

# KINSHIP CARE

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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

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**K**inship care is a new concept in Namibia. It is designed to cover situations where families make their own arrangements for children to live with someone other than their parents – such as extended family members or close family friends. This approach to child rearing is common in Africa. The Child Care and Protection Act is the first statute to recognise kinship care in Namibia. The parent and the care-giver can make a kinship care agreement about the child's care. Kinship care agreements are not mandatory unless the kinship care-giver wants to apply for or receive a State grant for the child.

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## 1. What is kinship care?

The Child Care and Protection Act defines “**kinship care**” as the “care of a child by a member of the child's family or extended family” *other than* the parent or guardian of the child or a person who has parental responsibilities and rights in respect of the child.

Kinship care is normally a voluntary arrangement made by a family. A court can order a placement in kinship care if the child is in need of protective services, where this would be in the child's best interests. For example, this could apply in a situation where the child cannot be adequately cared for by the parents because they are ill and there is a suitable family member who is willing to take on responsibility for the child.

A **kinship care agreement** is an agreement between a child's parent or guardian and the kinship care-giver about the child's care. It is not necessary to make a formal agreement when a child goes to stay with a relative or a friend, even if the stay lasts for an extended period. But a parent or guardian may choose to make a kinship care agreement with the kinship care-giver so that they have a clear understanding with each other about the child's care.

Kinship care can last for years, but it is not the same as adoption. Unlike adoption, kinship care does not affect parental responsibilities and rights.

A child's parent or guardian can change or cancel the kinship care arrangement at any time without the agreement of the kinship care-giver. A kinship care agreement does not transfer parental responsibilities and rights; it merely delegates them. A parent or guardian can take back a delegation of parental responsibilities and rights at any stage.

My parents want me to go to school in Windhoek but it is far from home. My aunt and uncle live in Windhoek so my parents have arranged for me to live with them. My aunt and uncle are my kinship care-givers.



The kinship care-giver can also cancel the agreement at any time, because the kinship care-giver does not have a legal duty to care for a child like a parent does. A person who is not a parent or guardian has no legal duty to continue caring for a child; this legal duty never left the parent or guardian but was only delegated to the kinship care-giver.

◆ Child Care and Protection Act, sections 1, 123(1)

### Express versus implied consent to kinship care

A child may be placed in kinship care with the express or implied consent of the child's parent or guardian. What is the difference between express and implied consent?

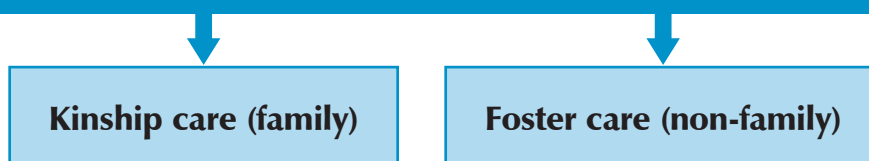
**Express consent** is explicit. Suppose that a mother asks a family member to care for her child while she temporarily moves to another town for study or employment. This parent is giving express consent to kinship care.

**Implied consent** occurs when surrounding circumstances would lead a reasonable person to believe that consent has been given, even though no direct words of agreement have been spoken. Suppose that a father who lives in a household with extended family members leaves town without his child, and expresses no objections to these extended family members continuing to care for the child in his absence. The circumstances indicate implied consent to kinship care.

### What is the difference between kinship care and foster care?

Kinship care	Foster care
<ul style="list-style-type: none"><li>④ Placement usually by voluntary private agreement</li><li>④ Kinship care-giver is a family member or close family friend</li><li>④ No supervision (unless it is by court order)</li><li>④ Eligible for same grant as a parent if kinship care agreement is registered with court (one or the other can apply for the grant, not both)</li></ul>	<ul style="list-style-type: none"><li>④ Placement only by court order (for child in need of protective services)</li><li>④ Foster parent is not a family member</li><li>④ Social worker supervision</li><li>④ Eligible for foster parent grant</li></ul>

### Children temporarily living apart from their parents



## 2. The importance of recognising kinship care

Before the Child Care and Protection Act was enacted, kinship care was not legally recognised in Namibia. The result was that people in such arrangements had to go to court to be named as “foster parents” in order to be eligible for grants. This process included a review by a social worker. This approach was time-consuming for the family, the social worker and the magistrate who had to consider the matter. It placed a burden on courts and social workers without really adding to the protection of the child, since the courts usually ended up just rubber-stamping arrangements which were already in place. There were also many cases where needy households were unable to access grants because they had not gone through the lengthy process of being approved as “foster parents” by the court. The new distinction between foster care and kinship care removes an unnecessary burden from community members, as well as social workers and courts.

Kinship care is culturally important in Namibia. Most children placed in foster care under the previous law are being cared for by extended family members. This is a good thing. The Convention on the Rights of the Child says that care by extended family members is the next best option if parental care is not possible. However, kinship care-givers often struggle to make ends meet. It is important that kinship care-givers are able to access the financial support they need to ensure that they can continue to provide for the children in their care. The new recognition of kinship care and the eligibility of kinship care-givers to apply for State grants for the children in their care will help.

◇ UN Convention on the Rights of the Child, Article 5

### **Namibian Constitution, Article 14(3)**

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

### **Convention on the Rights of the Child, Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### **UN Guidelines for the Alternative Care of Children (2010), paragraph 29(c)(i)**

Kinship care: family-based care within the child’s extended family or with close friends of the family known to the child, whether formal or informal in nature.

### 3. Who can make a kinship care agreement?

The parties to a kinship care arrangement can enter into a kinship care agreement if they wish.

A child can be placed in kinship care by a **parent or parents with custody of the child**, or by a **legal guardian** of the child other than a parent.

For example, a legal guardian for a child after the death of the parent or parents might be named in a will, or appointed by the High Court or the children's court. A legal guardian might also be named for a child whose parents are mentally incapacitated.

A person who has kinship care of a child is called a **“kinship care-giver”**. This could be a step-parent, an extended family member (grandparent, step-parent, brother, sister, uncle, aunt or cousin) or “any other person with whom the child has developed a significant relationship, based on psychological or emotional attachment”.

**Custodial powers can be delegated only by a parent or guardian who holds that responsibility in respect of the child.** This means that a kinship care agreement can be made only by a parent who has custody of the child, or by a guardian whose guardianship powers encompass custody. A parent or guardian cannot delegate a responsibility which he or she does not hold.

◆ see Child Care and Protection Regulations, regulation 40(1)

**Parent with custody or legal guardian delegates certain parental responsibilities and rights**



**Kinship care-giver accepts the delegation of certain parental responsibilities and rights**

**KINSHIP CARE AGREEMENTS ARE OPTIONAL:** A parent or guardian can make a kinship care agreement with a kinship care-giver in respect of any kinship care arrangement, but this is optional. A kinship care agreement is required **ONLY IF** the kinship care-giver wants to be eligible to apply for or receive a grant for the child.

◆ Child Care and Protection Act, sections 1 (definition of “family member”), 123(1)-(2)

## 4. What issues can a kinship care agreement cover?

A kinship care agreement might cover:

- ⑨ where and with whom the child will live, [such as with the child's grandmother in her house](#)
- ⑨ the payment of maintenance, [such as reimbursement for the cost of the child's living expenses or payment of a fixed amount such as \\$500 per month](#)
- ⑨ contact with the child by the parent who does not live with the child, or by other persons, [such as weekend visits with the child's father or grandparents](#)
- ⑨ the schooling and religious upbringing of the child, [such as a requirement that the child will attend a particular school or church](#)
- ⑨ who is responsible for medical care, medical expenses and medical aid coverage
- ⑨ the rights and responsibilities that the parent or guardian is temporarily delegating to the kinship care-giver, [such as the right to make decisions about the child's medical treatment or education.](#)

These are just some examples. Kinship care agreements can also cover other child-rearing issues.

◇ Child Care and Protection Act, sections 123 (3)(b) and (e), 119(6)

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

#### Kinship care agreement

- ⑨ Made by **unequal parties**, in the sense that the party on the one side has parental responsibilities and rights, and the party on the other side does not
- ⑨ Can be unilaterally changed or terminated by either party (except where there is a court order)
- ⑨ Cannot be made between co-holders of parental responsibilities and rights
- 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)

#### Parenting plan

- ⑨ Made by **equal parties**, in the sense that all parties to a parenting plan must be co-holders of parental responsibilities and rights
- ⑨ Can be changed or terminated only by agreement (except where there is a court order)
- ⑨ Cannot be made between a parent and a kinship care-giver



# 5. Making a kinship care agreement

## 5.1 Requirements

### Key guiding principle: best interests of the child

A kinship care agreement must be in the best interests of the child. The Act sets out the factors that must be taken into account to determine the best interests of the child. These factors are discussed in Chapter 2 of this Guide.

◇ Child Care and Protection Act, sections 3, 123(4)

A kinship care agreement must be **in writing**, and it must be **signed by two witnesses**.

The witnesses can be any adults who can confirm that the parties really signed the kinship care agreement.

It must describe **what parental rights and responsibilities are being delegated** to the kinship care-giver.

It must be made with **due consideration for the views of the child**, in light of the child's age, maturity and stage of development.

It must be in the **appropriate form if it is going to be registered** with the children's court:

- ⑨ If the kinship care agreement is going to be registered, it must be recorded on **Form 12A**, which is appended to the Child Care and Protection Regulations.
- ⑨ If the kinship care agreement is NOT going to be registered, it can take any form that the parties wish.

◇ Child Care and Protection Act, section 123(3)

## 5.2 Optional issues

Kinship care agreements may be made **independently or with help** from someone such as a social worker, a traditional leader or a legal practitioner.

A kinship care agreement may specify **how long it will remain in effect** or include **directions on how it may be cancelled**.

The agreement may direct that the kinship care be subject to **supervision by a designated social worker**.

◇ Child Care and Protection Act, section 123(4)



## Can one kinship care agreement cover multiple children?

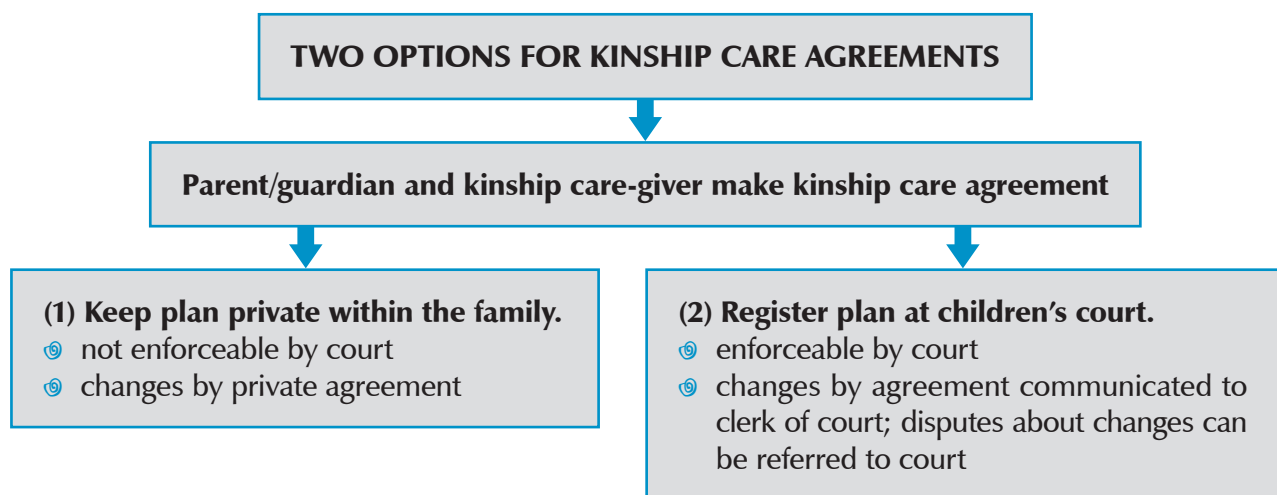
Yes. The form provided in the regulations for kinship care agreements allows one agreement to apply to multiple children. But this needs to be done with care, since children of different sexes and ages may have different needs.

# 6. Finalising a kinship care agreement

## 6.1 Two options

There are two different avenues for finalising a kinship care agreement:

- (1) A kinship care agreement can be **kept private** within the family.
- (2) A kinship care agreement can be **registered at the children's court**.



## 6.2 Procedure for registering a kinship care agreement

A parent or guardian who has entered into a kinship care agreement may register that agreement with the clerk of the children's court.

A kinship care agreement which is to be registered must be recorded on **Form 12A**, which is appended to the Child Care and Protection Regulations.

The following documents must be submitted to the clerk of the children's court along with the kinship care agreement:

- ⌚ the child's **birth certificate**
- ⌚ an **affidavit** by the parent or guardian confirming that he or she is the child's legal custodian (with copies of any relevant court order or document)
- ⌚ **proof of guardianship status**, IF the agreement has been entered into by a legal guardian who is not a parent.

An **affidavit** is a written statement which a person swears to before a commissioner of oaths such as a lawyer or a police officer.



The clerk of the children's court will stamp or endorse the agreement to show that it has been registered and give a copy of the endorsed agreement to each of the parties and to the Ministry.

A kinship care agreement **must** be registered at the children's court if the kinship care-giver wants to apply for or receive a State maintenance grant for the child.

The registration process is intended to make sure that a grant paid for a particular child goes to the person who is actually caring for that child. The clerk of the children's court must provide a copy of the agreement to the Ministry for this purpose.

If more than one agreement covering the same child is submitted for registration and the agreements are inconsistent with each other, the most recent agreement will apply – UNLESS there is other evidence about which agreement is the operative one.

- ◇ Child Care and Protection Act, sections 41, 123(2) and (4)(d)
- ◇ Child Care and Protection Regulations, regulation 40  
(see Technical Note below)



### What is the authority for requiring a parent or guardian to approach the clerk of the court to register a kinship care agreement?

**The agreement must be registered by the parent or guardian in order for the kinship care-giver to be eligible to receive a State maintenance grant.**

Section 123(2) of the Act states: “A child’s parent or guardian ... must conclude a kinship care agreement with the kinship care-giver, *and must register the agreement with the clerk of the children’s court in terms of subsection (4) before the kinship care-giver is eligible to receive a state maintenance grant contemplated in Chapter 16 or maintenance payment in terms of which the child is a beneficiary.*”

The Act is silent on the question of who can register a kinship care agreement if no grant is contemplated. In section 123(4)(d), the Act simply states that a kinship care agreement may “be registered with the clerk of the children’s court having jurisdiction”. Regulation 40 of the Child Care and Protection Regulations, which describes the registration process, is also silent on this question.

However, since there is no process for distinguishing between agreements which are registered to support the payment of grants and agreements which are registered for other purposes, **the only sensible way to apply section 123(2) meaningfully is to require that ALL kinship care agreements must be registered by the parent or guardian rather than by the kinship care-giver.** This is also consistent with the fact that the parties to kinship care agreements, unlike the parties to parenting plans, are not “equal” in terms of their rights and responsibilities over a child.

- ◇ Child Care and Protection Act, sections 123(2) and (4)(d)
- ◇ Child Care and Protection Regulations, regulation 40

## Court-ordered kinship care

The parties to a kinship care agreement **cannot** request to have it made into a court order. Court-ordered kinship care is a form of alternative placement that may be put in place **ONLY** after a child protection hearing where a child is found to be in need of protective services. (Protective services are services aimed at providing or improving care or protection for a child to safeguard his or her safety, security and well-being. For example, a child is in need of protective services if that child is abandoned, neglected or physically or mentally abused.)

◇ Child Care and Protection Act, sections 1 and 131

## 7. Changing or cancelling a kinship care agreement

**Basic rules on change and cancellation:** Either party to a kinship care agreement can change or cancel it at any time.

The kinship care-giver does not have to agree to a parent's proposed change – because a kinship care-giver does not have a duty to care for the child and so always has the power to refuse to do so. The parent or guardian does not have to agree to a kinship care-giver's proposed change – because the parent or guardian always has the power to cancel the arrangement.

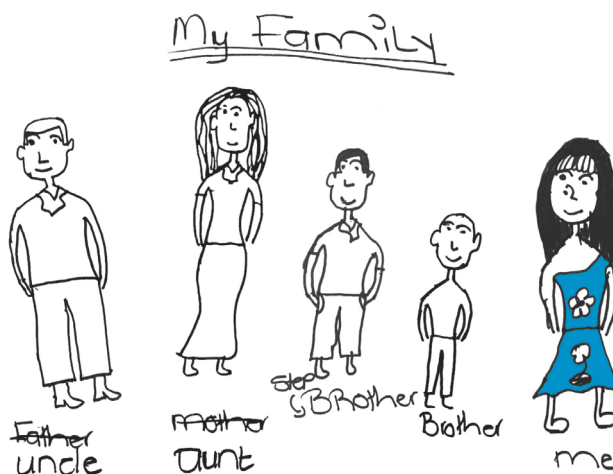
If the parties to the agreement cannot agree on what a kinship care agreement should say, then they are no longer in agreement. They can refer the dispute to the children's court (in terms of the procedure described in section 8 of this chapter), or discontinue the kinship care arrangement completely.

If the kinship care agreement is **registered with the court**, the person making the change must notify the clerk of the court of the change or cancellation **within seven days**. The procedure to follow in the case of a dispute about a change or cancellation is discussed in the following section.

The clerk of the children's court must **notify the Ministry** of any changes or cancellations of registered kinship care agreements. In the case of amendment, the clerk must provide a copy of the amended agreement to the Ministry. This will enable the Ministry to keep its information up-to-date on who is eligible for grants.

◇ Child Care and Protection Act, section 125(1)-(2)

◇ Child Care and Protection Regulations, regulation 40(4)



## CHANGE

My mother was providing kinship care for my daughter but now she has become ill. She does not want to stop being her kinship care-giver but she needs time to rest and recover from her illness. I have asked my sister to be my daughter's kinship care-giver until I finish my studies and can take care of her again.



## CANCELLATION

I was the kinship care-giver for my sister's children. But this did not work very well because the children missed their mother very much and wanted to be with her. I have told my sister that this arrangement is not in the best interests of her children. She agreed. She is going to relocate her small business enterprise from Windhoek to Ondangwa so that she can be with her children.



**What if a person no longer wants to be a kinship care-giver?:** Because kinship care-givers do not have parental rights and responsibilities, they do not have to continue caring for someone else's child if they choose not to. However, if the kinship care agreement is *registered with the children's court*, the person making the change must notify the court of the cancellation of the agreement within seven days. It is also possible that the other party to the agreement will ask the court to intervene if there is a dispute. But it is highly unlikely that a court would ever force someone who is not the parent or guardian of a child to take responsibility for the care of a child against their will.

◇ Child Care and Protection Act, sections 125-126

**Can a child change or cancel the kinship care agreement?:** The Child Care and Protection Act does not allow a child to change or cancel a kinship care arrangement on his or her own. But the child covered by the agreement can apply to the children's court to *resolve a dispute* about a kinship care agreement – which could relate to change or cancellation of the agreement. The child's views are also supposed to be taken into account in concluding any kinship care agreement, so a child could ask a social worker to intervene if this was not done. The general principle of child participation also applies to change or cancellation of a kinship care agreement.

◇ Child Care and Protection Act, sections 123(3)(c), 125-126

## Kinship care agreements versus parenting plans

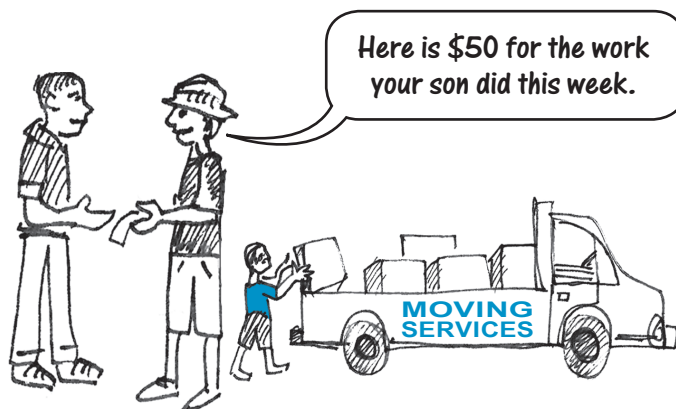
**Kinship care agreements** involve **unequal parties** (in the sense that one party has parental rights and the other does not). Either party can terminate the agreement without the consent of the other. The parent can take back the delegation of parental rights at any stage. The non-parent has no duty to continue caring for the child, since this legal duty technically never left the parent but was just temporarily delegated by agreement.

In contrast, **parenting plans** involve **equal parties** (in the sense that the parties must all be co-holders of parental rights). The parties can cancel the parenting plan only if they both agree to do so.

### Children in need of protective services

A social worker or any other person who has an interest in the well-being of a child may apply to the children's court to terminate a kinship care agreement, whether registered or unregistered. The court can cancel the agreement if it finds that the child is or may be in need of protective services, as well as making any other appropriate order.

◇ Child Care and Protection Act, section 125(3)



Exploiting a child for child labour would be grounds for cancelling a kinship care agreement. In a situation like this, the child may be in need of protective services.

## 8. Resolving disputes

If the parties are in dispute about changing or cancelling **any kinship care agreement** (registered or unregistered), or in dispute about how the agreement is being exercised, any party to the agreement can seek to resolve it by mediation or through a family meeting, or by applying to the children's court to make an order about what should happen. The child covered by the agreement can also apply to the children's court to resolve a dispute about a kinship care agreement.

### Family meetings

A family meeting is a meeting of family members convened by a skilled facilitator, where 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 application must be made on **Form 12B**, submitted to the clerk of the children's court together with **Form 6**. Both of these forms are appended to the Child Care and Protection Regulations.

Before the children's court will consider such an application, the court must attempt to contact important people in the child's life and invite them to give input if they wish. This would include the following people (if they are not already parties to the agreement) –

- ⑨ a parent or another person with parental responsibilities and rights
- ⑨ a parent who no longer holds parental responsibilities and rights
- ⑨ the child's primary care-taker
- 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.

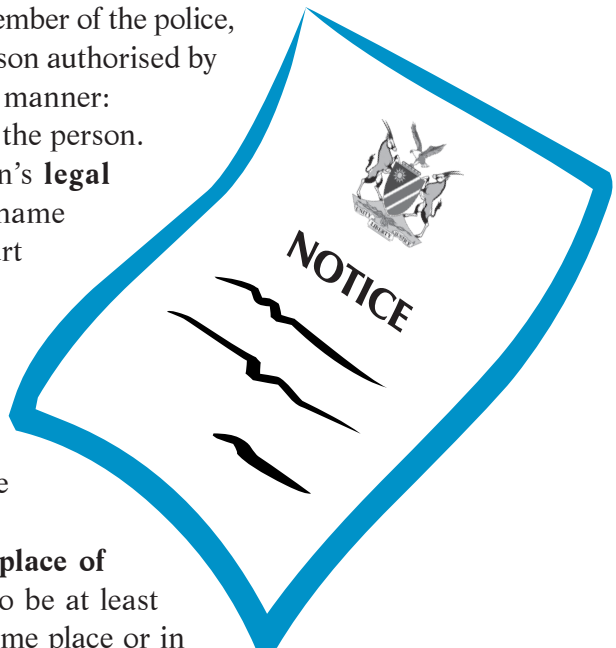
These persons must be given notice of the application and an opportunity to present information to the court if they wish.

If notice of the application 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.

## 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



The children's court may order the parties to try mediation or external intervention to reach an agreement on the exercise, amendment or cancellation of the kinship care agreement.

The children's court may order a social worker or other 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.

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.

If the court discovers during the process of considering a dispute about a kinship care agreement that the child may be in need of protective services, the court must hold a child protection hearing.

Are you getting enough sleep at home, Rebecca? You seem very tired.

I try to stay awake at night because sometimes my uncle comes into my room and touches me when I'm sleeping. I told my mother but she says my aunt and uncle are my kinship care-givers and I need to stay with them.



- ◆ Child Care and Protection Act, section 126, read together with section 121(2)-(4)

- ◆ Child Care and Protection Regulations, regulation 41

**A child who is being sexually abused by a kinship care-giver is in need of protective services.**

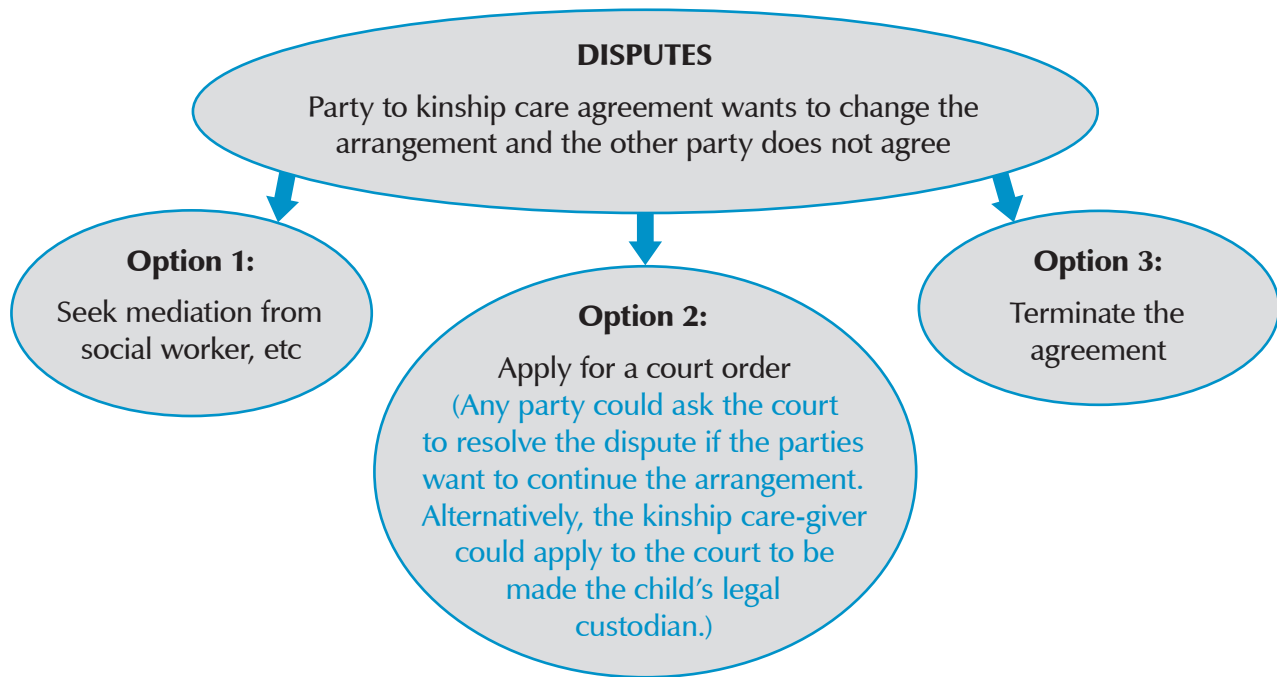


### Right to amend or terminate agreement versus referral of disputes about agreement to children's court

**There is some tension between sections 125 and 126 of the Act.** In terms of section 125(1)-(2), any party to a kinship care agreement can amend or terminate the agreement at any time – provided that notice of the change or cancellation is given to the clerk of court. However, section 126 provides for an application to the court in the event of a dispute about amendment or termination. This is somewhat peculiar given the unequal nature of the parties to the agreement, which is by its nature an agreement between a parent or guardian on the one side, and on the other side a person to whom that parent or guardian has temporarily delegated some parental powers.

The outcome of a dispute about a request to amend would depend on the nature of the amendment being requested. It would make sense for a dispute between the parties to be referred to the children's court only if the parties on both sides wanted to continue with the arrangement.

With respect to a dispute involving a wish by either party to terminate a kinship care agreement, it is difficult to imagine circumstances where the court could deny termination– given the fact that one party has parental rights and duties while the other does not. If there were concerns about a child's safety as a result of the termination of such an agreement, the child could be placed in alternative care if grounds for such an order were present. Another option would be for the kinship care-giver to apply to the children's court for custody and/or guardianship rights under the appropriate provisions of the Act.



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A court can issue an order resolving a dispute about a kinship care agreement, based on the child's best interests, but there is no provision in the Act for making a kinship care agreement into a court order (in contrast to parenting plans).

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## 9. Access by kinship care-giver after cancellation of agreement

A kinship care-giver may apply for access to a child after the kinship care agreement has been terminated if –

- (1) the agreement was **unilaterally terminated by the parent**  
AND
- (2) the agreement was **in place for at least one year OR it was in place for a shorter time but continued access may still be in the best interests of the child**  
AND
- (3) the child was **cared for primarily by the kinship care-giver** while the agreement was in place.

The kinship care-giver can apply for continued access regardless of whether the kinship care agreement was **registered or unregistered**.

The application must be made on **Form 12C**, submitted to the clerk of the children's court together with **Form 6**. Both of these forms are appended to the Child Care and Protection Regulations.

Attempts must be made to notify the child's parents and care-giver, anyone with custody or guardianship immediately prior to the application and anyone identified by the court or social

worker as having an interest in the application at least 14 days before the date of the hearing. These persons must be given an opportunity to give input.

See the box on pages 13-14 of this chapter for the procedures regarding notice.

The court must consider the application in the presence of the kinship care-giver (or his or her legal practitioner). Before making a final decision, the court must order and consider a report by a designated social worker on the issue of access. The court may institute any investigation it considers necessary and order any person to appear before it. The applicant may be required to pay for the costs of such investigation.

The court must make a decision on the application based on the best interests of the child. The court may impose any conditions that it considers necessary in the best interests of the child concerned.

- ◆ Child Care and Protection Act, section 127 (read together with section 103)
- ◆ Child Care and Protection Regulations, regulation 42

## 10. Kinship care by court order

A child might be placed in kinship care by court order where the child is removed from his or her home due to concerns that the child is in need of protective services. The court might place the child in the care of a family member pending a social worker investigation or child protection hearing. A child might also be placed in kinship care by court order after the conclusion of a child protection hearing, if this is determined to be the best form of alternative care for a child who could not safely remain in the usual home. Kinship care is usually considered to be the next best option for a child who cannot remain in the care of a parent or guardian who is unable or unsuitable to care for the child.

When a child is placed in kinship care **by the court**, the kinship care-giver has the following obligations:

- ⑨ The care-giver must promote the child's well-being and development, particularly in education and health.
- ⑨ The care-giver must encourage the child to have contact with parents, extended family members and friends, unless contact is prohibited by an order of the children's court or would not be in the child's best interests.
- ⑨ The care-giver must inform the child's parent or guardian of his or her progress.
- ⑨ When it is in the child's best interests, the care-giver must work with the social worker to return the child to the home for a specified trial period.
- ⑨ If a child is unable to return to his or her parents, the care-giver must encourage and assist the child to become independent and self-reliant.

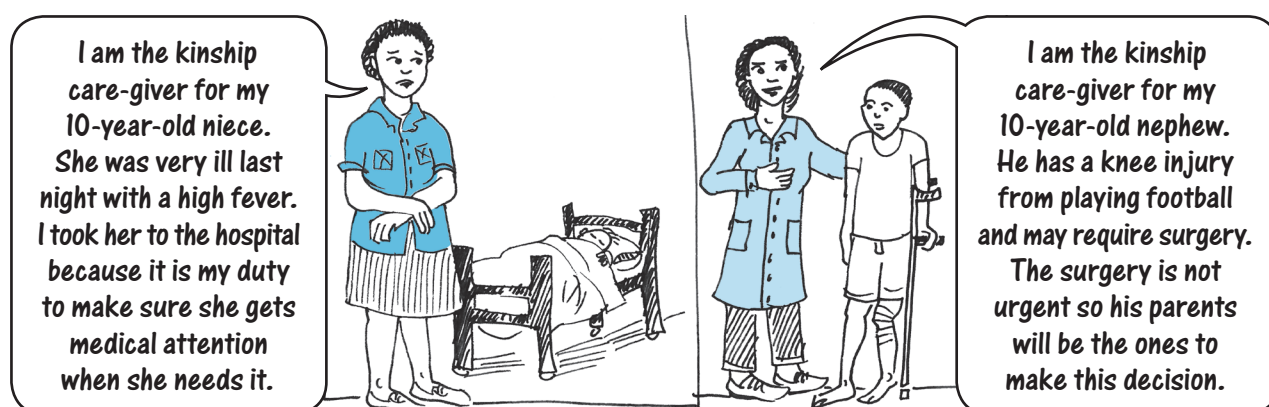
Kinship care-givers have obligations relating to the health and welfare of the child placed in their care **by the court**. They are required:

- ⑨ to obtain basic medical intervention for the child if reasonable grounds exist to believe that the child requires such intervention
- AND
- ⑨ to ensure that the child obtains a surgical operation if there are reasonable grounds to believe that the child needs the operation urgently and delaying it to consult with the child's parent would prejudice the child's health or welfare.

When a child is placed in kinship care **by the court**, custody and control over the child is transferred to the kinship care-giver. However, this does not include the power to deal with the property of the child or to consent to the marriage or adoption of the child.

When a kinship care agreement is made privately, the parent/guardian **cannot** transfer custody and control of the child. For example, if a parent or guardian is required by law to sign a document or provide consent, the kinship care-giver cannot provide consent instead of the parent or guardian.

◆ Child Care and Protection Act, section 149(1)-(4)



## What is the difference between kinship care and court-ordered kinship care?

### Kinship care

- ⑨ Voluntary private agreement
- ⑨ No supervision
- ⑨ Can be amended or terminated by parties
- ⑨ Parental rights and responsibilities remain with parents

### Court-ordered kinship care

- ⑨ Alternative care for child in need of protective services
- ⑨ Social worker supervision can be ordered
- ⑨ Can be amended or terminated only by court
- ⑨ Custody and control of child transferred to kinship care-giver, with some exceptions
- ⑨ Kinship care-giver has additional duties towards child and child's parents or guardian

# 11. State grants

## 11.1 Eligibility for grants

A kinship care-giver can apply for a grant for the child in his or her care, in the same way as the child's parent. Either the parent or the kinship care-giver can apply for the grant, but not both.

Any grant payable under the Act is paid to the person who is actually taking care of the child, no matter who applied for the grant – which means that a kinship care-giver might be able to collect a grant which a parent applied for.

But a kinship care-giver can apply for OR receive a grant for a child **only** if the kinship care agreement is registered at the children's court. The registration process is intended to make sure that a grant paid for a particular child goes to the person who is actually caring for that child.

A child in kinship care is generally eligible for a State maintenance grant if neither of the child's parents have enough income to be required to pay income tax. There is no financial requirement for a child disability grant.

State grants are generally payable until the end of the year in which the eligible child turns 18 years old – or in the case of a disability grant, until the eligible child qualifies for a disability pension.

For more information on grants, see Chapter 27 of this *Guide*.

- ◆ Child Care and Protection Act, section 123(2)
- ◆ Child Care and Protection Regulations, regulations 106, 109, 112(1)

## 11.2 Misuse of grants

If a social worker investigation finds that a kinship care agreement was made fraudulently in order to access a child grant, the grant will be cancelled. It is a crime to use a false kinship care agreement to get a child grant, or to fail to use a State grant for the benefit of the child. The penalty for either offence is a fine of up to N\$4 000, or imprisonment for up to 12 months, or both. The person who wrongfully received the grant money might also have to repay the money to the government.

- ◆ Child Care and Protection Act, sections 247(1)(c), 249-250

## 11.3 Transitional provisions

A kinship care-giver who was previously receiving a foster parent grant before the Child Care and Protection Act came into force will continue to receive the foster parent grant until the expiry of the court order placing the child in foster care. After the court order expires, the kinship care-giver may apply for a State maintenance grant on the basis of kinship care if a registered kinship care agreement is in place.

- ◆ Child Care and Protection Act, regulation 114(6)

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

It is a crime for any care-giver who voluntarily cares for a child, either indefinitely or temporarily, to abuse or deliberately neglect the child, or to abandon the child. This includes a kinship care-giver. 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)



**Kinship care-givers have a duty not to abuse or neglect a child in their care.**