

**THE LEGAL CHANGES WE NEED MOST TO COMBAT GBV:
What the Cabinet plan left out**

by Dianne Hubbard

This is the fourth and final article in a series of articles by the Legal Assistance Centre commenting on legal points in the recent Cabinet plan for combating gender-based violence.

The Legal Assistance Centre wholly supports Government's recent rejuvenation of efforts to combat gender-based violence, and the attention to the underlying legal framework.

However, most of the legal issues in the Cabinet plan on GBV relate to punishment rather than prevention, as they relate to criminal laws which can come into play only *after* the violent crime has been committed. The crucial question is whether there are any legal changes which might help to prevent such violence from occurring in the first place. The answer is yes.

Although the causes of gender-based violence are complex, we know that it happens most in societies where women and men are not equal. Namibia's Constitution and the laws governing the public sphere have given a great deal of attention to gender equality – but legal change in the domestic sphere has not kept pace, and this is the site of much of the ugliest violence which has recently disgraced the nation. Therefore, we would argue that the law reforms most urgently needed are in the realm of family law.

The Married Persons Equality Act 1 of 1996 placed husbands and wives on an equal legal footing, but it applies only to civil marriages and not customary marriages. Furthermore, it contains insufficient practical measures to give full protection even to the spouses who are covered.

The Law Reform and Development Commission (LRDC) has proposed a host of useful family law reforms which would have continued the movement towards equality within the family – most of which have drawn to some extent on Legal Assistance Centre research – but these have sadly not moved forward.

The Recognition of Customary Marriages Bill, proposed by the LRDC in 2004, would give customary marriages full legal status and put customary wives on an equal legal footing with their husbands.

The Divorce Bill, also proposed by the LRDC in 2004, would bring Namibia's arcane divorce procedures out of the dark ages, so that spouses would not find themselves trapped in broken and possibly violent marriages.

The Marital Property Reform Bill, put on the table by the LRDC in 2010, would overhaul the system of marital property regimes in both civil and customary marriage, with improved procedures to ensure fair dealing with joint property and provisions which would allow couples to change their marital property regime during the course of the marriage (with appropriate safeguards for vulnerable spouses and creditors).

The Succession Bill, finalised by the LRDC in 2012, would ensure that there is no discrimination between men and women when it comes to inheritance in the absence of a will, as well as providing protections against the practice of property-grabbing, which can leave women destitute and vulnerable.

The marital property and succession reforms together would also replace the last remaining provisions of the justifiably-hated and highly-discriminatory “Native Administration Proclamation of 15 of 1928”.

The LRDC is also currently in the process of finalising a report recommending some basic legal protections for cohabiting partners, so that women who have lived with men for years will not find themselves tied to a violent partner for economic reasons.

The Child Care and Protection Bill, which was sent by the Ministry of Gender Equality and Child Welfare to the Ministry of Justice for technical drafting in 2012, would include a number of measures to protect children in violent family situations – explicit provisions on preventative interventions, reforms which would reduce social worker time spent on administration and thus increase the time available to work with troubled families, and improved procedures for removing children from violent family environments where this is necessary.

Every one of these reforms is mentioned in the current *National Gender Policy (2010-2020)* – but they still seem to lack momentum despite the fact that we are already approaching the halfway point of the period covered by that policy.

Gender-based violence is large and messy problem. We need to look at it along its entire spectrum, instead of focusing only on the punishment of offenders. We need to look at the contexts where it occurs, and at how we can correct the imbalances of power in those contexts.

Improvements in the field of family law would surely help to give women more freedom, equality, security and autonomy – all of which would be good shields against gender based violence.

The Legal Assistance Centre appeals to Cabinet to add these crucial law reforms to its list of action points on GBV.