



# CHILDREN'S COURTS

**A** Children's Court is a Magistrate's Court. In the future, dedicated Children's Courts may be set up. But at this stage, all Magistrates' Courts also function as Children's Courts. When the Magistrate's Court is functioning as a Children's Court, the Magistrate is called a Commissioner of Child Welfare. The Commissioner of Child Welfare 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**  
**Commissioner of Child Welfare = Magistrate**

## Resolving issues outside court

The proposed 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 it goes to court. They can be directed to attempt this at one of the following types of meetings:

- (1) **Pre-hearing conference:** a private meeting held with the goal of reaching agreement on some or all of the issues in dispute (usually more effective if facilitated by a neutral person trained in mediation)
- (2) **Lay-forum hearing:** referral to a social worker or a traditional leader who can help the family try to reach agreement.

Both alternatives will usually include all people involved in the case – including the child.

A third option not currently included in the proposed law is **family group meetings**. Family group meetings started in New Zealand as a way to incorporate traditional Maori customs into the law. They are now used in many countries, including South Africa and the United Kingdom. Family group meetings bring together a wide group of extended family members (and even close family friends) to discuss ways to resolve the problem. An independent facilitator will give the family relevant information. The family will have some time for private discussion. Then they will discuss their ideas with the facilitator, to decide how to take them forward.

## Special provisions for hearings in Children's Courts

A Children's Court generally works in the same way as a Magistrate's Court. However, there will be 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 Commissioner must allow the child to express a view or an opinion, if the child wishes. There is no specific age limit. To decide if the child is able to participate, the court will consider "the child's age, maturity and stage of development and any special needs that the child may have".
- (2) **Assessors:** Cases in the Children's Court can be decided by a panel if special expertise is needed. The Magistrate will decide legal questions, and the additional assessors will help with decisions on other issues. 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.
- (3) **Private hearings in comfortable environments:** Cases in the Children's Court are private. Only children and other parties to the case may attend, plus 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 an 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 the child, the parents and other persons with an interest in the case.

- (4) **Vulnerable witness arrangements:** The provisions in the proposed law will help make the court experience less traumatic for children. As an additional idea, Children's Courts could use the special arrangements shown below which are already available to children who give evidence in criminal cases (such as victims of child abuse):
- Ⓞ 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.

## QUESTIONS ABOUT CHILDREN'S COURTS

### Family mediation

- Ⓞ Should pre-court meetings be voluntary, or should the court be able to order parties to attempt mediation?
- Ⓞ Who should facilitate these meetings?
  - Ⓞ Do social workers have the time and the skills to conduct mediations in family disputes?
  - Ⓞ Would traditional leaders need special training to conduct mediations about children's issues?
  - Ⓞ Are there other people who could serve as mediators in Namibia?
- Ⓞ Should Namibian law include the option of family group meetings which involve extended family members?

### Special provisions

- Ⓞ What people are best qualified to help the Magistrate make decisions about children's issues?
  - Ⓞ Should the Magistrate decide when to involve other experts, or should this be *required* in certain kinds of cases?
- Ⓞ What are the best ways to help children feel comfortable so that they will be able to participate effectively in a court hearing?

## WHAT DO YOU THINK?

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