

Should stepparents be responsible for their stepchildren?

The Ministry of Women Affairs and Child Welfare is seeking input on sections of the draft Child Care and Protection Act dealing with the duties of stepparents towards their stepchildren. The scenarios and questions below spell out some of the complexities of this issue in the Namibian context. Your input is welcome!

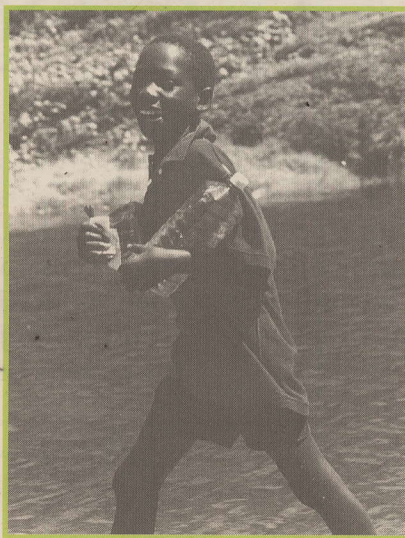
- A child is born to a single mother, who later marries and has other children with her husband. She does not know the whereabouts of her first child's father. The law says her current husband has no legal duty towards this child.
- A widow with a child marries a man who has two children. The mother of the man's two children is unemployed, and he pays maintenance for them. His wife is also unemployed, but under existing law he does not have any responsibility for his wife's child - not even if she dies and leaves this child an orphan.
- A divorced woman marries for a second time. Her ex-husband pays maintenance for the children of the first marriage, but the second husband is much more wealthy. The law does not give the second husband any responsibility toward the children of the first marriage, even if all the children are living in the same household. This could mean that the children of the first marriage have a different standard of living from the children of the second marriage, depending on the generosity of the husband.

All of these family arrangements involve "stepchildren". A stepchild is the child of one spouse but not the other. But who should be liable to maintain stepchildren? Does a per-

son who marries take on some degree of responsibility for the dependents of his or her spouse? In other words, do you marry a single individual, or is it a package deal?

The law says biological parents and adoptive parents must contribute to the maintenance of their children. But there is no responsibility for stepparents to maintain stepchildren.

A person acquires legal responsibility for the children of his or her



spouse only if there is a formal adoption. This is true even if the stepchild's other biological parent is dead, or destitute, or missing.

Does the existing law result in discrimination against stepchildren? The legal position of stepchildren raises difficult issues. Yet it is a question which must be examined, because Namibia is characterised by many complex family arrangements whereby children of different sets of parents share a household.

Issues involving stepchildren are likely to become even more important as AIDS claims family members.

The draft Child Care and Protection Act proposes that stepparents should be responsible for maintain-

ing stepchildren, unless this responsibility is overturned by a court after considering the following factors:

- the length and circumstances of the marriage of the stepparent and the child's parent;
- the relationship between the stepparent and the child;
- the arrangements for the maintenance of the child; and
- any special circumstance which should be considered to avoid injustice or undue hardship.

Placing a duty on a stepparent to contribute to the maintenance of the stepchild would not affect the duty of the biological parent of that child with respect to maintenance. The biological parent would be expected to pay for a fair proportion of the child's needs. But even if the responsibility of the biological parent were given priority, the draft law would mean that stepparents would also have to make a contribution if necessary.

Would this work to help improve the position of stepchildren in practice? Or would it mean that men and women would become reluctant to enter into marriages if the intended spouse already had children with another person?

This issue has already been debated at several forums, and it has proven to be very controversial. There are good arguments both for and against changing the present law. We are publishing this article in the hope of stimulating debate, which will help lawmakers to choose the best policy on this point for Namibia. Tell us what you think! ♀

Comments can be directed to:
**Office of the Permanent Secretary,
Attention: Kaleni Hiyalwa,
Tel: 2833109, Fax: 223545,
Private Bag 13359 Windhoek,
e-mail: khiyalwa@mys.gov.na**