

DOMESTIC VIOLENCE AND MAINTENANCE: TWO BIG PROBLEMS AND TWO NEW LAWS

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No law by itself will solve a problem but laws are necessary instruments for people to solve the problems around them.

Hon Nandi-Ndaitwah, Minister of Women Affairs and Child Welfare
Debate on Combating of Domestic Violence Act

Gender equality is one of the world's most important, and most neglected, human rights. In 2003, Namibia enacted two important pieces of legislation which should advance the rights of women and children significantly – the Combating of Domestic Violence Act and the Maintenance Act.

The **Combating of Domestic Violence Act** came into force on 17 November 2003. This law adopts a broad definition of domestic violence which include physical abuse, sexual abuse, economic abuse, intimidation, harassment and serious emotional, verbal or psychological abuse. It applies to all domestic relationships, which include husband-wife, parent-child, boyfriend-girlfriend and cohabitating couples.

The new law gives several options to those suffering from domestic abuse. One avenue is to apply for a protection order in a magistrate's court. This is a court order which can prohibit the perpetrator from engaging in further threats or violence. The order can place restrictions on contact with the victim. If there is physical violence, it can even order the abuser to vacate the shared household. The victims of violence will no longer have to be the ones who run away.

The process for obtaining a protection order is a quick and simple one, and it is a crime to violate such an order. As the Law Reform and Development Commission stated, it is meant to serve "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."

Another option is to lay a criminal charge. The act does not create any new crimes, but crimes of violence which take place in domestic relationships will be classified as "domestic violence offences". Special procedures will apply to these offences to ensure that the victim has a chance to give input on bail and sentencing, and there are prohibitions on reporting names in the press to protect family privacy. If the

victim is unwilling to lay a charge despite the more sensitive approach of the new law, the police will have the power to give the abuser a formal warning which will be placed on file for future reference.

The new law also calls for police directives which will give police specific duties in respect of domestic violence. Never again should victims of domestic violence be turned away on the grounds that such violence is a “private matter”. Police must provide appropriate protection and practical help, such as assistance with access to shelters or medical treatment. No law can prevent domestic violence, but this new law should at least give new avenues of assistance to women, men and children who are being injured by those who supposedly love them best.

The Ugly Face of Domestic Violence

Violence against intimate partners occurs in all countries, all cultures and at every level of society without exception, although some populations are at greater risk of violence by an intimate partner than others...

Although women can be violent towards their male partners and violence occurs also between partners of the same sex, the overwhelming burden of partner violence is borne by women at the hands of men. Ten to seventy per cent of women reported being physically assaulted by an intimate male partner at some point in their lives.

Around the world the events that trigger violence in abusive relationships are remarkably consistent. They include disobeying or arguing with the man, questioning him about money, not having food ready in time, not caring adequately for the children or the home, refusing to have sex and the man suspecting the woman of infidelity.

Women are often stuck in these bad relationships as a result of low income and poverty.

Women are particularly vulnerable to abuse by their partners in societies where there are marked inequalities between men and women, rigid gender roles, cultural norms that support a man's right to sex regardless of a woman's feelings and weak sanctions against such behaviour.

These factors may make it difficult for the woman to leave an abusive relationship. Leaving an abusive relationship does not guarantee safety. Violence can sometimes continue and may end up in the murder of a woman.

Hon Amathila, Minister of Health and Social Services
Debate on Combating of Domestic Violence Act

The new **Maintenance Act** also came into force on 17 November this year. The basic principle of child maintenance has always been that both parents should contribute

to the maintenance of their children in accordance with their means. This simple equation has never worked very well in Namibia – but the new law should help.

For one thing, the new law will make sure that all children are treated equally. It says that all children are entitled to a fair share of their parents' resources, regardless of their order of birth -- and the same principles will apply to all children, regardless of whether they were born inside or outside of marriage and regardless of what customary law applies.

An innovation is that a share of pregnancy and birth-related expenses can now be included as part of a maintenance claim, meaning that mothers and fathers are expected to share responsibility for the child right from the very point of conception.

Another innovation is a provision which makes it possible for primary caretakers - - persons other than parents who take primary responsibility for the daily care of a child – to approach the maintenance court for help with getting payments from one or both parents directly.

The new law will operate more efficiently. Those “deadbeat dads” who ignore the summons to come to court will find that maintenance orders can now be made in their absence.

The introduction of maintenance investigators will make it harder for people to hide themselves or their income. This should help stamp out abuse of the maintenance courts by dishonest parents on either side of the case.

Where someone does not have a cash income to use for maintenance, the new law allows for payment in kind – such as maintenance in the form of cattle. This should help to make the law workable for rural families as well as urban ones.

Another new provision will make it possible for maintenance payments to go directly into bank accounts instead of being collected in person at the court – a simple, practical improvement which will save parents time and money.

The new law also offers better enforcement mechanisms. Where a parent defaults on maintenance payments, it will be possible to utilise simple procedures to attach property or wages. Criminal charges will be used only as a last resort, meaning that the sentences for wilful failure to pay maintenance are likely to become tougher.

And yet the law is even-handed. Maintenance recipients who abuse maintenance

money by using for themselves instead of for the child can also now be punished.

The new law emphasises maintenance as a mechanism for the needs of the children, instead of a power struggle between mother and father. It should be a step forward in putting children first.

Society demands that parents must take care of the children's well-being... I am aware that some parents value alcohol more than their children. What is wrong with our society? Why should the government have to pass legislation to force parents to take care of their children? Is this not a social scandal? What I can only say to those parents who neglect the well-being of their children is that from now on the long arm of the law will catch up with you.

Hon Kawana, Deputy Minister of Justice
Debate on Maintenance Act

THE “VULNERABLE WITNESSES” BILL

The Criminal Procedure Amendment Bill which is now before Parliament will help put criminals behind bars by making court appearances less traumatic for the most vulnerable witnesses: children, victims of domestic violence offences or sexual crimes, and other persons who for some reason find the court process particularly intimidating. Once passed, the law will provide the following protections for vulnerable witnesses:

- **alternative venues for trials**, so that they can held in environments which are less intimidating than courtrooms
- **testifying behind one-way screens or by means of closed-circuit television**, so that vulnerable witnesses to not have to face their alleged abusers while giving sensitive testimony
- **support persons to accompany witnesses while they are testifying**, so that (for example) a young child could speak to the court while sitting on the lap of a family member
- **strict limitations on the use of irrelevant cross-examination to badger witnesses**
- **cross-examination through the presiding officer or an intermediary**, to make sure that lawyers do not try to intimidate or confuse vulnerable witnesses
- **more possibilities for using information given by a young children prior to the trial**, such as statements to social workers or police officers, to avoid the necessity of making the child repeatedly recount the details of a traumatic experience.

Practical arrangements to make trials more comfortable for vulnerable witnesses are already underway at courtrooms in various parts of the country. For example, a **Victim Friendly Sexual Offence Court Room** was launched at the Katutura Regional Magistrates’ Court in September. Vulnerable witnesses in this court can testify behind a one-way mirror, or (once the new law is passed) by means of closed-circuit television from a child-friendly room equipped with inviting toys and furnishings. Terrified witnesses who no longer have to testify under the intimidating stare of their abusers are likely to give more reliable evidence which will lead to more just outcomes for all.