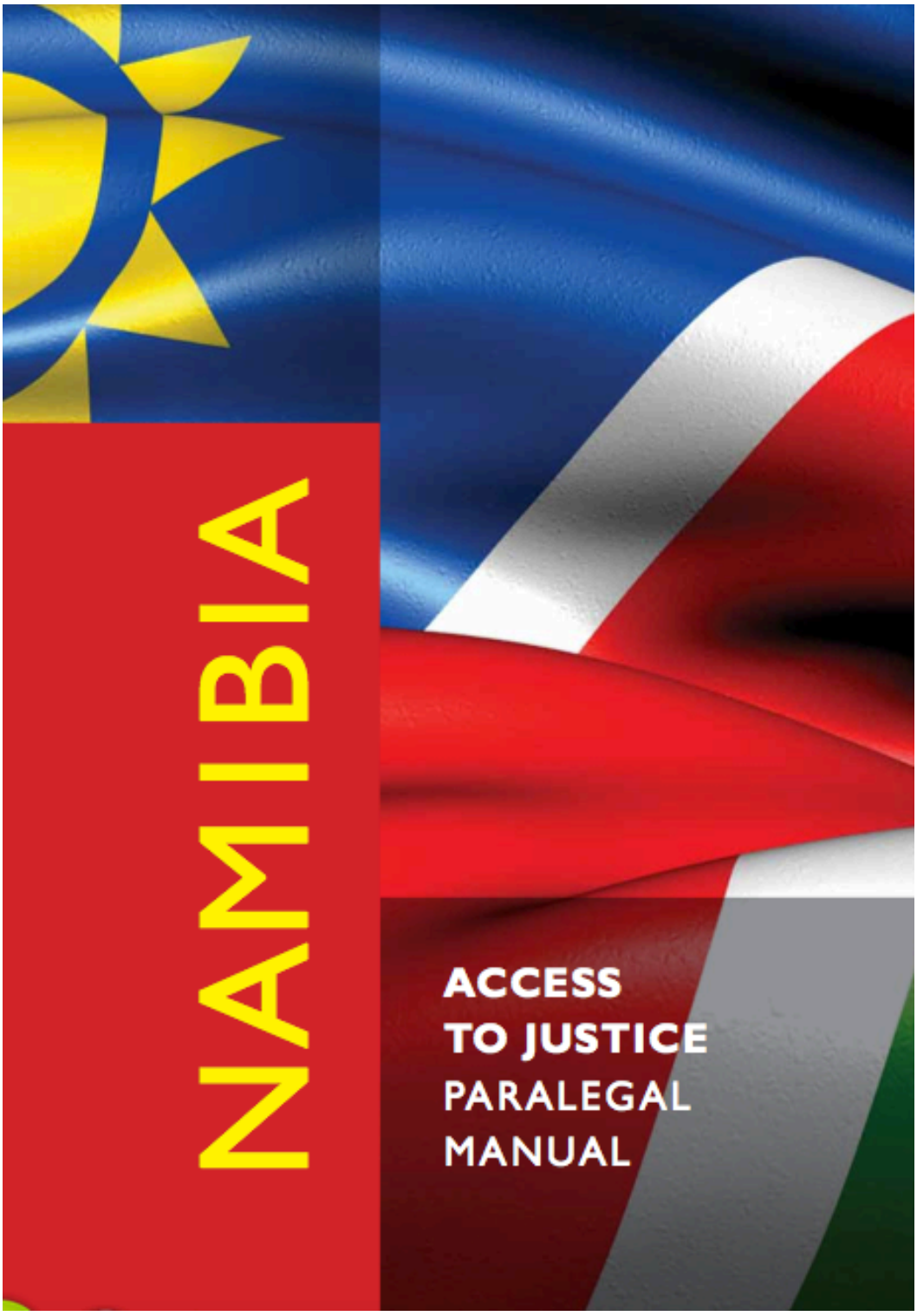
Excerpt from:



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.

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.

1. 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 interpreter. 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 Minster 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.

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.