

Realising the right to education for all: School policy on learner pregnancy in Namibia

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A schoolgirl makes an unwise decision. Or she is coerced into having sex against her will by means of physical force, economic pressure or peer pressure. She becomes pregnant. The father may be a schoolboy, a teacher, a ‘sugar daddy’ or even a relative. What will this mean for her future?

The problem of teenage pregnancy among schoolgirls is a major concern in many countries and a constraint in the elimination of gender disparities in education. Furthermore, on a continent where the adage *When you educate a woman you educate a nation* holds so true, the repercussions of girls dropping out of school due to pregnancy cannot be underestimated.

The importance of education has long been cited as a critical factor in the development of nations and in the achievement of the Millennium Development Goals,² which place the achievement of universal primary education second only to the eradication of extreme poverty and hunger. There can be no argument about the value and benefit of knowledge and learning. Education allows children to learn the skills they need to negotiate an increasingly technical world. The social benefits of educating women in particular include improved agricultural productivity, improved health, reductions in fertility, and reductions in infant and child mortality rates.³

1 This chapter is based on a previously unpublished paper entitled “School policy on learner pregnancy in Namibia: Background to reform”, prepared for the Ministry of Education by the Legal Assistance Centre’s Gender Research and Advocacy Project (LAC 2008). The paper was circulated as part of the consultation around a proposed new policy on learner pregnancy.

2 The Millennium Development Goals were adopted by some 190 nations, including Namibia, at the United Nations Millennium Summit in 2000 (United Nations Millennium Declaration, Resolution 55/2 adopted by the General Assembly, 8 September 2000). The eight goals are as follows: (1) Eradicate extreme poverty and hunger; (2) Achieve universal primary education; (3) Promote gender equality and empower women; (4) Reduce child mortality; (5) Improve maternal health; (6) Combat HIV/AIDS, malaria and other diseases; (7) Ensure environmental sustainability; and (8) Develop a global partnership for development.

3 The United Nations Children’s Fund (UNICEF) estimates that approximately 180 women die each year from pregnancy-related complications, and a further 5,400 mothers suffer from serious complications and lifelong illnesses (UNICEF 2009). Increased education can

There are a significant number of teenage mothers in Namibia. According to the latest Demographic and Health Survey, conducted in 2006–2007, approximately 13% of women aged 15 to 19 at the time of the survey were already mothers, and another 3% in this age group were pregnant with their first child.⁴ Although these figures are a small improvement over those in previous surveys, the median age at first pregnancy has not changed over the last 14 years and remains age 21.⁵ The Ministry of Health and Social Services has observed that –⁶

[h]igh proportions of Namibian mothers are very young, and one consequence of teenage pregnancy is that young women are less likely to complete their basic schooling.

Table 1 shows the percentage of teenagers who have begun bearing children. The figures include both mothers and those pregnant at the time of the survey.

Table 1: Percentage of girls aged 15–19 who have begun child-bearing, 1992–2007

Age at time of survey	1992 survey	2000 survey	2006–2007 survey
15	1.3	2.2	2.7
16	6.3	5.8	5.5
17	18.7	16.0	13.9
18	36.0	27.6	21.6
19	45.4	39.3	34.7
Total	21.5	17.6	15.4

Source: MHSS (1993, 2003, 2008).

In 2007, there were 98 females for every 100 males in primary school, and 117 females for every 100 males in secondary school, with the overall percentage of female enrolment being *higher* than male enrolment in all secondary grades.⁷ But while females had higher promotion rates and lower repetition rates than males up to Grade 8, the opposite was true for higher grades; and after Grade 8, a higher percentage of females than males left school, with the main reason for dropouts being pregnancy.⁸

affect this outcome; the 2006–2007 Namibia Demographic and Health Survey showed that only 79% of uneducated pregnant women accessed antenatal care from a skilled provider, as compared with 97% of women who had more than secondary education accessing such care (MHSS 2008:116).

4 MHSS (2008:4).

5 (ibid.:53).

6 MHSS (2001:59).

7 NPC (2008:14); EMIS (2008:Table 29).

8 NPC (2008:15); EMIS (2008:commentary at Table 30). There was also a marked and progressive increase in the percentage of female repeaters and re-entrants after Grade 5. According to the Ministry of Education (EMIS 2008:commentary at Table 29), –

... the higher repetition rates could indicate a higher commitment among females to complete

The national statistics also conceal major regional disparities. For instance, in the Kavango Region, which has the highest rate of teenage pregnancy in the country (with 35% of teenage girls aged 15–19 having begun child-bearing), enrolment for girls and boys is about equal in upper primary school, but the number of girls relative to boys declines rapidly at secondary school level.⁹

Official statistics for 2007 show that a total of 1,465 learners dropped out of school for pregnancy-related reasons, with the number of such dropouts being highest by far in Kavango and Ohangwena, followed by the Regions of Caprivi, Omusati, Oshana, and Oshikoto.¹⁰

Table 2: Pregnancy-related school dropouts, 2007

Region	Male	Female	Total
Caprivi	0	83	83
Erongo	4	55	59
Hardap	3	44	47
Karas	0	37	37
Kavango	17	336	353
Khomas	1	49	50
Kunene	0	32	32
Ohangwena	2	300	302
Omusati	9	173	182
Oshana	6	95	101
Oshikoto	5	136	141
Otjozondjupa	13	41	54
Omaheke	1	19	20
Head Office	1	3	4
Total	62	1,403	1,465

Source: Ministry of Education, 2007; based on information from all primary and secondary schools where the reasons for dropouts were ascertained by the school

their education, whereas the re-entrants could possibly indicate females returning to school after pregnancy.

9 NPC (2008:15).

10 Ministry of Education, 2007; based on information from all primary and secondary schools where the reasons for dropouts were ascertained by the school.

Other evidence indicates that these official statistics are likely to be an underestimate.¹¹ For example, in 2004, Women's Action for Development surveyed six schools in the Khomas Region and found that at least 68 pregnancies had occurred amongst schoolgirls there between January and September 2004, involving girls as young as age 15.¹² As another point of comparison, a survey was done in all schools early in 1996 to establish how many learners had left school in 1995, and their reasons for dropping out. A total of 29,436 learners were reported to have dropped out in 1995, and the survey found that 24% of female dropouts – and up to 40% in some Regions – were due to pregnancy.¹³

The impact of learner pregnancy has far-reaching effects. According to a recent report by Save the Children, –¹⁴

... the children of uneducated mothers are more than twice as likely to die or be malnourished than the children of mothers who have secondary or higher education.

Children born to educated mothers have a higher chance of enrolling and completing school. Conversely, children of less educated mothers are less likely to complete school themselves, meaning that they will have fewer opportunities to better their lives since they lack the level of education that would allow them to compete successfully for jobs.¹⁵ Thus, the concern about improving the educational rights of girls who become pregnant is based in part on the knowledge that this will affect the fate of their children and future generations.

Past Namibian policies on learner pregnancy

Prior to 1994, there was no written national policy on learner pregnancy in schools, with decisions on this issue being left to the discretion of individual schools. Schoolgirls were normally expelled as soon as the school authorities learned about their pregnancies, and the decision on whether to readmit them after they had delivered the baby was left entirely to the individual school. The father of the child, in cases where he was a learner and had been identified, was usually expelled as well. Teachers who were found to be responsible for impregnating learners were dismissed, but, if fully qualified, could return to teaching in a different community after two years or at their former schools after five years. Unqualified teachers responsible for such pregnancies could return to teaching only if they first acquired professional teaching qualifications.¹⁶

11 In Botswana, when official statistics on pregnancy-related dropouts were compared with findings from other studies, the official figures were found to be misleadingly low (Meekers & Ahmed 1999:199–200).

12 *New Era*, 25 October 2005; “Let’s talk about sex, says WAD”, *The Namibian*, 20 October 2005.

13 Abt Associates South Africa (2002:Annex G, 94–97).

14 Save the Children (2005:4).

15 See e.g. (ibid.:27).

16 Becker et al. (1995).

In March 1994, the Ministry of Education published a brief written policy on the management of learner pregnancy. This policy stated that the learner-mother was expected to take care of the infant for two years, attending continuing education classes in the afternoon if she so wished. She could then attempt to find a place at another school, where she was not known to have had a child, but the decision on whether to admit her was at the discretion of the principal.¹⁷

[A] mother student cannot take up a place of any other deserving learner.

The policy made no mention of the father of the child.

The policy was updated at the beginning of 1995 by a circular from the Ministry of Education and Culture sent to all schools with secondary grades. The circular stated that female learners excluded from school because of pregnancy “may” be readmitted to their former schools or to another school, but only if they were not over the maximum permissible age.¹⁸ Thus, the decision was still left primarily at the discretion of the individual school, with the readmission of young mothers being limited nationally on the basis of age.

Following a Ministerial Consultation on School Dropouts and Adolescent Pregnancy convened by the Forum for African Women Educationalists, which brought African Ministers of Education together in Mauritius in September 1994,¹⁹ the Ministry of Basic Education and Culture introduced an initiative to develop a more comprehensive policy on teenage pregnancy. A Task Force involving both governmental and non-governmental representatives was set up to investigate the issue and make recommendations.

After some initial consultations, a draft policy was circulated for discussion during 1995. It was circulated again in May 1997, with a few changes based on feedback received from regional workshops. This draft policy was much more extensive than previous approaches to the topic. It included provisions on the role of the family and the community, and the learner-mother’s need for information. It proposed an approach which would encourage learner-mothers to continue with their education.²⁰

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, and provided that a social worker is satisfied that the infant will be cared for by a responsible adult, the girl shall have the right of readmission 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, provided that space is available. Should the

17 As reproduced in Dieden (1994).

18 MBEC (1995). The ages referred to were as follows: learners applying to Grade 8 must not yet be 17 years old on 1 January of that school year; Grade 9 applicants must not yet be 18 years old; and Grade 10 applicants must not yet be 19 years old.

19 FAWE (1994).

20 MBEC (1997:para. 5.1.3).

girl decide not to return to full-time schooling, she should be counselled about the options available to her for continuing her education.

A noteworthy feature of this policy was its flexibility on both the date of departure before the anticipated delivery, and the date of return after the birth of the infant. The policy also considered the responsibilities of the father, noting the need to make the boy aware of the consequences of accepting or denying paternity and providing rules for leave of absence for learner fathers, similar to those put forward for learner-mothers.

However, the “temporary guidelines” approved by Cabinet in 1999 differed significantly from the policy which had been publicly discussed and debated.²¹ In contrast to the 1997 draft, which stated that schools must confront learner pregnancy “by rendering support to rather than punishing the learners who are to become parents”, the tone of the 1999 Cabinet guidelines was far more restrictive. Pregnant learners could attend regular classes “at least” until the pregnancy became visible, but were allowed to return to normal schooling only “after spending at least a year with the baby”. The Cabinet guidelines technically apply the same rules to any schoolboy who is held responsible for a pregnancy, but this is seldom imposed in practice;²² schoolboys accounted for only 6% of the students who left school for pregnancy-related reasons in 2007.²³

The “temporary” Cabinet guidelines remained in place for the next ten years, despite criticism of them from many quarters.²⁴

In 2001, the Forum for African Women Educationalists in Namibia (perhaps better known as *FAWENA*) commissioned a study to review the implementation of the policy on teenage pregnancy. This study, which included interviews with ten girls who had become pregnant while attending school, showed that the policy was being implemented inconsistently in different places – with one girl astonishingly being forced to stay out of school for one year after giving birth even though the baby had died. The study recommended the adoption of a policy which focused on support rather than punishment. It proposed that pregnant girls should be readmitted into the school system after delivery, as soon as the baby had been weaned. The study also recommended the establishment of “bridging centres” where young mothers could continue with their education while breastfeeding, counselling services for the girl and her parents, and the introduction of flexible models of attendance to provide additional opportunities for pregnant schoolgirls and young mothers to carry on with their classes.²⁵

21 MICT (2008). The Cabinet Guidelines were reiterated in Ministry of Basic Education, Sport and Culture, Circular Formal Education 5/2001, 20 April 2001.

22 MICT (2008).

23 See Table 2 above.

24 See, for example, Felton & Haihambo-Muetudhana (2002); Tjombonde (2002); Von Wietersheim (2002).

25 Tjombonde (2002).

A 2002 assessment of girls' education in the Rundu Educational Region conducted interviews at 28 schools there, including discussions with parents, principals, teachers, community leaders, female learners, and 26 girls who had dropped out of school – all but three of whom had permanently discontinued school because of pregnancy. None of the girls who had left school were continuing their education through the Namibia College of Open Learning (NAMCOL).²⁶

In 2005, the debate on the learner pregnancy policy was revived when a learner-mother, Utjiua Karuaihe, sought to be readmitted to school immediately after the birth of her child, without waiting for one year as stipulated in the Cabinet guidelines.

In March 2004, when Utjiua Karuaihe was 17 years old and in Grade 11, she became pregnant. The pregnancy was noticed in about October. Arrangements were made for Utjiua²⁷ to write her Grade 11 examinations separately from the other students. She passed these examinations and was, therefore, eligible to continue to Grade 12. Utjiua gave birth in December 2004 and sought to continue with her studies when the new academic year commenced in January 2005.

When the school refused to readmit her, her mother brought a court case on her behalf challenging this decision.²⁸ In the initial application, the High Court ruled that the temporary guidelines approved by Cabinet were not binding on schools, which had a duty to exercise discretion on issues relating to pregnancy amongst learners. The court stated further that –

... it cannot reasonably possibly be the intention of the Cabinet Policy to prohibit the enrolment of teenage mothers where the mother has a support system.

In Utjiua's case, the support system was present.

The court went on to draw a comparison with women in formal employment, who were entitled by law to a period of only three months' maternity leave, pointing out that these women invariably had to do what Utjiua had done: arrange for a relative or nanny to take care of the baby when they were unavailable. The judgment concluded that –²⁹

... much as society may abhor teenage pregnancies (with sound reason, I may add), it is not the intention of the Cabinet Policy to punish learners who happen to find themselves in the position of Utjiua.

26 Felton & Haihambo-Muetudhana (2002).

27 Use of her first name only is an attempt to avoid confusion with the actual party in the case, her mother Seuaa Karuaihe-Samupofu, and because the subject is a minor child; moreover, the quotations refer to her as Utjiua.

28 Because Utjiua was a minor, the court case was brought in the name of her mother, who was represented by the Legal Assistance Centre.

29 Unreported High Court judgment, per Manyarara, AJ, on file at the Legal Assistance Centre.

The question was referred back to the principal of the school to exercise his discretion in light of the court decision.

When the school still refused to readmit Utjiua for the 2005 school year, the family appealed the school's decision to the Minister of Basic Education, Sport and Culture. At this stage, the Ministry took the position – in an affidavit by the Permanent Secretary – that the constitutional right to education had to be balanced against the right of the child to be taken care of by his or her parents. The Permanent Secretary stated the following:³⁰

The small child has the right to be taken care of by his/her parents and the time spent with her little baby is to the benefit of such baby and his/her future development. It is incumbent on the parents of the young teenage scholar ... to ensure that the young teenage mother indeed learns responsibility by spending quality time with and taking care of her infant.

The Permanent Secretary also noted that youth should not be taught to simply transfer responsibility to grandparents, as this would “contribute to the erosion of moral and parental obligations”.³¹

Utjiua's mother disagreed with the Permanent Secretary's reasoning, saying that she could not understand –³²

... how denying a perfectly healthy and intelligent young girl the right to finish her secondary schooling amounts to an interest in the youth being educated.

She asserted that, on the contrary, “the object of the policy is to punish young girls for making the grave mistake Utjiua made”, and that the result was to stigmatise such girls.³³ Utjiua's mother emphasised that Utjiua was not transferring responsibility for her baby to anyone else, but was only being assisted by her family so that she could complete her education.³⁴

The Ministry ultimately supported the school's refusal to readmit Utjiua, with the crux of its argument being that the existing policy was “an honest and fair attempt” to balance the constitutional right to education against the rights of the newly-born child, as well as being –³⁵

... deeply grounded in certain basic and fundamental moral, ethical and educational principles [including] justice, fairness, responsibility, accountability, etc.

30 Affidavit of Permanent Secretary, on file at the Legal Assistance Centre.

31 (ibid.).

32 Affidavit of Seuaa Karuaihe-Samupofu, on file at the Legal Assistance Centre.

33 (ibid.).

34 (ibid.).

35 Letter from Minister dated 1 March 2005, on file at the Legal Assistance Centre.

Utjiua's mother then brought a court application for a review of the Ministry's decision, and an urgent court order to readmit Utjiua to school pending the outcome of the review. This urgent application was turned down by the High Court, in a ruling by a different judge from the one who had dealt with the initial application. This time, the Court found that there was no denial of Utjiua's right to education, since she would be allowed to continue her education after one year. The court also ruled that there was no merit to the argument that the requirement to stay out of school for a year was punishment, noting that Utjiua had the option of continuing her education through adult education programmes and that "in the unplanned circumstances she must face the realities".³⁶

There was little point in proceeding with further legal action at this stage, since the academic year was progressing and the question of when to readmit Utjiua would have become irrelevant before any further court proceedings could be concluded. Therefore, there was no final resolution of the varying opinions of the High Court on the Cabinet guidelines.

The right to education

The starting point for the right to education is Article 20(1) of the Namibian Constitution, which states that "All persons shall have the right to education". This provision echoes guarantees of the right to education in the Universal Declaration of Human Rights (Article 26), the International Covenant on Economic, Social and Cultural Rights (Article 13) and the Convention on the Rights of the Child (Article 28).

The right to education guaranteed by the Namibian Constitution must be read together with Article 10 of the Namibian Constitution which, again echoing several international conventions, guarantees equality and freedom from discrimination:

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

An additional buttress to the right to education is found in Article 95(e) of the Constitution, which commits the state to adopting policies which ensure that "every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law" – with education being a key public service.

However, these provisions are stated in general terms. There is a need to consider what the right to education means in terms of learner pregnancy.

In 1998, the United Nations Commission on Human Rights appointed a Special Rapporteur on the Right to Education.³⁷ The Special Rapporteur took on the task of giving

36 Unreported High Court judgment, per Gibson, J, on file at the Legal Assistance Centre.

37 Resolution 1998/33 of 17 April 1998.

content to the *right to education*. In a 1999 report, the Special Rapporteur structured government duties into a four-point scheme – availability, accessibility, acceptability and adaptability – to portray the complexity of governmental obligations arising from the right to education. This report cited the treatment of pregnancy as a disciplinary offence as an issue which undermines accessibility to education.³⁸ In a 2000 report, the Special Rapporteur addressed the issue of treating pregnancy as a basis for punishment in more detail, as an aspect of the acceptability of school discipline.³⁹ The Special Rapporteur acknowledged that “change does not come easily” – particularly because the –

... views of parents, teachers and community leaders tend to support the expulsion of pregnant girls from school, rationalising this punitive choice by the need to uphold a moral norm which prohibits teenage sex – pregnancy being considered as irrefutable proof that this norm was breached and as entailing punishment.

The report went on to suggest law on this issue as “a good starting point for the process of change”.⁴⁰ Five years later, the Special Rapporteur once again called attention to pregnancy and motherhood as a basis for discrimination against girls in education, noting that treating pregnancy as a disciplinary offence might even lead to increases in abortion.⁴¹

The UN Convention on the Rights of the Child also refers to the right to education, and the Committee which monitors it has emphasised the need for States Parties (which include Namibia) to provide support for adolescent parents and “to develop policies that will allow adolescent mothers to continue their education”.⁴²

Furthermore, as a signatory to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Namibian government has committed

38 UN Commission on Human Rights (1999). The four-point scheme was elaborated upon by the Committee on Economic, Social and Cultural Rights in connection with the “right to education” guaranteed by Article 13 of the International Covenant on Economic, Social and Cultural Rights. It described *availability* as meaning that functioning educational institutions and programmes had to be available in sufficient quantity within the jurisdiction of the State Party. *Accessibility* encompassed three overlapping dimensions: *Non-discrimination*, *physical accessibility* and *economic accessibility*. *Acceptability*, according to the Committee, meant that the form and substance of education, including curricula and teaching methods, had to be relevant, culturally appropriate, and of good quality. *Adaptability* meant that education had to be sufficiently flexible to adapt to the needs of changing societies and communities, and to respond to the needs of students within their diverse social and cultural settings. When considering the appropriate application of these four “interrelated and essential features”, the best interests of the student had to be a primary consideration (Committee on Economic, Social and Cultural Rights 1999).

39 UN Commission on Human Rights (2000:para. 57–59).

40 (ibid.).

41 UN Commission on Human Rights (2006:para. 76).

42 Committee on the Rights of the Child (2003:para. 31).

itself to take all appropriate measures to eliminate discrimination against women in the field of education, more specifically through –⁴³

... the reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely.

The Committee which monitors CEDAW criticised Namibia's policy on learner pregnancy in 1997⁴⁴ and again in 2007, when it said that the provision requiring girls who became pregnant to return to normal schooling only after spending at least one year with the baby "could act as a deterrent for girls to resume their studies after childbirth" and recommended –⁴⁵

... that the State party implement measures to retain girls in school and monitor the impact of the Policy on Pregnancy among Learners on the rate at which girls return to school after childbirth.

The right to education for learner-mothers is stated even more strongly in the Charter on the Rights and Welfare of the African Child, to which Namibia is a signatory. Article 11 of this Charter sets forth measures which States Parties are obliged to take to achieve the full realisation of the right to education, including "measures to encourage regular attendance at schools and the reduction of drop-out rates" and special measures in respect of female children.⁴⁶ Even more specifically, governments are also obliged by the Charter to ensure that –⁴⁷

... children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.

Similarly, the Protocol to the African Charter on the Rights of Women in Africa commits States Parties to the elimination of a range of barriers to girls' education, to –⁴⁸

43 Article 10(f).

44 The Committee expressed its concern that "pregnant teenage women were punished by expulsion from school" (Committee on the Elimination of Discrimination Against Women 1998:para. 77, 108).

45 Committee on the Elimination of Discrimination against Women (2007:para. 22–23).

46 Article 11(3)(d) and (e).

47 Article 11(6).

48 Article 12.2(c). In the same vein, the *World Declaration on Education for All* adopted by the World Conference on Education for All, in Jomtien, Thailand, in 1990, stated in Article III that –

the most urgent priority is to ensure access to, and improve the quality of, education for girls and women, and to remove every obstacle that hampers their active participation.

Declaration available at www.unesco.org/education/efa/ed_for_all/background/jomtien_declaration.shtml; last accessed 21 September 2009. Namibia's *National Plan of Action (2002–2015) for Education for All* identifies several activities which could contribute to achieving this objective (GRN 2002):

- Publicise and implement the policy on teenage pregnancy and encourage girls to continue with their studies for as long as possible

... promote the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely.

It is apparent that the right to education which appears both in international instruments and in the Namibian Constitution includes the right not to be discriminated against or 'disciplined' because of a pregnancy. Indeed, courts in some other countries have found that even a temporary suspension on the basis of pregnancy is impermissible discrimination in respect of the right to education. For example, the Supreme Court of Colombia found school regulations which suspended pregnant girls from schooling and rerouting them into tutorials impermissibly discriminatory, noting that while this approach –⁴⁹

... does not imply a definitive loss of the right to education, it does imply the provision of instruction to the pregnant schoolgirl in conditions which are stigmatizing and discriminatory in comparison with other pupils ... The conversion of pregnancy – through school regulations – into a ground for punishment violates fundamental rights to equality, privacy, free development of personality, and to education.

The 1991 *Mfolo* case from Bophuthatswana in South Africa also found a rule requiring the suspension of all pregnant students to be discriminatory. Here, the court considered a regulation applicable to teachers' colleges, which provided that pregnant students were to be suspended for the rest of the academic year. This regulation was challenged on the basis that it conflicted with section 9 of the Bophuthatswana Constitution, which provided for equality before the law and prohibited discrimination on the basis of sex. The court ruled that while there might be good reason for making specific provisions for pregnant female students, it was unjustifiable to apply a uniform sanction to all pregnant students. The Ministry of Education advanced a number of possible purposes for the regulations – including the encouragement of morality, health, and the maintenance of discipline – but the court found that none of these purposes justified the blanket regulation, which was ruled to be unconstitutional.⁵⁰

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- Sensitise teachers, principals, school boards, community leaders, inspectors in order to reduce the stigma of pregnancy and motherhood.
 - Explore options which would allow pregnant girls to complete their education, and increase access to reproductive health services.

49 UN Commission on Human Rights (2000). The Colombia case referred to is Supreme Court of Colombia, *Crisanto Arcangel Martinez Martinez y Maria Eglina Suarez Robayo v Colegio Ciudad de Cali*, No. T-177814, 11 November 1998, as translated from Spanish. The original text reads as follows:

... aun que la 'desescolarización no implica la pérdida absoluta del derecho a la educación, si implica su prestación conforme a una condición que tiende a estigmatizar a la alumna embarazada y a discriminarla frente a los restantes estudiantes en la recepción de los beneficios derivados del [derecho a la educación]. ... [e]xigir – por vía reglamentaria – el embarazo de una estudiante en causal de sanción, viola los derechos fundamentales a la igualdad, a la intimidad, al libre desarrollo de la personalidad y a la educación.'

50 *Mfolo & Others v Minister of Education, Bophuthatswana* (1994) (1) BCLR 136 (B) (date of judgment 07/11/1991); 1992 (3) SA 181 (BG).

Although the Namibian approach to learner pregnancy has evolved over the years, it still falls short in its embodiment of a non-discriminatory right to education.

The newborn child’s right to be cared for by both parents

Article 15 of the Namibian Constitution says that –

[c]hildren shall have the right ... subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents.

This constitutional provision has been cited by the Ministry of Education as a justification for requiring new mothers (and fathers) to remain out of school for a year. However, reliance on this right to justify the current Policy on Pregnancy amongst Learners appears misplaced.

This constitutional protection applies to all children, throughout their childhoods. If it did support a policy forbidding new parents to continue their schooling for the first year of their child’s life, then working mothers and fathers would also have to be given a full year’s maternity and paternity leave from work. By the same token, the constitutional right of the child to be cared for by his or her parents does not come to an end at age 1. If the Constitution could be applied in the way that has been suggested, then parents would be forbidden from working or attending school altogether. The “care” envisaged in the Constitution logically cannot refer to full-time daily care of children of all ages, but must rather relate to ongoing parental contact, involvement and responsibility.⁵¹

The new policy

In 2008, the Legal Assistance Centre was asked to work with the Ministry of Education to create a new policy on learner pregnancy. The assignment was to create a policy with two aspects: prevention and management. The process of developing the new policy included interviews with learners and consultative meetings at regional and national level with a range of stakeholders, including teachers, principals, regional education officers, counsellors, social workers, school board representatives and non-governmental organisations. Feedback based on the input received was incorporated into a working draft, which was endorsed by the Ministerial Planning and Coordinating Committee in April 2009 and approved by Cabinet in October 2009.⁵²

51 The UN Committee on the Rights of the Child (2006:para. 19) has recognised that a diversity of family and caregiving relationships can be in the best interests of a young child, noting the role of –

... some combination of mother, father, siblings, grandparents and other members of the extended family, along with professional caregivers specialised in childcare and education.

52 Cabinet Action Letter, Decision No. 19th/13.10.09/004. Although Cabinet approved the policy, it suggested that other ministries should give written submissions on it to the Ministry of Education. Thus, it is possible that there may still be some fine-tuning of the policy before it is implemented.

The new policy reflects many of the principles developed in the previous unused draft developed through public consultations in the 1990s. The role of the family as well as the community is considered. Detailed provisions explain the type and range of information schools are obliged to provide to all learners, as well as specific information learner-parents will require. Most importantly, like the previous draft policy, the new policy emphasises flexibility. It acknowledges that different families and communities have different attitudes to learner pregnancy. Thus, it *allows* pregnant girls to remain in school until four weeks before the due date without *requiring* that they do so; if a girl and her family would not be comfortable for her to remain in school once the pregnancy becomes visible, she may leave at that stage. Similarly, it *allows* learner-mothers to return to school shortly after giving birth *if they wish*, provided that the school, family and health care providers are satisfied that she and the baby are in good health and that the baby will be suitably cared for when she is at school. If the young mother and her family feel that she should stay at home for a longer period of time with the infant, she may take a leave of absence for up to a maximum of one calendar year.

The new policy does not substitute its judgment for that of the family. It merely sets out the conditions under which the doors of the school will be open to the learner. It is still up to the learner-mother and her family to decide if and when she will take advantage of the opportunities which the policy makes available. No pregnant girl or learner-mother will be forced to remain in or out of school against her will. Decisions can be made according to her personal situation, and with the support of her family and the school.

This flexibility also allows for appropriate responses depending on the time of the academic year in which the pregnant learner gives birth. Many teachers consulted mentioned this factor as being an important one, and felt that it would be much better to time returns to school with reference to practical issues such as the curriculum and the timing of exams. No “one-size-fits-all” solution makes sense in practice.

The new policy does not provide for a leave of absence for learner-fathers, since their biological role with respect to the baby is different from that of the learner-mother who gives birth and breastfeeds, but it encourages learner-fathers to be involved and responsible parents and to share in the duty of maintenance. By allowing them to continue their education, the new policy places them in a better position to assist with future financial support.

It was generally accepted during the consultations that the newborn infant will have a far better chance in life if both parents are able to complete their secondary education. Furthermore, statistics show that learners who continue their education are more likely to delay subsequent pregnancies, supporting the need to return a learner-mother to the education system as soon as the situation permits. It should also be noted that several learners interviewed who became pregnant whilst still at school vowed that they would make every effort upon their return to school to discourage other learners from putting themselves at risk of the same fate.

The new policy places a very strong emphasis on prevention, which includes the encouragement of abstinence and the communication of values such as gender equality and respect for individual autonomy. Practical prevention measures such as providing safer school and hostel environments, facilitating effective access to contraceptives and encouraging alcohol-free social activities for youth are also included. It is anticipated that implementation of the prevention section of the policy will be the primary mechanism for reducing the incidence of learner pregnancies.

During the consultation process, learners themselves called for strong and consistent messages about responsible sexual behaviour. Some learners appreciated the new information they received just by attending the consultative workshops; as one student said, “this meeting was very useful since we don’t usually get things like this here”. Another learner summarised the need for information as follows:⁵³

I think teenage pregnancy can be prevented only if teachers, learners and parents co-operate together and when teachers at school talk to their learners on how to prevent, and the effect girls can have when they have babies at an early stage.

Where a pregnancy does occur, the focus is on support rather than punishment. In the various consultations, some people have favoured a punitive policy because they believe that a supportive approach ‘condones’ pregnancy amongst learners. But there is a difference between condoning learner pregnancy and addressing the problem of learner pregnancy. The new policy acknowledges the reality in Namibia that teenagers and learners do give birth, and proposes new methods to deal with this situation.

Moreover, the emphasis on support is also appropriate in an environment where significant numbers of learner pregnancies may result from forced sex rather than unwise choices. Recent police statistics indicate that just over one third of all victims of rape and attempted rape are under the age of 18, with the vast majority of juvenile rape victims being female.⁵⁴ The rape of children is particularly likely to go unreported. Additionally, even where there is no overt coercion, the disparities in gender equality in Namibia often mean that girls may feel powerless to negotiate sexual behaviour or contraceptive use. A 2006 UNICEF survey of 265 girls aged 15–24 in the Kavango, Ohangwena and Omaheke Regions found that 19% of them had already been pregnant – *with a shocking 40% of these pregnancies resulting from forced sex*.⁵⁵ A further need for a more supportive policy is indicated by evidence that illegal abortion, baby dumping and infanticide are options currently utilised by learner-mothers to prevent motherhood from interfering with their education.⁵⁶

53 Legal Assistance Centre records of workshop feedback.

54 National statistics from the Namibian Police for 2003–2005, as reported in LAC (2007:8). This includes both rape and attempted rape. The age of the victims was not recorded nationally prior to 2003.

55 UNICEF (2006:9).

56 See, for example, learner comments in *OYO Young, Latest and Cool*, 2004, 3(1) in “Teenage pregnancy, unwanted pregnancy and abortion”. Many of the learners writing inputs for the

Many of those consulted acknowledged that the current statistics on pregnancy-related dropouts prove that the previous guidelines did not achieve the desired deterrent effect. During the consultations around the proposed new policy, one of the participants stated that –⁵⁷

Namibia really cannot afford to lose any learning person as we are geared toward realizing Vision 2030, that of a Learning Nation for Industrialisation and a better life to all of us.

This statement captures the ultimate goal of an improved policy on learner pregnancy.

The new policy can best be summarised by reference to its six guiding principles:

- the right to education
- prevention by means of positive interventions rather than punishment
- providing learners with appropriate information about reproductive health matters, to encourage responsible decision-making
- respect for the right to freedom of choice for both boys and girls, as well as respect for the dignity of the individual
- support to learner-parents to help them complete their education in a manner which takes into account the health and welfare of the newborn child, and
- respect for cultural and family values by providing sufficient flexibility to allow for a range of options.

The new policy is also noteworthy for its recognition that the broader community needs to play a role in all of these areas:⁵⁸

Schools constitute only one of the many players which share in the role of shaping the behaviour of our youth. A child's family should have the first and foremost responsibility of providing the child with the values and examples which will guide him or her through childhood and adolescence. The religious community, the wider community, government ministries, the media and society at large also influence the values of Namibia's young people.

Ensuring that girl learners are able to continue their education after pregnancy is critical if Namibia's long-term goals concerning gender equality in education and development are to be achieved. It may be difficult to achieve consistent implementation of the new policy immediately, because of differing attitudes towards learner pregnancy in different communities. But the policy is intended to guide policy direction over the next ten years, and to assist Namibia in achieving the Millennium Development Goals and the objectives of Vision 2030. The most effective way to address the problem of learner pregnancy is undoubtedly a rights-based approach built around the right to education

magazine said that they would consider abortion if they became pregnant, while several reported that they had actually resorted to this option themselves.

57 Excerpts from opening speech by Mr Ben Boys, Director of Education, Hardap Region, September 2008.

58 Ministry of Education (2009).

for all, which is a prerequisite for the realisation of so many other rights. The Legal Assistance Centre believes that the new policy will be far more effective than past approaches in preventing learner pregnancy, and that it will simultaneously ensure that young parents are encouraged to complete their education for the benefit of themselves, their infants and the developing Namibian nation.

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