

# **Background Information**



## INTERNATIONAL AND CONSTITUTIONAL SETTING

### ✘ UN Convention on the Rights of the Child

Article 19 commits the government to protect children from all forms of violence and abuse in the home environment.

### ✘ UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

Violence against women is not explicitly addressed in this document, although it is one form of discrimination against women. But in 1989, the UN Committee responsible for monitoring this Convention issued General Recommendation 12, which suggested that parties to CEDAW should include information on violence against women in their country reports. Then in 1992, the Committee issued General Recommendation 19, which formally identified gender-based violence as discrimination.

Although international conventions are usually directed only at the acts of governments rather than the acts of private individuals, the Committee emphasised that governments may also be responsible for private actions if they fail to act with due diligence to prevent violations of rights, to investigate and to punish acts of violence, and to ensure that victims receive appropriate compensation.

The following were among the recommendations on measures which governments should take to protect women against gender-based violence by public or private act:

- (i) *effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including, inter alia, violence and abuse in the family, sexual assault and sexual harassment in the workplace;*
- (ii) *preventive measures, including public information and education programmes to change attitudes concerning the role and status of men and women;*
- (iii) *protective measures, including refuges, counselling, rehabilitation action and support services for women who are the victims of violence or who are at risk of violence.*

### ✘ UN Declaration on the Elimination of Violence Against Women

In 1994, the UN General Assembly gave strong recognition to violence against women as a human rights issue, by adopting a Declaration on the Elimination of Violence Against Women. This is the first international human rights instrument which deals exclusively with violence against women, and it explicitly includes violence which occurs “in public or in private life”. In terms of this resolution:

*States should condemn violence against women and should not invoke any customs, tradition or religious consideration to avoid their obligations with respect to its elimination.*

Governments are expected to develop penal, civil, labour and administrative sanctions to punish and redress wrongs caused to women who are subjected to violence. They must also make sure that laws which are insensitive to gender considerations do not result in the re-victimisation of women. They must develop national plans of action against violence against women and include adequate resources for this problem in their budgets. They

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must ensure that women and children who have experienced violence have access to rehabilitation programmes, assistance with child care and maintenance, treatment, counselling, health services, social services and other support structures.

Although this Declaration is not legally binding, it sets forth clear international standards.

The UN's concern with violence against women was further emphasized when the Commission on the Status of Women appointed a Special Rapporteur on Violence Against Women in 1994. One of the duties of this Special Rapporteur is to make recommendations on national mechanisms for eliminating violence against women.

### **Beijing Platform for Action**

In the Beijing Declaration adopted at the Fourth World Conference for Women in 1995, governments pledged to “eliminate all forms of violence against women and girls”.

The Beijing Platform for Action devotes an entire chapter to violence against women. It identifies violence against women as “an obstacle to the achievement of the objectives of equality, development and peace” which prevents women from enjoying their basic human rights and fundamental freedoms.

Some of the specific actions to be taken by governments in this regard have particular relevance to the problem of domestic violence:

- *Refrain from engaging in violence against women and exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;*
- *Enact and/or reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the community or society;*
- *Adopt and/or implement and periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders;*
- *Take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators;*
- *Provide women who are subjected to violence with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm they have suffered and inform women of their rights in seeking redress through such mechanisms;*
- *Formulate and implement, at all appropriate levels, plans of action to eliminate violence against women;*
- *Create or strengthen institutional mechanisms so that women and girls can report acts of violence against them in a safe and confidential environment, free from the fear of penalties or retaliation, and file charges;*

- *Create, improve or develop as appropriate, and fund the training programmes for judicial, legal, medical, social, educational and police and immigrant personnel, in order to avoid the abuse of power leading to violence against women and sensitize such personnel to the nature of gender-based acts and threats of violence so that fair treatment of female victims can be assured;*
- *Adopt laws, where necessary, and reinforce existing laws that punish police, security forces or any other agents of the State who engage in acts of violence against women in the course of performance of their duties;*
- *Allocate adequate resources within the government budget and mobilize community resources for activities related to the elimination of violence against women, including resources for the implementation of plans of action at all appropriate levels;*
- *Provide well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counselling services and free or low-cost legal aid, where it is needed, as well as appropriate assistance to enable them to find a means of subsistence;*
- *Support initiatives of women's organizations and non-governmental organizations all over the world to raise awareness on the issue of violence against women and to contribute to its elimination;*
- *Organise, support and fund community-based education and training campaigns to raise awareness about violence against women as a violation of women's enjoyment of their human rights;*
- *Disseminate information on the assistance available to women and families who are victims of violence;*
- *Provide, fund and encourage counselling and rehabilitation programmes for the perpetrators of violence and promote research to further efforts concerning such counselling and rehabilitation so as to prevent the recurrence of such violence;*
- *Raise awareness of the responsibility of the media in promoting non-stereotyped images of women and men, as well as in eliminating patterns of media presentation that generate violence and encourage those responsible for media content to establish professional guidelines and codes of conduct; also raise awareness of the important role of the media in informing and educating people about the causes and effects of violence against women and in stimulating public debate on the topic;*

#### **African Charter on Human and People's Rights**

The "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa", which Namibia has adopted, includes protection against all forms of violence against women, including those which take place in private life. It requires states who are parties to it to take appropriate and effective measures to:

- *enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;*
- *adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;*

- *identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;*
- *actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;*
- *punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;*
- *establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;*
- *prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;*
- *prohibit all medical or scientific experiments on women without their informed consent;*
- *provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;*
- *ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;*
- *ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.*

It also gives parties a duty to protect all women who are at risk of being subjected to any form of violence, abuse and intolerance.

#### **African Charter on the Rights and Welfare of the Child**

Article 16 commits the government to protect children from violence and abuse in the home.

Article 21 (1) requires governments “to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child”, particularly customs and practices which are prejudicial to the child’s life or health, and those which discriminate on the basis of sex or other status.

#### **Addendum to 1997 SADC Declaration on Gender and Development**

On 14 September 1998, representatives of the Southern African Development Community agreed to an addendum to the SADC’s 1997 Declaration on Gender and Development. This Addendum deals specifically with “The Prevention and Eradication of Violence Against Women and Children”. The signatories resolved to take a range of measure to combat violence, including the following:

*Enacting laws such as sexual offences and domestic violence legislation making various forms of violence against women clearly defined crimes, and taking appropriate measures to impose penalties, punishment and other enforcement mechanisms for the prevention and eradication of violence against women and children;*

*Introducing, as a matter of priority, legal and administrative mechanisms for women and children subjected to violence, effective access to counselling, restitution, reparation and other just forms of dispute resolution;*

*Adopting such other legislative and administrative measures as may be necessary to ensure the prevention and eradication of all forms of violence against women and children;*

*Promoting the eradication of elements in traditional norms and religious beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women and children;*

*Introducing and supporting gender sensitisation and public awareness programmes aimed at eradicating violence against women and children;*

*Encouraging the media to play a constructive and supportive role in the eradication of violence against women and children by adopting guidelines which ensure sensitive coverage of the issue, and avoid the perpetuation of stereotypes;*

*Providing easily accessible information on services available to women and children victims/survivors of violence, including women and children with disabilities;*

*Introducing and promoting gender sensitisation and training of all service providers engaged in the administration of justice, such as judicial officers, prosecutors, police, prison, welfare and health officials*

### **The Namibian Constitution**

The Namibian Constitution protects life, human dignity and personal liberty. It prohibits torture and cruel, inhuman or degrading treatment or punishment. It also guarantees equality before the law, and forbids sex discrimination. Similar provisions in international conventions such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights have been interpreted to mean that states have obligations to protect women from all kinds of violence, including domestic violence.

The Constitution also gives special attention to the rights of children. Article 15(1) says that children have the right from birth to know and be cared for by their parents. Article 15(2) says that children are entitled to be protected from economic exploitation and child labour which might interfere with their education and development.

### **DOMESTIC VIOLENCE IN NAMIBIA**

Domestic violence is violence that takes place within the family or inside the home.

Domestic violence is sometimes called “battering”. When it takes place between husband and wife, it is sometimes called “wife abuse” or “spouse abuse”. When children are the victims, it is often referred to as “child abuse”.

Domestic violence is particularly disturbing because the home and the family should be places where people can feel the most safe and secure.

Although women can be violent, it is women and children who are most often the victims of domestic violence at the hands of men.



Asking for **HELP** is a sign of strength.

Violence against women and children is one of Namibia's most severe human rights problems.

How much domestic violence occurs in Namibia? No one knows for sure. Since there is no specific crime of "domestic violence", cases which are reported to the police are hidden within larger crime categories such as rape and assault.

Medical personnel interviewed in a recent study estimated that *almost half* of all the women and children whom they treat show signs of being victims of domestic violence.

The number of domestic violence cases reported to social workers nationwide is increasing – 173 in 1994, 283 in 1995 and 394 in 1996.

We also know that 400-500 children are removed from their homes each year by the courts because of various forms of abuse and neglect.

We know that Namibia has a population of at least 2000 street children, many of whom live on the streets because of neglect at home.

## ✘ MYTHS ABOUT DOMESTIC VIOLENCE

- **“WOMEN ASK FOR IT”**: Sometimes people say that women “ask” to be beaten because they nag their husbands, or because they fail to do some household task — such as not having meals ready on time. If a woman is bossy, lazy, untidy or headstrong, some people will say that she needs to be put in her place.

**This is not true.** Many ideas about how a wife should behave are based on stereotypes which are unfair to women. No matter what a woman does or says, no one has the right to beat her. Everyone has a legal duty not to use violence against others. Using violence is not an acceptable way to solve a problem in the home.

- **“IF IT IS SO BAD, WHY DOESN'T SHE LEAVE?”**: Some people say that women really like to be beaten by their husbands or their boyfriends because they like to be overpowered by men. They think that women like to be beaten so they know that the men in their lives really pay attention to them and care about them. Some people say that women would lose respect for the authority of men if they were not beaten. Some people think that a woman who leaves one violent relationship will always look for another violent man. Some people say that if the woman does not really want to be beaten, she will leave the relationship.

**None of these things are true.** No one really wants to be beaten. Violence can injure a woman's spirit as well as her body. Women who are beaten may develop a bad opinion of themselves. They may start believing that they are “bad” and that they deserve to be beaten. These things can make it hard for a woman who is being beaten to leave the relationship or even to seek help.

A woman who is beaten may also feel trapped in the relationship because she is emotionally and financially dependent on the man who is beating her. She may think that it will best for the children if the family stays together. The woman may believe that the man who beats her will change his ways. (Men who beat women often say that they are sorry afterwards, and promise that it will never happen again — but it usually does.) The woman may be afraid that her husband will kill her or her children if she tries to get

help. She may believe that she has a duty to keep trying to make the relationship work. She may be afraid that her friends and her family will think that she is the one to blame if the relationship breaks up.

There are many reasons why it is not easy for a woman to leave a violent situation — but this does not mean that she wants to be beaten.

- **“WHAT HAPPENS INSIDE THE FAMILY IS PRIVATE”:** Some people believe that a marriage is very private. They think that what happens inside a family is no one else’s business.

**This is not true.** What happens inside a marriage can affect the community in many ways. The community has an interest in making sure that all the people in the community are safe, both inside and outside their homes. People who grow up in violent homes are more likely to use violence themselves — because they have learned to believe that this is a way of solving problems. Society has a duty to try to prevent problems that increase the level of violence in the community.

Domestic violence also has costs for society. It results in lost working hours and increased demand for health services. It contributes to overall levels of crime and violence, and so places extra strain on the police and the courts. It sometimes contributes to increased alcohol and drug abuse. Domestic violence also interferes with overall national development, by preventing the victims, the perpetrators and the community from realising their full potential.

- **“ALCOHOL CAUSES BATTERING”:** Sometimes men use drinking as an excuse for violence. Women who are being beaten may think that the abuse will stop if the drinking stops. They may think that it is the drunkenness which causes the violence.

**This is not true.** Many people drink without becoming violent, and many men who do not drink beat their wives or their girlfriends. It is true that alcohol is often a part of a violent relationship. The reasons why a man drinks and why that same man uses violence may be related. The alcohol may make the violence come out, but the reasons why the violence is there are usually very complicated.

- **“VIOLENCE HAPPENS MORE OFTEN IN BLACK HOMES, OR POOR HOMES, OR TO LESS EDUCATED WOMEN”:** Some people think that violence happens more often in the homes of black families, or in homes where families are struggling to live on a small amount of money. They may also think that only women who are uneducated get beaten by their husbands.

**This is not true.** Violence takes place in all kinds of homes — black and white, rich and poor. All sorts of women suffer from violence — including well-educated women with good jobs. Domestic violence is a widespread problem.

## **FACTS ABOUT DOMESTIC VIOLENCE**

- **Domestic violence is widespread.** The World Health Organisation estimates that up to one-half of all women worldwide suffer physical abuse at the hands of intimate partners. The proportion is even higher in some countries.



- **Domestic violence is against the law:** Domestic violence has been condemned by international agreements which Namibia has signed – such as the Convention on the Elimination of All Forms of Discrimination Against Women. Domestic violence is contrary to the Namibian Constitution. It also violates existing criminal laws such as those on assault, indecent assault or child abuse.
- **Domestic violence is harmful to the victim:** Domestic violence can harm its victims physically, emotionally, financially and socially. The victim may suffer serious injury or even death, as well as a range of psychological problems.
- **Domestic violence is harmful to the children in the family:** Children growing up in a violent family can experience emotional and behavioural problems, even if they do not experience the violence directly. They also learn that violence is a way of solving problems, which increases the level of violence in society.
- **Domestic violence is harmful to the perpetrator:** The perpetrator may lose the respect of his family and his own self-respect. He may then try to compensate for his feelings of shame and inadequacy with more violence, or with a retreat into alcoholism.
- **Domestic violence is harmful to the family:** It often leads to a complete breakdown of the marriage.
- **Domestic violence is harmful to the community:** It can upset other family members and neighbours. It also sets a bad example for the children in the community. It may cause other women in the community to feel intimidated.
- **Domestic violence is harmful to society at large:** It creates a general atmosphere of disrespect for women. It maintains a high level of violence in society, by teaching children that force is acceptable. Its costs include the costs of state medical care, increased overall levels of crime and violence, social problems such as alcohol and drug abuse and lost productivity. In this way, it holds back the overall development of the nation.

## MORE FACTS

### *DOMESTIC VIOLENCE*

- Although women can be violent, most violence that causes injury is perpetrated by men against women.
- Women are most at risk of violence from men that they know.
- Domestic violence occurs in all socio-economic groups.
- The injuries caused by domestic violence are at least as serious as those caused from assaults by strangers, and sometimes more serious.
- Violence within relationships tends to increase over time.
- Most violent men are not mentally ill. Many are exercising what they see as their natural right to dominate women.
- Emotional and psychological abuse can be as damaging as physical abuse.

- Alcohol abuse exacerbates violence, but does not cause it.
- Men who abuse women in the home are likely to abuse their children as well.
- There are societies in which domestic violence does not exist.

### CHILD ABUSE

- Child abuse takes the form of sexual abuse, physical abuse, emotional abuse and neglect.
- Most sexual abuse of children comes from the child's family members.
- Both men and women commit sexual abuse of children, but the majority of abusers are men.
- Both boys and girls experience sexual abuse in the family, but most victims are girls.
- Children who grow up in a violent environment are more likely to engage in crime or to form violent families when they grow up.

### ✘ WHY DO PEOPLE ABUSE WOMEN AND CHILDREN?

- Sometimes people who are having problems, such as unemployment or financial worries, take their frustrations out on women and children.
- Alcohol and drug abuse can contribute to abuse.
- Sometimes abusers have mental problems, although this is not usually the case.
- Abusers sometimes come from homes where there was abuse. They sometimes learn this behaviour from their own families.
- Abuse of women and children is considered by some people to be socially acceptable.
- Children are small and weak. Sometimes people abuse them because they want to feel powerful and strong.

### ✘ TYPES OF DOMESTIC VIOLENCE

#### **physical abuse**

any use of physical force, including hitting, slapping, kicking, throwing, bruising, burning or choking

confining or detaining someone by force, such as locking someone inside a house

depriving someone of access to adequate food, water, clothing, shelter or rest

forcing someone to do things they do not want to do

#### **sexual abuse**

rape or incest

exposure to indecent acts or pornography

forcing someone to perform any sexual act

forcing someone to engage in prostitution

any other sexual conduct that is abusive, humiliating or degrading

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### **economic abuse**

depriving someone of basic economic or financial resources they are entitled to, such as household necessities disposing of shared property or property which belongs to another person destroying or damaging property shared property or property which belongs to another person hiding or hindering the use of shared property or property which belongs to another person.

### **intimidation**

using threats of harm to make someone afraid  
exhibiting a weapon  
any other menacing behaviour

### **harassment**

following someone, or watching their home, school or workplace  
unwelcome telephone calls  
sending unwelcome letters, packages, e-mails, etc

### **emotional or psychological abuse**

degrading or humiliating someone  
depriving someone privacy, liberty, integrity or security;  
undermining a person's dignity and self-confidence with constant ridicule or criticism. allowing a child to watch another person being abused  
indifference or hostility to a child on the part of parents or caretakers  
preventing a child from having normal social contacts

### **child neglect**

failing to provide the love, care, food and physical circumstances that will allow the child to grow and develop  
exposing the child to dangers

## **OTHER FORMS OF CHILD ABUSE**

### **Child labour**

Children are also sometimes prevented from furthering their education because they are expected to help with housework, farming, herding or other family chores.

### **Alcohol and drug abuse**

Children may drink, smoke cigarettes or dagga or use other drugs because they have not received information and guidance on the dangers of substance abuse. Alcohol and drug abuse can also harm children indirectly, when parents or family members neglect or assault children while under the influence of these substances. Family resources which should be spent on children's food and education are sometimes squandered on drugs and alcohol.

### **Sex discrimination**

The girl child is sometimes disadvantaged simply because she is a girl. For example, in some families boys will be encouraged to continue their education while girls are expected to drop out to help at home. Girls who stay in school may be burdened with housework and care of younger siblings in addition to their studies. Girls who do not receive guidance about sex and information about family planning may be forced to leave school because of pregnancy. They may be discouraged from exploring certain career options because of sex-role stereotyping.

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Girls may be brought up to believe that child care is their responsibility as females, while boys may be raised to believe that they do not have to take responsibility for the children that they father. These stereotypes are unfair to the next generation as well. Children need the support of both parents, and father and mothers should both take responsibility for the moral, physical and social wellbeing of their children.

### **Infanticide**

There is a high rate of infanticide in Namibia. Infanticide is a crime, but it is also a cry for help. New mothers — especially young mothers — may feel overwhelmed by the idea of parenthood. They may have difficulty coping with the drastic physical and emotional changes they are experiencing. They may be suffering from the depression sometimes brought on by the hormonal changes associated with giving birth. They may be convinced that they will be unable to provide for the child, and they may feel that there is no one they can turn to for help. They may fear the shame of having given birth outside of marriage, or they may fear that they will be unable to continue their studies on top of the responsibility of child care. None of these feelings can excuse the murder of a child. But they show that churches and communities can take steps to prevent infanticide by giving mothers support and reassurance.

### **SIGNS OF CHILD ABUSE AND NEGLECT**

Children may be reluctant to tell someone that they have been abused. They may feel guilty because they believe that the abuse is somehow their fault. These are some of the outward signs of abuse and neglect:

#### Some signs of abuse

- unexplained injuries
- pain in genitals, bleeding from vagina
- pain when urinating or fear of urinating
- unusual interest in their own or other children's bodies
- sudden avoidance of men or women
- sleeping problems (bedwetting, nightmares, sleepwalking, being afraid to go to bed)
- eating problems (loss of appetite, sudden weight gain, vomiting)
- problems with self-control (aggression, unusual fearfulness, loss of bladder or bowel control)
- withdrawal or loss of interest in life
- clinging or constant crying
- regression (acting like a baby)

#### Some signs of neglect

- constant hunger
- poor hygiene
- dirty body or clothes
- constant lack of supervision
- problems which no one is attending to
- engaging in begging, stealing, or petty crimes

Based on *Child Abuse In Namibia – 1996*, published by the CCN.

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## WHAT TO DO ABOUT DOMESTIC VIOLENCE

### • GO TO A SAFE PLACE.

A person who is experiencing domestic violence can arrange to stay with a friend or a relative for a little while. She can also go to a shelter if there is one available. This will give her time to think about what to do next. It will also show the abuser that she has choices and that she is not prepared to accept violence. If a woman leaves her home, this will not count against her in a divorce case.

#### **Problems**

Only a few communities in Namibia have shelters. But in some communities, it can be difficult find a safe place to go, especially if there are also children involved.

Finding a safe place is not a long-term solution. The woman must still decide what she is going to do about the problem.

### • GO TO OTHER FAMILY MEMBERS FOR HELP.

A person who is experiencing domestic violence can ask her family or her husband's family for help. The family can ask the husband to promise not to use violence again.

#### **Problems**

Some families are more helpful than others when they hear about violence in the home. If the family is not willing to help, then the person who is suffering the violence must go to someone else.

### • GET A PROTECTION ORDER

The person experiencing the abuse can use the Combating of Domestic Violence Act by going to any Magistrate's Court and requesting a court order saying that the abuser must stop the violence. This protection order can have other provisions to protect against the complainant and any children involved against the violence, depending on the circumstances, such as no-contact provisions or an order requiring the abuser to leave the shared household temporarily.

The procedure for obtaining a protection order is a simple one. There is no cost to the complainant and no need to use a lawyer.

Violating a protection order is a criminal offence. The penalty is a fine of up to N\$8000 or imprisonment for up to two years, or both.

Getting a court order shows that the person experiencing the abuse is not going to tolerate this kind of violence.

#### **Problems:**

Some abusers may respect a court order, but others may not. The person experiencing the violence will probably be in the position to decide if a court order is likely to help.

The punishment of a fine or imprisonment may have a negative influence on the family, especially if there are children who are dependent on maintenance from the abuser. However, it is possible for the court to use punishments like week-end imprisonment or community service, which could make it possible for the abuser to continue working. The complainant must be consulted on the sentence before the court makes a decision.

### LAY A CHARGE WITH THE POLICE

It is against the law for anyone to hurt another person, or to make threats of harm. There is no special crime of “domestic violence”, but it will usually fall under existing crimes such as assault, rape, or indecent assault. Where a child is involved, the charge might be ill-treatment or neglect in terms of section 18 of the Children’s Act 33 of 1960.

Sometimes the police do not like to get involved in family matters. They know that women who lay charges of assault for domestic violence often drop the charge before the case comes to court. The woman may have good reasons for this - such as fear - but it makes the police feel that arresting a man for domestic violence is a waste of time. The police may also worry that the violence may be turned against them when they come into a violent home.

But the police have a duty to protect members of the public who are experiencing crime, If the police officer who is first approached does not take the case seriously, the person involved can ask to speak to someone with a higher rank. There are Woman and Child Protection Units (WCPUs) in some areas of the country which can help with cases of domestic violence.

When there is a criminal offence involving domestic violence, the police can arrest the suspected offender without a warrant or issue a formal written warning which will be taken into account if there are any further problems. *The police officer must take into account the wishes of the complainant in deciding on a course of action.* The police may also search for weapons without a warrant if they see a weapon or are told that there is a weapon at the scene of the domestic violence.

The Combating of Domestic Violence Act has special provisions to make it less traumatic to lay a charge for domestic violence. For example, the person who is experiencing the violence must be consulted before a decision is made on bail. Bail will not be given if the abuser is threatening or intimidating the complainant. Trials for domestic violence offences will be heard in closed court, and it is illegal to publish any details that might reveal the identity of the complainant.

The punishment will depend on the circumstances of the crime. It might be a fine, a period of time in jail, or a suspended sentence (jail time which is postponed as long as there is no repeat offence). It might be weekend imprisonment or community service. These options can be good ones in cases where the offence was not too serious, or where the offender is employed and does not want to lose the job. The complainant will be given a chance to give input to the court on what she thinks would be an appropriate sentence.

The prosecutor has a legal duty to provide the complainant with information that will reduce the trauma of the trial. In some cases, the complainant will be able to testify behind a one-way mirror or through closed-circuit television. The magistrate or judge can also take other steps to make sure that the complainant feels comfortable speaking in court. These special measures are especially useful in cases where the victim of the abuse is a child.

Laying a charge shows that the person experiencing the abuse is not going to tolerate it.

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Laying a charge may also provide some time for the abused person to think about what to do next.

**Problems:**

If the abuser is arrested and then released on bail, he may be angry. The person who has been abused may want to find a safe place to stay until the trial takes place.

It is unusual for a person to be given a long prison sentence for domestic violence unless the victim was seriously injured. This means that the abuser may be home again soon, which could be dangerous.

It may be hard for a woman to decide to lay a criminal charge against someone with whom she has a close relationship. Even though she may hate the abuse, she might not want to see the abuser sent to prison.

If an abuser is arrested or imprisoned, this could have financial consequences for the whole family. The victim can request options like week-end imprisonment or community service, but these options may place her at risk of more violence.

An arrest may inspire more violence - if the abuser feels that he must take "revenge".

 **BRING A CIVIL CASE FOR DAMAGES.**

A criminal case is when a person is on trial for a crime. A civil case is when there is a dispute between two people. The law says that anyone who assaults another person must pay for the harm that person suffers. This can include medical costs, lost wages, property damage resulting from the violence, and an amount to pay for the pain and suffering caused by the abuse.

It is not necessary to lay a charge with the police before bringing a civil claim. But it is possible to do both.

If the person who has been abused wants to bring a civil case, the best way is to get a lawyer to help. If she cannot afford to pay a lawyer, she can ask for help from the Legal Assistance Centre, from one of its advice offices, or from legal aid at the Ministry of Justice.

A civil case is different from a criminal case. The abuser will not be sent to prison, even if the court finds that he has caused harm with his violence.

It is possible to bring a civil case even if the person who was abused is married in community of property. If the husband is ordered to pay damages his wife, this will be her own separate money. The law says that the husband cannot touch it.

**Problems:**

This remedy is not useful when the finances of the two parties are intertwined.

Courts do not usually like to award damages between family members. They do not like to get involved in family matters. This means that it may be hard to get the court to decide that the abuser should pay for the harm that he caused.

Since the abuser cannot be sent to prison in a civil case, the person who was abused must think about what will happen after the court case is over.

## ✘ GET A DIVORCE.

A wife can get a divorce if her husband is hurting her or her children, or even if he is only threatening harm.

One of the grounds for divorce in Namibia is “desertion” — which means leaving. But if the husband is making life in the home so dangerous or unbearable that the wife cannot stay there, then the husband is the one who will be guilty of desertion, not the wife.

The wife can leave the home before she starts trying to get a divorce, or she can start taking steps to get the divorce while she is still living in the house.

It is possible to get a divorce without a lawyer. But it can be very useful to have help from a lawyer, especially if there are disagreements about the property or the children. It is possible to get help for a divorce from legal aid at the Ministry of Justice, especially if there has been domestic violence.

### **Problems:**

A divorce puts a final end to the relationship, so the person who is thinking of getting a divorce must be sure that this is what she really wants.

## ✘ GET COUNSELLING.

“Counselling” is talking about a problem with someone who has a good understanding of that kind of problem. People who give counselling can provide information and ideas, and they can help the person who has been abused to understand her feelings more clearly. People who give counselling will not tell you what you should do, but they may be able to help you decide for yourself what to do.

If the abuser is also willing to get counselling, both parties can go together. But counselling can only be helpful if both people really want to solve the problem.

### **Problems:**

Some counsellors may focus too much on trying to save the marriage or on keeping the family together. But a person who has suffered abuse does not have any duty to try to work things out. A good counsellor will tell not an abused person what to do, but will rather help her decide what she wants.

## ✘ ADDITIONAL OPTIONS FOR ABUSED AND NEGLECTED CHILDREN

- **Counselling and support for the entire family:** For example, if the abuse stems from a drinking problem, the family will need help to fight alcohol abuse.
  - **Foster care:** The child can be removed from the family and placed in foster care. Foster parents are people who temporarily stand in the place of the child’s own family. The Ministry of Health and Social Services screens people who apply to be foster parents to make sure that they are suitable. A social worker will know how to arrange for foster care.
-

- **Children's homes:** Children can be placed in children's homes when they have no one to care for them, or when they have been temporarily removed from their families.
- **Adoption:** Children who have no one to care for them, or who cannot be returned to the family environment, can be placed with adoptive parents. Adoption makes the people who are caring for the child the child's legal parents. Extended family members often adopt children who cannot stay with their parents.
- **Taking action against the abuser:** It is not always enough to remove the child from the dangerous situation. It is often necessary to lay a criminal charge against the abusers to make sure that the abuse does not happen again. Children who must testify in court against their abusers need extra love and support to cope with this difficult task

### SOME GUIDELINES FOR COUNSELLORS

#### **Be a good listener.**

Concentrate on what the other person is saying.  
Try to understand the other person's point of view.

#### **Do not worry about silences.**

The other person may be silent because of shock, anger or relief.

#### **Do not force your beliefs and values onto another.**

Do not judge what the other person is saying.

#### **Check on how the other person is feeling.**

From time to time, state briefly what decisions the two of you have made together and what must still be decided. Do not try to press for details that the person is not willing to discuss.

#### **Make sure that the other person knows what to expect from you.**

Be clear about what you can and cannot do.

#### **Be aware of non-verbal signals.**

The person's body language – such as how she is sitting, whether or not she is making eye contact — may be a clue to how she is feeling.

#### **Show that you are listening.**

Sit facing the person. Make eye contact. Encourage communication with body language, such as nodding your head. Be sure that you are not doing all the talking.

#### **Be sensitive to the other person's needs.**

Be honest and realistic about what is possible. Be supportive and patient. Be sincere. Show the person you are counselling that you can be trusted. Do not violate the confidence of the communication.

#### **Help the other person decide what she wants to do.**

It is your role to help her think about her options. It is not your role to tell her what to do.

Ideas drawn from material published by RAPCAN, Resources Aimed at the Prevention of Child Abuse and Neglect, 197 Lower Main Road, Observatory, Cape Town, South Africa, tel: 021-448-9034, fax: 021-448 9042, e-mail: [rapcan@iafrica.com](mailto:rapcan@iafrica.com).

## ✘ THINGS THAT COUNSELLORS SHOULD NOT DO

Do **not** give orders.

such as "Now do not go back home and risk more abuse."

Do **not** make threats.

such as "If you do not answer these questions now, you will be sorry."

Do **not** lecture or moralise.

such as "It will be better for the children if the family stays together."

Do **not** give advice or offer solutions.

such as "You should move out of your house right away."

Do **not** judge, criticise or blame.

such as "How can a smart woman like you stay with an abusive man?"

Do **not** interpret or diagnose.

such as "You are feeling like this because you are lacking confidence."

Do **not** praise or agree.

such as "Of course you are strong enough to raise your children alone."

Do **not** give empty reassurances or sympathy.

such as "Don't worry, everything will be all right."

Do **not** interrogate.

such as "Exactly what did you say to him?"

Do **not** withdraw or divert the conversation.

such as "Now I want to talk about another aspect of the problem."

Do **not** talk about your own experiences.

such as "That reminds me of a time when I had a problem with my husband."

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## ✘ WHAT SHOULD YOU DO IF A CHILD TELLS YOU ABOUT ABUSE?

*Believe the child.*

Children do not lie about abuse. Let the child know that you believe what he or she is saying.

*Find out how the child feels.*

Reassure the child that the abuse is not his or her fault and that there is no need to feel guilty.

*Provide support.*

Tell the child how brave he or she is for seeking help. Tell that child that there are other children who have had similar experiences. Tell the child that you will work together to try to solve the problem.

*Listen to the child.*

Try to make the child feel safe, accepted and respected.

*Show the child that you can be trusted.*

Respect the confidentiality of the communication. Be honest with the child. Consult the child if you want to bring in other professionals, such as a doctor or a social worker.

*Be aware of your own feelings.*

Do not be judgmental. Do not blame the child for what has happened. Try to remain calm so that you can reassure the child.

*Take steps to help the child.*

Child abuse rarely stops without intervention. Be sure that the child knows what to expect. Talk to the child about your role. Discuss what you can and cannot do.

Do NOT make promises you cannot keep.

Do NOT press the child for details about the abuse that the child is not comfortable talking about.

Do NOT discuss what the child has told you with other people who are not involved.

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## CHILD DISCIPLINE

### **Is it abuse to use physical force to discipline a child?**

Not always, but is it wise? Children learn how to live by following the examples of watching their parents, teachers and caregivers. If you use violence against a child, even as a form of discipline, you will be teaching the child that some sorts of violence are acceptable. Children should rather be taught the importance of controlling their anger. They should be taught that that violence is all its forms in unacceptable.

- The main source of good discipline is growing up in a loving family. in a loving environment, children generally want to be kind and co-operative because they like other people and want other people to like them.
- Children learn by imitating the behaviour of their parents and caretakers. If they see love and affection, this is what they will copy. If they see violence and anger, they will copy those behaviours instead.
- Physical punishment does not even work for adults. Otherwise, criminals who spend time in prison for their deeds would never commit crimes again after they are released. But we all know that many of them do.

### Tips on non-violent forms of discipline in the home

Research shows that young children who are smacked or confined as punishment can never remember what the punishment was actually *for*. Physical punishments make them feel so angry and helpless that they are more likely to feel anger than repentance. Here are a few guidelines for avoiding physical punishment.

- Do not be afraid to use bargaining or bribes from time to time. “I know that you do not want to go to the shops with me this afternoon, but what if I let you choose a cool drink for yourself when we get there?”
- Use “time-outs” to give an angry child time to calm down. If a toddler is having a tantrum, it may be necessary to hold him or her gently until the tantrum subsides so that the child does not harm himself/herself or anyone else. But you should stay calm. Do not scream at the child. Anger is infectious, so the anger of the adult will just feed the anger of the child.
- Try to use “dos” rather than “don’ts”. If you say to your child, “You can’t leave your toys there in the middle of the room”, the child may take that as a challenge. It will be more effective if you say “Please put your toys over there so that no one will trip over them.”
- Teach your child good behaviour by explaining *why* you are asking the child to do certain things (once the child is old enough to understand). For example, say “You must put that knife down because you might cut yourself.” This is more of a learning experience for the child than if you say “You must put that knife down because I say so.”
- Let your child join in decision-making processes when this is reasonable. “Let’s discuss how late you should be allowed to watch television on weeknights.”
- Help your child to understand other people’s feelings. Try to get the child to see things from the other person’s point of view. “You know how bad it makes you feel if someone breaks your toys. That is how your sister feels when you break her things.”
- Be sure that you reward good behaviour, not bad behaviour. If your child whines for candy while you are shopping and you buy the candy for the sake of peace, then the child has learned that whining is effective.

Ideas drawn from Penelope Leach, *Your Baby & Child from Birth to Age Five* (1989) and Benjamin Spock and Michael B Rothenberg, *Dr Spock’s Baby and Child Care* (1985).

## SUMMARY OF THE COMBATING OF DOMESTIC VIOLENCE ACT

(Legal Assistance Centre, 2004)

### DEFINITIONS

#### What is domestic violence?

The following conduct constitutes abuse in terms of the Act if it occurs in a domestic relationship:

- physical abuse
  - sexual abuse
  - economic abuse (including destruction or damage to property)
  - intimidation
-



- harassment (including stalking)
- trespass
- emotional, verbal or psychological abuse (which requires a pattern of “degrading” or “humiliating” conduct)

Threats or attempts to carry out any of these acts are also domestic violence.

### **What is a domestic relationship?**

A domestic relationship is—

- a civil or customary marriage, a former marriage or an engagement to be married;
- a cohabitation relationship, where two people of different sexes are or were living together as if they were married;
- parents who have a child together, or are expecting a child together (regardless of whether they have ever lived together);
- parent and child
- any family member related by blood, marriage or adoption, as long as there is some actual connection between them, such as financial dependency or sharing a household (including people who *would* be family members if a cohabiting couple were married);
- any two people of different sexes who are or were in an intimate or romantic relationship.

Because times of change can be the most dangerous in terms of domestic violence, a “domestic relationship” for the purpose of the Act extends for one year after the connection between the parties has come to an end (such as by a divorce or a break-up). If two people have a child together, their “domestic relationship” continues for the lifetime of the child, or for one year after the child’s death. The court has the power to consider the further extension of a “domestic relationship” if there are good reasons.

### **What can a person who is experiencing domestic violence do?**

Anyone who has experienced violence or threats with violence in a domestic relationship can do the following:

- Make an application to a magistrate’s court for a protection order which will say that the abuser must stop his/her behaviour, stay away from the people who are being abused, or even leave the family home altogether. Disobeying a protection order is a crime.
- If the abuse amounts to a crime, lay a charge with the police or ask the police to give the abuser a warning.
- Do both of these things at the same time.

## **PROTECTION ORDERS**

### **Who may obtain a protection order?**

- Anyone who has been abused or threatened with abuse in a domestic relationship. A minor may bring an application without the assistance of an adult in cases where the violence is serious in nature.
- A counsellor, health care provider, police official, social worker, teacher, traditional leader, religious leader, employer or any person who has an interest in the well-being of the person who has suffered the violence. The person who has actually suffered the violence must give written consent for the application to be made by someone else, unless he/she is –

- a minor
- a mentally incapacitated person
- an unconscious person
- a person who is regularly under the influence of alcohol or drugs, where the court approves such an application
- a person who is at risk of such serious physical harm that the court approves an application in the absence of his/her consent.

The person who applies for a protection order is called the **applicant**. The person who is experiencing the domestic violence is called the **complainant**. The applicant and the complainant can be the same person (where a person applies for a protection order for himself or herself) or different people (in cases where the application is made by one person on someone else's behalf). The person against whom the protection order is requested is called the **respondent**.

### Terms of protection orders

An interim or a final protection order can be tailored to fit the problem. All protection orders will order the respondent not to commit domestic violence.

Protection orders may also order the respondent

- to surrender a firearm or other weapon
- not to have any contact or communication with the complainant, or with other specified persons who are at risk
- not to come near the complainant's residence, workplace, school, etc.
- to move out of the joint household, regardless of which one of the parties owns or leases it (after considering factors such as the length of time that the residence has been shared, the accommodation needs of the complainant as well as any children or other persons in the care of the complainant, and any undue hardship that might result for the respondent or any other person)
  - This provision is available only in cases where there has been physical violence. Such an order can include an order about the use of the contents of the household (such as furniture).*
- to pay rent for alternative accommodation for the complainant, or to otherwise arrange for another place for the complainant to stay
  - This is another option in cases where the parties shared a residence, if the respondent is not ordered to leave the joint household.*
- to give the complainant possession of specified personal property (such as vehicles, agricultural implements, livestock, furniture, chequebooks, credit cards, children's clothing and toys, identification documents, keys, personal documents or other necessary personal effects)
  - The court order can also direct the complainant to give specified personal property to the respondent, especially if the complainant is the one who remains in the shared home.*
- not to sell, damage or dispose of property in which the complainant has an interest.

The court can also —

- make a temporary order for maintenance
- make a temporary order concerning custody and access in respect of any children who are involved or
- make any other order which is necessary to protect the safety of the complainant and children or other persons in his / her care.

In addition the court may include in the protection order a directive to the police—

- to search for and seize any firearm or other weapon from the respondent
- to accompany the complainant to a specified place to assist him/her to collect personal belongings in safety.

### **How long does the protection order remain in force?**

Different provisions of a protection order can remain in force for different time periods.

- An order for sole occupation of a joint residence can stay in force for a maximum of 6 months (if the house is owned by the respondent), for one year (if it is jointly owned), or for any period set by the court (if the house is owned by the complainant).
- If the joint resident is leased, an order for sole occupation cannot remain in force beyond the end of the current lease period.
- An order about the possession of household effects such as furniture will have the same period as the order for occupation of the joint residence.
- An order about child custody or access to children will remain in force until it is changed by another court order. (This is because it would not be safe to allow an order which might affect the safety of children to expire automatically.)
- A temporary maintenance order can remain in force for a maximum of six months. (A temporary maintenance order is only an emergency measure. It is not intended to replace the role of the ordinary maintenance court.)
- Any other provision of a protection order can remain in force for a maximum of three years.

The complainant, the applicant or the respondent can also apply to the court to change or cancel a protection order at any time.

### **What happens if the respondent violates the protection order?**

The person protected by the order must notify the police. S/he will be required to make an affidavit giving details about how the respondent violated the protection order. S/he can simultaneously lay a criminal charge against the respondent if the actions amount to a crime.

The police have the power to arrest the respondent without a warrant if there are reasonable grounds to suspect that the protection order has been violated. The suspicion that the protection order has been violated can be based on the complainant's affidavit, on an affidavit from another person, or on the observations of the police officer.

A respondent who enlists another person to engage in behaviour that violates the protection order will be treated as if s/he has personally violated the protection order.

### **What is the penalty for violating a protection order?**

A fine of up to N\$8000 or imprisonment for up to two years, or both.

## **DOMESTIC VIOLENCE OFFENCES**

### **Does the law create any new crimes?**

No. But certain crimes which take place in domestic relationships will be referred to as "domestic violence offences" and dealt with in special ways. The crimes which will qualify for this treatment if they take place in domestic relationships are crimes of violence (such as murder, rape and assault) and certain other crimes (such as kidnapping, trespass, malicious

damage to property and *crimen injuria*, which means criminal insult). Violating a protection order will also be a domestic violence offence.

### **Who can lay a charge of a domestic violence offence?**

The complainant or any person who has an interest in the well-being of the complainant – such as a counsellor, health care provider, police official, social worker, teacher, employer. The **complainant** is the person who is the victim of the domestic violence offence, no matter who has actually laid the charge.

### **What will the police do in cases of domestic violence?**

A police officer who has a reasonable suspicion that a domestic violence offence has occurred can do any the following things, taking into account the wishes of the complainant —

- **arrest** the suspected offender **without a warrant**;
- issue a **formal written warning** to the suspected offender which will be taken into account if there are any further problems.

The provision allowing for warnings is intended to apply to situations where the complainant requests police intervention, but does not want an arrest.

The police may also search for weapons without a warrant IF they see that a weapon is present or are told that a weapon is on the premises.

### **Will a suspected offender who is arrested be released on bail?**

The question of bail will be treated in the same way as for other crimes, with one important difference. As in rape cases, the complainant must be informed about the bail hearing and given a chance to put relevant information before the court. For example, if the person who was arrested has threatened the complainant, this might be grounds for denying bail.

If a person accused of a domestic violence offence is released on bail, there will normally be a condition that s/he must have no contact with the complainant, and a condition prohibiting possession of a firearm or any other specified weapon. If appropriate, the court will order that the accused must continue to support the complainant and any dependents whilst out on bail at the same level as before the arrest, to make sure that the complainant is not financially punished for asserting his or her rights. The court might add other bail conditions if this is necessary.

If the complainant is not present at the bail hearing, s/he must be notified that the accused person is out on bail and told about any bail conditions that apply.

### **Will the trial be closed to the public?**

Trials for domestic violence offences will be heard in closed court. It will be an offence to publish any details that might reveal the identity of the complainant.

### **What will happen if a person is convicted of a domestic violence offence?**

The complainant will be given a chance to give input to the court on what s/he thinks would be an appropriate sentence. (If the complainant is deceased, this input will come from the next of kin.) Conviction of any domestic violence offence involving physical abuse can also disqualify a person from obtaining a license for a firearm for two years or more.

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*The new provisions on vulnerable witnesses which are summarised below can be applied to make trials on domestic violence offences less traumatic for the complainant.*

## RAPE IN NAMIBIA

Rape is a serious problem in Namibia. More than 700 cases of rape and attempted rape are reported to the Namibian Police each year. Experts believe that only about one out of every 20 rapes that take place is reported to the police. This means that rape is a problem which touches many people in Namibia. It is possible for men and boys to suffer forced sexual contact, but it is mainly women and girls who experience sexual violence.

Rapes occur in a wide variety of situations. They happen at night and in the daytime. They happen in the home, in riverbeds, along the road, in playgrounds and in schools. They happen in every community in Namibia, in villages and towns, in rural and urban areas.

Court records show that babies of less than one year and elderly women aged 85 have been raped. Women who are in advanced stages of pregnancy have also been raped. These facts show that rape is not a result of provocation by the person who is raped. *Rape is a crime of power which uses sex as a weapon.*

Rape is intended to humiliate and degrade. Rape reduces people to objects. It often makes them feel isolated. Rape can also cause feelings of anxiety, guilt and inadequacy. Rape is experienced as a loss, so a rape survivor will often go through a period of mourning and grief.

Rape is a horrifying violation of personal dignity and integrity. Attitudes about women in a society have an effect on how many rapes occur in that society. Because most people who are raped are women, rape is less common in societies where women are genuinely treated as being equal to men.

Some people in our society believe false myths about rape, especially the rape of women. These are some examples:

- Women say “no” when they really mean “yes”.
- Women secretly enjoy rape.
- Women are really responsible for rapes because they dress and behave provocatively.
- Rape is not really an act of violence, it is just rough sex.
- Women often consent to sexual relations and then later claim that it was rape.

More false myths about rape are shown on the following pages.

The myths about rape result in blame for the crime being placed on the person who was raped, instead of on the rapist. A rape complainant will not be treated with understanding and sympathy if police, prosecutors, social workers and medical personnel believe the myths. A rape complainant will not get support from her family and friends if they believe the myths. A rape complainant who believes the myths will have difficulty dealing with feelings of guilt and shame. The myths encourage the crime of rape by making excuses for people who rape.

The old law on rape was based on these false ideas. This is why the old law had to be changed. The new law on rape will help society to move away from the myths about rape. Law reform on its own cannot alter attitudes, but it can send out signals that false ideas about rape will no longer be accepted by the law or the courts.

<b>MYTHS AND FACTS ABOUT RAPE</b>		
<b>MYTH</b>	<b>RESULT</b>	<b>FACT</b>
Rape is provoked by the complainant.	The blame is taken away from the rapist and shifted to the complainant.	Rape is a violent attack using sex as the weapon. All kinds of people are raped in all kinds of situations. A person does not ask for rape by accepting a date, by acting polite or friendly, or by dressing or walking in ways that
Only beautiful young women in mini-skirts get raped. Only “bad girls” get raped. Only promiscuous women get raped.	People believe that rape is something that happens only to certain types of women. They tend to blame themselves for the crime, and so do not report it or seek help from others. They feel embarrassed and ashamed.	Both men and woman can be raped, regardless of age, appearance or economic class. Elderly persons, young children and even tiny babies have been raped.
People get raped when they are out alone at night, in dark and dangerous places. If they stay at home they will be safe.	This myth interferes with freedom of movement, especially for women. It suggests that a woman would not have been raped if she had been “in her place”. It also promotes the false idea that women cannot be raped at home, or by their husbands.	Rapes in Namibia occur in a wide variety of situations, at all times of day or night. Even women asleep in their beds at home have been raped. In fact, one Namibian study found that as many as one-third of all rapes occur in the complainant’s own home.
Rapes are usually committed by strangers. People who avoid strangers they will be safe.	People who know their rapists tend to blame themselves more. They cannot believe that a family member or an intimate partner could really be a rapist. People who are raped by someone they know are afraid that no one will believe them, and they are afraid that the rapist will try to get revenge.	According to the Namibian police, most rapes in Namibia involve people who know each other – a family member, a personal friend, or someone who is known to the family. The police estimate that only one out of every twenty rapes is reported to the police, and they believe that many rapes go unreported because they involve acquaintances.
Anyone who really tries to resist can prevent a rape. It is impossible to rape a person against his or her will.	People do not believe that a rape has occurred unless there are serious injuries. If there are no cuts or bruises, then the complainant must not have tried to resist.	Rapists often threaten to kill the person they are raping if there is any attempt to resist. In Namibia, rapists often threaten rape complainants with knives. Most rapes are committed by men against women, and men are often stronger than women. This means that rapists can often overpower people without a weapon, especially where young children are involved. Even if there are not injuries, the rape complainant may have had a very real fear of injury or death.
Rapes occur only in urban areas.	People in rural areas who report rapes will not be believed.	Rapes happen in every part of Namibia. Rapes in rural areas may not be reported because there is no police station or clinic nearby, or because the family of the victim prefers to resolve the problem with the family of the rape complainant, without involving the police.



<b>MYTHS AND FACTS ABOUT RAPE</b>		
<b>MYTH</b>	<b>RESULT</b>	<b>FACT</b>
Rape is an impulsive, uncontrollable act of sexual gratification. It usually takes place when a sexually frustrated man sees an attractive young woman and “just can’t control himself”.	This myth puts the blame on the rape complainant. It makes society think that the rapist is not responsible for his actions. It gives the rapist an excuse for using violence against another person.	Rape is a crime of power which uses sex as a weapon. Rapists themselves describe their motivation as being anger, hatred, conquest, humiliation or degradation – and not sexual gratification. A study of male rapists in South Africa found that less than 6% of them gave a sexual reason for their crime, and less than 40% reported that they experienced any sexual satisfaction from the act.
Rapists are abnormal perverts with an unsatisfied sex drive. Only “sick” or “insane” people rape.	People will not believe that a person who looks and acts “normal” could have committed a rape. They will expect the rapist to have some kind of special identifiable characteristics.	Rapists are “normal” people with normal sex drives. Male rapists often have wives or girlfriends. The only difference between the rapist and other people is that the rapist has a greater than average tendency to be violent and aggressive. The motive for rape is aggression, not sex.
People, particularly women, often lay false charges of rape with the police.	People will not believe a woman who says that she has been raped. This will make women more reluctant to report rapes. This myth also affects the way that the police respond to rape charges. If the police do not believe a woman’s story, they will not make a serious investigation of the case. This in turn will reduce the chances of a conviction.	A US study found that the incidence of false reports of rape is exactly the same as for all other serious crimes – about 2%. Information from the Namibian police indicates that only about 1% of all rape reports are unfounded.
It is not difficult to prove that a rapist is guilty. A person who does not go to the police was not really raped. If the rapist is not found guilty in court, the rape complainant must have been lying.	People do not understand that there are many reasons why a person who has been raped may not want to go to the police or to appear in court. They forget that the court case often makes the rape complainant feel like the one who is on trial. People may feel contempt for a person who does not report a rape to the police. Even friends and family members may doubt that the rape really happened if the accused rapist is not found guilty.	Under the old law, the state had to prove “absence of consent”, which is often very difficult. It is also hard to prove rapes because they usually occur in a place where there are no witnesses, and because sometimes the medical evidence is not properly collected. The court may not have enough evidence to find the accused “guilty” even in cases where a rape really occurred.
Rape is a crime which affects only a few people.	People will not believe that rape can happen in their own communities, or to someone they know.	Namibia has a high rate of rape in comparison to the size of its population. Rape also affects people who do not themselves experience rape (especially women), by causing them to live in fear.

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## SUMMARY OF THE COMBATING OF RAPE ACT

(Legal Assistance Centre, 2000)

### ✘ DEFINITIONS

The “complainant” is the person who has been raped. The “perpetrator” is the person who has committed the rape.

The new law has a new definition of rape that gives greater protection against rape to men, women, girls and boys. Under the new definition of rape, rape can be committed against men and boys as well as against women and girls.

Rape is the “intentional commission of a sexual act under coercive circumstances”. To understand this definition, we will have to consider the meaning of “sexual act” and “coercive circumstances”.

#### “Sexual act”

The definition of sexual act covers the most intimate kinds of sexual contact:

- **the insertion of the penis into the vagina of another person, to even the slightest degree**  
It is not necessary to prove that the penis actually entered the vagina. It is enough to prove that it was inserted into the external parts of the female genitals. This is important in cases where young girls are raped. The rapist should not get off more lightly just because the girl was physically too small for complete penetration.
- **the insertion of the penis into the mouth or anus of another person**
- **the insertion of any other part of the body into the vagina or anus**  
For example, putting fingers or a hand or a tongue into someone’s vagina or anus would be a sexual act.
- **the insertion of any part of the body of an animal into the vagina or anus**  
For example, putting the penis or the tongue of a dog into someone else’s vagina or anus would be a sexual act.
- **the insertion of any object into the vagina or anus** (with an exception for the insertion of objects into the vagina or anus as part of normal medical procedures)  
For example, there are cases of people being raped with objects such as bottles or broomsticks.
- **cunnilingus, which is oral stimulation of the female genitals**
- **any other form of genital stimulation**  
This would include simulation of the genitals with the hand, or forcing the complainant to masturbate himself or herself.

Other forms of forced sexual contact would be treated as the crime of indecent assault. For example, it would not be rape for a person to touch a woman’s breasts against her will, but she could lay a charge of indecent assault.

#### “Coercive circumstances”

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The definition of “coercive circumstances” includes force, threats of force, and other situations which enable one person to take unfair advantage of another. It includes all of the circumstances listed below, but it can also include other forms of coercion which are not mentioned in the law.

- **physical force against the complainant or another person**  
An example of using physical force against a third person as a means of rape would be where a man starts beating up a woman’s child and says that he will not stop unless she has sexual intercourse with him.
- **threats of physical force against the complainant or another person**  
A threat does not have to be made in words. For example, if a person is pointing a gun or a knife at you without saying a word, the message is still clear.
- **threats to cause harm other than bodily harm to the complainant or another person, in circumstances where it is not reasonable for the complainant to disregard the threats**  
This could include threats of property damage. But this kind of threat would create the crime of rape only in situations where the complainant did not have any reasonable option except to submit to the sexual act. For example, suppose that a boyfriend and a girlfriend go together to a deserted place and start kissing. The boyfriend wants the girlfriend to have sexual intercourse and says that if she refuses he will leave her to walk home alone. The girlfriend agrees because she would prefer to have sex with her boyfriend than to be attacked and perhaps raped by someone else. Whether or not submitting to sex in this situation would be reasonable would
- **the complainant is under the age of 14 and the perpetrator is more than 3 years older**  
No force or threat is necessary in such a case. The age difference alone will be interpreted to show that the older person is taking advantage of the younger. Sexual experimentation between children of similar ages will not be treated as rape.
- **the complainant is unlawfully detained**  
This would apply, for example, where to a case where the complainant had been kidnapped. It would also apply to a case where a complainant was confined against his or her will – such as a case where a husband locked his wife inside the family home and prevented her from having any contact with other people.
- **the complainant is**  
\*physically or mentally disabled  
\*drunk or drugged  
\*asleep  
**and so cannot understand what is happening or is unable to communicate unwillingness**
- **the perpetrator pretends to be another person**  
For example, a man could approach a sleepy woman in the dark hoping that she would mistake him for her husband.
- **the perpetrator pretends that what is happening is not actually a sexual act**  
For example, a doctor might lead an inexperienced complainant to believe that the sexual contact is actually some form of medical treatment.

- **the presence of more than one person is used to intimidate the complainant**  
For example, this could apply to the horrible practice known as “tournaments” where a boyfriend takes his girlfriend to a deserted place and expects her to have sex with his friends. The girlfriend may be intimidated by the situation even if there is no direct use of force.

### **AGE OF CONSENT**

**The Combating of Rape Act has raised the age of consent for the crime of rape to 14, for both boys and girls.** Even if there was no force or coercion, a rape has been committed if the complainant is under the age of 14 and the perpetrator is more than 3 years older. The minimum sentence for rape of a child is 15 years, and the maximum is life imprisonment.

**An amendment to the Combating of Immoral Practices Act gives additional protection to boys and girls under the age of 16.** A crime has been committed under this law if there is sexual contact with a child under the age of 16 by someone more than 3 years older. This is a less serious crime than rape. It has no minimum sentences. But this crime is broader, because it covers any “indecent or immoral act” and not just the “sexual acts” defined above. The maximum penalty under this law is N\$40 000 or 10 years in prison or both.

### **RAPE WITHIN MARRIAGE**

The new law says that **no marriage or other relationship will be a defence to a charge of rape.** This applies to both civil marriage and customary marriage, as well as other relationships.

If something would be rape *outside* a marriage – because of the use of force or threats of force, for example – then it would also be rape *inside* a marriage. The new law says that rape is rape, no matter what relationship there is between the two people. The fact that it takes place within marriage, or within any other relationship, is no excuse.

### **BAIL**

The new rape law changes bail procedures to pay more attention to the complainant’s concerns. Some people believe that no person accused of rape should be set free on bail before the trial starts. But the Constitution says that all persons are innocent until proven guilty. It is not fair to punish accused persons by holding them in custody before the court has heard their side of the story and decided if they are really guilty. People can be held in custody only if there is a danger that they will try to run away, or a danger that they will interfere with people who will be testifying against them in court.

In terms of the Combating of Rape Act, prosecutors and police have a duty to make sure that the court is aware of any information which shows that the complainant might be in danger if the perpetrator is released on bail. The complainant has a right to be notified of the date and time of the bail application. The complainant can attend the bail hearing personally, or ask the prosecutor to present relevant information on his or her behalf. Most complainants will probably prefer the second option, to avoid the trauma of an extra appearance in court and an extra cross-examination.

The complainant must be notified if bail is granted. The complainant must also be notified of the bail conditions which have been imposed. It must be an automatic condition of bail in

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every rape case that the accused rapist is not allowed to have any contact with the complainant. Accused persons who are out on bail are not allowed to interfere with the complainant, or with any other person who might be a witness at the trial. If they do, they can be re-arrested and held in custody until it is time for the trial.

### ✘ REDUCING THE TRAUMA OF THE TRIAL

The Combating of Rape Act gives prosecutors a special duty to provide information to the rape victim which can help reduce the trauma of the trial, such as an explanation of how the trial will proceed and what questions are likely to be asked.

The court will be closed to the public during the entire rape trial unless the complainant requests otherwise. It is illegal to publish any information which might reveal the identity of the complainant. This rule applies to newspapers, radio, television and any other kind of media. No one may publish the complainant's name and address, or photographs which reveal physical features or clothing that might identify the complainant.

The protection against publication applies from the moment that the offence is committed, even before the perpetrator has appeared in court. This is important for the protection of the victim's privacy, since the media often get information from police dockets before there have been any court appearances.

Information about the identity of the complainant in a rape case can be published only if the court has authorised the publication, or if a complainant who is over the age of 18 has authorised it. The parent or guardian of a rape complainant under the age of 18 does *not* have the power to consent to the publication of that child's identity. The penalty for publishing information about the complainant's identity without proper permission is a stiff fine of N\$10 000 or imprisonment for up to 1 year, or both.

*The new provisions on vulnerable witnesses which are summarised below can be applied to make rape trials less traumatic for the complainant.*

### ✘ MINIMUM SENTENCES

The new law on rape provides stiff minimum sentences for rapists. There are three categories of minimum sentences. For a **first offence**, the minimum sentence will be **5, 10, or 15 years**, depending on the circumstances of the rape. For a **repeat offender**, the minimum sentence is **10, 20 or 45 years**, depending on the circumstances of the rape. The maximum sentence for any rape is life imprisonment. The minimum sentences do not apply to persons who were under the age of 18 at the time the rape was committed. It is especially important to consider the possibility of rehabilitation for young offenders.

The Criminal Procedure Bill which was before Parliament at the time of writing proposed even stiffer minimum sentences. It suggested a minimum sentence of life imprisonment without the possibility of parole for gang rape, multiple rape, second or subsequent convictions of rape, rape by persons who know they are HIV positive, rape of children or other particularly vulnerable persons, and rape which involves weapons or result in serious injury. The minimum sentence for all other cases of rape would be life imprisonment with a possibility of parole after 15 years of imprisonment.

## RAPE AND HIV

A rapist who knowingly exposes a rape complainant to HIV through the rape will receive the heaviest minimum sentence. Knowingly exposing someone to the risk of HIV infection is also grounds for a criminal charge of attempted murder, in addition to the charge of rape. A conviction on this charge would be likely to carry a heavy prison sentence, which could be served in addition to the sentence for rape.

It is very important for all rape complainants to have HIV counselling and testing. Rape complainants can also take preventative medication to reduce the chances of contracting HIV from the rape. This medicine is called PEP (for Post-Exposure Prophylaxis). PEP should be started as soon as possible after the rape takes place. It must be taken for 28 days in order to be effective. The Ministry of Health & Social Services has promised to make PEP available to all rape victims, regardless of their ability to pay. If the closest hospital or clinic does not have PEP, ask a doctor, nurse or social worker to help you get it as soon as possible. Some medical aid funds cover the costs of PEP.

The law does not make provision for testing rape perpetrators for HIV. But preventative medication is most effective if it starts as soon as possible after the rape. This means that there is no time to wait for the results of an HIV test of the perpetrator before making a decision about whether to begin preventative treatment. Also, HIV test results for the perpetrator do not and cannot predict whether the rape survivor will be infected with HIV. It is possible that the rape complainant will not become infected, even if the perpetrator is HIV-positive. It is also possible that a perpetrator who is HIV-positive might test negative, if he or she has been only very recently infected. The only safe course of action is for the rape complainant to assume that the perpetrator may have been HIV positive, and to act accordingly in terms of medication, counselling and testing.

## WHAT TO DO IF YOU ARE RAPED

**Keep evidence.** Evidence means information and physical things that can support what you will tell the court in the rape case. Good evidence is important to make sure that the person who raped you will be found guilty and sent to prison.

**Do not wash yourself.** The doctor will be able to find important evidence on your body. This evidence will be destroyed if you wash.

**Do not change your clothes.** There might be important evidence on the cloth.

**Do not tidy up the place where the rape happened.** Do not wash anything which might have evidence such as blood or semen on it.

If you have to carry anything to the police station which might be used as evidence, **do not put it in a plastic bag.** Plastic can destroy this kind of evidence. Wrap the items in newspaper or some other kind of paper instead.

**Go to the Police.** You should report the rape to the police so that the person who raped you can be caught. This might prevent the rapist from raping someone else. If there is a Woman and Child Protection Unit in your area, you can go there to make your report. Police in these units have special training in how to deal with rape cases.

The police will arrange for you to see a doctor. They will also arrange for you to speak with a social worker. You should bring a change of clothes with you to the police station so that they can keep the clothes you were wearing during the rape as evidence.

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If you are a woman, you can ask to speak to a female police officer. If you are a man, you can ask to speak to a male police officer. You can also ask to speak about the rape in private, in a room with no one else in it but you and the police officer who is asking you questions. You can bring a friend or a relative with you for support if you wish.

If you are afraid that the person who raped you may come back and hurt you, be sure to tell the police. Sometimes a rapist will threaten to kill the person who was raped if they tell anyone. If the rapist threatened you, tell the police about this. If you have a good reason for being afraid, then the person who raped you will not be set free on bail.

If the person who raped you is set free on bail, be sure to tell the police right away if he/she tries to see you or speak to you. If this happens, then the bail will be taken away and the rapist will be kept in custody until the trial starts.

**Go to a doctor, clinic or hospital.** You must get medical help right away. You might want to go to a doctor, clinic or hospital even before you go to the police. You must be sure to explain that you have been raped. If you go to the police first, they will take you to the hospital or clinic.

**You may have been exposed to HIV as a result of the rape.** There is medicine called PEP that can reduce your chances of becoming infected with HIV, but it works only if you start taking it very soon after the rape. The sooner you start taking it, the more it will help. You will have to take the medicine for 28 days.

**You may have been exposed to another sexually-transmitted disease as a result of the rape.** There is medicine that can reduce your chances of becoming infected with other sexually-transmitted diseases, such as syphilis or hepatitis. It is also best to start taking this medicine as soon as possible.

**If you are a woman, you may be in danger of falling pregnant from the rape.** There are pills that can prevent pregnancy if they are taken right away. You should be given four pills, two to take now and two to take 12 hours later.

**You will need information about the side effects of medicines which can help to prevent HIV infection, other sexually-transmitted diseases and pregnancy.** For example, some of these medications can cause nausea or headaches. You should ask the doctor who gives you these medications to explain what side effects you might experience, and what steps you can take to reduce the side effects.

**You will need information about follow-up testing.** It is important to be tested at the right times for HIV, for other diseases that could result from the rape and for pregnancy. You can also get counselling which will help you to feel less afraid about having these tests.

**The doctor may be able to collect evidence about the rape.** Do not wash or change your clothes before you see the doctor. The doctor will ask you some questions about the rape. The doctor will examine you, and write down information about any injuries that you got from the rape. The doctor will probably want to examine the inside of your vagina or anus, to look for injuries and to collect evidence such as semen. The doctor will probably take some blood from your arm to send to a laboratory for testing. The doctor will also look at the clothing you were wearing during the rape to see if there is evidence such as semen or blood.

**Getting a legal abortion.** If you did not get the pills which can prevent pregnancy, or if they did not work for some reason, you can get a legal abortion. You should get a pregnancy test right away if your next period is late, and you should tell your doctor if you want an abortion. Your doctor will help explain the procedure to you. You will have to see a second doctor and get a certificate from a magistrate. You can get a legal abortion even if the rapist has not been found or brought to court. You do not have to wait for the court case. You can get a legal abortion if you have not laid a charge with the police. But you will have to explain to the magistrate why you did not go to the police.

## ✘ HOW PEOPLE REACT TO RAPE

Different people react to rape in different ways. This section lists some common reactions and describes the stages of response which are experienced by many rape complainants.

## ✘ THE IMPACT OF RAPE

These are some of the feelings a person who has been raped may experience:

**Fear:** The rape complainant has very likely been injured or threatened. He/she may feel weak or unsafe. He/she may feel afraid that it could happen again.

**Anger:** The rape complainant may feel that he/she has lost control over his/her life. The rape complainant may feel angry that such things as rape can happen in our society. The rape complainant may direct his/her feelings of anger towards the rapist, the doctor, the police, family member or himself/herself.

**Guilt:** The rape complainant may feel guilty. He/she may feel that the rape was somehow his/her fault. The rape complainant may wonder if he/she could have done something to get away from rapist. The rape complainant might blame himself/herself for walking alone at night, for leaving a door or a window open, or for inviting a "friend" into the house. The rape complainant may worry that he/she did something which unintentionally encouraged the rapist.

**Shame:** The rapist may have forced the rape complainant to do things which made him/her feel dirty or disgusting. The rape complainant may feel that the rape has destroyed his/her self-respect. The rape complainant may feel that he/she will be blamed for not being able to stop the rape from happening.

**Loss of control:** The rape complainant may feel disempowered because he/she had to give into the rapist, even though the rapist used force or coercion. Even a small decision, such as what to wear or to eat, may be difficult after a rape.

The impact of a rape can last for many years. A rape complainant who never talks about what happened may still be suffering inside. These are some other possible after-effects of rape:

- uncontrollable crying
  - uncontrollable shaking or trembling
  - stuttering or stammering
  - nightmares, sleeplessness, disturbed sleep, or sleeping more than usual
  - weight loss or eating disorders
  - nausea or vomiting
  - headaches
  - repeated bathing or washing
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- feeling unusually alert or watchful, being more easily startled or frightened than usual
- general feelings of fear or anxiety
- feeling restless and unable to relax, or sitting quietly with little movement
- feeling numb or withdrawn, or having difficulty feeling or showing any emotion at all
- feeling irritable, angry or confused
- having mood swings (sudden changes of mood)
- loss of memory about aspects of the rape
- fear of sex or loss of interest in sex, even with a supportive spouse or an intimate partner
- fear of begin rejected by a spouse or an intimate partner who may now find the rape complainant “dirty”
- fear of strangers
- fear of being alone
- fear of being touched
- distress caused by exposure to something that is a reminder of the rape (such as a television programme showing a similar kind of violence, or passing by the place where the rape occurred)
- flashbacks, which are sudden intense memories of the rape which have the effect of re-living it
- men who have been raped may feel that their masculinity has been taken away, which can lead to suicide, self-harm or unusually aggressive behaviour in an effort to compensate for the feeling of being emasculated
- difficulty making decisions
- difficulty in concentrating
- changes in behaviour (such as increased smoking or drinking, socialising more or less than usual, changes in relationships with family members)
- lack of interest in life or in normal activities, such as work or school
- general depression or sadness
- thoughts of suicide.

Most people who have been raped will experience some of these symptoms, but others may experience few of them or none at all. It is not possible to judge whether someone has really been raped by the number of symptoms that they display.

Some of the possible reactions to rape could affect the rape complainant’s ability to give a clear police statement, or to give detailed testimony in court.

police officer:

“She says that she cannot remember the face of the rapist, but she remembers the shirt he was wearing very clearly. Perhaps she is lying.”

social worker:

“But it is not unusual for people who are raped to forget certain aspects of the event. That is one response to trauma.”

### STAGES OF RESPONSE

Each individual will react differently to rape. There is no “proper” or “normal” way to react. All people have different ways of coping with personal crisis, depending on culture, upbringing, age, education level, the nature of the attack and individual personality.

However, there is a broad pattern which is common to many people. Different experts describe different “stages” of response to a rape. Some divide responses into two, three or

even four different stages. Responses to rape are grouped into three stages below for purposes of discussion. The different feelings, fears and physical reactions which have been described above can occur in different degrees during any of these three stages. There is no predictable time frame for the different stages of response.

#### **First stage: acute response**

Immediate responses vary. Physically, some rape complainants may experience shock. They are likely to feel cold, faint, become confused, feel nauseous or sometimes vomit.

Emotionally, some rape complainants will seem numb or controlled because they are feeling shock or disbelief. They may seem quiet and reserved, or have difficulties expressing themselves. A person who was raped by an acquaintance may have a particularly difficult time overcoming shock and disbelief. A person who suffered an extremely terrifying or brutal rape may experience extreme shock, and completely block out the memory of what happened.

Some rape complainants, on the other hand, will be visibly upset and very emotional. They may show obvious signs of sadness or anger. They may appear distraught or anxious. They may express rage or hostility against police, medical staff or other people who are trying to help them. They may talk a lot, cry, swear, shout, or even laugh. Any emotion is appropriate—because each person has different ways of responding to extreme stress.

These two kinds of immediate responses may even alternate. Rape complainants may experience a variety of emotions or mood swings. They may feel angry, afraid, lucky to be alive, humiliated, dirty, revengeful, degraded. There is no particular response that is “normal”.

#### **Second stage: reorganisation**

In the second stage, people who have been raped usually make an effort to come to terms with what has happened. They make an effort to re-establish the routines of their life. Sometimes, people who have been raped make dramatic changes in lifestyle or environment, in an effort to re-assert control over their lives. They may quit a long-standing job or move to a new location to get a fresh start. They may dramatically change their appearance – such as cutting their hair or changing hair colour. But changes such as these are unlikely to succeed in creating a renewed sense of security. In this stage, some people suppress their feelings because dealing with them is so painful.

There is usually some point where persons who have been raped are ready to confront their feelings about the rape. They may want to talk about what happened, or to begin counselling. Some people may feel overwhelmed as they attempt to deal with feelings they have struggled to suppress since the rape took place. They may find themselves taking one step forward and two steps back as they battle to find their way.

While some people are able to move forward with their lives after a rape, others continue to suffer intensely for many years and will need continuous counselling and support.

#### **Third stage: resolution**

Most people who have been raped eventually reach a point where the rape is no longer the central focus of their lives. They will never forget the rape, but the pain and the memories associated with the rape gradually become a little less strong. They accept the rape as a part of their life experience and move on from there. Some of the traumatic reactions previously experienced may continue to flare up at times, but this may begin to happen less frequently and with less intensity. Some people say that this is the point at which a person moves from being a rape “victim” to being a rape “survivor”.

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 **HOW TO HELP SOMEONE WHO IS RAPED**

Rape is a terrible, humiliating experience. It is important for everyone who deals with a rape complainant to be sensitive and kind. Here are some things you can do to help:

- Be aware of the different emotions a person who has been raped may be feeling.
  - Assume that the person who has been raped is upset, no matter how that person is reacting. Rape complainants may talk about their feelings, or they may hide them inside. They may even seem calmer than their family and friends. Do not let this fool you. Reactions may take place immediately, or they may show up only hours, days, months or years later.
  - Treat a person who has been raped very gently. Try to remain calm yourself, so that you are not the cause of further worry.
  - Give a person who has been raped privacy and respect. Remember that it is usually very difficult for rape complainants to talk about the physical details of what happened. Do not ask questions just because you are curious. Do not talk about the rape with other people, or when other people are present.
  - Do not rush a person who has been raped. Let rape complainants talk about what happened at their own pace.
  - Listen sympathetically. Let the person who has been raped know that you appreciate the fact that he or she has been through an extremely traumatic experience.
  - If the rape complainant does not want to speak about the rape, accept that silence. Do not try to force communication. Just leave the door open and wait until the rape complainant is ready to talk.
  - Try to reassure the rape complainant that there is a wide range of responses to a rape. Assure the rape complainant that whatever he or she is feeling is “normal”.
  - Do not negate the rape complainant’s experience. Do not say things like “You’ll get over it” or “Try not to worry about it” or “Put it behind you”. It is important to acknowledge and accept whatever the rape complainant is feeling. Remember that healing is not a quick or easy process.
  - You can suggest options, but do not make decisions for the person who is raped. Taking over will just make that person feel more powerless.
  - Discourage a person who has been raped from being alone. He or she will need support and reassurance at this time.
  - Encourage rape complainants to get medical assistance immediately. This is vital to reduce the chances of HIV infection, infection with other sexually-transmitted diseases and pregnancy. It is also important to have a prompt medical examination to get evidence for the court case.
  - Encourage rape complainants to get counselling, and tell them about local groups that offer counselling. A person who has been raped might not feel ready for counselling right away, but counselling may still be helpful later on.
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- Assess your own values and beliefs about rape. Do you have a biased attitude? Do you believe in your heart that the person who was raped must have done something to “deserve it”? If you are not able to approach the person who was raped in an open and fair-minded way, then you should not be involved. Do not cause further damage to a person who has already been brutalised by a rape.
- A person who has raped has already been victimised by the rapist. Do not as a member of society victimise that person again.

**REMEMBER: WHATEVER HAPPENED AND HOWEVER IT HAPPENED,  
RAPE IS THE FAULT OF THE RAPIST.**

## SUMMARY OF THE LAW ON VULNERABLE WITNESSES

(Legal Assistance Centre, 2004)

*Trials in sexual abuse cases and domestic violence offences are covered by the Criminal Procedure Amendment Act 24 of 2003, which came into force in December 2003. This is a summary of the key provisions of this law on vulnerable witnesses. At the end of 2004, Parliament was in the process of approving a new Criminal Procedure Act. The provisions on vulnerable witnesses will remain the same in the new law.*



### WHO IS A VULNERABLE WITNESS?

A vulnerable witness is:

- 1) anyone **under age 18**
- 2) any **victim of a sexual offence**  
rape, attempted rape, indecent assault, sexual offences under the Combating of Immoral Practices Act, etc.
- 3) a **victim of any offence involving domestic violence**
- 4) a witness who has some **mental or physical disability**  
if the disability creates special needs or may lead to undue stress
- 5) a witness who may be **intimidated** by the accused or any other person  
such as a case involving family members, or members of a criminal gang
- 6) **any person who may suffer undue stress while testifying**
- 7) **any person who needs special arrangements to give full and proper evidence.**

### ➤ SPECIAL ARRANGEMENTS FOR VULNERABLE WITNESSES?

The following special arrangements for giving evidence can be made (a) at the request of any party (b) at the request of the witness in question or (c) on the court’s own motion.

The factors to be considered in respect of any special arrangement are:

- the interest of the state in getting complete and accurate evidence



- the interests and well-being of the witness concerned
- the availability of the necessary equipment and venues
- the interests of justice in general.

1) The trial can be held in an **alternative venue**, which will be less formal and less intimidating than a courtroom.

*For example, a small child might feel more comfortable testifying in the magistrate's office.*

2) The **furniture in the courtroom can be re-arranged or changed**, or people can be directed to sit or stand in places different from what is usual.

*For example, a young child may be too short to see and be seen properly while sitting in the usual witness box.*

3) The witness may be allowed to **testify behind a one-way screen** or by means of closed-circuit television.

*The Katutura Regional Magistrates' Court has already been equipped with a Victim Friendly Court Room that has these facilities.*

*The accused must be able to see the witness, but the witness does not have to see the accused. For example, a victim of rape or domestic violence might feel less intimidated if she does not have to look at the accused.*

*The accused's legal representative, the prosecutor and the presiding officer must be able to see the witness.*

4) A **support person** can accompany witnesses while they are testifying.

*For example, a young child could speak to the court while sitting on the lap of a support person who is family member or a teacher (as long as that support person is not going to be giving further testimony in the same case).*

*The support person can stand or sit near the witness and give physical comfort to the witness as necessary. The support person can also interrupt the proceedings to alert the presiding officer to the fact that the witness is becoming upset. The presiding officer can then take appropriate steps, such as calling a short recess.*

*The support person may not help the witness answer questions or instruct the witness on what to say.*

*The presiding officer can instruct the support person not to communicate with the witness during testimony, or to refrain from doing anything which might interfere with the evidence.*

5) The presiding officer may authorise **any other steps** that he or she thinks "expedient and desirable" to facilitate the giving of evidence by a vulnerable witness.

*For example, the presiding officer might take some time to explain to a vulnerable witness how the procedure is going to work before the testimony begins.*



## ✘ OTHER SPECIAL MEASURES

The following provisions apply to all witnesses, or to specific categories of witnesses, rather than to “vulnerable witnesses”.

**1) Any witness under age 14 is NOT required to give an oath or an affirmation before giving evidence.** The presiding officer must simply warn the witness to tell the truth, the whole truth and nothing but the truth.

**2) Evidence will be received from any witness who appears to be able to give intelligible testimony.** There is no longer any reason for witnesses to be subjected to confusing questions about their ability to tell the difference between right and wrong, or between truth and lies. Anyone, including a child, who appears able to give intelligible testimony will be allowed to testify. The weight which should be given to the evidence will be determined by the presiding officer in light of the usual criteria for judging credibility.

**3) The evidence of a child shall not be regarded as being unreliable just because the witness is a child. The court must not treat the evidence of a child with special caution just because the witness is a child.** The reliability of a child’s evidence and the weight which should be given to it must be assessed in the same way as the evidence of any other witness.

**4) The presiding officer now has strengthened powers to place strict limitations on the use of irrelevant cross-examination to badger or to intimidate any witness.** If cross-examination is taking an unreasonably long time, the presiding officer can ask the cross-examiner to show the relevance of the line of questioning before he or she is allowed to proceed. (This discussion can take place in the absence of the witness if necessary.) The presiding officer can also set reasonable limits on the length of cross-examination, or place reasonable restrictions on certain lines of questioning.

**5) Any witness under age 13 may be cross-examined ONLY through the presiding officer or through an intermediary.** An intermediary is a person who has the qualifications gazetted by the Minister of Justice for this purpose. (For example, the Minister might approve social workers or psychologists as intermediaries.) The intermediary must be available right away, to prevent postponements. The presiding officer or the intermediary may restate the questions, simplifying them or re-phrasing them if necessary. The essential meaning of the question must not be changed. The purpose of this provision is to make sure that lawyers do not try to intimidate or confuse a witness with a hostile tone of voice or complicated questions.

**6) Medical records prepared by a medical practitioner who treated a victim may be used in a criminal case as *prima facie* proof that the victim suffered the injuries recorded in the documents, even if the medical practitioner in question is not available to testify personally.** The records are not admissible as evidence of any *opinions* stated unless the medical practitioner is available to testify. This provision is designed to take care of situations where doctors had left the country or were otherwise unavailable. Similar arrangements were already in place in the Criminal Procedure Act for documents prepared by other professionals.

**7) There are now added possibilities for admitting information given by children under age 14 prior to the trial,** such as statements to social workers or police officers, to avoid the necessity of asking the child to repeatedly recount the details of a traumatic experience. The previous statement can be used as evidence to prove a fact contained in the statement

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(a) if the child is unavailable; (b) if the statement “considered in the light of all the surrounding circumstances contains indications of reliability” or (c) if the child is present to confirm that he or she made the previous statement. This applies to (a) a statement made on an audiotape or a videotape, if the person who took the statement is in court to give evidence about the procedure (b) a written statement, if the person who took the statement is in court to give evidence about the procedure; or (c) oral evidence about the previous statement (if no audiotape, videotape or written statement is available).

## MORE INFORMATION ON VIOLENCE AGAINST WOMEN AND CHILDREN

You can consult the following sources for more information about domestic violence and sexual abuse in Namibia:

- Ministry of Health & Social Services (2004), *An assessment of the nature and consequences of intimate male partner violence in Windhoek: A sub-study of the WHO Multi-Country Study on Women’s Health and Domestic Violence*.

Statistics on the incidence of domestic violence and its health consequences based on a survey of 1500 women in Windhoek.

- Legal Assistance Centre (2004), *Guide to the Combating of Domestic Violence Act*.

A detailed description of the statute for service providers, community groups and counsellors.

- Legal Assistance Centre, *Whose Body Is It??: Commercial Sex Work and the Law in Namibia* (2002).

This study of commercial sex work in several regions includes some information on violence against sex workers and sex work by children.

- Legal Assistance Centre (2001), *Guide to the Combating of Rape Act*.

- A detailed description of the statute for service providers, community groups and counsellors.

- UNDP, *Namibia: Human Development Report 2000/2001*.

- Data on various forms of violence, including rape and domestic violence.

- D LeBeau (2001), “The Changing Status of Women in Namibia and its impact on Violence against Women” in Ingolf Diener & Olivier Graefe, eds (2001), *Contemporary Namibia: The First Landmarks of a Post-Apartheid Society*.

A review of the divergence between the legal and social status of women as a contributing factor to gender-based violence.

- Legal Assistance Centre (2000), *Namibian Men against Violence Against Women: Report on the National Conference in Windhoek, 23-25 February 2000*.

- Report of conference proceedings which lead to the launch of Namibian Men for Change (NAMEC), with information on action by men against gender-based violence in other countries.
  - H Becker (2000), "‘What it means to be a man’: Masculine identities among young men living in Namibian townships", *Development Update*, Vol 3 (2), March/April 2000.
  - A brief study of masculinity based on a survey of urban youths in Namibia, which examines links between concepts of masculinity and gender-based violence.
  - Legal Assistance Centre & Law Reform and Development Commission (1999) *Domestic Violence Cases Reported to the Namibian Police: Case Characteristics and Police Response*.
  - A study based on information collected from police stations throughout Namibia.
  - D Hubbard & D Wise (1998), *Domestic Violence: Proposals for Law Reform*, Legal Assistance Centre.
  - An examination of legislation on domestic violence in other countries, with proposals for law reform in Namibia.
  - Dr SMH Rose-Junius et al (1998), *An Investigation to Assess the Nature and Incidence of Spouse Abuse in Three Sub-Urban Areas in the Karas Region, Namibia*.
  - A study based on information from Lüderitz, Karasburg and Keetmanshoop, including individual interviews with victims of domestic violence, group discussion with other community members and interviews with social workers, doctors, police, church leaders and prisoners.
  - D LeBeau (1997), *The Nature, Extent and Causes of Domestic Violence Against Women and Children in Namibia* (prepared for the Women and Law Committee of the Law Reform and Development Commission).
  - A study based on information from doctors, nurses, social workers, police, community leaders and victims of domestic violence.
  - CCN Children’s Desk (1996), *Child Abuse in Namibia*.
  - A collection of press clippings and related information about child abuse.
  - H Becker & P Claassen (1996), *Violence Against Women and Children: Community Attitudes and Practices* (prepared for the Women and Law Committee of the Law Reform and Development Commission).
  - This paper examines community attitudes on rape, domestic violence and sexual harassment.
  - Social Sciences Division of the university of Namibia, Legal Assistance Centre & UNICEF (1995), *Children in Namibia: Reaching Towards the Rights of Every Child*.
  - A situation analysis of children in Namibia.
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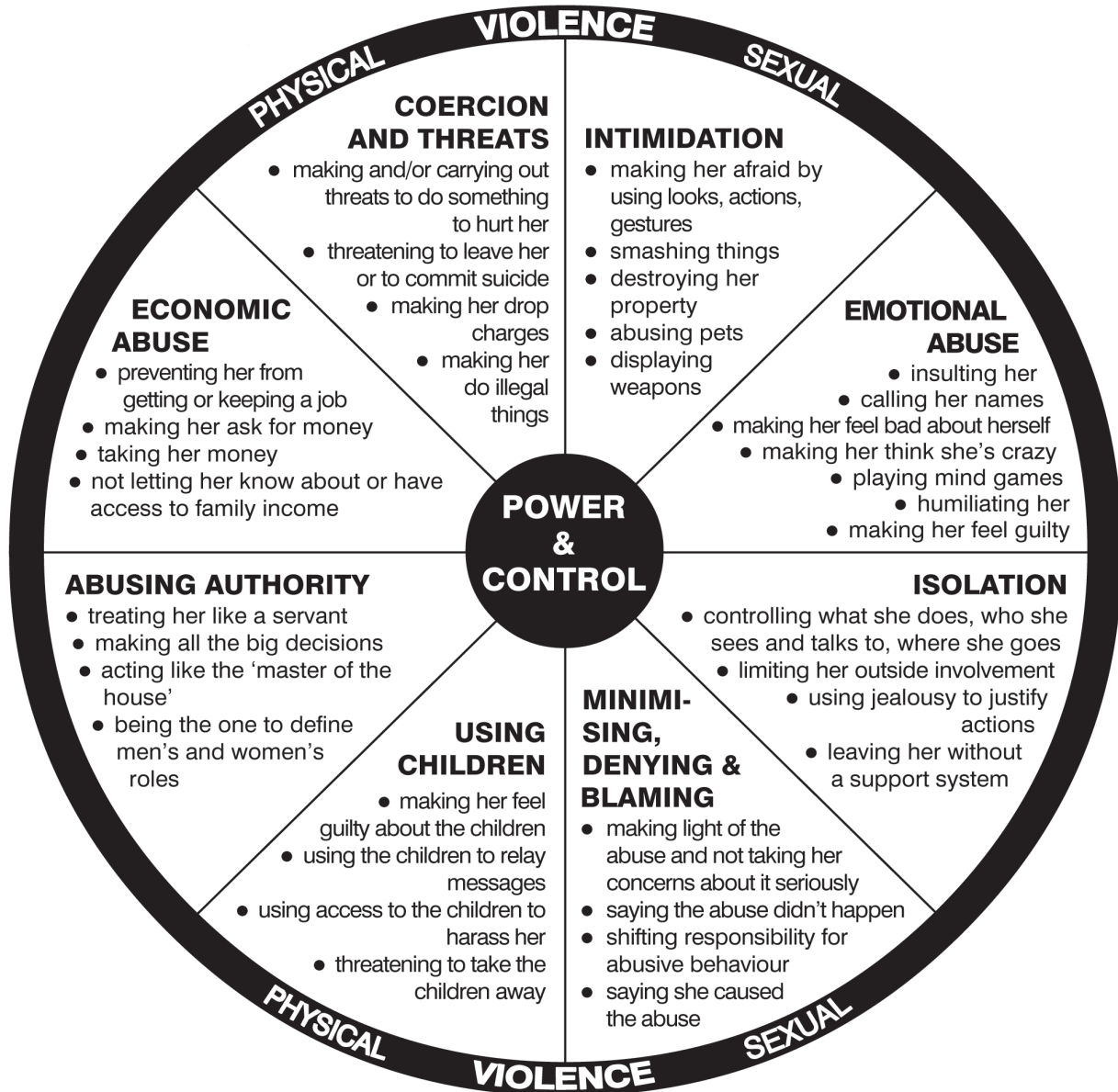
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- D Hubbard (1994), "Should a Minimum Sentence for Rape be Imposed in Namibia?", *Acta Juridica* 1994; reprinted in Christina Murray, ed., *Gender and the New South African Legal Order*, 1994.
  - Legal issues pertaining to minimum sentences, with some comparative data from other countries.
  - D Hubbard (1991), "A Critical Discussion of the Law on Rape in Namibia", in Susan Bazilli, ed., *Putting Women on the Agenda*, Raven Press, 1991.

This article explains the need for law reform on rape. It was written before the Combating of Rape Act was enacted, and based on a study carried out by Women's Solidarity, a Namibian rape counselling organisation.

You may also find the following resource useful for workshops on gender-based violence:  
Petrus Haakskeen (2003), *So cry the abused mother and child: Poetry on violence against women and children*, published by Legal Assistance Centre.  
It is illustrated with drawings by Namibian secondary school children depicting positive solutions to the kind of violence which the poems describe so eloquently.

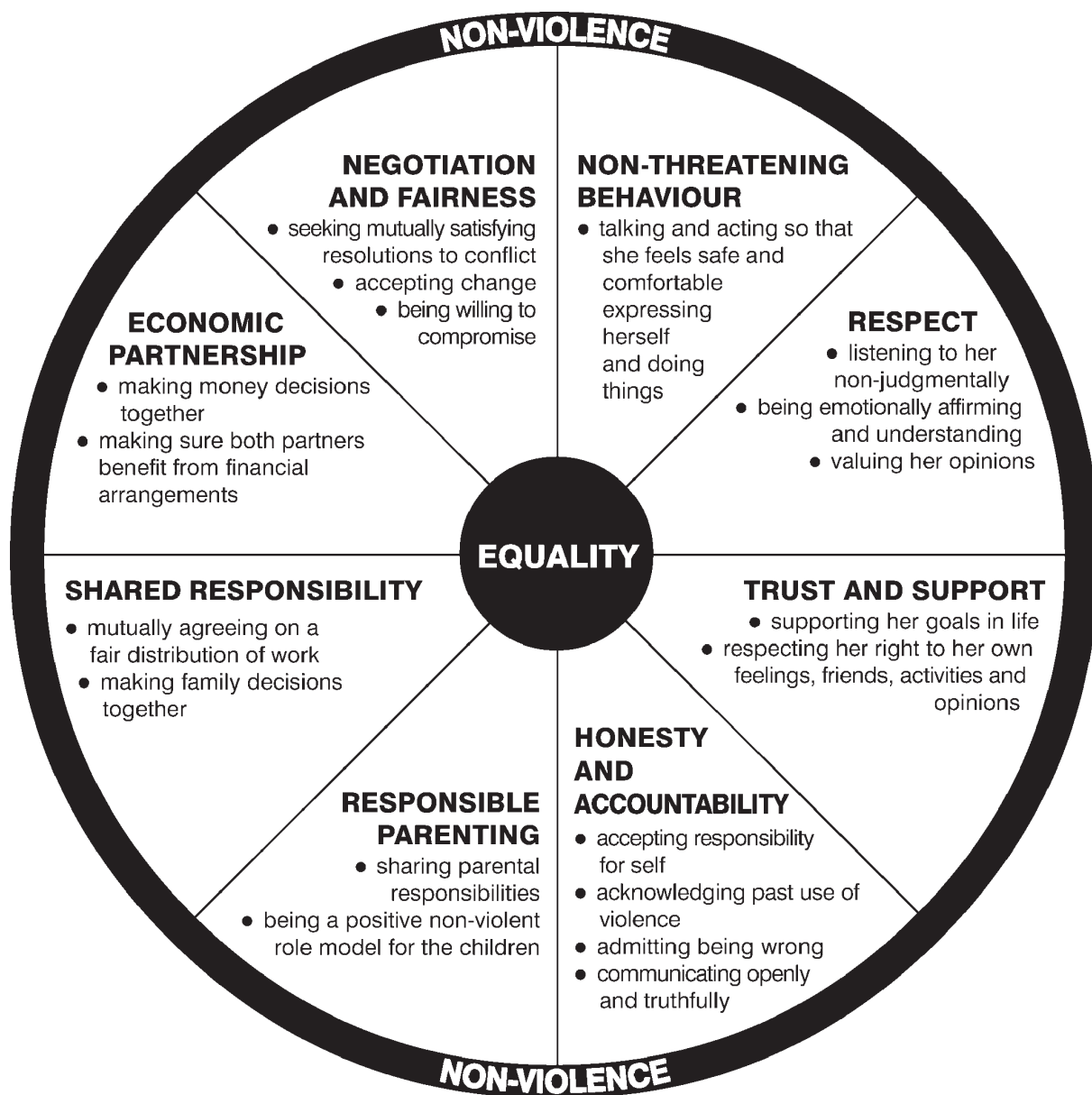
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**VIOLENCE WHEEL**



The Violence Wheel shows how physical and sexual abuse are related to other forms of power and control in personal relationships. The more subtle forms of control may lead to physical violence, or alternate with outbreaks of physical violence.

## NON-VIOLENCE WHEEL



The Non-Violence Wheel shows behaviours based on equality rather than power. It provides ideas for setting goals and boundaries in personal relationships.