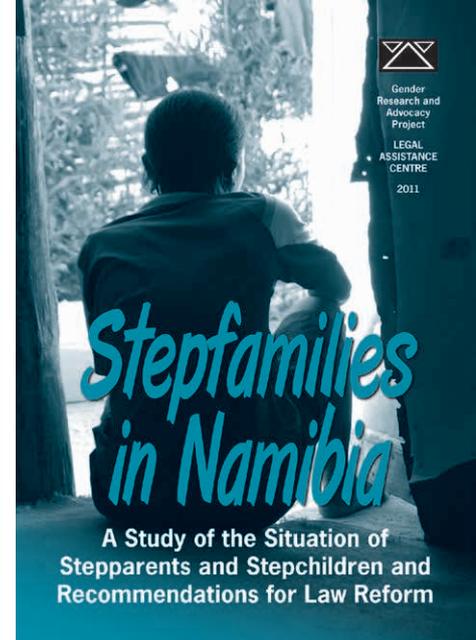




# Summary of Findings and Recommendations from *Stepfamilies in Namibia*



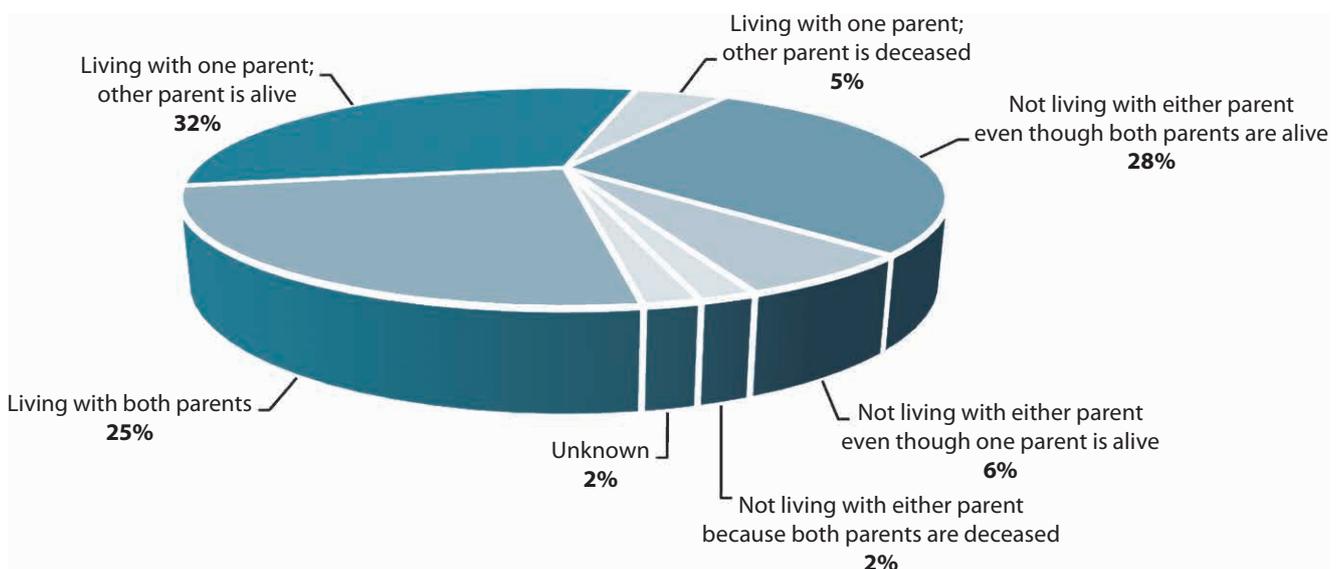
## What is a stepfamily?

A stepfamily is a family where children live with one biological parent and that parent's spouse or partner.

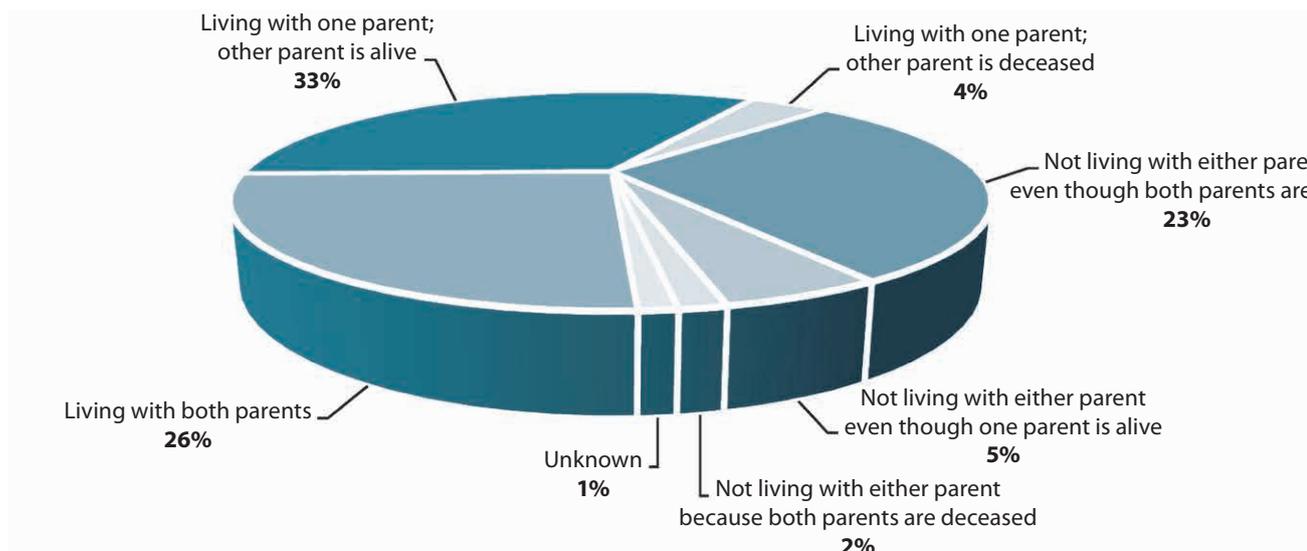
## How common are stepfamilies in Namibia?

Namibia has a wide diversity of family arrangements, and stepfamilies are very common. According to the *Namibia Demographic and Health Survey 2013* (the most recent such study), only one out of four children under age 18 (25%) live with both their parents. Far more children – about 37% of children under age 18 – live with only one of their parents. We do not know whether these one-parent households involve stepfamily scenarios, but it is likely. The high incidence of stepfamilies in Namibia is a product of shifting demographic trends, the history of apartheid-era contract labour practices, informal polygamy, the impact of HIV/AIDS, a decrease in marriage rates and an increase in informal cohabitation.

### Living arrangements of Namibian children under age 18



## Living arrangements of Namibian children under age 15



## Why did the LAC conduct research on stepfamilies?

There is little information about stepfamily dynamics and the situation of stepchildren in Namibia. We know from media reports, studies on domestic violence and accounts from children themselves that stepchildren can face particular problems with discrimination and abuse, and that stepfamilies face unique challenges. Stepparents and stepchildren are “legal strangers”, in the sense that there are no laws in Namibia that govern their relationship. The purpose of the study *Stepfamilies in Namibia* was to explore the situation of stepparents and stepchildren and offer an in-depth discussion of relevant law reform options, informed by views of the public.

## How was the study conducted?

Between 2010 and 2011, researchers collected information about stepfamilies through focus group discussions, individual interviews and key informant interviews involving 199 people – 88 males (44%) and 111 females (56%). The input came from both urban and rural areas in five regions of the country (Caprivi, Karas, Khomas, Kunene and Ohangwena).



## What did the study find?

Participants in every region viewed stepchildren as being disproportionately vulnerable to physical, emotional, economic and sexual abuse – such as beatings and psychological abuse based on the child’s non-biological status. In particular, sexual abuse of stepdaughters by stepfathers was cited as a widespread problem throughout the country. On the other hand, positive relationships between stepparents and stepchildren were also described, demonstrating the great importance this family relationship can have for children. Overall, our findings point to the need for greater support for stepfamilies and law reforms which provide some recognition of the stepparent-stepchild relationship.

## What does it mean to be a “stepparent” or a “stepchild”?

The research shows that people understand stepfamilies to involve situations where a parent lives with a partner who is not the biological parent of the partner’s child. Although some participants felt that a person only becomes a stepparent to a partner’s child upon marriage, most felt that stepfamilies also arise as a result of informal cohabitation relationships which are common in most communities. In some regions, the terms “stepparent” and “stepchild”, in various languages, were viewed as being disrespectful and not widely used.

*“The moment you call them stepchildren it is stigma.”*

– adult participant in Keetmanshoop

## Rights and responsibilities of stepparents towards stepchildren

### Care and support

Focus group respondents in every region strongly felt that stepparents have responsibilities to care for and support their stepchildren. For many, the most important factor was not whether the biological parent and the stepparent are married, but whether the stepparent and the stepchild share a household. Many felt that when you enter into a relationship with a person who already has children, you must take that partner and children as “a package.” However, although there was widespread agreement that stepparents should “take responsibility”, participants frequently indicated that this was not necessarily happening in their communities.

Some study participants expressed the view that responsibility for stepchildren lasts only as long as the stepparent is in a relationship with the biological parent, but others said that this depends on the situation and that the bond between the stepparent and stepchild has to be considered.

*“There is a strong tradition to care for stepchildren. It is a must. You just have to.”*

– adult participant in Khorixas

*“Just because he is dating the mother, her child is not his responsibility – what if he has his own kids to take care of?”*

– youth participant in Katutura

*“Stepchildren are just like the biological children. If you love the person, you accept the kids. It is a package.”*

– adult participant in Katutura

### Discipline

Most adults interviewed felt that a stepparent has the right to discipline a stepchild living in their home, especially if the stepparent is helping support the child. Youth participants were somewhat less supportive of this position, with some saying that only the biological parent is entitled to discipline a child. Both youth and adult participant responses in every region indicate that the most common form of discipline is “beating”, although youth were noticeably less likely than adults to view this as an appropriate response.

# Problems facing stepchildren and stepparents

## Discrimination and neglect

Respondents in both adult and youth groups overwhelmingly conveyed the sense that stepchildren often suffer from discriminatory treatment within the home. This was the most frequently-cited problem facing stepfamilies in the study overall. In every region, there were reports of stepchildren being discriminated against in terms of access to money, food and clothes, as well as being forced to do an unequal share of household labour.

*"It is very bad because I am not treated the same - I live with my father and stepmother. She treats me hard. I am scared to talk to my dad. You feel ashamed and displaced."*

- adult participant in Opuwo

*"The biological kids eat first, and there is no food left. In class, the biological kids are dressed nice, the others are not even washed."*

- kindergarten teacher in Katutura

*"My stepfather, he doesn't like me and also he does not want to pay for my school fees and also to buy for me clothes and other different things like food and school uniforms. My stepfather he used to treat me in a bad way, so everything that I want I just tell my mother, then she tries her best to buy for me and she is the one who pays for my school fees."*

- youth participant in Okangwati

*"Lack of education is a problem, if there is very little money the stepchild is the last one to get the education."*

- social worker in Windhoek



## Abuse

Abuse was identified as a serious problem facing stepchildren in every youth and adult focus group and in every interview. Participants in all regions cited examples of physical abuse, emotional and verbal abuse, economic abuse and neglect, and sexual abuse. Most striking was the frequency with which participants raised the issue of sexual abuse of stepdaughters by stepfathers. Stepmothers were most often implicated as the perpetrators of emotional and verbal abuse, economic abuse or neglect – with physical abuse by stepmothers being less often mentioned. Adult participants in most regions also raised concerns about the abuse of stepparents, particularly stepmothers, by older stepchildren.

*"There is a plant in Namibia with very sharp leaves that sting, it is called stepmother's tongue."*

– social worker in Windhoek

*"The stepfather will say, if you want this thing – food, school fees – you have to have sex."*

– adult participant in Opuwo

*"The stepmothers torture them so much ... they are misused in cooking and the house, no time to study."*

– adult participant in Katutura

*"When a woman with a beautiful young daughter wants to get married you must be very careful – you are a stepping stone to the daughter. I think it happens often. I have had many clients with this problem."*

– social worker in Windhoek

## Sending children away

Participants in every region mentioned that it is very common for a parent who enters into a new relationship to send a child away to live with other relatives. Reasons most often cited for this practice were that the new partner does not want the child or, if the child is a girl, that she may be at risk of sexual abuse if she is brought to live with a new stepfather. Youth participants spoke about this as a hurtful practice.

*"Sometimes the men say I need just you alone, you can't bring the kid. The kid gets left with the grandmother, or a sister or auntie or other relative."*

– adult participant in Katutura

*"The parents will try to force the stepchild into a hostel so that they don't have to take care. They will make an excuse – the child is too wild, the child will do better here – but the biological child stays in the house."*

– youth participant in Katima Mulilo

## Positive experiences

In every focus group, there were participants who described positive and happy relationships within stepfamilies, marked by support and care. A number of youth participants also spoke about the positive relationships they have with stepsiblings, whom they view simply as sisters or brothers.

*" I am staying with my stepfather a long time until now.  
My stepfather is treating me very nice ... And he said to me,  
'I am your father ; I am not really your father, but I am trying to be' ...  
He pays for my school fees and the hostel fees,  
he buys for me everything that I want."*

– youth participant in Sesfontein

*" I feel more at ease with my stepmother than with my birth mother.  
I tell her everything that really hurts me, that makes me smile, etc."*

– youth participant in Katima Mulilo

*"When I was age 3 my mother married my stepfather.  
He was like a real father and paid all fees and expenses.  
I was very lucky because my father took in my mom with five kids."*

– youth participant in Keetmanshoop

## Family conflict

Participants in every focus group, youth and adult, talked about problems of conflict and miscommunication within stepfamilies as adults and children alike try to adjust to the new family dynamic. Most groups felt that stepmothers were particularly likely to mistreat stepchildren and cause family conflict, while some adult groups highlighted the disrespectful or disobedient attitudes of “difficult” stepchildren.

*" Sometimes if you have stepchildren – you can't do anything.  
They won't listen to you. They say 'you're not my mother'."*

– adult participant in Katima Mulilo

*" They do suffer more. The research indicates that stepchildren  
are more prone to physical or sexual abuse. In my practice, I do often  
have people abused by a stepparent or the mother's boyfriend or an  
uncle (uncle is often used as a term for a mother's boyfriend)."*

– psychologist in Windhoek

## What does Namibian law say about stepfamilies?

There are no laws in Namibia which expressly govern the relationship between stepchildren and stepparents in Namibia. This means that stepchildren and stepparents generally have no legal rights and duties towards each other in the absence of formal adoption of the stepchild by the stepparent (which is not common in Namibia). Stepparents do not have any legal liability to maintain a stepchild. Stepchildren do not have any rights to inherit from a deceased stepparent's estate in the absence of a will.

A few statutes governing benefits, pensions, medical aid or other forms of assistance explicitly include a “*stepchild*” in their definitions of “*dependant*”. A few others define “*dependant*” to include anyone who was in practice dependent upon the person in question for maintenance – which could include stepchildren. However, stepchildren are clearly *excluded* from the definitions of “*dependant*” in some contexts, such as the Motor Vehicle Accident Fund Act.

*“There is so much talked about stepchildren, but not about stepparents. It needs attention.”*

– social worker in Windhoek

Relationships between stepchildren and stepparents are “*domestic relationships*” for purposes of the Combating of Domestic Violence Act as long as they have some actual connection of a domestic nature, such as where they are living in the same household or one of them is financially dependent on the other.



## What do other countries do?

Many countries are grappling with the legal implications of the changing dynamics of families and the increased prevalence of stepfamilies. Comparative law research by the Legal Assistance Centre found three basic models for legal responses.

- (1) Some countries automatically give stepparents full parental rights and responsibilities in respect of a child upon marriage to the child's biological parent.
- (2) Some countries give stepparents the option to voluntarily assume parental rights and responsibilities through parental agreements or court orders.
- (3) Some countries give stepparents a legal duty to support stepchildren financially, without legislating on other aspect of the relationship.

In some countries, legal rights and responsibilities come into play only where the stepparent is married to the child's biological parent. Other countries have broader approaches which cover stepparents who are informal cohabitation relationships with the biological parent. Some countries focus on the stepparent's relationship with the child, regardless of the relationship between the stepparent and the biological parent.

# Specific legal issues

## Parental rights and responsibilities

Parental rights and responsibilities refer to all the legal rights, duties, powers, responsibilities and authority a parent has in respect of a biological or adoptive child. There are a variety of ways in which stepparents can acquire parental rights and responsibilities with respect to a stepchild, aside from adoption. Some countries, such as Botswana, have laws granting automatic parental rights and responsibilities for stepparents upon marriage to the biological parent. In other countries, including England, stepparents can acquire full parental rights and responsibilities through legally-recognised parenting agreements or parenting orders. It appears to be a standard requirement in the countries surveyed that both parents of a child have the right to be notified and heard on court applications relating to the acquisition of parental rights and responsibilities over a child by a stepparent, and the right to be consulted where parental rights and responsibilities can be affected by agreements to this effect.

### In Namibia

Under the **Children's Status Act**, a stepparent who acts as the primary care-giver of a stepchild could apply for *custody* or *guardianship* of that child to a children's court. This would apply to a child born outside marriage or a child of divorced parents

The **Child Care and Protection Act**, which is will soon replace and improve the Children's Status Act, includes a somewhat broader provisions under which a stepparent could apply to a children's court for *custody* or *guardianship* of a child. Under this law, the stepparent would not have to be the primary care-giver to make the application. This procedure is available in respect of a child born outside marriage, a child of divorced parents or a child of estranged parents.

That statute also makes provision for persons other than biological parents to apply for rights of *access* to a child – and this provision is broad enough to include stepparents. For example, suppose that an informal relationship between a stepparent and a biological parent broke down after some years, but the stepparent and the stepchild had formed a strong bond. The children's court could make an order for access to the stepchild by the stepparent if it concluded that this would be in the child's best interests.

It is also possible that a stepparent might be able to get some parental rights and responsibilities in the process of getting a **divorce** from the stepchild's biological parent. There is at least one Namibian case where the High Court approved a settlement agreement that awarded joint guardianship of the mother's biological child to both her and the stepfather, and granted specific access rights to the stepfather – who agreed to pay maintenance for both the stepchild and a child born of the marriage.

As the upper guardian of all minor children in Namibia, the **High Court** has wide powers to make orders on custody, access and guardianship. However, due to its limited locations in Windhoek and Oshakati, and the costs associated with bringing a High Court application, this avenue is in reality inaccessible to most Namibians.

## Maintenance

Most countries impose some duty of maintenance on stepparents. In some countries, such as Botswana, this duty is automatic upon marriage to the child's parent. In other countries, such as Canada, a stepparent may be liable to maintain a stepchild if he or she "stood in the place of a parent", even without marriage to the child's parent. In Kenya, liability for maintenance by a stepparent depends on whether the stepparent treated the child as a "child of the family". In Zimbabwe and Australia, the duty of a stepparent to maintain a stepchild applies only if the biological parents are unable to maintain the child. In some countries, as in India and Canada, stepchildren also have a duty to provide financial support to stepparents in some cases.

### In Namibia

The Maintenance Act applies only "where a person has a legal duty to maintain another person" – and no such legal duty exists between stepparents and stepchildren. The absence of a legal duty of support also means that a stepchild would have no claim under common law for loss of support if the stepparent were unlawfully disabled or killed.

If a stepparent and a biological parent are married in community of property, then resources from the joint estate are applied to pay the expenses of the common household – which involves the stepparent, but only indirectly.

Stepchildren have no legal duty of support towards their stepparent in Namibia.

## Inheritance

In some countries, such as Botswana and Ghana, stepchildren are entitled to share in the estate of a stepparent. In other countries, such as Canada, inheritance from stepparents is not automatic and depends on the conduct and intention of the stepparent. In the United States and South Africa, a stepchild does not have a right to inherit in the absence of a will naming them as an heir. In England and Australia, stepchildren who were dependent on a deceased stepparent may be entitled to maintenance from that stepparent's estate.

### In Namibia

In Namibia, a stepchild has no right to inherit from a stepparent in the absence of a will, unless the child had been adopted (in which case the stepparent has legally become a parent).

Stepchildren also have no right to claim maintenance from a stepparent's estate.

*"If I die my things are for my family."*

– participant in Khorixas

*"It depends on the relationship."*

– participant in Katutura

## Abuse

There appears to be international consensus that stepparents may be liable in the same way as a parent for abuse or neglect of a stepchild.

### In Namibia

The Child Care and Protection Act (expected to come into force soon) makes it a serious offence for anyone who is caring for a child to abuse, neglect or abandon the child. The penalty is a fine of up to N\$50 000 or imprisonment for up to ten years, or both.

Protection orders under the Combating of Domestic Violence Act are available to protect against abuse in a “domestic relationship” – which is defined in a way that captures stepparents who live with or provide financial support for a stepchild.

With respect to sexual abuse, the Combating of Rape Act and the Combating of Immoral Practices Act prohibit the rape or sexual abuse of children and impose harsh penalties for these crimes. In the case of rape, the highest categories of minimum sentences apply when the rapist is a parent, guardian or caretaker or otherwise in a position of trust or authority over the victim – a definition which would clearly cover many stepfamily situations.

Other criminal offences such as assault or indecent assault might come into play in cases of abuse by stepparents or stepchildren.

## Proposals for law and policy on stepfamilies

The Namibian Constitution states that “the family is the natural state and fundamental group unit of society and is entitled to protection by society and the State”. There are a wide variety of family arrangements in Namibia, and stepfamilies are increasingly common. The Legal Assistance Centre believes that laws should evolve to recognise and protect these diverse family configurations that are part of the Namibian reality.

To that end, and based on the input received from research participants, the Legal Assistance Centre recommends the following key areas for action:

### Implement streamlined legal processes to enable stepparents to formally acquire rights and responsibilities with respect to their stepchildren

We suggest exploring options that allow stepparents to voluntarily formalise their relationships with stepchildren through processes which are more streamlined and accessible than formal adoption, and in a manner which need not necessarily extinguish the legal tie to the non-custodial biological parent. The procedures in the Child Care and Protection Act may provide assistance in this regard, but they are as yet untested. In the case of divorces involving stepchildren, law reforms on divorce should make it clearly possible for the court to consider custody, guardianship and access orders covering stepparents and stepchildren in appropriate cases, provided that the stepchild’s other biological parent is joined to the application.

**Attitudes amongst research participants:** There were mixed responses to the idea of giving stepparents automatic parental rights and responsibilities, with some pointing to the danger of this option in the context of stepchild abuse. Persons consulted were more consistently in favour of providing accessible options whereby stepparents can voluntarily acquire certain parental rights and responsibilities.

## Recognise maintenance duties between stepparents and stepchildren

Given the challenges that many stepchildren face in Namibia in terms of receiving adequate care and support, we recommend an amendment to the Maintenance Act introducing a provision imposing liability on stepparents to maintain stepchildren *where the stepparent is or was formerly married to the biological parent of the child and where the stepparent treated the stepchild as a child of the family*. However, this duty should be secondary to that of the biological parents and apply only upon application to the court, after consideration of specific factors. Stepchildren should have a reciprocal duty to maintain elderly or ill stepparents, if similar factors exist. Legislation designed to protect dependants (such as the Motor Vehicle Accident Fund Act) should also be amended to recognise stepfamily relationships, at least where the stepchild is in practice financially dependent on the stepparent .

**Attitudes amongst research participants:** A majority of those consulted felt that stepparents should have a legal duty to maintain stepchildren who share the same household, feeling that this would be beneficial to the children involved. However, others felt that this would be unfair, ineffective or a factor which would discourage relationships with people who already have children. Most felt that if stepparents are given a duty to maintain stepchildren, then there should be a reciprocal duty on adult stepchildren to maintain elderly or ill stepparents.

## Provide for maintenance of dependants from deceased estates

The question of whether stepchildren should have any rights to inherit from stepparents (in the absence of a will) seems particularly controversial. One alternative would be to retain the rule that stepchildren do not inherit from stepparents in the absence of a will, but to provide for maintenance of dependants of the deceased out of the deceased's estate before the remaining assets are distributed to the heirs.

**Attitudes amongst research participants:** There was disagreement on the question of whether stepchildren should have any right to inherit from a stepparent in the absence of a will, with strong opinions both for and against this idea. Some who favoured allowing inheritance thought that it should depend in part on the relationship between the stepparent and the stepchild, applying only where the stepparent has either married the biological parent or lived with that parent for a significant amount of time. Others felt that intestate inheritance should be limited to biological children, with some expressing worries about conflict between stepchildren and biological children if both had inheritance rights.

**" It [ laws governing stepfamily relationships ] can raise awareness that stepfamilies are not something to take for granted. It is something that it is just assumed people know how to deal with, but they don't. The bottom line is that it is a very complex thing. People need guidance and children need protection."**

- key informant

## Other policy recommendations

Legal responses are only one part of the picture. We recommend that a range of stakeholders - including government, social workers, community and church groups, counselling organisations and relevant civil society organisations – should consider incorporating the following steps into their programmes:

- (1) Expand public education and outreach on the vulnerability of stepchildren to domestic violence, sexual abuse and neglect.
- (2) Publicise relevant laws, services and resources available to assist children suffering mistreatment, abuse or neglect.
- (3) Expand and develop counselling services and support groups for stepfamilies.
- (4) Sensitise community workers, counsellors and social workers to the challenges faced by stepfamilies, and particularly by stepchildren.

*" I am so happy because I grew up with my stepfather.  
He was there whenever I needed him.  
I still communicate with my real father, we are good because  
I believe if not for him I would not have been in this world.  
For that I am grateful. My stepfather took my mother in with her  
5 kids and has 2 with my mom in the marriage and he does not  
make any differences between us, he is a father to all of us.  
Thanks god for a wonderful dad in our life."*

– youth participant in Keetmanshoop

*" A child is a child and children are equal, think about that.  
People of Namibia, if the child is not yours it is equal to your child."*

– youth participant in Erwee

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