

NAMIBIA

**ACCESS
TO JUSTICE
PARALEGAL
MANUAL**



TABLE OF CONTENTS

PART 1 THE ROLE OF THE PARALEGAL

Chapter 1 The Importance of Paralegals in the Republic of Namibia 1

PART 2 PRACTICAL SKILLS FOR PARALEGALS

Chapter 2 Practical Skills for Paralegals 7

PART 3 NAMIBIAN SUBSTANTIVE LAW

Chapter 3 Labour and Employment 25

Chapter 4 Workers Compensation 37

Chapter 5 Discrimination 42

Chapter 6 Marriage and Divorce 46

Chapter 7 Domestic Violence 55

Chapter 8 Rape 65

Chapter 9 HIV and AIDS 75

Chapter 10 Wills and Inheritance 83

Chapter 11 Motor Vehicle Accidents 91

Chapter 12 Social Grants 96

PART 4 THE CONSTITUTION AND CITIZENSHIP

Chapter 13 The Namibian Constitution and Bill of Rights 103

Chapter 14 The Courts and the Legal Profession 110

Chapter 15 Citizenship 119

Chapter 16 Public Participation 123

PART 5 APPENDICES

Appendix 1 The Namibian Paralegal Association Code of Conduct for Members 127

Appendix 2 Legal Dictionary/Glossary 129

Appendix 3 Index of Forms 137





PART I

**THE ROLE
OF THE
PARALEGAL**

CHAPTER I

THE IMPORTANCE OF PARALEGALS IN THE REPUBLIC OF NAMIBIA

1. INTRODUCTION

Paralegals play a very important role in Namibia. The need for legal services and legal advice in Namibia is great. Having gained independence in 1990, the rights of the individual – whether basic human rights or rights associated with family, land, or labour – have taken on a high level of importance.

As in many other southern African countries, it has remained difficult (even after independence) for poor and vulnerable people in Namibia to gain access to justice. Legal procedures are very complicated, lawsuits take a long time to conclude, and pursuing a case often requires the assistance of lawyers whose fees are too high for many everyday working people. While the people of Namibia now enjoy many new rights – rights included in the Constitution, the Bill of Rights, and newly enacted statutes – they can only exercise these rights if they have access to information.

In response to this situation, a movement developed to help people learn about their rights, enforce those rights, and secure justice. This growing movement of community assistance workers – volunteers who provide educational programs, advice, and advocacy assistance – arose to help bridge the gap between people who (until independence) lived outside the protections of a real justice system, and the structures of government, non-governmental organisations, charitable foundations, and trade unions designed to protect and serve all peoples regardless of race, ethnicity, gender, traditional community, or religion.

The name “paralegals” is the title for people who have been trained to act as community educators, activists, and advocates. Paralegals play an important role in providing access to justice in a transforming justice system. In Namibia, the Ministry of Justice has recognised the importance of the role that paralegals play in ensuring access to justice and has made significant efforts to involve paralegals in the evolving legal system.

2. BACKGROUND OF THE NAMIBIA PARALEGAL ASSOCIATION

In 1998, the Legal Assistance Centre (LAC) initiated the Community Paralegal Volunteer Project and established the Namibia Paralegal Association (NPA). The NPA was registered as a non-governmental organisation (NGO) in 2003, a non-profit, voluntary organization of individuals providing community members with free services on matters pertaining to violations of their legal, civil, constitutional, and human rights.

The paralegal project was initially implemented in two phases. In the first phase, the LAC trained 280 paralegals over a three-year period from 1998 to 2001. During those years, the LAC established advice centres in different communities around the country at which paralegals would provide a range of services to the community. Unfortunately, due to a lack of funding, most of those advice centres were closed. NPA paralegals continue to run two regional offices located in the Omaheke and Otjozondjupa regions.

The second phase lasted from 2005 to 2007, when the NPA received a grant from the Embassy of Finland. The NPA used the funds to hold various community workshops and paralegal trainings in regions around the country.

Today, the NPA operates through an estimated 200 paralegals representing all thirteen regions of the country and actively serving their communities. The NPA has an Executive Committee consisting of nine members, all of whom were part of the original group of 280 paralegals. The Executive Committee is elected by the paralegals at an Annual General Meeting. The Executive Committee for 2010/2011, the time when this manual was published, is comprised of the following members: Lucas Rumingu Kasera (Acting President), Nokokure (“Noko”) Kariko (Secretary), Sibali Kgobetsi (Vice Secretary), Sonny Ndalumbumo (Treasurer), Ferdinand Muharukua (Deputy Treasurer), Jarcino Beukes (Additional Member),



Mbaisana Tumbu (Additional Member), and Karel Gui dao-oab (Additional Member).

With communities' continued support, the NPA paralegals will continue to be a strong force helping people who historically have been denied justice, education, and resources.

3. WHAT IS A PARALEGAL?

A paralegal is a community-based person trained to give practical advice to communities and individuals about their legal rights, human rights, administrative matters, and constitutional and development problems. Paralegals are also trained to educate and assist community organisations with legal and developmental challenges. A paralegal is a volunteer and offers services for free.

A paralegal is not a lawyer. They cannot assist people in court or other tribunals (unless they study for and acquire the relevant qualifications to act as an attorney). Paralegals can, however, provide assistance to lawyers in much the same way a paramedic provides assistance to doctors and nurses. So while a paralegal cannot represent an individual in a court or tribunal, a paralegal's guidance can be critical to ensuring that an individual's legal rights are protected.

Most legal issues are resolved long before reaching a courtroom or tribunal, so a paralegal's role in the legal system is of the utmost importance. In general, a paralegal should focus more on the use of administrative methods and conflict resolution methods (like negotiation, conciliation, mediation, and arbitration) rather than using the courts.

EXAMPLE 1: A woman and her children, who are suffering from abuse at the hands of the husband and father, should be advised by a paralegal to apply for a Protection Order. But the paralegal should also see the bigger picture: the woman and her children are financially dependent on the husband and father for their survival so they cannot move out of the house unless they are supported in this process. The paralegal should therefore help the woman apply for maintenance for her children and she should be referred to a Women and Child Protection Unit or to a similar organisation supporting abused women.

EXAMPLE 2: A farmer is planning to evict ten families from his farm without a court order. A paralegal can help the families to approach the courts (using a lawyer) to get an urgent interdict to

stop the evictions from taking place. But this only provides the families with temporary relief. It would also be beneficial to the families if they were to sit around a table with the farmer and negotiate a way of dealing with the problem which would benefit all the parties. While they are doing this, they should be lobbying and putting pressure on the local government to provide land for the families to settle on because they do not have security of tenure rights on the farm. The paralegal can help them in all of these actions.

4. WHO MAY PERFORM PARALEGAL WORK?

There are basic requirements that must be complied with by any person who wishes to work as a paralegal. To be a paralegal, that individual must:

- Be an honest person who is trusted and respected by the people served;
- Have the ability to work effectively with others;
- Have mediation, administrative, and conflict resolution skills;
- Be a person who is motivated, disciplined, and committed;
- Have the ability and attitude to help people acquire the skills necessary to help themselves. For example, if a paralegal is faced with a domestic violence situation, the advice given to the client should empower the client to independently deal with a similar situation in the future;
- Always try to gain more knowledge of the law and keep himself/herself informed about new developments in the law; and
- Be able to read and understand legal texts.

Successful paralegals are resourceful and have a desire to help others. Among other things, paralegals enjoy interacting with people and the community at large and are comfortable consulting with potential clients, taking statements, collecting evidence, and writing basic legal letters. Paralegals must also understand and communicate in the official language – English – and must possess the ability to translate materials from English to the languages spoken in each locality.



5. SERVICES THAT PARALEGALS PERFORM

Paralegals provide many services to the community, including the following:

- Giving legal and other general guidance;
- Guiding those with legal needs to the right resources;
- Investigating cases that will later be referred to lawyers or to other service providers;
- Working as a link between lawyers and the community;
- Helping communities gain access to public services and other public resources;
- Mediating between communities and authorities;
- Facilitating community workshops;
- Assisting in the resolution of community and family disputes;
- Helping communities identify and implement developmental and income-generating activities; and
- Simplifying laws and legislation so that community members understand them.

Paralegals also need to know how to collaborate and cooperate with other organisations, government departments, and local and traditional authorities. For example, paralegals often need to refer clients to relevant government agencies, such as the Department of Social Welfare, The Women and Child Protection Unit of the Namibian Police, or the Legal Aid Directorate in the Ministry of Justice.

6. ETHICS OF PARALEGALS

Ethics refers to those rules and moral conduct to which every member of a group or certain profession should adhere. Lawyers, doctors, social workers, and other professionals have their own unique ethics as well. Paralegals have their ethics too. These ethics are important because the general public should know that a paralegal is someone who can be trusted because he/she does their job according to prescribed ethics. The following are the ethics of paralegals:

Prompt Service: A paralegal must provide prompt and efficient service. This means a client's problem must be dealt with as soon as possible. Where research is necessary, feedback must be provided at the paralegal's earliest convenience.

If there is a consultant or third person involved, give them the necessary information as soon as possible.

Free service: Whatever a paralegal does, he/she does for free. A paralegal should not charge any fee for services rendered. At times clients might highly appreciate what a paralegal did for them and might offer you a reward or present. It is important to note that to accept any sort of "reward" is against paralegal ethics.

Responsible service: A paralegal should not do work he/she is not qualified to do. For example, a paralegal should not pretend to be a lawyer and do work meant for lawyers. A responsible paralegal calculates his/her actions and deals only with matters within his/her ambit of work.

Accurate service: This requires a paralegal to "double check" any information provided to a client. Hence continuous research to obtain accurate information for the client is an important ethical obligation.

Fair and impartial service: A paralegal always maintains impartiality and fairness. In other words, a paralegal should not give advice based on his/her beliefs or preferences. Prejudices should be set aside to enable the paralegal to apply his/her mind.

Polite service: A paralegal should at all times be polite and treat clients with respect and care. Respect and care requires that a paralegal should not lose his/her temper even if the client is irritating, arrogant, or rude.

7. MAKING REFERRALS

There are assistance agencies in all regions of Namibia involved in solving specific legal problems. Often, one agency is more qualified than another to sort out a certain problem. Some of these agencies are privately run and some belong to the government. An important task of a paralegal is to recognize when a matter should be referred to a qualified agency and to then refer the matter to that particular agency. It is important for a paralegal to follow up with the agency to confirm that the referral has been accepted.

The *Namibia Paralegal Association* and the *Legal Assistance Centre* have helpful forms for creating a letter of referral. These forms can be found at www.namibiaparalegals.org and www.lac.org.na.





PART 2

**PRACTICAL
SKILLS FOR
PARALEGALS**

CHAPTER 2

PRACTICAL SKILLS FOR PARALEGALS

INTRODUCTION

Part 3 of this Manual addresses many of the substantive legal issues you will face when advising clients. Along with knowledge of the law, it is important that paralegals have strong communication skills. This chapter looks at practical skills necessary and useful for a paralegal to have in their advice-giving role.

I. COMMUNICATING WITH THE CLIENT

An effective paralegal has the communication skills to do the following:

- Interview the client and take statements;
- Listen to the client;
- Counsel the client;
- Monitor and gather evidence;
- Give advice and solve problems;
- Refer clients to other organisations or assistance agencies;
- Make telephone calls;
- Write letters; and
- Write reports.

A. INTERVIEWING YOUR CLIENT

There are several important things you should do when interviewing a client, especially for the first time. It is important to note that as a paralegal, your personality and general reputation in the community determines whether a client and the community will trust you.

Important tips for interviewing a client include:

- Introducing yourself to the client. This means you must explain who you are, what training you have had, and what help you may be able to provide.

- Asking for the client's name and address.
- Explaining the interview process to the client.
- Ask if you may take notes of the conversation. Offer to provide copies of your notes to the client. This and all other information should be recorded on the **Client Intake Case Form** (see following page).
- Asking the person why he or she has come for help.
- Working out whether the person is willing or able to discuss his or her problem. Keep in mind that the client may find it difficult to discuss his or her problems with you.
- Listening carefully to the client and not jumping to conclusions about his or her problem.
- Asking the client whether he or she took any steps to solve the problem before coming to see you.
- Discussing with the client what you think are the necessary steps needed to sort out the problem.
- Determining if the client only needs advice and counselling or if the client needs a referral to an agency for assistance. (See example of Referral Letter following.)

In interviewing the client:

- Do not assume that the client knows the law.
- Do not use foreign or Latin words (e.g., *pro amico*, *pro deo*).
- Do not use legal terms (e.g., jurisdiction or *locus standi*).

Always explain things in simple, everyday language and make sure the client understands you. It is helpful to explain things in a way that relates to the experience of the client. Concrete examples showing what might happen are often a good way to ask about and illustrate possible outcomes.



CLIENT INTAKE CASE FORM

Date:

Client Name:

Physical Address:

Postal Address:

Telephone/Cell:

Email (if any):

Age:

Type of case:

(e.g., labour)

Description of client's problem:

.....
.....
.....

Advice or suggestions given to client:

.....
.....
.....

Action taken on behalf of client:

.....
.....
.....

Was the client referred to another agency? If so, which agency?

.....

B. LANGUAGE

It is important to think about the fact that the client may feel more comfortable speaking a language that you do not know well. The best way to communicate is to interview a person in his or her own language. People find it much easier to tell you about their problems in their own language. It makes them feel more at ease and they will be able to explain themselves better. Confusion and misunderstandings can occur when a person has to explain a problem in a language which is not his or her own language. If you cannot speak the language of the person you are interviewing, then you should have someone with you who can act as an inter-

preter. If you are using an interpreter, that person should have a good understanding of both languages. It would also be helpful for them to have some basic knowledge of the law. Similarly, if you write to the client or write a document for your client, you should try to write the letter in the client's language.

It is also important to use the right level of language so that the person you are trying to help understands what you are saying. If you do not explain things plainly and in a way that is easy to understand, you will not be helping the client.

Here are some examples of language issues that may hinder the client's ability to understand you:



- Using difficult legal words. For example: discretionary, obligatory, etc.
- Using a difficult explanation to explain a difficult word. For example, explaining that an interdict is ‘a civil remedy calling on the offending party to refrain from harming the applicant’ is not as easy to understand as saying that ‘an interdict is a special kind of court order which you can get to protect you from harm or danger.’
- Using foreign or Latin words. For example, *quid pro quo*, *vis-à-vis*, etc.
- Using jargon (words that are usually only clear to a certain group of people).

C. LISTENING SKILLS

It is important to listen carefully when the client is telling you about a problem. There are different ways that you can use to show the client that you are listening carefully.

- Use your body to say “I am listening”:
 - Use eye contact and look at the client
 - Nod your head
 - Say “yes,” “I see,” or “I understand”
- Let your client tell their whole story first. Then summarize the main points of what your client said in your own words to make sure that you got the story right. Ask the client if your summary is correct.
- Show the client that you are sympathetic to his or her problem.
- Do not be impatient with the client when he or she is telling you about a problem.

If you listen carefully to the client, you will know what help she or he is looking for. The more sympathetic you are toward the client, the more the client will trust you and confide in you.

2. ADVISING A CLIENT

Giving a client advice is one of the most important jobs of a paralegal. Listen carefully to the client and find out exactly what he or she needs you to do. Discuss with the client what steps you will take to try to solve the problem. Make sure the client understands what you are going to do. Be realistic about how much you think you can do for the client and how long it will take to sort out the problem. Do not raise false hopes. Further, never give advice if you are not sure of the facts. In that case, it is wise to inform the client that you may need to get

back to him or her with advice after you have had an opportunity to investigate further.

Always agree on how you are going to report back to the client. This could be by writing a letter to the client or by the client coming back to you on a set date.

Keep track of all communications with the client. **Write down everything** that you do. For example, if you make a telephone call, write down what was said during the call. Keep copies of all letters that you write for the client.

You can start by using the **Client Intake Case Form**. Write down the advice that you give the client and the instructions he or she has given you. Keep copies of the Client Intake Case Form (and all communications and other client related documents) in the client’s file.

Keep **copies** of all documents in connection with the client’s claim. Do not write on original documents. Copies of client documents should be kept in a secure folder or stapled to the Client Intake Case Form so they do not get lost.

A. TAKING A CLIENT STATEMENT

Sometimes it is necessary to take a client’s statement. It is necessary to take a statement accurately and completely because it helps keep a record of the client’s case. It is also important because a client can forget facts over time. A statement can also be important when making a referral so that the person or agency receiving the matter has a written description of the event. For these reasons, it is very important for you to write down information accurately and completely. All client statements should be maintained with the client file.

The details you need will be different according to different types of legal problems. For example, in a complaint about the non-payment of wages, you need to know what work the client was doing and what the wage was supposed to be, as well as the name and address of the employer. To help with a pension application, you need the age and present income of the client.

Write down every detail of importance. It is always better to include information if you are not sure whether it is important or not. Paralegals can develop forms for different types of cases to ensure that they will record the correct information. However, a client statement should include at least:

1. Important details about the client. The client’s name, age, identity number, work details, postal address, and residential address should be carefully noted.



2. A description of the problem.

3. A chronological description of events.

If possible, it is best to have the client sign the statement. An example of a Client Statement is below.

B. VERIFYING INFORMATION

As a paralegal, you must be careful not to act based on false information. There are times when a client provides false or inaccurate information to back up his or her case. If you act on such information, you may face embarrassment and loss of respect. Therefore, it is very important to hear the story of the other person before you take action.

CLIENT STATEMENT

Date of statement:

30 October 2011

Statement taken by:

Rufinus Hindjo, Walvis Bay Community Advice Office

1. My name is Moses Asino. I am 35 years old and am living in Room 777, Single Quarters, Mondesa. I am married with three children. I am a fisherman by trade.
2. On 26 September 2001 at approximately 22h00 I was on my way home after watching a soccer match on television with my friend, Freddy Hamata, at his house. I passed the Mondesa Shopping Centre on my way home.
3. After passing the Shopping Centre, a group of approximately eight persons in official uniforms crossed the street and came toward me. One of them stopped me and asked where I was going. I told him I was on my way home.
4. He grabbed me by my shirt and started touching my pockets. I was very surprised at this move and pushed him away. Another member of the group immediately hit me with a rifle butt in the back. Thereafter, they all started hitting me and kicking me all over my body and told me not to be cheeky.
5. I begged them to leave me alone. After a while they stopped hitting me and told me to disappear. I felt very dizzy but started running with difficulty to my house.
6. When I arrived at home my wife opened the door and was shocked because my face was covered with blood and my lips swollen. She wanted to take me to the doctor, but I was too scared to leave my house after what happened that night.
7. The next morning I got up with great difficulty and went to the clinic in a taxi. I was immediately transferred to the State Hospital. In the hospital, I was treated for two broken ribs, severe bruising over my body, and a black eye. I spent two days in the hospital and was treated by Dr. Iyambo.
8. After my discharge from the hospital, I went to the Swakopmund police station to file a complaint against the persons who assaulted me. The police took a statement and promised to investigate the matter. After two weeks, I went back to the police station and the person who took my statement said they had not traced the persons who assaulted me.
9. I have been unable to earn a living as a fisherman since I still have severe pains in my rib cage after the assault.
10. I want the responsible people to be charged and I want to make a civil claim against them.

Signature of client



However, this does not mean you should question the credibility or honesty of your client. It all depends on whether you, as a paralegal listening to the complaint, have doubts as to the truthfulness of what you are being told.

C. CONFIDENTIALITY

Everything you discuss with your client must be kept confidential. A good paralegal keeps information confidential at all costs. Confidential means that you do not tell anyone the information the client has told you unless the client gives you permission to tell someone else. You can ask the client for permission to discuss the matter with another paralegal if you feel you would like to have a second opinion on how to handle the client's matter.

3. ADVICE GIVING AND PROBLEM SOLVING SKILLS

Sometimes people only need advice to help them with their problems. For example, someone may come to you asking where to go to find an application for a child social grant. You can advise him or her to go to the closest Ministry of Gender Equality and Child Welfare.

As much as possible, you should encourage people to try to sort out their problems on their own. Often this means that you give a person some advice and tell them to come back to you if they have not managed to sort it out. This makes people less dependent on you to solve their problems and encourages them to take responsibility for dealing with their own problems.

4. COUNSELING SKILLS

Sometimes people just want to talk to you about their problems and it may not be necessary for you to take any further action. It might be enough for you to counsel someone about ways to deal with a problem. For example, your client might have a problem with noisy neighbours who party through the night and keep her awake. You can suggest different ways to deal with the problem such as asking for a meeting with the neighbour to discuss the problem or getting a mediator in to help mediate between the neighbours.

Counselling is a skill used mainly by professional psychologists and social workers. Where the issues raised by an advice seeker can have serious psychological consequences (for example, in the case of a child who has been abused, a person who

has been raped, etc.), they will need psychological counselling. Paralegals are not trained to provide this service so they should refer the person to a professional.

5. MAKING REFERRALS AND WRITING LETTERS

Paralegals often play an important role by linking people who have a problem to an appropriate agency that is more qualified and better trained to deal with the problem. The best advice a paralegal can give may be a referral to another organisation or agency, including the Legal Assistance Centre, government agencies, Women and Child Protection Units, trade unions, maintenance officers, or social workers.

There are assistance agencies throughout Namibia that are more qualified to sort out certain problems. Some of these agencies are government run and some are privately run. People working in these assistance agencies are trained to deal with specific legal and social problems.

A. SIMPLE REFERRAL LETTER

The best way to refer someone to another person or agency is to write him or her a **Referral Letter**. A referral letter enables you to do two important things:

- Briefly describe the problem to the officer/ department agent that you hope to refer the matter to.
- Keep a record of the advice given.

B. DETAILED REFERRAL LETTER

Sometimes, a more detailed referral letter is required. This usually occurs when more detailed information is needed to explain the referral.

C. LETTER-WRITING SKILLS

Sometimes a referral letter is not always enough and you will need to write a more detailed letter in order to get a response. Here are some guidelines for writing a more detailed letter. Use this as a starting point and adapt it as necessary. Remember to keep letters as simple and to the point as possible. It often is helpful to ask someone else in the office to read the letter before sending it. He or she might be able to give useful suggestions to improve the letter. Remember to keep a copy on file.



1. THE OPENING

- Your address (or the address that the person getting the letter must respond to).
- Your telephone number, fax number, and email address if you have one.
- The date.
- A reference number (this should correspond to your filing system and is useful when you receive a reply or need to write another letter).
- The name and/or title of the person to whom the letter is addressed.
- The address of the person to whom you are writing.
- A topic (“Re”) line. This explains what the letter is about and usually includes the client’s name and the type of problem.

2. THE INTRODUCTION

- Start your letter by saying that you are writing on behalf of your client.
- Provide information that will identify the client.
- State what the problem is and set out the details of your client’s complaint.

3. THE BODY OF THE LETTER

- State what the law says and apply the law to the facts of your client’s situation.
- Say exactly what it is that you want from the person you are writing to. In other words, say what the person you are writing to must do about your client’s problem.

4. THE CLOSING

- Invite the person to reply by a certain date (normally between 7 and 14 days).
- Sign the letter.

SIMPLE REFERRAL LETTER

Ongwediva Paralegal Centre
Private Bag 5534
Oshakati
Namibia

Telephone: + 264 – 65 –230444/230178
Email: hrc@osh.namib.com
Fax: 264-65-230443

Ref: EU/11/01

28 November 2011

The Maintenance Office
Oshakati Magistrate’s Court
Oshakati, Namibia

Attention: Mr. Petrus Amakali

RE: MAINTENANCE CASE/EMILIA ALPHEUS V. EFRAIM UUSIKU

We hereby refer Ms. Emilia Alpheus to your office for assistance regarding the maintenance of her three minor children. Ms. Alpheus alleged that the father of the children, Mr. Efraim Uusiku, has never paid any maintenance to the minor children since 1992.

Could you please render further legal assistance to this person? Please contact me so that I know this referral has been successful.

Thank you.

Sincerely yours,

Bertha Namalambo



DETAILED REFERRAL LETTER

Ongwediva Paralegal Centre
Private Bag 5534
Oshakati
Namibia

Telephone: + 264 – 65 –230444/230178
Email: hrc@osh.namib.com
Fax: 264-65-230443

Ref: HH/11/01

25 November 2011

Mr. P.S Shivute
Magistrate Office
Private Bag 2004
Ondangwa, Namibia

RE: MRS. HILIA JOHANNES HAUFIKU/APPOINTMENT AS EXECUTOR

Mrs. Hilia Johannes Haufiku is a widow. Her husband died on 19 September 2011. Her husband had a subscription share account at the First National Bank, Ondangwa Branch. After his passing, Mrs. Haufika, as a legatee, inherited his account which was accordingly transferred to her own account No. 5333 80 108.

Mrs. Haufiku is able to verify her claim as the rightful beneficiary together with her seven children. She submitted that she was married in community of property, a claim she is ready to verify through documentation.

Mrs. Haufiku's husband died intestate. Therefore, the provisions of Intestate Succession Ordinance 12 of 1946 apply to her case. The relevant provisions states: "If a deceased is survived by a spouse as well as descendants, the spouse inherits either a child's share or so much of the intestate estate as does not exceed in the value the amount fixed by the Minister of Justice by notice in Government Gazette, whichever is the bigger amount."

Given these provisions, I refer this matter to you to appoint Mrs. Haufiki as the executor of the estate so as to avoid a potential conflict between the relatives of the deceased and the spouse.

Sincerely yours,

Jonas Shipiki
Paralegal
Ongwediva Paralegal Centre



MODEL LETTER SHOWING LAYOUT

(your information)

Namibia Paralegal Association
Gobabis Office
26 Heroes Lane
P.O. Box 1441
Gobabis, Namibia
Telephone: + 264-62-564892
Email: hrc@osh.namib.com
Fax: 264-62-564892

(date)

15 January 2012

(reference number)

Our Ref: 135/09

(Name and address to whom letter is being written)

The Manager
Tex Stores (Pty) Ltd
PO Box 1053
Gobabis, Namibia

Dear Sir / Madam

(topic – usually the client’s name and the type of problem)

Re: Ms Gerda Fortuin: Leave Pay

(introduction)

We are writing to you on behalf of Ms Gerda Fortuin. She was employed by you as a checker at your Upington branch from 20/02/96 until 30/04/09. She resigned after giving the necessary notice. Her wage was N\$610 per week. Ms Fortuin’s work number was 315. Her identity number is 4209050920088.

(what the problem is – setting out the details)

Ms Fortuin says that when she received her final pay packet, she was not paid for leave owing to her. She last took leave in September 2008.

(what the law says and applying the law to the facts)

In terms of the Labour Act of 2007, a worker may receive leave pay calculated according to the following formula: **(put in the formula and your calculations)**

Ms Fortuin is therefore owed 7 months pro-rata leave pay.

(what the person you are writing to must do)

Ms Fortuin requests that you forward the leave pay that is owed to her to the above address within 14 days of your receipt of this letter. Please contact our office if you would like to discuss this matter further.

Sincerely yours,

(sign your letter)

[Paralegal’s Name]
(Paralegal, Gobabis Office)



6. TELEPHONE CALLS

Before you make a telephone call, you must make sure that you clearly understand what the problem is and what you hope to get out of the telephone call. You must prepare yourself properly before making the call.

- Always introduce yourself to the other person. Tell the person you are calling on behalf of your client.
- Always write down the name of the person to whom you are speaking and the date and time of the telephone call.
- Never change the story of your client. You must only say what your client told you. If you don't know how to answer a question asked by the other person, say that you must speak to your client again and that you will telephone again.
- Be polite but firm about your client's rights and never lose your temper over the telephone. Try not to become involved in an argument on the telephone because you might end up saying things that could harm your client.
- Take notes while you are speaking on the telephone, then write them down in more detail as soon as you have finished. You might have to remember the details later.
- If you reach an agreement with the other person, or if the other person says he or she promises to do something, you should confirm what you agreed in a follow-up letter to that person.

7. REPORT WRITING

Reports are written to report back about what a person, office, group, or committee has done. Paralegals might have to write regular reports on their work for their management group, for donors and partner organisations, or for the NPA Annual General Meeting. Report-writing is a very important communication tool which enables people to share information in a structured way. It allows everyone to be kept informed on what is going on.

Reports are also an important tool for NPA members to communicate about what they are doing in their communities.



EXAMPLE OF A PROGRESS REPORT ON ACTIVITIES

Gobabis Regional Paralegal Office

1. INTRODUCTION

This progress report is based on activities undertaken from the period of March – June 2011 at the Gobabis regional paralegal office. There are currently two programmes that the Gobabis paralegals are running: (1) a computer literacy programme and (2) human rights education programme with community members. The computer literacy program is a full-time activity and student enrolment increases in number on a daily basis. The human rights education program has been slightly stagnant due to limited resources and high demand of legal assistance from local communities that the office cannot meet due to lack of lawyers who can take on high level cases of public interest.

2. CASES REPORTED

Labour – 15 cases, 3 resolved, 10 referred to district labour offices, 2 pending
Land Disputes – 23 cases, all pending
Domestic Violence – 9 cases, all referred to the Women and Child Protection Unit

3. LEGAL AND RIGHTS EDUCATION INFORMATIVE WORKSHOPS

We have held many educational workshops with community members in different areas this year.

- 2 x Informative workshops on constitutional rights
- 1 x Informative workshop on land rights
- 4 x Informative workshops on Domestic Violence Act
- 1 x Informative workshop on Married Persons Equality Act
- 2 x Informative workshop on Maintenance Act

4. PROJECT – COMPUTER LITERACY PROGRAMME

We currently have a total of 21 students of which 14 are from the San minority group, who are exempted from paying the course. There are a large number of students who are willing to register, but we cannot accommodate all student demand due to a limited number of computers and human resources. The course runs for two months for students with typing skills and for three months for students without typing skills.

Seven students are paying for the course. Five students are female and two are male. One student is working at a local restaurant, one is a pre-primary teacher, and all seven have completed grade 12 and are looking for jobs.

5. PARTNERSHIPS

We are working in partnership with the United States law firm DLA Piper (New Perimeter Program) and the University of Maryland School of Law (International and Comparative Law Clinic). They are helping the NPA to revise the NPA legal manual (last revised in 2003). They have asked paralegals in Omaheke (and other regions) to take a look at their draft chapters and to provide feedback. They visited us in Gobabis in April 2011 and we have been communicating by telephone and email since their visit.

6. FUTURE PROJECTS

In the next year we plan to:

- Run Know Your Rights educational workshops with farm workers
- Do advocacy with the community about increasing access to water in the settlements
- Initiate a partnership with the Namibia Literacy Trust to work together on the Computer Literacy Programme

7. CLOSING REMARKS

I would like to thank the committee and NPA volunteers for all their hard work.



8. NEGOTIATION, MEDIATION, ARBITRATION SKILLS

Conflict resolution often requires skills which include negotiating, mediating, and arbitrating.

I. NEGOTIATION

A. NEGOTIATION SKILLS

Most of us deal with some form of negotiation every day. The paralegal will constantly be involved in negotiating on behalf of clients.

B. WHAT IS NEGOTIATION?

Negotiation takes place when two or more people or groups who have a conflict come together to try to agree on how best to resolve this conflict. This might mean that one side must compromise. Usually it means that both sides compromise so that they can reach a settlement. This is called a 'win-win' situation.

C. HOW DO YOU NEGOTIATE?

The main purpose of being a negotiator is to get the best settlement possible for the person or group whom you are representing. To do this, a negotiator needs certain skills such as:

- Finding out facts and information about the other side before you start to negotiate
- Knowing what questions to ask
- Knowing how to create the right atmosphere for successful negotiation – if you are too aggressive too early in the negotiation, this will create a tense atmosphere
- Knowing how much to tell the other person or group - for example, you should not give too many details too early in the negotiation as this could give the other person or group an advantage
- Knowing when to put your proposals to the other person or group
- Controlling your attitude toward the other side - all kinds of different emotions, prejudices, different values and cultures can affect your attitude toward the other side. This can make it harder for you to communicate properly with them.

EXAMPLE

A union official negotiates with the manager of a farm about the rights of workers have to join the union. The union official is very emotional because the manager is threatening to dismiss the workers. The union official also believes that the manager is not concerned about the workers and that he is cruel and immoral.

The manager is also very emotional. He believes that the union official is trying to take over the farm. He is worried about financial losses and believes that as soon as workers join a union they will go on strike. He believes that all workers are lazy and only want money to spend on alcohol.

In this example, there are many conflicting emotions, prejudices, and values between the two sides. This will affect negotiations between the two parties.

D. PREPARING FOR NEGOTIATION

Before beginning negotiations, you should:

- a. Identify the issue – understand the issue requiring resolution
- b. Be clear about your mandate – understand your client's desire
- c. Define your objectives – work out the key points that you want to achieve
- d. Select a negotiation team – it is usually better to have more than one person on a negotiating team
- e. Get to know the other side – study the other side's position and ask who will be participating in the negotiation
- f. Plan your actual presentation – organise the information you have gathered in a logical format so that you can easily use it in the negotiation.

E. THE PROCESS OF NEGOTIATION

Every negotiation is different and the process can differ. However, the flow chart (below) illustrates how a negotiation might proceed. In this example, the client is an employee who has been dismissed and would like her job back. You have to negotiate with the manager of the company where the employee was dismissed.



NEGOTIATION PROCESS

Identifying the goal and getting a mandate

THE EMPLOYEE WANTS HER JOB BACK.



PREPARING AND PLANNING FOR THE NEGOTIATION

- Find out all the details about the dismissal of the employee. Find out how many warnings she received in the past, her length of service, what her job was, whether she was a member of a union, why she thinks she was dismissed, and so on.
- Find out about the company, the name of the manager, whether the company has a reputation for treating its workers badly, and so on.
- Plan what you are going to say to the manager when you call.



MEETING OR CONTACTING THE OTHER SIDE

- Call the manager. Explain who you are representing and the reasons for your telephone call. Ask for the manager's side of the story. Explain that the employee wants her job back.
- The manager might refuse and also might make you a different offer (this is called a counter-offer).
- You do not have a mandate to accept a counter-offer. Tell the manager that you must go back to the employee.



GOING BACK TO THE PERSON OR GROUP YOU ARE REPRESENTING

Go back to the employee and explain what the manager has offered. (If you think it is a good settlement, you can try to encourage the employee to accept it.) If the employee accepts the offer, call back the manager and say that you agree to the company's offer.



PUTTING THE SETTLEMENT INTO PRACTICE

- Immediately write a letter to the company confirming the agreement.
- If the company does not keep to its side of the agreement, you must meet again with the employee and decide together what you are going to do.



2. MEDIATION

Where two conflicting parties cannot reach agreement on the issue causing the conflict, they can agree to ask a third party (called a “mediator”) to help them reach a solution. A mediator is a person who acts as a facilitator between the parties but does not make a decision about who is right or wrong. A mediator is not a judge. The mediator goes on assisting both sides until the parties themselves come to an agreement. If it is clear that the parties are not going to reach an agreement, the mediator might have to withdraw from the process. The parties will then have to find another way to resolve their conflict; for example, by using arbitration or going to court.

The main job of a mediator is to keep the parties in the negotiation communicating with each other. To do this, the mediator must get the trust and confidence of both parties and keep this trust by always being objective. The mediator must try to find out exactly what the problem or conflict is about. When the two sides meet together, the mediator must encourage both sides to be realistic about what they want from the other side and what they are prepared to give.

If you representing a person or group at a mediation, you need to prepare for the mediation in the same way as for a negotiation.

A. EXAMPLES OF ISSUES WHERE A MEDIATION MIGHT BE USEFUL

- Consumer complaints – You can use mediation or arbitration to solve consumer complaints. For example, a second-hand TV which your client bought breaks down completely after a month. The company that sold it refuses to fix it. It is too expensive to go to court, so you could ask the company to agree to call in a third party to act as a mediator between your client and the company. This is a cheaper and much quicker way of solving the problem.
- Community or neighbourhood disputes – Mediation can be very helpful in conflicts between different political groups, or landlords and tenants.
- Potential criminal matters – In some cases, mediation could be used to bring the person who committed the crime together with the victim of the crime, to see whether they can reach any agreement as an alternative to laying a criminal charge.

- Education – Mediation can also be helpful in disputes between students and teachers, students and administrators, parents and administrators, and so on.
- Environment – Disputes between communities and authorities relating to water, dams, waste disposal, and land development can be resolved through mediation.
- Family or divorce – Family, domestic violence, and divorce matters often use mediation for resolution.

B. PLANNING A MEDIATION SESSION

You should be flexible when you plan a mediation session. For example, a more informal mediation between two neighbours needs a different approach compared to a mediation between a consumer and a company. An example of a half-day mediation session is shown on the following page.

3. ARBITRATION

In an arbitration, a third party, acceptable to both parties, is called in to help the parties resolve the conflict. The difference between an arbitration and a mediation is that in an arbitration, the arbitrator is called on to make a decision about who is right or who is wrong. In other words, the arbitrator acts like a judge. The arbitrator chairs the hearing at which both parties present evidence. He or she reviews all relevant documents, takes testimony from witnesses, reviews the law, and makes a decision regarding who wins the arbitration. The arbitrator writes down the reasons for his or her decision in a judgment and gives this to the parties.

Before the arbitration takes place, the parties should agree in writing on the parameters (extent and limit) of the arbitrator’s powers. For example, will the arbitrator’s decision be final or will there be a right of appeal? Usually the parties agree that the decision of the arbitrator is final. This means the parties must obey this decision and the losing party cannot appeal against the decision.

An arbitrator should use proper legal principles to interpret the evidence, but the arbitration process is usually less formal than a court proceeding.



HALF-DAY MEDIATION SESSION	
1. INTRODUCTION: The mediator will explain the structure and aims of the mediation	10 minutes
2. OPENING OF MEDIATION: a. Welcome b. Introductions c. Agreeing to rules and procedures	15 minutes
3. STATEMENT OF POSITIONS: a. Each side will present its position (point of view). b. The mediator will summarise these positions. c. The mediator will pose clarifying questions. d. The parties respond.	30 minutes
4. FINDING COMMON GROUND (ISSUES THAT BOTH SIDES AGREE ON): a. The mediator will ask each side what it is prepared to do. b. The mediator will then summarise the common ground and add alternative solutions.	30 minutes
5. SEPARATE MEETINGS: At this point, it is likely that the mediator will speak to both sides separately. He or she may even go back-and-forth several times.	60 minutes
6. REACHING AGREEMENT: The mediator will work to bring both sides to a common solution and/or present a solution that he or she thinks is fair and that both parties should accept.	30 minutes
7. CONFIRMING AGREEMENT: a. The mediator will ask each side to state whether they agree to the proposed solution. b. The mediator will go over each point of the agreement. c. The parties, with the mediator's help, will put the agreement into written form.	30 minutes
8. CLOSURE OF MEDIATION: a. The mediator will discuss other issues such as monitoring and publicising of the agreement. b. The mediation session will then be closed.	15 minutes



9. COMMUNITY EDUCATION AND TRAINING WORKSHOPS

Educating people about legal rights can be efficiently done through community education and training workshops. Workshops should be planned so that they have direction and also so that something practical comes out at the end. When planning a workshop, keep these guidelines in mind:

1. GOAL

- Why are you running the workshop?
- What is your goal?
- What legal issues will be discussed?

2. PARTICIPANTS

- Who will attend the workshop?
- How many people will come?
- If it is a big group, you may want to plan for smaller group sessions during the workshop. A group of more than 30 people is difficult to manage and makes it harder for everyone to participate in a way that is meaningful.

3. LANGUAGE

- Which language or languages will you use?
- Will you need translation? If so, who will do the translating? Translation takes a lot of time and skill. It must be planned in advance.

4. TIME AND VENUE

- When is the best time for running the workshop?
- How long will the workshop last?
- Where is the most suitable venue? This will depend on the size of the group.

5. CONTENT

- What will be covered in the workshop?
- What level of detail will be needed for a successful workshop?

You can divide your workshop into the following sections:

- a. The beginning: This includes your welcome, introductions, ground rules for the workshop, and setting expectations.

- b. The middle: This is where you deal with transferring knowledge and/or skills to people. This may include breakout sessions and practice sessions. For example, if you are running a workshop on mediation skills, then you need to explain the theory to people and then give them time to practice the mediation process.
- c. The end: This includes your summary of the workshop, evaluation by participants, and your own concluding remarks.

6. METHODS

- How will you get the message to people?
- What workshop methods will help you to achieve this? Having attendees participate and practice is the most successful method.

7. FACILITATORS AND RESOURCES

- Who will run different parts of the workshop?
- What resources will they need to run the workshop effectively?
- Prepare the resources you will need in the workshop – for example, handouts and charts, small group questions, feedback forms, and so on.

Always remember that advance preparation makes for the most successful workshop. If you are planning on giving a workshop, you should work with others to plan it and use available resources (like the NPA and LAC) during your preparation.





PART 3

**NAMIBIAN
SUBSTANTIVE
LAW**

Chapter 3

LABOUR AND EMPLOYMENT

COMMON QUESTIONS ABOUT LABOUR LAW

MUST ALL EMPLOYERS FOLLOW NAMIBIA'S LABOUR LAW?

Yes. All employers and employees in Namibia are covered by Namibia's labour law, which sets the minimum conditions of employment as well as the rules governing the payment of wages, the permissible hours of work, discipline, termination of employment, the resolution of employment disputes, and other matters.

HOW MANY HOURS MAY AN EMPLOYEE WORK IN ONE WEEK?

Generally, an employee may work up to 45 hours in one week, 9 hours a day in a 5-day work week, or 8 hours a day in more than a 5-day work week.

HOW MUCH MUST AN EMPLOYER PAY FOR AN EMPLOYEE TO WORK OVERTIME?

An employer must pay 1.5 times the employee's basic hourly wage if the employee is asked to work overtime (longer than the employee's usual work week). If the overtime occurs on a Sunday or public holiday, the employer must pay 2 times the employee's basic hourly wage for any overtime work requested.

IS AN EMPLOYEE ENTITLED TO SICK LEAVE?

Yes. In an employee's first year, he/she may take 1 sick day for every 26 days worked. After the first year, an employee who works a 5-day work week may take 30 days sick leave per sick leave cycle (36 consecutive months) and 36 days sick leave per sick leave cycle based on a 6-day work week.

ARE ALL WOMEN ENTITLED TO MATERNITY LEAVE?

Any woman who has worked for an employer for a minimum of six months in a row is entitled to maternity leave and maternity benefits.

HOW MUCH TIME OFF IS ALLOWED FOR MATERNITY LEAVE?

A pregnant employee is entitled to take 4 weeks of maternity leave before her expected due date and 8 weeks after the delivery of the baby. An employee is entitled to a total of at least 12 weeks of maternity leave and will be paid her ordinary wage without extras during those 12 weeks. Because it is not possible to predict the precise date of delivery, sometimes maternity leave will be longer than 12 weeks in total.

WHAT MUST BE DONE IF AN EMPLOYER WISHES TO DISMISS AN EMPLOYEE?

The notice of the dismissal or termination must (1) be given in writing, (2) state the reasons for termination, and (3) include the date on which the notice is given.

WHO IS ENTITLED TO SEVERANCE PAY?

An employee who is employed for 12 continuous months is entitled to severance pay if he or she is dismissed, dies while employed, or retires after age 65.

WHO CAN HELP ME IF I NEED HELP FILING A COMPLAINT ABOUT A LABOUR ISSUE?

For further assistance or for questions, an employee may contact the Ministry of Labour and Social Welfare (061-2066111) or the Legal Assistance Centre (061-223356).



INTRODUCTION

Labour law in Namibia is governed by the Labour Act of 2007, which sets the basic conditions of employment as well as the rules concerning termination of service, dismissal of workers, and disciplinary action. All employers and employees must follow the sections of the Labour Act which prohibit discrimination and sexual harassment. The provisions on maternity leave and compassionate leave apply to all employees except members of the Namibian Defence Force, the Namibian Police Force, all Municipal police services referred to in the Police Act of 1990, the Namibian Central Intelligence Service, and the Prison Service.

1. CHILD LABOUR

Children under the age of 14 years may not work under **any** circumstances. Employment of children 14 to 18 years old is permitted between the hours of 07:00 and 20:00, but may only involve non-hazardous and non-harmful work. For example, Namibia's Constitution prohibits child labour in hazardous environments, if it interferes with their education, or that may be harmful to their health or physical, mental, spiritual, moral, or social development.

Violations of the child labour laws are punishable by a fine of up to N\$20,000, imprisonment of up to four years, or both.

2. FORCED LABOUR

Forced labour or slavery is not allowed in **any** form. The Labour Act provides for penalties of up to four years in prison, a fine of up to N\$20,000, or both.

3. BASIC CONDITIONS OF EMPLOYMENT

Every employment contract must meet basic conditions of employment that are set out in the Labour Act, 2007 (Act No. 11 of 2007). These basic conditions are the minimum standards and are part of any employment contract regardless of whether the basic conditions set out in the Labour Act are specifically mentioned in the contract. An employer may choose to provide better conditions than the required minimum. These basic conditions concern:

- Pay and wages
- Work hours

- Annual leave
- Accommodations
- Termination

A. PAY AND WAGES

Pay rates and wages are calculated based on an hourly, daily, weekly, or monthly rate. Minimum wages are set by the government on an industry-by-industry basis. An employer may not pay an employee less than the minimum wage set for the industry, although an employer may pay more than the minimum.

Table 1 (right) provides a breakdown of the method for calculating such pay rates and an employee's basic wages

Earned wages (whether money, goods, or services) must be paid to the employee no later than one hour after the completion of work on the normal pay day. Payment should be made in cash or, if the employee chooses, by cheque in a sealed envelope or direct deposit into an employee's bank account. If an employee is terminated before the normal pay day, the employer must pay the wages that the employee is entitled to at the time he/she leaves the job.

B. DEDUCTIONS

An employer cannot deduct (subtract or take out) any pay from an employee's wages except where required or agreed to by the employee, such as:

- Wages may be deducted as required or permitted by court order.
- Wages may be deducted by an agreement in writing by the employee for the payment of rent to the employer, goods sold by the employer, or a loan advanced by the employer.

An employer may not do any of the following:

- Impose a monetary penalty on an employee unless it is authorised by statute or collective agreement.
- Require an employee to buy goods from or use the services of the employer.
- Sell goods to an employee at a price exceeding the goods' normal cost.
- Require an employee to repay earned wages.
- Require an employee to state that he/she earned a greater amount than was actually paid.

One of the purposes of these laws is to prevent employment from becoming forced labour.



TABLE 1 – CALCULATION OF REMUNERATION AND BASIC WAGES

	TO CALCULATE HOURLY RATES	TO CALCULATE DAILY RATES	TO CALCULATE WEEKLY RATES	TO CALCULATE MONTHLY RATES
EMPLOYEES WHOSE REMUNERATION IS SET BY THE HOUR		Multiply the hourly rate by the number of ordinary hours of work each day.	Multiply the hourly rate by the number of ordinary hours of work each week.	Calculate the weekly rate, then multiply the calculated weekly rate by 4,333.
EMPLOYEES WHOSE REMUNERATION IS SET BY THE DAY	Divide the daily rate by the number of ordinary hours of work each day.		Multiply the hourly rate by the number of ordinary hours of work each week.	Calculate the weekly rate, then multiply the calculated weekly rate by 4,333.
EMPLOYEES WHOSE REMUNERATION IS SET BY THE WEEK	Divide the weekly rate (or calculated weekly rate) by the number of ordinary hours of work each week.	Divide the weekly rate (or calculated weekly rate) by the number of ordinary days of work each week.		Calculate the weekly rate, then multiply the calculated weekly rate by 4,333.
EMPLOYEES WHOSE REMUNERATION IS SET BY THE FORTNIGHT	Divide the fortnightly rate by two times the number of ordinary hours of work each week.	Divide the fortnightly rate by two times the number of ordinary days of work each week.	Divide the fortnightly rate by two.	Calculate the weekly rate, then multiply the calculated weekly rate by 4,333.
EMPLOYEES WHOSE REMUNERATION IS SET BY THE MONTH	Divide the monthly rate by 4,333 times the number of ordinary hours worked each week.	Divide the monthly rate by 4,333 times the number of ordinary days worked each week.	Divide the monthly rate by 4,333.	

C. HOURS OF WORK

Generally, an employer may not require, ask, or even allow an employee to work:

- More than 45 hours in any one week;
- More than 9 hours in a single day (in a 5-day week); or
- More than 8 hours in a single day (if the employee works more than a 5-day week).
- Public service employees may work up to 15 minutes more per day, but not more than an additional 60 minutes per week.

Security officers, emergency healthcare employees, and any employees specifically designated by the Minister may not work:

- More than 60 hours in any week;
- More than 12 hours in a single day (in a week of 5 days or less); or
- More than 10 hours in a single day (if the employee works more than 5 days a week).

D. OVERTIME

The term “overtime” refers to situations in which an employee has worked more than the number of hours set by the employer as a normal work week. An employee may work overtime if he or she has an agreement regarding working more hours with their employer. However, the employee may not work more than 10 hours of overtime per week or 3 hours of overtime per day unless the employer has received approval from the Permanent Secretary of the Ministry of Labour. An employer must pay overtime at the rate of at least **1.5 times** the employee’s basic hourly wage. If the overtime is worked on a Sunday or public holiday, then the employer must pay overtime hours of at least 2 times the employee’s basic hourly wage.

E. MEAL BREAKS

The Labour Act requires employers to give employees who work continuously for more than 5 hours without a break a meal break of at least 1 hour. An employer may shorten the meal break to 30 minutes, only if the employee agrees and if the employer gives written notice to the Permanent Secretary of that agreement. An employer must not require or allow employees to work during their meal break.



F. NIGHT WORK

“Night work” is work that is performed between the hours of 20:00 and 07:00. For each hour of night work, an employee is entitled to an extra payment of 6% of that employee’s hourly wage (not including overtime). An employer may not require or permit a woman who is pregnant to work the night shift during the period starting 8 weeks before the expected date of birth of the child through 8 weeks after the birth. This period may be extended if a medical practitioner certifies that it is necessary for the health of the employee or her child.

G. DAILY AND WEEKLY REST PERIODS

Employers cannot require employees to work more than 12 hours within a 24-hour period. An employee is also entitled to at least 36 consecutive hours of rest hours during each 7-day week. The 36 consecutive hours rest period would normally constitute two nights and one day (or for someone who is working night shifts, two days and a night). However, these rules on daily and weekly rest periods do not apply to employees who perform “urgent work” (work that if not done immediately may cause harm or damage to people or property).

H. SUNDAYS AND PUBLIC HOLIDAYS

An employer must not require or permit an employee to perform work on Sundays or public holidays unless that work falls into one of the following categories:

- Urgent work;
- Carrying on the business of a shop, hotel, or boarding house;
- Performing domestic services in a private household;
- Work at a hospital, hospice, orphanage, or old age home;
- Farming which requires work on Sunday;
- Continuous work; or
- Other work approved by the Permanent Secretary.

An employee who works on a Sunday must be paid twice their basic hourly wage for each hour worked.

I. WORK ON PUBLIC HOLIDAYS

An employer **cannot** require an employee to work on a public holiday. “Public holiday” means any holiday referred to in or declared under the Public Holidays Act, 1990 (Act No. 26 of 1990), such as

Independence Day, Good Friday, Easter Sunday, Worker’s Day, Cassinga Day, Africa Day, Heroes’ Day, and Human Rights Day (this is a partial list).

1. PUBLIC HOLIDAYS THAT FALL ON REGULAR WORK DAYS

If a public holiday falls on a day of the week that an employee would normally have to work and the employee does not work on that day, then the employer must pay the employee his or her full regular daily wage (even though the employee did not work on that day).

If an employee works on the public holiday, then the employer must pay the employee his or her full regular daily wage and in addition, must pay the employee his or her hourly wage for each hour that he or she works on that holiday.

If the employee requests a different arrangement and the employer agrees, then the employer must pay the employee his or her full regular daily wage plus $\frac{1}{2}$ of the employee’s hourly wage for each hour that he or she works on that holiday.

For example, if Olivia makes N\$80 per day (N\$10 per hour) and she works 8 hours on Easter Monday, then she would be entitled to receive her regular full day’s pay of N\$80 plus her regular hourly wage of N\$10 per hour for each hour worked, which would be another N\$80. In total, Olivia would receive N\$160. If instead, Olivia requested, and her employer agreed, Olivia could choose to receive her regular full day’s pay of N\$80 plus $\frac{1}{2}$ of her regular hourly wage of N\$10 per hour for each hour she worked, which, if she worked 8 hours, would amount to an additional N\$40. In total, Olivia would receive N\$120 and she would also receive 8 hours of compensation time or time off from work.

2. PUBLIC HOLIDAYS THAT FALL ON NON-REGULAR WORKDAYS

If an employee works on a public holiday that does not fall on a day the employee normally works, the employer must pay that employee twice that employee’s basic hourly wage for each hour worked.

For example, if Olivia normally earns N\$80 per day and her normal work week is Monday through Friday, then if she works on Easter Sunday, she is entitled to receive two times her normal hourly wage of N\$10 for each hour that she works on that day. In total, if Olivia works a full 8 hours on Easter Sunday, then she would be entitled to receive N\$160.



J. ANNUAL LEAVE

The amount of annual leave that an employee is entitled to is calculated based on his or her completion of an “annual leave cycle”. Completion of one full annual leave cycle means that the employee has worked for the same employer for a full and consecutive (without substantial breaks, not including sick leave, vacation, etc.) 12-month period counting from the start date of employment. If the employee has worked for the same employer for more than one full annual leave cycle (12 full consecutive months), then the employee’s next leave cycle is counted from the date of the end of the last completed leave cycle.

Within each annual leave cycle, the number of days of annual leave each employee may take is at least 4 consecutive weeks at full pay. Additional leave beyond that minimum is calculated based on the number of days the employee regularly works during his or her ordinary work week, as follows:

NUMBER OF DAYS IN ORDINARY WORK WEEK	ANNUAL LEAVE ENTITLEMENT IN WORKING DAYS
6	24
5	20
4	16
3	12
2	8
1	4

An employer cannot require an employee to take annual leave during a period other than the one in which the employee has earned the leave. An employer must give an employee an additional day of paid leave if a public holiday falls on a day during the employee’s annual leave. In other words, if an employee would normally have the day off on the public holiday, that day does not count as annual leave and the employee is entitled to an additional day. An employer also may not pay an employee instead of the employee taking his or her earned annual leave except at the time of the termination of employment.

K. SICK LEAVE

The term “sick leave” means any period during which the employee is unable to work due to incapacity. During the first year of employment, an employee is entitled to 1 sick day for every 26 days worked. The term “sick leave cycle” means the period of 36 consecutive months’ employment with the same employer immediately following an employee’s commencement of employment or the completion of the last sick leave cycle.

An employee is entitled to 1 day of sick leave for every 26 days worked during the employee’s first year of employment. After the first year, an employee is entitled to 30 days of sick leave per sick leave cycle (36 consecutive months’ employment) if an employee ordinarily works 5 days during a week and 36 days of sick leave per sick leave cycle if an employee ordinarily works 6 days during a week. If an employee works less than 5 days per week, their sick leave is based on their shortened work schedule. For each day of sick leave that an employee takes, the employer must pay the employee an amount equal to the employee’s daily wages. However, an employer is not required to pay an employee for sick leave under the following circumstances:

- The employee has been absent from work for more than two days in a row and does not provide the employer with a medical certificate by a doctor or any other evidence of proof of illness;
- The employee is entitled to payment under the Employees’ Compensation Act as a result of an accident or disease;
- The employee is entitled to payment from a fund or organisation guaranteeing the sick leave and to which the employer contributes at least equal payments; or
- The employee is entitled to payment for the sick leave under any other law.

Sick leave does not entitle an employee to additional payment on termination. If sick leave is not used during a sick leave cycle, it does not carry over to the next cycle.



L. COMPASSIONATE LEAVE

“Compassionate leave” is when an employee is allowed to miss work and still receive pay because of death or serious illness in an employee’s family. “Family” includes an employee’s child or children (including children adopted by law, custom, or tradition), husband or wife, parent, grandparent, brother, sister, father-in-law, or mother-in-law. All employees are allowed 5 days of compassionate leave at full pay in every year of continuous employment. Compassionate leave is not part of sick leave or maternity leave. Usually, an employee must give an employer some acceptable proof of the family problem either before or after taking compassionate leave (such as a death certificate or a doctor’s certificate).

M. PREGNANCY AND MATERNITY LEAVE

Employers may not discriminate against or terminate female employees because of pregnancy or maternity leave. If a pregnant employee cannot perform her normal work responsibilities, an employer may assign that employee different tasks, but may not reduce her salary or benefits.

An employee who has worked for an employer for 6 consecutive months is entitled to maternity leave and maternity benefits as follows:

- Every pregnant woman who gives birth is entitled to at least 12 weeks of maternity leave in total.
- A pregnant woman is entitled to take 4 weeks of maternity leave before her expected due date and 8 weeks after the delivery of the baby.
- Maternity leave may be longer than 12 weeks if the birth occurs after the due date.

During maternity leave, the employer must pay the employee her ordinary wages, without extras and other benefits that the employee is entitled to such as pension and medical aid. If an employee or her baby has health problems, maternity leave may be extended for another month.

N. ACCOMMODATION (HOUSING PROVIDED BY THE EMPLOYER)

If an employee is required to live at or near their job, the employer must provide adequate housing. Upon termination, the employer must give the employee at least one month’s written notice to vacate the housing.

If the employment is agricultural work (like farm work), the employer must provide facilities for

employees and their families. “Family” includes a spouse and dependent children. The employee must be allowed to keep livestock and cultivate land to provide for the family’s needs or the employer must pay the employee an additional amount to provide for these needs. In such circumstances, upon termination, the employee must be given 3 months’ written notice.

O. TERMINATION OF EMPLOYMENT ON NOTICE

The law requires that, in certain cases, employment may only be terminated after the appropriate notice is given. Both employers and employees are required to give the required notice before terminating employment. Where an employment contract may be terminated on notice, notice must be given as follows:

- **1 day**, if the employee has been employed for 4 weeks or less;
- **1 week**, if the employee has been employed for more than 4 weeks but less than 1 year; or
- **1 month**, if the employee has been employed for more than 1 year.

The period of notice may be longer if agreed upon by the employer and employee. A notice of termination must (1) be given in writing (and also orally if the employee is illiterate), (2) state the reasons for termination, and (3) include the date on which the notice is given.

Notice of termination may be given only on certain days depending on the nature and duration (length) of the employment:

- If the employee has been employed for 4 weeks or less notice may be given on any working day;
- If the employee has been employed for more than 4 weeks but less than 1 year, notice may be given on or before the last working day of the week; or
- If the employee has been employed for more than 1 year, notice may be given on the 1st or the 15th day of the month.

If an employer does not give the required notice, the employer must pay an employee the compensation the employee would have received if the employee had worked during the notice period. Similarly, if the employee is terminating the employment and the employee is required to give the employer notice, the employee may pay the employer instead of giving notice.



P. AUTOMATIC TERMINATION OF CONTRACTS OF EMPLOYMENT

A contract of employment terminates automatically under the following circumstances:

- 1 month after the death of the employer if the employer is an individual;
- The date on which the employer is wound up if the employer is a corporation;
- The date on which the partnership is dissolved if the employer is a partnership; or
- At the end of a period provided for in an employment contract or collective agreement.

Q. UNFAIR DISMISSAL

Workers who feel they have been unfairly dismissed or disciplined may refer the dispute in writing to the Labour Commissioner within 6 months after the date of the dismissal. Disciplinary actions must be based on some type of serious conduct – such as theft, assault, or consistently ignoring warnings – and the employee must be informed of the reason for the discipline and be given an opportunity to respond. Misconduct that is not serious (for example, arriving 10 minutes late for work) is not enough for an employee to be dismissed.

R. SEVERANCE PAY

“Severance pay” is money, in addition to wages, that is due to an employee when their employment ends. For each year of continuous service with an employer, an employee is entitled to be paid an amount equal to 1 week of wages in severance pay. An employee who has been employed for 12 continuous months is entitled to severance pay if the employee:

- Is dismissed;
- Dies while employed; or
- Resigns or retires when he/she is 65 years of age.

An employee who has been dismissed for misconduct or poor performance, who unreasonably refuses to be reinstated, or who unreasonably refuses to accept employment on terms similar to those immediately prior to the termination is not entitled to severance pay.

S. TRANSPORTATION AFTER TERMINATION OF EMPLOYMENT

If an employee is dismissed during the first 12 months at a place other than where the employee was hired by the employer, the employer must transport the employee back to the place of hiring or pay the costs of transport.

T. PAYMENT ON TERMINATION AND CERTIFICATES OF EMPLOYMENT

Upon termination of employment, an employer must pay the terminated employee all of the following:

- All pay and wages due to the employee for work done prior to termination;
- Any paid time off the employee had accrued but not taken;
- Any annual leave due to the employee (unless employee fails to give proper notice of termination);
- Any severance pay;
- Any notice pay; and
- Any transport allowance.

An employer must pay any wages due to the employee on or before the next pay day after termination.

Upon termination of employment, an employer must also give the employee a certificate of services stating:

- The employee’s full name;
- The name and address of the employer;
- A description of the industry in which the employer is engaged;
- The date of commencement and date of termination of employment;
- The employee’s job description;
- The employee’s compensation on the date of termination; and
- If the employee requests, the reason for termination of employment.



4. DISPUTES CONCERNING BASIC CONDITIONS OF EMPLOYMENT

If there is a dispute over the basic conditions of employment, it may be referred to the Labour Commissioner. The Labour Commissioner must be satisfied that all parties have been notified of the dispute and will then refer the dispute to an arbitrator. See the section below called “Resolution of Disputes by Arbitration Through Labour Commissioner” for more details.

5. DOMESTIC WORKERS

Domestic work—work that might involve only one or a combination of some of the following jobs: housecleaning, laundry, childcare, cooking for women, and cleaning and gardening for men—has been consistently undervalued over the years. There are about 20 000 households in which at least one person is a domestic worker, and these households support an estimated 125,000 individuals, or 9% of the Namibian population.

The Labour Act which was enacted in 1992 placed domestic workers and farm workers on an equal footing with other workers for the first time. The law requires that all domestic workers and farm workers be provided with certain basic minimum standards of employment, introduces the concept of ‘unfair dismissal’ into the law, and provides a framework for industrial relations. Although this law has the potential to improve the lives of domestic workers, enforcement in this sector is still weak. For example, inspections in this sector are undertaken only in response to employee complaints.¹

People generally choose domestic work because it is the only job available. Most domestic workers find their jobs through networks of friends and relatives. Because supply is greater than demand, domestic workers enter the labour market at a disadvantage. They are usually not in a position to choose between various work situations or to engage in meaningful negotiation with prospective employers.

A. DAYS AND HOURS OF EMPLOYMENT

While many domestic workers work a 5-day work week, many of those who live in their place of employment or who are working for extended family members (“live-in workers”) are seen as being available for work at all times of the night and day. As a result, many live-in domestic workers work longer than 8-hour days, are not paid overtime, and frequently are not paid wages at all because they are not seen as “employees” in the way that other workers are.

In some situations, domestic workers have been locked inside the employer’s home and/or property, posing a threat to their safety. More generally, domestic workers have been prevented from using their employer’s telephone, even for emergency calls.

B. LEAVE

While many domestic workers receive an amount of annual leave which is in line with the requirements of the Labour Act, for many this is unpaid leave instead of fully-paid leave as the Act requires. The Legal Assistance Centre and the Social Sciences Division of the Multi-Disciplinary Research Centre at the University of Namibia conducted a survey to study the living and working conditions of domestic workers in Namibia.² Half of domestic workers surveyed had been given paid sick leave, while 11% received only unpaid sick leave in violation of the Act’s requirements. The remaining 35% did not know if they should be given paid or unpaid leave. Most domestic workers do not know what sort of maternity leave they would be entitled to if the need arose. Only 3% of domestic workers had a written employment contract, with the effect that many working conditions are dependent on the employer.

Knowledge of the Labour Act is very limited in the domestic work sector. The limited knowledge of worker rights and the low level of trade union membership contribute to the extreme vulnerability of domestic workers. Few employers surveyed were familiar with their duties under the Labour Act or the Social Security Act. None of the employees surveyed reported work conditions that are fully compliant with the Labour Act.

¹ A few domestic workers have brought cases to the district labour courts, but the isolated nature of the working environment means that there are usually no witnesses to support domestic workers in their complaints, thus making it more difficult for them to press their cases successfully.

² Legal Assistance Centre, *The Living and Working Conditions of Domestic Workers in Namibia* (1996).



C. SPECIAL CONSIDERATIONS FOR DOMESTIC WORKERS

As is the case with many workers in Namibia, many domestic workers regularly provide financial support to extended family members. They must sometimes maintain themselves as well as families left behind in rural areas, placing a serious strain on their resources. Households headed by female domestic workers are particularly vulnerable and often face shortfalls in cash needed for basic expenses. Female domestic workers employed on farms are among the most vulnerable categories of workers. They typically have very low levels of literacy and education and often experience harsh working conditions with little or no pay aside from rations.

6. HEALTH, SAFETY, AND WELFARE OF EMPLOYEES

The place of employment must be safe and without risk to the health and welfare of the employees. To ensure the health and safety of employees, the employer must do the following:

- Provide a safe worksite;
- Provide safe access to and from the worksite;
- Provide employees with protective clothing and safety equipment if necessary;
- Protect employees from unsafe or hazardous articles or substances;
- Train employees how to work safely and without health risks; and
- Properly supervise employees.

If there is an accident or a disease outbreak, the employer must report the incident to a Labour Inspector. Employees must also take reasonable steps to protect their own safety while at work. If an employee thinks that a workplace is unsafe or unhealthy, the employee may leave, but must tell the employer immediately the reasons why the workplace is unsafe. Employees are entitled to normal pay if they leave work because it is unsafe.

7. HEALTH AND SAFETY REPRESENTATIVES AND COMMITTEES

If an employer has between 10 and 100 employees, the employees have a right to elect at least 1 health and safety representative. If there are more than 100 employees, the employees are entitled to elect 1 health and safety representative for each 100

employees. Health and safety representatives are elected to 2 year terms. A health and safety representative has the power to do the following:

- Collect information on the safety, health, and welfare of employees;
- Inspect workplaces;
- Investigate accidents, complaints, and potential hazards; and
- Make representations on the safety, health, and welfare to the employer or Labour Inspector.

Employers must provide sufficient information to the health and safety representative, consult with the health and safety representative on issues relating to health and safety policies or procedures, allow for reasonable inspection, and permit access to a Labour Inspector.

If an employer has more than 100 employees and the health and safety representative makes the request, the employer must establish a health and safety committee to monitor and advise the employer on health and safety issues, regulations, and rules in the workplace.

A. DISPUTES CONCERNING HEALTH, SAFETY, AND WELFARE

If there is a dispute over health and safety provisions of the Labour Act, any party to the dispute may refer the dispute to the Labour Commissioner. The Labour Commissioner must be satisfied that all parties have been notified of the dispute and will then refer the dispute to an arbitrator (an independent and impartial person who is selected to decide the dispute without having to be in the court system).

8. TRADE UNIONS

A trade union is an organisation made up of workers and union representatives whose principal purpose is to negotiate relations between employees and their employers and to work on matters on behalf of the other workers in the same industry. A trade union may not discriminate against any individual with respect to:

- Admission, suspension, or termination of membership;
- Election to or removal from office; or
- The trade union's or the organisation's activities.



9. GETTING HELP

If an employee suspects that his/her employer has violated the Labour Act, the employee should collect the evidence and make a complaint to the employer if the employee feels comfortable doing this. If the employer does not fix the problem, the employee may then file a complaint with the Labour Inspector or the Labour Commissioner. Paralegals may assist individuals with the preparation and presentation of their complaint before the Labour Inspector or the Labour Commissioner. For further assistance or for questions, an employee may contact the Ministry of Labour and Social Welfare (061-2066111) or the Legal Assistance Centre (061-223356).

10. RESOLUTION OF DISPUTES BY ARBITRATION THROUGH LABOUR COMMISSIONER

The Labour Act of 2007 gives arbitration tribunals the power to hear and decide any dispute arising from the interpretation, implementation, or application of the Labour Act of 2007. This means that an employee or employer who wants to file a complaint about an employment dispute must refer the employment dispute in writing to the Labour Commissioner or any labour office.

The term “dispute” is broad and covers any “disagreement between an employer or an employers’ organisation on the one hand, and an employee or a trade union on the other hand, which disagreement relates to a labour matter.”³

“Arbitration” is a procedure that allows people who have a disagreement to use a third person who is appointed by the Labour Commissioner to hear the dispute and to make a decision. It is very similar to a trial in a court of law, but it is much less formal than a court proceeding. Arbitrators listen to each party present evidence and arguments about why they should win and then make a decision on which party will be victorious.

A. Timing of claim: If the dispute concerns a dismissal, then the party must refer the dispute within 6 months after the date of dismissal. All other types of employment disputes must be referred within 1 year after the dispute arises.

B. Notifying the parties: The party who refers the dispute to the Labour Commissioner must confirm with the Commissioner that a copy of the referral of the dispute has been provided to all other parties to the dispute. The Labour Commissioner then must refer the dispute to an arbitrator who will attempt to resolve the dispute through arbitration. The Labour Commissioner will determine the place, date, and time of the arbitration hearing and inform the parties to the dispute of the details.

C. The arbitration process: The arbitrator must first try to resolve the dispute through a conciliation process before beginning any arbitration hearing. The “conciliation” process includes: mediating a dispute, conducting a fact finding exercise, and making an advisory award if it will increase the prospect of settlement. If the conciliation does not work, the arbitrator must begin the arbitration process.

D. Arbitration awards: If the arbitrator determines that money be paid to one party, the decision is called an “award.” Usually, awards are permanent and binding upon the parties and the loser must pay the money. An arbitration award becomes an official “order” of the Labour Court when an award is filed in the Labour Court by any party who is affected by the award.

E. Appeal: A party has the option to appeal an arbitration award to the Labour Court within 30 days of the arbitrator’s issuance of the award.

³ Namibian Labour Lexicon, The Labour Act, 2007 A to Z: A Guide To The Understanding And Application Of The New

Labour Law (Act No. 11 of 2007), Vol. 2 revised edition (compiled by J.W.F. van Rooyen) (2011), at p. 48.



ADDRESSES OF THE LABOUR COMMISSIONER

HEAD OFFICE (WINDHOEK)

Private Bag 13367, Windhoek
249-582 Richardine Kloppers Street
KHOMASDAL
Tel. 061-379100
Fax 061-212334 or 061-379 129
Email: olc@mol.gov.na

REGIONAL OFFICES

OTJIWARONGO

P.O. Box 1981
Otjiwarongo
Erf BM71/8, Frans Indongo Street
Tel: 067-903748
Fax: 067-301053

SWAKOPMUND

P.O. Box 1143
Swakopmund
Tobias Hainyeko Street
Tel: 064-403678
Fax: 064-469679

KATIMA MULILO

Private Bag 2330
Ngweze
Katima Mulilo
Tel: 066-253304
Fax: 066-253328

OPUWO

Private Bag 3012
Mbumbijazo Muharukua Street
Tel: 065-279853
Fax: 065-273851

OSHAKATI

P.O. Box 1529
Oshakati
Leo Shoopala Street
Tel: 065-220719/224039
Fax: 065-224290

GOBABIS

P.O. Box 2277
Church Street, 57 Erf 98
Tel: 062-562692
Fax: 062-562678

GROOTFONTEIN

Private Bag 20 6
Grootfontein
Courtney Klark Street
Tel: 067-242514/243049
Fax: 067-242986

KEETMANSHOOP

P.O. Box 128
Wheeler Street
Tel: 063-223580
Fax: 063-222465

MARIENTAL

P.O. Box 747
Ernst Stumpfe Street
Tel: 063-242368
Fax: 063-241177

RUNDU

P.O. Box 940
Maria Mwengere Street
Tel: 066-255945/946
Fax: 066-256331

LÜDERITZ

P.O. Box 1238
RMI German Hostel
Tel: 063-203842
Fax: 063-203843



11. APPEAL TO THE LABOUR COURTS

The Labour Act of 2007 replaces the previous dispute resolution system through the district labour courts with the arbitration system (explained fully above). Today, the role of the Labour Court is to review decisions of the Labour Commissioner, arbitration tribunals' awards, and compliance orders. The Labour Court can also grant an order to enforce an arbitration agreement.

In other words, the new procedure for filing a complaint about an employment dispute requires that a complaint be filed with the Labour Commissioner who then selects an arbitrator (sometimes called an arbitral tribunal) to hear and decide that dispute. The arbitrator decides the dispute and then issues an award that is binding on the parties to the dispute. If one of the parties refuses to comply with the award, then the other party can go to the Labour Court to have the arbitration award enforced. In addition, if a party wishes to have a review of the arbitrator's decision, the party may seek review in the Labour Court. If the Labour Court confirms the arbitrator's award and one of the parties still refuses to comply with that award, then the refusing party may be penalized for that offence.

12. PUNISHMENT FOR NOT FOLLOWING THE LABOUR ACT

When an employer does not follow the Labour Act, the employer may be required to take any of the following actions:

- Reinstatement of an employee who was unfairly dismissed (put the employee back in his or her old job);
- Pay compensation to the employee; or
- Take any other steps ordered by a Labour Inspector, the Labour Commissioner, or the Labour Court.

SOURCES: Namibian Labour Lexicon, The Labour Act, 2007 A to Z: A Guide To The Understanding And Application Of The New Labour Law (Act No. 11 of 2007), Vol. 2 revised edition (compiled by J.W.F. van Rooyen) (2011); Legal Assistance Centre, Gender and the Labour Act 11 of 2007 (2009); Namibia Institute for Democracy, Labour Act in Practice (1998); Labour Act (No. 11 of 2007); Labour Act (No. 6 of 1992); Legal Assistance Centre, University of Namibia (Multi-disciplinary Research Centre, Social Sciences

Division), "The Living and Working Conditions of Domestic Workers in Namibia," 1996; U.S. State Dept Trafficking in Persons Report, June 2009; Ministry of Labour and Social Welfare, Namibian Child Activities Survey of 1999; Namibia Institute For Democracy, Guide to the Affirmative Action (Employment) Act (2000); Affirmative Action (Employment) Act (No. 29 of 1998); Employees Compensation Amendment Act (No. 5 of 1995).



CHAPTER 4

WORKERS COMPENSATION

COMMON QUESTIONS ABOUT WORKERS COMPENSATION

WHAT IS WORKERS COMPENSATION?

Workers Compensation is an accident fund; a pot of money that has been set aside to help workers who suffer injuries while they are working at their job. An employee may apply for workers compensation (which means a monetary payment that comes out of the accident fund) if he or she is no longer able to work or if his or her ability to work is less than it used to be because of the accident.

CAN AN INJURED EMPLOYEE RECEIVE COMPENSATION FROM BOTH THE ACCIDENT FUND AND THEIR EMPLOYER?

No. Employees can seek compensation from an employer for a workplace injury **only** from the accident fund. Employees **cannot** file civil lawsuits against their employers to recover compensation for on-the-job injuries.

ARE ALL EMPLOYEES ENTITLED TO RECEIVE WORKERS COMPENSATION?

Yes. Employers cannot put language in an employment contract that restricts an employee's rights under the labour laws. Employees may not agree to give up their right to collect compensation from the accident fund if they suffer a workplace injury.

WHO PAYS FOR THE ACCIDENT FUND?

All employers must pay money into the accident fund for its employees. An employer may not take money from its employees to pay for this cost.

HOW MUCH IS AN INJURED EMPLOYEE PAID?

An employee who is injured and unable to work for any period shorter than 12 months is considered as having a temporary disability and will receive 75% of his or her monthly pay. An employee who is injured and unable to work for a period longer than 18 months is considered to be permanently disabled. Compensation for permanent disability depends on what type of injury the employee suffered and how it has affected his/her life.

CAN AN EMPLOYEE WHO DIES FROM AN INJURY CAUSED BY AN ON-THE-JOB ACCIDENT RECEIVE COMPENSATION?

Yes. The amount of compensation depends on whether the employee leaves behind a surviving spouse and/or dependent children.

WHAT DOES AN EMPLOYEE NEED TO DO TO MAKE A CLAIM FOR COMPENSATION DUE TO AN ON-THE-JOB INJURY?

1. An employee must give written notice of the accident to his/her employer as soon as possible after the accident.
2. The employer must report the accident to the Social Security Commission.
3. The employer and employee must provide information about the accident to the Social Security Commission.
4. The claim must be filed with the Social Security Commission **within six months** of the accident or death.
5. After researching a claim, the Social Security Commission may hold a formal hearing to determine whether monetary compensation is due to the employee, how much is due, and when it will be paid.



INTRODUCTION

In 1995, Namibia created an accident fund to provide some financial assistance for people who are injured while they are at work.¹ The accident fund provides money for on-the-job injuries when an employee is no longer able to work at all, either permanently or for a short period. The accident fund also provides money for employees whose ability to work is limited in some way because of the accident.

1. EMPLOYER LIABILITY

Employees can only seek financial assistance due to a work injury from the accident fund. The accident fund is a fund provided for employees who are injured on the job. Under the Employees Compensation Act (No. 5 of 1995), an employee who receives money from the accident fund cannot file a lawsuit against his or her employer to recover compensation for on-the-job injuries. The Act and the Social Security Commission, also called “the Commission,” regulate how employers must pay money to the accident fund.

2. THIRD PARTY LIABILITY

If a work accident is caused by a person or a company (sometimes called a third party), other than the employee himself or the employer, then the employee may seek compensation from the accident fund and also file a lawsuit against the other person or company that caused the injury.

3. RIGHT OF EMPLOYEE TO COMPENSATION

If an employee is injured while acting in connection with his or her job, the employee is entitled to compensation from the accident fund even if the employer did not tell the employee to do the exact, precise act that caused the injury, and even if the act that the employee was required to do as part of his or her job was in violation of the law. However, if the accident is the result of serious and intentional or wilful misconduct of the employee, no compensation will be provided to the employee unless he or she is seriously disabled or dies leaving behind a child, wife, husband, or other person previously in their care.

4. ACCIDENTS DURING TRAINING FOR OR PERFORMANCE OF EMERGENCY SERVICES

An employee injured in a work accident may also receive compensation from the accident fund when the employee is injured during a training session for any of the following jobs:

- First aid responder;
- Ambulance or rescue worker; or
- Firefighter.

The same is true for any emergency service provider injured during training or while providing emergency services.

5. PAYMENT OF COMPENSATION

The employee may receive his or her monetary compensation either directly from the employer or from the accident fund. If the employee’s injury is a result of the employer’s negligence, then the employee can apply to the Commission for increased monetary compensation, in addition to the compensation normally payable under the Employees Compensation Act.

6. AMOUNT AND METHOD OF COMPENSATION

An employee has a “temporary disability” if he or she is disabled for a period that is shorter than 12 months. An employee with a temporary disability will receive 75% of his or her monthly pay.

If the employee is disabled for longer than 12 months, the Commission will decide whether to continue payments beyond those 12 months based on the facts of each person’s individual case (this is called examining the claims on “a case-by-case basis”).

If the employee is disabled for longer than 18 months, the Commission may consider the employee to have a “permanent disablement.” Compensation for permanent disablement is also based on the facts of each individual’s case (on a case-by-case basis) and will depend on the nature and extent of the employee’s disability (for example, whether the employee can still work in some way or is entirely unable to work because of the injury).

¹ Employees Compensation Amendment Act (No. 5 of 1995), which can be found by logging to the website of the Legal Assistance Centre, www.lac.org.na, and going to the section of

the site that contains NAMLEX, the LAC’s index to all of the laws of Namibia and their amendments.



7. DEATH BENEFITS

The amount of the death benefit that family members of the deceased employee can receive is based on whether the employee has a surviving spouse and/or dependent children. Pensions are paid to children until they reach the age of 18 or until they marry or die. Compensation payments may continue even after a child reaches the age of 18 if the child has a disability that prevents him or her from earning an income.

A. SURVIVING SPOUSE/NO CHILDREN

If an employee dies from an injury caused by an accident on the job and leaves a surviving spouse but no children, the payment from the accident fund is made in a single payment in the amount of either (a) two times the employee's monthly earnings, or (b) N\$1,500 and a monthly pension of 40% of the pension the employee would have received had he or she suffered a permanent disability, whichever amount is less.

B. NO SPOUSE/SURVIVING CHILDREN

If an employee dies from an injury caused by an accident on the job and leaves one or more dependent children but no spouse, the payment from the accident fund is a monthly pension for each child in an amount equal to 20% of the pension the employee would have received had he or she suffered a permanent disability.

C. SURVIVING SPOUSE/SURVIVING CHILDREN

If an employee dies from an injury caused by an accident on the job and leaves a surviving spouse and one or more children, the payment will be both of the amounts described above, but the pension cannot exceed the pension which would have been awarded to the employee for permanent disability.

8. METHOD OF CALCULATING EARNINGS

To calculate the amount an injured employee will be paid from the accident fund, the Commission considers a number of different factors. The Commission's decision about the amount will then be used as the basis for all of the other calculations for the employee and/or his or her family.

- The employee's salary;
- The value of any food or living quarters that were provided by the employer and used by the employee;

- The amount of any overtime pay or any other special compensation paid to the employee; and
- Whether the employee is married and/or has children.

If the employee is paid a fixed amount for work (a single fee for doing the requested work)--like charging N\$1500 for the removal of two dead trees on a person's property rather than charging N\$100 per hour--the Commission will calculate the employee's compensation payment based on the employee's total pay over the last 12 months.

If an employee works for two or more employers, then the employee's total compensation from the accident fund is calculated based on the total of the employee's incomes.

If the employee is under 26 years old or is in an apprenticeship, improvership, or learnership and has suffered a permanent disability, then the employee's compensation from the accident fund is based on the earnings that the employee would have received if the accident had not taken place.

9. INCREASED COMPENSATION

If an employer's mistake, carelessness, forgetfulness, or disregard of dangers (sometimes called "negligence") caused the accident, the employee may ask the Commission for a higher compensation payment. **The request for a higher payment must be made to the Commission within six months of the accident** unless the employee can prove why the application could not have been filed sooner.

If an employee requires the constant help of another person to perform everyday life tasks, such as eating, bathing, or walking, due to the severity of the injury, the compensation award may be increased so that the employee is able to pay for this care.

10. EMPLOYEE LIVES OUTSIDE NAMIBIA

If an employee lives outside of Namibia for more than six months, the Commission, after notifying the employee, may give the accident fund money to the employee in one single large payment rather than in a series of regular pension payments.



11. RECOVERY OF COMPENSATION

To receive compensation, an employee must give written notice of the accident to the employer **as soon as possible** after the accident. If an employee fails to give an employer notice, the employee may still receive compensation if the employee is able to prove that the employer knew of the accident. Because proving that the employer knew about the accident may be difficult to do, it is best if an employee immediately gives the employer a written note explaining what happened to him or her.

The employer must report the accident to the Commission. Any employer who fails to report such an accident is guilty of an offence.

An employee must give information about the accident to the employer or Commission.

The employer must also give information to the Commission about the employee's injuries, earnings, and other matters requested by the Commission. The employer's failure to provide such information may be an offence.

12. TIME PERIOD IN WHICH A CLAIM MUST BE FILED

After notifying his or her employer, the injured employee (or his or her family or representative if the employee has been too severely injured) must file a claim with the Commission **within six months of the date of the accident or death**. After the claim is filed, the employee must then gather all of the evidence available to show what happened to him/her and to prove that he or she has truly been injured and that it happened on or because of the job. The employee may need the assistance of a health worker to demonstrate the extent of the injury to the Commission.

13. FORMAL HEARING

After researching the claim by looking at the evidence provided to it, the Commission may hold a formal hearing or enquiry. At a formal hearing or enquiry, all parties are allowed to appear in person and also may be represented by any of the following:

- A family member;
- An employee;
- A legal practitioner;
- If the party is an employee, an officer of the employee's trade union;

- If the party is an employer, an officer of the employer's organisation; or
- Any other person with the written approval of the Commission.

The law allows paralegals to represent employees before the Commission so long as the Commission approves that representation in writing. If the employee wants to hire a legal practitioner instead, the employee should be aware that legal practitioners may request payment for taking on the job of representing the employee at the formal hearing. No other person may demand payment for this work unless the Commission approves such an arrangement.

14. EMPLOYEE TO SUBMIT TO MEDICAL EXAMINATION

An employee requesting compensation is required to have a medical examination by a medical professional selected by either the employer or the Commission. The employer is required to pay all of the costs related to such examinations. The employee's own doctor may be present at the exam, but the employee must pay this expense.

15. TRYING TO AVOID PAYING COMPENSATION IS PROHIBITED

Employers cannot put language in an employment contract that says that the employee agrees that the country's labour laws will not apply to his or her job. The law does not permit employees to agree to give up their right to compensation from the accident fund if they are injured at work. This part of the law is intended to ensure that employers do not take unfair advantage of workers who need jobs.

16. DEDUCTION FROM EMPLOYEES' EARNINGS IS PROHIBITED

Employers cannot deduct money from an employee's wages to cover any of the fees that the employer is required to pay under the country's labour law. For example, every employer in Namibia must put money into the accident fund to ensure that the fund will have enough money to assist an employee who is injured on the job. No employer is permitted to take money from its employees to pay for this cost.



17. PRE-EXISTING INJURIES, ILLNESSES, AND CONDITIONS

Employees must disclose information about any pre-existing injuries (those injuries that happened prior to the work accident). If an employee fails to disclose his/her prior injuries, the employee may not be able to receive payment from the accident fund for a work injury that makes a prior injury worse.

In addition, compensation may be denied when an employee's death or disability was caused by that employee's refusal to seek medical care for the injury, disease, or illness.

18. INJURIES OCCURRING WHILE WORKING OUTSIDE OF NAMIBIA

Generally, when an employee is working outside of Namibia and the other country provides compensation for the injury, the injured employee can claim compensation either from Namibia's accident fund or whatever is provided for injured workers under the laws of the other country, but not both.

Where an employer's business is primarily in Namibia and an employee usually works inside Namibia, if an accident happens while the employee is temporarily working outside of Namibia, the employee is entitled to the same compensation as if the accident happened in Namibia. Temporary employment outside of Namibia is considered to be work that takes twelve (12) months or less. However, if an employee works outside of Namibia for longer than twelve (12) months and is injured while working outside of Namibia, they may not be entitled to compensation from the Namibian accident fund. In such a case, the employee should look to the local laws of the country in which they have been working in order to seek compensation for work-related injuries.

19. INJURY OCCURRING IN NAMIBIA WHEN EMPLOYER'S BUSINESS IS OUTSIDE OF NAMIBIA

When an employer's business is primarily outside of Namibia, the employee usually works outside Namibia, and the accident happens while the employee is temporarily working inside Namibia, the employee is not entitled to compensation from the Namibian accident fund unless the employer previously agreed that the employee would be entitled to compensation. Otherwise, the employee must look to the local laws of the country in which they work to seek compensation for work-related injuries.



CHAPTER 5

DISCRIMINATION

COMMON QUESTIONS ABOUT DISCRIMINATION

WHAT IS DISCRIMINATION?

Discrimination is the unjust or unfair treatment of different people because of their gender, skin colour, HIV/AIDS status, sexual preference, pregnancy (or future pregnancy), marital status, age, religion, customs, or beliefs.

IS DISCRIMINATION ALLOWED AT WORK?

No. Discrimination is not allowed in the workplace and an employer may not treat employees differently because of their gender, skin colour, HIV/AIDS status, sexual preference, pregnancy, marital status, age, religion, customs, or beliefs.

WHAT IS SEXUAL HARASSMENT?

“Sexual harassment” is any unwanted sexual behaviour toward an employee by the employer or a co-worker.

WHAT KIND OF BEHAVIOUR QUALIFIES AS SEXUAL HARASSMENT?

Behaviour qualifies as sexual harassment where (1) the employee has indicated that the conduct is unwelcome, or (2) any reasonable person would find the behaviour unacceptable. Such behaviour could include sexual propositions, crude comments, touching, gestures, or allowing sexual materials at work (books, posters, magazines, etc.).

ARE WORKERS WITH HIV OR AIDS PROTECTED AGAINST DISCRIMINATION?

Yes. An employer may not refuse to employ a person who is HIV-positive or suspected of being HIV-positive unless the employee is too sick to work. The same is true of people with AIDS.

MAY AN EMPLOYER FIRE AN EMPLOYEE BECAUSE HE/SHE HAS HIV OR AIDS?

No. An employer may not dismiss a person living with HIV or AIDS who is still fit to work.

MAY AN EMPLOYER REQUIRE EMPLOYEES BE TESTED FOR HIV/AIDS?

No. Employers may not require employees to be tested for HIV/AIDS (or include such testing as part of the hiring process).

WHAT IS AFFIRMATIVE ACTION?

Affirmative action refers to policies that take attributes like race, colour, religion, sex, or national origin into consideration to benefit a specific group, usually as a means to remedy the effects of past discrimination.



INTRODUCTION

Discrimination is the unjust or prejudicial treatment of people because of their gender, race, ethnicity, age, religion, or other characteristic. Namibia's Bill of Rights grants all Namibians equal rights. Namibians are also protected against discrimination in the workplace under labour law. All employees are entitled to the same rights and protections. This chapter discusses how labour law (1) protects workers from sexual harassment, (2) protects people with HIV or AIDS from discrimination, and (3) attempts to achieve equal opportunities in employment through affirmative action.

1. PROHIBITION AGAINST DISCRIMINATION

The Labour Act states that an employer may not treat employees differently on the basis of sex, marital status, family responsibilities, or previous, current, or future pregnancy.

- It is discrimination for an employer to treat employees who perform work of equal value differently just because one employee is a man and the other is a woman.
- It is discrimination for an employer to decide between equally-qualified job applicants on the basis of their sex—unless the sex of the employee is an essential part of the job.

The prohibitions on discrimination apply to all aspects of employment, including promotions and demotions, transfers, and selection for training programs.

The Racial Discrimination Prohibition Act, 1991 (No. 26 of 1991), prohibits discrimination on the basis of a person's race, colour, or national or ethnic origin. Here are some examples of what the Act prohibits:

- No person is allowed to deny access to public amenities or limit the use of facilities because a person is a member of a particular racial group. Some examples of "public amenities" include: hotel, guest-house, pension, rest camp, game park, tourist recreation area, restaurant, theatre, and sports events.
- The Act prohibits any person who is involved in a business/profession that provides goods or services to the public to refuse to provide goods to another person because that person is a member of a particular racial group.

- The Act prohibits the denial of admission to an educational institution (school, university, college) or medical institution (hospital, nursing home, clinic) to a person because he/she is a member of a particular racial group.
- The Act prohibits an employer from refusing to appoint a person to a position he/she is qualified for, on the ground of that person's race, colour, or ethnic origin. Similarly, the Act prohibits an employer from dismissing an employee on the ground of that employee's race, colour, or ethnic origin.

A case can only be prosecuted under the Act if the Prosecutor-General gives written permission. If a court finds that a person is in violation of the Act, then it is a criminal offence and a person who is convicted will have to pay a fine, be imprisoned, or both. If the court convicts a person of an offence under the Act, and if the complainant (person who filed the complaint) requests, the court can order that the person convicted pay the complainant compensation for damage suffered.

2. SEXUAL HARASSMENT

"Sexual harassment" is any unwanted sexual behaviour toward an employee by the employer or a co-worker. Sexual harassment is prohibited. Conduct qualifies as sexual harassment where the employee has indicated that the conduct is unwelcome or any reasonable person would find the conduct unacceptable.

An example would be where one employee attempts to touch another employee's breasts or buttocks in the workplace. Any reasonable person should realize that this is unacceptable conduct without having to be told.

It is illegal for employers to engage in sexual harassment of their employees and for co-workers to engage in sexual harassment of their fellow workers. Employers also have a duty to prevent sexual harassment in the workplace. If an employee is forced to leave his or her job to escape the sexual harassment, that employee may be entitled to get his or her job back or receive compensation for the wages lost as a result of losing the job.



3. DISCRIMINATION AGAINST PEOPLE WITH HIV OR AIDS

Many people living with HIV live in poverty and their social and economic circumstances make it difficult for them to enjoy equal rights due to discrimination. Common examples of such discrimination include the following:

- Stigmatization, including workplace policies that unfairly discriminate against people living with HIV or AIDS.
- Medical aid schemes that deny effective treatment and care to people living with HIV or AIDS.
- Insurance companies which refuse to offer life insurance to people living with HIV or AIDS.
- Communities that stigmatize and isolate people living with HIV or AIDS.

It is unfair discrimination if an employer refuses to employ a person who is living with HIV or AIDS or is suspected of living with HIV or AIDS, unless the employee is too sick to work. It is also unfair discrimination for an employer to dismiss an employee who is living with HIV or AIDS and who is still fit to work. Additionally, it is unlawful to dismiss an employee merely on the suspicion that he/she has HIV or AIDS. An employee living with HIV or AIDS may be dismissed only if he/she is incapacitated (too sick to work), and the dismissal must be executed in accordance with labour law.

4. INSURANCE FOR PEOPLE WITH HIV/AIDS

If a person has life insurance, at their death a sum of money is paid out to the “beneficiaries” (persons who benefit from the insurance policy). When a person applies for life insurance, the insurer is allowed to require the applicant to go for an HIV test. However, applicants cannot be tested for HIV without first giving “informed consent.”

Informed consent is when a person agrees to be tested, that agreement must be one based on the person’s full understanding of what the test will determine, what a negative or positive result will mean for how the person’s life will unfold, what health care services may or may not be available for him or her.

Applicants may refuse to take the test, but then the insurer may refuse to insure the Applicant.

Many insurers will not grant life insurance to people who test positive for HIV. This is allowed

because (1) a person infected with HIV may die at a younger age than a person not infected with HIV, (2) the risk of insuring an HIV-positive person is heavy for insurers because the person stands a higher chance than an HIV-negative person of dying within a few years, and (3) insurance companies cannot afford to take a loss and thereby disadvantage their clients.

5. PRISONERS WITH HIV/AIDS

It is commonly thought that prisoners have no rights because they are no longer free to move around or practice their professions. That is wrong.

Prisoners, including those with HIV or AIDS, have rights, including the right to equality and non-discrimination. The following list describes how the Minister of Correctional Services may avoid discrimination (the Court in South Africa orders the Minister of Correctional Services to abide by this list):

- Observe confidentiality (keeping private all information) about the status of all persons who are HIV-positive or suffering from AIDS.
- Protect prisoners from discrimination by other prisoners on account of their HIV status or sexual orientation.
- Provide condoms to all prisoners.
- Provide the necessary and appropriate medical attention and treatment to HIV-positive prisoners.
- Perform testing for HIV or AIDS only with the informed consent of the prisoners involved.
- Not deprive any prisoner of access to work based solely on HIV status.
- Provide the same wash facilities for all prisoners regardless of HIV status.
- Provide education and information about the HIV and AIDS condition to staff and prisoners.

6. AFFIRMATIVE ACTION

Affirmative action means that there are government policies that take attributes like race, colour, religion, sex, or national origin into consideration to benefit a group of people with one of those attributes to undo the effects of past discrimination. These policies can exist in employment, education, public contracting, and health programs. Namibia passed the Affirmative Action (Employment) Act in an effort to achieve equal opportunity in employment. The phrase “equal employment



opportunities” means that all practices, rules, or conditions that discriminate must end.

All employers must have 3-year affirmative action plans. The policies in the Affirmative Action Act include the following:

- Elimination of employment barriers;
- Efforts to accommodate persons with disabilities;
- Creating employment opportunities through training programs; and
- Giving preferential treatment in employment decisions to suitably qualified persons from certain underrepresented groups.

The Affirmative Action Act is intended to assist three specific groups that have been historically discriminated against and are underrepresented in the workforce, including people who have been discriminated against based on their: (1) race; (2) gender (women); and (3) disability (either physical or mental limitations).

7. WHAT IS NOT DISCRIMINATION

It is **not** discrimination to apply affirmative action policies to ensure that specific groups who have historically been discriminated against have the same employment opportunities as those who have not experienced historical discrimination. Because affirmative action policies give greater opportunities to groups of people who have historically been discriminated against, it may seem that these groups are receiving preferential treatment and those who do not receive greater opportunities are being treated unfairly. However, because these groups have been discriminated against in the past, affirmative action policies which give greater opportunities to these groups are **not discrimination** because they attempt to rectify the inequality created by past discrimination.

8. HOW TO FIGHT DISCRIMINATION

A. GENERAL EMPLOYMENT DISCRIMINATION

If an employee feels that he/she has been unfairly discriminated against and suspects that the employer has violated the Labour Act, the employee should collect his or her evidence and make a complaint to the employer. If the employer does not resolve the issue, the employee may file a complaint with the Labour Inspector or the Labour Commissioner. See the Labour and Employment Chapter for more information.

For further assistance or for questions, an employee may contact the Ministry of Labour and Social Welfare (061-2066111) or the Legal Assistance Centre (061-223356).

B. DISCRIMINATION AGAINST EMPLOYEES WITH HIV OR AIDS

When an employee has been unfairly dismissed due to HIV status or has suffered unfair disciplinary action, the employee can refer the matter to the Labour Commissioner.

C. DISCRIMINATION AGAINST PRISONERS WITH HIV OR AIDS

If a prisoner is subject to discrimination or abuse, he or she can take the following actions:

- Prisoners can complain to the officer in charge of the prison or the Commissioner of Prisons.
- Prisoners have the right to take legal action against the prison authorities.
- Prisoners can also complain to the Ombudsman about abuse and human rights violations, who will attempt to assist the prisoner with his or her complaint.

RESOURCES: Legal Assistance Centre, Gender and the Labour Act (2009); Namibia Institute for Democracy, Labour Act in Practice (1998); Labour Act (No. 11 of 2007); Labour Act (No. 6 of 1992); Namibia Institute For Democracy, Guide to the Affirmative Action (Employment) Act; Affirmative Action (Employment) Act (2000); Legal Assistance Centre, HIV and the Law in Namibia (2009); Namibian HIV/AIDS Charter of Rights; National policy on HIV/AIDS for the Education Sector; Open Society Institute, Now More than Ever: Human Rights and HIV/AIDS (2007); Legal Assistance Centre, Realization to the Right to Adequate Housing for People Living with HIV/AIDS in Namibia (2007); Legal Assistance Centre and University of Wyoming College of Law, Struggle to survive: a report on HIV/AIDS and Prisoners' Rights in Namibia (2008).



CHAPTER 6

MARRIAGE AND DIVORCE

COMMON QUESTIONS REGARDING MARRIAGE AND DIVORCE

WHAT IS THE RIGHT TO A FAMILY?

The Namibian Constitution provides that adult men and women – without any limitation due to race, colour, ethnic origin, nationality, religion, creed, or social or economic status – have the right to marry and start a family.

WHAT IS THE DIFFERENCE BETWEEN CIVIL AND CUSTOMARY MARRIAGE?

Civil marriages are governed by Namibia's civil and common law. Customary marriages are governed by the customs of the community and differ from place to place.

DOES THE MAN HAVE SUPERIOR DECISION-MAKING POWER IN A CIVIL MARRIAGE?

No. Both the husband and wife, in a civil marriage, share decision-making power equally. In addition, couples who are married in community of property have equal rights over joint property.

HOW OLD MUST A PERSON BE TO MARRY?

Under civil law, a person under the age of 21 years cannot marry without the consent of both parents. However, boys and girls over 18 years in age can marry, as long as both parents agree. Boys and girls under age 18 need agreement from their parents and from the government to marry.

CAN RAPE OCCUR BETWEEN MARRIED PEOPLE?

Yes. The Combating of Rape Act provides that “No marriage or other relationship shall constitute a defence to a charge of rape.” Thus, any woman, married or not, has the right to refuse sexual advances, even if the person making the advances is her husband.

WHEN CAN I GET A DIVORCE?

Divorce of a civil marriage may be sought for adultery, desertion, constructive desertion (which can mean making marital life unbearable), the imprisonment for at least five years of a spouse who has been declared a habitual criminal, or the incurable insanity of a spouse that has lasted for at least seven years.

HOW IS PROPERTY DIVIDED DURING A DIVORCE?

In a civil divorce, marital property is divided based upon the marital property rules applicable to the marriage. If the couple was married in community of property, property will be divided into two equal parts. If the couple was married out of community of property, each person will receive his or her own separate property.

WHO WILL GET CUSTODY OF THE CHILDREN OF A CIVIL MARRIAGE AFTER A DIVORCE?

Custody will be determined by the Court based on the best interests of the children. However, parents who do not have custody are generally entitled to visit their children.

CAN I CHANGE MY NAME OR THE NAMES OF MY CHILDREN AFTER A DIVORCE?

Yes. After a divorce, a woman may retake her maiden name or another prior name. If she reassumes her maiden name, she may apply to change the name of the children of the marriage to that name as well.



INTRODUCTION

The Namibian Constitution provides that adult men and women, without any restrictions based on their race, colour, ethnic origin, nationality, religion, creed, or social or economic status have the right to marry and start a family. More specifically, the Constitution states that “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Marriage may not be entered into without the full and free consent of both people. All men and women are entitled to equal rights during and after any such marriage.

I. KEY TERMS IN MARRIAGE AND DIVORCE

In order to understand the law on marriage and divorce, it is important to have a basic understanding of the words and ideas behind the law. The following is a short list of basic terms used in this area of the law:

- **Adultery:** Voluntary, sexual contact between two people who are not married to each other, but where at least one of them is married to another person. A woman who is raped does not commit adultery because she did not act voluntarily.
- **Affidavit/Declaration:** An affidavit or a declaration is a written statement made under oath.
- **Barrenness:** A woman who is unable to have a child is barren.
- **Child custody:** Child custody involves the questions of whether a child will live with their mother or father and whether the other parent will have certain rights to visit the child. Custody also involves the rights of mother and father to make decisions about their children.
- **Civil marriage:** A civil marriage is one that is performed by a state-recognised marriage officer³ (usually a magistrate or a religious leader such as a minister or a priest). Civil marriages also include marriages by Namibians in exile.⁴
- **Complaint/Application/Petition:** When a document is filed with the court requesting the court take some form of action, it is called a complaint, application, or petition.
- **Constructive desertion:** Unlike desertion, which refers to the situation in which one spouse leaves

the other and does not intend to return, “constructive desertion” does not require that a husband or wife physically abandon the other. Instead, it is enough that the husband (or wife) makes marital life unbearable for the other person.

- **Customary marriage:** A customary marriage is one that is entered into under the customs and practices of the couple’s traditional authority. There is no formal legal recognition of customary marriages in Namibia although customary marriages are recognised in various statutes for specific purposes.
- **Defendant/Respondent:** The person responding to or who disagrees with a request made to the court is a defendant or respondent.
- **Dependent:** A dependent is a child, spouse, parent, or other person who relies on another person for food, water, clothing, and shelter.
- **Desertion:** Desertion is when a husband or wife abandons the other without intending to return. Desertion may also occur where a husband or wife is imprisoned for life or forces the other to leave under threats of violence, such as domestic violence. Desertion is a valid basis for divorce.
- **Domicile:** Domicile is the permanent place where a person lives. The domicile of a woman is based on where she lives and is independent of where her husband lives. Similarly, the domicile of a child under the age of 18 is the place where the child is most closely connected and not necessarily the domicile of either parent.
- **Gender-neutrality:** Gender-neutrality means that no preference is given to a person during marriage, divorce, or custody proceedings merely because the person is a man or a woman – men and women are treated the same.
- **Hybrid marriage:** A hybrid marriage or dual marriage is one where a couple marries under the rules of both civil and customary law.
- **Jurisdiction:** The word “jurisdiction” refers to the idea that civil courts have the power to decide a dispute that is brought before the court; it means that a court may “hear a case” and listen to the parties’ presentations of their sides of the issue. If a court does not have jurisdiction, it has no right or authority to listen to the dispute and make a decision in the case.

³ See Marriage Act (No. 25 of 1961) and the Births, Marriages and Deaths Registration Act (No. 81 of 1963).

⁴ See SWAPO Family Act (1977) and the Recognition of Certain Marriages Act (No. 18 of 1991).



- **Maintenance:** Maintenance is the money or other support that is provided by one spouse to the other after they have divorced. Maintenance may also be paid by mother or father to support a child or children. This money is paid to provide for basic needs, such as food, clothing, shelter, and education.
- **Plaintiff/Petitioner/Complainant/Applicant:** The person who is asking the court for something (divorce, order of protection, maintenance) is a plaintiff, petitioner, complainant, or applicant.
- **Property:** Property is an important issue in marriage and divorce. Laws about property govern what happens to property, who can control it, and who gets to keep it. If a marriage is “out of community of property,” that means that a husband and wife each keep and control their own property after they are married. If they get a divorce, each will generally keep their own property. However, if a marriage is “in community of property,” that means that a husband and wife will share property after they are married. If they get a divorce, each will get an equal share of the property from the marriage.
- **Separate property:** The property separately owned by husband or wife and money separately earned by each is their own property and is not shared if the couple gets a divorce.
- **Spouse:** A husband or wife is the spouse of the other (*i.e.*, the wife is the spouse of husband and the husband is the spouse of the wife).
- **Summons:** A summons is a piece of paper given to witnesses, defendants, or respondents to appear in court. A person who receives a summons must appear in court at the date and time stated in the summons.

2. MARRIAGE

There are two types of marriage in Namibia – civil marriage and customary marriage. In practice, these two types of marriage do not remain strictly separate. Couples often combine elements of both systems, either simultaneously or over time, to produce “hybrid marriages.” Hybrid marriages are ruled by the norms of either civil marriage or customary marriage, or both, depending on the

situation at hand. Because of the existence of two different systems of marriage, there are two different systems of divorce also exist in Namibia. Civil marriages can be dissolved only through a civil divorce.⁵ Customary marriages are dissolved through the customs of the community, which differ from place to place.

A. THE MARRIED PERSONS EQUALITY ACT

A husband and wife in a civil marriage generally have *equal rights* over their property if they are married in community of property.⁶ If they are married out of community of property, they will control their own property, but will both have a right to live in the marital home regardless of who owns it. Where the marriage is in community of property this means, for example, that a husband and wife must discuss with each other any big purchases.

Marriage is not always equal in customary marriages. However, even in customary marriages, a mother and father will share parenting rights over their children. For example, in both civil marriages and customary marriages, both mother and father must agree to any of the following:

- Consenting to allow a child to marry.
- The adoption of a child.
- The removal of a child from Namibia for longer than one year by either of the parents or by another person.
- The application to include the name of a minor child in a passport issued or to be issued to either parent.
- The sale of a house or land owned by a child (even if only in part).

These laws are intended to protect children from exploitation.

B. MINIMUM AGE TO MARRY

To get married, a man or a woman must be at least 21 years of age. However, boys and girls over 18 years of age can marry provided that both parents consent.

⁵ Where a couple has married under civil law and wish to divorce, the divorce must also be through civil law. A traditional divorce will not dissolve a civil marriage.

⁶ See Married Persons Equality Act (No. 1 of 1996).

⁷ See Combating of Rape Act (No. 8 of 2000) (“No marriage or other relationship shall constitute a defense to a charge of rape.”).



C. MARITAL RAPE

Rape can occur within a marriage. A husband does not have a right to have sex with his wife if she is unwilling. Such an act can constitute marital rape.⁷ Any woman or person, married or not, always has the right to refuse sex to anyone, even to their spouse. This means that a husband who forces his wife to have sex with him against her will has raped his wife and can be charged criminally for rape.

3. CUSTOMARY DIVORCE

Namibian communities follow a variety of kinship and lineage systems. Kinship involves social relations between the various members of a kin group. Accordingly, a customary marriage is seen as a union between two families or kin groups rather than a union between two individuals. A number of grounds for divorce are recognised under Namibia's various customary systems. These include adultery by the wife, taking a second wife by the husband without the consent of the first wife, barrenness, and various forms of unacceptable behaviour such as alcoholism or child neglect.

A. DIVISION OF PROPERTY

Customs regarding the division of property upon divorce (including household property and harvested crops) vary greatly between traditional communities. However, the wife, in many cases, may end up with nothing more than her personal belongings. Unlike a civil marriage, joint ownership of property is not the general rule in a customary marriage. Accordingly, equal sharing of property is not the general rule in customary divorces. ***If issues related to the division of property in a customary divorce arise, paralegals will need to consult community members within that region.***

B. CHILD CUSTODY

Both the mother and father of a child have the right to be involved in the life of their child. Each child custody/care plan is specific to each child and depends on the customs and traditions of the mother's and father's respective communities. Customary decisions under customary law regarding child care/custody can be very different from decisions made under civil law. Civil law typically focuses on the best interests of the child.

However, the customs of a child's family and the parents' different communities may still play a part in a child care/custody decision under civil law, as it may be part of the child's best interests.

C. CHILD AND SPOUSAL MAINTENANCE

When a husband or wife rely on the other spouse as the source of income (money) for the family, the wife (or husband) may have the right to money from husband (or wife) upon divorce to provide food, clothing, and shelter. When there are children of the marriage, the mother (or father) may also have a right to money from father (or mother) to pay for the basic needs of the child.

D. PROCEDURE FOR CUSTOMARY DIVORCE

The procedure for customary divorce is dynamic and varies by geographic region and/or traditional authority. There may also be differences in procedure based on gender.

For instance, among the Subia of the Caprivi, a man has the freedom to divorce his wife whenever he wishes by writing a letter to his wife's parents informing them of the divorce. In contrast, a woman who wants to leave her husband must first inform the village headman who may decide to attempt to bring about a reconciliation before permitting a divorce to proceed.

Customary divorce traditionally requires that the extended families of the two spouses attempt to resolve the marital disputes. Community elders and other members of the community may also play a mediating role. In a customary divorce, traditional tribunals become involved only if there is a dispute, such as failure to reach an agreement about the distribution of property.

⁷ See Combating of Rape Act (No. 8 of 2000) ("No marriage or other relationship shall constitute a defense to a charge of rape.").



4. CIVIL DIVORCE

A. JURISDICTION

Divorce of a civil marriage in Namibia may only be granted by the High Court in Windhoek. Magistrates' courts do not have jurisdiction (the power to decide cases) over divorce cases. The High Court has jurisdiction over a divorce case if both parties are, or one party is: (1) domiciled (or lives) within the territory controlled by the Court on the date the divorce is filed, or (2) resides within the Court's territory on the date the divorce was filed and has been a resident in Namibia for not less than one year immediately prior to that date.

B. GROUNDS FOR DIVORCE

Namibian law allows for a civil divorce under four circumstances: (1) adultery; (2) desertion (including constructive desertion); (3) imprisonment for at least five years of a spouse who has been declared a habitual criminal; or (4) incurable insanity of a spouse which has lasted for at least seven years. These grounds (with the exception of incurable insanity) are based on principle of fault – the idea that one spouse is guilty of committing some type of wrong against the other spouse.

The most common ground for divorce in Namibia is constructive desertion, which takes place when one spouse (either the husband or wife) has acted in a way that makes marital life so unbearable for the other spouse that the law will consider the non-behaving spouse to have deserted the marriage, even though the spouse might not have physically abandoned the other. The court will decide on a case-by-case basis whether a constructive desertion has taken place.

C. DIVISION OF PROPERTY

In a civil divorce, marital property is divided based upon the marital property rules applicable to the marriage. If the couple was married in *community of property*, the property will be divided into two equal parts and each person will receive one part. If the couple was married *out of community of property*, each person will receive his or her own separate property. Which marital property rules apply depend on where the couple was married and whether they agreed prior to being married that particular rules should apply.⁸

D. CHILD CUSTODY

As with customary law, both the mother and father of a child have the right to be involved in the life of their child. The court may issue a child custody/care plan specific to each child and based on the child's best interests. Generally, custody of young children is given to the mother. The court usually will not separate siblings unless there is a good reason. To determine which parent gets custody, the court considers the best interests of the child or children. Criteria considered by the court in determining the best interests of the child may include the following:

- The love, affection, and other emotional ties which exist between the parent and the child and the parent's compatibility with the child.
- The capabilities, character, and temperament of the parent and the impact thereof on the child's needs and desires.
- The ability of the parent to communicate with the child and the parent's insight into, understanding of, and sensitivity to the child's feelings.
- The capacity and disposition of the parent to give the child the guidance which he requires.
- The ability of the parent to provide for the basic physical needs of the child, such as food, clothing, housing, and the other material needs – generally speaking, the provision of economic security.
- The ability of the parent to provide for the educational well-being and security of the child, both religious and secular.
- The ability of the parent to provide for the child's emotional, psychological, cultural, and environmental development.
- The mental and physical health and moral fitness of the parent.
- The stability or otherwise of the child's existing environment.
 - The desirability of keeping siblings together.
 - The child's preference.
 - The desirability of applying the doctrine of same sex matching.

⁸ For couples married South of the Redline, the rule is that civil marriages are automatically in community of property.

However, for couples married North of the Redline, marriage is usually out of community of property.



The court may also consider any other factor relevant to the particular case. The parent who does not get custody is generally entitled to visit (or have access to) their child or children.

E. CIVIL DIVORCE PROCEDURE

Most couples who want to dissolve a civil marriage do so with the assistance of an attorney. To begin the case, the attorney will draft a document called the particulars of claim, which includes the following:

- Details of the marriage (in other words, when and where it occurred, whether it is in or out of community of property, and whether there are minor children);
- The grounds upon which the divorce is sought;
- The evidence in support of that grounds; and
- The requested relief (including orders as to maintenance, guardianship and custody of minor children, and the division of property).

The particulars of claim and a summons issued by the Registrar of the High Court will then be served on the defendant, in person, by a deputy sheriff. An unopposed divorce (where husband and wife agree) done with the assistance of legal practitioners is likely to cost a minimum of approximately N\$2,500–N\$3,000, with higher costs where service of process involves long distances. If the divorce is opposed or defended, costs will be higher.

If the couple who wishes to divorce or even if only one of the spouses wishes to obtain a divorce and cannot afford to do so, the couple or spouse may seek help from the Office of Legal Aid (see section below), may request that the court help them find an attorney who will help them for free (see below), or may decide to live apart and come to some informal agreement regarding financial support, property ownership, and child custody. In the case of a non-court decision to live apart, the issue of a formal divorce only becomes an issue when a spouse wishes to remarry and have a civil ceremony under the laws of Namibia.

F. NAMES AND REMARRIAGE

Following a divorce, a woman may retain her married name or reassume her maiden name or any other name she bore at any prior time. If she reassumes her maiden name, she may apply to change the surname of the children of the marriage to that name as well. She may also apply to change the surname of the children to that of a man which she subsequently marries. Once divorced, both spouses are also free to marry again, even to re-marry each other should they wish.

G. INTERIM RELIEF

Either party to a divorce may apply for interim relief (a court order before the divorce is final). This rule provides a simple and quick procedure by which one spouse can seek relief from the other spouse, including:

- Maintenance;
- Contributions toward the costs of the divorce;
- Custody of a child; or
- Access to a child.

The applicant seeking interim relief must submit an affidavit (a statement that is sworn under oath) setting out the grounds for the requests being made of the applicant's spouse. This rule can be particularly useful in cases where there is a possibility of a substantial delay either because the case is defended or because a social worker report has been requested. It can also be useful in a case where one spouse has engaged a lawyer but the other spouse does not have access to sufficient finances to do so.

H. LEGAL AID

Legal aid (free legal assistance) is available in some divorce cases. A person seeking legal aid must fill out an application form which is available at any magistrate's court. Application forms can also be obtained from social workers and other officials or by mail. The application form must be accompanied by:

- A copy of the marriage certificate;
- A copy of birth certificates of the couple's children; and
- The applicant's pay slip (or, in the case of informal employment, an explanation of the applicant's income).



A person qualifies for legal aid based on his or her monthly income and number of children (or dependents). The applicant can be required to make a contribution toward the cost of legal assistance at the discretion of the Director of Legal Aid. In practice, qualifying applicants in divorce cases are usually asked to pay a minimal amount, such as N\$100.

An alternative to legal aid in a divorce case is an application to the Registrar of the High Court to proceed *in forma pauperis* (meaning “for those too poor to pay”). The Registrar refers such cases to an attorney, who will ask about the person’s finances and the merits of the case. If it is clear that the person in question is unable to pay the fees for a divorce, then he or she must be referred to a legal practitioner who is willing to take the case free of charge.

I. SELF-REPRESENTATION

It is possible for a person to represent themselves in a divorce case, but this is difficult in practice as the procedure is fairly complicated. A person who is attempting to represent himself or herself should ask for assistance from the Registrar’s office, but this will be provided only if the staff in that office have time since it is not their primary function.

J. PRIVACY

Divorce proceedings are generally open to the public and the media. However, a court may exclude the press and the public from all or any part of the trial.

5. MAINTENANCE

The Maintenance Act⁹ applies to any relationship where one person has a legal duty to maintain another person. These duties generally include the following:

- Husbands and wives are responsible for each other’s maintenance.
- The parents of a child share responsibility for the maintenance of that child.
- Children have a duty under certain circumstances to maintain their parents.

These basic principles apply to everyone in Namibia, even in communities where customary law says something different. The Maintenance Act is gender-neutral, which means it does not discriminate against men or women.

A. CHILD MAINTENANCE

The duty of a parent to maintain a child¹⁰ who is unable to support himself or herself applies to both parents of a child regardless of whether (a) the child in question is born inside or outside the marriage of the parents; (b) the child is born of a first, current, or subsequent marriage; or (c) the parents are subject to any system of customary law which does not recognize both parents’ liability to maintain a child. A parent may not give priority to the maintenance of children of a first marriage. Further, the duty to maintain a child is shared between the parents in proportion to their respective means. This means that the duty must be shared on the basis of how much money each of them earns and what they possess. The cost of raising the child will not necessarily be divided evenly between the mother and the father, as the wages and resources of each parent must be taken into account. For example, one parent will have to carry 100% of the costs of maintenance if the other parent has no income or property. On the other hand, if one parent has a small income and the other parent earns more, then the child’s expenses might be divided accordingly, such as 20% for the parent with the small income and 80% for the other parent.

⁹ See Maintenance Act (No. 9 of 2003). The principles and law provided in the Maintenance Act supersede customary law where there is a conflict between customary law and the Maintenance Act.

¹⁰ The duty to maintain a child has priority over all financial commitments of the parents, except for financial commitments which are necessary to the parents’ ability to support himself or herself or other dependents.



Maintenance is not required once the child becomes self-supporting or turns 18 years old. A maintenance order may be extended beyond age 18 if there are special circumstances, such as a case where a child is disabled. The maintenance order will automatically remain in place until the child reaches age 21 if the child is attending an educational institution to complete a course that will enable that child to become self-supporting. However, any maintenance order for a child will come to an end if: (a) the child dies; (b) the child is adopted by someone else (causing the duty to support the child to shift to the adoptive parent); (c) the parents divorce and a new maintenance arrangement is included in the divorce order; or (d) the child marries.

B. PATERNITY TEST

If a man who is asked to pay maintenance for a child says he is not the child's father, he may ask for a paternity test. This test requires some blood or saliva from the child, the mother, and the man who is alleged to be the father of the child. The test is expensive, but it is very accurate.

C. PREGNANCY/BIRTH EXPENSES

Both parents share responsibility for a child from before the child is born. An order for child maintenance may include contributions toward the expenses of the mother in connection with pregnancy and childbirth. This can include the costs of medical and hospital expenses, as well as other expenses. A claim for a contribution toward pregnancy and birth-related expenses should normally be made before the child's first birthday unless there is a good reason for the delay.

D. SPOUSAL MAINTENANCE

If a couple married in a civil marriage are getting divorced, the one who is in the weaker financial position (and is the "innocent" spouse) can claim spousal maintenance from the other spouse as part of the divorce. Maintenance cannot be claimed after the divorce. The rules on maintenance in a customary marriage will depend on the customary law practices of the traditional community. Maintenance payments will stop when the person receiving the payments dies or remarries.

E. REQUESTING AND OBTAINING MAINTENANCE

To claim child or spousal maintenance a person needs to: (a) file a complaint with the maintenance officer through the clerk of court; (b) provide information to support the claim; and (c) attend a meeting with the maintenance officer. Sometimes, an enquiry in the maintenance court is also required. The result may be a maintenance order that directs the defendant to make a regular contribution toward the needs of the child or spouse. To support a claim for maintenance, it is helpful if the parent who is requesting money to care for a child can show receipts for payment of things like rent, municipal accounts, food, water, and school fees.

F. ENFORCEMENT AND VIOLATION OF MAINTENANCE ORDER

Enforcement efforts to collect unpaid maintenance may be started 10 days after the first missed payment. To do so, the person claiming past due maintenance must provide a sworn statement to the clerk stating the amount that has not been paid, the method of enforcement sought, and any information about the defendant's property, finances, or employment which might help with enforcement. The maintenance officer will give the documents to the magistrate. The magistrate will then make an order for enforcement to pay the missed payments in the amounts owed. Enforcement of a maintenance order may be made by: (a) garnishing the defendant's wages each month; (b) if the defendant owns property (such as a car, livestock, or land), ordering that the property be sold; (c) requiring assignment of monies due to the defendant if someone owes the defendant money (such as rent or repayment for a loan); and/or (d) if the defendant is receiving a pension, an annuity, or similar payments requiring assignment of part or all of these payments.

G. INTIMIDATION OF PERSON SEEKING MAINTENANCE

It is a crime to try to stop someone from filing a maintenance complaint (a) by threatening to kill or hurt them or anyone else, (b) by threatening to cause any kind of damage to them or anyone else, or (c) by threatening to damage property belonging to them or anyone else. This crime covers any kind of threat, including witchcraft. The penalty for such intimidation is a fine of up to N\$20,000 or imprisonment for up to five years.



H. MISUSE OF MAINTENANCE PAYMENTS

Failing to use maintenance money for the intended beneficiary is a crime. The penalty is a fine of up to N\$4,000 or imprisonment for up to 12 months. However, it is important to remember that money is interchangeable. For example, suppose that a woman picks up a maintenance payment at the court. She gets into a taxi and takes the money to her new boyfriend. Is she abusing the maintenance payment? Maybe. But it may also be that her new boyfriend loaned her money for groceries during the month which she is now re-paying. Thus, it is important that an allegation of misuse of maintenance be supported by evidence and not founded on supposition.

I. STATE MAINTENANCE GRANTS

Parents with children under the age of 18 may be able to get small amounts of money for maintenance of their children from the Ministry of Gender Equality and Child Welfare. This is called a “maintenance grant.” A maintenance grant is different from a maintenance order. A maintenance grant is a fixed amount of money which the national government pays to particularly needy parents to assist them with the support of their children. Only parents with very small incomes can get maintenance grants. The grant will be paid for each child up to a specific number of children, which will be periodically revised. At the beginning of 2005, the grant amounts were N\$200 for the first child and N\$100 for each additional child up to a total of three children. The amount is higher for the first child because part of the money is intended for the survival of the parent. Application forms for a maintenance grant are available from social assistance clerks, social workers, and magistrates’ courts.

REFERENCES: Maintenance Act (No. 9 of 2003); Legal Assistance Centre, Summary of Maintenance Act (2005); Legal Assistance Centre, Proposals for Divorce Law Reform in Namibia (2000); Proposals for Law Reform on the Recognition of Customary Marriages (1999); Married Persons Equality Act (No. 1 of 1996); Legal Assistance Centre, Marital Property in Civil and Customary Marriages (2005); Legal Assistance Centre, Guide to the Maintenance Act (2007); Legal Assistance Centre, Pocket Guide to the Married Persons Equality Act (2008); Legal Assistance Centre, Guide to the Married Persons Equality Act (2009).



CHAPTER 7

DOMESTIC VIOLENCE

COMMON QUESTIONS REGARDING DOMESTIC VIOLENCE

WHAT IS DOMESTIC VIOLENCE?

Domestic violence is violence toward a family member or someone with a relationship with that person, including emotional and psychological abuse, verbal abuse, physical abuse, sexual abuse, intimidation, harassment, trespassing, and economic abuse. When domestic violence takes place between a husband and wife or partners living together, it is sometimes called “wife abuse” or “spousal abuse”. It is also domestic violence if a child is allowed to see such abuse. When children are the harmed persons, the violence is often referred to as “child abuse.”

ARE ALL FORMS OF DOMESTIC VIOLENCE AGAINST THE LAW?

Yes. Domestic violence has been condemned by the international human rights agreements that Namibia has signed, it is contrary to the Namibian Constitution, and it violates criminal laws such as those outlawing rape, assault, indecent assault, robbery, child abuse, and other crimes that take place within the family or inside the home.

ISN'T WHAT HAPPENS IN THE FAMILY PRIVATE?

No, not in cases of violence. 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. Domestic

violence also interferes with overall national development, by preventing the harmed persons, the perpetrators, and the community from realizing their full potential.

IS THE ABUSE STILL A CRIME IF THE ABUSER WAS DRUNK OR THE “WOMAN (OR THE MAN) ASKED FOR IT”?

Yes. Sometimes people use excessive drinking as an excuse for violence. People who are being beaten may think that the abuse will stop if the drinking stops. They may think that it is the drunkenness that causes the violence. This is not true. Many people drink without becoming violent, and many men who do not drink abuse their spouses or partners. It is true that alcohol is often a part of a violent relationship. The reasons why a person drinks and why that same person 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.

IF NO ONE IS SERIOUSLY INJURED, THEN THE ABUSE DOESN'T CAUSE ANY HARM, RIGHT?

No. Domestic violence is harmful to the harmed person, the children, the abuser, the family as a whole and the community. Domestic violence can harm persons physically, emotionally, socially, and financially. The person physically harmed by domestic violence may suffer serious injury as well as a range of psychological problems. Children growing up in a violent environment can experience emotional and behavioural problems, even if they do not experience the violence directly. These children may also learn that force is acceptable and that violence is a way of solving problems, which in turn increases the level of violence in the



COMMON QUESTIONS REGARDING DOMESTIC VIOLENCE

community and in society overall. Domestic violence often leads to a complete breakdown of the marriage or partner (cohabitation) relationship, it can upset other family members and neighbours, and it may cause other women in the community to feel intimidated. It creates a general atmosphere of disrespect for women.

WHAT SHOULD SOMEONE WHO IS EXPERIENCING DOMESTIC VIOLENCE DO?

A person who is experiencing domestic violence has several choices. He or she may do one or more of the following things: (1) go to a safe place such as a friend's or a relative's house for a while; (2) go to other family members for help; (3) apply for a protection order from the court so that the police will protect him or her from the abusing spouse or partner; (4) get counselling from people who have had experience with domestic violence problems; (5) lay a criminal charge with the police; or (6) get a divorce.

GETTING TO A SAFE PLACE SHOULD ALWAYS BE THE FIRST STEP.

A person who is experiencing domestic violence should try to arrange to stay with a friend or relative to make sure her children are safe, to take time to think about what comes next and to get assistance with finding medical treatment if needed. However, finding a safe place is not a long-term solution to the problem. The person who has been abused must still decide what to do about the problem.

WHAT IS A PROTECTION ORDER?

A protection order is a court order saying that the abuser must stop the violent behaviour, stay away from the people who are being abused or even leave the shared family home temporarily.

HOW DO YOU APPLY FOR A PROTECTION ORDER?

There is no cost for a protection order and a lawyer is not required. The person seeking protection from the abuse must go to the magistrate's court and ask the Clerk of the

Court to help the harmed person fill out an application. The person seeking protection should take any witnesses who have seen the violence, and bring along any evidence, such as medical records. The magistrate will look at the application and, if there is enough evidence, issue a temporary protection order.

WHEN CAN YOU MAKE AN APPLICATION FOR A PROTECTION ORDER?

At any time. The magistrate can make decisions on applications for protection orders after ordinary court hours and on weekends. But a protection order is only active once it has been given to (or served on) the abuser.

WHO CAN GET A PROTECTION ORDER?

Any person who is experiencing domestic violence or abuse can apply for a protection order. If the person being harmed is under the age of 21, someone can request a protection order for them. If a person is over the age of 21 but is afraid, someone else can apply on their behalf. However, the person being harmed must agree to the application in writing unless they are unable to do so (for example if they are unconscious).

WHAT DOES A PROTECTION ORDER SAY?

All protection orders will order the abuser to stop the violence. However, each protection order is different, depending on the situation, and may contain other rules that must be obeyed by the spouse or partner.

WHAT HAPPENS IF THE ABUSER IGNORES THE PROTECTION ORDER?

It is a crime to ignore a protection order. The police can arrest the abuser who has disobeyed the rules set out in the order.

WHAT IS THE PENALTY FOR IGNORING A PROTECTION ORDER?

The abuser could be given a fine of up to N\$8,000 or go to prison for a period of up to two years, or both.



INTRODUCTION

Domestic violence is violence toward a family member or between two people in a relationship. All sorts of relationships are “domestic relationships,” including people who are married, living together, are girlfriend and boyfriend, two people who have had a child together, parents and their children, and family members who have a domestic connection with a member of the more extended family (such as an uncle who pays for the school fees of his niece and nephew).

I. TYPES OF DOMESTIC VIOLENCE

- **Physical abuse:** Physical abuse includes any use of physical force, including hitting, slapping, kicking, throwing, bruising, burning, or choking. It also includes confining or holding someone by force, such as locking someone inside a house, barn or other building, depriving someone of access to adequate food, water, clothing, shelter, or rest, or forcing someone to do things they do not want to do.
- **Sexual abuse:** Sexual abuse includes rape, incest, forcing someone – either by force or verbal threats – to perform any sexual act, to have sexual contact, to engage in other unwanted sexual conduct, including exposure to indecent acts or pornography, or forcing someone to engage in prostitution.
- **Economic abuse:** Economic abuse includes depriving someone of basic economic or financial resources they are entitled to, such as household necessities; disposing of, destroying, or damaging shared property or property which belongs to another person; or hiding or hindering the use of shared property or property which belongs to the abused person.
- **Intimidation:** Intimidation is a type of abuse that includes the use of threats of harm to make someone afraid by showing a person a weapon or by using threatening language or behaviour.
- **Harassment:** Harassment is a type of abuse that includes following someone or watching their home, school, workplace, or play area, making unwelcome telephone calls, sending unwelcome letters, packages, emails, or text messages, or repeatedly trying to contact someone when they do not want to communicate with the abuser.
- **Trespassing:** Trespassing is a type of abuse that involves entering the home or property of someone without their permission.
- **Emotional or psychological abuse:** Emotional or psychological abuse includes degrading or humiliating a person, depriving a person of his or her privacy, liberty, or security, or undermining a person’s dignity and self-confidence by criticizing or ridiculing them.
- **Child abuse:** The law states that allowing a child to watch another person being harmed in any of the ways described above, is child abuse. Child abuse also includes preventing a child from having normal social contacts, or being hostile to a child whom the caretaker is responsible for.
- **Signs of child abuse:** Signs that a child is being abused may (but do not necessarily) include the following: 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, or regression (acting like a baby).
- **Child neglect:** Child neglect is a form of abuse that involves conduct such as failing to provide the love, care, food, and physical circumstances (including shelter) that will allow the child to grow and develop or exposing the child to dangerous situations or persons.
- **Signs of child neglect:** Signs that a child is being neglected may (but do not necessarily) include the following: constant hunger; poor hygiene; dirty body or clothes; constant lack of supervision; problems which no one is attending to (like illnesses or injuries); engaging in begging, stealing, or other petty crimes.

Even threatening to do any of the above is domestic violence. It is also domestic violence if a child is allowed to see physical, sexual, or verbal abuse against another family member.



2. THE COMBATING DOMESTIC VIOLENCE ACT

Domestic violence is a serious problem in Namibia. The law provides criminal penalties for acts of domestic violence. In addition, the law provides safeguards and protections for people being harmed by domestic violence. The most common safeguard available under the law is a protection order against the person who is being violent or is threatening any act of domestic violence.

3. PROTECTION ORDERS

A. WHO MAY APPLY FOR A PROTECTION ORDER

Any person who has been abused or has been threatened with abuse in a domestic relationship may apply for a protection order against the other person in the relationship. Protection orders can also be obtained against extended family members, such as aunts and uncles, who live in an extension of the household.

An application for a protection order does not need to be made by the person who is being hurt or threatened. An application may also be made for the harmed person by any other person who has an interest in the well-being of the harmed person, including: (a) family members; (b) either of the unmarried parents of a child being harmed; (c) a school teacher or member of the clergy (or other religious leader) who has information about a child being harmed; (d) police officers; (e) social workers; (f) healthcare providers; (h) traditional leaders; or (i) employers. An application for a protection order made on behalf of someone who is being harmed is treated as if it was made by the harmed person.

The person being harmed must agree in writing to having someone else make an application for him or her, unless the person harmed is (a) a minor; (b) mentally incapacitated; (c) unconscious; (d) regularly under the influence of alcohol or drugs; or (e) at risk of serious physical harm. A minor (which includes any child 18 years of age or younger) may apply for a protection order without an adult if the court is satisfied that the minor understands what they are doing. However, the court will not issue a protection order to a minor unless the court is satisfied that the alleged domestic violence is serious.

B. JURISDICTION

Jurisdiction refers to the power and authority of a court to hear a particular matter. Jurisdiction over applications for protection orders exists in a court of a district where (a) the harmed person permanently or temporarily lives, works, or has a business; (b) the violent person lives, works, or has a business; or (c) the domestic violence took place.

C. APPLYING FOR PROTECTION ORDER

Any person who needs a protection order may apply for one at their local police station, any Women and Child Protection Unit (if there is one in the region), and at the nearest court with the power to issue such orders. The application must include an affidavit (a truthful statement signed under oath) by the person harmed stating (a) what happened; (b) why a protection order is needed; and (c) the police station closest to where they live. The application may also include affidavits from anyone who saw the domestic violence and any other evidence that is relevant to the issue.

For the injured person's protection, upon a request, her address may be left off of the application. However, if the address is left off the application, the court will not be able to issue an order forbidding the violent person from entering the residence of the person they have abused or coming near their home (as it has no address to include in the order). The application and affidavits should be given to the clerk of the local magistrate's court, who will submit the documents to the court.

D. WHEN A PROTECTION ORDER IS GRANTED

The court will grant a protection order if it believes that there is evidence that the accused person has been violent or threatened domestic violence against a family member, husband, wife, boyfriend, or girlfriend (or other romantic partner). A court, generally, will not grant a protection order based on small minor acts of domestic violence. However, where an application for a protection order is based on behaviour which appears to be minor, the court will also look at whether there is a larger pattern of violent behaviour which shows a need for protection. To decide what to include in a protection order, a court may consider the following information:



- The history of domestic violence by the accused person toward the harmed person;
- The type of the domestic violence;
- The existence of immediate danger to the harmed person or the harmed person's property;
- The harmed person's perception of the seriousness of the respondent's behaviour; and
- The need to preserve the health, safety, and wellbeing of the harmed person and any child or other person who is in the care of the harmed person.

A respondent (accused person) who encourages another person to commit an act which would be domestic violence if it was done by the accused person is treated as if he or she acted personally.

E. INTERIM PROTECTION ORDERS

An interim protection order is an order issued by the court before the accused person has the chance to defend him or herself. The court will issue an interim order to protect the person being harmed if there is enough evidence in the application (including any affidavits, medical records, or other evidence). It is up to the court to decide what it considers to be enough evidence. Once the interim protective order is granted, it is valid for 30 days, but may be extended by the court. The court will also request that the accused person provide evidence to show why the interim order should not become final.

The clerk of the court will send a copy of the interim protection order to the police station named in the application. That station commander will provide police protection, if it is necessary and possible, to the person being harmed and any person in the care of that person who may also be at risk from the accused person. If the interim protection order involves children, the clerk of the court will also send a copy to the Permanent Secretary of the Ministry responsible for child welfare to consider taking other appropriate action.

F. TERMS OF PROTECTION ORDERS

An interim or a final protection order can be tailored to fit the problem. All protection orders will order the accused person not to commit domestic violence. Protection orders may also order the accused person to do specific things and provide for any of the following:

- **Firearms:** The court may order a search for and seizure of any firearm or other weapon in the possession of the accused person.
- **Contact/communication:** The court may order that the accused person have no contact or communication with the person harmed, or with other specified persons who are at risk. This may include an order that the accused not come near the harmed person's residence, workplace, school, etc.
- **Occupancy of residence:** The court may order that the accused person 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 person harmed as well as any children or other persons in the care of the person harmed, and any undue hardship that might result for the accused person 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).
- **Payment of rent:** The court may order the accused person to pay rent for alternative accommodation for the person harmed or to otherwise arrange for another place for the person harmed to stay. This is another option in cases where the parties share a residence, if the accused person is not ordered to leave the joint household.
- **Possession of personal property:** The court may order the accused person to give the person harmed possession of specified personal property (such as vehicles, agricultural implements, livestock, furniture, cheque books, credit cards, children's clothing and toys, identification documents, keys, personal documents or other necessary personal effects). The court order can also direct the person harmed to give specified personal property to the accused person, especially if the person harmed is the one who remains in the shared home.
- **Damage or disposal of property:** The court may order the accused person not to sell, damage, or dispose of property in which the person harmed has an interest.
- **Collection of personal property:** The court may order that the police accompany the harmed person to a specified place to assist him/her to collect personal belongings in safety.



- **Maintenance:** The court may make a temporary order for maintenance.
- **Child custody/access:** The court may make a temporary order concerning custody and access to any involved children.
- **Personal safety:** The court may make any other order which is necessary to protect the safety of the person harmed and children who are involved or which is necessary to protect the safety of any other persons in his or her care.

G. SERVICE OF INTERIM PROTECTION ORDERS

An interim protection order must be served (a form of legal delivery) to the accused person. An interim protection order has the same legal power as a final protection order and, once it has been served on the accused person, is enforceable. This means the person being harmed may request help from the police if the accused person is not following the interim protection order.

H. CONFIRMATION OF INTERIM ORDER NOT OPPOSED

If the accused person does not fight the confirmation of the protection order (the legal process that makes the order final) and the order was properly provided to the accused person, the person being harmed should go back to the court to ensure that the protective order is confirmed.

I. NOTICE OF OPPOSITION

If the accused person decides to fight the interim protection order, he or she must give notice or tell the clerk of court. The clerk will then set a date for both parties to come in front of the court. However, just because an interim protection order is being fought by the accused person does not mean that the order cannot be enforced. The order remains in force until the court makes a decision on whether or not the order should become final.

J. PROCEDURE FOR ENQUIRY

On the date set for an enquiry into the application for protection order (when the two parties come before the court), the court will look at the evidence to decide if a permanent protection order should be granted. Both parties can ask witnesses to speak to the court to support his or her case. If either chooses to do so, the other person will also have the chance to ask that witness questions. The court

may also speak with any of the witnesses, including the harmed person or the accused person. Unless allowed by the court, a person whose presence is not needed cannot be present at the enquiry. However, both parties have the right to have two people of their choice present with them in the courtroom to provide support. The general public and media are not allowed to be present.

If either party does not come to the court on the date of the enquiry, the court may decide the case, may dismiss the case, or may set a new date for the enquiry. Unless an application has been dismissed, if the harmed person does not come to court, the court will request that the commander of the police station named in the application look into the reason the harmed person did not come to court. The police commander is to make sure that the harmed person has not been intimidated and to find out if the harmed person still wants the protection order.

After the enquiry, the court may (a) make the interim order final; (b) dismiss the interim order; (c) make only certain parts of the interim order final; (d) remove or change parts of the interim order and make it final; (e) issue an entirely new protection order; or (f) if the accused person had the chance to defend him or herself, add to the protections already provided in the interim protection order. A protection order granted after an enquiry is a final protection order.

K. FINAL PROTECTION ORDERS

A final protection order must be provided to the accused person, which is usually given in person at the end of the enquiry. If the accused person cannot be served at the end of the enquiry (for example, if they do not come to court), the court must extend the interim protection order until the final protection order can be provided to him. The clerk of the court will also send a copy of the final protection order to the station commander of the police station named in the application who will tell the police at that station that the person harmed and anyone under his or her care are at risk from the accused person. If the final protection order involves children, the clerk of the court will send a copy to the Permanent Secretary of the Ministry responsible for child welfare to consider appropriate action.



L TERMS OF FINAL PROTECTION ORDERS

A final protection order must state that the accused person stop any form of domestic violence toward the person being harmed. A protection order may also, at the request of the person harmed or by the court's own decision, include any of the following:

- A statement that the accused person must give the court or police any gun or other weapon they own or that is in their possession.
- A statement that the accused person must not have any contact with the person harmed and/or must stop speaking with specific people.
- If an act of physical violence is involved, a statement granting the person harmed and any child or other person in his or her care the exclusive right to the house where the person harmed and the accused person both lived.
- A statement that the accused person must pay rent for the person harmed each month or otherwise make arrangements for other shelter for the person harmed.
- A statement that a police officer must go with the person harmed, or another person designated by the person harmed, to the house where the person harmed and the accused person both lived to supervise the removal of personal belongings of the person harmed or any child or other person in the care of the person harmed.
- A statement granting either party possession of specific personal property, including but not limited to vehicles, tools, livestock, furniture, checkbooks, credit cards, children's clothing and toys, identification documents, keys, personal documents, or other necessary personal property.
- A statement that neither the person harmed nor the accused person may take, convert, damage, or sell property owned in whole or in part by the other person or which the other person may reasonably expect to use.
- A statement that the accused person must temporarily make maintenance payments to the person harmed, if the accused person is legally responsible to support the person harmed and/or his or her child(ren), as an emergency.
- A statement granting temporary sole custody over any child or children of the person harmed and the accused person to the person harmed.
- A statement temporarily forbidding, limiting, or specifying the conditions under which

the accused person may contact any child of the person harmed.

The court may also include any other provisions or statements that it believes are reasonably necessary to make sure the person harmed, and any child or other person in the care of the person harmed, remain safe.

M. DURATION OF FINAL PROTECTION ORDERS

Certain parts of a final protection order last for the life of the order, while others may only be in effect for a limited period of time. The following are a few examples:

- Provisions granting the person harmed the exclusive right to live in a residence owned by the person harmed remain in force for any period set by the court.
- Provisions granting the person harmed the exclusive right to live in a residence owned by the accused person remain in force for the period set by the court up to a maximum of six months.
- Provisions granting the person harmed the exclusive right to live in a residence owned by both the person harmed and the accused person remain in force for any period set by the court up to a maximum of one year.
- Provisions granting the person harmed the exclusive right to a leased or rented residence remain in force for any period set by the court, but must not extend beyond the duration of the current lease or rental agreement.
- Provisions directing that the person harmed enjoy possession of household property must, if made in conjunction with an order granting the person harmed the exclusive right to live in a house owned by both the person harmed and the accused person, remain in force for the same period as the provision of the order granting exclusive rights to live in the house.
- Provisions concerning the temporary custody of and access to a child or children remain in force until a new order is issued by the court regarding custody and access.
- Provisions concerning maintenance remain in force for the period set by the court up to a maximum of six months.

Any other provision of a final protection order automatically remains in force for a period of three years.



N. PENALTIES FOR VIOLATING A PROTECTION ORDER

A person who violates (does not follow) the provisions of a protection order may be charged with a crime. If convicted, that person can be fined up to N\$8,000 or imprisoned for up to two years, or both. A person may also violate a protection order (and be similarly charged with a crime) if another person, acting for the accused person, does something that would be a violation of the protection order. However, except in instances of violence or threats of violence, a violation of a protection order is not a crime if the person harmed agrees to the violation.

4. HARMED PERSON'S PRIVACY

Although Namibian courts are generally open to the public, matters involving accusations of domestic violence or rape are closed to the public in order to protect the privacy of the person harmed. In addition, information regarding the identity of the person harmed may not be released to the public or media. Unless otherwise allowed by the court, a person may not publish any information that would reveal the name of the person harmed or the name of any child or other person involved in the case. A person who violates the privacy of the person who has been harmed may be punished by a fine of up to N\$10,000 or imprisonment for a period not to exceed one year, or both. In these cases, the individual right to privacy by the person harmed is greater than the general right to free speech and free expression.

5. LAYING A CHARGE OF A DOMESTIC VIOLENCE OFFENCE WITH THE POLICE

A. WHO CAN LAY A CHARGE OF A DOMESTIC VIOLENCE OFFENCE WITH THE POLICE?

The person harmed or any person who has an interest in the well-being of the person harmed, such as a counsellor, health care provider, church official, police official, social worker, teacher, or employer can lay a charge. The person harmed (also called the complainant) is the person who is harmed by the domestic violence offence, no matter who has actually laid the charge.

B. 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**; or
- 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. This involves a search for weapons without a warrant IF they see that a weapon is present or are told that a weapon is on the premises.

C. 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 could 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 he or she 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 while 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 necessary.

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

D. 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.



E. WHAT WILL HAPPEN IF THE ACCUSED IS CONVICTED OF DOMESTIC VIOLENCE?

The complainant will be given a chance to give input to the court on what he or she 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.

6. COUNSELING SOMEONE WHO HAS SUFFERED VIOLENCE OR ABUSE

GUIDELINES FOR COUNSELORS

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 he or 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 he or she wants to do.

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

THINGS THAT COUNSELORS 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.”¹

¹ 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.



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

Believe the child.

Children do not often 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.



CHAPTER 8

RAPE

COMMON QUESTIONS REGARDING DOMESTIC RAPE

WHAT IS RAPE?

Rape is often described as a crime of power that uses sex as a weapon. The legal definition of rape is: the “intentional commission of a sexual act under coercive circumstances.” “Coercive circumstances” include force, threats of force, and other situations which enable one person to take unfair advantage of another. A “sexual act” includes but is not limited to the insertion of the penis, other part of the body, or any object into the vagina or anus, or any other form of genital stimulation.

IS IT POSSIBLE FOR MEN AND BOYS TO BE RAPED?

Yes. The new law on rape defines the most intimate forms of forced sexual contact as rape. For example, it is rape to force a penis or an object into the anus of a man, woman, boy, or girl.

IF A HUSBAND COMMITS A SEXUAL ACT WITH HIS WIFE BY FORCE OR WITHOUT HIS WIFE’S CONSENT, IS THAT RAPE?

Yes. A husband and wife agree through their marriage to be sexual partners in a general sense. However, this does not mean that they have agreed to have sexual contact at any time, under any circumstances. A husband who forces sexual intercourse on his wife has committed rape. A wife who forces a sexual act upon her husband has also committed rape.

IS IT POSSIBLE FOR PROSTITUTES TO BE RAPED?

Yes. A prostitute offers to engage in a specific sexual act in exchange for money or other

goods. While prostitution is illegal in Namibia, a prostitute still has the right to refuse to engage in any sexual act, even after making this offer. If force or coercion was used by one person against another in connection with a sexual act, then it is rape. The issue of prostitution is not relevant.

DOES THE LAW ON RAPE TREAT MEN AND WOMEN DIFFERENTLY?

No. The old law discriminated against men and boys because it gave protection against rape only to women and girls. The new law protects men and women equally.

IS IT POSSIBLE FOR A RAPE CASE TO GO FORWARD EVEN IF THE RAPE SURVIVOR WANTS TO WITHDRAW IT?

Yes, it is possible. The prosecutor will decide whether or not to proceed with the charges based on the evidence.

WHAT IS THE LEGAL AGE OF CONSENT TO ENGAGE IN SEX?

Generally, the age of consent is 14 for both boys and girls, if the sexual partner is not more than 3 years older. However, sexual contact between a child under the age of 16 and someone more than 3 years older is a crime. Children below these ages may not legally consent to sex.

WHAT IS THE PUNISHMENT FOR RAPE WITH SOMEONE WHO IS UNDER THE AGE OF CONSENT?

The minimum sentence for rape of a child under the age of 14 where the perpetrator is more than 3 years older is 15 years.



INTRODUCTION

Rape is a serious problem in Namibia – 1,000s of incidents of rape occur each year, with many unreported. Both men and women are raped, regardless of their age, economic status, or whether they are married or single. People who have been raped often feel shame or are embarrassed to seek help or to talk openly about what happened. Paralegals can play an important role in assisting rape survivors in their communities. Paralegals can provide support, information on medical treatment and testing, direction on how to preserve evidence, and options for reporting the rape and filing a criminal complaint with the nearest Women and Child Protection Unit or the Namibian Police.

I. KEY TERMS

The understanding of what is rape varies from community to community. However, the law on rape provides broad protections against rape, which include acts that traditionally may not be considered rape in some communities. The following is a short list of basic terms that will be useful in understanding how rape is defined and its legal implications:

- **Age of consent:** The law has determined that a boy or girl cannot agree to sexual contact (of any kind) until they reach a certain age. This means that even if the boy or girl willingly consents to a sexual act, it is still rape.
- **Coercive circumstances:** Coercive circumstances include any situation where one person pressures another person into an unwilling or involuntary sexual act. Force, threats of force, and other situations which enable one person to take unfair advantage of another are all coercive circumstances.
- **Complainant:** The term complainant refers to the survivor of the rape.
- **Consent:** Consent is the voluntary and willing agreement by one person to participate in a sexual act free from pressure, threats, or coercion.
- **Perpetrator:** The term perpetrator refers to the person who has committed the rape.
- **Rape:** Rape is the intentional commission of a sexual act under coercive circumstances.

- **Sexual act:** A sexual act includes (a) the insertion (to even the slightest degree) of the penis of a person into the vagina or anus or mouth of another person; or (b) the insertion of any other part of the body of a person or of any part of the body of an animal or of any object into the vagina or anus of another person, except where such insertion of any part of the body (other than the penis) of a person or of any object into the vagina or anus of another person is for proper medical reasons.

2. THE RAPE LAW PROTECTS EVERYONE

Rape and the protections against rape apply equally to men, women, boys, and girls, regardless of age and marital status. Rape can be committed against men and boys as well as against women and girls. Rape can be committed against a person who is single or a person who is married. If something would be rape outside of a marriage – for example, because of the use of force or threats of force – then it would also be rape inside a marriage.

3. COERCIVE CIRCUMSTANCES

The law on rape focuses on the existence of “coercive circumstances.” “Coercive circumstances” include force, threats of force, and other situations which enable one person to take unfair advantage of another, such as:

- Physical force against the victim or another person.
- Threats of physical force against the victim or another person.
- Threats to cause harm other than bodily harm to the victim or another person, in circumstances where it is not reasonable for the victim to disregard the threats.
- The victim is under the age of 14 and the perpetrator is more than 3 years older.
- The victim is unlawfully detained.
- The victim 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.
- The perpetrator pretends that what is happening is not actually a sexual act.
- The presence of more than one person is used to intimidate the victim.



This list is not complete but may include other situations where pressure, force, deception, or manipulation is used in the context of a sexual act.

4. SEXUAL ACT

Rape is when a person carries out a “sexual act” under “coercive circumstances.” A “sexual act” may include any of the following:

- The insertion of the penis into the vagina, mouth, or anus of another person.
- The insertion of any part of the body of a human or animal into the vagina or anus.
- The insertion of any object into the vagina or anus.
- Oral stimulation of the male or female sexual parts.

This list is not complete but may include any other form of stimulation of the male or female sexual parts.

5. AGE OF CONSENT AND STATUTORY RAPE

Children cannot agree to sexual contact before they are 14 years old. This is true for both boys and girls. This means that a sexual act that involves no force or coercion by either participant can still be rape if it involves a boy or a girl who is under the age of 14. There is an exception where both individuals are within three years of age and the sexual contact is free from coercion. The law leaves open the possibility of child rape where there is a sexual act between two or more children that involves force or coercion.

EXAMPLES:

- If a 16 year old has sexual contact with a 12 year old, the 16 year old could be charged with rape even if there was no use of force or coercion. This is because there are four years (not three or less) in between the 12 and 16-year-old.
- If two 12 year olds have sex in a situation where there is no force or coercion, neither could be charged with rape. The law would assume that neither was taking unfair advantage of the other since they are of similar ages (within three years).

Consensual sexual contact between a boy or girl older than 14 but under the age of 16 and an individual more than three years older is not rape, but is still a sex crime. It is a lesser offence than rape and there are no minimum sentences attached.

6. RAPE WITHIN MARRIAGE IS STILL RAPE

The law on rape 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 or any other relationship. If something would be rape outside a marriage – for example, because of the use of force or threats of force – then it would also be rape inside a marriage.

The 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.

This means that a man may be found guilty of raping his wife and a woman may be found guilty of raping her husband.

7. GANG RAPE

Gang rape is a crime that occurs when two or more persons act together to force or coerce another to commit a sexual act. For example, where a person uses force to make another commit a sexual act with his friend, both are guilty of rape. If a person helps another person commit rape, that person can also be found guilty of rape. Further, if three men take part in a gang rape, it is possible for each of them to be charged with committing three rapes. This means that each one of them could be charged for their own rape as well as the rape by the other two.

8. PUNISHMENT/MINIMUM SENTENCES

If it is a first offence, the minimum sentence for rape is 5, 10, or 15 years, depending on the circumstances of the rape. In the case of a second or subsequent conviction of rape, the minimum sentence is 10, 20, or 45 years, depending on the circumstances.

The minimum sentence for the rape of a child under the age of 14 where the perpetrator is more than 3 years older is 15 years. There is no minimum sentence for sexual contact not involving force or coercion with a child between the ages of 14 and 16 by an adult more than 3 years older. Minimum sentences do not apply to convicted persons who were under the age of 18 at the time the rape was committed.



9. PRIVACY OF A SURVIVOR OF RAPE

There are rules in place to protect the privacy of a rape survivor. For example, the court will be closed to the public during the entire rape trial unless the rape survivor requests otherwise. If the survivor is a minor (under the age of 21), the request to open the court must be made by the survivor's parent or guardian. This is true for any criminal case relating to sexual or indecent acts.

It is also illegal to publish any information which might reveal the identity of a survivor of rape. This rule applies to newspapers, radio, television, and any other kind of media. No one may publish the survivor's name and address or photographs which reveal physical features or clothing that might identify the survivor. The protection against publication applies from the moment the rape is committed, well before the perpetrator has appeared in court. This is important for the protection of the survivor's privacy, since the media often gets information from police dockets before there have been any court appearances.

Information about the identity of the survivor in a rape case can be published only if the court has authorised the publication or if a survivor who is over the age of 18 has authorised it. The parent or guardian of a rape survivor 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 survivor's identity without proper permission is a fine of N\$10,000 or imprisonment for up to 1 year, or both.

10. RAPE AND HIV/AIDS

A person who knowingly exposes another to HIV/AIDS through rape is likely to receive a heavy sentence. In addition to the charge of rape, it is possible to charge someone who knowingly exposes another person to the risk of HIV/AIDS infection with the criminal charge of attempted murder. A conviction on an attempted murder charge would likely carry a heavy prison sentence that could be served in addition to the sentence for rape.

Survivors of rape can take preventative medication to reduce the chances of contracting HIV/AIDS from the rape. The medicine is called PEP (which stands 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. Most hospitals and clinics have free three-day starter packs of preventative medication

which can be used while the rape survivor is arranging to get the full 28-day course of medication. The three-day package alone will not help to prevent HIV/AIDS—PEP must be taken for the full 28 days in order to be effective.

The Ministry of Health and Social Services has promised to make PEP available to anyone who has been raped, regardless of whether they can pay or not. If the closest hospital or clinic does not have PEP, ask a doctor, nurse, or other social worker for help obtaining PEP as soon as possible. Some medical aid funds cover HIV/AIDS prevention medicine.

The law does not require rape perpetrators to get tested for HIV/AIDS. Preventative medication is most effective if it is taken as soon as possible after the rape. This means that someone who has been raped should not wait for the results of an HIV/AIDS test before making a decision about whether to begin taking preventative treatment. The safest course of action is for the rape survivor to assume that the perpetrator may have been HIV/AIDS positive and to act accordingly by seeking medication, counselling, and testing.

11. HOW TO HELP SOMEONE WHO HAS BEEN RAPED

Rape is a traumatic, humiliating experience. It is important for everyone who deals with a rape survivor to be sensitive, kind, and a good listener. The rape survivor is the person who should decide how she or he wishes to proceed. Paralegals may suggest options, but should not make decisions for survivors, although they may need support assistance in making these decisions. Below is a list of steps that paralegals can follow when talking to a survivor of rape or sexual assault.

- **Empathy:** Listen and express empathy to the rape survivor.
- **Empower:** Try to re-empower the rape survivor and remind her/him – “what happened is not your fault”.
- **Encourage:** Encourage the survivor of rape or sexual assault to go to a doctor, clinic, or hospital as soon as possible.
- **Educate:** Educate and inform survivors about the options that are available to them. Describe each option and the process. Survivors might want to go to a doctor, clinic, or hospital even before they go to the police, especially if they have been hurt.



After a medical exam, survivors still have the option of whether or not they want to report the rape to the police. If survivors go to the police first, the police will take the survivor to a hospital or clinic.

Each of these steps is described in more detail in this chapter.

12. LISTENING TO A SURVIVOR AND EXPRESSING EMPATHY

People who work with survivors of rape or sexual assault should always try to make the survivor feel at ease and comfortable. Paralegals can help survivors they are in a comfortable, safe environment by allowing survivors to talk at their own pace and not forcing communication. Paralegals should remind survivors that paralegals owe survivors a duty of confidentiality and a duty to respect privacy, which means that paralegals promise not to tell anyone else about the information that the rape survivor shares. Listening sympathetically and expressing empathy lets a person know that the listener appreciates the fact that the survivor has been through an extremely traumatic, difficult experience. People who work with survivors can express empathy by putting themselves in the survivor's shoes and acknowledging that they have heard what the survivor has said. One way to show empathy is by repeating back to the survivor parts of what she/he has said, in reflective statements.

Here are some tips on how to listen and communicate effectively with survivors of rape and sexual assault:

- Ask open-ended questions that allow the survivor to answer in her/his own words.
- Avoid asking “why” questions because those usually make people feel defensive and not comfortable (for example, do not ask “why did you wait so long to talk about this incident?”).
- Accept silence. Sometimes survivors prefer to respond to questions or comments by remaining silent. An effective way to respond to silence sometimes is by also being silent. It is very difficult for survivors to talk about what happened and survivors might need the space to think carefully and respond in a way that makes them feel comfortable. But sometimes a survivor's silence might mean that they do not want to respond to a certain question or they are confused or uncertain about what to say. In that situation,

it might make a survivor uncomfortable if there is too much silence. Look for non-verbal signals like facial expressions to determine when it is appropriate to remain silent and for how long.

- Reassure attentiveness to survivors as they talk. This can be done by not interrupting survivors and maintaining eye contact, nodding one's head, and making very short comments as survivors talk (such as “oh”, “I see”, “Mm-hmmm”, “you did, eh”).

13. RE-EMPOWERING THE RAPE SURVIVOR

One of the most painful parts of surviving a rape is that the person feels completely powerless. The survivor might feel she/he has lost control and might be self-blaming for what happened. Paralegals can help survivors regain their self-esteem by reminding them that what happened was not their fault. Someone else did this to them—rape is the fault of the rapist. Remind survivors that each person has a right to dignity and to be respected as a person. This means that it is the survivor's right to decide who touches her/him and where she/he is touched. It does not matter if survivors are married or single, they still have the final say over who touches their body and where, because they are a person who deserves to be respected.

14. VISIT A DOCTOR, CLINIC, OR HOSPITAL AS SOON AS POSSIBLE

Paralegals should encourage survivors of rape or sexual assault to get medical attention as soon as possible. Obtaining medical assistance is important to reduce the chances of getting HIV, infection with other sexually-transmitted diseases, and pregnancy. A free exam can be completed by a hospital or health clinic, even if the survivor does not want to involve the police. The survivor should try not to shower or clean herself/himself, urinate after an attack, or wash their clothes. But even if a survivor has done any of that, it should not stop her/him from going to a hospital as soon as possible.

Health clinics and hospitals can give the rape survivor information about medicines which can help to prevent HIV infection, other sexually-transmitted diseases, and pregnancy. A survivor should explain to the doctor that they have been raped. This is important as the survivor may have been exposed to HIV/AIDS as a result of the rape and there is medicine that can reduce the chances of



becoming infected with HIV/AIDS, but it works only if it is taken very soon after the rape. Most hospitals and clinics have a three-day starter pack of HIV/AIDS prevention medication which is available for free. The survivor will have to take the medicine for 28 days, but the starter pack will provide time to arrange payment for the full course of medicine. The survivor might have been exposed to another sexually-transmitted disease as a result of the rape. There is medicine that can reduce the chances of becoming infected with other sexually-transmitted diseases, such as syphilis or hepatitis. It is best to start taking that medicine as soon as possible. Finally, if the rape survivor is a woman, she may be in danger of becoming pregnant from the rape. There are pills that can prevent pregnancy if they are taken right away. Health clinics and hospitals can also explain the possible side effects of taking these medicines, as well as provide counselling and information on follow-up testing.

Survivors might be intimidated by the thought of going to a hospital or might have questions about what will happen at the doctor's office. Here is some information paralegals can give survivors about the process:

- The doctor will ask the rape survivor some questions about the rape. The doctor will examine the survivor and write down any injuries that the survivor got from the rape.
- The doctor may be able to collect evidence from the rape (such as semen). Survivors should not wash or change clothes before seeing the doctor. The doctor might take some blood from the patient's arm to send to a laboratory for testing. The doctor will also look at the clothing the survivor was wearing during the rape to see if there is evidence such as semen or blood.
- The nurse or doctor might take various samples from the survivor, such as scraping under the fingernails, oral swabs, or combing the hairs around private parts and pulling out a pubic hair. Parts of this process can be uncomfortable or even a little painful. This process is for the collection of evidence.
- Survivors should remember to always ask questions if they do not understand something. Survivors have a right to have each step of the exam explained to them before it is performed.
- Survivors can refuse any part of the exam if they choose.
- After the exam is over, survivors should be allowed to wash, clean themselves, and put on clean clothing.

The survivor might want to find a close friend or other support person who can accompany them throughout this process. The survivor can ask to have her/his advocate with them at the hospital to support them and answer any questions they may have. Paralegals can encourage rape survivors to get counselling and can inform survivors about local groups that offer counseling. A person who has been raped might not feel ready for counselling right away, but counselling might still be helpful later on.

15. PRESERVATION OF EVIDENCE

Evidence means information and physical things that can support a conviction by the court in the rape case. Good evidence is important to make sure that the perpetrator will be found guilty and sent to prison. The following are helpful tips for preserving evidence of a rape:

- Do not wash. The doctor will be able to find important evidence on the body of the rape survivor. This evidence will be destroyed if washed away.
- Do not change clothes. There might be important evidence on the clothes.
- Do not clean the scene of the crime. Do not wash anything which might have evidence such as blood or semen or fingerprints on it.

Any physical evidence collected should be wrapped in newspaper or some other kind of paper and taken to the police.

16. REPORTING RAPE TO THE POLICE

Paralegals can encourage a rape survivor to go to the police and report the rape/sexual assault. But paralegals should not push the issue and should never tell a rape survivor that she/he must report the rape to the police—some survivors may wish to report a rape and others prefer not to involve the police. One reason a rape survivor should report the rape to the police is so that the person who committed the rape can be caught. This is also important as it might prevent that person from raping someone else. If there is a Woman and Child Protection Unit in the community, the survivor can go there to make a report. Police in these units have police officers with special training on how to deal with rape cases. The police will arrange for the survivor to see a doctor. They will also arrange for the survivor to speak with a social worker.



Some women do not want to report the rape because they are financially dependent on the person who raped them, or for other reasons. If the rape perpetrator is the survivor's parent or spouse, he may have a legal duty to provide for their basic living expenses. If the perpetrator threatens to withdraw this basic support, survivors can go to the maintenance court to get a maintenance order. The rape perpetrator may try to give the survivor money to withdraw the case, but survivors do not have to accept such an offer.

Here is some information paralegals can give survivors about the process of going to the police:

- The police can help survivors get medical attention right away and will arrange for the survivor to speak with a social worker. If a survivor goes to the police, she/he should bring a change of clothes so that the police can keep the clothes that were worn during the rape as evidence.
- If the survivor is a woman, she can ask to speak to a female police officer; if the survivor is a man, he can ask to speak with a male police officer. The survivor can speak with police officers in private rooms and can bring a friend or relative with them, if they want, as support.
- The police officer will ask the survivor questions about the rape or sexual assault, and will write down answers. Survivors should try to remember every detail as possible. If the police do not ask something but the survivor thinks police should know the information, survivors should tell them anyway. That information might be helpful. Survivors should try not to feel embarrassed.
- The survivor should tell the police anything they know about the person who raped her/him (such as the person's name, where they live, what they look like, if the survivor knows them). That information makes it easier for the police to arrest the person. Survivors should tell the police if anyone else saw the person who raped her/him or heard what was happening. Statements from other witnesses can be very helpful.
- Survivors should tell the police if the rape perpetrator threatened to hurt or kill the survivor or anyone. If the rape perpetrator threatened the survivor and the survivor is afraid, then the rape perpetrator will not be set free on bail.
- If survivors decide to go to the police, survivors do not have to give a statement right away if the survivor does not want to. It is fine to come back

the next day to give a statement. But the police will still want the survivor to see a doctor immediately, before important evidence on the body goes away. After the survivor gives her/his statement to police, the survivor can always go back to the police to give them more information if the survivor later realizes she/he forgot to tell the police something.

17. BAIL HEARING

If the police can find the rape perpetrator, that person will be arrested. The accused rapist will then have a right to ask to be let out on bail until the trial starts. Bail is money that is paid to the court to make sure that a person accused of a crime appears in court for the trial. If the accused person comes to court, the bail money is returned. If the accused person runs away, the court will keep the money.

There will be a hearing (proceeding in court) to decide if the accused rapist will be let out on bail. There will be no bail if there is a strong risk that the accused rapist will flee. There will also be no bail if the accused has threatened to hurt the rape survivor or if there is some other reason to believe that the accused might try to harm the survivor before the trial starts. The survivor may tell the police of any reason why the accused should not be given bail.

The police must tell the survivor when the bail hearing will be. The bail hearing cannot take place unless the survivor has been informed. The survivor can also ask to give the court information or may ask a police officer who is investigating the case to speak on his or her behalf. If the survivor speaks at the bail hearing, the accused, or the lawyer who is helping the accused, will be allowed to ask the survivor questions.

18. CRIMINAL TRIAL

If there is enough evidence of the rape, a prosecutor will be assigned to the case and it will be set for trial. A "prosecutor" is a lawyer who works on criminal cases for the government. Survivors do not have to pay the prosecutor because the government pays the prosecutor. It may be a long time before the trial takes place. It can sometimes take up to a year. The prosecutor should meet with the survivor ahead of the trial to explain exactly what happens in court. The prosecutor has a legal duty to do this. The prosecutor might ask a social worker to take the survivor to the courtroom ahead of the



trial date, to show the survivor where she/he will sit and to provide more details about what will happen on the day of trial. The survivor can go through the statement that she/he gave to the police before the trial starts, so that the survivor can refresh her/his memory about the details. The survivor must say the same things in court that she/he says to the police. Survivors might want to ask someone to come along with them to the trial, such as a friend, social worker, or someone from a counselling group.

A judge or a magistrate will be in charge of the trial. The prosecutor will try to show that the accused rapist is guilty of the crime. The accused rapist will try to show that he/she is not guilty. There may also be a lawyer who will ask questions and make statements on behalf of the accused. A lawyer who defends the accused against the charge of rape is called the defence lawyer. The court case is between the government on one side and the accused rapist on the other. This is why the survivor does not have a lawyer representing her/him. The trial will be held in private, unless the survivor wants the court to be open to the public. Only the people who must be present will be allowed inside the courtroom: the judge or magistrate, the prosecutor, the accused rapist, and the defence lawyer. There may also be a person who records what happens in court, a police officer who takes care of things which are presented to the court as evidence, and a clerk who helps out.

During the trial, the prosecutor will ask the survivor (called the “complainant”) questions about the rape. The judge or the magistrate might also ask questions. In addition, the accused, or the lawyer who is representing the accused, is allowed to ask questions. The defence will try to show that the survivor is mistaken, or that she/he is not telling the truth. The survivor must try to stay calm and answer everything truthfully. The survivor must explain exactly what happened, even if it is embarrassing to talk about. If the survivor does not know the answer to a question, the survivor should say that she/he does not know the answer. Never make up an answer.

At the end of the trial, the judge or the magistrate will say that the accused is “guilty” or “not guilty.” If the court finds the rapist “not guilty,” this means that there was not enough evidence to find the accused guilty. If the accused is found “not guilty,” he/she goes free.

If the accused is found “guilty,” the judge or magistrate will hear more evidence to decide what

the punishment will be. This will be done during the sentencing phase of the trial. The decision on the sentence may happen right away or it may happen a few days or weeks later. The prosecutor will inform the rape survivor when the sentencing will take place. The prosecutor should also contact the survivor to tell them what sentence the accused received if the survivor is not in court on that day.

19. EVIDENCE OF SEXUAL HISTORY

If the person accused of a rape has committed rape or other sexual crimes in the past, this information can be used to show the court that the perpetrator has a tendency to force certain kinds of sexual acts on people. The court will not, however, listen to any evidence about the character or the “sexual reputation” of a woman who has suffered rape or another sexual offence. Rather, the court focuses on what happened in the case at hand and not on the previous sexual history of the rape survivor.

The court may allow questions regarding sexual history, with very strict limits, concerning the explanation of the presence of semen, pregnancy, disease, or injury which might be connected to the rape. For example, if the prosecutor says that the alleged rape was the source of a sexual disease, the accused would have the right to show that the complainant actually got the disease from another sexual encounter. Evidence about sexual history can also be allowed if it is such an important part of the accused’s side of the story and excluding it would violate the accused’s constitutional right to a fair trial.

20. COMPENSATION

If the survivor has to spend money on transportation to the court, the survivor may be able to get a refund. If the survivor loses money because she/he has to miss work to come to trial, the survivor may be able to get some or possibly all of that money back. Survivors can discuss any questions about reimbursement of money in connection with court costs with the clerk of the court. Survivors can ask the prosecutor to request compensation for some kinds of costs at the criminal trial. But this can make the criminal trial take much longer. Also, there are some kinds of costs that cannot be requested in the criminal case.

Survivors can pay a private lawyer to take the accused rapist to court in a separate case, to try to get the accused to pay the survivor for all the costs of the rape. This is called a “civil case” and the costs are called “damages”. It does not matter in



a civil case whether the accused was found “guilty” or “not guilty” in the criminal trial because the rules for civil cases are different. A survivor can bring a civil case even if the accused was never arrested at all. If the rape survivor contracts HIV as a result of the rape, damages from a case against the rapist for compensation can help out with the costs involved in dealing with HIV/AIDS.

21. ABORTION

If a rape survivor becomes pregnant, she may legally obtain an abortion. The survivor can get a legal abortion even if the rapist has not been found or brought to court. Further, the survivor does not need to wait for the court case. The survivor can also get a legal abortion if no charge is filed with the police. However, the survivor will have to explain to the magistrate why he or she did not go to the police.

22. RESOURCES FOR SURVIVORS OF A RAPE

The following is a list of telephone numbers for Woman and Child Protection Units:

REGION	CITY/TOWN	TELEPHONE NUMBER
CAPRIVI	Katima Mulilo	066-251215
ERONGO	Walvis Bay	064-219068
HARDAP	Mariental	063-345000
HARDAP	Rehoboth	062-523223 (NamPol)
KARAS	Keetmanshoop	063-221826
KARAS	Lüderitz	063-203668
KAVANGO	Rundu	066-266330 (NamPol)
KHOMAS	Windhoek	061-2095375 or 2095374
KUNENE	Opuwo	065-273148 ext. 138
OHANGWENA	Eenhana	065-264204
OMAHEKE	Gobabis	062-566144
OMUSATI	Outapi	065-251863
OSHANA	Oshakati	065-2236056 or 2230657
OSHIKOTO	Tsumeb	067-2235053
OTJOZONDJUPA	Otjiwarongo	067-300625

23. SHELTERS AND RESOURCES FOR WOMEN

The following is a list of domestic violence shelters and other organisations providing resources for women:

- Aids Care Trust of Namibia
- Catholic Aids Action (National Catholic Women’s Programme)
- Change of Life Style Home’s Project (COLS)
- Directorate of Legal Aid (Ministry of Justice)
- Directorate: Developmental and Social Welfare Services (Ministry of Health & Social Services)
- Dutch Reformed Church Benevolence Board - Social Service Council
- Dutch Reformed Church Benevolence Board - Children’s Home
- Erongo House of Safety (Erongo Development Trust)
- Friendly Haven Shelter (Social Diaconic Action for Young Women)
- Helping Hand Welfare Organisation
- Helpline
- Interim Night Shelter (Street Children Programme)
- Karibib Shelter for Women (Let’s Help Each Other Women’s Foundation)
- Law Reform and Development Commission (LRDC)
- Legal Assistance Centre (LAC)
- Lifeline/Childline
- Michelle McLean Children’s Trust- Katutura Place of Safety
- Ministry of Education
- Ministry of Gender Equality and Child Welfare (MGE CW)
- Ministry of Safety and Security Services
- Ministry of National Youth Services - Regional Offices and Centres
- Namibia Institute for Democracy (NID)
- Namibia Planned Parenthood Association
- Namibia Red Cross Society
- Namibia Women’s Association (NAWA)



- Namibia Women’s Network (NWN)
- Namibian Children’s Home (Ministry of Health & Social Services)
- Namibian Men For Change (NAMEC)
- Namibian Police (NAMPOL)
- National Aids Control Programme (Ministry of Health & Social Services)
- National Society for Human Rights (NSHR)
- Nara Training Centre
- Office of the Ombudsperson
- Okahandja Youth Guidance Centre (Stop the Violence Women’s Group)
- PEACE
- Philippi Trust Namibia
- Psychological Association of Namibia
- Save the Children Project
- Scripture Union - Aids for Aids Programme
- Sister Namibia Collective
- Stop the Violence Women’s Group
- Tsumeb Women’s and Children’s Centre
- United Nations System in Namibia
- University of Namibia (UNAM) - Gender Training & Research Unit
- Usakos Children’s Education Centre
- Walvis Bay Child and Family Centre
- White Ribbon Campaign Namibia (WRCN)
- Women’s Action for Development
- Women and Child Protection Units (WCPUs)
- Women’s Solidarity Namibia (WSN)
- Young Women’s Christian Association (YWCA)

For more detailed information, including contact information, please consult the Namibia Domestic Violence and Sexual Abuse Service Directory©, published by the Legal Assistance Centre.

SOURCES: Legal Assistance Centre, A Summary of the Combating of Rape Act (2001); Combating of Immoral Practices Amendment Act (2000); Legal Assistance Centre, Pocket Guide to the Combating of Domestic Violence Act (2007); Combating of Domestic Violence Act (No. 4 of 2003); Combating of Rape Act (No. 8 of 2000); Legal Assistance Centre, Guide to the Combating of Rape Act (2010); Legal Assistance Centre, Withdrawing a Rape Case (2009), Legal Assistance Centre, Rape in Namibia (2006); Legal Assistance Centre, Domestic Violence and Sexual Abuse Service Directory (2005).



CHAPTER 9

HIV AND AIDS

COMMON QUESTIONS ABOUT HIV AND AIDS

WHAT IS HIV?

“HIV” is short for the illness called “human immunodeficiency virus.” HIV is a virus that infects specific cells in a person’s immune system (the body’s defence against infections and diseases).

WHAT IS AIDS?

“AIDS” is short for the illness called “acquired immunodeficiency syndrome.” HIV causes AIDS. People who are infected with HIV do not necessarily have AIDS. A person has AIDS when he or she has HIV in addition to one or more diseases or infections and when the person does not have any other known cause of immunodeficiency.

WHAT ARE COMMON WAYS OF GETTING HIV?

Having unprotected sex (sex without a condom) with someone who has HIV, sharing a needle to inject drugs, having a mother who is infected with HIV when her child is born, and being raped by someone who has HIV are the most common ways of getting HIV. Sometimes the HIV virus is transferred to a child through breastfeeding.

CAN A PERSON GET HIV/AIDS FROM CASUAL CONTACT WITH SOMEONE WHO HAS HIV/AIDS?

No. There is no evidence that HIV or AIDS can be transmitted through casual contact. Casual contact includes any activity that does not involve exposure of the blood, saliva, or semen of an infected person to the blood or mucous membranes of another. Some examples of casual contact activities include: touching, holding, living, or working in the same place as

a person who is HIV-positive or who has AIDS, being coughed upon or eating food prepared by an infected person, and use of swimming pools, tubs, or toilets previously used by an infected individual.

CAN I GET HIV FROM SITTING ON A TOILET SEAT OR SHARING A MEAL WITH SOMEONE WHO HAS HIV?

No. These are examples of casual contact activities that do not involve the transmission of blood or semen. There are many other casual contact activities that people wrongly believe can cause HIV, but those beliefs are not accurate.

CAN MOTHERS WHO HAVE HIV/AIDS TRANSMIT THE VIRUS BY BREASTFEEDING THEIR INFANTS?

Yes. Breastfeeding is another possible mode of transmitting the HIV/AIDS virus from an infected mother to an infant. Not all children who have been breastfed by AIDS-infected mothers have developed the AIDS virus.

ARE MEN WHO HAVE SEX WITH MEN AT HIGHER RISK OF CONTRACTING HIV/AIDS THAN MEN WHO HAVE SEX WITH WOMEN?

No. Because the HIV/AIDS virus is spread through infected semen and blood, any sexual activity that involves exposure to infected semen or blood has the potential to spread the virus to another person. Both men and women who have HIV/AIDS are able to transmit HIV/AIDS to another person. This means that a man who has sex with another man has just as much likelihood of contracting HIV/AIDS as a man who has sex with a woman.



COMMON QUESTIONS ABOUT HIV AND AIDS

WHY SHOULD I GET TESTED?

Many people living with HIV do not know that they are HIV-positive because they have not taken an HIV test. Effective prevention and treatment depends on each individual taking the initiative to be tested and taking necessary precautions from becoming infected or infecting others.

IF I HAVE HIV/AIDS, CAN I STILL GO TO A HOSPITAL OR HEALTH CLINIC?

Yes. Hospitals and clinics may not refuse to treat a person because that person has HIV or AIDS.

MAY MY EMPLOYER REQUIRE THAT I BE TESTED FOR HIV/AIDS?

No. It is illegal for an employer to require an applicant to take an HIV test as part of the employment application process. But there is an exception to this rule. Namibia has legislation called the Defence Amendment Act which allows the Namibian Defence Force ("NDF") to test people for HIV prior to employment.

CAN I BE TESTED FOR HIV/AIDS WITHOUT MY CONSENT?

No. Any person who will be tested must provide "consent" to an HIV test. "Consent" means that a person voluntarily agrees to the testing and knows that she or he has the option to decline testing. A pregnant woman cannot be tested for HIV/AIDS without her consent. Only in exceptional cases can another person consent, such as the parents of a child to be tested.

CAN A WOMAN BE STERILIZED WITHOUT HER CONSENT?

No. Never, under any circumstances, is it legal for a woman to be sterilized unless she has provided informed consent. Informed consent means that she has been allowed to make her own decision, she has been provided with full information to make a decision in a safe, comfortable, and confidential environment, and she understands that she has the option to refuse or decline healthcare procedures or services. Unfortunately, tubal ligation has been performed on many pregnant women against their will and without proper consent and many women have found out after they checked their health passports or accessed family planning services.

CAN I BE DISMISSED FROM EMPLOYMENT BECAUSE I HAVE HIV/AIDS?

No. Disciplinary action or dismissal is unfair if there is no fair and valid reason for the disciplinary action taken. This includes dismissal solely on the grounds of an HIV-positive status.

IS IT A CRIME TO FAIL TO DISCLOSE HIV/AIDS TO A SEXUAL PARTNER?

Yes. A person who knows that he or she is infected with HIV/AIDS and infects another person could be charged with crimes such as murder, culpable homicide, assault, assault with intent to cause grievous bodily harm, attempted murder, or attempted assault.



1. HIV/AIDS IN NAMIBIA

HIV and AIDS are an epidemic in Namibia and continue to limit Namibia's economic and social development. To confront the growing HIV and AIDS epidemic in Namibia, the government has adopted numerous strategic plans, enacted laws, and issued guidance on HIV and AIDS prevention. Despite these policies, discrimination against and stigmatization of people living with HIV or AIDS are still very common, with the result being that only a handful of Namibians who are living with the virus are willing to make their status known in public.

2. THE NATURE OF HIV AND AIDS

"HIV" is short for the "Human Immunodeficiency Virus." HIV is a virus that infects specific cells in a person's immune system (the body's defence against infections and diseases). After HIV has entered the body, the virus attacks the cells that people need in order to help the body fight off infections and diseases. Over time, HIV continues to attack more and more of these cells and progressively weakens a person's ability to fight off infections and other diseases.

"AIDS" is short for the illness called "Acquired Immunodeficiency Syndrome." HIV causes AIDS. A person has AIDS when he or she has HIV in addition to one or more diseases or "opportunistic infections." Two examples of opportunistic infections are tuberculosis ("TB") and pneumonia.

HIV itself is not the cause of death in an infected person. But because HIV continues to attack a person's immune system, it becomes more and more difficult for the body to fight off infections and diseases. If HIV is not treated, the infections and diseases (called "opportunistic infections") will continue to increase in number and eventually cause a person to die. A person can be infected with HIV for many years before he or she develops AIDS.

A. WHAT ARE SOME SYMPTOMS ASSOCIATED WITH HIV AND AIDS?

A person who has HIV can experience different symptoms that depend on that individual person's body, health, and stage of the HIV virus. At an early stage of HIV, a person might feel flu-like symptoms or no symptoms. A person who feels no symptoms may still have HIV and it might be causing harm that the person cannot physically feel.

B. HOW LONG DOES IT TAKE FOR THE HIV INFECTION TO TURN INTO AIDS?

HIV infection progresses in people at very different rates. There are medical treatments that can prevent or cure many of the illnesses that are associated with AIDS, even though there is no cure to AIDS itself. The time between HIV infection and AIDS is usually shorter among people who are older in age, have poor nutrition, and do not consume enough water each day.

3. TRANSMISSION OF THE HIV/AIDS VIRUS

HIV is transmitted through direct contact of a mucous membrane or the bloodstream with a bodily fluid containing HIV, such as blood, semen, vaginal fluid, preseminal fluid, and breast milk. Transmission can take place from any of the following activities:

- Any sexual activity that involves exposure to infected semen or blood. This means it is possible to transmit the virus through vaginal, oral, and anal sex.
- Blood transfusion.
- Contaminated hypodermic needles.
- Non-sterile needles in non-medical settings which transmit the virus from the blood of one individual to another.
- Transmission of the virus between mother and baby during pregnancy, childbirth, delivery, or breastfeeding.

Transmission *does not* take place from any of the following "casual contact" activities:

- Working in the same space as someone who has HIV/AIDS.
- Sharing the same living space as someone with HIV/AIDS.
- Swimming.
- Hugging.
- Shaking hands.
- Buying food from someone who has HIV/AIDS.



4. TREATMENT OF HIV/AIDS

There is currently no cure for HIV/AIDS.¹¹

However, treatments are available that may slow the progress of the disease. Treatment involves taking some combination of antiretroviral drugs (“ARVs”). ARVs reduce the HIV virus in a person’s body and lets the immune system recover and get stronger. A person who is considering treatment should ask his or her doctor for information about different ARVs and the good and bad things involved with each option.

A. HIV TREATMENT AND PREGNANCY

There are ways for a pregnant woman who is HIV-positive to receive treatment that will reduce the risk of transmitting HIV to her baby. A pregnant woman who uses ARVs during pregnancy can improve the mother’s own health and can reduce the risk of her baby becoming infected with HIV. In addition, the mother may be given a single dose of the drug “Nevirapine” when she goes into labour, and a single dose of Nevirapine may be given to the baby soon after childbirth. Women with HIV can consult a healthcare worker for more information about HIV treatment and how to reduce the risk of transmission between mother and baby.

B. GETTING TREATMENT AND ANTIRETROVIRAL MEDICATION

A person has a right to treatment even if he or she cannot afford to pay the hospital fees. Below is a list of some, but not all, of the hospitals that provide ARV treatment.

GOVERNMENT HOSPITALS	TELEPHONE NUMBER
WINDHOEK CENTRAL AND KATATURA HOSPITALS	061-2034167
OSHAKATI	065-2233000
WALVIS BAY	064-203441
KEETMANSHOOP	063-223388
KATIMA MULILO	066-253012
RUNDU	066-255025

OTHER HOSPITALS	REGION	TELEPHONE
ANDARA HOSPITAL (CATHOLIC HEALTH SERVICES)	Kavango	066-259311
ENGELA STATE HOSPITAL	Ohangwena	
GOBABIS STATE HOSPITAL	Otjozondjupa	
NYANGANA HOSPITAL (CATHOLIC HEALTH SERVICES)	Kavango	066-258266
OMARURU STATE HOSPITAL	Erongo	
ONANDJOKWE HOSPITAL (LUTHERAN MEDICAL MISSION)	Oshikoto	
OSHIKUKU HOSPITAL (CATHOLIC HEALTH SERVICES)	Omusati	065-354550
OTJIWARONGO STATE HOSPITAL	Otjozondjupa	
OUTAPI STATE HOSPITAL	Omusati	

Catholic Health Services will provide treatment whether or not a person can pay. Catholic Health Services also provides services to people regardless of their religious beliefs (so a person does not have to be Catholic to go there).

¹¹ For more information on treatment see the Legal Assistance Centre, “Treatment for HIV/AIDS: a Guide,” available online

at <http://www.lac.org.na/projects/alu/alupublications.html>.



5. WHAT RIGHTS DOES A PERSON LIVING WITH HIV OR AIDS HAVE IN NAMIBIA?

People living with HIV/AIDS have the same rights as people without HIV/AIDS. These rights include the right not to be discriminated against on the basis of one's health or HIV/AIDS status, the right to equality, the right to dignity, the right to

confidentiality, the right to information (about screening, aspects of the disease, and options for treatment and therapy), and the right to treatment (including the right not to be refused treatment). The following table explains some of the rights in the Bill of Rights and what they mean for people with HIV:¹²

ARTICLE IN THE BILL OF RIGHTS	RIGHT	WHAT THIS MEANS FOR PEOPLE WITH HIV
6	Life	Access to medication and information.
7	Personal liberty	A person living with HIV cannot be locked up for no reason other than his/her HIV-positive status.
8	Human dignity	Hospitals or institutions may not damage a person's dignity or self-respect by words or actions.
10	Equality and discrimination	Equal treatment and freedom from discrimination.
11	Arrest and detention	Prisoners cannot be treated differently or in an undignified way just because of their HIV status.
13	Privacy	People living with HIV have the right to keep that fact to themselves. An employer or a hospital cannot force people to tell them their HIV status or force people to have a blood test to find out their status, because this is private information.
15	Children's rights	A child cannot be forced to work (economic exploitation of children is against the law), especially if this interferes with the child's education.
17	Political activity	A person living with HIV may advocate and lobby for better treatment.
18	Administrative justice	A person living HIV with is entitled to fair and reasonable treatment by officials.
20	Education	A person living with HIV has the same rights as others to education. Schools cannot refuse to accept a child on the grounds of HIV status.
21(1)(a)	Freedom of speech and expression	People are allowed to criticise policies and decisions that negatively affect persons living with HIV, and to discuss HIV prevention campaigns in schools and prisons.
21(1)(d)	Peaceful assembly	Persons living with HIV can organise meetings or rallies.
21(1)(e)	Freedom of association	Persons living with HIV may join organisations working to improve their situation.
21(1)(g) and (h)	Freedom of movement, residence	A person living with HIV cannot be forced to live anywhere against his/her wishes
21(1)(i)	Freedom to leave and return to Namibia	A person living with HIV cannot be prevented from travelling to other countries and returning to Namibia.
21(1)(j)	Freedom to practise any profession or carry on any trade, occupation, or business	A person living with HIV can work in any profession or follow any career path of their choice.

¹² Legal Assistance Centre, "HIV and the Law in Namibia" (2009).



A. RIGHT TO EQUALITY AND FREEDOM FROM DISCRIMINATION

The Constitution of Namibia guarantees all people the right to equality and the right to be free from discrimination. All people includes people living with HIV. In other words, it is against the law to discriminate on the basis of a person's HIV or AIDS status. Common examples of discrimination that people living with HIV/AIDS experience:

- People are refused employment or membership of employment benefit schemes.
- People lose their job or feel pressure to leave their employment.
- Workplace policies that treat people living with HIV differently than people without HIV.
- Students who are HIV-positive and children with a parent who is HIV-positive are often treated differently at school by teachers or other students.
- Doctors, nurses, healthcare workers, employers, and other people disclose a person's HIV status without the person's consent (or permission) to do so.
- Women are sterilized without providing informed consent or feel pressure by doctors and other healthcare workers to be sterilized.
- Medical aid schemes refuse to provide treatment and proper healthcare to people living with HIV.
- Insurance companies refuse to offer life insurance to people living with HIV.
- Communities stigmatize and isolate people living with HIV.

The prohibitions on discrimination against people living with HIV or AIDS are further discussed in Chapter 5 on discrimination.

6. HEALTH RIGHTS AND CONFIDENTIALITY

A. THE RIGHT TO HEALTHCARE AND MEDICAL TREATMENT

Hospitals and clinics may not refuse to treat a person because that person has HIV or AIDS. This would be unfair discrimination. This includes all healthcare workers, such as doctors, nurses, psychologists, and dentists. However, healthcare workers who are experiencing certain infections or conditions that affect their immune system may be required to avoid treating HIV-positive patients. For example, a healthcare worker who is pregnant might be required to avoid treating an HIV-positive patient. This does not mean that an HIV-positive patient does not receive any treatment because a different healthcare worker who is not pregnant can treat the patient who is HIV-positive.

B. THE RIGHT TO CONFIDENTIALITY, INFORMATION, AND CONSENT

People with HIV or AIDS have the right to keep this information private, even where it is shared with healthcare workers. Such private information that is shared for health reasons is called "confidential information." The right to confidentiality is an ethical requirement and a legal requirement. Healthcare workers (such as doctors, nurses, psychologists, dentists) are required by law to keep all patient information confidential. This means that healthcare workers can only give medical information to another person if they have the patient's consent.

"Consent" is a term that means that someone has given permission for something to happen. In this case, a person must consent to the release of information concerning their HIV or AIDS status before such information is given to another person. A person can only give consent if that person:

1. is provided with enough information to fully understand the nature of the decision and risks and benefits involved;
2. has had enough time to think about the decision in a safe, comfortable environment where he or she does not feel pressure or influence to make a certain decision;
3. knows that he or she has the option to give consent or not to give consent; and
4. expresses approval, either through words or actions.



Consent may not be given because of force or threats of force. In the case of a patient who is a child, the child's parent or guardian must consent on behalf of the child.

C. HIV TESTING AND CONSENT

Testing for HIV may, generally, not occur without that person's informed consent. All adults with legal capacity and of sound and sober mind can give valid consent to treatment. Adults without legal capacity, such as a mentally ill person, cannot give consent without the assistance of a curator or guardian. For medical treatment, such as an HIV test, a person must be 14 years or older to consent. The parents or legal guardians of children under the age of 14 must consent on the child's behalf for the child to be tested.

D. FORCED AND COERCED STERILIZATION

Sterilization is a surgical or medical procedure (such as tubal ligation) that leaves a person unable to reproduce or have children. Usually, sterilization procedures are intended to be permanent and prevent women from having children. It is against the law for a woman to be sterilized unless she has provided informed consent. Informed consent means that a woman has been allowed to make her own decision and she has been provided with full information to make a decision in a safe, comfortable, and confidential environment. It also means she understands that she has the option to refuse or decline healthcare procedures or services. A woman cannot provide informed consent if she is feeling pressure from the doctors to do so. Women also cannot be required to sign forms authorising sterilization in order to receive assistance with childbirth, abortion, or other health procedures.

7. HIV/AIDS IN THE WORKPLACE

See Chapters 3 and 5 on Labour Law and Discrimination.

8. CRIMINAL LAW IN THE PREVENTION OF HIV AND AIDS

A person who knows that they have HIV or AIDS and infects another person, depending on the circumstances, could be charged with the following crimes:

- Murder.
- Culpable homicide.
- Assault.
- Assault with intent to cause grievous bodily harm.
- Attempted murder or attempted assault, where the accused intended to infect the other person but did not succeed in doing so.

However, in charging a person with conduct that places others at risk of HIV infection, it may be difficult to prove the various elements of the alleged crime.

9. EDUCATIONAL WORKSHOPS ON HIV/AIDS

Raising awareness of HIV/AIDS is extremely important for everyone because it reduces fear, discrimination, and encourages people to get tested and seek treatment. Paralegals can help organize HIV/AIDS education programs in their communities by teaming up with other community leaders who work on HIV/AIDS education, such as representatives from the Legal Assistance Centre, the Ministry of Gender, and the Ministry of Health. HIV/AIDS education programs can take place in a variety of settings, such as: community workshops or educational sessions, in-home educational workshops, and workshops in the workplace. An outline that may assist with preparation of such a workshop is included on the following page.



OUTLINE FOR EDUCATIONAL WORKSHOP ON HIV/AIDS

The information provided in an educational workshop may be different depending on where the workshop is held, who is conducting it, and who the audience is. Here is a sample outline of topics that could be covered in an AIDS educational workshop:

1. INTRODUCTION

- Introduce yourself and identify yourself as a paralegal (make sure people know you are not a lawyer, so you are not providing legal advice, and you are not a doctor, so you are not providing medical advice).
- Introduce anyone else who is presenting with you, including their professional role.
- Thank people for coming and describe the importance of education/awareness of HIV/AIDS.

2. THE NATURE OF HIV/AIDS

- What is the difference between HIV and AIDS?
- Is HIV/AIDS curable? Can it be treated?
- How does the HIV virus operate once a person is infected?
- Identify symptoms associated with the progression of HIV/AIDS.

3. TRANSMISSION OF THE HIV/AIDS VIRUS

- What bodily fluids carry the virus?
- How is HIV/AIDS transmitted?
- How is HIV/AIDS not transmitted?

4. HIV PREVENTATIVE MEASURES

- How to act in a way that would minimize the risk of HIV infection.
- Measures to prevent HIV from entering the bloodstream.
- Condom use (and where to obtain).

5. VOLUNTARY HIV/AIDS COUNSELING AND TESTING

- Methods for testing HIV infection.
- Understanding the purpose of voluntary HIV testing pre- and post-test counselling.

6. LIVING WITH HIV/AIDS

- Importance of caring for the HIV infection.
- Managing HIV/AIDS.
- Treatment options for people with HIV/AIDS.
- Government maintenance benefits for people living with HIV/AIDS.

7. RIGHTS OF PEOPLE LIVING WITH HIV/AIDS

- Right to confidentiality.
- Right to equality, dignity, and freedom from discrimination.
- Right to information.
- Right to provide fully informed consent about all decisions, treatment, and procedures.

8. RIGHTS AND RESPONSIBILITIES OF WORKERS IN THE WORKPLACE WITH REGARD TO HIV/AIDS

- Identify the rights and responsibilities of the HIV-infected worker in the workplace.
- Recognize the importance of accepting HIV-infected colleagues and treating them in a non-discriminatory way.

9. RIGHTS AND RESPONSIBILITIES OF PREGNANT WOMEN AND MOTHERS LIVING WITH HIV/AIDS

- Forced sterilization.
- Treatment options and labour procedures to reduce mother-to-child transmission.

10. LEAVE TIME AT END FOR QUESTIONS AND ANSWERS

11. PROVIDE MATERIALS FOR PEOPLE TO KNOW WHERE TO GO AFTER THE WORKSHOP IS OVER.

12. DISTRIBUTION MATERIALS:

- Display posters (from Legal Assistance Centre) and use the posters in workshop to explain relevant topics and concepts. Point to pictures – people sometimes learn more effectively when they have pictures or other visuals.
- Distribute pocket-sized fact sheets.
- Distribute comic published by LAC.
- Distribute information sheet with contact information for Ministry of Health, Legal Assistance Centre, etc.

SOURCES: Legal Assistance Centre, HIV and the Law in Namibia (2009); Namibian HIV/AIDS Charter of Rights; National policy on HIV/AIDS for the Education Sector; Open Society Institute, Now More than Ever: Human Rights and HIV/AIDS (2007); Legal Assistance Centre, Realization to the Right to Adequate Housing for People Living with HIV/AIDS in Namibia (2007); Legal Assistance Centre, Struggle to survive: a report on HIV/AIDS and Prisoners' Rights in Namibia (2008); Legal Assistance Centre, Testing the Awareness of the Namibian Public and Private Sectors on the Guidelines for the Implementation of a National Code on HIV/AIDS in Employment; http://en.wikipedia.org/wiki/HIV/AIDS_in_Namibia.



Chapter 10

WILLS AND INHERITANCE

COMMON QUESTIONS ABOUT WILLS AND INHERITANCE

WHAT KIND OF INFORMATION DOES A PERSON NEED AND WHAT STEPS SHOULD THEY TAKE BEFORE PREPARING A WILL?

First, they should inventory all of their assets, including their land, home, money, and other personal property. Then, they should meet with family members, especially their spouse, to consider how and to whom the property should be distributed.

A YOUNG PERSON DOESN'T NEED TO MAKE A WILL, RIGHT?

Wrong. Making a will is not just for the elderly or sick. Because death is uncertain, it is advisable that everyone 16 years or older make a will.

IF A PERSON HAS ALREADY TOLD EVERYONE WHAT THEY SHOULD BE EXPECTING FROM THEIR ESTATE ONCE THEY DIE, DO THEY REALLY NEED A WILL?

Yes, a will acts as a blueprint for the distribution of the estate. If a person does not have a will at the time of their death, their estate may not be distributed in accordance with their wishes.

CAN A PERSON MAKE THEIR OWN WILL?

Yes. While it is advisable to have someone assist in preparation of a will, there is no law that says an individual cannot prepare their own will. If a person drafts their own will, they will need to follow all of the necessary steps.

WHAT DOES A PERSON HAVE TO DO TO MAKE SURE THAT THEIR WILL IS VALID?

A will must be in writing, dated, signed at the end, and signed in the presence of two witnesses.

IF A PERSON DIES WITHOUT A WILL, HOW WILL THEIR PROPERTY BE DISTRIBUTED?

If a person dies without a will, they are said to have died "intestate". When a person dies intestate, their property can be distributed according to the intestate succession laws of Namibia. These laws do not always take into account the true wishes of the deceased, but instead, distribute property in accordance with a strict set of rules.

WHAT TYPES OF THINGS CAN BE PUT IN A WILL?

A will can include anything that a person owns or has rights to. This includes all of their property (house, land, animals, money, etc.) as well as their children.

IF A PERSON ALREADY HAS A WILL, BUT JUST GOT MARRIED, HAD A CHILD, OR ADOPTED A CHILD, SHOULD THEY MAKE A NEW WILL OR DOES THEIR OLD WILL AUTOMATICALLY INCLUDE THEM?

The previous will does not cover the changes to a family. That person should either make a new will or amend the old one to include their changed status. A new will or an amended will ensures that new family members are covered.



INTRODUCTION

Approaching the subject of death is never easy. The times shortly before and following a person's death can be very tough on a family. The last thing they want to worry about is what to do with the person's property once they die. However, by planning ahead, a person can save their loved ones a considerable amount of time and frustration that often accompanies death. This can be accomplished by making arrangements for the distribution of their property ahead of time. One of the easiest ways to plan ahead is by making a will.

1. KEY TERMS RELATING TO WILLS AND INHERITANCE

In order to understand the law of wills, it is important to have a basic understanding of the words and ideas behind the law. The following is a short list of basic terms used on this area of the law:

- **Decedent:** The deceased person.
- **Executor:** A person appointed in a will that is directed to administer the provisions of the will.
- **Intestate:** When a person dies without having made a will.
- **Intestate succession:** The process through which a person's property is distributed upon their death when they do not have a will.
- **Per stirpes:** A method for distributing a person's estate (discussed in detail below).
- **Testamentary capacity:** The mental ability of a person to make decisions for themselves.
- **Testate:** When a person dies having made a will.
- **Testator:** The person making the will.

2. WHAT IS A WILL?

A will is a legal document that directs how one's estate is to be distributed upon their death. A person's estate means the property a person owns – land, home, money, furniture, personal property.

3. TYPES OF WILLS

A. INDIVIDUAL WILL

An individual will is a will made by one person. The majority of wills you will encounter are individual wills.

B. JOINT WILL

A joint will is made by two or more people – often husband and wife. In a joint will, each person enters into a single agreement for the distribution of their individual property to the other. The individual people can provide for the distribution of property to anyone that they want, but the property will not be distributed until the last remaining person entering into the joint will dies.

4. WHY DO YOU NEED A WILL?

A will is a legal document that directs how an estate will be distributed upon a person's death. A person's estate includes all of their property, such as their money, land, home, and personal belongings (e.g., furniture, cars, etc.) A will provides a blueprint as to what happens to the person's property after they die and leaves no doubt as to how a person's belongings are to be divided. Additionally, if an individual has children, a will can appoint a guardian to take care of their children after they die.

If a person does not have a will at the time of their death, they are said to have died "intestate". A person who dies intestate may have their estate distributed to other individuals whom they did not intend to inherit their property and belongings. It is therefore highly recommended that everyone create a will to ensure that their estate goes to the loved ones they wish to inherit from them.

5. WHO CAN DRAFT A WILL?

While advisable, there is no legal requirement that a will be drafted by an attorney. A competent attorney will have the knowledge as to the necessary requirements of a valid will. However, an attorney is expensive and most Namibians cannot afford to have an attorney draft their will. Accordingly, a person can draft a will on their own behalf or have someone else draft it for them. However, it is important that legal requirements are followed when drafting a will. If a will does not conform to the particular requirements for a valid will, it can be held invalid and the estate can be divided in accordance with the intestate succession laws set forth in the various laws of Namibia.



6. WHO CAN MAKE A WILL?

Generally, anyone 16 years or older can make a will. However, individuals who are not capable of making decisions for themselves and would not understand that a will is disposing of their property at death cannot make wills. Such a person is said to “lack the necessary testamentary capacity”. A will made by a person that lacks testamentary capacity can be found to be invalid.

7. REQUIREMENTS FOR A VALID WILL

The requirements of a valid will are listed in the Wills Act, Act 7 of 1953. For a will to be valid, the following must be followed:

- The will must be in writing (a will cannot be oral). It can be either handwritten or typed.
- The will must be dated.
- The will must be signed by or on behalf of the testator. The testator is the person making the will.
 - The testator and witness(es) must sign their names on every page of the will. Initials are not sufficient.
 - The testator can sign by making a mark. However, a Commissioner of Oaths should be present when the testator is signing his/her will using a mark.
 - The testator can have someone else sign on his/her behalf, however:
 - The other person must sign in the presence of the testator;
 - Two witnesses must be present during the signing; and
 - The same two witnesses must sign the will in the presence of the testator and the person signing on behalf of the testator, as well as in each other’s presence.
- The testator must sign the will or acknowledge his/her signature in the presence of two or more competent witnesses (*Bosch v. Nel* 1992 (3) SA 600 (T)).
- The witnesses must also sign in full on every page of the will and attest the will in the presence of one another and the presence of the testator (*Oosthuizen v. Die Weesheer* 1974 (2) SA 424 (O)).
 - The witnesses are only attesting to the signature made on the will and not the contents.
- If the will is two or more pages in length, the same individuals should sign on every page (e.g., testator, witnesses, Commissioner of Oaths, etc.).
- The witnesses to the will must be “competent.” To be deemed a competent witness, the individual must be: (1) 14 years or older; (2) competent to give evidence in a court of law (be of sound mind); and (3) able to write.
- The testator must have the necessary testamentary capacity (mentally capable of making decisions for themselves) to be able to understand the nature and effect of their actions in making a will.
 - Generally, anyone 16 or older has the requisite mental capacity to make a will. A person is of a sound mind if they are aware that what they are doing relates to the making of a will. However, where an individual is insane or intoxicated, that individual is deemed to not hold the requisite mental capacity to make a will.
 - Do not confuse lack of sophistication with lack of capacity to enter into a will. Just because an individual does not have the requisite knowledge to know how to make a will does not mean that they lack the mental capacity to do so.
 - A will can be challenged on the basis that a person lacks mental capacity and struck down as being invalid. Make sure that the person that you are advising is of sound mind.
- A will may contain an attestation clause. An attestation clause is a clause that appears at the end of a will that provides that all parties signing the will did so in each other’s presence. Attestation clauses are not required, but help in establishing that a will is valid if a will is ever challenged.

8. WHAT SHOULD (OR CAN) A WILL CONTAIN?

A will should provide for the distribution of a person’s entire estate. If applicable, a person’s will should also include provisions relating to the care of their minor children by appointing a guardian. Additionally, a person’s will should include the name(s) of the executors they wish to administer their estate. As discussed below, executors are trusted individuals who are responsible for carrying out the terms of the will.



A will cannot contain anything: (1) that would be illegal; (2) that would offend public morals; (3) that is so unclear that an executor would not be able to carry out the terms of the will; or (4) that would significantly burden others. For example, a provision in a will that states: “Son A cannot inherit unless he divorces his wife” would be considered invalid as unduly burdensome and would likely offend public morals as well. Such a provision will be struck out of a will and be held unenforceable.

9. PEOPLE WHO CANNOT INHERIT FROM YOUR WILL

The following is a list of those individuals who cannot be included in a person’s will:

- The person who drafted the will. The person who drafted the will generally cannot inherit unless the testator confirms immediately after the completion of the will that this was his/her intention.
- The witnesses to the will. Similarly, witnesses generally cannot inherit under a will. However, witnesses can inherit if it is shown that their presence in the will was not the result of fraud or undue influence. The safest course of action is not to use persons named in a will as witnesses.
- An individual who signs on behalf of the testator. Neither that individual, nor their spouse, can benefit under a will where they signed on the testator’s behalf.
- Anyone who murders the testator.
- Anyone who negligently causes the death of the testator.

10. WHAT TO DO AFTER A WILL IS MADE

After making a will, it is advisable that you keep the original in a safe place and that you inform your family where the will can be found when you die. You may also wish to place copies in a safe, and/or give a copy to your priest, attorney, bank, and/or executor for safekeeping.

11. CHILDREN

Providing for children is one of the most important reasons to make a will. Children can be provided for in a valid will wherein they will receive the property that is directed to them. However, where the deceased did not make a will prior to their death, they are said to have died “intestate” and when this happens, children may not receive any property.

A. BIOLOGICAL CHILDREN

A biological child is a person born to his/her parents and related by blood. A biological child will receive whatever portion he/she is entitled to under the intestate succession laws, discussed below. He/she can inherit from either parent. Through the Children Status Act 2006, the distinction between children born inside marriage versus children born outside of marriage, for purposes of inheritance, has been found to be unconstitutional. Thus, for the purposes of inheritance, all natural children are treated equally under the laws of Namibia.

B. ADOPTED CHILDREN

Pursuant to the Children’s Act No. 33 of 1960 (Section 74), an adopted child will be deemed to be a legitimate child of the adoptive parents. An adopted child will, therefore, be able to inherit under the intestate succession laws from either of the adoptive parents. However, as a result of the adoption, the adopted child loses any right to inherit under the intestate succession rules from their biological parents’ estate. The biological parents can still provide for the child, but it will have to be done through a valid will.

12. WHAT HAPPENS IF YOU DIE WITHOUT A WILL (INTESTATE SUCCESSION)?

It is advisable that everyone make a will. By making a will, it leaves no doubt as to how property will be distributed upon death.

When an individual dies having not made a will, the individual is said to have died “intestate”. Dying intestate can mean that a person’s property will be distributed through intestate succession laws. The result of the application of these laws is that the distribution of property may not be how the decedent wished or planned to have the property distributed upon their death.



EXAMPLE – Bradley is married to Annika. He wished that upon his death his five head of cattle be given to his friend, Jonathan. At the time of his death, Bradley had not made a will and therefore died intestate. While Bradley had wished that his five head of cattle were to go to his friend, Jonathan, and had even told everyone in his village that this was his wish, under the laws of intestate succession, the cattle will go to his wife. Accordingly, because he did not have a will, Bradley's wishes regarding the cattle were not fulfilled. Bradley could have solved this problem had he made a valid will directing that the head of cattle go to Jonathan.

A. INTESTATE SUCCESSION (STATUTORY AND COMMON LAW)

When one dies without leaving a will (intestate), the estate will be distributed according to the intestate succession rules. The laws of intestate succession are governed by the Intestate Succession Ordinance No. 12 of 1946, as well as Common Law.

B. STATUTORY LAWS (INTESTATE SUCCESSION ORDINANCE NO. 12 OF 1946)

In general, the statutory laws of intestate succession can be split into four categories – (1) married with no descendants; (2) married in community of property with descendants; (3) married out of community of property with descendants; and (4) married in or out of community of property, no descendants, but leaves behind parents or siblings.

1. MARRIED WITH NO DESCENDENTS

If a person was married at the time of their death and leaves no descendants, the surviving spouse will be the sole heir and inherit the entire estate.

Example – Bradley is married to Annika at the time of his death. Bradley dies having never made a will. Bradley leaves behind N\$500,000 in his estate. Annika, as the surviving spouse where Bradley leaves behind no descendants (no children), will take the entire N\$500,000 in the estate.

2. MARRIED IN COMMUNITY OF PROPERTY WITH DESCENDENTS

If a person was married in community of property at the time of their death and had descendants (biological or adopted children), the surviving spouse will receive half of the joint estate plus a child's share or N\$50,000 total, whichever is greater.

EXAMPLE 1 – Bradley is married to Annika in community of property and they have a child, Christopher. Bradley dies having never made a will. Bradley leaves behind N\$500,000 in his estate. Annika will receive half of the joint estate plus a child's share or N\$50,000 total, whichever is greater. To calculate a child's share, you divide the value of the estate by the number of surviving children and add one (the surviving spouse). In this example, because Bradley left behind one child (Christopher) and one spouse (Annika), the remaining estate will be divided by two. Therefore, Annika will first receive half of the joint estate (N\$250,000), which leaves N\$250,000 remaining. The remaining N\$250,000 would be divided by two (one child plus one surviving spouse). This means that a child's share of the estate is N\$125,000. So, using the example above, Annika would receive N\$250,000 (half of the joint estate) plus N\$125,000 (a child's share) for a total of N\$375,000. Christopher would receive N\$125,000.

EXAMPLE 2 – Bradley is married to Annika in community of property and they have a child, Christopher. Bradley dies having never made a will. However, this time, Bradley leaves behind N\$60,000 in his estate. Annika will receive half of the joint estate plus a child's share or N\$50,000 total, whichever is greater. Annika, therefore, would first receive half of the joint estate (N\$30,000) plus a child's share (N\$15,000) for a total of N\$45,000. However, because Section 1(1)(a) says that Annika is to receive half of the estate plus a child's share OR N\$50,000 total, whichever is greater, Annika will take N\$50,000 because N\$50,000 is greater than the N\$45,000 she would have taken otherwise. This means that Annika will receive N\$50,000 and Christopher will receive N\$10,000.

3. MARRIED OUT OF COMMUNITY OF PROPERTY WITH DESCENDENTS

If the deceased was married out of community of property at the time of their death and had descendants (biological or adopted children), the surviving spouse will receive one child's share or N\$50,000 total, whichever is greater.

EXAMPLE – Bradley is married to Annika out of community of property and they have a child, Christopher. Bradley dies having never made a will. Bradley leaves behind N\$500,000 in his estate. Annika will receive a child's share or N\$50,000 total, whichever is greater. Because Annika and Bradley were married out of community of property, Annika will receive N\$250,000 and Christopher will receive the other N\$250,000.



4. MARRIED IN OR OUT OF COMMUNITY OF PROPERTY, HAS NO DESCENDANTS, BUT LEAVES BEHIND PARENTS OR SIBLINGS

If the deceased was married out of community of property at the time of their death and leaves no descendants (i.e., no biological or adopted children), but leaves parents and/or siblings, the surviving spouse is entitled to a half share, or N\$50,000 total, whichever is greater, and the remaining estate will be divided among the surviving parents and/or siblings.

EXAMPLE – Bradley is married to Annika out of community of property and at the time of his death Bradley leaves behind a father (Doug) and a brother (Edward). Bradley dies having never made a will. Bradley leaves behind N\$500,000 in his estate. Annika will receive half of the estate and the remaining half will be divided among the remaining members of his family (here, Doug and Edward). Therefore, Annika will receive N\$250,000 and Doug and Edward will each receive N\$125,000.

C. COMMON LAW

In general, common law rules to intestate succession can be split into four categories:

1. NO SURVIVING SPOUSE/NO SURVIVING DESCENDANTS/SURVIVING PARENTS

If the deceased had no surviving spouse or descendants, but was survived by parents, the parents will inherit the estate in equal shares.

Example – Bradley dies intestate. Bradley leaves behind a mother (Francine) and a father (Doug). Bradley leaves behind N\$500,000 in his estate. Doug and Francine will split the estate, each taking N\$250,000.

2. NO SURVIVING SPOUSE/SURVIVING DESCENDANTS

If the deceased dies leaving no surviving spouse, but has descendants (children), the descendants will inherit the entire estate “per stirpes with representation.” Per stirpes with representation means that each “branch” of the deceased’s family will receive an equal share of the estate regardless of whether the branch has an immediate descendant that can inherit. For example, if one of the children of the decedent has died, but has left behind children of his/her own – the grandchildren of the decedent – the grandchildren will split the share that the child of the decedent was to receive (see example on page 89).

EXAMPLE – Bradley dies intestate. His wife Annika, their son Christopher, and his mother Francine all die before Bradley. Those living at the time of Bradley’s death include his daughter Gertrude, his grandsons Harry and Isiah, who are the children of Christopher, his father Doug, and his two brothers Jonathan and Kevin. By operation of the common law, only the descendants (children) will receive a share of the estate per stirpes with representation. Therefore, Bradley’s daughter, Gertrude, will receive half of the estate and Harry and Isiah will receive one quarter each as a result of the representation through their now deceased father, Christopher. All other relatives will receive nothing.

3. NO SURVIVING SPOUSE/NO SURVIVING DESCENDANTS/SURVIVING PARENT AND SIBLINGS (DESCENDANT OF PREDECEASED PARENT)

Where the deceased leaves no surviving spouse or descendants, but leaves behind a surviving parent and siblings (descendants of predeceased parent), the surviving parent inherits half of the estate and the siblings (as descendants of a predeceased parent) inherit the other half. If there are no descendants of the predeceased parent, then the surviving parent receives whole.

EXAMPLE – Bradley dies intestate. Bradley’s wife Annika and his father Doug have died before him. Bradley is survived by his mother Francine and his brother Jonathan. His mother remarried after his father’s death and has two children from this marriage, Louis and Michael. Under this example, Bradley’s mother will inherit half of his estate as the surviving parent and his brother will inherit the other half. Because Louis and Michael are Bradley’s half-brothers, only being related to him through his mother Francine, they do not qualify to receive a share of his estate.

4. NO HEIRS

If an individual dies leaving no heirs whatsoever, Common Law provides that the State acquires the entire estate. Administration of Estates Act 66 of 1965.



13. AMENDING A WILL

A will can be amended or cancelled at any time. The laws that are applicable to making a will also apply to amending a will. Therefore, when amending a will, you will need to make sure that you follow the requirements outlined above. An amendment to a will is valid and enforceable so long as the requirements for a valid will are followed.

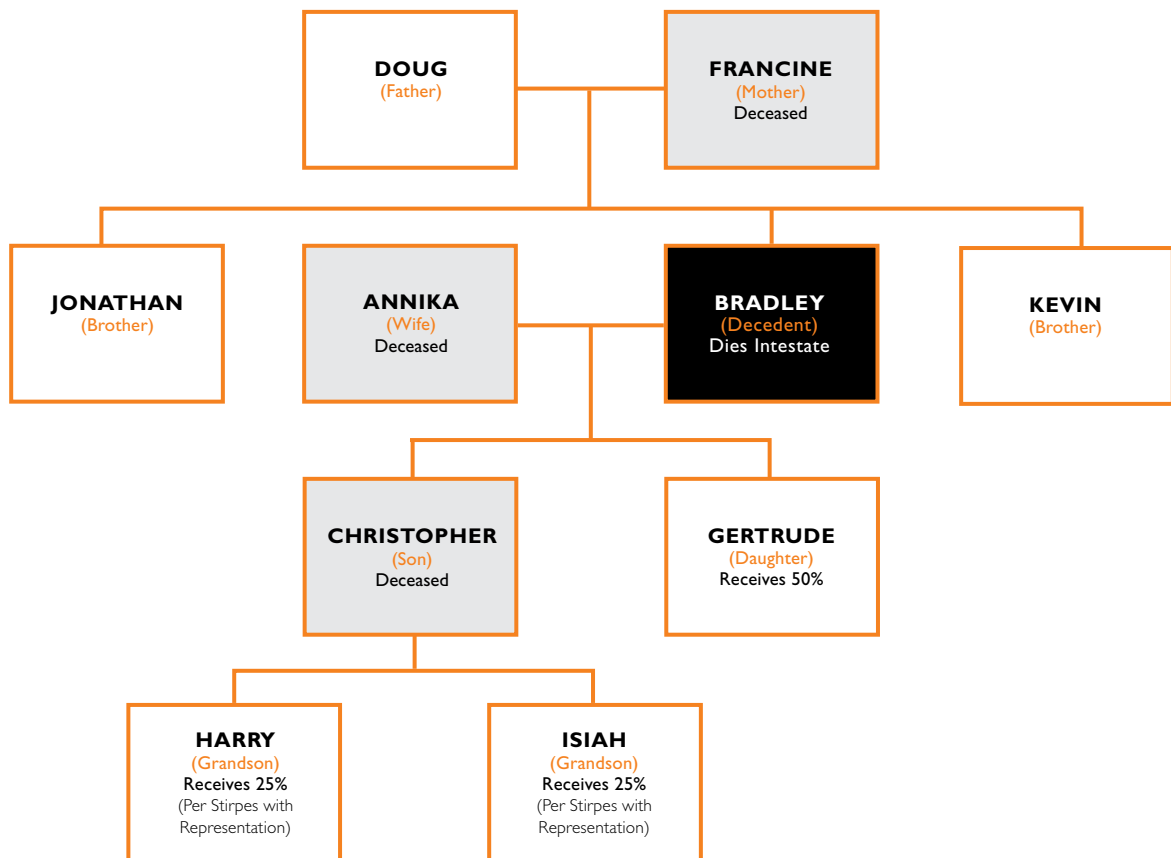
It is advisable that you amend your will if you recently got married, divorced, added/removed children to your family, or if a beneficiary contained within your previous will has died. A change in the status relating to any of the above does not automatically change the provisions of your will. You need to take the necessary steps to add or subtract individuals from your will.

14. CANCELLING A WILL (REVOCAATION)

A will is revocable at any time prior to the death of the testator. A will is deemed to be revoked if it was the intention of the testator that it be revoked. A revocation must be done in writing and cannot be done orally.

A will can be revoked expressly where a new will is made that contains a clause stating that any prior wills are revoked. Additionally, a will can be revoked by burning, tearing, or deleting your signature from the previous will

If a person has several wills but none of them expressly revokes the other, at the time of death, all of the wills are considered valid. To the extent possible, the wills will be read together to give effect to the intentions of the testator. If there is a conflict between a later will and an earlier will, the later will is to be given preference.



15. EXECUTORS

An executor is a person chosen by the testator in the will who ensures that the will is administered according to the testator's wishes. The executor can generally be anyone the testator wishes, however, the testator should choose someone they respect and trust.

While not necessary, it is good practice to include alternate executors in the will in case the original executor chosen by the testator is either unable or unwilling to be the executor.

16. PRACTICAL TIPS FOR PARALEGALS

The following are some practical tips for paralegals that should help when advising and drafting a will for a prospective client.

- Set aside at least two hours, making sure to take breaks as necessary to ensure the quality of information you are requesting is of the highest order. This can sometimes be a very difficult interview for the client. Making sure the client is comfortable both mentally and physically is very important.
- Make sure that you are prepared – bring a “form will” that you can use as a roadmap or sample.
- Make sure to be specific in your questions to obtain specific responses. Because provisions in a will can be struck down for being unclear, the more specific the information you can gather, the more confident you can be that the provisions in the will are valid.
- Make sure to gather detailed information as to all:
 - Potential recipients of the estate. Make sure to gather their name, date of birth, address, telephone number, etc., so that you can provide a very clear picture as to who will be inheriting from the testator. This information will also be helpful in contacting the potential recipients when the time comes to distribute the estate.

- Land. Make sure to gather information regarding the location, value, mortgages on the property (if any), any other names on the deed, and what type of tenancy it is being held in (joint, tenancy in common, etc.).
- Personal property. Make sure to identify the individuals who will be receiving the property including their name, address, and any alternate beneficiary should the original beneficiary die before the testator.
- Bank accounts and any other institutions that may be holding money for the client.
- Debts being held by the client.
- Find out if the client has ever made a will in the past, and if so, on what date(s) and what is the current status of that will (e.g., current, revoked, lost, etc.).
- If the client wants a previous will revoked, include a provision in the new will revoking the previous will.

CONCLUSION

Because wills are relatively easy to make and act as a blueprint for the distribution of one's estate, wills are an incredibly important part of estate planning and inheritance. It is, therefore, advisable that everyone make a will. Without a will, a person's property can fall into intestate succession and may be distributed to others who were not intended to receive property from the person when they die.

SOURCES: Intestate Succession Ordinance (No. 12 of 1946); Native Administration Proclamation (No. 15 of 1928); Estates and Succession Amendment Act (No. 15 of 2005); Administration of Estates Act (No. 66 of 1966); Recognition of Certain Marriages Act (No. 18 of 1991); Children's Act (No. 33 of 1960); Legal Assistance Centre, Will Writing and Inheritance in Namibia (2001); Legal Assistance Centre, Your Guide on How to Write a Will; Legal Assistance Centre, The Meanings of Inheritance: Perspectives on Namibian Inheritance Practices (2005); Legal Assistance Centre, Providing For The People You Love After You Die: Why You Should Make a Written Will (2011); Namibia Institute for Democracy, Wills, Testaments and Estates in Namibia.



CHAPTER 11

MOTOR VEHICLE ACCIDENTS

COMMON QUESTIONS ABOUT MOTOR VEHICLE ACCIDENTS

WHAT SHOULD BE DONE IF THERE IS A MOTOR VEHICLE ACCIDENT?

Contact the Motor Vehicle Accident Fund (“MVA Fund”). The *Accident Response Number* is **0819 682**. The MVA Fund website is also a good resource for information www.mvafund.com.na.

WHAT IS THE MVA FUND?

Namibia operates on a **no fault based system** with respect to motor vehicle accidents. This means that, regardless of who caused an accident, all people injured in a motor vehicle accident are entitled to receive fair and reasonable benefits for claims (with certain limitations). The MVA Fund implements Namibia’s motor vehicle accident and injury prevention measures. It also provides benefits to people injured using Namibian roads.

WHAT BENEFITS ARE AVAILABLE TO A PERSON INJURED IN A MOTOR VEHICLE ACCIDENT?

Persons injured in a motor vehicle accident may apply for medical benefits, an injury grant, and/or benefits related to loss of income.

IS 100% OF THE LOSS RECOVERABLE?

Not always. If the claimant contributed to the accident, the benefit will be reduced in proportion to the contribution of fault. Also, if a claimant was not wearing a seat belt, the benefit is reduced by 25%. If the claimant was in an overloaded vehicle, the benefit could be reduced by as much as 50%.

CAN ANYONE INJURED IN A MOTOR VEHICLE ACCIDENT OBTAIN A BENEFIT FROM THE MVA FUND?

Generally, yes. However, there are some limitations. For example, persons who are intoxicated (drunk), in a stolen vehicle, or are committing a crime at the time of the accident may not obtain a benefit from the MVA Fund.

WHAT IF SOMEONE IS KILLED IN A MOTOR VEHICLE ACCIDENT?

Dependents of someone killed in a motor vehicle accident may apply for a funeral grant and/or benefits related to loss of support.

IS THERE A TIME LIMIT FOR FILING A CLAIM WITH THE MVA FUND?

Yes. The time period within which a person can file a claim from the MVA Fund is **one year**. The Fund also has the right to serve a notice on the claimant to submit a claim within 90 days of the accident. If a person injured in an accident then fails to submit a claim within the requested 90 day timeframe, the claim will not be considered.

HOW IS A CLAIM SUBMITTED?

A claim form must be filled out. Depending on the claim, other information may also be required to be submitted. Forms may be obtained at an MVA Fund office, at a Nampost office, or on the MVA Fund website.

HOW ARE CLAIMS PAID?

Generally, by cheque. However, an alternative is to have payment directly deposited into a claimant’s bank account. A direct deposit request form titled “Deposit Request Form (Claimant’s Own Bank Account)” is available on the MVA Fund website.



INTRODUCTION

With respect to motor vehicle accidents, Namibia operates on a **no fault based system**. What this means is that regardless of who caused the accident, all people injured in a motor vehicle accident are entitled to receive fair and reasonable benefits for claims made in accordance with certain rules (subject to some limitations and exclusions).

I. THE MOTOR VEHICLE ACCIDENTS FUND

The statute that governs Namibia's no fault system is the Motor Vehicle Accidents Fund Act 10 of 2007. The Act became effective in May 2008. It replaced the Motor Vehicle Accidents Fund Act 4 of 2001, which in turn replaced the Motor Vehicle Accidents Fund Act 30 of 1990. Regulations for the Motor Vehicle Fund Act are contained in GN 104/2008 [GG 4040].

**IN THE EVENT OF AN ACCIDENT CALL
THE MVA FUND'S ACCIDENT RESPONSE
NUMBER: 0819 682**

The Motor Vehicle Accidents Fund Act 10 of 2007 establishes a Motor Vehicle Accident Fund ("MVA Fund"). The MVA Fund was established to design, develop, promote, and implement motor vehicle accident and injury prevention measures and provide benefits to all people using Namibian roads. Among other important responsibilities, the MVA Fund:

- Provides assistance and benefits to persons injured in motor vehicle accidents;
- Provides assistance to persons who suffer a loss as a dependent of a person killed in a motor vehicle accident; and
- Implements and oversees procedures to ensure that motor vehicle accidents are attended to without delay and that every person injured is conveyed to the nearest hospital or medical facility until they are stabilized.

2. BENEFITS AND EXCLUSIONS OF THE MVA FUND

The MVA Fund operates a very comprehensive website – www.mvafund.com.na – that explains in detail the benefits and exclusions of the MVA Fund. It also has detailed information about making a claim. *If a paralegal has access to the Internet, they should consult the MVA Fund website when advising a client.*

3. BENEFITS OFFERED BY THE MVA FUND

The MVA Fund offers a wide range of benefits.

- **Medical benefits:** Persons injured in a motor vehicle accident are entitled to medical treatment payments up to N\$1,500,000 for medical treatment, injury management, rehabilitation, and life enhancement.
- **Injury grant:** For pain, suffering, and loss of amenities of life, the MVA Fund provides an injury grant up to N\$100,000 depending on the severity of the injuries sustained.
- **Funeral grant:** A funeral benefit up to N\$7,000 is available as it relates to any person who died in a motor vehicle accident.
- **Loss of income:** Loss of income up to N\$100,000 per annum is also available. To be eligible, the injured person must establish (through proof) that he/she has paid income tax for the tax year prior to the injury or for most of a five-year period immediately preceding the injury. If loss of income cannot be established through tax documentation, the maximum amount available is the proven amount of actual loss suffered.
- **Loss of support:** Similarly, dependents of a person who died in a motor vehicle accident may apply for loss of support up to N\$100,000 per annum where there is proof that the deceased paid tax on income for the tax year preceding the injury or for most of a five year period immediately preceding death.





Notes:

- a) Read the heading of each section and fill in if required. Section 9 must be signed before a Commissioner of Oaths.
- b) Any MVA Fund or Nampost official can assist you to fill in this form.
- c) Note that it is a criminal offence to state false information or withhold information required if such information is within the knowledge of the person filling in this form.
- d) A parent, guardian or *curator* should fill in the form for a child.

SECTION 1 Personal details of the Claimant			
a)	Surname		
b)	First Names		
c)	Identification Number	d)	Place tick <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/>
e)	Date of birth		
f)	Place of birth		
g)	Nationality		

4. LIMITATIONS AND EXCLUSIONS

To participate and receive benefits from the MVA Fund, a claimant must submit a claim form. On request, a person must also furnish documentation and information relevant to the claim. Claims may also be **limited** as follows:

- A person who has contributed to the accident, injury, or death giving rise to the claim will have the monetary benefit otherwise payable reduced in proportion to such contribution.
- A person who was injured in an accident where he/she was not wearing a seat belt will have the monetary benefit otherwise payable reduced by 25%.
- A person who was injured when he/she was being conveyed in a goods vehicle will have the monetary benefit otherwise payable reduced by up to 50%.
- A person who was injured when he/she was being conveyed in a vehicle that was overloaded will have the monetary benefit otherwise payable reduced by up to 50%.

Certain persons will also be **excluded** from making a claim. These include:

- Persons guilty of driving the motor vehicle involved in the accident while under the influence of intoxicating liquor (drunken driving).
- Persons who do not hold a valid driver's license or a valid learner's license.
- Persons with a valid learner's license or other restricted license who fail to comply with conditions of that particular license.
- Persons who, even if the owner of a motor vehicle involved in an accident, was injured while the vehicle was being driven by a person who is not the holder of a license.
- Persons who were injured while willfully driving a motor vehicle with knowledge that it had been stolen.
- Persons driving a motor vehicle (or being conveyed in the motor vehicle) during the course of committing a serious criminal offence unless such person was in the vehicle against his/her will and did not take part in the committing such offence.
- Persons making claims through false information, or by withholding information, calculated to mislead the MVA Fund.



5. MAKING A CLAIM TO THE MVA FUND

To obtain relief from the MVA Fund, a claimant must submit a claim form. The time period within which a person can file a claim from the MVA Fund is **one year**. The MVA Fund also has the right to serve a notice on claimant to submit a claim within 90 days of the accident. If a person injured in an accident then fails to submit a claim within the requested 90 day timeframe, the claim will not be considered.

Claim forms are available in English, Lozi, and Rukwangari. An example of a claim form (MVAF 1) is on page 93.

Claim forms can be obtained on the MVA Fund website (www.mvafund.com.na), at the MVA Service Centres in Windhoek, Ongwediva, and Rundu, or at any Nampost office where the MVA does not have an office. The Windhoek, Ongwediva, and Rundu addresses are:

MVA FUND SERVICE CENTRE WINDHOEK

PO Box 25158
Service Centre
Church Street, Erf 8495
Windhoek
Tel: (061) 2897000
Fax: (061) 241142
Email: info@mvafund.com.na

MVA FUND SERVICE CENTRE ONGWEDIVA BRANCH

PO Box 3669
Ongwediva
Erven 6325 and 6326, Extention 5
(Next to Bennies Entertainment Park)
Tel: 065 231618/9
Fax: 065 231613
Email: info@mvafund.com.na

MVA FUND SERVICE CENTRE RUNDU BRANCH

PO Box 899
Rundu
North Gate Building, Shop No. 11
Tel: 066 255 826
Fax: 066 255 859
Email: peter@mvafund.com.na

In general, together with a fully-completed claim form, claimants are required to also have the doctor who treated the injured person immediately after the accident complete the medical report

section of the form. The doctor must sign the form and endorse it with his/her practice stamp. Claimants also must sign the form in the presence of two witnesses. Claimants should always attach a police report of the accident as well.

With respect to more specific information required for different types of claims, according the MVA Fund website, the following is also required:

WITH RESPECT TO A CLAIM FOR GENERAL DAMAGES/INJURY:

- Certified copy of claimant's ID;
- Accident Report [Pol 66], Witness Statements, Driver's Statement, Investigating Officer's Sketch Plan & Key;
- Claimant's Affidavit (statement) clearly stating where and how the accident occurred and giving details of the vehicle that caused the accident;
- Medical records of claimant;
- Certified copy of the claimant's health passport;
- All medical receipts (if any);
- If scars are visible on the body, photographs of scars and claimant's face;
- Letter from the claimant's employer stating period the claimant was absent from duty as a result of the accident and exact salary lost as a result thereof; and
- If claimant is a minor, a full birth certificate of minor child.

WITH RESPECT TO A CLAIM FOR LOSS OF SUPPORT CLAIMED BY DEPENDENTS OF A DECEASED ACCIDENT VICTIM:

- Duly completed claim form in respect of each dependent;
- Full birth certificates of each dependent;
- Certified copies of each claimant's ID;
- Letter from the employer of the deceased stating period of employment and net salary at the time of death accompanied by a salary certificate;
- Marriage certificate;
- If the claim is being made by the indigent parents (he/she has no other means of support) of the deceased, proof of indigence (usually by way of detailed affidavit);
- Details of children that were dependent on the deceased;



- Accident Report [Pol 66], Witness Statements, Driver's Statement, Investigating Officer's Sketch Plan & Key;
- Copy of tax certificate; and
- The claimant's statement under oath.

WITH RESPECT TO A CLAIM FOR FUNERAL EXPENSES/FUNERAL GRANT:

- Duly completed MVAF 1 Claim form;
- Death Certificate;
- Post-mortem report; and
- Certified copies of the deceased's and claimant's ID documents/full birth certificate/marriage certificate or letter of the executor.

6. OBTAINING PAYMENT FROM THE MVA FUND

Once all forms are complete and have been received by the MVA Fund, funeral claims are usually settled within 30 days. Other claims can take longer.

Payments are made by cheque. If a claimant is unable to visit one of the MVA Fund's offices to collect the cheque, an alternative is to have the payment directly deposited into the claimant's bank account. A direct deposit request form titled "Deposit Request Form (Claimant's Own Bank Account)" is available on the MVA Fund website.

7. OTHER PRACTICAL CONSIDERATIONS IN ADVISING COMMUNITIES ABOUT MOTOR VEHICLE ACCIDENTS

Because MVA Fund forms require detailed information about any accident, and because the MVA Fund may ask for follow-up information, recording events and keeping records can make the process run more smoothly. The MVA Fund recommends that anyone in an accident do the following:

- 1. CONTACT THE MVA FUND AT 0819 682 TO REPORT THE ACCIDENT**
- 2. CHECK TO SEE IF PEOPLE ARE HURT**
- 3. RENDER ASSISTANCE AS NEEDED**

4. AT THE SCENE OF THE ACCIDENT, RECORD THE FOLLOWING DETAILS:

- Full names, ID numbers, addresses (work and home), telephone numbers (work and home), and vehicle registration numbers of all drivers, passengers, and witnesses;
- Description of vehicles and drivers;
- Names and details regarding police, traffic, and ambulance officials;
- Name and details of tow truck personnel, if any; and
- Information regarding all vehicles' positions at the time of accident (using photographs or road markings – chalk, spray paint, etc.).

5. SUBSEQUENT TO THE ACCIDENT, RETAIN OR OBTAIN THE FOLLOWING DOCUMENTS:

- Collision report or the Police Officer's Accident Report;
- Witness statements taken by the Police;
- Hospital, medical, and/or clinical records;
- Details of medical institutions and medical practitioners;
- All hospital and medical accounts; and
- Details of material damages claim and the outcome thereof.



CHAPTER 12

SOCIAL GRANTS

COMMON QUESTIONS ABOUT SOCIAL GRANTS

WHAT ARE SOCIAL GRANTS?

A social grant is an amount of money given by the government to a person who is in financial need. It is given monthly for either a fixed or extended period of time. Examples of groups of people who may qualify for a social grant include orphans and vulnerable children, disabled children and adults, people with HIV/AIDS, and unemployed persons over 60 years of age (“pensioner”).

WHO QUALIFIES FOR SOCIAL GRANTS?

Each social grant has different requirements, but each generally requires that the applicant is either a Namibian citizen or permanent resident and unable to provide for themselves.

WHAT WILL I NEED TO APPLY FOR A SOCIAL GRANT?

An application for a social grant requires documents showing the applicant’s identification or ID, birth certificate, proof of citizenship, and other relevant documents. For example, a disability grant requires a certificate from a doctor providing proof of the disability.

WHAT SOCIAL GRANTS ARE AVAILABLE FOR CHILDREN?

The Ministry of Gender Equality and Child Welfare provides four types of social grants for children: maintenance grants, special maintenance grants (for children with disabilities), foster care grants (for children not living with their parents), and a place of safety allowance. Other government assistance is also available for children, such as government exemption from school fees.

WHY IS A CHILD MAINTENANCE GRANT MORE FOR THE FIRST CHILD THAN THE SECOND?

Qualified applicants may receive a monetary grant for the first child identified on the application but a lesser grant for each additional child. This is because the maintenance grant for the first child includes money to assist with the basic needs of the applicant or person caring for the child.

WHAT SOCIAL GRANTS ARE AVAILABLE FOR ADULTS?

Social grants available for adults include the old age grants (a pension for adults over 60 years old) and disability grants.

ARE FUNERAL EXPENSES COVERED BY ANY OF THE SOCIAL GRANTS?

Anyone receiving an old age pension or a disability grant is eligible to receive a funeral benefit, including standard citizen coffin, grave site, program for the funeral service, and burial and preparation services.

HOW LONG WILL IT TAKE BEFORE I WILL START RECEIVING PAYMENTS?

Once an application has been made for a social grant, it can take several months before the application is approved or declined.

HOW ARE PAYMENTS MADE ONCE AN APPLICATION IS APPROVED?

Once approved, a recipient of a social grant can choose how they want to be paid, including cash payment, or direct to a bank or post office account. Some grants can also be collected at cash machines located in payment centres throughout Namibia.



INTRODUCTION

There are several types of social grants and welfare programs that are available in Namibia to assist children and adults who are in financial need. Some of these programs include maintenance grants, disability grants, and old age pensions. Each of these social welfare programs targets a specific group of people at risk and/or in need of assistance. This chapter outlines the role of paralegals in advocacy work, the types of social grants available, who qualifies, and how qualified individuals may apply for these funds.

Paralegals can play a very important role in educating their communities and peers about the availability of social assistance and welfare programs. There are many social grants available in Namibia, but many people do not know that these grants are available, how to apply, or where to go to ask if they qualify for assistance. Some people might be aware that a social grant exists, but they might not be in a position to complete the application on their own because they do not read or write, they do not speak the language the form was written in, or they do not have a way of obtaining a copy of the form. To help community members access social grants, paralegals can:

- Make community members aware of the social grants that are available.
- Explain the requirements and qualifications for the different grants.
- Describe the process for applying for social grants.
- Help people determine if they might be eligible to receive a grant.
- Provide people with a copy of the grant application or form, or inform people where to obtain a copy.
- Translate the grant form and help people understand the requirements of the application.
- Inform people how to submit the application and where to go.

Paralegals can make a huge impact on the lives of many people by helping to raise awareness and access to the social assistance available in Namibia.

I. CHILD SOCIAL GRANTS

There are four types of social grants for children:

- Maintenance grants;
- Special maintenance grants for children with disabilities;
- Foster care grants (for children not living with their parents); and
- Place of Safety allowance.

Each type of grant has different qualification requirements. Application forms for a maintenance grant are available from social assistance clerks, social workers, and magistrates' courts.

A. APPLICATION FOR CHILD SOCIAL GRANT

An application for a child social grant is free and may, in general, be filed at any office of the Ministry of Gender Equality and Child Welfare. The only exception is an application for a Place of Safety allowance, which must be applied for at a magistrate's office. If the Ministry of Gender Equality and Child Welfare does not have an office nearby, an application may be filed with the local magistrate or at the office of a local social worker. All documents filed with the application should be certified. Documents can be certified at the local police station.

After an application is filed, the applicant will be given a receipt. This receipt is only proof that an application has been filed and has information about the applicant, including the identification of the applicant, date of application, type of grant, and reference information which the applicant must use when enquiring about the process of his or her grant application. The applicant should provide an address where he or she can receive mail. This address is where notifications and written communication about the grant will be mailed. It normally takes three months from the date of application before the first payment is made. If an application is not approved, the applicant will be informed in writing why the application was not successful.



B. APPROVAL AND PAYMENT OF CHILD SOCIAL GRANT

Once an application for a child social grant is approved, the applicant will be paid from the day of approval. Payment may be made as follows:

- Cash payment;
- Bank account; or
- Post Office account.

If payment cannot be collected by the applicant, or the concerned children do not live with the applicant, another person may be appointed to collect the grant payments. This person is called a “procurator”.

C. CHILD MAINTENANCE GRANT

Parents with children under the age of 18 may be able to get small amounts of money for maintenance to assist in supporting their children from the Ministry of Gender Equality and Child Welfare. This is called a “maintenance grant.” A maintenance grant is different from a maintenance order. A maintenance grant is a fixed amount of money which the government pays to particularly needy parents for the support of their children. Only parents with very small incomes can get maintenance grants.

To qualify for a maintenance grant for a child, the applicant must be a biological parent of the child under 18 years of age and meet one of the following qualifications:

- The applicant’s spouse, the breadwinner, receives an old age pension or disability grant; or
- The applicant’s spouse, the breadwinner, has died; or
- The applicant’s spouse, the breadwinner, is in prison for six months or longer.

The income of the parent who is making the application must also be below the maximum set by the Ministry of Gender Equality and Child Welfare.

To apply for a child maintenance grant, the applicant will need the following documents:

- Certified copies of applicant’s birth certificate and ID.
- Certified copies of child(ren)’s full birth certificates, confirmation of birth, or baptism card.

- Certified copy of applicant’s marriage certificate (if applicable).
- School report of child(ren), if attending school.
- Certified copy of breadwinner’s death certificate.
- Letter from prison if breadwinner is in prison and declaration from breadwinner in prison.
- Proof of breadwinner receiving disability or old age grant.
- If employed, a pay slip with the name, telephone number, and address of the employer, stating the amount of money the applicant earns.

If the application is approved, the applicant will receive a monetary grant for the first child plus a lesser grant for every additional child, up to a maximum number of children each month. The grant may continue until the child leaves school or turns 21 years old, whichever comes first. However, the parent/applicant must also give proof of income once each year. An increase in the wages of the parent/applicant may result in a loss of the maintenance payment. In addition, people who receive a child maintenance grant for school-age children must submit a copy of the school progress report of each child that is receiving the social grant, every term, in order for payment to continue.

D. SPECIAL MAINTENANCE GRANT

A disabled child who is under 16 years of age may qualify for a special maintenance grant. To apply, an applicant will need the following documents:

- Certified copy of the child’s full birth certificate.
- Certified copy of the parent(s)’ ID and birth certificate.
- Medical certificate from State medical officer or doctor confirming disability.
- A social background report from a social worker.

If the application is approved, the applicant will receive a monetary grant each month.



E. FOSTER CARE GRANT

Foster parents are eligible to apply for foster care grants to assist them in providing for the basic needs of the child they are fostering. A foster parent is any person (other than the biological parent) who temporarily takes care of a child found to be in need of care and who has been placed in his/her care by the State. To apply, a foster parent will need the following documents:

- Children’s Court Order, or, if the child was transferred, the Transfer Order.
- Certified copy of the concerned child’s birth certificate.
- School report of school-going children.
- ID and birth certificate of foster parent.
- Marriage certificates, if applicable.

If the application is approved, the applicant will receive a monetary grant each month for each foster child. The foster parents should ensure that the grant is used to benefit the child and must ensure that they are fed, clothed, and healthy and that they attend school.

F. PLACE OF SAFETY ALLOWANCE

A Place of Safety is temporary but safe housing for a child that has been removed from their home by the Commissioner of Child Welfare. Any person that is providing a “Place of Safety” for a child under the age of 18, who is placed with them by a Commissioner of Child Welfare (by an Order of Detention), may qualify for a Place of Safety allowance. To apply, an applicant must complete and file a Place of Safety Claim Form with a magistrate’s office. The form must be signed by the applicant and the magistrate’s office. An applicant will also need the Order(s) of Detention for the child; the order removing the child from their home and into a “place of safety.” If the application is approved, the applicant will receive a monetary grant for each day the child lives with the applicant.

2. ADULT SOCIAL GRANTS

A. OLD AGE PENSION

Namibian citizens and permanent residents over the age of 60 may qualify for a State pension. The State pension provides a monthly payment as set by the State and changed from time to time. Application for an old-age pension may be made at the Ministry of Labour and Social Welfare in Windhoek or at any of the Ministry’s district offices throughout the country. To apply, an applicant will need the following documents:

- Birth certificate.
- ID document.
- Marriage certificate (if a married woman).
- Proof of citizenship/residency (if not born in Namibia).

Marital status does not affect the Pension application. The marriage certificate is required for women, as their married name may be different from the name on their ID document.

Pension payments may be collected each month from designated cash payment centres throughout Namibia, at post offices, or banks. A payment centre should be located within 10 km of each pensioner. Each pensioner will get a special card that includes their ID number and photo. The cash machines that pay the pension payments also checks the pensioner’s fingerprints as a way of reducing fraud. It is also possible to have pension payments paid directly into a bank or post office account. Pensioners may also receive payments at an old-age home.

B. DISABILITY GRANT

Disability grants are available to Namibian citizens and permanent residents who are 16 years or older, and who have been medically diagnosed by a State doctor as being either temporarily or permanently disabled. An example of a permanent disability is blindness. A disability grant provides a monthly payment. The amount of the payment is set by the State and changed from time to time. Application for a disability grant may be made at the Ministry of Labour and Social Welfare in Windhoek or at any of the Ministry’s district offices throughout the country. To apply, an applicant will need the following documents:

- Birth certificate.
- ID document.



- Doctor's certificate (confirming the disability).
- Proof of citizenship/residency (if not born in Namibia).

Disability grants are delivered by the same methods as old-age pensions. If a disability is temporary, the applicant will be monitored to make sure that they are following rehabilitation and recovery program.

C. FUNERAL BENEFIT

Recipients of an Old Age Pension or Disability Grant are eligible for a funeral benefit. The funeral benefit includes the following:

- Standard citizen coffin.
- Grave site (nominal cost).
- Program for the funeral service.
- Burial and preparation services.
- Transport within regions.

Assistance from the organisation and final rites may be provided by the undertaker, who will guide the whole process.

SOURCES: Legal Assistance Centre, Guide to the Maintenance Act (2007); Legal Assistance Centre, Summary of Maintenance Act (2005); National Pensions Act (No. 10 of 1992); Social Security Act (No. 34 of 1994); Children's Act (No. 33 of 1960); Children's Status Act (No. 6 of 2006); Ministry of Gender Equality and Child Welfare, <http://www.mgecw.gov.na/index.html>; Black Sash, Social Assistance: A Reference Guide For Paralegals (2010).





PART 4

**THE
CONSTITUTION
AND
CITIZENSHIP**

CHAPTER 13

THE NAMIBIAN CONSTITUTION AND BILL OF RIGHTS

INTRODUCTION

For many years, apartheid took away the majority of the Namibian people's basic human rights. Very few people had a voice in how they were governed, security laws gave the police unlimited power to arrest and detain, and censorship silenced the masses. Discrimination resulted in the outcome that most people received poor quality education and health care.

In 1989, the first democratic elections were held in Namibia under the supervision of the United Nations and pursuant to the terms of UN Resolution 435. For the first time, everyone was allowed to vote and Namibia could call itself a democracy. The Constituent Assembly was created and it drafted a Constitution that represented the interests and needs of all Namibian people. The Namibian Constitution includes a Bill of Rights (Chapter 3) which confers rights that cannot be taken away.

This chapter discusses the Constitution, the Bill of Rights, human rights, and how these rights are protected and enforced.

1. THE CONSTITUTION

A. WHAT IS A CONSTITUTION?

A constitution is a set of agreed-upon laws and values that establishes government structures, explains how power will be organised, and how the laws of the country will be made. Typically, a constitution of a country also guarantees that all the citizens of the country will have certain rights.

The Constitution of Namibia came into force on 21 March 1990, the day that Namibia became an independent republic. The Constitution of Namibia, like any other constitution of a democratic nation, contains rules and procedures to regulate Namibian society and to maintain peace and stability in the country. The Constitution states that laws can be made only by Parliament. The Constitution is the supreme (the highest and most important) law of

Namibia. This means that the Constitution is the main law and all other laws that are passed by Parliament must follow the Constitution. All other laws that exist in Namibia must be passed according to the procedures described in the Constitution and they must be consistent with the rights protected in the Constitution.

2. THE STRUCTURE OF GOVERNMENT

This section describes the structure of government at the national level. The Constitution sets up three separate branches of government:

1. the executive (the President and Cabinet)
2. the legislature (Parliament)
3. the judiciary (the courts of law)

These three branches of government operate on the idea that each branch has separate powers, functions, and areas of responsibility: the legislative branch has the power to make laws, the executive branch has the power to implement the laws passed by the legislature, and the judiciary has the power to interpret and enforce the laws.

A. THE EXECUTIVE BRANCH

The Executive Branch runs the government. Its main task is to formulate policies and implement laws passed by the Legislature. In Namibia, this role and function is performed by the Cabinet. The Cabinet is a group of government officials who advise the President. The members of the Cabinet include: the President, the Prime Minister, the Deputy Prime Minister, and Ministers of each government department who are appointed by the President. The Prime Minister is the leader of government business in Parliament. The Prime Minister coordinates the work of the Cabinet and advises and assists the President to carry out the duties of government. The Prime Minister is also responsible for the overall management of the public service. Ministries are usually headed by



a Minister and a Deputy Minister appointed by the President. The Minister and the Deputy Minister must be Members of Parliament. Each Minister has a Permanent Secretary, who is responsible for organising the day-to-day business of the Ministry. Correspondence (for example, letters or e-mails) must usually go through the Permanent Secretary, who will then give it to the appropriate person. You can find an updated list of Ministers and their contact details in the green pages of the Telecom Namibia phone book and also on the internet at the Government's website: <http://www.grnnet.gov.na/> (click on "Our Government," then click "Our Cabinet," then click "Ministers").

B. THE LEGISLATURE

The Legislature makes, amends, and repeals laws. Legislative power in Namibia is vested in the National Assembly. The National Assembly has the power to make laws for Namibia so long as the laws are not in conflict with the Constitution. The National Council is the second house of Parliament and primarily serves a review function by considering bills passed by the National Assembly.

The National Assembly consists of 72 members who represent political parties chosen by the voters, and 6 non-voting members appointed by the President. The members of the National Assembly must represent all the people of Namibia. They must be guided in their decisions by the Constitution, by the public interest, and by their own consciences. There are 72 members of the National Assembly who are elected every five years on a proportional representation basis. Proportional representation means that each political party submits a list of its preferred candidates before an election. Voters cast their ballots for a party and not for a candidate. After the election, parties will be represented in the National Assembly in proportion to the support they received. In other words, if a political party receives 60% of the vote, it will receive 60% of the seats in the National Assembly. Every Namibian citizen who is at least 21 years old can stand for election to the National Assembly, except for people who have committed serious crimes or are unfit for office in other ways the Constitution describes. The President chooses 6 other people who have special experience, skills, or positions to become members of the National Assembly. These appointed members do not have the right to vote in the National Assembly.

C. THE JUDICIARY

The judiciary includes all the courts of law in Namibia – the Supreme Court, the High Court, and the Lower Courts. These courts can decide criminal cases (when someone has been arrested for committing a crime) and civil cases (disputes between individuals or entities, such as a divorce or an argument about who should pay for a car accident). They also interpret the law – that is, they say how to apply the law and the Constitution to everyday life.

All the courts are independent. This means that they follow only the Constitution and are free from outside influence. No one can tell the courts how to decide a case, not even someone from one of the other branches of the government. (Further detail about the Judiciary, various courts, and the legal profession in general are contained in *Chapter 14 – The Courts And The Legal Profession* of this manual.)

D. SYSTEM OF CHECKS AND BALANCES

It is not enough that the government is divided into three branches that operate independently of each other. In order to secure good governance based on democratic principles, each branch has a special duty to "keep an eye" on the other branches. This is called a system of "checks and balances" and helps to make sure that no one branch has more power than the others or is abusing their power. Here is an example of how checks and balances works:

Example of how the judiciary checks the legislature:

Pretend that Parliament makes a law that says "only men have a right to education". Such a law would be against the spirit of the Constitution, because the Constitution says that all persons shall have the right to education (Article 20) and all persons shall be equal before the law (Article 10). In this case, the judiciary has the power to declare such a law unconstitutional and therefore it cannot come into force.



3. DEMOCRACY

Democracy is a way of governing a country. The most common definition of democracy is: rule by the people. This means the people consent to the government running the country. People are given an opportunity to choose, through their right to vote, individuals to represent them in government. They do this in regular, free, and fair elections. However, democracy doesn't end there. Democracy also means that the people who have been elected are accountable in various ways to the people who voted for them. They are to act and deliver on the promises they made during elections and they have to be open (transparent) in their actions.

When a person votes they give the government a mandate to pass and enforce laws on their behalf. In making laws the government has to follow what is written in the constitution and it uses the courts as well as the police and military to enforce the laws.

If the government becomes unpopular or doesn't do what it promised to do, then people can vote for another party in the next election and vote the present government out of power. This is essentially how democracy works and why it is an effective system of government.

A. THE PRINCIPLES OF DEMOCRACY

Democratic principles are ideas which most people believe are essential for a democracy. The most important principles of democracy are:

PUBLIC PARTICIPATION

People have a right and a duty to participate in government and in civil society. Public participation includes standing for elections, voting in elections, becoming informed, holding and attending community meetings, joining civil and/or political organisations, paying taxes, protesting, and petitioning.

EQUALITY

All people should be treated equally and without discrimination and be given equal opportunities.

TOLERANCE

While the majority of people rule in a democracy, the rights of minority groups are also protected. People are allowed to express their opinions and join the political, religious, or civil groups of their choice.

ACCOUNTABILITY

Government must be accountable to the people for its actions, including the laws that are passed and how these laws are implemented.

TRANSPARENCY

Government must be open to the public about its actions. It must allow the public to give input before laws are passed.

REGULAR, FREE, AND FAIR ELECTIONS

Elections must happen in a free and fair way, without intimidation, corruption, and threats to the public before or during the election. Elections should also be held regularly, every few years.

ACCEPTING THE RESULTS OF ELECTIONS

When a political party loses an election, its supporters must accept this result.

ECONOMIC FREEDOM

People in a democracy should be allowed to have some kind of private ownership of property and business and they should be allowed to choose their own type of work and join labour unions. The government should not totally control the economy.

CONTROLLING ABUSE OF POWER

There should be ways to prevent government officials from abusing their powers. The courts should be independent and they should have the power to:

- act against government officials or bodies that commit an illegal or corrupt act;
- allow for public participation and elections; and
- check police abuse of power.

HUMAN RIGHTS

The human rights of individuals and groups should be protected, for example, in a Bill of Rights. A Bill of Rights includes a list of rights and freedoms that are guaranteed to all people in the country. All rights and freedoms are protected if they are abused.

MULTI PARTY SYSTEM

More than one political party must be allowed to participate in elections and play a role in government.

RULE OF LAW

The rule of law means that no one is above the law, including the leader of the country. Everyone must obey the law and be held accountable if they break the law. The law must also be equally, fairly, and consistently enforced.



4. A SUMMARY OF THE NAMIBIAN CONSTITUTION

The Constitution begins with an introduction called the “Preamble” which explains why the Constitution is so important. The Preamble says that everyone should have the right to life, liberty, and the pursuit of happiness (the right to try to find ways to be happy) without discrimination. The Preamble also says that these rights can be best protected in a democratic society:

- Where the people are governed by representatives they have freely elected;
- Where there is a Constitution that says how the government works, which everyone in the government must obey; and
- Where there are independent courts of law that can enforce each person’s rights.

The Namibian Constitution says that the Republic of Namibia is a “sovereign, secular, democratic, and unitary” State founded on the principles of democracy, the rule of law, and justice for all.

- Sovereign means that the Republic of Namibia is an independent State.
- Secular means that the government of Namibia does not represent any particular religion.
- Democratic means that power rests in the hands of the people of Namibia, who elect the government.
- Unitary means that Namibia is one nation and the Constitution applies equally to everyone in every part of Namibia.

5. HUMAN RIGHTS

A. WHAT ARE HUMAN RIGHTS?

The term “human rights” refers to the rights that every person in the world has because they are a human being. Every human being is entitled to have rights and to have those rights equally—regardless of gender, race, age, social or economic class, national origin, ethnic or tribal affiliation, or religion. “Rights” are the benefits and entitlements that are considered to be essential for individual well-being, dignity, and fulfilment. Because each person has human rights, there must be a system in place to protect rights and provide remedies (solutions) for people whose rights have been violated or denied.

B. THE NAMIBIAN BILL OF RIGHTS

Chapter 3 of the Namibian Constitution is a section called “Fundamental Human Rights and Freedoms.” This section is also known as the Bill of Rights. The fundamental rights and freedoms are the most important rights in a democratic society. The rights and freedoms listed in the Constitution must be respected by all government bodies and officials and by all people in Namibia. The courts have a duty to help enforce these rights. Most of the rights and freedoms in the Namibian Constitution apply to every person in Namibia. There are a few rights and freedoms that apply only to Namibian citizens.

Chapter 3 of the Namibian Constitution is broken into different sections, called “articles”:

ARTICLE	ARTICLE
5. Protection of Fundamental Rights and Freedoms	16. Property
6. Protection of Life	17. Political Activity
7. Protection of Liberty	18. Administrative Justice
8. Respect for Human Dignity	19. Culture
9. Slavery and Forced Labour	20. Education
10. Equality and Freedom from Discrimination	21. Fundamental Freedoms
11. Arrest and Detention	22. Limitation upon Fundamental Rights and Freedoms
12. Fair Trial	23. Apartheid and Affirmative Action
13. Privacy	24. Derogation
14. Family	25. Enforcement of Fundamental Rights and Freedoms
15. Children’s Rights	



PROTECTION OF LIFE (ARTICLE 6):

- Every person in Namibia has the right to life.
- This means that the death sentence cannot be used in Namibia as punishment for any crime.

PROTECTION OF LIBERTY (ARTICLE 7):

- Liberty is the right to be free.
- No one can take another person's liberty away, unless this is done according to the law. This means that the law must be followed whenever a person is arrested. This helps to make sure that arrests are not misused for political reasons.

RESPECT FOR HUMAN DIGNITY (ARTICLE 8):

- The dignity of every human being in Namibia must be respected. All government bodies and all courts must treat the people who appear before them with respect.
- No one can be tortured or punished in any cruel way, not even a person who has been convicted of a crime.

SLAVERY AND FORCED LABOUR (ARTICLE 9):

- No one in Namibia may be forced to work or held in slavery.

EQUALITY AND FREEDOM FROM DISCRIMINATION (ARTICLE 10):

- All people in Namibia are equal before the law.
- This means that nobody may discriminate against you because of your sex, race, colour, ethnic origin, religion, creed, or social or economic status.

ARREST AND DETENTION (ARTICLE 11):

- A person can be arrested only if there is a fair reason and if the right legal steps are followed.
- Anyone who is arrested must be told the reason for the arrest in a language he or she understands.
- Anyone who is arrested must be brought before a magistrate within 48 hours (two days) of the arrest. This will give the person a chance to ask for bail, or to tell the magistrate about any mistreatment.

FAIR TRIAL (ARTICLE 12):

- Anyone charged with a crime or involved in a dispute about legal rights and obligations has the right to a fair trial by an independent, impartial, and competent court. A court is independent when it cannot be told how to decide by anyone, not even by a government official or the President. A court is impartial when it is not influenced by factors such as a person's race,

sex, politics, ethnic origin, religion, family, or political connections. The court must look only at the facts of the case and at the law. A court is competent if it has the authority to decide the case. Persons who are brought before a court must have been given a fair chance to tell their side of the story.

PRIVACY (ARTICLE 13):

- All people have a right to privacy in their own homes.
- The government cannot open your letters or listen to your telephone conversations without your consent. However, there can be exceptions to this rule for reasons of national security or safety or for the protection of the community. Searches of homes or persons must be properly authorised by a court or in accordance with laws designed to prevent abuses of power.

FAMILY (ARTICLE 14):

- All adult men and women have the right to marry and have children, irrespective of their race, colour, ethnic origin, nationality, religion, creed, or social or economic status.
- People, male or female, cannot be forced to marry against their will.
- Men and women have equal rights in marriage and divorce.

CHILDREN'S RIGHTS (ARTICLE 15):

- All children have the right to a name and nationality.
- They also have the right to know and be cared for by their parents. The best interests of the child will be the most important factor in any laws on the role of parents.
- Children are also protected against economic exploitation. Children under the age of 16 cannot do work that is dangerous to their health or well-being or work that interferes with their education.

PROPERTY (ARTICLE 16):

- All people have the right to own land and other kinds of property in any part of Namibia.

POLITICAL ACTIVITY (ARTICLE 17):

- All Namibian citizens have the right to take part in peaceful political activities. This includes the right to join existing political parties or to form new political parties. It also includes the right to participate in public affairs directly or through elected representatives.



- Every Namibian citizen who is at least 18 years old has the right to vote. Every Namibian citizen who is at least 21 years old may be elected to political office.

ADMINISTRATIVE JUSTICE (ARTICLE 18):

- Government officials must act according to the laws of Namibia. Any person who has been treated unfairly by a government official can go to a court for help.

CULTURE (ARTICLE 19):

- All people in Namibia have the right to their own culture, language, traditions, and religion, but no one can use this right in a way that interferes with the rights of any other person or with the national interest of Namibia.

EDUCATION (ARTICLE 20):

- Every person in Namibia has the right to an education.
- Primary education will be provided free of charge by the government. All children must go to school until they have finished their primary education or until they are 16 years old.

FUNDAMENTAL FREEDOMS (ARTICLE 21):

All people in Namibia have the following rights:

- **Freedom of speech and expression:** All people have the right to say what they like, even if it is a statement that is critical of the government or an idea that is very unpopular. This includes freedom of the press (newspapers, radio, and television). Freedom of speech ensures that important issues can be freely discussed and debated by all Namibians.
- **Freedom of thought, conscience, and belief:** All people are free to think and believe whatever they wish, as long as this does not interfere with the rights of anyone else.
- **Freedom to practise any religion:** The government cannot prohibit any religion. All people are free to worship as they please.
- **Freedom to assemble peacefully:** People are free to come together for meetings or gatherings, as long as they are peaceful and carry no weapons.
- **Freedom of association:** This is the freedom to join together with other people for any lawful purpose. It protects the right to form groups such as trade unions and political parties.

- **The right to strike:** The government cannot make it a crime for workers to go on strike for better working conditions.

- **Freedom to move freely throughout Namibia:** No one can be restricted to a particular area. Everyone in Namibia is free to travel to any part of Namibia, at any time.

- **The right to live in any part of Namibia:** No part of Namibia can be reserved for people of a single ethnic group. Everyone is free to live in any part of the country.

- **Freedom to leave and return to Namibia:** All persons have the right to visit other countries and return to Namibia.

- **Freedom to do any kind of work:** All jobs and professions must be open to any person who has the necessary skills, regardless of race, ethnic origin, or sex.

LIMITATION ON FUNDAMENTAL RIGHTS AND FREEDOMS (ARTICLE 22):

- Parliament can make laws about how these rights are exercised, but it cannot take any of them away.

APARTHEID AND AFFIRMATIVE ACTION (ARTICLE 23):

- Apartheid and racial discrimination, which caused so much suffering in the past, are outlawed forever by the Namibian Constitution. However, it will not be considered discrimination for Parliament to pass laws that give special help to people who suffered from race or sex discrimination in the past.
- The Constitution also points out that women have suffered special discrimination in the past. It says that Parliament may need to take special steps to help women play an equal role in all areas of life in Namibia.

THE POWER TO SUSPEND SOME FUNDAMENTAL RIGHTS AND FREEDOMS IN AN EMERGENCY (ARTICLE 24):

- The President and the National Assembly can declare a state of emergency when there is a situation that threatens the life of the nation or the existence of the government.
- During a state of emergency, the President has the power to suspend some fundamental rights and freedoms. The government can detain people during an emergency, but even in an emergency



the Constitution provides safeguards to make sure that detained persons are treated fairly and not tortured. And there are some rights that cannot be taken away, even in an emergency – such as freedom of speech and thought, the right to life and human dignity, the right to consult a lawyer, and the right to go to a court for help.

ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS (ARTICLE 25):

- No one has the authority to take away another person's fundamental rights and freedoms, not even Parliament or the President. The Constitution provides ways for people to seek justice if their rights have been violated. People who think that someone has interfered with their rights can go to a court for help and the court can make an order that will protect them. If there is a law that is in conflict with the Constitution, the court can rule that the law is no longer in force. The court can also award money to people who have suffered damages because their rights have been violated.
- People can also make complaints to a government official called the Ombudsman. The Ombudsman is a lawyer or a judge appointed by the President to guard against corruption and injustice in the government and to help protect the fundamental rights and freedoms of all people. The Ombudsman can look into the problem and take any action that is needed to correct it.



CHAPTER 14

THE COURTS AND THE LEGAL PROFESSION

INTRODUCTION

Historically, the resolution of disputes in Namibia was often carried out through “customary laws” and through regional and community tribunals. When Namibia adopted its Constitution in 1990, it set forth a system for how the judiciary would be organised, operate, and function going forward, but the Constitution also recognised that the customary and common law should remain in effect unless there was a conflict with the Constitution or with other laws.

Common law – Common law refers to the whole collection of decisions made by judges in the courts of Namibia. The common law is the set of laws not made by Parliament or any level of government.

The Roman Dutch and English law brought by the Dutch and British are also part of the common law. The common law can be changed by new decisions in the courts. The common law applies to everyone equally in the whole country. But statutory law is stronger than common law. It is only when there is no statutory law about something that the common law will apply. The decisions of the South African Constitutional Court and High Court are not part of the common law; however, they have very persuasive authority on how the judges in Namibia interpret Namibian constitutional law.

Customary law – Customary law (sometimes called indigenous law) is the body of rules originating from customary practices that regulate the affairs of the majority of Namibians in rural and urban areas and on commercial farms. Customary law comes from traditional courts in Namibia. It is unwritten, passed on orally from generation to generation, and strongly tied to culture, tradition, and the tribe. Customary law includes: the practices of traditional authorities, what the chief/headmen say, and the decisions of the tribunals in the traditional authorities. Namibians can choose to be bound by customary law or they can choose to go to Namibia’s national courts. Namibians can also go first to a customary tribunal or community

court, and then if they do not like that decision, they can appeal that decision in Namibia’s national courts (this practice is established in the Community Courts Act of 2003).

I. THE STRUCTURE OF THE NAMIBIAN JUDICIAL SYSTEM

The Constitution puts all judicial power in the Courts of Namibia which include: the Supreme Court, the High Court, and the Lower Courts. [Article 78(1)] More information can be found at <http://www.grnnet.gov.na/grnabout.html>.

A. CIVIL AND CRIMINAL CASES

The term “case” refers to either a criminal or civil dispute (controversy) between opposing parties that has been submitted to a court for resolution.

Criminal Case

A criminal case begins when a person suspected of a crime is charged with a criminal offence by a government official called a prosecutor.

Civil Case

A civil case (often called a lawsuit, litigation, or legal controversy) begins when a “plaintiff” files a document, usually called a “complaint.” A civil case can also be resolved through arbitration. The remedy requested may be money, an injunction (a court order that requires the “defendant” to perform some action or refrain from performing some action), or a declaratory judgment (a court decision that determines whether the plaintiff has certain legal rights).

Arbitration is a process by which a dispute is submitted to a non-judicial third party who hears the case of the disputing parties in order to expeditiously determine the matter by making a binding award. The arbitrator’s decision is to be regarded as final and binding.



B. THE SUPREME COURT

The Supreme Court is the highest court of Namibia. The head of this court is called the Chief Justice. At least three judges must work together to decide any case in the Supreme Court.

A decision of the Supreme Court must be obeyed by all the other courts and by all people in Namibia. The Supreme Court can hear cases which are appeals from the High Court. (An appeal is when one party to a court case is unhappy with the outcome and asks another higher court to say if the decision was really correct.) It also has the special duty of making final decisions on any questions about the Constitution and the fundamental rights and freedoms that the Constitution protects.

The Supreme Court is also granted the power to hear matters referred to it by the Attorney General or authorised by an Act of Parliament, but this does not happen often in practice. [Article 79(2)]

Namibia follows a system called *stare decisis*. The Latin term *stare decisis* means that all decisions of the Supreme Court are binding on all other courts of Namibia unless they are reversed by the Supreme Court itself (in a later decision) or by an Act of Parliament. [Article 81] Another term for *stare decisis* is “precedent.”

Every decision of the Supreme Court is reported in the Namibian Law Reports. The Namibian Law Reports provide a summary on the first page of the case record and follows a Fly Note (headnote) system that tracks Case Number, Year, Party Names, Court, Citation, Fly Notes, Subject Matter, Judge, and Keywords. This is useful when researching the application of the Supreme Court decisions on other cases.

Supreme Court decisions reported in the Namibian Law Reports are identified by the abbreviation “SC” at the end of the citation (e.g., *Commissioner Of Inland Revenue v. Namsof Fishing Enterprises*, 2008 (1) NR 55 (SC)). The Namibian E-Law Website (www.namlii.org) is a good resource for accessing Namibian Law Reports.

C. THE HIGH COURT

The High Court is the second highest court in the country. It is busier than the Supreme Court because most cases are resolved here. The head of the High Court is called the Judge President. The High Court listens to cases that are appealed from the Lower Courts. The High Court is also a court of

first instance in cases concerning the interpretation, implementation, and upholding of the Constitution and the fundamental rights and freedoms guaranteed thereunder. [Article 80] The High Court handles cases relating to liquidation, divorce, appeals, inheritance, and constitutional disputes, among others.

Decisions of the High Court are binding on the lower courts. High Court decisions are also reported in the Namibian Law Reports. High Court decisions reported in the Namibian Law Reports are identified by the abbreviation “HC” at the end of the citation (e.g., *Mushimba v. Autogas Namibia (Pty) Ltd*, 2008 (1) NR 253 (HC)). The Namibian E-Law Website (www.namlii.org) is a good resource for accessing Namibian Law Reports.

The High Court rules can be found in the Rules of the High Court of Namibia No. 59 of 1990.

D. LOWER COURTS

Below the Supreme Court and the High Court are the Lower Courts. These courts decide cases that are not too serious. More serious cases will start in the High Court.

Some Lower Courts are **Magistrates’ Courts**. There are two types of Magistrates’ Courts – **District Courts and Regional Courts**. The decision-maker in these courts is a magistrate. Magistrates are appointed by the Magistrate’s Commission under the Magistrates Act 3 of 2003. The Magistrate’s Commission must ensure that magistrates are properly qualified and competent persons. It must also ensure that magistrates are not improperly influenced or victimised. This is intended to ensure that all magistrates act impartially and independently when making decisions. District Court decisions have automatic review for sentences longer than six months. Regional Courts do not do an automatic review and must be appealed through the High Court.

Other Lower Courts are **Community Courts**. The Community Courts Act 10 of 2003 transforms traditional tribunals into new community courts. Community courts have the authority to hear and decide cases arising under customary law. They apply the customary law of the traditional community in the area where they operate.

The Minister of Justice appoints Justices of Community Courts as the decision-makers in community courts. A justice of a community court must know the customary law in the area where the



court will operate. The justice may not be a Member of Parliament, a regional councillor, a local authority councillor, or a leader of a political party.

All community court proceedings must follow the principles of fairness and natural justice. There must be written records of all community court proceedings. There is a right of appeal from community courts to Magistrates' Courts, and from there to the High Court. This means that traditional courts are now integrated into the overall judicial system of Namibia.

The presence of Lower Courts varies from region to region. Consult the local – or nearest Magistrate Court for more information about Lower Courts in various regions throughout Namibia.

E. LABOUR COURT

Historically, Labour Courts were part of the Lower Court system and dealt with all types of labour disputes, including terminations, advancement, collective bargaining, wages, and conditions. However, in 2008, Namibia passed the Labour Act No. 11 of 2007 which repealed the Labour Act of 1992, abolished the District Labour Court, and mandated (instructed) that all labour disputes be submitted to arbitration or conciliation. Arbitration is a process by which a dispute is submitted to a non-judicial third party who hears the case of the disputing parties in order to expeditiously determine the matter by making a binding award. The arbitrator's decision is to be regarded as final and binding. Only if the matter remains unresolved are the parties afforded an opportunity to file a complaint with the High Court-Labour Court. Accordingly, the High Court-Labour Court now has standing as a court of appeal to labour disputes.

Decisions of the High Court-Labour Court are reported in the Namibian Labour Court Reports and in the Namibian Law Reports. An example of a citation in the Namibian Labour Court Reports is *Municipality of Walvis Bay v. Du Preez NLLP* (Namibian Labour Law Publication) 1002 (1) 14 NLC. Decisions reported in the Namibian Law Reports are identified by the abbreviation "LC" at the end of the citation (e.g., *Parcel Force Namibia (Pty) Ltd v. Tsaeb) Ltd*, 2008 (1) NR 248 (LC)). The Namibian E-Law Website (www.namlil.org) is a good resource for accessing Namibian Law Reports.

F. GOVERNMENT ATTORNEYS

1. ATTORNEY-GENERAL

The Attorney-General is responsible for all the criminal cases, so all the office of the Prosecutor-General is under the control of the Attorney-General. The police bring information about a criminal case to the office of the Prosecutor-General and that office decides whether there is good reason to have a trial, if there is enough information to provide in court that the person is guilty.

The Namibia Constitution calls for the appointment by the President of an Attorney-General. [Article 86] According to the Constitution, the powers and functions of the Attorney-General are to:

- exercise the final responsibility for the office of the Prosecutor-General;
- be the principal legal adviser to the President and Government;
- take all action necessary for the protection and upholding of the Constitution; and
- perform all such functions and duties as may be assigned to the Attorney-General by Act of Parliament. [Article 87]

2. PROSECUTOR-GENERAL

The Namibian Constitution also calls for the appointment of a Prosecutor-General by the President (on the recommendation of the Judicial Service Commission). The Constitution sets forth the powers and functions of the Prosecutor-General:

- prosecute criminal proceedings;
- prosecute and defend appeals in criminal proceedings in the High Court and the Supreme Court; and
- delegate to other officials, subject to his or her control and direction, authority to conduct criminal proceedings in any Court. [Article 88]



2. FAIRNESS, PRIVACY, AND ACCOUNTABILITY

A. FAIR TRIAL

In recognition of basic civil rights, the Namibian Constitution expressly recognizes the right to a fair trial. [Article 12] To ensure accountability, except in certain circumstances (such as national security), all persons are entitled to a public hearing by an independent, impartial, and competent court or tribunal. [Article 12(1)(a)] A trial must take place within a reasonable time. [Article 12(1)(b)]

With respect to criminal trials, except where the interests of juvenile persons or morals otherwise require, judgments in criminal cases shall be given in public. [Article 12(1)(c)] Persons charged with an offence shall be presumed innocent until proven guilty, shall be afforded adequate time and facilities for the preparation and presentation of their defence, and shall be entitled to be defended by a legal practitioner of their choice. [Article 12(1)(c)-(d)] Additionally, no persons shall be compelled to give testimony against themselves or their spouses (including partners in a marriage by customary law) or shall be liable to be tried, convicted, or punished again for any criminal offence for which they have already been convicted or acquitted according to law. [Article 12(1)(e)-(f), (2)-(3)]

B. PRIVACY

The Namibian Constitution also provides for basic civil rights with respect to privacy. Specifically, Article 13(1) of the Constitution provides that:

[N]o persons shall be subject to interference with the privacy of their homes, correspondence, or communications save as in accordance with law and as is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime, or for the protection of the rights or freedoms of others.

Searches of a person or the homes of individuals may only occur where authorised by a competent judicial officer. [Article 13(2)]

C. THE OMBUDSMAN (“PUBLIC PROTECTOR”)

There is one government official who does not really fit into any one of the three branches of government – the Ombudsman. The Ombudsman is the Public Protector and is established by the Namibian Constitution. [Chapter 10, Articles 89-94] The Mission of the Ombudsman is as follows: “The Office of the Ombudsman in Namibia strives to promote and protect human rights, promote fair and effective administration, combat corrupt practices, and protect the environment and natural resources of Namibia through independent and impartial investigation and resolution of complaints, as well as raising public awareness.” The Ombudsman is governed by the Ombudsman Act No. 7 of 1990. [Chapter 10, Articles 89-94]

In other words, the Ombudsman’s job is to guard against corruption and injustice in all three branches of government, and to help protect the fundamental rights and freedoms of all people. The Ombudsman, who can be a man or a woman, is a lawyer or a judge who is appointed by the President. The Ombudsman is an independent official who is answerable only to the Constitution and the laws of Namibia. No one can stop the Ombudsman from doing his or her job, not even Parliament or the Cabinet. Like a judge, the Ombudsman stays in office until he or she retires at the age of 65. And, like a judge, the Ombudsman can be removed from office sooner only if he or she is mentally unfit or guilty of serious misconduct. This means that the Ombudsman does not have to be afraid to investigate a complaint about anyone in the government – even a complaint about the President.

The Ombudsman has a duty to investigate any complaints about corruption or abuse of power by government officials. For example, if you see someone using a government car for personal trips, you could tell the Ombudsman. The Ombudsman also has a duty to help protect Namibia’s natural resources. For example, if you see a company throwing dangerous chemicals into a river, you could make a complaint to the Ombudsman. You could also tell the Ombudsman if some government official treats you unfairly or discriminates against you, or if anyone – whether it is a person or a business or an organisation – interferes with your fundamental rights. The Ombudsman will then look into the problem and act to correct it if possible.



You could go to a court and bring a case about many of these problems – but court cases can take a long time, and they can be very expensive. Sometimes it is quicker and easier to resolve a problem by making a complaint to the Ombudsman. The Office of the Ombudsman has its own website – <http://www.ombudsman.org.na/>.

HOW TO FILE A COMPLAINT WITH THE OMBUDSMAN:

The Ombudsman must receive complaints before it can act on a specific matter to investigate and to give the proper remedies. Complaints to the Ombudsman can be made by mail, telephonically, in person, or by facsimile (fax).

- **Complete a copy of the complaint form.**
A copy of the complaint form is found below and is also available on the internet at <http://www.ombudsman.org.na/index.php/about-us/50-filing-a-complaint.html>.

- **To file a complaint by the post, send to:**
Office of the Ombudsman
Private Bag 13211
Windhoek, Namibia
- **To file a complaint telephonically, call:**
Call 061-2073111
(Mondays to Fridays from 08:00 to 17:00)
- **To file a complaint in person:**
You can also file a complaint in person by visiting the Office of the Ombudsman, which is located at the corner of Felt and Lossen Street in Windhoek. If you are from the South, there is also an Ombudsman office at Keetmanshoop.
- **To file a complaint by fax:**
Complete the form and fax it to 061-226838

COMPLAINT FORM

COMPLAINANT INFORMATION:

NAME: _____

POSTAL ADDRESS: _____

TELEPHONE: _____

(h) _____ (w) _____ (cell) _____

COMPLAINT INFORMATION:

Institution complained against: _____

Complaint details: _____

SIGNATURE OF COMPLAINANT

DATE



3. ANTI-CORRUPTION COMMISSION

The Anti-Corruption Commission is an independent and impartial body consisting of a Director, a Deputy Director, and other staff. The Director and Deputy Director of the Anti-Corruption Commission are appointed for 5 years by the National Assembly, upon nomination by the President. The Commission was formally inaugurated on 1 February 2006. The Anti-Corruption Commission has the duty of preventing and punishing acts of corruption. The basic functions of the Anti-Corruption Commission are to investigate corrupt practices, educate the public, and to prevent corruption.

- **Investigating corrupt practices:** The main role of the Anti-Corruption Commission is to receive and investigate claims of corruption, regardless of whether these involve the public sector or the private sector. The Commission has to decide if a claim of corruption should be investigated and whether the investigation should be carried out by the Commission or by some other authority. It can investigate the conduct of any person who may be connected with corrupt practices. In cases where it appears that a crime has been committed, the Commission can forward information to the Prosecutor General for a decision on whether or not to prosecute.
- **Educating the public:** The Anti-Corruption Commission educates members of the public on corruption, the causes and costs of corruption, and ways to fight corruption. This is done by holding workshops and seminars for the public, civil society, the business community, and public servants to increase awareness and debate on corruption.
- **Preventing corruption:** The Anti-Corruption Commission tries to prevent corruption in public and private organisations by looking at how institutions operate and advising them on how best to reduce the potential for corruption. For example, it can recommend codes of conduct that will encourage transparency and accountability. Citizens have a legal duty to report certain corrupt practices to the Anti-Corruption Commission. This includes an obligation to report:
 - A public official who is offered a bribe or some other favour.
 - Any person who is asked to provide a bribe or some other improper favour by anyone in the public or the private sector.

The identity of anyone who supplies information to the Commission that is normally kept confidential. A person who makes a report in good faith will have no liability even if it turns out that the information is incorrect, but it is a criminal offence to supply false information to the Commission intentionally.

HOW TO FILE A REPORT WITH THE ANTI-CORRUPTION COMMISSION

You can make a report of corruption by telephone, fax, or email, or you can go to the office of the Commission in person. The Commission has a duty to give you feedback on its actions in respect of the matter you have reported. If an investigation is warranted, you may be asked to provide more information.

- **To make a report in person, go to:**
12th Floor, Dr Frans Indongo Gardens
PO Box 23137
Windhoek
Namibia
- **To make a report by telephone, call:**
061-370600
- **To make a report by fax, fax to:** 061-300952
- **To make a report by email, send to:**
anticorruption@iway.na

4. LEGAL AID DIRECTORATE (GOVERNMENT-FUNDED LEGAL ASSISTANCE)

The Namibian Constitution says that the Government has an obligation to actively promote and maintain the welfare of the people by adopting policies that strive to achieve:

- the “enactment of legislation to ensure that the unemployed, the incapacitated, the indigent, and the disadvantaged are accorded such social benefits and amenities as are determined by Parliament to be just and affordable with due regard to the resources of the State”.
[Article 95(g)]
- “a legal system to promote justice on the basis of equal opportunity by providing free legal aid in defined cases with due regard to the resources of the State.” [Article 95(h)]

Accordingly, the Parliament enacted the Legal Aid Act No. 29 of 1990. Under the Legal Aid Act, those individuals with insufficient means can apply for legal aid to have a Legal Practitioner represent him or her. The Legal Aid Act is broad and applies to



both civil and criminal matters, as well as matters in the Lower Court and before the High Court. According to the Legal Aid Act, there are two conditions that must be met for the Government to grant legal aid:

- “Where the interests of justice so require”; and
- “Where the accused is unable to pay for such services from his or her own resources.”
[Legal Aid Act, §10(2)]

The way the Act is worded means that the Directorate of Legal Aid has discretion (the choice) to grant or deny applications for legal assistance. Although the Legal Aid Act states that the Directorate will provide legal assistance in both criminal and civil matters, in practice, the Directorate has focused mostly on representing individuals in certain criminal law matters because of limited financial and human resources. Unfortunately, the limited resources of the Directorate mean that the vast majority of applications for legal assistance are denied.

5. LEGAL ASSISTANCE CENTRE (LAC)

The Legal Assistance Centre (LAC) is another option available to indigent persons seeking legal assistance in Namibia. The LAC is a not-for-profit, non-governmental organisation, with the main objective to “protect the human rights of all Namibians.” The LAC head office is in Windhoek, and it has two regional offices. All the services of the LAC are free of charge (with the exception of litigation where the client may be asked to contribute certain costs if the client recovers money in the lawsuit).

The LAC works in five broad areas:

Litigation

The LAC takes on public interest cases. A public interest case is one that will have a wider impact on the community than just assisting the individual concerned. A public interest case is one that might establish a new legal rule or change the law for the entire country or address a discriminatory policy or practice. Examples of cases that the LAC has taken up include:

- The right of a widow to keep the land she lived on during her marriage after the death of her husband.
- The right of a HIV-positive person not to be dismissed from employment based on their HIV status.
- The right of an accused in a complicated criminal trial to obtain legal aid.

- The right of a school learner to return to school after her child was born.

Legal Information and Advice

The LAC provides legal information and advice on human rights in the following areas:

- **HIV/AIDS** – including advice on what to do if you are discriminated against, information on workplace policies, access to treatment for HIV.
- **Gender equality** – including information on rape, domestic violence, sexual harassment in the workplace, inheritance, marriage, divorce, and maintenance.
- **Human rights and the Constitution** – including the right to basic education, health, citizenship, and the right not to be tortured or ill-treated.
- **Immigration** – including basic rights faced by immigrants.
- **Land, environment, and development** – including inheritance, conservancies, illegal fencing, environmental issues, and issues affecting especially disadvantaged groups such as the Himba and the San.

Education and Training

The LAC also runs training workshops for communities and service providers (such as legal officials, traditional leaders, school principals, police, and social workers) on:

- Gender-friendly laws including rape and domestic violence.
- Communal Land Reform Act and conservancy-related legislation.
- HIV/AIDS and rights, including children’s rights.
- Basic human rights training.

Research

The LAC also carries out research, particularly on the need for new laws and the implementation of existing laws. Some recent reports which are available are:

- HIV/AIDS and Prisoner’s Rights in Namibia
- Infanticide & Baby Dumping in Namibia
- Land Reform: A look into Namibia’s first court case on land expropriation

Law Reform and Advocacy

The LAC advocates for law reform based on the research the LAC conducts. Recent laws that the LAC contributed to and advocated for include:



- Combating of Rape Act
- Combating of Domestic Violence Act
- Maintenance Act
- Non discrimination on the basis of HIV in the Labour Act

If you want to speak to someone about a legal issue you are concerned about, contact the LAC as follows:

LAC Head Office - Windhoek

PO Box 604
4 Körner Street
Windhoek, Namibia
Tel: +264 61 223356
Fax: +264 61 234953
Email: info@lac.org.na

The office is open from Monday to Friday, 08:00-11:30, and 14:00 – 16:00.

LAC North Office - Ongwediva

Private Bag 5534
ELCIN Centre
Ongwediva, Namibia
Tel: +264 65 230178
Fax: +264 65 230443

6. THE LEGAL AID CLINIC OF THE UNIVERSITY OF NAMIBIA, FACULTY OF LAW

The University of Namibia (“UNAM”) Legal Aid Clinic was created in 2002 to provide law students with practical skills training and to make legal services available to those people in the Khomas region who cannot afford the cost of a lawyer. The UNAM Legal Aid Clinic maintains an office in the Red Cross Centre of Katutura, which makes it accessible to community members who cannot afford the costs associated with travelling to UNAM’s campus or downtown Windhoek. The Clinic also has a cell phone number that clients can SMS (see below).

The Clinic’s practice areas include: labour disputes (unpaid wages, discrimination, unsafe working conditions, unfair dismissal, disclosure of HIV positive status), family law matters (child maintenance, guardianship, custody, divorce), domestic violence, medical malpractice, education/student disciplinary issues, inheritance disputes, breach of contract cases, property disputes, HIV/AIDS discrimination, conflict mediation, and lease agreements.

The Clinic also produces and distributes free *Know Your Rights* pamphlets. The Clinic is open to all Namibians who fall within the financial need threshold, which is generally people who earn less than N\$1,500 per month, but the financial cut-off is not determinative. The UNAM Clinic considers other factors and screens prospective clients on a case-by-case basis.

Contact information for the UNAM Legal Aid Clinic is as follows:

UNAM Legal Aid Clinic

University of Namibia
Private Bag 13301
340 Mandume Ndemufayo Ave
Pionierspark
Windhoek, Namibia
Telephone (UNAM Office): 061-206 3893
Fax: 061-206 3988
Cell: 081- 398 6780
Website: <http://www.unam.na>

Katutura Office

Located in the Red Cross Centre of Katutura
Telephone (Katutura Office): 061-260 206
Cell: 081- 398 6780

7. THE LAW SOCIETY OF NAMIBIA

The Law Society of Namibia (LSN) is a self-regulating body that serves the profession and the public by promoting justice, protecting the independence of the judiciary, and upholding the Rule of Law. The Law Society of Namibia’s objectives include:

- To maintain and enhance the standards of conduct and integrity of all members of the legal profession
- To present a positive view of the legal profession
- To further the development of law as an instrument of social engineering and social justice
- To encourage and promote efficiency in and responsibility in relation to the profession
- To promote the education of lawyers at all stages and levels, with particular emphasis on the broadening of such education
- To make recommendations to interested parties in relation to the training of lawyers
- To define and enforce correct and uniform practice and discipline among members
- To give all necessary assistance to the effective implementation of any legal aid scheme established and governed under any law



- To promote discussion among members
- To consider and deal with all matters affecting the professional interest of members
- To cooperate with the representative bodies of other professional bodies
- To promote applied research in the development of the law and participate in the reform of law by the Government and other agencies
- To seek the enhancement of the rule of law and promote the protection of human rights
- To represent, protect and assist members with regards to their conditions of practice and related matters

Contact Details for the Law Society of Namibia

The offices of the Law Society of Namibia are located in the NamLex building in Windhoek's central business district

Correspondence should be sent to:

Law Society of Namibia

PO Box 714

Windhoek, Namibia

Telephone: 061-230263/088

Fax: 061-230223

8. LEGAL PROFESSIONALS AND PRACTITIONERS

Legal Practitioners are those persons licensed to practice law in Namibia and are governed by the Legal Practitioners Act No. 15 of 1995 (amended by Legal Practitioners Amendment No. 4 of 1997).

Historically, those practicing law in Namibia were divided into two groups: Attorneys and Advocates. Attorneys were general legal practitioners while Advocates (who typically worked at the direction of Attorneys) specialized in a specific field of law. While those practicing law still often call themselves Attorneys or Advocates, the division is less significant today and both fall under the title "Legal Practitioner."

Generally, Namibian citizens are qualified to become a Legal Practitioner if that person:

- holds a degree in law from the University of Namibia, or an equivalent qualification in law

from a university or a comparable educational institution situated outside Namibia which has been prescribed by the Minister;

- has satisfactorily undergone practical legal training; and
- has passed the Legal Practitioners' Qualifying Examination.

[Legal Practitioner's Act of 1995, Sections 4-5].

The Legal Practitioners' Qualifying Examination is administered by the Justice Training Centre established by the University of Namibia pursuant to Section 16 of the Legal Practitioners Act. Examination regulations can be found on the University of Namibia website at <http://www.unam.na/centres/jtc/exam.html>.

Persons licensed as "Attorneys" in Namibia under the Attorneys Act No. 53 of 1979 or as "Advocates" in Namibia under the Admission of Advocates Act No. 74 of 1964 also qualify to become Legal Practitioners, so long as other requirements are also fulfilled. [Legal Practitioner's Act of 1995, Section 6.]

9. LEGAL EDUCATION

The University of Namibia offers a law degree program. Information about the University of Namibia's law degree programs and courses can be found at http://www.unam.na/faculties/law/law_index.html.

At the University of Namibia, students can obtain a Bachelor of Laws (LL.B) program in four years. Students who obtain a Bachelor of Laws can take additional classes and exams at the Justice Training Centre (administered by the University of Namibia) that will enable them to take the Namibian Qualifications Examination.

The University of Namibia also offers a Master of Laws (LL.M) program and a Doctor of Philosophy in Law (Ph.D) program.

The Polytechnic of Namibia offers several courses concerning the law, but does not have a law degree program. Information about the Polytechnic of Namibia and its courses can be found at <http://www.polytechnic.edu.na/>.

RESOURCES: Website of the Legal Assistance Centre, www.lac.org.na, Legal Assistance Centre, *Advocacy in Action: A Guide to Influencing Decision-Making in Namibia* (2007). Sam Amoo, *An Introduction to Namibian Law* (Macmillan, Windhoek, 2008). Namibian Labour Lexicon, *The Labour Act, 2007 A to Z: A Guide to the Understanding and Application of the New Labour Law, Volume 2* (Macmillan 2011). Geraldine Mwanza Geraldo and Isabella Skeffers, update by Hilya Nandago, "Researching Namibian Law and the Namibian Legal System," *GlobalLex* (2010), available at <http://www.nyulawglobal.org/globallex/Namibia1.htm>.

CHAPTER 15

CITIZENSHIP

INTRODUCTION

A citizen of a country is a person who belongs to that country and has the right to live there. All Namibian citizens belong to Namibia and have the right to live in Namibia.

1. WAYS TO OBTAIN NAMIBIAN CITIZENSHIP

There are six ways in which a person can be a citizen:

- by birth;
- by descent;
- by marriage;
- by registration;
- by naturalisation;
- by special honorary conferment.

Citizenship by birth and descent are legal rights for anyone who can prove the facts of birth and parentage. To obtain citizenship through any means other than birth, a citizen certificate will be required. Citizenship in Namibia is governed by the Ministry of Home Affairs. The Ministry website is <http://www.mha.gov.na/>. The website has more detailed information and representative forms.

A. BIRTH AND BIRTH CERTIFICATES

1. WHO QUALIFIES FOR CITIZENSHIP BY BIRTH?

Citizens of Namibia by birth are:

1. People born in Namibia before the date of Independence and at least one parent would have been a Namibian citizen if the Constitution had been in force at that time
2. People born in Namibia before the date of Independence and at least one parent was residing in Namibia unless that parent was someone:
 - who had diplomatic immunity in Namibia; or

- who was a career representative of another country; or
- who was a member of a police, military, or security unit within Namibia by the Government of another country
- except if such person was residing in Namibia at the date of Independence and had been residing in Namibia at least five years prior; or
- if at least one parent of such person was residing in Namibia at the person's birth and had been residing in Namibia at least five years prior.

3. People born in Namibia after the date of Independence and at least one parent was a Namibian citizen at the time of the birth

4. People born in Namibia after the date of Independence and at least one parent was residing in Namibia at the time of the birth unless that was someone:

- enjoying diplomatic immunity in Namibia; or
- who was a career representative of another country; or
- who was a member of a police, military, or security unit within Namibia by the Government of another country; or
- who was an illegal immigrant; except
- none of these exceptions apply to children who would otherwise be stateless.

2. WHAT IS REQUIRED TO OBTAIN A BIRTH CERTIFICATE?

A birth certificate is the most important document that can be used for acquiring Namibian citizenship by birth. Requirements for Obtaining a Birth Certificate:

- Maternity Certificate (Hospital Passport);
- Marriage Certificate (Married Women only);
- Birth Certificates of both parents;



- IDs of both parents;
- Affidavit from principal of first Primary School attended (Only if hospital passport is lost and late registration);
- Two witnesses who are at least 5 years older than the applicant (Only in case where both parents are deceased); and
- One witness who is at least 5 years older than the applicant (Only if one of the parents is deceased).

3. HOW TO PROVE BIRTH WITHOUT A BIRTH CERTIFICATE?

Proving a birth can be very difficult if there is no birth certificate or if the person was not born in a hospital or clinic. In those cases, some forms of proof that might be available include:

- a baptismal certificate which was issued soon after the person was born. Churches may keep a baptismal record and can issue a duplicate if the original is lost.
- clinic cards
- an affidavit from the Chief/Headman of the area where the child was born, or from another respected person in the community, who has known the family for a long time and knows the child was born there
- an affidavit from the owner of the farm where the child was born
- an affidavit from the mother's employer at the time of the birth
- an affidavit from the person's older sister or brother who already has an ID and is accepted as a Namibian citizen
- affidavits can be made by people who helped the mother at the birth or who were neighbours at the time of birth

Affidavits might not be enough proof for Home Affairs, so try to find some other kind of documents which can be attached to the affidavits.

B. DESCENT (NOT BORN IN NAMIBIA)

1. WHO QUALIFIES FOR CITIZENSHIP BY DESCENT?

The Constitution makes provision for Namibian citizenship for children born outside Namibia (this is called citizenship by descent). For example, a child born outside Namibia may obtain citizenship if one of the child's parents is a Namibian citizen OR if one of the child's parents would be a Namibian citizen by birth if the Namibian Constitution had been in force at that time.

2. WHAT IS REQUIRED TO OBTAIN CITIZENSHIP BY DESCENT?

To obtain citizenship by descent, a person must complete an application for a Namibian Citizenship Certificate. The requirements for this Certificate are:

- Copy of an abridged and full birth certificate of applicant;
- Copy of birth certificate (parent born in Namibia);
- Copy of Namibian ID (if in possession);
- Copy of Namibian ID (parent born in Namibia);
- Police certificate of conduct from the country of origin; and
- Applicant must be over the age of 16.

C. MARRIAGE

1. WHO QUALIFIES FOR CITIZENSHIP BY MARRIAGE?

Persons who are not citizens by birth or descent may become Namibian citizens by marriage if they in good faith marry a Namibian citizen, or before the date of Independence, in good faith marry a person who would have qualified for Namibian citizenship if the Constitution had been in force.

2. WHAT IS REQUIRED FOR CITIZENSHIP BY MARRIAGE?

To obtain citizenship by marriage, a person must complete an application with the Ministry of Home Affairs. The following documents will also be required:

- Copy of the Marriage Certificate; and
- Copy of Namibian spouse's birth certificate.



D. REGISTRATION

1. WHO QUALIFIES FOR CITIZENSHIP BY REGISTRATION?

Citizenship by registration may be claimed by persons who are:

- not Namibian citizens by birth, descent, or marriage; and
- were residing in Namibia at the date of Independence; and
- had resided in Namibia for at least five years prior to Independence; and
- applied for citizenship registration within 12 months from the date of Independence; and
- prior to making such application, renounced citizenship of any other country.

2. WHAT IS REQUIRED FOR CITIZENSHIP BY REGISTRATION?

To obtain citizenship by registration, a person must complete an application for a Namibian Citizenship Certificate. Along with the application, documentation of identity and country of origin may be required.

E. NATURALISATION

If a person is a citizen of another country but wants Namibian citizenship, he or she can apply to the Minister of Home Affairs for Citizenship by Naturalisation.

1. WHO QUALIFIES FOR CITIZENSHIP BY NATURALISATION?

Citizenship by naturalisation may be applied for by persons who are not Namibian citizens by birth, descent, marriage, or registration and who:

- reside in Namibia at the time the application for naturalisation is made; and
- have been residing in Namibia for at least ten years; and
- satisfy any other criteria pertaining to health, morality, security, or legality of residence as may be prescribed by law.

The following requirements must be met to obtain citizenship by naturalisation. The person must:

- be lawfully admitted in Namibia for residence; and
- be more than 18 years old; and

- be of good character; and
- intend to continue to reside in Namibia; and
- have adequate knowledge of the responsibilities and privileges of Namibian citizens; and
- be willing to renounce to the citizenship of any other country; and
- not have been convicted in Namibia for any offence described under the “Second Schedule” of the Act (e.g., murder, rape, fraud, sedition, kidnapping, theft, robbery, bribery, etc.).

Granting of the certificate of naturalisation is completely at the discretion of the Minister of Home Affairs. This means the Minister can refuse to grant an application for citizenship, even if the person seems to fulfil all the conditions. Citizenship by Naturalisation is regarded as a privilege, not a right. You cannot appeal the Minister’s decision.

2. WHAT IS REQUIRED FOR CITIZENSHIP BY NATURALISATION?

To obtain citizenship by naturalisation, a person must complete an application for a Namibian Citizenship Certificate. The requirements for this Certificate are:

- Copy of a permanent resident permit; and
- Clearance certificate of country of origin; and
- Namibia medical report letter from Receiver of Revenue confirming period of residence; and
- Two character references (letters from friends who have known the applicant longer than 2 years); and
- Job description of the applicant and spouse; and
- Copy of Namibian ID (if in possession); and
- Copy of birth certificate.



2. REFUGEES

A. REFUGEE STATUS:

A person is a refugee if:

- owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, he or she is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or
- not having a nationality and being outside the country of his or her former habitual residence, he or she is unable or, owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group, or political opinion, is unwilling to return to it; or
- owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his or her country of origin or nationality, he or she is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality.

A person may not be granted refugee status if that person:

- Has more than one nationality; or
- Has committed a crime against peace, or a serious non-political crime, or acted against the principles of the United Nations (UN) or Organisation of African Unity (OAU), before entering into Namibia; or
- Belongs to a category which the Ministry declared is not entitled to receive refugee status.

B. NAMIBIAN REFUGEE POLICY

The policy in Namibia demands that refugees live in camps with minimum integration in the local communities. The Ministry of Home Affairs, the Council of Churches in Namibia, and the United Nations High Commission for Refugees ensure that refugees are accorded treatment in line with Continental and International Laws.

C. THE REFUGEE ADMINISTRATION

The Refugee Administration has the responsibility of taking care of refugees and asylum seekers.

The Refugee Administration offers the following services:

- Provides protection to refugee's structure and facilities (Osire camp).
- Registration—issues refugees Identification Documents (ID) and certificates.
- Facilitates meetings for Namibian Refugees Status Determination Committee.
- Ensures logistics and functions between the Refugee Camp and Head Office.
- Promotes good coordination between and among stakeholders.
- Keeps data statistics for refugees and asylum seekers.
- Ensures that refugee children enjoy their right to education.
- Ensures that skilled refugees are issued permits.



CHAPTER 16

PUBLIC PARTICIPATION

INTRODUCTION

When people vote for representatives in elections (for government and any other institutions), they are voting for the representatives to make laws and policies on their behalf and to ensure that these are carried out. This is one of the most important principles of democracy, but it goes further than this. Democracy also means that the people who have been elected are accountable in various ways to the people who voted for them. Citizens may choose to play a role in participating in government and the governance processes on an ongoing basis to ensure that the people they vote for carry out their duties and obligations. This participation is encouraged and protected in the Constitution.

1. PUBLIC PARTICIPATION IN A DEMOCRACY

Citizens of Namibia have a constitutional right to be involved in the voting process in all spheres of government: national, provincial, and local. However, democracy does not end there. Democracy also means that the people who have been elected are accountable in various ways to the people who voted for them. They have to act and deliver on the promises they made during elections and they have to be open (transparent) in their actions. When we vote we give the government a mandate to pass and enforce laws on our behalf. If the government becomes unpopular or does not do what it promised to do, then people can vote for another party in the next election and vote the present government out of power.

2. CONSTITUTIONAL PROTECTIONS

To ensure public participation in government, the Constitution includes important and fundamental freedoms. These fundamental rights and freedoms include:

THE RIGHT TO PEACEFUL POLITICAL ACTIVITY – ARTICLE 17 OF THE CONSTITUTION.

The Constitution includes the right to political activity for all citizens, including the right to:

- participate in peaceful political activity;
- form and join any political party of one's choice;
- elect any persons of one's choice to public office;
- vote, for those who are 18 years or older; and
- be elected to public office, for those who are 21 years or older.

FREEDOM OF SPEECH - ARTICLE 21(1)(A) OF THE CONSTITUTION.

The right to freedom of speech means that "All persons shall have the right to freedom of speech and expression, which shall include freedom of the press and other media." Art. 21(1)(a), Constitution.

Freedom of speech, however, does not mean that:

- you have the right to insult your opponent; or
- you have the right to hatred or violence; or
- you have the right to say things that are untrue about other people.

No one is allowed to incite hatred against other members of the community.

FREEDOM OF ASSEMBLY – ARTICLE 21(1)(D) OF THE CONSTITUTION.

The right of freedom of assembly means that "All persons shall have the right to assemble peacefully and without arms." Art. 21(1)(d), Constitution.



Freedom of assembly, however, does not give you the right to:

- destroy other people’s property during or after a demonstration, rally, or procession; or
- physically attack your political opponents or those who do not share your views.
- Freedom of Movement – Article 21(1)(g) of the Constitution.

The right to freedom of movement means that “All persons shall have the right to move freely throughout Namibia.” Art. 21(1)(g), Constitution. However, having a right to freedom of movement does not mean you have the right to trespass on another person’s property.

3. ADVOCACY CAMPAIGNS, PETITIONS, PUBLIC EVENTS AND PROTESTS, AND USE OF THE MEDIA

For more information about planning an advocacy campaign, see *Advocacy in Action: A Guide to Influencing Decision-Making in Namibia* (Windhoek, 2007), Legal Assistance Centre.





PART 5

APPENDICES

APPENDIX I

THE NAMIBIAN PARALEGAL ASSOCIATION CODE OF CONDUCT FOR MEMBERS

1. A member shall at all times display honesty, integrity, and impartiality.
2. A member shall at all times act professionally and with due diligence and competence.
3. A member shall disclose to NPA and the parties any interest which the member has or has had, in any party, person, or issue if a reasonable part thereof might perceive the member to be biased as a consequence of such interest.
4. A member shall decline an appointment or recuse him or herself, if he or she is actually biased or if upon disclosure of an interest, which might give rise to a perception of bias.
5. A member shall not disclose any information obtained in consultation to the public unless ordered to do so by the client.
6. A member shall not disclose any information obtained in consultation meeting with clients.
7. A member shall, except for good cause shown, honour all his or her obligations to the clients and NPA in particular.
 - 7.1 Shall arrive on time for meetings.
 - 7.2 Shall give his or her undivided attention to the meeting for its agreed duration.
 - 7.3 Shall avoid any unnecessary delay.
 - 7.4 All membership fees amounts should be paid on time.
8. A member shall conduct all processes in a competent and professional manner having due regard to best practice and rules of natural justice.
9. A member shall always act with the utmost good faith in relation to NPA, fellow members, and clients.
10. Any member who breaches this Code of Conduct may be suspended, expelled, or refused re-registration to the Association.



APPENDIX 2

LEGAL DICTIONARY/GLOSSARY

A

ACCESS TO JUSTICE

The ability of all people to use the court system to enforce the law and resolve disputes.

ACCUSED

A person who is charged with a crime or on trial for a crime.

ACT

A law passed by Parliament.

ACQUITTED/ACQUIT

When an accused is cleared of the criminal charges against him/her and set free.

ADVOCATE

A person who assists, speaks for, defends, pleads, or prosecutes on behalf of another person.

A paralegal is an advocate for his/her client.

AFFIDAVIT

A written statement made under oath to be used as evidence in court. The person who makes the statement is called the affiant.

AFFIRMATIVE ACTION

Measures designed to ensure that persons in designated groups have equal employment opportunities by giving them preferential treatment in hiring. The government has designated three groups for affirmative action policies: racially disadvantaged persons, women, and persons with disabilities.

AGENT

A person who is authorised to act on behalf of another.

ALIBI

A defence that a person accused of a crime was somewhere else when the crime occurred and so could not have committed the crime. Latin for "elsewhere."

ALIEN

A foreigner who resides in Namibia. Someone who is not a Namibian citizen but lives within the borders of Namibia.

ALLEGED/ALLEGATION

Something that is asserted to be true but has not yet been proved.

ALTERATION

A change or modification, such as to a contract or a will.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Ways for disagreeing parties to find an agreement without litigation or going to court. Includes mediation and arbitration.

APPEAL

Submitting a lower court's decision to a higher court for the decision to be reviewed, reversed, or changed.

APPEARANCE/APPEAR

To present oneself formally before a judicial authority as a party, interested person, or lawyer. The appearance in court can be through formally participating in court or submitting forms such as a complaint or answer.

APPELLANT

The party who appeals the lower court's decision to a higher court.

ARBITRATION

A non-court process that allows parties who have a disagreement to use an agreed-upon third person to hear the dispute and to make a decision to resolve the dispute. It is less formal and usually cheaper than going to court, but is binding on the parties.

ARBITRATOR

An impartial third party chosen by opposing parties to judge and settle their dispute out of court.

ASSETS

Property owned by a person that has value.

ASSIGNMENT

Legal transfer of a right, property, or obligation to another person.

ATTACH PROPERTY

To seize by legal authority or take under control of the court. Property, assets, and wages can all be attached by a court.



ATTORNEY (ALSO SEE LAWYER)

A legal practitioner; someone who holds a degree in law from the University of Namibia, has undergone practical legal training, and passed the Legal Practitioners' Qualifying Examination.

ATTORNEY-CLIENT PRIVILEGE

The information a client tells his lawyer is confidential and cannot be used as evidence in court.

AUTHORISE/AUTHORITY

To give, or have, permission or approval to take some action.

B

BAIL

The money required when a person is temporarily released from imprisonment while waiting for trial. The money helps to ensure that the accused will come to the trial and not run away. If the accused runs away, the money will not be refunded.

BENEFICIARY

A person who receives funds or other benefits. For example, the beneficiary of a life insurance plan will receive money when the insured person dies; the beneficiary of a will receives money from the deceased person; the beneficiary of a maintenance order is the person who will receive maintenance.

BEQUEST

A gift of personal property by will.

BILL OF RIGHTS

A statement of the rights of the Namibia people.

BONA FIDE

In good faith; sincerely; genuine; without intention to deceive.

BREACH OF CONTRACT

Violating a contract by failing to perform one's own promise or interfering with another party's performance.

C

CHILD

A person who is under the age of 18 years.

CIVIL ACTION

A lawsuit brought before a court of law in which a plaintiff seeks a legal or equitable remedy for damages. Not a criminal trial.

CIVIL RIGHTS

The rights of citizens to political and social freedom and equality which are guaranteed by the Constitution.

CLAIMANT

A person who makes a claim, asserts a right, or demand. The claimant is also known as the plaintiff when beginning a lawsuit.

CLIENT

Person who employs the services of a legal adviser; the person receiving legal services.

COMMUNITY OF PROPERTY

Property owned jointly by a husband and wife. For couples married South of the Redline, the rule is that civil marriages are automatically in community of property. However, for couples married North of the Redline, marriage is usually out of community of property.

COMPENSATION

Something, usually money, offered as amends for loss, injury, suffering, or damage. Compensation is supposed to make the injured person whole.

COMPLAINT/ APPLICATION/PETITION

When a document is filed with the court requesting the court take some form of action it is called a complaint, application, or petition. The person filing the complaint is called the complainant. The person filing an application is called an applicant. The person filing a petition is called a petitioner.

COMPULSORY

Required by rule or law; obligatory.

CONFESSION

A formal statement admitting that a person is guilty of a crime; disclosing the truth before the proper authorities.

CONFIDENTIAL

Information that is intended to be kept secret.

CONFIDENTIAL INFORMATION

Trade, business, or industrial information that is not generally available or known by others.

CONSENSUS

General agreement among members of a group.

CONSENT

To give permission.

CONSULTATION

A meeting with an expert or professional to seek advice. When a paralegal first meets with a person to learn about his legal problem before deciding to help him.

CONTEMPT OF COURT

Conduct that defies the authority or dignity of a court and is punishable by a fine or imprisonment. Contempt of court can take place in or out of court.



CONTRACT

A legally binding agreement between two or more parties that something should be done, or not done, by one or both. Contracts can be oral or written.

CONTRAVENTION

An action that violates a law or treaty; violation; infringement.

CONVICTION

The formal declaration by a judge in a court of law that someone is guilty of a crime.

COSTS/LEGAL COSTS

Expenses of legal action. Includes the cost of hiring an attorney and arbitration or court fees.

COUNSEL

A person whom one consults with a problem and receives advice from.

COURT ORDER

Directions or a command from a court or judge requiring a person to do or not do something.

COVENANT

An agreement, a promise, a contract, or a clause in a contract.

CREDITOR

A person to whom money is owed.

CRIMINAL RECORD

A list of a person's previous criminal convictions.

CROSS-EXAMINATION

Questioning of a witness called by one's opponent in court. Cross-examination comes after direct examination and can be followed by re-examination.

CULTURAL RIGHTS

Rights invested in religious, ethnic, and indigenous groups to protect their way of life. Examples include the right to exercise one's culture, raise children in traditional manners, and speak one's mother tongue.

CUSTODY (ARREST)

Being held or imprisoned by the police; confined.

CUSTODY (OF CHILDREN)

The parent, or adult, who has chief rights over a child to make major decisions for the child such as school and medical decisions. Guardianship.

CUSTOMARY LAW

The law that has developed over the years in different communities in Namibia.

D

DAMAGES

Money paid in compensation for loss or injury. Damages can be paid from a settlement, arbitration award, or a court order.

DEBT

Money that is owed.

DEBTOR

A person who owes money.

DE FACTO

In reality or in fact; not officially recognized or legally established.

DEFAULT JUDGMENT

A judgment against someone when they failed to answer or appear in court to defend themselves against the plaintiff's claim.

DEFENDANT/RESPONDENT

The person responding to, or who disagrees with, a request made to the court.

DEFENCE

A defendant's reason why the plaintiff or prosecutor has no valid case against him.

DE NOVO

To start from the beginning; anew.

DEPENDENT

A person who relies on another for support.

DEPONENT

A person who gives a deposition or affidavit (written testimony) under oath.

DETAINEE

A person held in custody by law enforcement or the government.

DETERMINE

To decide.

DESIST

To stop. A court may give a cease-and-desist order which requires a person to stop certain behaviour.

DISCHARGE

To fire or terminate someone from a job.

DISCOVERY

The process of learning something or uncovering facts.

DISCRIMINATION

A law or practice that gives privileges or denies privileges to different categories of people on the grounds of race, age, sex, nationality, religion, or disability.

DOMESTIC VIOLENCE

Physical abuse, sexual abuse, economic abuse, intimidation, harassment, and emotional, verbal, or psychological abuse, usually in a domestic relationship.

DOMICILE

A domicile is the permanent place where a person lives. The domicile of a woman is based on where she lives and is independent of where her husband lives. Similarly, the domicile of a child under the age of 18 is the place where the child is most closely connected and not necessarily the domicile of either parent.



DURESS

A threat of harm to a person that is made to compel that person to do something against his/her will or judgment.

E

ECONOMIC RIGHTS

Part of the second generation of human rights. Includes the right to work, the right to own property, and the right to access health care services.

ENACTING LEGISLATION

The process by which Parliament passes a bill to make it a law.

ENFORCEMENT

Compelling compliance with a law.

EQUALITY

Having the same status, rights, and opportunities.

ESTATE

All of the money and property owned by a particular person.

EXECUTOR

A person chosen by the testator (deceased person) to ensure that the will is administered according to the testator's wishes.

EVIDENCE

Information given by a person, from a document, or in the form of material objects that help to establish facts in a legal investigation or in court.

EX POST FACTO

"From a thing done afterward"; something that has retroactive force or effect. A retroactive law punishes people for crimes committed before the law was passed.

EXCULPATORY

To clear from blame or guilt. An exculpatory statement is one which clears the accused from blame.

EXPERT

A person who has gained skill or knowledge on a particular subject and is seen as an authority on that subject.

F

FINAL ORDER

An order from a court that decides a case or claim on a final basis.

FINDING

Decision of a court.

FORECLOSURE

Legal proceedings started by a creditor to repossess the collateral for a loan that is in default. For example, if a person takes a loan from the bank to buy a house, but then doesn't make payments on the loan, the bank will foreclose the house and take it back.

FRAUDULENT MISREPRESENTATION

Making false or misleading statements about something with the intent to deceive.

FRAUD

Deceiving a person or lying for financial or personal gain.

FUNDAMENTAL RIGHTS

Basic human freedoms that every person is entitled to; part of the foundation of the law of a country.

G

GARNISH

To take property to pay a debt. When wages are garnished, the employer gives the money directly to pay the employee's debt rather than to the employee.

GUARDIAN

A person who has legal authority to care for another person and their property because of infancy, incapacity, or disability.

H

HEIR

The person who receives property from someone who died without a will.

HUMAN RIGHTS

Also called natural rights, they belong to all human beings regardless of class, race, sex, age, religion, or social status. Human rights are absolute, universal, and interdependent. They include civil rights, political rights, social rights, economic rights, and cultural rights.

I

ILLEGAL

Against the law.

IMMOVEABLE PROPERTY

Property that cannot be moved such as houses and land.

IMMUNITY

Being exempt from a duty or liability. Many diplomats have diplomatic immunity which means they are exempt from certain laws in the country where they work.

IN CAMERA

When a judge holds a hearing or court case privately; not open to the public.

INDEMNITY

Compensation for loss or damage paid by a third party. For example, when a person has car insurance and causes an accident, the insurance company will indemnify the person, or pay for the damage caused to other people.



INDICTMENT

The formal accusation that a person committed a criminal offence.

INDIGENT

A person so poor and needy that he or she cannot provide the necessities of life (food, clothing, or shelter) for himself or herself. This may include someone without enough money to pay a lawyer.

INDICTMENT

A formal accusation that a person committed a crime; the court will list all of the charges against the accused.

INSOLVENCY

Being unable to pay debts as they are due.

INTERNATIONAL LAW

Laws that govern the relations between countries such as treaties.

INTESTATE

A person who dies without a will.

INTERIM ORDER

A temporary order passed by a court that is not final.

J

JUDGMENT

The decision of a court or judge.

JUDICIARY

An independent branch of the government which administers justice, settles disputes, interprets the Constitution and laws, and promotes human rights.

JURISDICTION

The power of a civil court to hear a case. If there is no jurisdiction, the court has no right or authority to rule on a case.

JUVENILE (ALSO SEE MINOR)

A young person.

L

LABOUR COURT

A court of appeal that will decide labour disputes that could not be resolved through arbitration or conciliation.

LAWFUL

Recognised or allowed by law.

LAWYER (ALSO SEE ATTORNEY)

A legal practitioner; someone who holds a law degree from the University of Namibia, has undergone practical legal training, and passed the Legal Practitioners' Qualifying Examination.

LEASE

To rent property.

LEGAL AID

Financial assistance for someone who cannot afford a lawyer.

LEGISLATION

A law that has been promulgated or enacted by a legislature.

LIABLE/LIABILITY

Legally responsible.

LIEN

The right to keep goods until the debtor has paid for them or for their repair. For example, if a mechanic repairs a car, he can keep the car until the owner has paid for the repairs.

LITIGANT

A person involved in a lawsuit or who takes legal action.

LITIGATION

A proceeding in court or a legal action.

M

MALICIOUS

Purposely causing harm or damage; spiteful.

MATTER

A case or subject being considered by a court.

MEDIATION

Mediation is a way to resolve disagreements through the use of a third person to assist with the negotiation. It is less formal and usually cheaper than going to court.

MINOR

A person under the age of majority; not yet an adult for legal purposes.

MISREPRESENTATION

A false or misleading statement made with the intent to deceive.

MITIGATION/MITIGATE

To make less severe. In a criminal case, reasons why a person should not receive as harsh a sentence as they would otherwise.

N

NEGLIGENCE

Not taking necessary or reasonable care in doing something; not doing what a reasonable person would do in the same situation.

NEGOTIATION

Bargaining to reach an agreement on a disputed matter.

NOTICE

Making a person aware of legal proceedings that might affect them.



O

OATH

A solemn promise that one will tell the truth.

OFFENCE

An illegal act; a crime.

OMBUDSMAN

A government official who is appointed by the President and investigates complaints about corruption or abuse of power by government officials and violations of fundamental rights and freedoms.

ORDINANCE

A law made by a local government.

P

PARALEGAL

A community-based person who provides legal advice and assistance to persons in the community.

PARASTATALS

A company that is owned or controlled, wholly or in part, by the government.

PARTY

Person or people on one side of a lawsuit or legal proceeding.

PECUNIARY

About money.

PENALTY

Punishment for breaking a law, a rule, or a contract.

PENDING

Still undecided; waiting for a decision or settlement.

PER SE

By itself; without considering anything else.

PERJURY

Deliberately making a false statement under oath, such as during a deposition, in an affidavit, or in a courtroom. Perjury is a crime.

PERSECUTION

Violence and oppression directed against members of a particular religious, ethnic, or political group.

PLAINTIFF/PETITIONER/ COMPLAINANT/ APPLICANT

The person who is asking the court for something, such as a divorce or maintenance order, is a plaintiff, petitioner, complainant, or applicant.

PLEA

When a person accused of a crime tells the court that they are “guilty” or “not guilty”.

PLEADINGS

Formal written statements in a civil action where each party states their cause of action (reason for filing the lawsuit) or their defence.

POLITICAL RIGHTS

Rights guaranteed to citizens by the Bill of Rights of the Namibian Constitution such as the right to vote and the right to form associations.

POWER-OF-ATTORNEY

Giving a person the legal power to make decisions for another person, such as healthcare or business decisions.

PRECEDENT

A previous case or legal decision that may be binding.

PRECLUDE

To prevent or make impossible.

PRIMA FACIE

“On its face”; as it first appears without further investigation.

PROBATION

When a person convicted of a crime is released into the community to give him a chance to prove his good behaviour while being supervised.

PROCEDURAL

Related to how the court does things and not the substantive law. For example, a law that prohibits driving fast near primary schools is a substantive law. If you are given a ticket for speeding near a primary school and have two weeks to pay it, the two weeks would be considered a procedural rule.

PROOF

Evidence to establish that a fact or statement is true.

PROSECUTE/ PROSECUTION

To start, or continue, legal proceedings against a person.

PROSECUTOR

The person, usually a government official, who starts legal proceedings against an accused person in a criminal court.

PROTECTION ORDER

A restraining order; a court order restricting a person from harassing, threatening, or going near another person.

Q

QUID PRO QUO

One thing in exchange for another.

R

RECEIPT

Something written that shows goods were paid for or received.

REDRESS

Relief, remedy, or compensation for a wrong; damages.



REGISTRAR

An officer of a court who receives documents for filing with the court.

REGULATION

A rule, usually from an administrative agency, that is like a law.

REMAND

When a case is returned to a lower court for reconsideration.

RENOUNCE

Abandon or surrender.

REMUNERATION

Compensation, usually money.

REPOSSESSION

To take back a thing; to regain possession. Often involves seizure of property when a loan or mortgage is not paid.

RESIDENCE

Place where a person usually resides.

RESTRAIN

To prevent from doing something.

S**SETTLEMENT**

The official agreement to resolve a dispute or conflict.

SERVICE

To deliver legal documents to a person that gives them notice of legal proceedings, such as Service of Process or Service of Protection Orders.

SOLVENT

Having enough money to pay one's debts; the opposite of insolvent.

STARE DECISIS

The doctrine of precedent; a court must follow earlier court decisions when the same issues arise.

STATUS QUO

The existing state of affairs at present.

STATUTE

A law passed by Parliament.

SUBPOENA

An official procedure used to tell people they must give information or take a specific action. Subpoenas will often tell a person they must testify in court or bring physical evidence to the court.

SUBSIDY

Help, aid, assistance.

SUBVENTION

A subsidy or grant of money from the government.

SUCCESSION

The process of inheriting property.

SUE/SUING

To start a lawsuit against another person or company.

SUMMARY DISMISSAL

A decision by a court to dismiss a case without a full trial when there is no dispute about the material facts of the case.

SUMMONS

A summons is a piece of paper given to witnesses, defendants, or respondents to appear in court. A person that receives a summons must appear in court at the date and time in the summons.

T**TESTATE**

When someone dies with a valid will.

TESTATOR

The person making a will.

TESTIFY

To give evidence in court as a witness.

TRESPASS

To go on someone's property without the owner's permission.

TRIAL

A formal examination of evidence and legal claims in court.

U**UNLAWFUL**

Illegal, not authorised by law.

V**VALID**

Legally acceptable.

W**WILL**

A legal document that directs how one's estate (money, land, home, and personal belongings) is to be distributed upon their death.

WITNESS

A person summoned or requested to give evidence at an enquiry; can include the plaintiff and defendant.



APPENDIX 3

INDEX OF FORMS

RELATED CHAPTER	DESCRIPTION	PAGE
PRACTICAL SKILLS	Client Intake Form	139
CITIZENSHIP	Notification of Birth	140
CITIZENSHIP	Application for Late Registration of a Birth	144
CITIZENSHIP	Application for Passport	148
CITIZENSHIP	Application for Visa	150
CITIZENSHIP	Application for Tourist Visa	154
CITIZENSHIP	Application for Temporary Work/Study Permit	156
CITIZENSHIP	Applications for Residency	163
CITIZENSHIP	Citizenship Applications	178
DOMESTIC VIOLENCE / RAPE	Packet of Forms for Reporting Domestic Violence and Rape	188
FAMILY LAW	Packet of forms for Maintenance	210
LABOUR LAW	Notification of a Grievance	220
LABOUR LAW	Application for Leave	221
LABOUR LAW	SSC - Declaration for Late Submission of a Claim	222
LABOUR LAW	Claim For Maternity Leave	223
LABOUR LAW	Notification of Changes to Maternity Leave Claim	225
LABOUR LAW	Submission of Document In Support of Claim For Maternity Leave Benefits	226
LABOUR LAW	Maternity Leave Benefits - Declaration Regarding Employment Status	227
LABOUR LAW	Sick Leave Benefits - Declaration Regarding Employment Status	228
LABOUR LAW	Claim for Sick Leave Benefits	229
LABOUR LAW	Final/Progress Medical Report	231
MOTOR VEHICLES	Motor Vehicle Fund Claim Form	93 / 232
SOCIAL GRANTS	Claim for Death Benefits in the Case of the Death of an Employee	240
SOCIAL GRANTS	Affidavit Accompanying Claim for Death Benefit Where the Claimant Was Not the Spouse of the Deceased Employee	242
SOCIAL GRANTS	Claim for Death Benefits in the Case of Retirement or Disability of an Employee	242
WILLS AND INHERITANCE	Sample Will	245



Date:
Client Name:
Physical Address:
Postal Address:
Telephone/Cell:
Email (if any):
Age:
Type of case:
(e.g., labour)

Description of client's problem:
.....
.....
.....

Advice or suggestions given to client:
.....
.....
.....

Action taken on behalf of client:
.....
.....
.....

Was the client referred to another agency? If so, which agency?
.....





REPUBLIC OF NAMIBIA
MINISTRY OF HOME AFFAIRS
Department of Civic Affairs
NOTIFICATION OF BIRTH

WARNING - The penalties for false statements wilfully made are the same as those for perjury.

N.B. - This form must be filled in block letters and should preferably be signed by the father or mother or guardian.

CHILD

- 1. NAME: Surname
- First names in full
- 2. DATE OF BIRTH: (in full)
- 3. PLACE OF BIRTH: (a) City / town / farm
- District
- Country
- (b) Was the child born in a maternity home or hospital? (Yes or No)
- 4. SEX:

FATHER OF CHILD

- 5. IDENTITY NUMBER
- 6. NAME: Surname
- First full names in full
- 7. DATE OF BIRTH: Year Month Day
- 8. PLACE OF BIRTH:
- 9. CITIZENSHIP AT THE TIME OF CHILD'S BIRTH:
- 10. IF THE FATHER IS NOT A NAMIBIAN CITIZEN, STATE WHETHER HE IS A PERMANENT RESIDENT OF THE REPUBLIC OF NAMIBIA.
Yes or No If Yes, state -
IMMIGRATION PERMIT NUMBER (not form number) AND DATE

MOTHER OF CHILD

- 11. IDENTITY NUMBER
- 12. NAME: Present legitimate surname
- First names in full
- Maiden name
- 13. DATE OF BIRTH: Year Month Day
- 14. PLACE OF BIRTH:.....



15. CITIZENSHIP AT THE TIME OF CHILD'S BIRTH:.....

16. IF THE MOTHER IS NOT A NAMIBIAN CITIZEN, STATE WHETHER SHE IS A PERMANENT RESIDENT OF THE REPUBLIC OF NAMIBIA.

Yes or No If Yes, state -

IMMIGRATION PERMIT NUMBER (not form number) AND DATE

17. ARE PARENTS INDICATED UNDER ITEM 6 AND 12 LEGALLY MARRIED TO EACH OTHER?

Yes or No

IF YES, STATE PLACE WHERE MARRIAGE WAS SOLEMNIZED

AND DATE

GENERAL INFORMATION

18. RESIDENTIAL ADDRESS WHERE CHILD WILL BE CARED FOR - USUALLY THAT OF THE PARENTS (COMPLETE THE APPLICABLE ITEMS ONLY):

(a) Name and number of plot/farm.....

(b) Name of and number in street/avenue/etc.....

(c) Name of suburb

(d) name of city/town/place

(e) Magisterial district

19. (a) NAME OF PERSON OR INSTITUTION IN WHOSE CARE THE CHILD IS - USUALLY THAT OF THE PARENTS

.....
.....

(B) POSTAL ADDRESS OF SUCH PERSON OR INSTITUTION, IF NOT THE SAME AS THE ADDRESS INDICATED AT ITEM 21:

.....

IMPORTANT

I SOLEMNLY DECLARE THAT THE INFORMATION FURNISHED BY ME IS TRUE AND CORRECT.

20. RELATIONSHIP TO CHILD

21. RESIDENTIAL ADDRESS

DATE SIGNATURE (OR MARK)

FOR OFFICIAL USE ONLY

ENTRY NUMBER

REGISTRAR

CHECKED

DATE

INPUT VOUCHER





REPUBLIC OF NAMIBIA

MINISTRY OF HOME AFFAIRS

Department of Civic Affairs

APPLICATION FOR REGISTRATION OF BIRTH IN
TERMS OF THE NAMIBIAN CITIZENSHIP ACT, 1990

Directives:

1. This form must be completed in BLOCK letters.
2. The completed form must be lodged with the office of the Ministry of Home Affairs.
3. The form must be completed by the father or mother who is a Namibian Citizen.

CHILD

Surname: _____
First name(s) in full: _____
Date of birth: Day _____ Month _____ Year _____
Country of birth: _____
Sex: Male Female

FATHER OF CHILD

Surname: _____
First name(s) in full: _____
Date of birth: Day _____ Month _____ Year _____
Country of birth: _____
Identity Number: _____
Date of marriage: _____ Place of marriage: _____

CITIZENSHIP OR NATIONALITY OF FATHER

I was a citizen of (state country) _____ at the time of my child's
birth. I acquired the citizenship of the said country by virtue of _____ on
(date) _____ while resident in (country) _____. I was in
possession of Namibian Passport No.: _____ issued at (place) _____
on (date) _____ valid until (date) _____



MOTHER OF CHILD

Surname: _____ Maiden Name: _____
First name(s) in full: _____
Date of birth: Day _____ Month _____ Year _____
Country of birth: _____
Identity Number: _____
Citizenship or Nationality: _____

CITIZENSHIP OR NATIONALITY OF MOTHER

I was a citizen of (state country) _____ at the time of my child's birth. I acquired the citizenship of the said country by virtue of _____ on (date) _____ while resident in (country) _____. I was in possession of Namibian Passport No.: _____ issued at (place) _____ on (date) _____ valid until (date) _____

DECLARATION

I, (name in full) _____
at present residing at (address in full) _____

Hereby declare that:

- (a) I am the father / mother of the above-mentioned child and that I have not acquired citizenship or nationality of any other country by a formal and voluntary act while absent from Namibia and that the information furnished above is to the best of my knowledge and belief correct; or
- (b) I am the legal guardian of the above-mentioned child and that the father / mother of the child has not acquired the citizenship or nationality of any other country by a formal and voluntary act while absent from Namibia and that the information furnished above is to the best of my knowledge and belief correct.

Signature: _____ Capacity: _____
(Father / mother / legal guardian)

Date: _____

Place: _____


FOR OFFICIAL USE

Date of registration: _____ District: _____

REGISTRAR



3-1/0032



ENTRY NUMBER

--	--	--	--	--	--	--	--	--	--

REPUBLIC OF NAMIBIA

MINISTRY OF HOME AFFAIRS

DEPARTMENT OF CIVIC AFFAIRS

APPLICATION FOR THE LATE REGISTRATION OF A BIRTH

WARNING: THE PENALTIES FOR FALSE STATEMENTS WILFULLY MADE ARE THE SAME AS THOSE FOR PERJURY.

N.B.: READ THE INFORMATION ON PAGE 4 BEFORE COMPLETING THE FORM.

A. CHILD / APPLICANT

Surname:

First names in full:

Date of birth: Place of birth:

Country of birth:

Residential address: Tel. No.:

Identity number:

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

 Sex:

Was the child born in a maternity home or hospital? Yes No

B. FATHER OF CHILD / APPLICANT

State whether father is: Alive Dead

His present residential address (if alive):

..... Tel.No.:

If deceased, state date: District of death:

Surname:

First names in full:

Date of birth: Place of birth:

Country of birth:

Identity number:

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Citizenship at the time of child's/applicant's birth:

If the father is not a Namibian citizen, state whether he is a permanent resident of the Republic of Namibia:

Yes No

If yes, state Permanent Residence Permit Number (not number of form)

and date

C. MOTHER OF CHILD / APPLICANT																					
State whether mother is: Alive <input type="checkbox"/> Dead <input type="checkbox"/>																					
Her present residential address (if alive):																					
Tel. No.:																					
If deceased, state date:	Place of death:																				
Surname:	Maiden name:																				
First names in full:																					
Date of birth:	Place of birth:																				
Country of birth:																					
Identity number: <table border="1" style="display: inline-table; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> </table>																					
Citizenship at the time of child's / applicant's birth:																					
If the mother is not a Namibian citizen, state whether she is a permanent resident of the Republic of Namibia:																					
Yes <input type="checkbox"/> No <input type="checkbox"/>																					
If yes, state Permanent Residence Permit Number (not number of form)																					
and date																					
D.																					
Are the parents indicated under Item B and C legally married to each other? Yes <input type="checkbox"/> No <input type="checkbox"/>																					
If yes, state place where marriage was solemnized:																					
Date:																					
E. ACKNOWLEDGEMENT OF PARENTAGE OF A CHILD BORN OUT OF WEDLOCK <i>(This part must be completed and signed in the presence of a Registrar of Births)</i>																					
FATHER																					
I,, I.D. No.:,																					
declare that I am the biological father of the abovementioned child and give permission for the registration of his/her birth in my surname.																					
Signature (Father):	Left thumb print <div style="border: 1px solid black; width: 100px; height: 100px; margin: 0 auto;"></div>																				
Date:																					
MOTHER																					
I,, I.D. No.:,																					
declare that I am the biological mother of the abovementioned child and consent for the registration of his/her birth in the surname of the biological father.																					
Signature (Mother):	Left thumb print <div style="border: 1px solid black; width: 100px; height: 100px; margin: 0 auto;"></div>																				
Date:																					



F. GENERAL INFORMATION IN RESPECT OF THE APPLICANT HIM/HERSELF OR THE FATHER/MOTHER/GUARDIAN OF THE CHILD

Name of person or institution in whose care the child/applicant is (usually that of the parents):

Name:

Postal address:

Residential address: Tel. No.:

Relationship to child:

G.

State whether you have previously applied for a Namibian Birth Certificate: Yes No

If yes, state:

(i) When:

(ii) At which office:

APPLICATIONS MUST BE SIGNED IN THE PRESENCE OF A REGISTRAR OF BIRTHS.

I declare under oath that the particulars given by me are, to the best of my knowledge true and correct.

Date: Signature of Deponent:

H. FOR OFFICE USE ONLY

1. I certify that, before administering the oath/affirmation, I asked the deponent(s) the following questions and wrote down his/her answer in his/her presence:

(a) Do you know and understand the contents of this declaration?

ANSWER:

(b) Do you have any objection to taking the prescribed oath?

ANSWER:

(c) Do you consider the prescribed oath to be binding on your conscience?

ANSWER:

2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration which was sworn/affirmed before me and the deponent's Signature/Thumbprint was placed thereon in my presence.

.....
Registrar of births

.....
Designation (Rank)

Full names and surname:

Business address:

Date:

OFFICIAL DATE STAMP



I. GENERAL INFORMATION

1. This form must be completed in block letters and should preferably be signed by the father, mother, guardian or the applicant self. If he/she is older than 21 years of age.
2. When completing Part E, the father and mother must be present with their identity cards. (The office personnel will assist you in completing this part.)
3. A late registration of the birth is done when a person is one year or older. In order to substantiate application for the late registration of birth the following documents should be attached to Form 3-1/0032.
 - * Maternity certificate/proof of birth
 - * Marriage certificate of the parents
 - * Identity documents of the parents
 - * Birth certificate of parents
 - * Affidavit from principal of first school attended
 - * Death certificate of parents if they are deceased.
4. The left thumbprint of person for whom a late registration of birth is applied must be provided in the box below. (Only persons who are thirteen years and older)

Left thumbprint

5. The abridged birth certificate may be issued after the application for late registration has been approved.
6. Every birth may be registered in the region or area in which it occurs.

J. NAMES OF RELATIVES OR ACQUAINTANCES WHO CAN BE CONTACTED FOR FURTHER INFORMATION

NAME	I.D. NUMBER	ADDRESS	TEL. NO.	RELATIONSHIP
A.				
B.				

K. FOR OFFICE USE ONLY

Checked by: (Full name): Date:

Approved / Not approved: Date:

Approved by: (Full name): Date:

Reasons, if not approved:

.....

.....

.....

Litho Art Namibia





REPUBLIC OF NAMIBIA
(Ministry of Home Affairs)

PA N^o: 352083

PASSPORT APPLICATION FORM

FOR OFFICIAL USE ONLY

- NAMIBIAN PASSPORT DIPLOMATIC PASSPORT
 OFFICIAL PASSPORT EMERGENCY TRAVEL CERTIFICATE

Identity No.

1. **NAME** **NAME TO APPEAR IN PASSPORT**
 Surname
 First Name
 Middle Name(s) (optional)

PREVIOUS SURNAME(S)

Surname at birth Date of departure, if known
 Other Names (if changed)

2. **PERSONAL INFORMATION**

Date of Birth Place of Birth
Year Month Day Town Country
 Sex Male Female Marital Status
Single Married Widowed Divorced Separated
 Hair Eye Height Weight Occupation
 Residential Address
No. Street Town
 Telephone
Area Code Home Area Code Business Extension
 Postal Address

3. **PREVIOUS NAMIBIAN PASSPORT** - In the last 5 years has a Namibian passport been issued to you?
 Write 'YES' or 'NO'
 If 'YES', indicate and include it with your application.
Number Date of Issue

4. **CITIZENSHIP** - You must provide the documents below (Certified photocopies acceptable)

<p>If you were born in Namibia</p> <p><input type="checkbox"/> certificate of birth, or <input type="text"/> <input type="text"/> <small>Registration Mail Date of Issue</small></p> <p><input type="checkbox"/> certificate of citizenship <input type="text"/> <input type="text"/> <small>certificate number Date of Issue</small></p>	<p>If you were born outside Namibia</p> <p><input type="checkbox"/> certificate of citizenship, or <input type="checkbox"/> certificate of naturalization, or <input type="checkbox"/> certificate of retention of citizenship, or <input type="checkbox"/> certificate of registration of birth abroad <input type="text"/> <input type="text"/> <small>Certificate Number Date of Issue</small></p>
---	---





REPUBLIC OF NAMIBIA
 Ministry of Home Affairs and Immigration
 Immigration Control Act, 1993
APPLICATION FOR VISA
 (Sections 12 and 13 / Regulation 11)

3-1/0033

FOR OFFICIAL USE ONLY Approved / Not Approved Single / Multiple entry
File No.: _____
Date of issue: _____
Date of expiry: _____
Remarks: _____
Signature: _____
Date: _____

Items 4 to 10 to be completed by inserting an "X" in the appropriate box.

1. Surname: _____
2. First names: _____
3. Maiden name (if applicant is or was a married woman): _____
4. Sex: Male Female 5. Marital status: Never Married Married Divorced Widow/Widower
6. Have you at any time applied for a permit to settle permanently in Namibia? Yes No
7. Have you ever been restricted or refused entry to Namibia? Yes No
8. Have you ever been deported or ordered to leave Namibia? Yes No
9. Have you ever been convicted of any crime in any country? Yes No
10. Are you suffering from tuberculosis, or any other contagious lung disease; trachoma, or any other chronic eye infection, frambesia, yaws, scabies or any other contagious bacterial skin disease; syphilis or any other venereal disease; or leprosy or Acquired Immune Deficiency Syndrome virus (AIDS virus), or any mental illness or affliction? Yes No
11. If the reply to any one of the questions 6 to 10 is in the affirmative, attach full particulars.
12. Birth (a) Date: _____ (b) Place: _____ Country _____
13. Citizenship: _____ (if acquired by naturalization, state original citizenship)
14. Passport: (a) Number: _____ (b) Place of issue _____
 (c) Date of issue: _____ (d) Date of expiry: _____
 (e) Is passport valid for travel to Namibia: Yes No
15. (a) Present residential address: _____ (b) Telephone no.: (_____) _____
16. Address and period of residence in country of which you are a permanent resident:
 (a) Residential address: _____
 (b) Telephone no.: (_____) _____ (c) Period: _____
17. Occupation or Profession: _____
18. Firm, company, university, etc., to which you are attached or which you represent:
 (a) Name and address of employer: _____
 (b) Telephone no.: (_____) _____
 (c) Nature of business: _____
 (d) If a student, name of university to which you are attached and the course pursued: _____
19. If accompanied by your wife and children state:

First Names	Date of Birth	Place of Birth
(a) _____	_____	_____
(b) _____	_____	_____
(c) _____	_____	_____
20. (a) What amount of money will you have available on arrival in Namibia for your own use? N\$ _____
 (b) Will you be in possession of an onward/return ticket? Yes No

(N.B. separate applications have to be completed in respect of your spouse or children over the age of 16 years and children travelling with their own passports.)

NOTE: COMPLETE ONLY PART A OR B

(A) HOLIDAY / BUSINESS / WORK / TRANSIT / VISA

1. Intended date and port of arrival in Namibia: _____
2. (a) What is the purpose of your visit? _____
 (b) if it is for business purposes, explain in detail the nature of business: _____

 (c) Duration of intended visit (Number of days, weeks or months) _____
3. Places to be visited in Namibia (full address, including telephone number must be provided) _____

4. If the purpose of your visit is for medical treatment, please provide the following information:
 (a) Name of doctor, hospital or clinic you will visit: _____
 (b) Who will pay your medical expenses and hospital fees: _____
 (c) If you are liable for the expenses and fees above, state amount of funds available: _____
5. Proposed residential address in Namibia: _____
 Telephone no.: (_____) _____
6. Names and addresses of relatives in Namibia:

Name	Address and Telephone number	Relationship
(a) _____	_____	_____
(b) _____	_____	_____
7. Date of last visit, if any, to Namibia: _____
8. Do you contribute professionally or otherwise to publications, radio, television or films? If so, give details: _____

9. (a) Destination after leaving Namibia: _____
 (b) Mode of travel to destination: _____
 (c) Intended date and port of departure: _____
 (d) Is your entry to that destination assured, e.g. do you hold a visa or a permit for permanent or temporary residence? (Proof to be submitted) _____
10. Reasons for travelling through Namibia: _____

(B) RETURN VISA

IMPORTANT

An applicant has to:

- (i) produce his or her passport or travel document; and
- (ii) submit proof of his or her right of residence in Namibia if not endorsed in his or her passport.

1. (a) Kind of Permit and number: _____
 (b) Date of departure: _____
 (c) Expected date of return: _____
2. Particulars of Residence in Namibia:

Date of first entry	Port of entry	Periods of residence in Namibia	
		From	To
_____	_____	_____	_____
_____	_____	_____	_____
3. Countries to which you will be travelling:
 (a) _____ (b) _____ (c) _____ (d) _____
4. Purpose of journey (explain fully): _____

I solemnly declare that the above particulars given by me are true in substance and in fact and that I fully understand the meaning thereof.

Date: _____ Signature: _____
 (N.B. Only the signature of the applicant will be accepted)





REPUBLIC OF NAMIBIA
Ministry of Home Affairs and Immigration
APPLICATION FOR VISA
INSTRUCTIONS AND INFORMATION

IMPORTANT

- (i) Failure to complete the visa application in detail may result in the delay or rejection of a visa.
- (ii) A separate application form must be completed by each applicant over the age of 16 years and by each applicant under the age of 16 years who is in possession of his/her own passport.
- (iii) Visas granted will be subject to the laws and regulations governing the admission of persons to the Republic of Namibia. A temporary visitor must, inter alia, be in possession of a valid passport which must bear a valid visa, if required, for entry into the Republic of Namibia; be of sound mind and body; have a clear record as far as certain criminal offences are concerned; and must satisfy the Immigration Officer at the port of arrival that he/she has sufficient means to support him/her for a reasonable period after his/her arrival, and for his/her return passage, if he/she is not in possession of a return ticket.

The Immigration Officer may require from the temporary visitor to make a cash deposit if he/she cannot comply with any of the above-mentioned requirements.

OFFICES AT WHICH VISAS ARE ISSUED

Diplomatic or consular representatives of the Republic of Namibia abroad. (See overleaf) The Ministry of Home Affairs and Immigration, Cohen Building, corner Independence Avenue and Casino Streets, Windhoek (Postal Address: Private Bag 13200, Windhoek) and in the case of holders of official or diplomatic passport or Laissez Passer, the Ministry of Foreign Affairs, Windhoek.

HOW TO OBTAIN VISA

Applicant's must submit their completed applications to the nearest Namibian diplomatic or consular Representative at least 60 days prior to their proposed date of departure. Applicants in countries where Namibia is not represented may also send their applications directly to the Ministry of Home Affairs and Immigration, Windhoek. Applications may also be transmitted through the various airlines, shipping companies or travel agencies arranging the applicant's visit to the Republic of Namibia.

If the request for a visa is approved, the visa will be stamped in the passport and the passport returned. If the applicant's passport is not available, a loose leaf visa (i.e. a visa not endorsed in a passport) will be issued and forwarded to the applicant or his agent by airmail. If the date and place of arrival and the flight number is available, the Immigration Officer at the port of arrival in the Republic of Namibia will be advised accordingly, if necessary. In the case of urgency, the Ministry of Home Affairs and Immigration will be prepared to advise the applicant or the agent who has submitted the application, by telegram, telex or facsimile of the outcome of the visa application. The visa or other document authorising the applicant's entry into the Republic of Namibia must be produced to the Immigration Officer at the port of arrival in the Republic of Namibia.

PHOTOGRAPHS

An applicant who cannot submit his passport for a visa must attached two passport-type photographs, measuring 37 x 52 mm, to his/her visa application, and in the case where the applicant has to be forwarded by fax a copy of his/her photograph should accompany the application. The reverse side of the photographs must bear the applicant's name and signature.

PASSPORT

A valid passport (valid for at least 6 months longer than the intended stay) must accompany the visa application except in the case of the passport not being available.

HEALTH REQUIREMENTS

- (1) Yellow fever - Inoculation is a requirement only if the journey to the Republic of Namibia entails passing through the yellow fever area of Africa by any other means than by a scheduled air service.
- (2) The validity of Yellow fever certificates begins 10 days after the date of vaccination.

PERSONS IN TRANSIT

Persons applying for a transit visa must submit proof (if required) that they will be admitted to the country of their destination.

(This page must be retained by the applicant)

OFFICES AT WHICH VISAS ARE ISSUED

A OFFICES IN NAMIBIA

- | | |
|--|---|
| <p>1. The Ministry of Home Affairs and Immigration
Cohen Building
corner Independence and Casino Streets
Private Bag 13200
Windhoek</p> | <p>2. The Ministry of Foreign Affairs
(In case of Official and Diplomatic Passports
or Laissez Passer)</p> |
|--|---|

B NAMIBIAN DIPLOMATIC MISSIONS ABROAD

- | | |
|--|---|
| <p>1. Angola
Rua Dos Coquiros No. 37
P.O. Box 953, Luanda, Angola
Tel: 00244 - 2 - 395483/394730/3962811
Fax: 00244 - 2 - 339234</p> | <p>8. Sweden
Luntnakargatan 86-88, 111 22 Stockholm
Tel: 09468 612 7788
Fax: 09468 612 6655</p> |
| <p>2. Belgium
Avenue de Tervuren 454
B 1150 Brussels, Belgium
Tel: 0032 - 2 - 771 - 14-10
Fax: 0032 - 2 - 771 - 96 - 89</p> | <p>9. United Kingdom
6 Chandos Street, London - WIM OLQ
United Kingdom
Tel: 0044 - 207 - 636 - 6244
Fax: 0044 - 207 - 637 - 5694/637099</p> |
| <p>3. Cuba
5th A Street 44-64 Miramar - Havana
Cuba
Tel: 0053 - 7 - 241 - 430/28
Fax: 0053 - 7 - 241 - 431</p> | <p>10. United Nations
135 East 36 Street, New York
Tel: 001 - 212 - 685 - 2003
Fax: 001 - 212 - 685 - 1561</p> |
| <p>4. Ethiopia
Bole Road W. 17. K. 19 House No. 002
P.O. Box 1443, Addis Ababa, Ethiopia
Tel: 00251 - 1 - 611966/612055
Fax: 00251 - 1 - 612677</p> | <p>11. United States of America
1605 New Hampshire Ave. N.W.
Washington D.C., 20009 U.S.A.
Tel: 001 - 202 - 986 - 0540
Fax: 001 - 202 - 986 - 0443</p> |
| <p>5. France
80 Avenue Foch 17, Square de L' Avenue Foch
Paris, France
Tel: 0033 - 144 - 17 - 3265/76
Fax: 0033 - 144 - 17 - 3273</p> | <p>12. Russian Federation
Street Konyushkovskaya, 28 Moscow
Tel: 07095 252 2471
Fax: 07095 253 9610</p> |
| <p>6. Germany
5 Wichmannstrasse
10787, Berlin, Germany
Tel: 0049 - 30 - 2540950
Fax: 0049 - 30 - 25409555</p> | <p>13. Zambia
30 A Mutende Road
P.O. Box 30577 Woodlands, Lusaka
Tel: 00260 - 1 - 2604078
Fax: 00260 - 1 - 263858</p> |
| <p>7. Nigeria
Plot 1738 T.Y. Danyuma Street
Cadastral
Zone, A4 Asokoro, District Abuja
Tel: 00234 931 42740/1/2/3/4
Fax: 00234 931 42743</p> | <p>14. Botswana
P.O. Box 987
2nd Floor, Debswana House
Gaborone
Tel: 00267 - 3902181
Fax: 00267 - 3902248</p> |



3-1/0033

REPUBLIC OF NAMIBIA
MINISTRY OF HOME AFFAIRS
 DEPARTMENT OF CIVIC AFFAIRS
 IMMIGRATION CONTROL ACT, 1993
APPLICATION FOR VISA
 (Sections 12 and 13 / Regulation 11)

FOR OFFICIAL USE ONLY
Approved / Not Approved
Single / Multiple Entry

1. Surname: _____
2. First Names: _____
3. Maiden name (if applicant is or was a married woman): _____

ITEMS 4 TO 10 TO BE COMPLETED BY INSERTING AN "X" IN THE APPROPRIATE BOX

4. Sex: Male Female
5. Marital Status Never Married Married Divorced Widow/Widower
6. Have you at any time applied for a permit to settle permanently in Namibia? Yes No
7. Have you ever been restricted or refused entry to Namibia? Yes No
8. Have you ever been deported or ordered to leave Namibia? Yes No
9. Have you ever been convicted of any crime in any country? Yes No

10. Are you suffering from tuberculosis, or any other contagious lung disease; trachoma, or any other chronic eye infection, frambesia, yaws, scabies or any other contagious bacterial or other skin disease; syphilis or any other venereal disease; or leprosy or acquired immune deficiency syndrome virus (AIDS virus), or any mental illness or affliction? Yes No

11. If the reply to any one of the questions 6 to 19 is in the affirmative, attach full particulars
12. Birth: (a) Date: _____ (b) Place: _____ Country: _____
13. Citizenship: _____ (if acquired by naturalization, state original citizenship)
14. Passport: (a) Number _____ (b) Place of issue: _____
 (c) Date of issue _____ (d) Date of expiry: _____
 (e) Is passport valid for travel to Namibia? Yes No

15. (a) Present residential address: _____

(b) Telephone number: (Code: _____) No: _____

16. Address and period of residence in country of which you are a permanent resident:

(a) Residential address: _____

(b) Telephone number: (Code: _____) No: _____

(c) Period: _____

17. Occupation or profession: _____
18. Firm, company, university, etc., to which you are attached or which you represent: _____

(a) Name and address of employer: _____

(b) Telephone number: (Code: _____) No: _____

(c) Nature of business: _____

(d) If a student, name of university to which you are attached and the course pursued: _____

19. If accompanied by your wife and children, state:

	DATE OF BIRTH	PLACE OF BIRTH
(a) _____	(a) _____	(a) _____
(b) _____	(b) _____	(b) _____
(c) _____	(c) _____	(c) _____

20. (a) What amount of money will you have on arrival in Namibia for your own use? NS
- (b) Will you be in possession of an onward/return ticket? Yes No

(N.B. Separate applications have to be completed in respect of your spouse or children over the age of 16 years and children travelling with their own passports.)

File No: _____

Date of Issue: _____

Date of Expiry: _____

Remarks: _____

Signature: _____

Date: _____



NOTE: COMPLETE ONLY PART A OR B

(A) HOLIDAY / BUSINESS / WORK / TRANSIT VISA

1. Intended date and port of arrival in Namibia: _____
2. (a) What is the purpose of your visit? _____
 (b) If it is for business, explain in detail the nature of business: _____

 (c) Duration of intended visit (number of days, weeks or months): _____
3. Places to be visited in Namibia (full address, including telephone number must be provided): _____

4. If the purpose of your visit is for medical treatment, please provide the following information:
 (a) Name of doctor, hospital or clinic you will visit: _____
 (b) Who will pay your medical expenses and hospital fees: _____
 (c) If you are liable for the expenses and fees above, state amount of funds available: _____
5. Proposed residential address in Namibia: _____ Telephone number: _____
6. Name and addresses of relatives in Namibia:

NAME	ADDRESS AND TELEPHONE NUMBER	RELATIONSHIP
(a) _____	_____	_____
(b) _____	_____	_____
7. Date of last visit, if any to Namibia: _____
8. Do you contribute professionally or otherwise to publications, radio, television or films? If so, please give details: _____

9. (a) Destination after leaving Namibia: _____
 (b) Mode of travel to destination: _____
 (c) Intended date and port of departure: _____
 (d) Is your entry to that destination assured, e.g. do you hold visa or permit for permanent or temporary residence? (Proof to be submitted) _____
10. Reasons for travelling through Namibia: _____

(B) RETURN VISA

IMPORTANT

An applicant has to:

- (i) produce his or her passport or travel document; and
- (ii) submit proof of his or her right of residence in Namibia if not endorsed in his or her passport.

1. (a) Kind of Permit and number: _____
 (b) Date of departure: _____
 (c) Expected date of return: _____
2. Particulars of residence in Namibia:

DATE OF FIRST ENTRY	PORT OF ENTRY	PERIODS OF RESIDENCE IN NAMIBIA	
		From	To
_____	_____	_____	_____
_____	_____	_____	_____
3. Countries to which you will be travelling:
 (a) _____ (b) _____ (c) _____ (d) _____
4. Purpose of journey (explain fully): _____

I solemnly declare that the above particulars given by me are true in substance and in fact and that I fully understand the meaning thereof.

Date: _____ Signature: _____

(N.B. Only the signature of the applicant will be accepted)





REPUBLIC OF NAMIBIA
MINISTRY OF HOME AFFAIRS
DEPARTMENT OF CIVIC AFFAIRS
APPLICATION FOR TEMPORARY WORK OR STUDY PERMIT

- DIRECTIVES:
1. This form must be completed in BLOCK Letters.
 2. All items must be completed in detail. A mere dash is not acceptable.
 3. Failure to complete in detail will cause unnecessary delay.
 4. The completed form must be forwarded to the Under-Secretary, Department of Civic Affairs, Private bag 13200, Windhoek, Namibia.

PARTICULARS OF THE APPLICANT

1. Surname: _____
2. Maiden Name (if applicable): _____
3. First Names (in full): _____
4. Particulars of birth:
 - (a) Date of birth: _____
 - (b) Place of birth: _____
(District) (Country)
5. Sex: MALE FEMALE
6. Marital status (Indicate by means of an "X" whatever is applicable and attach copy of marriage certificate)
Single Married Window/Windower Separated Divorced
*If separated, state whether divorce proceedings have been instituted and when final divorce is expected:

(Copy of document to be attached)
7. Identity number: (if available) _____
8. Passport or other travel document:
 - (a) Number: _____ (b) Date of expiry _____
 - (c) Issuing Authority (attach document) _____
 - (d) Nationality: _____
 - (e) Immigration Permit Number?: _____ (f) Date of issue: _____
9. Particulars of residence in Namibia (if any): (If not, complete paragraph 13)
 - (a) date of entry: _____
 - (b) Postal address in Namibia: _____
 - (c) Residential Address: _____

Telephone Number: _____
 - (d) If you are already working Namibia or on a visit, state number and date of your temporary residence permit:

 - (e) If you have no permit explain circumstances under which you find yourself in Namibia:

10.
 - (a) If married, state full name of spouse (including maiden name, where applicable): _____
 - (b) Place and date of birth of spouse: _____
 - (c) Name and address of employer of spouse (if employed): _____



11. Particulars of children:

Full name and registered surname of each child	Date of birth	Place (district) of birth	Sex
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

12. Present permanent residential address of the spouse and children outside Namibia (if not accompanied by applicant):

13. Present address outside Namibia:
 (a) Residential: _____
 (b) Postal: _____ Telephone number: _____

14. (a) Will your dependants accompany you: YES NO
 (b) If not, state reason: _____

15. Occupation of applicant: _____

16. Contemplated period of residence in Namibia: _____

17. If purpose of entry is to accept employment state:
 (a) Nature of employment: _____
 (b) Name and address of firm/person offering employment or sponsoring applicant. (If you have an offer of employment in Namibia, attach copy):

18. Details of training and experience: _____

(a) School education	From	To
Primary School: _____	_____	_____
Secondary school: _____	_____	_____
Highest Examination Passed: _____	_____	_____
Major subjects: _____	_____	_____

(b) Higher education or special training (Copies of relevant documents to be attached)
 Name of College, University or institution attended: _____

 Prescribe duration of course: _____
 Period attended: From: _____ To: _____
 Major subjects: _____

 Degree, Diploma or Certificate obtained: _____

(c) Trade qualifications: _____
 Duration of apprenticeship training: From: _____ To: _____
 Trade in which qualified: _____



(d) Record of employment: (The details furnished must be in date order including periods of employment for the last 5 years)

(Submit documentary proof)

Name of Firm/Employer	Address where located	From	To	Nature of work

(e) Describe briefly your last duties: _____

(f) What is the trade or business of your last employer? _____

(g) What was your last monthly salary or income per month? _____

(h) What amount of money will you transfer to Namibia? _____

(j) Do you receive a pension or do you have a private income? If so, please give details:

(k) Language proficiency:

(i) What is your mother tongue? _____

(ii) What is your proficiency in other languages (Answer YES or NO)

	Speak	Read	Write
(aa) English _____	_____	_____	_____
(bb) _____	_____	_____	_____
(cc) _____	_____	_____	_____
(dd) _____	_____	_____	_____

19. If purpose of entry is to study, state:

(a) Reason for study in Namibia: _____

(b) Nature of course: _____

(c) Intended period of study: _____

(d) Name of educational institution (attach copy of registration certificate)

- 20. Have you any time applied for a permit to reside in Namibia? YES NO
- 21. Have you ever been restricted, or refused entry into Namibia? YES NO
- 22. Have you ever been deported from or ordered to leave Namibia or any other country? YES NO
- 23. Have you ever been convicted of any crime in any country? YES NO
- 24. Are you suffering from any infectious or contagious diseases? YES NO



25. Particulars if the reply to one or more of the questions 20 to 24 is in the affirmative: _____

26. If your spouse was born outside Namibia and resides in Namibia, state whether permanent residence has been granted to him/her or his/her parents and, if so give the number of residence permit:

27. If you reside outside Namibia at the time of this application, a medical certificate from a doctor in that country to the effect that you are free from infectious disease and physically fit for the type of work which you will perform in Namibia, must be attached to this application.

28. I clearly understand that if the application is approved, the work permit will not entitle me to reside permanently in Namibia and on expiration of the validity or the cancellation of the permit or the termination of my service or whenever the Ministry of Home Affairs so decides, I will leave the country forthwith. My employer or myself will be solely responsible for my accommodation. I realise that my spouse and children may not enter Namibia unless they acquire residence rights in Namibia

29. I solemnly declare that I understand the aforesaid conditions and that the information furnished in this form is true and correct.

SIGNED at _____ in the presence of the undersigned two

witnesses on this _____ day of _____ 20_____

SIGNATURE OF APPLICANT

AS WITNESSES:

1. _____

2. _____



3-1/0003



**REPUBLIC OF NAMIBIA
MINISTRY OF HOME AFFAIRS
DEPARTMENT OF CIVIC AFFAIRS
MEDICAL CERTIFICATE**

CONDITIONS OF A RECURRENT NATURE
Although the person(s) may be generally in a good state of health at the time of the examination, it would be appreciated if the medical officer/practitioner could furnish details of any disease, condition or defect the person(s) has/have suffered and which might recur.

I hereby certify that I have examine the following person(s)

- | | |
|---------|--------|
| 1 | 5..... |
| 2 | 6..... |
| 3 | 7..... |
| 4 | 8..... |

and find him/her

- (a) not mentally disordered* or physically defective in any way;
- (b) not suffering from leprosy, venereal disease, trachoma, tuberculosis or other infection or contagious diseases;
- (c) generally in a good state of health;

except for the following defects observed:

Name of person(s) (Please type or print)

.....
.....
.....
.....

Signature of medical officer/practitioner

.....

Date:.....

Int. Code	* "Mental disorders" includes the following:
290-299	All psychoses
300	Neurosis
301	Personality disorders
303-304	Addictions
308	Behaviour disturbances of childhood
310-315	All forms of mental retardation
320-349	Epilepsy and all other forms of degeneration of the central nervous system.

HB Printers cc



31/0004



REPUBLIC OF NAMIBIA

MINISTRY OF HOME AFFAIRS
DEPARTMENT OF CIVIC AFFAIRS
RADIOLOGICAL REPORT

Note:

- (1) A radiological report of the chest is required in respect of every prospective immigrant 12 years of age and over.
- (2) The radiologist must insert the names of the prospective immigrants examined by him in the space provided for that purpose on the form. Unused spaces must be crossed out.
- (3) A separate report is required in respect of every applicant suffering or suspected to be suffering from tuberculosis.

I hereby certify that I have radiologically examined the chest(s) of the following person(s) and that I could find no signs of active pulmonary tuberculosis.

Name: (1)

(2)

(3)

(4)

(5)

(6)

Official stamp and address of Radiologist/Hospital:

.....
Radiologist

Date:

Quick Stamp & Printing



3-1/0005



REPUBLIC OF NAMIBIA
MINISTRY OF HOME AFFAIRS
DEPARTMENT OF CIVIC AFFAIRS

DEED OF SURETY

WHEREAS (1)

is an intended visitor/employee to Namibia and (1).....

may be repatriated or deported from Namibia by the Government of the Republic of Namibia which may involve certain expenses and costs.

NOW THEREFORE, I

(2)

do hereby bind myself as surety and co-principal debtor to the said

GOVERNMENT OF THE REPUBLIC OF NAMIBIA
(hereinafter called 'the Government')

(a) of all expenses and costs to be incurred for the repatriation or deportation:

(b) the care, treatment and maintenance of the said person by the Government and/or a local authority and/or any other public body of

(1)

and the amount thereof (not exceeding N\$.....) shall be in the sole discretion of the Ministry of Home Affairs on behalf of the Government, and I hereby renounce all benefits arising out of the legal exceptions ordnis seu excussionis et divisionis with the full force and effect with which I acknowledge myself to be acquired.

I choose my domicilium citande et executandi for all purposes of and in connection with this deed as follows:

.....

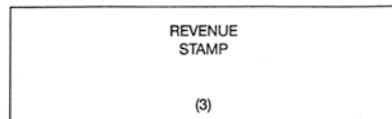
SIGNED AT this day of 20 in the presence of the undersigned witnesses.

.....
(Signature)

AS WITNESSES:

1.

2.



* (1) Full name of visitor/employee, in block letters
(2) Full name of employer, guardian, relative or bank giving surety, in block letters.
(3) Under item 20 of the first Schedule of Act 77 of 1968 5c for every N\$100 or part thereof.





REPUBLIC OF NAMIBIA

Ministry of Home Affairs and Immigration

Immigration Control Act, 1993
(Sections 26 (3)(g) / Regulation 9)

APPLICATION FOR A PERMANENT RESIDENCE PERMIT BY THE SPOUSE/DEPENDENT CHILD/PARENT OF A PERSON PERMANENTLY RESIDENT IN NAMIBIA.

DIRECTIVES

1. This form must be completed in BLOCK Letters.
2. All items must be completed in detail. A mere dash is not acceptable.
3. Failure to complete in detail will cause unnecessary delay.

To: The Immigration Selection Board
Windhoek, Namibia

PARTICULARS OF THE APPLICANT

1. Surname: _____
2. Maiden name (if applicable): _____
3. Previous surname (if applicable): _____
4. First names (in full): _____
5. Particulars of birth:
 - (a) Date of birth: _____
 - (b) Country and place of birth: _____
6. Country of present residence: _____
7. Citizenship: _____
8. Sex: Male Female
9. Marital status: Single Married Widow/Widower Separated Divorced
 - (a) If married, attach a copy of marriage certificate.
 - (b) If widow or widower, attach copy of death certificate of late spouse, or certificate by Master.
 - (c) If separated, attach proof of divorce proceedings instituted, if any, and state when final order of divorce is expected.
 - (d) If divorced, attach copy of final order of divorce.
10. Identity number: _____
11. Passport or other travel document:
 - (a) Number: _____
 - (b) Issuing authority: _____
 - (c) Date of issue: _____ (d) Date of expiry: _____

(Attach copy of passport or travel document)
12. Present residential address: _____



13. Present postal address: _____

14. Telephone number: (_____) _____

15. Present monthly income NS: _____

16. If the applicant is married, the following particulars relating to his or her spouse have to be furnished:

(a) Surname: _____

(b) Maiden name (if applicable): _____

(c) Previous surname (if applicable): _____

(d) First names in full: _____

(e) Date of birth: _____

(f) Country and place of birth: _____

(Attach copy of birth certificate)

(g) Country of present residence: _____

(h) Citizenship: _____

(i) Identity number: _____

17. Will the spouse of the applicant accompany the applicant. Yes No

18. If the reply to the question in paragraph 17 is "No", attach reasons.

19. Particulars of dependent children accompanying the applicant:

Surname and first names	Date of Birth	Place of birth	Citizenship

20. Particulars of previous visits to or period of residence in Namibia:

(a) from: _____ to: _____

(b) from: _____ to: _____

(c) from: _____ to: _____

21. Has the applicant or his or her spouse or any of his or her dependent children accompanying him or her:

(a) Ever been convicted of any offence, whether inside or outside Namibia (excluding the contravention of any by-law or regulation where fine of N\$200 or less, or the equivalent thereof, was imposed)? Yes No

(b) ever been deported from or refused entry into any country? Yes No

(c) ever suffered, or is at present suffering from:

- (i) tuberculosis or any other contagious lung disease;
- (ii) trachoma or any other chronic eye infection;
- (iii) frambesia, yaws, scabies or any other contagious bacterial or other skin disease;
- (iv) syphilis or any other venereal disease;
- (v) leprosy
- (vi) Acquired Immune Deficiency Syndrome (AIDS); or
- (vii) any mental illness or affliction?

Yes No

(d) at any time applied for an employment permit or a permanent residence permit, or any other permit under any law to take up employment or to reside in Namibia?

Yes No

If the applicant has replied "Yes" to any of the questions in paragraph 21, full particulars have to be attached to this application.



APPLICATION FOR A PERMANENT RESIDENCE PERMIT BY THE SPOUSE/DEPENDENT CHILD/PARENT OF A PERSON PERMANENTLY RESIDING IN NAMIBIA - PAGE 3 OF 4

22. Reasons why the applicant applies for permanent residence: _____

23. Particulars of person who has undertaken to maintain the applicant:

(a) Surname: _____

(b) First names (in full): _____

(c) Residential address: _____

(d) Postal address: _____

(e) Telephone number: (_____) _____

(f) Namibian citizen: _____

(g) Holder of permanent residence: _____

(h) Relationship to applicant: Father Mother Spouse Son Daughter

24. Has the applicant the intention to apply for Namibian citizenship? Yes No

25. If the applicant has replied "No" to question 24, attach reasons.

26. The applicant shall, in respect of himself or herself, attach to this application, in addition to the other documents specified in the application, the following documents:

- (a) A certificate issued by the police of the country where the applicant is residing, and the police of every country where the applicant has resided during the past ten years, reflecting all convictions relating to criminal offences, if any, of the applicant; and
- (b) A certificate issued by a medical practitioner certifying that the applicant does not suffer from any disease listed in subparagraph (c) of paragraph 21; and
- (c) Two passport photographs of the applicant (3,80cm by 3,80cm; black and white; face and shoulders only; both ears visible).

27. The applicant hereby declares that:

- (a) He or she hereby applies for the granting to him or her of a permanent residence permit under section 26 (3)(g) of the immigration control act, 1993 (act 7 of 1993);
- (b) The information furnished in this application and all annexures thereto is correct and is the truth;
- (c) The two photographs submitted with the application are true likenesses of the applicant, whose name appears on the reverse thereof;
- (d) He or she understands that if this application by the applicant for permanent residence in Namibia is granted to the applicant, that such permanent residence applies to the applicant only and not in respect of his or her spouse, children or any other person;
- (e) It is his or her firm intention to reside in Namibia permanently;
- (f) The person named in paragraph 23 shall be responsible for the maintenance of the applicant and that the applicant is aware of the fact that the government of Namibia does not accept any responsibility in respect of such maintenance.

SIGNED at _____ in the presence of the undersigned two witnesses on this _____ day of _____ 20 _____

SIGNATURE OF APPLICANT

AS WITNESSES:

1. _____

2. _____



APPLICATION FOR A PERMANENT RESIDENCE PERMIT BY THE SPOUSE/DEPENDENT CHILD/PARENT OF A PERSON PERMANENTLY RESIDING IN NAMIBIA - PAGE 4 OF 4

UNDERTAKING BY PERSON RESPONSIBLE FOR THE MAINTENANCE OF THE APPLICANT.

Particulars of person giving undertaking to maintain the applicant:

28. (a) Surname: _____
- (b) Maiden name (if applicable): _____
- (c) Previous surname (if applicable): _____
- (d) First names (in full): _____
- (e) Identity number: _____
- (f) Namibian citizenship: Yes No
- (g) Holder of permanent residence permit for Namibia? Yes No
(Attach proof of citizenship/copy of permanent residence permit, whichever may be applicable)
- (h) Present residential address: _____
- (i) Present postal address: _____
- (j) Telephone number: (_____) _____
- (k) Sex: Male Female
- (l) Marital status: Single Married Widow/Widower Separated Divorced
- (m) Number of dependant children and respective ages: _____
- (n) Occupation or profession: _____
- (o) Address of employer: _____
- (p) Present monthly income: NS _____
- (q) Other benefits: _____

UNDERTAKING

29. I hereby declare that-

- (a) my surname and full first names are: _____
- (b) the particulars pertaining to myself as set out above is correct;
- (c) the applicant, namely (surname and full name): _____
is my father/mother/spouse/son/daughter;
- (d) I am financially able and in a position to maintain the applicant during his or her period of residence in Namibia;
- (e) the applicant will be residing at my above residential address/will be residing at the following address: _____
- (f) I hereby undertake to provide for the entire maintenance of the applicant for the period of his or her residence in Namibia or until he or she becomes financially independent, whichever may be applicable; and
- (g) I am aware of the fact that the Government of Namibia does not accept any responsibility in respect of maintenance of the applicant in any way whatsoever.

SIGNED at _____ in the presence of the undersigned two
witnesses on this _____ day of _____ 20 _____

SIGNATURE OF PERSON GIVING UNDERTAKING _____

AS WITNESSES:

1. _____
2. _____





MINISTRY OF HOME AFFAIRS
DEPARTMENT OF CIVIC AFFAIRS

APPLICATION FOR A PERMANENT RESIDENCE PERMIT

Please read and comply with the instructions on page 4 and 5

- Note - (a) Read all items carefully and complete them in detail. A mere dash (-) is not acceptable.
(b) The completed form MUST be accompanied by the documents listed on page 4.
(c) In the case of married couples both the husband and the wife must sign and date this form.

FOR OFFICIAL USE ONLY	
Interviewed by .....	.....
on .....	.....
APPROVED: Signature .....	.....
Date .....	.....
Previous correspondence .....	.....

1. DETAILS OF APPLICANT (block letters):

Sex	Marital status (never married/married/ widowed/divorced)	Date of birth	Country and place (town/city) of birth	Highest educational and vocational qualifications (or number of years of schooling completed successfully)	Present nationality	Religion	Denomination of your church	For official use Permit numbers

- PRESENT RESIDENTIAL ADDRESS: No: Street: Suburb and town/city:
2. (a) Details of: (i) Wife; (ii) Husband if the wife is the applicant; (iii) unmarried children under the age of 21 of both husband and wife including those born out of previous marriages or out of wedlock; (iv) children, if any, of unmarried applicants. Full details are required whether the persons concerned intend to proceed to Namibia or not or are already in Namibia. If the applicant is a child details of parents, brothers and sisters under 21 years must be furnished.

Surname	First Name (s)	Relationship to applicant, e.g. wife, husband, son, daughter	Date of birth	Country and place (town/city) of birth	Highest educational and vocational qualifications (or number of years of schooling completed successfully)	Occupation	Present nationality	Religion	Denomina- tion of your church

- (b) Wife's maiden name and (c) any other former surnames
- (d) Names of the persons mentioned under paragraph 2(a) who do not wish to apply for permanent residence and the reasons therefor:

3. If a wife and children wish to join a husband who is already in Namibia or if a husband who is in Namibia wishes his wife and children to join him the address of husband or wife must be furnished below:

Present address

4. DETAILS REGARDING APPLICANT AND (IF APPLICABLE) WIFE AND CHILDREN
- The following questions relate to you (the applicant) as well as to any person mentioned under paragraph 2 (a), and must be answered "YES" or "NO"
- (a) Have you or any of the persons concerned ever been-
- (i) convicted of a criminal offence even if such conviction is no longer on record against you or the person concerned?
- (ii) declared insolvent?
- (iii) the subject of civil action?
- (b) will you or any of the persons concerned leave any debts behind on your departure or, if you are already in Namibia, leave any debts behind abroad?
- (c) Is there a civil or criminal enquiry pending against you or any of the persons concerned?
- (d) Have you or any of the person concerned previously applied to immigrate to or to settle permanently in Namibia
- (e) Have you or any of the persons concerned ever been refused permanent residence in or entry to or been repatriated or deported from Namibia or any other country?
- (f) Have you or any of the persons concerned ever previously been to Namibia for longer than three months?
- (g) Do you or any of the persons concerned suffer, or have any of you ever suffered from or been treated for any physical or mental disability?

For:

N.B. - If the answer to any of the questions 4(a) to (g) above is "YES" give FULL details below. In connection with question (a) (ii) state whether or not you or the persons concerned have been rehabilitated. In respect of question (f) actual period and addresses of residence must be furnished

.....

.....

.....

5. Have you or any of the persons concerned ever emigrated to another country? If so, please state which person(s), the countries of previous immigration, and the year in each case

.....

.....

.....



6. (a) What is your present occupation?
(b) Wat occupation do you intend following in Namibia?
7. Name and address of present employer
8. Address at which you can be contacted in Namibia:

Note: - Any incorrect information or false documents furnished in support of this application may result in the applicant and his/her dependants being refused permission to enter into or to remain in Namibia

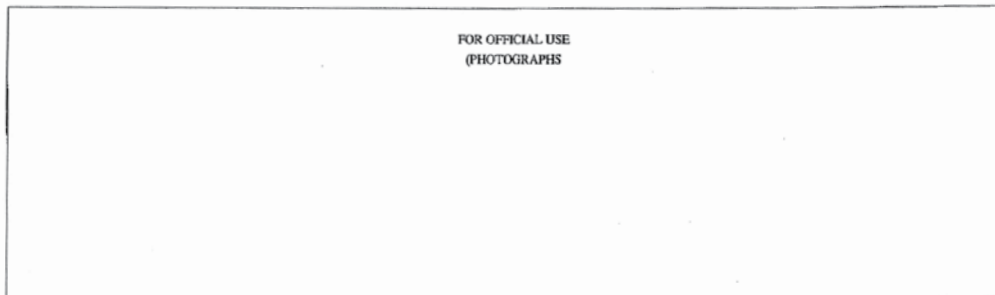
9. We, the undersigned, declare that the photograph (s) submitted in support of this application are a true likeness of the person (s) whose address appear on the reverse side thereof and that the details reflected in this application and supporting documents are true and correct, that it is my/our firm intention to reside permanently in Namibia and that neither I/we nor any of the persons mentioned under paragraph 2(a) have ever received any financial assistance from the Namibian Government, or any agency acting on its behalf, for the purpose of proceeding to and settling in Namibia.

Signature of applicant

Date

Signature of legal spouse

Date





REPUBLIC OF NAMIBIA

REF: _____

MINISTRY OF HOME AFFAIRS
DEPARTMENT OF CIVIC AFFAIRS

**QUESTIONNAIRE – TRAINING AND EXPERIENCE
(PERMANENT RESIDENCE)**

Persons who intend to apply for a residence permit in the Republic of Namibia are requested to fill in this questionnaire and return it to the Under Secretary, Department of Civic Affairs, Private Bag 13200, WINDHOEK

Name and First Name(s) Mr Mrs Miss _____

Present Address: _____
(All First Names as reflected on birth certificate)

Nationality at present: _____ At birth: _____ Religion: _____

Date of birth: _____ Birthplace: _____ Country: _____ Age: _____

Marital Status Never married married widowed divorced estranged

Do you or any of your dependents suffer or have any of you ever suffered from any physical or mental disability? Yes No

If yes, please give full details _____

Will your wife and child(ren) accompany you to Namibia? Yes No

If "no", please state reasons therefore _____

Number and age of all your children _____

Details regarding children over the age of 15 years but not older than 21 years

Name: _____ Date and place of birth: _____ School and professional qualifications: _____

I have you ever been to or resided in Namibia? _____

If so, please state type of visa and exact dates (from/to) of stay: _____

IMPORTANT:

Questions (A) and (D) to (L) must be completed by all applicants in detail:

(A) SCHOOL EDUCATION

Number of years in schooling: _____

Primary School: _____ Years Secondary School: _____ Years

High School: _____ Years Professional School: _____ Years

Year in which passed: _____

Highest examination passed: _____



3.

(L) LANGUAGE PROFICIENCY

(i) What is your mother language? _____

(ii) What is your proficiency in other languages? (Answer "A" = very good; "B" = good; "C" = fair or "D" = nil under the different headings)

	Speak	Read	Write
(a) English	_____	_____	_____
(c) _____	_____	_____	_____
(c) _____	_____	_____	_____

(M) Details of relatives/friends resident in Namibia

NAME	ADDRESS	RELATIONSHIP
_____	_____	_____
_____	_____	_____

(N) All addresses where you resided from the age of 18 years:

No. and Street	City	Country	from	to
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Name of your father: _____
 Surname First Name(s) Date of birth Place of birth

Maiden Name of your Mother: _____
 Maiden name First Name(s) Date of birth Place of birth

 Signature of Applicant Date

(O) IF MARRIED OR INTEND MARRYING BEFORE LEAVING, THE FOLLOWING DETAILS ARE REQUIRED IN RESPECT OF YOUR SPOUSE:

Surname, christian name(s) and maiden name: _____
 Place of birth: _____ Country: _____ Date of birth: _____
 Nationality: _____ At birth: _____ Religion: _____



(P) All addresses where resided from the age of 18 years:

No. and Street	City	Country	from	to
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Name of father: _____
Surname First Name(s) Date of birth Place of birth

Maiden name of Mother: _____
Maiden name First Name(s) Date of birth Place of birth

(Q) RECORD OF EMPLOYMENT OF SPOUSE

The details furnished below must be in date order and must cover the last 20 years

Nature of work	City, in which located	from	to	Nature of work
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Signature of legal wife Date

(FOR OFFICIAL USE)

REMARKS

DATE: _____





REPUBLIC OF NAMIBIA

MINISTRY OF HOME AFFAIRS
DEPARTMENT OF CIVIC AFFAIRS

Department of Civic Affairs
Private Bag 13200
WINDHOEK
9000

Reference No.

UNDERTAKING OF SPONSORSHIP IMPORTANT

1. This form must be completed in duplicate by the sponsor of the prospective immigrant(s) and returned to the Department of Civic Affairs, Ministry of Home Affairs.
2. In the case of married persons the husband must act as sponsor. The wife's particulars must be inserted in the space provided on page 3.
3. Only persons who have permanent residence in Namibia, or who are Namibian citizens, may act as sponsors.
4. Each page of this form and any alterations to the information furnished by the sponsor must be signed in full by the sponsor and the witness concerned.
5. If the sponsor or his wife was born in Namibia, the names, dates and places of birth of his/her parents must be furnished on a separate sheet.

I. PARTICULARS OF PERSON(S) FOR WHOM ADMISSION TO NAMIBIA IS SOUGHT

- (a) Surname(s):
 [i] (Husband)
 [ii] Maiden name (Wife)
- (b) First name(s):
 [i]
 [ii]
- (c) Date of birth: [i] [ii]
 Place of birth:
 [i]
 [ii]
- (d) Marital status
 never married, married, widowed, divorced separated
- (e) Present full residential address
- (f) Relationship of person(s) to sponsor (e.g. parents etc.)
- (g) Is it the intention of the person(s) concerned to reside in Namibia permanently? Yes No



- (h) Occupation (if any) to be followed in Namibia
- (i) Did the person(s) concerned previously reside in/visit Namibia?
- (j) If the answer to (i) above is in the affirmative, state periods:
 From to
 From to
- (k) Particulars of the sponsored person's/persons' financial means i.e. fixed assets, transferable pension(s), etc.
 (i)
 (ii)
- (l) Particulars of all children irrespective of whether or not they are already in Namibia still abroad.

Full names of sponsored person's(')children/	Date of birth	Relationship to sponsor	Country where resident at present

- (m) Which of the persons mentioned in paragraph (1) contemplate permanent residence in Namibia?
- Have you ever been convicted of a criminal offence? (i) (ii)
- Also give particulars:
 (i)
 (ii)

II. UNDERTAKING BY SPONSOR

I (full names)
 of (address)

the undersigned, hereby declare that the information furnished under Sections I and II of this form is correct and I undertake to provide the person(s) mentioned under Section I with the necessary board and lodging and to maintain him/her/them continuously while resident in Namibia so that he/she/they will not become a burden on the State.

I further undertake that should I fail to provide for and maintain the person(s) as aforesaid, to pay to the Government of the Republic of Namibia any costs or expenses incurred or to be incurred by it in providing such board and lodging and maintenance.

I further undertake that should it be deemed necessary by the Government to deport or repatriate the said person(s) from the Republic of Namibia, I shall pay to the Government of the Republic of Namibia any costs or expenses incurred or to be incurred by it for or arising out of such deportation or repatriation. I have informed the sponsored persons that if his/her/their application for permanent residence is approved it will in no way influence consideration of applications for permanent residence of any major children who also contemplate permanent residence in Namibia.

Dated at on the
 day of 19.....

SIGNATURE OF SPONSOR

Full residential address

Telephone Number:
 Business Residence

WITNESSES:
 1. Signature 2. Signature



III. PARTICULARS OF (i) THE SPONSOR, (ii) SPONSOR'S WIFE

- (a) Surname(s):
 - (i) [Sponsor]
 - (ii) Maiden name [Wife]
- (b) First name(s):
 - (i)
 - (ii)
- (c) Particulars of birth:
 - Date (i) (ii)
 - Place (i) (ii)
 - Country (i) (ii)
- (d) Nationality at birth (i) (ii)
- (e) Present nationality (i) (ii)
- (f) Immigration permit no (i) (ii)
- (g) Identity No (i) (ii)
- (h) Naturalisation certificate No (i) (ii)
- (i) Date of arrival in Namibia (i) (ii)
- (j) Port of arrival in Namibia (i) (ii)
- (k) Marital status (never married, married, widowed, divorced or separated) (i) (ii)
- (l) Particulars of dependants already living in Namibia

Name	Age	Relationship

- (m) Profession, business or occupation:
 - (i)
 - (ii)
- (n) Income per year (i) R (ii) R
- (o) Employer's name and address:
 - (i)
 - (ii)
- (p) Name and address of own business (if any):
 - (i)
 - (ii)



31/0004



REPUBLIC OF NAMIBIA
MINISTRY OF HOME AFFAIRS
DEPARTMENT OF CIVIC AFFAIRS
RADIOLOGICAL REPORT

Note:

- (1) A radiological report of the chest is required in respect of every prospective immigrant 12 years of age and over.
- (2) The radiologist must insert the names of the prospective immigrants examined by him in the space provided for that purpose on the form. Unused spaces must be crossed out.
- (3) A separate report is required in respect of every applicant suffering or suspected to be suffering from tuberculosis.

I hereby certify that I have radiologically examined the chest(s) of the following person(s) and that I could find no signs of active pulmonary tuberculosis.

Name: (1)

(2).....

(3).....

(4).....

(5).....

(6).....

Official stamp and address of Radiologist/Hospital:

.....
Radiologist

Date:

HR Printing Services cc 0196





3-1/000

**REPUBLIC OF NAMIBIA
MINISTRY OF HOME AFFAIRS
DEPARTMENT OF CIVIC AFFAIRS
MEDICAL CERTIFICATE**

CONDITIONS OF A RECURRENT NATURE
Although the person(s) may be generally in a good state of health at the time of the examination, it would be appreciated if the medical officer/practitioner could furnish details of any disease, condition or defect the person(s) has/have suffered and which might recur.

I hereby certify that I have examined the following person(s)

1.....	5.....
2.....	6.....
3.....	7.....
4.....	8.....

and find him/her:

- (a) not mentally disordered* or physically defective in any way;
- (b) not suffering from leprosy, venereal disease, trachoma, tuberculosis or other infectious or contagious diseases;
- (c) generally in a good state of health;

except for the following defects observed:

Name of person(s)	(Please type or print)	
.....
.....
.....

Signature of medical officer/practitioner	Official stamp and address of medical officer/practitioner/hospital
.....

Date:

Int. Code	**Mental disorders** includes the following:
290-299	All psychoses
300	Neurosis
301	Personality disorders
303-304	Addictions
308	Behaviour disturbances of childhood
310-315	All forms of mental retardation
320-349	Epilepsy and all other forms of degeneration of the central nervous system.





**REPUBLIC OF NAMIBIA
APPLICATION FOR NAMIBIAN CITIZENSHIP**

- DIRECTIVES:**
1. This form must be completed in BLOCK letters
 2. All items must be completed in detail. A mere dash (-) is not acceptable
 3. Failure to complete in detail will cause unnecessary delay

OFFICIAL USE	
Reg./Nat. Certificate No.....	.....
Date: .....	.....
Initials: .....	.....
Date: .....	.....

A. PARTICULARS OF APPLICANT (indicate by means of a cross, whatever is applicable):

CITIZENSHIP BY: MARRIAGE DESCENT NATURALISATION REGISTRATION

SURNAME	CHRISTIAN NAMES
---------	-----------------

Maiden name (if the applicant is or was a married woman)	Previous Surname (if the surname of applicant has been changed)
--	---

Date of Birth	Place of birth	Sex:	Marital status:			
	Town		Male <input type="checkbox"/>	Single <input type="checkbox"/>	Widower <input type="checkbox"/>	Divorced <input type="checkbox"/>
	Country		Female <input type="checkbox"/>	Married <input type="checkbox"/>	Widow <input type="checkbox"/>	

(Attach copy of birth certificate)

Occupation	Identity No.
------------	--------------

If born outside Namibia please state:

Present citizenship:

Residential address:

..... Telephone No.

Postal Address:

Date of ordinary residence in Namibia if not born in Namibia:

Particulars of children under the age of 18 years

Full name and registered surname of each child	Date of Birth	Place (district) of birth
.....
.....
.....

Did you acquire citizenship of a country other than Namibia whilst not a minor? YES NO

If so, kindly give the following particulars in respect of the first foreign citizenship you acquired:

(a) Date of acquisition

(b) Place of acquisition:



(c) Was it due to registration by virtue of:

(i) Residence in that country YES NO

(ii) Marriage YES NO If Yes, state name of spouse:
 citizenship or nationality of spouse:
 date and place of marriage

(d) Citizenship acquired by you:

Have you ever been convicted of any crime in any country? YES NO

Are you suffering from tuberculosis, any other infections or contagious disease or any mental or physical deficiency? YES NO

Particulars if the reply to one or more of the questions is in the affirmative:

.....

Was your father or mother at the time of your birth:

(a) enjoying diplomatic immunity in Namibia under any law relating to diplomatic privileges YES NO

(b) career representative of another country? YES NO

(c) members of any police, military or security unit seconded for service within Namibia by the government of another country YES NO

(d) Illegal immigrants YES NO

Particulars if the reply to any one of the questions is in the affirmative:

.....

If your father or mother was born outside the Republic of Namibia state date of entry

B. PARTICULARS OF PARENTS (to be completed by all applicants):

Surname of father		Christian names of Father	
Date of Birth	Place of birth	Naturalisation/Permanent residence permit number and date	
	Town:	(If Father was not born in Namibia)	
	Country:	Identity Number	
Surname of mother		Christian names of mother	
Date of Birth	Place of birth	Naturalisation/Permanent residence permit number and date	
	Town:	(If mother was not born in Namibia)	
	Country:	Identity Number	



C. PARTICULARS OF SPOUSE (to be completed only by applicants who apply for citizenship by virtue of marriage):

Are you married to a Namibian Citizen <input type="checkbox"/> YES <input type="checkbox"/> NO (Attach copy of marriage certificate)	Date and place of marriage	Identity No. of spouse <table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td> </tr> </table>																				
Surname		Christian names																				
Citizen by: Birth <input type="checkbox"/> Descent <input type="checkbox"/> Registration <input type="checkbox"/> Naturalisation <input type="checkbox"/>		Place and Date of Birth Date:..... Town: Country:..... (Copy of birth certificate)																				

D. DECLARATION

I solemnly declare that the above particulars given by me are true in substance and in fact and that I fully understand the meaning thereof

Signature:.....

Date:

Before administering the prescribed oath/solemn declaration, I put the following question to the deponent and noted his/her reply in his/her presence:

- (a) Do you know and understand the contents of the above declaration?
Reply.....
- (b) Have you any objection to makint the prescribed oath?
Reply.....
- (c) Do you regard the prescribed oath as binding on your conscience?
Reply.....

The deponent has acknowledged that he/she knows and understands the contents of the declaration. The declaration was duly sworn to/solemnly affirmed before me and the deponent's signature/thumb print/mark was appended thereon in my presence

Date: Signature:
Commissioner of Oaths

Place.....
Designation (Rank)

.....
Christian names and Surname

Address:

This form is exempted from stamp duty



4. Name of husband or wife.....

5. Date and place of Marriage: (Please attach copy of marriage certificate)
.....
.....
.....

6. Occupation and Work Address
.....
.....
Postal Address:..... Code.....
Telephone No.:..... Code:.....

7. Residential Address:
.....
.....
Telephone No..... Code:.....
Postal Address:..... Code:.....

B. PERSONAL HISTORY

8. Left Namibia prior to 1990 Left Namibia after 1990

Specify the year.....

9. Left Namibia due to one of the reasons:

Parents immigrating Job transfer On my own Other

Please give details:.....
.....
.....
.....
.....
.....
.....
.....

10. What was your parents status in Namibia during the time of your birth?

.....
.....
.....
.....

11. What was your parents status prior to leaving Namibia?

.....
.....
.....
.....

- a) Please provide proof of Permanent Residence Permit
- b) Certified copy of parent's birth certificate
- c) Applicant's birth certificate (Please not a copy)

12. Did you serve in the Army or Police Force in the Republic of Namibia or South Africa before or after 21st March 1990? Please provide Force Number and other details:

.....
.....
.....
.....
.....
.....
.....

13. After moving to South Africa, did you acquire South African citizenship? If so, please provide proof.

.....
.....
.....
.....

14. Did you acquire South Africa citizenship through your parents who were born in the Republic of South Africa or on your own?

.....
.....
.....
.....



C. DETAILS OF MINORS

(Please note that all children above the age of 18yrs should submit their individual applications)

15. Will you be accompanied by children below the age of 18yrs?
(If yes, please attach birth certificates and provide the following details)

YES	NO
-----	----

FIRST NAMES	DATE OF BIRTH	PLACE OF BIRTH
a).....	a).....	a).....
b).....	b).....	b).....
c).....	c).....	c).....
d).....	d).....	d).....
e).....	e).....	e).....

16. For adopted or foster children, please provide legal documents regarding adoption or any other arrangement. Please indicate documentation attached:

.....

.....

17. For divorced parents, a legal document giving custody of the children **must be accompanied by** a Police certified declaration of the other parent. In case of the ex-husband/wife being deceased, a legal document giving sole custody of the children must be provided. Please provide original documents only.

.....

.....

.....

D. MOTIVATION

18. Please write in detail as to what you have been doing in South Africa since you left the Republic of Namibia.

.....

.....

.....

.....

.....

.....



20. Particulars of next of kin in Namibia Please provide physical, postal addresses as well as telephone and fax numbers where applicable.

NAME(S)	ADDRESS
---------	---------

a)
----	-------------------------

b)
----	----------------------------------

21. Particulars of relatives or friends in South Africa. Please provide details as in above:

a)
----	----------------------------------

b)
----	----------------------------------

22. Particulars of job offer in Namibia if any: If not please provide details of how you will earn your living in Namibia.

.....
.....
.....
.....
.....
.....

23. Will you be able to afford accommodation in Namibia? Please provide proof

.....
.....
.....

.....
24. If you will be staying with relatives or friends, please provide contact addresses:

a).....
.....
.....
.....

b).....
.....
.....
.....

25. What is your current financial status? Please provide proof:
.....
.....
.....
.....
.....
.....
.....
.....
.....

D. CRIMINAL RECORD

26. Have you ever been convicted of any crime in South Africa, Namibia or any where else? If so, please provide details including clearance documents from the Department of Justice or any other competent authority.
.....
.....
.....
.....
.....

27. DECLARATION

I solemnly declare that the above particulars given by me are true in substance and in fact and that I fully understand the meaning thereof.

This form is exempt from stamp duty

Date _____

Signature: _____
(only the signature of the applicant is accepted)



**FORM 1 –
(Regulation 2)
APPLICATION FOR PROTECTION ORDER
Section 6(1) of the Combating of Domestic Violence Act, 2003**

DEFINITIONS

COMPLAINANT = the victim of the domestic violence (even if someone else applies for the protection order)

RESPONDENT = the person who committed the domestic violence

If the directions say to mark a question with a **TICK**, you can use a mark that looks like § or X.

DOMESTIC VIOLENCE

Domestic violence includes the following acts. It can also include acts which are not listed.

PHYSICAL ABUSE

- physical assault or any use of physical force against the complainant;
- forcibly confining or detaining the complainant;
- physically depriving the complainant of access to food, water, clothing, shelter or rest.

SEXUAL ABUSE

- forcing the complainant to engage in any sexual contact;
- engaging in any sexual conduct that abuses, humiliates or degrades or otherwise violates the sexual integrity of the complainant;
- exposing the complainant to sexual material which humiliates, degrades or violates the complainant's sexual integrity;
- engaging in such contact or conduct with another person with whom the complainant has emotional ties.

ECONOMIC ABUSE

- the unreasonable deprivation of any economic or financial resources to which the complainant, (or a dependant of the complainant) is entitled under any law, requires out of necessity or has a reasonable expectation of use - including household necessities, and mortgage bond repayments or rent payments in respect of a shared household;
- unreasonably disposing of moveable or immovable property in which the complainant (or a dependant of the complainant) has an interest or a reasonable expectation of use;
- destroying or damaging property in which the complainant (or a dependant of the complainant) has an interest, a reasonable expectation of use;
- hiding or hindering the use of property in which the complainant (or a dependant of the complainant) has an interest or a reasonable expectation of use.

INTIMIDATION, which means intentionally inducing fear in the complainant (or a family member or dependant of the complainant) by -

- committing physical abuse against a family member or dependant of the complainant;
- threatening to physically abuse the complainant, or a family member or dependant of the complainant;
- exhibiting a weapon;
- any other menacing behaviour, including sending, delivering or causing to be delivered an item which implies menacing behaviour.

HARASSMENT, which means repeatedly following, pursuing or accosting the complainant (or a family member or dependant of the complainant), or making persistent unwelcome communications – such as -



-
- watching, or loitering outside or near the building or place where such person resides, works, carries on business studies or happens to be;
 - repeatedly making telephone calls or inducing a third person to make telephone calls to such person, whether or not conversation ensues; or repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects or messages to such person's residence, school or workplace.

TRESPASS, which means entering the residence or property of the complainant, without the express or implied consent of the complainant, where the persons in question do not share the same residence.

EMOTIONAL, VERBAL OR PSYCHOLOGICAL ABUSE, which means a pattern of degrading or humiliating conduct towards a complainant (or a family member or dependant of the complainant) including-

- repeated insults, ridicule or name calling;
- causing emotional pain;
- the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's, or the complainant's dependant or family member's privacy, liberty, integrity or security.

THREATS or ATTEMPTS to do any of these acts.

PSYCHOLOGICAL ABUSE OF A CHILD includes a situation where someone other than a victim of domestic violence -

- repeatedly causes or allows a child to see or hear the physical, sexual, or psychological abuse of a person with whom that child has a domestic relationship;
- repeatedly puts a child at risk of seeing or hearing such abuse ;
- repeatedly allows a child to be put at risk of seeing or hearing such abuse.

In some cases, a SINGLE ACT can amount to domestic violence. A number of acts that form part of a PATTERN of behaviour may amount to domestic violence even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

DOMESTIC RELATIONSHIPS

Domestic relationships include only the following relationships.

MARRIAGE: a male and female who are or were married to each other in a marriage according to any law, custom or religion, or who are or were engaged to be so married.

LIVING TOGETHER AS HUSBAND AND WIFE: a male and female who are living or have lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other.

HAVING A CHILD TOGETHER: a male and female who have, have had or are expecting a child together - excluding situations where the child is conceived as a result of rape or where the parties contributed ova or sperm for an assisted reproduction technique but have no other relationship.

PARENT AND CHILD, whether biological or adoptive.

FAMILY MEMBERS

- people related by blood, marriage or adoption;
- people who are standing in the place of family members because of foster arrangements;
- people who would be family members related by marriage if a man and a woman who are living together as husband and wife had been formally married .

BUT ONLY IF THEY HAVE SOME CONNECTION OF A DOMESTIC NATURE, such as the sharing of a residence or one of them being financially or otherwise dependant on the other.



BOYFRIEND/GIRLFRIEND: a male and female who are or were in an actual or a perceived intimate or romantic relationship.

A “domestic relationship” based on a past relationship (such as marriage or a romantic relationship which is now over) is considered to continue for at least one year after the relationship has come to an end. Where a child is born to any couple, their “domestic relationship” continues throughout the lifetime of that child and for one year after the death of the child. The court can extend these time periods if there are good reasons to do so.



SECTION A. PARTICULARS OF COMPLAINANT (the victim of the domestic violence)

IF THE APPLICATION IS BEING MADE BY SOMEONE OTHER THAN THE VICTIM OF THE DOMESTIC VIOLENCE, THIS SECTION MUST STILL GIVE DETAILS ABOUT THE VICTIM.

1. Surname	
2. Full first names	
3. Sex	..... male female
4. Date of birth	
5. ID number (if available)	
6. Normal home address	
7. Home telephone number	
8. What is the telephone number of the place you (the victim)are staying now?	
9. Occupation	
10. Employer	
11. Work address	
12. Work telephone number	
13. What is the best address and telephone number to use to get in touch with you (the victim)? Give the number of a friend or relative or some other contact if this will be helpful.	



14. What is your relationship (the victim's relationship) to the person who has committed the domestic violence?

I (the victim) has (or am expecting) a child by the respondent.
..... yes
..... no

I (the victim) am the of the person who has committed the violence.
(girlfriend/boyfriend, wife/husband, ex-wife/ex-husband, sister/brother, mother/father, etc)

If the relationship is based on a marriage, engagement or romantic relationship which no longer exists, give the date (or approximate date) on which the relationship came to an end:

If you (the victim) are a family member of the person who has committed the violence (such as aunt/uncle, niece/nephew, grandparent/grandchild, or cousin), explain what other connections exist between you and the abuser (sharing the same residence, financial support, etc):
.....
.....
.....

15. Do you (the victim) currently share a residence with the respondent (the person who committed the domestic violence)? If you (the victim) have temporarily moved somewhere else for safety, this does not change your normal place of residence.

..... **no**

..... **yes**

If yes, state how long the residence has been shared:

If yes, explain who else lives in the residence:

.....

16. Did you (the victim) previously share a residence with the respondent (the person who committed the domestic violence)?

..... **no**

..... **yes**

If yes, provide the approximate dates that you (the victim) shared a residence with the person who committed the domestic violence:
.....
.....

SECTION B. PARTICULARS OF PERSON MAKING THE APPLICATION ON BEHALF OF THE COMPLAINANT (if applicable)

COMPLETE THIS SECTION ONLY IF THE VICTIM OF DOMESTIC VIOLENCE IS NOT THE SAME PERSON WHO IS MAKING THE APPLICATION. FILL IN THE DETAILS OF THE PERSON MAKING THE APPLICATION IN THIS SECTION.

IF THE VICTIM OF THE DOMESTIC VIOLENCE IS THE SAME PERSON WHO IS MAKING THE APPLICATION, THEN SKIP SECTION B AND GO ON TO SECTION C.

1. Surname	
2. Full first names	
3. Date of birth	
4. Sex	..... male female
5. ID number (if available)	
6. Home address	
7. Home telephone number	
8. Occupation	
9. Employer	
10. Work address	
11. Work telephone number	
12. Capacity in which application is made family member (your relationship to complainant): police officer social worker health care provider teacher traditional leader religious leader other (specify:	
13. Why are you bringing the application on behalf of the complainant?	



14. Do you have written consent from the complainant to bring the application?

..... **Written consent is attached.**

..... **Written consent is not necessary because the complaint is:**
(Tick appropriate reason and explain as indicated)

..... **a minor**
The complainant is aged.....

..... **mentally incapacitated**
Explain nature of mental condition:

..... **unconscious**
Explain briefly:

..... **regularly under the influence of alcohol or drugs**
Describe the complainant's condition:

..... **at risk of serious physical harm**
Explain briefly:



SECTION C. PARTICULARS OF RESPONDENT (the person who committed the act of domestic violence)

1. Surname	
2. Full first names	
3. Sex	..... male female
4. Date of birth (if known)	
5. ID number (if known)	
6. Home address	
7. Home telephone number	
8. Occupation	
9. Employer	
10. Work address	
11. Work telephone number	
12. Other contact details for respondent	



<p>6. Did anyone else see or hear this incident of abuse?</p> <p>..... no</p> <p>..... yes</p> <p>name:</p> <p>contact details of this person:</p>
<p>7. Did any children see or hear this incident of abuse?</p> <p>..... no</p> <p>..... yes</p> <p>names:</p> <p>ages:</p> <p>give details:</p>

b) THE HISTORY OF ABUSE (PREVIOUS INCIDENTS)

1. How long has the abuse been happening?:	
2. When was the first incident of abuse? (if you can remember)	..... date month year
3. What kind of abuse has happened in the past?	
4. Has the abuse been happening more often lately?	..... no yes explain:
5. Has the abuse become more severe lately?	..... no yes explain:
6. Does the respondent (the person who commits the abuse) own a weapon?	..... no yes what kind of weapon?.....



7. Has the respondent used or threatened to use a weapon against you (the victim) in the past?

..... **no**

..... **yes**
explain:

8. Have you (the victim) ever been physically injured by past abuse?

..... **no**

..... **yes**
give details:

9. Did you (the victim) see a doctor or a nurse or other health practitioner because of the abuse in the past?

..... **no**

..... **yes**
give details:

date(s):

name of doctor or nurse or health practitioner (if known):

name of hospital or clinic other health facility:

what treatment did you get?

10. Has anyone else seen or heard any past incidents of abuse?

..... **no**

..... **yes**
name:

contact details of this person:

11. Did any children see or hear past incidents of abuse?

..... **no**

..... **yes**
names:

ages:

give details:



12. How has the abuse affected you (the victim)?
(examples: stress, missing work or school or losing a job, health problems, depression, etc)

13. Has the respondent (the person who is committing the abused) ever been convicted of any crime?

- not to the best of my knowledge
- no
- yes
give details (crime and date of conviction if known):

14. Does the respondent (the person who is committing the abuse) use or abuse alcohol or drugs?

- not to the best of my knowledge
- yes
- no
- alcohol
- drugs
-alcohol and drugs
- give details:

15. Has the respondent (the person who is committing the abuse) made threats against you (the victim) or anyone else?

- not to the best of my knowledge
- yes
- no
- give details:



<p>16. List other people who are being affected by the violence:</p>
<p>Name:</p> <p>Age:</p> <p>Relationship to you (the victim):</p> <p>How this person is being affected?</p> <p>Does this person live with you (the victim)? yes no</p>
<p>Name:</p> <p>Age:</p> <p>Relationship to you (the victim):</p> <p>How this person is being affected?</p> <p>Does this person live with you (the victim)? yes no</p>
<p>Name:</p> <p>Age:</p> <p>Relationship to you (the victim):</p> <p>How this person is being affected?</p> <p>Does this person live with you (the victim)? yes no</p>
<p>Name:</p> <p>Age:</p> <p>Relationship to you (the victim):</p> <p>How this person is being affected?</p> <p>Does this person live with you (the victim)? yes no</p>
<p>Name:</p> <p>Age:</p> <p>Relationship to you (the victim):</p> <p>How this person is being affected?</p> <p>Does this person live with you (the victim)? yes no</p>
<p>Name:</p> <p>Age:</p> <p>Relationship to you (the victim):</p> <p>How this person is being affected?</p> <p>Does this person live with you (the victim)? yes no</p>



SECTION E. TERMS OF THE PROTECTION ORDER

THESE ARE THE CONDITIONS THAT YOU ARE ASKING THE COURT TO ORDER AGAINST THE RESPONDENT (THE ABUSER). TICK THE CORRECT BOXES, AND FILL IN ALL INFORMATION THAT IS REQUIRED.

All protection orders direct the respondent not to commit any further acts of domestic violence against you (the victim) or your (the victim's) dependants, either directly or by getting the help of another person to carry out the violence. In the list below please tick the types of domestic violence which the respondent has already committed for special emphasis in the order:

- physical abuse;
- sexual abuse;
- economic abuse (including destruction or damage to property);
- intimidation;
- harassment (including stalking);
- trespass;
- emotional, verbal or psychological abuse;
- threats or attempts to carry out any of these acts;
- exposing a child to acts of domestic violence against another person.

Please indicate what other conditions the court should include in the protection order:

a) WEAPONS

The respondent must hand over to the police

..... **all firearms in his/her possession**

..... **other specific weapon(s)** (describe:.....).

The respondent's firearm licences must be suspended.

b) NO-CONTACT PROVISIONS

..... **The respondent must not come near me (the victim) wherever I may be.**

..... **The respondent must not enter or come near my (the victim's) residence, which is at the following address:**
.....

..... **The respondent must not enter or come near my (the victim's) workplace, which is at the following address:**
.....

..... **The respondent must not enter or come near my (the victim's) educational institution, which is at the following address:**
.....

..... **The respondent must not enter or come near the following place or address. (This can include the residence, workplace or educational institution of a child or dependant, a family member's residence, a temporary shelter or residence, or a place which is often visited.)** Consent from the relevant persons must be attached if the respondent is going to be restricted from someone else's private residence.



place or address:
.....

reason why respondent should be restricted from this place or address:
.....

..... **The respondent must not communicate with me (the victim) in any way, except under the following conditions** (if any):

.....

..... **The respondent must not communicate with the following person(s) in any way, except under the following conditions** (if any). Consent from the person named (or from the parent or guardian in the case of a child) must be attached.

name:
age:
conditions (if any):
consent in respect of this person is attached: yes

name:
age:
conditions (if any):
consent in respect of this person is attached: yes

name:
age:
conditions (if any):
consent in respect of this person is attached: yes

c) EXCLUSIVE OCCUPATION OF A JOINT RESIDENCE
(available only if there has been an act of physical violence)

..... **I (the victim) must have the exclusive right to occupy the joint residence at the following address.**

address:.....

Tick the appropriate answers:

The residence is *owned* by
..... me (the victim)
..... the respondent
..... the respondent and myself jointly.

The residence is *leased* by
..... me (the victim)
..... the respondent
..... the respondent and myself jointly.

The residence is on *communal land* which is allocated to
..... me (the victim)
..... the respondent
..... the respondent and myself jointly.



..... **All of the contents of the joint residence must be left there for my use.**

Give reasons:

..... **The following items must be left at the joint residence for my use.**

List:

Give reasons:

..... **A police officer must remove the respondent from the joint residence.**

..... **A police officer must accompany the respondent to collect personal belongings from the joint residence.**

d) ALTERNATIVE ACCOMMODATION

(available if the respondent is legally liable to support you and you do not wish to stay in the joint residence, or it is more appropriate for the respondent to stay in the joint residence)

..... **The respondent must pay rent for suitable alternative accommodation for me (the victim) and dependants whom the respondent is legally liable to support.**

address of alternative accommodation:

monthly rental:

..... **The respondent must make the following arrangements for suitable alternative accommodation for me (the victim) and dependants whom the respondent is legally liable to support:**

.....
.....
.....

e) PROPERTY

..... **A police officer must accompany me (the victim) to collect personal belongings from the joint residence.**

..... **The following items must be left in my (the victim's) possession:**

List:

.....



Give reasons:

.....

.....

..... The respondent must not take, sell, damage, give away or otherwise deal in any property in which I (the victim) have an interest or a reasonable expectation of use.

List any property which is of special concern:

.....

.....

.....

f) MAINTENANCE

..... The respondent must pay temporary monthly maintenance in respect of the following children or dependants:

name:

age:

monthly amount:

name:

age:

monthly amount:

name:

age:

monthly amount:

name:

age:

monthly amount:

g) CUSTODY AND ACCESS OF CHILDREN

..... Temporary custody of the following children must be granted to me (the victim).

List names:

..... Temporary custody of the following children must be granted to (list other person)

List names:



..... **The respondent is refused all contact with the following children.**
 List names:

..... **The respondent is granted contact with the following children only under the specified conditions:**

name:
 visiting arrangement:
 other conditions:

name:
 visiting arrangement:
 other conditions:

name:
 visiting arrangement:
 other conditions:.....

h) OTHER ORDERS REQUESTED:

..... **MY (THE VICTIM'S) PHYSICAL ADDRESS MUST NOT BE REVEALED TO THE RESPONDENT.**

NAME THE POLICE STATION WHERE YOU (THE VICTIM) WOULD MOST LIKELY MAKE A REPORT IF THE RESPONDENT VIOLATES THE PROTECTION ORDER:

WITNESSES

I would like these people to come to court to give evidence about the information stated in this application:

NAME	BEST CONTACT ADDRESS	WHAT INFORMATION THIS WITNESS CAN GIVE THE COURT



NOTE: You should now look back through this form and make sure that you have included all the relevant information. Then you must sign or make your mark in the space below, in front of a Commissioner of Oaths.

You must also put your initials or your mark in the corner of every page of this statement, in front of a Commissioner of Oaths.

.....
SIGNATURE

.....
DATE

**CERTIFICATION
for use by Commissioner of Oaths**

I hereby certify that before administering the oath / taking the affirmation I asked the Deponent the following questions and noted his/her answers in his/her presence as indicated below:

Do you know and understand the contents of the above declaration?

Do you have any objection to taking the prescribed oath?

Do you consider the above oath to be binding on your conscience?

Dated atthisday of

I hereby certify that the Deponent has acknowledged that he/she knows and understands the contents of this declaration which was sworn to / affirmed before me, and the Deponent's signature / thumb mark/ mark was placed in my presence.

.....
Signature of Commissioner of Oaths

FULL NAMES:

DESIGNATION:
(police officers must state rank)

ADDRESS:

NOTE: THE COMMISSIONER OF OATHS MUST ALSO INITIAL EVERY PAGE OF THE AFFIDAVIT.



FORM 14
(Regulation 14)
RECORD OF DOMESTIC VIOLENCE INCIDENT
Section 27(1) of the Combating of Domestic Violence Act

POLICE STATION	O. B. NUMBER	NAME OF POLICE OFFICER
----------------	--------------	------------------------

SECTION A. PARTICULARS OF COMPLAINANT (the victim of the domestic violence)

1. Surname	
2. Full first names	
3. Sex	..... male female
4. Date of birth	
5. ID number (if available)	
6. Home address	
7. Home telephone number	
8. Occupation	
9. Employer	
10. Work address	
11. Work telephone number	
12. The complainant is the .....of the person who has committed the violence. (girlfriend/boyfriend, wife/husband, ex-wife/ex-husband, sister/brother, mother/father, etc)	
13. Does the complainant share a residence with the respondent (the person who committed the domestic violence)? .....no yes unknown	



SECTION B. PARTICULARS OF RESPONDENT (the person who committed the act of domestic violence)

1. Surname	
2. Full first names	
3. Sex	.....male female
4. Date of birth (if known)	
5. ID number (if known)	
6. Home address	
7. Home telephone number	
8. Occupation	
9. Employer	
10. Work address	
11. Work telephone number	

SECTION C. THE DOMESTIC VIOLENCE INCIDENT

Date of incident:

Date incident reported to police: **Time reported:**

- The domestic violence took the form of (tick all that apply):**
 physical abuse;
 sexual abuse;
 economic abuse (including destruction or damage to property);
 intimidation;
 harassment (including stalking);
 trespass;
 emotional, verbal or psychological abuse ;
 threats or attempts to carry out any of these acts; and
 exposing a child to acts of domestic violence against another person.

Give a brief description of the incident:



FORM A
Maintenance application

FORM A
(Regulation 2(a))
COMPLAINT IN TERMS OF SECTION 9(1) OF THE ACT
(NEW COMPLAINT)

Reference No.....

(This information should, as far as possible, be given in order to investigate the complaint)

I, Vivienne Muruko
.....
(full name of complainant)

born on 01.09.1981.....(date) / age 23.....

identity number

living at Khomasdal
.....

telephone number

Working at 54 Mission Village, Ludwigsdorf
.....

Telephone number 225717
.....

Hereby *declare under oath/truly affirm as follows:

The "I" here is an error which should be ignored.

I, Aron Tjiramba
.....
(full name of defendant)

born on 28.06.1981.....(date) / age 23.....

Identity number

Living at 28 Clemens Kapuu St, Katutura
.....

telephone number

working at Rukoro Construction,
Jakob Marengo St, Khomasdal
.....

telephone number

is legally liable to maintain *me and/or the following beneficiary(ies), who is/are under my care:

Samuel Muruko..... born on 18th March 1998
.....

..... born on

..... born on

..... born on



..... born on

2. *The defendant is legally liable to maintain me or the beneficiary(ies) because

.....
 He is the father of the child

3. *The beneficiary(ies) mentioned in paragraph 1 is/are under my care because.....

I am his mother

4. The defendant has since..... not supported *myself/
 the said beneficiary(ies) and has made *no contribution towards maintenance/the
 following contribution towards maintenance:

5. I request that the defendant be ordered to make the following contribution(s)
 towards maintenance:

(a) A*weekly/monthly contribution of -

N\$	Name of Beneficiary
N\$ In respect of myself (complainant)
N\$ In respect of 152.02	Samuel Muruko
N\$ In respect of
N\$ In respect of
N\$ In respect of
N\$ In respect of

The total child maintenance required is N\$241.30.

 If both parents pay 19% of their respective incomes, the father's share is N\$152.02.

 The mother's share is N\$89.28.

(b) The first payment should be made on 30th Jan 05 and after that on or before thelast..... day of each succeeding *week/month. All payments should be made

to..... Vivienne Muruko

in favour of Samuel Muruko

and/or



(c) Other contributions (for example medical and dental costs, school fees, fees to tertiary institutions, school clothes, expenses for sport and/or cultural activities, birth expenses and maintenance for beneficiary(ies) from birth):

.....

.....

.....

.....

6. Particulars of my assets and *weekly/monthly income and expenditures (supported by documentary proof, where possible) are as follows:

Assets	
Fixed property	N\$
Investments	N\$
Savings	N\$
Shares	N\$
Motor vehicles	N\$
Other:	N\$
.....	N\$
.....	N\$
.....	N\$
Total value of Assets	N\$

Income	
Gross salary	N\$ 480 per month
	(including N\$40 taxi fares per month)
Minus deductions:	
Tax	N\$
Medical Aid	N\$
Pension	N\$
Other:	N\$
.....	N\$
.....	N\$
.....	N\$
Total nett salary	N\$ 480
Other income (state source)	N\$
.....	N\$
.....	N\$
Total income	N\$ 480



Expenditure (per month)			
	Self	beneficiary(ies)	Total
1. Lodging(bond repayment/ levy/rent/board)	NS	NS	NS
2. Food: Groceries	NS	NS ..33	NS
Meat	NS	NS ..20	NS
Bread and milk	NS	NS ..80	NS
Fruit and vegetables	NS	NS ..20	NS
Baby food	NS	NS	NS
Lunches	NS	NS	NS
3. Household expenditure:			
Water and electricity/	NS	NS ..20	NS
Gas/paraffin	NS	NS	NS
Rates and taxes	NS	NS	NS
Cleaning materials	NS	NS	NS
Laundry/Dry-cleaning	NS	NS	NS
Toiletries	NS	NS	NS
Telephone	NS	NS	NS
Domestic worker	NS	NS	NS
Garden services	NS	NS	NS
Insurance (short term)	NS	NS	NS
4. Clothing:			
Clothes and shoes	NS	NS ..10	NS
School uniforms	NS	NS ..7.10	NS
Sports clothes	NS	NS	NS
5. Personal care (including hair care/ cosmetics, etc.)	NS	NS ..10	NS
6. Transport:			
Bus	NS	NS	NS
Car: Installments	NS	NS	NS
Maintenance	NS	NS	NS
Fuel	NS	NS	NS
Licenses	NS	NS	NS
Insurance	NS	NS	NS
Taxi	NS	NS	NS
Lift Club	NS	NS	NS
Parking	NS	NS	NS
Other	NS	NS	NS
7. Educational expenditure:			
School fees	NS	NS ..17	NS
After school care	NS	NS	NS
Day care	NS	NS	NS
Study policy (insurance)	NS	NS	NS
Books	NS	NS ..4.20	NS
Stationery	NS	NS	NS
Outings	NS	NS	NS
Sports	NS	NS	NS
Extramural	NS	NS	NS
Other school expenditure.....	NS	NS	NS
8. Medical expenditure:			
Doctor/dentist/etc.	NS	NS ..20	NS
Medication (prescription)	NS	NS	NS
Hospital	NS	NS	NS
Other medical expenditure	NS	NS	NS



Expenditure			
	Self	beneficiary(ies)	Total
9. Insurance:			
Life	NS	NS	NS
Annuity	NS	NS	NS
House owners/holders	NS	NS	NS
10. Pocket money/allowances	NS	NS	NS
11. Holidays	NS	NS	NS
12. Maintenance, House	NS	NS	NS
replacement Household appliances	NS	NS	NS
and repairs Kitchenware	NS	NS	NS
of items Linen, towels, etc.	NS	NS	NS
Bicycles/bikes/scooters	NS	NS	NS
Other items	NS	NS	NS
13. Entertainment & recreation (incl.M-net)			
14. Personal loans	NS	NS	NS
15. Security alarm system	NS	NS	NS
16. Membership fees	NS	NS	NS
17. Religious contributions/charities	NS	NS	NS
18. Gifts	NS	NS	NS
19. TV License	NS	NS	NS
20. Reading materials: Books	NS	NS	NS
Newspapers	NS	NS	NS
Periodicals	NS	NS	NS
21. Lease/instalment Furniture	NS	NS	NS
sales payments Appliances	NS	NS	NS
Other	NS	NS	NS
22. Pets Food	NS	NS	NS
Veterinary surgeon	NS	NS	NS
Licence	NS	NS	NS
23. Other (not specified above)	NS	NS	NS
Total expenditure	NS	NS 241.30	NS

Dated at 2005 This 14th day of January

Vivienne Muruko
Signature of Complainant



Oath/Affirmation

1. I certify that before administering the *oath/affirmation I asked the complainant the following questions and wrote down *his/her answers in *his/her presence:
 - (a) Do you know and understand the contents of the above declaration?
Answer *Yes*
 - (b) Do you have any objection to taking the prescribed oath?
Answer *No*
 - (c) Do you consider the oath as binding on your conscience?
Answer *Yes*

2. I certify that the complainant acknowledged that *he/she knows and understands the contents of this declaration. The complainant uttered the following words **"I swear that the contents of this declaration are true – so help me God"*/**I truly affirm that the contents of this declaration are true"*. The *signature/mark of the complainant was affixed to the declaration in my presence.

Signature
.....
Commissioner of Oaths

Full name and surname
(block letters)

Designation (Rank) Ex Officio

Business address
(street address must be stated)

.....
Dated at this day of

*Delete whichever is not applicable



FORM E
Maintenance order

FORM E
(Regulation 8)
ORDER IN TERMS OF SECTION 17 OF THE ACT
(MAINTENANCE ORDER)

Reference No.

(Form G must be used in the event of an order by consent and form H must be used in the event of a default order)

In the maintenance matter between:
.....
Vivienne Muruko
.....
(complainant)

and
.....
Aron Tjiramba
.....
(defendant)

In terms of the provisions of section 17(1)(a) or (b) of the Act, it is ordered that -

I,
Aron Tjiramba
.....
(full name of defendant)

identity number

living at
28 Clemens Kapuuo St,
.....
Katutura

and working at
Rukoro Construction,
.....
Jakob Marengo St, Khomasdal

*(a) must pay on a *weekly/monthly basis with effect from 30th Jan 05
..... towards the maintenance of *the complainant and/or the following
beneficiary(ies) the sum of -

total maintenance →

breakdown of total amount {

N\$ 152.02		Name of Beneficiary Samuel Muruko
N\$	In respect of	complainant
N\$	In respect of 152.02	..... Samuel Muruko
N\$	In respect of	.....
N\$	In respect of	.....
N\$	In respect of	.....
N\$	In respect of	.....

the first payment is to be made on 30th Jan 05 and after that on or
before the^{last} day of each succeeding *week/month to
Vivienne Muruko
.....
Samuel Muruko
.....



and/or

*~~(b)~~

(other contributions, for example medical and dental costs, school fees, fees to tertiary institutions, school clothes, expenses for sport and/or cultural activities, birth expenses and maintenance for beneficiary(ies) from birth.
or

- *2 It is ordered that in terms of section 17(1)(b)(i) of the Act, the maintenance order, dated, made by the is hereby **substituted** by the following order.....; or
- *3 It is ordered that in terms of section 17(1)(b) (i)/(ii) of the Act, the maintenance order dated, made by the is hereby **suspended or discharged**.

Dated at 2005 this 14th day of January

Signature

Magistrate

*Delete whichever is not applicable



FORM K

**Application
for
enforcement
of
maintenance
order**

**FORM K
(Regulation 18)**

**APPLICATION FOR ENFORCEMENT OF MAINTENANCE ORDER OR
OTHER ORDER IN TERMS OF SECTION 28 OF THE MAINTENANCE ACT**

Reference No.

In the maintenance matter between:

.....
Vivienne Muruko
.....
(complainant)

and

.....
Aron Tjiramba
.....
(defendant)

To the Maintenance Officer of the Maintenance Court,

I, **Vivienne Muruko**
.....
(full name of complainant)

identity number

1. hereby apply -

- * (a) for the authorisation to issue a warrant of execution;
- * (b) for an order for the attachment of emoluments; or
- * (c) for an order for the attachment of a debt.

2. The following information is important for the purposes of my application:
(submit information relating to property and/or debts of the defendant or his or her employer and income)

.....
Aron owns a car
.....

3. The whereabouts of the defendant are as follows:

.....
28 Clemens Kapuuo St, Katutura
.....

4. In support of my application I hereby * declare under oath/truly affirm that:

- (a) on **28th Jan 05**.....(date) the attached order in terms of the Act was made by the above-mentioned court;
- (b) the order has remained unsatisfied; and
- (c) the amount of N\$ **912.12**..... is still outstanding. This amount has been calculated as follows:

.....
N\$152.02 per month x 6 months
.....



Dated at 2005 this 4th day of Aug

Vivienne Muruko
Complainant

Oath/Affirmation

I certify that before administering the *oath/affirmation I asked the deponent the following questions and wrote down *his/her answers in *his/her presence:

(a) Do you know and understand the contents of this declaration?

Answer..... Yes

(b) Do you have any objection to taking the prescribed oath?

Answer..... No

(c) Do you consider the oath binding on your conscience?

Answer..... Yes

I certify that the deponent acknowledged that *he/she knows and understands the contents of this declaration. The deponent uttered the following words *‘‘I swear that the contents of this declaration are true, so help me God.’’/‘‘I truly affirm that the contents of this declaration are true.’’ The *signature/mark of the deponent was affixed to the declaration in my presence.

Signature
Commissioner of Oaths

Full name and surname
(block letters)

Designation (Rank) Ex Officio

Business address.....
.....
(street address must be stated)

Dated at this day of

*Delete whichever is not applicable



Form: Notification of a Grievance

Name of grieved employee: (List names and details of all employees in group if a group grievance is lodged)		Personnel number:	
Position:		Department:	
Description of grievance: (Be specific – include actions, dates, witnesses and other names)			
Desired outcome required: (Specify what remedy will mitigate the grievance)			
Employee declares as follows:	<ul style="list-style-type: none"> The contents of my grievance as stipulated in this document is true and based on facts: 		
Employee signature and date:		Grievance received by... : Name: Designation: Date: ...On behalf of the employer	
Representative name & signature:		Witness name & signature:	

Stage 2:

Description	Date completed	Details
Grievance investigated:		
Proposed remedy:		
Employee signature in acknowledgement that he/she accepts remedy as indicated herein and that the matter is resolved to his/her complete satisfaction.		Employee and representative signatures
Employer or designate signature in confirming the application of the remedy as stipulated herein:		Employer signature



Form: Application for Leave

Employee Name and Surname	
Personnel Number	

Please indicate leave type and duration of leave:

Leave Type	Paid leave	Sick Leave	A.W.O.L.	Unpaid Leave	Compassionate Leave	Maternity Leave
<i>Indicate option with X</i>						
Dates	From: (dd/mm/yy)		To: (dd/mm/yy)		Total number of <u>working</u> days	

Please complete the section below if application is submitted for compassionate leave:

Reason for compassionate leave	Serious illness		Death	
<i>Indicate option with X</i>				
Employee's relationship with affected person	Spouse	Biological or legally adopted child	Parent, grandparent or mother / father-in-law	Brother sister
<i>Indicate option with X</i>				
Please list name & surname				

Please note the following:

1. The "from" date will mean the 1st working day that the employee is on leave.
2. The "to" date will mean the last working day that the employee is on leave.
3. An application for Sick Leave for longer than 2 days need to be accompanied by a sick certificate, issued by a registered medical practitioner.
4. An application for compassionate leave need to include the reason for compassionate leave as well as the relationship to the relevant party.

Employee signature in application

Date

Employer signature in approval

Date

**REPUBLIC OF NAMIBIA
SOCIAL SECURITY COMMISSION**

Form 13

Cnr. A Kloppe & J. Haupt Streets – Khomasdal

The Chief Executive Officer
Social Security Commission
Private Bag 13223
Windhoek
Namibia

IN ALL CORRESPONDENCE QUOTE

--

**CLAIM FOR MATERNITY LEAVE
(Section 29/regulation 9)
TO BE COMPLETED IN BLOCK LETTERS**

TO BE COMPLETED BY THE CLAIMANT

1. Social Security registration number:
2. Surname:
3. Previous surname (in case of change of surname under which registered):
4. First names:
5. Date of birth: 6. Identity number:(if any)
7. Passport number:(if any)
8. Postal Address:(if any)
9. Telephone number: 10. Facsimile
11. Method of payment of benefits:

Cheque	<input type="checkbox"/>	Bank Transfer	<input type="checkbox"/>
--------	--------------------------	---------------	--------------------------
12. If benefits are to be transferred to bank or building society account, indicate:
 - a) Name of financial institution:
 - b) Name of branch:
 - c) Branch number:
 - d) Account number:
 - e) Type of Account:

I certify that the above particulars are true and correct.

.....
CLAIMANT **DATE**

MEDICAL CERTIFICATE TO BE COMPLETED BY A MEDICAL PRACTITIONER

I(full names) and qualifications) hereby certify that(name of patient) was examined by me and it was found that she is pregnant. From my examination and information furnished by her, the expected date of confinement is considered to be20.....practice number:

.....
MEDICAL PRACTITIONER **DATE**



TO BE COMPLETED BY THE EMPLOYER:

- 1. Name of Employer:.....
- 2. Social Security Registration Number:
- 3. Monthly income of employee: N\$
- 4. Date of commencement of maternity leave:

I(full names and capacity certify that the above particulars are true and correct.

.....
EMPLOYER

.....
OFFICIAL STAMP

.....
DATE

FOR OFFICIAL USE ONLY		
Checked by: _____	Date: _____	Time _____
Remarks: _____		



REPUBLIC OF NAMIBIA
SOCIAL SECURITY COMMISSION
SOCIAL SECURITY ACT, 1994

Form 13(b)

The Chief Executive Officer
Social Security Commission
Private Bag 13223
Windhoek
Namibia

IN ALL CORRESPONDENCE QUOTE

NOTIFICATION OF CHANGES TO MATERNITY LEAVE CLAIM
(Section 29/Regulation9)

TO BE COMPLETED IN BLOCK LETTERS

1. Name of employer:
2. Social Security registration number:

This is to confirm that –

- a) Surname of employee:.....
- b) First names of employee:.....
- c) Social Security registration number:

Is/was on:

- (i) Maternity leave from200... to200...

3. Kindly bring the above changes into consideration when making payment of benefits to the claimant.

.....

EMPLOYER

.....

DATE



**OFFICE OF THE
SOCIAL SECURITY COMMISSION**

Form 14

Cnr. A Klopper & J. Haupt Streets – Khomasdal

The Chief Executive Officer
Social Security Commission
Private Bag 13223
Windhoek
Namibia

Telephone: 280 7999
Fax: 211765 /212322

IN ALL CORRESPONDENCE QUOTE

[Empty rectangular box for quoting]

**SUBMISSION OF DOCUMENT IN SUPPORT OF CLAIM FOR
MATERNITY LEAVE BENEFITS**
(Section 29/regulation 9)

TO BE COMPLETED IN BLOCK LETTERS

- 1. Type of document

Birth Certificate	Death Certificate	
-------------------	-------------------	--
- 2. Social Security registration number of claimant:
- 3. Surname of Claimant:
- 4. First names of Claimant:

.....
CLAIMANT **DATE**

* Duly certified copies of Birth Certificate or Death Certificate must accompany this Form.

FOR OFFICIAL USE ONLY	
Checked by: _____	Date: _____
Remarks: _____	



REPUBLIC OF NAMIBIA
SOCIAL SECURITY COMMISSION
SOCIAL SECURITY ACT, 1994
Cnr. A Klopper & J. Haupt Streets – Khomasdal

Form 15

The Chief Executive Officer
Social Security Commission
Private Bag 13223
Windhoek
Namibia

Telephone: 280 7999
Fax: 211765 /212322

MATERNITY LEAVE BENEFITS

DECLARATION REGARDING EMPLOYMENT STATUS

(This form must be completed before final payment of maternity leave benefits can be made)

TO BE COMPLETED IN BLOCK LETTERS

- 1. Social Security registration number:
- 2. Surname:
- 3. First names:
- 4. Date of Birth: 5. Identity Number:

Declaration:

I, declare that I have not done any paid
(full name)
work since my confinement and that I am entitled to maternity leave benefits for the period:

..... to

.....
Signed

.....
Date

WARNING

“ Any person who knowingly makes any false statement for the purpose of obtaining payment of a benefit to which he or she is not entitled shall be guilty of an offence”.





SOCIAL SECURITY COMMISSION
Social Security Act, 1994

Form 15A

The Executive Officer
Social Security Commission
Tel.: 067 – 304741
Fax.: 067 - 304743
Private Bag 2620
Otjiwarongo
Namibia

SICK LEAVE BENEFITS

DECLARATION REGARDING EMPLOYMENT STATUS

(This form must be completed before final payment of maternity leave benefits can be made)

TO BE COMPLETED IN BLOCK LETTERS BY THE CLAIMANT

- 1. Social Security registration number:
- 2. Surname:
- 3. First names:
- 4. Date of Birth: 5. Identity Number:
- 6. Address:

Declaration:

I,declare:
(full name)

(a) that I have not done any paid work during the period:toand
that I am entitled to sick leave benefits for the period:to; and

(b) that I received N\$ a month during the periodtofrom
.....under my contract of employment.

(Signed)

WARNING

“ Any person who knowingly makes any false statement for the purpose of obtaining payment of a benefit to which he or she is not entitled shall be guilty of an offence”.



REPUBLIC OF NAMIBIA
SOCIAL SECURITY COMMISSION
SOCIAL SECURITY ACT, 1994
 Cnr. A Klopper & J. Haupt Streets – Khomasdal

Form 16

The Chief Executive Officer
 Social Security Commission
 Private Bag 13223
 Windhoek
 Namibia

Telephone: 280 7999
 Fax: 211765 /212322

IN ALL CORRESPONDENCE QUOTE

--

CLAIM FOR SICK LEAVE BENEFITS
 (Section 30/Regulation 10)

TO BE COMPLETED IN BLOCK LETTERS BY THE CLAIMANT:

1. Social Security registration number:
2. Surname:
3. Previous surname (in case of change of surname under which registered):
4. First names:
5. Date of birth: 6. Identity number:.....(if any)
7. Passport number:(if any)
8. Postal Address:
9. E-mail Address
10. Telephone number: 11.Facsimile number:

12. Method of payments:

Cheque	Bank transfer	
--------	---------------	--

13. If benefits are not be transferred to Bank or Building Society account indicate:.....
 (a) Name of financial institution

(b) Name of branch.....

(c) Branch number:

(d) Account number.....

(e) Type of account.....

(f) Holder of account:

Own	Husband	Wife	
-----	---------	------	--

14. Are you entitled to any remuneration or compensation in respect of any period for which you qualify for sick leave benefits in terms of Social Security Act, 1994:

Yes		No	
-----	--	----	--

 If "Yes", state particulars of nature thereof and amount:

.....

I certify that the above particulars are true and correct.

 CLAIMANT

 DATE

Please turn over



MEDICAL CERTIFICATE TO BE COMPLETED BY A MEDICAL PRACTITIONER:

I,(full names),

2. Surname:Practice number hereby certify that(name of patient) has been under my treatment from20.....to.....20.....and that he/she is suffering from: disease or injury to be stated as far as possible in non-technical terms with concise particulars as to history, symptoms and severity, and ascertainable cause).

Further certify that he/she is in consequence unable to perform his/her duties and I consider it essential for recovery of his/her health and he/she should have leave from20..... To.....20.....for the purpose of:.....

Medical Practitioner

Date

TO BE COMPLETED BY THE EMPLOYER:

1. Name of Employer:.....
2. Social Security registration number:
3. Monthly income of employee: N\$
4. Date of commencement of sick leave:
5. Date on which unpaid sick leave commenced:

I,(full names and capacity)certify that the above particulars are true and correct.

** Attach proof of latest social security contributions/deductions from member's salary.*

.....
EMPLOYER

.....
OFFICIAL STAMP

.....
DATE

FOR OFFICIAL USE ONLY	
Checked by: _____	Date: _____
Remarks: _____	





Claim Form MVAF 1

Notes:

- a) Read the heading of each section and fill in if required. Section 9 must be signed before a Commissioner of Oaths.
- b) Any MVA Fund or Nampost official can assist you to fill in this form.
- c) Note that it is a criminal offence to state false information or withhold information required if such information is within the knowledge of the person filling in this form.
- d) A parent, guardian or *curator* should fill in the form for a child.

SECTION 1			
Personal details of the Claimant			
a)	Surname		
b)	First Names		
c)	Identification Number	d)	Place tick <input type="checkbox"/> Male <input type="checkbox"/> Female
e)	Date of birth		
f)	Place of birth		
g)	Nationality		
h)	Status (Place tick <input type="checkbox"/>)	Married <input type="checkbox"/>	Single <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed <input type="checkbox"/>
i)	Residential address		
j)	Postal address		
k)	Phone Numbers	W	H
			Cell
l)	If the claimant is claiming on behalf of another person, he/she should state:		
	(i)	Relationship of claimant to such person:	
	(ii)	Name and address of person on whose behalf compensation is being claimed:	
	(iii)	Identity / Passport No. of such person:	
	Please attach a certified copy of I.D. or passport. In the event of a claim for loss of support or on behalf of another person, photocopies of relevant marriage and / or full birth certificate, as the case may be, should accompany this form.		
	Kindly provide details of two contact persons		
m)	Name		
	Contact details		
n)	Name		
	Contact details		



SECTION 2 Details of Claim						
Place a tick <input checked="" type="checkbox"/> for the benefits being claimed					Estimated loss (N\$)	
a)	Costs of past medical treatment				<input checked="" type="checkbox"/>	
b)	Costs of future medical treatment					
c)	Reimbursement of past income lost					
d)	Reimbursement of future income to be lost					
e)	Financial support lost as a result of death of person <i>(only for dependents)</i>					
f)	Reimbursement of funeral grant					
g)	Injury grant					
SECTION 3 Details of the Deceased						
Fill in only if claim is for financial loss of support; reimbursement of funeral expenses and/or costs of past medical treatment for deceased						
Details of the Deceased only						
a)	Surname					
b)	First names					
c)	Identification number					
d)	Date of injury			e)	Date of death	
f)	Name of clinic/hospital where first treated					
g)	Name of doctor who first treated deceased					
h)	Was deceased ill prior to death?	YES	NO	What illness?		
i)	Place of death					
j)	What was the relationship of the deceased to the claimant?	Spouse	Father	Mother	Son	Daughter
	Place a tick <input checked="" type="checkbox"/>	If "other" please specify -				
k)	(i) Employed or self employed? Place a tick <input checked="" type="checkbox"/>	Employed	Self-employed			
	(ii) Trade or occupation. State sector, if self-employed					
l)	Name of employer					
	(i) Address of employer					
	(ii) Phone number of employer					
	(iii) Earnings of deceased per month					
	(iv) State address from where the deceased operated					
m)	(v) Earnings per month					
	Was deceased on duty at time of accident?					
n)	State names of all the deceased dependents, including claimant	Name(s) of dependent(s)			Date of birth	
In the event of claim for loss of support, please provide certified copies of the deceased's three most recent pay slips, I.D. or passport. In the event of claim for past medical costs, please provide original invoices.						



SECTION 4 Details of Income			
Fill in if claim is for reimbursement of income lost			
a)	Trade or occupation		
b)	Employed or self employed? Place a tick ✓	Employed	Self employed
c)	If employed, state name of employer		
d)	Address of employer		
e)	Phone number of employer		
f)	Earnings per month		
g)	Income from own business		
h)	If self employed, state occupation or sector		
	(i) State address from where you operate		
i)	Period of employment		
j)	Period of not working due to injury		
k)	Total of income lost	NS	
l)	Details of any other income or earnings which is not part of the claimant's salary	NS	
Kindly attach a letter from your employer indicating the period in which income was lost, certified copies of medical certificate and two most recent payslips proving the loss.			

SECTION 5 Mitigation of Loss			
Give details of other payments claimant entitled to			
	Place a tick ✓	If Yes give details, e.g., amount payable per month or cash amount	
a)	Workmans Compensation	NO	YES
b)	Social Security Support benefits	NO	YES
c)	Social Security Death benefits	NO	YES
d)	Medical aid	NO	YES
e)	Any other grant from Government	NO	YES



o)	Give summary of accident facts
Police Stamp	Signed
	Name

**SECTION 7
Medical Report**

**This report must be completed by the medical practitioner who treated the injured person unless that medical practitioner is not available.
In cases where the medical practitioner is not available, a registered medical practitioner who has acquainted him/herself with the case should complete this section**

a)	Name of medical practitioner	Practice No.							
b)	Are you the first medical practitioner to treat the injured person? Place a tick ✓	YES	NO						
c)	If no, state name of medical practitioner who first treated the injured person	Practice No.							
d)	Name of house medical practitioner	Practice No							
e)	Full name of injured person								
f)	Date(s) of examination	Place							
Please place a tick ✓ in box below									
g)	Was injured person(s) blood tested for alcohol level?	YES	NO						
h)	If yes, is there a report available?	YES	NO						
i)	Kindly indicate the severity of injuries below, with a tick ✓ in the box alongside relevant injury(ies) <i>N.B. For convenience, this report can be attached to the form as a separate annexure</i>								
		Head	Chest	Neck	Abdomen	Back	Upper limbs	Lower limbs	Pelvis
	Minor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Fairly severe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Severe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



**Section 8
Banking Details**

**If you want your money to be deposited directly into your bank account,
please complete this section**

I, _____, the undersigned, state:

1. I am the holder of a bank account with the following details:
 Account Holder Name: _____ Account number: _____
 Account type (savings/cheque/etc): _____
 Bank: _____ Branch: _____ Branch code: _____
2. I hereby request that the cheque be deposited into the above bank account.
3. I accept the risk of any loss that I may suffer as a result of the fact that the cheque is deposited into this bank account, and indemnify the MVA Fund of all or any loss or damage, whether direct or indirect, that might arise as a result of the cheque being deposited.

.....
Claimant

.....
Date

Please ensure that the above bank details are correct.

**Section 9
Claimant's Affidavit**

**I hereby declare that the deponent has sworn to and signed this statement in my presence at
..... on the day of 20.... and he/she declared
as follows: that the facts herein contained fall within his/her personal knowledge and that he/she
understands the contents hereof; that he/she has no objection to taking the oath; that he/she regards
the oath as binding on his/her conscience and has declared as follows:**

"I swear that the contents of this Sworn Affidavit are true and correct, so help me God."

Signed
Claimant's Name

Date

SWORN BEFORE ME

Commissioner's stamp

Signed
Commissioner of Oaths/Capacity

**Note that if the claimant is under legal disability, this form should be signed by the claimant's guardian,
curator or custodian.**



REPUBLIC OF NAMIBIA
SOCIAL SECURITY COMMISSION
SOCIAL SECURITY ACT, 1994
Cnr. A Klopper & J. Haupt Streets – Khomasdal

Form 17

The Chief Executive Officer
Social Security Commission
Private Bag 13223
Windhoek
Namibia

Telephone: 280 7999
Fax: 211765 /212322

IN ALL CORRESPONDENCE QUOTE

CLAIM FOR DEATH BENEFITS IN THE CASE OF THE DEATH OF AN EMPLOYEE
(Section 3/Regulation 11)

This form must be completed for the purpose of claiming the death benefit payable in respect of a deceased, employee and must be accompanied by a certified copy of the death certificate

TO BE COMPLETED IN BLOCK LETTERS

Particulars of deceased employee:

- 1. Social Security registration number:
- 2. Surname:
- 3. Previous surname (in case of change of surname under which registered):
- 4. First names:
- 5. Date of birth: 6. Identity number:.....(if any)
- 7. Passport number:(if any)
- 8. Date of death of employee:

Particulars of claimant:

- 1. Surname:
- 2. First names:
- 3. Identity number:
- 4. Postal Address:
- 5. E-mail Address:.....
- 6. Residential Address:
- 7. Telephone number:(h).....(w)
- 8. Relations to deceased employee/capacity:

Note:

- (a) If spouse, the marriage certificate or a duly certified copy thereof must accompany this form.
- (b) If not the spouse, this form must be accompanied by an affidavit in the form of Form 18.

I certify that the above particulars are true and correct.

CLAIMANT

DATE



TO BE COMPLETED BY THE EMPLOYER:

1. Name of Employer:.....

2. Social Security registration number:

I declare that the deceased employee was in my employ at the time of death.

** Attach proof of latest social security contributions/deductions from member's salary.*

.....
EMPLOYER

.....
OFFICIAL STAMP

.....
DATE

FOR OFFICIAL USE ONLY

Checked by: _____ Date: _____

Remarks: _____



AFFIDAVIT ACCOMPANYING CLAIM FOR DEATH BENEFIT WHERE THE CLAIMANT WAS NOT THE SPOUSE OF THE DECEASED EMPLOYEE

REPUBLIC OF NAMIBIA
SOCIAL SECURITY COMMISSION
SOCIAL SECURITY ACT, 1994

Form 18

The Chief Executive Officer
Social Security Commission
Private Bag 13223
Windhoek
Namibia

IN ALL CORRESPONDENCE QUOTE

[Empty rectangular box for quoting correspondence]

AFFIDAVIT ACCOMPANYING CLAIM FOR DEATH BENEFIT WHERE THE CLAIMANT WAS NOT THE SPOUSE OF THE DECEASED EMPLOYEE
(Section 31/ Regulation 11)

TO BE COMPLETED IN BLOCK LETTERS

I.....(first names and surname of claimant)
hereby make the following statement:

That I am(state relationship to deceased employee or capacity and surname of the deceased)and that to the best of my knowledge and belief the deceased had no other relatives or heirs entitled to receive the death benefit.

.....
APPLICANT

I certify that this declaration has been signed and sworn to/affirmed before me at thisday of 200.....
by the deponent who acknowledge that-

- (a) he/she understands the contents of the declaration;
- (b) he/she has no objection to taking the prescribed oath/affirmation; and
- (c) he/she considers the prescribed oath to be binding to his/ her conscience, and that he/she uttered the following words:

“ I swear that the content of this declaration is true, so help me God.”/ “I affirm that the content of this declaration is true”.

.....
COMMISSIONER OF OATH

Full name:.....
Business address:.....
Designation:.....
Area for which appointment is held:.....
Office held if appointment is *ex officio*:



REPUBLIC OF NAMIBIA
SOCIAL SECURITY COMMISSION
SOCIAL SECURITY ACT, 1994
Cnr. A Klopper & J. Haupt Streets – Khomasdal

Form 19

The Chief Executive Officer
Social Security Commission
Private Bag 13223
Windhoek
Namibia

Telephone: 280 7999
Fax: 211765 /212322

IN ALL CORRESPONDENCE QUOTE

--

CLAIM FOR DEATH BENEFITS IN THE CASE OF RETIREMENT OR DISABILITY OF AN EMPLOYEE
(Section 31/Regulation 11)

This form must be completed for the purpose of claiming the death benefit payable in respect of an employee who retires or becomes permanently disabled.

TO BE COMPLETED IN BLOCK LETTERS BY THE CLAIMANT

1. Social Security registration number:
2. Surname:
3. Previous surname (in case of change of surname under which registered):
4. First names:
5. Date of Birth: 6. Identity Number:(if any)
7. Passport number:(if any)
8. Postal Address:
9. E-mail Address
10. Telephone number:11. Facsimile number:
12. Method of payment of benefits:

Cheque	Bank transfer	
--------	---------------	--
13. If benefits are to be transferred to bank or building society account, indicate:
 - (a) Name of financial institution:
 - (b) Name of branch:
 - (c) Branch number:
 - (d) Account number:
 - (e) Type of Account:
- 14.. If permanently disabled, give full particulars:

(Documentary proof e.g. certificate by medical board, medical practitioner, etc. must accompany this claim)

I certify that the above particulars are true and correct.

.....
CLAIMANT

.....
DATE

Please turn over



DISABILITY INFORMATION

Medical certificate to be completed by a medical practitioner in respect of disability of a member:

I,(full names),
Qualificationspractice numberhereby certify
That(name of patient)
Has been under my treatment from20.....to.....20.....and that
He/she is suffering from:
.....
disease or injury to be stated as far as possible in non-technical terms with concise particulars as to history, symptoms and severity, and ascertainable cause).

Further certify that he/she is in consequence unable to perform his/her duties and I consider it essential for the benefit of his/her health and recommend that he/she should retire from normal employment with effect from20.....

Medical Practitioner Date

TO BE COMPLETED BY THE EMPLOYER:

- 1. Name of employer:
- 2. Social Security registration number:
- 3. Date employee retired or became permanently disabled:

I certify that the above particulars are true and correct.

* *Attach proof of latest social security contributions/deductions from member's salary.*

EMPLOYER OFFICIAL STAMP DATE

FOR OFFICIAL USE ONLY	
Checked by: _____	Date: _____
Remarks: _____	



SAMPLE WILL

I, _____ *[NAME OF TESTATOR]*, of sound mind and body, with
identity number _____, of _____ *[ADDRESS]*
make this my last will and testament.

I hereby revoke all previous wills made by me and declare this to be my last will and testament.

I nominate _____ *[NAME]* of _____ *[ADDRESS]*
to be the executor of my estate.

I give the following to _____ *[NAME OF PERSON TO RECEIVE BEQUEST]*
of _____ *[ADDRESS]*

***[DETAILED DESCRIPTION OF PROPERTY AND PROPORTION, IF APPLICABLE, TO
BE GIVEN TO THE PERSON NAMED ABOVE]***

I appoint _____ *[NAME]* of _____ *[ADDRESS]*
to be the guardian of my children.

I, _____ *[NAME OF TESTATOR]*, sign this, my last will and
testament at _____ *[LOCATION]* on this ____ day of 20__ in the
presence of the undersigned witnesses, who signed in my presence and in the presences of each
other, all being present at the same time.

Signature of Testator



WITNESSES:

Name and Address of Witness #1

Name and Address of Witness #2

Signature of Witness #1

Date Location Signed

Signature of Witness #2

Date Location Signed



ACKNOWLEDGEMENTS



This *Access to Justice Manual* was born from a discussion in early 2010 between **Sheldon Krantz** (then-Director of New Perimeter – DLA Piper’s Global Pro Bono Initiative) and Professor **Barbara Olshansky** of the University of Maryland, Francis King Carey School of Law. Professor Olshansky was already very active in Namibia and introduced New Perimeter to the Namibia Paralegal Association (“NPA”). The NPA had a strong network of volunteer paralegals, but needed an updated manual addressing substantive law. New Perimeter was honoured to assist.

Getting the manual printed required different stages that involved a number of people. The manual was first researched, then outlined, and then written in draft format. At that point, in April 2011, a team travelled to Namibia to talk to members of the NPA and others involved in the Namibian legal system to get practical input on the manual. Getting feedback from those in Namibia who would use the manual was a very important part of the project. After receiving feedback, the manual was finalized and recirculated. Only then was it ready to print.

New Perimeter (the global pro bono arm of the law firm **DLA Piper**) is responsible for providing the resources (people and funding) that made this manual possible. Along with Sheldon Krantz, current Director **Lisa Dewey** provided guidance and oversight. Special acknowledgement goes to **Aaron Goodman**, an invaluable member of the team. Aaron is a DLA Piper attorney, and was responsible for most of the substantive drafting, was part of the team that travelled to Namibia, and took many of the photographs contained in the manual. New Perimeter’s Program Manager **Kristen L. Abrams** also deserves special recognition for setting up the project, then overseeing and managing the project, and for communicating progress to the New Perimeter Board. Others associated with New Perimeter and DLA Piper that contributed to the manual include: **Jonathan Labukas** and **Summer Krause** (DLA Piper attorneys), **Sara Andrews** (New Perimeter Program Manager), **Wanda Delgado** (New Perimeter Program Coordinator), and **Kathy Sieckman**.



From the **University of Maryland**, we thank Professor Barbara Olshansky and **Michelle Salomon** for their consistently good editorial work, which is reflected throughout the manual. Professor Olshansky had tireless assistance from Michelle Salomon. Michelle graduated from University of Maryland School of Law in 2011 and is now the Clinical Teaching Fellow with the International and Comparative Law Clinic of the law school. Professor Olshansky and Michelle provided valuable input during each stage of the project and helped make this a successful project. They were instrumental in planning and participating in the meetings in Namibia, alongside University of Maryland clinical law student **Yewande Ajoke Agboola**. We were so fortunate that they were already in Namibia working on other projects during our visit. Our trip to Namibia was successful because of them.

Many volunteer paralegals at the **Namibia Paralegal Association** gave us their time and ideas in revising the manual during and after our visit to Namibia. Special recognition is deserved by **Lucas Rumingo Kasera** (NPA President) and **Manfred Jacobs** and **Lydia Muundjua** of the NPA Gobabis Branch for assistance and input throughout the process. Other NPA volunteers met with us in Windhoek, Gobabis, Tsumeb, Otjiwarongo, and Ongwediva. These include **Richard N. Gauseb**, **Emilly Kellys**, **Nokokure (“Nokoo”) Kariko**, **Ferdinand Muharukua**, **Zenecia Nghitamuka**, **Hofni F. Hamunyela**, **Christaline Howaes**, **Collin Neidel**, **Maria T. Johannes**, **John Shangheta**, **Rachel M. Shikongo**, **Victor D. Hamunyela**, **Pheny Kalulau**, **Niklaus J. Nghumono**, **Beata Halcaye**, **Aletta Kathindi**, **Martha Gorases**, **Jarcino Beukes**, and **David M. Simon**.

Others, like **Nico Horn** (Professor of Law at the University of Namibia) and **Michael Millemann** (Professor of Law at the University of Maryland) provided inspiration and guidance.

Finally, we could not have learned so much about Namibian law without resources provided by the **Legal Assistance Centre** (“LAC”). LAC has been providing up-to-date articles, legal guides, and easy-to-read “Comics” relating to human rights and other legal topics of importance to Namibian citizens since 1988.

Dianne Hubbard deserves a very special thank you for giving us her time in Windhoek and for reviewing and providing input as we finalized the manual. And thank you to other members of LAC who gave us their time while we were in Namibia, including **Rachel Coomer**, **Toni Hancox**, **John Hazam**, and **William Magenya**.

Thank you all for your support in completing this manual. We hope it serves as a useful resource to Namibian volunteers who provide valuable services to citizens of Namibia in need of legal advice.



Andrew P. Valentine
DLA Piper
Team Leader

New Perimeter: www.newperimeter.org

DLA Piper: www.dlapiper.com

Namibia Paralegal Association: www.namibiaparalegals.org

Legal Assistance Centre: www.lac.org.na

University of Maryland, Francis King Carey School of Law: www.law.umaryland.edu



ABOUT THIS MANUAL

This reference manual is intended to act as a guide to paralegals (Namibia's community educator/advocates) and other people and organisations that provide advice regarding Namibians' legal, civil, and human rights. The manual draws on the extensive experience of the community-based paralegals who, since 1998, have been serving their communities on a volunteer basis working under the auspices of the Namibia Paralegal Association (NPA). These paralegals assist Namibians with the challenges they face in their everyday lives.

The manual was written and designed by a team of lawyers and law students working in collaboration with the NPA, with a view toward enriching the reader's understanding of certain areas of law, the kinds of challenges that people face in trying to advocate for their rights, and the strategies that can be used to address them. The manual is designed to help paralegals and other readers find answers to some of the most pressing social and economic problems facing Namibians today. The manual includes chapters dedicated to specific areas of the law and forms that can be reproduced for use in addressing specific problems.

