

## **Namibia and CEDAW**

Dianne Hubbard, Legal Assistance Centre, 1998

*The Namibian Government recently received the United Nation's official response to Namibia's first report under the Convention on the Elimination of All Forms of Discrimination against Women. Dianne Hubbard of the Legal Assistance Centre accompanied the Namibian delegation which presented this report to the UN in July 1997 as a technical advisor. In this article, she recounts the process which led up to this presentation and summarises the key points in the UN response.*

### **WHAT IS CEDAW?**

CEDAW is the UN's most comprehensive attempt to ensure that sexual equality is fully incorporated into the provisions of international law. The founding document of the United Nations gave recognition to "the equal rights of men and women" back in 1945, and every major human rights convention enacted since then forbids sex discrimination. A UN Commission on the Status of Women was established in 1946, and there have been several conventions which have dealt with issues of specific concern to women. But this was not enough to make the notion of sexual equality truly meaningful at the international level. CEDAW is an expression of a new emphasis on women's rights as human rights.

CEDAW was adopted by the UN in 1979. It came into force in 1981, following ratification by the required 20 countries. It includes all of the provisions aimed at the elimination of discrimination against women from previous UN conventions, and also covers topics which had not been addressed by the UN before. CEDAW goes farther than simply stating the principle of equality -- it guides nations on what positive steps they must take to ensure that women have full and equal enjoyment of basic human rights in all areas of life. It also places a responsibility on governments to take action to prevent discrimination against women by anyone -- by any "person, organisation or enterprise".

By May 1996, 139 nations had ratified CEDAW. But there have been more reservations to CEDAW than to any other UN Convention -- 40 out of 119 signatories had entered 91 reservations as of mid-1994. (A reservation is when a nation refuses to agree to adhere to certain provisions of an international convention, often on the grounds of religious or cultural beliefs.) This shows that few nations are ready to make a whole-hearted commitment to the principle of equality for men and women.

Namibia ratified CEDAW without any reservations in November 1992. Since then, the Department of Women Affairs has made efforts to popularise CEDAW by producing booklets in all the major Namibian languages which explain the main provisions of the Convention in simple terms.

### **THE ENFORCEMENT OF CEDAW**

CEDAW includes provisions for its own monitoring body, a Committee made up of 23 experts elected by the nations who have signed the convention. These experts, who are nominated by their governments, serve for a term of four years. The Committee meets annually in New York to consider reports from the nations which have ratified CEDAW.

All nations that ratify CEDAW must submit an initial report within one year of ratification, and then every four years after that. In reality there is a large backlog

of work, meaning that there is usually a time lag of about three years between the time that a country submits a report and its consideration by the Committee.

### **NAMIBIA'S FIRST COUNTRY REPORT**

In 1994, the Department of Women Affairs commissioned the Legal Assistance Centre to draft Namibia's first country report in terms of CEDAW. During 1995 a team of LAC staff members prepared a draft report which drew on information from various surveys and reports as well as interviews with key persons inside and outside government.

In October 1995, the DWA invited representatives of various government departments and NGOs to attend a workshop to discuss the draft report. Attendance was relatively poor, however, and only a very few of those who were present offered any comments. The comments which were put forward were incorporated where possible, and the report was finalised and forwarded to the Committee.

Hon Netumbo Nandi-Ndaitwah, the Director-General of the Department of Women Affairs, presented Namibia's report to the UN in July 1997. Committee members then made comments and asked some ninety questions about various aspects of the report. The Namibian delegation had two days to prepare written answers containing supplementary information for further presentation to the Committee.

### **THE COMMITTEE'S REACTION**

The Committee's reactions were summarised in an official statement which was transmitted to Namibia last month. It praised Namibia's frank, detailed, and well-structured report. It also congratulated Namibia for ratifying CEDAW without reservations so soon after achieving independence, and for involving NGOs in the preparation and presentation of the report.

The Committee spoke positively about the establishment of the Department of Women Affairs, welcoming its upgrading to Cabinet level (while expressing dissatisfaction that its representative in Cabinet does not have a vote). It also welcomed the establishment of the Law Reform & Development Commission and the passage of the Married Persons Equality Act, hinting that it looked forward to the speedy passage of new children's legislation which is already in draft form.

Other developments which were singled out for applause included Namibia's the appointment of a woman as Ombudsman, first woman judge, the establishment of Woman and Child Protection Units, and the government's willingness to utilise affirmative action as a method for redressing gender imbalances.

Three main problems were cited as being Namibia's greatest obstacles to full gender equality: gender discrimination arising from customary laws, the general lack of public knowledge about human rights and the law, and the poverty which prevents so many Namibian women from fulfilling their aspirations. The Committee went on to make specific suggestions on issues which it considered particularly crucial.

The effective implementation of affirmative action was one of the Committee's key focuses. It stressed that affirmative action initiatives should have clear time frames, and should include programmes which can sustain the achievements of temporary affirmative action measures after they expire. The Committee also highlighted the need for effective monitoring of all affirmative action programmes. It said that affirmative action should be aimed at the judiciary in particular, to achieve a better gender balance.

Another theme highlighted by the Committee was the need to address the impact of customary laws on women.. It proposed research to identify customary laws which contradict the letter and the spirit of the Constitution. More specifically, it suggested law reform to remove all barriers to women's land ownership, especially in rural areas, as well as "an intensive programme to discourage polygamy". Particular emphasis was given to the need for law reform to provide for the registration of customary marriages. The Committee also singled out traditional courts as an area of concern, saying that the government must ensure that these courts comply with the principles of gender equality in all respects.

The problem of violence against women also came under the spotlight. The Committee recommended that the government should reform the law on rape, and extend it to cover rape within marriage. It also stated that the government should take "immediate action to combat domestic violence". The Committee thought that traditional tribunals should not have jurisdiction over cases of sexual violence, and that victims of such violence should be given more privacy and protection during state court proceedings. Another suggestion was awareness-raising programmes for professionals who deal with violence against women, including health care workers, police and the judiciary. At a more basic level, the Committee noted that the economic empowerment of women would help to reduce their dependence on men and their vulnerability to domestic violence. (Some of these issues have moved forward in recent months: new rape legislation is expected to be introduced in Parliament later this year, and the Law Reform & Development Commission is in the process of developing law reform proposals on domestic violence and vulnerable witnesses.)

Not shying away from controversial issues, the Committee advocated a review of the laws on abortion, and complained that health care for prostitutes is not given sufficient attention. The Committee also expressed particular concern about the consequences of teen pregnancies, noting that girls are being punished for their pregnancies by expulsion from school.

The Committee made several more general suggestions, advocating programmes designed to counter stereotyped roles of men and women in the family, more educational programmes for women on human rights and the law, steps to encourage greater political participation by women, and continued collaboration between government and NGOs in implementing CEDAW.

## **PUTTING CEDAW INTO ACTION**

CEDAW is legally binding. But as in the case of most other international conventions, enforcement depends largely on political will and lobbying inside the country. Namibia will be expected to report on its follow-up to the Committee's suggestions in its next country report, which is due in the year 2000. But, even so, if the Government has failed to act, it will probably suffer nothing more serious than some international embarrassment. It is up to people inside the country, both inside and outside government, to take responsibility for using CEDAW and the Committee's recommendations as a reference point.

Cabinet has taken a first step in this regard by inviting all government offices, Ministries and agencies to study the Committee's recommendations and to forward ideas for implementing their suggestions to the Department of Women's Affairs. Following on the UN Committee's remarks about the role of NGOs, the NGO

community should also take part in the process of continuing to put CEDAW into action.