



OVERVIEW OF THE CHILD CARE AND PROTECTION ACT

Before the enactment of the Child Care and Protection Act, Namibia’s main law on children was the Children’s Act 33 of 1960, which was inherited from South Africa at independence. That outdated statute was a colonial law which was not well suited to African situations. The Child Care and Protection Act provides better systems for protecting and assisting Namibian children.

Key topics in the new Child Care and Protection Act

Definition of “child”:

A child is defined as anyone under age 18, and the age of majority is accordingly lowered from 21 to 18.

Objectives and guiding principles:

The paramount concern in decisions about children is the best interests of the child. The Act emphasises the rights and duties of parents and children, and the importance of child participation.

National Advisory Council on Children:

The Act establishes a cross-sectoral body to monitor the implementation of the law and to advise on child rights issues.

Children’s Advocate:

This official in the Office of the Ombudsman is empowered to investigate and act on complaints about abuses of children’s rights.

Parenting plans:

The Act provides procedures to help parents and other care-givers make agreements about issues such as custody, access and maintenance, as a way of preventing future disputes.

Replacement of the Children’s Status Act:

This 2006 Act is repealed and re-enacted as a chapter in the Child Care and Protection Act, with improvements based on practical experience, to bring all related child laws together in one unified whole.

Kinship care:

The Act acknowledges the role of the extended family and close family friends in caring for children and makes it possible for kinship care-givers to have easier access to social grants for the children in their care.

Prevention and early intervention services:

The Act provides for services to help families address problems that may harm children, before they become too serious.

Foster care:

The Act provides for persons to volunteer to take in children who have no family members to care for them. This is a different concept than in the past, as the Act makes a distinction between kinship care by family members and foster care by strangers.

Facilities for the care of children:

The Act provides for the registration of various facilities which care for children, as well as providing minimum standards for all such places:

- ☉ **places of safety:** places where children can stay temporarily in emergencies
- ☉ **children’s homes:** institutions that provide residential care for children
- ☉ **child detention centres:** more secure institutions suitable for young offenders or children with behavioural problems
- ☉ **shelters:** places that provide services and overnight accommodation for victims of abuse (adults and children), as well as street children and other children in need
- ☉ **places of care:** places that provide short-term care by arrangement with parents and care-givers, such as crèches and day-care centres
- ☉ **early childhood development centres:** places that provide a structured set of learning activities care for children who are below school age

Combating baby-dumping:

The Act provides procedures and safeguards so that children who are unwanted can be dropped off anonymously at safe places instead of being left to die.

Consent to medical procedures:

The Act provides for independent consent to medical interventions and HIV testing by mature children, and also provides for the examination and treatment of children without parental consent where abuse is suspected.

Other child protection measures:

There are other protective measures for children in particularly vulnerable situations:

- ⑨ **corporal punishment:** measures to eliminate corporal punishment, and programmes to help parents and other care-givers learn how to apply discipline without being abusive
- ⑨ **child-headed households:** rules to support and protect households where there is no responsible adult to take care of the children
- ⑨ **worst forms of child labour:** offences aimed at preventing the sexual and economic exploitation of children
- ⑨ **harmful social, cultural or religious practices:** prohibitions on child marriage and other harmful practices
- ⑨ **child safety at places of entertainment:** safety measures at events likely to be attended by large numbers of children
- ⑨ **crimes relating to child abuse and neglect.**

The international framework

Namibian laws on children must support Namibia's international commitments on children's rights. Since independence, Namibia has signed several key international agreements aimed at protecting children's rights:

1. **United Nations Convention on the Rights of the Child:** This set of minimum standards for children's rights has been adopted by almost every country in the world. Its four core principles are (1) non-discrimination; (2) commitment to the best interests of the child; (3) the child's right to life, survival and development; and (4) respect for the views of the child.
2. **African Charter on the Rights and Welfare of the Child:** This Charter focuses on issues particularly relevant to African children and emphasises the role of the extended family.
3. **ILO Convention on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour:** This Convention addresses (1) slavery and similar practices, including the sale and trafficking of children; (2) using children for prostitution or pornography; (3) involving children in unlawful activities; and (4) work that is likely to be harmful to children.
4. **Protocol to the Convention Against Transnational Organised Crime, to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children:** "Trafficking in children" means involvement in moving children from one place to another for purposes such as sexual exploitation or forced labour. This Convention is aimed at preventing trafficking and assisting victims of trafficking.
5. **Convention on the Rights of Persons with Disabilities:** This Convention is aimed at ensuring that persons with disabilities can enjoy full human rights without discrimination. It calls for "respect for the evolving capacities of children with disabilities".

The Act also supports the signing of four key Hague Conventions on children:

1. **Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption:** This Convention provides substantive safeguards and procedures on intercountry adoption aimed at preventing abuses such as abduction, exploitation, sale or trafficking of children. It allows consideration of intercountry adoption only after exploring options for placing the child within the child's home country, and is designed to make sure that intercountry adoptions are child-centred rather than adult-centred.
2. **Hague Convention on the Civil Aspects of International Child Abduction:** This treaty seeks to combat parental child abduction. If a child is removed from the country of habitual residence by one parent in breach of the other parent's custody or access rights, the child must be returned and the dispute resolved in the original country.
3. **Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children:** This treaty provides a structure for effective international co-operation in child protection matters — such as where a runaway teenager has crossed international borders, or where there is a need to place a child in foster or institutional care in a country other than the one where the child habitually resides.
4. **Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance:** This new Convention is designed to offer children and other dependants a simpler, swifter, more cost-effective international system for the recovery of maintenance where the child's parents reside in different countries.

