

CHILDREN AND ALCOHOL

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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).

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Underage drinking is a significant problem in Namibia. To address this issue, the Child Care and Protection Act amends the Liquor Act 6 of 1998 to make it clearer and to cover some neglected issues. The amendments –

- ⑨ require alcohol sellers to confirm the age of the buyer by checking identification
- ⑨ strengthen offences and penalties for using fake IDs, and authorise liquor-licence holders to confiscate fake IDs and hand them over to the police
- ⑨ prohibit children under age 18 from being present in certain types of drinking establishments except when accompanied by a parent or guardian
- ⑨ prohibit the manufacture of homemade alcoholic beverages by children
- ⑨ authorise police to confiscate alcohol from persons under age 18.

These amendments also make it illegal for anyone to sell or provide liquor to a parent or care-giver who is accompanied by a child if the parent or care-giver appears to be intoxicated, or in any other circumstances where there is concern about the child’s safety. It is furthermore now illegal for an adult to force, allow or encourage children to drink alcohol or take illegal drugs.

1. International framework

Article 33 of the **Convention on the Rights of the Child** requires States to take measures “to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties”. This does not include alcohol. There are three major international treaties on drugs: (1) the Single Convention on Narcotic Drugs, 1961 as amended by the 1972 Protocol; (2) the Convention on Psychotropic Substances of 1971; and (3) the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. There is, however, no international treaty which covers alcohol. The Framework Convention on Tobacco Control, 2003, adopted under the World Health Organisation Constitution, provides rules for governing the production, sale, distribution, advertisement and taxation of tobacco. Some groups advocate a Framework Convention for Alcohol Control which would take a similar approach.

The **Convention on the Right of the Child** is relevant to children’s use of alcohol as part of “the right of the child to the enjoyment of the highest attainable standard of health” (Article 23). Some of the General Comments of the Committee that monitors the Convention have linked alcohol use to other rights as well. For example, General Comment No. 3 notes that “the use of substances, including alcohol and drugs, may reduce the ability of children to exert control over their sexual conduct and, as a result, may increase their vulnerability to HIV infection”. General Comment No. 20, in its discussion of the protection of children from all forms of exploitation and abuse, reaffirmed that 18 should be the minimum age for the purchase and consumption of alcohol and tobacco “in view of the degree of risk and harm associated with their use.”

- ◆ Convention on the Rights of the Child, Articles 23, 33
- ◆ Committee on the Rights of the Child, *General Comment No. 3* (2003), paragraph 39; *General Comment No. 20* (2016), paragraph 40
- ◆ *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, page 507

The World Health Organisation has issued a **Global strategy to reduce the harmful use of alcohol**, developed through close collaboration between WHO Member States and the WHO Secretariat and approved by the World Health Assembly in 2010.

This strategy identifies regulation of the **availability of alcohol** as being important for reducing the harmful use of alcohol, and preventing easy access to alcohol by vulnerable and high-risk groups. It identifies several policy options and interventions to support this strategy:

- (1) placing reasonable limitations on the distribution of alcohol and the operation of alcohol outlets in accordance with cultural norms, by measures such as –
 - ⑨ a licensing system, or public health oriented government monopolies
 - ⑨ regulating the number and location of on-premise and off-premise alcohol outlets
 - ⑨ regulating days and hours of retail sales
 - ⑨ regulating the modes of retail sales
 - ⑨ regulating retail sales in certain places or during special events;
- (2) setting an appropriate minimum age for purchase or consumption of alcoholic beverages and other policies which raise barriers against the sale of alcohol to adolescents and the consumption of alcoholic beverages by adolescents;
- (3) adopting policies to prevent sales to intoxicated persons and those below the legal age, and considering mechanisms that place liability on sellers and servers in respect of this issue;

- (4) setting policies regarding drinking in public places or at official public agencies' activities and functions; and
- (5) adopting policies to reduce the illicit production, sale and distribution of alcoholic beverages, and to regulate or control informal alcohol.

Another concern with particular relevance to youth is the **marketing of alcohol to young people and adolescents**. Alcohol marketing uses increasingly sophisticated advertising and promotion techniques, including linking alcohol brands to sports and cultural activities, sponsorships and product placements. New marketing techniques utilise e-mails, text messages and social media. Advertising that targets young adult consumers almost inevitably reaches children who are under the legal minimum age for drinking. Policy options and interventions on this issue include:

- (1) setting up regulatory frameworks, supported by self-regulatory measures, for alcohol marketing that –
 - ⌚ regulate the content and the volume of marketing
 - ⌚ regulate direct or indirect marketing in certain media, or all media
 - ⌚ regulate sponsorship activities that promote alcoholic beverages
 - ⌚ restrict or ban promotions in connection with activities targeting young people
 - ⌚ regulate new alcohol marketing techniques, such as those on social media
- (2) developing effective systems for monitoring the marketing of alcohol products
- (3) setting up effective systems for addressing infringements of marketing restrictions.

◆ World Health Organisation, *Global strategy to reduce the harmful use of alcohol*, 2010, Areas 5 and 6

“Evidence from a range of settings demonstrates the importance of a legal framework for reducing the physical availability of alcohol that encompasses restrictions on both the sale and serving of alcohol. Having a licensing system for the sale of alcohol allows for the opportunity for control, since infringement of laws can be met by revocation of the licence. Implementation of laws that set a minimum age for the purchase of alcohol show clear reductions in drinking-driving casualties and other alcohol-related harm; the most effective means of enforcement is on sellers, who have a business interest in retaining the right to sell alcohol. An increased density of alcohol outlets is associated with increased levels of alcohol consumption among young people, increased levels of assault, and other harm such as homicide, child abuse and neglect, self-inflicted injury, and, with less consistent evidence, road traffic injuries. Reducing the hours or days of sale of alcoholic beverages leads to fewer alcohol-related problems, including homicides and assaults.”

◆ World Health Organisation, *Global strategy to reduce the harmful use of alcohol*, 2010, Annex II, paragraph 6

Namibia is a party to the **African Youth Charter**, which focuses on the rights of persons between the ages of 15 and 35. As part of the right of youths to enjoy the best attainable state of physical, mental and spiritual health, Article 16(2)(j) of the Charter calls upon States to “take legislative steps such as **banning advertising and increasing price** in addition to **instituting comprehensive preventative and curative programmes** [to] control the consumption of tobacco, exposure to environmental tobacco smoke and alcohol abuse”.

◆ African Youth Charter, Article 16(2)(j)

2. Rules on underage drinking

The Child Care and Protection Act amends the Liquor Act to expand and strengthen the provisions aimed at underage drinking. This section does not discuss the Liquor Act as a whole, but only the amended rules aimed at preventing the use of alcohol by persons under age 18.

Terminology: The rules refer to “liquor”, “light liquor” and “refreshments”. These terms have specific definitions for the purpose of the Liquor Act.

“**Liquor**” means –

- ⑨ any liquor, wine or beer (excluding methylated spirit) which is 3% alcohol or more
- ⑨ tombo or any other traditional or non-traditional drink which is 3% alcohol or more
- ⑨ any other “drink or concoction” declared to be liquor by the Minister responsible for trade and industry, by notice in the *Government Gazette*.

“**Methylated spirit**” refers to a type of alcohol which is made unfit for drinking while still being suitable for industrial or domestic purposes. It has additives to make it bad-tasting, foul-smelling, or nauseating to discourage recreational consumption. It is sometimes dyed in an unusual colour to differentiate it from alcohol intended for human consumption.

“**Light liquor**” means any liquor which contains not more than 16% alcohol.

“**Refreshments**” refers to non-alcoholic drinks or snack foods.

References to a “**licensee**” refer to a person who holds a liquor licence in terms of the Liquor Act.

◇ Liquor Act 6 of 1998, section 1

Minimum age for drinking or possessing liquor: It is illegal for a person under the age of 18 to consume, produce, possess or import liquor, or to supply liquor to any other person.

Note that the law does not penalise children for *buying* alcohol, but only for consuming it or possessing. The duty not to sell alcohol to minors falls on the seller. However, once a minor has completed a purchase, the minor would illegally be in possession of the alcohol in question.

A member of the police or a municipal police force can immediately confiscate liquor in the possession of someone who is underage, without a warrant. This applies to liquor in an opened or unopened container in the possession of someone who cannot provide reasonable proof that he or she is age 18 or over. The usual rules for seizure and forfeiture in criminal cases will apply.

◇ Liquor Act 6 of 1998, section 56(10)-(12)

Sale and supply: It is illegal for any person to sell or supply liquor to a person under age 18.

◇ Liquor Act 6 of 1998, section 56(1)

It is also illegal to sell or serve alcohol products, or to otherwise make them available, to children under age 18 at places of entertainment where a majority of the persons in attendance are children and the total number of people present (counting adults and children) is more than 50. This rule overlaps with the prohibition on the sale and supply of alcohol to children in the Liquor Act. However, the rule in the Child Care and Protection Act applies to any “alcohol product”, regardless of the level of its alcohol content.

◆ Child Care and Protection Act, section 229(4)

Duty to verify age: A person who intends to sell or supply liquor to another person is required to take reasonable measures to determine the age of that other person. The most obvious way to verify a person age is to demand an ID. This provision was added by the Child Care and Protection Act, with a view to making the duty not to sell alcohol to minors more meaningful in practice, and easier to enforce.

◆ Liquor Act 6 of 1998, sections 56(2)

Duty to exclude minors from certain premises:

It is illegal for any person, including a licensee, or a manager or employee of a licensee, to allow a person under the age of 18 years to be present in a licensed or unlicensed shebeen, a night club or a dance hall – unless the minor is accompanied by his or her parent, guardian or care-giver. The licensee, or manager or employee, must take reasonable measures to determine the age of a person suspected to be under the age of 18 years (such as demanding an ID before admitting them) or to determine whether an adult accompanying a minor is in fact that minor’s parent, guardian or care-giver.

A “shebeen” refers to any premises used exclusively or mainly for the sale of light liquor and refreshments to the public, or the consumption of light liquor and refreshments on the premises by members of the public. It includes a “tavern” (which is not defined). The Liquor Act does not define the terms “night club” or “dance hall”.

The presence of minors on a premises which serve mainly alcohol may be easier to enforce than the actual sale of alcohol to minors. This rule could also help to prevent situations where older youths purchase alcohol for the underage drinkers in their party.

In other countries, similar rules are enforced by means of unannounced visits to premises by police officers, often undercover, to see if the venue is actually checking IDs. Since a liquor licence-holder who repeatedly fails to comply with the law could lose his or her licence, there is a powerful incentive to follow the rule.



◆ Liquor Act 6 of 1998, section 56(3)-(4)

TECHNICAL NOTE: Subsections 56(3) and 56(4) are inconsistent in their use of “employee” and “employer”; “employee” seems to have been the intended word in both.

Duty not to endanger a child by providing alcohol to an intoxicated adult:

It is illegal for any person, including a licensee, or a manager or employee of a licensee, to sell or provide liquor to a parent, guardian or care-giver who is accompanying a child if that adult giver reasonably appears to be intoxicated, or in any other circumstances where there is concern about the health, safety or well-being of the child. **For example, suppose that a parent brings a baby or a toddler along to a shebeen. If the parent becomes intoxicated, he or she would no longer be in a position to make sure that the child remains safe. Continuing to serve alcohol to that parent could endanger the child.**



◆ Liquor Act 6 of 1998, section 56(5)

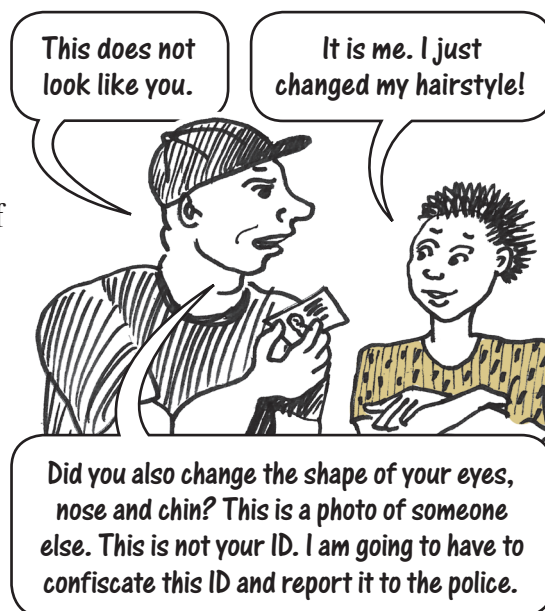
TECHNICAL NOTE: Subsection 56(5) appears to have been intended to refer to an “employee” rather than an “employer” of a licensee.

Misrepresentation of age: It is illegal for a minor to falsely represent himself or herself, or any other person, as being age 18 or older for the purpose of obtaining liquor or gaining access to premises where the presence of minors is restricted. **This would include presentation of a false ID or an ID belonging to some other person, or lying about age.**

◆ Liquor Act 6 of 1998, section 56(6)

False IDs: It is illegal for anyone to make a false document, sell or supply a false document, or deface or alter any document if that person knows or suspects that the document may be used to get around any of the rules about minors and alcohol.

It is also illegal to provide any document which has some evidence of age to another person, knowing or suspecting that it will be used to get around any of the rules about minors and alcohol – no matter whether the document itself is fake or genuine. **For example, this would apply to someone over age 18 who loans an ID to a minor so that the minor can buy alcohol or get into a night club.**



A licensee, or a manager or employee of a licensee, who has a reasonable suspicion that a document is being presented in violation of any of these rules must confiscate the document and submit it to the police or municipal police within 48 hours for purposes of an investigation. **These rules were added to the Liquor Act by the Child Care and Protection Act to facilitate meaningful enforcement of the rules on underage drinking. Where a document is handed over to the police for investigation, the usual rules for seizure and forfeiture in criminal cases will apply.**

◆ Liquor Act 6 of 1998, section 56(7)-(9), (12)

Penalties: A person *age 18 or older* who violates any of these rules can be fined up to N\$5 000 and/or imprisoned for up to one year and/or required to attend an educational programme on the dangers of underage drinking. Repeated offences can lead to the loss of a liquor licence, and even to disqualification from ever holding another liquor licence.

A person *under age 18* who violates these rules can be fined up to N\$300 and/or required to attend an educational programme on the dangers of underage drinking.

Note that the penalties for minors do *not* include imprisonment., The emphasis is on deterrence and education, rather than on punishment.

◇ Liquor Act 6 of 1998, sections 72(2A)-(2C)

3. Coercing, allowing or encouraging underage drinking

It is illegal for any person, including a parent, to –

- Ⓢ coerce any child **under age 18** to drink an alcoholic beverage
- Ⓢ to allow or encourage any child **under age 16** to drink an alcoholic beverage.

The penalty is a fine of up to N\$20 000, imprisonment for up to five years, or both. The convicted person may also be required to attend an educational programme on the dangers of underage drinking or drug abuse.

There is an **exception** for the use of alcohol in generally-recognised religious sacraments, such as providing wine as part of communion.

This provision is intended to address situations such as where parents take young children to shebeens and give them alcohol to keep them quiet.

Why is the age for allowing or encouraging children to drink alcohol set at 16 instead of 18? The idea was to permit parents to introduce children who are approaching the legal drinking age to responsible drinking in their own homes or other private and secure environments, such as by allowing them to taste wine or beer at a family lunch or a wedding. Also, a parent may be aware that an older child is experimenting with alcohol, and should not be legally obliged to stop this on pain of a criminal penalty if the child is at least age 16. It is probably better to provide an older adolescent with guidance about responsible drinking than to create a situation which encourages that adolescent to drink secretly rather than confiding in a parent or another trusted adult.

However, it remains illegal for anyone to supply alcohol to a child under age 18 – which would make the exception almost impossible to utilise in most practical situations.

◇ Child Care and Protection Act, section 230

4. Using alcohol for illegal sex with children

The Combating of Immoral Practices Act 21 of 1980 was amended by the Child Care and Protection Act to expand the rule protecting “females” from being made drunk or drugged for the purposes of sex, in order to apply this protection to *all* children, *male and female*. The amendments also doubled the penalty for this crime. It is illegal in terms of the amended provision for anyone to give a child any drug or intoxicating liquor with the intent to stupefy or overpower that child for the purposes of engaging in sexual conduct with that child, or enabling another person to do so. The penalty is imprisonment for up to ten years.

◇ Combating of Immoral Practices Act 21 of 1980, section 16

Other relevant rules in the Liquor Act

These rules may also be particularly relevant to the enforcement of the prohibitions on underage drinking.

- ⑨ Every licenced premises open to the public must, during the hours when it is open for business, display a notice stating that it is prohibited by law to sell a drink containing more than 3% alcohol to any person under the age of 18.
- ⑨ It is illegal for any person, regardless of age, to consume liquor in a public place.
- ⑨ It is also illegal for anyone to be intoxicated at any licensed premises or in a public place.
- ⑨ A “public place” for the purpose of these rules means “any square, garden, park, recreation ground, show ground, rest camp or other open or enclosed space intended for the use, enjoyment or benefit of the public”.

◆ Liquor Act, sections 1, 49(b), 57, 71(1)(h)-(i)
(These rules were not changed by the Child Care and Protection Act.)



Other protective measures for children who are using or abusing alcohol

One component of **prevention and early intervention services** is providing families with information about the dangers of alcohol and other drugs, and assisting them to address abuse of alcohol or drugs by any family member — which could include a child. See Chapter 13 of this Guide for more information on prevention and early intervention services.

A child who is addicted to alcohol or another dependence producing drug, and is without any support to obtain treatment for such dependency, is **a child in need of protective services**. A professional who works with children would have a duty to report a suspicion that a child falls into this category. A children’s court could, at the conclusion of a child protecting hearing, order appropriate services for such a child. See Chapter 14 of this Guide for more information on child protection proceedings.

A staff member at a children’s facility is required to report to the manager of the facility any **substance abuse by a child** in the care of the facility (regardless of whether it takes place on or off the premises), or **any incident where a child is under the influence of alcohol on the premises**. The manager must promptly notify the parent, guardian or care-giver of the situation, and of what steps have been taken. This rule applies to **residential child care facilities** (which include places of safety, children’s homes or child detention centres), **places of care** (creches, day care centres, etc which care for more than six children), **ECD centres** or **shelters** (facilities used for services or accommodation for abused adults and children, or for children living or working on the streets).

◆ Child Care and Protection Act, sections 130(4)(c), 131(1)(e), 132
◆ Child Care and Protection Regulations, regulation 13

“ Currently the age at which alcohol can be obtained in Namibia is 18. However, in society, minors have access to alcohol as early as the ages of four and five. Having shebeens and bars in our neighbourhoods is looked upon as being normal. Parents and the community at large turn a blind eye. However, we often don’t know the long-term effects that alcohol has on our bodies. Most of us minors know that if you drink in excess you will get drunk, tipsy and have a terrible hangover the next day. But alcohol is actually a depressant, can be addictive and can have long-term health effects. I suggest that our government have an annual Alcohol Awareness Campaign to educate 18-year-olds about what drinking alcohol can mean. ”

◆ comment from high school student in Windhoek during consultations around draft Child Care and Protection Bill