



ADOPTION OF CHILDREN

Adoption is a useful way of affording children the benefits of family life which might not otherwise be available to them. Only a small number of Namibian children are adopted each year.

When can a child be adopted?

A child is adoptable when:

- Ⓞ the child's parent or guardian cannot be found and/or the child does not have a parent or any suitable guardian or care-giver willing to care for him or her
- Ⓞ the child is to be adopted by a step-parent
- Ⓞ the child has been abandoned
- Ⓞ the child is in need of permanent alternative care
- Ⓞ the child's parent or guardian has consented to give up the child for adoption.

The names of children available for adoption will be placed on a register of adoptable children.



Who can adopt a child?

The following people can adopt a child:

- Ⓞ a husband and wife acting jointly
- Ⓞ a step-parent (a person married to one of the child's parents)
- Ⓞ a widow or widower
- Ⓞ a divorced or unmarried person.

The person adopting the child might already be the child's foster parent, kinship care-giver or primary caretaker.

An adoptive parent must normally be at least 25 years old. (Where the adoptive parents are a married couple, at least one of them must be at least 25 years old.) Younger persons can adopt if they can show a good reason to make an exception. There is no maximum age for adopting. The adoptive parent must be a person who is willing and fit to undertake parental responsibilities and rights. Past convictions for violent crimes will disqualify a person from adopting. A social worker will investigate the adoptive parent's circumstances and make a recommendation. The names of persons considered suitable to adopt will be placed on a register of prospective adoptive parents. Placement on this register must be renewed after three years.

Who must consent to a child's adoption?

Consent to an adoption must normally be given by both parents, regardless of whether the parents are married. But consent of an unmarried father is required only where he has already acknowledged paternity (such as by paying maintenance or being named as the father on the child's birth certificate). If the court finds that the child was conceived through rape, the rapist's consent is not required to give the child up for adoption. Consent is also **not** required from a parent who:

- Ⓞ is mentally incompetent to give consent
- Ⓞ has abandoned the child
- Ⓞ cannot be found or identified after reasonable efforts
- Ⓞ has abused or neglected the child, or allowed the child to be abused or neglected
- Ⓞ has made no attempt to fulfil any parental responsibilities towards the child during the last year
- Ⓞ has failed to respond to a notice of the proposed adoption within 30 days of receiving it.

The child being adopted must also consent to the adoption, if the child is over age 10 — or under age 10 but mature enough to understand the implications of adoption.

The social worker handling the adoption must counsel the parents and the child about the meaning of adoption before the consents are given, and no final consents can be given before the child is born. The consent papers must be signed in the presence of a children's commissioner.

The children's court can overrule a lack of consent if the adoption would be in the child's best interests and consent is being unreasonably withheld. Before making this decision, the court must take into account the relationship between the parent and the child over the last two years and their potential for a good future relationship.

Deciding to put a child up for adoption is a difficult decision, so there is a 60-day "cooling-off period" when consent can be withdrawn. The child would normally live with the adoptive parents during this time, but could be placed in foster care or a place of safety instead if the social worker thinks this would be preferable. If consent to the adoption is withdrawn, the child will be returned to the birth parents.



What factors are considered in approving an adoption?

The paramount issue is the **best interests of the child**.

Other considerations include:

- ① preserving the child's identity, language, culture and religion where possible
- ② the views of the child (depending on the child's age and maturity)
- ③ any reasonable preferences expressed by the parent or guardian who is giving the child up for adoption
- ④ the social worker's assessment and recommendation.

Some adoptions are "closed adoptions" where the birth parents and the adoptive parents do not know each other's identity. Other adoptions are "open adoptions", where all the identities are known.

Adoption plans

In an "open adoption", the birth parents and the adoptive parents may decide to make a plan about sharing information – such as medical information or information about milestones in the child's development – or about contact with the birth family. The adoption plan might also contain agreements about how to ensure that the child maintains links with his or her cultural heritage. Adoption plans are optional and voluntary. They are binding only if they are made into court orders. The social worker facilitating the adoption will assist with an adoption plan if the parties want one, and the child must be consulted about it if the child is old enough to understand it.

The effect of an adoption

A child who is adopted becomes the child of the adoptive parents in every way. The names of the adoptive parents are entered into the child's birth certificate as the child's parents.

Access to information about an adoption

Information about all adoptions is recorded in an Adoption Register. Even if the adoption was a "closed adoption", the child is entitled to access information about the birth parents when the child reaches age 18. The adoptive parent also has a right to information about the birth parents' identity at this stage if this was previously unknown. The birth parent has a right to information about the adoptive parents' identity at this point if the adoptive parents and the child who was adopted have consented to this. Vital medical information (such as information about an inherited condition) can be revealed sooner if this is relevant to the child's health.

Intercountry adoptions

Intercountry adoption became common after World War II when many countries were left with war orphans but lacked the resources to care for them within the country. Intercountry adoptions became increasingly popular in the 1970s and 1980s, as a way to provide children to couples who could not have their own children. The increased demand to adopt children has led to some problems, such as child trafficking and baby selling. On the other hand, with the HIV/AIDS epidemic affecting many countries, intercountry adoption can also be a way of providing for the best interests of orphans in situations where the extended family has broken down or is overstretched.

Concerns about intercountry adoption led to the Hague Convention on Intercountry Adoption, an international agreement first signed in 1993. It provides procedures for intercountry adoption aimed at preventing abuses like abduction, exploitation, sale or trafficking of children. The agreement requires that **countries can turn to intercountry adoption only after considering options for placing the child within the child's home country**. It ensures that intercountry adoptions are child-centred rather than adult-centred.

The Child Care and Protection Act is designed to support implementation of this Hague Convention. The High Court of Namibia ruled in 2004 that it is unconstitutional to have a blanket rule preventing foreigners from adopting Namibian children, because such adoptions may sometimes provide the best family environment for a child. The Hague Convention provides a framework for intercountry adoption which protects the best interests of Namibian children. Joining the Convention does NOT mean that Namibia must entertain all requests from people outside Namibia who want to adopt Namibian children. If there are adoptable children in Namibia for whom no suitable adoptive parents can be found, Namibia can allow intercountry adoptions from a limited number of other Hague signatory countries.

Intercountry adoptions outside the Hague Convention framework will be allowed only in special circumstances, such as adoption by extended family members or where the child has some special need that cannot be adequately addressed inside Namibia (such as an unusual medical issue or a learning disability). In such cases, Namibia will apply as many of the safeguards of the Hague Convention as possible.

The Hague Convention's definition of intercountry adoption does not depend on citizenship. It defines an intercountry adoption as any adoption where parents who are *habitually resident* in one country want to adopt a child who is *habitually resident* in another country. The relevant point is whether the child will be moved from one country to another. This is when extra safeguards are needed.

Criminal offences

People who are desperate to adopt children are often willing to pay huge amounts to birth parents or to social workers who arrange adoptions. The Child Care and Protection Act makes it a serious offence to pay more than the prescribed fee to social workers for adoptions. It is also a serious offence to give compensation to the birth parents aside from the reasonable costs of medical expenses or counselling. Advertisements about adoptions are also strictly regulated. Only general announcements, such as information about the need for adoptive parents, are allowed. Children should not be for sale.

