



Gender
Research and
Advocacy
Project

LEGAL
ASSISTANCE
CENTRE

2011

Stepfamilies in Namibia

**A Study of the Situation of
Stepparents and Stepchildren and
Recommendations for Law Reform**

Acknowledgements

The author of this report is **Christina Beninger**, a Canadian lawyer from the Canadian Bar Association Young Lawyers International Program, funded by the Canadian International Development Agency.

Dianne Hubbard and **Rachel Coomer** supervised the project and edited the final report.

Andrea Russell, a visiting Canadian lawyer from Lawyers Without Borders, assisted with preliminary field research and contributed legal research and drafting assistance to Chapter 3.

Christina Beninger conducted the field research and analysed the data. **Yolande Engelbrecht** assisted with conducting focus groups in some regions.

Rachel Coomer, **Yolande Engelbrecht** and **Christina Beninger** organised logistics for the field research. **Rachel Coomer** coordinated the finances for the project.

Perri Caplan did the design and layout of the report.

The report was printed by John Meinert Printing (Pty) Ltd.

Funding for this project was provided by the Dutch Ministry of Foreign Affairs, MDG3 Fund.



© Legal Assistance Centre 2011

4 Körner Street, Windhoek
P.O. Box 604, Windhoek, Namibia
264-061-223356
264-061-234953
Email: info@lac.org.na
Website: www.lac.org.na

An electronic version of this report is posted on the LAC website.

ISBN 978-99945-61-41-4

Contents

Chapter 1

BACKGROUND INFORMATION 1

1.1 Introduction 1

1.2 Stepfamilies in Namibia 4

1.2.1 Factors contributing to the rise in stepfamilies 4

1.2.2 Previous studies on stepfamilies 9

1.2.3 Problems facing stepchildren 11

Chapter 2

RESEARCH METHODOLOGY AND FINDINGS 29

2.1 Methodology 29

2.1.1 Focus group formats 31

2.2 Field research findings 37

2.2.1 “Stepparent” and “stepchild” terminology 37

2.2.2 Rights and responsibilities of stepparents towards their stepchildren 43

2.2.3 Problems facing stepchildren and stepparents 50

2.2.4 Positive relationships 67

Chapter 3

COMPARATIVE LAW ON STEPFAMILIES 71

3.1 Overview 71

3.2 Current law on stepchildren and stepparents in Namibia 73

3.2.1 Parental duties and responsibilities 74

3.2.2 Parental rights and responsibilities and stepparents 76

3.2.3 Maintenance 85

3.2.4 Inheritance 86

3.2.5 Abuse 87

3.2.6 Stepchildren as dependants in existing Namibian statutes 90

3.2.7 Identity of interest amongst stepfamily members in existing Namibian statutes 94

3.3 Laws on stepchildren and stepparents in selected other countries 96

3.3.1 Parental rights and responsibilities 96

3.3.2 Parental rights and responsibilities and stepparents 98

3.3.3 Stepparent's duty of maintenance 117

3.3.4 The reciprocal duty of a stepchild to maintain a stepparent 129

3.3.5 Stepchildren's rights to inherit from stepparents 130

3.3.6 Liability for abuse of a stepchild by a stepparent 132

Chapter 4

PUBLIC OPINION ON LAW REFORM OPTIONS AND RECOMMENDATIONS 135

4.1 Research findings on law reform options 135

4.2 Key recommendations 145

4.2.1 Law reform 145

4.2.2 Other recommendations 162

“ I am going to talk from experience.

Things happened to me. In 1997 when I was still young, about 4 years old, my father divorced my mother.

Of course afterwards, life changed dramatically. We were living with dad all the time except for working hours. But things went wrong when dad married a lady (my stepmother). She seemed to be very good in the first few months, but later she showed her colours to us.

We were two, I and my sister. When it was time for us to go to school the wife (my stepmom) refused because we were still young and there was no money for all the goods needed for us to go to school. But her child who was younger than us went to private school ...

We were taken to the government school. When it's time for the holidays, we are left home alone and they go with the stepmother's child. We were working like slaves, treated like servants, no food for us when going to school and given a small or little income, but the biological child is given everything he needs.

We stepchildren in our homes do nearly everything that should be done even by elderly people. Some even tend to be street kids because they are fed up.

I think and believe that it is the issue of stepparents that increases the percentage of street kids.

Thanks for giving me the floor to share my views with the public. ”

– youth participant in Katima Mulilo

Chapter 1

BACKGROUND INFORMATION



1.1 Introduction

Stepfamilies appear to be common in Namibia, but there has been virtually no research on this family form. The purpose of this study is to explore the relationship between “stepparents” and “stepchildren”, with a particular focus on issues of concern and potential law reforms which might alleviate them.

It appears that stepfamilies exist in large numbers in Namibia. Yet little is known about the family dynamics and the situation of stepchildren. To our knowledge, there has yet to be any published research into the nature and situation of stepfamilies in Namibia. This report seeks to provide some insight into this prevalent yet little known family dynamic and identify specific areas of concern, with a view to informing a debate about whether stepparents should have legal rights and responsibilities towards their stepchildren, and if so, what form potential law reforms should take.

The purpose of this study is to explore the following broad subject areas about stepfamilies:

- concepts of “stepparent” and “stepchild” in Namibia
- rights and responsibilities of stepparents towards their stepchildren
- problems facing stepchildren and stepparents
- public views on law reform options.

Throughout this study, and whilst conducting field research, we employed purposefully broad definitions of stepparent and stepchild. A stepparent was defined generally as a person who enters into a relationship with a person who already has children from a previous relationship, while a stepchild was defined as a child whose biological parent is in a relationship with a person who is not the child’s other biological parent. We did not limit the application of the concept to relationships involving marriage between biological parents and their partners, although some interviewees and focus group participants felt that such a distinction should be made. Indeed, part of our research involved investigating whether different understandings of the terms and concepts exist in different communities in Namibia.

The growing number of stepfamilies in Namibia is part of a world-wide trend, as international literature suggests that stepfamilies are on the rise around the world. As Jan Pryor, editor of *The International Handbook of Stepfamilies*, observes, *the reality is that living in stepfamilies is an aspect of the lives of increasing numbers of adults and children worldwide*.¹ Although we are not aware of any national statistics on the prevalence of stepfamilies in Namibia, statistics on the number of stepfamilies in various other countries demonstrate the increasingly frequent occurrence of this family form. For example, the most recent statistics from the United States indicate that almost half (42%) of adults surveyed have a steprelative, defined as including a stepparent, stepsibling or stepchild.² According to data from the United Kingdom for 2009, stepfamilies accounted for 15% of families with dependent children.³

Generally speaking, unless specific law reform measures have been introduced, stepparents and stepchildren are regarded by the law as “*legal strangers*”.⁴ This remains the case in Namibia, where no specific laws govern the relationship between stepparents and stepchildren in the absence of formal adoption. As Canadian commentator Carol Rogerson notes, “*the existence*

¹ J Pryor, ed, *International Handbook of Stepfamilies: Policy and Practice in Legal, Research and Clinical Environments*, New Jersey: John Wiley and Sons, Inc, 2008 at xx. Although this publication offers a selection of articles discussing stepfamilies in different countries and regions around the world, there are no references to any studies or reports on stepfamilies from any countries in Africa.

² K Parker, *A Portrait of Stepfamilies*, Washington, DC: Pew Research Centre, 2011, available online at <www.pewresearch.org/pubs/1860/survey-stepfamilies-demographics-opinions> (last accessed 28 February 2011).

³ Office for National Statistics, *General Household Survey 2009 Data*, Newport, South Wales: Office for National Statistics, 2009 at Table 3.10, available online at <www.statistics.gov.uk/StatBase/Product.asp?vlnk=5756> (last accessed 28 February 2011).

⁴ M Mason, S Harrison-Jay, G Messick Svare and N Wolfinger, “Stepparents: *De facto* parents or legal strangers?” *Journal of Family Issues*, vol 23 no 4 (2002) at 507. The authors argue that the current legal regime in the United States does not recognise the contemporary reality of stepfamilies, and they advocate for the legal recognition of stepparents as *de facto* parents.

*of step-families – in ever increasing numbers – gives rise to many legal issues with respect to the recognition and regulation of the relationship between stepparents and stepchildren”.*⁵ Fashioning appropriate and just legal responses to stepfamily arrangements is not without its challenges. However, as one commentator notes, developing legal responses to govern and protect stepfamilies is important because of the increased prevalence of these family arrangements:

*This reality has trans-national importance because the increased incidence of divorce, remarriage, parents marrying partners without children, the first marriage of previously unwed mothers, and the increasing death numbers of parents with AIDS, all mean the stepfamily has become an important resource for children.*⁶

Many countries around the world have responded to these demographic changes, developing laws to govern stepfamilies that impose a range of rights and duties upon stepparents to protect stepchildren and to give legal recognition to the relationship. It is our hope that the findings of this study will help to determine whether Namibia should consider law reform to introduce similar measures. As noted in a recent report, “*the Namibian Constitution protects ‘the family’ without specifying what ‘family’ means – which allows for legal concepts of family to evolve to fit social realities*”.⁷

“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 ... I thank LAC for doing this.”

– youth participant in Keetmanshoop

⁵ C Rogerson, “The child support obligations of stepparents”, Canadian Journal of Family Law, vol 18, 2001 at 2.

⁶ M Engel, *Worldwide Stepfamily Tribulations Under Current Laws and Social Policies* (draft paper) 2005, available online at <www.law2.byu.edu/isfl/saltlakeconference/papers/isflpdfs/Engel.pdf> at 2 (last accessed 28 February 2011). The author also states at 2: “*The disconnect between stepfamilies and the legal system stems from the institutions of marriage and the family. Family courts have been slow to accommodate people traditionally defined as outsiders. At present, the legal rights and obligations for the first-marriage family, however stormy and brief, are generally not extended to the stepfamily, however stable and lengthy. Clearly, the perils associated with the changing composition of families have not been adequately considered.*” [citations omitted]

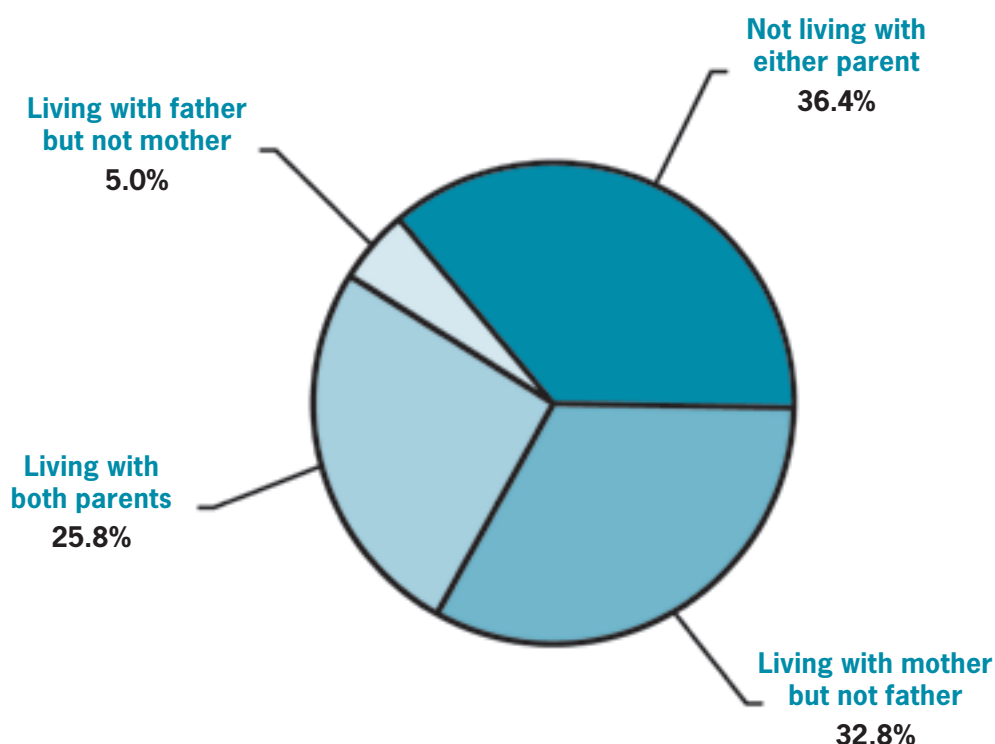
⁷ Legal Assistance Centre, *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform*, Windhoek: Legal Assistance Centre, 2010 at 3.

1.2 Stepfamilies in Namibia

A variety of social and economic factors have contributed to the diversity and fluidity of family forms in Namibia, including the existence of stepfamilies. Prior to this study, the only other specific research on stepfamilies in Namibia appears to be a small student study carried out in Rundu in 1998. Anecdotal information from broader studies, court cases and press reports suggests that stepchildren may be particularly vulnerable to physical, sexual, economic and emotional abuse, as well as neglect.

1.2.1 Factors contributing to the rise in stepfamilies

Namibia has a wide diversity of family arrangements. Recent national statistics indicate that families where the child lives with both biological parents are in the minority. The *Namibia Demographic and Health Survey 2006-07* found that only one-quarter of children in Namibia live with both parents.⁸ In fact, 36% of children in Namibia do not live with *either* biological parent.⁹



Source: Based on Table 16.1, **Ministry of Health and Social Services (MoHSS)**, *Namibia Demographic and Health Survey 2006-07*, Windhoek: MoHSS, 2008 at 256.

⁸ Ministry of Health and Social Services (MoHSS), *Namibia Demographic and Health Survey 2006-07*, Windhoek, MoHSS, 2008 at 255. Unfortunately the study did not indicate what percentage of children live with a stepparent.

⁹ Ibid.

Traditionally in Namibia, families are organised along kinship lines, with children being cared for by multiple members of the extended family.¹⁰ For example, it is common for a child to live with a grandmother or aunt, who becomes the primary caregiver. As one South African commentator, Marius Pieterse, discusses “... *the focus of the average African family has always been and remains to a large extent on the extended family, which is the primary social institution in most African communities*”.¹¹ As a result, Pieterse argues, in many African families children are raised by various “social” parents with whom they may have strong emotional or psychological connections, in addition to or in substitution for biological parents.¹²

***“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

Recent literature suggests that Namibian families are undergoing shifting dynamics as social factors influence changing norms and increased fluidity of relationships. Kinship care is on the increase, as HIV/AIDS ravages the middle-age adult population. One study found that elderly women bear the brunt of this, as more than half of AIDS-orphaned children are cared for by their grandmothers.¹³ Consequently, the literature suggests that more and more children find themselves in the care of extended family members, or in single-parent households where the parent’s partner is often not their own biological parent.¹⁴

A 2010 report on the situation of children and adolescents produced by the National Planning Commission observes current social shifts affecting family structures in Namibia:

While the family unit is seen as a core unit of society, only one quarter of children live with both their parents. This may not be a problem where households are large and multi-generational. But adult relationships are changing, such that over two thirds of men and women were not in a formal relationship. Over one-third of children live with neither their father nor their mother. Children describe how they do not always find the care and protection that they should receive in a family setting¹⁵

¹⁰ L Edwards-Jauch, *Aids and Family Structures*, Windhoek: University of Namibia, 2010 at 3.

¹¹ M Pieterse, “In loco parentis: Third party parenting rights in South Africa”, *Stellenbosch Law Review*, vol. 11, 2000 at 330.

¹² Id at 332. Pieterse goes on to argue that the South African legal system, and particularly family law, is at odds with this social reality, designed as it was to reflect Western conceptions of the nuclear family. He discusses and criticises the deep reluctance of South African lawmakers and courts to extend third-party parenting rights to non-biological caregivers. (Note that this article predates the South African Children’s Act 38 of 2005, which does extend parenting rights to non-biological caregivers.)

¹³ L Edwards-Jauch, *Aids and Family Structures*, Windhoek: University of Namibia, 2010 at 43.

¹⁴ For example, see South African Law Commission [as it was then known], *Discussion Paper 103, Project 110, Review of the Child Care Act*, 2002 at 180, available online at <www.ci.org.za/index.php?option=com_content&view=article&id=627%3A2002-south-african-law-reform-commission-discussion-paper&catid=32%3Achildrens-act&Itemid=52>.

¹⁵ National Planning Commission, *Children and Adolescents in Namibia 2010: A Situation Analysis*, Windhoek: National Planning Commission, 2010 at 35.

Researchers have identified various factors contributing to these shifting family dynamics in Namibia, which include labour migration patterns resulting from apartheid-era contract labour policies; poverty; informal polygamy; the impact of the HIV/AIDS epidemic; and shifting social norms resulting in a decline in marriage and higher rates of informal cohabitation and children born outside of marriage. All of these factors contribute to social conditions and family arrangements which make stepfamilies more likely to occur.

Labour migration patterns

As the South African Law Reform Commission has noted, the legacies of apartheid and particularly the migrant labour system which still persists informally in Namibia today, have reshaped family structures in dramatic ways:

*... In South Africa, apartheid policies such as the migrant labour system and influx control measures had a devastating effect on family life, particularly as regards African families, resulting in the emergence of many 'social families', viz. family units in which children are brought up wholly or partly by persons who are not biological or legal parents, including relatives such as grandparents, and other persons who are not related to the child in question.*¹⁶

Under apartheid, the migrant contract labour system separated the families of black Namibians, as men were forced to seek jobs away from their home villages or towns.¹⁷ As a result, as one publication notes, “often migrant workers entered into second and third and concurrent relationships (formal and informal sexual unions) in urban centres as part of polygamous marriage”.¹⁸ Recent research indicates that this dynamic still exists, and is becoming increasingly common, with the frequent result that men have multiple children by multiple women.¹⁹

Informal polygamy

While the Namibia *Demographic and Health Survey 2006-2007* found that only 6% of married women were in a polygamous marriage with co-wives,²⁰ studies have identified a growing trend towards informal polygamy. This occurs where married men enter into informal cohabitation relationships with another woman, referred to as “second house” arrangements, which often result in more children.²¹

¹⁶ South African Law Commission, *Discussion Paper 103, Project 110, Review of the Child Care Act*, 2002 at 180.

¹⁷ H Jauch, L Edwards and B Cupido, *A rich country with poor people: inequality in Namibia*, Windhoek: Labour Resource and Research Institute, 2009 at 11. Available online at <www.larri.com.na/files/Inequality%20in%20Namibia%202009%20final.pdf>.

¹⁸ Id at 12.

¹⁹ Legal Assistance Centre, *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform*, Windhoek: Legal Assistance Centre, 2010 at 72.

²⁰ Ministry of Health and Social Services (MoHSS), *Namibia Demographic and Health Survey 2006-07*, Windhoek: MoHSS, 2008 at 76.

²¹ See, for example: H Becker and M Hinz, *Namibia Papers No. 30: Marriage and Customary Law in Namibia*, Windhoek: Centre for Applied Social Studies (CASS), 1995; D Le Beau, E Iipinge, and M Conteh, *Women's property and inheritance rights in Namibia*, Windhoek: Pollination Publishers, 2004; L Edwards-Jauch, *Aids and Family Structures*, Windhoek: University of Namibia, 2010.

For example, research by the Legal Assistance Centre published in a 2010 report on cohabitation noted that interviewees reported that married men from rural areas who move to urban centres in search of work opportunities often take a new partner, whilst still maintaining involvement with their wives back home.²² One area of concern expressed by some interviewees was a lack of support from husbands who have entered into such informal relationships, with some women indicating that they felt abandoned and that their husbands were not sending money for them or their children.²³

“My husband left me for another woman and is not paying anything. He left me and the children and won’t help with the school fees. He is supporting his new stepchildren [the kids of his new girlfriend].”

– adult participant in Katutura

HIV/AIDS epidemic

The HIV/AIDS epidemic has had a profound effect on family structures in Namibia, redrawing families as children lose one or both parents. Namibia has one of the highest HIV/AIDS infection rates in the world, with the most recent figures, from 2010, putting infection rates at 18.8% – an increase from the 2008 figures of 17.8%, but a drop from 20% in 2004 and 2006, and 22% in 2002.²⁴

Lucy Edwards-Jauch notes that *“adult morbidity and mortality result in the depletion of a middle layer of society since most AIDS-related deaths occur amongst people in the 19–49 year age group”*.²⁵ The result is that many children in Namibia have lost one parent or potentially both – increasing the likelihood that children will be raised by extended family members or that single parents will bring a new partner into the home as a stepparent.

These factors have dramatic consequences for family structures and relationships in Namibia. According to research conducted by Edwards-Jauch:

*In Namibia, poverty, labour migration and AIDS-related mortality intersect and alter family residential patterns, child care arrangements, resource pooling arrangements and decision-making structures. The resulting new and emerging family forms also challenge our nuclear normative assumptions of what a family is.*²⁶

²² Legal Assistance Centre, *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform*, Windhoek: Legal Assistance Centre, 2010 at 72.

²³ Id at 72–73.

²⁴ Ministry of Health and Social Services (MoHSS), Report on the 2010 National HIV Sentinel Survey, Windhoek: Directorate of Special Programmes, MoHSS, 2010 at 16.

²⁵ L Edwards-Jauch, *Aids and Family Structures*, Windhoek: University of Namibia, 2010 at 1.

²⁶ Id at 2.

" [My friend's] father got married to a new woman when her mother passed away, when she was only 10 years of age. Her stepmother always makes her cry and she misses her dead mother very much. [Her stepmother] always makes her do all the house cleaning, cooking and washing clothes, even the cars at some points. She shouts at her like a mad person from hell, especially if her elder sisters are not around. "

– youth participant in Katima Mulilo

Rise of informal cohabitation relationships

Commentators and researchers have also noted a shift within Namibian society towards increased informal cohabitation amongst adults and a decline in formal marriage, with the result that more children are born outside of marriage.²⁷ A study conducted in 2008 in eight regions across Namibia found that:

*Virtually all [focus group] participants in all regions agreed that relationships between unmarried women and men have increased dramatically since independence. This type of relationship was felt to have not been very prevalent in the past, as it was heavily frowned upon.*²⁸



A 2010 report by the Legal Assistance Centre on the status of cohabitation in Namibia recognised that “while it is difficult to gauge the precise prevalence of cohabitation relationships in Namibia, the practice is certainly common”.²⁹ The report went on to state that “national surveys indicate that at least one-fifth of Namibians in the prime of their adulthood are living together without being formally married, and that is likely to be an underestimate”.³⁰

As the South African Law Reform Commission noted in a 2002 discussion paper:

²⁷ See Legal Assistance Centre, *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform*, Windhoek: Legal Assistance Centre, 2010 at 2; L Edwards-Jauch, *Aids and Family Structures*, Windhoek: University of Namibia, 2010 at 46.

²⁸ Social Impact Assessment Policy Analysis Corporation (SIAPAC), *Knowledge, Attitudes and Practices Study on Factors that may Perpetuate or Protect Namibians from Violence and Discrimination: Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa Regions*, Windhoek: Ministry of Gender Equality and Child Welfare (MGE CW), 2008 at 57.

²⁹ Legal Assistance Centre, *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform*, Windhoek: Legal Assistance Centre, 2010 at 2.

³⁰ Ibid.

This diversity of family forms is not unique to South Africa or even to the African continent, but is increasingly encountered throughout the world. Rising divorce rates and an increase in the number of children born out of wedlock have resulted in a growing number of children living in single-parent households or with one biological parent (usually the mother) and another person who is either married to that parent (a stepparent) or cohabiting with him or her.³¹

Rise of stepfamilies

Against this backdrop of increasing fluidity of family arrangements and adult relationships, it is not surprising that there is a public perception that stepfamilies are very common in Namibia. As one study noted, “*step parenting is a common phenomenon in Namibia and is on the rise due to HIV/AIDS and instability of marriages*”.³² Moreover, anecdotal or indirect references in a number of studies conducted in Namibia indicate a growing recognition of both the existence of stepfamilies in Namibia and of areas of concern within stepfamilies – specifically with regard to violence and abuse.³³

1.2.2 Previous studies on stepfamilies

The only empirical study of stepfamilies conducted in Namibia that we are aware of is a very small unpublished study of stepparenting carried out in Rundu by a University of Namibia student of social work in 1998. Although the results are necessarily limited by the fact that only 30 people were interviewed in one site,³⁴ this study does offer some interesting findings that support the general sense that stepfamilies are common and experience unique problems.

The study found that interviewees perceived stepfamilies as very prevalent in their community: of those surveyed, 67% responded that stepparenting is “*very common*”, while 23% responded that its occurrence is “*average*”.³⁵ A number of respondents indicated that stepfamilies are very common because of high rates of divorce and teenage pregnancies.³⁶ Most of the people interviewed lived in stepfamilies (33%) or extended families (33%), with only about 17% indicating they live in nuclear families.³⁷

Although 67% of respondents defined stepfamilies as “*mixed families with a husband and wife and children from a previous marriage*”, apparently viewing marriage as a necessary

³¹ South African Law Commission, *Discussion Paper 103, Project 110, Review of the Child Care Act, 2002* at 180.

³² Legal Assistance Centre, “*I just want to have a good life: OVC and human rights in five regions of Namibia*”, Windhoek: Legal Assistance Centre (undated) at 36.

³³ See section 1.2.3 of this report on “Problems facing stepchildren in Namibia”.

³⁴ Franciska Hamutenya, “A study on stepparenting done in Rundu, Kavango Region, Namibia” (unpublished BA thesis), Windhoek: University of Namibia, Department of Social Work, 1998 at 31. The study interviewed 30 respondents living in Rundu in 1998.

³⁵ Id at 38.

³⁶ Ibid.

³⁷ Id at 35.

factor. Some (no percentage given) also felt that due to a high rate of teenage pregnancies, most unmarried people bring children along to their new marriages, which also constitutes a stepfamily.³⁸

In terms of how a stepchild refers to his or her stepparents, 50% of respondents felt you should call your stepparent mum or dad, and 33% felt you should call them by name.³⁹

In terms of responsibilities, 73% agreed that a stepparent should discipline a child as a biological parent would.⁴⁰

The survey also asked how participants would describe their relationship with their stepparents and stepchildren. The views of stepchildren were noticeably more negative than those of stepparents. Almost half of stepchildren respondents (40%) described their relationship with a stepparent as “*bad*”, while only 20% of stepparents described their relationship this way. Of stepchildren interviewed, 20% responded that the relationship is “*good*”, while more than half of stepparents (60%) felt this way. Another 40% of stepchildren and 20% of stepparents rated the relationship as satisfactory. Stepchildren who classified the relationship as bad provided the following reasons: there are always misunderstandings between parents and their stepchildren; children are not treated equally especially with respect to emotional and physical care; and sometimes there is rejection and isolation.⁴¹

Interestingly, almost all respondents had a positive view of their relationships with step-siblings, as 90% of respondents described these relationships as good or satisfactory.⁴²

Respondents were also asked “*what do you enjoy most about living in a stepfamily?*”. Half of the respondents (50%) indicated “*being part of a family*”, while 30% cited “*having a replacement for the missing family*”.⁴³ When asked “*what do you fear most about living in a stepfamily?*”, more than half of the respondents indicated “*parental role not adequately fulfilled*”, indicating that many stepparents fear failing as parents, and that stepchildren fear inadequate parenting.⁴⁴ Almost half (40%) replied “*heavy burden taking up main responsibility*”. Additional comments indicated that stepparents fear the “double work” of step-parenting, including raising children from two households and increased responsibility regarding discipline.⁴⁵

³⁸ Id at 38.

³⁹ Id at 47.

⁴⁰ Ibid.

⁴¹ Id at 40-41.

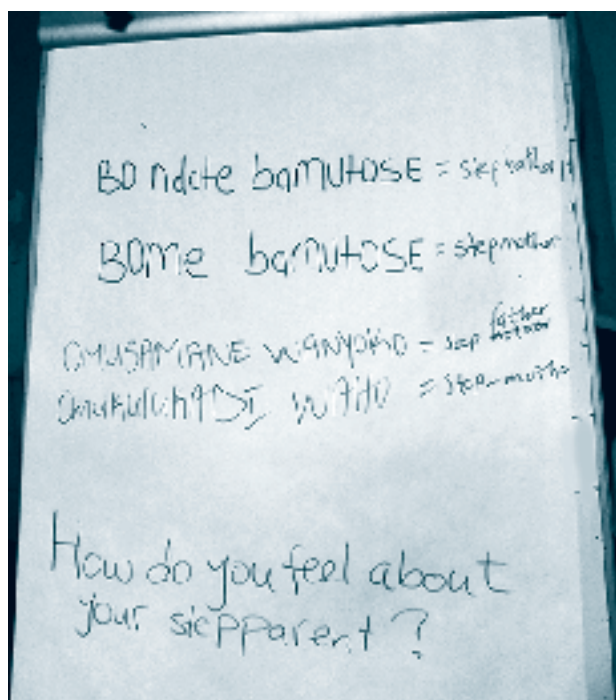
⁴² Id at 42.

⁴³ Id at 43.

⁴⁴ Id at 44.

⁴⁵ Ibid.

A flipchart
used in a
focus group
discussion
with youth in
Katima Mulilo





Groups of adults and children in different parts of the country participated in this study on stepfamilies.

The fear of poor parenting seems to be pervasive, and based on lived experience. When asked what causes disorganisation in stepfamilies, 63% replied “*inadequate care by stepparents*” and “*disengagement in parental activities*”.⁴⁶

When asked to list the advantages and disadvantages of living in a stepfamily, the most common disadvantage cited, by almost half (43%), was “*abuse*” – an interesting finding that supports the general perception that stepchildren face a greater likelihood of experiencing abuse. The most common advantage cited was the benefit of being “*part of a family*”, and “*replacing a missing family*” (total of 60%). Interestingly, the economic consequences of living in a stepfamily were viewed as both an advantage and a disadvantage, with 37% responding that “*extra expenses*” are the biggest disadvantage, and 40% responding that “*increase in income*” is the biggest advantage.⁴⁷

1.2.3 Problems facing stepchildren

Although we are not aware of any other specific research exploring issues involving stepparents and stepchildren within Namibia (aside from the small, unpublished study in Rundu discussed above), many of the references to stepchildren that are available in more general literature and media reports focus on incidents of emotional, economic, physical and sexual abuse of stepchildren by stepparents. Indeed, almost half of the respondents to the Rundu study cited abuse as the greatest disadvantage of living in a stepfamily.⁴⁸ Of particular concern is the frequency with which incidents of sexual abuse of a stepdaughter by a stepfather are referred to. Anecdotal evidence indicates that stepchildren frequently report discriminatory treatment within the home – in terms of love and attention, access to food and material goods, and an unequal burden of household labour, particularly as compared to biological children.

⁴⁶ Id at 46.

⁴⁷ Id at 49.

⁴⁸ Ibid.

These anecdotal references accord with research findings on the situation of stepchildren internationally. Leading Canadian researchers Martin Daly and Margo Wilson coined the term “*the Cinderella effect*”, referring to the phenomenon whereby stepchildren are more likely than biological children to suffer from abuse and violence.⁴⁹ One startling statistic holds that a child is one hundred times more likely to be abused or killed by a stepparent than by a biological parent.⁵⁰ Studies carried out in various Western countries, including the United States, Britain, Canada, Australia and Finland, all showed that children face a higher likelihood of violence at the hands of a stepparent than a biological parent.⁵¹

A child is one hundred times more likely to be abused or killed by a stepparent than by a biological parent.⁵²

Physical abuse

It has been well-documented that children in general face high levels of physical and sexual abuse within Namibia.⁵³ For example, in a study conducted in eight of Namibia’s 13 regions in 2008, surveying factors that may perpetuate or protect against violence and discrimination, the researchers found that 45% of respondents who lived with a child in the house reported the use of “*physical discipline*” and 36% reported the use of “*excessive physical discipline*”.⁵⁴ As the study did not indicate *who* was carrying out the discipline, it

⁴⁹ M Daly & M Wilson, *The Truth About Cinderella: A Darwinian View of Parental Love*, New Haven: Yale University Press, 1999. Cinderella refers to a well-known Western fairy-tale where the main character, Cinderella, is tormented by her “evil” stepmother and stepsisters, who force her to do all the work in the house, treating her like a servant and subjecting her to serious mistreatment. In the end, Cinderella is rescued by a fairy godmother and a handsome prince, with whom she lives happily ever after.

⁵⁰ Id at 28.

⁵¹ See R Mazariegos, “The frequency of abuse and neglect on stepchildren”, *Journal of Juvenile Law*, vol. 21 (2000) 57 at 65-67 and M Daly and M Wilson, “The “Cinderella effect”: Elevated mistreatment of stepchildren in comparison to those living with genetic parents” (undated), available online at <www.psych.ucsb.edu/research/cep/buller/cinderella%20effect%20facts.pdf> (last accessed 31 January 2011). We were unable to locate any studies specifically dealing with stepchildren in Africa.

⁵² M Daly & M Wilson, *The Truth About Cinderella: A Darwinian View of Parental Love*, New Haven: Yale University Press, 1999 at 28.

⁵³ See, for example: Legal Assistance Centre, *Corporal Punishment: National and International Perspectives*, Windhoek; Legal Assistance Centre, 2010; Legal Assistance Centre, *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000*, Windhoek: Legal Assistance Centre, 2006; Social Impact Assessment Policy Analysis Corporation (SIAPAC), *Knowledge, Attitudes and Practices Study on Factors that may Perpetuate or Protect Namibians from Violence and Discrimination: Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa Regions*, Windhoek: MGECCW, 2008; H Becker & P Classen, *Violence Against Women and Children: Community Attitudes and Practices*, paper prepared for the Women and Law Committee of the Law Reform and Development Commission (unpublished), 1996; D Lebeau, *The Nature, Extent and Causes of Domestic Violence Against Women and Children in Namibia*, paper prepared for the Women and Law Committee of the Law Reform and Development Commission (unpublished), 1996.

⁵⁴ Social Impact Assessment Policy Analysis Corporation (SIAPAC), *Knowledge, Attitudes and Practices Study on Factors that may Perpetuate or Protect Namibians from Violence and Discrimination: Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke and Otjozondjupa Regions*, Windhoek: Ministry of Gender

is unknown how often stepparents were implicated in such physical discipline. However, the authors of the report stated that *“focus group discussion participants noted that violence against children was most common in cases where there was a stepfather in the household”*.⁵⁵

Other studies have identified particular problems with abuse and violence involving stepparents. For example, a study of orphans and vulnerable children (OVC) conducted by the Aids Law Unit of the Legal Assistance Centre found that *“... many OVC experience abuse and maltreatment in their homes, particularly from their caregivers. Particular problems were noted where the caregiver was a stepparent”*.⁵⁶

One study on domestic violence in Namibia compiled by Debie Lebeau in 1996 noted that medical personnel and community activators interviewed for the study implicated stepparents or *“the mother’s boyfriend”* in physical abuse of children. The report went on to note that:

*Essays, research reports and case studies indicate that the perpetrators of physical abuse against children are frequently stepparents or parent’s partners. Other case studies and essays describe how stepparents sometimes abuse their stepchildren possibly out of jealousy.*⁵⁷

Media reports detailing incidents of violence involving stepparents and stepchildren, including criminal cases, appear on a regular basis in the national newspapers. In one notorious case, a stepfather in Swakopmund admitted to drowning his 13-month-old stepson in 2006 in a bucket of water because he was *“angry and disappointed”* with the toddler’s mother.⁵⁸

Research indicates that stepchildren sometimes experience particular problems with reporting abuse by a stepparent to their biological parent. There are many accounts of the biological parent denying that such abuse is taking place, or refusing to believe the child. This appears to be a common phenomenon in the context of stepchild abuse. For example:

Equality and Child Welfare (MGECW), 2008 at 66. In 2007/2008, SIAPAC surveyed 210 people in each of the eight regions studied, for a total sample of 1680 persons, with half men and half women.

“Physical discipline” was defined as “spanking, hitting or slapping on the bottom”, while “excessive physical violence” was defined as including the following:

- hitting the child on the bottom or elsewhere on the body with something like a belt, hairbrush, stick or other hard object
- hitting or slapping the child on the face, head or ears
- hitting or slapping the child on the hand, arm or leg
- beating the child with an implement over and over.

⁵⁵ Ibid.

⁵⁶ Legal Assistance Centre, *“I just want to have a good life”: OVC and human rights in five regions of Namibia*, Windhoek: Legal Assistance Centre (undated) at 38-39.

⁵⁷ D Lebeau, *The Nature, Extent and Causes of Domestic Violence Against Women and Children in Namibia*, paper prepared for the Women and Law Committee of the Law Reform and Development Commission (unpublished), 1996 at 13. The author does not cite any references for this point.

⁵⁸ D Kisting, “Stepdad sat listening to baby’s death throes”, *The Namibian*, 15 October 2010.

*A 4-year-old boy born to his unmarried mother and living with her boyfriend had been severely beaten. Only after a separate interview with the boy was it disclosed that the mother's boyfriend had been beating him for some time. Upon inquiry the mother said ghosts were responsible for the injuries sustained by the boy.*⁵⁹

Certainly abuse of children is not only perpetrated by stepfathers – there are also numerous reports of stepmothers physically abusing their stepchildren. One particularly horrifying example of abuse of a 3-year-old girl by her stepmother was reported in a 1996 study:

*In the Herero community a 3 year old girl who was living with her father and her stepmother [was abused] for a long period by excessive hitting with wood logs and canes. Sometimes the little girl had to be treated at a clinic for her injuries. One particular evening the entire family was sitting around the fire, the child said something which made the stepmother angry and the step-mother took a burning log from the fire and burnt the little girl's private parts. A nurse who had previously treated the girl notified the authorities and the stepmother was charged. At the trial the father said he had not noticed any abuse to the child and also mentioned that he was away from home a lot as he was working in Gobabis. The stepmother was found guilty and condemned to pay a fine only.*⁶⁰

Another disturbing example is given in a more recent publication:

*I remember a lady who burnt her stepkids with hot coals in their mouths, because they ate chicken meat from the pot. Put yourself in the kids' shoes and imagine how painful that could be. If I was the mother, I would rather not give them meat for at least a month, rather than burning them.*⁶¹

"I'm a girl of 14 years. I lost my parents in 2004. After that, I lived with my stepmother and she didn't take care of me. She supports her children and I have an aunt who loves me and I love her and I went to live with my aunt. I was very disappointed when my stepmother threw me out of my father's house. The bad things that have happened to me, when I was with my stepmother? She used to beat me all the time ... The good things that have happened to me are when I was still with my father, he used to give me money and food to eat at school and used to take me to school and help me with my homework."⁶²

⁵⁹ D Lebeau, *The Nature, Extent and Causes of Domestic Violence Against Women and Children in Namibia*, paper prepared for the Women and Law Committee of the Law Reform and Development Commission (unpublished), 1996 at 14.

⁶⁰ Id at 14-15.

⁶¹ Legal Assistance Centre, *Corporal Punishment: National and International Perspectives*, Windhoek; Legal Assistance Centre, 2010 at 50.

⁶² From an interview conducted by the Legal Assistance Centre, "I just want to have a good life": OVC and human rights in five regions of Namibia, Windhoek: Legal Assistance Centre (undated) at 37.

CASE STUDY Murder of a stepchild by a stepparent

In this 1994 case, the accused was convicted of culpable homicide for the murder of his stepson whilst severely intoxicated. The court explained the facts of the case:

The evidence in this case briefly is that on the relevant day, which is some two years ago, at a time that the accused and his wife were separated, the accused arrived at the house, the worse for liquor. A dispute arose concerning the meat which was in the refrigerator and which had to be cut. Like so many of these disputes it grew to serious proportions. In the house at the time was the stepson of the accused, in fact the son of Mrs Britz, Hendry David Zahl. Apparently Henry tried to check the argument which was going on but unfortunately produced a pocket knife with which he teased and antagonized his stepfather.

His stepfather had reared him, having been married at that stage to the deceased's mother for about 23 years. The accused and deceased loved each other according to the State's evidence and got on with each other very well. However, liquor and provocation acting together can in fact be such as to remove the faculty of realising or of forming an intention to kill. The accused, drunk as he was, and enraged by his stepson's conduct, had taken the knife from the kitchen drawer for cutting the meat and in the argument had stabbed his stepson causing him to die. He has pleaded guilty to culpable homicide saying that he was negligent in so doing. In fact, he is responsible for the death of his stepson but clearly not intending it. The Court accordingly found him guilty of culpable homicide.

– Excerpted from **S v Britz**, 1994 NR 25 (HC)

NEWS “9 years for child killer”

The broken and bruised body of a toddler was found to be the result of repeated child abuse by Benny Krohne, who was sentenced to nine years' imprisonment in the Swakopmund Regional Court last week.

The post-mortem report indicated that 3-year-old Renaldo Daan's body showed clear signs of continuous abuse.

Bruises were found all over his face, chest, back, neck and legs. His death finally came by way of two fractured vertebrae and subsequent haemorrhage.

Krohne was arrested on a charge of murder and two charges of assault with the intent to do grievous bodily harm, shortly after little Renaldo was found dead in his home in Mondesa, Swakopmund, on May 18 2003.

Magistrate Gert Retief found Krohne guilty of culpable homicide, for which he will serve seven years in jail. He was sentenced to an additional one year's imprisonment on each of the two assault charges.

At the time, Krohne was engaged to the boy's mother, Lena Daan, who was also a victim of violence at the hands of her fiancée.

The second charge of assault on which Krohne was convicted was in connection with an attack on Lena Daan during which he slapped her in the face several times and poured hot coffee over her. She had withdrawn a previous charge of assault.

Her son, Renaldo Daan, had also been treated in the Swakopmund State Hospital about nine months before his death, when he arrived with scratch marks, bruises and abrasions on his body and a swollen forehead. According to the medical report, the injuries could have been caused by a fall, but abuse could not be ruled out.

Krohne pleaded not guilty to all charges when he first appeared in court shortly after the crime. “I didn't hurt the child,” he said. “He was throwing up early in the morning and I warned his mother to take the child to hospital.”

A seven-year-old girl was the only eyewitness to testify during the trial. She said she had seen how Krohne had flung the little boy into the air that morning whilst his mother was at work.

Later, when she went to call Renaldo for lunch, he didn't wake up where he was lying on a mattress in the house he was sharing with his mother and soon-to-be stepfather.

A woman who was called to the house immediately sent for the boy's mother, who found his cold, stiff body. With the corpse of her son in her arms, Lena Daan then ran to the Police station.

– Excerpted from a report by Elma Roberts, **The Namibian**, 13 February 2007

NEWS “Man repeatedly rapes stepdaughter”

Police in the Omusati Region have arrested a man from Ondukuta village for raping his stepdaughter on numerous occasions. The grandmother of the 13-year-old victim opened a case of rape with the Outapi Police after she learnt that her grandchild was repeatedly and brutally raped by her stepfather.

The 46-year-old man, whose name is known to *New Era*, appeared in the Outapi Magistrate's Court on charges of rape yesterday. The girl allegedly fled to her grandmother's house after she endured a series of rapes by her stepfather.

The girl, together with her grandmother, told the police that the incidents of rape took place between September 7 and 10, after her heavily pregnant mother left home to stay near the hospital. This is common practice for expecting mothers from villages that are far from hospitals.

“On one occasion, he allegedly raped her in the bedroom, where her younger siblings aged five and three were sleeping,” said Sergeant Menas Jacobs of Omusati Regional Police.

The girl allegedly informed the police that it all started on September 7, 2010, when her stepfather called her to his room and ordered her to strip off her clothes. When she refused, he allegedly undressed her himself and raped her.

On another occasion, the man allegedly asked the girl to bring him tea in his bedroom and then raped her. Still on another occasion, he asked her to bring him a radio, again to the bedroom. He allegedly raped her.

The man allegedly once entered a room where the girl and her two younger siblings were sleeping and raped her. It was after this incident that the girl fled to her grandmother, who later took her to the police.

– Reported by Helvy Shaanika, *New Era*, 17 September 2010

Studies have found that children in Namibia face high levels of sexual abuse generally, with a large number of children reporting forced sexual intercourse. For example, according to the *Namibia School-based Student Health Survey 2004*, 20% of learners surveyed in grades 7-9 had been physically forced to have sexual intercourse, with the number rising to 27% for children under age 12.⁶³ Although this study did not ask who had forced the intercourse, another study by UNICEF in 2006 identified parents and caregivers as perpetrators of sexual abuse in shockingly high numbers. In this study, 25% of respondents aged 10-14 and 15% of respondents aged 15-24 reported that they had experienced one or more forms of sexual abuse by a parent or caregiver.⁶⁴

Sexual abuse of stepdaughters by stepfathers appears to be a particular problem. In the *Namibia Human Development Report 2000/2001*, the United Nations Development Programme observed that “... stepchildren are sometimes abused sexually because the man does not consider the child ‘his

⁶³ Ministry of Health and Social Services (MoHSS), *Report on the Namibia School-Based Student Health Survey 2004*, Windhoek: MoHSS, 2008 at 11-12. The study surveyed 6367 learners from across Namibia in grades 7-9 in 2004.

⁶⁴ UNICEF Consultancy, *Knowledge, Attitudes, Practice And Behaviour Study*, Report by Research Facilitation Services, 2006 at section 4.10.7. This study interviewed 1000 children, youth and adults ranging in age from 10 to “30 and older” in three regions: Kavango, Ohangwena and Omaheke. Sexual abuse was defined as any of the following three acts: having been forced to have sex with a parent or caregiver; having been forced to touch a parent or caregiver in a sexual way or; having been touched in a sexual way by a parent or caregiver. It is unknown how many of the “parent or caregiver” perpetrators of sexual violence were stepparents, but from the extent of anecdotal evidence referring to stepparent sexual abuse, it can be assumed that at least some of the perpetrators were stepparents.

own”.⁶⁵ This report cited a case where a farmworker was found guilty of raping his 12-year-old stepdaughter.⁶⁶

A 1998 report offers another example of a stepparent abuser being reported and criminally prosecuted for his actions: *“I was informed about a case of a man sexually abusing the young daughter of his San girlfriend. The young girl became pregnant. The San woman filed a case against her boyfriend and the court has put him in jail”*.⁶⁷

A 1999 study by the Legal Assistance Centre and the Law Reform and Development Commission (LRDC) on domestic violence reported the following case from Rundu:

*A 6-year-old girl who was sexually molested by her 41-year-old stepfather was in such a severe state of shock that she had to be sedated by a doctor during the investigation. According to the police officer, the result of the incident is that the victim hates all males, even her schoolmates, and ‘likes to be alone at all times’. She was placed in the care of her sister, who reported subsequently that her condition has improved although she is still unable to concentrate at school. The family was at that stage seeking further treatment for the victim. The perpetrator was found guilty of indecent assault and sentenced to 18 months imprisonment, 6 months suspended for 4 years.*⁶⁸

A service provider interviewed for a 2009 report by the Legal Assistance Centre on the withdrawal of rape cases recounted another case of sexual abuse:

*A step father penetrated a child with his finger. She was totally damaged physically. She had said it was his finger, but the doctor didn’t think it was only a finger. The experience must have been too painful for her and she blacked out. He put a pillow over her face while he did it. He was convicted, received 15 years.*⁶⁹

In one particularly disturbing case, a father gave away his 10-year-old stepdaughter to a colleague, to whom she was to become his informal “wife”. The colleague raped her on numerous occasions over a period of a week. During sentencing, the magistrate remarked on the failure of both men to show any remorse, and in particular the “barbarous” actions of the stepfather, who should have behaved as “a guardian and protector”. Both men were sentenced to twenty years imprisonment under the Combating of Rape Act.⁷⁰

⁶⁵ United Nations Development Programme, *Namibia Human Development Report 2000/2001: Gender and Violence in Namibia*, Windhoek: UNDP Namibia, 2000 at 101. The report cites a case where a farmworker was found guilty of raping his 12-year-old stepdaughter (referencing *The Namibian*, 1 December 1999).

⁶⁶ The report references *The Namibian*, 1 December 1999 for this case.

⁶⁷ E Gaeses, Working Group of Indigenous Minorities in Southern Africa, *Violence Against San Women* (report prepared for the First African Indigenous Women’s Conference, Morocco, 1998) at 3.

⁶⁸ Legal Assistance Centre & Law Reform and Development Commission, *Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response*, Windhoek: Legal Assistance Centre & Law Reform Development Commission, 1999 at 34.

⁶⁹ Legal Assistance Centre, *Withdrawn: Why complainants withdraw rape cases in Namibia*, Windhoek: Legal Assistance Centre, 2009 at 207.

⁷⁰ W Menges, “Father gave child away as ‘sex slave’”, *The Namibian*, 08 August 2005.

CASE STUDIES Rapes by stepfathers

In a 1999 case, the 31-year-old accused was the intimate partner of the complainant's mother, and consequently the 4-year-old complainant's stepfather. The accused, complainant, complainant's mother and complainant's younger sister lived together in a one room house without a bathroom.

On several occasions the accused woke the complainant at night and told her he would take her to the outside toilet to urinate. He used that opportunity to have sexual intercourse with her. The complainant's mother noticed blood and semen on the complainant and took her to hospital. After that she monitored the situation at home, eventually catching the accused having sexual intercourse with the complainant. The accused assaulted the complainant's mother with a stick and thereafter threatened to kill her if she reported the incident.

The complainant's mother took the complainant and left the house, and then reported the matter to the police. At trial the accused denied living with or indeed having any knowledge of the complainant and her mother. The court rejected his testimony, and he was convicted of rape. The court observed that *"this case is a classic example not only of a betrayal of trust but also of sexual abuse involving a small and very young defenceless girl"*.

– Excerpted from **S v Hamutenya**, (CC 46.99) [1999] NAHC 20 (2 December 1999)

In a 2005 case, the accused was the cohabiting partner of the complainant's mother and considered by the court to be the complainant's stepfather. He was charged with the repeated rape over a series of months of the complainant, who was 13 and 14 at the time. She became pregnant as a result of one of the instances of rape, dropped out of school and gave birth to a stillborn baby. The complainant informed her mother of the rapes on many occasions. This was substantiated by an admission by the accused himself to the mother during the complainant's pregnancy. But the mother took no action – apparently not believing the accusations because she never *"caught them red handed"*. The accused was convicted of rape and sentenced to 15 years imprisonment.

– Excerpted from **S v K** (CA19/04, CA19/04) [2005] NAHC 41 (2 November 2005)

In a 2005 case, the accused was convicted of several counts of rape of his stepdaughter in respect of rapes that occurred over a period of several months. He was sentenced to 15 years imprisonment. He and the girl's mother had been living *"as husband and wife"* in a rural area when the girl, who was 13 years old at the time, returned to the family home after having lived with relatives whilst attending school. The Court reports what happened:

One day some time before Christmas when her mother was not at home [the accused] called her into the room, pulled her onto the bed, took off her panty and had sexual intercourse with her without her consent. She reported the incident to her mother, who remained quiet. The next incident occurred some time after Christmas when [the accused] asked her to accompany him to look for donkeys in the veld. Complainant refused and ran away, but tripped, whereafter the appellant had sexual intercourse with her. The [accused] repeated his conduct on three occasions in the veld.

The family then moved to another place in the communal area and there the accused had sexual intercourse with the complainant about twice in the house. Further reports to her mother were in vain – no action was taken. When the complainant reported that her menstruation had stopped and later that something was moving in her abdomen, her

mother shrugged the matter off, saying it was nothing, the complainant was just putting on weight. Complainant became pregnant but her mother ignored even this obvious sign. Matters came to a head when the family attended a funeral where the complainant's elder sister, Agnes, noticed that she was obviously pregnant and confronted both the complainant and their mother. Agnes promised that she would send for the complainant and arrange that she be examined by a doctor. Agnes kept her word. The medical examination confirmed that the complainant was seven months pregnant. Complainant told Agnes that it was [the accused] who used to have sexual intercourse with her. During February 2002 the complainant, at the age of 14 years, gave birth to a stillborn baby. She did not return to her mother's house, nor did she return to school. She continued staying with Agnes. Shortly after the birth [the accused] was arrested on charges of rape.

As part of its case the State called the complainant's mother who stated that at a certain stage she noticed that the complainant's abdomen was growing bigger. At first she thought complainant was just putting on weight, but later she suspected that the complainant might be pregnant. However, the complainant denied this. The mother suspected [the accused] of being the father as he was the only adult male living there but [he] denied knowing anything about it. However, at a later stage, it seems after the funeral at which Agnes confronted her, the mother became more insistent and [the accused] then admitted that he was the one responsible and that he was the one who had had sexual intercourse with the complainant. He explained that he was afraid to tell the mother in case she mistreated the complainant.

The court commented on the failure of the girl's mother to believe her daughter or to help her:

Complainant's mother confirmed that her daughter made reports to her that the appellant had had sexual intercourse with her, but she did not believe these reports. She thought they were just 'lies of kids'. Sadly, in spite of the obvious signs and [accused's] admission, the mother did not report the matter to the police or any other authority. It seems she was in denial, as she explained, 'I didn't believe it because I never caught them red-handed.' She also explained that she did not believe the reports because it was contrary to her people's tradition for a stepfather to have sexual intercourse with his stepdaughters. She did not believe that her boyfriend, [the accused], would do something like that ...

The accused was convicted of rape and sentenced to 15 years imprisonment. The Court commented, "One does not expect such conduct from an adult in a father/daughter relationship".

– Excerpted from **S v Kautzuu**, 2006 (1) NR 225 (HC)

In a 2011 case, the accused appealed his conviction for the rape of his 13-year old stepdaughter, the daughter of the woman he was traditionally married to. The complainant told the court that her stepfather had threatened her with a knife, saying that he would kill her if she told her mother, and then raped her while holding the knife in his hand. She testified that she did not scream because she feared that he would assault her. The court recognized the stepfather's position of authority and trust, and noted that he had made previous threats against the complainant. However, citing several apparent inconsistencies in the complainant's testimony, including her failure to call for help and slightly conflicting descriptions of where he held the knife during the rape, the court overturned the conviction.

– Excerpted from **Epafra v S** (CA 32/2009) [2011] NAHC 42 (18 February 2011)

Although there are some examples of stepparents facing criminal sanctions for abuse, it appears that it may be only the most extreme cases which are reported and prosecuted and receive media attention – such as those involving very young children or when the abuse is particularly heinous.

" My friend has a stepmother and he's always beaten by his stepmother. My father asked him one day, 'What is wrong with you?', and he said, 'No, I am fine, nothing is wrong,' and he went back home. His stepmother come out of the house and said, 'You boy, where are you coming from?', and he said, 'Mother I am coming from my friend's house.' She said, 'But you are not at home. There is no water, but you are playing with your friend ... I will beat you today.' And that boy cried and cried, and he said, 'I am not your born child, don't beat me, I will tell the police.' And his stepmother started to throw stones at the boy. And then he told my father that problem that he has, and my father went to the police office and told the police the problem that boy has, and his stepmother was called and she came to the police office, and the people and the police solved that problem."

– youth participant in Erwee

A major study of intimate-partner violence undertaken by the World Health Organisation gathered data from a number of countries, including Namibia, in 2001 and found that of women in Windhoek who had experienced *physical* violence since age 15, 4% reported a stepfather as the perpetrator.⁷¹ Of women who had experienced *sexual* violence before age 15, stepfathers were also identified as the perpetrators 4% of the time, although this figure dropped to 1% for sexual violence after age 15.⁷² The percentages relating to memories of childhood abuse may be an underestimate, as some women who experienced childhood sexual abuse may have been unwilling to discuss it or may have repressed painful memories. It may also be that the category "*stepfather*" was problematic, as some women may refer to a mother's unmarried partner as something other than a stepfather – such as simply the mother's boyfriend.

There is reason to suspect that sexual abuse by stepparents is significantly underreported, as victims face not only feelings of shame and humiliation, but also because they likely experience family and social pressure to stay silent. Literature on sexual abuse within families notes that

⁷¹ C García-Moreno et al, *WHO Multi-country Study on Women's Health and Domestic Violence against Women, Initial results on prevalence, health outcomes and women's responses*, Geneva: WHO, 2005 at Appendix Table 9 at 182.

⁷² Id at Appendix Table 10 and 11 at 184.

children are often afraid to tell adults that they have been abused.⁷³ Children may fear that they will not be believed – which (as explored below and illustrated by some of the case studies above) does occur in the context of stepparent abuse. Children may also be frightened of the reaction of the adult whom they tell, or may have feelings of guilt arising from the abuse.

One report observed that *“sexual relationships between stepfathers and stepdaughters may lead to the break-up of the marriage, and the men in question would thus force the girls to keep quiet by all means”*.⁷⁴ Another incident, reported by a learner in the OYO magazine,⁷⁵ highlights the extreme pressures a victim of sexual abuse may face:

*My sister was raped just last week by our stepfather while our mom was at work. He said he would kill her if she told my mom about this. Now she feels too ashamed to tell our parents or the police, but she is afraid of being alone in the house because she thinks that he will rape her again.*⁷⁶

It is also noted that mothers sometimes refuse to believe that their partner has sexually abused their child, and therefore do not help their daughters. One recent report documents the view of young girls from a focus group discussion who said that:

*... most teenage girls silently experience sexual abuse at the hand of uncles and stepfathers. Sometimes the mother or someone else will know about the abuse but they will pretend that it is not happening. According to the girls, this really has a bad effect: ‘you feel dirty, hating yourself, feel like dying and develop a fatalistic approach to life – you just don’t care anymore and you end up doing stupid things’ ... Some girls say they hate their mothers because they fail to protect them.*⁷⁷

A 2002 report by the Legal Assistance Centre documented the situation of commercial sex workers in Namibia. The report noted that some participants reported problems within stepfamilies and abuse by stepparents during childhood as factors driving them into prostitution.⁷⁸ One quarter of respondents said that their first sexual experience was not out of free will.⁷⁹ Several participants identified a stepfather or mother’s boyfriend as the perpetrator of sexual abuse:

⁷³ See, for example, R Jewkes, L Penn-Kekana, H Rose-Junius, J Malala, *Child Sexual Abuse and HIV: Study of Links in South Africa & Namibia*, Pretoria: Medical Research Council, 2003 at 33. This study surveyed cases reported to the Windhoek Women and Child Protection Unit.

⁷⁴ H Becker, D Hubbard & Y Katjirua, “‘The cousin story’: Culture, social coercion and consent to sexual activity in Namibia”, Windhoek, 2000 (unpublished article), at 24.

⁷⁵ The Ombetja Yehinga Organisation (OYO), a Namibian trust which aims to create social awareness amongst young people using the arts, publishes a magazine for youth entitled *OYO Young, latest and cool*, with different themes four times a year.

⁷⁶ Learner contribution to *OYO Young, latest and cool*, “Let’s stop violence”, vol 9, no 6 (December 2010) at 13.

⁷⁷ National Planning Commission, *Children and Adolescents in Namibia 2010: A Situation Analysis*, Windhoek: National Planning Commission, 2010 at 84. The location of the focus group is not given.

⁷⁸ Legal Assistance Centre, *Whose body is it? Commercial sex work and the law in Namibia*, Windhoek: Legal Assistance Centre, 2002 at 81.

⁷⁹ *Id* at 83.

*My stepfather always touch my buttocks by the time I was seven years old.*⁸⁰

*My mother lived with another man when my father passed away. That boyfriend of my mother (my stepfather) raped me when I was 16 years old. He committed suicide when it came public that he raped me. I was pregnant with twins by him but they died before birth. My mother left me with my sisters and brothers in Windhoek and moved to the farm.*⁸¹

According to a 2004 media report, a 15-year-old girl in Arandis had reported to the police that she had been raped by her stepfather, and that the abuse had been ongoing since she was six years old.⁸² In a subsequent article, it was reported that the stepfather had been found guilty of rape and sentenced to a jail term of 17 years.⁸³ The article noted that when the girl first reported the abuse to her mother, her mother did not believe her, and the daughter then reported to the grandmother. When confronted by both women, the stepfather admitted to the abuse (see box below).

A 2005 newspaper report which explored child sexual abuse in Namibia documented an in-depth interview with a woman named Jane, who said she had suffered sexual abuse at the hands of her stepfather from the ages of six to eight. The article quoted Windhoek social worker Dr Hetty Rose-Junius, who stated that “one of the tragedies of underreporting is the fact that mothers refuse to believe disclosure of sexual abuse when their husbands, boyfriends, brothers or fathers are named as the perpetrators”.⁸⁴

NEWS “Jailed for 17 years for raping stepdaughter”

AN ARANDIS resident who was prosecuted on a charge that he sexually molested, and later raped, his stepdaughter on repeated occasions over a matter of years, was convicted and sentenced to a 17-year prison term yesterday.

The 37-year-old man was found guilty on charges of rape and assault in the Swakopmund Regional Court yesterday. The man's claim that his stepdaughter had been seducing him was dismissed as “sickening” by Magistrate Gert Retief. He sentenced the man to a combined term of 17 years' imprisonment on the two charges.

... He was accused of raping the child on several occasions from 2000 to 2004. According to the evidence, the girl in question was six years old when her stepfather started to sexually molest her. She is now 17. By the time that she was 12 years old, he started raping her.

At the age of 15, she testified, she realised how unacceptable his conduct over the years had been,

and reported this to her mother. Her mother, who was employed at a place away from Arandis, had often been absent from home. She at first did not believe her daughter's complaint about her husband and the child's stepfather, whereafter the child also made the same report to her grandmother.

When the two women confronted the man together about the claims that the child was making, he admitted that they were true, the court heard. His explanation then was that feelings had been awakened in him for the first time when he was asked to bathe the girl, the Magistrate was told.

– W Menges, **The Namibian**, 5 July 2006

⁸⁰ Id at 84.

⁸¹ Ibid.

⁸² Staff reporter, “Teen claims stepdad raped her”, *The Namibian*, 12 October 2004.

⁸³ W Menges, “Jailed for 17 years for raping stepdaughter”, *The Namibian*, 05 July 2006.

⁸⁴ A Kloppers and F Links, “The ugly face of child sexual abuse” *The Namibian*, 02 February 2005.

Economic abuse and neglect

There is also evidence that some stepparents subject stepchildren to economic abuse by denying access to food and material goods, and forcing children to perform an unfair or unreasonable amount of household work, sometimes at the expense of the child's education. Research by Scholastika Iipinge, Kathe Hofnie and Steve Friedman on gender roles and HIV noted that focus group participants reported that *"often people neglect their stepchildren"*.⁸⁵ One example from an interview on orphans and vulnerable children conducted by the Legal Assistance Centre also evidences neglect:

*My life is not good; I live with my stepmother and my father. They always say something that makes me cry. She says I'm not your mother. Sometimes I sleep hungry. She uses me to cook and fetch water.*⁸⁶

This experience is echoed in another report from a primary school learner:

*I have a friend whose parents passed away two years ago. She lives with her stepmother, who always treats her badly and beats her. My friend only eats porridge and spinach for lunch, and no dinner or breakfast. She is always sleeping during school hours. Sometimes her stepmother tells her not to come to school, but rather to go and fetch water instead.*⁸⁷

There is also evidence that stepchildren are discriminated against in the home, as compared to biological children, who are favoured with greater access to food, materials goods, and a much reduced burden of household chores. In the research conducted by Scholastika Iipinge et al, mentioned above, young women from rural Northern communities reported in focus groups that some people *"are giving your own kid love and food and the step kids are just working, they don't get enough food"*.⁸⁸ As one learner reports elsewhere:

*Last year in 2006 I lived with my father, stepmother and stepsister. My stepmother was very strict with me, but she never told her child what to do. My dad is a mechanic; he was never at home to see the things my stepmother did to me. Every day after school I had to wash the dishes and clean the house. I was only allowed to eat after I had finished all the housework. On some days, my stepsister would come home from school first and if there was no food, then her mother would give her N\$1 to buy a vetkoek, but when I came home, I had to do the housework and I got nothing. I never told my dad about it, because I was scared he would neglect me ...*⁸⁹

⁸⁵ S Iipinge, K Hofnie and S Friedman, *The Relationship Between Gender Roles and HIV Infection in Namibia*, Windhoek: University of Namibia, 2004 at 229.

⁸⁶ Legal Assistance Centre, *"I just want to have a good life": OVC and human rights in five regions of Namibia*, Windhoek: Legal Assistance Centre (undated) at 37.

⁸⁷ Primary school learner contribution to *OYO Young, latest and cool*, "Parent and child relationships", vol 7, no 2 (April 2008) at 19.

⁸⁸ S Iipinge, K Hofnie and S Friedman, *The Relationship Between Gender Roles and HIV Infection in Namibia*, Windhoek: University of Namibia, 2004 at 229.

⁸⁹ Learner contribution to *OYO Young, latest and cool*, "Parent and child relationships", vol 7, no 2 (April 2008) at 10.

Emotional and verbal abuse

Children also report verbal and emotional abuse by stepparents. In some cases the abuse centres on the child's status as a stepchild, with stepparents emphasising that they are not the true parent of the child. For example, one girl reports, *"My stepmother always insults me and says something that makes me cry. She says I am not your mother"*.⁹⁰

Another child reports:

*I am currently staying with my stepmother. At times she is good, but then other times she is not good cause she also shouts at me that you are just going to die like your parents died. Or she will say that it is why your parents died. She only shouts at me and my little brother, but not her kids ...*⁹¹

One primary school learner reported:

*I have a problem with my stepmother; she is always saying bad things to me that make me sad. I feel like running away from the house. She says I'm stupid. Please help me. What can I do?*⁹²

It appears that stepchildren also face particular issues in terms of the stability of their living arrangements. One study noted the relatively common practice of sending a child off to live with a grandparent or other extended family member when the parent enters into a relationship with a new partner and starts a new family.⁹³

"But since I was a boy I never knew how my sisters and brother look like. And when I came from Swakopmund to Windhoek I found out where my biological father's house is. When I went there to visit them and to see my sisters and my brother, my stepmother just said I must go away and I must not even come back, not even to visit."

– youth participant in Katutura

Cultural practices with particular consequences for stepchildren

There is also some evidence of traditional cultural practices that particularly affect stepchildren. For example, one study found that in Herero communities, *"a stepdaughter*

⁹⁰ Legal Assistance Centre, *"I just want to have a good life": OVC and human rights in five regions of Namibia*, Windhoek: Legal Assistance Centre (undated) at 37.

⁹¹ Id at 36.

⁹² Primary school learner contribution in *OYO Young, latest and cool*, "Parent and child relationships", vol 7, no 2 (April 2008) at 18.

⁹³ L Edwards-Jauch, *Aids and Family Structures*, Windhoek: University of Namibia, 2010 at 45-46.

may be compelled by custom to take her mother's place as the stepfather's sexual partner on the occasion of the mother's death, or if the latter became ill or reached menopause".⁹⁴

In addition, as noted in another study, one result of the practice of polygamy, in both rural and urban areas in Namibia, is the situation where one wife (or girlfriend) becomes the primary care-giver of her husband's children from co-wives, resulting in a stepmother role.⁹⁵ The study notes that social workers, NGO workers and children themselves have reported mistreatment of children by the co-wives (their stepmothers), to the extent that children have had to be removed from the home and sent to the biological mother's family.⁹⁶

Consequences of abuse for stepchildren

The consequences of experiencing violence and abuse at home are severe for children. As discussed, there is evidence that some stepchildren suffer abuse ranging from emotional and verbal, to economic, to physical and sexual abuse. This can have serious emotional and psychological consequences, interfering with a child's well-being and education, as well as causing physical harm. In the most severe cases stepchildren have been murdered by a stepparent.

A 2010 study on the situation of children and youth in Namibia concluded that *"violence and oppression in the family appears to be common, causing stress, anxiety or physical harm to the children affected"*.⁹⁷ Family-related stress is also a significant contributor to suicidal tendencies amongst Namibian children. The *Namibia School-based Student Health Survey 2004* found that an alarming 32% of students surveyed had planned to attempt suicide during the past twelve months. The most common reason cited for planning to attempt suicide was family problems.⁹⁸ In the 2010 study on the situation of children and youth, one female focus group participant explained the personal impact of her stepfather's abuse of her mother:

*At home, my parents fight, which make me feel bad. In 2007 my mom and stepfather were always fighting in front of me. Sometimes he will point a gun to my mom and tell me he is going to shoot her. It is affecting my studies. I am always crying in class ... It really hurts me a lot seeing my mom beaten ... that's the reason I come to school here because I couldn't study at home.*⁹⁹

Although the evidence of stepchild abuse is mainly anecdotal, the prevalence and the seriousness of the problem are evident.

⁹⁴ H Becker, D Hubbard & Y Katjirua, "'The cousin story': Culture, social coercion and consent to sexual activity in Namibia", Windhoek, 2000 (unpublished article), at 24-25.

⁹⁵ L Edwards-Jauch, *Aids and Family Structures*, Windhoek: University of Namibia, 2010 at 45.

⁹⁶ Id at 46.

⁹⁷ National Planning Commission, *Children and Adolescents in Namibia 2010: A Situation Analysis*, Windhoek: National Planning Commission, 2010 at 51.

⁹⁸ Ministry of Health and Social Services (MoHSS), *Report on the Namibia School-Based Student Health Survey 2004*, Windhoek: MoHSS, 2008 at 19.

⁹⁹ National Planning Commission, *Children and Adolescents in Namibia 2010: A Situation Analysis*, Windhoek: National Planning Commission, 2010 at 41.

Problems faced by stepchildren in children's own words

Stepchildren have given compelling accounts of the problems they experience. The Ombetja Yehinga Organisation (OYO), a Namibian trust which aims to create social awareness amongst young people using the arts, publishes a magazine for youth entitled OYO Young, latest and cool four times a year, with different themes. The magazine provides a forum for children and youth to write about their own experiences. The following are some of the stories shared by children in various editions:

Stepparents – especially stepmothers – don't really treat their stepchildren the way they treat their real children. Stepmothers seem to hate other women's children; they mistreat them by making them do all the work, while their biological children enjoy themselves with their friends. When a stepchild tries to ask for money, or permission to go somewhere, the stepparent always says 'no'. Some stepchildren are always unhappy and cry all the time. Their stepbrothers and stepsisters also sometimes mistreat them by beating them. My advice to parents and children is to treat everyone equally because God has created all of us equally and nothing will change it. In this world we all are brothers and sisters and all adults are our parents, so we should respect each others' rights.

– Briahanna Barakias, Kamwandi Junior Secondary School¹⁰⁰

When I was 10 years old my stepfather always used to call me to help him with 'something', but then always ended up touching me and doing things that I didn't like. This went on for five months, till my mother caught him touching me. She was so furious that she kicked him out of her house. Now with the help of Lifeline/Childline, I have become a happy girl.

– Epa, Immanuel Shifidi Secondary School¹⁰¹

When my mom and dad were together, they gave me anything I wanted and needed. Since their divorce, my father has returned to South Africa and my mother has been drinking a lot since she lost her job. When I ask her for N\$100 she doesn't give it to me. I feel so embarrassed. Now she is married to another man, and she gives his children money, but not me. One of my family members who feel sorry for me pays for my school and hostel fees. I don't even know what I'm doing at school when my mom doesn't care about me.

– 'Miz T', Jacob Basson Combined School¹⁰²

¹⁰⁰ OYO Young, latest and cool, "Parent and child relationships", vol 7, no 2 (April 2008) at 13.

¹⁰¹ OYO Young, latest and cool, "Let's stop violence", vol 9, no 6 (December 2010) at 13.

¹⁰² OYO Young, latest and cool, "Parent and child relationships", vol 7, no 2 (April 2008) at 18.

I stayed with my stepfather, but he hated me so much. He never wanted me to go to school activities and he would beat me when I came back from school because he said I was late, but this was not true. One night he came into my room while I was fast asleep and took my clothes off. He woke me up and I found myself naked – I felt as if I had been raped. I felt so alone, and children at school were making fun of me, saying that I sleep with grown-ups. This makes me not want to go to school.

– BRY-N, Outjo Secondary School¹⁰³

I'm living with my dad and my stepmother, who hates me very much because of the hatred she bears for my real mother. She always beats me and accuses me of doing bad things in the house whenever my dad is not there. My stepmother never sees the good things I do, like cleaning the house, performing well in school or taking care of the other children.

– Es, Acacia High School¹⁰⁴

There was a girl named Sara. She was a happy girl and always played with her sister. One evening while her mother was at work her stepfather came into the house and raped her. Since that day Sara has been sad; she has stopped playing with her sister and is afraid to tell her mother.

– Mildred, E Garoeb Primary School¹⁰⁵



¹⁰³ OYO Young, *latest and cool*, “Let’s stop violence”, vol 9, no 6 (December 2010) at 4.

¹⁰⁴ OYO Young, *latest and cool*, “Let’s stop violence”, vol 9, no 6 (December 2010) at 5.

¹⁰⁵ OYO Young, *latest and cool*, “Let’s stop violence”, vol 9, no 6 (December 2010) at 13.

CASE STUDY Abuse against stepparents

There are also reported cases of stepchildren abusing their stepparents, although this appears to be much less common than the reverse situation. In a decision of the High Court in September 2010, Antonius Kashidule was convicted of several offences arising from the attempted rape and physical assault of his stepmother and the subsequent brutal rape of his infant half sister in 2006. He was 17 when he committed the crimes. The incidents are explained in a social worker's report reproduced in the court judgment:

The accused's crime plan was to have sex with his stepmother. He did consume some traditional drink, but was sober enough to keep alternating his plans to succeed in his plan. For example he saw the opportunity when his stepmother was alone with the baby on her way back home and offer to accompany her. He offered his stepmother a stolen umbrella to soften her towards him. When she refused the umbrella he verbally asked her to have sex with him behind a bush. She refused and tried to talk to him while walking fast to the nearest homestead. The accused talked her out of seeking help at the neighbours and promised to behave. The accused patiently waited and planned his next move and when the stepmother needed help to get through the fence with the baby he acted. When she gave resistance he violently attacked her, broke her arm, abducted the baby, ran away and raped the baby violently, ripping the small body apart, while the baby was screaming.

The court noted the tragic circumstances of the accused, who was deeply troubled and had clearly been failed by his family and his community:

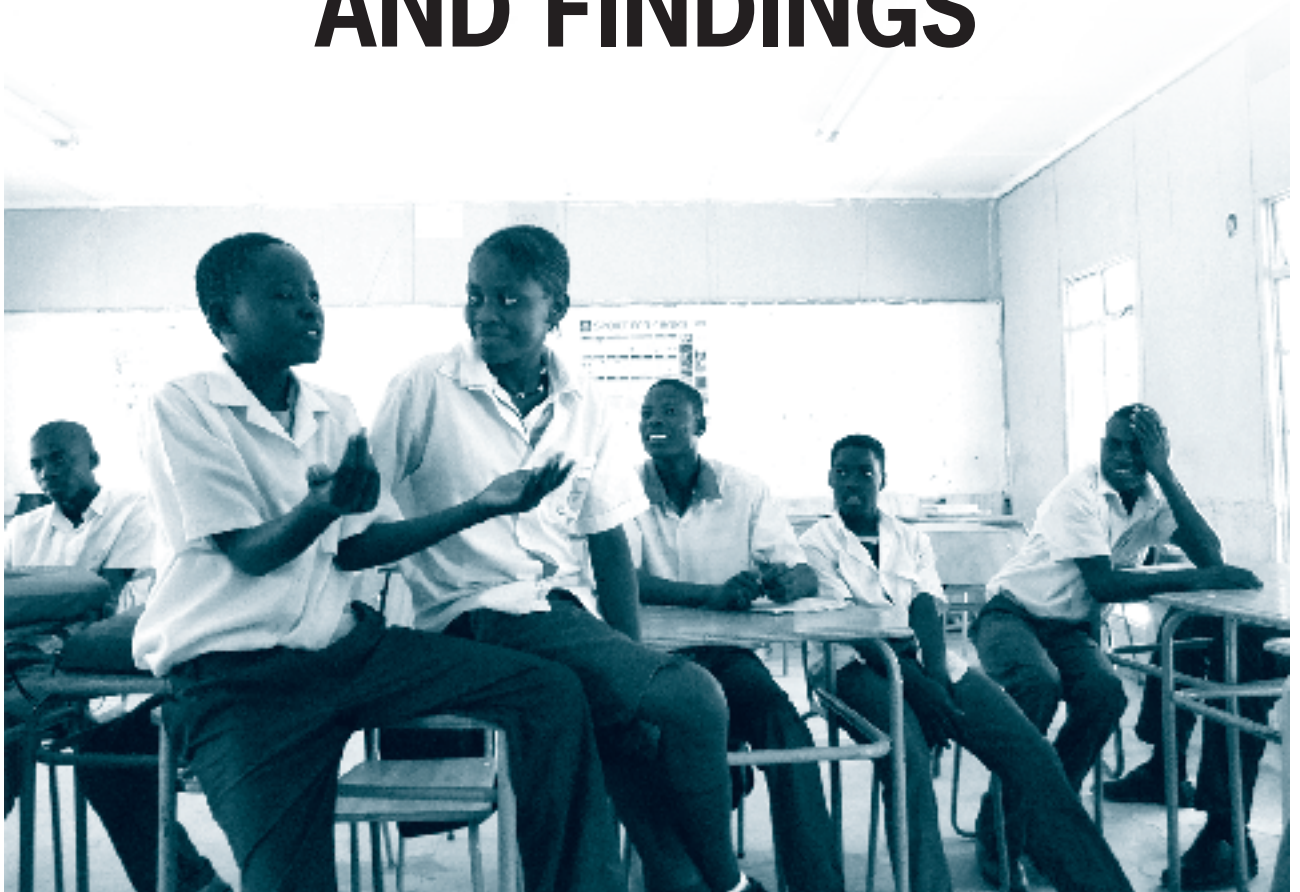
The accused comes from a family where there are eleven siblings with parents that did not positively contribute to the upbringing of their children. When the accused was fifteen years of age his mother died and although his siblings were taken in and cared for by family of his deceased mother, nobody was willing to take the accused and his brother because by then both had already shown serious behavioural problems. Their biological father also refused to provide for them as he was unable to discipline and control them due to old age; and therefore he sent them away to find employment elsewhere. Instead, they put up a hut in the bushes and sustained themselves by stealing from the surrounding homesteads. When his father again married the complainant (H M), the accused returned to his father's homestead but preferred to isolate himself and did not take part in the family activities. He continued stealing from the neighbours and when confronted, he became aggressive and violent.

The court sentenced the accused to serve 20 years in prison for the rape, with the sentences for the lesser charges to be served concurrently.

– Excerpted from **S v Kashidule** (CC 03/2010) [2010] NAHC 106 (24 September 2010)

Chapter 2

RESEARCH METHODOLOGY AND FINDINGS

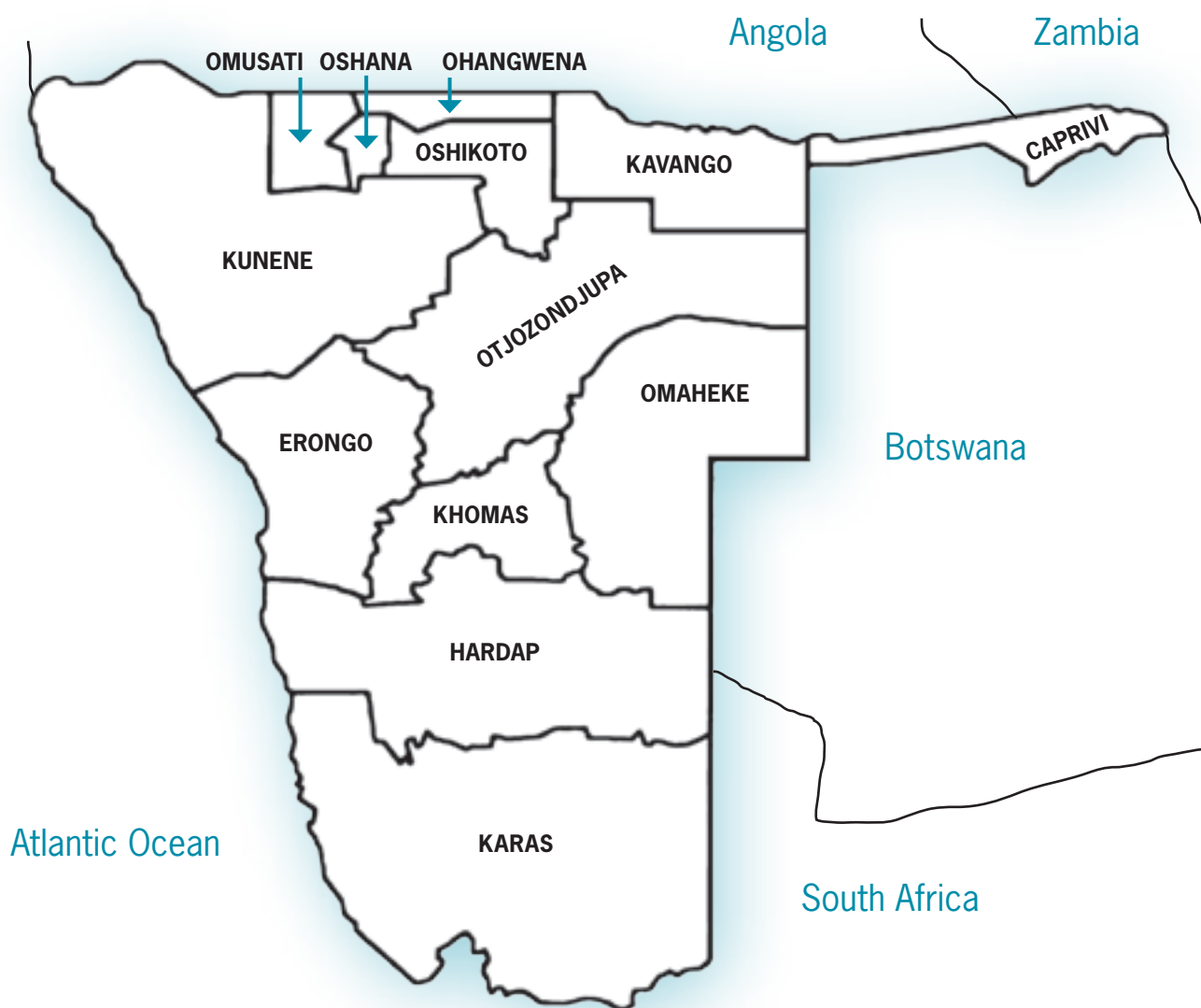


2.1 Methodology

The Legal Assistance Centre collected information on stepfamilies through focus group discussions, individual interviews and key informant interviews involving 199 people – 88 males (44%) and 111 females (56%) – in five of Namibia's 13 regions.

In order to gain a better understanding of the situation of stepfamilies in Namibia and public views of law reform options, the Legal Assistance Centre conducted small-scale field research in five selected regions of the country in late 2010 and early 2011. The study uses a qualitative approach, employing focus groups and informal individual interviews with community members and key informants to gather public opinion on the subject of stepfamilies in Namibia.

NAMIBIA'S REGIONS



TYPE OF INPUT	NUMBER OF PARTICIPANTS			LOCATIONS
	Male	Female	Total	
FOCUS GROUP DISCUSSIONS (13)	86	102	188	
Youth groups (7)	48	50	98	Katima Mulilo (Caprivi), Keetmanshoop (Karas), Katutura (Khomas), Okangwati, Erwee, Sesfontein (Kunene)
Adult groups (6)	38	52	90	Katima Mulilo (Caprivi), Keetmanshoop (Karas), Katutura (Khomas), Opuwo, Khorixas (Kunene), Eenhana (Ohangwena)
INDIVIDUAL INTERVIEWS	4	6	10	Katima Mulilo (Caprivi), Keetmanshoop (Karas), Katutura (Khomas), Opuwo, Erwee (Kunene)
KEY INFORMANT INTERVIEWS	2	9	11	Windhoek (Khomas)
TOTAL	92	117	209*	

* Because the individual interviews involved focus group participants, the research involved a total of 199 different individuals: 88 males (44%) and 111 females (56%).

Focus group discussions

In total, 188 people from both rural and urban areas in five different regions (Caprivi, Karas, Khomas, Kunene and Ohangwena) participated in focus group discussions, including 102 females and 86 males. Focus group participants ranged in age from 14 to 71, with the youth groups generally ranging in age from 14 to 21. The home languages of participants included Afrikaans, Oshiwambo, Otjiherero, Damara/Nama, Zemba, Rukangwali, Silozi and Subia. Focus group discussions were conducted in English, with translation assistance as required.

A total of six adult focus group discussions were held in Katutura, Keetmanshoop, Katima Mulilo, Opuwo, Eenhana and Khorixas. A total of seven youth focus group discussions were held in Katutura (two), Keetmanshoop, Katima Mulilo, Okangwati, Sesfontein and Erwee.

Individual interviews

In order to gather more detailed or personal input from community members, individual interviews were conducted on ad hoc basis with some focus group participants who volunteered to be interviewed. A total of ten individual interviews were conducted with four men and six women. These interviews were informal, and were conducted in a flexible manner as best fit the personal situation of the interviewee.

Key informant interviews

A total of eleven key informant interviews were conducted in Windhoek with two males and nine females. The key informants were selected for their professional expertise and knowledge of stepfamily issues within their communities. They included social workers and counsellors from the Ministry of Gender and Social Welfare and from private organisations, a clinical psychologist, lawyers specialising in family law, and community outreach workers.

The key informant interviews were conducted using a semi-structured questionnaire that outlined the main subject areas, although some flexibility was employed by the researchers to allow for a more personalised interview tailored to the key informant's areas of knowledge and expertise.

2.1.1 Focus group formats

Focus group discussions offered a safe and collaborative environment for community members to provide their opinions on stepfamilies. Focus groups were assembled with the assistance of local organisations and community leaders. In order to gather opinions from both adults and youth, two separate focus groups formats were designed.

Youth focus groups

The focus groups conducted with youth were designed to last for a half day, and in practice lasted two to four hours, depending on the group's time constraints. The focus groups involved story completion exercises, a role play activity, viewing of a clip from the film

Stepmom and a writing exercise. In some cases, time constraints meant that only some of the activities were completed.

In each youth focus group, the group was presented with two story completion exercises.

Story Completion 1

Gabes lived at home with his mum. Two years ago, his mum started dating a new man, Joseph. After a month of dating, Gabes' mum asked Joseph to move in with her and Gabes. Now Joseph, Gabes, and Gabes' mum eat dinner together every night and spend time on the weekends together. Joseph has now been living with Gabes and his mum for almost two years.

The children were then asked the following questions to generate discussion:

- How would you describe Gabes' relationship to Joseph?
- Do you know of different words for Gabes' relationship to Joseph in other languages or communities?
- If you were Gabes, what would you call Joseph?
- Would the answers to these questions be any different if Gabes and Grace were formally married instead of just living together?

The purpose of the first story completion exercise was to elicit opinions regarding how stepparents are defined, and what constitutes a stepparent.

Story Completion 2

You are at home one day after school by yourself. Your mum is out and your stepfather hasn't come home from work yet. Your stepfather's daughter Mary is also out playing with friends.

You really need to phone your friend, but realised that you are out of credit. Although you know he wouldn't like you using his phone, you take your stepfather's cell phone to quickly phone your friend. In your hurry to put the phone back in your stepfather's room after you use it, you drop it and break it, cracking the screen.

Just as you are looking at the damage, your stepfather comes home together with his daughter Mary, who also lives with you.

The group was then asked the following questions:

- What happens now?
- How does the stepfather react?
- Who should be responsible for disciplining you, your stepfather or mother?
- Would your stepfather's reaction be any different if it were his biological daughter Mary who had broken the phone?

The purpose of the second story completion exercise was to ascertain participants' views on the treatment of stepchildren by stepparents, and particularly to explore the possibility of

abuse. In some focus groups, this exercise was turned into a role play. Follow-up questions focused on exploring any mention of abuse by participants.

An additional role play exercise presented the group with the following scenario, from which they were asked to create short, two-minute plays in small groups.

Role Play Exercise

You and your mum live together with your mum's boyfriend, Joseph. Your mum and Joseph have been living together for two years now.

Your mum had a job working at a guesthouse nearby, but this week, she lost her job. Joseph has a job driving a taxi, and he usually works six days a week.

Next week is the beginning of the school term, and your mum realises that now that she has lost her job, she doesn't have the money to pay your school fees. You really want to continue going to school.

Your mum tells you that she is going to ask Joseph if he can help pay your school fees.

Create a short play showing what happens when your mum asks Joseph if he will help pay your school fees.

Following the performance of the plays, the participants were asked to comment on each other's plays, and whether they could imagine any other responses besides those shown in the plays. They were also asked whether it would make any difference if the mum and Joseph were married.

The purpose of the role play exercise was to prompt responses about whether a stepparent has or should have responsibilities towards a stepchild, particularly financial ones, and whether this depends on formal marriage or not.

If time permitted, the group was also presented with a short clip from a film entitled *Stepmom*, portraying conflict between a stepparent and stepchild. The participants were then asked to comment on the situation, and what they thought about it. Due to logistical and technical considerations, the film viewing took place in only one focus group.

Finally, there was a writing exercise where members of the group were each given a sheet of blank paper and asked to write about how they feel about their stepparent. If the youth did not have a stepparent themselves, they were asked to base their work on someone they know who does, such as a cousin or friend.

The purpose of this exercise was to give the participants an opportunity to express their opinions or personal experiences privately, allowing for more detailed or personal comments, and to encourage input from those who may have been shy too speak up in the group exercises.

Adult focus groups

The adult focus groups were conducted in a similar format as the youth focus groups, with story completion and role play exercises, as well as a list creation activity.

In each adult focus group, the participants were presented with the following story completion scenario.

Story Completion 1

Grace and Joseph live together in [location of focus group discussion], but they are not married. Before she moved in with Joseph, Grace lived with another man, and they had two daughters. Now Grace and Joseph live together with Grace's two daughters in one house. They have been living together for three years.

Joseph has a job working as a mechanic, fixing cars at a garage in town. Joseph doesn't have any other children. Grace's former partner has a job as a teacher in a nearby town, but Grace and her daughters haven't seen him in two years. Grace has heard that he now has two sons from his new partner.

The group was then asked questions about the relationships between the characters:

- If Grace and Joseph were your neighbours, what would you call Joseph's role in relation to Grace's two daughters?
- Do you know of different words for Joseph's role in relation to Grace's daughters in other languages or communities?
- What might Grace's daughters call Joseph?
- Would the situation be any different if Joseph and Grace were married?

The group was also asked questions to elicit opinions on the role of a stepparent, and whether any duties continue after the relationship with the biological parent ends. The questions were:

- What are some of the things that Grace might ask Joseph to help with in relation to her two daughters?
- Are there some things that Joseph might do in relation to Grace's daughters without even being asked?
- Think of some of the things that you have just listed that Joseph might have to help with in relation to the two daughters. If Joseph moves out of the house next month, will he still have to do any of those things?

The second story completion exercise involved two mini-scenarios, one designed to prompt discussion about the treatment of stepchildren by stepparents, including potential issues of abuse, and the other designed to elicit comments about whether stepchildren should be entitled to inherit from stepparents.

Story Completion 2(a)

Joseph comes home from work one afternoon and Grace's two daughters are sitting in the house, alone. Grace is not at home. Joseph discovers that her daughters have made a huge mess in the house while Grace is out. There is sugar spilled all over the floor, and a new jug of milk has been spilled onto the table. Joseph is not happy, especially since he bought the sugar and the milk.

The questions asked of the group were:

- How will Joseph likely react?
- Will Joseph see it as his role to tell the two girls that they should not spill food on the floor?
- Will Joseph wait until Grace gets home to let her deal with the situation?
- Would Joseph possibly hit or hurt the two girls?

Story Completion 2(b)

The next day, Grace is at home with the two girls when she learns that Joseph has been hurt in a very bad car accident. That evening, Joseph dies in the hospital. Joseph had a job as a mechanic in a garage. Grace, however, has no job, and her two daughters are hungry.

Grace knows that Joseph had a bank account with quite a lot of money in it. Joseph has no other children and no former wives. Grace and Joseph were not married but they lived together for three years.

The questions asked of the group for this scenario were:

- Should Grace's daughters have a right to some or all of the money that Joseph has left in his bank account? Why or why not?
- What if Grace and Joseph have only been living together for one month?
- What if they had been living together for ten years?
- Does it matter if Joseph had given money to Grace to spend on her daughters throughout their time living together?
- What if Joseph had never given money to Grace to spend on her two daughters?
- Would the situation be any different if Joseph and Grace were married?

In the role play exercise, the participants were split into small groups and asked to perform a short play about the following scenario.

Role Play Scenario

It is the beginning of the school year, and Grace has unfortunately just lost her job as a dishwasher at a small restaurant. She must now pay her two daughters' school fees, but she doesn't have enough money to pay both daughters' fees. She hasn't talked to her former partner and the girls' biological father in the last two years. Grace also knows that he now has two other sons to provide from his new relationship. Grace's current partner, Joseph, still has his job as a mechanic.

Grace needs money to pay the daughters' school fees, and the girls' biological father, and their stepfather, Joseph, have jobs.

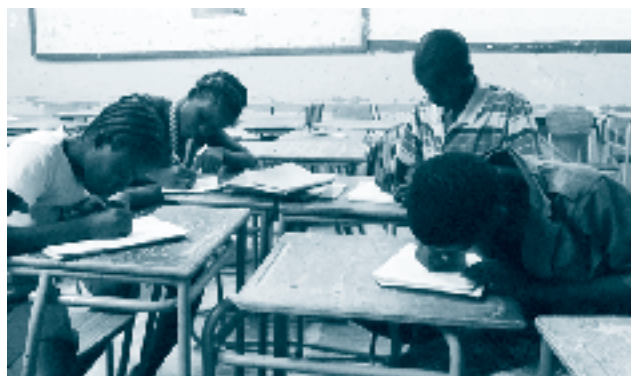
Following the performance of the plays, the groups were asked to give feedback on each other's plays. Follow-up questions regarding gender equality were also asked:

- Would the situation be different if the two children in the story were Joseph's children instead of Grace's children – and Joseph was the one who lost his job?
- Could Joseph ask Grace for help with paying his children's school fees?

The final exercise in the adult focus groups was a list creation activity. Based on the discussion, the moderator summarised a list of the problems identified by the participants in previous activities, or had the participants identify problems, and asked participants to work in smaller groups to create solutions for the identified problems, either legal or non-legal.

The facilitator then explained examples of law reforms in other countries, drawn from the comparative law discussion in Chapter 3, and asked participants for their views on each of the possible law reform options. The examples of law reform options from other countries included:

1. automatic parental rights and responsibilities for stepparents
2. voluntary parental rights and responsibilities acquired by stepparents through court order or parenting agreement (including custody, access, and guardianship)
3. legal duty of stepparent to maintain a stepchild
4. reciprocal duty on stepchildren to maintain stepparents
5. stepchild's right to inherit from a stepparent
6. stepparent's right to apply for adoption of a stepchild.



Respondents engaged in role plays and writing exercises in Keetmanshoop, Sesfontein and Katutura

2.2 Field research findings

The focus group discussions and activities, individual interviews and key informant questionnaires were designed to explore the views of participants about the following main topics:

- the concepts of “*stepparent*” and “*stepchild*”
- rights and responsibilities of stepparents towards their stepchildren
- problems facing stepchildren and stepparents
- views on law reform options.¹

2.2.1 “Stepparent” and “stepchild” terminology

Most focus group respondents indicated that they understood “*stepparent*” to refer to a person who is in a relationship with a child’s biological parent, while “*stepchild*” is the term used to describe your partner’s child from a previous relationship. Although some participants, particularly youth, thought that the stepparent must be married to the biological parent to be called a stepparent, most felt that this designation also applies to couples living in informal cohabitation relationships. In some regions, the terms “*stepparent*” and “*stepchild*” were viewed as disrespectful and are not widely used, while in other regions this was not the case. Youth participants tended to feel that a stepparent had to “*earn*” the title by acting like a parent.

To facilitate discussion about how participants understand and define the terms “*stepparent*” and “*stepchild*” in the adult focus groups, the facilitator described a family situation where a woman, Grace, and her husband separate and she goes with her children of that marriage to live with another man, Joseph. Grace does not marry Joseph, but she and her children live in his house. The participants were then asked what they would call Joseph in relation to Grace’s children, and vice versa.

In all groups, respondents indicated that the term “*stepparent*” refers to this situation. Overall, most focus group respondents indicated that they understood “*stepparent*” to refer to the person who is in a relationship with the child’s biological parent, while “*stepchild*” is the term used to describe your partner’s child from a previous relationship. All groups and interviewees indicated that the English terms are widely understood within their communities, although in some places, people do not use these terms when referring to each other because it is perceived to be disrespectful. In addition, some participants felt that you would not refer to a person as a “*stepparent*” in the absence of marriage to the parent.

¹ The opinions on law reform options are discussed in Chapter 4: Recommendations. Throughout this report, we have made minor edits to quotations from focus group participants and interviewees to correct grammar and enhance clarity, without altering the meaning of the statements in any way. We have also corrected spelling and grammar when reproducing written input from participants.

It appears to be relatively common that stepparents and stepchildren alike simply refer to each other as “*mother*”, “*father*” or “*my child*”. A few participants indicated that children sometimes refer to stepparents generally as “*aunty*” or “*uncle*”. One key informant indicated that in white communities, stepchildren usually use the parent’s first name, although another key informant observed that doing so in some other communities would be viewed as disrespecting an elder.

Primarily Oshiwambo-speaking adult respondents in urban Katutura widely agreed that Joseph would be called “*stepfather*”, and Grace’s children “*stepchildren*”. In contrast, in rural Eenhana, also a primarily Oshiwambo-speaking area, participants largely felt that he would be called father (“*Tate*”), a sign of respect, and that it does not matter if he is not the biological father. Respondents in Eenhana also said they would refer to the children as “*stepchildren*”.

In some regions participants felt very strongly that it would be regarded as “*unfair*” and “*disrespectful*” to actually use the terms “*stepfather*” and “*stepchild*”. This reaction was strongest in Keetmanshoop, where the primarily Damara/Nama-speaking adult participants stated that “*the Nama tribe believes that they are all children, it doesn’t matter if stiefkind [the Afrikaans term for “stepchild”]*”. Participants felt that the terms “*stepparent*” and “*stepchild*” were negative and created unnecessary distinctions and, as a result, problems within families.

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

– adult participant in Keetmanshoop

Adult respondents from Katima Mulilo echoed this view. They explained that you could not call him “*stepfather*” in the house to his face, you must call him “*ndate*” (Subia for “*father*”), but you could refer to him as “*stepfather*” if explaining his relationship to someone else (eg. “*this is my stepfather*”). The participants also stressed that it is “*not fair*” to call Grace’s children “*stepchildren*”, saying that you must refer to them as “*child*”, or “*daughter/son*”.

Some key informants also felt that using the terms “*stepparent*” and “*stepchild*” imposes problematic categories and distinctions. One social worker commented that “*emotional separation results from making distinctions*”. She felt that such terms imply a less close relationship – believing that their effect is “*to show immediately that you feel less close or you feel separate*”.

Unlike other adult groups, the Opuwo adult group did not suggest that use of the term “*stepparent*” was disrespectful. In fact, at one point it was mentioned by several participants that “*stepfather*” was a sign of respect by pointing out that the man is not the biological father, but still has an important role. Similarly all agreed that the children would be referred to as “*stepchildren*”.

In Khorixas, responses were mixed, with some adult participants saying “*stepfather*”, and some saying “*father*” or “*uncle*”. Several agreed that “*it depends on the relationship, if he is acting like a father*”. One participant said, “*it is not disrespectful to say stepfather, it is appropriate*”. Only a few thought it was disrespectful to say “*stepparent*”. All participants agreed that you would simply refer to the child as “*my child*”.

Interestingly, several key informants emphasised that the widely used Afrikaans terms “stiefkind”, “stiefma” and “stiefpa” have a negative connotation, because they mean “other” and “not my child”. One commented that in common usage, “stief” is negative – for example, “that man treated me stief”, meaning badly.

Does marital status matter?

Participants in all focus groups were asked if formal marriage between the stepparent and the biological parent makes any difference to the relationship between a stepparent and stepchild, and the use of the relevant terms. Responses varied in different regions. In Katima Mulilo, no one thought that marriage mattered in terms of “stepparent” status: “No, because in our culture, if he is in a relationship with your mother, it is the same”. Adult participants in Katutura appeared to share this view. Adult respondents in Opuwo also agreed, as all thought it does not make a difference, and that you would use the same terms and view the stepparent/stepchild relationship in the same way regardless of whether the stepparent is married to the biological parent.

However, in Keetmanshoop, adult participants generally felt that it did make a difference: “Yes. Because can’t accept as your father because he could just run away, and there could be another new one tomorrow. But if they are married you accept as your father because it is more serious”.

“In marriage you have to take the husband’s kid as part of the marriage. You have to treat well or he will think you do not want the children.”

– adult participant in Keetmanshoop

The adult group in Khorixas had mixed feelings on this, with some replying that it did change the nature of the relationship, and others replying that it does not matter.

The key informants also had mixed views on this point. One key informant felt that the term “stepparent” should only be used in cases in which a biological parent is married to their partner, and the partners live together with the biological parent’s child or children. She believes that in other instances, alternate caregivers should simply be referred to as “guardians or fosterers”. She also felt that the child’s view of the stepparent depends on the child’s age – as a very young child will probably refer to a stepmother as “mummy”, while an older child would be more likely to call her “aunty”.

Another key informant agreed that marriage is a requirement, saying “I think that only when married do you refer to stepparents. But marriage is not necessarily a commitment from the father to be there. It is accepted as that way but it is not necessarily so”.

“You are automatically a stepchild even if they are not married, because there is increased prevalence of cohabitation, and it is widely accepted.”

– social worker in Windhoek

Other key informants disagreed, stating that most commonly, a parent's new partner moves in, and this person becomes a stepparent. One observed that in many cases couples are not legally married, but can have a stable relationship for many years, and she thinks that in this case children of the other partner are regarded as stepchildren in the community. Another key informant, a social worker, also echoed this view, saying that a stepparent in Namibia cannot be restricted to adults who are married to one of a child's biological parents.

She felt that this categorisation would ignore common stepfamily relationships involving a) a child's biological parent who lives together informally with a partner in the same household with the child; b) a father and mother who live together, and the father brings into the home children that he has fathered through an extramarital relationship; or c) a child whose parents have died or abandoned him or her and who lives together with an older sibling and that sibling's partner – a relationship she feels often resembles a stepfamily. In this social worker's experience, the situation where the father brings children from another relationship into the home is the most common stepfamily arrangement in Namibia. In such cases the father's wife then becomes the stepmother to the children born from her husband's affair.

Another key informant, a counsellor, felt that in her Otjiherero-speaking community, it is more common to say *"mom's boyfriend"* or *"dad's girlfriend"* than to use the term *"stepparent"*, which some view as disrespectful and many think should apply only if the stepparent and biological parent are married. She added that *"it depends on the relationship – if very good, you would rather call mom or dad"*. She also felt there was a distinction between stepfathers and stepmothers: a stepmother is *"more likely to say 'that's my child', but a stepfather is more likely to say 'my girlfriend's children'"*.

The youth focus groups were presented with a scenario similar to that discussed in the adult focus groups. The facilitator described a situation where Grace and her son, Gabes, move in with a man, her boyfriend Joseph. The youth were asked how they would describe the relationship between Gabes and Joseph.

Responses to this question were noticeably different amongst the youth focus groups as compared to the adult focus groups. Most commonly, youth participants felt that how you would refer to a stepparent would depend on how they act – whether they *"act like a parent"*. This was a very common response in the two urban Katutura focus groups, where the participants generally seemed to feel that stepparent status must be earned. One participant in the first group said: *"Gabes would accept if his stepfather treated him like a real son"*. Another said it depends *"if stepfather and stepson both agree to accept"*, suggesting that the youth view both stepparent and stepchild as having a say in the status of the relationship. Yet another said: *"it depends on the qualities of stepfather. What type of role Joseph is playing towards Gabes"*.

In the second group, similar sentiments were expressed, indicating that the important factor is the actions of the stepparent. In this group respondents said: *"It has to do with respect. The more you respect the person the more he is like a father figure"* and *"he has to be there and give advice if I relate to him as a stepfather"*.

“If mom married another guy, but he doesn’t act like a father, then he is not a stepfather.”

– youth participant in Katutura

Youth respondents in Katima Mulilo shared this view. Many thought that whether Joseph would be called a stepfather *“all depends on how he acts”*. Most said they would just call him by his name. Some thought he would only be a stepfather if he was engaged or married to the mother, because otherwise *“they could break up at any time and he would leave”*.

In contrast, youth in the rural areas of Erwee, Okangwati and Sesfontein did not raise the issue of how the stepparent behaves, but simply felt that *“stepparent”* applies to situations where you stay with someone who is not your parent, but that you would call them mother or father *“to show respect”*. They felt that stepparents in their communities just call stepchildren *“my child”*.

Youth respondents were overall less likely than the adult participants to use the term *“stepparent”*, viewing it as a title that must be earned, or that applies only after marriage to the biological parent. As some participants in Katutura stated, Joseph is just the *“mother’s boyfriend, if they are not married he is nothing”*. In Katutura, about half the participants in both youth focus groups felt that Joseph is just Gabes’ mother’s boyfriend, while the other half felt that he would be called *“stepfather”*.

Interestingly, the responses of youth groups indicate that some view marriage as an important indicator of stepparent status, in contrast to most responses from the adult groups. In one of the focus groups in Katutura, some participants felt that it was an important factor. One respondent said *“Gabes should only refer to Joseph as stepfather if he is married to Gabes’ mom”*. Another agreed, saying *“Joseph is only dating the mother. He is not entitled to do anything but when married that is when the full package comes in”*. The main reason given for this view was that if they are not married, he can just leave – there is a lack of permanence to the family arrangement. As one participant observed, *“what if dating doesn’t work out? He could just leave”*.

However, other participants in the same group raised the point that it is common for people not to marry, or to delay marriage for years, concluding that marriage cannot be a factor in deciding whether a person is your stepparent. The majority appeared to feel that marriage does not matter. One participant said: *“even though not married he is Gabes’ father. The mother is having a relationship with Joseph so because there is something between them he is also tied to Gabes”*.

The majority of youth respondents in Keetmanshoop felt that marital status does matter, because it makes *“permanent”* changes to the family dynamic. They felt this brought greater responsibilities and obligations to the stepparent, as well as permanence to the relationship. Otherwise, they felt, *“Gabes would think that if they are not married, Joseph could just walk out”*.

"Age matters, the older you are the harder it will be. Especially if you are used to your real father, it will bring confusion. I would never accept any man that dates my mother as my father."

– youth participant in Katutura

Another factor raised by both youth groups in Katutura was the role of the absent biological parent. Many indicated that the relationship with the stepparent would depend on the role of this absent parent in the child's life. In response to the scenario, participants commented that *"if Gabes has a relationship with his real father then he will not accept Joseph"*.

All focus groups indicated that stepfamilies are *"very common"* in their communities. In Katima Mulilo, both youth and adult participants observed that the impact of HIV/AIDS in their region has greatly contributed to the prevalence of stepfamilies – to the extent that one young male participant said stepfamilies live in virtually each house. Key informants interviewed in Windhoek observed that stepfamilies are *"incredibly common"*.

Terms used in other languages to describe the stepparent and stepchild relationship

The following are responses received from participants who were asked if there are words in their home languages that mean "stepparent" and "stepchild":

- **Afrikaans:** *"stiefma"* and *"stiefpa"* mean stepmother and stepfather, *"stiefkind"* means stepchild
- **Damara:** *"ôa-!na //un"* means stepparent and *"oa!galgoara"* means stepchild
- **Subia:** *"bo ndate ba mutose"* means stepfather and *"bome bamutose"* means stepmother
- **Lozi:** *"banyoko bamutose"* and *"banyoko beso"* mean stepmother and stepfather, and *"mwana wa mutose"* and *"mwendakumongo"* means stepdaughter and stepson
- **Rukwangali:** *"mukurona gositumbwena"* means stepparent and *"munona gositumbwena/ munwa gositumbwena"* means stepchild.

With respect to Otjiherero and Oshiwambo, participants advised the researchers that there are no words for *"stepparent"* or *"stepchild"* in these languages. Participants explained that there is no word for *"stepparent"* in Otjiherero, so you would call a stepfather *"Tate"* (father). In addition, participants said that there is no direct literal translation of the English terms in Oshiwambo, but that sometimes people use the Afrikaans terms *"stiefpa"*, *"stiefma"* and *"stiefkind"*.

Oshiwambo-speaking participants also advised that sometimes people would say *"ongeda naina"*, which means *"come with your mother when she marries, and the child is not of the man you are marrying"*, meant to describe the child going with the mother to the new husband. Participants also mentioned the phrase *"uunona wopondje"* – the literal translation is *"outside children"*, although there were differing views in the Katutura youth groups about whether this is insulting, some saying it is fine, and some saying that it is offending and perpetuates stigma – *"we don't use it"*.

2.2.2 Rights and responsibilities of stepparents towards their stepchildren

Care and support

Focus group participants in every region strongly felt that stepparents have responsibilities to care for and support their stepchildren, although agreement was generally more pronounced amongst adult participants than youth. Most adult participants felt that a stepparent has responsibilities even if he or she is not married to the biological parent. Youth participants overall agreed with this view, but more frequently viewed marriage as a requirement before responsibilities arise with regard to the stepchildren. For many participants, the most important factor is if the stepparent “*lives in the house*”. Many felt that when you enter into a relationship with a person who already has children, that you must take them as “*a package*”. However, although there was wide agreement that stepparents should “*take responsibility*”, participants frequently indicated that this was not necessarily happening in their communities.

Focus group participants in both youth and adult groups in every region widely agreed that in the hypothetical situation described in section 2.2.1, Joseph, the stepfather living in an informal cohabitation relationship with Grace and her children, has responsibilities towards his stepchildren.

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

– adult participant in Khorixas

The responsibilities described by participants centred on caring for and supporting the stepchildren, primarily focusing on aspects of financial support, with responsibilities to provide emotional support and parental guidance also being mentioned somewhat less frequently. Common examples of expected types of financial support were providing food and paying for accommodation and other associated housing expenses. It should be noted that each focus group was asked whether their responses would be any different if the roles were reversed, and it was Grace who was the stepparent. No groups felt that it made any difference whether the stepparent is male or female.

Key informants generally agreed with this view. One, a social worker, felt that stepparents who enter into a relationship with the biological parent assume all parental rights and responsibilities, including financial support, care and love. Another social worker agreed that financial support was expected, but also guidance, love and care. She also noted that it varies according to children’s ages. For younger children, she felt that stepparents should contribute to things like their primary education, hospital expenses if there is an illness and

even future education. In her view, “stepparents have the right to be protectors and providers – financially, emotionally, spiritually and psychologically”.

In contrast to the views of the focus group participants, one key informant, an Otjiherero-speaking counsellor, felt that there are differences between community expectations of a stepmother’s and a stepfather’s responsibilities:

Culture dictates the way you are brought up. If you are a woman, you are to provide care as if the child is yours. Men are hands off with the child. A few of them provide finances and food. There is no expectation, it is if they feel like this is my child. The stepmother will provide financial help, but the stepfather feels that no, the child has his own father.

A significant majority of participants in every adult focus group felt that responsibilities to care for and support the stepchildren exist whether or not the stepparent is married to the child’s biological parent, although some participants felt that a responsibility arises only if you are married. Very few felt that there are never any responsibilities, such as one participant in Katima Mulilo who said, “there are no responsibilities because they are not your biological children”.

Interestingly, participants from some youth focus groups were less likely than the adult participants to assert that a stepparent has responsibilities towards a stepchild. In Okangwati, for example, only about half of the youth participants felt that a stepparent has responsibilities. A number of respondents felt that responsibilities arise only if the stepparent marries the biological parent. For example, as one key informant replied, marriage makes “a huge difference. Because if married, it makes it compulsory for stepparent to care for the stepchild”. Others, such as a youth participant from Katutura, agreed: “Joseph is only dating the mother. He is not entitled to do anything but when married that is when the full package comes in”.

Reasons given by youth participants who did not agree that stepparents have any responsibilities towards their stepchildren were:

- “How can they share the bills? He needs to take care of his own kids. He might start taking more care of Gabes to please Gabes’ mother.” (youth participant from Katutura)
- “If not married he can help only if he wants.” (youth participant from Katima Mulilo)
- “But if they are married he has to help, it is a must.” (youth participant from Katima Mulilo)
- “Stepparents can volunteer but not have the duty. Biological parents have the duty.” (youth participant from Katutura)
- “It is unfair to bring children that don’t belong to you.” (youth participant from Okangwati)

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

– youth participant in Katutura

Adult participants in Katima Mulilo provided the following specific examples of the types of responsibilities that a stepparent has towards a stepchild:

- to take care of the child
- to support the child
- to help with homework
- to pay school fees
- to take responsibility
- to buy food
- to treat exactly the child exactly like a biological parent would.

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

– adult participant in Katutura

When asked to explain why the participants felt that a stepparent has responsibilities towards a stepchild, the most common responses across all regions, in both adult and youth focus groups, were because the stepparent lives in the same house, because it is part of the “*package*” if you love and enter into a relationship with the child’s parent, and because it is “*tradition*” or “*culture*”. Here are some examples of participant responses from adult focus groups:

- *“This is an indication that he loves the mother – must also love the children.”* (Katima Mulilo)
- *“It is a cultural idea. How we are supposed to do – like our ancestors – treat all the same.”* (Katima Mulilo)
- *“When you get a child, you can’t divide. It is a package. He must be responsible and be the father, and buy everything they need and provide fatherly love.”* (Keetmanshoop)
- *“I100% agree. I like the woman I take her as a package and treat them as my kids.”* (Keetmanshoop)
- *“If he is in the house, he is responsible.”* (Keetmanshoop)
- *“In our tradition if I get married with a lady having kids, I have to accept her kids.”* (Khorixas)
- *“He is taking over Grace’s house, he must support. If he buys food, he must feed the children.”* (Khorixas)
- *“During the relationship the stepparent will take full responsibility to help with the upbringing of the stepchildren.”* (Eenhana)
- *“It is his responsibility to buy food and support every member if he is the owner of the house.”* (Katutura).

Very similar responses were given in the youth focus groups:

- *“He should take full responsibility.”* (Katutura)
- *“They should share their responsibilities.”* (Katima Mulilo)
- *“It must be a duty.”* (Katima Mulilo)
- *“When I say yes to you – even to live together – it is your responsibility.”* (Katutura)
- *“There should be shared responsibilities. Both parents and stepfather help out.”* (Katutura)
- *“If you move in, you are responsible.”* (Keetmanshoop)
- *“If you date someone you have to take the whole package. You get the whole profile. I will take up full responsibility if I date someone.”* (Katutura)
- *“You must play your part because you are coming in to be a parent.”* (Katutura)

“If you are in a relationship with the mother or the father you take on the children too, like yours.”

– adult participant in Opuwo

However, when asked whether they thought that stepparents were actually supporting their stepchildren in practice in their communities, many respondents expressed doubts. Adult participants in Katima Mulilo admitted that *“stepparents are expected to play the role, but sometimes they don’t”*. A key informant also expressed the view that stepparents are not concerned with the *“overall wellbeing of the child”*:

They feel it is not their responsibility, unless they have a good relationship and the child regards as a parent. Commonly the responsibility is more household related – telling the stepchild to do chores, but not actually looking at the child’s wellbeing, for example, to help with homework. This is very rare.

***“I’m living with my stepfather and my mother ...
He was a good person when I was in grade five he was paying
my fees. When I came in grade 7 than he realized that I’m wasting
his money and he is not working. And I’m not his child.”***

– youth participant in Okangwati

In both the adult and youth focus groups, facilitators asked what would happen if Grace, who had recently lost her job, asked her boyfriend for help with paying her children’s school fees. In some focus groups, this scenario was discussed, and in others, it was explored through role plays.

Interestingly, although respondents in every focus group indicated strong, if not unanimous support, for the general idea that the stepparent must have responsibilities to care for and support stepchildren, when presented with this scenario, only around half indicated that they thought that Joseph actually *would* help Grace with the children’s school fees. Although there seemed to be general consensus overall that he *should* help, many participants indicated that he probably would not, or if he did, only after requiring Grace to beg or offer a bribe and after much argument.

This was most noticeable in rural Erwee, Sesfontein and Okangwati, where youth participants performed role plays, two in each focus group, and all six depicted the stepparent refusing to help. Most commonly, the performers showed the stepfather saying *“I am not your father – go ask him”*, and emphasising that he has no responsibility to help them since they are not *“his”* children. Despite this, all respondents in Sesfontein felt strongly that the stepparent should help: one young woman said *“he has to support my children if he is with me”*, and another said *“he has to pay because the kids help with the livestock, the goats and the cattle”*. Many agreed with this comment, saying they often help with the livestock themselves. They

felt that the stepparent “*must pay for food, school, clothes, and uniforms*”. Respondents in Erwee and Okangwati were less certain, with only about half agreeing that a stepparent has such responsibilities.

In both Keetmanshoop and Opuwo, the adult group participants were split into two groups. In each case, one group’s play showed the stepparent agreeing to help, and the other group’s play showed him refusing. In several cases, participants depicted the stepfather as angrily refusing because “*they are not my children ... ask their own father!*”. In one role play in Opuwo, the stepfather angrily sent the children off to see their natural father, who did happily agree to assist with the school fees.

In the Keetmanshoop youth focus group, the participants also performed two plays, one showing the stepfather angrily refusing to help, and one where he only agreed after much begging on Grace’s part. In the following discussion the group said that they thought the first play was the most realistic, because the most common response would be for the stepfather to refuse to assist, and if he did eventually give in, it would only be if the mother begged him, as in the second play.

“I am not your father – go ask him.”

– typical stepfather response to a request for financial help in youth role plays

In one of the Katutura youth groups, both plays depicted the stepfather agreeing to help, and the general consensus from the group seemed to be that it would be realistic to expect him to help. In the Katima Mulilo youth group both stepfathers also eventually agreed, but the first play depicted violence by the stepfather, who behaved in a threatening manner towards Grace. This group also agreed that some sort of exchange or negotiation, or even a bribe, would be expected from Grace if the stepfather agreed to help.

“You got into a relationship with kids, you should take responsibility.”

– youth participant in Keetmanshoop

A common theme that arose during this exercise was the responsibility of Grace’s ex-husband, the children’s biological father. Participants in almost every group felt that the biological father has the first responsibility to provide for the children financially. As one adult participant in Katima Mulilo said, “*He must pay – he is the father. Go to the maintenance court.*” Adult participants in Keetmanshoop agreed, saying “*the responsibility is for the biological father. The stepfather also becomes like the father, but he can’t be forced to support the kids.*” Youth participants in Keetmanshoop agreed, saying “*if the father is alive, he has to provide*”. Youth in Katutura also felt that if the father can help, he should, but pointed out that he may be dead, have no job or be in jail. A key informant also identified the absence of the other biological parent as an important factor in whether or not the stepparent would support the child: “*because the stepfather would feel like there is no other choice, no other person to care for the child*”.

In Eenhana, respondents similarly felt that the responsibility should be with the biological father and Grace should first approach him, but depending on the relationship between Joseph and Grace, Joseph might want to help out. Respondents in Katutura expressed the most doubt that the stepfather would help in these circumstances. As one participant said, echoing a view of many participants in this group, *“Joseph will always say it is never his responsibility. As an Oshiwambo, it is the responsibility of the woman to go to her family for help.”* They felt that this tradition would also extend to the children’s biological father, because *“in Owambo tradition the child belongs to the mother’s side. So he will refuse, and say go to your man, or your family”*. Thus, these responses were influenced by the matrilineal lineage of Oshiwambo-speaking groups.

Interestingly, some youth participants rejected the idea that the biological father would, or should, help. In Katutura, one participant said: *“my biological father was never there. So he can’t just show up, because my stepfather raised me since I was a little boy”*. Another youth participant in Keetmanshoop agreed, saying *“no, he is not acting like a father anyway”*.

As participants in Eenhana explained, in the event of separation, the stepparent will break all ties with the stepchildren, including all responsibility for them. Other groups also expressed the view that the responsibility only lasts as long as the stepparent is in a relationship with the biological parent. As a participant said in Katima Mulilo, to wide agreement, when the relationship ends, *“Joseph has no responsibilities. The relationship with the kids is only based on the relationship with Grace”*. Participants in Opuwo, however, were less certain, with about half saying that it depends on the situation, and that the bond between the stepparent and stepchild has to be considered.

Discipline

Most adult participants across all regions 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 responding 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.

Participants were asked whether a stepparent is entitled to discipline a stepchild who misbehaves, or if it is solely the biological parent’s responsibility. Most respondents in all adult focus groups felt that the discipline of a stepchild should be shared between the biological parent and the stepparent. In Eenhana and Katutura participants all agreed that discipline should be a *“50/50”* responsibility. No one suggested it was not Gabes’s responsibility because he was the stepfather. Participants in Opuwo agreed, saying *“since we agree to live together, with our children, shouldn’t have to wait for the other person”*. A participant in Katima Mulilo echoed this view, saying *“Yes, he is taking care [of them], he has the right to discipline”*.

Responses to this question in the youth groups were less uniform. In one of the Katutura groups and in Katima Mulilo, youth respondents largely felt that both should be able to discipline. However, a large minority in some groups argued that only Grace, the biological parent, should be allowed to discipline the children. For example, in Keetmanshoop some youth participants agreed that if the stepparent takes responsibility and supports the child, then he or she has a right to discipline and beat the child, but others said that *“it is the mother, she was there first”*. Opinions were stronger in the second Katutura group, where many participants seemed to feel that discipline of the child should only come from the mother: *“the child has more respect for the mother – there is more connection”*, and *“it is always more comfortable with the biological parent”*.

A number of participants linked financial support to the right to discipline. As one male adult participant in Opuwo said, *“if he is paying maintenance, supporting them – he can beat them”*. An adult respondent in Keetmanshoop agreed, saying *“it is his right to discipline if he supports the kids”*. Another adult respondent in the group cautioned that *“the punishment must be fair, when the mother is not home he can beat too much”*.

Respondents in Katima Mulilo noted the difficulties that result because he is not the real father, and also the possibility that the biological father would be angry about Joseph disciplining the child. Several young men within this adult focus group felt that it was not a good idea for the stepparent to discipline a stepchild, as only the biological parent has that right. As they said:

No, it is not a good idea for him to discipline. He will be very bad because of the situation in the house. He will be scared [to upset the mother]. Better to wait for the mother and sit together and talk to the kids. Then they will see it comes from you both.

Beating was the most common response in both youth and adult groups when participants were asked how the stepparent would react to the children misbehaving.² Without exception, every group indicated that this was the most likely form of discipline, although some also mentioned that the stepparent might discuss what happened rather than beating. One youth participant in Keetmanshoop commented *“the only punishment our people know is beating”*. Interestingly, most adult respondents felt that this was an appropriate response, while many youth participants, although they agreed that beating was a likely reaction, expressed the view that it is wrong. It appears that many youth participants are aware that beating creates fear, perpetuates violence, and is not an effective form of discipline.³ For example, one youth participant in Katutura made the following comment: *“no corporal punishment because it is against the law”*.⁴

² The issue of beating will be discussed in more detail in section 2.2.3, in reference to problems involving physical abuse.

³ Similar views were expressed by children interviewed during public consultations about the draft Child Care and Protection Bill, as summarised in Legal Assistance Centre, *Corporal Punishment: National and International Perspectives*, Windhoek: Legal Assistance Centre, 2010 at 44.

⁴ Note that section 56(1) of the Education Act 16 of 2001 bans the use of corporal punishment in schools, although this principle has not yet been extended to the use of corporal punishment in the home.

“It is not okay to beat, should do some other actions. Like talking.”

– youth participant in Katutura

2.2.3 Problems facing stepchildren and stepparents

Overview

The most common problems facing stepchildren as identified by focus group participants and interviewees are:

- discriminatory treatment within the home, especially in comparison to biological children
- verbal and emotional abuse
- economic abuse
- physical abuse
- sexual abuse, particularly of stepdaughters by stepfathers
- children being sent away to live with other relatives when the parent enters into a new relationship with another partner
- conflict within the family arising from challenges with adjusting to a new stepparent.

In addition, some participants raised the issue of abuse of stepparents by older stepchildren, as well as less serious problems involving conflict within the family and communication problems, including stepchildren “*disrespecting*” and refusing to obey their 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. Reports were very common in every region of stepchildren being discriminated against in terms of access to food and goods like clothes, and money generally, as well as being forced to do an unequal share of household labour.



Adult respondents in Katima Mulilo



Adult respondents in Keetmanshoop



Youth respondents in Erwee



Youth respondents in Erwee

"I've experienced it – my cousin is treated differently than her stepsister. It was during final exams, when kids need to study. My cousin has to cook all the food – lunch and dinner, so she can't study, like her stepsisters and stepbrothers."

– youth participant in Katutura

"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

Adult participants in Katutura described discriminatory treatment as a regular occurrence. One adult participant, a kindergarten teacher, said she thinks this is a very common problem. She explained that often there are fathers who bring their children from their wives in the North to stay with girlfriends in Windhoek, who become the children's stepmothers. These children, she said, *"are not washed, no food. You can see she has no mother"*. Youth participants in Katutura agreed that *"it is common to not treat them equally"*. They said commonly stepparents will tell you there is no money, if you ask for help with buying food or other things.

Another teacher in Erwee shared this view, saying she often sees children treated unequally, and denied access to food: *"some stepmothers treat differently – the biological children better"*. She elaborated: *"when she is serving food, you see the difference. There is better food, meat, for the biological kids. The stepkids will keep quiet"*.

The adult focus group in Katutura also commented on the traditionally low status of children born to women before they were married in Oshiwambo tradition:

An unmarried woman with children was looked down upon by some Owambo tribes, because she is no longer a virgin – "spoiled" or "of cheap value". In the tribes where lobola is usually paid, she would get less lobola – "only a goat instead of a cow, or nothing"; because she has a child she is "worth less" to her new husband. This happened in the past, but it is still happening now in some tribes.

A key informant added that in his view, in Oshiwambo culture, you “*can’t take another man’s child*”. Another key informant explained that in the Herero community, “*women tend not to accept*” a male partner’s child born outside of marriage because such a child is “*ekumbe zumo*”, translated as “*not properly made*”. However, a child born inside marriage is “*properly made*” and will be accepted.

“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

Youth participants in Keetmanshoop identified unequal treatment of stepchildren as compared to biological children as a major problem in stepfamilies: “*yes, the parents take more care of the biological child. It happens a lot*”. Another participant said the “*stepchild is doing all the chores while the other child is doing nothing*” and “*it is very common that stepchildren are made to do much of the work in the house*”. However, one participant observed that “*there are also families where the stepkid is treated better. If he [the stepfather] is abusive, she [the biological mother] will treat his kids better, and he will start to beat you [the biological child]*”.

Youth in Sesfontein also identified discrimination as a common problem: “*stepmothers, they discriminate. After cooking at the fire, then they put the food in the house and only give to their own children and you sleep hungry*”.

“Many men and women don’t want a stepchild, feeling it is ‘just not mine’.”

– community worker in Windhoek

Adult respondents in Katima Mulilo also felt that stepchildren were discriminated against within the family on a regular basis. One woman said “*It is too expensive to take care of both, so in some instances, you treat the biological child better – they have to eat well, dress well*”. Youth participants in Katima Mulilo also viewed unequal treatment of stepchildren as a serious problem, and provided the following examples:

I have a stepbrother. I do stuff he doesn’t do [in the house], but he gets a lot more money then they give me. I do a lot of the work.

Sometimes the stepchild is scared to ask for something – like the N\$500 shoes that the other kids have. The stepparent says no but then buys them for the biological kid.

My stepbrother was coming from the village. When he arrived he asked my mother for the money for the transport, to pay the driver, but she said she had no money. Later she gave me money to buy food, so I know she had it.

Another adult participant in Opuwo, himself a stepchild, felt that sometimes *“biological kids are treated better – they are paid more attention”*. As a result, he felt, *“stepkids don’t feel it is their house”*. He thinks that *“the living standard”* is a big problem – often there is not enough money for all the children, and in such cases biological children are favoured with greater access to food and goods. The problem of stepchildren being economically marginalised because of competition for scarce resources within the home was cited by other participants in different regions, demonstrating the impact of pervasive poverty on stepfamilies.

In the second youth focus group discussion in Katutura, participants felt that greater awareness amongst *“today’s generation”* of categories of family relationships is causing problems for stepfamilies, causing people to feel that stepchildren are different and not so easily accepted. They felt that in the past, people did not make distinctions about parental status and blood relations, but rather lived as part of an extended family. One participant said:

In Africa we don’t have stepbrothers because of polygamy. Everyone is born from the same house, they are all brothers and sisters. Even nannies are called mothers too. Now everyone knows it is not the same.

The same youth participants in Katutura explained that greater access to media sources – such as television, internet and Western films – has a significant impact in changing traditional attitudes amongst youth. This appears to be particularly pronounced in a vibrant urban centre such as Katutura, in comparison to rural areas where children and youth have less exposure to such outside influences. A teacher in rural Erwee pointed out that, in her experience, there is a big difference between the awareness and sophistication of children and youth from urban and rural areas in Namibia; she feels that children in her community particularly lack knowledge of their rights, understanding about the identification of abuse, and resources for children facing abuse.

Issues with discrimination were also identified by key informants. One noted that *“stepchildren are often not treated the same way as biological kids. There are harder battles with financial support – who should I ask for money?”*. Another, a social worker, observed that *“stepchildren are often used as servants of the family – they do all the hard work in the fields”*. A ChildLine counsellor confirmed that in her experience, stepchildren *“are discriminated against and treated differently”*.

“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

Another key informant, a community outreach worker and former counsellor, pointed out that *“it starts with the meaning of the words – for example, asking ‘Is the child from your man?’, in front of the child”*. As a result, she feels that stepchildren are labelled, and so there is stigma.

Abuse

Abuse was identified as a serious problem facing stepchildren in every youth and adult focus group and in every interview. Participants across all regions cited examples of physical abuse, emotional and verbal abuse, economic abuse and neglect, and sexual abuse. Stepmothers were most often implicated as the perpetrators of emotional and verbal abuse, economic abuse and neglect, and (to a lesser extent) physical abuse. Economic abuse and neglect of stepchildren was identified as particularly serious problems by participants in every region. Most striking was the frequency with which participants raised the issue of sexual abuse of stepdaughters by stepfathers as a widespread problem. Although much less frequently mentioned, adult participants in most regions also discussed concerns about the abuse of stepparents by older stepchildren.

*"The real problem is the abuse –
stepchildren are more at risk as victims of abuse."*

– community worker 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

*"Kids are not exposed to the idea that they are being abused –
verbally, physically. They don't realize because it is normal to them.
A real fact and issue striking our nation – kids are not aware it is
wrong. This study is very important, this issue needs attention."*

– female teacher in Erwee

Physical abuse

In every focus group, both adult and youth, participants spoke of "beating". As explained in the discussion regarding discipline in section 2.2.2, this was the most common response to discussions and role plays about a scenario involving how a stepparent would respond to misbehaviour by a stepchild. In every adult group, some if not most participants felt that beating was an appropriate response to any misbehaviour by a child. For example, one man in Opuwo said "in Herero tradition, beating is a nice punishment because then kids won't do it again". Some participants felt that stepparents only have "a right" to beat stepchildren if

they are supporting them financially. As one young adult participant in Opuwo said: *“If I make a mess, you only have a right to beat me if you are supporting”*

There was an obvious generational divide on this point. Although there was wide agreement within the youth groups that the stepparent would beat the child, few participants felt that beating was justified or *“right”*. As one Keetmanshoop youth group participant pointed out, *“beating starts to create fear”*.

In Khorixas participants described serious types of physical abuse by stepmothers: *“beating, slapping – very bad. Sometimes taking a stick”*. Participants here felt that stepmothers beat stepchildren because they reject them, and resent them. In Katutura, one participant mentioned a case she had heard of where the stepmother burned the stepchild with hot water.

***“God punishes you if you mistreat
stepchildren especially, in the Nama tribe.”***

– adult participant in Keetmanshoop

Keetmanshoop youth group participants felt that stepmothers are particularly abusive. One commented: *“when the father is there, the stepmother has a happy face, but when he leaves, she is abusing physically and verbally”*. A community worker in Katima Mulilo felt that beating by stepparents was a common problem, and most key informants in Windhoek also identified physical abuse as a common problem facing stepchildren.

Some participants identified the involvement of alcohol as a factor in beating and physical abuse by a stepparent. Youth participants in Khorixas, Keetmanshoop and Katima Mulilo in particular highlighted alcohol abuse as a major problem contributing to violent behaviour by parents and stepparents alike. For example in the Khorixas adult focus group, participants commented that some stepmothers *“are drunk a lot and take out stress at the kids”*. One youth participant in Katima Mulilo wrote *“if the mother is a drinker, she will abuse you and talk bad things at you”*.

Sexual abuse

Sexual abuse of stepchildren was identified as a major problem in most focus groups, both youth and adult, and by most key informants.

Adult participants in Keetmanshoop emphasised that they felt sexual abuse of stepdaughters was a particularly widespread problem in their community. One participant said, *“The stepfather is raping the stepchild, because he is angry if he is not respected.”* The participants reported that in *“many, many”* cases, the stepdaughters are getting pregnant and having babies. In some cases, they said, the stepfather has died and the girl stays in the house with the baby, while grandma (the stepfather’s wife and the stepdaughter’s biological mother) helps raise the baby. The stepdaughters are never kicked out, they said: *“It is your daughter, your grandchild. She can’t leave.”* When asked whether such cases were reported to the police, participants replied that this rarely, if ever, happens. One woman explained:

In the Nama tradition you are raised that the husband's shame is your shame. You don't report it. It is behind closed doors, no one talks about it. Mothers are ashamed. They won't do anything. It is only when the child is old enough and tells someone.

Participants did offer one example of a particularly appalling case that was reported to the police, involving a family known to most of the participants:

There was a recent incident last October here: a stepfather raped and murdered his little girl, four years old. It went to the police and he is in jail, the trial is pending.

Adult participants in Opuwo also felt that stepfather sexual abuse of stepdaughters is very prevalent in their community. Although they said it is not really acceptable in Herero communities, it is so common that no one thinks it very unusual. One participant said he thinks it is particularly common in the Himba tribe, where, in his view, rape is not viewed as a crime of any importance.

Sexual abuse of stepchildren is such a problem, Opuwo participants said, that it is the main reason that stepdaughters specifically are left with their grandmothers or other relatives instead of coming to live with the mother and her new partner. Adult participants in Katutura also reported that, *"If you make a mistake and bring a girl and the man is strong, he will sleep with her [the stepdaughter]. It happens a lot."*

One key informant, an experienced social worker, also identified this situation as a common problem:

In my practice as a social worker, there were cases with stepfathers sexually abusing stepdaughters. 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.

She noted that *"child sexual abuse is often done by a person the child knows well, with easy access to the child, and somebody the child trusts – a stepfather easily counts as all of these"*. She went on to explain that the mothers often know it is happening, but they keep silent and do nothing. In her view, they are *"silent abusers"*. As a result, *"It is not getting reported, even to family members – who are usually the first line. Mothers are so wrapped up – eyes are closed to the abuse."*

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

– adult participant in Opuwo

A social worker for the Ministry of Gender Equality and Child Welfare stated that the majority of incest cases that the Ministry sees involve stepfathers abusing their stepdaughters. She feels that incest is extremely rife in Namibian society, but it is rarely mentioned. She explained that such abuse is tremendously difficult for the daughters, because typically the mother will

not support the daughter against the stepfather. According to this social worker, the mothers usually will not support the daughter in bringing charges or even an investigation against the stepfather, either for reasons of loyalty to her partner, or because she is financially dependent on the partner and must ensure that he stays with her. In many such cases, it is the eldest stepdaughter who is being abused, and she will be sent away from the home if she complains about the abuse. Oftentimes the stepfather will then simply begin to abuse the next youngest stepdaughter who remains in the household.

As one participant in Opuwo stated:

Yes, it is a very big problem, the main reason why mothers don't take their daughters [to live with the new boyfriend]. If Grace gets a job, she will leave her girls at home, then Joseph will rape her [the stepdaughter] and she will fall pregnant.

Other participant comments in the Opuwo adult focus group on this issue included:

- *"Sometimes they do not rape, just touch her or say things to her."*
- *"The girl is too afraid to say anything because she is living in the same house, his house. She doesn't want to cause divorce."*
- *"You blame the stepfather – but sometimes it is not true. Sometimes it is the attitude of the girl."*

No one in the Opuwo group knew of anyone ever reporting such rapes to the police, but a few said that sometimes the families or neighbours will intervene: *"If people know it happens, they will take the daughter out of the house. Sometimes the stepfather will have to pay cash or cattle to the girl or the mother's family."* Participants also said that *"sometimes the mother's family can beat the man [stepfather]"*.

***"It happens a lot here. Girls fall pregnant –
in some cases it is the stepfather."***

– adult participant in Opuwo

In Khorixas, participants stated that *"some stepparents want sex from kids"*. They said that sexual abuse does happen, but they feel that it is very rare in their community. Although as one participant observed, people rarely talk about it: *"People are not opening up. It is a disgrace to the family."* One participant relayed this story about a family in her neighbourhood:

Once a stepdad was sleeping with the girl – he had two kids with his stepdaughter [she was 16 or 17]. When the first child arrived, they stayed in the house – but when the second came, the mother chased her out because they are competing for the same man. The mother was ignorant, didn't believe her daughter.

When asked what happens in such cases, and if they are ever reported to the police, there was wide agreement from the group that this rarely happens.

Youth participants in Sesfontein said that they think rape of stepdaughters happens “*very much*”. They also raised the issue of stepfathers demanding sex from stepdaughters in exchange for money: “*He will say, I will not pay. You must have sex for school fees.*”

The issue of sexual abuse was not raised by focus group participants in Katima Mulilo, but in a subsequent individual interview one participant, a community mobiliser who had participated in research on child labour issues in the area, described a case she came across in a rural area. She interviewed a young girl who reported that she stays with her stepfather in town and cooks for him, and he is sexually abusing her:

She was afraid of being witched by the stepfather so she stays with him. He has three wives and he is sexually abusing all the other little girls. There was jealousy between the girls and the mother. They are hiding it.

In addition, one youth participant from Katima Mulilo raised the issue of sexual abuse by a stepbrother. This female participant described in her writing exercise the “*worst experience of her life*”, when her stepbrother attempted to rape her:

I used to live with my stepmom, dad and my stepbrother. One time we were left alone, the two of us as the kids in the house, since we were good siblings. My stepbrother showed affection I needed in my life. But things turned out weird one night when my stepbrother tried to rape me, went into my bedroom and told me in a polite way that he wanted to keep me warm during the night – as soon as he went in my bed I jumped off and slept at one of our good neighbours.

The next day I took my things and left the house, when my father arrived I told him what happened. He told my stepmom but she got so angry, saying that I was just trying to break their marriage. She made sure that I had to leave the house; yes, my mum insisted that I should move. For almost a year me and my stepmum were enemies, I think she never wanted to see me ...”



"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

As already discussed in this section, discriminatory treatment of stepchildren within the home, in the form of deprivation of food and goods, or an unfair burden of labour, was the form of abuse most frequently mentioned in the focus groups overall. The prevalence and severity of this situation was most pronounced in discussion groups in Okangwati, Sesfontein, Katutura and Katima Mulilo.

One woman in Katutura freely admitted that *"I'm a stepmother and if my husband gave me money to buy clothes for the child, I will buy beautiful clothes for the biological child and not the stepchild"*. Another participant in Katutura, a kindergarten teacher, said she often sees cases where *"children are suffering with stepmothers, they are never given food. They will starve."*

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

– adult participant in Katutura

Adult respondents in Katima Mulilo felt that people in their community *"always tend to give stepkids too much to do"*. In their view, *"too much work is abuse also"* and *"it is child labour"*. A community outreach worker who had interviewed many orphans and vulnerable children in the region commented that *"many stepchildren after school are cooking, fetching water – there is no time for rest or play"*. As a result, she also identified child labour as a particular problem affecting stepchildren.

Youth respondents in Katima Mulilo also identified issues with economic conflict. One girl described her own experience: *"I was supposed to go to Windhoek for hospital stuff, but my stepmom says 'No, you're not my child, I will not give you the money. Ask your dad'."* Another said, *"Some stepmothers deny payment on pay day – you ask for some money, she refuses but you know she has it."*

Participants in Khorixas also identified excessive labour by stepchildren as a problem that happens *"a lot"*; *"the stepchildren are doing all the housework"*.

"If you live with your father and his wife you must be a slave in the house."

– adult participant in Khorixas



Youth in a role play in Erwee



Adults in a focus group discussion in Katutura

Emotional abuse

“There is a plant in Namibia with very sharp leaves that sting, it is called stepmother’s tongue.”

– social worker in Windhoek

Emotional, verbal and psychological abuse was mentioned as a major problem in most focus groups and by almost all key informants. Specific examples indicate that verbal abuse often takes the form of taunting the stepchild with insults about the child’s other biological parent and the child’s non-biological status. Most groups indicated that stepmothers are the most common perpetrators of this form of abuse.

Participants in Khorixas highlighted emotional and verbal abuse as a particular problem. Participants offered examples of the types of insults stepmothers use: *“I’m better than your mother”*; *“You are nothing, husband’s child”*; *“Just go back to your mother’s house”*. One youth participant in Sesfontein said, *“If you make them angry, they say things like ‘you are not even mine’.”*

A teacher in Erwee says that she observes stepchildren where *“the kids are crying, not eating. The biggest thing is the psychological issue. There is psychological abuse most of the time.”* A ChildLine counsellor also identified emotional abuse as the most common problem facing stepchildren, *“in the sense of the way stepparents talk to their stepchildren, very degrading. Using insults – ‘you are worthless, you won’t go anywhere’, ‘you make my life difficult’.”*

The issue of witchcraft being used by stepparents to threaten and instil fear in stepchildren arose in both youth and adult focus groups in Katima Mulilo. The youth participants felt that many people in their community believe that you must be very careful or your stepparent could *“witch”* you. One participant said, with wide agreement from the group, *“Sometimes stepfathers or stepmothers can kill their children through witchcraft. This is very common in the Caprivi.”*

Abuse of stepparents by stepchildren

“My husband is having kids outside, I am unemployed. His kids come and visit. They abuse me emotionally.”

– adult participant in Khorixas

An issue that was raised in several adult focus groups was the occurrence of emotional, economic and physical abuse of stepmothers by stepchildren. One female participant in Katutura told her story:

I am a stepmother, my stepchildren are big now. They are abusing me. The big stepchildren came to Windhoek, to university, and they get a good job. But in the house they don't buy electricity or food. If they buy food, they hide it. The older child won't give food to the younger ones or to me, only for herself. I try to talk to her and tell her to make the food only when the other young ones aren't around, so they won't see it – but she only does this for a short time.

Participants in Khorixas also identified emotional and verbal abuse of stepmothers by older stepchildren as a problem: *“This happens. Older children are most problematic. They say, ‘my father's house, my father's salary’.”* Some female participants in Katima Mulilo also spoke about being hit by older stepsons. A youth participant in Katima Mulilo confessed that he had previously hit his stepmother. He said: *“My stepmother – we fight three to four times per week. I have to go into my room to stay away so that I don't hit her.”*

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

– social worker in Windhoek

An experienced social worker in Windhoek also raised this issue in a key informant interview. She said that she has had some cases in which the stepchildren are teenagers, and are abusing their stepparents, particularly their stepmothers. Most stepparents, she said, are not aware that they can obtain protection orders against abusive stepchildren; there is a lack of awareness of this issue and process amongst stepparents.⁵ Another social worker commented on the frequency of disrespectful treatment of stepparents by stepchildren, which may escalate to verbal and sometimes physical abuse.

⁵ Under section 3(1)(e)(i) of the Combating of Domestic Violence Act 4 of 2003, any family members related by affinity and whom have some domestic connection, such as sharing a home or being financially dependant upon the other, are considered to be in a domestic relationship. Under section 4(1) any person in a domestic relationship who is suffering domestic violence – defined in section 2(1) to include physical, sexual, economic and emotional, verbal or psychological abuse – may apply for a protection order.

Sending children away

Youth and adult 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 grandparents or other extended family members. 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 in the Caprivi region felt that it was also very common in their community for stepparents to send stepchildren to live in a school hostel while the biological child is allowed to remain at home.

*"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

A topic that arose in many discussions was the apparently common practice of sending a child away to live with an extended family member when the parent goes to live with a new partner. The adult focus group in Katutura identified this as a particularly widespread practice. The participants agreed this is the case for both male and female parents: *"the men, if they already have a child, the woman doesn't want the child"*.

Participants explained that often the father, after leaving his wife or girlfriend and their children in a rural area to pursue employment in an urban centre, would enter into a new relationship in the city and have children with this new woman. It seems to be a common occurrence for the father to then take his children from the previous rural relationship to have them live with his new urban family, for better opportunities like schooling, for example. Participants observed that this often caused friction between the stepmother and the stepchildren, and between the stepmother and the biological mother whose children have left to live with the father and stepmother.

However, in contrast to the common practice within many communities in Namibia of sending children to live with extended family for financial reasons or for better opportunities such as schooling, in the context of stepfamilies, the reason most often cited for sending a stepchild away to live with extended family is that the new partner would not want the child to live with them.

As discussed in reference to sexual abuse in this section, another reason the participants provided for the practice of not taking children to live with a new partner is the risk of sexual abuse of the daughter by the stepfather. Participants in Opuwo held similar views: *"It is prevention. Avoid these situations by not taking girls."* They said people are doing this because, *"If Grace takes her girls to Joseph, this man who is not your father can have feelings for you. Sexual harassment. Then it will cause divorce. If it is guys [stepsons], not a problem."*

Participants in Opuwo also explained that a mother would not take her children with her to live with her new partner if she had been married to the children's father, because *"in Opuwo tradition, if your parents married, then you [the child] remain where you got your surname [the father's]"*. In situations where the mother was not married to the children's father, then they said the children would be taken care of by the mother's family because, they said, *"men think kids are the women's responsibility, they don't want them"*. The participants said that this is tradition in both Herero and Himba culture.

Adult participants in Khorixas also reported that it is common to send children to live with extended family rather than bringing them to live with a new partner or spouse. As one male participant said: *"If I had kids from another girlfriend, obviously they cannot live with me and my wife. They stay with the biological mother or grandma. The new wife will not allow them."*

Youth participants in Keetmanshoop also raised this issue, with all agreeing that in *"most cases"* stepchildren are very likely to be *"kicked out"* of the house and sent off to live with their grandparents if the mother marries a different partner. They said, *"If the mother dies and a new woman moves in, she will kick the children out, especially if they are teenagers"*, because they will be *"rebellious"* and will not want to listen to a new stepmother whom they do not know. Overall, youth appeared to perceive this practice as problematic and hurtful to the child more often than adult participants.

Youth participants in Katima Mulilo emphasised that stepchildren are frequently forced out of the house and into school hostels, saying that this happens *"so much"*:

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.

A key informant, a social worker from Windhoek, also commented on this, noting that stepchildren are sent to boarding schools where they live in hostels; in her view, *"these are often rife with bullying, drugs, and Satanism"*. She also explained that in many Namibian families, children are often sent to live with their grandparents whilst they are young and whilst the mother is living with the potential stepfather. When the children are a bit older, they are brought back to live with the mother and the stepfather.

Most key informants commented on the frequency of a child being sent away to live with grandparents, or less often, other relatives, rather than coming with the mother to live with a new partner. A psychologist described the problems which can ensue:

This child is often living with grandparents, and is not brought into a new marriage. Often the biological dad is not involved. There are real problems because the child is not formally adopted by the grandparents. The rights and responsibilities are not formally negotiated. This occurs very frequently.

Raising a related issue, another key informant, a counsellor for ChildLine, commented on the impact of parent's informal relationships on their children, describing them as *"most*

common, and traumatising, when parents are not married. Then boyfriends and girlfriends are coming and going, and it is very disruptive.”

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. Key informants highlighted the emotional consequences of this readjustment on children and youth. Interestingly, 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.

In Katutura the adult women participants all agreed that the relationship between stepmothers and stepchildren is very difficult. They said it was “*very painful*” and that there are “*bad attitudes*”. One youth participant in Katutura expressed her frustration with her stepchild, saying “*she disrespects me by saying ‘you’re not my mother’*”. Adult participants in Keetmanshoop echoed this view: “*If the stepmother is not included in all the decision making it brings problems. She will start to treat the stepchildren badly.*” In Katima Mulilo, some adult participants felt that if a wife is given “*increased power*”, her husband’s children will run away because she will mistreat them.

Female adult participants in Katima Mulilo spoke about difficulties with their stepchildren: “*Sometimes if you have stepchildren – you can’t do anything. They won’t listen to you. They say ‘you’re not my mother’.*” Most felt that the biggest problems were with stepdaughters, who are “*rude and disrespectful*”.

***“A stepchild is something that is not yours.
It always comes back to this with Hereros.”***

– adult participant in Opuwo

In Opuwo, adult participants also spoke about personal experiences involving conflict with stepparents. One young man said, “*My stepmother is only nice when my father is around. She is a very rude lady.*” Another commented on competition within the family for financial resources: “*My father is sending me money. My stepmother complains, says ‘you think you are the only child of this house?’*” One woman spoke of the difficulties she had when her young daughter was told by neighbours that her stepfather was not her real father; now she has “*a complex*” and is “*isolating herself from her stepfather*”.

Adult participants in Khorixas felt that the major problem with stepmothers is that they do not want to accept stepchildren, only their biological children. In addition, they said, it is because “*she is jealous, competing with the kids for attention. She doesn’t want the father to support them.*” Some participants countered this, saying, “*Some wives do accept men’s kids. Stepchildren are the problem; they won’t accept her as a mother.*”

Youth participants in all focus groups also raised issues of conflict within stepfamilies as a common occurrence. In many of the youth focus groups, the first response to questions asking participants to describe the relationship between the hypothetical stepchild Gabes and stepfather Joseph was negative. In Katima Mulilo participants responded that Joseph was “a stranger” and “an intruder” because “he just moved in and Gabes doesn’t know him”.

This view was shared by the youth group in Keetmanshoop, who replied that this situation would be “uncomfortable” because there is a new person who “changes the whole dynamic”. They felt there would be “troubled relationships” because Gabes was previously head of the house, and now he is being replaced by this new man. Similar comments were made in both Katutura youth focus groups, where participants noted that there would be “confusion” and that it “wouldn’t be comfortable”, because he is “a stranger”. These focus groups noted that age is a major factor – if the stepchild is older, he or she will have a more difficult time accepting a new authority figure in the home, especially if the stepchild is a young man who is used to being “head of the house”.

One key informant, a psychologist, explained the problems that face a stepfamily trying to adjust to the new family dynamic, and the psychological and emotional implications:

It takes time for families to develop and negotiate rules when thrown into a stepfamily, because they don’t know how to do it. It can cause tremendous difficulties. There is no relationship or bond, but suddenly you have to do it. People underestimate it and assume it is easier than it is. Any relationship that you step into with other kids is very difficult. A lot of people divorce or separate because of stepkids. The dynamics are totally different.

“Problems start with the fact that they are stepfamilies. They are strangers you are taking into your house and eventually your heart.”

– key informant in Windhoek



Adults in a role play in Opuwo



Refreshments for the adults in Opuwo

One social worker explained in a key informant interview that *“stepchildren very often from the beginning reject a stepparent. They don’t want to see their own parent replaced or forgotten.”* She explained that children are often not ready to accept a new parent, which can *“make life hard for the new stepparent”*. As a youth participant in Katutura said, *“Children must not be forced to accept the spouses, they should earn it.”* A teacher in Erwee commented, *“There is the idea that this person joined our family late – so they don’t respect”*.

A counsellor identified communication issues as a major problem for stepparents, and also described a *“feeling of being very restricted with the child. It results in not knowing how to handle situations at home.”* A ChildLine counsellor seconded this view, noting the problems that result because *“bringing a stepchild in the house is rarely talked about. There is no agreement about how to deal with it.”*

“In 2010 I was living with my father who got married with another woman. Eeeiiigh! Life was hard living in that house with my stepmother. You eat small food, treat her children well, all the work’s on your shoulder and you don’t get time to study ...”

– youth participant in Okangwati

A social worker from Windhoek described some of the possible emotional consequences for stepchildren who do not feel accepted as part of the family:

You can sometimes tell from how the child is dressed or the lack of self image – they are not part of the family. There is emotional alienation. Children may develop serious emotional problems, like feeling rejected or unloved, not feeling that they belong, having a very bad self image.



2.2.4 Positive relationships

Some youth and adult participants in every focus group spoke about good relationships with their stepparents or stepchildren, obviously viewing these relationships as an important source of familial support and care. Although it appears to be common for stepchildren to face discrimination within the home, especially compared to biological children, a number of youth participants also spoke about the positive relationships they have with stepsiblings, whom they view simply as sisters or brothers.

In every focus group there were participants who described positive and happy relationships within stepfamilies, which demonstrates the great importance that these relationships can have, particularly for children. In each youth group, there were participants who discussed the positive relationship they have with a stepparent:

- *"I am never afraid to ask my stepmom things – she is really good."* (Katutura)
- *"I've grown fond of my stepdad over the years, since we have been together for 11 years now. He is more like my dad and I love him dearly."* (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."* (Keetmanshoop)
- *"I used to live with my stepfather and somehow he used to treat me in a very good way because I am showing respect to him in order for him to treat me well. Because I know that my mother and my father are divorced, it is better to show respect to my stepfather."* (Sesfontein)
- *"I'm having a stepfather, he is good."* (Katutura)
- *"I feel more at ease with her [stepmother] than with my birth mother. I tell her everything that really hurts me, that makes me smile, etc."* (Katima Mulilo)
- *"I am staying with my stepfather a long time until now. My stepfather is treating me very nice and I am feeling good of that thing that he used to give me or to advise me. Always he likes to tell me, 'please my child try to complete your school' ... 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. I am feeling happy and I want to finish my school so that I can help my stepfather."* (Sesfontein)

"I think my stepfather is the most perfect father I have ever met in my life. He took over my mom after my father died. Whenever I am asking something from him, he just used to give it to me, and I know it's with a free heart."

– youth participant in Katima Mulilo

Adult participants in each group also discussed positive experiences in their personal relationships with stepchildren. Some of the adult female participants in Keetmanshoop were particularly proud of their families and their strong relationships with their stepchildren.

One spoke proudly about all of her children, including two stepchildren who live with her and one who lives with her biological mother, with whom she still maintains contact and a good relationship. Another told her story:

I took in my stepdaughter when she was nine months old. Now she is 16. She won't call me stepmom, only mom. She considers me her mother. Once she went with her dad to his new girlfriend, but didn't like it and came back to me.

Another female adult participant in Keetmanshoop shared her story of being a stepmother for nine stepchildren, the biological children of her husband, for more than five years. She and her husband also had three children together and she went through a divorce whilst she was pregnant with their fourth child. She became very close to all her stepchildren and after more than five years they still have a good relationship – so much so that after some became employed, they assisted her financially, but not their biological father who currently lives with another woman in Walvis Bay. When the court asked her what amount she wants from her ex-husband for maintenance for her three biological children with him, she replied by saying that it would be wrong to ask for maintenance only for her biological children when the other nine stepchildren are not being maintained by the father. She told the ex-husband that if he has to maintain he must do so for all twelve children.

A male adult participant in Keetmanshoop described how he views his girlfriend's children as his own:

I refer to my girlfriend's children as my own children. My in-laws are always reminding the kids they are not mine. It is creating problems. It is worse because we are not married. But we treat them all as our children, we don't split them up. We do not treat them as 'stiefkind'.

One youth participant in Katutura described how his half-brother, who had lived with him and their father and the brother's stepmother, preferred to stay with his stepmother rather than be sent back to live with his biological mother:

My brother is having a different mother – my half brother (same father). My father says my mother (his stepmother) has to take him. He stayed with us five years, then his biological mother took him back. Then he sneaked back to our house because he didn't want to stay with her. His uncle came and took him back. My mother (his stepmother) has no rights, she can't do anything.

Relationships with stepsiblings

The issue of relationships with new stepsiblings also arose in several of the youth focus group discussions. As already described above, it appears to be a frequent occurrence that biological children are favoured in the house as compared to stepchildren, who face discriminatory treatment. In addition, as one social worker from Windhoek noted, *"If something goes wrong between siblings, the stepchild is normally seen to be the guilty one who should have known better."*

Despite this, it appears that the youth participants have a generally positive view of their relationships with stepsiblings. In Katutura, for example, youth participants emphasised that they regard stepsiblings not as half-sisters or half-brothers, but that they are all just brothers and sisters. They said that children and youth in their community do not make a distinction when it comes to stepsiblings. Several described very positive relationships with their stepsiblings.

One of the role play activities in some of the youth focus groups provided insight into participant perceptions of the relationships between stepsiblings. Youth were asked to show how a stepparent would respond to arriving home to find that the stepchild had taken the stepparent's phone without permission and then accidentally dropped and broken it, to explore responses about discipline and potential abuse. A new character, Mary, the biological child of the stepparent and the stepchild's parent, was introduced. Participants were asked to show how Mary would be involved, if she arrived home with the stepparent.

In Keetmanshoop, both plays showed Mary intervening, in one case to side with her stepparent and encourage him to beat the stepchild, but in the other, to try to protect her stepbrother. In the discussion that followed, participants felt that the relationships vary widely. On one hand they said, *"It is common that Mary would side with her dad. He has to show her he is boss of the house. He was showing off his power."* But in the other play, *"Mary looked up to her brother. She cried because her father was beating her brother."* The father in the second play responded by angrily yelling at Mary, *"he's not your real brother"*, which upset her greatly. The participants felt that stepsiblings would commonly regard each other as siblings, so it would be very hurtful to emphasise that he is *"not your real brother"*.



An adult focus group in Katima Mulilo

“Stepsisters are treating us like mothers.”

– youth participant in Sesfontein

In Sesfontein, both role plays depicted Mary helping her stepbrother. The participants felt this was very realistic, as they all described positive relationships with stepsiblings. One girl described how her stepsister helps her when her stepmother denies her money:

I feel very badly because I am staying with my stepmother and she is treating me in a bad way. Even she used to make a discrimination between me and her child. One day when I was in Grade 9 ... and her child was in Grade 2, she was saying that first before I go to school I must look after the livestock ... When I tried to ask for cosmetics she used to say that I must go and ask my real mother, while my real mother is dead. When I told my father he is just ignoring me. But when I went to tell my stepsister, they just pay it for me.

The findings of the study indicate that people in the regions surveyed believe that stepfamilies are very common. Overall, participants paint a troubling picture of the situation of stepfamilies in Namibia. In every focus group, discrimination and abuse faced by stepchildren were raised as major problems. In particular, discriminatory treatment of stepchildren within the home – including being subjected to an unequal and unreasonable burden of household work as compared to biological children, and being denied a fair share of food, basic goods, and money – emerged as the most frequently-mentioned area of concern.

Participants and interviewees in every region also described the physical, emotional, economic and sexual abuse that some stepchildren are subjected to, especially beatings and psychological abuse focused on the child’s non-biological status. In particular, sexual abuse of stepdaughters by stepfathers was cited as an alarmingly widespread problem throughout the country.

The problems facing stepchildren as identified by the study participants are consistent with the anecdotal evidence discussed in Chapter 1, and suggest that stepchildren in Namibia are particularly vulnerable to mistreatment and abuse.

Some participants reported positive relationships with stepparents or stepchildren, which suggests that some stepfamilies can and do offer strong emotional and familial care and support.

However, family conflict was a commonly-mentioned problem, affecting children and adults alike. Many stepparents described problems with “disrespectful” and “disobedient” stepchildren, and some reported mistreatment and even physical abuse at the hands of their older stepchildren.

Chapter 3

COMPARATIVE LAW ON STEPFAMILIES



3.1 Overview

Basic paradigms for legal responses identified by our comparative law research include:

- (a) the automatic imposition of full parental rights and responsibilities upon a stepparent's marriage to the biological parent
- (b) the option for stepparents to voluntarily assume parental rights and responsibilities through parental rights and responsibilities agreements or court orders
- (c) statutory liability to support stepchildren financially.

The purpose of this section is to provide an overview of the law as it relates to stepfamilies in Namibia, and to explore legal responses to the stepfamily relationship in various other countries. This comparative law discussion is intended to provide examples of legal measures used in other countries that may be relevant to the Namibian situation, and should not be viewed as an exhaustive summary of law on this topic.

It is clear that many countries are grappling with the legal implications of the changing dynamics of families and the increased prevalence of stepfamilies. At the core of this issue is the protection of the best interests of children and recognition of the relationship between stepparents and stepchildren in the context of shifting understandings of family.

Recognising the growing prevalence of stepfamilies, and identifying a need for some protections for the stepparent and stepchild relationship, different countries have introduced a range of legal measures. Basic paradigms for legal responses identified by our research include:

- (a) the automatic imposition of full parental rights and responsibilities upon a stepparent's marriage to the biological parent, as in the Botswana Children's Act of 2009
- (b) the option for stepparents to voluntarily assume parental rights and responsibilities through parental rights and responsibilities agreements or court orders, as in South African, Australian and British law
- (c) statutory liability to support stepchildren financially, as in Kenya, Zimbabwe, Ghana and a number of American states.

This section identifies and discusses legal responses to the stepparent and stepchild relationship in the following key areas:

- the ability of stepparents to acquire rights and responsibilities towards stepchildren, and if so, to what extent
- the procedures by which parental rights and responsibilities are acquired, including adoption, parenting agreements and orders, and custody, guardianship or access court orders
- whether formal marriage is required in order to meet the stepparent definition
- the stepparent duty of maintenance
- the reciprocal duty of a stepchild to maintain a stepparent
- stepchild rights to inherit from stepparents
- stepparent liability for abuse or neglect of a stepchild.

"She loves her children more than me by giving full support to her children and she doesn't give them heavy duties compared to me. I used to do lots of work while her children did their own business. Especially when my father's out, I will be instructed to fetch water, fetch firewood and even cook with no one's help ... And when she gets money or when she's given money by my father to buy clothes for us she will buy few clothes for me and more clothes for her children."

– youth participant in Katima Mulilo

3.2 Current law on stepchildren and stepparents in Namibia

There are no laws in Namibia which expressly govern the relationship between stepchildren and stepparents, who have no legal rights and duties towards each other in the absence of formal adoption of the stepchild by the stepparent, or by acquiring custody, guardianship or access rights in an order made by the High Court or (in limited circumstances) by a children's court. Stepparents do not have any legal liability to maintain a stepchild in Namibia. Stepchildren do not have any rights to inherit from a deceased stepparent's estate in the absence of a will. However, stepparents can be held liable for the abuse of a stepchild.

A few statutes governing benefits, pensions, medical aid or other forms of assistance explicitly include a "*stepchild*" in their definitions of "*dependant*", while a few others indirectly include stepchildren within definitions of "*dependant*" which could encompass stepchildren who were *in fact* dependant upon the person in question for maintenance. However, stepchildren are clearly excluded from the definitions of "*dependant*" in some contexts, such as the Motor Vehicle Accident Fund Act. Several statutes include stepfamily relationships in provisions dealing with identity of interest.

Presently there are no laws in Namibia which expressly govern the relationship between stepchildren and stepparents. In effect, stepchildren and stepparents in Namibia are legal strangers.

Stepparents do not have any legal parental rights or responsibilities towards their stepchildren, and the legal avenues to acquire such parental rights and responsibilities are limited. Stepparents do not have any obligation to maintain their stepchildren under the **Maintenance Act 9 of 2003** or the common law, nor is there a reciprocal duty upon stepchildren to maintain their stepparents. Without a valid will, stepchildren do not have any right to inherit from a deceased stepparent's estate. Stepchildren are not eligible to receive compensation under the **Motor Vehicle Accident Fund Act 10 of 2007** as a dependant of a stepparent who suffers injury or death in a motor vehicle accident.

However, there are certain laws which do indirectly apply to the stepparent and stepchild relationship. The **Children's Act 33 of 1960** permits adoption of a stepchild by a stepparent, but adoption in such circumstances is rare. Under the **Children's Status Act 6 of 2006**, a stepparent who acts as a primary care-giver could apply for custody or guardianship orders in respect of a stepchild, in certain limited situations. The **Combating of Domestic Violence Act 4 of 2003**, the **Combating of Immoral Practices Act 21 of 1980** and the **Combating of Rape Act 8 of 2000** are all broad enough to cover abuse of a stepchild by a stepparent.

In addition, some statutes which allocate benefits, compensation, and other assistance to dependants, such as the **Employee's Compensation Act 30 of 1941**, the **Medical Aid Funds**

Act 23 of 1995, and the Veterans Act 2 of 2008, expressly include stepchildren, and others may apply indirectly to stepchildren, such as the Pension Funds Act 24 of 1956 and the Social Security Act 34 of 1994.

As will be explained below, the draft Child Care and Protection Bill will introduce various provisions that could be relevant to stepparents and stepchildren.¹ The Bill introduces the concept of parental duties and responsibilities to Namibian law, mirroring an approach that has been adopted in other countries. This reflects a conceptual shift away from the principle of parental authority or parental power to the more child-centred concept of parental responsibility.

3.2.1 Parental duties and responsibilities

What is meant by “parental duties and responsibilities”? According to *Boberg’s Law of Persons and the Family*, under the common law parental power was traditionally defined “as the complex of rights, powers, duties and responsibilities vested in or imposed upon parents, by virtue of their parenthood, in respect of the minor child and his or her property”.² More specifically, the concept includes guardianship, custody, a duty of support and the right of the child to intestate succession.³ It also encompasses a range of further incidences, including questions of liability by and towards third parties which flow from the relationship.⁴ In recent years there has been a “dramatic shift” in family law towards a child-centred approach that recognises children as bearers of their own rights, and replaces the traditional concept of parental power with that of parental responsibilities.⁵

The draft Child Care and Protection Bill would supplement the common law on custody, guardianship, access and maintenance, by providing for additional parental duties and responsibilities as follows:

Parental duties and responsibilities

8. Every person with parental responsibilities towards a child, and any other person legally responsible for a child, has the duty to –

- (a) ensure that the best interests of the child are his or her basic concern at all times;
- (b) guide and direct the child in the exercise of all of his or her rights under this Act or any law in a manner consistent with the child’s evolving capacities;
- (c) protect the child from neglect, discrimination, violence, abuse and harm; and

¹ Throughout this study, the draft Child Care and Protection Bill is cited as of June 2010, prior to the consideration of the Bill by Cabinet.

² B Van Heerden, A Cockrell and R Keightley, eds, *Boberg’s Law of Persons and the Family*, 2nd ed, Kenwyn, South Africa: Juta, 1999 at 313.

³ Ibid; E Spiro, *Law of Parent and Child*, 4th ed, Kenwyn, South Africa: Juta, 1985 at 33. The concepts of guardianship and custody are explained in more detail in this section at (b).

⁴ E Spiro, *Law of Parent and Child*, 4th ed, Kenwyn, South Africa: Juta, 1985 at 33.

⁵ B Van Heerden, A Cockrell and R Keightley, eds, *Boberg’s Law of Persons and the Family*, 2nd ed, Kenwyn, South Africa: Juta, 1999 at 314.

- (d) *ensure that in the temporary absence of a parent or care-giver, the child is cared for by a competent person.*⁶

The draft Child Care and Protection Bill also specifies that a child has the following rights, and that it is *“the duty of a child’s parents, guardian or other care-giver to secure, within their abilities and financial capacities, the conditions of living”* as follows:

Children’s rights to basic conditions of living

7. (1) *A child has the right to conditions of living necessary for his or her development, including adequate –*

- (a) *food;*
- (b) *shelter;*
- (c) *clothing;*
- (d) *care and protection, which includes adequate health care and immunization;*
- (e) *education; and*
- (f) *play and leisure.*

The draft Child Care and Protection Bill further enumerates certain rights and responsibilities in section 120 which co-holders of parental responsibilities and rights may apportion in a parenting plan (as described at section 121):

Parental responsibilities and rights

120. (1) *For purposes of this Chapter the parental responsibilities and rights that a person may have in respect of a child, include the responsibility and right –*

- (a) *to have custody of the child, including responsibility for decisions relating to the child’s day-to-day upbringing;*
- (b) *to maintain contact with the child;*
- (c) *to act as guardian of the child; and*
- (d) *to contribute to the maintenance of the child.*

In addition, the draft Child Care and Protection Bill would impose the following corresponding duties and responsibilities upon children:

Children’s duties and responsibilities

9. *In the application of this Act, and in any proceedings, actions and decisions by any organ of state concerning any child, due regard must be had to the duties and responsibilities of a child to –*

- (a) *work for the cohesion of the family, respect the rights of his or her family members and assist his or her family members in times of need;*

⁶ Draft Child Care and Protection Bill, June 2010 at section 8. All of the references to this Bill in this report refer to the Bill as it stood on this date, which is after it was revised to take into account the input from a nationally consultation process, but before presentation to Cabinet and Parliament. See Ministry of Gender Equality and Child Welfare (MGE CW), Legal Assistance Centre (LAC) and UNICEF, *Public Participation in Law Reform: Revision of Namibia’s Draft Child Care and Protection Bill, Final Report 2010*, Windhoek: MGE CW, LAC and UNICEF, 2010.

- (b) *serve his or her community, respect the rights of all members of the community and preserve and strengthen the positive cultural values of his or her community in the spirit of tolerance, dialogue and consultation;*
- (c) *serve his or her nation, respect the rights of all other persons in Namibia and preserve and strengthen national solidarity; and*
- (d) *contribute to the general moral well-being of society,*
provided that due regard must be given to the age, maturity, stage of development and ability of a child and to such limitations as are contained in this Act.

3.2.2 Parental rights and responsibilities and stepparents

(a) Adoption

Formal adoption

Under the law currently in force in Namibia, the only way for stepparents to acquire full parental rights and responsibilities with respect to a stepchild is by formal adoption. Adoption is currently governed by sections 70 to 82 of the Children's Act 33 of 1960. Although the Act does not explicitly refer to the adoption of stepchildren, stepparents may fall into one of the categories of persons who are permitted to adopt in terms of section 70(1):

- (a) *a husband and his wife jointly;*
- (b) *a widower or widow or unmarried or divorced person;*
- (c) *a married person whose spouse is at the time of the adoption, and has been for a continuous period of not less than seven years immediately preceding that time mentally disordered or defective, within the meaning of section two of the Mental Disorders Act, 1916 (Act 38 of 1916);*
- (d) *a married person who is separated from his or her spouse by judicial decree.⁷*

Section 71(2) sets out the criteria required before an adoption application will be granted, including:

- (a) *the applicant is or that both applicants are qualified to adopt the child;*
- (b) *that the applicant is or that both applicants are of good repute and a person or persons fit and proper to be entrusted with the custody of the child and possessed of adequate means to maintain and educate the child;*
- (c) *that the proposed adoption will serve the interests and conduce to the welfare of the child ...*

⁷ Section 70(2)(b) makes it clear that stepparents and their spouses can adopt under section 70(1)(a) when it elaborates on rules regarding age differences between adoptive children and adoptive parents, noting that one of several exceptions to the general rule that no person shall adopt a child aged sixteen or older is where the adoptive parent “*is married and the child is a child born of one of the spouses and is adopted by the spouses jointly and is at least fifteen years younger than the husband, if born of the wife, or at least ten years younger than the wife, if born of the husband*”.

In addition, subsections 71(2)(d) and (e) require that adoption be done with the consent of both parents and the child, if aged 10 or over. Adoption has the effect of severing all legal connections of the child to the biological parents, and grants to the adoptive parent full legal rights equal to that of a biological parent.⁸ These provisions on consent have been supplemented by section 13(7) of the Children's Status Act 6 of 2006, which provides that the written consent of both parents is required for adoption even if the parents are unmarried. Thus, a stepparent seeking to adopt a stepchild would have to first obtain the consent of the child's other biological parent. However, consent may be dispensed with in certain limited situations: if the parent in question is dead, has deserted the child, is incompetent to give consent due to mental disorder or defect, or has been declared a habitual criminal.⁹

Changes to the adoption laws in Namibia are expected under the draft Child Care and Protection Bill, and are explained more fully in this section at (c).

De facto adoption

It is not clear if such a thing as “*de facto adoption*” exists in Namibian or South African law. We can find no reference to this concept in Namibian precedent. In the recent South African case of *Flynn v Farr*¹⁰, it was argued on the basis of a case from American Samoa that a *de facto* adoption between a stepparent and stepchild could exist (for the purposes of establishing a right to inheritance) where the stepparent performs parental duties towards a child in his household, and that child performs filial obligations in return, just like a formally adopted child.¹¹ However, the High Court of South Africa refused to consider the possibility of a *de facto* adoption as a basis for establishing a claim to intestate inheritance under the relevant South African statute.¹² The Court relied heavily on an affidavit from the government department that handles formal adoptions, objecting generally to the recognition of *de facto* adoptions on the several practical grounds.¹³

In the subsequent South African case of *MB v NB*,¹⁴ counsel asserted that the *Flynn* case was “*authority for the proposition that a de facto adoptive relationship enjoys no recognition in our law and thus cannot provide a basis for concluding that the adoptive parent is under a duty to*

⁸ Children's Act 33 of 1960, section 74.

⁹ Children's Act 33 of 1960, section 72; Children's Status Act 6 of 2006, section 13(8).

¹⁰ 2009 (1) SA 584 (C).

¹¹ At 597E-I, referencing *Estate of Tuinanau Fuinaono (deceased)*, High Court of American Samoa, 10 November 1992.

¹² The Court was essentially asked to read the reference to “*adopted child*” in section 1(4)(e) of the Intestate Succession Act 81 of 1987 to include both *de lege* adopted children as well as *de facto* adopted children.

¹³ The following concerns were amongst the arguments against recognising *de facto* adoptions: that there would be no clear records of such adoptions, which could lead to uncertainty and deprive adopted children of information about their identities in later life; some children are absorbed into households because they need care and protection, with no intention that they be adopted; the lack of formalities would make it harder to protect children against exploitation; and *de facto* adoptions, which would not extinguish the rights of biological parents, could create overlapping rights and duties and thus cause confusion. At 598C-599D.

¹⁴ 2010 (3) SA 220 (GSJ).

support the child in question”. However, here the Court disagreed, noting (in *obiter dicta*) that while “*matters of context and implication militated against recognition of the factual adoption*” in the Flynn case,¹⁵ the door was still open for the recognition of *de facto* adoptions in other contexts.¹⁶

This avenue for recognition of some legal relationship between stepchildren and stepparents may be developed in future jurisprudence, but is as yet only a hypothetical one.

(b) Court orders for custody, guardianship or access

Some provisions of Children’s Status Act, which came into force in 2008, are broad enough to permit a stepparent who is “*acting as the primary caretaker of the child*”¹⁷ to apply to a children’s court for custody and guardianship over a child, although these only apply with respect to a child who is “*born outside of marriage*” or a “*child of divorced parents*”.¹⁸ However, it should be noted that the Children’s Status Act was designed primarily to remove discrimination in the law relating to the relationship between parents and children born outside of marriage, who were previously considered to be unrelated to their fathers. Consequently, the impact on stepparents is purely incidental, which explains the general inadequacy of this law to address stepfamily issues.

Under the common law, custody is understood to refer to “*the control and supervision of the daily life and person of the child*”.¹⁹ The parental duties associated with custody include the duty to provide the child with accommodation, food, clothing and medical care, maintenance and support; to educate and train the child; and to care for the child’s physical and emotional well-being.²⁰ Section 12(1)(c) provides that “*someone, other than the mother or father of the child, who is acting as the primary caretaker of the child*” may seek an order pertaining to custody of a child born outside of marriage. Such an application will only

¹⁵ The Court cited these factors as being relevant to the context of the Flynn decision: “*the relationship between putative father and son had consequences for third parties – the heirs whose entitlement to inherit was regulated by the Act – and the court held that the legislature, in deciding to confine the class of beneficiaries to de jure members of the family, had made a policy choice that could not properly be attacked as unreasonable or irrational*”. At 228G-I.

¹⁶ The Court stated: “I do not read the decision as going as far as that; rather, I see it as ultimately establishing no more than that, firstly, a *de facto* adoption cannot always be equated with a *de jure* one and, secondly, that it should not be recognized for the purposes of intestate succession. The context in which a claim based on *de facto* adoption is made is important and the practical implications of the claim must be considered.” At 228D-F.

¹⁷ The definition of “*primary caretaker*” under the Children’s Status Act is identical to the definition used in the draft Child Care and Protection Bill: “*a person, other than the parent or a custodian of a child whether or not related to the child, who takes primary responsibility for the daily care of the child with the express or implied permission of the child’s custodian*”.

¹⁸ See section 11(1)–(3) and 12(1) in respect of children born outside marriage. Section 4(3) covers applicability to children of divorced parents.

¹⁹ F !Owoses-/Goagoses, “Custody and guardianship of children” in O Ruppel, ed, *Children’s Rights in Namibia*, Windhoek: Konrad Adenauer Foundation, 2009 at 179.

²⁰ *Ibid.*

be allowed if the biological parents or guardians and caregivers have been notified of the application and are given an opportunity to be heard on the matter.²¹

Guardianship is a broader concept which bestows extensive legal authority upon a person over a child. It includes custody (if custody has not been granted to someone else), the right to make decisions about the child, and the right to manage the child's affairs and finances.²² Guardianship will normally rest with the parent who has custody, but (as in the case of custody) a primary caretaker may apply for guardianship of a child born outside of marriage.²³

In practice, the custody and guardianship procedures in the Children's Status Act would be unlikely to be open to stepparents unless the custodial parent dies. In making such orders, the best interests of the child are paramount, and the court may have regard to the following factors with respect to "*other relevant persons*", in part:

- *the capability of each parent, and of any other relevant person, to meet the child's physical, emotional and educational needs*
- *the fitness of all relevant persons to exercise the rights and responsibilities in question in the best interests of the child*
- *the nature of the relationship of the child with each of the child's parents and with other relevant persons ...* .²⁴

Stepparents cannot apply for access rights with respect to a child under the Children's Status Act, as section 14 limits application for access rights to the "*non-custodian parent*".

It should also be noted that stepparents may be able to secure certain responsibilities and rights with respect to a stepchild upon divorce from the biological parent through a settlement agreement approved by the High Court. For example, in *De Haas v De Haas*, the High Court approved a settlement agreement as an order of the court that awarded joint guardianship of the mother's biological child to both her and the stepfather, and granted specific access rights to the stepfather. In addition, the stepfather agreed to pay maintenance for both the stepchild and the biological child born of the marriage.²⁵

As the upper guardian of all minor children in Namibia, the High Court has wide powers under the common law 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.

²¹ Children's Status Act 6 of 2006, section 12(3).

²² F!Owoses-/Goagoses, "Custody and guardianship of children" in O Ruppel, ed, *Children's Rights in Namibia*, Windhoek: Konrad Adenauer Foundation, 2009 at 179.

²³ Children's Status Act 6 of 2006, section 13(1) and 13(3)(c).

²⁴ Section 3(1)(c)-(e).

²⁵ See *De Haas v De Haas*, case no I837/2009 (HC) (unreported).

(c) The draft Child Care and Protection Bill

Changes to the adoption laws

The draft Child Care and Protection Bill specifically refers to stepparents (albeit not using that term) when it indicates that the “*spouse of a parent of the child*” may adopt a child.²⁶ The stepparent, according to the terms of the Bill, would be reviewed by a social worker for fitness to serve as a parent to the child.²⁷ As is currently the case, a person who adopts a child under this draft Bill would acquire full parental rights and responsibilities towards that child.²⁸

Section 165 of the Bill limits the children who can be adopted:

165. (1) *A child is adoptable if –*
- (a) *the child does not have a parent and has no suitable guardian or care-giver willing to care for him or her;*
 - (b) *the whereabouts of the child's parent or guardian cannot be established;*
 - (c) *the child has been abandoned;*
 - (d) *the child is in need of a permanent alternative placement; or*
 - (e) *the child's parent or guardian has consented to the adoption.*

In a situation in which a stepparent is living with the child's biological parent, the only provision above that might apply would be (e), namely cases in which the child's biological parent has consented to the adoption.

In terms of the Bill, consent to adoption of a stepchild by a stepparent would be required from the non-custodial biological parent of the stepchild, regardless of whether the biological parents of the child were ever married.²⁹ However, exceptions are provided in cases in which the non-custodial biological parent has abandoned the child, cannot be located, has abused or neglected the child, or has “*consistently failed to fulfil his or her parental responsibilities towards the child during the last 12 months*”.³⁰ The Bill also provides exceptions for cases in which consent by the biological parent is unreasonably withheld.³¹

The provisions for dispensing with the requirements for consent of the other biological parent, which cover a much broader range of circumstances than currently permitted under the Children's Act, are likely to facilitate stepparent adoption and make it somewhat more common. However, adoption in general is not popular or common in Namibia, particularly amongst certain cultural groups. Therefore, even under the changed law, formal adoption is unlikely to be a sufficient solution for stepfamilies.

²⁶ Section 166(1)(b).

²⁷ See section 166(2)(a).

²⁸ Section 174(2)(a).

²⁹ Section 168(1).

³⁰ Section 168(1)(a).

³¹ Section 169.

Clarification of rules on custody and guardianship orders and extension of access orders to “family members”

There is no definition of stepparent in the draft Child Care and Protection Bill. However, stepparents who meet the definition of “*care-givers*” and the criteria of the respective provisions, could apply for custody of a stepchild whose biological parents are unmarried or divorced under section 95(1), or for guardianship under section 96(3).³² These provisions are very similar to those currently in the Children’s Status Act, which would essentially become a slightly revised chapter of the draft Child Care and Protection Bill if it is enacted. Section 95, the provision permitting applications for custody, clarifies that applications can be made in terms of the section in respect of children of unmarried or divorced parents, while section 93 provides generally that orders relating to custody, guardianship and access can be applied for in relation to both of these categories of children.³³

The language used in section 95(1)(c) regarding who can apply for custody has expanded to include “*someone, other than the mother or father of the child, who is acting as the care-giver of the child or who can show that he or she is acting in the best interests of the child*”. Guardianship will normally follow custody, as under the Children’s Status Act,³⁴ but section 96(3)(c) also permits “*someone, other than the mother or father of the child, who is acting as the care-giver of the child*” to apply for guardianship – the same language used in the corresponding provision under the Children’s Status Act.

Section 1 of the draft Child Care and Protection Bill provides the following definitions:

“care-giver” means any person other than a parent or guardian, who takes primary responsibility for the day-to-day care of a child and includes –

- (a) a foster parent;*
 - (b) a kinship care-giver;*
 - (c) a primary caretaker;*
 - (d) a person who cares for a child whilst the child is in a place of safety;*
 - (e) the person at the head of a facility where a child has been placed; and*
 - (f) the child at the head of a child-headed household;*
- [emphasis added]

“primary caretaker” means a person other than the parent or other legal care-giver of a child, whether or not related to the child, who takes primary responsibility for the daily care of the child with the express or implied permission of the person who is the custodian of the child

³² Note that the draft Child Care and Protection Bill, if enacted into law, will re-enact the provisions of the Children’s Status Act dealing with custody and guardianship orders, with modifications as explained in the text.

³³ Although the corresponding section in the Children’s Status Act (section 12) appears to apply only to custody applications involving “*children born outside of marriage*”, section 4(3) provides that the provisions within the Act relating to custody, guardianship and access also apply to “*children of divorced parents*”.

³⁴ Draft Child Care and Protection Bill, section 96(1)(a), which mirrors section 13(1) of the Children’s Status Act 6 of 2006.

Based on this statutory language, a stepparent could fall under the definition of “*primary caretaker*” if he or she has assumed that role in respect of a stepchild.

Under the draft Child Care and Protection Bill, as in the Children’s Status Act, the biological parents, guardians and anyone else holding parental duties and responsibilities with respect to a child must be notified of an application for custody or guardianship, and given the opportunity to be heard on the matter.³⁵ The court must determine whether the application is in the best interests of the child, having regard to a social worker’s report.³⁶

The parents of child born outside marriage both have equal rights to custody, but only one will actually function as the custodial parent, and also normally as the child’s guardian;³⁷ the decision on custody and guardianship can be determined by agreement between them or decided by a competent court.³⁸ If the child is born within marriage, the parents have joint custody and guardianship.³⁹ In a stepfamily, the biological parent in the relationship is presumably the custodian of the stepchild, or else the stepfamily situation would be unlikely to have arisen; therefore, it is unlikely that a stepparent would seek custody or guardianship unless the custodial biological parent dies.

The draft Child Care and Protection Bill extends the provision on access to children born outside marriage and children of divorced parents. Section 98 extends the listed persons who may apply for an access order to include “*members of the family or extended family of the child*”. Section 1 defines “*family member*” very broadly, to include “*any other person with whom the child has developed a significant relationship, based on psychological or emotional attachment, which resembles a family relationship*”, language which could easily capture a stepparent. This option to apply for access could be particularly useful to a stepparent who has formed a close relationship with a stepchild and wants to maintain contact with the stepchild after the relationship with the child’s biological parent has broken down. As in decisions on custody and guardianship, the court must have regard to a social worker’s report before making a decision on access.

A similarly broad approach to access can be found in a draft Divorce Bill approved by Namibia’s Law Reform and Development Commission, which has yet to go to Cabinet or Parliament.⁴⁰ Section 13 of this Bill states that a Court “*may, on application, make an order granting or denying access to members of the family of the non-custodial spouse or any other person, who, in the opinion of the court, should have access in the best interests of the child*”.⁴¹

³⁵ Sections 95(3) and 96(5).

³⁶ Sections 95(4) and (5); 96(6) and (7).

³⁷ Sections 94 and 96.

³⁸ If there is neither an agreement nor a court application, then the surviving common law would presumably apply, making the mother the guardian (and custodian) until such time as there is an agreement or a court order stating otherwise.

³⁹ Married Persons Equality Act 1 of 1996, section 14, read together with the common law on custody of the children of a marriage.

⁴⁰ As of April 2011.

⁴¹ Draft Divorce Bill, Law Reform and Development Commission (LRDC), *Report on Divorce* (LRDC 13), Windhoek: LRDC, 2004, Annexure A. The Bill provides that the Court may consider a report from a social

Kinship care

The draft Child Care and Protection Bill also introduces the concept of kinship care to Namibian law. Kinship care occurs when a child is placed in the care of a member of the child's family or extended family with the consent of the child's biological parent or guardian, either by informal arrangement or by order of the court.⁴² The very broad definition of "family member" as already noted, could easily apply to a stepparent.

The child's parent or guardian may enter into a kinship care agreement with the kinship care-giver to delegate parental rights and responsibilities, and such an agreement is required before the care-giver can receive grants or maintenance payments on behalf of the child:

Kinship care and kinship care agreements

114. (1) *A child is in kinship care if the child has been placed in the care of a member of the child's family or extended family ("the kinship care-giver"), other than the parent or guardian of the child or a person who has parental responsibilities and rights in respect of the child, with the express or implied consent of the child's parent or guardian, or by order of court ...*

(2) *A child's parent or guardian may conclude a kinship care agreement with the kinship care-giver in terms of subsection (3), and, in the absence of a court order placing the child in kinship care, must conclude such an agreement with the kinship care-giver and register the agreement with the clerk of the children's court in terms of subsection (4) before the kinship care-giver is eligible to receive any grant or maintenance payment in terms of which the child is a beneficiary.*

(3) *A kinship care agreement appointing a kinship care-giver for a child must –*

- (a) be recorded in writing and signed by two witnesses;*
- (b) set out information about the delegation of parental rights and responsibilities to the kinship care-giver in relation to the child, subject to section 145(3); and*
- (c) be concluded after due consideration to the views of the child.*

(4) *A kinship care agreement in terms of subsection (3) may –*

- (a) be facilitated by a designated social worker or a traditional leader;*
- (b) include directions on the duration of the agreement and supervision by a designated social worker;*
- (c) include directions on the termination of the agreement;*
- (d) be registered with the clerk of the children's court having jurisdiction; and*
- (e) include agreement on the matters specified in section 121(2).*

(5) *A kinship care agreement must comply with the best interests of the child standard as provided for in section 4.*

worker or other professional before deciding on such access. Section 21(3). The Bill also contemplates the possibility that custody may be awarded to someone other than a parent following a divorce, evidenced by the requirement that the Court must order an investigation into the child's best interests from a Family Advisor, which may include a social worker report, in any case where "there is an intention to place children in the custody of someone other than a parent". Section 21 (3) read together with section 21(4)(b). This situation could involve stepparents, grandparents or other extended family members.

⁴² Section 114(1).

The kinship care provisions would cover stepparents if they meet the definition of a family member. Thus a stepparent could acquire parental rights and responsibilities over a stepchild if the child's parent places the child in the care of the stepparent, and the parties enter into a kinship care agreement. Kinship care is designed to recognise situations where families make their own arrangements for informal foster care, in situations where children do not live with either biological parent, but with some other caregiver. It is not a concept that was developed to cover stepfamilies. So it appears that this option would be limited to circumstances where the biological parent has decided to leave the child in the stepparent's care, which suggests the parent is unable or unwilling to care for the child him or herself. This is unlikely to be a common situation for Namibian stepparents, who most often live together with the child's parent and the child.

Parenting plans

Section 120(2) of the draft Child Care and Protection Bill, states that “[m]ore than one person, including the parent and alternative care-giver of a child, may hold parental responsibilities and rights in respect of the same child (in this Act referred to as ‘co-holders of parental responsibilities and rights’).” The draft Child Care and Protection Bill also provides for parenting plans, although it stipulates that the parenting plans are limited to “co-holders of parental rights and responsibilities”, thereby restricting their application to persons who *already* hold parental rights and responsibilities.⁴³ This would preclude stepparents from acquiring rights and responsibilities via a parenting plan.

In fact, the draft Child Care and Protection Bill is silent as to *how* stepparents might acquire parental rights and responsibilities, with the exception of formal adoption or in the limited circumstances related to custody or guardianship orders in respect of children born outside marriage or children of divorced parents.

Duties of children toward family members, including stepparents

As noted in section 3.2.1, under section 9 of the draft Child Care and Protection Bill, children also have duties and responsibilities to respect and assist family members. Due to the very broad definition of “*family member*” in the Bill, this duty could extend to a stepparent with whom the child has a “*significant relationship*”.

“ My stepparent likes arguing with me all the time even when I didn’t do anything wrong to her or in the house. Sometimes I do listen to what she says, but do not take it serious at all. And sometimes I just walk away angry while she talks and leave her alone because I don’t want to be responsible for what I might do to her in the end. We sometimes talk and laugh together but it doesn’t last for long and I don’t do what she wants me to sometimes because of what she says about my biological mom.”

– youth participant in Katima Mulilo

⁴³ Section 121.

3.2.3 Maintenance

The Maintenance Act 9 of 2003 does not define the term “*parent*”, and there is no reference made to “*stepparent*” or “*stepchild*”. Section 2 states that the Act applies “*where a person has a legal duty to maintain another person*”. Under the common law, a legal duty of support exists only between blood relations and spouses, and does not extend to relationships of affinity, such as those between stepparents and stepchildren.

This was the finding of the High Court in the 1991 decision *S v Koyoka*, which considered a claim under the predecessor Maintenance Act 23 of 1963.⁴⁴ In *Koyoka* the complainant, an elderly man, sought maintenance from the defendant, whom the complainant had financially supported as a young boy and whom he had cared for as one of his own children.⁴⁵ The court observed that the Act did not provide any definition of the words “*legally liable*” under section 5(4), which stated that the “*court may ... make an order against any person proved to be legally liable to maintain any other person*”.⁴⁶

The court ruled that although there is a common law duty of support between blood relations and spouses, this duty of support does not extend to relationships of affinity, such as between stepparents and stepchildren.⁴⁷ The court denied the claim for maintenance because the complainant did not fall into any category of “*special relationship*” where a duty of support exists – since there was no blood relationship between the parties and the complainant had not formally adopted the defendant.⁴⁸

The High Court of Namibia recently reaffirmed this principle in *Mokomele v Kaihivi*⁴⁹ when it made the following statement, albeit in *obiter*:

*... the law on the point is clear: the duty of support between parents rests on blood relationship and, where the step parent is married in community of property to the child's biological parent, the duty to support the child rests on the joint estate. See Mentz v Simpson 1990 (4) SA 455 (A).*⁵⁰

⁴⁴ See *S v Koyoka*, 1991 NR 369 (H.C.).

⁴⁵ Id at 369H-I.

⁴⁶ Id at 370C-D.

⁴⁷ Id at 371B-C.

⁴⁸ Id at 371B-D.

⁴⁹ *Mokomele v Kaihivi*, Case 99/2008, High Court of Namibia [2009] NAHC 101 (12 June 2009).

⁵⁰ With respect, the attribution of this principle to *Mentz v Simpson* is problematic and inaccurate. Although this statement was made in *Mentz v Simpson* at 460B-D, it was part of the summary of the lower court's statement on this point, which was then rejected by Hefer JA of the appellate court. Hefer JA noted that the lower court applied “*certain dicta*” from *S v MacDonald* 1963 (2) SA 431 (C) to conclude that the defendant may be liable for the maintenance of his stepchildren in his capacity as administrator of the joint estate if the parties were married in community of property. Although Hefer JA did not accept or reject this interpretation of the law specifically, he stated: “*This part of the Court's reasoning cannot be supported either. Respondent's liability to the suppliers of household goods is quite irrelevant and the possibility that he might be married in community of property was not raised either at the enquiry or in the Court*”. In effect, the lower

The absence of a legal duty of support means that a stepchild would have no claim under common law for loss of support if the stepparent were disabled or killed by the unlawful act of a third party, even if the stepchild was in fact dependant upon the stepparent. A contractual undertaking by a stepparent to support the stepchild would also be insufficient to support a claim for loss of support. As will be seen in section 3.2.6, however, some statutes have defined “*dependants*” in a way which acknowledges the support of stepchildren by their stepparents in some specific contexts.

3.2.4 Inheritance

As already explained, there is no legal relationship between stepparents and stepchildren, unless the stepchild has been formally adopted. Therefore stepchildren do not have any legal entitlement to inherit from a stepparent’s estate in the absence of a valid will making the stepchild an heir.

Similarly, in South Africa the intestate inheritance laws do not permit inheritance by a stepchild unless the child was formally adopted by the stepparent. In the 2008 case of *Flynn v Farr NO and Others*, the South African High Court refused to recognise the right of a stepchild to inherit from his deceased stepfather’s estate.⁵¹ The case was decided under the Intestate Succession Act, which affords formally adopted children the same right to inheritance as biological children. However, as the stepson in the case had not been formally adopted by his stepfather, but rather was treated as a *de facto* adopted son, the court held that he had no entitlement to inheritance under the Act.⁵² The court also rejected the applicant’s claim that the Intestate Succession Act was discriminatory because it treated *de facto* and *de lege* adopted children differently, concluding that there was a rational purpose for the differentiation.⁵³ As legal precedent from South Africa is highly persuasive in Namibia, it is assumed that a Namibian court would adopt a similar approach to interpretation of Namibia’s Intestate Succession Ordinance 12 of 1946.

“I think stepparents must treat the children in a nice manner, for example if the man has a child with a women and the woman has another child with another father they must be treated equally.”

– youth participant in Katutura

court’s discussion of the point was unnecessary and entirely *obiter*. The case involved a maintenance claim in respect of the biological children, and the court held that the needs of stepchildren were largely irrelevant to the issue of the maintenance requirements of one’s own children. The conclusion of the Namibian High Court is however consistent with the precedent from *S v MacDonald*.

⁵¹ See *Flynn v Farr NO and Others*, 2009 (1) SA 584 (C).

⁵² Id at 588D-F.

⁵³ Id at 599E-H. The court relied on evidence regarding the government’s need for an enforced system of formal adoption to ensure proper documentation and regulation (at 598C-599E).

3.2.5 Abuse

In Namibia, the Combating of Domestic Violence Act 4 of 2003 would cover the relationship between many stepparents and stepchildren, as section 3(1)(d) specifies that a “*domestic relationship*” includes “*family members related by consanguinity, affinity or adoption*”, provided that there is a “*connection of a domestic nature*”, including the sharing of a residence or financial dependence of one person on another. This definition would capture all stepparents who live with or provide financial support for a stepchild (who is a family member related by “*affinity*”). Section 3(1)(e) reads:

3. (1) For the purposes of this Act a person is in a “domestic relationship” with another person if, subject to subsection (2) –

...

(e) they –

(i) are or were otherwise family members related by consanguinity, affinity or adoption, or stand in the place of such family members by virtue of foster arrangements; or

(ii) would be family members related by affinity if the persons referred to in paragraph (b) were married to each other, and they have some connection of a domestic nature, including, but not limited to –

(aa) the sharing of a residence; or

(bb) one of them being financially or otherwise dependant on the other.

Therefore any child abuse or neglect of a stepchild by a stepparent living in the same household or providing financial support would fall under the Act as conduct that is defined as domestic violence. Specifically, according to section 2 of the Act domestic violence includes physical abuse, sexual abuse, economic abuse, intimidation and harassment, and emotional, verbal or psychological abuse that occurs in the context of a domestic relationship. Consequently, stepchildren facing abuse that comes within the meaning of the Combating of Domestic Violence Act can apply for protection orders under section 4(1) of the Act, and access special measures that apply during criminal trials for domestic violence offences.

With respect to sexual abuse, the Combating of Rape Act 8 of 2000 applies to any perpetrator of rape, which would include, of course, stepparents. The Act provides for longer prison sentences for individuals who are in a position of trust towards children under the age of eighteen, which could include stepparents. Section 3(1)(a)(iii)(cc) provides that a first conviction of an individual who is the complainant’s parent, guardian or caretaker, or of someone who is otherwise in a position of trust or authority over the complainant, if aged eighteen or under, will warrant a minimum sentence of 15 years imprisonment in most instances, which is greater than the minimum sentence of five years for a first offence. For a repeat offender, the minimum sentence under this category is 45 years imprisonment.

In addition, the Combating of Immoral Practices Act 21 of 1980 prohibits sexual acts, including “*indecent or immoral*” acts, with children under the age of 16 if the perpetrator is

more than three years older than the child. Penalties include a fine of up to N\$40,000 and a maximum sentence of 10 years imprisonment. Section 14 reads:

Any person who –

- (a) commits or attempts to commit a sexual act with a child under the age of sixteen years; or*
- (b) commits or attempts to commit an indecent or immoral act with such a child; or*
- (c) solicits or entices such a child to the commission of a sexual act or an indecent or immoral act,*

and who –

- (i) is more than three years older than such a child; and*
- (ii) is not married to such a child (whether under the general law or customary law), shall be guilty of an offence and liable on conviction to a fine not exceeding N\$40 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.*

This general provision could be applied to abuse of stepchildren by a stepparent.

In addition, section 18 of the Children's Act 33 of 1960 provides that ill-treatment or neglect of children constitutes an offence punishable by a fine of up to two hundred pounds or two years imprisonment.⁵⁴ However, the Act limits application of this provision to “*any parent or guardian of a child or any person having custody of a child*”, which would only very rarely include a stepparent:

18. (1) *Any parent or guardian of a child or any person having the custody of a child who ill-treats, neglects (otherwise than by such failure as is mentioned in subsection (2)) or abandons that child or allows it to be ill-treated, shall be guilty of an offence if as a result of the ill-treatment, neglect or abandonment the child is likely to suffer unnecessarily or any part or function of its mind or body is likely to be injured or detrimentally affected, even though no such suffering, injury or detriment has in fact been caused or even though the likelihood of such suffering, injury or detriment has been averted by the action of another person.*

(2) *Any person legally liable to maintain a child who, while able to do so, fails to provide that child with adequate food, clothing, lodging and medical aid, shall be guilty of an offence.*

The draft Child Care and Protection Bill would introduce a similar provision, but with far more extensive application. Section 236 would impose criminal sanctions upon parents and certain other persons who abuse, neglect, abandon or fail to maintain a child. The expansive wording covers both a “*care-giver*” – defined in section 1 to include a primary caretaker, who is “*a person other than the parent or other legal care-giver of a child, whether or not related to the child, who takes primary responsibility for the daily care of the child with the express or implied permission of the person who is the custodian of the child*” – and a “*person who has no*

⁵⁴ Children's Act 33 of 1960, section 18(5).

parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely or temporarily". Both of these categories could easily capture a stepparent. The provision imposes penalties of a fine of up to N\$50,000 and/or imprisonment for up to ten years.

Offences relating to abuse, neglect, abandonment and maintenance

236. (1) *Subject to the provisions of section 210(1), a parent, guardian, other person who has parental responsibilities and rights in respect of a child, care-giver or person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely or temporarily, commits an offence if that parent or care-giver or other person –*

(a) abuses or deliberately neglects the child; or

(b) abandons the child,

and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding ten years or to both the fine and imprisonment.

(2) *A person who is legally liable to maintain a child commits an offence if that person, while able to do so, fails to provide the child with adequate food, clothing, lodging and medical assistance and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding ten years or to both the fine and imprisonment.*

It is also relevant to note that stepchild-stepparent relationships, and relationships between stepsiblings who have a common parent, are broadly encompassed in the common-law offence of incest, which is sexual intercourse between persons who are prohibited from marrying because of their degree of relationship through consanguinity (blood), affinity (marriage) or adoptive relationship.⁵⁵

"That's why I say it is not good to stay with stepfathers. Stepfathers, they don't take care for other children who are not belonging to them."

– youth participant in Okangwati

⁵⁵ CR Snyman, *Criminal Law, 2nd edition*, Cape Town: Butterworths, 1989 at 373-375. The prohibitions on marriage cover the ascendant or descendant blood relations of a spouse (which would prohibit marriage between stepparents and their stepchildren or stepchildren). These prohibitions also cover stepsiblings who are related by blood, as any two people related to a common ancestor "*in the first degree*" are prohibited from marriage. Id at 375.

In this regard, section 238(1)(a) of the Criminal Procedure Act 51 of 1977 states that it is sufficient to prove that the accused "*is reputed to be the lineal ascendant or descendant or the sister, stepmother or stepdaughter of the other party to the incest*", while section 270(1)(a) of the Criminal Procedure Act 25 of 2004 (passed by Parliament but not yet in force) states in more gender-neutral fashion that it is sufficient to prove that the accused "*is reputed to be the lineal ascendant or descendant or the brother, sister, stepparent or stepchild of the other party to the incest*". Article 14 of the SWAPO Family Act similarly states: "*Relatives-in-law, to wit, father-in-law, son-in-law and mother-in-law, step-father and step-daughter, step-mother and step-son shall not marry inter se.*" See the Schedule to the Recognition of Certain Marriages Act 18 of 1991.

3.2.6 Stepchildren as dependants in existing Namibian statutes

A number of statutes which provide for payment of benefits, pensions, medical aid or other forms of assistance expressly include a “*stepchild*” in the definition of eligible dependants, while others indirectly include stepchildren if they were *in fact* dependent upon the relevant person for maintenance. However, the exclusion of stepchildren as dependants from the Motor Vehicle Accident Fund Act is a notable exception. Several statutes dealing with corruption include stepchildren and stepparents in the definition of “*relative*”. None of the statutes examined have a definition of “*stepchild*” or “*stepparent*”,⁵⁶ but it is likely that they might be applied only where the child’s parent is formally married to the stepparent.

A number of statutes which provide for payment of benefits, pensions, medical aid or other forms of assistance expressly include a “*stepchild*” in the definition of eligible dependants:

- Employee’s Compensation Act 30 of 1941
- Government Service Pension Act 57 of 1973
- Military Pensions Act 84 of 1976
- Judges’ Pensions Act 28 of 1990
- Medical Aid Funds Act 23 of 1995
- Former Presidents’ Pension and Other Benefits Act 18 of 2004
- Veterans Act 2 of 2008.

The **Income Tax Act 24 of 1981** includes a “*step-child*” as a child in respect of whom a taxpayer can claim certain exemptions. Maintenance of stepchildren is also referred to explicitly in the **Military Discipline Code** appended to the **Defence Act 1 of 2002**.

The **Employee’s Compensation Act 30 of 1941** (as amended by the Employees’ Compensation Amendment Act 5 of 1995)⁵⁷ provides that “*dependants*” are eligible to claim compensation in the case of injury, death or disablement of an employee. The definition of “*dependant*” at section 4 includes:

...

- (c) *any child: Provided that in the case of an adopted child the Commission is satisfied that the child was adopted prior to the accident;*
- (d) *a parent or **step-parent** or an adoptive parent who adopted such employee if the Commission is satisfied that the employee was in fact adopted.*

⁵⁶ Section 16(ab)(ii) of the Income Tax Act 24 of 1981 has a definition of “*child or step-child*”, but in the form of conditions which attach to *both* of these categories rather than an actual definition of who will be viewed as a stepchild. We have been unable to locate any case law defining “*stepchild*” in Namibia or South Africa.

⁵⁷ Note that until it was renamed as part of the 1995 amendments, the Act was known as the Workman’s Compensation Act 30 of 1941.

At section 2 of the Act, “*child*” is defined as “*a son or daughter under the age of eighteen years and includes ... a step-child*”.⁵⁸

The **Government Service Pension Act 57 of 1973** entitles a dependant to collect government service pensions in respect of pre-independence government employees. In terms of section 1, “*dependant*”, defined in relation to any member or any person entitled to an annuity or benefits, “*means the widow or minor child of such member or person, including his minor stepchild or a minor child who has been legally adopted by him, and also any person who, in the opinion of the Director-General, was totally or partially dependant on such member*”.⁵⁹

The **Military Pensions Act 84 of 1976** includes stepchildren in the definition of dependant for the purposes of pensions and disability payments to members of certain military forces. Section 1 defines “dependant” as a “*wife or child*”, and then defines child as follows:

“*child*”, in relation to any member, means an unmarried child under the age of eighteen years –

- (a) *who is a child for whose maintenance such member is legally responsible;*
- (b) *who is a stepchild of such member;*
- (c) *who has been legally adopted by such member;*
- (d) *any such unmarried child over the age of eighteen years who is a full-time student at any university or other educational institution or who, on account of any physical or mental disability, is not able to provide for his own maintenance and is regularly maintained by such member.*

The **Judges’ Pensions Act 28 of 1990** similarly provides for payment of certain benefits to a judge’s “dependant”, which is defined in section 1 to include “*any minor child, including any step-child ...*”.

Section 1 of the **Medical Aid Funds Act 23 of 1995** defines “dependant” as follows:

“dependant”, in relation to a member of a registered fund, means –

- (a) *the spouse of such member;*
- (b) *any minor child (including any stepchild or adopted child) of such member who is not self-supporting; and*
- (c) *any other person who, under the rules of the fund, is recognised as a dependant of such member and is entitled to receive benefits under the fund by virtue of such member’s membership, and who is not a member of that fund or any other registered fund.*

⁵⁸ Through this section, we have added emphasis to the references to stepchildren, stepparents and other relevant terms in the quoted provisions, for ease of reference.

⁵⁹ An alternative reading of this provision would limit its coverage to a “*minor stepchild ... who has been legally adopted*”, but this reading would be illogical, as an adopted child would no longer be a stepchild in terms of the law but would legally become the child of the adoptive parent. See Children’s Act 33 of 1960, section 74(2): “*... an adopted child shall for all purposes whatsoever be deemed in law to be the legitimate child of the adoptive parent ...*”. The few exceptions to this general rule set forth in the statute are not relevant to this discussion.

Therefore a stepchild is *prima facie* entitled to claim benefits as a dependant of a member of a registered medical aid fund, although each fund is governed by its own rules.

The **Former Presidents' Pension and Other Benefits Act 18 of 2004** provides for payment of the pension benefits of a former President only to a "*surviving spouse*", or in the absence of a surviving spouse to a "*dependant child*". The term "*dependant child*" is defined in section 1 to include "*an adopted child or a **step-child** of a deceased former President, who is "under the age of 21 years and was wholly or substantially dependent upon the deceased former President for his or her livelihood immediately preceding the death of the former President"*".

Stepchildren are also specifically mentioned in the **Veterans Act 2 of 2008**, which allows dependants to receive assistance from the Veterans Fund or to benefit from projects initiated under the Act. Under section 1, "*dependant*" is defined to include "*any child*" of the veteran. "*Child*" is further defined in this section to include a stepchild:

"child", in relation to a veteran, means a person aged below 18 years –

- (a) who is a biological child of such veteran;*
- (b) **who is a step-child of such veteran;***
- (c) who is a legally adopted child of such veteran; or*
- (d) who is a posthumous child of such veteran.⁶⁰*

In addition, the **Income Tax Act 24 of 1981**, as amended, permits a taxpayer to claim an exemption under section 16(ab)(i) for tax on any insurance policy proceeds expended for providing for the education or training of "*a child or **stepchild***" for the purpose of obtaining post-school qualifications. Section 16(ab)(ii) defines "*child or step-child*" for the purposes of section 16(ab)(i) as any child who was unmarried, under age 26 and "*wholly or partially dependent for his or her maintenance upon the taxpayer*".⁶¹

Stepchildren are also mentioned explicitly in the **Military Discipline Code** appended to the **Defence Act 1 of 2002**. Article 127 of the Code, which is concerned with forfeiture of pay as a sanction, recognises that a stepchild may be a dependant of a person subject to the Code; forfeiture is limited to one-third of a person's pay if that persons "*has a child, **stepchild** or legally adopted child who lives with and is maintained by that person*".

Some statutes do not specifically include stepchildren in the definition of dependants, but define a dependant broadly to include anyone who was "*in fact dependant on the member for maintenance*" even though the member had no legal liability to maintain the dependant:

- Pension Funds Act 24 of 1956
- Social Security Act 34 of 1994.

⁶⁰ This statute repeals the War Veterans Subvention Act 16 of 1999, which had a similar definition of "*child*".

⁶¹ See also section 12(3) of Schedule 2 to this Act.

As was discussed in section 3.2.3, stepparents do not have a legal duty to maintain a stepchild either under the Maintenance Act or at common law. However, some statutes permit eligibility as a dependant if the member was not legally liable to maintain the person, but was in fact doing so. For example, under section 1 of the **Pension Funds Act 24 of 1956**:

“dependant”, in relation to a member, means –

- (a) a person in respect of whom the member is legally liable for maintenance;*
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person –*

- (i) was, in the opinion of the person managing the business of the fund, upon the death of the member **in fact dependent on the member for maintenance.***

Therefore if a member of a pension scheme was in fact maintaining a stepchild, the stepchild may be eligible to receive benefits in terms of pension funds registered under this statute.

The **Social Security Act 34 of 1994** uses a very similar definition of dependants as the Pension Funds Act:

“dependant”, in relation to a member of any fund, means –

- (a) a person in respect of whom the member is legally liable for maintenance, including the spouse, natural children or adopted children of the member;*
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person was, in the opinion of the Commission, upon the death of the member **in fact dependent on the member for maintenance;** or*
- (c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died.*

Thus any person who was in fact dependent upon a fund member can claim death benefits under the Social Security Act, which could include a stepchild.

Some statutes exclude stepchildren as eligible dependants for the purpose of claiming compensation or benefits. Examples include:

- Defence Act 1 of 2002
- Motor Vehicle Accident Fund Act 10 of 2007.

Under sections 82-32 of the **Defence Act 1 of 2002**, if a member is missing or has been taken as a prisoner of war, his or her salary, wages or allowances may be paid to his or her spouse or to “*other legal dependants*”. However, “*other legal dependants*” is not defined, and presumably would not include a stepchild, as a stepparent has no legal duty of maintenance towards a stepchild.

Stepchildren are not included in the definition of a dependant under the **Motor Vehicle Accident Fund Act 10 of 2007**, which provides compensation for the dependants of a

person injured or killed in a motor vehicle accident. The definition of dependant in section 1 of this statute is narrow:

“dependant” in relation to a person involved in a motor vehicle accident, means any person being a spouse or a minor child of such person or a disabled or indigent person legally entitled, other than in terms of contract, to monetary maintenance from such person and includes a spouse in a customary law union and child of such union.

Unlike some of the other statutes already discussed, this Act does not define “child” to specifically include stepchild – in fact, it does not offer any definition of the term “child”. It also expressly limits the definition of “dependant” to a person who is “legally entitled” to maintenance. As already noted above, a stepchild has no legal entitlement to maintenance from a stepparent. Thus the benefits provided under the Motor Vehicle Accident Fund Act are presently denied to stepchildren, even if they were factually dependant on the person who was injured or killed.

There does not appear to be any logical or principled approach to the statutory inconsistencies regarding treatment of stepchildren, for example, to explain why a stepchild is a dependant for the purposes of eligibility for social security benefits, pensions and medical aid, but not under the compensatory scheme set out under the Motor Vehicle Accident Fund Act.

3.2.7 Identity of interest amongst stepfamily members in existing Namibian statutes

In the following statutes prohibiting corruption, certain members of stepfamilies are included within the definition of “relative”:

- Banking Institutions Act 2 of 1998
- National Reinsurance Corporation Act 22 of 1998
- Anti-Corruption Act 8 of 2003.

In a similar vein, “parents” and “children” include stepfamily relationships in relation to certain rights of landowners which extend to their family members under the **Nature Conservation Ordinance 4 of 1975**, and stepchildren’s claims under wills are referenced along with those of other family members in the **Friendly Societies Act 25 of 1956**.

The **Banking Institutions Act 2 of 1998**, section 41(10) prohibits a director of a banking institution, or a member of a committee of the board of directors, or a principal officer or manager, from taking part in any consideration of any matter in which a “close relative” has a personal or economic interest. Under section 1, close relative includes a “child, **step-child**, adopted child, brother, sister, **step-brother**, **step-sister**, parent or **step-parent**”.

An even broader approach is taken in section 11 of the **Namibia National Reinsurance Corporation Act 22 of 1998**, which defines “close relative”, for purposes of identifying indirect

conflicts of interest to include, amongst others, a “*child, stepchild, parent or stepparent, or any descendant of such parent or stepparent*”.

The term “*stepparent*” is also referenced in Namibia’s anti-corruption laws. The **Anti-Corruption Act 8 of 2003** refers to stepparent under the rules relating to public officers having an interest in a matter directly or through a relative. A relative is defined under section 43(3)(a) as, *inter alia*, a parent, “*including a step-parent*”.

In a similar vein, under the **Nature Conservation Ordinance 4 of 1975**, certain rights related to huntable game and game birds which accrue to landowners may also be exercised by the landowners’ “*children*” or “*parents*”. In terms of section 1, “*children*” means “*the natural children, step-children and lawfully adopted children of a person, and includes the husband or wife of any such child*” and “*parents*” means “*the parents of whom a person is the natural child, step-child or lawfully adopted child, and includes the husband or wife of any such parent*”.

In section 48B of the **Friendly Societies Act 25 of 1956**, stepchildren are included amongst family members whose claims, under wills, to benefits covered by the statute take precedence over claims by other creditors.

“ In Namibia a stepchild relationship is not easy, especially when both parents of the involved child are alive. In cases where a woman has a stepchild, both that child and the stepmother will suffer emotionally. Many men are trying to keep their kids from outside relationships in their matrimonial homes to avoid paying maintenance and to keep the 'other woman' away from him. This becomes a triangle relationship and hell breaks loose from there. As a woman it becomes difficult for you to discipline a stepchild as the mother is likely to be monitoring the situation at all times ... In some cases stepchildren end up being the caretakers of their half-brothers and half-sisters at home, or being responsible for all the household chores. These children end up in the streets and are deprived of education and other basic care that they might need.”

– email message received by the Legal Assistance Centre

3.3 Laws on stepchildren and stepparents in selected other countries

3.3.1 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. This usually includes the right to make decisions about the child, to have custody of the child, to have contact with the child, and the duty to provide care and support for the child. Generally parental rights and responsibilities in other countries apply to biological and adoptive parents, but not to stepparents.

The concept of parental rights and responsibilities has been incorporated into the family law of many countries, including England, Northern Ireland, Australia, South Africa, Botswana, Ghana and Kenya. A number of countries have taken a broad view of what parental rights and responsibilities involve, presumably allowing for flexibility. For example, the definition in England's Children Act, similar to the definition adopted in Australia, is: "*parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property*".⁶²

Generally speaking, parental rights and responsibilities usually include, for example, the right to make decisions about the child, to have custody of the child, to have contact with the child, and the duty to provide care and support for the child. Generally parental rights and responsibilities apply to biological and adoptive parents, but not usually to stepparents.

Some countries provide a more detailed summary of parental rights and responsibilities. For example, Ghana's Children's Act of 1998 provides the following explanation of parental rights and responsibilities in section 6:

- (1) No parent shall deprive a child [of] his welfare whether –
 - (a) the parents of the child are married or not at the time of the child's birth; or
 - (b) the parents of the child continue to live together or not.
- (2) Every child has the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents.
- (3) Every parent has rights and responsibilities whether imposed by law or otherwise towards his child which include the duty to –
 - (a) protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression;

⁶² England Children Act 1989 c. 41, section 3(1), available online at <www.legislation.gov.uk/ukpga/1989/41/contents> (last accessed 20 January 2011); Australian Family Law Act 1975, section 61B, available online at: <www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/> (last accessed 20 January 2011).

- (b) *provide good guidance, care, assistance and maintenance for the child and assurance of the child's survival and development;*
- (c) *ensure that in the temporary absence of a parent, the child shall be cared for by a competent person and that a child under eighteen months of age shall only be cared for by a person of fifteen years and above.*⁶³

In the **Kenya Children Act 8 of 2001**⁶⁴ the same general definition given in England's legislation is used at section 23(1), but the following specific rights and duties are enumerated at section 23(2):

The duties referred to in subsection (1) include in particular –

- (a) *the duty to maintain the child and in particular to provide him with –*
 - (i) *adequate diet;*
 - (ii) *shelter;*
 - (iii) *clothing;*
 - (iv) *medical care including immunization; and*
 - (v) *education and guidance; ,*
- (b) *the duty to protect the child from neglect, discrimination and abuse;*
- (c) *the right to –*
 - (i) *give parental guidance in religious, moral, social, cultural and other values;*
 - (ii) *determine the name of the child;*
 - (iii) *appoint a guardian in respect of the child.*

South Africa also adopted the concept of “parental responsibilities and rights” in the Children's Act 38 of 2005.⁶⁵ Under section 18, parental responsibilities and rights are defined as follows:

- (1) *A person may have either full or specific parental responsibilities and rights in respect of a child.*
- (2) *The parental responsibilities and rights that a person may have in respect of a child, include the responsibility and the right –*
 - (a) *to care for the child;*
 - (b) *to maintain contact with the child;*
 - (c) *to act as guardian of the child; and*
 - (d) *to contribute to the maintenance of the child.*
- (3) *Subject to subsections (4) and (5), a parent or other person who acts as guardian of a child must*
 - (a) *administer and safeguard the child's property and property interests;*
 - (b) *assist or represent the child in administrative, contractual and other legal matters;*

or

⁶³ Ghana Children's Act, 1998 (Act 560), available online at <www.unhcr.org/refworld/docid/44bf86454.html> (last accessed 20 January 2011).

⁶⁴ Kenya Children Act 8 of 2001, available online at <www.unhcr.org/refworld/type,LEGISLATION,,KEN,47975f332,0.html> (last accessed 28 March 2011). The Act came into force in 2002.

⁶⁵ The South Africa Children's Act 38 of 2005 came into force in 2007. It is available online at: <www.info.gov.za/view/DownloadFileAction?id=67892> (last accessed 21 January 2011).

- (c) *give or refuse any consent required by law in respect of the child, including*
 - (i) *consent to the child's marriage;*
 - (ii) *consent to the child's adoption;*
 - (iii) *consent to the child's departure or removal from the Republic;*
 - (iv) *consent to the child's application for a passport; and*
 - (v) *consent to the alienation or encumbrance of any immovable property of the child.*

As explained at section 3.2.1, in **Namibia**, the draft Child Care and Protection Bill would supplement the existing common law by outlining specific parental duties and responsibilities, and by imposing certain duties and responsibilities towards family members upon children.

3.3.2 Parental rights and responsibilities and stepparents

When and how do stepparents acquire parental rights and responsibilities?

Stepparents can acquire full parental rights and responsibilities over a stepchild through adoption. In Botswana, a stepparent who is married to the biological parent automatically has parental rights and responsibilities in respect of a stepchild. In Ghana, a person functioning as a parent to a child, which would include some stepparents, automatically has parental rights and responsibilities towards that child. In some countries, stepparents may voluntarily acquire certain parental rights and responsibilities in respect to a stepchild through a parenting agreement with the biological parent, such as in England and South Africa. A number of countries permit stepparents and other caregivers who are not the parents of a child to apply for court orders for broad parental rights and responsibilities, or for the more specific rights of custody, access and guardianship.

There are varying degrees to which stepparents can acquire parental right and responsibilities with respect to a stepchild. A few countries appear to equate stepparents with parents under certain circumstances, making it possible for stepparents to automatically acquire full parental rights and responsibilities. Other countries allow stepparents to voluntarily assume certain parental rights through agreements with the biological parent of a child. Yet other countries make provision for stepparents (and sometimes other persons) to apply for court orders for custody, access and guardianship – which are specific aspects of parental rights and responsibilities.

It must be noted that custody or access orders involve limited rights. For example, they do not typically include the right to appoint a guardian or the right to change a child's surname, nor do they impose liability to maintain. Further, such orders do not extend intestate inheritance rights to the child. Even when combined with guardianship, such orders do not

generally create a full parental legal relationship. In practice, most stepparents would not have a need to apply for custody, access or guardianship orders during the relationship with the biological parent, but the ability to make such applications could be of great importance upon the death of the biological parent or the end of the relationship.

Generally, formal adoption of the child is required for a stepparent to acquire all parental rights and responsibilities.

(a) Adoption

Generally, stepparents are entitled to formally adopt their stepchildren, although individual countries have specific considerations and formalities for the stepparent to fulfil before such an adoption will be granted. Adoption permits the stepparent to acquire full parental rights and responsibilities towards the child, and the stepparent is then viewed by the law as having full parental status equal to that of a biological parent. The consent of the biological parent is generally required for such an adoption, although courts usually have authority to dispense with such consent in specified circumstances

In **England**, a stepparent may apply for adoption under the Adoption and Children Act 2002.⁶⁶ Section 51(2) provides that a person who is the partner of a parent of the child may apply for an adoption order. This means that stepparents may apply for adoption regardless of whether they are formally married to the biological parent. There is a requirement that the child must have lived with the stepparent for at least six months prior to the adoption application.⁶⁷ Additionally, pursuant to section 1, the court must consider whether the proposed adoption is in the best interests of the child and whether there may be preferable alternative arrangements. Under section 47(2), the consent of the other biological parent or guardian is required before an adoption order can be made, although the court has discretion to dispense with this requirement in certain circumstances.⁶⁸

Similarly, in **Scotland**, under section 30(3) of the Adoption and Children (Scotland) Act 2002, which came into force in 2009, a stepparent can apply as a single applicant for an adoption order with respect to a stepchild.⁶⁹ By virtue of the definition of “*relevant couple*” in section 29, which includes civil partners and cohabiting partners, it is not required that the stepparent be formally married to the biological parent. Section 31 requires parental consent to the adoption, although such consent may be dispensed with in specific circumstances.

In **Ghana**, the Children’s Act specifies that the spouse of a parent may apply for adoption at section 66(2): “*an application for an adoption order may be made by the mother or father of*

⁶⁶ Adoption and Children Act 2002 (c. 38), available online at <www.legislation.gov.uk/ukpga/2002/38/part/1/crossheading/the-making-of-adoption-orders> (last accessed 25 January 2011).

⁶⁷ Id, section 42(3).

⁶⁸ Note that section 52(1) states that the court can only dispense with the requirement for consent if the parent or guardian cannot be found or is incapable of giving consent, or if the welfare of the child requires it.

⁶⁹ Adoption and Children (Scotland) Act 2002, available online at <www.legislation.gov.uk/asp/2007/4/contents> (last accessed 16 March 2011).

the child alone or by either of them jointly with a spouse". Although section 68(1) of the Act requires that an adoption order shall only be made with the consent of the child's parent or guardian, under section 68(2) the court may dispense with the consent requirement:

... if satisfied that the parent or guardian has neglected or persistently ill-treated the child, or that the person cannot be found or is incapable of giving consent or that the consent is unreasonably withheld.

In **Australia**, the Family Law Act specifically permits stepparents to apply for leave to make an application for adoption of a stepchild, although the adoption process varies by state. Section 60G of the federal Family Law Act provides that the Family Court may grant leave for proceedings to be commenced for the adoption of a child by a "*prescribed adopting parent*". Section 4 defines "*prescribed adopting parent*" to include "*the spouse of, or a person in a de facto relationship with, a parent of the child*" or "*a parent of the child and either his or her spouse or a person in a de facto relationship with the parent*". However, in some states in Australia, such as Victoria, stepparent adoption is discouraged in favour of custody or guardianship orders.⁷⁰ The laws of Victoria also impose a consent requirement from the other biological parent.

In **Canada**, adoption laws also vary by province, but British Columbia's Adoption Act permits stepparent adoption. Requirements of consent from birth parents may be dispensed with in certain circumstances, such as if the parent cannot be located, has abandoned or deserted the child, or has failed to make reasonable efforts to meet their parental obligations to the child.⁷¹ If the child is aged 12 or older, he or she must also consent to the proposed adoption.⁷²

In the **United States**, a stepparent may only adopt a stepchild after the noncustodial biological parent has lost status as a legal parent by reason of consent, court order, or death.⁷³

In **South Africa**, section 231(1) of the new Children's Act provides that a child may be adopted by "*a married person whose spouse is the parent of the child or by a person whose permanent domestic life-partner is the parent of the child*". This definition would encompass stepparents in long-term relationships with the child's parent. In considering the adoption application, the court will request an assessment of the stepparent, and will consider the cultural and community diversity of the child and the parent, amongst other issues. In addition, South African law requires consent to the adoption from each biological parent of the child except in specified circumstances; for example, consent is not required from a parent who has abandoned or abused the child.⁷⁴

⁷⁰ Government of Victoria, "Stepchildren and adoption: information for parents and step-parents" (undated) at 6, available online at <www.cyf.vic.gov.au/__data/assets/pdf_file/0019/323605/stepchild_adoption_dl_booklet.pdf> (last accessed 15 March 2011).

⁷¹ British Columbia Adoption Act, RSBC 1996, c.5, section 17.

⁷² Id, section 13(1)(a).

⁷³ M Mahoney, "Stepparents as Third Parties in Relation to Their Stepchildren", *Family Law Quarterly*, Vol 40, No 1, Spring 2006, 81-108 at 89.

⁷⁴ See South African Children's Act 38 of 2005, sections 233 and 236. Consent to the adoption of a child is not necessary if the parent or guardian is incompetent to give consent due to mental illness, has abandoned

Currently in **Namibia**, adoptions are still governed by the Children's Act 33 of 1960⁷⁵ although they will fall under the auspices of the draft Child Care and Protection Bill if and when it passes into law. Although stepparents are not specifically mentioned in section 70, which specifies who may adopt any child, they could fall under some of the categories set out in that provision ("*a husband and his wife jointly*" or "*a widower or widow or unmarried or divorced person*"). In terms of section 71(2)(d), consent is required from both parents if the child was born within marriage, although section both this section and section 72 allow the court to dispense with consent in certain fairly narrow circumstances. This provision has been supplemented by section 13(7) of the Children's Status Act 6 of 2006, which requires the consent of both parents for adoption of a child who was born outside of marriage, subject to the exceptions set forth in the Children's Act. Thus, a stepparent seeking to adopt a stepchild must normally obtain the consent of the child's other biological parent unless one of the narrow exceptions applies.

The draft Child Care and Protection Bill specifically refers to stepparents (albeit not using that term) when it indicates that the "*spouse of a parent of the child*" may adopt a child in Namibia.⁷⁶ Although the consent of the other parent is still required under the draft Child Care and Protection Bill, the circumstances in which consent may be waived are considerably broader – some of the grounds for dispensing with consent are if the non-custodial biological parent has abandoned the child, cannot be located, has abused or neglected the child, or has "*consistently failed to fulfil his or her parental responsibilities towards the child during the last 12 months*".⁷⁷ The Act also provides exceptions for cases where consent by the biological parent is being unreasonably withheld.⁷⁸

(b) Laws imposing automatic parental rights and responsibilities for stepparents

Botswana is unique in that it has introduced laws imposing automatic parental rights and responsibilities upon a stepparent who marries the stepchild's biological parent, without adopting the stepchild. The Children's Act, 2009, specifically includes "*stepparent*" within the definition of a parent.⁷⁹ The Act further defines a stepparent, in relation to a child, as

the child, cannot be identified or located, has abused or deliberately neglected the child (or allowed the child to be abused or deliberately neglected), "*has consistently failed to fulfil his or her parental responsibilities towards the child during the last 12 months*", has been divested of the right to consent to adoption by a court order or has failed to respond to a notice of the proposed adoption within 30 days.

⁷⁵ Namibia Children's Act 33 of 1960, section 71.

⁷⁶ Draft Child Care and Protection Bill, section 166(b).

⁷⁷ Id, section 168(11)(a). The ground for dispensing with consent are that the parent is incompetent to give consent due to mental incapacity, has abandoned the child, cannot be found or identified, has abused or deliberately neglected the child (or has allowed the child to be abused or deliberately neglected), has consistently failed to fulfil his or her parental responsibilities towards the child during the last 12 months, has been divested of the right to consent by a court order or has been convicted of certain specified offences committed in relation to the child.

⁷⁸ Id, section 169.

⁷⁹ Botswana Children's Act 8 of 2009, section 2. The final version of the Act is available online at <www.santac.org/eng/Media/Files/Botswana-Children's-Act-2009> (last accessed 20 January 2011). Although the Act was assented to by Parliament on 16 June 2009, it does not appear to be in force as of January 2011.

*“the spouse of the child’s biological parent, which spouse is not the child’s biological parent.”*⁸⁰ The Botswana Act is unusual in that it states that stepparents shall automatically have a number of duties or responsibilities in relation to their stepchild, as *“every parent”*, which includes a stepparent, has a relatively comprehensive set of duties. In terms of section 27(4), parental duties include ensuring that the basis of all decisions affecting the child are in the child’s best interests, and raising children in the household to have equal dignity to other persons in the household, regardless of the child’s sex. Section 28(1) sets out the principal rights of a parent, including the right to have the child live with him or her, or to maintain personal relations with, and have access to, the child if the child does not live with him or her. In addition, the Botswana Children’s Act indicates at section 27(3) that:

*Where both or one of the biological parents is deceased, or the biological parents do not live together as a nuclear family and the absent parent plays no role in the child’s life, the other relatives, guardian, adoptive parent, **step parent** or foster parent of the child shall be deemed to have assumed the parental duties associated with the biological parents of the child.* [emphasis added]

A similar situation applies in **Ghana**, although some voluntary assumption of a parental role is required. The definition of *“parent”* in section 24 of Ghana’s Children’s Act⁸¹ states that parent means *“a natural parent and includes a person acting in whatever way as parent”*. This appears to potentially include a stepparent who acts as a parent towards a stepchild, even though stepparents and stepchildren are not specifically mentioned. Under Ghana’s legislation, all parents within this definition have automatic rights and responsibilities.

(c) Parenting agreements and parenting orders permitting stepparents to voluntarily acquire full parental rights and responsibilities

Some countries have introduced laws that expressly permit stepparents to acquire full parental rights and responsibilities with respect to a stepchild either by entering into a parenting agreement with the biological parent(s) or applying for a parenting order. As discussed below in section (d), although a number of countries permit stepparents, amongst other caregivers or interested persons, to apply for custody, guardianship or application orders, the parental rights and responsibilities acquired by the parenting orders or agreements discussed in this section are generally broader and more comprehensive. Unlike custody, guardianship and access orders, which are limited and will generally only be applicable in specific circumstances, such as if the biological parent dies or the relationship between the parties ends, it appears that parenting agreements or orders specifically relating to stepparents in Northern Ireland, England, Australia and South Africa, for example, can be entered into or applied for at any time, although some countries require the stepparent to be married to the biological parent.

Stepparents in **Northern Ireland** are explicitly given the ability to acquire full parental responsibility by means of a court order in terms of the Children (Northern Ireland) Order

⁸⁰ Ibid.

⁸¹ Ghana Children’s Act, 1998 (Act 560).

1995, as amended. Section 7(1A) provides that “*a child’s step-parent shall acquire parental responsibility for the child if the court, on the application of the step-parent, orders that he shall have parental responsibility for the child*”.⁸² The provision defines stepparent as the person who is married to, or the civil partner of, a child’s parent.

A stepparent in **England** can similarly acquire broad parental rights through a parental responsibility court order, or by entering into a parental responsibility agreement (which would require the agreement of both biological parents of the child).⁸³ Section 4A of the Children Act 1989, introduced by amendments that came into force in 2005, provides:

4A Acquisition of parental responsibility by step-parent

- (1) Where a child’s parent (“parent A”) who has parental responsibility for the child is married to, or a civil partner of, a person who is not the child’s parent (“the step-parent”) –*
 - (a) parent A or, if the other parent of the child also has parental responsibility for the child, both parents may by agreement with the step-parent provide for the step-parent to have parental responsibility for the child; or*
 - (b) the court may, on the application of the step-parent, order that the step-parent shall have parental responsibility for the child.*
- (2) An agreement under subsection (1)(a) is also a “parental responsibility agreement”, and section 4(2) applies in relation to such agreements as it applies in relation to parental responsibility agreements under section 4.*
- (3) A parental responsibility agreement under subsection (1)(a), or an order under subsection (1)(b), may only be brought to an end by an order of the court made on the application –*
 - (a) of any person who has parental responsibility for the child; or*
 - (b) with the leave of the court, of the child himself.*
- (4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.*

The effect of section 4A(1) is that a stepparent who is married to the child’s biological parent may acquire parental rights and responsibilities by entering into an agreement with a biological parent who is the sole holder of parental rights with respect to the child – or if both biological parents have parental rights, then by entering into an agreement with both of them. However, 4A(1)(b) allows the court to order that a stepparent may have parental responsibility, presumably even if the other biological parent does not agree.

An agreement made under this section provides the stepparent with rights and responsibilities over the child, but does not derogate from the parental rights and responsibilities already held by the biological parents. It appears that a court order made under this section could also give parental rights and responsibilities to a stepparent without taking them away from either biological parent. The Explanatory Notes to the amending statute that enacted section 4A describe the intention of the provision as follows:

⁸² Children (Northern Ireland) Order 1995, No. 755 (NI 2), available online at: <www.legislation.gov.uk/nisi/1995/755/article/7> (last accessed 21 March 2011).

⁸³ England Children Act 1989 c. 41.

*This measure is intended to provide an alternative to adoption where a step-parent wishes to acquire parental responsibility for his or her step-child. It has the advantage of not removing parental responsibility from the other birth parent and does not legally separate the child from membership of the family of the other birth parent.*⁸⁴

In **Australia**, the Family Law Act 1975 expressly refers to stepparents. As defined in section 4 of the Act, stepparent means:

*A person who: (a) is not a parent of the child; and (b) is, or has been, married to or a de facto partner (within the meaning of section 60EA) of, a parent of the child; and (c) treats, or at any time while married to, or a de facto partner of, the parent treated, the child as a member of the family formed with the parent.*⁸⁵

Under Australia's legislation, a stepparent can apply for a parenting order in respect of a stepchild. Although not expressly referring to stepparents, section 64C states that parenting orders may be made in favour of a parent or "*some other person*", and section 65C specifies that a parent, a child, a grandparent, and "*any other person concerned with the care, welfare or development of the child*" may apply for a parenting order. This latter category has been broadly interpreted in the courts, and includes stepparents.⁸⁶ Section 64B of the Act explains the broad range of powers that a parenting order can include: where the child is to live, who assumes parental responsibility of the child, maintenance of the child and "*any aspect of care, welfare or development of the child*". Stepparents could utilise these provisions to apply for a parenting order regarding the child's residence if the relationship with the biological parent ends or if the biological parent dies.

The **South African** Children's Act provides several avenues for stepparents to acquire parental rights and responsibilities, including by entering into a parental rights and responsibilities agreement, or through specific contact or care orders, which are discussed in greater detail below in section (d). The Act does not expressly refer to stepparents and does not provide a definition of "*stepparent*", but it also does not use the term "*parent*" in reference to parental rights and responsibilities as set forth in section 18; instead, it uses the phrase "... *parental responsibilities and rights that a person may have in respect of a child*", indicating potential application to a wider range of persons who have assumed parental roles. Indeed, the Act provides avenues for a range of non-biological care-givers to acquire rights and responsibilities over a child. As commentator Ann Skelton explains,

⁸⁴ Adoption and Children Act 2002, c. 38, section 112 (explanatory notes), available online at <www.legislation.gov.uk/ukpga/2002/38/notes/division/4/2/2>.

⁸⁵ Australia Family Law Act 1975 (Cth), available online at <www.austlii.edu.au/au/legis/cth/consol_act/fla1975114> (last accessed 20 January 2011).

⁸⁶ See for example, *KAM & MJR* [1998] FamCA 1896 (13 November 1998), where the unmarried romantic partner of the biological mother was granted a parenting order in respect of the biological mother's child because she met the threshold test of a person concerned with the care of the child. Similarly, in *P and P* [2006] FCWA 14 (8 February 2006) at para 6, the court held that a stepfather who had married the biological mother of two children met the threshold test for "*any other person concerned with the care, welfare or development of the child*" under section 65C given the length of time the stepfather had lived with stepchildren and the closeness of their relationship – although the stepfather's application for court-ordered parenting rights was denied on other grounds.

*The Children's Act also recognises that there is a diverse range of family forms and different kinds of care arrangements that can be made for children. For this reason, the Act allows parental responsibilities and rights to be acquired – either by agreement or by court order – by other persons who are not parents.*⁸⁷

Under section 22, “any person having an interest in the care, well-being, and development of a child”⁸⁸ may enter into a parental responsibilities and rights agreement with the mother or any other person who has parental responsibilities and rights. Such an agreement will take effect only if it is registered with the family advocate (a government official tasked with safeguarding the best interests of the child in a range of legal proceedings) or if it made into an order of the High Court, a divorce court or the children’s court, or a family advocate is satisfied that the agreement is in the best interests of the child.⁸⁹ Such a parenting agreement does not *transfer* parental responsibilities and rights, but rather *confers* parental responsibilities and rights held by a parent upon another person. In effect, it appears to be a formalised sharing or delegation of parental responsibilities and rights.⁹⁰ This is clear from section 30(3), which states that:

a co-holder of parental responsibilities and rights may not surrender or transfer those responsibilities and rights to another co-holder or any other person, but may by agreement with that other co-holder or person allow the other co-holder or person to exercise any or all of those responsibilities and rights on his or her behalf.

Although section 22 does not appear to require notification or consultation with the child’s other biological parent prior to entering into a parenting agreement with “any person”, section 22(6) permits “a person having parental responsibilities and rights in respect of the child” to apply to amend or terminate the agreement. In addition, with particular relevance for parenting agreements, section 31(2) requires a co-holder of parental rights to give “due consideration to the views and wishes of consideration to any views and wishes expressed by any co-holder of parental responsibilities and rights in respect of the child” before taking any decision “which is likely to significantly change, or to have an adverse effect on, the child’s living conditions, education, health, personal relations with a parent or family member or, generally, the child’s well-being”. Note that this provision does not compel a co-holder to give effect to the other co-holder’s wishes or views, but to merely give them due consideration before taking a decision.⁹¹ Nonetheless, as some commentators have noted, this requirement “will probably lead to many disputes between co-holders of parental responsibilities and rights”.⁹²

⁸⁷ A Skelton, “Parental Responsibilities and Rights” in T Boezaart, ed, *Child Law in South Africa*, Claremont, South Africa: Juta, 2009 at 63.

⁸⁸ As noted by CJ Davel and AM Skelton, eds, *Commentary on the Children's Act*, Claremont, South Africa: Juta, 2007 at 3-14: “This category is extremely broad. It inter alia covers members of the child’s present and/or former extended family (such as a grandparent, aunt, uncle, sibling and a present or former stepparent), and the present and/or former permanent life partner of the child’s biological parent” [emphasis added].

⁸⁹ South African Children’s Act 38 of 2005.

⁹⁰ See A Skelton, “Parental Responsibilities and Rights” in T Boezaart, ed, *Child Law in South Africa*, Claremont, South Africa: Juta, 2009 at 80.

⁹¹ CJ Davel and AM Skelton, eds, *Commentary on the Children's Act*, Claremont, South Africa: Juta, 2007 at 3-30.

⁹² Ibid.

(d) Custody, guardianship or access orders permitting stepparents to voluntarily acquire specific or limited parental rights and responsibilities

In many countries, a stepparent who has not formally adopted a stepchild would be able to acquire custody, guardianship or access rights only by means of a court order.

In Kenya, the Children Act permits applications for custody orders under section 82. Stepparents are not explicitly mentioned, but a stepparent could apply for custody of a child under section 82(3)(c) or (d):

- (c) any person who applies with the consent of a parent or guardian of a child and has had actual custody of the child for three months preceding the making of the application;*
- (d) any person who, while not falling within paragraph (a), (b) or (c), can show cause, having regard to section 83, why an order should be made awarding that person custody of the child.⁹³*

Section 83 sets out the considerations the court must have regard to in assessing an application for custody. In particular, a stepparent's views could be recognised by the court under (c), which considers the wishes of any person with actual (as opposed to legal) custody of the child for at least three years.

- (1) In determining whether or not a custody order should be made in favour of the applicant, the court shall have regard to –*
 - (a) the conduct and wishes of the parent or guardian of the child;*
 - (b) the ascertainable wishes of the relatives of the child;*
 - (c) the ascertainable wishes of any foster parent, or any person who has had actual custody of the child and under whom the child has made his home in the last three years preceding the application;*
 - (d) the ascertainable wishes of the child;*
 - (e) whether the child has suffered any harm or is likely to suffer any harm if the order is not made;*
 - (f) the customs of the community to which the child belongs;*
 - (g) the religious persuasion of the child;*
 - (h) whether a care order, or a supervision order, or a personal protection order, or an exclusion order has been made in relation to the child concerned and whether those orders remain in force;*
 - (i) the circumstances of any sibling of the child concerned, and of any other children of the home, if any;*
 - (j) the best interest of the child.*

Note that section 83(1)(a) requires the court to consider the wishes of the parents or guardians of the child.

⁹³ Kenya Children Act 8 of 2001.

Sections 113 and 114 of Kenya's Children Act give the court the power to make certain orders for the protection of children, including access and residence orders. Under section 113(2) (c) a *“relative of the child”* may apply for such an order. Section 2 defines *“relative”*, in part as follows: *“in relation to a child, means any person related to the child, whether of the full blood, half blood or by affinity ...”*. The reference to affinity indicates that non-biological relatives, such as a stepparent, are included in the definition. Section 102 allows guardianship by appointment only upon the death of the biological parents.

In **Ghana**, section 43 of the Children's Act states that *“a parent, family member or any person who is raising a child may apply to a Family Tribunal for custody of the child”*, while section 44 provides that *“a parent, family member or any person who has been caring for a child may apply to a Family Tribunal for periodic access to the child”*. Thus a stepparent who acts in whatever way as a parent (as *“parent”* is defined in the Act) or is raising or caring for a child can apply for custody or access under these provisions. Section 45 sets out the relevant considerations on a custody or access application:

- (1) *A Family Tribunal shall consider the best interest of the child and the importance of a young child being with his mother when making an order for custody or access.*
- (2) *Subject to subsection (1) a Family Tribunal shall also consider –*
 - (a) *the age of the child;*
 - (b) *that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents;*
 - (c) *the views of the child if the views have been independently given;*
 - (d) *that it is desirable to keep siblings together;*
 - (e) *the need for continuity in the care and control of the child; and*
 - (f) *any other matter that the Family Tribunal may consider relevant.*

In **England**, in addition to parenting agreements which permit stepparents to acquire full parental rights and responsibilities, a stepparent may also apply for more limited rights in the form of a residence [custody] or contact [access] order for his or her stepchild during or after the marriage to the child's biological parent. The Children Act provides at section 10(5) that *“any party to a marriage (whether or not subsisting) in relation to whom the child is a child of the family”* or *“any person with whom the child has lived for a period of at least three years”* may apply to a court for a residence or contact order in relation to a child (known as a section 8 order).⁹⁴ Under section 1 of the Act, the paramount consideration of the court involving any decisions about a section 8 order is the *“child's welfare”*, which includes the wishes of the child concerned and *“how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs”*. However, as the South African Law Reform Commission has noted, such residence and contact orders do not create *“a full legal relationship with the child”*.⁹⁵

⁹⁴ England Children Act 1989 c. 41.

⁹⁵ South African Law Commission, *Discussion Paper 103, Project 110, Review of the Child Care Act, 2002*, quoting Atkin and Bridge *“Establishing Legal Relationships: Parents and Children in England and New Zealand”* 17 *New Zealand Universities Law Review* 13 (1996) at 28: *“The parental responsibility they (step-parents) assume is not the same as that held by parents: guardians cannot be appointed, consent to adoption cannot be withheld,*

In **Scotland**, the Children (Scotland) Act 1995⁹⁶ at section 11(2) entitles the court to make an order imposing parental rights and responsibilities upon “*a person*”. A section 11 order could include a residence order, a contact order or a guardianship order.⁹⁷ Section 11(3)(a)(i) specifically allows a person who “*not having, and never having had, parental responsibilities or parental rights in relation to the child, claims an interest*” to apply for such an order, which could easily include a stepparent. According to the relevant rules of court, in a section 11 application, the following persons must be notified and called as “defenders”:

- (a) *the parents or other parent of the child in respect of whom the order is sought;*
- (b) *any guardian of the child;*
- (c) *any person who has treated the child as a child of his family;*
- (d) *any person who in fact exercises care or control in respect of the child.*⁹⁸

In addition, section 5 of the Children (Scotland) Act 1995 provides that a person who has care or control of child without parental responsibilities or parental rights nonetheless has certain responsibilities “*to do what is reasonable in all the circumstances to safeguard the child’s health, development and welfare*”.

In **Canada**, a “*spouse*” or “*any other person*” may apply for custody or access rights in respect of a child of the marriage in the course of a divorce proceeding under section 16 of the federal Divorce Act. Under this legislation, a “child of the marriage” is broadly defined, and can include a child for whom one spouse is a stepparent if he or she “stands in the place of a parent”. In addition, a stepparent in the two major provinces of Ontario and British Columbia has the legal right to apply for custody, access, or guardianship of stepchildren.

Under **Ontario’s** Children’s Law Reform Act of 1990, a parent or “*any other person*” may apply for custody or access to a child, after having provided the court with a child-rearing plan and a police record and court proceedings check.⁹⁹ Decisions by Ontario courts regarding access or custody are made with regard to the “*best interests of the child*”.¹⁰⁰ Section 24(2) of the Act indicates that a court will consider “*all of the child’s needs and circumstances*,” including:

- (a) *the love, affection and emotional ties between the child and, (i) each person entitled to or claiming custody of or access to the child, (ii) other members of the child’s family who reside with the child, and (iii) persons involved in the child’s care and upbringing;*
- (b) *the child’s views and preferences, if they can reasonably be ascertained;*
- (c) *the length of time the child has lived in a stable home environment;*

the child cannot succeed on the stepparent’s intestacy, and parental or court approval is required for a change in the child’s surname. A residence order formalises the step-parent’s relationship with the child and gives that person standing in relation to local authorities, but in practical terms offers little more than the statutory right to do what is reasonable for a child. For stepparents it may seem considerably less desirable than adoption.”

⁹⁶ Children (Scotland) Act 1995, c. 36, available online at <www.legislation.gov.uk/ukpga/1995/36/contents> (last accessed 15 March 2011).

⁹⁷ Section 11(2).

⁹⁸ Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993, No 1956 (s. 223), Schedule 1, c. 33 at section 33.62.

⁹⁹ Ontario Children’s Law Reform Act, RSO 1990, c. C-12, sections 21-21.2.

¹⁰⁰ *Id.*, section 24(1).

- (d) *the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child;*
- (e) *the plan proposed by each person applying for custody of or access to the child for the child's care and upbringing;*
- (f) *the permanence and stability of the family unit with which it is proposed that the child will live;*
- (g) *the ability of each person applying for custody of or access to the child to act as a parent; and*
- (h) *the relationship by blood or through an adoption order between the child and each person who is a party to the application.*

Under Rule 7(4) of the Ontario Family Law Rules, in a case about custody of or access to a child, “every parent or other person who has care and control of the child involved, except a foster parent under the *Child and Family Services Act*, shall be named as a party, unless the court orders otherwise”.¹⁰¹

In **British Columbia**, section 35(1) of the Family Relations Act states that a court has jurisdiction to order, upon application, that one or more persons may exercise custody over a child or have access to a child.¹⁰² The provision goes on to state that “persons” who may apply for custody or access “includes parents, grandparents, other relatives of the child and persons who are not relatives of the child”, which could include a stepparent. Section 22 requires that “each parent of the child affected by the application and each adult person with whom the child usually resides must be served with notice of the proceeding”.

In the **United States**, the question of parental rights and responsibilities has arisen primarily upon the termination of the marriage to the biological parent. Stepparents historically did not have custody rights to stepchildren following the termination of the stepparent’s marriage to the child’s biological parent through divorce or death of the biological parent. A strong bias towards the remaining biological parent was exhibited in the law, such that a stepparent would typically not have been awarded custody following the death of a biological parent, or the break-down of the stepparent’s marriage to the biological parent with custody.

Despite the increase in numbers of families including stepparents, courts in most US states still do not demonstrate much leniency towards stepparents in granting custody following termination of their marriage to the biological parent. Some courts, however, have granted custody to stepparents after divorce or death of the biological parent if there are “extraordinary circumstances”, such as if it is in the child’s best interest, the biological parent is seen as “unfit” to care for the child, the biological parent offers an “unsuitable” environment for the child, or the stepparent has been a significant caregiver to the child.¹⁰³ Some judges have

¹⁰¹ Family Law Rules, Courts of Justice Act, O. Reg. 114/99.

¹⁰² British Columbia Family Relations Act, RSBC 1996, c. 128.

¹⁰³ See M Guggenheim, AD Lowe, D Curtis, *The Rights of Families*, USA: American Civil Liberties Union, 1996 at 20; J Hans, “Stepparenting after Divorce: Stepparents' Legal Position regarding Custody, Access, and Support,” *Family Relations*, Vol 51, No 4, October 2002 at 302.

even granted custody to a stepparent over the objections of biological parents, if such an arrangement would be in the child's best interest.¹⁰⁴ A recent commentator, however, has noted that most legislatures and state courts continue to uphold the presumption that a child is best left in the custody of a biological parent, and that presumption is only overcome in cases in which the biological parent is "*unfit*" to care for the child.¹⁰⁵

Following divorce from the biological parent, or death of the biological parent, a stepparent who is not successful in obtaining custody over a stepchild, may nonetheless obtain visitation rights over the child in the United States. About one-third of the 50 states have legislation that either expressly or indirectly provides for visitation rights to stepparents, provided it is in the best interests of the child.¹⁰⁶ At the opposite extreme, some state courts (in Alabama, Florida, Iowa, and South Dakota) have held that stepparents may not even petition for visitation. The standard that most state courts employ in determining whether a stepparent should be granted visitation is the "*best interests of the child*".

In **South Africa**, in addition to the process for obtaining parental rights and responsibilities through the parenting agreements outlined under section 22 of the Children's Act, section 23(1) makes provision for "*any person having an interest in the care, well-being or development of a child*" to apply to the High Court, a divorce court or the children's court for an order granting contact with or care of a child. This broad provision could easily include stepparents. In terms of section 23(2), the court must consider the following when deciding whether to order contact or care of a child:

- (a) *the best interests of the child;*
- (b) *the relationship between the applicant and the child, and any other relevant person and the child;*
- (c) *the degree of commitment that the applicant has shown towards the child;*
- (d) *the extent to which the applicant has contributed towards expenses in connection with the birth and maintenance of the child; and*
- (e) *any other fact that should, in the opinion of the court, be taken into account.*

It should be noted that "*contact*" and "*care*" are intended to mean access and custody, as those terms were previously understood in the legal sense. As explained in the final report of the South Africa Law Commission on the review of the Child Care Act, the new Act purposefully employs new and "*less loaded*" terminology.¹⁰⁷

Section 23 goes on to state at subsection (4) that "*the granting of care or contact to a person in terms of this section does not affect the parental responsibilities and rights that any other*

¹⁰⁴ See SL Pollet, "Still A Patchwork Quilt: A Nationwide Survey of State Laws Regarding Stepparent Rights and Obligations", *Family Court Review*, Vol 48, No 3, July 2010, 528-540 at 534.

¹⁰⁵ LW Morgan, "The Rights Duties, and Responsibilities of Stepparents to their Stepchildren: Custody and Visitation", *Divorce Litigation*, 2002, available online at <www.nlrg.com/divlit/STEP2.htm> (last accessed 20 May 2010).

¹⁰⁶ See SL Pollet, "Still A Patchwork Quilt: A Nationwide Survey of State Laws Regarding Stepparent Rights and Obligations", *Family Court Review*, Vol 48, No 3, July 2010, 528-540 at 532.

¹⁰⁷ South African Law Commission, *Project 110: Review of the Child Care Act, Report*, 2002 at 61.

person may have in respect of the same child". However, it is possible under section 28 to make a corresponding application for termination, suspension or restriction of someone else's parental responsibilities, and the two proceedings may be combined by the court.

Similarly, under section 24(1), "*any person having an interest in the care, well-being and development of a child may apply to the High Court for an order granting guardianship of the child to the applicant*". If the child already has a guardian, "*the applicant must submit reasons as to why the child's existing guardian is not suitable to have guardianship*".¹⁰⁸ In deciding whether to award guardianship, the High Court will consider: the best interests of the child; the relationship between the applicant and the child, and any other relevant person and the child; and any other fact that should, in the opinion of the court, be taken into account.

Thus, contact or care orders can be obtained from courts of various types, and are therefore reasonably accessible, while only the High Court can grant an order for guardianship. It should also be noted that, as in Namibia, the High Court in South Africa is the upper guardian of all minor children by virtue of the common law and has broad powers with respect to custody, guardianship and access orders.

In addition, like section 5 of Scotland's Children Act, section 32(1) of the South African Children's Act provides that a care-giver who does not have parental responsibilities and rights with respect to a child nonetheless has certain obligations to "*safeguard the child's health, well-being and development*" and "*protect the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical, emotional or mental harm or hazards*". This responsibility includes the right to consent to medical treatment for the child if necessary.¹⁰⁹ This provision, which emphasises the special duties of all care-givers to safeguard and protect children, easily has application to a stepparent. However, it should be noted that it is an offence to hold one's self out as a legal parent or guardian whilst exercising responsibilities under this section.¹¹⁰ In other words, a stepparent cannot intentionally misrepresent himself or herself as a child's legal parent or guardian in carrying out these obligations.

As already discussed in detail in section 3.2.2, in **Namibia**, the only way that a stepparent could acquire parental rights and responsibilities in respect of a stepchild, with the exception of formal adoption, would be by acquiring custody, guardianship or access rights in an order made by the High Court or (in limited circumstances) by a children's court in terms of the Children's Status Act 6 of 2006 which applies to primary care-takers of children born outside marriage and children of divorced parents.¹¹¹

The provisions relating to custody and guardianship under the Children's Status Act 6 of 2006 are broad enough to permit a stepparent who is "*acting as the primary caretaker of the child*" to apply for specific rights of custody and guardianship over a child born outside of marriage or of divorced parents. In making such orders, the best interests of the child are

¹⁰⁸ South African Children's Act 38 of 2005 at section 24(3).

¹⁰⁹ Section 32(2).

¹¹⁰ Section 32(4).

¹¹¹ Children's Status Act 6 of 2006, sections 12, 13.

paramount, and the court may have regard to the following factors with respect to “*other relevant persons*”, amongst others:

- (c) *the capability of each parent, and of any other relevant person, to meet the child’s physical, emotional and educational needs;*
- (d) *the fitness of all relevant persons to exercise the rights and responsibilities in question in the best interests of the child;*
- (e) *the nature of the relationship of the child with each of the child’s parents and with other relevant persons ...*¹¹²

Although the draft Child Care and Protection Bill, which is expected to re-enact the Children’s Status Act, does not specifically refer to stepparents, its slightly more broadly-worded provisions relating to applications for custody and guardianship could similarly be accessed by stepparents.

Stepparents cannot currently apply for access rights with respect to a child under the Children’s Status Act, as section 14 limits application for access rights to the “*non-custodian parent*”. The draft Child Care and Protection Bill reproduces this provision at section 97, but also introduces a new provision (section 98) which would allow “*members of the family or extended family of the child*” to apply for access; in terms of the definitions in the Bill, this could include a stepparent.¹¹³

In addition to utilising these statutory procedures, a stepparent could apply to the High Court for an order for custody, guardianship or access given that Court’s broad jurisdiction as the upper guardian of all minors.¹¹⁴ However, a High Court application would be more expensive and less accessible than a children’s court procedure.

The draft Child Care and Protection Bill provides for parenting plans which are in some respects similar to the parenting agreements available under the South African Children’s Act, but the Namibia draft Bill stipulates that the parenting plans are limited to “*co-holders of parental rights and responsibilities*”, implying application only to persons who *already* hold parental rights and responsibilities.¹¹⁵ This would preclude stepparents from acquiring rights and responsibilities via a parenting plan, unless they already had a court order giving them custody, access or guardianship. The parenting plan scheme is limited to co-holders of parental rights because the envisaged parenting plans do not have to be confirmed

¹¹² Children’s Status Act 6 of 2006, section 3(1).

¹¹³ As discussed above in section 3.2.2, a draft Divorce Bill approved by Namibia’s Law Reform and Development Commission would also give courts broad powers in the context of divorce to make orders for access to a child by any person whose contact would be in the best interests of the child. Draft Divorce Bill, Law Reform and Development Commission (LRDC), *Report on Divorce* (LRDC 13), Windhoek: LRDC, 2004, Annexure A, section 13.

¹¹⁴ See B Van Heerden, A Cockrell and R Keightley, eds, *Boberg’s Law of Persons and the Family*, 2nd ed, Kenwyn. South Africa: Juta, 1999 at 499–500 and 510–511. The High Court has long been the upper guardian of all children by virtue of extensive case law. As upper guardian the court has extensive powers with respect to custody, guardianship and maintenance orders involving children.

¹¹⁵ Section 121.

by a court or by any other authority to be enforceable, but can be concluded privately.¹¹⁶ Therefore the drafters concluded that it would be appropriate to confine parenting plans to existing co-holders of parental rights, since there would be no external oversight to ensure that they are in the best interests of the child. Furthermore, if a parenting plan had the power to *confer* parental rights and responsibilities on someone who did not previously hold them, it was felt that there would be a need to include a requirement for consultation with all other co-holders of parental rights and responsibilities.¹¹⁷

It should also be noted that section 236 of the draft Child Care and Protection Bill (discussed in more detail in sections 3.3.6 on abuse and section 3.3.3) on maintenance places certain basic duties on persons caring for children, regardless of whether or not they have parental rights and responsibilities – in a manner somewhat analogous to section 5 of Scotland’s Children Act and section 32(1) of the South African Children’s Act. However, the Namibian provision is formulated as a prohibition rather than as a positive duty.

Is marriage required in order to meet the stepparent definition?

In some countries, the legal concept of a stepparent is limited to situations where the person in question is formally married to the child’s biological parent. Other countries have broader approaches, defining stepparent to include a person in an informal cohabitation relationship with the biological parent, or focusing on the person’s relationship with the child rather than with the biological parent.

Whether marriage is required in order to be defined as a stepparent in the legal sense varies by country. Some countries have specifically limited the definition of stepparent to those who are married to a child’s biological parent. For example, in **Northern Ireland**’s laws, a stepparent is defined as the person married to the child’s parent. Likewise, in **Botswana**’s statute, the definition of stepparent refers to the spouse of the biological parent.

Other countries use more expansive definitions. For example, in **Australia**, a stepparent is defined as the person married to or the *de facto* partner (unmarried) of the biological parent, while in **England** a stepparent is defined as the person married to or the civil partner of the biological parent.¹¹⁸ In **Canada**, as will be explained in more detail, stepparents can be held liable for maintenance obligations and stepchildren can inherit intestate without the stepparent having formally married the biological parent.

¹¹⁶ Section 121(5) provides that a parenting plan may be registered with the clerk of the children’s court, while section 121(6) authorises the parties to such a plan to apply to have it made into an order of court. These optional steps affect amendment, enforcement and termination of the parenting plan (sections 122–124), and are intended to give such plans more “teeth” when it comes to the prevention of future disputes.

¹¹⁷ Information from persons involved in national consultations around the draft Child Care and Protection Bill.

¹¹⁸ Note that in both Acts the terms “*de facto partner*” and “*civil partner*” are intended to cover same sex relationships.

Interestingly, in **Ghana**, the relationship of the stepparent to the biological parent is taken out of the equation, and the broad definition of “*any person acting in whatever way as a parent*” is employed, focusing instead on the relationship with the child. In **South Africa**, although stepparent is not defined, nor specifically included in the “*parent*” definition,¹¹⁹ similarly broad and inclusive language is employed throughout the Children’s Act, such as “*any person having an interest in the care, well-being, and development of a child*”. A similar approach is used in the draft Child Care and Protection Bill in **Namibia**, where provisions relating to custody and guardianship orders and parenting plans can apply to non-biological “*care-givers*”.

Does the other biological parent have to be consulted?

It appears to be a standard requirement amongst countries surveyed that both parents of a child have the right to be notified and heard on court applications relating to parental rights and responsibilities over the child, and the right to be consulted or required to consent where parental rights and responsibilities can be affected by agreements.

Generally, the rules of court in each country require that a child’s parents, guardians or actual caregivers be notified of a custody, access or guardianship application and be named as respondents.

Section 4A(1)(a) of **England’s** Children Act requires the other parent’s approval to a parenting agreement. It states that if the other parent of the child also has parental responsibility for the child, both parents may by agreement with the stepparent provide for the stepparent to have parental responsibility for the child. In addition, section 4A(3)(a) says that any person with parental rights and responsibilities can apply to amend or terminate an order granting parental rights and responsibilities to a stepparent. Furthermore, according to Appendix 3 of the Family Proceedings Rules 1991, a person applying for a residence or contact order in respect of a child must give notice to “*persons who are caring for the child at the time when the proceedings are commenced*” and “*every person whom the applicant believes to have parental responsibility for the child*”, who will be named as respondents in the proceeding.

In the Australian Family Law Act, the best interests of the child are the paramount consideration in any applications for a parenting order. The relationship with the other parent and the parents’ ability to fulfil their parental duties are factors that are listed as relevant to determining the best interests of the child. According to regulation 6.02(2) of the Family Law Rules 2004, if an application is made for a parenting order, the following must be parties to the case:

¹¹⁹ The definition of “*parent*” in the Children’s Act consists of limiting factors rather than specifically outlining relationships which do fall within the definition, as set out at section 1:

“*parent*”, in relation to a child, includes the adoptive parent of a child, but excludes –

(a) the biological father of a child conceived through the rape of or incest with the child’s mother;

(b) any person who is biologically related to a child by reason only of being a gamete donor for purposes of artificial fertilisation; and

(c) a parent whose parental responsibilities and rights in respect of a child have been terminated.

- (a) *the parents of the child;*
- (b) *any other person in whose favour a parenting order is currently in force in relation to the child;*
- (c) *any other person with whom the child lives and who is responsible for the care, welfare and development of the child.*

The **South African** Children's Act, under section 23(2)(b), requires a court which is considering an application for custody or care to take into account "*the relationship between the applicant and the child, and any other relevant person and the child*", and section 23(4) specifies that "*the granting of care or contact to a person in terms of this section does not affect the parental responsibilities and rights that any other person may have in respect of the same child*". In an application for guardianship under section 24, the court must consider "*the relationship between the applicant and the child, and any other relevant person and the child*" and "*in the event of a person applying for guardianship of a child that already has a guardian, the applicant must submit reasons as to why the child's existing guardian is not suitable to have guardianship in respect of the child*".¹²⁰

It is generally recognised that parents or guardians have a right to be present at a sitting of the children's court in South Africa.¹²¹ Section 58 of the Children's Act further specifies that the following persons have the right to adduce evidence in a matter before a children's court:

- (a) *a child involved in the matter;*
- (b) *a parent of the child;*
- (c) *a person who has parental responsibilities and rights in respect of the child;*
- (d) *a care-giver of the child;*
- (e) *a person whose rights may be affected by an order that may be made by the court in those proceedings; and*
- (f) *a person who the court decides has a sufficient interest in the matter.*

In **Namibia**, under both the Children's Status Act and the draft Child Care and Protection Bill, the other parent, a guardian or any other holders of parental rights must be notified of an application for custody or guardianship, and have the opportunity to be heard on the matter.

According to section 12(3) of the Children's Status Act, the parents of the child must be notified of the application:

An order for custody in terms of this section may only be made after the prescribed attempts have been made to notify the child's parents, the child's primary caretaker and any other person or persons with custody or guardianship of the child immediately prior to the application, and that person has or those persons have been given an opportunity to be heard.

¹²⁰ South African Children's Act 38 of 2005, section 24(3).

¹²¹ See CJ Davel and AM Skelton, eds, *Commentary on the Children's Act*, Claremont, South Africa: Juta, 2007 at 4-22.

Section 13(5) imposes an identical requirement to notify the child's parents of a guardianship application. These requirements remain unchanged in the draft Child Care and Protection Bill.

Can stepparents adopt their stepchildren?	
<i>England</i>	<i>YES: but the stepparent must have lived with the stepchild for a minimum of six months and consent of the other biological parent is required</i>
<i>Scotland</i>	<i>YES: but consent of the other biological parent is required</i>
<i>Ghana</i>	<i>YES: but consent of the other biological parent is required</i>
<i>Australia</i>	<i>YES: although discouraged in some states</i>
<i>Canada</i>	<i>YES: but consent of the other biological parent is required</i>
<i>United States</i>	<i>YES: but consent of the other biological parent is required</i>
<i>South Africa</i>	<i>YES: but consent of the other biological parent is required</i>
<i>Namibia</i>	<i>YES: but consent of the other biological parent is required</i>

Can stepparents acquire parental rights and responsibilities by any means other than formal adoption?	
<i>Botswana</i>	<i>YES: automatically, upon marriage to the biological parent</i>
<i>Ghana</i>	<i>YES: automatically, for a person acting as a parent, or by application for a custody or access order</i>
<i>Northern Ireland</i>	<i>YES: by application for a court order</i>
<i>Australia</i>	<i>YES: by application to the court for a parenting order</i>
<i>England</i>	<i>YES: by entering into a parental responsibility agreement, or by application to a court for a parental responsibility order or a residence or contact order</i>
<i>Scotland</i>	<i>YES: by application for a residence, contact or guardianship order</i>
<i>Kenya</i>	<i>YES: by application for a custody, access or residence order</i>
<i>British Columbia and Ontario, Canada</i>	<i>YES: by application for a custody, access, or guardianship order</i>
<i>United States</i>	<i>YES: by application for a court order, but in limited circumstances, and it varies by state</i>
<i>South Africa</i>	<i>YES: by entering into a parental responsibilities and rights agreement confirmed by a family advocate or the court, or by application for a contact, care or guardianship order</i>
<i>Namibia</i>	<i>YES: by application to a children's court for a custody or guardianship order (but not access) in respect of children of unmarried parents or divorced parent, or by application to the High Court (without limitation)</i>

3.3.3 Stepparent's duty of maintenance

Many countries impose a duty of maintenance upon 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.

When are stepparents liable for maintenance?

Many countries have enacted legislation which imposes a liability for maintenance on stepparents in respect of stepchildren.

Botswana appears to be the country with the strictest duties for stepparents in terms of the provision of financial support to stepchildren. As indicated above, Botswana has included "*stepparents*" within the definition of "*parents*" in the new Children's Act of 2009. Within its definition of parental duties, the Act requires that all parents – including stepparents – have the duty to "*provide for the ... material needs of the child*".¹²² However, the Act also indicates that the "*primary duty to care for and maintain a child shall rest upon the biological parents*", but provides that where the biological parents:

*... do not live together and the absent parent plays no role in the child's life, the other relatives, guardian, adoptive parent, step parent or foster parent of the child shall be deemed to have assumed the parental duties associated with the biological parents.*¹²³

Nonetheless, "*subject to*" the provision above, "*every parent*" shall have parental duties, including the provision of material maintenance to the child. In addition, stepparents as "*parents*" fall within the child neglect provisions of the Act, which define neglect, *inter alia*, as the failure by parents to provide or pay for adequate food, clothing or housing for a child, or to "*make adequate provisions for the proper health and care of the child*".¹²⁴

Ghana's Children's Act 1998 also imposes the same maintenance obligation on stepparents as on parents, but without referring to stepparents explicitly. The Act appears to indirectly include stepparents within its definition of parents ("*a person acting in whatever way as a parent*") and consequently requires that stepparents acting as parents towards stepchildren provide for their maintenance, as section 6(3)(b) specifically states that every "*parent*" has a duty to provide maintenance to a child. Section 47 reaffirms this duty:

¹²² Botswana Children's Act 8 of 2009, section 27(4)(b).

¹²³ Id, sections 27(1) and (3).

¹²⁴ Id, section 57.

*Section 47–Duty to Maintain a Child. (1) A parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of health, life, education and reasonable shelter for the child.*¹²⁵

The Act also holds, under its clause regarding parental rights and responsibilities (section 6), that “*no parent shall deprive a child of his welfare*”, whether the parents of the child continue to live together or not.

Kenya, in its Children’s Act 8 of 2001, specifically refers to stepparents under its maintenance provisions. Section 94 is entitled “*Financial provisions by step-parents and father of child born out of wedlock*”. The provision focuses on whether the stepparent has treated the stepchild as a “*child of the family*”, and states:

- (1) *The Court may order financial provision to be made by a parent for a child including a child of the other parent who has been accepted as a child of the family and in deciding to make such an order the court shall have regard to the circumstances of the case and without prejudice to the generality of the foregoing, shall be guided by the following considerations*
- (a) *the income or earning capacity, property and other financial resources which the parties or any other person in whose favour the court proposes to make an order, have or are likely to have in the foreseeable future;*
 - (b) *the financial needs, obligations, or responsibilities which each party has or is likely to have in the foreseeable future;*
 - (c) *the financial needs of the child and the child’s current circumstances;*
 - (d) *the income or earning capacity, if any, property and other financial resources of the child.*
 - (e) *any physical or mental disabilities, illness or medical condition of the child;*
 - (f) *the manner in which the child is being or was expected to be educated or trained;*
 - (g) *the circumstances of any of the child’s siblings;*
 - (h) *the customs, practices and religion of the parties and the child;*
 - (i) *whether the respondent has assumed responsibility for the maintenance of the child and if so, the extent to which and the basis on which he has assumed that responsibility and the length of the period during which he has met that responsibility;*
 - (j) *whether the respondent assumed responsibility for the maintenance of the child knowing the child was not his child, or knowing that he was not legally married to the mother of the child;*
 - (k) *the liability of any other person to maintain the child;*
 - (l) *the liability of that person to maintain other children.*¹²⁶

The Zimbabwean Children’s Act¹²⁷ also expressly imposes a duty of maintenance upon stepparents, with certain caveats:

¹²⁵ Ghana Children’s Act, 1998 (Act 560).

¹²⁶ Kenya Children Act 8 of 2001.

¹²⁷ Zimbabwe Children’s Act (Chapter 5:06), available online at <www.kubatana.net/html/archive/legisl/021201childact.asp?sector=legisl&year=2002&range_start=1> (last accessed 1 February 2011).

83. Liability of step-parent to maintain his step-child

A step-parent shall be liable to maintain his step-child until such step-child attains the age of eighteen years:

Provided that –

- (i) a step-parent shall not be obliged to maintain a step-child which is being adequately maintained by its natural parents;*
- (ii) the obligation of a step-parent to maintain his step-child shall cease–*
 - (a) if the mother of his step-child has deserted him and removed the step-child from his custody; or*
 - (b) if in the event of divorce or judicial separation there is no order of maintenance made in favour of his step-child.*

In **Australia**, section 66D of the Family Law Act 1975 provides that a stepparent has a duty to maintain a stepchild if imposed by a court order, although such a duty is secondary to, and does not derogate from, the primary duty of the parents to maintain the child.¹²⁸ As specified in section 66M(3), the duty of a stepparent to maintain a stepchild, as enforced by a court order, will be determined by an assessment of the following factors:

- (a) the matters referred to in sections 60F [definition of children of the marriage], 66B [object of child maintenance is to ensure children have proper level of financial support from their parents] and 66C [parents have primary duty to maintain children]; and*
- (b) the length and circumstances of the marriage to, or relationship with, the relevant parent of the child; and*
- (c) the relationship that has existed between the step-parent and the child; and*
- (d) the arrangements that have existed for the maintenance of the child; and*
- (e) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.*

In **Canada**, the federal Divorce Act imposes a duty of financial support on stepparents, although the courts have developed specific criteria to evaluate when and if this duty applies. Under the federal Divorce Act, section 15.1, a married spouse has the obligation to provide support for any “*child of the marriage*”; this concept is further defined under section 2 as any child under eighteen for “*whom one or both current or former spouses stand in place of a parent, and any child for whom one spouse or former spouse is the parent and the other stands in the place of a parent*”.¹²⁹

In *Chartier v Chartier*,¹³⁰ the Supreme Court of Canada held that the legal test for whether a stepparent is under an obligation to provide child support to a stepchild is whether the stepparent “*stood in the place of a parent*” to the stepchild within the meaning of the federal Divorce Act. In determining whether the stepparent stood in the place of a parent, the court will look at a number of factors, amongst which are:

¹²⁸ Australia Family Law Act 1975 (Cth), section 66D.

¹²⁹ Canada Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), available online at <www.laws.justice.gc.ca/PDF/Statute/D/D-3.4.pdf> (last accessed 24 January 2011).

¹³⁰ [1999] 1 SCR 242.

- a) *intention of the step parent, both express and inferred, to treat the child as a child of the marriage;*
- b) *whether the child participates in the step parent's extended family activities;*
- c) *financial support to the child provided during the marriage;*
- d) *whether the parent disciplines the child as a parent; and*
- e) *the nature of the child's relationship with the other absent biological parent.*¹³¹

If, following application of this test, the court concludes that the stepchild is considered to be a “*child of the marriage*” for the purposes of the Divorce Act, the stepparent automatically incurs responsibility for the child equal to that of a biological parent, which includes responsibility for financial support to the child.¹³² The Court underlined that every case must be determined on its own facts.¹³³

The Supreme Court of Canada further held in *Chartier* that stepparents are not entitled to unilaterally terminate their role as parents to a child.¹³⁴ A stepparent cannot simply indicate that he or she no longer wishes to act as a parent to the child. The courts will examine whether, in fact, the stepparent stood in the place of a parent to the child throughout the marriage before declaring that the stepparent no longer owes any obligation to the stepchild. In addition, the Court dismissed concerns that the custodial biological parent might be able to collect support from both the stepparent and the absent biological parent.¹³⁵ The Court held that the maintenance duty of the non-custodial biological parent must be assessed independently of the similar duty of the stepparent – that the obligations of the stepparent and parents to the child are “*joint and several*”.¹³⁶ The court further explained:

*The issue of contribution is one between all of the parents who have obligations towards the child, whether they are biological parents or step-parents; it should not affect the child. If a parent seeks contribution from another parent, he or she must, in the meantime, pay support for the child regardless of the obligations of the other parent.*¹³⁷

In Canada, stepparents who are not formally married to the child's biological parent may still be liable for child support where – as under Ontario law – they have demonstrated an intention to treat the child as a “*child of their family*”.¹³⁸

¹³¹ Id at paras 38-39.

¹³² Id at para 39.

¹³³ Id at para 40.

¹³⁴ Id at para 32, 37.

¹³⁵ Id at para 42.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ontario Family Law Act, RSO 1990, c. F-3, available online at <www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90f03_e.htm#BK37> (last accessed 24 January 2011). Under section 31, every parent has an obligation to provide support for his or her unmarried child. According to the definition provided at section 1, “‘*child*’ includes a person whom a parent has demonstrated a settled intention to treat as a child of his or her family”.

Legislation in the **Canadian province of British Columbia** is unique in that it sets out specific criteria to qualify when a stepparent may be liable for child support, stipulating that the stepparent must have already contributed to the support or maintenance of the stepchild for at least one year as a threshold requirement for potential liability. Section 88(1) of the British Columbia Family Relations Act¹³⁹ provides that “*each parent of a child is responsible and liable for the reasonable and necessary support and maintenance of the child*”. Section 1 of the Act states that the definition of “parent” includes:

... a stepparent of a child if (i) the stepparent contributed to the support and maintenance of the child for at least one year, and (ii) the proceeding under this Act by or against the stepparent is commenced within one year after the date the stepparent last contributed to the support and maintenance of the child.

Stepparent is further defined in section 1(2) as follows:

For the purpose of paragraph (b) of the definition of “parent” in subsection (1), a person is the stepparent of a child if the person and a parent of the child

(a) are or were married, or

(b) lived together in a marriage-like relationship for a period of at least 2 years and, for the purposes of this Act, the marriage-like relationship may be between persons of the same gender.

The requirement that the stepparent must have provided for the child for at least one year prior to the application has been interpreted broadly; generally sharing of household expenses qualifies. Note that if the stepparent and biological parent were married in British Columbia, then the liability for support could also arise under the Federal Divorce Act, which does not impose a duration criteria, but simply asks whether the stepparent “*stood in the place of a parent*”.¹⁴⁰

United States courts have not generally proven as willing to impose an obligation of child support on stepparents. As family law is governed on a state-by-state basis, there is significant inconsistency in the approaches taken by various states, prompting one commentator to describe United States law pertaining to stepfamilies as a “*patchwork quilt*”.¹⁴¹ However, although there is a lack of consensus across the country on this issue, twenty American states now have statutes imposing a duty on stepparents to support their stepchildren during their marriage to the stepchild’s parent.¹⁴²

¹³⁹ British Columbia Family Relations Act, RSBC 1996, c. 128, available online at <www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96128_01#section35> (last accessed 24 January 2011).

¹⁴⁰ See *TDO v RGO*, 2000 BCSC 448 at para 32. The court stated that the approach to be used is that which is most favourable to the child.

¹⁴¹ SL Pollet, “Still A Patchwork Quilt: A Nationwide Survey of State Laws Regarding Stepparent Rights and Obligations”, *Family Court Review*, Vol 48, No 3, July 2010 at 532.

¹⁴² LW Morgan, “The duty of stepparents to support their stepchildren” *Divorce Litigation*, 1996, available online at <www.childsupportguidelines.com/articles/art199908.html> (last accessed 13 January 2011). See also <www.divorcesource.com/tables/stepparentsupport.shtml> (last accessed 25 January 2011).

In many other states there are also various legal theories that are applied to impose a duty of support upon stepparents when the stepparent has made a promise to support the child or voluntarily chosen to assume such responsibility. For example, the *in loco parentis* doctrine is applied in cases where a stepparent has “*demonstrated a voluntary intention to stand in the place of a parent*” to impose a duty of support. This duty, however, ceases when the stepparent’s marriage to the biological parent ends.¹⁴³

In addition, following the leading New Jersey Supreme Court case *Miller v Miller*¹⁴⁴ stepparents will be liable for support where they have represented to the parent or child that they wish to incur responsibilities towards them, and where reliance on this support has resulted in a future “*economic detriment*” to the child from having abandoned support claims made to the non-custodial biological parent.¹⁴⁵

Although some states impose a duty upon stepparents to financially support a stepchild for the duration of the marriage, the general principle under United States law is that following divorce from a child’s biological parent, a stepparent will not owe financial support to the stepchild.¹⁴⁶ However, some American courts have held that if a stepchild continues to live in the same home with a stepparent following divorce of the stepparent and biological parent, the stepparent will remain financially liable for the child. Other states, however, have limited this requirement for support of a stepchild in the same home to cases where the child is in financial need.¹⁴⁷

Unlike in the previous countries discussed, generally stepparents do not have a duty of maintenance towards stepchildren in either South Africa or Namibia. As noted by E Spiro, in South Africa “*no legal consequences attach to the stepchild and stepparent relationship at common law*”.¹⁴⁸ The South African Maintenance Act 99 of 1998¹⁴⁹ applies to any person who has a legal liability to maintain another person, although the Act does not define this legal duty and it does not provide a definition of “*parent*”. The Act itself makes no reference to stepparents. Generally, “*relations by affinity*”, which include stepparents and stepchildren, do not give rise to a duty to maintain under South African common law.¹⁵⁰ South African

The states with legislation imposing a duty of support upon stepparents are Delaware, Hawaii, Iowa, Kentucky, Maine, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Vermont and Washington.

¹⁴³ M Mahoney, “Stepparents as Third Parties in Relation to Their Stepchildren”, *Family Law Quarterly*, Vol 40, No 1, Spring 2006, pages 81-108 at 100-101.

¹⁴⁴ 478 A.2d 351 (NJ 1984).

¹⁴⁵ See AH Young, “This Child Does Have 2 (or More) Fathers: Step-parents and Support Obligations”, 45 (1) *McGill Law Journal* 107, 2005, available online at <www.lawjournal.mcgill.ca/documents/Harvison_Young.pdf> (last accessed 1 June 2010).

¹⁴⁶ See M Mahoney, “Stepparents as Third Parties in Relation to Their Stepchildren”, *Family Law Quarterly*, Vol 40, No 1, Spring 2006, 81-108 at 101.

¹⁴⁷ M Mahoney, *Step Families and the Law*, USA: University of Michigan Press, 1994.

¹⁴⁸ E Spiro, *Law of Parent and Child*, 4th ed, Cape Town: Juta, 1985 at 58.

¹⁴⁹ South African Maintenance Act 99 of 1998, available online at <www.justice.gov.za/legislation/acts/1998-099.pdf> (last accessed 26 January 2011).

¹⁵⁰ See L van Zyl, *Handbook of the South African Law of Maintenance*, Goodwood, South Africa: Interdoc Consultants Pty Ltd, 2000 at 14; B Van Heerden, A Cockrell and R Keightley, eds, *Boberg’s Law of Persons and the Family*, 2nd ed, Kenwyn, South Africa: Juta, 1999 at 276-77.

courts have ruled, in a number of decisions, that there is no duty of support as between stepparents and stepchildren specifically.¹⁵¹

However, in some cases the South African courts have held that stepparents may be indirectly responsible for supporting stepchildren as part of household expenses in marriages in community of property, because “*the inevitable concomitant of a marriage in community of property is the shared responsibility of both spouses for the maintenance of the common household*”.¹⁵² However, although stepparents may have some responsibility towards stepchildren as an inevitable consequence of supporting a shared household, this does not amount to a legal obligation of maintenance. In *S v MacDonald* although the court noted that “*the accused obviously agreed to treat the three stepchildren as his own, as an inevitable concomitant with the maintenance of the household, while he had the consortium of his wife*”,¹⁵³ the court went on to conclude that although the parties were married in community of property, the defendant cannot “*be a person legally liable to maintain the children in the sense intended by [the Maintenance Act]*”.¹⁵⁴ The court emphasised that “*the authorities appear to be unanimous on the point that a stepfather is not obliged to support a stepchild ...*”¹⁵⁵

In a more recent decision, the court considered the principles from *S v MacDonald*; in this 2002 decision, *Heystek v Heystek*,¹⁵⁶ the wife applied for interim maintenance pending a divorce action, to cover the period when the parties were separated but not yet divorced. The court held that as the parties had a marriage in community of property, the husband was liable for the maintenance of his wife’s household as long as the marriage subsisted, even though a portion of the maintenance might benefit her children from a previous relationship.¹⁵⁷ Adopting the reasoning from *S v MacDonald* above, the court explained:

*I am of the view that the inevitable concomitant of a marriage in community of property is the shared responsibility of both spouses for the maintenance of the common household, which, in this case, certainly includes the applicant’s children since the respondent had and has consortium with the children’s mother. Whilst the marriage subsists and until divorce is decreed the consortium prevails. In the circumstances, the respondent is to provide maintenance for the applicant even if portion of that maintenance is utilised for the children.*¹⁵⁸

Interestingly, in a departure from previous court decisions rejecting any duty of maintenance for stepparents, the Court in *Heystek* also implied that is some maintenance obligation of

¹⁵¹ See L van Zyl, *Handbook of the South African Law of Maintenance*, Goodwood, South Africa: Interdoc Consultants Pty Ltd, 2000 at 14, citing *In re Estate Visser* 1948 3 SA 1129 (C); *S v McDonald* 1963 2 SA 431 (C) 432; *Joffe v Lubner* 1972 4 SA 521 (C) 524; *Quickfall v Swan* 1975 3 SA 82 (R); *Wilkie-Page v Wilkie-Page* 1979 2 SA 258 (R).

¹⁵² *Heystek v Heystek* 2002 (2) SA 754 (T) at 757A-B.

¹⁵³ *S v MacDonald* 1963 (2) SA 431 (C) at 432D.

¹⁵⁴ *Id* at 433G-H.

¹⁵⁵ *Id* at 432E-F.

¹⁵⁶ *Heystek v Heystek* 2002 (2) SA 754 (T).

¹⁵⁷ *Id* at 757A-B.

¹⁵⁸ *Id* at 757A-B. It should be noted that the biological father of the children was deceased. At 756B.

a stepparent towards a stepchild, founded upon the provisions of the Constitution of the Republic of South Africa dealing with children's rights. Specifically the court pointed to section 28(1)(b), which states that every child has the right to family care or parental care, and section 28(1)(c), which guarantees the right of children to basic nutrition, shelter, basic health care services and social services.¹⁵⁹ The court went on to state that

*... parental care is not confined to natural parents but extends to stepparents, adoptive parents and foster parents. Inherent in the notion of parental care is concomitantly the child's right to basic nutrition, shelter and basic health care services as well as the right to basic education. Therefore I am of the view that the needs of the child in every matter, but its maintenance pendent elite or otherwise, must be taken into consideration ...*¹⁶⁰

This decision prompted the authors of *Child Law in South Africa* to make the following statement:

*Until recently, no maintenance obligation between a stepparent and a stepchild was recognised [citing Ex parte Pienaar 1964 (1) SA 600 (T); Mentz v. Simpson 1990 (4) SA 455 (A)]. This position has been changed by Heystek v Heystek, where the maintenance obligation of a stepparent towards a stepchild is inter alia founded upon section 28(1)(b) and (c) of the Constitution.*¹⁶¹

However, other commentators have expressed the opinion that the holding was not about a stepparent's duty of maintenance *per se*, but rather about the duty of parental care which is somewhat different.¹⁶²

In a 2009 decision, *MB v NB*,¹⁶³ the South African High Court placed a limited maintenance obligation ("*a species of maintenance*"¹⁶⁴) on a stepfather who had acted as a father to his stepson. The question arose in the context of a divorce case, where the mother claimed payment of schools fees by the stepfather for her son's attendance at an exclusive private school – without claiming any other form of maintenance for him. The son was age 14 at

¹⁵⁹ Id at 757B-D.

¹⁶⁰ Id at 757C-D [citations omitted].

¹⁶¹ N Van Schalkwyk, "Maintenance for Children" in T Boezaart, ed, *Child Law in South Africa*, Claremont, South Africa: Juta, 2009 at 46 [citations omitted].

¹⁶² See, for example, Prof JA Robinson, "Children's Rights in the South-African Constitution", *Potchefstroom Electronic Law Journal*, Vol 6 No 1, 2003, available online at <www.ajol.info/index.php/pelj/article/view/43475/27010>; Amanda Boniface, "Revolutionary changes to the parent-child relationship in South Africa", doctoral thesis, University of Pretoria, 2007 at 168, available online at <<http://upetd.up.ac.za/thesis/available/etd-04092008-122134/unrestricted/02chapter3.pdf>>.

Elsje Bonthuys asserts that "*the case contains no analysis of the implications of the common law rule that stepparents are not obliged to maintain their stepchildren and simply disregards authority to the contrary*". Elsje Bonthuys, "The Best Interests of Children in the South African Constitution", 20 *International Journal of Law, Policy and the Family* 23, 2006 at note 44.

¹⁶³ *MB v NB* 2010 (3) SA 220 (GSJ)

¹⁶⁴ Id at 226F.

the time of the marriage, and his biological father was deceased. The stepfather formed a strong bond with him and had set adoption proceedings in motion, but failed to pursue them to completion. However, he gave his surname to his stepson by means of a formal name change, which according to the Court “*impliedly represented to [the son], to the plaintiff and to the world at large, that he proposed to stand in relation to the boy as a father to a son*”.¹⁶⁵ He confirmed this standing when he signed his name as the boy’s father on the school application forms and made a pledge to contribute to the fees.¹⁶⁶

The Court acknowledged the general principle that “*a spouse has no general duty to support a child born of another marriage, unless the child is, in consequence of formal adoption, deemed to be his or her own*”.¹⁶⁷ The Court also emphasised that it was *not* finding a *de facto* adoption, a general duty of maintenance or a contractual obligation¹⁶⁸ – but rather holding that the particular circumstances of the case at hand made it unfair not to hold the stepfather to his undertaking to contribute to the school fees. It appeared to rely on two general legal principles in reaching its conclusion: the doctrine of *in loco parentis* (standing in the place of a parent), and a type of estoppel (without expressly using this legal term). The court observed that “*during the course of the marriage the defendant, it seems, faithfully performed the functions and discharged the duties of a father in his dealings with [the stepson]*”.¹⁶⁹ The court concluded that the stepfather had therefore placed himself *in loco parentis*, and thus could not now unilaterally terminate the relationship and withdraw all support.¹⁷⁰ In addition, the court noted that the stepfather had made a promise that he would pay, which was relied upon by the ex-wife and ex-stepson, and that he had demonstrated a commitment to this pledge by contributing to the fees.¹⁷¹ The court concluded that it would be unfair and unjust to fail to enforce this promise in the circumstances:

*Being willing to place himself, literally, in loco parentis when the family was still intact, it is scarcely right for him to renounce his obligations now that he has fallen out with his wife. Considerations of propriety and morality would be offended if he did, and while they do not determine the law, they certainly inform it.*¹⁷²

The Court also referred to section 28(1) of the South African Constitution, which states in part that every child “*has the right ... (b) to family care or parental care ...*”. The Court found that the stepson, “*having become the ostensible son of the defendant, had the right expect him to provide the family and parental care that the section contemplates*”.¹⁷³ It summarised the basis for its finding as follows:

¹⁶⁵ Id at 226H-I.

¹⁶⁶ Id at 224A-B, 225H-I.

¹⁶⁷ Id at 225F-G.

¹⁶⁸ See id at 225I-J and 227E-F.

¹⁶⁹ Id at 227B-C.

¹⁷⁰ Id at 227C-D.

¹⁷¹ Id at 227E-H.

¹⁷² Id at 227C-D.

¹⁷³ Ibid.

It is enough that I conclude, as I have, that the defendant held himself as [the stepson's] father; that both [the stepson] and his mother relied on this representation; and that, in pursuit of the obligations implicit in this ostensible relationship, the defendant joined with the plaintiff in deciding to place [the stepson] in [a private school] and undertaking to pay the school fees that the decision entailed. To find that, in such circumstances, the defendant bears the obligation to contribute towards [the stepson's] private school tuition gives due recognition to the constitutional rights and protections to which children are entitled in terms of the clause in the Bill of Rights I have cited above. The defendant had in effect promised to do this, and the law would be blind if it could not hold him to his promise.¹⁷⁴

The foregoing cases suggest that there may be a shift in the law underway in terms of the maintenance obligations of stepparents with respect to stepchildren in South Africa. The view that a failure to maintain a stepchild amounts to a breach of children's rights under the Constitution is a particularly interesting development. Nonetheless, it should be noted that a 2010 decision took a more restrictive approach, suggesting that there is some uncertainty in the case law as to the liability of a stepparent for maintenance. In *W(born G) v W*, the High Court denied a maintenance order *pendent lite* for the wife's daughter of a previous marriage who had been living with the stepfather. The Court referred to the precedent from *Heystek* discussed above, but ruled that there was no duty of maintenance upon a stepparent in marriages out of community of property, and when the other biological parent is already maintaining the child.¹⁷⁵

Like its South African counterpart, the **Namibian** Maintenance Act 9 of 2003 does not define the term “parent”, and there is no reference to “stepparent” or “stepchild”. Section 2 states that the Act applies “where a person has a legal duty to maintain another person”. Under the common law, a legal duty of support exists only between blood relations and spouses, and does not extend to relationships of affinity, such as those between stepparents and stepchildren.¹⁷⁶

However, it is possible that the principles of *in loco parentis* and estoppel relied upon in the South African decision in *Heystek* as the basis for imposing liability to pay school fees upon a stepparent could potentially be applied in Namibia.

It should also be noted that section 236(1) of Namibia's draft Child Care and Protection Bill also moves toward the imposition of certain basic responsibilities on anyone who is standing in the place of a parent to a child. This section prohibits abuse and neglect and is worded in a negative manner, but given the broad definition of “neglect” in section 1 it can also be understood as imposing positive duties on any care-giver or anyone else “who voluntarily cares for the child either indefinitely or temporarily” – including a stepparent who care for a stepchild:

¹⁷⁴ Id at 227E-H.

¹⁷⁵ *W(born G) v W* (469/10) [2010] ZAECELLC 1 (7 September 2010).

¹⁷⁶ See *S v Koyoka*, 1991 NR 369 (HC), and the discussion at section 3.2.3.

Offences relating to abuse, neglect, abandonment and maintenance

236. (1) Subject to the provisions of section 210(1), a parent, guardian, other person who has parental responsibilities and rights in respect of a child, care-giver or person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely or temporarily, commits an offence if that parent or care-giver or other person –

- (a) abuses or deliberately neglects the child; or
- (b) abandons the child,

and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding ten years or to both the fine and imprisonment.¹⁷⁷

“neglect”, in relation to a child, means a failure in the exercise of parental responsibilities to provide for the child’s basic physical, intellectual, emotional or social needs.

“I would like to contribute on the issue of the stepmother and stepson or stepdaughter. I have experience since I grew up under stepmothers. My father is a husband of three wives, and none of them is my real mother; my mother was divorced when I was three years old and my father took me away somewhere, and there he got married to a woman with one son, meaning my stepbrother. I suffered discrimination. Thank God my granny was still alive. My father learned of it and he had to threaten her to stop or he will bring back my real mother. When he married the second wife, there was no change, things became worse. When he married the third one, my father failed to help me financially to further my studies, and not even with clothes, due to the bad influence of these ‘hired hands’, who overlooked me for the interest of their children who were not even my father’s. I became the source of labour. My father said nothing. When I ask help from him, they are the first to answer negatively – but when it’s ‘time for their children, they support. When I told my father, he told me, ‘What can you expect from someone who did not give birth to you?’ My happiness was taken from me. I felt betrayed, but I was forced to call them mothers. As life became tough, I raised concerns to the people around. One person asked my third stepmother about me, but she simply said, ‘I came to find a living for my children, that’s all.’ Things got worse. I felt unwanted and rejected. Now as I am talking to you I am in exile. I left home to seek love, care and security somewhere else. I am glad God is there for me. Now I am six years away from my father. What makes the matter worse, our own father or mothers prefer to be dormant even if their children are abused, for the sake of the relationship”

– SMS message received by the Legal Assistance Centre

¹⁷⁷ Section 236(2) places more extensive duties on a person who is legally liable to maintain a child: “A person who is legally liable to maintain a child commits an offence if that person, while able to do so, fails to provide the child with adequate food, clothing, lodging and medical assistance and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding ten years or to both the fine and imprisonment.”

DO STEPPARENTS HAVE A LEGAL DUTY TO MAINTAIN THEIR STEPCHILDREN?		If so, does this duty extend beyond the end of the relationship with the biological parent?
<i>Botswana</i>	<i>YES: automatically, upon marriage to the biological parent</i>	<i>Unlikely, as stepparent status is based on the marriage to the biological parents</i>
<i>Ghana</i>	<i>YES: automatically, for a person acting as a parent</i>	<i>Potentially, if the stepparent continues to act as a parent</i>
<i>Kenya</i>	<i>YES: if the stepparent treats the child as a “child of the family”</i>	<i>Potentially, if certain criteria are met</i>
<i>Zimbabwe</i>	<i>YES: if the stepchild is not being adequately maintained by the natural parents</i>	<i>No</i>
<i>Australia</i>	<i>YES: but subject to consideration of certain factors, and only as a secondary duty to that of the biological parents</i>	<i>Yes, if certain criteria are met</i>
<i>Canada</i>	<i>YES: if the stepparent “stands in place of a parent”</i>	<i>Yes, if certain criteria are met</i>
<i>British Columbia, Canada</i>	<i>YES: if the stepparent supported the stepchild for one year prior and was either married to the biological parent, or cohabiting with the biological parent for a minimum period of two years</i>	<i>Yes, if certain criteria are met</i>
<i>United States</i>	<i>YES: required by statute in 20 states if the stepparent married the biological parent; in other states, possibly if the stepparent was in loco parentis or if the estoppel principle is applied</i>	<i>Generally not</i>
<i>South Africa</i>	<i>NO, although the common law appears to be evolving on this point</i>	<i>Possibly, under evolving common law principles</i>
<i>Namibia</i>	<i>NO, although the draft Child Care and Protection Bill suggests that there is a duty on any person who cares for a child to provide for that child’s basic needs</i>	<i>No</i>

3.3.4 The reciprocal duty of a stepchild to maintain a stepparent

In India and the Canadian province of Ontario, stepchildren have a duty, in some cases, to provide financial support to stepparents.

In the Canadian province of Ontario, the Family Law Act¹⁷⁸ states that:

32. Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for or provided support for the child, to the extent that the child is capable of doing so.

The same Act includes stepparents implicitly within its definition of parent, by providing that “parent” includes a person who has demonstrated a settled intention to treat a child as a child of his or her family”.¹⁷⁹

Likewise, in India, the 2007 Maintenance and Welfare of Parents and Senior Citizens Act provides that parents sixty years of age and older, including stepparents, may apply to a tribunal for maintenance from non-minor children. The obligation of the children to maintain the parent “extends to the needs of such parent ... so that such parent may lead a normal life”.¹⁸⁰

In South Africa, the courts have specifically held that a stepchild has no duty to support a stepparent.¹⁸¹

In Namibia, as already discussed, in the *Koyoka* decision the High Court held that there is no duty of support between stepparents and stepchildren.

Do stepchildren have a legal duty to maintain their stepparents?	
<i>Ontario, Canada</i>	<i>YES</i>
<i>India</i>	<i>YES</i>
<i>South Africa</i>	<i>NO</i>
<i>Namibia</i>	<i>NO</i>

¹⁷⁸ Ontario Family Law Act, RSO 1990, c. F-3, section 32.

¹⁷⁹ Id, section 1.

¹⁸⁰ India Maintenance and Welfare of Parents and Senior Citizens Act 56 of 2007, sections 4(2) and (3), available online at <www.dpal.kar.nic.in/.%5CAct56of2007%20PR-26.pdf> (last accessed 24 January 2011). Interestingly, the Act also applies to Indian citizens living abroad.

¹⁸¹ See L van Zyl, *Handbook of the South African Law of Maintenance* (Goodwood, South Africa: Interdoc Consultants Pty Ltd, 2000) at 14. The case referred to for the general principle that stepchildren do not have a duty to support stepparents is *Ex parte Pienaar* 1964 1 SA 600 (T) 605.

3.3.5 Stepchildren's rights to inherit from stepparents

In some countries, such as Botswana and Ghana, the statutory language suggests that stepchildren are entitled to share in the estate of a stepparent who has died intestate. In the United States, stepchildren are not entitled to inherit intestate from a stepparent unless they were formally adopted. In other countries, such as Canada, England and Australia, stepchildren who are dependants may be entitled to maintenance from a deceased stepparent's estate.

Botswana's new Children's Act specifically provides that stepchildren are entitled to inherit from stepparents. The Act, as indicated above, defines parents as including a "stepparent". Under section 27(4)(g) of the Act, every parent has the duty to "*ensure the child inherits adequately from his or her estate*".

Ghana's legislation takes a similar approach. As mentioned above, Ghana's Children's Act defines parent to include "*any person acting in whatever way as a parent*", which could obviously apply to a stepparent. Under section 7 of the Act, "*no person shall deprive a child of reasonable provision out of the estate of a parent whether or not born in wedlock*".

In other countries, inheritance from stepparents is not automatic. In Canada, for instance, under Ontario's Succession Law Reform Act, stepchildren do not automatically inherit from a stepparent.¹⁸² However, under Part V, "Support of Dependants", the court may order that provision be made out of an estate to provide maintenance for a dependant child whom a stepparent treated as a child of the family.¹⁸³ This provision does not explicitly refer to stepparents, but the definitions of "*parent*" and "*child*" provided at section 57 could indirectly permit a stepchild to claim as a dependant. This provision does not require a stepparent to have been married to the child's biological parent for the clause to apply.

In England, a stepchild does not inherit automatically from a stepparent under intestacy rules, unless the child was formally adopted by the stepparent. However, as in Canada, if a stepchild was treated by the married stepparent as a member of the family, the stepchild can apply to the court for support under the Inheritance (Provision for Family and Dependants) Act 1975.¹⁸⁴ This provision of the Inheritance Act applies only in cases in which the stepparent was married to the child's biological parent.

In Australia, the laws of inheritance vary as they are governed at the state level. For example, in the state of Victoria, section 91 of the Administration and Probate Act 1958 provides

¹⁸² Ontario Succession Law Reform Act, RSO 1990, c. S-26, available online at <www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s26_e.htm> (last accessed 24 January 2011).

¹⁸³ Id, section 58(1).

¹⁸⁴ Section 1(1)(d). See the Parentlineplus information sheet available online at <www.besomeonetotell.org.uk/cmsFiles/00559PARInheritance.pdf> (last accessed 3 June 2010). The Act itself is available online at <www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1975/cukpga_19750063_en_1> (last accessed 3 June 2010).

that “the Court may order that provision be made out of the estate of a deceased person for the proper maintenance and support of a person for whom the deceased had responsibility to make provision”, and goes on to set out a number of factors which must be considered by the court in making such an order.¹⁸⁵

In a recent decision, the Victoria Supreme Court held that three stepchildren were each entitled to a lump sum share of their deceased stepfather’s estate pursuant to section 91, despite the fact that the stepfather had a valid will that did not name any of the stepchildren.¹⁸⁶ The court noted that in the state of New South Wales, the courts had ordered provision for stepchildren out of a stepparent’s estate in several cases where the “stepchildren were sufficiently accepted as part of the testator’s family to have a claim upon his or her estate under the Family Provision Act 1980”.¹⁸⁷

In contrast, in the **United States**, a stepchild generally does not share in a stepparent’s estate unless the child is specifically mentioned in that parent’s will or was formally adopted by the stepparent.¹⁸⁸ In fact, unadopted stepchildren are excluded from intestate inheritance rights in every state in the US.¹⁸⁹

In **South Africa** the intestate inheritance laws do not permit inheritance by a stepchild unless the child was formally adopted by the stepparent. In the 2008 case of *Flynn v Farr NO and Others*, the South African High Court refused to recognise the right of a stepchild to inherit intestate from his deceased stepfather’s estate.¹⁹⁰ The case was decided under the Intestate Succession Act, which affords formally adopted children the same right to inheritance as biological children. However, as the stepson in the case had not been formally adopted by his stepfather, but rather was treated as a *de facto* adopted son, the court held that he had no entitlement to inheritance under the Act.¹⁹¹ The court also rejected the applicant’s claim that the Intestate Succession Act was discriminatory because it treated *de facto* and *de lege* adopted children differently, concluding that there was a rational purpose for the differentiation.¹⁹²

Likewise, in **Namibia**, a stepchild would not have any 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).

¹⁸⁵ Victoria Administration and Probate Act 1958 (No 6191 of 1958), available online at <www.austlii.edu.au/au/legis/vic/consol_act/aapa1958259?>.

¹⁸⁶ *Roberston & Ors v Koska* [2010] VSC 134 (16 April 2010).

¹⁸⁷ Id at para 86.

¹⁸⁸ SL Pollet, “Still A Patchwork Quilt: A Nationwide Survey of State Laws Regarding Stepparent Rights and Obligations”, *Family Court Review*, Vol 48, No 3, July 2010 at 535.

¹⁸⁹ M Mahoney, “Stepparents as Third Parties in Relation to Their Stepchildren”, *Family Law Quarterly*, Vol 40, No 1, Spring 2006, 81-108 at 98.

¹⁹⁰ *Flynn v Farr NO and Others* 2009 (1) SA 584 (C).

¹⁹¹ Id at 588D-F.

¹⁹² Id at 599E-H. The court relied on evidence regarding the government’s need for an enforced system of formal adoption to ensure proper documentation and regulation (at 598C-599E).

Do stepchildren have a right to inherit intestate or to claim maintenance from a stepparent's estate?	
<i>Botswana</i>	<i>YES: every parent including a stepparent has duty to ensure child inherits adequately</i>
<i>Ghana</i>	<i>YES: child entitled to reasonable provision from estate of parent including stepparent</i>
<i>Ontario, Canada</i>	<i>YES: a stepchild may be entitled to maintenance from the estate, depending on the conduct and intention of stepparent</i>
<i>England</i>	<i>YES: a stepchild can apply for maintenance from the estate of stepparent if treated as member of family by stepparent</i>
<i>New South Wales and Victoria, Australia</i>	<i>YES: a stepchild can apply for maintenance from the estate, depending on the conduct and intention of stepparent</i>
<i>USA</i>	<i>NO: not unless named in a will or formally adopted</i>
<i>South Africa</i>	<i>NO: not unless named in will or formally adopted</i>
<i>Namibia</i>	<i>NO: not unless named in will or formally adopted</i>

3.3.6 Liability for abuse of a stepchild by a stepparent

International authority appears united on the notion that stepparents may be liable in the same way as a parent for abuse or neglect of a stepchild.

International authority appears united on the notion that stepparents may be liable in the same way as a parent for abuse or neglect of a stepchild.

Under **Botswana's** Children's Act, which, as indicated above, includes stepparents within the definition of parents, any parent who "*neglects, ill-treats or exploits the child or allows or causes that child to be neglected, ill-treated or exploited shall be guilty of an offence*" and shall be liable either for a fine or imprisonment of between six months and two years.¹⁹³ The Act further specifies at section 57(2) that a child:

shall be deemed to be neglected if the parent ... a) unreasonably fails to provide or pay for adequate food, clothing or housing for the child; b) unreasonably fails to make adequate provision for the proper health and care of the child; c) unreasonably leaves the child in the care of any person or institution without showing any further interest in the child; or d) exposes the child to conditions or circumstances which are likely to cause that child physical, mental or psychological distress or harm.

¹⁹³ Botswana Children's Act 8 of 2009, section 57.

In addition, under the Botswana Act, any parent, including a stepparent, who misuses money given to them for the child's support is liable for a fine or imprisonment.¹⁹⁴

In the **United States**, stepparents may be liable for abuse or neglect of a child in their care, even if not explicitly referred to in the legislation; courts have held “*any person having care or control of a child*” to be potentially liable for such treatment.¹⁹⁵

Under **South Africa's** Children's Act,¹⁹⁶ abuse of stepchildren is indirectly dealt with under the offence set forth in section 305(3):

A parent, guardian, other person who has parental responsibilities and rights in respect of a child, care-giver or person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, is guilty of an offence if that parent or care-giver or other person –
a) abuses or deliberately neglects the child; or
b) abandons the child.

In **Namibia**, the Combating of Domestic Violence Act 4 of 2003 appears to apply to stepparents and stepchildren, as section 3(1)(d) specifies that a “*domestic relationship*” includes “*family members related by consanguinity, affinity or adoption*”, provided that there is a “*connection of a domestic nature*”, including the sharing of a residence or financial dependence of one person on another. This definition would capture all stepparents who live with or provide financial support for a stepchild (who is a family member related by affinity). Therefore any child abuse or neglect of the various forms set out at section 2 of the Act by a stepparent would constitute an offence under the Act and would enable stepchildren to apply for protection orders.

With respect to sexual abuse, the Combating of Rape Act 8 of 2000 and the Immoral Practices Act 21 of 1980 prohibit sexual abuse and rape of a minor, and impose harsher penalties for sexual abuse or rape by a parent, caregiver or person in authority.

In addition, section 18 of the Children's Act 33 of 1960 provides that ill-treatment or neglect of children constitutes an offence punishable by a fine of up to two hundred pounds or two years imprisonment.¹⁹⁷ However, the Act limits application of this provision to “*any parent or guardian of a child or any person having custody of a child*”, which would very rarely include a stepparent. However, section 236 of the draft Child Care and Protection Bill would apply to a stepparent. This provision criminalises abuse, neglect, abandonment and failure to maintain a child by any person who cares for the child, regardless of whether or not that person has parental rights and responsibilities, with the offence attracting penalties including imprisonment for up to ten years and a fine of up to N\$50 000.

¹⁹⁴ Id, section 56(3).

¹⁹⁵ See M Guggenheim, AD Lowe, D Curtis, *The Rights of Families*, USA: American Civil Liberties Union, 1996 at 99.

¹⁹⁶ South African Children's Act 38 of 2005.

¹⁹⁷ Children's Act 33 of 1960, section 18(5).

Are stepparents liable for abuse of a stepchild?	
<i>Botswana</i>	YES
<i>United States</i>	YES
<i>South Africa</i>	YES
<i>Namibia</i>	YES

"A friend of mine [Thomas] lives with his biological dad, who recently married another woman after divorcing his biological mother. When his dad is not home his stepmother makes him do things a maid should be doing, like cleaning the house regularly, and she also accuses him of anything that goes missing even when he is not at fault. ... Sometimes Thomas thinks of committing suicide because he can't stand his stepmom's behaviour. It shocked me when he told me he wants to kill himself. I spoke to him and convinced him not to do it and he understood. Thomas now just avoids what she says and just does what he thinks is right and is trying hard to get over what his stepmother does to him. She always calls him names and makes fun out of him when her relatives are around."

– youth participant in Katima Mulilo

Chapter 4

PUBLIC OPINION ON LAW REFORM OPTIONS AND RECOMMENDATIONS



4.1 Research findings on law reform options

Drawing on examples of legal responses to stepfamilies in various countries identified in the comparative law research discussed in Chapter 3, key informants and adult focus group participants were asked for their views on a generalised list of possible law reform options. When each option was presented during interviews and focus group discussions, examples from specific countries were provided to illustrate how the proposed option might work.

List of Possible Law Reform Options

1. Automatic parental rights and responsibilities for stepparents
2. Stepparent right to apply for adoption of a stepchild
3. Voluntary parental rights and responsibilities acquired by stepparents through court order or parenting agreement (including custody, access, and guardianship)
4. Legal duty of stepparent to maintain the stepchild
5. Reciprocal duty of stepchildren to maintain stepparent
6. Stepchild right to inherit from a stepparent

1. Automatic parental rights and responsibilities for stepparents

Respondents in the adult focus group discussions were asked whether they think that stepparents should be legally defined as parents and automatically have certain parental rights and responsibilities towards their stepchildren.

Botswana was used as an example, where the recently introduced Children's Act includes "*stepparent*" in the definition of "*parent*", provided that the "*stepparent*" is married to the child's biological parent. Ghana was offered as another example, where the Children Act states that "*a person acting as a parent*" will have rights and responsibilities with respect to children.

Participant responses

The focus groups in Katutura and Keetmanshoop were very supportive of this idea. When the adult Damara/Nama-speaking participants in Keetmanshoop were asked whether they thought that stepparents should have automatic rights and responsibilities towards their stepchildren, they said "this is already happening in our tribe".

There was mixed reaction to this idea in Opuwo, where around half were in favour of this proposal. One participant said "yes, you have to take care of the kids, that is the most important".

Respondents in Katima Mulilo were generally not in favour of this idea, with only a few participants indicating support. In the adult focus group in Khorixas, no participants were in favour of this measure. They indicated that tradition within their community already requires stepparents to care for stepchildren, but that this should not be the law. As one participant said, "it is already common ... either good or bad, we are used to it."

One key informant felt that each case should be considered on its merits: "stepparents should not just get automatic rights. It depends on the situation." She pointed out that "there are other situations where it would be wrong to have rights and responsibilities – child sexual abuse is often by the mom's boyfriend". Another key informant, a lawyer, strongly felt that there should not be any changes to the law imposing automatic obligations – rather, that legal changes to the law pertaining to stepfamilies should proceed by small steps.

2. Stepparent right to apply for adoption of a stepchild

Adult focus group participants were asked if they thought that stepparents should have the right to apply for adoption of stepchildren.

It was explained that many countries permit adoption by stepparents. Although consent of the other parent is required, the countries surveyed have provisions permitting consent to be waived in certain circumstances.

Participant responses

The adult groups in Katutura and Katima Mulilo did not express strong feelings on this. The participants in Katima Mulilo said that it would not make any difference to them, as formal adoptions are not common in their communities.

A similar sentiment was echoed in the adult group in Opuwo. In Herero tradition, they said, adoptions are done verbally, where people agree to take in children in the community – whether stepchildren, nieces, nephews, etc. Participants also referred to namesake adoption as a common tradition within their community. This is where when a child is born if it is named for you, then the child is given to you (the child need not be the child of a relative, but could be the child of a friend) and you raise this child. It seems that formal adoption is very uncommon in this area, and there was general confusion about the formal adoption laws within the group.

Likewise, in Khorixas, adult focus group participants felt that adoption was very rare in their community, with participants remarking *“I only see this on TV”* and *“never heard of it”*. There was opposition to the idea of stepparent adoption, with one woman commenting that *“stepchildren are not your children. It is abnormal.”*

In Keetmanshoop, all participants were in favour of stepparents being able to adopt their stepchildren. In their view, there should be laws to allow automatic adoption after a certain period of time for stepparents, such as four years. The group thought that there should be a requirement to inform the other biological parent, and that a social worker should be involved. They thought that the consent of the biological parent should in some cases be unnecessary, depending on the circumstances – for example, *“if the biological father has not been around for 20 years”*. When other options such as court orders or parenting agreements were discussed, they thought that those approaches would be preferable, as they would be easier, cheaper and less formal options.

Key informants also generally favoured this option, although opinions on how common adoption by stepparents is at present varied widely. One thought that adoption should be available only to stepparents who are married to the biological parent, and that the consent of the other biological parent must be obtained. Another, a lawyer, felt that adoption is the preferable means by which stepparents can legally acquire parental rights and duties, as it requires an investigation and a formal process at the court that ensures it is in the best interests of the child.

3. Voluntary parental rights and responsibilities acquired by stepparents through court order or parenting agreement (including custody, guardianship and access)

Respondents in the adult focus group discussions were asked how they felt about a law that would allow stepparents to voluntarily acquire certain parental rights and responsibilities, including custody or access rights, through applying for a court order or entering into a parenting agreement with a biological parent.

South Africa was offered as an example, where the Children's Act permits "*any person having an interest in the care, well-being, and development of a child*" to apply to the court for a contact or care order, or to enter into a parenting agreement with the biological parent that has the power to confer specific parental rights and responsibilities. It was also noted that similar legal processes are available to stepparents in Australia and the United Kingdom.

Participant responses

This idea had the most consistent support from all focus group participants of all the possible law reform options discussed. Support was most enthusiastic in Keetmanshoop, where every participant in the adult focus group discussion thought there should be some way to legally formalise parental responsibilities for stepparents other than by means of adoption. Six participants thought that parental rights and responsibilities should be automatic if the stepparent is married to the biological parent, while four thought that a voluntary approach was best, regardless of whether or not the stepparent is formally married to the biological parent. The participants in Keetmanshoop thought the procedure entailed should analogous to the maintenance process at the magistrate's court, in the sense of being easy to access and free.

This option also came up in the discussions with the youth focus group in Keetmanshoop – the participants agreed that it was a good idea, although they felt that both the custodial biological parent and the child must agree to the stepparent getting some rights over the child.

Adult participants in Katutura also showed wide support for this option. Some thought that something similar was already happening – that stepparents provide help and support if they want to. However, some of the women seemed particularly interested in being able to get a "*paper*" to prove who is responsible – they favoured proof to make the duty official, and which can provide some legal protection. One participant spoke of her own situation: she raised her stepchild and then the biological mother showed up to take the nearly grown-up child back. She thought that "*the paper*" could prove she had parental rights as a stepmother.

This option was also popular with adult focus group participants in Opuwo, with 8 out of 11 in favour. Participant said "*yes, bring this law here, then people can choose*". People were in support of the idea that couples could make written agreements about their relationship with their stepchildren that would be "*legal*". As participants commented, the agreement "*must be signed on legal papers*" and "*you should make an agreement before you get married*".

About half of the adult respondents in Katima Mulilo indicated support for the idea, although no participants showed a strong opinion on it. However, when asked whether they thought that stepparents should be able to obtain custody over a stepchild if the biological parent dies, all were strongly opposed. They said that the child must always go to the family of the mother, or failing that, the family of the biological father. Otherwise, they said, "*the family will have a guilty conscience because of leaving them with a man who is not family*".

One participant, supporting this option over an automatic regime, echoed the views of a number of respondents: *“it should be voluntary. I don’t have an inherent duty to take care of the child ... it must be out of my own will”*.

In Khorixas, adult focus group respondents were not in favour of any legal measures to enforce a duty upon stepparents to care for stepchildren, saying that this already happens informally as part of the tradition in their community. They felt the main legal responsibility must lie with biological parents. As one participant commented, *“if you are a stepparent, there are limits to your responsibilities. Not full like biological parents”*.

Responses to the proposed options indicated that some stepparents are looking for ways to acquire and formalise rights and responsibilities with respect to their stepchildren. One key informant, a social worker with the Ministry of Gender Equality and Child Welfare, indicated that stepparenting cases that come to the social workers in the Ministry usually involve stepparents who would like to have some additional responsibility or rights in relation to their stepchild. Another key informant, a lawyer, reported that she sometimes has cases where stepparents are seeking ways to legally formalise their relationship with their stepchildren – for example, in order to gain access rights – although this is not common.

The social worker with the Ministry of Gender Equality and Child Welfare offered what she thought was a fairly common example in Namibia: a biological parent lives with a partner, who is the child’s stepparent. The other non-custodial biological parent dies. Then the custodial biological parent and the stepparent terminate their relationship. The stepparent then seeks access to the stepchild. Another key informant agreed that there are *“many disputes”* arising from stepparents wanting access to their stepchildren following the break-up of their marriage to the biological parent. Yet another key informant echoed this concern, observing: *“there are cases where the parent died. The child was never adopted so there are no rights for the stepparent – but what if he or she wants to stay?”*

Several key informants highlighted the importance of parenting agreements as a tool for families to formalise parental rights and responsibilities. One social worker says that the Ministry of Gender and Child Welfare has many parents coming in and asking about “parental rights and responsibilities” agreements under the forthcoming Child Care and Protection Act. She thinks that a lot of parents want to put their commitments regarding maintenance and other issues into writing.

Most key informants were strongly in favour of a legal approach that allows stepparents to apply to the court or enter into parenting agreements and thereby acquire certain parental rights and responsibilities. One, a lawyer, felt that any law reform in this area should be very limited and begin with small steps, but supported a process whereby responsibilities towards a child voluntarily assumed by a stepparent, such as a duty to provide maintenance, could be made legally enforceable. A clinical psychologist also indicated that this would be a good idea, if the decision is based on factors which include the relationship between stepparent and stepchild and the child’s wishes.

4. Legal duty of stepparent to maintain stepchild

Respondents in both the adult and youth focus group discussions were asked whether they thought the Maintenance Act should be changed to impose a legal duty upon stepparents to maintain stepchildren.

It was explained that many countries have laws imposing a duty of maintenance on stepparents, including Kenya, Zimbabwe, Botswana, Australia and Canada, although it was also noted that when this duty applies may vary, and that it is usually secondary to the primary duty of parents to maintain their own biological children.

For example, in some US states, Australia and Botswana, the duty applies only if the stepparent marries the stepchild's parent. In Ghana, the law first asks whether the stepparent acted like a parent towards the stepchild, while in Kenya the duty applies only if the stepparent treated the stepchild like a child of the family. It was also mentioned that some countries, such as Canada, do not require the stepparent to be married to the biological parent for the duty to apply.

Participant responses

Overall, this was a popular law reform option, favoured by a majority of participants in most groups, both youth and adult, as well as by key informants. The adult groups in Katutura and Keetmanshoop were particularly supportive of this option, with unanimous agreement, and in Opuwo all but one adult focus group participant indicated support for the idea. Both groups in Katutura and Keetmanshoop also unanimously agreed that a duty of maintenance should apply whether the stepparent is married to the biological parent or not, as they thought the key issue was not whether there was formal marriage, but the fact that the stepparent lives in the house with the child and should therefore have responsibility. In Opuwo, some participants felt such a duty should only apply if the stepparents and biological parent are married.

As one Katutura participant said: *"It is your responsibility whether married or not. You have to take care of them"*. Another participant said: *"[the stepparent] has full responsibility. Stepchildren are just like the biological children. If you love the person, you accept the kids. It is a package"*, a view that was commonly expressed in every focus group. As a male participant from Keetmanshoop stated: *"I 100% agree. I like the woman I take her as a package and treat them as my kids"*. In Opuwo, participants strongly indicated that they felt that such a law would help children in their communities.

Not everyone felt this way though, with some pointing out that there is no biological connection with the stepparent, who should not be forced to care for a child. As one female respondent asked *"why should I take care of the child? It is the mother's responsibility ... it should be a personal choice [to care for the stepchild]"*.

Respondents in Katima Mulilo also disagreed with the idea of changing the maintenance law to include stepparents. They felt that it would not work or make a difference, indicating

that the maintenance law is ineffective even for biological children: *“even now, biological parents are failing to maintain – it is not working.”* Another participant felt that *“people can’t be forced to care for non-biological children. There is no link between them”*. However, for most of these participants the disagreement was not with the proposal itself, so much as perceptions of its potential effectiveness.

In Khorixas, there was also strong opposition to this proposal by all adult focus group participants, with some saying this is *“unfair”* or *“abnormal”*. As one person stated, *“then no one would want to have a relationship with a person having a kid.”*

A range of opinions were expressed by the youth groups. In both groups from Katutura, many participants felt that stepparents should not be *“forced”* to be responsible for a child. Others suggested that stepparents should be responsible for their own biological children first, and that the first responsibility for maintenance should rest on the biological parents. However, when asked more generally if stepparents should be *“responsible”* to provide for the child in the home – with food, clothing, school fees, etc. – almost all agreed.

In Keetmanshoop, the youth agreed that stepparents should be responsible for maintenance if they live in the same household as the stepchildren, although most felt the first responsibility should be with the biological parents. The strongest support for placing a legal duty of maintenance upon stepparents amongst youth participants came from youth in Katima Mulilo, where 8 out of 10 strongly supported the idea. When asked if they thought that such a law would help children in their community, they all strongly agreed that it would.

One key informant emphasised the importance of such a law as a means to clearly convey that the stepparent role should be taken seriously, as it will have financial implications. In her opinion, the stepparent must know from the beginning that *“they can’t push the kid away”* and that there will be financial obligations. She felt that the best interests of the child should always be the priority. One counsellor thought that although some stepparents would be against it, a duty of maintenance *“would benefit children a lot”*.

Another key informant pointed to the need to discuss stepfamily issues publicly, to sensitise people to problems that stepchildren face before any law reform measures are taken. In her view, *“we are not ready in this country for that, we are not there yet”*. Another key informant strongly opposed any changes to the maintenance law, saying that such obligations should be voluntary, and only rarely legally enforceable – such as if the stepparent is married to the biological parent and the other parent is deceased.

Another key informant, a social worker, felt that any responsibilities placed on stepparents should not be limited to those who are formally married to the biological parent. In her view, defining stepparents solely as those who are married to a child’s parent would ignore many cases involving non-traditional families that resemble stepparent relationships.

5. Reciprocal duty of stepchildren to maintain stepparents

Respondents were also asked if they thought that a reciprocal duty of maintenance should also be imposed on stepchildren to maintain elderly or ill stepparents, assuming that stepparents are given a legal duty to maintain their stepchildren.

It was explained that Namibia's Maintenance Act imposes a reciprocal duty upon biological children to maintain their parents if they are elderly or ill. Laws in India and Canada were offered as examples where stepchildren may be liable to maintain their stepparents.

Participant responses

Participants in each adult focus group widely supported this proposal. Participants in Keetmanshoop felt that if the stepparent maintained the stepchildren growing up, the adult stepchildren must then maintain the stepparent. They indicated that lack of care and support for the elderly is a problem in their communities, with even biological children failing to support elderly parents. Participants in Katima Mulilo also agreed with this idea, but only if stepparents also had a duty to maintain stepchildren, because *“it must be 50/50”*.

Key informants generally supported this proposal, although one noted that *“it has to start with adults first”*. Another key informant commented, *“it is not easy, but if you accepted this person as a stepfather, it is a lifetime commitment. If something goes wrong, you must care for them. But it also depends on the relationship”*.

This option was not discussed with the youth focus group participants.

6. Stepchild right to inherit intestate from a stepparent

Adult focus group participants were asked whether they thought stepchildren should have any right to inherit from a stepparent if the stepparent dies without a will.

It was explained that stepchildren have a right to inherit from a stepparent in Botswana, if the stepparent was married to the biological parent. It was also noted that some counties, such as Canada and England, may allow stepchildren to receive maintenance from the deceased's estate even if the stepparent was not married to the stepparent, if the stepparent treated the stepchild as part of the family.

Participant responses

Of all the law reform options discussed in the focus groups, the issue of inheritance was the most controversial. Most participants in Katutura, Khorixas, Eenhana and Katima Mulilo were strongly against any inheritance rights for stepchildren, stating that *“there is no link”* and that stepchildren have their own parents that they can inherit from.

Those who were in favour of a right to inheritance in Katima Mulilo emphasised that it must depend on the type of relationship between the stepparent and stepchild, should only apply to children who were “*very small*” when the stepparent entered the home, and should only be considered in cases where the biological parent is married to the stepparent.

In Katutura and Opuwo, most of the participants indicated that only the wife or partner of the deceased and his biological children, if any, should be entitled to inherit. Most agreed that “[t]he stepdaughters have no right. They cannot inherit because he is not the biological father”. One participant in Khorixas said, “*if I die my things are for my family*”.

Only 4 out of 12 participants in Katutura thought that stepchildren should be entitled to inherit, and these participants further indicated that it depended on the situation – especially the relationship between the stepparent and stepchild. As one woman commented: “*I think yes, it depends on the relationship between [the stepparent] and the children. If they consider him as a father they should have full rights*”.

In Opuwo, there was a lack of strong support for this proposal, but also no strong opposition, unlike in some other groups. Mostly the responses were that it depends: on whether the stepparent has biological children, or if they are around and in his life; on how long the relationship lasted (ie only if it was longer than two years); and on whether the stepchild will also inherit from a biological parent (“*what will happen if they inherit double?*”). About a third thought that inheritance should be automatic if the stepparent marries the biological parent.

In contrast, in Keetmanshoop all participants agreed that the law should be changed to automatically allow stepchildren to inherit from stepparents. They felt that because these were the “*people he was with every day*”, they should benefit from his estate. They felt it was important to protect the stepchildren’s rights. The group proposed a minimum relationship duration between the stepparent and biological parent of two years to ensure that it was a relationship of some stability. They did not think there should be a marriage requirement. They did not think it mattered whether the stepparent is a male or female, nor did they think the degree of contributions made during the relationship had any bearing.

Several participants said “*you can’t discriminate*” between stepchildren and biological children with respect to inheritance, especially if there is evidence that the stepparent accepted the child as his or her own, such as by providing maintenance, or by paying for food and school fees.

Key informants also had differing views on this option. Several thought that the right to inheritance for stepchildren should be automatic if the stepparent and biological parent were married, but most felt that inheritance for stepchildren of unmarried relationships would be “*more tricky*” and “*hard to go for*”. One social worker thought that the question of whether a stepchild should be able to inherit from a stepparent really depends on the particular facts of the situation – for instance, the length of the relationship and the financial support given to the child whilst the stepparent was alive. Another key informant, also an experienced social worker, strongly opposed this idea, feeling that stepchild rights to inheritance would result in family conflict, because the biological children may feel that they have more rights to the

assets than the stepchildren. She emphasised that “*land has huge implications here ... There is an emotional connotation*”. Another key informant, a lawyer, also strongly opposed this idea.

This option was not discussed with youth focus group participants.

SUMMARY OF RESPONSES TO POSSIBLE LAW REFORM OPTIONS

There were mixed responses to the idea of giving stepparents automatic rights and responsibilities, with some pointing to the danger of this option in the context of stepchild abuse. There was no opposition to the idea of allowing stepparents to formally adopt stepchildren, but people thought that this would be an unpopular option in most Namibian communities as formal adoption is generally rare or even unknown. Persons consulted were more consistently in favour of providing accessible options whereby stepparents can voluntarily acquire certain parental rights and responsibilities.

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.

The question of whether stepchildren should have any right to inherit from a stepparent in the absence of a will proved to be particularly controversial, eliciting strong opinions both for and against this idea. Many who were in favour of this approach thought that it should depend in part on the relationship between the stepparent and the stepchild, and apply only where the stepparent has either married the biological parent or lived with that parent in a relationship of significant duration. Others felt that intestate inheritance should be limited to biological children, with some worrying about conflict between stepchildren and biological children if both had inheritance rights.



The school of study respondents in Erwee



A home in Sesfontein

4.2 Key recommendations

4.2.1 Law reform

In order to determine what, if any, law reform options are appropriate in the Namibian context, we should first consider the problems and issues that such laws would be intended to address.

Although stepfamilies seem to exist in large numbers in Namibia, there are no laws that specifically govern this relationship. With the exception of adoption, or formal court orders for custody or guardianship, stepparents have no means to formalise and therefore legally protect caregiver roles that they assume towards their stepchildren. In any event, our research suggests that there is little public knowledge of the custody and guardianship options, which provide only limited legal formalisation of parental rights and responsibilities in certain specific situations, and that formal adoption is not common or preferred.

Some participants and key informants expressed specific concerns about potential law reform ideas. Some focus group participants in each region of the study felt that the biological parents should always have primary responsibility and expressed concern over the implications of developing laws that allow stepparents to gain legal responsibility over a child. Some were obviously concerned about any laws that could remove the primary parental status of a biological parent; as one key informant observed: *“people have a great fear of losing their biological children”*.

Some were strongly opposed to the idea that a person could become legally liable for the maintenance of a partner’s children, believing that this should be a purely voluntary undertaking. Some key informants, including an experienced social worker and an experienced family law lawyer, expressed serious doubts about whether Namibia is *“ready”* for laws in this area, and whether the present court system is adequate to handle such changes. They felt that public sensitisation and wide consultation is required first, and that any legal changes must start small and be purely voluntary.

These perspectives raise important issues, which must be borne in mind when exploring options for law reform relating to stepfamilies. However, we have seen that family structures in Namibia are changing – they are diverse and fluid and sometimes informal. Policy and laws must respond to these changing social dynamics to ensure that children are protected and that existing family structures that are the reality in Namibia are legally recognised. As noted in the discussion above, social workers report many cases of stepparents seeking ways to legally acquire rights and responsibilities towards their stepchildren, and focus group participants in most regions were in favour of a relatively easily accessible, voluntary legal process to enable this.

This legal vacuum seems all the more pressing when viewed in light of the changing dynamics of families in Namibia, where many adults, and consequently their children, live

in informal cohabitation relationships which may often involve stepparents. The impact of the HIV/AIDS epidemic and the resulting high mortality rates amongst parents and a growing number of single parents and orphans also makes expanding laws to broaden the formal responsibilities of alternative caregivers such as stepparents all the more important.

Moreover, the literature discussed in Chapter 1 and this study's findings on problems facing stepfamilies discussed in Chapter 2 indicate that stepchildren in Namibia face many problems – including discrimination in the home, emotional, verbal, physical, economic, and sexual abuse, and sometimes neglect. The concept of the best interests of the child is at the centre of family law, and must be the guiding principle when considering possible law reform for stepfamilies. We also know that some stepparents face challenges with their stepchildren, and that many stepfamilies will benefit from better legal protections that are relevant to their situations and needs.

As article 14(13) of the Constitution of Namibia guarantees, *“the family is the natural and fundamental group unit of society and is entitled to protection by society and the State”*. We have seen that families in Namibia exist in a wide variety of arrangements, and in particular, that stepfamilies are increasingly common. We believe that laws should evolve to recognise and protect these diverse configurations and understandings of *“family”* that are the reality in Namibia.

There are likely to be indirect benefits of any laws that have the purpose of recognising and protecting the relationship between a stepparent and stepchild – this sends a strong signal to communities that people who enter into a relationship and live with a person who already has a child from a previous relationship are assuming some measure of responsibility towards that child. It also conveys the idea that stepchildren are part of the family like biological children and should be treated equally – an important point given the apparently widespread occurrence of discrimination against stepchildren within the home.

As one key informant responded when asked whether she favoured new laws to govern stepfamilies:

Yes. This can be very helpful. It 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.

As identified by respondents in this study, the following are the four key areas where law reform measures should be considered. As explained below, some of the areas are likely to be addressed by the forthcoming Child Care and Protection Act, and we urge Parliament to work towards finalising and enacting this law.

1. Stepparent rights to adopt a stepchild

Stepparents are currently entitled to adopt stepchildren under the Children's Act 33 of 1960 and will continue to be able to do so under the draft Child Care and Protection Bill. The draft Bill has improved provisions on parental consent which give courts more leeway to dispense with the parental consent requirement in the best interests of the child. We believe that these provisions will be adequate to cater for formal adoption of stepchildren by stepparents.

Overall, respondents did not generally have strong feelings on adoption, perhaps owing to the perception that formal adoption is very uncommon, although most supported the idea that a stepparent should be allowed to adopt a stepchild, and there was no strong opposition to this proposal. As explained in section 3.2.2, the Children's Act 33 of 1960 (supplemented by section 13(7)-(9) of the Children's Status Act 6 of 2006) already permits adoption by a stepparent, but requires that consent be obtained from the other biological parent except in certain limited situations. However, changes to adoption laws anticipated as a result of the forthcoming Child Care and Protection Act, particularly with respect to exceptions to the consent requirements, will likely make the process more accessible to stepparents and therefore possibly more common.

As discussed in section 3.2.2, under the draft Child Care and Protection Bill, the “*spouse of a parent of the child*” is specifically entitled to apply for adoption of a stepchild. The stepparent, according to the terms of the Bill, would be reviewed by a social worker for fitness to serve as a parent to the child. The draft Child Care and Protection Bill also indicates that a person who adopts a child acquires full parental rights and responsibilities towards that child, as is the case under the existing law.

Like the Children's Act and the Children's Status Act, the draft Child Care and Protection Bill requires the consent of both parents of a child before adoption will be approved. This consent is an important requirement because adoption has the effect of severing all legal ties between that parent and the child. However, in the draft Bill there are exceptions that allow the court to dispense with the requirement for consent from the other biological parent in the following expanded circumstances: if the non-custodial biological parent has abandoned the child; cannot be located; has abused or neglected the child; has “*consistently failed to fulfil his or her parental responsibilities towards the child during the last 12 months*”; or is “*unreasonably withholding*” consent.

Thus the provisions with respect to adoption in the draft Child Care and Protection Bill specifically allow stepparents who are married to the child's biological parent to apply for adoption, and the exceptions to the consent requirement will make it easier for stepparent applicants by removing any barriers posed by the other biological parent where this parent has no role in the child's life, has mistreated the child, or cannot be located.

Although the changes to the adoption laws proposed under the draft Child Care and Protection Bill do still limit stepparent adoption rights to those who are married to the biological parent, we submit that this should remain the case unless there is a general change allowing cohabiting partners to adopt children jointly, as discussed in the 2010 LAC publication *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform*.¹ Stepparents who are not married to biological parents but would still like to assume legal rights and responsibilities over a stepchild will be permitted to do so under the proposed changes to the scheme for custody, guardianship and access orders under the draft Child Care and Protection Bill.

Therefore it is unnecessary to recommend any new legal measures for adoption by stepparents, as adequate law reform with respect to adoption is already captured in the draft Child Care and Protection Bill.

2. Legal processes to enable stepparents to formally acquire rights and responsibilities with respect to their stepchildren (including custody, guardianship and access rights)

In order to cater for the needs of stepfamilies who are seeking ways to voluntarily acquire legal rights and responsibilities with respect to their stepchildren, we recommend certain amendments to the draft Child Care and Protection Bill. Specifically, we recommend permitting applications for joint custody of stepchildren, which would enable stepparents to formally acquire custodial rights to be held jointly with the biological parent. The procedure would protect the rights of the other biological parent, as both biological parents and any other current caregiver must be given notice and opportunity to be heard in respect of any custody application. We also recommend amendments to the provisions in the Bill dealing with custody, guardianship and access applications, so that the children's court is not limited to hearing such applications in respect of children born outside marriage or children of divorced parents, but could also entertain such applications in respect of the children of married parents if no divorce application was pending.

We also recommend amendments to the draft Divorce Bill to make it possible for the court to consider custody, guardianship and access orders involving stepparents and stepchildren in appropriate cases in divorces involving stepchildren, provided that the stepchild's other biological parent is joined to the application.

¹ The following recommendation appears at section 11.4.7 of this report: "*Amend section 70(1) of the Children's Act 33 of 1960 (or the provisions on adoption in the forthcoming Child Care and Protection Act) to allow domestic partners who have registered their partnership to adopt children jointly, provided that a social worker investigation has confirmed that the partnership is a stable one.*" (at 116). The motivation for this recommendation is explained in section 7.6 at 54.

Finally, recognising that there are many situations in Namibia where a child is cared for by caregivers who do not have legal parental duties and responsibilities with respect to the child, we strongly recommend that the draft Child Care and Protection Bill be amended to include a provision similar to section 32 of the South Africa Children's Act, which imposes a positive statutory duty upon caregivers to guard and protect any child in their care. The draft Child Care and Protection Bill already includes a provision making it a criminal offence to abuse or neglect a child in one's care, but this could be usefully supplemented by a provision setting forth a corresponding positive duty. Both positive and negative provisions would help to protect stepchildren against abuse and neglect.

As explained in section 4.1, two general approaches in the law for stepparents to acquire rights and responsibilities with respect to their stepchildren were discussed in focus group discussions and interviews; the first was an automatic approach, as in Botswana's new Children's Act; and the second was a voluntary legal regime, as exists in South Africa, where stepparents could apply to the court for a parenting order, such as to obtain custody or access rights, or enter into a parenting agreement with the biological parent to formally acquire specific parental rights or responsibilities with respect to a stepchild.

Although there was some support for the automatic approach, given that Namibia currently does not have any laws specifically dealing with stepchildren, we think it would be an unnecessarily dramatic jump to recommend automatic legal responsibilities upon stepparents. There are some family relationships that we feel warrant minimum automatic protections. For example, we have recommended certain basic automatic protections for unmarried cohabiting partners, for reasons explained in the 2010 LAC publication *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform*. However, we do not feel that a similar approach is appropriate at this time with respect to stepfamilies for the following reasons.

Conceptualising such a legal regime would be particularly difficult, as it would likely be viewed as challenging the primacy of the parental rights and responsibilities of biological parents. This is especially true given the prevalence of informal cohabitation relationships in Namibia, which raise the difficult question of when such automatic rights and responsibilities would take effect – such as only upon marriage, only after cohabitation of a significant duration, or only where the relationship mirrors that of a biological parent and child in significant respects. Additionally, as noted by one key informant, there are situations where automatic rights and responsibilities would be deeply problematic, such as with respect to a sexually abusive stepfather. Also, it is necessary to exercise greater caution when dealing with rights and responsibilities towards children in contrast to those between adults, due to children's greater vulnerability and society's correspondingly greater duty to protect them.

Rather, we suggest as a starting point exploring options that allow stepparents to voluntarily formalise their relationships with their stepchildren in a more streamlined and accessible

process than formal adoption, and in a manner which need not necessarily extinguish the legal tie to the non-custodial biological parent. As discussed, focus group participants and key informants were consistently in favour of a voluntary approach which would allow stepfamilies to apply for court orders or enter into parenting agreements to legally formalise parental rights and responsibilities for stepparents.

Custody, access and guardianship orders

As explained at section 3.2.2 in Chapter 3, anyone who meets the criteria of “*primary care-taker*”, which could include a stepparent, can already apply for custody and guardianship under the Children’s Status Act, which would be re-enacted as sections 95 and 96 of the draft Child Care and Protection Bill if and when it comes into force. This provides an existing legal process to a stepparent who act as a “*primary care-giver*” to apply to the court for custody or guardianship orders, in a very similar way as already exists in South Africa’s Children’s Act.

In addition, as also discussed above at section 3.2.2 in Chapter 3, the draft Child Care and Protection Bill would introduce a provision allowing family members – who are defined to include a person who has a “*significant emotional attachment*” to the child and could therefore include a stepparent – to apply for access to a child.

There are some limitations to these provisions. Although useful and appropriate for some situations, legal custody, access and guardianship orders do not individually address the full range of parental rights and responsibilities, and will only be relevant and accessible in some situations – for example, a stepparent would most likely only apply for custody or guardianship if the biological parent dies, or possibly when the relationship with the biological parent breaks up. In addition, as all parents and guardians must be notified of and heard on any applications brought under these provisions, it is unlikely a stepparent would or should succeed on such an application if there is another biological parent or guardian with existing parental rights who opposes the application. This process also requires formal applications to the court and appearances by the applicant to argue the case, which may appear too complicated and intimidating for some.

Furthermore, because neither the Children’s Status Act nor the draft Child Care and Protection Bill allow for applications for joint custody orders, in practical application a stepparent would only be eligible to apply for a custody order under section 95 if the custodial biological parent who holds sole custody rights dies or is otherwise unable to care for the child, or possibly to determine custody following the termination of the relationship.

Consequently, we recommend a provision in the draft Child Care and Protection Bill allowing for the possibility of an order for joint custody for cohabiting but unmarried biological parents,²

² The Legal Assistance Centre has already recommended that cohabiting parents should be able to make an agreement for joint custody and equal guardianship of their children during the subsistence of their relationship, but that such an agreement should be enforceable only if made into an order of court:

and for other caregivers who cohabit with the custodial biological parent. For example, this provision could be inserted as a subsection of section 95, and would be subject to the same process and rules for applying for a custody order in the remainder of the provision as it currently stands:

95(2) The following persons may seek an order pertaining to the joint custody of a child provided that such a proceeding is brought by or on behalf of the person who is seeking custody of the child:

- (a) the biological parent of a child born outside of marriage who does not have custody of the child but who is cohabiting with the other biological parent who has sole custody of the child; or*
- (b) a person other than the mother or father of the child, who is cohabiting with the biological parent who has sole custody of the child, and who is acting as a care-giver of the child.*

Unmarried parents, stepparents, and other non-biological care-givers who reside with a child and exercise control and care over that child on a day-to-day basis, in essence already share custody with the custodial biological parent in fact, although not in law. Providing access to the courts to legally formalise these care arrangements recognises the contemporary reality of flexible and informal family arrangements in Namibia. This legal process would allow such caregivers to gain legally recognised custody rights, with benefits to the child and the entire family.

In addition, we suggest that the restrictive language employed in the current draft of the Child Care and Protection Bill, which specifically limits applications with respect to custody, access and guardianship to children of unmarried or divorced parents be deleted and replaced with simply “a child”. The effect of the current wording is that only married parents are *required* to approach the High Court for the resolution of custody and guardianship questions – which generally arise where the spouses are estranged or separated but have not yet divorced (since the divorce order would normally address these issues). Where a divorce action has already

-
- (1) The parents of a child born outside of marriage who are cohabiting may make a written agreement between themselves before or after the birth of the child which establishes joint custody and equal guardianship between themselves for the duration of their cohabitation, and may petition the children’s court to make this agreement an order of court if the court is of the opinion that it will be in the best interests of the child.
 - (2) An agreement made in terms of subsection (1) shall become valid only when it is made into an order of a children’s court.
 - (3) Where the parents are sharing a common home, there shall be a rebuttable presumption for the purposes of subsection (a) that joint custody and equal guardianship are in the best interests of the child.
 - (4) If the parents of the child cease to cohabit, custody and guardianship of the child *shall be determined in accordance with the Children’s Status Act, unless a competent court directs otherwise.*

Legal Assistance Centre, *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform*, Windhoek: Legal Assistance Centre, 2010, Draft Bill on Domestic Partnerships, section 12 at 124-125. The motivation for this proposal is explained in detail in section 7.2 at 52-53.

commenced, interim custody can sensibly be addressed by the same court as an ancillary matter pending the final divorce;³ however, disputes on these issues do arise between married parents outside the context of divorce actions.⁴ It would be rare for a stepparent to be in the picture in such circumstances, but not impossible, as persons who are still formally married often cohabit with other partners without ever formally dissolving their marriages.⁵ There seems to be no principled reason for the limitations currently contained in these provisions, and indeed, they could potentially be found to be unfair and discriminatory under the Constitution.⁶ This recommendation is not crucial to the position of stepchildren, but it would ensure that no stepfamily is deprived of the most accessible avenue of action.

Furthermore, we suggest considering amendments to the draft Divorce Bill, particularly to section 11 which governs custody of a “*child of the marriage*” upon divorce and to the references to a “*child of the marriage*” in this and other sections.

Section 12 covers access to a “*child of the marriage*” by the non-custodial spouse, and section 13 expressly extends the right to apply for access with respect to “*the child*” – by implication the “*child of the marriage*” referred to in section 12 – to “*members of the family of the non-custodial*

³ Where a divorce action is pending. Rule 43 of the Rules of the High Court provides a simple and quick procedure by which one spouse can seek the following from the other spouse:

- maintenance *pendente lite* (pending the resolution to the case)
- contributions towards the costs of a pending case
- interim custody of a child
- interim access to a child.

Rule 43, Rules of the High Court of Namibia, Government Notice 59 of 1990 (GG 90), as amended.

⁴ See, for example, *Beukes v Beukes and Another* (A22/2009) [2009] NAHC 15 (3 March 2009).

⁵ See Legal Assistance Centre, *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform*, Windhoek: Legal Assistance Centre, 2010, section 10.7 at 72-ff.

⁶ The current situation arose because the intention of the Children’s Status Act (which is expected to be re-enacted as a chapter of the forthcoming Child Care and Protection Act) was to remove discrimination in the treatment of children born outside marriage, including discrimination in terms of parental rights and duties towards such children. Children of divorced parents were then included on the theory that they were in an analogous situation to children of unmarried parents – with both categories of children needing an accessible avenue to resolve disputes about parental rights and responsibilities between parents who were living apart. The majority of married parents will have no need of the children’s court procedures, since they will usually be either in a subsisting marriage with shared responsibilities or obtaining a divorce order which will incorporate decision about custody, guardianship and access. However, as noted in the discussion above, there are situations where these questions will arise between parents who are still formally married but separated.

The key countervailing consideration is that married couples should not be encouraged to use custody, guardianship and access proceedings in a children’s court as a substitute for a divorce proceeding in a High Court which will also address property division and maintenance; the temptation could be to utilise the cheaper, more accessible children’s court option to sort out responsibilities towards children and then forgo the more expensive formal divorce proceeding. This will depend in part on whether divorce remains the province of the High Court, as at present and as proposed in the draft Divorce Bill approved by the Law Reform and Development Commission (discussed in section 3.2.2.). As a point of comparison, in South Africa, regional magistrates’ courts have recently been given divorce jurisdiction. See Jurisdiction of Regional Courts Amendment Act 31 of 2008.

spouse or any other person, who, in the opinion of the court, should have access in the best interests of the child". In addition, section 15 states that a court may make an order granting "*one parent or any other suitable person sole guardianship of any minor child of the marriage*". These provisions thus envision "*other persons*" being permitted to apply for access and guardianship of a "*child of the marriage*". In contrast, as section 11 does not specify *who* may apply for custody, it is unclear who is entitled to do so.

However, a limitation on all of these provisions is that a stepchild is not considered a "*child of the marriage*" as defined under section 1, unless he or she was adopted by the parent's spouse. We recommend that the court's powers should not be limited to a "*child of the marriage*", but should in appropriate cases extend to a child of either spouse, provided that due regard is given to the rights of any such child's other biological parent. We also recommend that section 11 be amended to employ similar language as that used in the access and guardianship provisions with respect to who may apply for custody.

These changes would allow a stepparent who is in the process of divorcing from the biological parent of a child to request custody, guardianship and/or access to that child. Giving custody to a stepparent could be in the best interests of the stepchild, particularly in a situation where the biological parent who is divorcing is for some reason not a suitable custodian and the other biological parent has been uninvolved. However, any other biological parent of the stepchild would have to be joined to the application. The proposed amendments would also make it possible for the court to consider an award of custody to the previously non-custodial biological parent, if that parent were appropriately joined to the application.⁷ Resolving such questions with the involvement of all relevant parties in the context of the divorce proceedings would be better for the child than having such a dispute drag on in separate court proceedings.

Parenting agreements

Although the draft Child Care and Protection Bill would allow "*alternative care-givers*" to enter into parenting agreements to specify parental rights and responsibilities, it limits these agreements to existing "*co-holders*" of parental rights. Therefore, unlike South Africa's laws on parenting agreements, which have the power to *confer* parental rights and responsibilities on "*any other person having an interest in the care, well-being and development of the child*", under the draft Child Care and Protection Bill parenting agreements are not a means by which stepparents can acquire parental rights and responsibilities which they do not otherwise hold.

We have considered the possibility of adopting a similar approach to that set out in section 22 of the South African Children's Act, which permits the delegation of parental rights and

⁷ The non-custodial biological parent could otherwise seek custody in an application to the children's court under the Children's Status Act (or under its replacement chapter in the Child Care and Protection Act) in this situation, since the biological parents must have been unmarried or divorced in order for this situation to arise in the first place. But it would surely be best for the child to minimise different court proceedings.

responsibilities to non-biological caregivers through a parenting agreement. The advantage of this approach is that it allows a flexible and accessible voluntary process by which a biological parent can confer or delegate certain parental rights and responsibilities upon a stepparent, which then becomes an order of the court after the court ensures that it is in the best interests of the child. Our research findings indicate that there is strong public support for such an approach.

However, after careful deliberation, we do not recommend this approach for Namibia at this time. This approach raises troubling questions about the consequences of allowing parental rights holders to confer parental rights and responsibilities upon third parties by agreement, particularly when there is no express provision in the law for notifying or consulting with, or obtaining the consent of, the other biological parent.

To illustrate some of the problems which could occur, it must be remembered that in some stepparent situations then non-custodial biological parent still wishes to remain intimately involved in the child's life. Imagine a situation where two involved parents have divorced, and one of them has remarried, then the mother of the child finds herself at the hospital with the new wife, who has been delegated parental rights by the child's father – with both of them attempting to make decisions on the child's health care.

Yet even if there were a requirement that the other biological parent be consulted or give consent (along the lines of section 31(2) of South Africa's Children's Act), this would likely create significant conflict amongst the parents and stepparent and could actually work against the goal of formalising the stepparent's involvement, if the non-custodial biological parent raised objections which preventing the agreement from being finalised. Our research findings show that some respondents are very concerned about any threats to the biological parents' rights to maintain their primary roles with respect to a child. We agree that any legal processes that allow parental rights and responsibilities to be conferred upon others by agreement must be viewed very seriously and approached with great caution, and should be confined to situations where there is oversight by the courts.

Even if there is only one biological parent in the picture, because the other is deceased or completely uninvolved, court oversight is still advisable to protect the child's best interests – particularly given concerns about sexual abuse by stepfathers which the biological parent may refuse to believe or acknowledge.

And if courts must be involved in every instance to approve such agreements, then there is really no purpose served by providing such agreements as an alternative to a procedure whereby stepparents can seek a children's court order giving them custody, guardianship or access rights. This avenue would be sufficient to provide the 'piece of paper' that many respondents favoured, and it would have the advantage of including a procedure giving the other biological parent notice and an opportunity to be heard, as well as requiring a social worker assessment to guide the court's decision-making.

In addition, we feel that agreements and court orders would likely only be of assistance to those families who already have a clear sense of, and agreement on, allocation of parental

rights and responsibilities within the household, and would be unlikely to assist those stepfamilies who are already facing serious problems. For example, if a stepparent is refusing to care for and support a stepchild, he or she is highly unlikely to seek to assume any parental rights and responsibilities. The real value of such arrangements would be where they are concluded at a time when the family is in harmony, to bind the stepparent at a time when problems arise. A court order for custody, guardianship or access would remain in place until one of the interested parties applied to terminate it, thereby giving some protection to the stepchild and stepparent when the relationship between which created the stepfamily comes to an end by death, divorce or separation.

Statutory duty of a caregiver to guard and protect a child

Recognising that there are many situations in Namibia where a child is cared for by caregivers who do not have legal parental duties and responsibilities with respect to the child, we strongly recommend that the draft Child Care and Protection Bill be amended to include a provision similar to section 32 of the South Africa Children's Act, which imposes positive legal obligations to guard and protect the child, and to consent to medical treatment on the child's behalf if the legal parent or guardian is absent.⁸ Section 32 reads in relevant part:

- 32. (1) A person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, including a care-giver who otherwise has no parental responsibilities and rights in respect of a child, must, whilst the child is in that person's care –*
- (a) safeguard the child's health, well-being and development; and*
 - (b) protect the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical, emotional or mental harm or hazards.*
- (2) A person referred to in subsection (1) may exercise any parental responsibilities and rights reasonably necessary to comply with subsection (1), including the right to consent to any medical examination or treatment of the child if such consent cannot reasonably be obtained from the parent or guardian of the child.*
- (3) A court may limit or restrict the parental responsibilities and rights which a person may exercise in terms of subsection (2).*

This would complement the prohibition on abuse and neglect by caregivers which is already contained in section 236 of the draft Child Care and Protection Bill. Section 236 makes it a criminal offence for any person who cares for the child to abuse, neglect or abandon that child, punishable by imprisonment for up to ten years and a fine of up to N\$50 000.

⁸ The issue of medical treatment is already partially covered in the draft Bill. Section 145(4) authorises “a foster parent, kinship care-giver or residential child care facility in whose care a child had been placed” to make decisions on basic medical interventions and urgent surgical operations in respect of the child, and section 200(4) authorises the “superintendent of a hospital or the person in charge of the hospital in the absence of the superintendent, or the regional director of a clinic” to consent to medical interventions or surgical operations on a child in emergency situations where it could be detrimental to the child to wait until the normal consent can be obtained. However, the Bill's inclusion of these more limited provisions on medical consent does not obviate the need for the much broader provision proposed here.

Provisions on both “positive” duties and “negative” prohibitions would be very important legal tools to vividly highlight stepparents’ duties towards stepchildren in their care, especially given the evidence in this study of prevalent abuse and neglect of stepchildren at the hands of stepparents.

3. Maintenance duties as between stepparents and stepchildren

We recommend consideration of an amendment to the Maintenance Act which would impose a legal duty of maintenance upon stepparents who are married to the biological parent of the child, if such a stepparent treats the stepchild as “a child of the family”. We suggest that this duty should be secondary to that of the biological parents and apply only upon application to the court, after consideration of specific factors. In addition, we recommend consideration of a consequential amendment imposing a reciprocal duty upon stepchildren to maintain elderly or ill stepparents in specified circumstances.

We also recommend amendments to the Motor Vehicle Accident Fund Act to expressly include stepchildren in the definition of “dependants” where the stepchild in question was in fact being maintained by the person involved in a motor vehicle accident.

Some stepchildren face discrimination and disadvantage. In particular, we know that there are many reports of stepchildren being denied adequate food, housing, clothing, material goods, and school fees simply because they are stepchildren. This is economic abuse and neglect. A legal duty of maintenance upon stepparents is one possible response to this problem. Not only would a legal duty of maintenance have the practical effect of holding stepparent caregivers liable for the reasonable care and support of stepchildren in their care, it would be a strong signal to communities that stepchildren have a legal right to care and support and protection just like biological children. It would recognise the role of stepparents as caregivers in many households, and formalise the view of many respondents that *“if you live in the house, it is your responsibility”* to care for any children.

As discussed, respondents in the study were largely in favour of changes to the maintenance laws to impose a duty of maintenance upon stepparents – in some groups, there was unanimous support for such a measure. However, some expressed reservations, asking why a stepparent should have to maintain a child with whom *“there is no link”*, when this should be the responsibility of biological parents. Others felt that such a duty should only be imposed if the stepparent is married to the biological parent, as this step indicates the intentions of both parties to accept a high degree of permanence and formal responsibility within the relationship. As one key informant felt, it is a good idea, but perhaps one that Namibia is not ready for yet.

As discussed in Chapter 3, many jurisdictions have enacted such laws, including other African countries, recognising situations where stepparents have voluntarily placed themselves in a parental role and assumed responsibilities towards a child. However, countries with maintenance laws that apply to stepparents generally contain important qualifications. For example, in Botswana and Zimbabwe, stepparents are liable for maintenance only if the biological parents are not properly maintaining the child. Furthermore, the definition of stepparent in Botswana's legislation limits the term to persons married to the biological parent.

In Kenya and in Canada, the duty of maintenance upon a stepparent is not automatic. In Kenya, a stepparent may be liable for maintenance if he or she treated the stepchild like a "*child of the family*", while in Canada the court will consider whether the stepparent "*stands in the place of a parent*". In these countries, as well as in Australia, the duty of maintenance depends upon factors which are specific each case, such as the type and duration of the relationship between the child and stepparent, the involvement of the biological parents, each party's ability to contribute and the child's best interests.

Given the serious challenges that many stepchildren face in Namibia in terms of receiving adequate care and support, we recommend consideration of an amendment to the Maintenance Act introducing a provision imposing liability to maintain stepchildren upon stepparents. However, there are many corollary questions that arise and must be considered: Should a stepparent duty of maintenance apply only to stepparents who are married to the biological parent, or to those in informal cohabitation relationships as well? If applied to cohabitation, should there be a minimum duration of cohabitation before such a duty is imposed? Should such a duty automatic, or should it depend on the circumstances of each family? Should the stepparent's duty to maintain be secondary to the biological parent's primary duty?

The majority of focus group participants in every region visited did not think that it mattered whether the stepfather and biological parent were married when it came to responsibilities to support a child. The factor most often cited as the most important was simply the fact that the stepparent "*is in the house*" and thereby assumes responsibilities for the household. Indeed, as one social worker pointed out, given the prevalence of informal cohabitation relationships, limiting liability for maintenance only to stepparents who are married to the biological parent would mean that the law would not apply to many children that such a law would be intended to protect. Furthermore, it is possible that a law with such a limitation might even encourage people not to marry partners with children from previous relationships.

However, limiting such a duty to stepparents who have married the stepchild's parent, as was recommended by one key informant, a lawyer, does offer the advantage of clarity and consistency in the law, drawing a bright-line to indicate who is liable and who is not. It also recognises that stepparents who choose to enter into marriage have the intention of forming a long-term formal relationship that carries special legal obligations. Some focus group participants, although a minority, also felt that a person only becomes a stepparent

upon marriage to the biological parent. This is the approach used in some countries, such as Botswana, where the definition of “stepparent” is limited to the spouse of the biological parent.

Therefore, although we recognise the reality that there is wide variety and fluidity of family arrangements in Namibia, and that informal cohabitation is common, we recommend that any amendments to the maintenance laws to impose a duty of support upon a stepparent apply only when the stepparent has married the biological parent, or if the stepparent has acquired custody rights with respect to the child by court order. In addition, we submit that this provision would apply to cohabitants who have registered their cohabitation agreement with the court, if and when law reform on cohabitation moves forward.⁹ We are of the view that, at this stage, it is unworkable to extend such a duty to informal cohabitation relationships as there is no way to gauge the permanence and seriousness of the relationship, and to impose duties of maintenance upon the partner of a parent who is in a short-term informal relationship would be unfair and unreasonable.

Furthermore, we recommend that the approach used in the laws of Kenya and Canada be considered, where stepparents will only be held liable for maintenance if they have stood in the place of a parent, or treated the child as a child of the family. In those countries, stepparent liability for maintenance within marriage is assessed on a case-by-case basis, where the court must consider specific factors that examine the relationships and means and needs of the child and parents and stepparents. For example, it would probably make no sense to hold a stepparent liable for a stepchild who is living with the other biological parent and not within the stepparent’s household.

Many respondents in focus group discussions felt that although stepparents should have a duty of maintenance towards their stepchildren, it should be secondary to the primary duty that applies to the biological parents. As we have seen, many other countries also take this approach, and we recommend that this also be the case with any potential amendments to the Maintenance Act. We agree that the primary duty for supporting a child rests with the biological parents, as already articulated in section 4(1)(a) of the Maintenance Act as a fundamental principle in dealing with maintenance.

Consequently we suggest considering inclusion of this provision in section 2 of the Maintenance Act, which draws on elements of the laws in Zimbabwe, Australia, Kenya and Canada:

⁹ The Legal Assistance Centre has proposed that it should be open to cohabiting couples to register their partnership with a clerk of court, to facilitate proof of the existence of the relationship, and (if they wish) to register at the same time an agreement between themselves concerning maintenance of each other, the sharing of property and assets and any other financial matters pertaining to the partnership which they wish to regulate their rights and duties. Termination of the domestic partnership can also be registered. Legal Assistance Centre, *A Family Affair: The Status of Cohabitation in Namibia and Recommendations for Law Reform*, Windhoek: Legal Assistance Centre, 2010, section 11.3.2 at 94-ff, section 11.4.3 at 113-114 and Draft Bill on Domestic Partnerships, sections 7-10 at 122-124.

2.(2)(a) A stepparent may be liable for maintenance in respect of a child if the stepparent has treated the child as a child of the family.

(b) For the purposes of this section, a stepparent means a person who is or was the spouse of the biological parent of the child in a civil or customary marriage.

(c) A stepparent shall not be obliged to maintain a stepchild who is being adequately maintained by the biological parents, who have the primary duty to maintain a child.

(d) In deciding whether a stepparent has treated the child as a child of the family the court will consider the circumstances of the case and have particular regard to the following factors:

(i) the intention of the stepparent to treat the child as a child of the family;

(ii) whether the stepparent is currently providing or has previously provided maintenance for the child;

*(iii) the nature of the child's relationship with the other biological parent;
and*

(iv) the best interests of the child.

As in any maintenance order, once liability for maintenance is established, the court would be expected to consider the child's maintenance needs, the financial means and responsibilities of the stepparent and the stepparent's liability to maintain any other children.

In line with the general approach followed in other countries that impose a maintenance liability upon stepparents who assume a parental role or treat the child as a "child of the family", it is recommended that any amendments to the Maintenance Act provide that the duty of maintenance may apply following the termination of the relationship with the biological parent, depending on the circumstances of the case and upon the court's consideration of the specified factors.

Respondents in the study largely support a reciprocal duty of maintenance upon stepchildren to care for ill or elderly stepparents, if a duty of maintenance were imposed on stepparents. The Legal Assistance Centre suggests that any amendments to the Maintenance Act should recognise the duty of stepchildren to maintain stepparents in certain situations, mirroring the reciprocal duty already in force between biological parents and their children in specific circumstances.

It is also noted that any amendment to the maintenance laws that creates a legal duty of maintenance as between stepparents and stepchildren could expand the application of certain statutes that entitle dependants to benefits that presently exclude stepchildren. Most importantly, the Motor Vehicle Accident Fund Act currently limits eligible dependants to minor children whom the injured or deceased person has a legal duty to maintain, which excludes stepchildren. However, if the Maintenance Act were amended to impose a legal liability upon stepparents to maintain their stepchildren, then stepchildren could meet the definition of dependant under the Motor Vehicle Accident Fund Act, and would therefore be entitled to compensation if the stepparent was injured or killed in a motor vehicle accident.

Nevertheless, regardless of the decision made on amendments to the Maintenance Act, we recommend amendments to the Motor Vehicle Accident Fund Act to expand the definition of “*dependant*” to correspond with the definitions used in other statutes providing access to benefits, pensions and social security – all of which include a “*stepchild*”, as discussed in detail in section 3.2.6. There is no principled reason why there should be such a difference in the definition of “*dependant*” amongst these statutes, and consequently the very limited definition employed in the Motor Vehicle Accident Fund Act appears to be unfairly restrictive and arguably discriminatory. However, because the purpose of the statute is to provide compensation for loss of support, the meaning of dependant could fairly be limited to stepchildren who were factually dependant in whole or in part on support from the stepparent – so as to exclude stepchildren who have never been maintained by the stepparent in question or never formed part of the stepparent’s household.

4. Stepchild right of inheritance

We recommend enactment of a new Intestate Succession Act including a provision requiring that adequate provision for maintenance of all dependants must be made out of the deceased’s estate before the residue of the estate is distributed. This provision would apply to any stepchildren who were in fact being maintained by the deceased.

The research findings indicate that the question of whether stepchildren should have any rights to inherit from stepparents is very controversial. Overall, respondents were split on whether stepchildren should have a right of inheritance, and those that opposed such a measure did so very strongly. Those that did support it mostly thought that it should not be automatic, but rather based on the circumstances of each case, depending upon the relationship between the stepchild and the stepparent. Some felt that this type of right should be limited to stepchildren where the stepparent was married to the biological parent. Some expressed concern that stepchildren who were treated like a child by the stepparent would be denied any share in the estate.

We believe this issue may be adequately addressed by the draft Intestate Succession Bill being prepared by the Law Reform and Development Commission as of 2010, if it is amended to include a provision requiring that adequate provision for maintenance of all dependants must be made out of the deceased’s estate before the residue of the estate is distributed. In 2010, the Legal Assistance Centre provided comments on any early draft of this Intestate Succession Bill, and recommended that the following provision be included in the Bill in order to protect dependants of the deceased.

Maintenance of Dependants

- (1) For the purposes of this section, “*dependant*”, in relation to a deceased, means –
 - (a) a surviving spouse;
 - (b) a divorced spouse who at the time of the deceased’s death was entitled to the payment of maintenance by the deceased in terms of an order of court;

- (c) *a partner in a long-term life partnership in the nature of a marriage who was being maintained by the deceased at the time of death;*
- (d) *a person who was treated as a spouse or a child of the deceased as the result of a levirate or sororate union;*
- (e) *a minor child;*
- (f) *a major child who is, by reason of some mental or physical disability, incapable of maintaining himself and who was being maintained by the deceased at the time of death;*
- (g) *a parent who was being maintained by the deceased at the time of death; and*
- (h) ***any other person in respect of whom the deceased at the time of death –***
 - (i) ***was making a substantial contribution in money or in kind towards the maintenance of that person at the time of his death; or***
 - (ii) *was obligated to pay maintenance.*

(2) *No estate may be distributed until the maintenance needs of all dependents have been satisfied in accordance with this section; Provided that nothing in this subsection shall be construed as preventing the executor, before the application is finally determined, from disbursing any part of the estate for the purpose of providing maintenance for any person who was totally or partially dependent on the deceased immediately before his death.*

[emphasis added]

Subsection (3) goes on to propose that any person who meets the definition of dependant may make application for an award of maintenance from the deceased's estate. Upon such an application, the court must consider a series of factors as explained at subsection (9), such as the needs of the applicant, the needs of other dependants and the size of the estate.

The Legal Assistance Centre's comments on the Intestate Succession Bill explained the need for a provision providing maintenance to dependants out of a deceased's estate as follows:

Zimbabwe and Zambia have made provision for the maintenance of the deceased's dependants in situations where a testator has not made adequate provision for their reasonable needs. It is submitted that Namibia should do the same. Maintenance should be available to all dependents of the deceased whose reasonable maintenance needs are not adequately provided for by will or in terms of the intestate succession rules. For example, if the spouse and children receive an adequate portion of the estate as a result of a will or through application of the rules for intestate inheritance, or as a result of the division of marital property shared with the deceased, then they would not need to apply for maintenance from the estate.

The language of subsection (1)(h) includes as a dependant any person to whom the deceased was making a substantial contribution towards the maintenance of, which would capture a stepchild who was being supported by a stepparent prior to the stepparent's death. We believe this provision would offer an important and effective economic safeguard for the stepchildren of a deceased who was already supporting his or her stepchildren at the time of death, whilst avoiding the controversies around inheritance by stepchildren.

We also note that the controversy over inheritance identified in our research highlights the importance of the use of wills. Through a will, a stepparent can specify that he or she wishes to leave part of his or her estate to a stepchild. Indeed, the importance of promoting the use of wills by the public was emphasised by several focus group participants. One male respondent from the Khorixas adult focus group discussion emphasised that wills would address problems relating to inheritance and expressed his view that wills should be compulsory.

4.2.2 Other recommendations

We recommend that relevant stakeholders, including government, social workers, community and church groups, counselling organisations and relevant civil society organisations should:

- expand public education and outreach on the vulnerability of stepchildren to domestic violence, sexual abuse and neglect
- publicise relevant laws, services and resources available to assist children suffering mistreatment, abuse or neglect
- expand and develop counselling services and support groups for stepfamilies
- sensitise community workers, counsellors and social workers to the challenges faced by stepfamilies, and particularly by stepchildren.

Some of the problems identified by this study do not require new legal responses, but call for policy development in terms of community outreach, social programs and public education priorities.

For example, this report has documented the serious problems that exist within stepfamilies in terms of abuse of stepchildren – emotional, verbal, economic, physical and sexual. As explained in Chapter 3, there is already a strong legal regime in place to address these issues. The Combating of Domestic Violence Act, which applies to stepfamilies, offers assistance to victims of abuse, primarily through the availability of protection orders. The Combating of Rape Act imposes heavy criminal penalties on caregivers or persons in positions of trust, which would include stepparents, who rape minors. The minimum sentence of imprisonment in that case, for a first offence, would be 15 years, and if repeated, 45 years.

In addition, section 236 of the forthcoming draft Child Care and Protection Bill would make abuse, neglect, abandonment and failure to maintain a child by any person who cares for the child criminal offences attracting penalties including imprisonment for up to ten years and a fine of up to N\$50 000. We feel this provision can be a very effective tool to help combat abuse of stepchildren, and again urge Parliament to actively pursue enactment of this Bill. When the Bill passes into law, we strongly recommend public awareness campaigns to educate the public about this provision and the criminal consequences of abusing any child, including a stepchild.

As laws are already in place to address cases of abuse and violence, our recommendations in this area are not legal, but policy-focused. It is clearly very important to focus attention on continuing to emphasise that abuse of children is wrong, and that abuse of stepchildren is domestic violence. It is also very important to publicise the importance of reporting domestic violence and abuse, and to educate the public, specifically children and youth, about services and resources available to them if they are experiencing mistreatment or abuse, such as social workers, the Women and Children Protection Units and counselling services such as LifeLine/ChildLine. As one participant in the Keetmanshoop focus group said:

I know of a case where the stepfather is sexually abusing the stepchild, age 16. The mother didn't believe her, said she is lying. The girl had no idea what to do. It took four years until she learned about social workers, other ways to get help.

All stakeholders must work together to strengthen resources and services available to stepchildren facing abuse and to engage in relevant public education programs.

The draft Child Care and Protection Bill would introduce a new law imposing an obligation on “a person who performs professional or official duties with respect to children” to report any suspicions that a child may be in need of protection services to the police or a social worker.¹⁰ This would require, for example, a teacher, traditional or religious leader, or doctor to report any suspected abuse, neglect or mistreatment of a child to the authorities. Failure to do so could result in a fine of up to N\$20 000 or five years imprisonment. When the draft Bill becomes law, we recommend that a public education campaign be developed to promote awareness of this new legal duty to report child abuse amongst relevant professionals.

A number of the problems identified by participants were of a social rather than a legal nature, relating to conflicts between family members within stepfamilies, and difficulties adjusting to and accepting these family dynamics. Participants in the study repeatedly referred to the importance of family meetings and discussions as a strategy to address these types of problems. Many participants felt that expanded counselling programs and access to social workers within their communities would be of great assistance. One key informant recommended support groups, perhaps within churches.

Several participants thought that there should be a law to require family meetings, perhaps with social workers, for stepfamilies. In fact, the draft Child Care and Protection Bill already makes reference to the concept of a family meeting, which it defines in section 1 as

a structured meeting of family members convened and presided over by a skilled facilitator, at which the family members attempt to find solutions to a problem involving the care or protection of a child, and which includes an opportunity for private discussion in the absence of the facilitator, with due regard to the principles in this Act on child participation.

Section 39(1) and section 177(a) of the draft Bill provides that a children's court can refer a dispute brought to it, or case involving a child who may be in need of care or protection, to

¹⁰ See section 125.

lay forums such as mediation or a family meeting for attempted resolution. Family meetings could also form part of the prevention and intervention services for families envisaged under section 126.¹¹ However, the legal endorsement of this mechanism will not be nearly so important as the role of social workers and other children's stakeholders in as popularising this approach to resolving problematic family issues.

We also recommend that social workers and counsellors who do community outreach work be sensitised to issues involving stepfamilies, particularly the vulnerability of stepchildren to mistreatment and abuse. Furthermore, stakeholder groups and social workers should develop support groups and family counselling programs to enable stepfamilies to better adjust to their family arrangements and to resolve problems constructively. Such initiatives would fall under the broad provisions of the draft Child Care and Protection Bill dealing with prevention and early intervention measures, and could be of great assistance to stepfamilies struggling with adjusting to a new family dynamic and experiencing specific problems, such as with problems with communicating and parenting.

Prevention and Early Intervention Services in the Draft Child Care and Protection Bill

126. (1) Prevention services means services –

- (a) designed to serve the purposes mentioned in subsection (3); and*
- (b) provided to families in order to strengthen and build their capacity and self-reliance to address problems in the family.*

(2) Early intervention services means services which are –

- (a) designed to serve the purposes mentioned in subsection (3); and*
- (b) provided to families with children identified as being vulnerable to or at risk of harm or removal into alternative care.*

(3) Prevention and early intervention services must be aimed at one or more of the following objectives –

- (a) preserving a child's family structure;*
- (b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children, including but not limited to the promotion of positive, non-violent forms of discipline and raising awareness about the procedure to be followed in the registration of births and the importance of such registration;*
- (c) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of children with disabilities and chronic illnesses;*
- (d) establishing appropriate interpersonal relationships within the family;*

¹¹ Section 31(1)(b) also recommends family meetings as part of “early intervention services and programmes” for children accused of committing a criminal offence.

- (e) *providing psychological, rehabilitation and therapeutic programmes for children;*
- (f) *preventing the neglect, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs;*
- (g) *preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;*
- (h) *preventing developmental delays in young children due to inadequate or inconsistent nutrition, stimulation, physical and emotional care;*
- (i) *preventing criminal activities by children and diverting children away from the criminal justice system; or*
- (j) *avoiding the removal of a child from the family environment.*

(4) *Prevention and early intervention programmes may include, without being limited to, one or more of the following components –*

- (a) *assisting families to obtain the basic necessities of life, including assistance with application for state grants;*
- (b) *empowering families to obtain such necessities for themselves;*
- (c) *providing families with information to enable them to access services;*
- (d) *providing families with information about the dangers of alcohol and other drugs and assisting them to address abuse of alcohol or drugs by any family member;*
- (e) *providing families with information about gambling addiction and assisting them to address such addiction of any family member;*
- (f) *supporting and assisting families with a chronically ill or terminally ill family member;*
- (g) *assisting families to provide or access appropriate early childhood development opportunities for young children;*
- (h) *addressing specific issues affecting or potentially affecting families in the community, such as gender-based violence, health and nutrition issues, reproductive and sexual health issues, child labour, child trafficking or child behaviour problems; and*
- (i) *promoting the well-being of children and the realisation of their full potential.*

(5) *Prevention and early intervention programmes must involve and promote the participation of families, parents, care-givers and children in identifying and seeking solutions to their problems.*

(6) *A children's court may make an order regarding the provision of prevention and early intervention services, summarily ... or after a child protection hearing ...*

It is also important that there be concentrated public awareness campaigns to educate the public about specific problems faced by stepchildren and stepfamilies, and legal and non-legal responses to these problems. To this end, we recommend that stakeholders maximise media coverage wherever possible. In addition, publication and distribution of accessible education materials, such as comic books or short informative pamphlets, by relevant civil society organisations should be a priority.

SUMMARY OF RECOMMENDATIONS

1. PARENTAL RIGHTS AND RESPONSIBILITIES:

- Do not impose automatic rights and responsibilities between stepparents and stepchildren, given the common occurrence of abuse in such relationships.
- Allow stepparents to formally adopt stepchildren with consent from the appropriate biological parent, and allow the courts to dispense with this consent in appropriate circumstances where this would be in the child's best interests.
- Allow stepparents to apply to children's courts for court orders for sole or joint custody, guardianship and access in appropriate cases, with due regard to the rights of both biological parents.
- When a parent and a stepparent are divorcing, give the court power to include orders pertaining to stepparent and stepchild in appropriate cases, with due regard to the rights of the child's other biological parent.

2. MAINTENANCE:

- Consider imposing a duty of maintenance on stepparents who are or were formally married to the biological parent of a child, where the stepparent has treated the stepchild as a child of the family, but make this duty secondary to that of the child's biological parents.
- If such a duty of maintenance is imposed, balance it with a reciprocal duty on the stepchild to maintain elderly or ill stepparents in appropriate cases.
- Make statutory schemes designed to protect dependants consistent in the inclusion of stepchildren who were in fact dependent upon the stepparent, particularly the Motor Vehicle Accident Fund Act 10 of 2007.

3. INHERITANCE:

Although stepchildren cannot inherit from stepparents in the absence of a will, ensure that adequate provision is made for the maintenance of stepchildren who were actually dependent on the deceased from the estate.

5. ABUSE:

Place a legal duty on all persons who have assumed care of a child, including stepparents, to safeguard any child in their care.

6. SERVICES: Relevant stakeholders should

- expand public education and outreach on the vulnerability of stepchildren to domestic violence, sexual abuse and neglect
- publicise relevant laws, services and resources available to assist children suffering mistreatment, abuse or neglect
- expand and develop counselling services and support groups for stepfamilies
- sensitise community workers, counsellors and social workers to the challenges faced by stepfamilies, and particularly by stepchildren.

SUMMARY OF PROPOSED LAW REFORMS

DRAFT CHILD CARE AND PROTECTION BILL

- Permit applications by the custodial biological parent and the stepparent for joint custody of stepchildren, after providing the other biological parent and any other current caregiver with notice and opportunity to be heard.
- Amend the provisions in the Bill dealing with custody, guardianship and access applications, so that the children's court is not limited to hearing such applications in respect of children born outside marriage or children of divorced parents, but could also entertain such applications in respect of the children of married parents if no divorce application was pending.
- Include a provision which imposes a positive statutory duty upon caregivers to guard and protect any child in their care, to complement the existing provision which makes it a criminal offence to abuse or neglect a child in one's care.
- Retain the provisions contained in the draft Bill as it stood at June 2010 on the ability of stepparents to adopt a stepchild jointly with the child's biological parent, and on the circumstances under which a court can dispense with the consent of the other biological parent where this would be in the child's best interest.

DRAFT DIVORCE BILL

In the context of divorces involving stepchildren, make it possible for the court to consider custody, guardianship and access orders covering stepparent and stepchild in appropriate cases, provided that the stepchild's other biological parent is joined to the application.

MAINTENANCE ACT 9 OF 2003

Consider an amendment which would impose a legal duty of maintenance upon stepparents who are or were married to the biological parent of the child, if such a stepparent treats the stepchild as "a child of the family". Make such a duty secondary to that of the biological parents, and impose it only upon application to the court after consideration of specific factors. Include a consequential amendment imposing a reciprocal duty upon stepchildren to maintain elderly or ill stepparents in specified circumstances.

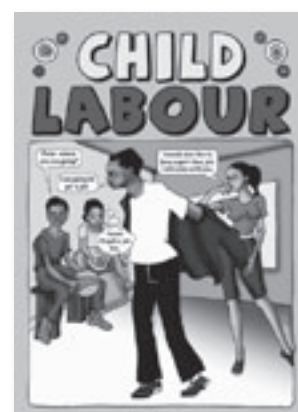
MOTOR VEHICLE ACCIDENT FUND ACT 10 OF 2007

Amend this act to expressly include stepchildren in the definition of "dependants" where the stepchild in question was in fact being maintained by the person involved in a motor vehicle accident.

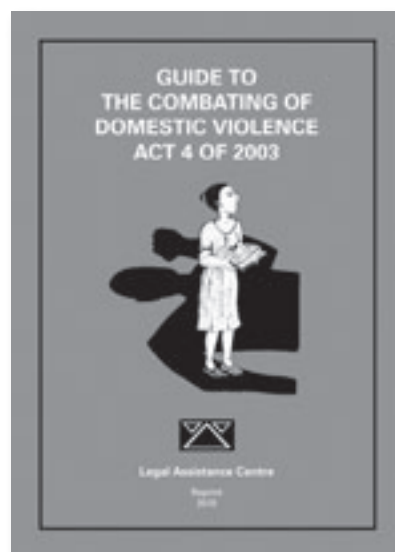
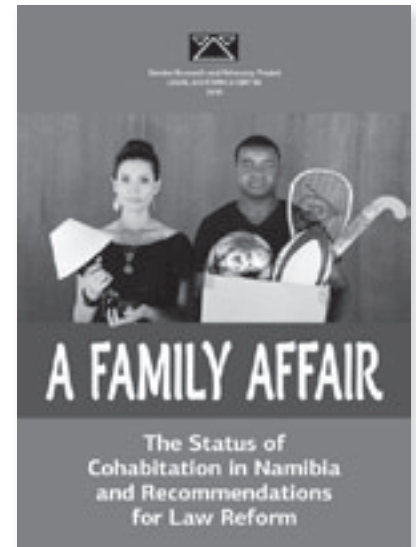
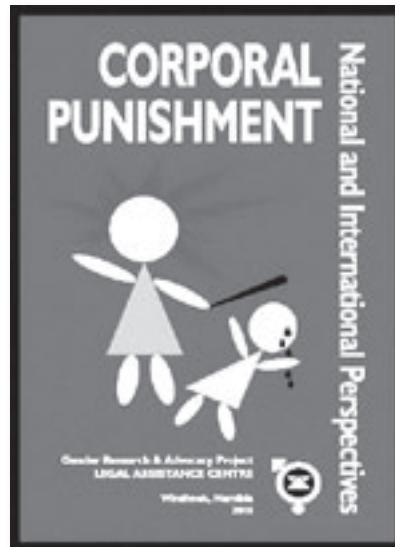
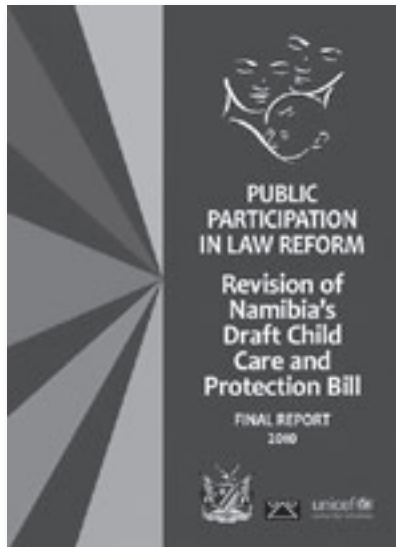
DRAFT INTESTATE SUCCESSION BILL

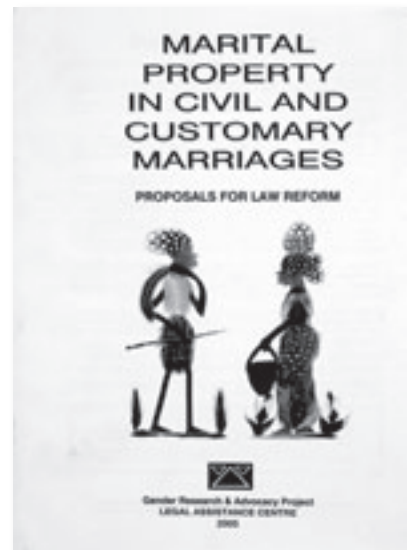
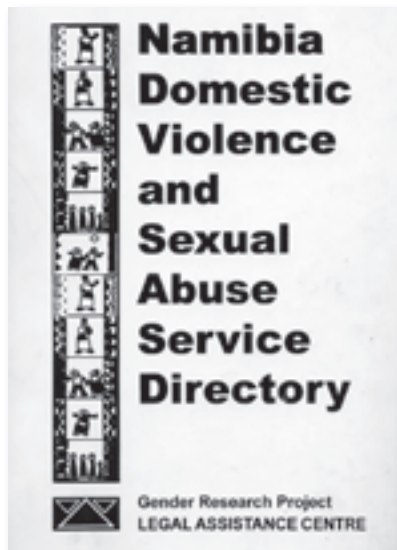
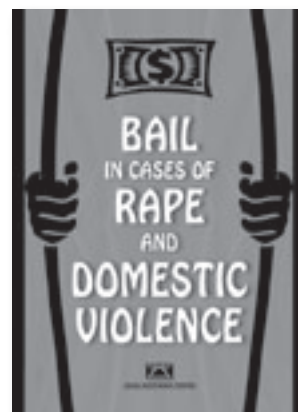
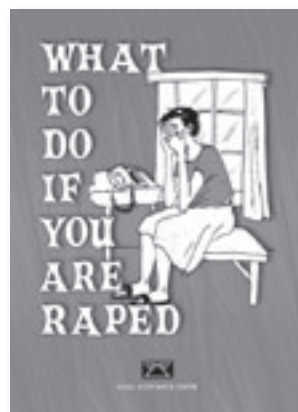
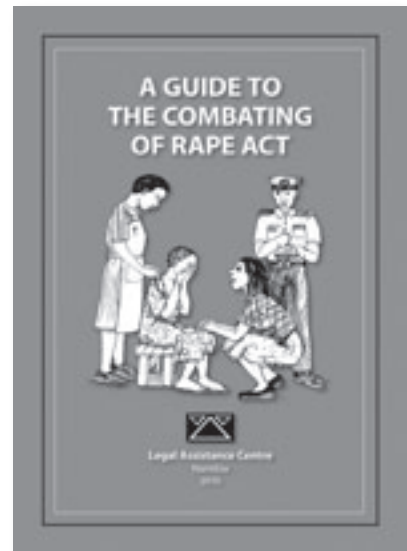
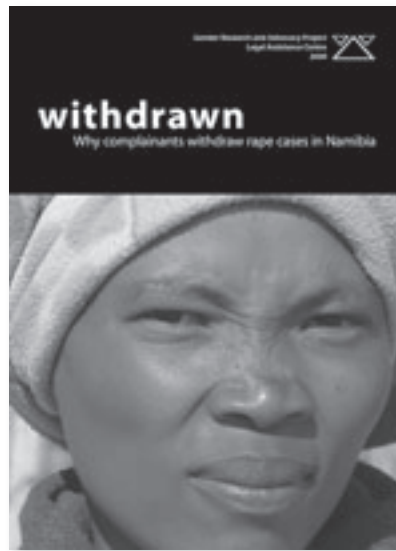
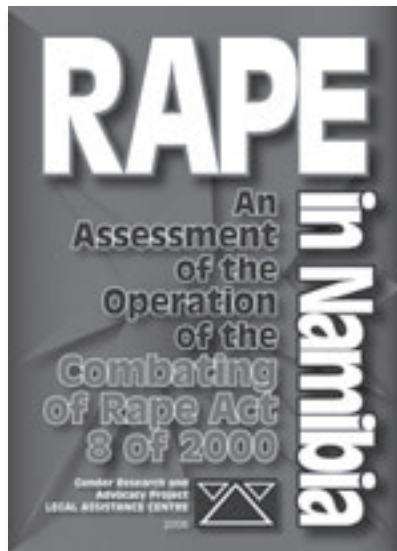
Require that adequate provision for maintenance of all dependants must be made out of the deceased's estate before the residue of the estate is distributed, thereby including any stepchildren who were in fact being maintained by the deceased.

LAC publications on topics of interest to children and parents

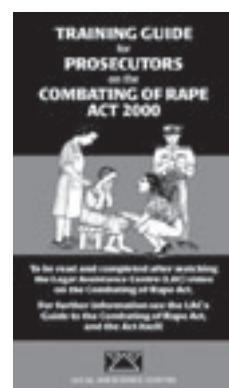


These are just a few of the recent publications produced by the LAC Gender Research and Advocacy Project. Most of the LAC's publications are available on the LAC website (www.lac.org.na). Many are available in Namibian languages other than English.

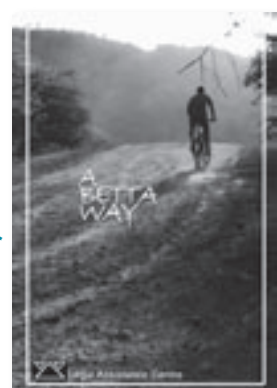




Video (DVD) productions



Video on Corporal Punishment





**Gender
Research and
Advocacy
Project**

**LEGAL
ASSISTANCE
CENTRE**

2011