



REPUBLIC OF NAMIBIA

---

LAW REFORM AND DEVELOPMENT COMMISSION

---

REPORT

on

DOMESTIC VIOLENCE

LRDC 10

Windhoek, Namibia;  
December 2000

ISSN 1026 8405  
ISBN 0-86976-555-8

(i)



**REPUBLIC OF NAMIBIA**

**LAW REFORM AND DEVELOPMENT COMMISSION**

# **REPORT**

**on**

# **DOMESTIC VIOLENCE**

**LRDC 10**

**Windhoek, Namibia;  
December 2000**

**ISSN 1026 8405  
ISBN 0-86976-555-8**

**PUBLICATIONS OF LRDC:**

**ANNUAL REPORTS (ISSN 1026-8391)\***

First Annual Report – 1992 (ISBN 0-86976-382-2)\*

Second Annual Report – 1993 (ISBN 0-86976-383-0)\*

**OTHER PUBLICATIONS (ISSN 1026-8405)\***

LRDC 1\* Aspects of Family Law: The Abolition of Marital Power and Equalization of Rights between Spouses (ISBN 0-86976-384-9)\*

LRDC 2 The Ascertainment of Customary Law and the Methodological Aspects of Research into Customary Law: Proceedings of Workshop, February/ March 1995 (ISBN 0-86976-385-7)

LRDC 3 T.W. Bennett, Customary Law and the Constitution (ISBN 0-86976-397-0)

LRDC 4 Report on the Law pertaining to Rape (ISBN 0-86976-406-3)

LRDC 5 Report on Maintenance (ISBN 0-86976-407-1)

LRDC 6 Report on Small Claims Courts (ISBN 0-86976-412-8)

LRDC 7 Violence against and Abuse of Women and Children Project:  
Formal Addresses made at the National Hearing-May 1997 (ISBN 0-86976-489-6)

LRDC 8 Violence against and Abuse of Women and Children Project: Verbatim  
Discussions held at the National Hearing-May 1997 (ISBN 0-86976-490-X)

LRDC 9 Domestic Violence Cases reported to the Namibian Police - Case Characteristics  
and Police Responses (ISBN 0-86976-516-7)

LRDC 10 Report on Domestic Violence (ISBN 0-86976-555-8)

\*Number of publication and ISSN and ISBN numbers not printed on all copies.

(iii)

**LAW REFORM AND DEVELOPMENT COMMISSION OF NAMIBIA**

**THE HONOURABLE MINISTER OF JUSTICE, DR E N TJIRIANGE**

I have the honour to submit to you in terms of section 9(1) of the Law Reform and Development Commission Act, 1991 (Act 29 of 1991) the Commission's Report on Domestic Violence.

**MR U D NUJOMA**  
**CHAIRPERSON**  
**2000-12-21**

**LAW REFORM AND DEVELOPMENT COMMISSION OF NAMIBIA**

The LRDC was established by the Law Reform and Development Commission Act, 1991 (Act 29 of 1991).

The members of the LRDC (on 1 December 2000) are:

Mr U D Nujoma (Chairperson - Full-time)  
Adv B Gawanas (Ombudswoman of Namibia)  
Mr A Vaatz  
Adv D Sauls  
Mr G Mutwa  
Mr G N Ndauendapo  
(There are two vacancies)

Secretary: Mr W J Potgieter

The Secretariat of the Commission (Directorate Law Reform) is housed in the Ministry of Justice, Justitia Building, Independence Avenue, Windhoek.

All correspondence to the Commission should be addressed to:

The Secretary  
Law Reform and Development Commission  
Private Bag 13302  
WINDHOEK  
Republic of Namibia

Fax: (+264-61) 240064  
Tel: (+264-61) 280-5111  
E-mail: [lawreform@moj.gov.na](mailto:lawreform@moj.gov.na)

*This publication of the Law Reform and Development Commission is issued with the technical and financial assistance of the Legal Capacity Building Programme, implemented jointly by the Ministry of Justice of Namibia and the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) mbH as implementing agency for technical co-operation of the German Federal Ministry of Economic Co-operation and Development (BMZ).*

**CONTENTS**

	<b>Page</b>
1. Form of Report .....	1
2. International and Constitutional Obligations .....	1
3. LRDC's Violence against and Abuse of Women Project : Background; Process; .....	1
Other Reports/Issues :   Law pertaining to Rape.....	2
Vulnerable Witnesses.....	2
Maintenance.....	2
4. Material and Publications.....	3
5. Conferences, Seminars, Workshops, Visits.....	4
6. Present Law and Need for Reform.....	5
7. Summary of Contents of Bill.....	5
8. Preparation before Implementation.....	7
8.1    Law; Services; Education.....	7
8.2    Need for proper preparation before implementation.....	7
8.3    Training.....	7
8.4    Specialization.....	7
8.5    Sufficient staff.....	7
8.6    Guidelines; Manuals.....	8
8.7    Social Services; Medical Facilities; Forensic Skills.....	8
8.8    Shelters.....	8
8.9    Victims' Advocates & Counseling and Treatment Programs.....	8
8.10   Diversion.....	8
9. Prevention of Violence.....	8
9.2    Violence in General.....	8
9.3    Life skills Programmes & Public Awareness.....	9
9.4    Misuse of Alcohol and Drugs.....	9
10. Monitoring & Statistics.....	9
11. Key Definitions : Contrary Views.....	9
12. Further consultations.....	10
13. Summary of Recommendations.....	10
ANNEXURE A: Explanatory Memorandum on Draft Domestic Violence Bill	
ANNEXURE B: Draft Domestic Violence Bill	

## **1. Form of Report**

- 1.1 This Report of the Law Reform and Development Commission (hereinafter referred to as the LRDC) deals with one of the most crucial aspects that was identified as in need of reform during a comprehensive process on the broader issue of violence against and abuse of women and children. This Report is for this reason, as well as for other reasons that will be evident from the contents below, different in form from what a report of the LRDC would normally be.
- 1.2 Various other documents that have already been published, and that are mentioned in paragraph 4 below, form a background to this Report. This Report itself will therefore be in various respects very brief; the issue of domestic violence as such, the need for reform, different aspects of the issue and possible remedies, etc. will only be mentioned very briefly. In particular this Report should be read together with the report prepared by the Legal Assistance Centre for the LRDC (hereinafter referred to as the "LAC's Report") which is mentioned in paragraph 4.3.8 below.
- 1.3 The draft Domestic Violence Bill recommended by the LRDC forms Annexure B hereto and Annexure A is a comprehensive Explanatory Memorandum of this draft bill.

## **2. International and Constitutional Obligations**

- 2.1 Other documents, in particular the said LAC's Report, deal more extensively with the relevant Articles of the Namibian Constitution as well as Namibia's international obligations as far as women and children in general and violence against women and children in particular are concerned.
- 2.2 This Report will merely refer to the Addendum to the 1997 Declaration on Gender and Development of the Southern African Development Community (SADC) which places high responsibilities on Namibia to do its part in this regard.
- 2.3 The LRDC would however like to reiterate what the Honourable Minister of Justice said on the occasion of the Second Reading debate on the Combating of Rape Bill in the National Assembly, namely ".....I believe that we should not approach these issues from a perspective that we are forced to do certain things or that we are obliged to stay in line with the rest of the world, but rather that we want to do as much as possible to improve the lives of the people we are representing.....".

## **3. LRDC's Violence against and Abuse of Women and Children Project : Background; Process; Other Reports/Issues**

- 3.1 The widespread and high incidence of violence against and abuse of women and children has prompted community organizations and concerned citizens to petition the Government calling for law reform and enhanced social services. Consequently the Law Reform and Development Commission, with the concurrence of the Honourable Minister of Justice, embarked since +- July 1996 on a comprehensive Project on Violence against and Abuse of Women and Children. The LRDC's Women and Law Committee was tasked with this project. The aims of the project were to identify the violation of the human rights of women and children, to identify the underlying causes thereof and to identify the measures to be taken for the prevention, protection and promotion of the said rights.

- 3.2.1 One part of this project was to commission some **social science research** (see paragraphs 4.3.1 and 4.3.2 below) as well as to obtain factual information by means of a **police survey** (see paragraph 4.3.3 below).
- 3.2.2 Some brief documents were prepared for the LRDC by legal experts identifying the need for law reform.
- 3.2.3 The LRDC further embarked on a very comprehensive consultation process with all the stakeholders and with the general public. **Workshops** in the regions, with the assistance of the Namibia National Women's Organization (NANAWO), to mobilize the community's input were held during the latter part of 1996. This was followed by **regional hearings** through Hearing Committees of the LRDC at various key towns in the regions as well as in Windhoek. Thereupon **national hearings** in Windhoek followed (see paragraphs 4.3.4 and 4.3.5 below).
- 3.3.1 It must be pointed out that although the **law pertaining to rape** obviously should be seen as part of this Violence project it was, for various practical purposes, to some extent dealt with separately. The LRDC's Report on the Law pertaining to Rape was therefore published in July 1997 (see paragraph 4.3.6 below) and it culminated in the Combating of Rape Act, 2000 (Act 8 of 2000) and the Combating of Immoral Practices Amendment Act, 2000 (Act 7 of 2000) which came into operation on 15 June 2000.
- 3.3.2 Another issue that was identified as being in need of urgent new legislation was the issue of **vulnerable witnesses**. The LRDC had such a sub-project, and also commissioned the Legal Assistance Centre for a discussion document which was published in November 1998 (see paragraph 4.3.9 below), but some clauses in this regard were then directly incorporated in the Combating of Rape Bill as introduced in Parliament. During the Parliamentary processes and the involvement of the Standing Committee on Human Resources further proposals were made on this issue and the Honourable Minister of Justice then in February 2000 decided to take this issue out of that bill and to deal with it in a separate bill which he must still (re-) introduce.
- 3.3.3 The third issue that was identified in need of urgent new legislation was the issue of domestic violence that is being dealt with in this report.
- 3.3.4 The LRDC also published its Report on Maintenance in September 1997 (see paragraph 4.3.7). This did not form part of the Violence Project but the issue of **maintenance** is of course also very much related to the broader issue.
- 3.4.1 During May 1998 the LRDC commissioned the Legal Assistance Centre to prepare a document outlining proposals for law reform in the area of domestic violence. This document was produced in September 1998 (i.e. the "LAC's Report" referred to above and see paragraph 4.3.8 below).
- 3.4.2 It was in May 1999 decided to put the issues that were at that stage being dealt with by the Women and Law Committee under new separate project committees of the LRDC. As far as Domestic Violence was concerned, this was however entrusted to an internal committee of the LRDC consisting of two of its staff members, Mr H L Awaseb and Mr B F Bankie, together with the co-author of the LAC's Report, Ms Dianne Hubbard. The LRDC would like to put on record its appreciation for Ms Hubbard's continuous input. The LRDC would also like to acknowledge the role of the Women and Law Committee, and in particular that of its Chairperson, Adv V Erenstein Ya Toivo. Ms



Retha van Zyl, a member of the WLC, also still assisted the LRDC during the final stages of this project. The LRDC would further like to acknowledge the input of Ms R Falkenberg; she made a survey of the prosecution of sexual offences and cases in 1998 and she became a GTZ legal adviser to the LRDC in April 2000.

- 3.5 The delay in the finalization of this Report has often been criticized by various stakeholders. The LRDC would indeed have liked to have this Report ready earlier, but it must be borne in mind that the LRDC is dependent on the availability of its staff who are involved in numerous other matters and who are often not available to concentrate solely on issues like this. During the final stages new members were appointed on the LRDC who had to acquaint themselves with the issues in a very short period.
- 3.6 The bulk of the work by the LRDC was sponsored through the GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit mbH) as implementing agency for technical co-operation of the German Federal Ministry of Economic Co-operation and Development. In respect of some of the work for this project contributions were however also made by other donor agencies – see the publications under paragraph 4.3.3, 4.3.8 and 4.3.9 below.

#### 4. Material and Publications:

- 4.1 The LRDC (and the LAC for the purposes of the LAC's Report) had the benefit of material on domestic violence issues from law reform institutions from all over the world. The list of publications in paragraph 4.3 below is merely a list of publications of the LRDC itself or in respect of which the LRDC had a special interest. As such, it does not include various publications by other stakeholders in Namibia, some of which are of the utmost importance for the ongoing broader process to combat domestic violence. (The Namibia Domestic Violence and Sexual Abuse Service Directory of the Legal Assistance Centre, first published in September 1999, for example provides *inter alia* a comprehensive list of bodies, organizations, etc. involved in issues in this regard.)
- 4.2 The LRDC also wants to put on record the fact that through the work of the Multi-Media Campaign on Violence against Women and Children a continuous flow of information regarding the debates on domestic violence issues, from all over the world, reached the LRDC.

#### 4.3 List of Publications:

- 4.3.1 Violence against Women and Children – Community Attitudes and Practices (Heike Becker and Pamela Claassen).
- 4.3.2 The Nature, Extent and Causes of Domestic Violence against Women and Children in Namibia (Debie le Beau);

(See paragraph 3.2.1 above. At the time of the finalization of this Report further steps were being taken to publish these two reports.)

- 4.3.3 Domestic Violence Cases reported to the Namibian Police – Case Characteristics and Police Response by Dianne Hubbard; Gender Research and Advocacy Project; Legal Assistance Centre; November 1999 (LRDC 9).

- 4.3.4 Violence against and Abuse of Women and Children Project : **Formal Addresses** made at the National Hearing (B F Bankie/A Odendaal/T Thatcher (eds.); April 1999 (LRDC 7).
- 4.3.5 Violence against and Abuse of Women and Children Project : **Verbatim Discussions** made at the National Hearing (B F Bankie/A Odendaal/T Thatcher (eds.); April 1999 (LRDC 8).
- 4.3.6 Report on the Law pertaining to Rape; July 1997 (LRDC 4).
- 4.3.7 Report on Maintenance; September 1997 (LRDC 5).
- 4.3.8 Domestic Violence : Proposals for Law Reform; Dianne Hubbard and Daina Wise; Legal Assistance Centre; September 1998.
- 4.3.9 Children in Court : Protecting Vulnerable Witnesses; Legal Assistance Centre; November 1998.

## 5. Conferences; Seminars; Workshops; Visits

- 5.1 During the last few years various members of the LRDC as well as staff members of the LRDC attended conferences, seminars and workshop on domestic violence or related subjects, not only in Namibia, but also at regional and international levels within Southern Africa and beyond. During visits to other countries and their law reform institutions, the issue of domestic violence was invariably on the agenda for discussion and experiences were shared with each other. The LRDC also had several visits from other persons in the world with a special interest in these issues. Some of the LRDC members as well as some of the staff members also attended some of the general conferences, etc. on women issues where the issue of violence of course always received special attention.
- 5.2 The following conferences etc. should be mentioned: (This list is however not exhaustive, in particular not as far as conferences, etc. in Namibia are concerned.)
  - 5.2.1 Chairperson of the LRDC, Mr Nujoma – Durban, South Africa : SADC Conference on the Elimination of Violence against Women and Children (5 – 8 March 1998). (A member of the LRDC, Ms D Sauls, attended the follow-up Conference in Maseru, Lesotho while this report was being finalized (11 – 15 December 2000).)
  - 5.2.2 Chairperson of the LRDC, Mr Nujoma – Vienna, Austria : Judicial colloquium on the application of international human rights law at the domestic level (27 – 29 October 1999 (Mr Nujoma regularly attended conferences, etc. on human rights issues in general; this one is however specifically mentioned as it was held to commemorate the 20<sup>th</sup> anniversary of the adoption of the Convention on the Elimination of All Forms of Discrimination against Women and the 10<sup>th</sup> anniversary of the adoption of the Convention on the Rights of the Child.)
  - 5.2.3 Chairperson of the LRDC, Mr Nujoma – Harare, Zimbabwe: Child and Law Project of Training and Support Centre : Women and Children : Promotion of Rights and Prevention of Abuse; The Judiciary's Leading Role (16-18 August 1999)
  - 5.2.4 Mr H L Awaseb (Deputy Chief: Directorate Law Reform) - Belfast, Ireland: British Council International Seminar: Into the mainstream; contemporary perspective on

domestic violence (12 – 17 September 1999). (Mr Awaseb further attended an International Conference, “Violence in the Family – plan of action for the 21<sup>st</sup> century”, in Nicosia, Cyprus while this report was being finalized (26 –30 November 2000.)

- 5.2.5 The Secretary of the LRDC, Mr W J Potgieter, and Ms R Falkenberg of the GTZ, legal adviser to the LRDC, visited Pretoria during August 2000 and had discussions with various persons who are involved in the implementation of the Republic of South Africa’s Domestic Violence Act (No. 116 of 1998).
- 5.2.6 Expert Working Group Meeting; organized by the LAC for discussion of LAC’s Report; 11 February 1999 (The LAC organized another workshop, “Lessons from South Africa” on 21 September 2000.)
- 5.2.7 Dissemination Seminar on Domestic Violence Research Projects – Windhoek (2 June 1999). (This workshop was organized by the Ministry of Health and Social Services. The World Health Organization is undertaking an international research project on domestic violence in six countries worldwide. Namibia is included.)

## **6. Present Law and Need for Reform:**

- 6.1 At present there is no law in Namibia aimed specifically at domestic violence. In a nutshell, a person experiencing domestic violence has the following legal options under the general law: - i.e. apart from seeking a divorce to end the relationship. The victim:
  - can lay an appropriate criminal charge, e.g. like assault;
  - can obtain an interdict from the High Court;
  - can obtain a peace order from a magistrate in terms of (the still unrepealed) section 370 of the Criminal Procedure Ordinance, 1963 (Ordinance 34 of 1963);
  - can bring a civil action against the abuser for damages.
- 6.2 These remedies have however been proven ineffective in adequately addressing the problem of domestic violence. Problems are being experienced as a result of the withdrawal of charges by the victims. The situation necessitates that lawmakers should look for a broader set of remedies, including protection orders, that extend the mere criminal sanctioning of the perpetrators of violence.

## **7. Summary of contents of draft bill**

- 7.1 1 For a full understanding of the draft bill recommended by the LRDC (Annexure B) it will be necessary to study the draft bill itself as well as the Explanatory Memorandum (Annexure A) and for a perspective of the various possibilities it is suggested that some of the other background documents mentioned above be studied.

7.2 The following is merely a summary of the provisions of the draft bill in a nutshell:

- 7.2.1 The draft bill introduces protection orders, to be granted by the courts, as a readily available and simple mechanism for a complainant to do something about violence from which she or he is suffering in a domestic relationship. Other persons may apply on behalf of the victim; in the case of minors and other vulnerable persons even without his or her consent. The process is kept as simple as possible and care is taken to avoid making matters even worse for the complainant. The court will first only grant an interim protection order for which the perpetrator’s presence is not imperative. It is then served on the respondent by the State and it can in due course be



confirmed as a final order. The possible terms of such orders are prescribed in the draft bill and are very open and wide so as to be adjusted to the circumstances of any particular case. The State will serve these orders on the alleged abuser.

- 7.2.2 A breach of such a protection order is an offence. This, together with powers of arrest without a warrant to the police under defined circumstances, affords the opportunity to a victim to get quick action via the police whenever the alleged abuser again oversteps his or her limits. This serves as the proverbial sword over the head of the abuser to hopefully persuade him or her to refrain from continuing with his or her unwanted behaviour.
- 7.2.3 Otherwise the draft bill does not propose a specific offence of domestic violence. It however lists certain offences to be domestic violence offences, if such offences are committed against a person with whom the perpetrator has a domestic relationship. Such listing is done for specific purposes, namely other persons than the victim can lay a charge; the police get specific defined powers, and responsibilities, of arrest without a warrant; the option of diversion is provided; it provides for the rights of victims and the involvement of victims in bail matters, in the case itself and in sentencing.
- 7.2.4 The draft bill provides for specific conditions of bail in domestic violence cases. It provides for priority to be given for domestic violence cases.
- 7.2.5 The draft bill prescribes various responsibilities and duties of the police. These responsibilities are generally aimed at ensuring that victims of domestic violence are not neglected and that they get the necessary protection as well as responses and that they are properly informed of what remedies are available to them.
- 7.2.6 The draft bill provides that courts will be closed during the hearing of domestic violence matters and that the privacy of the suffering parties will be protected. It also deals with certain evidentiary issues, e.g. testimony of a psychological nature.
- 7.2.7 It provides for victims advocate programmes and for counselling and treatment programmes. It provides for proper records, for control and statistical purposes, to be kept.
- 7.2.8 A very important feature of the draft bill is the broadening of the definition of "domestic violence" to also include sexual, economical, emotional, verbal or psychological abuse and intimidation and harassment and the broadening of the definition of "domestic relationship" to include various other relationships than the normal marriage relationships. (See also paragraph 11.)
- 7.2.9 The bill is gender neutral. Men are also suffering from domestic violence, in particular such violence according to the broader definition thereof as provided for in the draft bill, and should therefore have the same protection and remedies. If such gender neutrality is not provided for it could simply be seen as support for the wrong perception that men don't need any protection because they can always resort to physical violence.
- 7.2.10 The LRDC does not recommend more criminalization, e.g. to create a specific offence of domestic violence or other offences in this regard. It seems that any such recommendations would, if the issue is seen in its total perspective, have more disadvantages than advantages. Whereas it is imperative that a loud and clear message

should be spread that the authorities will not turn their backs on domestic violence, it is also important that the emphasis should be on the improvement of family life and not to destroy it.

## 8. Preparation before Implementation

8.1.1 Basically the LRDC found under its broader Violence Project that all the recommendations made to the LRDC for an improvement of the situation of violence to women and children (see e.g. the publications of the National Hearings referred to in paragraph 4.3.4 and 4.3.5 above) can be put into three categories, namely –

- changes to the substantive **law**;
- new and/or improved **services** by the Government (This includes improved administration (including training) and it also includes support by the Government to services rendered by non-governmental organizations. Changes to the law or new legislation may also be needed to accommodate some of these suggestions);
- **education** and public awareness.

8.1.2 It seems that there may be a tendency to expect too much from changes to the law. Such changes only form a part of the solution and all the other matters must also be addressed.

8.2 Throughout the process of the preparation of the draft bill it has become abundantly clear to the LRDC that much harm can be done if a domestic violence law is placed on the statute book but then the authorities (i.e. the Government and all its functionaries) cannot handle it properly. A Domestic Violence Bill should therefore not be too idealistic, but should thoroughly keep certain realities in mind. It has also been emphasized by specialists in other countries that **proper preparation before implementation** is imperative. The LRDC has therefore in the clause of the draft bill providing for the date of coming into operation of the new legislation (clause 44) provided that such a date shall only be determined by various Ministers in consultation with each other.

8.3 Proper **training** for all persons who have to apply domestic violence legislation is of utmost importance. Such training must therefore be given to police officers, to prosecutors, to magistrates and also to the clerks at the magistrates' offices. Training of clerks seems to be often overlooked and neglected, yet they are often indeed the first point of contact for women who seek assistance. It must also be mentioned that once domestic violence legislation is in place, it will happen that people will try to misuse it, even if inadvertently, for purposes in respect of which other remedies and laws are available. Only good training can prevent that. It seems that the GTZ will be prepared to support professional training in this regard.

8.4 **Specialization** is necessary. Although it is realized that in a country like Namibia there are severe limitations to adequate specialization, the Government should try very hard to ensure that the necessary expertise is developed. Apart from the already existing Women and Child Abuse Centres of the Namibian Police, special components in the Office of the Prosecutor-General, etc. should be considered.

8.5 It is often not realized enough that the work involved in the handling of domestic violence is of a very sensitive nature and as such requires more time. Overworked

persons cannot be expected to deal properly with domestic violence matters and therefore the plea for **sufficient** police and court **staff** should be heard.

- 8.6 The LRDC has not specifically provided in the bill for the development of proper **guidelines, manuals**, etc. – and with Parliamentary scrutiny thereof (as e.g. the RSA Domestic Violence Act). This does not mean that the LRDC regards it as not of importance – it is of course an absolute inseparable part of training, but it can be dealt with like any other administrative guidelines for those involved in the administration of justice. Support in this regard can also be required from the GTZ.
- 8.7 The combating of domestic violence necessitates good **social services**. It also necessitates proper **medical facilities** and even good **forensic skills** and facilities. Without that the courts cannot do their part properly.
- 8.8 The availability of **shelters** (or safe houses, places of safety) for battered women and children to serve as a temporary home is indeed indispensable. The LRDC experienced a general willingness of the community to get involved in the establishment of such shelters and it seems that there are significant advantages if such services are rather provided by the community than by the State. Communities should therefore be encouraged to render these services and should get as much as possible support from the Government. It seems that the Ministry of Health and Social Services is reviewing its policies on issues concerning welfare organizations and the LRDC trusts that financial assistance from the State to “self-help” schemes, also as far as shelters are concerned, will materialize.
- 8.9 The recommended draft bill not only contains the ordinary responsibilities with regard to policing and the handling of court cases, but also unique responsibilities in the form of **victims’ advocates programmes and counselling and treatment programmes** – the first-mentioned to be handled by a Ministry or government body still to be determined and the latter to be handled by the Ministry of Health and Social Services. If they can however not implement it, because of a lack of the necessary financial and human resources, those provisions should not stay part of the bill – or at least should not be put into operation until they can indeed cope with it.
- 8.10 This applies also to the issue of **diversion**. It must be very practical. The LRDC further wants to point out that if the principle is accepted, it may be necessary to look further at the detail of the provisions in this regard as there are many options available, e.g. with regard to when diversion should commence.
- 8.11 It is interesting to note from the experience of other countries that it seems that the more proper legislation and other support structures get into place, the more the broader public are prepared to get involved.

## 9. **Prevention of Violence**

9.1 As a general policy the emphasis should be on the prevention of violence. Providing remedies to battered women, as recommended in the draft bill, is in the first instance a preventative measure. It seems that where similar legislation was adopted, the general message to the people that the Government is indeed prepared to step in when and where necessary already played a significant part in the combating of domestic violence.

9.2 **Violence in general** is of course a far bigger problem than merely the issue of domestic violence. It is a fact that with modern technology, like television and the Internet,



becoming accessible to more and more people, they are exposed to all kinds of violence on an unprecedented scale. During the public hearings referred to above the LRDC also received representations, in particular from religious denominations, that the Government should give special attention to more control in this regard. The LRDC of course agrees that prevention of violence against women and children necessitates a broader approach to all the relevant issues. The LRDC has a separate Project on Publications in which some of these issues will be addressed.

9.3 If the present generation cannot achieve the ideal situation, there should at least be continuous efforts to make life better for the next generation. There can be no doubt that **life skills programmes** at school have become a necessity rather than a dream. Such programmes are of course primarily the responsibility of the Ministry of Basic Education, Sport and Culture, but as far as the development of material on a matter like violence against women and children is concerned, it will of course necessitate co-operation with the Ministry of Justice and the establishment of inter-ministerial structures. There are indications that donor funding for such programmes could be available, e.g. from the GTZ. In the long run every cent spent on life skills programmes will render valuable returns. Apart from the obvious reasons it should be borne in mind that the Namibian society has undergone tremendous changes during the past few years and it is still an ongoing process. The pressure on ordinary citizens to adjust to new roles in society is enormous – and they need help to deal with it. The LRDC will not blame the violence against women that is nowadays experienced on the new more equal roles that men are expected to play, but it seems that it often does have negative effects. To change the society's attitude of apathy towards domestic violence will necessitate pro-active efforts. Fortunately a lot has already been done and a lot has already been achieved in the field of **public awareness**. A unique new development is the initiatives taken by men that e.g. lead to the establishment of men's organizations and the national conference "Men against Violence against Women" on 23 February 2000.

9.4 Throughout the public hearings and the process up till now, it has always been emphasized to the LRDC that the **misuse of alcohol and drugs** is the major contributing factor to domestic violence. A considerable part of our people live in constant fear of weekend evenings, not to mention the horrible times they have at Easter, Christmas, New Year, etc. – the joy of others have become their nightmares. The LRDC unfortunately has no easy solution to this problem and have not addressed any possibilities as far as improved legislation to combat the misuse of drugs and alcohol is concerned.

#### 10. Monitoring & Statistics

It is imperative that steps be taken for the proper monitoring of the state of domestic violence in Namibia and the success of various steps to combat it. The draft bill therefore contains a clause, namely clause 39, regarding the keeping of proper records and statistics. This is merely a modest attempt to ensure a formal contribution from the law enforcement agencies, but it is of course advisable that all stakeholders give this aspect the necessary attention so that the special efforts taken during the last few years by these other stakeholders and the LRDC will not be necessary anymore as there would be a continuous flow of information available.

#### 11. Key Definitions : Contrary Views

The draft bill contains two definitions of a very unique nature, namely that of "domestic violence" and that of "domestic relationships". These definitions are of absolute crucial interest to almost all the clauses of the bill. These definitions go far beyond what would

normally be understood under those words in their ordinary use. "Domestic violence" for instance covers, apart from "physical violence" such manifestations as "economic violence", "emotional violence", etc. and "domestic relationships" cover such situations as past relationships, relationships between not so close family and romantic relationships. The LRDC wants to point out that there are indeed considerable differences of opinions on whether these definitions should be as wide as contained in the draft bill. It has been criticized as being too sophisticated and unnecessarily broad and which could lead to the use thereof for purposes that is not at all intended. Such controversy can indeed be expected throughout the further legislative process. It has however emerged that in practice in other countries it has been proved to be necessary to have such wide definitions and cases occurred where as a result of such wide definitions victims could get the remedies that they deserved.

## **12. Further consultations**

The LRDC received, as explained above, a very broad input from various stakeholders, including e.g. members of the Namibian Police, prosecutors and magistrates throughout the duration of the project. It was decided not to try to get the official comments from those ministries, offices, etc. on the LRDC's final recommendations as contained in this report. Such a further round of consultations can obviously be better conducted by the Ministry of Justice once the LRDC has submitted this report.

## **13. Summary of Recommendations**

- 13.1 The LRDC recommends the draft bill as in Annexure B.
- 13.2 The LRDC further recommends that each and every aspect raised in paragraph 8 above (Preparation before Implementation) be thoroughly addressed in a co-ordinated way –
  - 13.2.1 firstly, to ensure that the final bill that is to be adopted is a true reflection of what can realistically be achieved as far as human and financial resources are concerned;
  - 13.2.2 secondly, to ensure that the necessary preparatory steps are taken by all Ministries/Offices to facilitate a smooth implementation of the new legislation.
  - 13.2.3 The LRDC recommends that every possible contribution towards the elimination of domestic violence be still further pursued; the LRDC would however in particular like to emphasize the need for the implementation of life skills programmes in schools with special attention to domestic violence (see paragraph 9.3 above).

**Annex A "Explanatory Memorandum on Draft Domestic Violence Bill" – *separate document***  
**Annex B "Draft Domestic Violence Bill" – *separate document***