

Is Namibia Prepared for Paternity Leave?

Matthew Burnett, Legal Assistance Centre, 2004

Because there are many Namibian fathers who do not involve themselves in child care responsibilities, paternity leave is an issue whose time has perhaps not yet come. On the other hand, paternity leave might serve as a mechanism which would encourage Namibian fathers to take greater responsibility for their children's upbringing.

As part of its ongoing work to promote gender equality in Namibia, the Legal Assistance Centre (LAC) recently made a submission regarding the new Labour Bill to the National Council Standing Committee on Constitutional and Legal Affairs. Included in these submissions is a proposal for public input on the question of paternity leave. The LAC proposed that the Committee investigate whether there is any demand for this type of leave, and that it get feedback from both employers and employees regarding the viability of paternity leave in Namibia. Defined as a period of leave from employment that allows fathers to bond with the mother and newborn child, paternity leave can be an important mechanism to encourage fathers to take greater responsibility in their children's upbringing. But is Namibia prepared for paternity leave?

As part of its submission, the LAC proposed a number of questions that may shed some light on this issue: Would fathers use paternity leave to help take care of a child? Should paternity leave be limited to men who have named themselves as fathers on the birth certificate? Should paternity leave be limited to fathers who are sharing a common household with the mother and child? Should some type of verification be required to show that the father in question did in fact spend time bonding with the mother and child? How long should paternity leave be? And finally, should paternity leave be paid or unpaid?

Throughout the world, paternity leave has been recognized as an important means of reconciling the professional and familial lives of workers. As one African trade union notes, "while it is ordained by nature that only women can bear children, there is nothing natural about the fact that in many societies women are expected to bear the responsibility of raising children alone." (National Union of Eritrean Workers: *General Conditions of Eritrean Women factory workers*. Addis Ababa, 1995.) But paternity leave policies must also be considered from the perspective of the best interest of the child. No stage of development is more important than the first three years, and granting fathers the right to paternity leave may empower them to be more active in the care and nurturing of a child at this crucial stage.

Paternity leave is addressed by the International Labor Organization's Workers with Family Responsibilities Recommendation, which provides that both mothers and fathers should have the right to parental leave in order to care for their children. However, it does not prescribe any specific guidelines for implementation, and the duration and conditions of paternity leave are left to

each country. Many ILO Member States do have legislative provisions governing parental leave. Some Nordic countries even offer subsidized childcare services and compensation that is approximate to the actual loss of earnings. In the United States, the federal Family Medical Leave Act (FMLA) is completely gender neutral, and grants employees the right to 12 weeks of unpaid leave for family and medical reasons, including the birth of a child. However, in all countries with the right to parental leave, there are certain legal conditions that must be met. Generally employees must have worked between six and twelve months in order to be eligible, and some countries do not require that the employer provide any financial remuneration. Also, depending on the country, there are different safeguards against dismissal.

In Africa, countries such as Algeria, the Democratic Republic of Congo and Egypt provide three days of paternity leave per annum. Ten days leave is provided for “family events” in Benin, Cameroon, Central African Republic, Chad, Comoros, Djibouti, Gabon, Madagascar, Mali, Mauritania, and Togo. South Africa does not have a law requiring paternity leave, but some collective bargaining agreements have included paternity leave benefits.

In Namibia, a small survey of businesses and organizations was conducted by the Legal Assistance Center, revealing that paternity leave policies are virtually nonexistent. Nonetheless, Article 10(2) of the Namibian Constitution provides that “no person may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed, or social or economic status.” Thus, granting disproportionate parental leave benefits on the basis of sex may constitute a constitutional violation. Also, Article 15(1) of the Namibian Constitution, which parallels the UN Convention on the Rights of the Child, provides that “children shall have ... as far as possible the right to know and be cared for by their parents.” This provision makes no distinction between mother and father, but rather employs the term “parents.” Because parental leave is highly consistent with the care of children, the failure to provide adequate leave for both mothers and fathers may violate this provision.

The question still remains, however, whether including paternity leave benefits in the new Labour Bill is a positive step forward for Namibia. Although there are a number of benefits, including the potential to empower fathers to become more active in their children’s lives, there are also economic costs. For every day that a father is not working, the Namibian economy loses a day of his productive potential. Further, some may argue that annual leave provides a sufficient number of days for fathers to take leave to care for their children. But others would argue that annual leave is intended to provide time for employees to rest, and should not be compromised by forcing fathers to use these days for the demanding work of attending to a newborn child.

Ultimately, it is up to Namibians to decide whether the benefits of paternity leave outweigh the costs. Even if it is decided that the right to paternity leave

should be included in the new bill, there still remain important questions about the specific duration and conditions of this leave. It is therefore important for both Namibian workers and their employers to discuss these questions, and ultimately do what they think is in the best interests of Namibia's future -- its children.

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