

GENDER SCORECARD 1998
Dianne Hubbard, Legal Assistance Centre

*The Legal Assistance Centre takes its annual look
at developments in gender and the law during the course of the year.*

BIRTHS: A new affirmative action law

The Affirmative Action (Employment) Act passed in September promises affirmative action measures for three designated groups: racially disadvantaged persons, women and persons with disabilities. When it comes into force fully some time next year, it will require employers to implement measures to increase the representation of persons in the designated groups in various job categories.

Employers will set their own goals and timetables, and progress will be monitored by an Employment Equity Commission. This Commission will comprise representatives of the state, trade unions and employers, as well as persons who will represent the interests of each of the designated groups.

This new law is modeled on successful affirmative action initiatives in other countries, and is the outcome of an elaborate consultation process. It could hold great promise for the advancement of women in the workplace. Congratulations to Namibia on a promising start in this area!

NEW SIBLING: National Plan of Action on Gender

The National Gender Policy launched at the end of 1997 has a new sister – the National Plan of Action recently approved by Cabinet. The subtitle of the Plan of Action is “Effective Partnership Towards Gender Equality”, and it envisages joint action by government, NGOs and private sector.

Some of the expected results of the policy are very ambitious – a significant reduction of poverty, men and boys performing 50% of all housework, 50% of all regional and local councillors to be women along with gender balance in Cabinet, in Parliament and in the governing bodies of all political parties. Examples of other goals include Woman and Child Protection Units in all regions, information centres in each constituency, making effective rural water supply a high priority, and ensuring that gender-related bills enjoy priority with legal drafters. The goal of increasing rights awareness and gender sensitivity is a thread which runs throughout the plan.

It is a worthy plan, but unfortunately silent about which agencies will be expected to take the lead in what areas. May 1999 be the year that puts the action in the Plan of Action!

LOST: One draft abortion law

In mid-1995, the Ministry of Health & Social Services circulated a draft Abortion & Sterilization Bill which would have increased the availability of legal abortions in the early stages of pregnancy. Public responses were varied and heated. Since then the topic has re-surfaced vaguely from time to time, but the proposed law reforms seem to have been lost along the way. Abortion remains a contentious topic, but wouldn't it be better to continue the debate in the open and decide on a national policy than to wait non-committally, hoping in vain that the problem of unwanted pregnancies will simply go away?

MISSING: Four laws on women and children

1998 started off to be a very promising year in terms of gender legislation. Following years of petitions and demonstrations and promises from Parliament, a new Combating of Rape Bill was drafted and discussed with interested parties in late 1997 and early 1998. A new Maintenance Act drawing on research published back in September 1995 took three or four giant steps forward, keeping step with a broad-based Child Maintenance Campaign which received a high level of public attention. And two pieces of children's legislation that grew out of a consultative workshop held back in June 1994 finally made their way from the Ministry of Health and Social Services over to the Ministry of Justice for technical drafting before the end of 1997.

So, when 1998 dawned, all of these laws were "with the legal drafters". And, as 1998 draws to a close, they are apparently still there. Is the phrase "with the legal drafters" actually a secret code for "at the bottom of the stack behind the filing cabinet"? Rape, maintenance and children's rights have long been identified as pressing issues which affect the lives of many Namibians daily. They should be amongst the highest of high priorities for law reform. But we women of Namibia should not be sitting back and blaming government for the slow progress – we should be standing on the steps of the Parliament building shouting to make sure that these crucial laws are passed without further delay. Here's hoping that 1999 finds them at the top of the stack and the front of the queue.

PRESUMED DEAD: Nine gender sectoral committees

Once upon a time there were nine Gender Sectoral Committees convened under the auspices of the Department of Women Affairs. These committees are cited in the National Gender Policy and in the country's CEDAW report as part of the structure of gender monitoring mechanisms. They are supposed to bring together government agencies and NGOs to advise the Department of Women Affairs on issues related to their area of focus. The chairpersons of these committees sit on a Gender Network Coordinating Committee which is meant to see that gender policies and programmes are implemented by government.

But the bottom of this pyramid has fallen away. The Gender Network Coordinating Committee still exists, but the persons who sit on it as representatives of the sectoral committees do not actually represent anything. For example, no meeting of the gender sectoral committee on women and legal affairs has been convened in over two years, and none of the other eight committees are presently active. If the Gender Sectoral Committees are still intended to function as the cornerstone of the gender structure, then they should be revived. If the concept doesn't work, then the erstwhile committees should be replaced by something new. 1999 should bring either a formal death certificate or a new lease on life.

A SHOCKING OMISSION: Gender statistics on HIV/AIDS

In light of the fact that AIDS has emerged as one of the most serious threats to the Namibian population, it is shocking to learn that the Ministry of Health & Social Services does not keep gender-disaggregated statistics on the incidence of HIV/AIDS. The inequality of men and women in Namibia affects all areas of life – including decision-making about if, when and how to engage in sexual activity. In order to control the spread of HIV/AIDS, Namibia needs to identify gender patterns and trends. And to do this, we need gender statistics.

WOMEN IN GOVERNMENT

Affirmative action is alive and well in local government, where the law still requires it. The 1998 elections, held in terms of a strengthened affirmative action requirement, produced local councils which are 41% women, up from 32% in the 1992 local elections.

Alas, the same cannot be said for regional government, where the inclusion of women depends solely on the will of the political parties involved. In the wake of the latest regional elections, a measly 4% of regional councillors are women. Following on a stirring call to action by President Sam Nujoma, SWAPO promised at its party congress that not less than half of the candidates on its local and regional party lists would be women – but Party Secretary Hifikepunye Pohamba later explained away the fact that there were only 7 women amongst its 102 regional candidates by saying that “our lady comrades seem not to be wanting to participate.” Not very convincing - where there is a will, there is a way.

WHAT'S IN A NAME?

A woman who marries in Namibia has the right to keep her own surname or to adopt her husband's surname, without notifying anyone or undergoing any legal procedure. But if a husband wants to adopt his wife's surname, he must go through the formalities for changing a name, which include publishing a notice of intent, allowing interested persons an opportunity to object and then obtaining authority from the Minister of Home Affairs. Does this different treatment constitute sex discrimination against men?

In one of the first cases dealing with the Constitutional prohibition against sex discrimination, the High Court said no. The court's theory is that it is reasonable for there to be an exception for women since it is common for women to assume their husband's surnames. But since it is unusual for men to assume the surnames of their wives, the court said that it is not unfair to require the few who choose this route to undergo the inconvenience of a formal procedure. According to the court, allowing husbands to adopt their wives' surnames informally, as wives do, would “surely open the door to fraud, other criminal offences and malpractice”. But the final opinion is still in question – the case will be heard on appeal by the Supreme Court next year.

WHERE THE MONEY GOES

During 1998, the Ministry of Finance and the Department of Women Affairs worked with two Swedish consultants to initiate a gender analysis of the Namibian budget. This exercise, which is a regular occurrence in other countries such as Australia and South Africa, examines the gender impact of state expenditures. As a starting point, the consultants analysed two budget votes – Basic Education and Culture (combined with Higher Education) and Agriculture, Water & Rural Development.

The analysis of the education vote concluded that the basic education system benefits women and men fairly equally as learners. However, several gender problems were identified. Gender stereotypes in course selection and career choice are not yet being adequately addressed by guidance counselling. The treatment of pregnancy among learners still needs serious attention. Male teachers predominate in managerial positions, even though women teachers have higher formal qualifications on average. On the other hand, the National Literacy Programme is under-utilised by illiterate men, which may point to negative male attitudes towards learning. In tertiary education, women outnumber men as students at UNAM, but men predominate in managerial positions and as professors. In vocational education,

women are disadvantaged by the choice of subjects on offer, given present gender preferences in subject selection and in the labour market.

With respect to the agriculture budget, the analysis found that about 80% of all government services in support of agriculture go to the communal farming sector, where some 60% of the agricultural work is carried out by women. The National Agricultural Policy gives prominent attention to the need to address gender imbalances in rural areas, in a field historically biased towards the commercial farming sector which is primarily the province of white males. The available data indicates that women are under-represented amongst the employees of the Ministry of Agriculture, especially at managerial levels. But there are many examples of expenditures which are beginning to take gender roles into account – such as a growing emphasis on veterinary services for small stock (more likely to be controlled by women), and agricultural research aimed at developing higher-yield strains of mahangu (the major crop cultivated by female subsistence farmers). Most agricultural extension workers are male, but about half of the farmers they reach are women. It is also noteworthy that the proportion of female students at Namibia's agricultural colleges is gradually increasing. Women and children appear to be the main beneficiaries of drought relief expenditures by the Ministry, and women outnumber men in the food-for-work programmes aimed at drought relief.

The budget analysis is admittedly an inexact science, but it nevertheless provides an indication of whether men and women are benefiting equally from the national budget. After all, it is easy to say all the right things about gender equality, but it is harder to follow through with the resources to make it happen. The goal is to rotate such analysis, so that every portion of the budget is examined from a gender perspective on a regular basis. Here's hoping that this sort of analysis does indeed become a regular feature.

HOW WE LOOK TO THE OUTSIDE WORLD

Namibia received its first comments from the UN Committee on the Convention of All Forms of Discrimination against Women (CEDAW) this year. The Committee congratulated Namibia for ratifying CEDAW without reservations so soon after achieving independence, and complimented its frank and detailed country report. The Committee also noted a number of positive developments since independence, including the establishment of the Department of Women Affairs and the Law Reform & Development Commission and the passage of the Married Persons Equality Act. Other developments singled out for applause included Namibia's appointment of a woman as Ombudsman, the first woman judge, the establishment of several 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. On the topic of customary law, the Committee suggested law reforms to remove all barriers to women's land ownership and to provide for the registration of customary marriages, as well as "an intensive programme to discourage polygamy". The Committee also cited 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 "immediate action to combat domestic violence" and rape

law reform, including the extension of the crime of rape to rape within marriage. 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.

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

IN THE PIPELINE: Expected developments in 1999

Passage of the long-awaited legislation on rape, maintenance and children's rights

Passage of the Communal Lands Bill, which could improve women's access to land in rural areas

A new law on domestic violence

New procedures to make children and vulnerable witnesses more comfortable in court

Interesting results from a nationwide gender survey carried out by the Gender Research and Training Programme at UNAM

AND SO INTO 1999 ...

There are lots of exciting plans and possibilities, but actual progress on gender issues is still moving slowly. In 1999, the focus should be on bringing priority issues to fruition so that Namibia enters the next millennium as the most gender-sensitive nation in Africa.