

BABY-DUMPING

1. What is baby-dumping?	2
2. Leaving an unwanted baby at a safe place	6
3. Procedure for dealing with any abandoned child	8

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

Baby-dumping is a significant problem in Namibia. To discourage this practice, the Child Care and Protection Act provides that it is not an offence to leave a child anonymously in a safe place such as a hospital, police station, fire station, school, place of safety, children's home or other designated place – provided that the child does not show any signs of abuse or neglect. Some countries refer to such places as “safe havens”. Any abandoned child must immediately be reported to the police and handed over to a social worker. The social worker will put the child in a place of safety for temporary care and carry out an investigation. A child who has not been claimed after 60 days may be made available for adoption. If the child is claimed by family members or by a parent, the social worker will continue to monitor the situation. A child will be returned to the person who abandoned the child only if the social worker is sure that the child will be safe.

1. What is baby-dumping?

Baby-dumping: Baby-dumping is the informal term used in Namibia for abandoning an infant and thereby exposing it to danger and possible death. (This term is not used in the Child Care and Protection Act, but it is well-known to the public. The Act refers to “abandoned children”,)

Depending on the circumstances, baby-dumping could give rise to criminal charges of **murder** (intentionally causing the death of another person), **culpable homicide** (negligently causing the death of another person) or **exposing an infant** (intentionally exposing and abandoning an infant in circumstances which make it likely that death from exposure will result).

Where the baby dies, these cases often include the separate charge of **concealment of birth**, which is a statutory offence in terms of the **General Law Amendment Ordinance 13 of 1962**.

It is a crime in terms of the Child Care and Protection Act for a parent, guardian, any other person with parental responsibilities and rights in respect of a child, a care-giver or any person who voluntarily cares for a child either indefinitely or temporarily to **abuse, deliberately neglect or abandon** that child. The penalty is a fine of up to N\$50 000, imprisonment for up to ten years, or both.

It is also a crime in terms of the Child Care and Protection Act for a person who is legally liable to maintain a child to **fail to provide the child with adequate food, clothing, lodging and medical assistance** while being able to do so. The penalty is the same as for the crime of abandonment: a fine of up to N\$50 000, imprisonment for up to ten years, or both.



The offences in the Child Care and Protection Act are gender-neutral. Even though only mothers are usually punished for baby-dumping, the law provides for punishment for both parents if they have failed in their duties to care for and provide for a child.

Police statistics indicated that 20 infants were dumped by their mothers between January and June 2019. This may underestimate the true extent of the problem as it is likely that some cases go unreported.

- ◆ General Law Amendment Ordinance 13 of 1962,
 - ◆ Child Care and Protection Act, section 254
 - ◆ common law on crimes against the person
 - ◆ Adam Hartman, “Abortion, baby-dumping on the rise”, *The Namibian*, 21 August 2019 (reporting police figures)

General Law Amendment

Ordinance 13 of 1962

Section 7

- (1) Any person who disposes of the dead body of any child with intent to conceal the fact of its birth, whether the child died before, during or after birth, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding three years.
- (2) Whenever a person disposes of the dead body of any such child of which a woman was recently delivered, he shall be deemed to have disposed of such body with intent to conceal the fact of the child's birth, unless it is proved that he had no such intent.

Infanticide: Infanticide refers to killing an infant. Some distinguish neonaticide (killing a child within the first 24 hours of life) and infanticide (killing a child under the age of one year). Infanticide is not a distinct crime in Namibia. The relevant criminal charge, depending on the circumstances, will be **murder**, **culpable homicide** or **exposing an infant**. Cases involving infanticide are often charged together with the separate crime of **concealment of birth**.

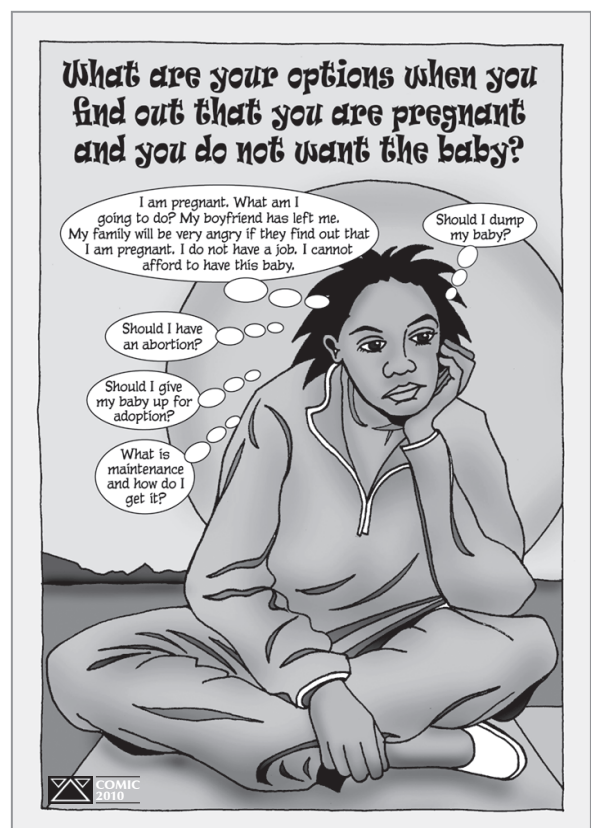
- ◆ common-law on crimes against the person

“Many legal systems recognize the particular crime of infanticide as a distinctly defined form of homicide with reduced penalties. The ostensible intention is to provide a special defence for mothers suffering psychological trauma as a result of the process of birth. But by denoting a special, and lesser, crime, such laws appear to discriminate against children as victims of homicide.”

- ◆ *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, page 88

“Newborn babies have just as much right as others to protection of life.”

- ◆ *S v Shaningwa* 2006 (2) NR 552 (HC)



Public opinion on baby-dumping

In 2012, The Ministry of Gender Equality and Child Welfare and the Ministry of Youth, National Service, Sport and Culture, with the support of UNICEF and the Legal Assistance Centre, asked the public WHY baby dumping is such a problem in Namibia and HOW the government can address it. The survey asked three multiple choice questions. The questions were published in The Namibian and Die Republikein newspapers and interested persons were asked to respond by text message. A total of 3742 people responded to the questions in a format which could be tabulated. The majority of people who responded were women between the ages of 19-30.

QUESTION 1: What do you think is the main reason that people dump babies?

A total of 2185 people responded to this question. The top three responses were:

1. The father denies paternity. (22.4%)
2. The mother is a student. (16.6%)
3. The mother does not know about options such as foster care, adoption and institutional care. (15.1%)

QUESTION 2: How can baby dumping be addressed?

A total of 1489 people responded to this question in the correct format. The top three responses were:

1. Provide more information about what the law says about abortion and baby-dumping. (20.0%)
2. Provide more information about foster care, adoption and institutional care. (18.2%)
3. Provide more information about contraceptives. (14.0%)

QUESTION 3: What would your first reaction be if you found out that you/ your girlfriend is pregnant and you do not want the baby?


Fewer people responded to this question. This may have been because it was the third question in the series and people grew less interested in the topic over time. Or it may have been because the question was challenging to answer. A total of 68 people responded to the question. The top three responses were:

1. Consider keeping the baby but plan to dump the baby when it is born. (27.9%)
2. Tell a family member. (26.5%)
3. Phone LifeLine toll free on number 116. (25.0%)

Why is baby dumping such a problem in Namibia?

The Namibian Constitution provides for the protection and respect of the right to life. The Namibian government ratified the Convention on the Rights of the Child. Therefore, the government recognizes the inherent right to life and is committed to preventing the incidence of baby dumping to ensure the survival and development of children in Namibia.

The Ministry of Gender Equality and Child Welfare and the Ministry of Youth, National Service, Sport and Culture with the support of UNICEF would like to know your opinion on WHY baby dumping is such a problem in Namibia and HOW can the government address it.



1st Question (valid only during 26th May - 8th June)

What do you think is the main reason that people dump babies?

1. Baby is born outside of marriage
2. Father of the child denies that he is the father
3. Mother is afraid that the father will not provide financial support for the child
4. Mother is afraid that she and her family does not have enough money to support the baby
5. The mother does not know about options such as foster care, adoption or institutional care
6. The mother is afraid that she will transfer HIV/AIDS to the baby
7. The mother is a student and she is afraid that she will have to leave school or university
8. The pregnancy was a result of rape or an unwanted sexual act
9. Mother is afraid of the shame and stigma that an unwanted pregnancy will bring
10. Mother lives in childheaded household and cannot provide for the baby
11. Another reason

❖ Factsheet: Baby Dumping: What the public says, Government of the Republic of Namibia, UNICEF and Legal Assistance Centre, 2012

Causes of baby-dumping

Infanticide and baby-dumping are crimes, but these acts are also cries for help. New mothers – especially young mothers – may feel **overwhelmed by the idea of parenthood**. They may have difficulty coping with the drastic physical and emotional changes they are experiencing. They may be suffering from **post-partum depression** which is sometimes brought on by the hormonal changes associated with giving birth – and is more likely to occur when there are other stresses, such as where the pregnancy is unwanted or when the mother is in precarious financial circumstances.

Poverty is often a factor. Some pregnancies occur when young girls are pressured into sex by older men whom they turn to for financial security, while others are forced by poverty into prostitution. Some women fear that they will not be able to support a child without financial help from the child's father, which is often not forthcoming. They may be convinced that they will be unable to provide for the child, and they may feel that there is no one they can turn to for help.

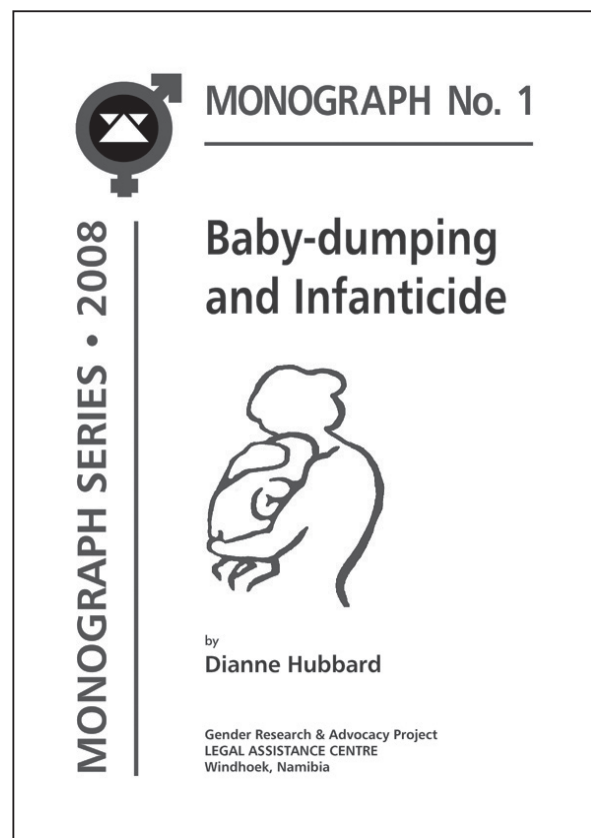
Mothers may fear the **shame** of having given birth outside marriage, or they may fear that they will be unable to continue their studies. Furthermore, unwanted pregnancies are often the result of **unwanted sex**. The baby may have been conceived by rape or incest, which may also give rise to shame and a desire to hide the birth.

Baby-dumping is also exacerbated by **lack of knowledge about family planning** or **lack of confidential access to means of contraception**. Furthermore, the prevalence of **violence against women** in Namibia means that women are not always free to choose whether or not to engage in sex or to use contraceptives. The **strict laws on access to abortion** also contribute to unwanted pregnancies.

Mothers are often solely blamed for baby-dumping, but **men who refuse to share responsibility for contraception**, or **fathers who fail to provide emotional and financial support** must share the responsibility for this problem.

Nothing excuses the abandonment or murder of a newborn child. But Namibian families and communities could provide increased **emotional and financial support** for new mothers so that they do not feel desperate and alone.

◇ adapted from Dianne Hubbard,
Monograph 1: Baby-dumping and Infanticide,
Legal Assistance Centre, 2008, page 1
and "Submission to Parliament on
Baby-Dumping and Infanticide",
Legal Assistance Centre, 7 April 2009



2. Leaving an unwanted baby at a safe place

Exception to the crime of abandonment: The Child Care and Protection Act provides that a parent, guardian or care-giver who abandons a child will NOT be prosecuted for abandonment if the child is left in the physical control of a person at an approved authority AND shows no sign of abuse, neglect or malnutrition.

What is an approved authority?: Leaving a child with an approved authority means leaving the child **in the physical control of a person who is on the premises of:**

- ⑨ a hospital
- ⑨ a police station
- ⑨ a fire station
- ⑨ a school
- ⑨ a place of safety
- ⑨ a children's home
- ⑨ any other place identified in regulations issued under the Act.

A “**place of safety**” is a place approved by the Ministry for the short-term, temporary reception and care of children.

◆ Child Care and Protection Act, section 64

These approved authorities are informally referred to as “**safe havens**”, even though this term does not appear in the Child Care and Protection Act.

As of 2019, no other places had been identified by regulations for this purpose.

◆ Child Care and Protection Act, section 227(1)

PHYSICAL CONTROL: The exception to possible prosecution for abandonment applies only if the child is left “in the physical control of a person” at one of the approved authorities. This means that the child must be left in the care of a person and not just dropped outside. Leaving a newborn baby at a hospital would probably be acceptable, since the baby would be in the care of nurses, but it would be better if the mother informed someone. The rule is designed to make sure that the child will be safe.

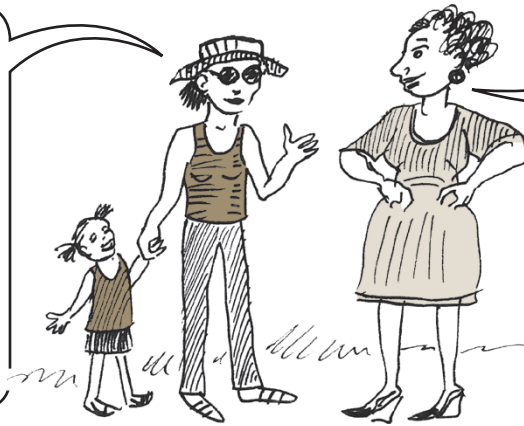
INFORMATION: The person who receives the child may provide information and discuss alternative options if the person who is leaving the baby is willing to engage in such a discussion. Persons who leave babies may be asked to volunteer some details about themselves or the child, to assist with the social work investigation which will follow, or in case they have a change of heart later and want to reclaim the child — but the law does not require them to provide their names if they prefer to remain anonymous.

Below: **BabySaver box at Ruach Elohim Foundation in Swakopmund. The box has a sensor which alerts eight people when a baby is placed inside, to ensure a prompt response.**



The procedure for abandoning unwanted children safely is unlikely to be used unless the option is popularised, alongside information about other options such as kinship care, foster care and adoption. Staff at approved authorities must be trained in the correct procedure for receiving an unwanted child.

I am happy to look after any baby that needs a home until a permanent family can be found for the child. I will tell people that they can leave their babies at my church.



That is very caring of you, but a church is not an approved place for receiving unwanted children. Why don't you see if you can register your home as a place of safety? Then the Ministry can help you make sure that you are properly equipped to receive abandoned children.

Let's put a big cardboard box at the entrance to the school so learners can leave their unwanted babies there.



That is very caring of you, but a baby must not be left outside in a cardboard box. A baby who is left with an approved authority such as a school must be left in the physical control of a person. It is important to make sure that the baby does not get too hungry, or too hot or cold, before someone realises that the baby needs attention. A learner could leave an unwanted baby with a school guidance counsellor or a school nurse.

International position on baby safe havens

Some countries provide temperature-controlled alcoves with doors in the external wall of a place such as a hospital or a fire station. They often have alarms that go off within the building a few seconds after a baby is placed inside, giving the person who has dropped off the baby time to leave anonymously while ensuring that the baby is attended to promptly. Such safe places for leaving unwanted infants are in use in many countries in Europe and in all US states, amongst other places. They go by a wide variety of names internationally, including safe havens, baby hatches, baby boxes, angel cradles, safe cradles and windows of life.



In 2012, the UN Committee on the Rights of the Child controversially called for a ban on such facilities. The Committee said that this practice violates Article 7 of the **Convention on the Rights of the Child**, which guarantees children's right, as far as possible, to know their parents, and Article 8(1) on children's right to preserve their identity and family relations. But many defend these facilities, arguing that they are justifiable in terms of the Convention because they save infants' lives (thus supporting the child's "inherent right to life" under Article 6 of the Convention), and pointing out that the child's right to know his or her parents under Article 7 is qualified by the language "as far as possible". Some have also noted that the Preamble to the Convention states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth".

There are debates about the effectiveness of safe havens. Typically only a few babies are dropped off each year at such facilities, but these numbers add up over time. However, in most countries which have such facilities, baby-dumping and infanticide still take place sometimes. Some people emphasise that the safe haven approach should not substitute for supportive services to new mothers and measures that enable women to prevent unwanted pregnancies.

Some countries provide the alternative of a “concealed delivery” whereby women can hide their identities when they give birth to a baby whom they want to give up for adoption, but with their names being recorded for access by the adopted children on request after they reach age 18. This is essentially the same as Namibia’s procedure for “non-disclosed adoptions”, discussed in Chapter 17 of the *Guide*.

◆ See, for example, Committee on the Rights of the Child, *Concluding Observations on the Report of Switzerland*, CRC/C/CHE/CO/2-4, 26 February 2016, *Concluding Observations on the Report of Hungary*, CRC/C/HUN/CO/3-5, 14 October 2014 and *Concluding Observations on the Report of India*, CRC/C/IND/CO/3-4, 13 June 2014

◆ See also, for example, Randeep Ramesh, “Spread of ‘baby boxes’ in Europe alarms United Nations”, *The Guardian*, 10 June 2012; David Rising and Maria Cheng, Associated Press, “Baby box ban: Why the UN wants to ban the practice”, *The Christian Science Monitor*, 26 November 2012



3. Procedure for dealing with any abandoned child

Duty to report abandoned child: Any person who finds an abandoned child must immediately report this to police or a designated social worker.

This applies no matter where the child is found – in the veld, at a rubbish dump or anywhere else.

If the report is made to police, the member of the police who receives the report must immediately inform a designated social worker.

Opening file: The designated social worker must open a file in respect of any abandoned child and give that file a file number. The social worker must record the following information in this file:

- ⑨ the place where the child was found or received
- ⑨ the date when the child was found or received
- ⑨ identifying characteristics of the child, including –
 - race
 - sex
 - estimated age
 - birthmarks, if any
 - eye colour
 - physical deformities, if any
 - weight and height
 - a description of any jewellery or other adornment found on the child.

A “**designated social worker**” is a State or private social worker authorised by the Minister to carry out specific tasks.

◆ Child Care and Protection Act, section 33

Wrist or ankle tag: A tag labelled with the date when the child was found or received and the relevant file number must be placed on the wrist or ankle of the child, unless the child is old enough to be positively identified by other means.

This identification is necessary in case someone comes to claim the child. In the case of an older child who knows his or her name, this step is not necessary.

The tag should remain on the child's wrist or ankle until the end of the 60-day waiting period described below.

Placement of child in place of safety: The designated social worker must place any abandoned child in a place of safety.

Initiating investigation: The designated social worker must also start an investigation, as an abandoned child is automatically a child in need of protective services.

The procedure for this type of investigation is described in Chapter 14 of this *Guide*.

Advertisements: The social worker must arrange publication of at least **two newspaper advertisements**. One must be in a national newspaper circulating in Namibia and one must be in another other local or national newspaper circulating in the area where the child was found. The social worker must also arrange for a **radio announcement** to be broadcast on at least one national radio station. These announcements must call upon any person to claim responsibility for the child.

The purpose of advertising the recovery of the baby is to see if a parent or family member comes forward to claim the baby. This is also a way to make sure that the baby has not been kidnapped.

The advertisement should give some information about the child, such as the place where the child was found or received, and the date when this took place. It should also include some, but not all, of the child's identifying characteristics. Some information should NOT be revealed, to allow for verification by anyone who comes forward seeking to claim the child.

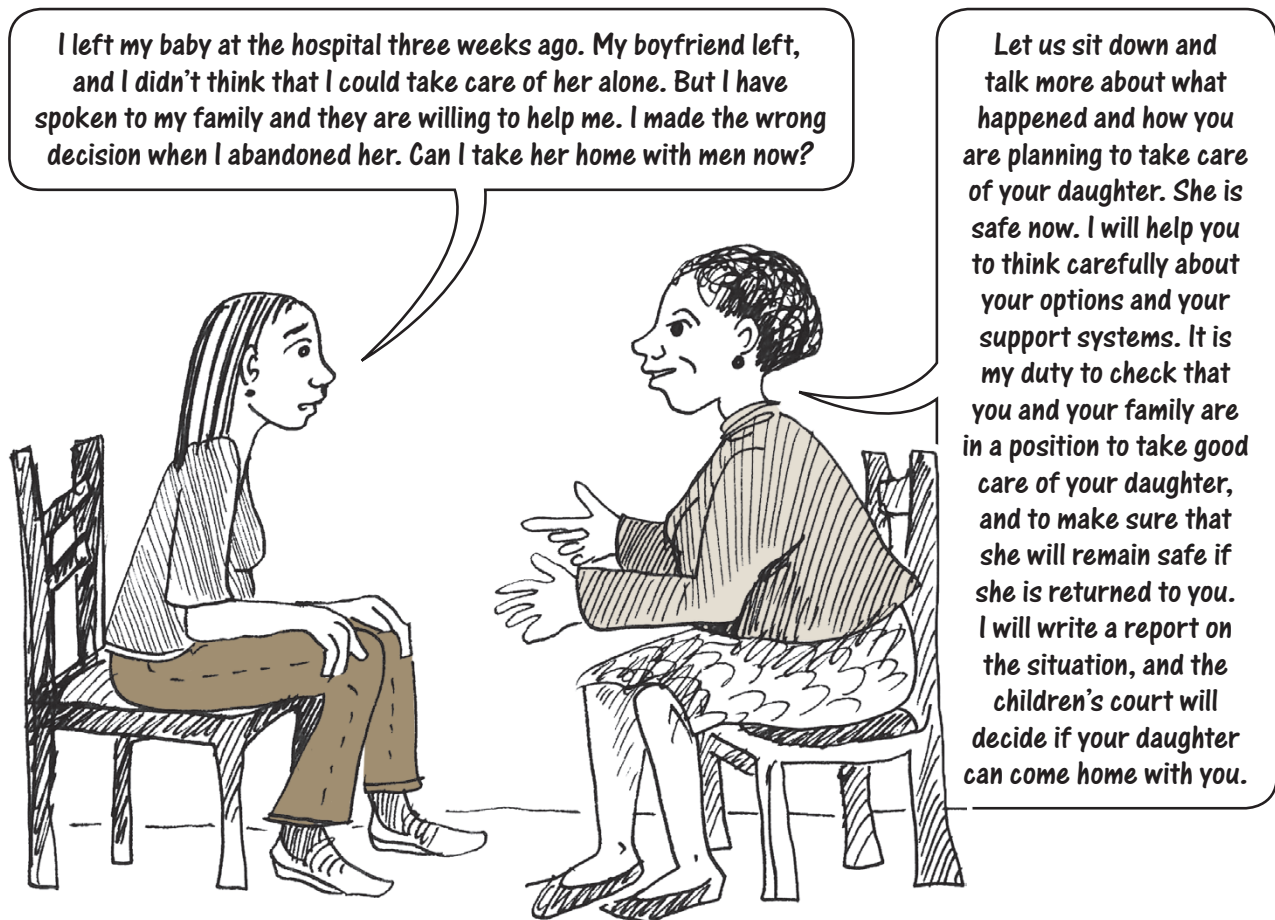
Reclaiming an abandoned child: The person who left the child with an approved authority may seek to reclaim the child within 60 days of the date when the child was dropped off.

The person claiming responsibility for the child must be able to provide some identifying characteristics that have not been publicly disclosed. DNA testing can be used if there is doubt.

In this situation, the child must be still treated as a child who is in need of protective services. A social worker investigation must be completed, and the children's court must decide how to deal with the situation after considering that report.

The social worker will recommend return of the child to the person seeking to reclaim him or her only if the social worker is satisfied that restoring care of the child to the person claiming responsibility is in the best interests of the child.

The children's court has a wide discretion in deciding how to proceed in respect of a child in need of protective services. For example, the child might be returned to the person in question under social worker supervision. The child might be placed in court-ordered kinship care, foster care or some other alternative care, with a view to eventual family reunification. The court might also require the person who abandoned the child to obtain medical or psychological treatment before considering the return of the child to that person's care. This approach is designed to ensure that the child remains safe.



Abandoned child becomes adoptable after expiry of waiting period: An abandoned child may be made available for adoption 60 days after the date of publication of the last advertisement about the child, if no one has come forward to claim responsibility for the child during that period.

The child could then be listed in the Register of Adoptable Children and Prospective Adoptive Parents (RACAP) as an adoptable child. The procedure for adoption is described in Chapter 17 of this *Guide*.

- ◆ Child Care and Protection Act, section 227, read together with sections 131(1)(a), 139
- ◆ Child Care and Protection Regulations, regulation 92

TECHNICAL NOTE: Section 227 is entitled "Procedure for dealing with abandoned children left with approved authorities", and regulation 92 is entitled "Abandoned children left with approved authorities". However, the text of both deals with procedures for abandoned children who are received at approved authorities OR found elsewhere.

Recommendations from the Parliamentary Committee on Human Resources, Social and Community Development

“The following are the proposed measures to reduce the incidence of baby-dumping and infanticide in Namibia and the ministry or ministries and other institutions responsible for the implementation of the recommendation.

6.1 Encourage steps to prevent unwanted and teenage pregnancies: *Ministry of Gender Equality and Child Welfare and Ministry of Health and Social Services* should promote gender equality in the area of sexuality so that men and women are equally empowered to control their own fertility and access information in [a] non judgemental manner. Life skills programmes for both young men and women about their bodies, conception and contraception, as well as dangers of alcohol and drug abuse should be intensified.

6.2 Encourage boys and men to take greater responsibility for their children: *Ministry of Education, Faith Based Organisations (FBO), Community Based Organisations (CBO), Parents and Men for Change Organisation* should collaborate to take initiatives that will socialise boys and men to take joint responsibility for the consequences of sexual activities, and to play both a financial and emotional role in the upbringing of the children they father. Taking steps to promote more gender equality in the acceptance of parental responsibilities would not only assist in reducing infanticide and baby-dumping, but would be to the benefit of all children.

6.3 Strengthen community protection systems and provide non-judgemental support for pregnant women: Pregnant women need more support from society. *Ministry of Gender Equality and Child Welfare and Ministry of Health and Social Services* should provide social welfare services that would ensure that expecting parents gets appropriate counselling along with pre- and post-natal care and access adolescence friendly health facilities. Community support groups can play an important role to create a supportive environment.

6.4 Increase information and awareness for expecting parents: *Ministry of Gender Equality and Child Welfare and Women and Child Protection Unit* should provide information to alert pregnant women and fathers on the range of possibilities for support for pregnancies that they feel financially unequipped to handle, including child welfare grants.

6.5 Strengthen alternative care systems including temporary safe havens, adoption, and kinship care and expanded fostering arrangements: *Ministry of Gender Equality and Child Welfare and Ministry of Health and Social Services* should finalise and implement alternative care policies and standards and improve public awareness and education of young parents on alternative care options. Ensure that enough qualified social workers are available in all regions to assist in these cases.

6.6 Revise the policy on pregnancy among school girls: *Ministry of Education* should revise the current policy on pregnancy amongst school girls and take [a] supportive approach instead of a punitive one so that schoolgirl mothers and fathers get help to complete their studies and thus have no motivation to try to conceal their pregnancies.

6.7 Ministry of Health and Social Services and Ministry of Safety and Security should conduct research and collect data on this complex issue to establish reliable baseline [data] that would ensure evidence based policy and planning development of response.


6.8 Ministry of Gender Equality and Ministry of Justice should provide information about legal abortion: It is currently possible for pregnant women to obtain legal abortion in certain limited cases – such as where the pregnancy results from rape or incest or unlawful intercourse with a person with severe mental disabilities; where the mother’s life is at risk or there is a serious threat to her physical or mental health; or where there is a serious risk that the child to be born will suffer from a physical or mental defect of such nature that the child will be irreparably handicapped. However, these provisions for legal abortion are seldom used and many women are unaware that they exist. Clear information should be provided by clinics and other public agencies on this option in appropriate situations. In the longer term, the law on abortion should be re-examined to see if the grounds for legal abortion could not be expanded.

6.9 Consider enacting a separate crime on infanticide. The Ministry of Justice should consider a statute similar to Zimbabwe’s Infanticide [Act] for Namibia to make it easier for the court to take into account the unusual psychological and biological factors which are peculiarly relevant to this kind of cases.”


- ◇ “Report on the Motion of Baby-Dumping in Namibia”, Parliamentary Committee on Human Resources, Social and Community Development: National Assembly, February 2010 (With regard to point 6.6, the Education Sector Policy for the Prevention and Management of Learner Pregnancy, which provides a flexible approach to pregnant learners and learner parents, has been rolled out since these recommendations were compiled. This policy is designed to support learner parents to enable them to complete their education.)

DON'T DUMP HER!

THERE IS ALWAYS A BETTER OPTION THAN BABYDUMPING



1. **Prevent pregnancy:** Consider abstinence or use contraceptives.
2. **Involve others:** You do not have to cope alone. You can work together with the father or your family to decide on the best option for the child's future.
3. **Get help with maintenance:** Both parents have a duty to support their child. If the parents cannot support the child, other family members may have a duty to help. You may also be eligible for a state maintenance grant.
4. **Seek support:** Talk to a social worker or a trusted adult. A social worker can tell you about options such as foster care and adoption.
5. **Take time to think:** You may experience physical and emotional after-effects from the birth which affect your judgement. Don't make a decision in haste that you will regret later.
6. **Save a life:** If you really do not want to pursue any of these options, you should leave your baby in a safe place such as a hospital or police station so that he or she can have a life with someone else.


 British High Commission Windhoek

This initiative was developed by the Legal Assistance Centre and funded by the British High Commission in Namibia.


The baby depicted in this poster is a model. The LAC has been given permission to use this photo as part of a social media initiative to encourage people not to dump their baby.

DON'T DUMP HIM!

THERE IS ALWAYS A BETTER OPTION THAN BABYDUMPING




1. **Prevent pregnancy:** Consider abstinence or use contraceptives.
2. **Involve others:** You do not have to cope alone. You can work together with the father or your family to decide on the best option for the child's future.
3. **Get help with maintenance:** Both parents have a duty to support their child. If the parents cannot support the child, other family members may have a duty to help. You may also be eligible for a state maintenance grant.
4. **Seek support:** Talk to a social worker or a trusted adult. A social worker can tell you about options such as foster care and adoption.
5. **Take time to think:** You may experience physical and emotional after-effects from the birth which affect your judgement. Don't make a decision in haste that you will regret later.
6. **Save a life:** If you really do not want to pursue any of these options, you should leave your baby in a safe place such as a hospital or police station so that he or she can have a life with someone else.

 British High Commission Windhoek

This poster is part of a social media initiative developed by the Legal Assistance Centre and funded by the British High Commission in Windhoek.

The aim of this initiative is to encourage people not to dump their baby.

The baby depicted in this poster is a model. The Legal Assistance Centre has been given permission to use this photograph in this initiative.

 LEGAL ASSISTANCE CENTRE