



OTHER PROTECTIVE MEASURES

- ☉ HARMFUL SOCIAL AND CULTURAL PRACTICES
- ☉ BABY-DUMPING
- ☉ CHILD-HEADED HOUSEHOLDS
- ☉ CHILDREN IN PRISONS OR POLICE CELLS

1. Harmful cultural and social practices

The African Charter on the Rights and Welfare of the Child requires states to take measures to eliminate harmful social and cultural practices affecting children. In line with the African Charter, the Act contains a broad statement that “a person may not subject a child to social, cultural and religious practices which are detrimental to his or her well-being”.

One of the cultural practices of concern in some Namibian communities is **child marriage**. Early sexual activity and child-bearing involve health risks. The Act contains several measures to combat this practice. Firstly, it sets the minimum age for customary marriage at 18, to match the minimum age for civil marriage – which was set at 18 for both boys and girls in 1996. At present, marriage under customary law in some communities is allowed when the child reaches puberty – but the age of puberty has been getting lower and lower in recent years, with many girls reaching puberty as early as age 11 or 12. Setting the minimum age for all marriages at 18 gives equal protection to children who live under customary law and those who do not, and also brings Namibia in line with the African Charter which requires states to prohibit marriages for children under age 18.

The Act also forbids forced marriage or betrothal.

“Marriage shall be entered into only with the free and full consent of the intending spouses.”

Namibian Constitution, Article 14(2)

There are three layers of consent involved for a civil or customary marriage:

- (1) A marriage (or betrothal) may take place only with the consent of both of the intended spouses, regardless of their ages. Forcing a child into a marriage (or betrothal) against his or her will is a crime.
- (2) The consent of the Minister of Home Affairs and Immigration is required before any child (i.e. a person under the age of 18) can marry.
- (3) The consent of the parent or guardian is required before any person under age 21 can marry.

Early marriage is the only specific cultural practice prohibited by the Act. The Act authorises the Minister, after consultation with interested parties including traditional leaders, to prohibit **other specific social, cultural or religious practices** – including but not limited to any form of sexual initiation – which may be detrimental to the well-being of children.

2. Baby-dumping

Baby-dumping is a significant problem in Namibia. To encourage people to leave unwanted babies in safe places, the Child Care and Protection Act provides that it is not an offence to leave a child 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”.

A child who is left at one of the “safe havens”, or an abandoned child found anywhere else, 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. This social worker will also advertise the recovery of the baby, to see if any parents or family members come forward to claim the baby. This is also a way to make sure that the baby has not been kidnapped by someone such as a disgruntled partner. If the child has not been claimed after 60 days, the child may be a suitable candidate for adoption. If the child is claimed by family members or by a parent who has had a change of heart, the social worker will continue to monitor the situation. The child will be returned to the parent only if the social worker is sure that the child will now be safe.

3. Child-headed households

Sometimes it may be better for children who are living in a household without an adult to stay where they are instead of having to be split up and moved somewhere else, which might involve a change of community or school. The Child Care and Protection Act allows the Minister responsible for child welfare to officially recognise a household as a child-headed household where all four of the following circumstances are present:

- (1) The parent or care-giver of the household is chronically or terminally ill, has abandoned the children, is imprisoned or has died.
- (2) There is no adult family member available to care for the children in the household.
- (3) A child has assumed the role of care-giver for some other child in the household.
- (4) It is in the best interests of the children in the household.

A child-headed household recognised in this way will be placed under the supervision of an adult named by the children's court, or an adult named by the Minister (or chosen by an NGO designated by the Minister). This adult will provide regular support and monitoring for the child-headed household, but the children will not live with this adult.

The child who heads the household will make day-to-day decisions about the household and the children in it. Where adult intervention is required, the child who heads the household should be consulted. The other children in the household must also be consulted if they are mature enough to express a meaningful opinion. The child heading the household or the adult who is supervising the household may collect and administer any grants which the children are eligible to receive. Any of the children in the household can complain to a social worker if the supervising adult is not behaving responsibly.

4. Children in prisons or police cells

The Child Care and Protection Act, enacted at a time when Namibia had no dedicated legislation on child justice, provides basic protection for children in a prison or a police cell. The Child Care and Protection Act requires that such children must be held separately from adults, with a few exceptions:

- ☉ Children may eat or exercise in the same room as adults provided that there is proper supervision by a state official.
- ☉ Children may stay with a detained parent, guardian or care-giver under prescribed conditions if this is in the child's best interests. A social worker will assess the situation in such cases.

The Act also requires that children awaiting trial must be held separately from children who have been convicted and sentenced, and in conditions which reduce the risk of harm to the children in question. The Act requires specific record-keeping about children in prisons or police cells, and provides for social worker investigations and appropriate follow-up in the case of a complaint about the situation of any child in a prison or a police cell.

Other protective measures

The Act also contains some other protective measures. For example, there are provisions which cover **unaccompanied foreign children** who are found in Namibia without any adult to care for them. The Act makes it a crime for anyone caring for a child to **abandon, abuse or deliberately neglect** that child. It is also a crime for anyone who is legally liable for a child's maintenance to **fail to provide the child with adequate food, clothing, lodging and medical assistance**, if the person has the means to provide these things.

