



# WHAT ELSE SHOULD BE INCLUDED IN THE ACT?

## Part 1

### (1) Rights and responsibilities

Right and responsibilities go together. Some countries have decided to include children's responsibilities in their laws along with children's rights. For example, the Children's Act in Kenya includes a section on the responsibilities children have. The African Charter on the Rights and Welfare of the Child also includes sections on the responsibilities children should have. What should Namibia do?

#### Kenya's Children's Act 2001

This law says that a child has a responsibility to:

- ④ respect his parents, superiors and elders at all times and assist them in case of need;
- ④ serve his national community by placing his physical and intellectual abilities at its service;
- ④ preserve and strengthen social and national solidarity; and
- ④ preserve and strengthen the positive cultural values of his community in his relations with other members of that community.

**ISSUES FOR DISCUSSION:** Should the Child Care and Protection Act include a section on children's responsibilities? If so, what responsibilities should it include? How would this be enforced?

### (2) Harmful cultural practices

Some harmful traditional practices include:

- ④ female genital mutilation
- ④ some forms of ceremonial male circumcision
- ④ sexual initiation
- ④ child marriage and betrothal.

Traditional cultural practices reflect values and beliefs held by members of the community for periods often spanning generations. Whilst some practices are beneficial to all members of a cultural group, others are harmful to specific people within a culture, such as women and children. It has been reported that some children in Namibia, most often girls, are subjected to some harmful traditional practices.

In Ghana, the Children's Act of 1998 states that "No person shall subject a child to... any cultural practice which dehumanises or is injurious to the physical and mental well-being of a child". It also says that "No person shall force a child to be betrothed, to be the subject of a dowry transaction or to be married." Uganda makes it a crime to subject a child to harmful social and cultural practices in the Children Statute of 1996: "it shall be unlawful to subject a child to social or customary practices that are harmful to the child's health". What should Namibia do?

#### ISSUES FOR DISCUSSION

- ④ What harmful cultural practices affect children in Namibia?
- ④ What should the new law say about harmful cultural practices?
- ④ Should the minimum age of 18 which applies to civil marriage be extended to all types of marriages? Why or why not?

### (3) Baby-dumping and infanticide

Baby-dumping and infanticide are significant problems in Namibia, although we have no national statistics. While the killing of a baby is a crime, it can be difficult to judge these cases because of the complex physical, mental and emotional factors involved – such as a special form of depression that some new mothers experience. Some countries make infanticide a separate crime to murder. For example, in Zimbabwe a woman who kills her own child within six months of the child's birth "at a time when the balance of her mind is disturbed as a result of giving birth to the child" is guilty of infanticide rather than murder and is liable to imprisonment for a period not exceeding five years. This sentence is designed to provide a response to the crime while at the same time acknowledging that there may have been exceptional circumstances involved. Botswana and Lesotho also have separate offences of infanticide. What should Namibia do?

To adequately address the issue of baby-dumping and infanticide, additional measures are needed. Some countries, such as the United States, have enacted "safe haven" laws. The purpose of these laws is to encourage parents – usually mothers – to leave unwanted babies in a safe place (such as a hospital or police station) where the baby will receive proper care and protection until an adoptive home can be found. The objective is to prevent infants from being abandoned in circumstances which are likely to harm them, or cause their deaths. Safe haven laws generally allow the parent to remain anonymous. **TURN PAGE**

Whilst safe havens laws are important if they can prevent even a small number of infants from being left to die, there can be some problems. What should Namibia do?

#### ISSUES FOR DISCUSSION

- ④ Should infanticide be a different criminal offence to murder?
- ④ Should Namibia introduce safe haven provisions into the new law? If so, what measures should be put into place to protect the rights of fathers and extended family members?

#### Limitations of safe haven laws

- ④ The law could deprive biological fathers of their legal right to care for their children, as the infant may be left without their knowledge.
- ④ The children who are left at safe havens may never know their family histories. Extended family members are also prevented from having the chance to care for the child in question.
- ④ Mothers who intend to leave their infants at a safe haven may conceal their pregnancies and give birth in unsafe circumstances instead of seeking appropriate pre-and post-natal care.

#### Advantages of safe haven laws

- ④ Combined with public awareness campaigns, they can help to reduce the number of infanticides and backstreet abortions.
- ④ Once a baby has been dropped, many safe havens advertise for fathers who might suspect a baby is theirs to come forward. This gives fathers a chance to care for their children.

## (4) Children and alcohol

Underage drinking is another significant problem in Namibia. For example, a Ministry of Health study found that amongst 13-16 year-olds, 11% of girls and 18% of boys use alcohol regularly. The same study found that over 28% of youths aged 13-30 drink alcohol weekly, and almost 7% drink alcohol daily. To address this issue, the draft Child Care and Protection Act could include amendments to the Liquor Act 6 of 1998 to make the current provisions clearer and to expand them to cover areas which are currently neglected:

1. Prohibit children under the age of 18 from being in certain types of drinking establishments except when accompanied by a parent or guardian.
2. Require alcohol sellers to confirm the age of the buyer by checking identification and strengthen penalties for presentation of false identification by the buyer.
3. Make alcohol suppliers and sellers legally obliged to check the age of the buyer through an identification check and strengthen penalties for presentation of false identification.
4. Clarify situations where alcohol can be supplied to persons under age 18 (for example as a religious sacrament, or in moderate amounts for older children drinking under parental supervision).
5. Prohibit manufacture of homebrew by children under age 18.
6. Define certain types of coerced, induced or permitted alcohol consumption by children as a form of child abuse by the adults who are involved.
7. Put in place more restrictive rules for persons under age 21 who drink and drive.

What should Namibia do?

#### ISSUES FOR DISCUSSION

- ④ Should the new law strengthen the provisions on underage drinking?
- ④ If an adult coerces, induces or permits a person under age 18 to consume alcohol, should this be considered child abuse?
- ④ Should there be a more restrictive provision on drinking and driving for young drinkers, such as those under age 21?

## (5) International abduction

One form of international abduction can happen when the parents of a child part company, and one parent takes the child out of the home country without the permission of the other. The Hague Convention on the Civil Aspects of International Child Abduction is an international agreement that facilitates the rapid return of abducted children under age 16 to their home country in these circumstances. The court in the child's home country can then decide disputes between the parents on custody and access. Namibia has not yet signed this agreement but may sign it soon. Signing this Convention would promote international cooperation to assist in cases of international abduction by parents. Namibia has already signed the United Nations Convention on the Rights of the Child, which says that member states should "take measures to combat the illicit transfer and non-return of children abroad".

#### ISSUES FOR DISCUSSION

- ④ Are Namibian children being removed from the country by one parent, in violation of the other parent's rights? If so, how are these cases being dealt with at present?
- ④ Should Namibia adopt the Hague Convention on the Civil Aspects of International Child Abduction and make provision in the new law for implementing it?

### WHAT DO YOU THINK?

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