

# PARENTING PLANS

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## NOTE

In this publication, “Ministry” and “Minister” refer to the Ministry and Minister responsible for child protection, and “Guide” means this *Guide to the Child Care and Protection Act* (which is published in separate chapters).

EDITION  
2019

**The purpose of a parenting plan is to facilitate cooperation between persons who have parental responsibilities and rights in respect of a child. Parenting plans can be particularly useful for parents who do not live in the same household. Parenting plans can be kept private within the family, registered at a children's court or made into an order of court. The choice affects the procedure for changing or enforcing a parenting plan.**

## 1. What is a parenting plan?

A parenting plan is a written agreement between co-holders of parental responsibilities and rights about the exercise of their parental rights and duties. It outlines how parents intend to exercise their rights and duties towards their children. Parenting plans are optional and voluntary.

An agreement between unmarried parents about who will have custody of a child born outside marriage is NOT a parenting plan. But parents who have made such an agreement might want to supplement it with a parenting plan.

◆ Child Care and Protection Act, sections 99(2), 119(1)-(3)

### Parental rights and responsibilities

Parental rights and responsibilities include the right and responsibility to –

- ④ have **custody** of the child (which includes responsibility for decisions relating to the child's day-to-day upbringing)
- ④ maintain **contact** with the child
- ④ act as **guardian** of the child
- ④ contribute to the **maintenance** of the child
- ④ provide **basic living conditions** for the child (food, shelter, clothing, adequate health care and immunisation, education, and play and leisure)
- ④ act in the child's **best interests**
- ④ **guide and direct the child** in a manner consistent with the child's evolving capacities
- ④ **protect the child** from neglect, discrimination, violence, abuse and harm
- ④ make sure that the child receives **proper care when the parent is temporarily absent**.



This list is not comprehensive. Parental rights and duties are difficult to cover completely in a list. They have been described over the years in common law (which means court cases on this topic).

A person may have full parental responsibilities, or only specific rights and responsibilities over a child. If more than one person holds parental responsibilities and rights in regard to a child, they are referred to as **co-holders of parental responsibilities and rights**.

◆ Child Care and Protection Act, sections 1, 6(2), 7, 118(1)-(3)  
◆ common law on parental rights and responsibilities

“ A parenting plan is a formal agreement concluded between the holders of parental responsibilities and rights, in which they mutually agree to the terms upon which such responsibilities and rights are to be exercised. Central to the concept is the recognition that it is generally in the best interests of children that conflict and confrontation between parents regarding the care and parenting of children is to be avoided, and that, where disputes regarding the exercise of parental responsibilities arise, such disputes are to be resolved by mediation as far as may be possible, and that courts be resorted to only where such disputes cannot otherwise be resolved. ”

◇ PD v MD 2013 (1) SA 366 (ECP), paragraph 24

## 2. Who can make a parenting plan?

Parenting plans will most often be made between **parents of a child**, particularly if they were **never married or do not live together**. Parenting plans might be used by parents who have **divorced**, if the divorce order did not include sufficient detail on all of the child-rearing issues which concern them.

Parenting plans might also be made between **a parent or parents and a foster parent** who has acquired some parental rights by virtue of a court order for foster care.

Parenting plans might also be made between **a parent or parents and a person who has been appointed as the legal guardian of the child**.

Another example would be a situation where a parent of a child is a minor – in such a case, the parent or guardian of the minor parent is also the guardian of the child. So **a minor parent and the parent or guardian of that minor parent** might want to make a parenting plan.

Any person who has been given **parental rights and responsibilities in terms of a court order** can make a parenting plan with a biological parent, or with any other person who has parental rights and responsibilities over the child in question.

◇ Child Care and Protection Act, section 119(2)

### Who can NOT make a parenting plan?

**Can a parent and a family member or friend who is looking after that parent's child make a parenting plan?** No. A parenting plan can be used only between people who have parental rights and duties. But a parent and a family member or friend can make a **kinship care agreement** if they wish. This is explained in Chapter 12 of this *Guide* on kinship care.

In cases like these, a parent is delegating temporary responsibility for the child's care to someone else. But a parent does NOT have the power to transfer the legal rights and responsibilities which go with being a parent to someone else.

**Can a biological parent and an adoptive parent make a parenting plan?** No. When a child is adopted, the biological parents no longer have parental rights and responsibilities. But a biological parent and an adoptive parent can make an **adoption plan** if they wish. This is explained in Chapter 17 of this *Guide* on adoption.

## What is the difference between parenting plans and kinship care agreements?

Parenting plan	Kinship care agreement
<ul style="list-style-type: none"> <li>⑨ Made by <b>equal parties</b>, in the sense that all parties to a parenting plan must be co-holders of parental responsibilities and rights</li> <li>⑨ Can be changed or terminated only by agreement (except where there is a court order)</li> <li>⑨ Cannot be made between a parent and a kinship care-giver</li> </ul>	<ul style="list-style-type: none"> <li>⑨ Made by <b>unequal parties</b>, in the sense that the party on the one side has parental responsibilities and rights, and the party on the other side does not</li> <li>⑨ Can be unilaterally changed or terminated by either party (except where there is a court order)</li> <li>⑨ Cannot be made between co-holders of parental responsibilities and rights</li> <li>⑨ Authorises kinship care-giver to apply for State grants in the same way as a parent (one or the other can apply for the grant, not both)</li> </ul>

## 3. What issues can a parenting plan cover?

A parenting plan might include agreements on:

- ⑨ where and with whom the child will live
- ⑨ the payment of maintenance
- ⑨ contact with the child by the non-custodian parent, or by other persons such as members of the parents' extended families
- ⑨ the schooling and religious upbringing of the child
- ⑨ the responsibility for medical care, medical expenses and medical aid coverage.

These are just some examples. Parenting plans can also cover other parenting issues, such as:

- ⑨ participation in sport or other extra-curricular activities
- ⑨ participation in religious services or cultural activities
- ⑨ responsibility for Christmas and birthday presents
- ⑨ use of safety equipment (such as agreeing that the child must always be strapped in a car seat when travelling in a vehicle)
- ⑨ how the child will or will not be disciplined
- ⑨ access to television or electronic devices
- ⑨ piercings and tattoos
- ⑨ pocket money.

Enough detail should be included in the parenting plan to make it useful to the parties. But the parenting plan should be flexible and realistic.

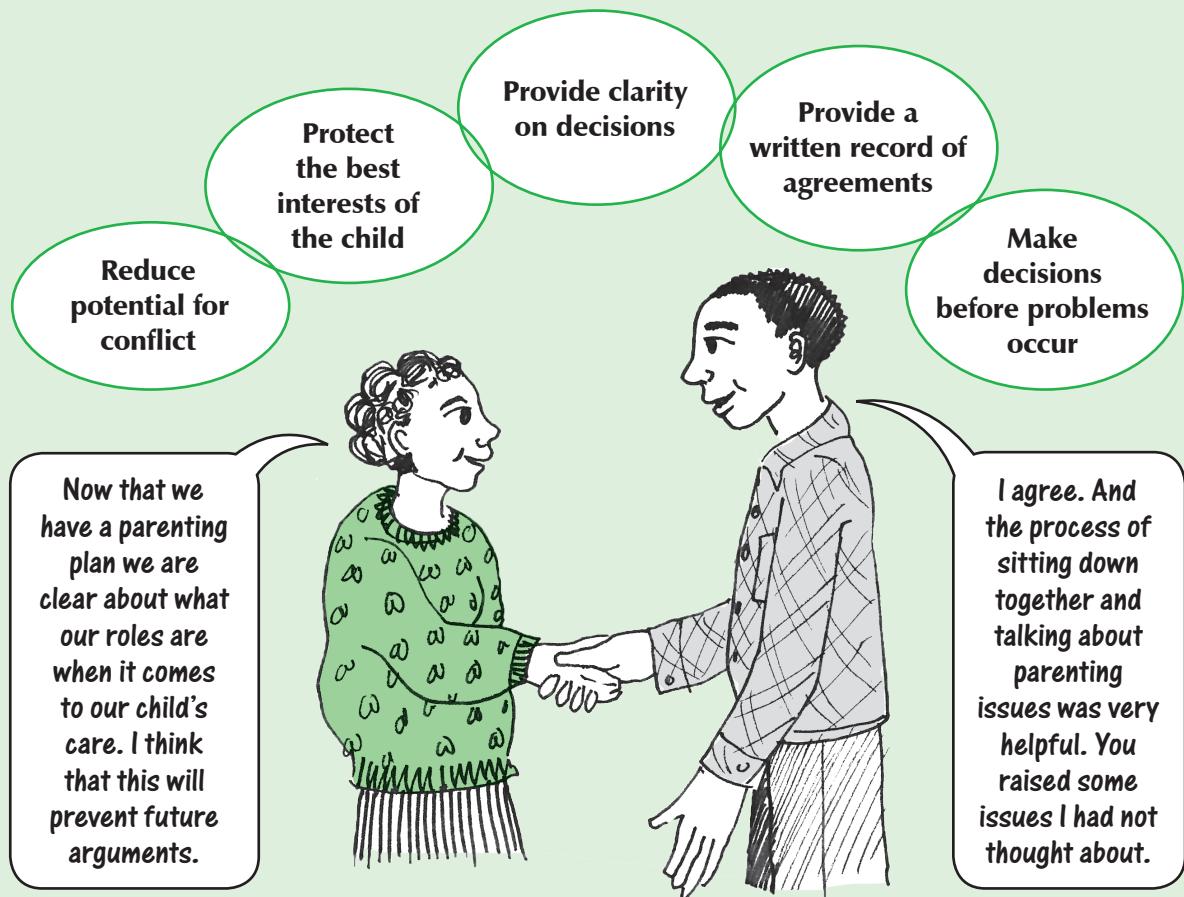
❖ Child Care and Protection Act, section 119(6)



## How are parenting plans useful?

Parenting plans are intended to help parents co-operate in raising their children. Parenting plans can help families make decisions before problems occur, to reduce the potential for conflict and to protect the best interests of the child. They can also help prevent disputes because they serve as a written record of what has been agreed.

For example, perhaps parents who have never been married are disagreeing about the father's access to the child. They could make an agreement saying that he will visit the child every other weekend, and that the child will spend one Christmas holiday with the mother's family and the next one with the father's family.



## Parenting plans and maintenance

**If a court order for maintenance is already in place (under the Maintenance Act 9 of 2003, or as part of a divorce order), can new terms for maintenance be agreed upon in a parenting plan?** No. A court order cannot be changed by a private agreement. The correct procedure to adjust a court order for maintenance is to use the procedures for substitution or discharge of the order under the Maintenance Act.

**Can a parenting plan be made solely to agree on maintenance?** Yes, this seems to be acceptable. It would work in the same way as when an agreement between the parents is made into a binding maintenance order under the Maintenance Act. The Child Care and Protection Act says that, when a parenting plan is registered with the children's court or made into a court order, a provision dealing with maintenance is enforceable under the Maintenance Act.

**Are there any advantages to agreeing about maintenance in a parenting plan which is registered with the court or made into a court order, versus getting a maintenance order from the maintenance court?** No. The enforcement mechanisms are the same. Both avenues require the parties to approach a magistrate's court to formalise their agreement on maintenance if they want to be able to use the law to enforce the agreement.

- ◆ Child Care and Protection Act, section 119(11) (enforcing maintenance provisions in parenting plans)
- ◆ Maintenance Act 9 of 2003, section 18 (consent maintenance orders)

## 4. Agreeing on a parenting plan

Parenting plans can be made independently by the parties to the plan. They can also be made with help from a lawyer, a social worker, a traditional leader, another suitable professional or someone with experience in mediation.

The principle of **child participation** applies to parenting plans. The child's viewpoint must be given consideration when the plan is being made, in light of the child's age, maturity and stage of development.

Parenting plans should be recorded on **Form 11A**, which is appended to the Child Care and Protection Regulations, or in a similar way.

**Any  
parenting  
plan must  
be in  
the best  
interests  
of the  
child.**

For example, it would be acceptable to copy out the headings from Form 11A by hand on any sheet of paper if no photocopy of the form is available.

The form requires a description of the child's participation, or an explanation of why no consultation with the child took place.

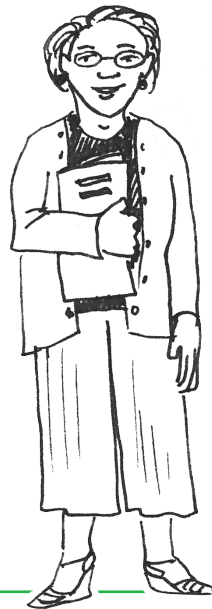
The parenting plan must be signed by the parties to the plan in the presence of two witnesses.

The witnesses should ideally be adults. They must be able to confirm that the parties really signed the parenting plan.

- ◆ Child Care and Protection Act, section 119(4)-(5),
- ◆ Child Care and Protection Regulations, regulation 36, Form 14A



We find it difficult to talk to each other without arguing, so we made our parenting plan with the assistance of a social worker.



The social worker met with each of us individually to discuss the plan. This assisted us to reach agreement without conflict.

## Can one parenting plan cover multiple children?

**Yes.** The form provided in the regulations for parenting plans allows one plan to apply to multiple children. But this needs to be done with care, since children of different sexes and ages may have different needs.

## What if one parent is unwilling to make a parenting plan?

**No one can be forced to make a parenting plan.** It may be possible to convince a reluctant parent to agree to make a parenting plan by involving a third party such as a social worker or a family member to mediate. But a parenting plan is an *agreement*, so it must be voluntary.

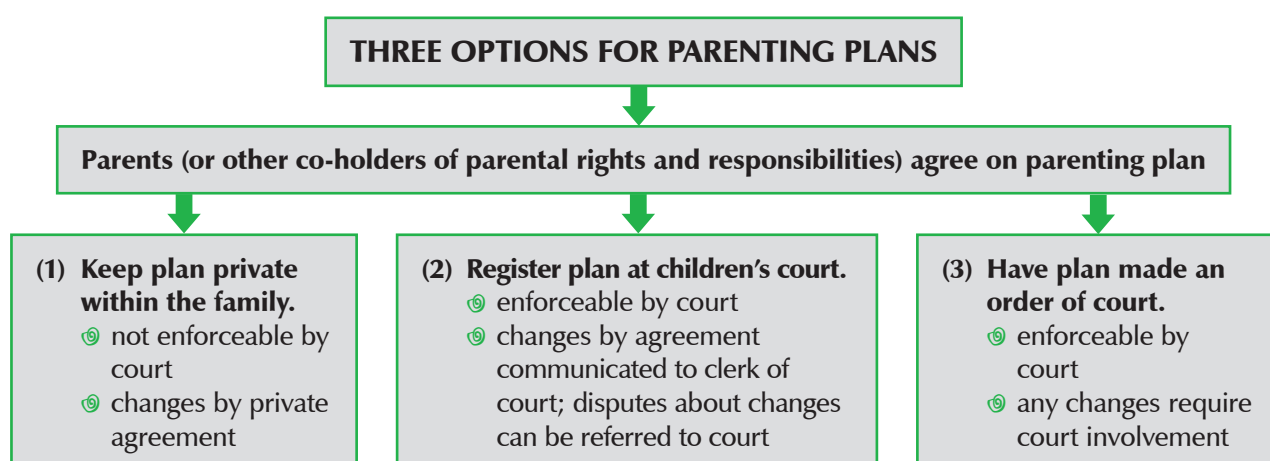
## Things to consider when making a parenting plan

- ⑨ Child participation is important when making a parenting plan, but remember that **children may say what they think a parent wants to hear rather than what they really think.** A child may feel more comfortable expressing views privately to someone who is facilitating the parenting plan, such as a social worker.
- ⑨ Remember that a **parenting plan may need to be revised as the child develops.** Even if a child is too young to give input when the parenting plan is initially made, it may be appropriate for the child to give input at a later stage when the plan is revised.
- ⑨ **Children should not be put into a position where they have to choose between their parents.** If the parents cannot agree on something, it is probably not appropriate to ask the child to make a decision. Parents should consider asking another person to assist when involving the child, so the child will not feel as though he or she is caught in the middle of a conflict between the two parents.
- ⑨ **Is the child old enough to take part in decisions about what goes into the plan?** If the child is still very young, it may be more appropriate to explain the plan to the child instead of asking the child for input.

## Tips for parents on how to make a successful parenting plan

- ⑨ Try to put your emotions aside and approach the plan as if you were in a business relationship.
- ⑨ Remember that putting your parenting plan down in writing does not mean that you do not trust each other or that you disagree. A written agreement is just a mechanism for being clear.
- ⑨ Resist the urge to fight old fights. When discussing a parenting plan, stick to the issue at hand rather than talking about your relationship in general.
- ⑨ Separate your needs from your children's needs. Do not try to use the parenting plan to punish the other parent. A parenting plan is about the needs of the children it covers.
- ⑨ Start with the easier issues that you can agree on. Starting with agreements sets a good tone for the entire discussion. Agreements can lead to more agreements. If you start with the most controversial issue, you are unlikely to have a fruitful discussion.

## 5. Finalising a parenting plan



There are three different avenues for finalising a parenting plan. These different approaches give a parenting plan varying degrees of weight and permanence. The different procedures for finalising the plan will affect how the plan can be enforced or changed.

*We were in a relationship but have separated. We remain friends. Keeping our parenting plan within the family allows us to edit the plan without involving the children's court. We get along well, so we are able to solve any conflicts or differences between ourselves on our own.*

### OPTION 1: Keeping the plan private

This means that the parties can enforce the parenting plan only by negotiation between themselves, or by voluntary mediation. They can change or cancel the parenting plan by agreement between themselves, without notice to anyone.





## OPTION 2: Registering the plan

This means that a party to the parenting plan can apply to the children's court for assistance with enforcement if the plan is not being followed. The parties can change or cancel the parenting plan by agreement between themselves, but they must give notice of this to the clerk of the children's court within seven days. If they are in dispute about changing or cancelling the parenting plan, any party to the plan can apply to the court to rule on the matter in light of the child's best interests.

To register a parenting plan, the signed parenting plan must be submitted to the clerk of the children's court in the area where the child normally lives. The application must be accompanied by proof that the parties to the parenting plan are the parents of the child, or proof that they have parental rights and responsibilities. This proof might take the form of:

- ⑨ a full birth certificate of the child
- ⑨ a court order in a proof of parentage proceeding
- ⑨ a certificate of legal guardianship
- ⑨ a court order for foster care.

The kind of proof which will be presented will depend on who is making the agreement. The clerk will file this proof together with the parenting plan.

*We decided to register our parenting plan with the children's court. We don't always see eye to eye, so we wanted to take a step that would make the plan more official.*



## OPTION 3: A parenting plan can be made into a court order.

This means that a party to the plan can apply to the children's court for assistance with enforcement if the plan is not being followed. The parties must apply to the court to change or cancel the parenting plan, even if they are in agreement about what should be done. The child or someone acting in the best interests of the child can also apply to the court for the parenting plan to be changed or cancelled.

The parties to a parenting plan can apply to the children's court in the area where the child normally lives to have the parenting plan made into a court order. They must submit this application to the clerk of the children's court on **Form 11B**, submitted together with **Form 6**. Both of these forms are appended to the Child Care and Protection Regulations.

The application must be accompanied by proof that the parties to the parenting plan are the parents of the child, or proof that they have parental rights and responsibilities.

There is no requirement that the parenting plan must be registered with the court before applying to make it a court order.

Before a parenting plan is made into a court order, the court must attempt to contact certain key persons if they are not parties to the plan:

- ⑨ a parent or some other co-holder of parental responsibilities and rights who is not a party to the plan
- ⑨ a parent who is for some reason no longer a co-holder of parental responsibilities and rights

- ⑨ the child's primary caretaker
- ⑨ any person or persons with custody or guardianship of the child immediately prior to the application
- ⑨ any other person identified by the court or the social worker concerned as having an interest in the application.

The clerk of the court will notify these people of the application on **Form 7**, which is appended to the Child Care and Protection Regulations, enclosing a copy of the application: These persons must be given an opportunity to present information to the court if they wish.

**“Primary caretaker”** means a person other than the parent or other legal care-giver of a child who takes primary responsibility for the daily care of the child with the express or implied permission of the child's legal custodian.

◆ Child Care and Protection Act, section 1 (definition of “primary caregiver”)

If notice of the application to make the parenting plan into a court order cannot be personally served on any of these persons, the clerk of the children's court must attempt to notify them by telephone, fax, email, courier or registered post – or by sending an official to their last known residential address or workplace to attempt to find out how to reach them. If the clerk of the court is still unable to contact the individual by means of these alternative methods, the clerk must provide the court with proof of the attempts which were made.

The court's decision on whether or not to register the parenting plan will be based on the best interests of the child.

If the court discovers during the process of considering whether to make a parenting plan into an order of court that the child may be in need of protective services, the court must hold a child protection hearing.

*We decided to have our parenting plan made into a court order. Trust is difficult between us, so it is reassuring to know that the court must be involved if we want to change some element of the plan.*



◆ Child Care and Protection Act, section 119(7)-(9)

◆ Child Care and Protection Regulations, regulations 38, 120, Form 11B

## The role of the court

Note that the court is **not required** to make a parenting plan into a court order even if the parties are in agreement that they would like to take this step. The court has a duty to consider the evidence placed before it and to make a decision based on the **best interests of the child**, after considering the factors which are intended to guide identification of a child's best interests. These factors are discussed in Chapter 2 of this *Guide* on general principles.

Also, an agreement cannot be made into a court order unless it is consistent with the Namibian Constitution and the laws of Namibia, as well as both **legally and practically enforceable**. The court will not make a court order in respect of an agreement with terms that are too vague or nonsensical to be capable of enforcement.

◆ Child Care and Protection Act, section 3

◆ See *Eke v Parsons* 2016 (3) SA 37 (CC)

## Notices under the Child Care and Protection Regulations

Notices from the court must be served by a member of the police, a messenger of the magistrate's court or a person authorised by the children's commissioner in the following manner:

- (1) The notice can be served **personally** on the person.
- (2) The notice can be given to the person's **legal practitioner**, if the legal practitioner's name and address have been provided to the court for purposes of proceedings under the Act.
- (3) The notice can be left at the person's **place of residence or business**, with anyone who appears to be at least 16 years of age and residing at the residence or working at the business.
- (4) The notice can be left at the person's **place of employment**, to anyone who appears to be at least 16 years of age, and employed at the same place or in charge there.
- (5) In the case of a **legal person (such as an organisation)**, the notice can be left at its **registered office or main place of business**, with a director or a responsible employee.

If the person to be served in any way **prevents the notice from reaching him or her**, it is sufficient service to **attach a copy of the notice to the outer door or security gate** of the relevant place.

If a notice cannot be served in any of these ways, the member of the police, messenger of the magistrate's court or other person authorised by the children's commissioner must attempt notification in one or more of the following ways:

- (1) The person can be notified by **telephone**.
- (2) The person can be notified by **fax**.
- (3) The person can be notified by **e-mail**.
- (4) The person can be notified by **courier** or **registered post**.
- (5) The person attempting notification can visit the last known residential address or place of business or employment of the person in question, to **attempt to discover the current contact details** of the person, and then try to use that contact information to serve the notice.

If all efforts to serve the notice fail, the person who attempted notification must give the children's **court proof of the attempts made**.

Proceedings in a children's court may begin or continue in the **absence of a person who was notified, or attempted to be notified**, to attend the proceedings or to make representations – IF the children's court considers it to be in the **interests of justice** and in the **best interests of the child**.

The court must **postpone** the matter due to the **absence of a person who was notified to attend** in any one of these circumstances:

- ④ The person who is not present at children's court proceedings is **likely to make a valuable contribution** regarding the best interests of the child in question.
- ④ The court is of the opinion that the presence of the person is **necessary** for the purposes of the court proceeding.
- ④ The person who is absent is the relevant child's **parent, guardian, custodian, care-giver or a person identified by the court or the relevant social worker as having an interest in the matter** (see section 56(3) of the Act).
- ④ The person who is absent is the **investigating social worker** (see section 56(3) of the Act).

In such a case, the court can postpone the matter and arrange for the issue of a **subpoena** to the absent person on **Form 4**, which is appended to the **Regulations relating to Children's Court Proceedings**.

A person who fails to appear before the children's court without a reasonable cause after being issued with a notice or a subpoena commits a crime punishable by a fine of up to N\$5 000 or to imprisonment for up to one year or both. A person is not subject to a penalty for non-attendance if the children's court decided to proceed in that person's absence.

◇ Child Care and Protection Regulations, regulation 120

## 6. Enforcing a parenting plan

What can a party to the parenting plan do if the plan is not being followed?

- (1) If the plan was **NOT registered with the court or made into a court order**, the parties can negotiate between themselves or ask a social worker or another person trained in mediation for help.
- (2) If the parenting plan was **registered** with the court OR made into a **court order**, one or more of the parties to the plan can apply to the court for assistance if the plan is not being followed. The court will focus on the child's best interests in resolving the dispute. It may order the parties to try to resolve the dispute through mediation or some other lay forum first. It may also order a social worker or some other professional to investigate the child's circumstances.

An application regarding a dispute about a parenting plan must be made to the clerk of the court on **Form 11C**, submitted together with **Form 6**. Both of these forms are appended to the Child Care and Protection Regulations. Notice of this application must go to the same persons in the same manner as an application for making a parenting plan into a court order.

- ◆ Child Care and Protection Act, sections 119(10)-(11), 122
- ◆ Child Care and Protection Regulations, regulations 39, 120, Form 11C

### What tools can a court use to enforce a parenting plan?

A children's court might refer the parties in dispute to a **lay-forum** — such as mediation, a family meeting or a traditional authority — to attempt to find a cooperative solution.

If a parenting plan contains an agreement about the payment of **maintenance** and it is registered at the court or made into a court order, the agreement on maintenance can be enforced in the same way as a maintenance order which was made in terms of the Maintenance Act 9 of 2003.

A “**family meeting**” is a meeting of family members attended by a skilled facilitator at which the family members attempt to find solutions to a problem involving the care or protection of a child. Family meetings include an opportunity for private discussion without the facilitator. The child should be permitted to participate in the family meeting and have his or her views considered, depending on the child's age and maturity.

The Magistrate's Court Act 32 of 1944 provides for a penalty for disobedience of any **order of court**. Any person who wilfully disobeys or fails to comply with a magistrate's court order can be found guilty of **contempt of court** and punished by a fine of up to N\$1 000 or imprisonment for up to three months.

When a dispute is referred to a children's court, the court could order a **social worker investigation** if there was reason to believe that a child covered by the plan might be in need of protective services.

- ◆ Child Care and Protection Act, sections 42(1), 44, 47(1)(f), 119(11) and 121(4)
- ◆ Magistrate's Court Act 32 of 1944, section 106

## Requirements for contempt of court: Example from South Africa

*The passage below comes from a 2014 South African case involving contempt of court in a High Court in respect of a violation of a divorce order which contained provisions similar to those which might be found in a parenting plan.*

“It is a crime to unlawfully and intentionally disobey a court order, thereby violating the dignity, repute or authority of the court. Contempt proceedings are concerned with the unlawful and intentional refusal or failure to comply with the order of court. Although the object of such proceedings is the imposition of a penalty in order to vindicate the court’s honour, a declaration of contempt in civil matters may be made and is appropriate in certain circumstances. [...]

A private litigant who has obtained a court order requiring an opponent to do or not do something [...] is entitled to approach the court again, in the event of non-compliance, for a further order declaring the non-compliant party in contempt of court, and imposing a sanction. This is a civil proceeding that invokes a criminal sanction or its threat.

The applicant must show the requisites of contempt, namely the existence of the order, service or notice; non-compliance; and wilfulness or *mala fides* [bad faith] beyond reasonable doubt. However, once the applicant has proved the order, service or notice and non-compliance, the respondent bears an evidential burden in relation to wilfulness and *mala fides*, and, if evidence is not advanced establishing reasonable doubt as to whether non-compliance was wilful or *mala fide*, contempt will have been established beyond a reasonable doubt. ‘(W)ilfulness and *mala fides* on the part of the respondent will normally be inferred and the onus will be on the respondent to rebut this inference ...’.”

♦ *JC v DC* 2014 (2) SA 138 (WCC), paragraphs 35-37 (some citations omitted)

## 7. Changing or cancelling a parenting plan

Sometimes a parenting plan may need to be changed or cancelled. For example, as the child grows older, there may be a need to adapt the plan to reflect the growing maturity of the child. There may also be changed circumstances, such as a situation where one party to the plan has a new partner or additional children, or where the child moves into a school hostel. The parties may want to cancel the parenting plan if it is not proving helpful.

- (1) Parties to a parenting plan that is **not registered with the court or made into a court order** can agree to change or cancel the plan at any time. They can approach the children’s court to decide what is in the child’s best interests if they cannot agree.
- (2) Parties to a parenting plan that is **registered** with the court can agree to change or cancel the plan on their own, but they must notify the court about this within seven days. They can approach the children’s court to decide what is in the child’s best interests if they cannot agree.
- (3) Parties to a parenting plan that is made into a **court order** *must* apply to the court in order to change or cancel the agreement. The child or someone acting in the best interests of the child can also apply to the court for the parenting plan to be changed or cancelled. After considering the application, the court may grant the application, grant the application with conditions or refuse the application. The decision will depend on the child’s best interests.



An **application** regarding amendment or cancellation of a parenting plan must be made to the clerk of the court on **Form 11C**, submitted together with **Form 6**. Both of these forms are appended to the Child Care and Protection Regulations. A **child** can apply to the court to have the parenting plan changed or amended only with the court's consent. This requirement is designed to prevent frivolous applications by children. **Notice** of this application must go to the same persons in the same manner as an application for making a parenting plan into a court order. If the parties are not in agreement about the proposed change or termination, the court may order that they try **mediation** before the matter is considered by the court. The children's court may order a social worker or another person to conduct an **investigation** and submit a report to the court. It may also order any person to appear before the court and provide evidence. The court may order the applicant or any party opposing the application to pay the costs of any such investigation or witness appearance.

- ◆ Child Care and Protection Act, sections 120-121
- ◆ Child Care and Protection Regulations, regulations 39, 120, Form 11C

**Why are the rules and procedures for changing or cancelling parenting plans different from the ones for kinship care agreements?** The reason is that **parenting plans** involve **equal parties** (in the sense that all parties must be co-holders of parental rights). The parties can cancel the parenting plan only if they both agree to do so. In contrast, **kinship care agreements** involve **unequal parties** (in the sense that one party has parental rights and the other does not). Either party can terminate the agreement without the consent of the other. The parent can take back the delegation of parental rights at any stage. The non-parent has no duty to continue caring for child, since this legal duty technically never left the parent but was just temporarily delegated.

## Considering the child's point of view: Example from South Africa

### *HG v CG* 2010 (3) SA 352 (ECP)

The case of *HG v CG* is a good example of how a court can consider the child's point of view in connection with a request for an amendment of a parenting plan.

In this case, the parents of four children (triplets with an older sibling) were divorced with joint custody of the children. The parents had bought homes in the same development and the children spent equal time at both houses. This arrangement was in place for three years until the mother wished to become the primary caregiver and relocate to Dubai with the children. The triplets were age eleven at this time, while the elder sibling was age fourteen. All the children were very attached to both parents and did not want to leave their father and live far away.

The mother had submitted a report to the court that dismissed the opinions of the children and asserted that living in Dubai would allow them to live in a better house and attend a better school. The report's conclusion that the children should move with their mother was based solely on financial considerations, and not the best interests of the child.

The Court dismissed the report, noting the statutory rules which gave the children a right to be heard. In addition, even though the best interests standard recognises that the capacity of the parents to provide for the needs of children is an important consideration, financial issues are only one of many factors that must be considered in combination to form the basis of the decision.

The Court found that the children were of a sufficient age and level of maturity to express an informed opinion. In light of their views, the Court held that it was not in the children's best interests to allow a change to the parenting plan agreed upon at the time of the divorce.

## 8. Examples of terms in parenting plans

Parenting plans must be recorded on **Form 11A** of the Child Care and Protection Regulations, or in a similar way. The form is divided into sections by topic, to help keep the plan organised and clear. Not all the topics need to be agreed upon in the plan. Each plan will be unique to the situation of the particular family involved. **Sections of the form can be left blank if there is no agreement about a certain topic.**

**The parenting plan can cover multiple children.** At the beginning of the form, there is a space for the particulars of each child as well as information about the individuals who hold parental responsibilities and rights over the children.

One topic in the parenting plan form is the **day-to-day care of the child**. In this section, the parents can give details about where the child will live, for what periods and under whose care. **For example, there could be an agreement that the parents will alternate care, with the child spending weekdays at his mother's house, and the weekends at his father's house.**

Another topic is **maintenance**. This section is for agreements about who will contribute what to the child's maintenance. **For example, this section might cover the monthly cash contribution of the parent who is not living with the child, and the payment of medical and dental expenses and school-related expenses (uniforms, stationery, sport, extracurricular activities, etc).**

Another topic is **contact**. This section can include information about contact with the child by the parent who is not living with the child. **For example, this section might include agreements on weekly or monthly visits with the child, the timing of visits or where the child will spend school holidays, birthdays and other special days. It might contain agreements on who is responsible for transferring the child to the parent with access, how the child can be reached when he or she is away from home with that parent, or agreements about other travel (such as visiting extended family members or going on school trips). There might also be agreements on the timing and frequency of telephone calls, texts and emails.**

The plan can include a discussion of **major decisions**, with agreements on how key decisions in the child's life will be made. **This might deal with topics such as education, religion, cultural activities, health, sports or other extra-curricular activities, hobbies, pets, and special needs.**

Another possible topic is **how disagreements will be resolved**. It is useful to agree on this before a problem arises. **For example, the parents might agree in advance that they will seek family mediation if they find themselves in disagreement. They might agree in advance that they will each take responsibility for half of the costs of such mediation.**

### Sample agreement on access

- "1.4 Parent 1 shall have contact with the children as follows:
- 1.4.1 Every alternate weekend by collecting the children from school on the Friday and returning them to school on the Monday, provided that should such weekend be preceded or succeeded by a public holiday, the public holiday shall then be deemed to be incorporated in the weekend in question;
  - 1.4.2 Every alternate public holiday which is not attached to a weekend as envisaged in para 1.4.1 above;
  - 1.4.3 Every Wednesday when Parent 1 does not have a weekend contact with the children, by collecting them from school on the Wednesday and returning them to school on the Thursday."

◇ example based on  
*JC v DC* 2014 (2) SA 138 (WCC)

There are also **other issues** that can be agreed upon in the parenting plan. For example, the parties to the plan can agree on contact with other family members or contact with new partners of either parent. They might agree on methods of child discipline, or how to deal with future life changes such as marriage, re-marriage or change of residence. Additional information can be included on extra sheets attached to the form if necessary.

Remember that a mandatory part of a parenting plan is the inclusion of the **views of the child or children** – if the child covered by the plan is of sufficient age or maturity to contribute an opinion. The parties to the plan need to confirm that they consulted with the child and describe how the consultation took place. If a child was opposed to any of the terms of the plan, this needs to be explained and discussed. If no consultation took place, there must be an explanation for this.

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**REMINDER:** The parenting plan must be signed by all parties before two witnesses.

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◆ Child Care and Protection Regulations, regulation 36, Form 11A

### Sample agreement on major decisions

“In respect of the following issues, joint decisions will be required:

- 1.3.1 the children’s enrolment in any crèche, preschool, school, after-care, extra tuition, or tertiary institution;
- 1.3.2 the children’s choice of subjects and enrolment in any extramural and sporting activities;
- 1.3.3 any elective medical treatment that may be required by the children, which does not include their day-to-day medical care or emergency treatment, but which shall include them receiving any therapeutic assistance;
- 1.3.4 any significant change in the rearing of the children with regard to their religious beliefs and cultural or traditional values;
- 1.3.5 any decision to change the children’s residence in either party’s home from Windhoek and immediate surrounds or to remove the children from the aforesaid area, other than for a holiday period of short duration;
- 1.3.6 any decision which is likely to change significantly, or to have a significant adverse effect on, the co-holder’s exercise of parental responsibilities and rights in respect of the children.”

◆ example based on  
*JC v DC 2014 (2) SA 138 (WCC)*

### Sample agreement on other issues

- “1.5 Both parties shall ensure that the other party receives copies of the children’s school reports and any correspondence or documentation received by them which relates to the children’s progress at school and/or to any problems that they may be experiencing and provide the other party with copies of any reports that they may receive.
- 1.6 Should either party not be able to care for the children during their respective contact periods, such party shall first approach the other party to ascertain whether they are available to care for the children prior to a third party being appointed to do so.”

◆ example based on  
*JC v DC 2014 (2) SA 138 (WCC)*

## 9. Duty not to abuse, neglect or abandon child

It is a crime for a parent, guardian or any other person with parental responsibilities and rights in respect of a child to abuse or deliberately neglect the child, or to abandon the child. This applies regardless of whether or not a parenting plan is in place. The punishment can be a fine of up to N\$50 000 or imprisonment for up to 10 years, or both.

◆ Child Care and Protection Act, section 254(1)