

Unequal justice triumphs

A man recently appeared in court for causing the death of his daughter. Judge Theo Frank held it to be a mitigating circumstance that the accused had killed his own flesh and blood.

The father, Naftalie Kandenge, was sentenced to a fine of N\$5 000 or one year in prison for culpable homicide.

In another case a few weeks later of a woman who left her baby outside in a plastic bag to die, state prosecutor Paul Eia called on the court to do away with "the chauvinistic and paternalistic practice" of considering it a mitigating circumstance when a woman killed her own child. The woman, Karen Sacharia, received a 7-year jail sentence.

Judge Simpson Mtambanengwe, in his final judgement referred to the psychiatric report which said that there had been nothing wrong with her mental state except a tendency to be promiscuous, which was confirmed by the fact that she already had two fatherless children.

In a country where many unmarried women have an average of five children, it seems out of place to use this as an argument for criminal behaviour. Another question that comes to mind is who is to define promiscuity.

Commenting on gender bias in judicial reasoning Chairperson of the Law Reform and Development Commission, Bience Gawanas, found it surprising that despite a workshop held for magistrates and judges in June this year where the issue of gender bias was discussed, this type of judgement continued in



the Namibian justice system.

Court sentences meted out must be done irrespective of the sex of the offender Ms Gawanas continued. Yet many women, whether as offenders or witnesses, find

that their credibility in the courtroom is affected by ingrained attitudes, stereotypes, assumptions and myths about them as women.

For example, what is considered reasonable conduct for a man may be considered unreasonable conduct for a woman as the reference to promiscuity in the Sacharia case has shown.

Promiscuity seen in this context had nothing to do with the mental state of the offender but was used to show her conduct and regarded as a deviation from the expected role of virtuous mother and a woman's "natural" role of mother, Gawanas said.

In a letter to *The Namibian* this organisation (*Sister Namibia Collective*) expressed their dismay at the double standards courts apply when sentencing men and women.

DICTIONARY

chauvinistic - Chauvinistic behaviour is when a person shows exaggerated or prejudiced support or loyalty for one's cause or group.

gender bias - (also gender prejudice)

mitigating - Mitigating circumstances make a crime easier to understand, and may result in less severe punishment.

paternalistic - Paternalistic behaviour refers to fatherly behaviour, meaning limiting freedom and responsibility of subordinates by "well-meant" regulations.

promiscuous - Someone who is promiscuous has sex with several different people.

Journalists turn rapist into victim

Mocks Shivute and Francis Xoagub of *New Era* obviously think that there is nothing wrong with rape in marriage. In their words (in the article on cohabitation in the August 3-9 issue), a man accused of raping a woman "has a simple and clear line of defence" in claiming that the woman he raped was his wife.

Unfortunately the "poor man" could not legally prove his marriage, and thus, according to Shivute and Xoagub, by being "thrown into the Windhoek Magistrate's Court to answer rape charges" he became a "victim of the Recognition of Certain Marriages Act." How about condemning the legal right to rape in marriage instead, gentlemen!