

## WHAT STEPS TO TAKE FOR STEP-CHILDREN?

Dianne Hubbard, Legal Assistance Centre, 2001

A child is born to a single mother, who later marries and has four other children with her husband. She does not know the whereabouts of her first child's father. The existing law says that her current husband has no legal duty towards this firstborn child.

A widow with a child marries a man who already has two children. The mother of the man's two children is unemployed, and he pays maintenance for them. His wife is also unemployed, but under existing law he does not have any responsibility for his wife's child -- not even if she dies and leaves this child an orphan.

A divorced woman marries for a second time. Her ex-husband pays maintenance for the children of the first marriage, but the second husband is much more wealthy. The law does not give the second husband any responsibility toward the children of the first marriage, even if all the children are living in the same household. This could mean that the children of the first marriage have a different standard of living from the children of the second marriage, depending on the generosity of the husband.

All of these family arrangements involve "stepchildren". A stepchild is the child of one spouse but not the other. But who should be liable to maintain stepchildren? Does a person who marries take on some degree of responsibility for the dependents of his or her spouse? In other words, do you marry a single individual, or is it a package deal? And what about step-children who are born to one or another of the spouses *during* the course of the marriage, because of an extramarital affair?

The law says that biological parents and adoptive parents must contribute to the maintenance of their children. But there is no responsibility for step-parents to maintain step-children. A person acquires legal responsibility for the children of his or her spouse only if there is a formal adoption. This is true even if the step-child's other biological parent is dead, or destitute, or missing.

Does the existing law result in discrimination against step-children? If all the children in a household are eating from one pot, are family resources stretched farther to make what is available feed everyone, or are the step-children treated differently? What is the role of the extended family with respect to step-children? For example, sometimes the children of a first marriage go to live with their grandparents when there is a second marriage -- in that case, who should take responsibility for them?

The legal position of step-children raises extremely difficult issues. Yet it is a question which must be examined, because Namibia is characterised by many complex family arrangements whereby children of different sets of parents share a household. Issues involving step-children are also likely to become even more important as AIDS claims multiple members of some families.

The draft Child Care and Protection Act proposes that step-parents should be responsible for maintaining step-children, unless this responsibility is overturned by a court after considering the following factors:

- the length and circumstances of the marriage of the step-parent and the child's parent;
- the relationship between the step-parent and the child;
- the arrangements for the maintenance of the child; and
- any special circumstance which should be considered to avoid injustice or undue hardship.

Placing a duty on a step-parent to contribute to the maintenance of a step-child would not affect the duty of the biological parent of that child with respect to

maintenance. The biological parent would be expected to pay for a fair proportion of the child's needs. But even if the responsibility of the biological parent were given priority, the draft law would mean that step-parents would also have to make a contribution if necessary.

Would this work to help improve the position of step-children in practice? Or would it mean that men and women would become reluctant to enter into marriages if the intended spouse already had children with another person?

This issue has already been debated at several forums, and it has proved to be extremely controversial. There are good arguments both for and against changing the present law. The Legal Assistance Centre is working together with the Ministry of Women Affairs and Child Welfare to consider this topic, and we would like to have more input from the public. We are publishing this article in the hope of stimulating debate which will help law-makers choose the best policy on this point for Namibia. Tell us what you think.

Comments can be directed to Naomi Kisting, Legal Assistance Centre, tel: 223356, fax: 234953, PO Box 604 Windhoek, email: [NKisting@lac.org.na](mailto:NKisting@lac.org.na).