



ADOPTION

Article 14 of the Namibian Constitution says:

The family is the natural and fundamental group unit of society and is entitled to protection by society and state.

Adoption is a valuable way of affording children the benefits of family life which might not otherwise be available to them. However, only a small number of Namibian children (about 80) are adopted each year. In comparison, as of February 2009, there were almost 14 000 children in foster care. Are the rules and regulations associated with adopting a child in Namibia too difficult or are there other reasons why adoption is not common in Namibia?

Who should be able to adopt a child?

The draft Child Care and Protection Act proposes that the following people should be able to adopt a child:

- ⑨ a husband and wife who are unrelated to the child
- ⑨ a step parent (a person married to one of the child's parents)
- ⑨ the foster parent/s of the child
- ⑨ a widow or widower
- ⑨ a divorced or unmarried person
- ⑨ a person related to the child.

In Angola, a single person or a couple may adopt a child. The couple does not have to be married to become joint adoptive parents. In contrast, only married couples in Chile may adopt a child. In Kenya, a single parent may adopt a child of the same sex. What should Namibia do?

How old should an adoptive parent be?

The draft Child Care and Protection Act says that an adoptive parent should be over the age of 18. It does not say whether there should be a specific age gap between the adoptive parent and the child. The current law in Namibia (the Children's Act of 1960) says that an adoptive parent must be 25 years old unless the adoptive parent is a relative or step-parent of the child. The Children's Act also requires there to be 25-year age gap between the adoptive parent and the child in some cases, such as where unmarried persons adopt children of the same sex.

Kenya and Ghana require that adoptive parents be at least 25 years old and at least 21 years older than the child if they are unrelated to the child. Burundi requires a 15-year age gap for non-relatives. Russia requires no age gap for adoption by married couples, but a single person who adopts a child must be more than 16 years older than the child. Some countries also apply maximum ages for adoptive parents – for example, the maximum age is 65 in Kenya and 60 in Greece. What should Namibia do?

What about cultural and religious values?

The draft Child Care and Protection Act proposes that a child in any of the following circumstances may be adopted:

- ⑨ the child has no parent, guardian or caregiver who is willing to adopt the child OR
- ⑨ the whereabouts of the child's parent or guardian cannot be established OR
- ⑨ the child has been abandoned OR
- ⑨ the child is in need of a permanent alternative placement.

The draft law says that the child's identity, language and cultural and religious ties must be preserved as far as possible in an adoption. While this standard is important, it should not be forgotten that the most important criteria should always be the child's best interests.

For example, suppose that a child has formed a very strong bond since birth with close family friends who are from a different cultural and language group. If this child's parents are killed in a car accident and there are no close extended family members, it might be in the child's best interests to be adopted by the close family friends despite their cultural differences.

Who should consent to a child being adopted?

The draft Child Care and Protection Act says that consent to an adoption must normally be given by both parents, regardless of whether the parents are married. But consent of a single father is required only where he has already acknowledged that paternity (such as by paying maintenance or being named as the father on the child's birth certificate). Consent is also **not** required from a parent who –

- ⑨ is mentally incompetent to give consent
- ⑨ has abandoned the child
- ⑨ cannot be found or identified after reasonable efforts
- ⑨ has abused or neglected the child
- ⑨ has allowed the child to be abused or neglected
- ⑨ has consistently failed to fulfill parental responsibilities towards the child during the last year
- ⑨ has failed to respond to a notice of the proposed adoption within 30 days of receiving it.

The Children's Court can overrule a lack of consent where it finds the adoption would be in the child's best interests and that 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. Therefore there is a 60-day "cooling-off period" after consent has been given. The child would normally live with the adoptive parents during this time, but could be returned to the birth parents if consent to the adoption is withdrawn.

Arguments **against** a 60-day cooling-off period:

- ⑨ the uncertainty during this period is traumatic for both adoptive and birth parents
- ⑨ the waiting period can hamper bonding between the adoptive parents and the child
- ⑨ the same objective could be served by counselling the birth parents, to ensure that they have considered their decision thoroughly

Arguments **for** a 60-day cooling-off period:

- ⑨ the circumstances of the birth parents might change and cause them to want to withdraw their consent
- ⑨ social workers can observe the placement to see if proper bonding has taken place before the adoption is final
- ⑨ a lifetime decision like adoption should be carefully considered, after adequate counselling

One compromise might be a shorter waiting period, such as 30 days.

Does the child have a role in the decision?

If the child is 14 years or older, and of sufficient maturity and stage of development to understand what is happening, he or she **must** give consent to the adoption; younger children **must** also give consent to their own adoption if they are of sufficient age, maturity and stage of development.

How should intercountry adoptions be managed?

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 then became increasingly popular in the 1970s and 1980s, as a way to provide children to couples who could not conceive a child of their own. The increased demand to adopt children has led to problems such as child trafficking and baby markets. With the HIV/AIDS epidemic affecting many countries, intercountry adoption is seen by some people as a way of providing for the best interests of orphans in situations where extended family links have broken down or the extended family is already overstretched.

Concerns about these problems 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 consider intercountry adoption only after exploring options for placing the child within the child's home country. It is designed to make sure that intercountry adoptions are child-centred rather than adult-centred.

Many countries have signed this agreement. Namibia has not yet signed the agreement but may do so in the future. 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 would provide a framework for intercountry adoption which would protect the best interests of Namibian children.

Some countries require that foreigners who want to adopt must establish some link to the child's home country. For example, some countries require foreigners to reside in the child's home country for certain time periods before the adoption can be finalised: 1 month in Madagascar, 3 months in Kenya, 12 months in Zambia and 3 years in Uganda (although the court makes exceptions to this rule where it is in the child's best interests). What should Namibia do?

ISSUES FOR DISCUSSION

- ⑨ Why are so few children adopted in Namibia? Is there a need for some other option of permanent care, which does not require the end of all legal ties between the child and the child's birth parents?
- ⑨ Should single people be allowed to adopt children of the same sex?
- ⑨ Should unmarried couples be able to adopt a child together? What about others who might want to adopt a child together, such as a brother and sister?
- ⑨ Should there be a fixed minimum or a maximum age for an adoptive parent, or a fixed age gap between the adoptive parent and the adopted child? or should this be decided on a case-by-case basis?
- ⑨ Should the consent of both biological parents be required if they are not married? What rules should be applied to ensure that a parent who is not actively involved in a child's life does not block an adoption unreasonably?
- ⑨ Should there be a cooling-off period during which the birth parent can withdraw consent to the adoption? If so, how long should this period be?
- ⑨ How can a Namibian child's cultural connections best be preserved in cases where an intercountry adoption is determined to be the best option for the child?

WHAT DO YOU THINK?

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