seek divorce. If a divorce takes place, “the interests of the children shall be given paramount importance” and the joint property of the marriage is to be shared “equitably”.

There is a specific section on widows’ rights. States parties are expected to take legal measures to prohibit “inhuman, humiliating or degrading treatment” of widows. More specifically, a widow shall automatically become the guardian and custodian of her children after the death of her husband (unless this is for some reason contrary to the welfare and interests of the children). A widow also has the right to remarry the person of her choice. The accompanying section on inheritance says that a widow shall have the right to continue to live in the matrimonial house, although this right continues upon remarriage only if the house belongs to her or if she has inherited it. Furthermore, a widow has a right to “an equitable share in the inheritance of the property of the husband”.

On inheritance generally, the Protocol says that “women and men shall have the right to inherit, in equitable shares, their parents’ properties”.

Also notable is the Protocol’s strong section on health, which explicitly promises women the right to control their fertility, to decide on whether and when to have children, to choose any method of contraception and to receive family planning education. A particularly important provision guarantees “the right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS”. Women have a

right to be informed of their own health status and the health status of their partners, within the context of internationally recognised standards and best practices on confidentiality and disclosure.

The Protocol is a grand and ringing statement of women's rights in Africa. It will become binding on individual states after the 15th ratification. However, as with so many grand and ringing statements of rights, the real question will be whether the Protocol is observed in practice.

COURT CASES

The most interesting court case for women this year comes not from Namibia but from South Africa. In the landmark *Bhe* case, the South African Constitutional Court found that the customary law rules on inheritance unfairly discriminate against women. The court ordered that the estates of black persons in South Africa must be distributed in the same way as the estates of any other person who dies without a will – with appropriate adjustments for polygamous marriages -- until Parliament comes up with a better solution to the problem. So in South Africa, the Constitutional promise of sexual equality has been found to overrule customary law on inheritance. Because Namibia's Constitution is similar to South Africa's on this point, the *Bhe* case could be a signpost to our future.

Back in Namibia, the *Lopez* case decided in late 2003 dealt with marital rape. A husband was found guilty of raping his estranged wife after he forced her into his car and drove her to a deserted area. On appeal, his sentence was reduced from ten years to five years. One of the "substantial and compelling grounds" cited by the court for reducing the sentence was that "it must be accepted that the complainant, as the appellant's wife of some years is no stranger to having sexual intercourse with him". One wonders – is it more traumatising to be raped by a stranger or by a man you once loved and trusted?

In a notorious domestic violence case, defendant Sean Burger was sentenced to a total of 20 years in prison for knifing an ex-girlfriend to death. According to the judge, a total of 20 wounds were inflicted, with the accused repeatedly replacing the knives as they broke. This case is, sadly, not unique. A full survey of the cases involving violence against women and children this year would fill pages.

THE POSITION OF WOMEN IN SOCIETY – IMPROVING OR NOT?

Everyday life is not looking very rosy for women in Namibia. Violence against women seems to be on the upswing, in spite of the new laws aimed at combating it. For example, the number of reported rapes appears to be rising, with alarming numbers of children both being raped and committing rapes.

An assessment of male-partner violence published by the Ministry of Health & Social Services in November 2004, based on a survey of 1500 women in Windhoek, contains the shocking finding that that 1 out of 3 women who have been in a relationship with a man have been physically or sexually abused at some stage. And 1 out of 5 women surveyed were experiencing abuse from their male partners at the time of the study. The study concludes that "male perceptions of gender roles and male entitlements are at the core of violence against women, and major and intensive intervention should be directed towards the socialisation, education and also 'empowerment' of men, to take the lead in addressing family violence in general and intimate partner violence in particular".

On the labour front, a study recently released by the Labour Resource and Research Institute found that males – and particularly white males – still dominate senior

and middle management. Women have made some gains at the level of skilled workers, but even here the advances made by black males outstripped those by black females.

The 2004 elections produced mixed results for women. Women continued to make strides forwards at the local level, where legal provisions in the Local Authorities Act make sure that women have places on the party list. The local elections held in May resulted in women increasing their presence from 41,3% to 43,4%, holding 123 out of 283 seats.

But women lost some ground in the National Assembly. Only 18 women are amongst the 72 new members, which constitutes 25% of the membership -- down from 19 women seated after the 1999 elections, which was 26.3 % of the total.

Only COD and UDF placed a zebra arrangement of candidates in Parliament, and both of these party lists began with men. SWAPO has only 15 women amongst its 55 representatives. President Nujoma's personal support for women continued to be strong, with 6 women amongst the 10 persons selected by the President to head the party list – but there were only 9 other women amongst the additional 45 persons on the SWAPO list who made it into the National Assembly.

If all 6 non-voting members of Parliament appointed by President-elect Pohamba are women, this will allow Namibia to squeak by the modest SADC goal of 30% female representation -- but this will not hide the fact that gender imbalances in positions of power still pose a challenge to SWAPO. The problem is not likely to improve unless SWAPO adapts its internal procedures to accommodate zebra lists of candidates, as the ANC has done in South Africa.

In the subsequent regional elections, there were only 12 women amongst the 107 persons elected to fill seats on the 13 regional councils, for a total of 11.2 %. Six of the 13 regions have no women at all on their regional councils, although the Khomas region bucked this trend with 6 women amongst its 10 councillors. The gender balance is better in the new National Council, where 7 out of the 26 new members are women (almost 27%).

Parliamentary discourse continued to include some outrageous claims about women, although disparaging remarks about women seemed to be less well-received now than in the past. For example, when one male Parliamentarian recently claimed that there was no such thing as forced sex within marriage, his misperception was corrected by both male and female colleagues.

Perhaps the most bizarre gender debate in Parliament during 2004 was on the question of whether a future President might have more than one spouse – which would affect the cost of the Presidential retirement package. Several female Parliamentarians insisted that this would be inappropriate and even unconstitutional, but some of their male colleagues maintained that it would be entirely acceptable.

Is anything getting better for women? Well, it seems that women are speaking out more and more. For example, in Swakopmund women handed over a petition to the local magistrate in July demanding reforms in the system for distributing monthly maintenance payments. In September, members of Women's Action for Development in Rehoboth petitioned local authorities to force shebeens and liquor stores to abide by the liquor laws. And in Omaruru, women marched to the magistrate's court to call for life sentences for men who commit violence against women. It seems clear that Namibian women will no longer allow their interests and concerns to be ignored.

WHAT LIES AHEAD

The Law Reform and Development Commission recently recommended the repeal of the part of the "Native Administration Proclamation 15 of 1928" which makes civil marriages between blacks north of the old Police Zone automatically out of

community of property, in contrast to the rest of the nation where such marriages are automatically *in* community of property.

The Law Reform and Development Commission is expected to publish reports early in the new year which will recommend an overhaul of Namibia's antiquated divorce laws, as well as a new regime for the official recognition and regulation of customary marriages.

The Children's Status Bill should move forward in Parliament. It will hopefully be joined by the long-awaited Child Care and Protection Bill, which will reform procedures to protect abused and neglected children and adjust Namibia's framework for adoption.

The big question is whether or not Namibia will take the bull by the horns and address the thorny question of inheritance. Will the government initiate law reform on this point, or will it wait until a court case forces it to take action (as in South Africa)? Reconciling the Constitutional promises of gender equality with respect for local culture and customary law is challenging, but not impossible.

AND IN CONCLUSION....

A survey of attitudes about law reform and gender equality carried out by UNAM's Gender Training and Research Unit (reported in *Beijing +10: The way forward*, Namibian Institute for Democracy in February 2004) documented some resistance to changes in gender roles at grassroots level. For example, one 44-year-old man said that women now see men as their enemies, while a 39-year-old man said that women's rights are used to undermine men. These are commonly-held perceptions, particularly in rural areas. There is a long way to go before Namibian men look past the mistaken idea that gender equality heralds a battle between the sexes, to see that it can transform relationships to produce a new and positive kind of partnership between men and women.

And so, as a parting thought for the coming year:

Q. How many feminists does it take to change a lightbulb?

A. None. It's not the lightbulb that needs changing.