



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
against Women**

**Consideration of reports submitted by States parties
under article 18 of the Convention on the Elimination
of All Forms of Discrimination against Women**

Combined second and third periodic reports of States parties

Namibia*

* The present report is being issued without formal editing.
For the initial report submitted by the Government of Namibia, see CEDAW/C/NAM/1 which
was considered by the Committee at its seventeenth session.



TOTAL POPULATION BY SEX AND REGION, NAMIBIA 2001 CENSUS

REGION	POPULATION			PERCENT
	TOTAL	FEMALE	MALE	
CAPRIVI	79 826	40 749	39 077	4.4
ERONGO	107 663	50 040	57 616	5.9
HARDAP	68 249	33 665	34 579	3.7
KARAS	69 329	32 346	36 976	3.8
KAVANGO	202 694	106 176	96 515	11.1
KHOMAS	250 262	123 613	126 648	13.7
KUNENE	68 735	34 237	34 487	3.8
OHANGWENA	228 384	124 828	103 556	12.5
OMAHEKE	68 039	32 484	35 554	3.7
OMUSATI	228 842	126 368	102 473	12.5
OSHANA	161 916	87 958	73 957	8.8
OSHIKOTO	161 007	84 620	76 387	8.8
OTJOZONDJUPA	135 384	65 488	69 896	7.4
TOTAL	1 830 330	942 572	887 721	100.0

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List of Acronyms

CBS	-	Central bureau of Statistics
CIDA	-	Canadian International Development Agency
CEDAW	-	Convention on the Elimination of all Forms of Discrimination Against Women
COD	-	Congress of Democrats
DTA	-	Democratic Turnhalle Alliance
FAWENA	-	Forum for African Women Educationalist in Namibia
GDP	-	Gross Domestic Product
GFCF	-	Gross Fix Capital Formation
LAC	-	Legal Assistance Centre
LRDC	-	Law Reform and Development Commission
MAWRD	-	Ministry of Agriculture, Water and Rural Development
MBESC	-	Ministry of Basic Education, Sport and Culture
MHETEC	-	Ministry of Higher Education, Training and Employment Creation
MOHSS	-	Ministry of Health and Social Services
MMC	-	Multi-media Campaign on Violence Against Women and Children
NAPPA	-	Namibia Planned Parenthood Association
NDHS	-	Namibia Demographic and Health Survey
NDP	-	National Development Plan
NGO's	-	Non-Governmental Organisations
NGP	-	National Gender Policy
NGPA	-	National Gender Policy Action
NLFS	-	Namibia Labour Force Survey
NPC	-	National Planning Commission
SIAPAC	-	Social Impact Assessment and Policy Analysis Corporation (PTY) Ltd.
STI'	-	Sexually Transmitted Infections

SWAPO	-	South West Africa People's Organisation
UDF	-	United Democratic Front
UNECA	-	United Nations Economic Commission for Africa
UNO	-	United Nations Organisation
UNHCR	-	United Nations High Commissioner for Refugees
UNAM	-	University of Namibia
WCPU	-	Women and Child Protection Unit

SUMMARY

PART 1: INTRODUCTORY SECTION

- A. The introductory sections of this report provide background information on Namibia's general, social, economic, political and legal structures, primarily for readers who may not be well acquainted with Namibia.
- B. The second part covers the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Namibia since the presentation of the first report.

PART 2: NAMIBIA'S IMPLEMENTATION OF THE CONVENTION

ARTICLE 1: Definition of Discrimination

- 1.1 This section of the report deals with the provisions of the Constitution that are most relevant to the implementation of CEDAW: Articles 10 (Equality and Freedom from Discrimination), 14 (Family) and 23 (Apartheid and Affirmative Action), as well as some parts of Article 95 (Promotion of the Welfare of the People).
- 1.2 The Namibian Constitution explicitly forbids sex discrimination (Article 10).

In *Myburgh versus Commercial Bank of Namibia*, The High Court interpreted Article 10 of the Constitution, which prohibits discrimination on the basis of sex. In this case, Mrs. Myburgh admitted of having borrowed money from the Bank, but, relying on common law that women married in community of property cannot be sued, she argued that the Bank should rather sue her husband as the administrator of their property and her guardian. In pursuance of Article 10 of the Constitution, the Court concluded that the common law rule was in conflict with the Constitution, and the Bank could therefore sue Mrs Myburgh and her appeal was therefore dismissed.

ARTICLE 2: Policy Measures to Eliminate Sex Discrimination

- 2.1 The principle of sexual equality is unequivocally enshrined in the Namibian Constitution (Article 10). With regard to other legislation, the Labour Act (Act 6 of 1992), has outlawed discrimination on the basis of sex in most aspects of employment, the Income Tax Act (Act 4 of 1981) has done away with sex discrimination by a series of amendments to the Act, and the Government of Namibia enacted the Married Persons Equality Act (Act 1 of 1996).
- 2.2 A national gender policy was adopted in 1997 to outline the principles for the implementation, coordination and monitoring of gender programmes.

ARTICLE 3: General Protection of Equal Human Rights and Fundamental Freedoms

- 3.1 This part of the report focuses on violence against women and children and covers areas such as rape, domestic violence, child abuse and HIV/AIDS and violence. The incidence of violence against women is an indicator of the degree to which women lack meaningful gender equality.
- 3.2 Each year about six hundred (600) cases of rape and 150 (one hundred and fifty) cases of attempted rape are reported to the police. Between 1995 and 1999, the number of reported cases was fairly consistent ranging between 543 and 601 per year. In the year 2000, the figure went up to 705. As a response to the increasing number of rape cases, the Government of Namibia enacted the Combating of Rape Act in 2000 (Act 8 of 2000).
- 3.3 In the year 2000, a total of 70 000 people had been diagnosed with HIV, and during the same year, 2 868 people were reported to have died from AIDS related diseases. A sample of 3 890 women were tested and about 22.3% were found to be positive with the virus. The fact that women are mostly the victims of domestic violence, especially rape, renders them more vulnerable to contract HIV/AIDS.

ARTICLE 4: Affirmative Action

- 4.1 The Affirmative Action (Employment) Act (Act 29 of 1998) was promulgated in 1998. The Act requires that all employers prepare affirmative action plans, targeting blacks, women and persons with disabilities for affirmative action.
- 4.2 The Ministry of Labour has established an independent agency known as the Employment Equity Commission to administer the affirmative action legislation. The Commission represents the interests of employers, employees and members of designated groups, and monitors compliance with the law and investigates complaints of discrimination in employment practices. Other affirmative action provisions have also been made applicable to some statutory bodies and boards – ranging from the Social Security Commission to the National Sports Commission. The Social Security Act (Act 34 of 1994) requires female representations from government, trade unions and employers' organization on the Social Security Commission. The Namibia Sports Act (Act of 19) requires that at least three of the 14 members of the Namibian Sports Commission be women. The recently promulgated Communal Land Reform Act (Act 5 of 2002) makes provision for the inclusion of four women on the Communal Land Boards out of the possible eleven members of the various Communal Land Boards.

According to the Annual Report of the Employment Equity Commission of 2002, out of the total employees of 118 174, women were particularly under represented in traditionally men dominated sectors such as Construction (7%), Mining (12,2%), Transport (14%), etc.

ARTICLE 5: Sex Role Stereotyping

There is little statistical data available on sex role stereotyping in Namibia; research is needed to provide more information on the changing roles of women in all aspects of economic and social life. It is commonly known that men still dominate women and this is reinforced by religious beliefs, cultural practices and remaining inequities under both general and customary laws.

ARTICLE 6: Prostitution and Trafficking of Women

6.1 Prostitution in Namibia is still governed by the Combating of Immoral Practices Act (Act 21 of 1980). The Act prohibits the keeping of brothels, the procurement of prostitutes, soliciting by prostitutes, living on the earnings of prostitution and the enslavement of women for sexual purposes.

According to a study conducted by the Legal Assistance Centre in 2002, the majority of sex workers do not have other sources of income. The main reason given for engaging in sex work was money to support their children, or other family members or simply to sustain themselves.

The majority of sex workers are in favor of the decriminalisation of prostitution in Namibia, while the general population are in favor of the criminalisation of prostitution. Although there is no evidence that trafficking is a widespread phenomenon in Namibia, there has been at least one case in 2000 involving the transport of young Namibian women to South Africa for the purpose of sexual exploitation.

ARTICLE 7: Women in Political and Public Life

- 7.1 In Namibia all citizens, regardless of their sex, who have reached the age of 18, have the right to vote. And those who have reached the age of 21 are eligible to be elected to public office.
- 7.2 The National Assembly has 22% of women out of 72 elected and 6 appointed members. There are only 2 women out of 26 members in the National Council.
- 7.3 A total of 136 women were amongst the 329 persons who actually took seats in the 1998 local elections.
- 7.4 Although the recruitment of women to senior management positions has improved since the last report, women are still under represented in senior positions. For instance, women make up only 24.1% out of a total of 449 employees at senior management level in the public service.

ARTICLE 8: Representations in Missions Abroad

Although currently only five of Namibia's twenty one (21) foreign missions are headed by women, they constitute 49% of all foreign mission staff; an improvement of 14% from the last report.

ARTICLE 9: Nationality

Namibian Laws on the acquisition and loss of Nationality are gender neutral.

ARTICLE 10: Education and training

10.1 The Namibian Constitution guarantees the right to education to all persons and makes it compulsory until the age of 16, or until completion of primary education.

10.2 Nationally, there are no striking differences in primary and secondary schools enrolment. Out of a total learners of 528 958 enrolled in 2001, girls constituted more than 50% (268 479). However the retention of girls in secondary and tertiary institutions is still a problem. With regard to enrolments at colleges of education in Namibia, out of total 2 111 students enrolled, 972 or 46% were female in 1999.

ARTICLE 11: Labour Development

The Labour Survey of 2000 revealed that the employed population amounted to 401 203, with a male and rural majority of 55 and 56 per cent, respectively. The rate of unemployment, according to the same survey, is estimated at 34.5 per cent.

ARTICLE 12: Health Care

12.1 The main objective of the Government in the delivery of health services is to improve the health of the Namibian population through the provision of relevant preventative, curative and rehabilitative services, which are affordable to all Namibians.

12.2 The Namibia Demographic and Health Survey (NDHS) of 2000 reported that there were 264 clinics, 37 health centres, 35 hospitals and 6 756 hospital beds available in Namibia. The most readily available services are: immunisation, education on HIV/AIDS, including use of condoms and reproductive health. The services that specifically affect women only are the least available. These are services such as screening for breast cancer and screening for cervical cancer.

About 77% of the population in Namibia has access to safe drinking water, and 41% has access to sanitary means of excreta disposal. Over 90% of mothers who give birth during the years 1995 to 2000 received antenatal care from a doctor or nurse. Women account for 53 per cent of all reported new HIV cases. In 2002, HIV prevalence among pregnant women was 22.0%.

ARTICLE 13: Economic and Social Life

13.1 Old age pension grants are an important source of income for poor households. Women find traditional approaches to maintenance under customary law inadequate. Women in both rural and urban areas use Maintenance Courts to secure their maintenance.

The Government provides, in collaboration with other stakeholders, technical and financial assistance to individuals and groups who provide training and other forms of assistance to women's businesses.

ARTICLE 14: Rural Women

14.1 While rural women are the largest demographic group in the country, they are severely disadvantaged in terms of ownership to land, access to labour, labour, agricultural services, natural resources and employment.

14.2 The Ministry of Agriculture, Water and Rural Development, in collaboration with UN agencies, has embarked on measures aimed at enhancing agricultural capacity and outreach to communal farmers.

Parliament has passed the Communal Land Reform Act (Act 5 of 2002). In terms of the Act, men and women are equally eligible for individual rights on communal land.

ARTICLE 15: Legal Capacity and Domicile

15.1 The Married Persons Equality Act (Act 1 of 1996) has abolished the marital power of the husband as the head of the household.

15.2 The Namibian law does not make provision for the registration of customary marriages, and their unions are therefore not recognised as marriage for legal purposes like obtaining joint assets.

PART 1: INTRODUCTORY SECTIONS

1.0 GENERAL, SOCIO-ECONOMIC AND LEGAL STRUCTURES

1.1 General

Namibia is situated in the south-west corner of Africa, bordered in the west by the Atlantic Ocean, in the east by Botswana, Zambia and Zimbabwe, in the south by South Africa and in the north by Angola. Namibia covers an area of approximately 824 295 square kilometers or 317 827 square miles, which is nearly four times the size of the United Kingdom or a little more than twice the size of California.

Topographically, the country is divided into three regions: The Namib Desert, the Central Plateau, and the Kalahari Desert. The Namib Desert stretches along the South Atlantic coast, along the entire length of the country, from the Angolan border to the South African border. The Central Plateau rises 3000 to 9000 feet above sea level. The Kalahari Desert in the east and north is characterised by thick layers of the terrestrial land and limestone and scarcity rainfall. Namibia (known as South West Africa until 1990) was colonized by Germany in 1884. The German colonization of the territory lasted until 1915 when the Union of South Africa defeated the Germans during the First World War. In 1920 the League of Nations entrusted Namibia to South Africa as a class C mandate. In terms of the mandate, the Union of South Africa was expected "...to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government for independence..."¹

In 1945, the League of Nations was succeeded by the United Nations Organization (UNO), which requested South Africa to place Namibia under its trusteeship. Instead, the Union of South Africa not only refused to place South West Africa under the UN Trusteeship but also failed to promote the 'material and moral well-being of the people of the territory'. But above all, it systematically introduced the policy of apartheid in the country. The pillars of this policy were the continued appropriation of African land for white settlement through forced removals; the confinement of African people to small barren reserves consolidated into tribal – based "homelands", the denial of political rights to the African people and the reservation of white-collar and professional employment opportunities for people mainly of European descent.²

Towards the end of the 1950s and early 1960s the national liberation movements emerged and took up the plight of the oppressed people. Initially, these movements concentrated their efforts on petitioning the United Nations and the political mobilization of the people inside the country. But in 1966, the South West Africa People's Organization (SWAPO) added a new dimension to the struggle by launching the armed struggle inside the country.

¹ Alfred T. Moleah, *Namibia: The Struggle for Liberation*, Wilmington, Delaware, 1983.

² CEDAW, First Country Report, Department Of Women Affairs, 1995, p. 1

As a result of the intensification of the struggle, the five western members of the UN Security Council initiated negotiations between SWAPO and South Africa aimed at reaching a peaceful settlement of the Namibian dispute. On the 29th of September 1978, the UNSC adopted Resolution 435. However, due to Superpower rivalry of the time, Resolution 435 was not implemented until 1989. On 21 March 1990, after the successful implementation of Resolution 435, Namibia officially became independent.

Namibia is a country with a rich culture and traditions. Like many African countries, it has diverse ethnic groups, which include the Afrikaner, Baster, Caprivian, Coloured, Damara, English, German, Herero, Kavango, Nama, Owambo, San and Tswana peoples. English is the official language. Ninety percent of the Namibians are Christians. The denominations are Lutheran (48%), Catholic (32%) Dutch Reformed (10%), Anglican (8%) Methodist (1,6%) and individual Muslims are at 0.1%.³

1.2 Social structures

The preliminary findings from the 2001 Population and Housing Census revealed that the total population of Namibia was 1 826 854 in 2001, comprising 890 136 males and 926 718 females. The average annual growth rate was 2.6%, below the 3.1 % of 1991 census. In Namibia, the 1996 estimates have it that about 35% of the population of 1.68 million was living in urban areas. Windhoek is the most urbanized center and in 1991, about 31 % of the country's total population lived in Windhoek. The population of Windhoek has been increasing at an annual rate of 5,4% between 1991 and 1995, the largest annual growth rate in history. The 1997 population of Windhoek was about 200 000 people, comprising almost half of the urban residents in the country. Estimates indicate that the population of Windhoek will double by 2010 as a result of migration resulting in considerable growth in the form of informal settlements.⁴

According to the 2000 Namibia Demographic and Health Survey (NDHS), the average fertility rate was 4.2 children. This represents a decline of 22% from 5.4 children in 1992. The decrease is assumed to have resulted from increasing access to education, particularly by women, and from the declines in fertility due to the HIV/AIDS pandemic.⁵

Life expectancy at birth in 1991 was estimated at 58 and 62 years, respectively, for males and females. In the absence of figures for 2001, the figures suggest that male life expectancy is at 50.6 and female life expectancy is at 54.1 years. Infant mortality has declined from 57 per 1000 live births during 1988-92 to 38.1 per 1000 during 1996-2000. In the year 2000 the NDHS indicated that the under five-mortality rate for the period 1996-2000 is 62 per 1000, an improvement of one third on the figure of 91.6 per 1000 for the period 1988-92.

³ CIDA, Country Report – Namibia, 1990 in CEDAW, 1995, p.2

⁴ *Ibid*

⁵ MOHSS, 2001

1.3 Economic Structures

At independence in 1990, the real gross domestic product (GDP) and real national income per capita, at constant 1990 prices, were N\$6 081 million and N\$4 520, respectively. Now twelve years after independence and over the post- independence decade, 1990 – 1999, real GDP increased by about 39%, from N\$6 081 to N\$8 453 million; while real income per capita increased by about 4.8 %, from N\$4 520 to N\$ 4 735.⁶

The economy of Namibia is characterized by a dominance of primary industries. The mining sector plays a leading role in the Namibian economy, which is not only underpinned by its contribution to GDP, export earnings and investment, but also by its contribution to government revenue. However, the sector's contribution to GDP declined from 21 percent (1983-1989) to 14, 6 percent (1990-2000). In 2002, the sector has continued to show a declining trend both for diamond production as well as mining and quarrying. Diamond production has declined by 5.1%. Investment as a share of the total Gross Fix Capital Formation (GFCF) on the other hand remained also most constant at 15, 3 % and 14,9 % during the two periods respectively. Its contribution to export earnings declined from 70% to 54% respectively.

The sector's performance largely depends on external factors such as the state of the world economy and on country quotas applied by the Central Selling Organization on Namdeb's diamond production. A recession with depressed mineral prices results in a contraction of the sector, while a boom leads to increased demand and higher prices, thus benefiting the mining sector in Namibia.⁷

Agriculture is the key sector in the Namibian economy. The mainstay of the agricultural sector is cattle and sheep, while maize, wheat and millet are grown in the high rainfall areas. In 1998 the sector contributed about 8 percent to the GDP and merchandise exports respectively, accounting for 25 percent employment of the labour force.⁸ The Agricultural sector recorded a decline of 11.4 per cent in 2001 as compared to a growth of 4.3 per cent in the total output of the industry in 2000. The negative growth rate is attributed to the constant number of livestock in 2001 as compared to 2000 when the increase was substantive.

The sector's performance is mainly determined by climatic conditions. Droughts impact substantially on the sector's output and result in negative growth rates. Switching to more drought-resistant products such as tobacco and cotton, and improvements in weather forecasts for the rainy season can enable the sector to cope better with the climatic conditions. In recent years, more farmers ventured into the plantation of tobacco and cotton instead of maize in rain-fed areas. For instance, marketed cotton increased from 1,160 tons in 1997/98 to 4 800 tons in 1998/99. Cotton, tobacco and rice crops were also introduced in the communal areas in the form of pilot projects.⁹

⁶ CBS, 2000

⁷ NPC, 2002

⁸ Namibia Trade Directory, 2001

⁹ NPC, 2002

Namibia has also started to successfully exploit the competitive advantage in grape production alongside the Orange River. From a mere 32 hectares at independence, land under cultivation for grape production grew tremendously to 1,028 hectares in 1999, creating more than 1 400 permanent and additional 2 100 seasonal jobs.¹⁰

Since independence, the fishing sector has expanded significantly, contributing some 10% to the GDP and 29% to merchandise exports in 1998.¹¹ The sector registered a decline of 7.7% in 2001 relative to a growth of 2.9 the previous year. This is due to the decrease in fish catches.¹² The main species exploited are pilchard, hake, horse mackerel, rock lobster and monkfish. Sole, snoek and tuna occur on the continental shelf along the coastline.

1.4 Political Structures

The Namibian Constitution promulgates multiparty democracy with fundamental rights and freedoms. The Constitution lays down the division of power between the executive, the legislature and the judiciary. The Cabinet is the executive branch, headed by the President. The President is elected by direct popular vote and can serve for two five year terms. The bicameral legislature consists of the National Assembly with 72 members elected and six appointed by the President for a five-year term, and the National Council made up of two representatives drawn from each of the 13 geographical regions of Namibia¹³, who are elected for a six-year term from among the various Regional Council members.

The National Assembly proposes legislation and has the authority to enact laws despite objections from the National Council, if a two-thirds majority approves. The National Council reviews bills passed by the National Assembly.

The following political parties participated in the last national elections held in December 1999, with the number of parliamentary seats obtained by each: SWAPO Party, 55; Democratic Turnhalle Alliance (DTA), 7; Congress of Democrats (COD), 7; United Democratic Front (UDF), 2; and Monitor Action Group (MAG), 1.

1.5 Legal Structures

The legal system in Namibia consists of the Supreme Court, High Court and Lower Courts and the Judicial Service Commission. Traditional courts continue to administer customary law, but that is about to change with the introduction of the Community Courts Bill. The Supreme Court "... shall hear and adjudicate upon appeals emanating from the High Court"...¹⁴ The High Court, according to the Constitution, "shall have original jurisdiction to hear and adjudicate upon all civil disputes and

¹⁰ Kalili, 2000

¹¹ Namibia Trade Directory, 2001

¹² CBS, 2001

¹³ The geographical regions in Namibia are: Caprivi, Hardap, Erongo, Khomas, Karas, Kavango, Kunene, Ohangwena, Omaheke, Omusati, Oshana, Oshikoto and Otjozondjupa.

¹⁴ The Namibian Constitution, Article 79(2)

criminal prosecutions, including cases which involve the interpretation, implementation and upholding of the Constitution”...¹⁵

The independence of judges is guaranteed by the Constitution; they are appointed for life and may only be removed on the grounds of mental incapacity or gross misconduct. The Ombudsman’s duties are to investigate complaints of violation of fundamental rights and freedoms, and to keep an eye on the conduct of public authorities and officials. The Prosecutor-General and Attorney-General are the law enforcement officers of Government.

2.0 IMPLEMENTATION OF THE CEDAW

In accordance with the provisions of CEDAW, the party States are expected, at least every four years, to submit a national report to the Committee, indicating the measures they have adopted to give effect to the provisions of the Convention.¹⁶ Namibia submitted its first report to the United Nations in July 1997.

After a thorough screening of the report by the Committee, which considers reports from the party States, the Committee made its comments on the report. The Committee praised Namibia for its frank, detailed and well structured report. It also congratulated Namibia for ratifying the Convention without reservation, and for involving NGO’s in the preparation of the report.¹⁷

The Committee also welcomed the establishment of the Law Reform and Development Commission and the passage of the Married Persons Equality Act, and they looked forward to the passage of the new children’s legislation.¹⁸

However, the Committee cited the following three problems as being obstacles to Namibia’s gender equality programme: discrimination arising from customary law; the general lack of public knowledge of human rights and the law; and the poverty which prevents the majority of women in Namibia from fulfilling their aspirations.

Other suggestions made were on the effective implementation of affirmative action, the impact of customary laws on women, violence against women, laws on abortion, health care for “prostitutes”, teenage pregnancies, etc.

As a response to these suggestions, Cabinet invited all government offices, ministries and agencies to study the Committee’s recommendations and to forward ideas for implementing their suggestions to the then Department of Women’s Affairs. Following on the UN Committee’s remarks on the role of NGOs, the NGO community was also invited to take part in the process of continuing to put CEDAW into action.

¹⁵ The Namibian Constitution, Article 80(2)

¹⁶ UN, CEDAW, July 1990, p.3

¹⁷ The Legal Assistance Centre was commissioned by the then Department of Women Affairs to draft the first country report.

¹⁸ Dianne Hubbard, Namibia and CEDAW, 1997.

Although this report does not purport to cover all the concerns raised by the Committee in the first report, suffice it to say that much has been done on gender issues since 1997 to address their concerns. The first and most important development was the upgrading of the Department of Women Affairs in the Office of the President to a fully-fledged Ministry of Women Affairs and Child Welfare. Despite some constraints (human and financial), its very existence is an achievement as it serves as an effective platform for advancing gender- oriented activities.

Secondly, the adoption of the National Gender Policy was another milestone. The policy outlines the framework and sets out principles for the implementation, co-ordination and monitoring of gender issues. Article 2 of this report will expand more on the policy.

In terms of gender discrimination from customary laws, the draft Community Courts Bill, currently before Parliament would regulate the jurisdiction and powers of traditional tribunals to conform to the provisions of the Constitution. Article 2 on policy measures to eliminate sex discrimination will elaborate more on this.

On the lack of public knowledge about human rights and the law, the National Gender Policy has a special commitment to encourage women to be recruited in the legal profession. The recent increase in the number of female students at the Law Faculty at UNAM is a testimony to this. At practical level, the Legal Assistance Centre, a local NGO, has taken the initiative to make law more accessible to the grassroots communities through translations and simplifications of various laws. The Ministry of Woman and Child Welfare is currently busy conducting legal literacy workshops in the various regions.

The Combating of Rape Act (Act 8 of 2000) and the Domestic Violence Act (Act 13 of 2003) are some of the measures adopted to combat violence against women. As recommended by the Committee that the law on rape should cover rape within marriage, the Combating of Rape Act covers rape within marriage. Violence against women is dealt with extensively in Article 3 of this report.

The Affirmative Action (Employment) Act (29 of 1998) is intended to improve the participation of blacks, women and persons with disabilities in the formal workforce, by requiring employers with more than 50 employees to prepare affirmative action plans with clear time frames. The Employment Equity Commission, which monitors affirmative action programmes, is made up in part of persons from each of the designated groups. The 15 member Commission is constituted as follows:

- The chairperson (referred to in the Act as the Commissioner);
- 4 persons representing the State;
- 2 persons representing employers' organisations and 2 persons representing trade unions; and
- 2 persons for each designated group, i.e. for racially disadvantaged persons, woman, and the disabled, respectively.

The Act also provides for the appointment of alternative members to stand in for Full members if the need therefore should arise. These are some of the measures adopted by the Government to give effect to the provisions of the Convention. Specific articles in the report will detail more on the measures adopted by the Government to eliminate all forms of discrimination against women.

PART 2: NAMIBIA'S IMPLEMENTATION OF THE CONVENTION

ARTICLE 1: Constitutional Provisions Pertaining to Women

The Namibian Constitution explicitly forbids discrimination on the basis of sex. Article 10 on Equality and Freedom from Discrimination states that:

- “(1) All persons shall be equal before the law.
- (2) No person may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.”

Article 23, of the Constitution, on Affirmative Action, which places a special emphasis on women, supplements this Article and reads as follows:

1.1 **Apartheid and Affirmative Action**

- (1) The practice of racial discrimination and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices.
- (2) Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws and practices, or for achieving a balanced structuring of the public service, the police force, the defence force, and the prison service.

In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.”

Added to these general provisions is Article 14 that makes specific reference to equality between men and women matters relating to marriage and the family in Article 14 of the Namibian Constitution:

1.2 **Family**

- (1) Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution.
 - (2) Marriage shall be entered into with the free and full consent of the intending spouses.”
- Other provisions in the Namibian Constitution with reference to equality for women are in a non-binding chapter on Principles of State Policy. Although these principles are not in

themselves enforceable by any court, they are intended to guide the Government in making and applying laws and to guide the courts in interpreting laws based on them.¹⁹ The principles contained in Article 95 on “Promotion of the Welfare of the People” commit the state to adopt policies aimed at, *inter alia*, the following:

- “(a) enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society; in particular, the Government shall ensure the implementation of the principle of non-discrimination in remuneration of men and women; further, the Government shall seek, through appropriate legislation, to provide maternity and related benefits for women;
- (b) enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength;
- (c) enactment of legislation to ensure that the unemployed, the incapacitated, the indigent and the disadvantage are accorded such social benefits and amenities as are determined by Parliament to be just and affordable with due regard to the resources of the State...”

1.3 Scope of Discrimination

Article 1 of CEDAW makes it clear that the Convention is aimed at both intentional discrimination and unintentional discrimination.

In *Myburgh v Commercial Bank of Namibia* 1999 NR the High Court of Namibia interpreted Articles 10 and 16 of the Namibian Constitution. Article 10 of the Constitution, as cited earlier on, provides for equality and freedom, and prohibits discrimination.

In this case, Mrs Myburgh appealed to the High Court against a judgment that she pay N\$115 927, 92 to the Commercial Bank of Namibia. Mrs Myburgh admitted that she had borrowed money from the Commercial Bank but said that the Commercial Bank should have sued her husband rather than herself. Mrs Myburgh relied on a common law rule for her defence.

The common law rule is that a woman married in community of property cannot be sued. Her husband must instead be sued, because he is the administrator of their property and her guardian. An exception to this rule is that a woman who is a trader or businesswoman can be sued in respect of her activities as such.

Mrs Myburgh denied that she was a trader or a businesswoman.

Relying on *Muller v The President and Another* (discussed below) the Court found that the common law rule discriminated against wives on the grounds of their sex, contrary to Article 10 (2) of the Constitution. This is because the rule treats husbands and wives differently. This difference in treatment amounts to discrimination based on sex.

¹⁹ Supra footnote 2, p. 18

The Court further found that the rule is also contrary to Article 16 (1) of the Constitution as husbands and wives are entitled to equality during marriage. The court also found that the rule violated the right to dignity, Article 8 (1) of the Constitution, noting that the right to equality is based on the idea that every person possesses equal human dignity.

The Court then considered whether the rule became unconstitutional and unlawful when the Constitution came into force on 21 March 1990, or only when the Married Persons Equality Act (Act 1 of 1996)²⁰ came into force on 15 July 1996. Mrs Myburgh signed the loan agreement before 15 July 1996, but Commercial Bank sued her after this date.

Article 66 (1) of the Constitution provides that the common law shall remain in force, except where it conflicts with the Constitution. The Court concluded that because the common law rule was in conflict with the Constitution, it became unconstitutional as soon as the Constitution came into force at independence. The Court held that Commercial Bank could sue Mrs Myburgh and her appeal was therefore dismissed.

ARTICLE 2: Policy Measures to Eliminate Sex Discrimination

2.1 The Principle of Equality of Men and Women and Prohibition of Sex Discrimination

The principle of sexual equality is unequivocally enshrined in the Namibian Constitution. In terms of Article 10 of the Constitution, *“all persons shall be equal before the law and that no person may be discriminated against on the grounds of sex, race, colour, ethnic origin... or social or economic status”*.²¹

The Labour Act has outlawed discrimination on the basis of sex in most aspects of employment and the Income Tax Act has done away with sex discrimination in taxation by a series of amendments to the Act. The Government of the Republic of Namibia enacted the Married Persons Equality Act in 1996. The Married Persons Equality Act has significantly advanced sexual equality between spouses in civil marriages. This Act will be discussed in details in chapter 15 of this report.

The Government is currently also giving attention to sex discrimination under Customary Law. A draft Community Courts Bill is before Parliament and would regulate the jurisdiction and powers of traditional tribunals and reinforce the Constitution by defining the “Customary Law” which can be administered by such bodies as customary tribunals in conformity with the Namibian Constitution.

2.2 The Protection of Women Against Acts of Discrimination

In an effort to address gender issues and concerns in general, and to protect women against acts of discrimination in particular, the Government of Namibia, among other measures, adopted a National Gender Policy in November 1997.

²⁰ Hereinafter referred to as the Married Persons Equality Act

²¹ Namibian Constitution, Article 10

In the foreword to the National Gender Policy, the President of the Republic of Namibia, H.E. Dr. Sam Nujoma said the following:

“The need for gender integration into all government policies, procedures and programmes is very important because women’s rights have to be promoted and protected...”

...The move from “women only struggle” to “gender recognition” seeks to desegregate women’s needs into the wider perspective. Gender and development aim at addressing issues concerning equal opportunities for both women and men”.²²

On her part, the then Director General of Women Affairs, now Minister of Women Affairs and Child Welfare, Honourable Netumbo Nandi-Ndaitwah had the following to say:

“Although the Namibian Constitution enshrines gender equality, the face of poverty is increasingly more female. Society’s attitude through traditional and cultural behaviours still results in the belief that women must play secondary roles.

Much work has been done in the efforts to promote equality between women and men. However, resistance to change is still visible despite the intensification of gender sensitisation programmes and the enactment of some legislation aimed at bringing about gender equality. Education and training should be used to promote social transformation for gender equality in all aspects of life such as health, education, and economic empowerment among others”.

2.2.1 The National Gender Policy

Although the importance of integrating gender issues in Namibia’s overall socio-economic development has been recognised since independence, and the Namibian Constitution is based on the principle of equality between men and women, discrimination against women has continued in most sectors of the Namibian society. It was against this background that the National Gender Policy was adopted to combat discrimination based on sex.

“The National Gender Policy outlines the framework by which implementation of Constitutional issues can be encouraged, supported and sustained. More specifically, the National Gender Policy outlines the framework and sets out principles for the implementation, co-ordination and monitoring of gender-sensitive issues which will enhance effectiveness in the continued management and planning of the developmental processes in the different cultural, social and economic sectors of the Namibian nation.”²³

While acknowledging the continued existence of gender (male) bias in Namibian society, the National Gender Policy shall “support efforts aimed at improving awareness among policy makers, planners, implementers, development agents and the general public, of the provisions of the Constitution regarding the equal status of women and men, and the roles of women and men as equal partners in the country’s development process.”

²² National Gender Policy, 1997

²³ *Ibid*

Further, according to the policy, the Government shall continue to recognize that the empowerment of women and equality between women and men are prerequisites for achieving conducive and sustainable political, social, cultural and economic security among all people of Namibia.

To that effect the government shall:

- ❖ Continue, in line with affirmative action, to support the integration of women and gender perspective into the mainstream of national, regional and local development initiatives.
- ❖ Support the increased participation of women in decision-making in all spheres of the Namibian society.
- ❖ Guided by the Constitution, the First National Development Plan (NDP1) the Beijing Platform for Action, the African Platform of Action, the SADC Gender Programme of Action and objectives of the Ministry of Women Affairs and Child Welfare this Gender Policy addresses the following areas of concern:
 - *Gender, Poverty and Rural Development*
 - *Gender Balance in Education and Training*
 - *Gender and Reproductive Health*
 - *Violence Against Women and Children*
 - *Gender and Economic Empowerment*
 - *Gender Balance in Power and Decision-Making*
 - *Information, Education and Communication*
 - *Gender and the Management of the Environment*
 - *The Girl-Child*
 - *Gender and Legal Affairs*
 - *Monitoring Mechanism*

Except for the monitoring mechanisms, the ten identified areas of concern will be discussed in other chapters of the report.

2.2.2 Monitoring Mechanisms of the National Gender Policy

To ensure effective implementation of the policy, the following structures have been created:

Gender Focal Points – to oversee the integration of gender perspective in all policies and programmes developed in ministries and other government institutions and bodies at national, regional and community levels.

Gender Sectoral Committee – to advise the Ministry of Women Affairs and Child Welfare on issues related specifically to their areas of focus.

Gender Network Coordinating Committee – to see to it that all policies and programmes developed are implemented.

National Information-Sharing Forum- to take place every two years to evaluate the progress on the implementation of the National Gender Policy and other relevant national instruments.

Gender Commission - shall be the legal body to reinforce the implementation of the NGP. However this body is still non-existent because of the absence of an enabling Act.

2.2.3 National Gender Plan of Action

A National Gender Plan of Action (1998 – 2003) was launched in 1998 by the then Department of Women Affairs in the Office of the President. The National Gender Plan of Action is to be used with the National Gender Policy as it identifies national goals, expected outcome and role players in the implementation process.

The goal of the National Plan of Action is to promote gender equality by empowering women through the dissemination of information, co-ordinating and networking with all stakeholders, mainstreaming gender issues, promoting law and policy reform, and monitoring progress so as to ensure that women, men, children and people with disabilities have full and equal participation in the political, economic, social and cultural development.

2.2.4 Implementation of the National Gender Policy

The NGP and NGPA have been instrumental in guiding the planning of various gender–focussed activities within different ministries and NGO’s in Namibia, and some categories of government employees have participated in training that was aimed at enhancing gender- responsive planning. However, in general, the country still has to systematically and effectively integrate a gender perspective into its development policies, programmes and projects, in order to fulfil its commitments and targets for gender equality and equity.

As part of designing a Gender Management System (GMS) that would facilitate the implementation of NGP, a SWOT (Strengths, weaknesses, opportunities and threats)²⁴ analysis was carried out to identify the nature and level of existing capacity for gender mainstreaming in Namibia.²⁵ Some major bottlenecks that continue to pose challenges to the process of gender mainstreaming were identified by the SWOT analysis as follows:

At political level it was noted that:

- ❖ Despite the support of top political leaders, there is a pervasive negative attitude to gender equality and a marginalisation of gender equality issues from mainstream programmes.
- ❖ The allocation of financial and human resources does not match expectations in advancement of women and gender equality.

²⁴ A Mission from the United Nations Economic Commission (UNECA) headed by Hilda Tadria, a Special Advisor on Gender at UNECA, carried out the SWOT analysis in November 2001.

²⁵ UNECA, Report of the Mission to Namibia: Gender Mainstreaming Programme, July 2002, p. 27

Regarding the Gender Policy, it was noted that there is no clear implementation strategy; for example, the policy is not a legal document, and non-implementation is therefore not sanctioned.

The plan of Action is too broad and not clear on the implementation mechanism. It concentrates more on women and development and does not address the unequal gender relation or the transformative issues.

At Institutional Level it was observed that:

- ❖ There is no effective National Gender Mainstreaming Programme and therefore co-ordination of the gender mainstreaming at national level becomes difficult.
- ❖ There is no formalized structure for gender mainstreaming in sector ministries and no clear mandate for Gender Focal Points (GFPs).

Gender disaggregated data:

- ❖ There has been no intensive research on the critical gender issues.
- ❖ There is limited gender disaggregated data and access, and therefore gender analysis cannot be effectively done.

Resource allocation – human/financial

- ❖ Since there is a general lack of recognition for the value of gender mainstreaming work, limited resources (financial and human) are allocated for this work at different levels.

At the programme level, it was noted that:

- ❖ Although there are some Gender equality and equity programmes (e.g. Affirmative Action and Women's Empowerment Projects), in many sectors and institutions gender equality commitments and plans are generally not translated into a gender-responsive programme of action; because, to a certain extent attitudes to women's advancement and gender equality, are still negative.

Monitoring and Evaluation

- ❖ Established instruments or mechanisms for effective and continued monitoring and evaluation of the implementation of the national gender policy or the commitments government has made regarding the advancement of women and gender equality and equity need to be strengthened.
- ❖ There is a limited of capacity (i.e. staff, skills and tools) for monitoring and evaluation of gender mainstreaming at the national level.

The results of the SWOT analysis showed clearly that in order to ensure effective gender mainstreaming in programmes and policies, at all levels, the government is implementing the following:

- ❖ Systematic and consistent capacity-building for gender mainstreaming at all levels in both the public and private institutions.
- ❖ Institutional transformation and adequate resource allocation for gender mainstreaming.

- ❖ Systematic gender-focussed research to enhance the relevance of development planning to national gender equality and equity commitments.

2.3 Discrimination by Public Authorities and Institutions

Although the Namibian Constitution guarantees equality and prohibits discrimination based on sex, women are still unrepresented or under-represented in most public authorities and institutions. This issue will be dealt with in detail in Article 7 hereunder.

2.4 Steps to Eliminate Discrimination Against Women by any Person, Organisation or Enterprise

Despite the existence of Article 5²⁶, which clearly spells out that “the fundamental rights and freedoms shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government...” and Article 91(d)²⁷ of the Namibian Constitution, no instances have been discovered in which government assistance has been sought or offered to combat instances of discrimination against women by private bodies.

2.5 Repeal of National Penal Provisions Which Discriminate Against Women

A few penal provisions in the Criminal Procedure Act (Act 51 of 1977) Sections 29 and 37 which provide that a woman may be bodily searched or examined only by another woman overtly distinguish between men and women, and these are not necessarily discriminatory. These provisions, however, need to be changed to be gender-neutral, which provide that all persons may be bodily searched or examined only by members of the same sex.

2.5.1 Infanticide

Infanticide is an increasingly common crime, especially among young mothers. This is still an area, which calls for further investigation, together with a deeper understanding of attitudes about contraception and abortion as well as availability of adequate support services for young mothers. However the problem is not limited to young mothers, a local weekly has reported that “police have arrested a 44 year-old woman for allegedly killing her newborn baby after delivery a few weeks ago”.²⁸ This is a serious problem that may take time to be resolved.

²⁶ The Namibian Constitution

²⁷ Article 91(d) authorises the Ombudsman “to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedom under the Constitution has taken place”.

²⁸ Namibia Today, 18-24 October 2002

2.5.2 Abortion

Namibia's Abortion and Sterilization Act (Act 2 of 1975) makes it a crime for a woman to seek an abortion, or to terminate her own pregnancy, except in very narrow circumstances²⁹. This Act has been used as a basis for the prosecution of individual women.

According to the Namibian Police, abortion in Namibia has been reported as follows:

Year	Number of Reported Cases
1996	12
1997	14
1998	14
1999	7
2000	6
2001	7
2002 until 31 August	12

The Ministry of Health proposed a draft law on abortion in 1996 but it was withdrawn in 1999 because a majority of Namibians were not in favour of the law. That means more work needs to be done, to sensitize the community on the danger of illegal abortion.

2.5.3 Women in Prison

A very small proportion of Namibia's prison population consists of women. As of December 2002, only about 5% of the total prison population was female. This is an increase from the 4% reported in our first report.³⁰ The total number of persons imprisoned in Namibia for various reasons in the year 2001 was 5432, out of this, 304 were women. They were imprisoned for various offences such as murder, culpable homicide, robbery, stock theft; drug trafficking, fraud and housebreaking and theft.

²⁹ (a) where the continued pregnancy endangers the woman's life;
 (b) where it constitutes a serious threat to her physical health;
 (c) where it constitutes a serious threat to her mental health;
 (d) where there is a serious risk that the child to be born will suffer from a physical defect of such a nature that he will be irreparably seriously handicapped;
 (e) where there is a serious risk that the child will suffer from a mental defect of such a nature that he will be irreparably seriously handicapped;
 (f) where the foetus is alleged to have been conceived in consequence of incest;
 (g) where the foetus is alleged to have been conceived in consequence of rape;

³⁰ CEDAW, 1995, p.25

ARTICLE 3: General Protection of Equal Human Rights and Fundamental Freedoms

3.1 Rape

Rape is a matter of serious concern in Namibia. Each year about (600) cases of rape and 150 cases of attempted rape are reported to the Namibian Police.³¹ Experts believe that only about one out of every 20 rapes that take place is reported to the police. Between 1995 and 1999, the number of reported cases was fairly consistent ranging between 543 and 601 per year. In the year 2000, the figure went up to 705, an increase of about 17%. There is a general trend of an increasing violence against women and children; this renders it a continuous problem.

While the figures do include boys and men, it is mainly women and girls who experience sexual violence. Court records show that even babies younger than one year old and elderly women aged 85 have been raped in Namibia. Women in advanced stages of pregnancy have also been raped. These facts show that rape is not a result of provocation by the person raped, but a crime of power that uses sex as a weapon. Rapists themselves describe their motivation as anger, hatred, conquest, humiliation or degradation – not sexual gratification.³²

Most rapes in Namibia involve people who know each other, either a family member, personal friend, or someone known to the family. As much as 95% of cases may go unreported because they involve acquaintances and they prefer to resolve the matter ‘in many house’. Often in rural areas rape cases are not reported to the police for fear of revenge or because the family of the complainant would rather resolve the problem with the family of the rapist. Sometimes it is not reported because there is no nearby clinic or police station³³.

As a response to the increasing number and brutal nature of rape cases, organisations from a diverse spectrum of social and political life have made appeals to the Ministry of Justice and the Law Reform and Development Commission for new laws on rape that give stiffer sentences for convicted rapists, revise the definition of rape, remove the marital rape exemption, etc.

Under the old law, rape was defined as “intentional unlawful sexual intercourse with a woman without her consent”. This definition had several serious limitations, such as:

- ❖ It did not make it possible for men or boys to lay a charge of rape.
- ❖ It did not make it possible for wives to lay a charge of rape against their husbands, because sexual intercourse between married persons was not considered “unlawful”.
- ❖ It focused on the question of consent, instead of the force or coercion used by the rapist. This meant that the woman who was raped would be asked questions, in court about her sexual history and behaviour, or about what she was wearing or doing at the time of the rape. This often made the woman who was raped feel as if she was the one on trial.
- ❖ In the eyes of the law, rape occurred only where the penis was inserted into the vagina.

³¹ SIAPAC, *Inequalities and Social Welfare: Vision 2030*, 2002, p.89.

³² Dianne Hubbard, 2001.

³³ Dianne Hubbard, 2001.

The Combating of Rape Act (Act 8 of 2000)³⁴ came into force in Namibia in June 2000. This new law has been hailed as one of the most progressive pieces of legislation on rape in the world. The Combating of Rape Act (Act 8 of 2000) defines³⁵ rape as the “intentional commission of a sexual act under coercive circumstances.” The definition of a sexual act covers the most intimate kinds of sexual contact:

- The insertion of the penis into the vagina of another person, to even the slightest degree
- The insertion of the penis into the mouth or anus of another person;
- The insertion of any other part of the body into the vagina or anus;
- The insertion of any part of the body of an animal into the vagina or anus;
- The insertion of any object into the vagina or anus;
- Cunnilingus or any other form of genital stimulation
- The act is one of the most advanced laws on rape in the world. The previous law on rape in Namibia contributed to marital rape (a man raping his wife) and rape of people other than women, because these crimes were legally defined not as rape, but as indecent assault (Ipinge and LeBeau 1997:80).

The definition of “coercive circumstances” includes force, threats of force, and other situations, which enable one person to take unfair advantage of another.

In terms of the old definition of rape, a wife could not charge her husband with rape, no matter what kind of force he used. The Combating of Rape Act provides that no marriage or other relationship will be a defense to a charge of rape. This applies to civil marriage and customary marriage as well as other relationships.

The Combating of Rape Act has risen the age of consent for both boys and girls. Even if there was no force or coercion, a rape has been committed if the complainant is under the age of 14 and the perpetrator is more than 3 years older. The minimum sentence for rape of a child is 15 years, and the maximum is life imprisonment.

An amendment to the Combating of Immoral Practices Act gives additional protection to boys and girls under the age of 16. A crime would be committed under this Act if there were sexual contact with a child under the age of 16 by someone more than 3 years older. This is, however, a less serious crime than rape and is broader and covers “indecent or immoral act”. The penalty under the Combating of Immoral Practices Act (as amended) is N\$40 000-00 or 10 years imprisonment or both such fine and imprisonment.

The Combating of Rape Act provides for stiff minimum sentences for rapists. There are three categories of minimum sentences. For a first offence, the minimum sentence would be 5, 10 or 15

³⁴ Hereinafter referred to as the Combating of Rape Act

³⁵ LAC, Guide to Combating Rape Act, 2001

years, depending on the circumstances of the rape. For a repeat offender, the minimum sentence is 10, 20 or 45 years, depending on the circumstances of the rape. The maximum sentence for any rape is life imprisonment.

Under the Combating of Rape Act, the court would be closed to the public during the entire rape trial unless the complainant requests otherwise. If the complainant is a minor (under the age of 21), the request to open the court must be made by the complainant's parent or guardian. It is also illegal to publish any information, which might reveal the identity of the complainant. A rapist who knowingly exposes a rape complainant to HIV through the rape would receive the heaviest minimum sentence. Knowingly exposing someone to the risk of HIV infection is also grounds for a criminal charge of attempted murder, in addition to the rape charge.

Cases dealt with under the Combating of Rape Act

- 1) 57-year-old man raped 11-year-old girl. Sentenced to 15 years imprisonment (19 February 2000).
- 2) 42-year-old man, raped an 8-year-old girl. Sentenced to 12 years imprisonment (19 May 2000).
- 3) 25-year-old man raped a 13-year-old girl and indecently assaulted a 3-year old toddler, was sentenced to 16 years imprisonment for rape and 2 years imprisonment for indecent assault (2 May 2000).
- 4) 25-year-old man raped a 10-year-old girl. Sentenced to 27 years imprisonment (23 March 2000).

3.2 Domestic Violence

Rape, other violence against women and children such as domestic violence and child abuse cut across class, race, gender and age, it is the women that suffer the most. For example, of the more than 2000 domestic violence cases reported to the police every year, 86% of the victims are females, and 14% male. 93% of the cases are committed by men, and 14% by women.³⁶

Under power relations, poverty, unemployment and substance abuse rank among the contributing factors to domestic violence. More than one fifth of all violent crimes in Namibia occur within domestic relationships.

Also similar to rape, the vast majority of domestic violence cases are not reported to the police. According to WCPU, reasons for not reporting include: it goes against the tradition, ignorance of the law and their own rights, distances involved in making the report, fear of an unsympathetic response from the police, and fear of reprisals and/or consequences to their families.³⁷

³⁶ Ministry of Women Affairs and Child Welfare, 2000.

³⁷ WCPU, 2000

The widespread and high incidence of violence against women and children has prompted community organisations and concerned citizens to petition the Government calling for law reform and enhanced social services. Consequently since 1996 the Law Reform and Development Commission, with the concurrence of the Minister of Justice have embarked, on a comprehensive Project on Violence Against Women and Children. The aims of the project were to: identify the violation of the human rights of women and children; identify the underlying causes thereof; and identify the measures to be taken for the prevention, protection and promotion of the said rights.

In support of these measures, President Nujoma at the Independence Day celebrations on 21 March 2001 stated that: *“The whole nation is disturbed by the increase of violence against women and children in our society. Our mothers, sisters and daughters must have their wishes respected by all members of our society. They must be able to move freely at any time of the day or night without fear of being attacked and their rights and freedoms being violated by any single individual or groups of men in the length and breath of Namibia.”*

The Law Reform and Development Commission, after lengthy national conferences, seminars, workshops, and visits to the various regions in Namibia, proposed a Domestic Violence Bill. This Bill has since been passed in Parliament.

The Combating of Domestic Violence Act (Act 4 of 2003) in a nutshell provides for:

- i) Protection Orders – section 4 of the Act provides that any person can make an application for a protection order personally in a “domestic relation”. Thus renders the Act gender neutral. It further states that any other person with an interest in the well-being of the applicant, such as a police officer, a social worker, a counsellor, etc., can also make the application on behalf of the victim. Of course, such a third party must act with the consent of the applicant, except in situations beyond the control of the applicant.³⁸

The jurisdiction requirements have been made liberal in that the magistrate’s court can issue a protection order in the jurisdiction where the applicant or the respondent resides or where the abuse took place. A protection order is enforceable throughout Namibia.

The protection orders are available on a 24-hour basis, this clause provides for temporary police protection after hours if necessary, until such time as the court is open”.

- ii) Criminal Provisions – The Act does not create any new offences, but when existing crimes occur within domestic relationships, these would be categorised as “ domestic violence offences”, so that special provisions concerning diversion programmes and sentencing options can be applied.

³⁸ Law Reform and Development Commission, Report on Domestic Violence, December 2000

In terms of section 24 a police officer who reasonably suspects that a domestic violence offence has been committed may arrest a person without a warrant of arrest.

- (iii) General – to protect privacy, this clause makes it an offence to publish information that might reveal the identity of persons involved in protection orders or criminal proceedings for domestic violence.

In addition the Multimedia Campaign on Violence Against Women and Children (MMC) was established in June 1996 and consists of governmental agencies, NGO's and individuals involved in combating violence, providing support services or advocacy on issues concerning violence against women and children.

In order to provide shelter for abused women and children and to create a suitable and conducive environment for traumatized victims, the Namibian Police established the Women and Child Protection Units (WCPU's). The first Unit was established in 1993 and became operational in 1994. Currently there are fifteen (15) units throughout Namibia.

Further, over the last few years, various NGO's have been established to deal with the issue of violence against women and children. These include the Men Against Violence Against Women and Namibian Men for Change. Although women are also involved one way or another, men are the most active people in these two organizations.

3.3 Child Abuse

Child abuse manifests itself through sexual, physical, emotional, financial abuse and general neglect in Namibia. While both women and men commit child abuse, men commit most cases. Although both boys and girls are abused, the majority of the victims are girls.³⁹

The Namibian Government in collaboration with stakeholders has passed two legislations which are aimed at reducing violence against women and children. The two Acts being Combating of Rape Act which is prescribe minimum sentences for rape..." with the passing of this law the situation of immoral practices is hoped to be reduced.

Combating of Domestic Violence Act (Act 4 of 2003) this Act was prompted by the widespread and a high incidence of domestic violence against women and children in Namibia. The Act helps to recognise the rights of women and children who are the most vulnerable members of the society.

3.4 Violence Against Women and HIV/AIDS

As of 2002, an estimated 22% of all Namibians adults are HIV positive, or some one-quarter million Namibians, and this will continue to climb to a figure just under 25%.⁴⁰ According to the health information system, in 1999 some 2 823 people died of diseases associated with AIDS, representing

³⁹ SIAPAC, 2002.

⁴⁰ "A situation analysis of Orphans Children in Namibia", April 2002, a study undertaken by SIAPAC.

26% of all reported deaths and 47% of all deaths in the age group 15 – 49. However, most AIDS-related deaths have not been recorded in the health information system. Indeed, model projections indicate that some 50 000 Namibians have already died from AIDS-related diseases, and that by the year 2021 there will be a cumulative death total of over one-half million. The total population by 2021 is estimated at 2.7 million, compared to an estimate of 3.6 million without AIDS. The fact that women are mostly the victims of domestic violence, especially rape, and their lack of power over their bodies and sexual lives renders them vulnerable to contract HIV/AIDS.

HIV/AIDS pandemic in Namibia has an impact on the Namibian children. A study undertaken by SIAPAC in 2002⁴¹ reports that as of 2001 it is estimated that half of all orphans in Namibia are AIDS orphans. This number will rise to some 75% by 2005 and remain at over 75% until 2021. In terms of AIDS orphans the “worst-affected” areas of Namibia are currently the four north-central regions of Ohangwena, Oshikoto, Oshana and Omusati, the north-eastern regions of Caprivi and Kavango, and Windhoek in the Khomas region in central Namibia.

In Namibia as of 2001, orphans generally comprise an estimated 20% of all children aged 17 and younger and this will rise to 40% by 2021.⁴²

ARTICLE 4: Affirmative Action

4.1 Constitutional Authorisation for Affirmative Action

Following the independence of Namibia, and the consequent abolition of the system of apartheid in the country, the Namibian Constitution, in Article 10, prohibits discrimination on the grounds of sex, race, ethnic origin, creed and social and economic status. In addition to the prohibition of discriminatory practices, the Namibian Constitution explicitly permits measures undertaken to promote the advancement of persons disadvantaged by past discriminatory practices. It is in this context that Parliament passed the Affirmative Action (Employment) Act (Act 29 of 1998)⁴³.

4.2 Affirmative Action (Employment) Act

Affirmative Action (Employment) Act was promulgated in 1998 after a consultation document was circulated for comments to trade unions, employers and NGO's.

The Affirmative Action (Employment) Act requires that all employers should prepare affirmative action plans targeting blacks, women and people with disabilities for affirmative action. Such affirmative action plans would include the following components:

- ❖ A workforce analysis: a listing of all jobs within each department or organisational unit showing the total number of employees and the number of target group members for each job title.

⁴¹ *Ibid*

⁴² *Ibid*

⁴³ Hereinafter referred to as the Affirmative Action (Employment) Act

- ❖ An utilisation analysis: a determination of whether the number of target group members in the employer's workforce is reasonable given their availability in the relevant workforce.
- ❖ An analysis of employment policies and practices to identify any differential impact on disadvantaged groups.
- ❖ Affirmative action measures to be implemented, including (1) the removal of employment barriers (such as bias in recruitment, interviewing and testing procedures); (2) positive measures (such as special training courses; and (3) reasonable job accommodation measures (such as steps to enable people with disabilities to hold jobs and to advance in employment).
- ❖ Numerical goals and timetables, which can be used to identify progress towards achieving the objectives, to be set forth in the plan.
- ❖ Monitoring and evaluation procedures.

While the Affirmative Action (Employment) Act is aimed at creating equal opportunities for all, it is acceptable that affirmative action will not be implemented at the expense of efficiency, but preferential treatment is to be given to suitably qualified persons from the target groups. Any other approach would lead to token appointments, which are economically inefficient and damaging to the self-esteem of those appointed.

The Ministry of Labour has established an independent agency known as the Employment Equity Commission to administer the affirmative action legislation.

The Employment Equity Commission represents the interests of employers, employees and members of the designated groups. It also monitors compliance with the law and investigates complaints of discrimination in employment practices.

The Affirmative Action (Employment) Act has a provision which penalises any person who contravenes the provisions of the Act.

4.3 National Resettlement Policy

It is the government policy to help Namibians to have access to land tenure. However, the government acknowledges, with regard to resettlement, that for practical reasons and by force of circumstances inherent in the limitation of means, such help can only be provided on a priority basis and proportional to the needs of the potential beneficiaries. The government, through the MLRR, has set up an order of priority of beneficiaries in its resettlement programme. In this programme the main target groups are members of the San Community, Ex-soldiers, Returnees, Displaced persons, People with disabilities and people from overcrowded communal areas.

The humanity of a nation is measured by the way such a nation gives help to the most vulnerable groups in its society, including women, children, the elderly and people with disabilities. The war situation that prevailed in Namibia has increased the number of disabled people in the country. The government also considers alleviation of the situation of the disabled people as part of its responsibility by assisting them to achieve an acceptable economic and social standing in the

community through resettlement and creation of institutions where they can acquire social help, be trained in different skills, become self-supporting and have their human and civil rights respected by society.⁴⁴

4.4 Other Affirmative Action Laws

One area in which affirmative action has been applied to women who work outside the formal workforce is through the Co-operatives Act (Act 23 of 1996). Section 29 (2) (b) provides that any co-operative which has a substantial number of women members must ensure that there is at least one woman on its board, as a means to increase the representation of women in management positions⁴⁵. This provision applies to any co-operative with more than five women amongst its members, or with women numbering more than one-third of its members (whichever is lesser).

Affirmative action provisions have also been made applicable to a number of statutory bodies and boards – ranging from the Social Security Commission to the National Sport Commission. The Social Security Act 34 of 1994 requires female representation from government, trade unions and employers' organisation on the Social Security Commission.⁴⁶ The Namibia Sports Act 7 of 1995 requires that at least three of the 14 members of the National Sports Commission be women.⁴⁷ This Act also specifies that the Sports Development Fund which is established for the promotion of sports in Namibia, shall be used “to enhance the sports of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices” – a provision which could be used as the basis for affirmative action for women in this field. The National Vocational Training Act (Act 14 of 1994) requires a cross-section of female representation on the Vocational Training Board. The Polytechnic of Namibia Act 33 of 1994 requires that the Council of the Polytechnic should include one person appointed by the Minister to represent the interests of women. The Namibia Film Commission Act 6 of 2000 requires that one third of the eight members of the Board be women.

4.5 Implementation of Affirmative Action in Employment

As mentioned earlier, the implementation of affirmative action is aimed at redressing existing imbalances in the Namibian labour market. Since CEDAW is only dealing with the elimination of discrimination against women, only the position of women in the labour market will be considered in this report. Table 1 below shows the distribution of employees by industry and sex.

⁴⁴ National Resettlement Policy (MLRR)

⁴⁵ Co-operative Act, Act 23 of 1996

⁴⁶ Social Security Act, Act 34 of 1994

⁴⁷ Namibia Sports Act, Act 7 of 1995

Table 1: Distribution of Employees by Industry and Sex

Industry/Sector	Employees					
	Male	Female	Total	Male	Female	Total
	(Number)			(Per Cent)		
Local Government, Water and Related Services	4297	778	5075	84.67	15.33	100
Public Services	19168	25785	44953	42.64	57.36	100
Manufacturing	4262	1530	5792	73.584	26.416	100
Health and Welfare (Private)	505	834	1339	37.715	62.285	100
Private Security, Legal and Wholesale and Retail	2665	262	2927	91.049	8.9511	100
Correctional Services						
Education, Training & Development	393	456	849	46.29	53.71	100
Practices(Private)	5305	4202	9507	55.801	44.199	100
Tourism and Hospitality	1435	1158	2593	55.341	44.659	100
Transport	3405	479	3884	87.667	12.333	100
Information Systems, Electronic, and Telecommunications	2532	765	3297	76.797	23.203	100
Services	2516	3615	6131	41.037	58.963	100
Construction	2383	174	2557	93.195	6.8048	100
Agricultural	2830	1472	4302	65.783	34.217	100
Fishing Industries	5590	2617	8207	68.113	31.887	100
Financial Intermediation	2825	3743	6568	43.012	56.988	100
Mining	5156	673	5829	88.454	11.546	100
All Industries/Sectors	65267	48543	113810	57.347	42.653	100

Source: Employment Equity Commission Report, 2003.

The report revealed that out of 83,5% persons for designated groups⁴⁸, women make out 26,6% in parastatals while 12% of their senior management level consists of women and at middle management women account for 18%. In the Public Service, women account for 24% of senior managers and 41% of middle managers.

The total number of employees reported at the national level was 113 810. Women were particularly under-represented in traditionally male dominated sectors such as Construction (7%), Mining (12%), Private Security, Legal and Correctional Services (9%), and Transport (12%). Males were represented

⁴⁸ Designated groups refers to the racially disadvantaged, women, and persons with disabilities.

fairly well in almost all the sectors or industries, representing more than 50% of the total employees except in the Public Service (57%), Financial Intermediation (57%) and in the Health and Welfare Sector (Private) (62%).

ARTICLE 5: Sex Role Stereotyping

There is very little statistical data available on sex role stereotyping in Namibia, and research is needed to provide more information on the changing roles of women in all aspects of economic and social life, especially since independence.

An example of stereotyped thinking of the Namibian society is the decision of the Supreme Court of Namibia in the case of *Muller v The President of the Republic of Namibia and Another* 2000 (6) BCLR (NmS). Mr Muller married Ms Engelhard during 1996. Mr Muller wished to use his wife's surname, rather than his own surname. In other words, they would have become Mr and Mrs Engelhard. To do this, he would have had to comply with the formalities prescribed by Section 9 of the Aliens Act. A woman in marriage is not obliged to comply with any formalities, but may elect to use her husband's surname as her surname (section 9 (1) (a)).

Mr Muller applied to the High Court for an order that Section 9-(1) (a) was unconstitutional. His main argument was that the section infringed his rights under the Constitution to equality before the law and freedom from discrimination on the grounds of sex (Article 10 of the Constitution). He also asked that he be allowed to assume his wife's surname. Mr Muller's application was dismissed by the High Court. He then appealed to the Supreme Court.

The Supreme Court made a number of important findings. Under Article 10 (1), legislation may treat persons differently if there is a sensible or rational reason for the difference in treatment. The legislation must also have been enacted for a legitimate purpose. An example of a legitimate purpose, in this case, is to prevent persons changing their surnames to avoid detection by the police.

The Court further held that the test under Article 10 (2) is, however, much stricter. If the legislation treats persons differently on one of the grounds referred to in Article 10 (2) (for example, sex or race), and this difference in treatment is discriminatory, then the legislation is contrary to Article 10 (2). The only exception is if it is covered by Article 23 i.e. "affirmative action" legislation. To be considered discrimination, the different treatment must also have an element of unjust or unfair treatment. The court will look at the effect of the discrimination on the person. Relevant factors include the person's position in society, whether he or she was disadvantaged by racial discrimination in the past, whether the discrimination is based on a specified ground or not and whether the discrimination affected the person's dignity.

In applying the law to the facts, the court concluded that the different treatment did not affect Mr Muller's dignity. He was also not a member of a previously disadvantaged group, because he was a white male. The legislation was also necessary to establish a person's identity for various purposes. The different treatment also reflected the tradition that a wife used her husband's surname on marriage. Mr. Muller was therefore not the victim of discrimination and the Supreme Court ruled

against Mr. Muller. However, the ruling of the Committee that monitors the Convention on civil and Political Rights overturned the Supreme judgment and ruled in favour of Mr. Muller⁴⁹.

Traditionally, girls enrolled for subjects such as home economics, needlework, hotel management, catering etc. To correct this trend, FAWENA (Forum for African Women Educationalist in Namibia) in partnership with the MBESC, coordinates with principals to identify girls who are facing challenges in Mathematics and Science subjects to offer tutoring sessions after school. These extra classes are conducted a few weeks before they sit for the final Examination, after the May/August school holidays. Girls take these classes seriously, as the majority of those who signed up participated actively in the programs.

ARTICLE 6: Prostitution and trafficking in women

6.1 Prostitution

Prostitution in Namibia is prohibited by the Combating of Immoral Practices Act (Act 21 of 1980)⁵⁰, section 7 of the Act provides that any person –

- (a) *“in any public street or place entices, solicits or importunes or makes any proposal to any other person for immoral purposes;*
- (b) *willfully and openly exhibits himself in an indecent dress or manner at any door or window within view of any public street or place to which the public have access.*
Shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or both such fine and such imprisonment.”

The Children Act (Act 33 of 1960) makes it an offence for the parent, guardian or custodian of a child to “cause or conduce”, or to allow a child to reside in a brothel. This provision of the Act could also be used as a tool to combat the demand for child prostitutes.⁵¹ Likewise, section 2 of the Combating of Rape Act makes it an offence for someone to commit a sexual act with a person under the age of 14 if he/she is more than three years older, even if the sexual act was consensual.

Although it is common knowledge that prostitution exists in Namibia, there have been no formal studies prior to 1996. The then Ministry of Youth and Sport and the Gender Research and Training Programme conducted the first studies of its extend in 1996 – 1997. These studies were rather of a small-scale nature - with a sample of only 10 and 15 sex workers in Walvis Bay and Windhoek, respectively.

A detailed study of adult commercial sex work in Namibia was, however, conducted by the Legal Assistance Centre in 2002. The study covered 148 sex workers, of whom 94 per cent were female. The study was conducted in five major towns in Namibia. According to their findings, the majority of

⁴⁹ Dianne Hubbard, LAC, August 2002.

⁵⁰ Act 21 of 1980

⁵¹ LAC, 2002 p. 67

sex workers had no other sources of income.⁵² Those who did have other sources of income obtained them from a variety of low-paid and unstable jobs to supplement their income from sex work.

The main reason given for engaging in sex work is money to support their children and other family members; or simply to sustain themselves due to lack of other employment.

“Most sex workers experienced verbal, physical or sexual abuse during childhood. Many also experience extreme poverty. The age of first sexual experiences ranged from four years old upwards. Sadly, about one quarter of the sample said that their first sexual experience was not out of free will”.⁵³

Health issues such as HIV/AIDS and STI's and abuse from various sources such as partners, clients, the general public and officers of the law are the main problems they are facing. According to the LAC study about 9.2% of the abuses suffered by sex workers were at the hands of the police and Special Field Force members.

According to the study, the majority of sex workers are in favour of the decriminalization of prostitution in Namibia. This is in direct contrast to the general population where the majority are of the opinion that prostitution should be illegal for both client and sex worker.

Speaking during the launch of Project Eluwa, a Namdeb initiative to fight HIV/AIDS, the Minister of Health and Social Services, Libertine Amathila said “sex workers needed to be registered so that they could be protected from harassment by their clients and pimps”.⁵⁴

In support of that position was the Deputy Chairperson of the National Council, Margaret Mensah, who said that, “legalising sex workers will not increase operations of sex workers but will slow the spread of HIV/AIDS, since commercial sex workers will be able to be tested, treated, counseled and given education and information on sexually transmitted diseases, including HIV/AIDS”.⁵⁵ However, despite these sympathetic sentiments from some leaders, some influential church leaders, and traditional and political leaders remain totally opposed to the decriminalisation of prostitution.

6.2 Trafficking

Although there is no evidence that trafficking is a widespread phenomenon in Namibia, there has been at least one case involving the transport of young Namibian women to South Africa for the purpose of sexual exploitation.

A local daily, The Namibian, reported that: “...according to information from their relatives, the two girls were apparently abducted from Swakopmund while on their way to Windhoek for the September

⁵² The term majority here refers to the majority of responses.

⁵³ LAC, 2002, p.16

⁵⁴ The Namibian, 9 April 2001

⁵⁵ The Namibian, 21 May 2002

school holidays. The girls were held as sex slaves at separate shacks at Greenfields near Thokoza, 25 kilometres east of Johannesburg.”⁵⁶

6.3 Inter-Country Adoption

Namibia has strong safeguards to prevent the abuse of inter-country adoptions for purposes of exploitation. The law on adoption has not changed since the previous report. However, there is currently an application before the High Court by a non-Namibian couple who wish to adopt a Namibian baby. The applicants in this matter are seeking an order declaring section 71-(2) (f) of the Children’s Act, Act 33 of 1960 to be inconsistent with the provisions of the Constitution of the Republic of Namibia.

ARTICLE 7: Women in Political and Public life

7.1 Equal Rights to Vote, Hold Office and Participate in NGO’ and Associations

In Namibia, all citizens who have reached the age of 18 years have the right to vote. Those who have reached the age of 21 years have the right to be elected to public office.⁵⁷ In terms of Article 23(3) of the Namibian Constitution, *“it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged to play a full, equal and effective role in the political, social, economic and cultural life of the nation⁵⁸.”*

Namibia has further committed itself to a 30% benchmark to ensure women’s participation by 2005⁵⁹. Negative attitudes of some members of society towards gender issues and a lack of understanding have contributed to gender concerns being made secondary to other national issues.

Despite the enabling national instruments in place, such as the Affirmative Action Act and NGP, women are still underrepresented.

⁵⁶ The Namibian, 14 December 2000

⁵⁷ The Namibian Constitution, Article 17(2). These rights “may only be abrogated, suspended or be impinged upon by Parliament in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are necessary in democratic society”.

⁵⁸ The Namibian Constitution, Article 23 (3)

⁵⁹ SADC Gender Monitor, March 2001, page 1.

7.2 Women in Parliament

YEAR	TOTAL	FEMALE	MALE	FEMALE	MALE
1996	104	13	91	12.5	87.5
1997	104	16	88	15.4	84.6
1998	104	16	88	15.4	84.6
1999	104	16	88	15.4	84.6
2000	104	20	84	19.2	80.8
2001	104	23	81	22.1	77.9
2002	104	23	81	22.1	77.9
2003	104	23	81	22.1	77.9

Source: Namibia minutes and proceeding of the National Assembly

Namibia continues to make steady progress in the participation of women in politics. As the table illustrates, the proportion of seats held by women varies from as low as 12,5 in 1996 to just 22% in 2003.

7.3 Women in Cabinet, Regional and Local Council

Government Body	Women	Men	Total
Members of Cabinet (Ministers)	5 (18.5%)	22 (81.5%)	27
Regional Governors	1 (7.7%)	12 (92.3%)	13
Regional Councillors	7 (6.9%)	95 (93.1%)	102
Local Councillors	135 (44%)	169 (56%)	304

Source: MWACW, 2003

The above table revealed that women are only having a bigger share in the Local Council. This can be attributed to the fact that Affirmative Action that was introduced in the first two elections, thereby culminating in the current status of women in local government. Meanwhile in the regional council where affirmative action was not applied there are few women.

7.4 Women in the Public Service

While the involvement of women in senior management positions has improved greatly since the last report, women are still under-represented in senior positions. For example, women are occupying 108 (24.1%) out of a total 449 of employees at senior management level in the public service.⁶⁰ A notable exception is the Office of the Prime Minister' where women are occupying 12 positions out of 30 positions at the senior management level.

⁶⁰ Employment Equity Commission, Annual Report 2001-2002, page 21

At the middle management level, the picture is however different because out of 2 814 positions, 1 156 or 41.1% are occupied by women.

7.5 Women in Law Enforcement and the Administration of Justice

Compared to the last five years, there is considerable evidence (although statistics are not readily available) that the percentage of women in the police has increased considerably. The same can be said of women as magistrates, prosecutors and lawyers. Table 2 indicates the position of men and women in senior positions in the Ministry of Justice. From Table 2 it is clear that the number of women positions improved considerably in 1998, compared to the situation in 1995.

Table 2: Senior Positions in the Ministry of Justice

Occupation	July 1995		March 1998	
	Men %	Women %	Men %	Women %
Magistrate	80	20	70.21	29.79
State Prosecutor	60	40	55.41	44.59
Legal Advisor	60	40	40.00	60.00
Legislative Drafter	79	21	72.73	27.27
Government Attorney	60	40	50.00	50.00
Administrators	43	57	42.20	57.80

Source: Ministry of Justice, (2001-2002).

In addition to Ombudswoman, a woman has been appointed as Attorney General. For the 2000 academic year, the University of Namibia has reported the intake of 79 female students to 71 male students, out of 150, for the Faculty of Law.⁶¹ In 1999, the same Faculty had a total number of 50 female students out of total of 113 students.⁶²

7.6 Women in Traditional Authorities

The attitudes of traditional authorities towards issues relating to the family and to the economic activity of women are influenced by the fact that women are virtually absent from positions of traditional leadership.⁶³ There are at least two Namibian communities where women hold the position of chief (the Sambyu and Bondelswarts communities). In addition, there are a few headwomen and traditional councilors in some Kavango, Owambo and Herero communities. With these few exceptions, traditional authorities and courts continue to be dominated by men.

⁶¹ UNAM, Annual Report, 2001

⁶² UNAM, Annual Report, 1999

⁶³ Supra footnote 2.

7.7 Women in Local Authority

There are now 11 local authorities in which women hold a majority of seats, as compared to only 4 after the first elections. There is no local authority council without any women amongst its members. There are 2 councils with only 1 woman out of 7 members, and 2 councils with only 2 women out of 7 members. The performance of women does not seem to fall into any patterns on the basis of region or on the basis of the size of the local authority. The ruling party, SWAPO, has a policy that makes it possible to have a woman in each local council.

The number of women in local authority councils continues to outweigh women's participation in other key government posts by far. The percentage of women in regional councils remains at 3 women out of 95 regional council seats.

7.8 Women in the Media

According to statistics by the United Nations, Namibia employs a high percentage of women in the media.⁶⁴ Even in the absence of updated statistics, there is every reason to believe that women are well represented in the media, although not well represented in the management positions. The situation has improved as both the National Broadcasting Corporation (NBC) and New Era⁶⁵ have 2 women on the Board of Directors out of totals of 6 (NBC) and 5 (New Era) board members. One major local newspaper, The Namibian, and a quarterly magazine, Namibia Review are both edited by women.

ARTICLE 8: International Representation

8.1 Gender Representation in Missions Abroad

At present there are 21 foreign missions of which five are headed by women. However, as the following tables shows, women are mostly employed at the lower level of the pyramid.

Table 3: Gender representation in Missions Abroad

NAME OF MISSION		
Addis Ababa	SEX	RANK
	Male	Ambassador
	Female	Minister Counsellor
	Female	First Secretary
	Female	Second Secretary
	Female	Third Secretary

⁶⁴ *Ibid*

⁶⁵ New Era is a government subsidised newspaper.

Beijing		
	Male	Ambassador
	Male	Minister Counsellor
	Male	First Secretary
	Female	Second Secretary
	Female	Third Secretary
Berlin		
	Male	Ambassador
	Male	Minister Counsellor
	Male	First Secretary
	Female	Second Secretary
	Female	Third Secretary
Paris		
	Male	Ambassador
	Male	Counsellor
	Male	First Secretary
	Female	Second secretary
Brussels		
	Male	Ambassador
	Male	First Secretary
	Male	Second Secretary
	Female	Third Secretary
Moscow		
	Male	Ambassador
	Male	First Secretary
	Male	Second Secretary
	Female	Third Secretary
London		
	Female	High Commissioner
	Male	First Secretary
	Female	First Secretary
	Female	Second Secretary
	Female	Third Secretary
Harare		
	Male	High Commissioner
	Male	Counsellor
	Male	First Secretary
	Female	Second Secretary

	Female	Third Secretary
Lagos		
	Male	High Commissioner
	Male	First Secretary
	Female	Second Secretary
	Female	Third Secretary
Havana		
	Female	Ambassador
	Male	Counsellor
	Female	Second Secretary
	Female	Third Secretary
Luanda		
	Male	Ambassador
	Male	First Secretary
	Male	Second Secretary
	Female	Third Secretary
Pretoria		
	Male	High Commissioner
	Male	Minister Counsellor
	Male	First Secretary
	Female	First Secretary
	Male	First Secretary
	Male	First Secretary
	Female	Second Secretary
	Female	Third Secretary
New York		
	Male	Permanent Representative
	Male	Minister Counsellor
	Male	First Secretary
	Female	First Secretary
	Male	First Secretary
	Female	Third Secretary
Washington		
	Male	Ambassador
	Male	Minister Counsellor
	Male	First Secretary

	Female	Second Secretary
	Female	Third Secretary
Lusaka	Female	High Commissioner
	Male	First Secretary
	Male	Second Secretary
	Female	Third Secretary
Stockholm		
	Female	Ambassador
	Male	Counsellor
	Male	First Secretary
	Female	Second Secretary
	Female	Third Secretary
Kinshasa		
	Male	Ambassador
	Male	Minister Counsellor
	Male	Second Secretary
	Female	Third Secretary
Gaborone		
	Female	High Commissioner
	Male	Deputy High Commissioner
	Male	First Secretary
	Female	Second Secretary
	Female	Third Secretary
Kuala Lumpur		
	Male	High Commissioner
	Male	First Secretary
	Male	First Secretary
	Female	Second Secretary
	Female	Third Secretary
New Delhi		
	Male	High Commissioner
	Female	Counsellor
	Female	Second Secretary
	Female	Third Secretary

Vienna	Male	Charged' Affaires
	Female	First Secretary
	Female	Second Secretary
	Female	Third Secretary

Source: Ministry of Foreign Affairs: 2003

With the effective implementation of the National Gender Policy, it is hoped that the position of women at the higher level of the pyramid will improve and eventually match that of their male counterparts.

ARTICLE 9: Nationality

9.1 Acquisition and Loss of Namibian Citizenship

As reported in the first country report, the Namibia's rules on Nationality are completely gender-neutral.

9.2 Women Asylum-Seekers

If an alien claims the status of refugee, he or she applies for asylum and registers with the Ministry of Home Affairs and the United Nations High Commission for Refugees. An inter-ministerial Sub-committee on Refugee Status meets about every three months to hold interviews, to make decisions on applications and to hear appeals. This sub-committee includes a representative of the UNHCR who serves in an advisory capacity.

ARTICLE 10: Education

10.1 Constitutional Provisions on Education

Article 20 of the Namibian Constitution states that:

“(1) All persons shall have the right to education.

(2) Primary education shall be compulsory and the State shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge.

(3) Children shall not be allowed to leave school until they have completed their primary education or have attained the age of sixteen (16) years, which- ever is the soonest...”

The National Gender Policy recognises “the importance of ensuring for the retention of girls and women at all levels of education...”

In addressing disparities in access to educational opportunities for females, the Government has adopted strategies to ensure access and maintain female participation rates in primary, secondary and

tertiary education, and to support efforts towards improving the implementation of the literacy programme; etc.

10.2 Enrolment of Learners in Schools

Nationally, there are no striking differences in primary and secondary schools enrolment as Table 4 show.

Table 4: Percentage female learners in the different school phases in each education region for the year 2001

	Total	Lower Primary	Upper Primary	Junior Secondary	Senior Secondary	Other
National	50.8%	49.5 %	50.7%	53.6%	51.4%	42.7%
Education Regions						
Katima Mulilo	48.8%	48.8%	49.1%	48.9%	46.8%	22.2%
Rundu	48.7%	49.8%	49.3	45.5%	38.8%	-
Ondangwa East	51.7%	49.5%	52.4%	55.6%	52.1%	32.5%
Ondanwa West	51.4%	49.0%	50.4%	56.7%	54.5%	48.2%
Khorixas	50.7%	49.2%	51.8%	52.5%	51.7%	40.2%
Windhoek	50.6%	50.4%	49.6%	52.4%	51.2%	40.4%
Keetmanshoop	50.6%	49.4%	50.6%	52.8%	53.0%	44.9%
Head Office	42.9%	42.4%	40.5%	39.5%	-	44.4%

Source: Education Management Information Systems (MBEC)

This fact has also been confirmed by a study conducted by UNAM in 2000. According to their findings, approximately 1161 (50,6%) of those who responded sent boys to school compared to 1135 (49,4%) for girls. Thus, there is no significant difference in the enrolment of boys and girls in Namibian schools.⁶⁶

With regard to enrolments at colleges of education in Namibia, out of a total of 2111 students enrolled, 972(46%) were female in 1999.⁶⁷ In the year 2001, out of total of 1983, about 936 (47.2%) students enrolled were female. This is an increase of one per cent from the 1999 intake.

At the Government Vocational Training Centres, the total number of trainees enrolled in 1998 was 1064; out of this total, female trainees were 193 (18%). In 1999, the number of trainees increased to 1610, and the female number increased to 335, or 21% of the total.⁶⁸ It means that there was an increase of about 3%, compared to 1998, in female enrolment. This trend has continued to increase

⁶⁶ The National Gender Study, Vol. 1, 2000, p.156

⁶⁷ Ministry of Higher Education, Vocational Training, Science and Technology, Annual Report 1999, p.41

⁶⁸ MHEVTST, Annual Report 1999, 47

when in the year 2001, out of 1633 trainees, 441 (27%) were females.⁶⁹ This is an indication that the government policy on gender balance is on track.

University of Namibia's Annual Report 2000⁷⁰ reported that the enrolment for the Faculty of Agriculture was 164 students for the academic year 2002. Out of the total students, 63 (38%) of them are female, compared to 101 male students. In the same year, the Faculty of Economics and Management Sciences enrolled 888 students, of whom 412 (46%) were female, compared to 476 male students.

For the Faculty of Education in 2002, an enrolment 673 was reported, of whom 309 (46%) were female. This is another indication that more women are now taking up the challenge of tertiary education. The trend throughout the country is that the number of women graduating from colleges and universities is increasing.

10.3 National Literacy Programme

Soon after independence the Ministry of Basic Education and Culture established the Directorate of Adult and Continuing Education to cater for the educational needs of adults and out-of-school youth. Since 1991, enrolments in the programme have increased substantially, with the majority of learners being women.

Table 5: Participation figures for 2001 for the National Literacy Programme

Education Region	Stage 1 Number Tested	% Female	% Passed	Stage 2 Number Tested	% Female	% Passed	Stage 3 Number Tested	% Female	% Passed
Total	12 952	63.2%	71.8%	10 335	66.3%	71.1%	11 405	69.5%	86.5%
Katima Mulilo	328	71%	76%	211	73.0%	76.8%	202	66%	78.2%
Rundu	3054	79.1%	74.0%	1870	72.9%	84.9%	122269	59.1%	84.2%
Ondangwa East	4562	56.1	62.9%	3609	69.7%	82.9%	4632	75.9%	86.4%
Ondangwa West	2338	68.8%	74.9%	1970	75.8%	80.7%	2752	81.6%	86.4%
Khorixas	545	54.9%	80.9%	881	50.3%	89.6%	637	44.4%	80.8%
Windhoek	1925	49.4%	81.1%	1662	50.1%	87.7%	1640	52.3%	91.8%
Keetmans hoop	200	57.5%	83.5%	132	41.7%	84.1%	273	52.4%	89.0%

Source: Education Management Information Systems (MBEC)

⁶⁹ MHEVTST, Annual Report 2001

⁷⁰ UNAM, Annual Report, 2002

10.4 Pregnancy among Teenage Learners

Pregnancy amongst learners is one of the social problems which prevents girls from continuing with their education. In 1994, a Study Group was set up to investigate this issue and recommend measures to address it. After consultation with stakeholders, the Study Group drafted a Policy on Pregnancy amongst Learners that was submitted to Cabinet for approval.⁷¹

In 1997, the policy on pregnancy amongst teenage learners was adopted. This policy, *inter alia*, provides the following:

- ❖ Pregnancies among learners threaten their health and social welfare and the health and welfare of the children born to them. Pregnancies often cause learners to terminate their education, leaving them with very few options of establishing a good life for themselves and their children.
- ❖ School must confront this situation by rendering support rather than punishing the learners who are to become parents. The learners will need support to continue with their education until the time of the confinement and subsequently, while still ensuring the welfare and health of the new-born child.
- ❖ School should also provide information to assist female learners who have become pregnant to obtain financial support for the child from the male responsible for the pregnancy or his family.
- ❖ Therefore the following measures will be needed:
 1. With respect to the girls who become pregnant:
 - 1.1 There should be at least one member of staff with whom the girl can discuss her situation.
 - 1.2 The girl should be obliged to reveal the identity of the responsible male.
 - 1.3 The girl may continue with her education at school until the time of her confinement or an earlier date on the advice of a medical practitioner or clinic sister. After giving birth the girl shall have the right of admission to the same school within twelve months of the date on which she left school irrespective of her age. She shall have the option, within the same period, to return to another school.
 - 1.4 A girl who has left school because of pregnancy may write her end-of-year examinations, provided that she can satisfy the School Board that her work is up to standard.
 - 1.5 If she is a boarder in a government school hostel she shall be entitled to continue in the hostel for the period that she is attending school under the same conditions as would have applied had she not fallen pregnant.

⁷¹ MBEC, Policy on Pregnancy among Learners, 1997

2. With respect to the boy responsible for the pregnancy, if he is a learner in school (either the same school as the girl, or another school), and provided that rape is not involved the same rights and obligations apply *mutatis mutandis*.
3. A teacher who engages in an amorous or sexual relationship with a learner has breached the code of conduct for teachers and must be charged with misconduct and suspended pending the outcome of disciplinary proceedings. Disciplinary steps shall be instituted which may lead to the dismissal of the teacher. In all cases of sexual relationships between teachers and learners the dismissal of the teacher shall be sought. Should the teacher resign, the investigation shall nevertheless be completed and if the teacher is judged to be guilty he or she shall be barred from again holding a teaching post in a government or government-aided school.

10.5 Population and Family Life Education

The Ministry of Basic Education, Sport and Culture is extremely concerned with unwanted pregnancies and an increasing number of HIV-infected learners, which result from unprotected sexual activity of learners.

It is often said that education about human reproduction and sexuality encourages youth to become sexually active. However, a survey carried out by the World Health Organization's Global Programme on AIDS in 1993 reveals that population and family life education leads to either a delay in starting sexual activity or to a decrease in overall sexual activity. Population and family life education also increases the use of safer sexual practices in those individuals who are sexually active.

The World Health Organization survey stresses that access to counselling and contraceptive services does not encourage earlier or increased sexual activity. It is therefore the duty of the Ministry of Basic Education, Sport and Culture and communities to provide learners with education on population and family life and with information about the implications and consequences of being sexually active, so that the learners are enabled to make rational and healthy decisions regarding sexuality.

To this end the Ministry of Basic Education, Sport and Culture has resolved that:

- ❖ The primary role of the parents in providing population and family life education is stressed.
- ❖ It is accepted that the National Institute for Educational Development is currently integrating population and family life education, including sexual education, into the primary and secondary school curriculum. It may be necessary to revisit syllabuses which have already been revised, such as the Life Science revised syllabus, which delays the study of human biology to the grade 10 year of the three-year course. Population and family life education should cover HIV/AIDS and other sexually transmitted diseases and contraception.
- ❖ Non-promotion subjects such as Guidance, Life Skills, Religious and Moral Education, Basic Information Science and Physical Education are to be treated as an integral part of the school curriculum and are not to be neglected in schools. All these subjects provide opportunities for

issues of population education to be dealt with in a responsible manner. In particular the Youth Health Programme of the Special Education Directorate of the Ministry deserves to be fully implemented. The post structure of the school should allow these areas to be adequately covered.

- ❖ Teenagers should be provided with adequate information on criminal offences involving child abuse, sexual harassment, rape and statutory rape, and should be made aware of the possible consequences of being guilty of or encouraging the commission of a criminal offence. They should also be provided with information on where and how to report the crime, what evidence is required and what support is available.
- ❖ School libraries should have information available on population and family life education and specifically on sexual issues (including contraceptive measures and how and where contraceptives may be obtained).
- ❖ Schools should create opportunities for the discussion of these matters by their learners and by the parents of their learners.
- ❖ Affirmative action programmes for girls should be instituted where necessary in schools to ensure that girls are not denied opportunities to prepare themselves for leadership positions in later life. Learners who have had the experience of teenage pregnancy or parenthood may be drawn in where appropriate to assist in counselling others.

According to the MBESC report⁷², the rate of new HIV infections among young people (15 – 24) remains high and 25% of girls who dropped out of school in 2000 were due to pregnancy. Therefore FAWENA has embarked upon a campaign to increase girls' access to information about reproductive health and safer sexual practices in an attempt to reduce HIV/AIDS infections, unwanted pregnancies and sexually transmitted infections. Through the establishment of HIV/AIDS clubs at schools, excursions for San girls and vacation schools, FAWENA conducts workshops and disseminates information to empower girls and boys to advocate for behaviour change.

Namibia Planned Parenthood Association (NAPPA) is a Non-Governmental Organisation whose objectives are:

- To increase youth's access to information and understanding about their sexual and reproductive health, including safer sexual practices to reduce STI/HIV infections and transmissions.
- To establish channels in the community through which NAPPA can advocate and pass information to influence policy change, attitudes and behaviour change with regard to youth sexuality and status in society.
- To improve the extent to which women, men and youth or young people exercise free and informed choices regarding sexual and reproductive health and rights without any form of coercion, discrimination and violence.

⁷² The Impact of HIV/AIDS on Education, June 2000

10.6 Pre-Service Teacher Education

If teachers are to play a positive role in reducing the number of pregnancies among learners and in promoting reproductive and sexual health, they need to be prepared while they are at college or university:

- ❖ Teachers in training need to undergo gender-sensitive orientation.
- ❖ All teachers in training should be familiarized with population and family life education and the way in which it is incorporated into the school curriculum and should be trained (irrespective of their teaching subjects) to discuss these topics with learners.
- ❖ Teachers in training should be familiarized with the professional ethos of teaching, with the code of conduct to which they will be required to subscribe, with the implications of the concept in *loco parentis* (in the place of the parents), with legal provisions for their employment, including what constitutes misconduct and procedures for dealing with misconduct.

10.7 In-Service Training of Practicing Teachers

Teachers were formerly not trained to cope with reproductive and sexual health issues. In-service training on these issues is thus essential for all school principals and teachers.

- ❖ By way of regional workshops all inspectors of education and principals are familiarized with population education and with the Ministry policy on sex and pregnancies within the school context.
- ❖ By way of circuit or school workshops all schoolteachers are similarly instructed.
- ❖ By way of staff meetings or school workshops teachers are to be made aware of the counselling/referral chain for the particular school as it links with a local clinic or hospital or with social services.
- ❖ Schools need teachers trained in guidance and counselling to provide the guidance and counselling which their learners need.

While the government provides free primary education, School Development Funds are established to contribute to non-core educational activities such as school outing sports, there is no mechanism to monitor this basic right. As such, parents have to contribute to school development funds. However, if the parents cannot afford to contribute to the development fund of a school, the parents are at liberty to approach the specific school and make out their case to the school board for an exemption for contribution.

ARTICLE 11: Labour Development

11.1 Size of the Labour Force

According to the Labour Survey of 2000, the employed population amounts to 401 203, with a male majority of 55% and an urban majority of 56%. The number of the unemployed, however, depends

very much on the measure of unemployment used (“broad” or “strict”). According to the broad measure, it amounts to 211 416 jobless people who are available for work but may or may not be actively searching for work. If the strict definition of unemployment is used, the number of the unemployed drops by more than half to 97 121 jobless people who are available for work and are taking active steps to find employment. The difference of 114 295 in fact represents those who are not involved in any active search.

This difference also represents the difference between the estimates of the labour force according to the two definitions of unemployment.

11.2 The Rate of Unemployment by Region, Area and Sex

Unemployment is a major problem. Out of a labour force estimated at 612 616 in 2000, comprised of 307 454 men and 305 165 women, about 35% were unemployed.⁷³

The Namibia Labour Survey also gives the rate of unemployment by various criteria. With the broad definition of unemployment, the rate of unemployment in Namibia is estimated to be 34.5% in 2000. This is a very high rate, but it should not be directly compared with the much lower rates estimated for Namibia by earlier surveys. Indeed, this rate would fall considerably to 19.5% if, as in previous surveys, the strict definition of unemployment is used, i.e. if those not looking for work are not regarded as being unemployed. The rate of unemployment is higher for women than for men, 40% compared to 29% respectively.

Table 6 presents trends in the labour force, employment and unemployment, based on the narrow definition of unemployment and the broad definition of unemployment respectively.

Table 6: Trends in the labour Force, Employment and Unemployment, 1993/94 and 2000* (BROAD DEFINITION OF UNEMPLOYMENT)

Survey/ Area	TOTAL				FEMALES				MALE			
	Emp- loyed (No.)	Unemp- loyed (No.)	Labour Force (No.)	Unemp- loyment Rate(%)	Emp- loyed (No.)	Unemp- loyed (No.)	Labour Force (No.)	Unemp- loyment Rate(%)	Emp- loyed (No.)	Unemp- loyed (No.)	Labour Force (No.)	Unemp- loyment Rate(%)
1993/94 NHIES:												
Urban	13447	62124	19651	31.6	56001	37087	93088	39.8	78406	25037	10343	24.2
Rural	21583	10947	32520	33.6	10756	68812	17638	39.0	10837	40605	14892	27.3
National	35020	17151	52181	32.9	16357	10589	26946	39.3	18673	65642	25235	26.0
1997 NLFS:												
Urban	17803	85472	26354	32.4	72209	46792	11901	39.3	10584	38680	14453	26.8
Rural	22310	12594	34914	36.1	10956	76618	18615	41.2	11364	49326	16290	30.3
National	40123	21146	61268	34.5	18175	12340	30515	40.4	21947	88006	30743	28.6

Source: Ministry of Labour and NPC, CBS (July 2000): NLFS 1997, Table 4.5, p.25. The 1991 NPHC did not capture information that could be used for the broad definition of unemployment.

⁷³ Ministry of Labour Survey 2000

Similar differences between women and men can also be observed in urban and rural areas. The rural rate of unemployment (36 per cent) is only slightly higher than the urban rate of 32 per cent. Regional variations, however, are considerable. Caprivi and Omusati, both are predominantly rural, have the highest unemployment rates of around 50 per cent, while Oshikoto, also a rural region, has the lowest rate of 25 per cent. The two predominantly urban regions, Erongo and Khomas, do somewhat better than the national average, with unemployment rates of around 30 per cent each.

ARTICLE 12: Health Care

12.1 Health Policy and Systems

The Government's main objective in the delivery of health care is to "improve the health of the Namibian population through the provision of relevant preventative, curative and rehabilitative health services, which are affordable to all Namibians".⁷⁴ Additional principles guiding the formulation and implementation of health policy are equity and community participation.

To this effect, the Government has committed itself to a number of goals, such as equitable distribution of resources as well as equity in terms of access to basic services by the under-privileged, impoverished and under-developed majority of the population.⁷⁵

12.2 Availability and Distribution of Facilities

According to the NDHS of 2000,⁷⁶ there were 246 clinics, 37 health centres, 35 hospitals and 6 756 hospital beds available in Namibia. While the number of hospitals has decreased since independence (due to the closure of "ethnic hospitals", the number of clinics and health centres has been increasing (e.g. from 215 clinics in 1992 to 246 in 2000). Table 7 summarises the health services that are available and the degree, expressed as a percentage, to which they are available nation-wide.

Table 7: Type of Service and the Degree of Availability Nation-wide

Type of Service	% of availability of services nationwide
Delivery Care	51.1
Education on HIV/Aids	81.5
Nutrition	56.7
Immunization	91.5
Child Care	61.8
Family Planning	77.9
Distribution of Condoms	81.3
Separate ante-and-postnatal Care	40.1
Breastfeeding	59.9

⁷⁴ NPC, NDP-I, 1995, p.230 in CEDAW 1995, p.103

⁷⁵ Supra footnote 2, p.103

⁷⁶ MOHSS, NDHS, 2001

Screening for cervical cancer	28.7
Screening for breast cancer	29.1
Screening and care for victims of violence	32.6
Screening and treatment of STD's	57.0
Menopause	26.0
Others	2.5

Source: The National Gender Survey, Vol. 1, UNAM, p.160

According to the survey, the most readily available services are: Immunization, Education on HIV/Aids, Use of Condoms, Family Planning and Child Care. However, the services that specifically affect women are to be improved. These are: Screening and care for victims of violence, screening for breast cancer, screening for cervical cancer and menopause.

According to NDP1 11,65% of pregnant women received antenatal care. However, the 2000 NDHS reported that over 90% of mothers who give birth during the years 1995 to 2000 received antenatal care from a doctor or nurse. Of this figure, 78% met with a nurse or midwife and 13% saw a doctor for antenatal care. The same study concluded that urban and educated, rather than rural, women are most likely to receive antenatal care.⁷⁷

With regard to assistance at birth delivery, about 78% of women who gave birth during the years 1995 to 2000 were assisted by trained nurses and midwives (66%), or by doctors (12%).⁷⁸

12.3 Safe Drinking Water

According to the Namibia Demographic and Health Survey (NDHS) of 2000 nationally, 77% of the population has access to safe drinking water during the rainy season, rising to 83% during the dry season. This rise could be explained by the fact that more people make use of unsafe water sources such as ponds during the rainy season.

12.4 Sanitation facilities

Nationally, according to the NDHS 2000, 41% of the population has access to sanitary means of excreta disposal. However, this disguises large variations in access across the country. For example, less than 10% of people in the Caprivi and Ohangwena regions have access to toilet facilities, compared to over 80% of people in Erongo, Karas, and Khomas regions. Other regions ranged between 15% and 68%, possibly reflecting the presence of some well-developed urban areas and some poorly developed rural areas. Similar disparities are apparent in urban/rural comparisons where access averages 85% in urban areas and 19% in rural areas.

⁷⁷ NDHS, 2000 in SIAPAC 2002, p.36

⁷⁸ Ibid

12.5 Fertility

The total fertility rates for Namibia by urban and rural areas and by region are shown in Table 7. On the average, at the time of the Population and Housing Census in 2001, women were expected to give birth to about four children. Women in urban areas were expected to have between three to four children, while those in the rural areas gave birth to between four and five children. The total fertility rates for the regions ranged from between three children for Karas region to over five children for Kavango and Ohangwena regions.

Table 7: Total Fertility rates of all the regions

Area	Total Fertility Rates	
	2001	1991
Namibia	4.1	6.1
Urban	3.4	4.7
Rural	4.6	6.8
Caprivi	3.8	6.7
Erongo	3.2	5.1
Hardap	3.6	4.9
Karas	3.1	3.8
Kavango	5.5	7.1
Khomas	3.3	4.1
Kunene	4.7	6.2
Ohangwena	5.3	7.7
Omaheke	4.7	6.1
Omusati	4.0	5.7
Oshana	3.7	5.6
Oshikoto	4.6	6.7
Otjozondjupa	4.1	5.7
Levels of Fertility by area, Namibia, 1991 and 2001 Census		

As it can be observed from the table above, the level of fertility declined significantly between 1991 and 2001. During the latter period women are, on the average, having two fewer children than in 1991. This decline is consistent across all the regions as well as for the urban and rural areas. It is worth noting that the overall trend in the level of fertility across the regions is consistent between the two periods of time. It can be concluded that, with the exception of Caprivi, the regions with relatively high levels of fertility in 2001 were the same ones in 1991. The same is also the case for those regions with relatively low levels of fertility.

12.6 Family Planning

According to NDHS 2000, some knowledge of family planning is nearly universal among Namibian women, 97% have heard of at least one method (Table 8). Knowledge of methods is only slightly higher among married women than all women and is actually lower for both male and female condoms.

Table 8 Knowledge, ever use, and current use of family planning methods among women						
	Know method		Ever use method		Currently using method	
Method of contraception	All women	Currently Married Women	All Women	Currently Married Women	All Women	Currently Married Women
Any method	97.3	97.8	63.2	73.2	37.8	43.7
Any modern method	97.2	97.8	61.0	71.1	37.1	42.6
Pill	89.2	91.9	23.6	33.4	5.7	8.2
IUD	51.5	56.0	3.3	5.2	0.7	1.2
Injections	92.0	95.6	39.2	47.8	17.0	18.7
Condom	93.4	92.0	28.2	21.6	8.9	5.2
Female condom	65.7	64.9	0.9	0.5	0.1	0.1
Diaphragm/foam/jelly	19.5	20.6	0.3	0.5	0.0	0.0
Emergency contraception	20.6	20.4	0.9	1.0	0.0	0.0
Female sterilisation	59.6	66.5	4.3	8.5	4.3	8.5
Male sterilisation	30.6	35.1	0.4	1.0	0.3	0.8
Any traditional method	47.2	49.5	12.1	13.4	0.7	1.1
Rhythm/Periodic abstinence	34.0	35.3	6.5	6.4	0.1	0.2
Withdrawal	33.8	35.3	5.7	6.0	0.1	0.1
Other methods	6.1	7.8	2.8	4.2	0.5	0.9
Number of women	6.755	2.610	6.755	2.610	6.755	2.610

Source: MHOSS, NDHS, 2000

12.7 Maternal Health

While proper care during pregnancy, delivery and after delivery is important for the health of both mother and the baby, the maternal mortality has increased from 251/ 100 000 live births to 255/ 100 000 over the last ten years. The report, however, notes that the estimate has a wide margin of error because of the small size of the samples.

Reproduction health is one of the most important components of the Namibian health system. A variety of measures are available to prevent and reduce risks that expectant mothers and their children may face. Below are some of the measures aimed directly at maternal and child health care:

Ante-natal care – ante-natal care services are provided at almost all the health facilities in the country. About 91% of all women attend these services across the country. The utilization of ante-natal services varies by region and by education back ground. Mostly women in urban areas and those who are educated make use of these services. Generally most women visit a health facility during their second trimester. The average number of visits to an ante-natal clinic is four per duration of pregnancy per woman. To prevent the risks of babies contracting tetanus, two doses of tetanus toxoid are administered during these visits. According to 2000 NDHS about 85% of women had tetanus injections during their first recent pregnancy. This is much higher than 1992 NDHS report, which was only 61%.

Haemoglobin testing – haemoglobin testing is also one of the important test done for pregnant women to establish whether they are anaemic or not. In 2002 about 10% of women countrywide were found to be anaemic.

Delivery Services – most women are delivering in health facilities countrywide. This service is mostly provided in all hospitals and health centres. Although the reproduction health policy calls for this service to be provided also in the clinics, at the moment only emergency deliveries are provided at clinics. This is due to limited personnel and space, as well as required delivery supply at the clinics. Assisted (by trained personnel) delivery services have increased from 68% 1992 to 75% in 2000.⁷⁹

Post-natal services – this service includes general examination of a woman to rule out any possible complications that would emanate from pregnancy and childbirth. Pap smears are one the services delivered to women at post-natal clinics. Although this service is provided, it is not very popularly utilized. This service, however, has increased from 29% in 1992 to 59% in 2000 according to the 2000 NDHS.

12.8 HIV/AIDS in Namibia

In Namibia, the first four cases of HIV infection were identified in 1986, and a decade later it had become the leading cause of death in Namibia. While AIDS is the leading cause of death in Namibia

⁷⁹ NDHS 2000

today, and accounts for 26% of all reported cases (i.e. facility-based) deaths in 1999, directly or directly AIDS is associated with some 61% of all recorded deaths in the country.⁸⁰

Women account for 53% of all reported new HIV cases and the ones diagnosed at a younger age: the median age of HIV diagnosis is 30 years for women and 34 years for men.⁸¹ HIV prevalence among pregnant women in Namibia continues to increase. In 2002 HIV prevalence among pregnant women was 22.0%.

Table 9: Trend in HIV prevalence among pregnant women by sentinel site, Namibia 1992-2002

Sentinel Site	1992	1994	1996	1998	2000	2002
Katima Mulilo	14%	24%	24%	29%	33%	43%
Oshakati	4%	14%	22%	34%	28%	30%
Grootfontein		9%				30%
Onandjokwe		8%	17%	21%	23%	28%
Windhoek	4%	7%	16%	23%	31%	27%
Oshikuku					21%	27%
Walvis Bay				29%	28%	25%
Tsumeb						25%
Otjiwarongo	2%	9%		16%	18%	25%
Uutapi						23%
Rundu		8%	8%	14%	14%	22%
Nyangana		6%	5%	10%	16%	22%
Andara		2%	11%	16%	15%	21%
Engela		7%	118%	17%	23%	19%
Nankudu				13%	18%	16%
Keetmanshoop	3%	8%		7%	17%	16%
Swakopmund	3%	7%	17%	15%	22%	16%
Gobabis	1%			9%	9%	13%
Mariental					10%	12%
Rehoboth		3%			9%	10%
Opuwo	3%	1%	4%	6%	7%	9%
Overall	4.2%	8.4%	15.4%	17.4%	19.3%	22.0%

Factors that contribute to the increase of HIV infection in Namibia include, among others, the following: cultural practices that attached stigma to sex, the tendency to control female sexuality, and socio-economic factors. With regard to the former, promiscuity for men is culturally accepted, as part

⁸⁰ NPC, NDP-2, 2002.

⁸¹ MOHSS, Epidemiological Report, 1998.

of being male, while for women it is a taboo and may lead to castigation by society. Socio-economic inequalities contribute to unequal relationships between males and females, even within marriages.

Other factors that contribute to the spread of HIV/AIDS include early marriages, illiteracy among women, women's lack of control over their fertility, teenage pregnancies, alcohol and drug abuse, etc.⁸²

It is evident from the latest statistics that HIV infections and deaths are increasing in the economically active age group 15–49 years. HIV/AIDS will continue to impact both the education system and human development in Namibia.

There is increasing recognition that the education sector has an important role to play in the prevention of HIV infection, in the support of infected and affected people, and in maintaining service delivery despite the impact of AIDS. The sector's roles have begun to expand from its earlier role as a partner of other organisations in HIV prevention activities.

Both the Ministry of Basic Education, Sport and Culture and the Ministry of Higher Education, Training and Employment Creation developed a groundbreaking strategic and operational plan on HIV/AIDS in 2001 and its implementation has been started. The plan lays out ways to refine and implement strategy in particular areas that are consistent with, but go beyond, the objectives laid out for the sector in the National Strategic Plan on HIV/AIDS for 1999-2004. Though prevention is the primary focus of the plan, it also covers aspects of care, support, and reducing impacts on both employees and learners.

Young people can be reached fairly easily through HIV/AIDS information, prevention, care and health promotion programmes in educational institutions. Recognising this, the MBESC and MHETEC have adopted a National Policy on HIV/AIDS for the Education Sector in January 2003.

In the said policy the Ministries recognise the importance of effectively addressing stigma and discrimination related to HIV/AIDS and the need to promote human rights based response to HIV/AIDS.

The MOHSS in 2001 introduced a national programme for the prevention of mother-to-child HIV transmission in Namibia, using anti-retroviral drugs.

Specific objectives were set, and they are as follows:

- To pilot the introduction of a programme for the prevention of mother-to-child HIV transmission in Namibia, using Nevirapine.
- To establish the viability and sustainability of such a programme on a national scale.
- To reduce the transmission of HIV from mother to child.

⁸² DWA, Namibia National Progress Report on the Implementation of the Beijing Platform for Action, 1999.

- To improve the quality of life and prolong the lifespan of the parents.
- To improve the care of children and reduce early orphanhood.

During the first phase of the project of the Mother-to-child Transmission Programme which was running in two hospitals, namely Windhoek and Oshakati, hospitals 511 women were enrolled; 200 mothers and their babies received Nevirapine and 41 fathers, of whom 21 tested positive, also enrolled.

Namibian NGO's as in many other countries, have an inherent comparative advantage over government in responding to some urgent needs of the community. Whilst this is the collective guiding principle there is also a very strong recognition amongst the NGO communities for good coordination of development initiatives. It is with this in mind that the Namibia Network of AIDS Services Organisations (NANASO) was founded on the 14th August 1991 by a group of progressive, visionary and concerned NGO's, with the following objectives:

- to facilitate the sharing of information, ideas, experiences and resources in AIDS related work between NGO's within Namibia and the world at large,
- to promote collaboration in AIDS work among NGO's and the National AIDS Control Programme (NACOP),
- to coordinate and enforce integration of common AIDS related activities and functions undertaken by NGO's and other agencies in Namibia,
- to seek a common position among the Namibian NGO's on social, political and economical implications of HIV/AIDS in Namibia.

ARTICLE 13: Economic and Social Life

13.0 Family Benefits

13.1 Old Age Pension Grants

Old age pensions paid by the state are an important source of income for poor households. In fact, some households depend on these pensions for more than 50% of their income.

Before independence, pension levels were determined by ethnic criteria in terms of the Social Pension Act inherited from South Africa. Pension amounts ranged from a high of R382-00 per month for whites to a low of R55-00 per month for blacks in the Ovambo (as it was then known), Kavango and Caprivi regions.⁸³ Initially, an attempt was made to redress these imbalances by maintaining the highest pensions at pre- independence rates, while progressively increasing the lower amounts.

However, all pension payments were subsequently equalised at N\$ 120 per month. This amount has now been raised to N\$ 250-00 per month during the 2001/2002 financial year.

⁸³ Supra footnote 2, p.114

13.2 Maintenance Grants

Presently, maintenance grants are given under the Children Act 33 of 1960. Up to 1996, the criteria for obtaining grants were still governed by racially based regulations inherited from South Africa. The grant criteria and amounts were different for different “population groups”. However, since 1996 the racial distinction was done away with and family allowances now amount to N\$100 for the parent and N\$100 each for up to three children in cases where the parent earns less than N\$ 500-00 and the other parent is dead, imprisoned or otherwise unable to provide support.

13.3 Maintenance from Parents

Shortly after independence the issue of maintenance became a major concern as many women started to complain of the difficulty securing maintenance from the fathers of their children, and about the inefficient operation of the maintenance courts, which fall under the legislation inherited from South Africa.⁸⁴ The Legal Assistance Centre conducted research on the issue and their findings, which included draft legislation, was published in 1995 and submitted for consideration to the subcommittee of the Law Reform and Development Commission. This subcommittee submitted a report to the full Law Reform and Development Commission in August 1996. In September 1997, the Law Reform and Development Commission published a report based on the subcommittee’s recommendations, which contained recommendations for law reform, but not a draft bill.⁸⁵ A maintenance Act (Act 9 of 2003) has since been passed by Parliament and signed by the State President.

A study conducted by the LAC showed that women in both rural and urban areas use the maintenance courts and are concerned about more effective mechanisms for securing maintenance, and that many women find traditional approaches to maintenance under customary law inadequate⁸⁶. According to the 1993/4 National Household Income and Expenditure Survey, remittances from maintenance and pensions are crucial sources of income for survival in many households, and maintenance can be particularly significant in the 38% of all Namibian households which are headed by women, 71% of which are in rural areas.⁸⁷

In terms of the Namibian law, children born out of a marriage could not inherit intestate from their biological fathers. However the High Court of Namibia in the case of *Ruby Kalomo* has since changed this position. Although his parents never married, Ruby Kalomo’s father treated him as his son. He paid for his schooling and maintained Ruby throughout his life. Unfortunately his father died intestate. The LAC unsuccessfully approached the executor of the estate requesting that Ruby be considered as a lawful heir to the estate. Consequently the LAC approached the High Court, which ruled in favour of Ruby Kalomo.

⁸⁴ Maintenance Act 23 of 1963 in Dianne Hubbard, *Gender and Law Reform in Namibia: The First Ten Years*, p.9

⁸⁵ Law Reform and Development Commission, *Report on Maintenance* (LRDC 5, September 1997)

⁸⁶ Dianne Hubbard, 2000, p.9

⁸⁷ NHIS, 1993/1994

13.4 Financial Credit

In order to reduce women's dependency, the need for women economic empowerment cannot be overemphasized. To this end, the Government provides, in collaboration with other stakeholders, technical and financial assistance to individuals and/or groups who provide training, job-placement, career guidance, etc. It also assists and facilitates women's access to credit facilities, profitable markets and to services which may enable them to become entrepreneurs.

There is no discrimination against women by commercial financial institutions; all customers are treated equally. Some NGO's have emerged that specifically target women as their beneficiaries. In this regard, we can mention the Association of Women in Business (NNAWIB).

NNAWIB strives to empower women through the promotion of small businesses. It has a paid-up membership of about 2 500 women. It offers training in basic business management and loans to small businesswomen.

The MWACW supports women's projects countrywide with seed money and training in business management, and aims to increase exposure of small businesses to new markets and methodologies of production. The Ministry has also sponsored women to attend Trade Fairs both in Namibia and abroad.

13.5 Sports

The Namibian National Sports Council of 2003/2004 consists of ten men and only one woman, and most of the other officers are men. Still, as previously reported, other sports bodies in Namibia – such as the Namibian School Sports Union, the Namibian Football Association and other bodies concerned with individual sports are even more dominated by men, except for the All Namibian Netball Association which is dominated by women.

ARTICLE 14: Rural Women

14.1 Status of Rural Women

Notwithstanding the large number of rural women in Namibia, they are severely disadvantaged in terms of access to land, labour, agricultural services and assets, natural resources and employment. Rural women are also virtually absent from decision-making structures.

There are 13 Regional Councils in Namibia, which have general responsibility for the allocation of resources, and women are extremely under-represented in the Regional Councils. Only 2 (two) out of a total of 13 (thirteen) Regional Governors are women, and there are only 2 women out of 26-member National Council.

14.2 Government Policy on Agriculture and Rural Development

The Ministry of Agriculture, Water and Rural Development adopted a National Agricultural Policy in October 1995. The policy highlights the need to secure the participation of women in agricultural development and states that women need to be recognized as farmers in their own rights.

According to the policy, women's access to and control over household resources remain marginal. It states that the Government will ensure that this vulnerable group is not marginalized by means of a strategy that will provide for the basic needs of all Namibians.⁸⁸

The policy states that the role of women in agricultural development needs to be re-emphasized and their participation in agricultural organizations ensured. More importantly, it also states that the prevalent socio-cultural norms relating to women will have to be changed, and emphasized the need to assist women in overcoming their constraints in participating in development efforts related to lack of skills and poor access to services and finance.

14.3 Programmes to Promote the Status of Rural Women

The MAWRD, in collaboration with FAO, and NGO's, has embarked on several measures aimed at enhancing agricultural extension capacity and outreach to communal farmers. The main purpose of the programme is to develop and strengthen extension services in Agriculture. These services are directed to address female-headed households since they are the majority in rural areas. These services are in the form of information/communication and advisory services to change some cultural perceptions and attitudes.

The MAWRD have been conducting several training workshops to sensitise extension officers on gender equality by equipping them with gender analysis skills. In order to increase the efficiency of extension services, 12 agricultural and rural development centres have been established all over the country.

14.4 Laws Pertaining Specifically to Rural Women

The major development for rural women is the Communal Land Reform Act (Act No. 5 of 2002)⁸⁹. After being discussed for years and going through countless drafts, was passed by the National Assembly in 2002.

In terms of this Act, men and women are equally eligible for individual rights to communal land, and the treatment of widows and widowers is identical. The new law will alter the current practice in some areas, whereby a widow can be dispossessed of the communal occupation fee. It is noteworthy that the law, which provides a procedure for official recognition of traditional authorities, requires that they "promote affirmative action amongst the members of that community", particularly "by

⁸⁸ MAWRD, National Agricultural Policy, 1995.

⁸⁹ Hereinafter referred to as the Communal Land Reform Act

promoting women to positions of leadership”. Although the Act contains no specific monitoring or enforcement mechanism, it provides a basis for encouraging greater participation by women in traditional leadership positions.

ARTICLE 15: Legal Capacity and Domicile

The Namibian Constitution provides that all persons shall be equal before the law and discrimination on the basis of sex is explicitly forbidden. To this end, the Married Persons Equality Act (Act 1 of 1998) was promulgated.

15.1 Civil Marriage

The Married Persons Equality Act makes eighteen (18) years the age of consent for entry into civil marriage for both sexes, and men and women are equal before the law. In terms of the Act, husbands’ marital power as head of the house has been abolished. It provides for equal power of spouses married in community of property to dispose of the assets of the joint estate; to contract debts for which the joint estate is liable; and to administer the joint estate. The Act also provides for women married in community of property to have equal access to bank loans and ownership of property without the consent of the partner.

Further, immovable property, such as a communal house, must be registered in both spouses’ names and the sale of such property has to be approved by both parties. Likewise, the act makes provisions for equal guardianship over minor children of their marriage.⁹⁰ This law, except for giving husbands and wives in both civil and customary marriages equal power of guardianship in respect of children of marriage, did not address the gender inequalities in customary marriage when it comes to their estate. Currently, research is being undertaken on Customary Law and the findings will be helpful in the process of improving the law.

15.2 Customary Marriages

The Namibian law does not require the registration of customary marriages. Customary marriage has, traditionally, been regarded as a union between the families of the bride and groom families. However, the Ministry of Justice is in the process of consulting traditional leaders in the regions to compile a Bill on the registration of customary marriages.

Conclusions

Namibia, with only thirteen years of independence and with limited resources, has made great strides towards gender equality. Significant changes have taken place, not only in terms of law reforms, but also at a structural level with the adoption of the national gender policy. But the most important achievement, during the period under review, for the cause of gender equality was the elevation of the Department of Women Affairs to a fully-fledged Ministry of Women Affairs and Child Welfare. The

⁹⁰ DWA, Namibia Progress Report on the Beijing Platform for Action, 1999, p. 51

upgrading does not only mean that the women of Namibia now have a representative at Cabinet level with a vote, but it will also serve as an effective platform for advancing gender-oriented activities.

The adoption of the national gender policy was another milestone during the period under review. The policy provides guidelines and sets out principles for the implementation and coordination of gender issues. Although the implementation of the policy is currently experiencing minor problems, it is hoped that with the adoption of the gender mainstreaming programme, currently in the process of being formulated, some of the obstacles to its full implementation will be eliminated.

In terms of law reforms, the enactment of the Affirmative Action (Employment) Act has significantly improved the representation of women in the formal workforce. An increasing number of women are now occupying positions at management level in many organisations. The Combating of Rape Act and the Domestic Violence Act are some of the measures adopted by the Government to combat violence against women.

The Combating of Rape Act came into force in June 2000. This new law has been praised as one of the most progressive pieces of legislation on rape in the world. It contains a gender-neutral definition of rape, which moves away from the concept of “consent” that has historically made rape survivors feel as if they were the ones on trial. It also provides for increased protection for the survivor’s privacy and procedures to make sure that the rape survivor has an opportunity to place information before the court at the bail hearing.

With regard to family law, the Married Persons Equality Act eliminates the discriminatory Roman-Dutch law concept of marital power that previously applied to civil marriages. It also provides for equal power of spouses married in community of property to dispose of the assets of the joint estate. The major development for rural women is the Communal Land Reform Act. In terms of the Act, men and women are equally eligible for individual rights of tenure on communal land, and the treatment of widows and widowers is the same.

However, there are still areas that were identified as areas of concern by the Committee but have so far not received the required attention. Here, we have in mind the recommended intensive programme to discourage polygamy and the registration of customary marriages. Although it is commonly known that polygamy is decreasing, it is still being practiced, especially in the rural areas.

Regarding the registration of customary marriages, the Ministry of Justice is in the process of consulting traditional leaders in the regions to compile a Bill on the registration of customary marriages.

Despite the support of top political leaders, there is pervasive negative attitude to gender equality and a marginalisation of gender equality issues from mainstream programmes.

Resources, both human and financial, need to be utilized to support the gender mainstreaming programmes both locally and internationally.

Finally, to support or to complement the clause of the Constitution that guarantees gender equality, laws have been enacted to prohibit discrimination on the basis of sex and while many efforts have been made to promote gender equality, due to some cultural and traditional barriers it will take a while before meaningful equality between men and women could be realized. Secondly, for the realization of gender equality, educational programmes for women in human rights and law, and continued collaboration between government and the NGO's in implementing CEDAW will be intensified.

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