

Women and Custom in Namibia

Cultural Practice versus Gender Equality?

Training Manual

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Introductory remarks

Namibia is rated amongst the countries with the most pro-active laws in Southern Africa. The Married Persons Equality Act¹, -Combating of Rape Act², the Combating of Domestic Violence Act³, the Maintenance Act⁴ and the Children's Status Act⁵, are all testimony to the fact that government of the Republic of Namibia has lived up to its promise to FIGHT CRIME and do everything in its power to STOP VIOLENCE AND ABUSE OF WOMEN AND CHILDREN.

The laws exist and they are clear.

Why then are the statistics on rape, abuse, passion killings and baby dumping so high in our Country?

Why do people still live in fear of speaking out against discrimination, harmful cultural practices, oppression in the household and tyranny in the workplace?

The answer is simple: PEOPLE ARE NOT EMPOWERED ENOUGH IN ORDER TO MAKE A CHANGE!

- **Lack of Awareness**
- **Fear of the Consequences and the**
- **Lack of the Confidence** to approach people that can help are the main reasons why victims choose to exist in their abusive or oppressive circumstances.

¹ No 1 of 1996

² No. 8 of 2000

³ No 4 of 2003

⁴ No 9 of 2003

⁵ No. 6 of 2006

That is why this Manual on Women and Custom is important, it provides the reader with quick, understandable and concise facts and remedies on issues that they challenge on a daily basis in the Namibian society.

- Work related matters
- Family disputes
- Abuse
- Land and property rights

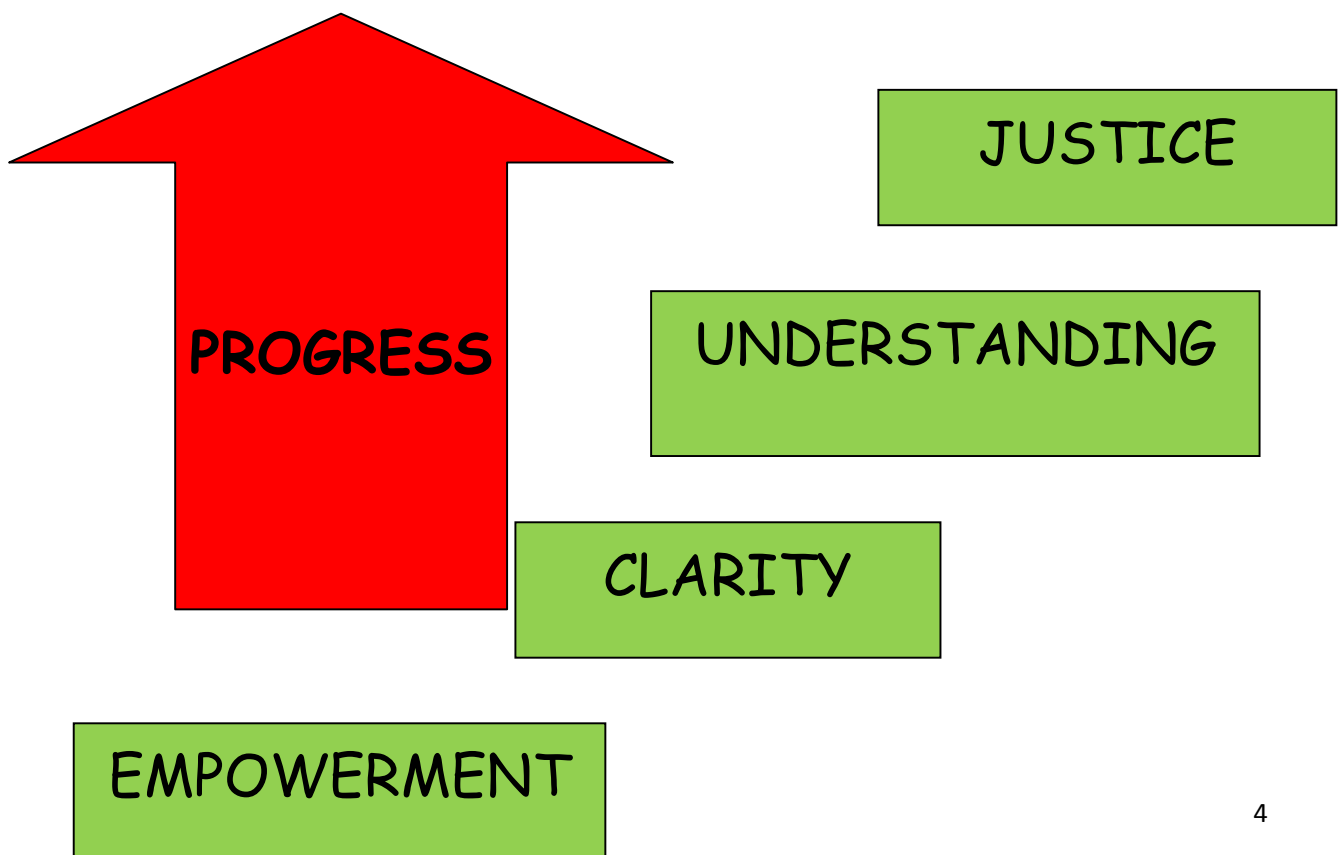
The Women and Custom Manual is a reference book for the existing laws in this country and combines case studies, with critical questions that people ask themselves daily, such as: "How do I know that I am being discriminated against" and "how to get a protection order"

After you have read this manual, you will have the knowledge that could make a difference in the lives of many of your community members, do not keep this information to yourself...SPEAK OUT, EMPOWER THE NATION, FIGHT FOR JUSTICE!

Stephanie M. de Klerk
Windhoek, October 2009

1. Purpose of the Manual

- **Empowering** you through sharing Legal knowledge and Skill
- Creating an **understanding** of Human rights.
- Providing **clarity** with regards to the current situation in Namibia and the role of law
- Preparing you to train your community members and fight for **justice** in your communities.



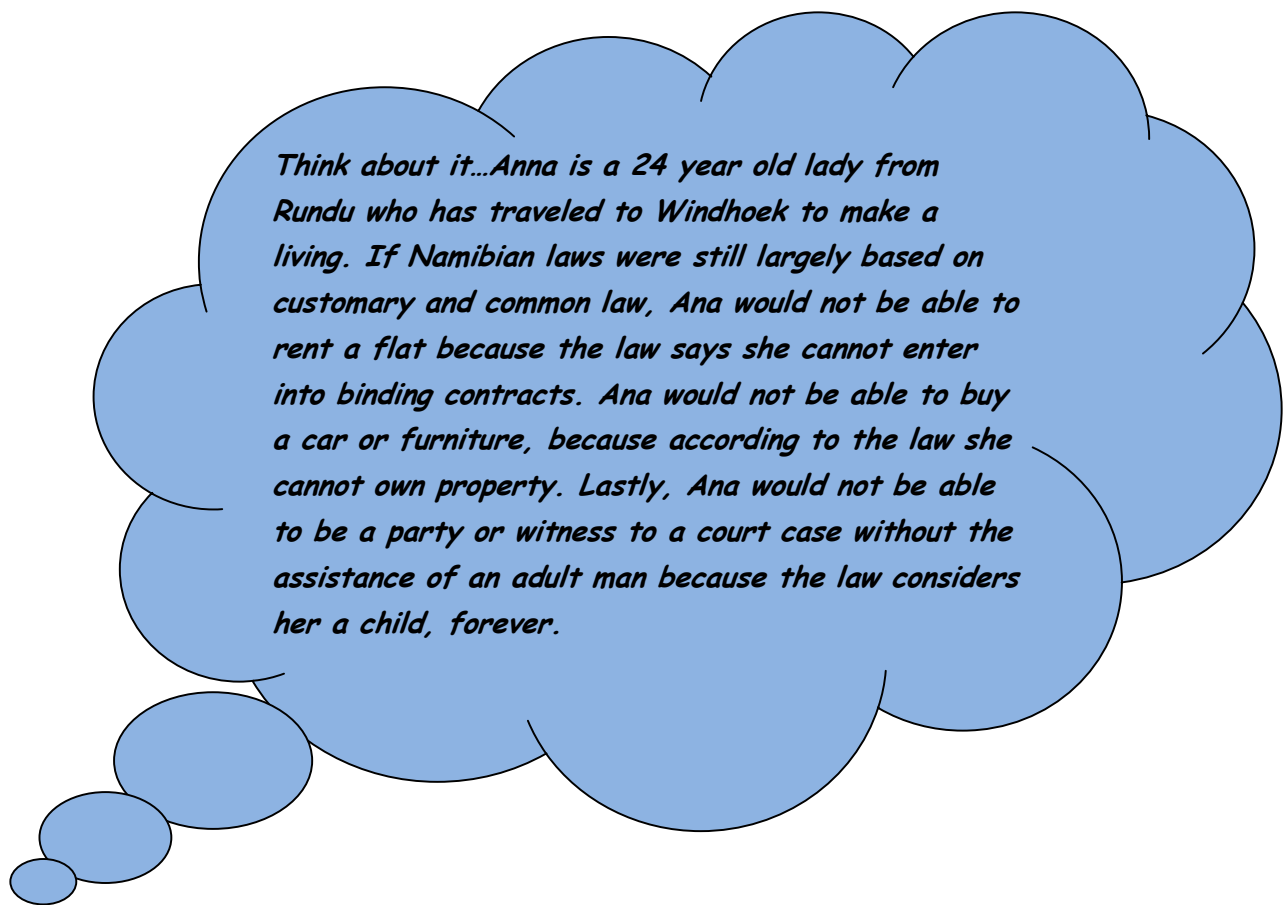
2. The Impact of History on Human Rights in Namibia:

PATRIARCHY

- Before independence the Namibian society was deeply patriarchal i.e. based on the "pater familias" ideology.
- Patriarchy can be define as a form of social organization in which the father or eldest male is the head of the family and descent is reckoned through the male line
- Also control is exercised by senior men over the lives and property of women

This empowerment of men has meant a corresponding disempowerment of women. Customary Law and thus Customs and Traditions apply patriarchy i.e. this type of application of the law denies women three powers in order to realize their independence:

- **Contractual capacity** (meaning she could not enter into contracts without the assistance and signature of her husband because she was considered a 'perpetual minor' i.e. forever a child)
- **Proprietary capacity** (meaning she could not own, acquire dispose of property such as a house, car, cattle or tools, they belonged to her husband, also she could not be said to have an estate which is the ownership of assets, therefore she could not inherit nor could someone inherit from her)
- **Locus standi in judicio** meaning that she would lack the capacity to be a party to court proceedings i.e. she would not be able to litigate- which is the process whereby a person brings a claim or an accusation to a court for adjudication and ruling, i.e. the Courts would not be open to her as a person.



Think about it...Anna is a 24 year old lady from Rundu who has traveled to Windhoek to make a living. If Namibian laws were still largely based on customary and common law, Ana would not be able to rent a flat because the law says she cannot enter into binding contracts. Ana would not be able to buy a car or furniture, because according to the law she cannot own property. Lastly, Ana would not be able to be a party or witness to a court case without the assistance of an adult man because the law considers her a child, forever.

This causes unequal relationships between men and women, boys and girls:

Michael Kaufman, co-founder and director of the White Ribbon Campaign that aims to raise awareness about men's abuse of women, said:

"The first and root cause of men's violence against women is the: UNEQUAL POWER between the sexes...

When you have INEQUALITY between people ultimately it takes VIOLENCE to maintain that INEQUALITY

Men's privilege and the sense of ENTITLEMENT to privileges is also a reason for violence-this is seen from the fact that the most common form of rape or sexual assault is not carried out by a stranger but by the victim's

boyfriend or husband-because he feels he is entitled to have sex with his woman any time he wants.

The third cause is SOCIAL PERMISSION, we allow it to happen because we don't get involved when we see a battered woman, we say: ITS NONE OF OUR BUSINESS, when really every act by any person that decays the moral values of a society, is everyone's business.

SOCIALIZATION of boys into men and PAST EXPERIENCE is another cause of violence. Boys are told not to show emotion and to be tough, also if a boy's role model, such as his father, older brother or uncle beats up a woman, this would make this kind of behavior seem right and normal to the boy, increasing the possibility of him copying what he saw."

APARTHEID ADMINISTRATION

Many racial and discriminatory laws were passed during South Africa's administration of then South West Africa.

These laws affected the livelihoods and capacities of native Namibians in a negative way.

These are:

1. Intestate Succession Ordinance 12 of 1946:

- Made a distinction between white and blacks and coloreds on issues concerning inheritance and succession.
- The Ordinance determined the dissolution of property for all except Black Namibians, thus largely leaving the administration of estates to the customary laws of the Blacks

2. Native Administration Proclamation 15 of 1928:

- Regulated process of succession for black men living in certain parts of Namibia.

-These regulations made the type of marriage and the marital property regime the criteria for determining the rules of intestate succession that applied to Blacks.

- The Proclamation only applied to areas north of the Police Zone and provided that the estate of all black persons regardless of the circumstances of any marriage they may have entered into, were to be distributed according to native laws and customs.

Therefore this is a clear indication that, despite the Proclamation, communities were nevertheless at liberty to apply their customs and traditions with regard to inheritance. THEREFORE, women were left with the little that they owned during the duration of these marriages since they had limited or no rights to real property such as cattle or land.

3. The Impact of the Constitution on Human Rights in Namibia

The Namibian Constitution brought about a *change in thinking* in terms of *human rights concepts*:

1. It provides a strong backdrop for **Gender Equality**;
2. It **forbids discrimination** on the basis of sex;
3. It **provides for equality** in all aspects of **marriage**;
4. It places special **emphasis on the rights and welfare of women** - through affirmative action;
5. It states that **customary law survives only to the extent that it does not conflict with the Constitution**; and

6. Men and women are in an identical position with respect to **citizenship** including citizenship by marriage.

A Sub-Division of the Rights Guaranteed under the Constitution

These are rights that pertain to women directly according to the Constitution and other relevant laws in Namibia.

This section is important because it will explain the laws regarding the socio-economic challenges that women are faced with, such as:

- Abuse in and out of wedlock including rape, isolation, deprivation of financial opportunities etc.;
- Discrimination within their families, the workplace and society at large;
- Discrimination and/or ill or dangerous treatment within their communities that are based on customs or traditions;-
- Property grabbing and the forfeiture of livestock and assets once their husband dies.

Therefore, the reason for this section is to serve as a constant source of information.

A. The Constitution and Gender Equality

Article 10 of the Constitution guarantees sexual equality, and states the following:

"(a) All persons are equal before the law

(b) No person shall be discriminated against on the grounds of sex, race, color, ethnic origin, religion, creed or social or economic status."

The Constitution is Gender Neutral throughout. This means that the Constitution does not distinguish between the rights enjoyed by men and women, but rather refers to the rights enshrined within it as belonging to all citizens.

How do you determine whether a law or customary practice is **DISCRIMINATORY**?

Step 1: Ask yourself whether the law or practice makes a distinction or difference, limitation, or exclusion, on the basis of sex?

Step 2: If it does make a distinction, provide a limitation or work to the exclusion of either a man or a woman, then that law or practice is discriminatory, and contrary to the Constitution.

B. The Constitution and Equality in Marriage

Introduction:

Namibia has two types of marriage systems:

- The Civil system that is solemnized by civil or religious rites and is registered by a marriage officer. The couple may choose to marry in community of property or may draft an ante nuptial contract that separates their estates, meaning that they would be married out of community of property.
- The Customary marriage is based on tradition and is often solemnized in the rural areas where recognition is based on the fact that the community members have witnessed the wedding. Thus, this kind of marriage is not registered.

According to the Marriage Ordinance all marriages north of the Red Line shall be considered to be out of community of property. This explains the property grabbing from widows that is prevalent in the north of the country. On the other hand, marriages south of the Red Line are in community of property, unless the parties to the marriage sign a contract stating otherwise.

□ **The Constitution Article 14: Family:**

(1) "Men and women of full age, without any limitation due to race, color, ethnic origin, nationality, religion, creed or social or economic status, shall have the right to marry and found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses."

□ **The Married Persons Equality Act No. 1 of 1996 (refer to Women and Custom Book, p187-188)**

The intention behind the Act include the abolition of the marital power of the husband over the person and the property of his wife- **Section 2**

The Act is clear that spouses married out of community of property are still both liable to third parties for debts incurred by either of them in respect of the necessities for the joint household. **Section15 (1)**

It even binds spouses that were married north of the Red Line before the Act came into being (**Section 15(2)**), unless the spouses agreed otherwise. A spouse aggrieved has a right of recourse against a spouse who fails to contribute to the household necessities (**Section 15(3)**)

The Act fixes the legal age of marriage at 18 years for both boys and girls.

CASE STUDY:

Myburgh v Commercial Bank of Namibia 1999 interprets the meaning of Article 10.

This case is the locus classicus on the interpretation of Article 10, i.e. It is the first and precedent setting case on the interpretation of Article 10 and 16(1).

The case began as an appeal by Mrs. Myburgh to the High Court against a judgment that she pays N\$ 115,927.92 to the Commercial Bank of Namibia.

The High Court held that the common law rule that, a woman married in community of property could not be sued discriminated against wives on the grounds of their sex, and was contrary to Article 10(2) because it treated husband and wives differently.

The court also found that the common law rule was contrary to Article 16(1) of the Constitution, as husbands and wives are entitled to equality during marriage. The court continued that the rule violated Ms. Myburgh's dignity in terms of Article 8(1) noting that the right to equality was based on the idea that every person possessed equal human dignity.

C. The Constitution and Affirmative Action

☐ **Article 23 of the Constitution**

The Article places special emphasis on women in this regard, and stipulates the following:

(1) The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and ... such practices, and the propagation of such practices, may be rendered criminally punishable ...

(2) Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices

(3) In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, it shall be permissible to have regard to the fact that WOMEN in Namibia have traditionally suffered special discrimination and that they need to be encouraged to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

□ Affirmative Action Act No 29 of 1998

In line with the Constitution the Affirmative Action Act has improved the participation of previously disadvantaged groups (such as blacks, women, and persons with disabilities) in the formal workforce.

HOW?????

Employers with more than 50 employees are now required to prepare Affirmative Action plans with clear time frames that target women, amongst others.

Affirmative Action measures to be implemented include the following:

(1)[T]he removal of employment barriers; such as bias in recruitment, interviewing and testing procedures;

(2)[P]ositive measures; such as special training courses; and

(3)[R]easonable accommodation measures; such as steps to enable people with disabilities to hold jobs and advance in employment. All the goals of the affirmative action plan need to be monitored and evaluated through sufficient procedures.

☐ **Co-operatives Act No 23 of 1996**

Through the Co-operatives Act, affirmative action has also been made applicable to women working outside the formal employment sector, particularly rural women.

Section 29(2) (b) of the Co-Operatives Act provides as follows:

... Any co-operative which has a substantial number of women members must ensure that there is at least one woman on its board, as a means to increase the representation of women in management positions.

The provision applies to any cooperative with more than five women amongst its members, or with women numbering more than one-third of its members (whichever is the lesser). **Clearly this is a way to get women into the job market and then into higher management positions.**

Affirmative provisions have also been made applicable to statutory bodies and boards. For example:

☐ **Social Security Act No 34 of 1994**

The Act requires female representation from government, trade unions and employers' organizations on the Social Security Commission.

In the Field of Sports...

☐ **Namibia Sports Act No 7 of 1995**

The Act requires that at least three (3) of the fourteen (14) members of the National Sports Commission have to be women.

The Act also specifies that the Sports Development Fund established for the development of sports in Namibia *... shall be used to enhance the sports persons within Namibia who have been socially, economically or educationally disadvantaged*

by past discriminatory laws and practices... This provision could be used as the basis for Affirmative Action for women in this field.

In Education...

□ National Vocational Training Act No 14 of 1994

The Act provides that there should be a cross-section of female representation on the Vocational Training Board.

□ Namibia Film Commission Act No 6 of 2000

The Act requires that one-third of the eight members of the Board be women.

□ Polytechnic of Namibia Act No. 33 of 1994

Requires the Council of the Polytechnic include one person appointed by the Minister of Education to represent the interests of women.

These Acts give a clear indication that government has taken the interests of women to heart, and has been prompt to promote women's interests in order to rectify the inequality between genders that existed previously.

D. The Constitution and Customary Law

What is Customary law?

It is *the law according to which most of the* Namibians regulates marriage, divorce, inheritance and land tenure amongst other things, the **Living law of the Namibian people that has evolved with them, as opposed to the laws that are "written down"**

It is a body of norms, customs and beliefs relevant for most Namibians

Customary law has for a time been marginalized and even ignored owing to colonial rule.

Customary law is a complex, dynamic legal system which has constantly evolved in response to a wide variety of internal needs of communities and external influences from colonizers.

□ Article 66

In terms of Article 66 Customary law is provided the same recognition and status as the common law of Namibia. However, both the customary and the common law that contravenes the Constitution any other statutory law **shall fail to be valid and binding.**

Therefore, customs and traditions should be practiced within the ambit of Chapter 3, the Human Rights and Freedoms of individuals.

□ The Traditional Authorities Act No. 25 of 2000

Its legislative enactment has affected customary law.

The land is held in trust by the government to promote the economic and social development of the people living in communal areas

It also protects the surviving spouse by giving him/her the right to apply to the chief or traditional authority to relocate the land into his/her name.

Communal Land Boards, responsible for the ratification of land rights, are obliged to include at least four women. **(Section 4(1)(d))**

□ Community Courts Act No. 10 of 2003

The Community Courts Act has been passed by Parliament and gazette, but the law is not in operation yet because of the many preparations that have to be made to enforce and ensure its effectiveness. However, it remains an important law to have knowledge of.

The Act provides for the establishment of community courts in Namibia. Community courts are much cheaper than the ordinary Courts. Also the person that has the problem is given a judgment that agrees with his or her customs, such as payment of cattle or goats etc. This is because the law applicable in litigation is the customary law of the community concerned (**Section 13**).

According to section 19 of the Act all the proceedings in a Community Court shall be in line with the **principles of fairness and natural justice**.

What can I do if a decision by the Community Court was unfair or unjust?

*Any person that is pained, hurt or aggrieved by the exercise of a community court's powers has the right to look for another remedy from the **Magistrates Court** in the area, according to section 26 of the Act.*

E. The Constitution and Sexual Offences

Sexual offences include: Rape and Sexual Assault.

Both men and women can be victims of sexual assault or rape.

Some traditional practices include:

- a) **Dry sex:** Herbs are applied to the woman's vagina that prevents her from becoming moist during sex. This is usually forced on younger girls and can lead to infections or HIV/AIDS.
- b) **Sodomy of young men during initiation:** This is usually administered by older boys during initiation of younger boys as a way to force them to respect older men in the tribe or clan.
- c) **Rite of passage:** Is when young girls are forced or instructed to have sexual intercourse with her uncle or older cousin first, as a way of passing into womanhood.

- d) **Genital mutilation:** This practice is the female version of male circumcision and involves cutting or marking of a certain part of the woman's vagina, even so, male circumcision that is done against the will of the young boy, is illegal.
- e) **Under age sex:** Under age sex occurs when a girl is married off to a man before she is an adult, therefore under the age of sixteen, and is then forced to have sex with her husband.
- f) **Forced sex within the marriage is also Rape.**

Any cultural practices that are of a sexual nature and that are done against the will of the person involved are **illegal and punishable by law!**

- **The National Gender Policy of November 1997 (refer to Women and Custom Book, p. 176-177)**

The Policy outlines the framework and sets out principles for the implementation, coordination and monitoring of gender sensitive issues

With regards to women and custom, the policy calls on Government to enact legislation to combat and protect women against socio-cultural practices that make them susceptible to HIV/AIDS and contribute to the spread of HIV/AIDS.

The policy states that violence against women and girls originates from cultural and traditional patterns and harmful practices, language or religion that perpetuates the lower status accorded to women

- **The Combating of Domestic Violence Act No. 4 of 2003 (refer to Women and Custom Book, p. 180-183)**

The Act has broadened the definition of domestic violence to include:

- a) Physical abuse
- b) Sexual abuse
- c) Economic abuse
- d) Intimidation
- e) Harassment
- f) Forced entrance into the home of the complainant

And provides for protection measures in domestic violence cases

□ **The Combating of Rape Act No. 8 of 2000 (refer to Women and Custom Book, p. 178-180)**

The Act makes it clear that any person who intentionally forces a person to commit or him/herself commits a sexual act with another person, or makes or causes another person commit a sexual act with the perpetrator or with a third person, shall be guilty of the offence of rape. **(Section 2)**

No court shall treat the evidence of any complainant in criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature with special caution because the accused is charged with any such offence. **Section 5 Abolition of cautionary rule relating to offences of a sexual or indecent nature.**

□ **The Combating of Immoral Practices Act No. 21 of 1980 (refer to Women and Custom Book, p. 183-185)**

According to the Act, any person who commits or attempts to commit a sexual act with a child under the age of sixteen years; or commits or attempts to commit an indecent or immoral act with such a child; or solicits or entices such a child to the commission of a sexual act or an indecent or immoral act 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.

The person must either be more than three years older than such a child; and not married to such a child (whether under the general law or customary law) **Section 14 Sexual offences with youths**

F. The Constitution and Property Rights

Introduction:

As head of the house, the men traditionally make the final decisions with regard to household property, decisions about livestock, and property disposal and acquisition. Even though women can head households, in marriage the man is still regarded as head of the household. It is clear that women are the primary users of the agricultural environment, but because in the past women did not have the ability to own land rights or have right of use and enjoyment over such land rights: they could only do so indirectly, i.e. via their husband or other male relatives.

Data compiled by the LAC report of 2005 indicated that 50% of all women in Namibia work in agriculture, compared with 43% of men. Under most customary systems, women - at least traditionally - could not own or inherit land. This was because women were seen to be part of the wealth of the community, and therefore cannot be the owner of land right grants. Widowed women traditionally could not inherit land, but were allowed to remain on the matrimonial land and home until their death or remarriage

In general, there are four basic reasons for women's lack of access to property, namely -

- **Laws that discriminate against women**
- **The prejudicial application of property laws**
- **Women's lack of awareness about their legal rights, and**
- **Women's lack of confidence to take action when their rights have been violated.**

☐ **Article 16 of the Constitution:**

The Constitution is clear on the fact that all Namibians inclusive of women have the right to own property. According to Article 16:

"All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of movable and immovable property...and to bequeath their property to heirs or legatees...."

□ **National Agricultural Policy of 1995**

Was adopted by Ministry of Agriculture, Water and Rural Development (MAWRD) in October 1995.

This Policy highlighted:

- a) The need to secure the participation of women in agricultural development, and stated that women needed to be recognized as farmers in their own right.
- b) Women's access to and control over household resources were marginal.
- c) Specific strategies must be employed to ensure that women farmers were not excluded from the government's commitment to provide for the basic needs of all Namibians.
- d) The role of women in agricultural development needed to be re-emphasized and their participation in agricultural organizations ensured.
- e) More importantly, the prevalent socio-cultural norms which related to women needed to be changed, according to the Policy, which also emphasized the need to assist women in overcoming constraints to their participation in development efforts related to the lack of skills and poor access to services and finance.

□ **Communal (Agricultural) Land Reform Act No. 5 of 2004**

In terms of the Act, men and women are equally eligible for individual rights to communal land, and the treatment of widows and widowers is identical. This law alters current practice in some areas, where a widow can be dispossessed of the communal occupation fee.

- The Act makes it clear that all communal land belongs to the state.
- The land is held in trust by the government to promote the economic and social development of the people living in communal areas.
- The Act grants women equal rights when applying for communal land.

- It also protects the surviving spouse by giving him/her the right to apply to the chief or traditional authority to relocate the land into his/her name.
- Communal Land Boards, responsible for the ratification of land rights, are obliged to include at least four women. (Section 4(1) (d).

4. Other Areas of Interest

□ Maintenance Act No. 9 of 2003

The Act aims at implementing more effective mechanisms for securing maintenance in order to avoid or at least minimize the high number of women facing traditional approaches to maintenance under customary law.

Both parents of a child are liable to maintain that child. **Section 3.** This applies regardless of whether the child is born inside or outside the marriage of the parents or born, of another marriage of one of the parent and regardless of whether the parents are subject to any system of customary law which does not recognize both parents' liability to maintain a child.

Also in terms of the Maintenance Act, single women can legally claim maintenance for their children or for themselves. **It is a crime to disobey a maintenance order.** In terms of **section 39(1)**, a guilty party will be liable to a fine not exceeding N\$4,000 or imprisonment for a period not exceeding 12 months, or such periodical imprisonment as set out in section 285 of the Criminal Procedures Act

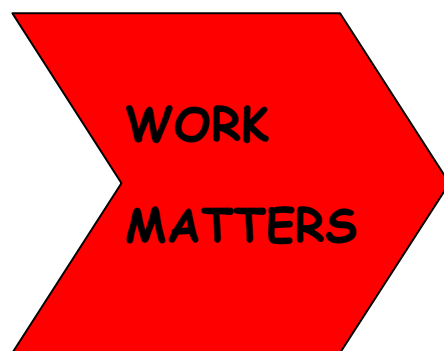
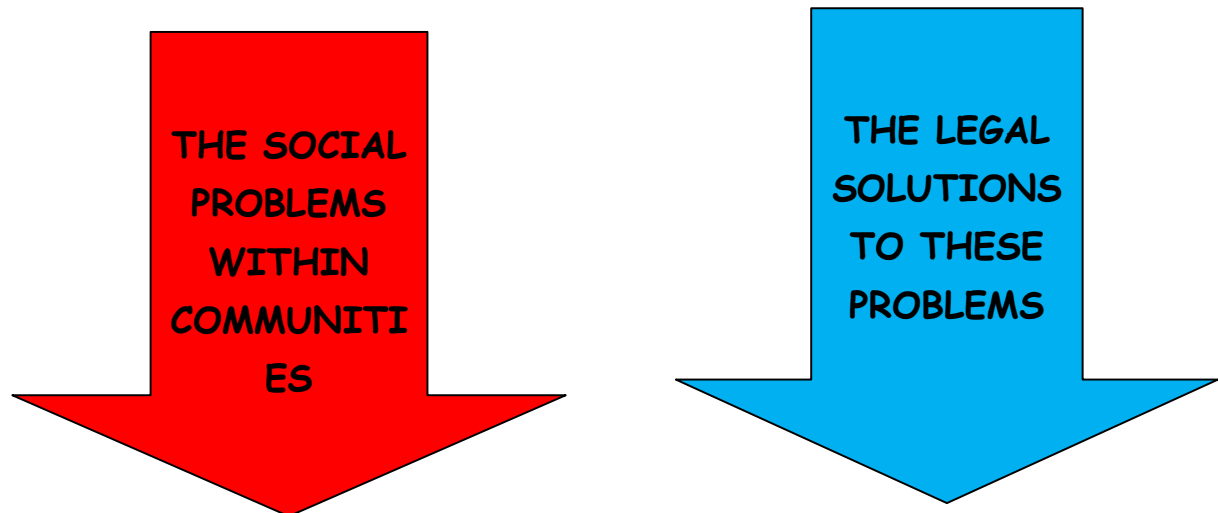
□ Children's Status Act No. 6 of 2006

Children born out of wedlock are to be treated the same as those born inside wedlock.

According to the Act, despite anything to the contrary contained in any statutes, common law or customary law, a person born outside marriage is obliged, for

purposes of inheritance, either intestate or by testamentary disposition, to be treated in the same manner as a person born inside marriage.

5. *How to Help your Community Members*



1. *Unfair discrimination*
2. *Unfair dismissal*
3. *Constructive Dismissal*
4. *Breach of the Employment Contract by the Employer*
5. *Harassment by a fellow employee/employer*

As a first option it is advisable to talk to the person with whom you have trouble or a problem be it the employer or a fellow employee, if this doesn't help

Conciliator, Mediators and Arbitrators:

Try to solve labor issues within the workplace.

When the matter is reported they will call a meeting with the concerned parties to try to negotiate on the matter, however, if this doesn't help...

District Labor Courts/ Labor Courts

Open a case with the district labor court, especially matters on breach of the employment contract, unfair dismissal and constructive dismissal

Labor Commissioner

Deals with matters where the entire workforce is involved, but can get involved in serious matters

FAMILY MATTERS

1. *Refusal to pay maintenance by the other parent*
2. *Failure to pay maintenance*
3. *If the parent fails to pay every month as ordered.*

Refusal to pay:

Apply to the Magistrates Court for a maintenance order

Failure to pay and if he/she fails to pay monthly:

Report him/her to the Maintenance office at the Magistrates Court

There is a fine of N\$ 4000.00 or imprisonment of up to twelve months attached to disobeying a maintenance order. Section 39(1)

CUSTOMARY MATTERS/ DISPUTES

1. *Customary marriage disputes*
2. *Theft of livestock by a member of the community*
3. *Removal of Chastity of a virgin*
4. *Petty crimes*
5. *Disputes over harvests, etc.*

Headmen/ Headmen's Council

Usually found within Communities. They deal with the day-to-day disputes that may arise, serious matters are reported to the

Chief

As the head of the community he is empowered to make certain decisions and hear certain disputes within the communities. If these are crimes punishable by imprisonment, he must alert the police of the incident.

Magistrates Court:

Can be used for more serious cases and can be used if the decision of the Community Court is unsatisfactory, unfair or unjust.



1. *Physical abuse*
2. *Sexual abuse*
3. *Economic abuse*
4. *Intimidation*
5. *Harassment*
6. *Constant Psychological, verbal and emotional abuse*

Get a Protection Order

Apply to the Magistrates Court for a protection order against the abuser, immediately. Report that matter to the Police.

Women and Child Protection Centers

Register with the local Women and Child protection Centers, so that you have a place to sleep on the nights when he/she comes home drunk.

Magistrate/High Court

Lay a complaint against the abuser, co-operate with the Police, investigators and prosecutor so that he/she can be imprisoned, for the crime.



1. *By widowers or widows of communal land owners*

The Communal Land Board

Deals with the allocation, rezoning and reallocation of communal land.

This is done in consultation with the chief of the village and with the assistance of the members of the Land Board.

6. How to Apply for a Protection Order

What is it?

A protection order is a court order directing the abuser to stop the violence. It can also prohibit the abuser from having any contact with the victim. In cases of physical violence, it can even order the abuser to leave the common home. It is possible for people who have suffered domestic violence to seek a protection order and lay a criminal charge at the same time if they wish. There are social provisions to protect the privacy of a complainant who lays a charge, and provisions which will make the court process less traumatic.

Can you help someone that is being abused?

YES!

According to the section 4(2) of the Combating of Domestic Violence Act, it is possible for you to apply for a protection order on behalf of someone that is being abuse, but that person must give you permission **in writing** to do so.

How is it done?

STEP 1: Go to the Magistrates Court in our area; go to the **OFFICE OF THE CLERK OF COURT**.

STEP 2: Ask for a Protection Order Form, called "an application to the Court". Fill in the application form, follow the instructions carefully. You may ask the Clerk to help you.

STEP 3: Attach an "affidavit to your application". An affidavit is a statement under oath of what happened. Your affidavit must mention:

1. What happened which caused you to come an apply for the protection order, also called the "facts"

2. The type of order you are applying for, this could be a Protection order, a Restraining order (You can ask a prosecutor to help you)
3. The name of the police station where you reported the matter
4. You can add other statements by people who saw what happened, or who know about the matter, to the application.

- ✓ **Tip!** *If you want the order to prohibit the abuser from entering your premises you **MUST** fill in your residential address in order for the Court to make the ruling based on the correct address, **OTHERWISE** the court will not make such a ruling. Section 6(5).*
- ✓ **Remember to fill in the application and affidavit truthfully and correctly, you are under oath.**
- ✓ **Make sure that you give all the documents that you have filled in to the CLERK OF THE COURT.**

7. Conclusion

"Give a Man a fish and feed him for a day, teach him how to fish and feed him for a life-time."

This Manual is evidence of the success of the book Women and Custom in Namibia: Cultural Practice versus Gender Equality that was published in 2008.

As a country, Namibia has shown itself willing to move forward with vigor in terms of the protection of men, women and children. Moreover, the

Government of the Republic of Namibia has put laws in place that are engineered to make communities safer to live in and more favorable to growth and development. However, it is an undeniable fact that there still exist negative elements in society that threaten growth, happiness, safety and the positive co-existence of all Namibians.

This manual is designed to help the readers to pin point illegal, discriminatory and abusive elements within their communities and to fight against those elements, with knowledge on the law and where to find help.

Culture, customs and traditions are a part of the Namibian people and define us as a nation, but when those cultures, traditions and practices become oppressive, harmful or discriminatory they deduct from what the Constitution of the Republic of Namibia had envisaged for the people of this country, namely: **"...the right of the individual to life, liberty and the pursuit of happiness, regardless of race, color, ethnic origin, sex, religion, creed or social or economic status."**

This manual should not be used selfishly, but instead the message and skills should be passed on and taught to all Namibians, because only through awareness and knowledge can one be empowered to uplift yourself and then your community.

Start to understand the law, then use it to make society a better place.