



CHILDREN'S COURTS

A children's court is a magistrate's court. All magistrates' courts can function as children's courts. At present, there is a dedicated children's court only in Windhoek, but others may be established in the future. When a magistrate's court is functioning as a children's court, the magistrate is called a children's commissioner. The children's commissioner has a specific duty to promote and protect the best interests of any child who comes before the court.

Children's Court = Magistrate's Court
Children's Commissioner = Magistrate

Resolving issues outside court

The Child Care and Protection Act includes provisions to reduce the number of cases that must be decided in court. In cases which do not involve allegations of child abuse, the court can order the people involved to try to reach agreement between themselves on the problem before the case is dealt with in court.

- (1) Pre-hearing conference:** The court may order the parties to participate in a pre-hearing conference with the goal of reaching agreement on some or all of the issues in dispute. For example, perhaps there is a case involving allegations of child abuse where the parties agree that the child was injured but disagree on the cause of the injuries. Agreeing on some of the issues could shorten and simplify the hearing, by limiting the issues which will require evidence and debate.
- (2) Lay-forums:** The court may refer the parties to a social worker, a traditional leader or another authorised person who can help the family try to reach agreement. One type of lay-forum is a family meeting where family members come together under the guidance of a skilled facilitator to discuss possible solutions to the problem involving the child. In such meetings, the family must also have the opportunity to discuss the issue in private, outside the facilitator's presence. Lay-forums are not permitted in cases involving the alleged abuse or sexual abuse of a child.

Both of these approaches must involve all the parties to the case – including the child. The purpose of providing for these alternatives is to help reduce conflict in cases involving children, to resolve problems affecting children more quickly, and to promote harmonious and lasting solutions to family problems.

Special procedures in children's courts

A children's court generally works in the same way as a magistrate's court. However, there are some special rules and procedures for children's courts:

- (1) Child participation:** Children have a right to participate in decisions affecting them. In a children's court, the children's commissioner must allow the child to express an opinion, if the child wishes. There is no specific age limit for this. To decide if the child is able to participate, the court will consider "the child's age, maturity and stage of development".
- (2) Assessors:** A children's commissioner can get assistance from assessors. An assessor could be an expert such as a doctor or a psychologist. An assessor could also be someone from the same language or cultural group of the child, who could help the child feel more comfortable and make sure that there is clear communication with the child. Assessors can participate in decisions on fact, but the commissioner alone will decide questions of law.

- (3) **Broad accessibility:** Children are often unable to speak for themselves. Therefore the Act makes it possible for a range of people to approach the court on the child's behalf – including the Minister responsible for child welfare, a social worker, the Children's Advocate, an NGO or anyone who is acting in the child's interest. It is also possible for the court to consider matters affecting a group or a class of children (such as all the children housed in a particular children's home).
- (4) **Private hearings in comfortable environments:** Cases in the children's court are private. Only the child in question and the other parties to the case may attend, along with any legal representatives or other people who are necessary to the case. The children's court is allowed to hold hearings in places other than the courtroom, such as in the commissioner's office, so that children will not feel intimidated by big rooms and formal settings. The commissioner must explain what is happening in simple language to everyone present. The commissioner may speak privately to the child. This is important because children may be afraid to speak openly in front of a parent or an abuser.
- (5) **Vulnerable witness arrangements:** The children's court can apply any of the special arrangements for vulnerable witnesses. These arrangements are already available to children who give evidence in criminal cases (such as victims of child abuse). They include:

- ⦿ allowing a child to give evidence from behind a one-way screen or by means of a live video recording from another room
- ⦿ allowing a support person to be with the child when the child gives evidence (such as allowing the child to sit on the lap of a family member)
- ⦿ requiring that questions be put to the child through an intermediary (a neutral person who has experience in talking to children, such as a social worker)



- ⦿ using statements the child has already made where possible, to avoid asking the child to talk about a traumatic experience repeatedly.

- (6) **Legal representation:** The outcome of a children's court case could have serious implications for a child's future – and the adults involved in the case may be so busy fighting with each other that the child's interests are forgotten. So it may be necessary in some cases for children to have their own legal representatives, to make sure that their views or interests are clearly presented to the court. A legal representative can bring additional investigative power and resources to the case, making it more likely that all relevant information will be placed before the court. The Act allows the court to order legal representation for the child if this would be in the best interests of the child. This *must* be done in particularly difficult cases, such as where it is recommended by the social worker who has investigated the case, or where there are allegations or evidence of child abuse. There are three avenues for providing legal representation for a child:

- (a) The court can order the parties to the case to cover the costs of a private lawyer for the child if they have the means to pay.
- (b) The court can order legal representation via Legal Aid, at state expense.
- (c) The court can order legal representation by a children's court assistant. All prosecutors are children's court assistants, and the Minister of Justice has the power to appoint dedicated assistants for any children's court.