

GENDER AND THE LAW



The work of the Gender Research & Advocacy Project of the Legal Assistance Centre

We would like to introduce you to the Gender Research & Advocacy Project of the Legal Assistance Centre. This newspaper will explain who we are and what we do. It will also tell you about some of our most recent publications.

What is the Legal Assistance Centre?

The Legal Assistance Centre is a **public interest law firm** based in Windhoek. It has **five major departments** which focus on different areas of work:

1. Human Rights and Constitutional Unit
2. Gender Research & Advocacy Project
3. Child Justice Project
4. Land, Environment and Development Project
5. AIDS Law Unit.

(See page 8 for more information on the Legal Assistance Centre.)

What is the Gender Research & Advocacy Project?

The Gender Research & Advocacy Project was established as a department of the Legal Assistance Centre in February 1993. It seeks to promote gender equality and the empowerment of women through legal research, law reform and related advocacy work. The **key goals** of the Gender Research & Advocacy Project are:

- to conduct research aimed at assessing the effectiveness of existing laws in serving the needs of women and men and making proposals for new laws where necessary
- to encourage and facilitate law reform on gender issues
- to increase public involvement in the law reform process
- to raise public awareness of new and existing gender-related laws and the underlying issues they address
- to provide training materials and training of trainers for key service providers involved in the implementation of gender-related laws.

MISSION STATEMENT of the Legal Assistance Centre

We, the Legal Assistance Centre, being a public interest law centre, collectively strive to make the law accessible to those with the least access, through education, law reform, research, litigation, legal advice, representation and lobbying, with the ultimate aim of creating and maintaining a human rights culture in Namibia.

What is GENDER?

Sex refers to the biological differences between men and women, such as their different roles in reproduction. Gender refers to the social behaviour associated with being female or male in a given culture. Although most gender behaviour is learned and varies from culture to culture, researchers now believe that there is also a biological basis for some aspects of gender identity.



Gender equality and law reform in Namibia

Namibia's Constitution provides a strong backdrop for sexual equality. But the constitutional guarantees of sexual equality do not work automatically. All laws in force at the date of independence remain in force until they are repealed or amended by Parliament, or declared unconstitutional by a court. Namibia is also a signatory to many international agreements such as the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UN Convention on the Rights of the Child, and the Protocol to the African Charter on the Rights of Women on Africa. These are important commitments to the principle of gender equality. But law reform on gender issues is vital in bridging the gap between principles and reality.

The 15 years since independence have seen a number of significant legal developments for women. Affirmative action provisions in the Local Authorities Act have resulted in strong representation for women in local government, and the Affirmative Action (Employment) Act is seeking to improve the representation of women in the formal workforce. Labour legislation, including both the Labour Act and the Social Security Act, has addressed gender issues such as maternity protection and sexual harassment. There is a

new legal framework for violence against women and children which includes the Combating of Rape Act, the Combating of Domestic Violence Act and amendments to the Criminal Procedure Act designed to protect vulnerable witnesses. Family law reforms have been more limited – the Married Persons Equality Act dealing with certain aspects of inequality between husbands and wives, the Communal Land Reform Act which provides for secure land tenure for widows and the Maintenance Act which is intended to advance women's economic independence through a more workable system for obtaining child maintenance.

The Gender Research & Advocacy Project was involved with many of these new laws, by conducting research which informed the new laws, by working in partnership with government to come up with proposals for new laws, by lobbying Parliament on the fine-tuning of some of the proposed bills, and by preparing simple-language explanations to help members of the public make their views known on proposed bills and understand the new laws once they were enacted.



Photo by *The Namibian*

These laws are important steps forward. However, there is still a need to make sure that they are properly understood and implemented. It is also important to monitor the new laws which are in place to see if they are accomplishing their intended purposes. A third concern is public understanding and awareness. People in both urban and rural areas need to know about the new laws and how to use them.

There is also still a need for additional law reforms – particularly in the areas of children's rights, family law, customary law and state welfare grants. ■

Who works in the Gender Research & Advocacy Project?

Because of a shortage of funds we have only two permanent staff members. We manage to carry out our work by making use of a range of consultants, interns and volunteers who have expertise in specific areas.

CURRENT STAFF

Dianne Hubbard, Co-ordinator

Dianne has been the Co-ordinator of the Gender Research & Advocacy Project since it was established in 1993. She has degrees in English literature from the University of North Carolina in the USA and the University of Stellenbosch in South Africa, as well as a law degree with honours from Harvard Law School in the USA. She is listed in the "A-Z of Political Personalities" in the recently-published Guide to Namibia Politics. Dianne serves on the board of trustees of Sister Namibia.

Naomi Kisting, Project Assistant

Naomi has been with the Gender Research & Advocacy Project since 2001. She has a Diploma in Executive Secretarial Studies and is currently pursuing a BTech in Public Management at the Polytechnic. She is a member of the National Council for Older Persons in Namibia and serves on the board of trustees of the Namibian Women's Network. She is also serving on the steering committee of Women Solidarity Namibia.

Mercedes Ovis, Legal Researcher

Mercedes is on a 2-year contract from June 2004 to June 2006, as a legal researcher specialising in customary law and rural women. As part of her training programme, she served an internship with the Centre for Applied Legal Studies at the University of Witwatersrand. She has a law degree from the University of the Western Cape in South Africa.

Anne Rimmer, Training Co-ordinator

Anne is being sponsored by the Catholic Institute for International Relations (CIIR). She has been with the Gender Research & Advocacy Project since February 2004. Anne has a degree in politics and sociology from the Open University in Britain and over 15 years of experience in human rights training with Amnesty International. She has conducted participative training, including training of trainers, in five African countries, in addition to Namibia.

Wairimu Munyinyi, VSO Volunteer

Wairimu is a Kenyan citizen who is being sponsored by the British VSO programme for a 2-year placement with the Gender Research & Advocacy Project as a field research supervisor. Wairimu has a degree from the Catholic University of Eastern Africa in sociology & political science, with further qualifications in policy analysis, advocacy and pro-poor development design and interventions.

Amanda Dodge, intern

Amanda is a Canadian lawyer who is being sponsored for a 6-month placement with the Gender Research & Advocacy Project by the Canadian Bar Association. Interns come to us regularly from Canada through this programme. In exchange for providing volunteer assistance to the Legal Assistance Centre, the interns have chance to learn about Namibia and to observe human rights in action in an international context.



The past work of the Gender Research & Advocacy Project

The Gender Research & Advocacy Project has been in existence for almost 13 years. During that time we have produced **major research reports** on the following topics:

- marital property
- inheritance
- child maintenance
- affirmative action for women in local government elections
- working conditions of domestic workers
- divorce
- recognition of customary marriage
- domestic violence
- rape
- children and other vulnerable witnesses in court
- women and commercial land reform
- commercial sex work.

We have produced a large number of **educational materials**, including:

- summaries of various laws in simple language
- posters
- newspaper and magazine articles, television 'commercials'
- several short films
- two full-length movies and a television documentary
- radio 'soap operas'
- murals on school walls.

We have given input on the following pieces of **legislation**:

- Social Security Act 34 of 1994
- Married Person Equality Act 1 of 1996
- Affirmative Action (Employment) Act 29 of 1998
- Combating of Rape Act 8 of 2000
- Communal Land Reform Act 5 of 2002
- Combating of Domestic Violence Act 4 of 2003
- Maintenance Act 9 of 2003
- Criminal Procedure Amendment Act 24 of 2003 (to assist vulnerable witnesses in court)
- Labour Act 15 of 2004.

We have also provided input into the following **bills**:

- draft Children's Status Bill (now before Parliament)
- draft Child Care and Protection Bill (expected to go to Parliament soon)
- draft Divorce Bill (now with Ministry of Justice)
- draft Recognition of Customary Marriage Bill (now with Ministry of Justice).

We have worked particularly closely with the Law Reform and Development Commission, the Ministry of Justice, the Ministry of Gender Equality and Child Welfare and the Ministry of Health and Social Services. We helped draft Namibia's first country report in terms of CEDAW. We are members of the National Advisory Committee on Gender-Based Violence, Sexual Harassment and Legal Affairs and the Advisory Committee of the Woman Child Protection Units.

We have good working relationships with the NGO community in Namibia, and we often work on lobbying and advocacy campaigns alongside a range of other groups. One important aspect of our work is to explain proposed laws in accessible language, and to assist civil society to make an effective input into such proposals. ■

"The Gender Research & Advocacy Project of the Legal Assistance Centre (LAC) has and continues to make a major input in the advancement of women rights in Namibia."

- Government of the Republic of Namibia, *Initial Report in terms of the International Covenant on Economic, Social & Cultural Right*, paragraph 140



ADVOCACY IN ACTION:

A guide to influencing decision-making in Namibia

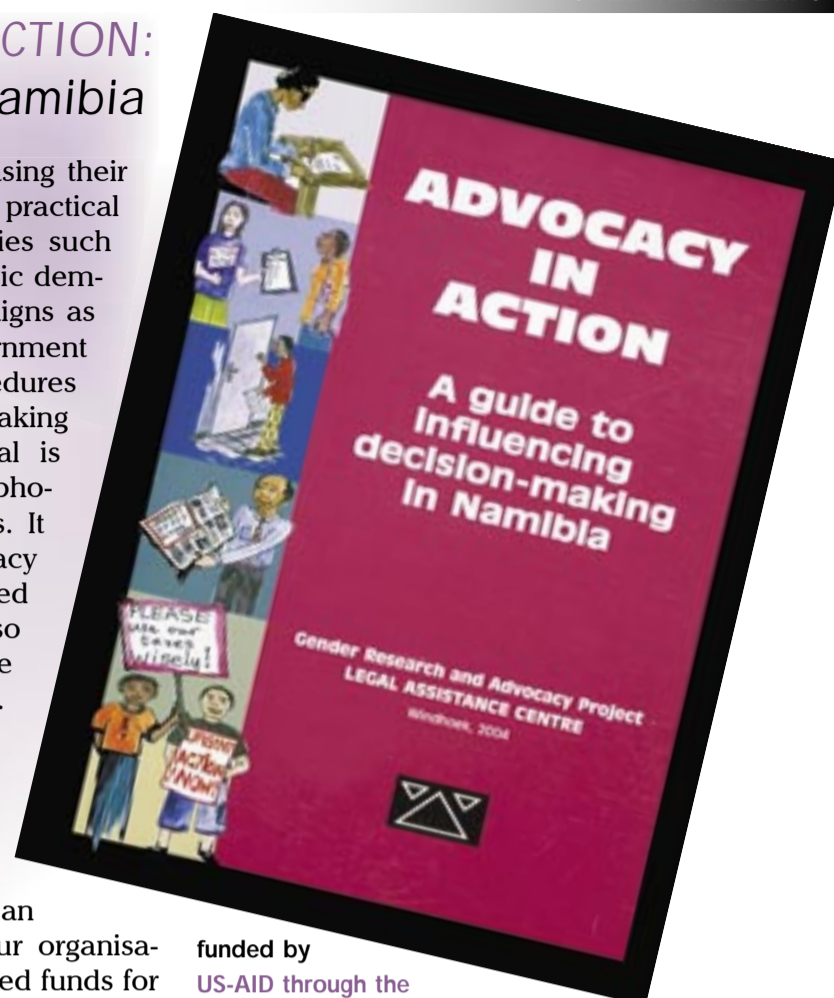
Have you ever wanted to convince Parliament to pass a law on a particular topic? Ever wanted to persuade your regional council to provide better services for the elderly, or to pressure your local authority to take steps against illegal shebeens? Ever wanted to lobby your local clinic to stay open for longer hours, or to convince your school to introduce a new extracurricular activity? Ever wanted to influence a decision by a government body such as the Social Security Commission or a Communal Land Board? Ever wanted to convince your church to play a more active role in speaking out on HIV, to convince your employer to offer a better medical aid plan or to convince your traditional leader to involve more women in community decision-making? If you have ever wanted to influence decisions like these, then you are interested in advocacy.

Advocacy is an effort to influence a law, a policy or some other decision. Advocacy can be directed at various levels of government, government bodies, or other institutions or individuals. And, if you are interested in improving your advocacy skills, then you might be interested in the Gender Research & Advocacy Project publication *Advocacy in Action*.

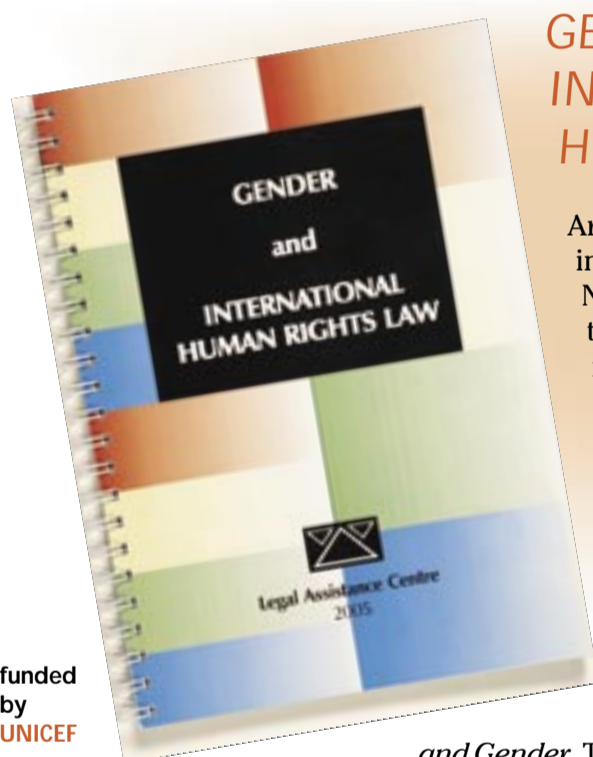
Advocacy in Action is a 336-page manual aimed primarily at NGOs and grassroots-based

groups who are interested in increasing their advocacy skills. It contains concrete, practical information about advocacy strategies such as petitions, press conferences, public demonstrations and letter-writing campaigns as well as detailed information on government structures and Parliamentary procedures – and how to influence decision-making bodies and processes. The manual is written in simple English, with many photographs, illustrations and examples. It includes actual case studies of advocacy efforts in Namibia. The manual is aimed primarily at civil society, but it will also be of interest to office-bearers at the local, regional and national level. It is best used as ‘textbook’ for workshops on advocacy skills.

Contact the Gender Research & Advocacy Project if you are interested in obtaining a free copy of the manual. You can also request an advocacy training workshop for your organisation. However, GR&AP has only limited funds for holding such workshops, so we may not be able to respond to your request unless your group can bear the costs of the workshop. ■



funded by
US-AID through the
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and Women's Legal Rights Initiative



funded by
UNICEF

GENDER AND INTERNATIONAL HUMAN RIGHTS LAW

Article 144 of the Namibian Constitution incorporates international law into Namibia's domestic law. This means that Namibia is bound to follow the international agreements that it has formally adopted, in the same way as it must enforce the laws made by our own Parliament.

Would you like to know more about Namibia's international commitments on gender? The Gender Research & Advocacy Project has developed a 230-page on this topic, called *International Human Rights and Gender*. This document covers important

international agreements, such as:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination Against Women
- Beijing Platform for Action
- African Charter for Human and People's Rights and its Protocol on the Rights of Women in Africa
- SADC Declaration on Gender and Development.

The publication also has a chapter on international provisions relating specifically to violence against women.

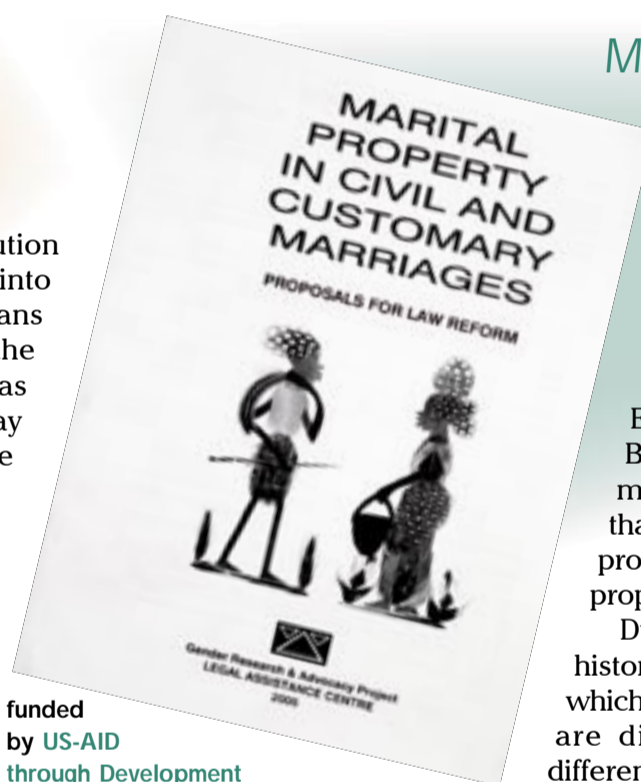
Each international agreement is introduced and explained in simple language, along with information about Namibia's commitment to each agreement (such as the date when Namibia agreed to it). Full texts of most of the documents are included.

This publication is designed as a reference manual particularly for policy-makers. It will also be useful to lawyers and law students. ■



“Now, I finally understand. I am able to go back to my community and teach others.”

– An elderly woman who attended a workshop session on gender-related laws.



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through Development
Alternatives, Inc.

Marital Property in Civil and Customary Marriages: Proposals for Law Reform

Everyone loves a wedding. But many people get married without knowing that the marriage will have profound effects on their property rights.

Due to Namibia's apartheid history, the property regimes which apply to married couples are different for people of different races in some parts of the country. This situation is clearly unconstitutional and in

urgent need of reform. There are also different property consequences for civil marriages and customary marriages – a situation which needs to be re-assessed.

There are a number of other legal questions which need consideration. Should lobola be allowed? Should special rules apply to the home shared by the married couple when the marriage ends by death or divorce? What property arrangement should apply when couples do not discuss their preferences before the marriage? Should married couples be allowed to change their property regime after the marriage takes place? Should married couples be allowed to use joint bank accounts?

This publication looks at some of the pros and cons of issues like these, drawing on examples from other countries around the world. This is a technical legal document intended for policy-makers, lawyers and other specialists. It is currently being used by the Law Reform and Development Commission as a resource while they consider law reform on marital property issues. As law reform on this topic moves forward, the Gender Research & Advocacy Project will prepare more simple and accessible materials aimed at the general public. ■

Publications on inheritance

What is inheritance? The simple answer is that inheritance is all about who gets what when a person dies. But the more accurate answer is that inheritance is a system which is intended to minimise the disruptive effect of the death on the family unit.

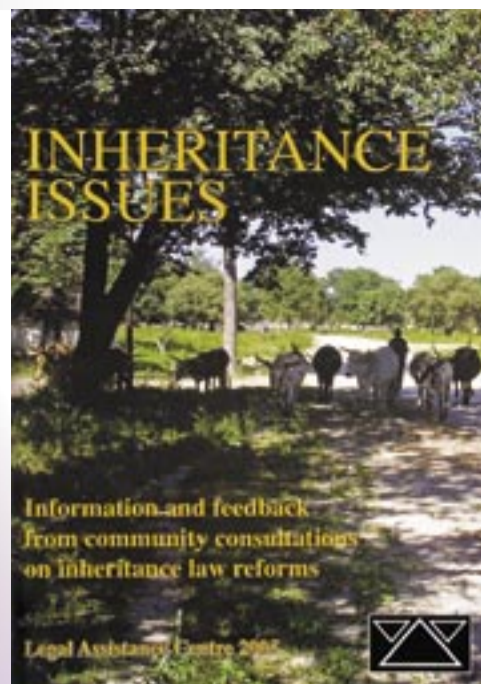
Inheritance has become a controversial issue because rules that once worked well to protect family members in practice do not work so well now. This is because concepts of family have changed over time, and because different kinds of property form part of the family assets – including property such as bank accounts and pension payments which were not envisaged when the current rules developed.

It also seems that some individuals have turned death into an opportunity for personal financial enrichment, not caring if this creates hardship for other family members.

Different rules on inheritance are applied to people of different races. There are different rules for people in different kinds of marriages. Some customary laws on inheritance discriminate against women and certain children – such as younger children or children born outside of marriage. Yet customary laws on inheritance also have many positive values, such as flexibility and familiarity.

What to do? The problems with the current system were highlighted by the Berendt case in 2003. In this case, the High Court ruled that several sections of the “Native Administration Proclamation 15 of 1928” are unconstitutional violations of the prohibition on racial discrimination in Article 10. These complicated provisions treated the estates of deceased blacks as if they were “Europeans” in some circumstances, while requiring in other circumstances that they should be distributed according to “native law and custom”. The Berendt case also struck down the legal provision which gives magistrates power to administer “black estates” while other estates go to the more specialised jurisdiction of the Master of the High Court. Parliament was given a deadline of 30 June 2005 to replace these offensive sections with a new system. This deadline was extended to 30 December 2005. (The Berendt case did not deal with the separate system for Rehoboth Basters, but this is probably also unconstitutional for the same reasons.)

Just before the end of 2005, Parliament passed a law intended to comply with the court order in the Berendt case – the Estates and Succession Amendment Act, 2005. But this law was a very strange one. In essence, it said the following: All the portions of the Native Administration Proclamation which the court found unconstitutional are



repealed. But the rules contained in those laws will continue to apply to the same people as before, just as if they had not been repealed. The only thing that will change is that all estates will be administered by the Master of the High Court. But since the Master does not have offices throughout the country, the Master can delegate powers to magistrates. In other words, Namibia's systems of inheritance will continue to work almost exactly as they did before the Berendt case.

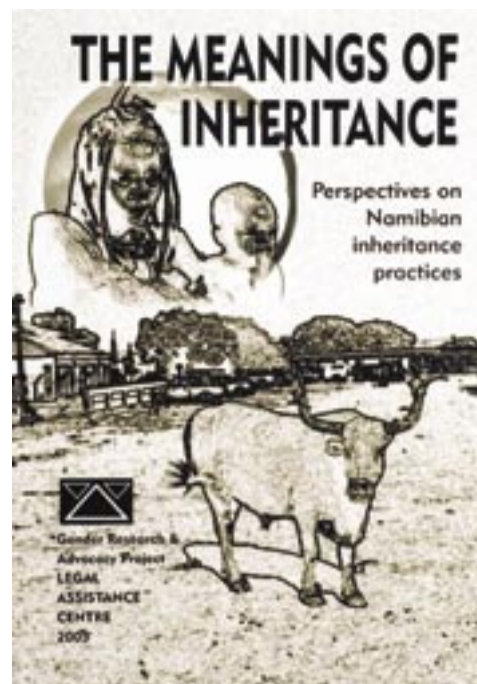
This means that law reform on the difficult questions about inheritance is still a matter for the future.

The Gender Research & Advocacy Project would argue that there are several guiding principles that any new law on inheritance should serve:

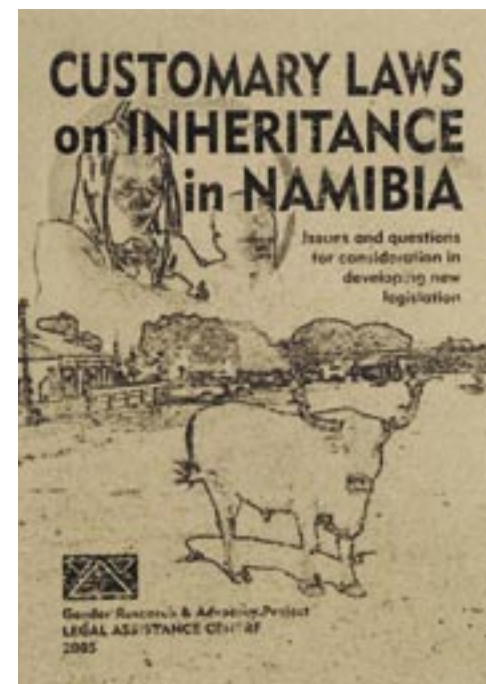
1. Unconstitutional aspects of the law on inheritance must be changed.
2. Where people make wills, their wishes should generally be respected – although it should be possible to use part of the deceased's property to provide maintenance for the deceased's dependants before looking to the will.
3. The laws on inheritance should make sure that the deceased's spouse and children are provided for in some way.
4. Where the deceased was a man in a polygamous marriage who died without a will, all of the wives should share in the estate. (Even if polygamy is outlawed in the future, there will still be wives in polygamous marriages from the past.)
5. Property-grabbing should be stopped.

We would also say that there should be more emphasis on providing for the basic needs of the deceased's dependants before anything else, so that the death does not create financial hardship for anyone. If basic maintenance of all the deceased's dependants is provided, this might reduce disputes about who should get the remainder of the deceased's property.

We believe that the spouse and children living in the household of the deceased at the time of the deceased's death should be allowed to continue living there, at least while the children are still of school-going age. This would make the death less disruptive for the household of the deceased. Furthermore, the Communal



Land Reform Act already allows the surviving spouse to remain on the deceased's communal land. If no provision is made for households elsewhere, then it could be argued that spouses outside communal areas are being discriminated against as compared to spouses inside communal areas. On the other hand, the house might be the only property of the deceased with any significant value, so there might be conflicts of interest between the children of the deceased who were living in the household and the children of the deceased who were living elsewhere.



It will be difficult to find a new system of inheritance which will be fair and accepted by everyone. Should there be one system of inheritance for everyone in Namibia? Should the parts of customary law on inheritance which are consistent with our Constitution be preserved? Should there be a new system which tries to draw on the good points of both customary law and general law?

These are complicated questions which call for much discussion and debate. Do you want to know more? The Gender Research & Advocacy Project has published a range of materials on inheritance:

INHERITANCE ISSUES: Information and feedback from community consultations on inheritance law reforms

This magazine-style publication presents options for law reform and records the feedback of 80 participants from all walks of life in different parts of Namibia who attended a workshop hosted by the Gender Research & Advocacy Project in 2005. It also records feedback from separate discussions held in Ongwediva and Omaruru and includes some information on the experience of neighbouring African countries. This is a short and accessible introduction to the topic. ■

THE MEANINGS OF INHERITANCE: Perspectives on Namibian Inheritance Practices

This book is a collection of essays based on academic research on inheritance. There is much detailed information about the inheritance practices of different communities which is buried in long documents that are not easy for most people to understand. This book contains summaries of research which provides insight into the complex role of inheritance in different communities. ■

CUSTOMARY LAWS ON INHERITANCE IN NAMIBIA: Issues and questions for consideration in developing new legislation

This is a report of an in-depth study which contrasts a patrilineal system (Vaalgras, which combines some Herero and Khoekhoegowab traditions), a matrilineal system (Ovambo customary law in Oshikoto, Ohangwena and Omusati regions) and a double descent system (Herero customary law in Epukiro and Okakarara). The research also draws on historical material and interviews with a variety of individuals. The report also includes information on approaches to inheritance in South Africa, Ghana, Zambia and Zimbabwe. It concludes with a range of recommendations for law reform in Namibia. ■

All three publications funded by
Austrian Development Cooperation
through the North-South Institute.



funded by Austrian Development Cooperation through the North-South Institute and UNICEF

Namibia Domestic Violence and Sexual Abuse Service Directory

This publication is a directory of organisations providing services to persons who have suffered domestic violence or sexual abuse. The directory includes details about the services offered by different organisations as well as their contact information. The services are also listed by region so that you can easily find out what is available in your area. This directory was first published in 1999 and updated in 2005. ■

Guidelines for Service Providers on Rape and Domestic Violence Cases

The Legal Assistance Centre has compiled and published Guidelines for Service Providers on the Combating of Rape Act of Namibia and Guidelines for Service Providers on the Combating of Domestic Violence Act of Namibia. The guidelines are intended for professionals who deal with persons who have suffered rape or domestic violence – police, medical personnel, prosecutors, magistrates, social workers and counselors.

These guidelines were actually drafted by members of the professions in question. The draft guidelines were then circulated to professionals from every region in the nation for comment. They were discussed in numerous workshops, and revised in light of the comments received. They were also discussed widely with members of the public, and with psychologists and counselors who deal directly with complainants in cases of gender violence.

National guidelines are helpful because they set the standard for a consistent and sensitive professional response. They will help service providers from different professions see how their various duties and responsibilities fit together. The guidelines are also useful for people who work with survivors of gender-based violence, so that they can understand how the system should work to serve those complainants effectively.

There is a saying that a picture is worth a thousand words. With this in mind, the Gender Research & Advocacy Project is also in the process of preparing training videos for specific service providers. We have already received positive feedback on our videos on domestic violence for clerks of court. Videos on rape for prosecutors as well as videos on maintenance for maintenance officers are almost ready for distribution.

We believe that these interventions can help service providers to do their demanding jobs more sensitively and more expertly – and more expert services should mean more protection for women and children against violence. ■

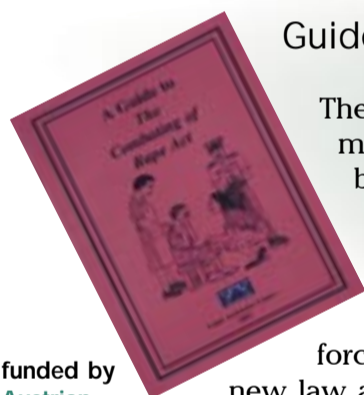


Guidelines funded by

US-AID through the Namibian Institute for Democracy and the Embassy of the Royal Netherlands. Training videos funded by the Embassy of the Royal Netherlands and the Royal Danish Embassy.

GUIDES TO KEY GENDER-RELATED LAWS IN SIMPLE LANGUAGE

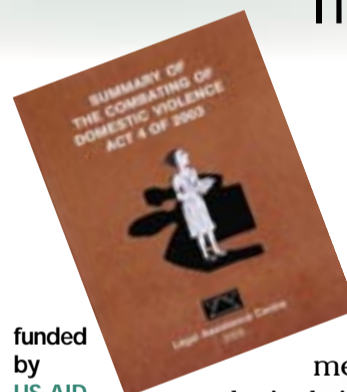
Guide to the Combating of Rape Act



funded by Austrian Development Cooperation through the North-South Institute, the Democracy and Human Rights Fund of the US Embassy, US-AID through the Namibia Institute for Democracy and UNICEF

The Combating of Rape Act 8 of 2000 was a major milestone in Namibia's battle against gender-based violence. This law is one of the most progressive pieces of legislation on rape in the world. It introduces a broad, gender-neutral definition of rape and moves the focus away from the "consent" of the rape victim to the force or coercion used by the perpetrator. This new law also creates new duties for police officers and prosecutors who deal with victims of rape, to give greater protection to the complainant.

The Gender Research & Advocacy Project has published a detailed Guide and a shorter Summary which explain the rape law. The Guide is aimed primarily at community leaders and people who work with the law as service providers, while the Summary is aimed at the general public. Both are available in English, Oshiwambo, Khoekhoegowab, Otjiherero, Rukwangali and Silozi. The Afrikaans translations are currently out of stock. ■



funded by US-AID through the Namibia Institute for Democracy, Austrian Development Cooperation through the North-South Institute, Namibian Literacy Trust, the Democracy and Human Rights Fund of the US Embassy and Colegio de Abogados de Málaga

Guide to the Combating of Domestic Violence Act

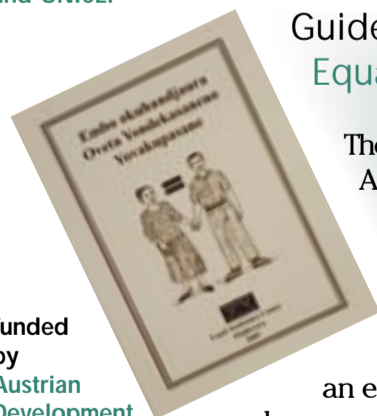
The new law on rape was followed by a companion piece of legislation on domestic violence, the Combating of Domestic Violence Act 4 of 2003.

This law covers a range of forms of domestic violence, including sexual violence, harassment, intimidation, economic violence and psychological violence. It covers violence between husbands and wives, parents and children, boyfriends and girlfriends and between family members. The law gives those who have suffered violence alternatives to laying criminal charges, by setting up a simple, free procedure for getting a protection order from a magistrate's court. A protection order is a court order directing the abuser to stop the violence. It can also prohibit the abuser from having any contact with the victim. In cases of physical violence, it can even order the abuser to leave the common home. It is possible for people who have suffered domestic violence to seek a protection order and lay a criminal charge at the same time if they wish. There are social provisions to protect the privacy of a complainant who lays a charge, and provisions which will make the court process less traumatic.

The Gender Research & Advocacy Project has published a detailed Guide and a shorter Summary which explain the law on domestic violence. The Guide reproduces the key forms needed to apply for a protection order and explains how to complete them.

Both publications are available in English. Translations into Afrikaans, Khoekhoegowab Oshiwambo and Otjiherero will be ready soon. ■

Guide to the Married Persons Equality Act



funded by Austrian Development Cooperation through the North-South Institute and UNICEF

The Married Persons Equality Act 1 of 1996 was instrumental in abolishing the unconstitutional marital powers of the husband and placing husbands and wives in Namibia on an equal footing. Men and women who are married in civil marriages in community of property must now consult each other on all important financial transactions, as equal partners. To explain how the new system works, the Gender Research & Advocacy Project of the Legal Assistance Centre has published



funded by Austrian Development Cooperation through the North-South Institute and UNICEF

a detailed Guide and a shorter Summary. These publications are available in English, Afrikaans, Khoekhoegowab, Oshindonga, Rukwangali, Otjiherero and Silozi. ■

the maintenance system in simple language, including a step-by-step guide to seeking a maintenance order. The Guide reproduces the key forms needed to apply for a maintenance order and explains how to complete them. Both publications are available in English. Translations into Afrikaans, Khoekhoegowab, Otjiherero, Oshiwambo, and Rukwangali will be ready soon. ■

Guide to the Maintenance Act

In the past, the difficulty of securing child support from absent fathers has been a key issue affecting children's welfare and women's economic independence. The Maintenance Act 9 of 2003 has made significant changes to the maintenance system, to make it more efficient. The new law provides for the sharing of expenses incurred during pregnancy. It gives clear guidelines for deciding on how much maintenance should be paid. It also provides new methods of enforcement to use when maintenance payments are not made.

The Gender Research & Advocacy Project's Guide Summary explains

WHAT TO DO IF YOU ARE RAPED

1. **Do not wash your body or change your clothes.** This would destroy signs of the rape which can be used to make sure that the rapist is found guilty in court. Do not tidy up the place where the rape happened. Do not wash anything which might have evidence such as blood or semen on it. Wrap items in newspaper for safekeeping – do not put anything inside plastic packets as plastic can damage the evidence.
2. **Go to a doctor, clinic or hospital.** You must get medical help right away. You might want to go to a doctor, clinic or hospital even before you go to the police, especially if you have been hurt. You must be sure to explain that you have been raped. If you go to the police first, they will take you to the hospital or clinic.
 - **Get PEP immediately.** PEP (post-exposure prophylaxis) is a medicine which can greatly reduce the chances of being infected with HIV as a result of a rape. It works only if it is taken immediately after the rape and continued regularly for 1 month. The course of medicine **MUST** begin with 48 hours of the rape, or it will not work.
 - **Ask the doctor about medicine to prevent infection with other sexually-transmitted diseases** such as syphilis or hepatitis. It is also best to start taking this medicine as soon as possible.
 - **If you could be in danger of falling pregnant from the rape,** ask your doctor for pills that can prevent a pregnancy. These pills will work only if they are taken right after the rape.
 - **Get information about follow-up testing.** It is important to be tested at the right times for HIV, for other diseases that could result from the rape and for pregnancy. You can also get counselling which will help you to feel less afraid about having these tests.
3. **Lay a charge with the police.** You should report the rape to the police so that the person who raped you can be caught. This might prevent the rapist from raping someone else. Contact a Woman and Child Protection unit if possible, as the police in these units have specialised training on dealing with rape cases. The police can help you get to a hospital or a clinic. They can collect evidence which will be helpful in the court case. You should bring a change of clothes with you to the police station so that they can keep the clothes you were wearing during the rape as evidence. If you are afraid that the person who raped you may come back and hurt you, be sure to tell the police. If you have a good reason for being afraid, then the person who raped you will not be set free on bail. ■

Each year Dianne Hubbard of the Gender Research & Advocacy Project of the Legal Assistance Centre provides an overview of annual developments in gender and the law. Here is the rundown on 2005.

GENDER SCORECARD 2005

The good	The not so good
The Ministry of Women Affairs and Child Welfare changed its name to the Ministry of Gender Equality and Child Welfare. The new name is more holistic, and it no longer sounds like something that worries jealous husbands.	Problems with implementation have undermined the effectiveness of the Namibia's progressive new laws on domestic violence and maintenance. The officials responsible for administering these laws have not received sufficient training. The provisions which look lovely on paper are not yet working so well in practice.
Women are moving into higher and higher places in Namibia, as evidenced by our first female Deputy Prime Minister.	The new Parliament which took office in 2006 contained fewer women than the previous one. Namibia has not reached the SADC goal of 30% women in decision-making positions.
Both the President and the Prime Minister made strong statements against gender-based violence, and the government has promised to take increased action on this issue. We hope to see these promises made good in 2006.	Violence against women and children reach new heights of horror in 2005, with child rape running rampant and the nation in a state of shock over the beheading of Juanita Mabula.
The new Labour Act provisions prohibiting sexual harassment and discrimination on the grounds of pregnancy look set to survive the fine-tuning of this law in 2006, along with the improved maternity benefits. The substantive provisions of this new law are not yet in force, but will hopefully come into action in 2006.	The Estates and Succession Amendment Act passed in late 2005 reformed the administration of the estates of deceased persons, but did not touch the problematic substance of the rules which govern inheritance.
Three films explaining the Combating of Domestic Violence Act were produced by the Ministry of Gender Equality and Child Welfare and screened on NBC in late 2005. We hope to see more practical initiatives like this.	Provisions were added to the Criminal Procedure Act back in 2003 to reduce the trauma of court proceedings for children and other vulnerable witnesses. But reports from courts around the country indicate that few of these provisions are being used in practice.
The Children's Status Bill, which will deal with the position of orphans and children born outside of marriage, was referred to the National Council's Committee on Gender, Youth and Information for further hearings. Congratulations to the National Council for refusing to rubber-stamp an important bill like this, particularly in light of its complex history in the National Assembly.	The Child Care & Protection Bill, long anticipated as a central piece of children's legislation, is still nowhere in sight. The fact that it has long languished with the technical drafters at the Ministry of Justice shows that it is not a top political priority. This law is expected to provide better support for children in need of care or protection, to institute an improved system for adoptions, and to provide increased protection against child exploitation and other harms. Where, oh where, has this crucial bill gone?
The same committee held hearings on sex work as part of its investigation of the plight of sex workers, street kids and other vulnerable persons. The recommendations on sex work showed real sensitivity to the economic desperation which drives many into this soul-destroying work.	The Law Reform and Development Commission produced draft Bills on Divorce and on the Recognition of Customary Marriage in early 2005. New laws in these fields are urgently needed. What has happened to these initiatives? Let us hope to see them moving forward in 2006.
The Law Reform and Development Commission has begun an investigation into possible law reforms in the area of marital property. Its attention to important family law issues such as these is very welcome.	When it comes to gender and the law, there is still a big gap in knowledge and services between urban women and rural women. Government and civil society both need to keep searching for better ways to reach Namibia's rural population.
The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa came into force on 25 November 2005. Namibia signed the Protocol on 9 December 2003 and ratified it on 11 August 2004.	Namibia is behind schedule with its reports in terms of the UN Convention on the Elimination of All Forms of Discrimination Against Women and the UN Convention on the Rights of the Child, a factor which weakens the practical influence of international treaties such as these.
Events of 2005 show that talk is easier than action, and passing laws is easier than implementing them. Let 2006 be a year of concrete action on the ground to make rights for women and children a reality. ■	

“The Legal Assistance Centre (LAC) is a driving force behind gender law reform ...”

– Debie LeBeau and Eunice Iipinge, “Namibia's Progress towards Gender Equality: Post-Beijing Policies and Programmes” in Justine Hunter, ed, Beijing +10, *The Way Forward: An introduction to gender issues in Namibia*, NID, 2004

What will the Gender Research & Advocacy Project do next?

This list contains the **main projects** we will work on in 2006:

- We will complete of a major research project to monitor the **implementation of the Combating of Rape Act** by observing selected court cases, examining court records and police dockets and interviewing complainants and key informants.
- We will begin a companion study on the **implementation of the Combating of Domestic Violence Act** which will probably continue into 2007.
- We will collect public feedback on the **draft Divorce Act** and the **draft Recognition of Customary Marriages Bill** proposed by Law Reform and Development Commission, particularly from rural areas, so as to involve more rural men and women in the law reform process.
- We will plan a major research project on **cohabitation**, building on preliminary field work already conducted and analysed.
- We will collect information on the **implementation of the Maintenance Act** and make recommendations for improving its application.
- We will publish a research paper on **corporal punishment of children in the home**, looking at legal approaches to this issue in other countries as well as practical alternatives.
- We will conduct research on **policies on teenage pregnancy and schools** in other African countries, with a view to seeing if we can make any recommendations for dealing this issue more effectively in Namibia.
- We will make legal and policy recommendations on the problem of **children engaged in sex work and the trafficking of children**.
- We will produce **radio programmes** on a range of issues concerning gender and the law, hopefully utilising the various languages services.
- We will continue **training** members of the public on advocacy skills and gender-related laws, and training of service providers in partnership with government to promote more effective implementation of such laws.



Norman Tjombe, Director of the Legal Assistance Centre (LAC) and Rev Strydom, Secretary General of the Council of Churches in Namibia (CCN), recently signed a memorandum of agreement on joint activities to promote gender equality. This is the first formal partnership between the two groups since independence. Among the activities covered by the agreement are training on family law issues for church leaders and training of pastors' spouses on gender-based laws, with a view to empowering them to play a more confident role in the church community. The two leaders expressed their hope that this agreement will be the beginning of an era of closer cooperation on issues of common interest.

- We will publish simple-language **educational materials on inheritance, gender issues in Labour Act**, and the **Children's Status Act**, translated into Namibia's main indigenous languages. If funding can be obtained, we also hope to produce **education material on rape for blind persons**.
- We will publish a book of **collected essays on gender and sexuality**, with the goal of making academic research in Namibia on this important topic more accessible to the public and policy-makers.
- Working together with the Council of Churches in Namibia, we will provide **pilot training on family law issues to Ecumenical Committees** and we will co-produce with CCN a **pamphlet on relevant family law issues for use in pre-marital counselling**. ■



HUMAN RIGHTS AWARDS FOR COMBATING GENDER-BASED VIOLENCE

All over Namibia there are unsung heroes and heroines who are battling to promote gender equality and to make gender-based violence a thing of the past. Who are they? Where do they live? What have they achieved?

To highlight their work, show appreciation for their efforts, and inspire us all, the Gender Research & Advocacy Project will be calling for nominations for these awards in 4 categories:

- Human Rights Award for Combating Gender-Based Violence **Overall**
- Human Rights Award for Combating Gender-Based Violence **through the Media**
- Human Rights Award for Combating Gender-Based Violence **amongst Young People**
- Human Rights Award for Combating Gender-Based Violence **in Rural Areas**

Please send nominations to Anne Rimmer at the Legal Assistance Centre (arimmer@lac.org.na). Watch the press for further details about these prestigious awards. ■

Donors past and present

We would like to extend our most heartfelt thanks to the many donors who have made our work possible over the past years:

- Austrian Development Cooperation through the North-South Institute
- Department for International Development (DFID)
- Ford Foundation
- Government of Finland
- Colegio de Abogados de Málaga (Lawyers' Association of Malaga, Spain)
- Namibian Literacy Trust
- National Democratic Institute
- Royal Danish Embassy
- Royal Netherlands Embassy
- SIDA
- US-AID through the Namibia Institute for Democracy, Development Alternatives, Inc. and the Women's Legal Rights Initiative
- UNICEF
- UNDP
- UNIFEM
- US Embassy

Funding for the Gender Research & Advocacy Project

We have had many donors over the years. However, all over the world, funding for gender work is becoming increasingly difficult to find. Funding for NGO work in Namibia in general is also harder to find now that Namibia is a well-established democracy with 15 years of independence behind it. The Gender Research & Advocacy Project is currently operating with a reduced staff, which limits our ability to reach as many people as we would like.

But gender equality is not yet a full reality in Namibia. Great strides have been made in the law which applies to violence against women, but these laws have not yet stopped the epidemic of violence. And family law and child law are only beginning to receive attention. The next decade will be a crucial window of opportunity for legal development around gender issues – a time to carry on writing new laws, and to make sure that these new laws are working as they should.

A great deal of work on gender and the law still needs to be done. ■

WOULD YOU LIKE TO HELP?

Please contact the Gender Research & Advocacy Project if you would like to **make a financial donation** to our work.

Naomi Kisting
tel: 061-223356
nkisting@lac.org.na



MORE INFORMATION ON THE LEGAL ASSISTANCE CENTRE

What is a public interest case?

A public interest case is a legal case which will have a wider impact on the community than just assisting the individual concerned. Such a case may establish a new legal rule, which will change the law for the entire country. Or it may give attention to a problem that is affecting many people.

The LAC's time and resources are limited, so we have to choose carefully which cases we can take. We normally only consider assisting when the person concerned cannot afford a lawyer. When we have decided to take up a case, we provide a lawyer's services free of charge.

Examples of public interest cases taken up by the LAC include:

- the right of a school learner to return to school soon after her child was born
- the right of accused in a criminal trial to obtain legal aid
- the right of a widow to keep the land she lived on during her marriage after the death of her husband
- the right of an HIV + person not to be dismissed from employment based on his or her HIV status

The number of legal cases we can take up varies from time to time, depending on the resources available. During 2006 we are particularly keen to hear about cases which relate to:

- property grabbing following a death
- problems with customary marriage and divorce
- your right to health, housing, water and a clean environment

We usually can NOT help with the following types of cases, unless they involve a Constitutional issue such as discrimination or violation of fundamental rights:

- criminal cases
- divorce cases
- labour cases
- maintenance cases
- contractual disputes between individuals
- liquidation and distribution of deceased estates.

Even if we cannot help you with your case, we may be able to give you information on your rights and on steps you can take to help yourself. ■

Research

The LAC carries out research, particularly on the need for new laws and the implementation of existing laws. Some recent research reports which are available are:

- *Marital Property in Civil and Customary Marriages: Proposals for Law Reform*
- *Customary Laws on Inheritance in Namibia: Issues and questions for consideration in developing new legislation*
- *Implementation of the Combating of Rape Act* (to be released in 2006)
- *A Place We Want to Call Our Own: a study on land tenure policy and securing housing rights in Namibia*



Legal information and advice

We provide legal information and advice on human rights issues to anyone requesting it, particularly on the following topics:

- HIV/AIDS – including advice on what to do if you are discriminated against, information on workplace policies, access to treatment for HIV
- Child Justice – including children in detention
- Gender equality – including information on rape, domestic violence, sexual harassment in the workplace, inheritance, marriage, divorce and maintenance
- Human rights and the Constitution – such as the right to education and the right not to be tortured or ill-treated
- Land, Environment and Development – including inheritance, conservancies, illegal fencing, environmental issues, and issues affecting especially disadvantaged groups such as the Himba and the San.

If you want to speak to a paralegal about a legal issue you are concerned about, phone us or come to the office (open Monday to Friday, 0800 to 1300, and 1400 to 1700).

Our procedure at the LAC is that a paralegal takes your statement and then gives it to one of our lawyers to see if they can help in your case. If it is a very urgent case, we will try to refer it to one of our lawyers right away. Otherwise, we will telephone you after a lawyer has read your statement to tell you if we can help or not. We have this procedure because our lawyers cannot deal directly with the many requests for help we receive each week. Also, it may become clear that your case is not one that the LAC can take on, and if so the paralegal may be able to give you information about where you can go to get help.

All the information you give is confidential to the LAC. ■



Education and training

We produce information for educational purposes – books, booklets, leaflets, videos and radio programmes. Examples of our publications include a booklet containing the Constitution, simple guides to laws on rape, domestic violence, maintenance and communal land. Most of these are available in a number of languages. See our website for full information. Our office has a list of all the publications.

We also run training workshops for communities and service providers (such as legal officials, police and social workers) on:

- Advocacy – influencing decision-making at all levels
- Gender-friendly laws including rape and domestic violence
- Communal Land Reform Act and conservancy-related legislation
- HIV/AIDS and rights, including testing, confidentiality, affordable drugs and discrimination

There is a big demand for our training. We will consider all requests, but due to limited resources we may not be able to agree to every one. If we cannot conduct training we may be able to offer other resources. ■

Law reform and advocacy

We advocate for law reform based on our research. Recent laws which the LAC contributed to and advocated for are:

- Combating of Rape Act
- Combating of Domestic Violence Act
- Maintenance Act
- Non-discrimination on the basis of HIV in the Labour Act

We welcome any comments about our work and the services we provide.

All our services are free of charge. Donations are very welcome.

The text in this supplement was written by Dianne Hubbard, working together with other staff of the Gender Research & Advocacy Project.

The design and layout are by Perri Caplan, designer of most of the Project's publications.

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