



# **Summary of Namibia's CHILD CARE AND PROTECTION ACT (Act No. 3 of 2015)**



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Ministry of Gender Equality  
and Child Welfare



Legal Assistance Centre



Embassy of Finland  
Windhoek



**THIS BOOKLET HAS BEEN TRANSLATED INTO  
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# 10 REASONS WHY THE ACT IS SO IMPORTANT

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**C**hildren cannot care for themselves or protect themselves in the same way that adults can. This means that children are an extremely vulnerable group and need special attention. This is particularly important in Namibia, where more than one out of three persons are under age 15.

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1. **The Child Care and Protection Act replaces outdated legislation.** Previously, the main law governing the care and protection of children in Namibia was the Children's Act of 1960 inherited from South Africa. This previous law did not adequately cover issues such as the HIV/AIDS epidemic, the sharp rise in international child trafficking, the high level of sexual abuse against Namibian children or the large number of child-headed households – to name but a few current issues of concern. The Child Care and Protection Act provides mechanisms to address these and many other problems faced by children in Namibia today.
  2. **The Child Care and Protection Act brings national legislation in line with Namibia's international commitments.** Namibia is a party to the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. According to the Namibian Constitution, provisions in international agreements automatically become part of Namibian law – but they can be more effectively implemented if they are incorporated into national legislation. One aspect of the harmonisation with international law is the lowering of the age of majority to 18.
  3. **The Child Care and Protection Act makes the best interests of the child the key consideration in matters concerning the child.** Decisions about the care and protection of children can be complicated. The best interests standard can reduce conflict and simplify decision-making because the deciding factor must always be what is best for the child. The best interests standard is part of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, but Namibia's previous laws on child protection did not apply this standard consistently.
  4. **The Child Care and Protection Act recognises the importance of child participation, and sets out children's rights and responsibilities.** In the past, children were often treated as objects instead of people with their own rights, responsibilities and opinions. Both the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child say that children have a right to participate in decisions that affect their lives. The African Charter also says that the rights of children come with matching responsibilities. The Child Care and Protection Act gives effect to these international principles.
  5. **The Child Care and Protection Act provides for new structures which give children better protection.** For example, it provides for a National Advisory Council composed of experts from different ministries and sectors, and a Children's Advocate within the Office of the Ombudsman. These institutions will improve co-ordination and monitoring of child protection initiatives.
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- 6. The Child Care and Protection Act provides mechanisms for the care and protection of children which are appropriate to the reality of families in Namibia.** For example, the Act recognises kinship care, where relatives or close family friends care for children in the place of the parents. This means that kinship care-givers no longer have to go through long legal processes to access grants for the children in their care. The Act provides for parenting plans which will allow the different people with parental responsibility for a child to formalise agreements between themselves. The Act also recognises the existence of child-headed households and makes provision for such households to function under the supervision of a suitable adult or child protection organisation.
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- 7. The Child Care and Protection Act provides stronger and more detailed provisions on the care of children who do not live with their parents or extended family.** For example, it regulates foster care (where a child is placed by a court with an unrelated family for temporary care), children's homes, day-care centres and child detention centres (previously known as reform schools), for the housing and rehabilitation of young offenders and children with unmanageable behavioural problems. Minimum standards of care are prescribed for all these forms of alternate care.
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- 8. The Child Care and Protection Act provides protection to children in key areas that were not adequately covered by the previous law.** For example, it regulates grants for children. It applies safeguards for vulnerable witnesses to children's court proceedings, to make them less traumatic for children. It provides a legal procedure for a parent to leave an unwanted baby in a safe place without fear of prosecution for abandonment, to help combat baby-dumping. It also clarifies the law on consent to medical interventions on children and the medical examination of abused children.
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- 9. The Child Care and Protection Act introduces safeguards to regulate intercountry adoption.** Following the 2004 High Court ruling that adoptions cannot be restricted to Namibian citizens alone, Namibia experienced an increase in requests for intercountry adoptions. However, the previous law did not have sufficient safeguards to prevent abuses such as baby-selling. The Child Care and Protection Act introduces detailed steps that must be followed before a child can be adopted by people from another country, including steps to ensure that there is no suitable adoptive family for the child within Namibia. These procedural improvements support Namibia's accession to the Hague Convention on Intercountry Adoption, which helps countries cooperate to prevent unscrupulous international adoption practices.
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- 10. The Child Care and Protection Act introduces new offences with strong penalties to protect children against mistreatment.** These offences include new restrictions on the sale of alcohol to children, child trafficking and exploitation of children. These strengthened offences are intended to deter people from taking advantage of children's vulnerability.
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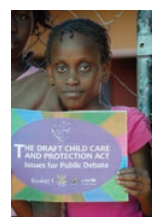
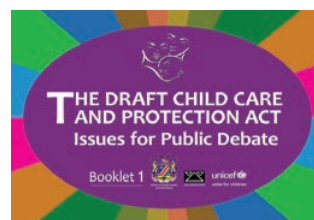
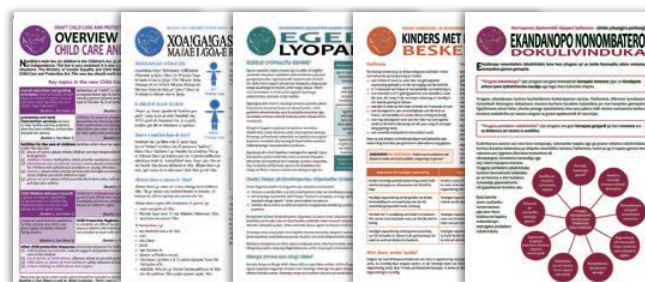




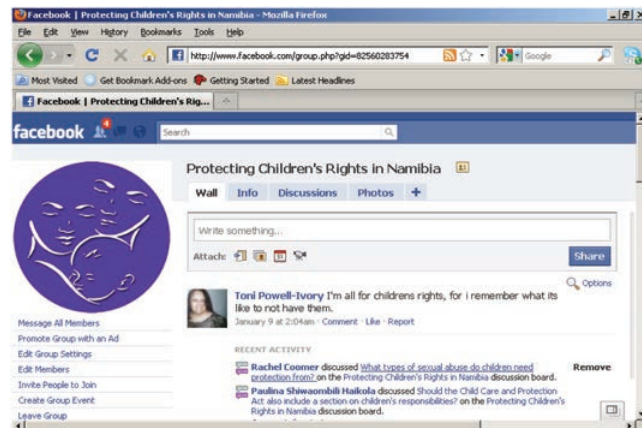
# PREPARING THE ACT: WHO WAS CONSULTED?

**T**he process of developing the Child Care and Protection Act involved the largest national law reform consultation held to date in Namibia. It was a multi-media, multi-language campaign that involved all sectors of society.

- ⑨ **Twenty-one factsheets** were produced about different aspects of the draft bill in a total of five languages.
- ⑨ Approximately **40% of the Namibian population** was exposed to information about the draft bill in **factsheets circulated as newspaper inserts** in three languages.
- ⑨ **Regional consultations** involved participants from all regions in Namibia, including regional councillors, traditional leaders, social workers, community activists and civil society.
- ⑨ **National consultations** involved international experts from three continents.
- ⑨ **Children and youth represent 30% of all people consulted.**
- ⑨ **Thirty-nine workshops, conferences, consultations, focus group discussions or other meetings** were held to discuss the revision of the draft bill, with 16 of these targeting children or youth.
- ⑨ At least **38 radio slots** and **9 television broadcasts**, and possibly more, featured the draft bill during the consultation period.



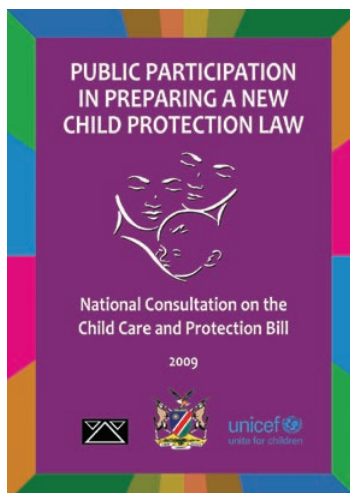




- ⑨ A total of **25 articles, opinion pieces, letters or text messages on the draft bill appeared in Namibian newspapers** during the consultation period, along with **8 articles in Namibian magazines**.
- ⑨ Seven specific topics in the draft bill were discussed on **Facebook** in a group which had almost 300 members at its peak.
- ⑨ Information about the revision process was circulated in **five electronic-newsletters**, both national and international, during the consultation period.
- ⑨ Several Namibian organisations which work with children and individual experts on children's issues provided **detailed written input** on the draft bill.
- ⑨ All **key government ministries that play a role in implementing child protection measures** were consulted. Detailed discussions on implementation issues took place between the Ministry responsible for child welfare, the Ministry of Justice and the Ministry of Finance.
- ⑨ The Ministry responsible for child welfare discussed the draft bill with the **Council of Traditional Leaders**.
- ⑨ **Members of the Hague Convention** provided ongoing support and information regarding Namibia's signing of the four Hague conventions covered by the draft bill.

***"Congratulations on all the work that has gone into the bill. It is particularly welcome to see the four Hague Conventions scheduled to the bill. This is real leadership by Namibia and a positive signal to other States in the Region."***

— **William Duncan**, Deputy Secretary-General, Hague Conference on Private International Law, 2009





# OVERVIEW OF THE CHILD CARE AND PROTECTION ACT

**B**efore the enactment of the Child Care and Protection Act, Namibia's main law on children was the Children's Act 33 of 1960, which was inherited from South Africa at independence. That outdated statute was a colonial law which was not well suited to African situations. The Child Care and Protection Act provides better systems for protecting and assisting Namibian children.

## Key topics in the new Child Care and Protection Act

### Definition of "child":

A child is defined as anyone under age 18, and the age of majority is accordingly lowered from 21 to 18.

### Objectives and guiding principles:

The paramount concern in decisions about children is the best interests of the child. The Act emphasises the rights and duties of parents and children, and the importance of child participation.

### National Advisory Council on Children:

The Act establishes a cross-sectoral body to monitor the implementation of the law and to advise on child rights issues.

### Children's Advocate:

This official in the Office of the Ombudsman is empowered to investigate and act on complaints about abuses of children's rights.

### Parenting plans:

The Act provides procedures to help parents and other care-givers make agreements about issues such as custody, access and maintenance, as a way of preventing future disputes.

### Replacement of the Children's Status Act:

This 2006 Act is repealed and re-enacted as a chapter in the Child Care and Protection Act, with improvements based on practical experience, to bring all related child laws together in one unified whole.

### Kinship care:

The Act acknowledges the role of the extended family and close family friends in caring for children and makes it possible for kinship care-givers to have easier access to social grants for the children in their care.

### Prevention and early intervention services:

The Act provides for services to help families address problems that may harm children, before they become too serious.

### Foster care:

The Act provides for persons to volunteer to take in children who have no family members to care for them. This is a different concept than in the past, as the Act makes a distinction between kinship care by family members and foster care by strangers.

### Facilities for the care of children:

The Act provides for the registration of various facilities which care for children, as well as providing minimum standards for all such places:

- ⑨ **places of safety:** places where children can stay temporarily in emergencies
- ⑨ **children's homes:** institutions that provide residential care for children
- ⑨ **child detention centres:** more secure institutions suitable for young offenders or children with behavioural problems
- ⑨ **shelters:** places that provide services and overnight accommodation for victims of abuse (adults and children), as well as street children and other children in need
- ⑨ **places of care:** places that provide short-term care by arrangement with parents and care-givers, such as crèches and day-care centres
- ⑨ **early childhood development centres:** places that provide a structured set of learning activities care for children who are below school age

### Combating baby-dumping:

The Act provides procedures and safeguards so that children who are unwanted can be dropped off anonymously at safe places instead of being left to die.

### Consent to medical procedures:

The Act provides for independent consent to medical interventions and HIV testing by mature children, and also provides for the examination and treatment of children without parental consent where abuse is suspected.

### Other child protection measures:

There are other protective measures for children in particularly vulnerable situations:

- ⑨ **corporal punishment:** measures to eliminate corporal punishment, and programmes to help parents and other care-givers learn how to apply discipline without being abusive
- ⑨ **child-headed households:** rules to support and protect households where there is no responsible adult to take care of the children
- ⑨ **worst forms of child labour:** offences aimed at preventing the sexual and economic exploitation of children
- ⑨ **harmful social, cultural or religious practices:** prohibitions on child marriage and other harmful practices
- ⑨ **child safety at places of entertainment:** safety measures at events likely to be attended by large numbers of children
- ⑨ **crimes relating to child abuse and neglect.**

## The international framework

Namibian laws on children must support Namibia's international commitments on children's rights. Since independence, Namibia has signed several key international agreements aimed at protecting children's rights:

1. **United Nations Convention on the Rights of the Child:** This set of minimum standards for children's rights has been adopted by almost every country in the world. Its four core principles are (1) non-discrimination; (2) commitment to the best interests of the child; (3) the child's right to life, survival and development; and (4) respect for the views of the child.
2. **African Charter on the Rights and Welfare of the Child:** This Charter focuses on issues particularly relevant to African children and emphasises the role of the extended family.
3. **ILO Convention on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour:** This Convention addresses (1) slavery and similar practices, including the sale and trafficking of children; (2) using children for prostitution or pornography; (3) involving children in unlawful activities; and (4) work that is likely to be harmful to children.
4. **Protocol to the Convention Against Transnational Organised Crime, to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children:** "Trafficking in children" means involvement in moving children from one place to another for purposes such as sexual exploitation or forced labour. This Convention is aimed at preventing trafficking and assisting victims of trafficking.
5. **Convention on the Rights of Persons with Disabilities:** This Convention is aimed at ensuring that persons with disabilities can enjoy full human rights without discrimination. It calls for "respect for the evolving capacities of children with disabilities".

The Act also supports the signing of four key Hague Conventions on children:

1. **Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption:** This Convention provides substantive safeguards and procedures on intercountry adoption aimed at preventing abuses such as abduction, exploitation, sale or trafficking of children. It allows consideration of intercountry adoption only after exploring options for placing the child within the child's home country, and is designed to make sure that intercountry adoptions are child-centred rather than adult-centred.
2. **Hague Convention on the Civil Aspects of International Child Abduction:** This treaty seeks to combat parental child abduction. If a child is removed from the country of habitual residence by one parent in breach of the other parent's custody or access rights, the child must be returned and the dispute resolved in the original country.
3. **Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children:** This treaty provides a structure for effective international co-operation in child protection matters — such as where a runaway teenager has crossed international borders, or where there is a need to place a child in foster or institutional care in a country other than the one where the child habitually resides.
4. **Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance:** This new Convention is designed to offer children and other dependants a simpler, swifter, more cost-effective international system for the recovery of maintenance where the child's parents reside in different countries.





# THE DEFINITION OF A “CHILD”

## WHEN DOES A CHILD BECOME AN ADULT?

### THE DEFINITION OF A CHILD

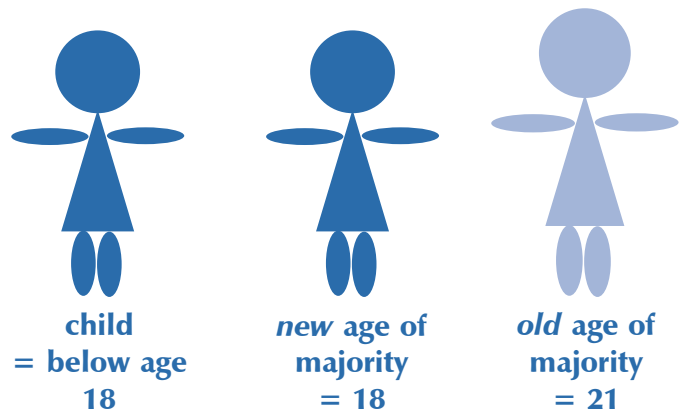
The Child Care and Protection Act defines a “child” as being a person below the age of 18. The UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child both define a “child” as a person below the age of 18.

### THE AGE OF MAJORITY

To bring Namibia in line with these definitions, the age of majority has been changed from 21 to 18. However, persons below age 21 must still get the consent of a parent or guardian in order to marry.

#### What is the age of majority?

The concepts of “minor” and “major” relate to the legal capacity of a person. **A person who is a major is legally an adult.** A major has full legal capacity. This means that people who have reached the age of majority can enter into contracts, bring court cases, and perform other legal acts independently. A minor can do these things only with assistance from a parent or guardian.



#### Why was Namibia’s age of majority originally set at 21?

This age of majority was inherited from South Africa at independence. This age was based on the idea that some children typically finished schooling at 18 and then completed a three-year university course while still being supported by their parents, after which they were ready to begin work. Children in Namibia follow different courses of education, so the pattern described is not typical for all Namibian children.

#### What is a minor *unable* to do?

Minors can engage in certain legal actions only with the consent or assistance of a parent or guardian. A minor acting without assistance from a parent or guardian cannot:

- enter into contracts
- bring or defend a court case
- enter into a civil marriage
- sell or mortgage land
- use or manage inherited money or property.

#### What is a minor *able* to do?

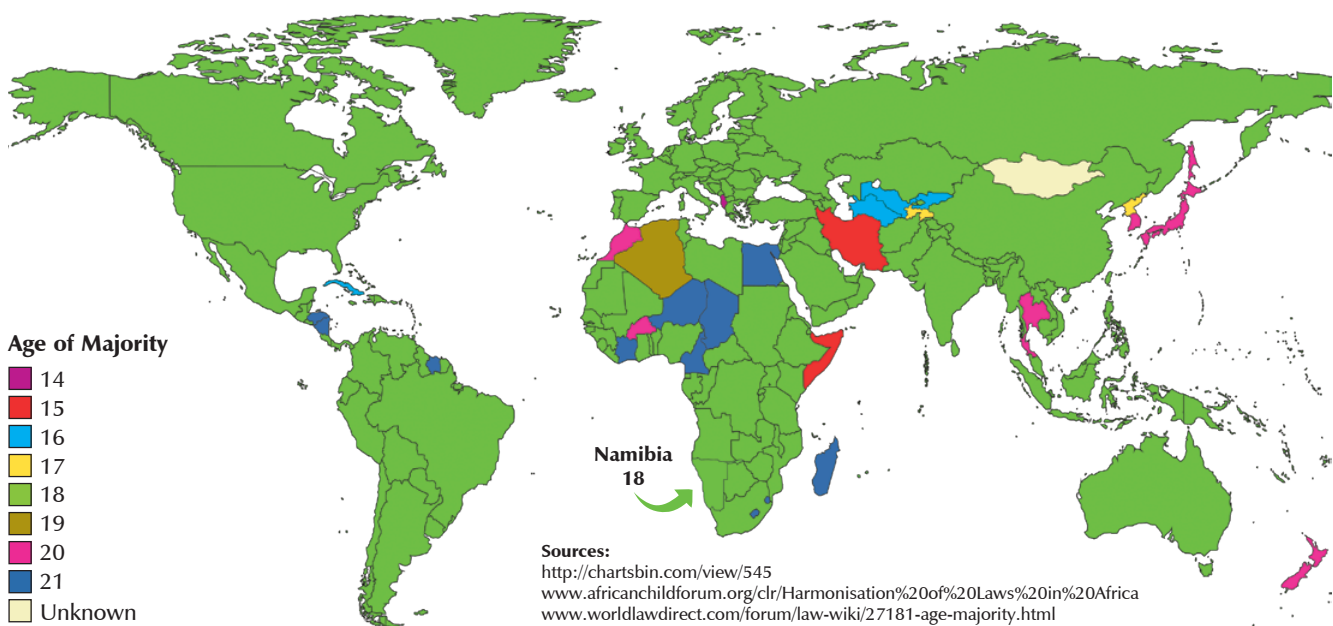
Minors gradually acquire certain rights as they mature, so that they are gradually treated more like adults. A minor who is at least 16 years old can:

- make a will
- open and operate a bank account
- consent to sexual activity.

Before the change in the age of majority, an 18-year-old could vote, drive, drink, own a gun and be locked up in a police cell with adults, but still needed parental assistance to sign a cell phone contract. Now that the age of majority has been changed to 18, an 18-year-old is an adult, able to do all the things that any adult can do, with one exception: persons under age 21 need the consent of a parent or guardian in order to marry. Also, persons in tertiary education will still be eligible for parental maintenance up to age 21 in appropriate circumstances.

## Other countries

Most countries in the world set the age of majority at 18. The United Nations encourages countries to harmonise the definition of “child” and the age of majority if they are not already the same. This helps to ensure that children do not lose any of their special legal protections before they get complete adult rights. By lowering the age of majority from 21 to 18, Namibia will be bringing its legislation in line with most other countries in the world.



## Transitional provisions

The Act says that documents such as trusts and wills which refer to majors and minors will be interpreted in light of the law as it stood at the time the document in question was made — to respect the intentions of the persons who made the documents. Existing maintenance orders and provisions for child maintenance in divorce orders will also be applied as if the age of majority had not changed. The Act also provides protections to ensure that the change in the age of majority does not disadvantage anyone who was between the ages of 18 and 21 when the law came into force.



# OBJECTIVES AND GUIDING PRINCIPLES OF THE CHILD CARE AND PROTECTION ACT

## OBJECTIVES

The objectives of the Child Care and Protection Act are:

- ⑤ to protect and promote the well-being of all children
- ⑤ to give effect to children's rights in the Namibian Constitution
- ⑤ to implement international agreements that are binding on Namibia
- ⑤ to promote the protection of families
- ⑤ to strengthen and develop community structures which provide care and protection for children
- ⑤ to establish, promote and co-ordinate services and facilities for the care and protection of children
- ⑤ to provide protective services to children who need them
- ⑤ to protect children from discrimination, exploitation and other forms of harm
- ⑤ to ensure that children are not discriminated against or disadvantaged because of the marital status of their parents
- ⑤ to recognise the special needs of children with disabilities or chronic illnesses.

## Best interests standard

The paramount consideration in all matters concerning the care, protection and well-being of children is the best interests of the child, as provided for in the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. This standard applies in court cases and other actions or decisions by government bodies.

The Act includes a list of factors to guide decision-makers in determining what will be in the child's best interests:

- ⑤ the child's sex, age, background, maturity and level of development
- ⑤ the child's physical and emotional security, and intellectual, emotional, cultural and social development
- ⑤ the views of the child, in light of the child's age and maturity
- ⑤ the right of the child to know and be cared for by both parents, where this is in the child's best interests
- ⑤ the relationship between the child and significant persons in the child's life
- ⑤ the attitude of the parents or other care-givers, and their capacity to care for the child
- ⑤ the importance of keeping siblings together where possible
- ⑤ the impact change will have on family relationships and the ability to maintain contact with both parents
- ⑤ the need for children to maintain connections with their family, extended family, culture and tradition
- ⑤ the impact of disability or chronic illness
- ⑤ the importance of a stable family environment
- ⑤ the need to protect the child from harm
- ⑤ the need to minimise legal and administrative procedures
- ⑤ any other relevant factor.

## Child participation

Children of sufficient age, maturity and stage of development must be given a chance to express an opinion about decisions which affect them. Children's views should be given an appropriate degree of consideration, keeping in mind the child's age and maturity. This is important because children have thoughts and feelings — they should not be treated like objects to be argued over. The United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child both say that children should participate in decisions that affect them.



## GENERAL PRINCIPLES

- 🕒 Respect, protect, promote and fulfil the **fundamental rights and freedoms** set out in the Constitution, the **best interests** of the child, and the **rights and principles set out in the Act**.
- 🕒 Respect the child's **dignity**.
- 🕒 **Treat all children fairly and equitably**.
- 🕒 Protect children against **unfair discrimination**.
- 🕒 Recognise the child's need for **development** and an opportunity to **play**. Respond to any **special needs** related to a child's disability or chronic illness.
- 🕒 Give the **child's parents or care-givers** an opportunity to **express their views** in any matter concerning the child.
- 🕒 Resolve matters concerning children in a **non-conflictual** way if possible.
- 🕒 **Avoid delays** as far as possible.
- 🕒 **Inform children and their parents and care-givers** of matters which could affect the child.

**Rights and responsibilities go together. The Child Care and Protection Act discusses some of the key rights and responsibilities of parents and children.**

### Children's rights to basic conditions of living

All children have a right to basic living conditions in the form of adequate:

- (a) food
- (b) shelter
- (c) clothing
- (d) care and protection, including health care and immunisation
- (e) education
- (f) play and leisure.

A child's parent, guardian or care-giver has a duty to fulfil these basic needs according to their ability and financial capacity.

### Parental duties and responsibilities

Any person who has parental responsibilities and rights towards a child has a duty to:

- (a) promote the best interests of the child
- (b) guide the child to exercise his or her rights in a way that suits the child's evolving capacities
- (c) protect the child from neglect, discrimination, violence, abuse and harm
- (d) ensure that the child is adequately cared for when the parent or care-giver is temporarily absent.

The Act does not attempt to define all aspects of parental rights and responsibilities. These include caring for the child, promoting the child's development and welfare, providing appropriate direction and discipline and making legal decisions on the child's behalf.

### Children's duties and responsibilities

The Act says that children have a responsibility to:

- 🕒 respect the rights of their family members and assist the family in times of need
- 🕒 serve their communities, respect the rights of all community members and promote positive cultural values in the community
- 🕒 serve the nation, respect the rights of all other persons in Namibia and preserve and strengthen national solidarity
- 🕒 contribute to the general moral well-being of society.

Children's duties must be viewed in light of the age, maturity, stage of development and ability of each child. These responsibilities are based on the African Charter on the Rights and Welfare of the Child.

### Children with disabilities

One of the general principles in the Act is that the dignity of all children should be respected. But the dignity of some groups of people is more easily ignored than others. So the Act emphasises the need to treat children with disabilities in a way that respects their dignity. The Act also states that children with disabilities should receive the care and protection they need to achieve the fullest possible social integration and individual development.



# **NATIONAL ADVISORY COUNCIL ON CHILDREN & CHILDREN'S ADVOCATE**

## **What is the National Advisory Council on Children?**

The National Advisory Council on Children is a government-appointed body with the task of promoting the rights and interests of children in society. The purpose of the Council is to bring together key stakeholders from different government ministries and civil society to encourage cross-sectoral cooperation on children's issues, and to advise the Minister responsible for child welfare on matters pertaining to children. The Council is modelled on Namibia's Labour Advisory Council, which advises on issues relating to the Labour Act.

## **Functions of the National Advisory Council on Children**

The National Advisory Council on Children has the following functions:

- ⑨ to encourage cross-sectoral cooperation on matters relating to children
- ⑨ to advise government on matters relating to the protection and care of children
- ⑨ to advise on the implementation of the Child Care and Protection Act, and other laws relating to children
- ⑨ to advise the Minister and where appropriate an organ of state on the need for law reform on any issue relating to children
- ⑨ to encourage the involvement of non-governmental organisations and communities in services and facilities to advance the well-being of children
- ⑨ to design and recommend programmes relating to the protection or care of children
- ⑨ to study, investigate and monitor the implementation of the Child Care and Protection Act and related laws
- ⑨ to perform any other functions assigned to it by the Minister.

The Council is required to meet at least twice a year. It will receive reports from all ministries involved with child protection issues, to facilitate co-ordination across ministries, and it is required to submit annual reports to the Minister on its activities.

## **Who are the members of the Child Welfare Advisory Council?**

The Council consists of the following 16 members:

- ⑨ Executive Director of the Ministry responsible for child welfare (Chairperson)
- ⑨ Children's Advocate (Deputy Chairperson)
- ⑨ Executive Director of the Ministry responsible for health
- ⑨ Executive Director of the Ministry responsible for education
- ⑨ Executive Director of the Ministry responsible for youth
- ⑨ Executive Director of the Ministry responsible for justice
- ⑨ Executive Director of the Ministry responsible for labour
- ⑨ Executive Director of the Ministry responsible for home affairs
- ⑨ Executive Director of the Ministry responsible for foreign affairs
- ⑨ Executive Director of the Ministry responsible for safety and security
- ⑨ Registrar of the Social Work and Psychology Council
- ⑨ Executive Chairperson of the National Youth Council
- ⑨ Chairperson of the National Disability Council
- ⑨ one staff member from the Office of the Prime Minister (designated by the Prime Minister and appointed by the Minister responsible for child welfare)
- ⑨ two representatives of civil society who have expertise in children's issues (nominated by civil society and appointed by the Minister responsible for child welfare).

The Council may utilise external advisors, and it can co-opt non-members to serve on its subcommittees. The National Advisory Council on Children, through its Chairperson, also administers the Children's Fund.

## What is the Children's Fund?

The Children's Fund is a special fund established to pool resources from different ministries, donors and development partners for children's programmes that cut across ministries and may extend beyond a single financial year. It is audited annually by the Auditor-General. The Minister responsible for child welfare receives an annual financial report on the fund, and must table that report in the National Assembly.



## What is the Children's Advocate?

The Children's Advocate is an official in the Office of the Ombudsman who focuses on issues relating to children.

## What does the Children's Advocate do?

The Children's Advocate has five main roles:

- ⑨ to investigate complaints about services provided to children under the laws of Namibia or the violation of children's rights under the Namibian Constitution or any other laws
- ⑨ to monitor the implementation of the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and other international agreements on child protection which are binding on Namibia
- ⑨ to monitor the implementation of the Child Care and Protection Act and any other law pertaining to children
- ⑨ to take cases to court as necessary to further the interests of children
- ⑨ to raise awareness about the Child Care and Protection Act and the importance of child protection in general.



The Children's Advocate is expected to resolve complaints through negotiation and mediation where possible, in order to minimise conflict.

The National Advisory Council on Children may request the Ombudsman to provide it with an annual report on the key activities of the Children's Advocate.





# THE ROLE OF SOCIAL WORKERS

**T**he Child Care and Protection Act provides many duties for social workers. Most of these duties can be carried out by any social worker, including state social workers, private social workers or social workers employed by child protection organisations. The government must ensure that there are enough social workers to carry out the functions in the law.

## What is a child protection organisation?

This is a non-governmental organisation which employs private social workers. An example is the Church Benevolence Board. Child protection organisations successfully performed statutory functions under the previous law, taking some of the pressure off of state social workers. This system continues under the Child Care and Protection Act. The Minister will designate the child protection organisations authorised to perform duties under the Child Care and Protection Act.

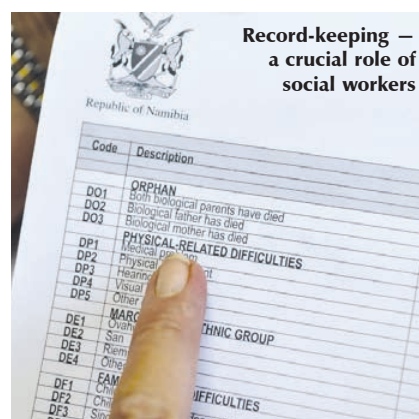
Some social workers may be authorised to perform all of the functions given to social workers under the law, while others may be authorised to perform only specific duties. For example, some tasks might be reserved for state-employed social workers, or for social workers who have a certain level of experience.

The Minister responsible for child welfare determines the criteria that social workers must meet for different duties under the law. The Ministry will provide each designated social worker with a certificate indicating what functions and duties that social worker can perform. Social workers must renew their certificates every two years. The Ministry also has the power to revoke a certificate if necessary — such as in a case where a social worker has not been performing tasks competently.

The law also provides for two categories of persons who can assist social workers with some of their duties:

- (1) social auxiliary workers, who may in future be registered by the Social Work and Psychology Council after appropriate training
- (2) community child care workers, staff members of the Ministry designated by the Minister as “community child care workers” (regardless of their actual job titles).

These persons work under the supervision of social workers and help with their workload. However, some tasks — such as facilitating adoptions and preparing court reports — must be performed personally by social workers.



## PROBATION OFFICERS

Some social workers also function as probation officers. A probation officer is a state-employed social worker who works with people accused or convicted of crimes. For example, a probation officer may make recommendations to a magistrate or judge on the appropriate sentence to impose, or monitor convicted criminals who have been released on parole. Probation officers work with both children and adults.

The duties of a probation officer who works with children may include the following responsibilities:

- ⑨ to investigate the circumstances of a child who has committed a crime
- ⑨ to provide a pre-trial report with recommendations on whether or not prosecution should proceed
- ⑨ to provide information to the court which can guide sentencing
- ⑨ to assist children in conflict with the law and their families, including services such as mediation and family meetings where appropriate
- ⑨ to supervise children who have been convicted of crimes, or to monitor convicted children who are confined in a correctional services facility or other institution
- ⑨ to monitor children's compliance with probation conditions.

The previous law used the term “probation officer” to refer to any social worker who was authorised to do statutory work under the Children's Act. This conflicts with the general international use of the term. The Child Care and Protection Act uses the term “designated social workers” for social workers who are authorised to perform various functions under the Act, while “probation officers” are social workers who work specifically with criminal matters. A single social worker may perform both functions, or there may be specialisation.

The Child Care and Protection Act is designed to make it possible for social workers to focus less on administrative work so that they can spend more time on true child protection work — such as preventative interventions and support to families who are experiencing problems.





# CHILDREN'S COURTS

**A** children's court is a magistrate's court. All magistrates' courts can function as children's courts. At present, there is a dedicated children's court only in Windhoek, but others may be established in the future. When a magistrate's court is functioning as a children's court, the magistrate is called a children's commissioner. The children's commissioner 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  
Children's Commissioner = Magistrate

## Resolving issues outside court

The 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 the case is dealt with in court.

- (1) **Pre-hearing conference:** The court may order the parties to participate in a pre-hearing conference with the goal of reaching agreement on some or all of the issues in dispute. For example, perhaps there is a case involving allegations of child abuse where the parties agree that the child was injured but disagree on the cause of the injuries. Agreeing on some of the issues could shorten and simplify the hearing, by limiting the issues which will require evidence and debate.
- (2) **Lay-forums:** The court may refer the parties to a social worker, a traditional leader or another authorised person who can help the family try to reach agreement. One type of lay-forum is a family meeting where family members come together under the guidance of a skilled facilitator to discuss possible solutions to the problem involving the child. In such meetings, the family must also have the opportunity to discuss the issue in private, outside the facilitator's presence. Lay-forums are not permitted in cases involving the alleged abuse or sexual abuse of a child.

Both of these approaches must involve all the parties to the case — including the child. The purpose of providing for these alternatives is to help reduce conflict in cases involving children, to resolve problems affecting children more quickly, and to promote harmonious and lasting solutions to family problems.

## Special procedures in children's courts

A children's court generally works in the same way as a magistrate's court. However, there are 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 children's commissioner must allow the child to express an opinion, if the child wishes. There is no specific age limit for this. To decide if the child is able to participate, the court will consider "the child's age, maturity and stage of development".
- (2) **Assessors:** A children's commissioner can get assistance from assessors. 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. Assessors can participate in decisions on fact, but the commissioner alone will decide questions of law.



- (3) **Broad accessibility:** Children are often unable to speak for themselves. Therefore the Act makes it possible for a range of people to approach the court on the child's behalf — including the Minister responsible for child welfare, a social worker, the Children's Advocate, an NGO or anyone who is acting in the child's interest. It is also possible for the court to consider matters affecting a group or a class of children (such as all the children housed in a particular children's home).
- (4) **Private hearings in comfortable environments:** Cases in the children's court are private. Only the child in question and the other parties to the case may attend, along with any 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 the commissioner's 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 everyone present. The commissioner may speak privately to the child. This is important because children may be afraid to speak openly in front of a parent or an abuser.
- (5) **Vulnerable witness arrangements:** The children's court can apply any of the special arrangements for vulnerable witnesses. These arrangements are already available to children who give evidence in criminal cases (such as victims of child abuse). They include:
- ⑨ allowing a child to give evidence from behind a one-way screen or by means of a live video recording from another room
  - ⑨ 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)
  - ⑨ 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)
  - ⑨ using statements the child has already made where possible, to avoid asking the child to talk about a traumatic experience repeatedly.
- (6) **Legal representation:** The outcome of a children's court case could have serious implications for a child's future — and the adults involved in the case may be so busy fighting with each other that the child's interests are forgotten. So it may be necessary in some cases for children to have their own legal representatives, to make sure that their views or interests are clearly presented to the court. A legal representative can bring additional investigative power and resources to the case, making it more likely that all relevant information will be placed before the court. The Act allows the court to order legal representation for the child if this would be in the best interests of the child. This *must* be done in particularly difficult cases, such as where it is recommended by the social worker who has investigated the case, or where there are allegations or evidence of child abuse. There are three avenues for providing legal representation for a child:
- (a) The court can order the parties to the case to cover the costs of a private lawyer for the child if they have the means to pay.
  - (b) The court can order legal representation via Legal Aid, at state expense.
  - (c) The court can order legal representation by a children's court assistant. All prosecutors are children's court assistants, and the Minister of Justice has the power to appoint dedicated assistants for any children's court.





# FACILITIES

## RESIDENTIAL CHILD CARE FACILITIES, PLACES OF CARE, SHELTERS AND EARLY CHILDHOOD DEVELOPMENT CENTRES

### SIX TYPES OF FACILITIES

#### Residential child care facilities

A “residential child care facility” is a facility where children can be placed for a specific time period by a court order. There are three different kinds of residential child care facilities. The kind of facility which is appropriate for a particular child will depend on the child’s needs and circumstances. Facilities caring for a child in terms of a court order are eligible for small state grants to apply towards the costs of this care.

**(1) Places of safety**

A place of safety is used as a short-term temporary measure, such as where a child at risk of abuse must be removed from the usual home immediately while the process to decide on a longer-term plan is still underway

**(2) Children’s homes**

A children’s home is used to accommodate a large number of children who are in need of care in a single facility. The children in these homes are often organised into smaller groups, to create a more home-like environment.

**(3) Child detention centres**

A child detention centre is a more highly-secured facility, designed to accommodate children in conflict with the law or children with serious behavioural problems. It is similar to what used to be known as a “reform school” or a “school of industries”.

#### Shelters

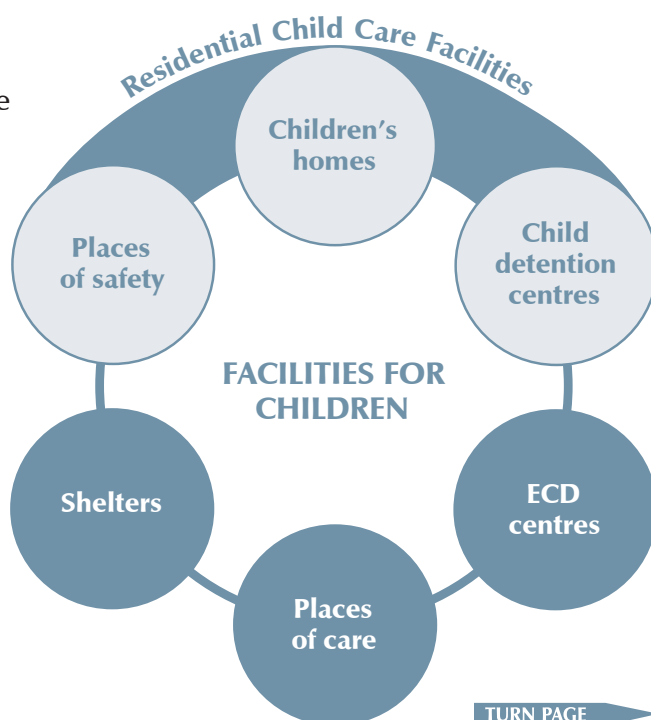
A shelter is a place used for the temporary accommodation of victims of abuse who need a safe place to go. It might also be used for the temporary accommodation of other children who need a place to stay, such as a child who has been living on the streets.

#### Places of care

A place of care is a place used for the care of more than six children by private arrangement during the temporary absence of the parents or care-givers – usually during specific hours of the day or night, and usually for some kind of payment. Crèches and day care centres fall into this category. Community hostels are also places of care.

#### Early childhood development centres

An early childhood development centre is a place used to care for children between birth and the age of formal schooling, which offers a structured set of learning activities. The facilities themselves must be registered with the Ministry responsible for child welfare, but the educational programmes are the responsibility of the Ministry of Education.



## REGISTRATION AND MINIMUM STANDARDS

### Registration and inspection

All of the facilities covered by the law must register with the Ministry and renew the registration every five years. Unregistered places can be closed down, or given time to meet the requirements for registration. Social workers will carry out inspections of all registered facilities at least once a year to make sure that the children in the facility are safe.

### Minimum standards

Every registered facility must have:

- ④ a safe area for the children to play
- ④ adequate space and ventilation
- ④ safe drinking water
- ④ hygienic and adequate toilet facilities
- ④ access to services for the disposal of refuse or other adequate means of disposal of refuse generated at the facility
- ④ a hygienic area for the preparation of food for the children
- ④ appropriate first-aid supplies.

In interpreting the minimum standards, the standards of the community where the facility is situated will be taken into consideration, to make sure that the requirements are realistic for Namibia's diverse situations.

Every facility must also have a channel for children to make their views known, in a manner which is appropriate for the children's age and maturity.

The Ministry may impose additional standards on some types of facilities.







# CHILDREN'S STATUS ACT REPEALED AND RE-ENACTED

**T**he Child Care and Protection Act repeals and re-enacts the Children's Status Act 6 of 2006. This ensures harmony on issues such as child participation, legal representation for children, vulnerable witness provisions for children, and the factors courts should use to assess a child's best interests.

The Children's Status Act 6 of 2006 covered three main topics:

- (1) proof of parentage
- (2) the legal position of children born outside of marriage
- (3) custody and guardianship of any child whose parent or guardian has died.

All of these topics are now covered in the Child Care and Protection Act.

## Proof of parentage

Proving parentage means establishing the identity of a child's mother or father. The identity of the father (paternity) is more often in dispute than the identity of the mother (maternity), but a mother's identity could be uncertain — for example, if she concealed her pregnancy and abandoned the newborn infant. In modern times, scientific testing known as DNA testing can establish parentage with great certainty — although the tests are expensive.

The Act provides certain presumptions about paternity. The Act assumes that a man is the father of a child if:

- 9 he was married to the child's mother at conception or birth or anytime between
- 9 he lived with the child's mother at the approximate time of conception
- 9 he is listed as the father on the child's birth certificate
- 9 both he and the mother acknowledge that he is the father
- 9 he admits, or it is otherwise proved, that he had sexual intercourse with the mother at a time when the child could have been conceived.

But the man can still present evidence to show that he is *not* the father, and DNA testing can be ordered if necessary. If a parent refuses to submit themselves or the child to a DNA test, the court will assume that the person refusing to co-operate is attempting to conceal the truth.

## Children born outside marriage

The Act removes discrimination against children born outside marriage, and applies the Constitutional principle that all children have a right to know and be cared for by both parents, subject to legislation enacted in their best interests.

The Act deals with three important aspects of parental responsibilities and rights:

- 9 **Access** — having contact with a child.
- 9 **Custody** — responsibility for the day-to-day care of a child, including the power to make decisions relating to that care.
- 9 **Guardianship** — the right to make important legal decisions on behalf of the child.

The Act provides simple procedures for allocating parental rights and responsibilities in cases where children are born outside marriage. There are also simple procedures to use if someone wants to apply for a change in custody or guardianship, to limit access, or to insist that the right of reasonable access is respected. These procedures are also available to divorced parents and to married parents who are living apart.

**BEFORE** Children's Status Act:

- ⑨ Mothers had sole custody and guardianship.
- ⑨ Fathers had no clear rights.
- ⑨ Children born outside marriage could not inherit from their fathers without a written will naming them specifically.

**AFTER** Children's Status Act (now re-enacted as part of the Child Care and Protection Act):

- ⑨ Both mothers and fathers have rights.
- ⑨ The parents must decide which parent will care for the child on a daily basis.
- ⑨ The parent without custody has an automatic right of access.
- ⑨ If the parents cannot agree, a children's court will decide. The deciding factor is the best interests of the child.
- ⑨ All children have equal rights to inherit in the absence of a will, regardless of the marital status of their parents. This applies under both general law and customary law.



## Any child without a parent or guardian

The Act provides a simple procedure in the children's court for appointing a new guardian when any child's parent or guardian has died. There is also a simple court procedure to use if someone has reason to believe that a guardian is not acting in the child's best interests — such as using the child's inheritance for the guardian's own benefit.

**BEFORE** Children's Status Act:

- ⑨ Only the High Court could name a guardian, which was expensive and inaccessible to most Namibians. The result was that many children were left with no official legal guardian.
- ⑨ There was a need to formalise the situation because some adults just wanted to get control of the child's money or property.

**AFTER** Children's Status Act (now re-enacted as part of the Child Care and Protection Act):

- ⑨ The law provides a simple, cost-free procedure for appointing guardians. A certificate of guardianship can be obtained at a children's court.
- ⑨ There is a simple, accessible procedure for complaints in cases where the guardian is not acting in the best interests of the child.

## The re-enactment of the 2006 law

The basic principles in the Child Care and Protection Act remain the same as in the original Children's Status Act. However, some improvements have been made based on practical experience. For example, a social worker report is now required in all cases involving questions of custody, guardianship or access.

Another addition is that where a child was conceived of incest, the parent must maintain the child but the child will have no responsibility to maintain the parent. Similarly, a child born of incest can inherit from the parent in the absence of a will, but not vice versa. These are ways of discouraging incest (which involves both parents) without being detrimental to the child.

The regulations to the Children's Status Act have also been repealed and re-enacted as part of the Child Care and Protection Act regulations.



# PARENTING PLANS

## What is a parenting plan?

A parenting plan is an agreement between co-holders of parental responsibilities and rights about the exercise of their parental rights and duties.

## Who can make parenting plans?

Parenting plans will most often be made between parents of a child who do not live together, particularly if they were never married. Parenting plans might be used by parents who have divorced, if the divorce order did not include sufficient detail on all of the child-rearing issues which concern them. Parenting plans might also be made between a parent and a foster parent who has acquired some parental rights by virtue of the court order for foster care.



**Can a parent make a parenting plan with a friend or family member who is looking after the parent's child?** No. A parenting plan can be used only between people who have parental rights and duties. But a parent can make a kinship care agreement with a friend or family member. This is covered in a different chapter of the Act.

## What does a parenting plan contain?

A parenting plan might include agreements on:

- ⑨ where and with whom the child lives
- ⑨ the payment of maintenance
- ⑨ contact with the child by the parent who does not live with the child, or by other persons such as members of the parents' extended family
- ⑨ the schooling and religious upbringing of the child.

These are just some examples. Parenting plans can also cover other parenting issues.

Parenting plans are optional and voluntary.



## Why are parenting plans useful?

Parenting plans are intended to help parents co-operate in raising their children. Parenting plans can help families make decisions before problems occur, to reduce the potential for conflict and protect the best interests of the child. They can also help prevent disputes because they serve as a written record of what has been agreed.

For example, perhaps parents who have never been married are disagreeing about the father's access to the child. They could make an agreement saying that he will visit the child every other weekend, and that the child will spend one Christmas holiday with the mother's family and the next one with the father's family.



## Making a parenting plan

Parenting plans can be made independently or with help from a lawyer, a social worker, a traditional leader or someone with experience in mediation.

The viewpoint of the child should be considered when the plan is being made, according to the child's age, maturity and development. The plan must be signed in the presence of two witnesses.

## Finalising a parenting plan

There are three different avenues for concluding parenting plans:

- (1) Parenting plans can be **kept private** within the family.
- (2) Parenting plans can be **registered at the children's court**.
- (3) Parenting plans can be **made into a court order**. Before a parenting plan is made into a court order, the court must attempt to contact all of the important people in the child's life, such as the parents of the child, the care-giver, and anyone else the court or a social worker has identified as having an important role in the child's life.

These different approaches give the parenting plan different degrees of weight and permanence.

## Enforcing a parenting plan

What can the parties do if the parenting plan is not being followed?

- (1) If the plan *has not* been registered with the court or made into a court order, the parties can negotiate between themselves or ask a social worker or another person trained in mediation for help.
- (2) If the parenting plan *has* been registered with the court or made into a court order, the parties can apply to the court for assistance with enforcement if the plan is not being followed. The court will focus on the best interests of the child in resolving the dispute. The court may try to get the parties to resolve the dispute through mediation first, or it may order a social worker or some other professional to investigate the child's circumstances.
- (3) If a parenting plan contains an agreement about the payment of maintenance *and* it is registered at the court or made into a court order, the agreement on maintenance has the same weight as a maintenance order. This means it can be enforced in the same way as a maintenance order.

## Changing or cancelling a parenting plan

- (1) Parties to a parenting plan that *is not* registered with the court or made into a court order can agree to change or cancel the plan at any time. They can approach the children's court to decide what is in the child's best interests if they cannot agree.
- (2) Parties to a parenting plan that *is registered* with the court can agree to change or cancel the plan on their own, but they must notify the court about this within seven days. They can approach the children's court to decide what is in the child's best interests if they cannot agree.
- (3) Parties to a parenting plan that *is made into a court order* must apply to the court in order to change or cancel the agreement. The child or someone acting in the best interests of the child can also apply to the court for the parenting plan to be changed or cancelled.



# KINSHIP CARE

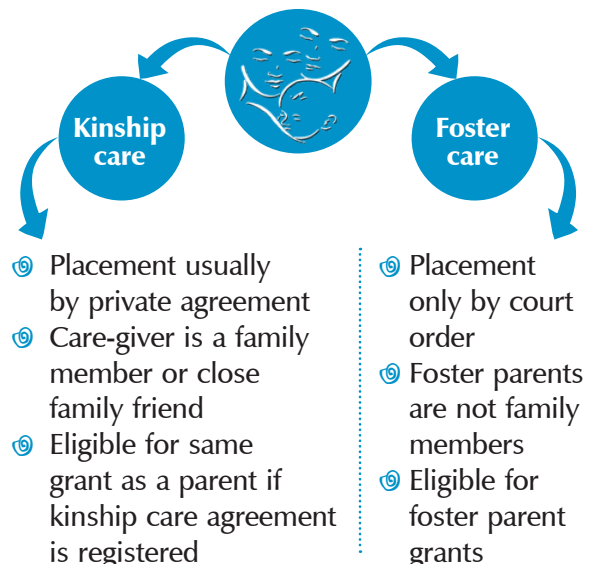
## What is kinship care?

Kinship care is a new concept in Namibia. It is designed to cover situations where families make their own arrangements for children to live with someone other than their parents — such as extended family members or close family friends. This approach to child rearing is common in Africa.

Kinship care is normally a voluntary arrangement made by a family. But a court can order a placement in kinship care if this would be in the child's best interests — such as in a situation where the child cannot be adequately cared for by the parents for some reason.

### Kinship care versus foster care

The previous law did not cater for kinship care. The result was that people in such arrangements had to go to court to be named as “foster parents” in order to be eligible for grants. This placed a burden on courts and social workers without really adding to the protection of the child, since the courts usually ended up just rubber-stamping arrangements already made by the child's family. There were also many cases where needy households were unable to access grants because they had not gone through the process of being approved as “foster parents” by the court. The new distinction between foster care and kinship care removes an unnecessary burden from community members, as well as courts and social workers.



## Kinship care agreements

It is not necessary to make a formal agreement when a child goes to stay with a relative or a friend for an extended period. But a parent or guardian may choose to make an agreement with the care-giver so that understandings about the child's care are clear. This is a kinship care agreement.

A kinship care agreement might cover:

- ⑨ where and with whom the child lives
- ⑨ the payment of maintenance
- ⑨ contact with the child by the parent who does not live with the child, or by other persons
- ⑨ the schooling and religious upbringing of the child
- ⑨ the rights and responsibilities that the parent or guardian is temporarily delegating to the kinship care-giver.

These are just some examples. Kinship care agreements can also cover other child-rearing issues.

A kinship care agreement must be in writing, and it must be signed by two witnesses. It should be made with due consideration for the views of the child, depending on the child's age and maturity. Kinship care agreements can be made independently or with help from someone such as a social worker, a traditional leader or a legal practitioner.

## Finalising a kinship care agreement

There are two different avenues for concluding kinship care agreements:

- (1) Kinship care agreements can be **kept private** within the family.
- (2) Kinship care agreements can be **registered at the children's court**.

A kinship care agreement **must** be registered at the children's court if the kinship care-giver wants to receive a state grant on behalf of the child. The registration process is intended to make sure that a grant paid for a particular child goes to the person who is actually caring for that child.

## Changing or cancelling a kinship care agreement

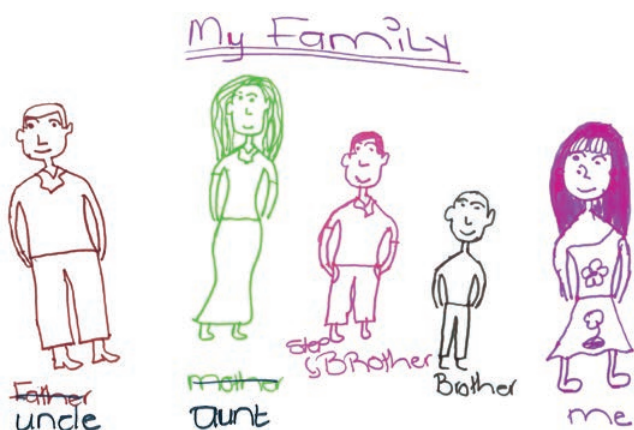
Either party to a kinship care agreement can change or cancel it at any time. The kinship care-giver does not have to agree to a parent's change or cancellation, because a kinship care-giver does not have the same rights and responsibilities over the child as a parent. Similarly, because kinship care-givers do not have parental rights and responsibilities, they do not have to continue caring for someone else's child if they choose not to.

If the kinship care agreement *is registered with the court*, the person making the change must notify the court of the change or cancellation within seven days.

If the parties to a kinship care agreement have a dispute that they cannot resolve, they can contact a social worker or a traditional leader to help. They can also refer the dispute to a trained mediator, or discuss it at a family meeting. The parties to the agreement, or the child concerned, can also take the dispute to a children's court. The court will focus on the best interests of the child in resolving the dispute. The court may try to get the parties to resolve the dispute through mediation first, or it may order a social worker or some other professional to investigate the child's circumstances.

### Grants

A kinship care-giver can apply for and collect a grant for the child in his or her care, in the same way as the child's parent. But only a parent or a person who is actually caring for a child can collect a grant on behalf of the child. If a social worker investigation finds that a kinship care agreement was fraudulent, the agreement will be cancelled. It is a crime to use a false kinship care agreement to get a child grant. The person who wrongfully received the grant money might also have to repay the money to the government.







# PREVENTION AND EARLY INTERVENTION SERVICES

## What are prevention and early intervention services?

Prevention and early intervention services are services that are designed to reduce the risk of violence or other harm within the family environment.

### Prevention services

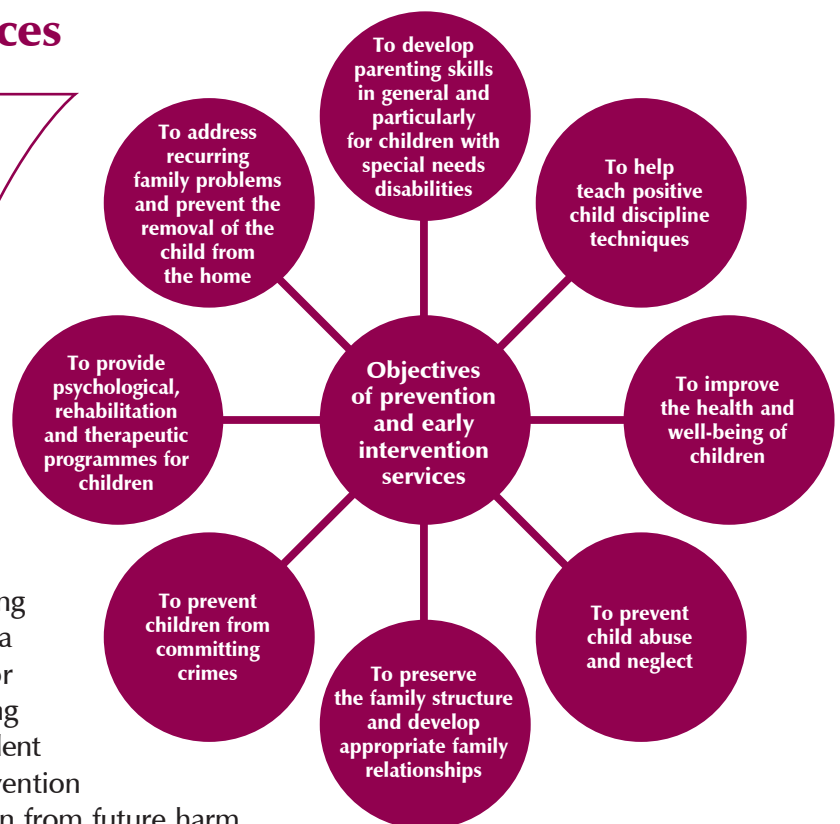
“**Prevention services**” are services provided **generally to families with children** in order to strengthen and build their capacity to address problems that may occur in the family environment.

Prevention services can be targeted at the entire community. For example, a programme for parents on positive methods of child discipline can help prevent family violence. As another example, training sessions on caring for children with disabilities can help ensure that such children are treated properly. Prevention services might also address issues affecting a specific community, such as gender-based violence, nutrition problems, reproductive health issues, child labour, child trafficking or child behaviour problems.

### Early intervention services

“**Early intervention services**” are services provided to **specific families with children** identified as being especially vulnerable or at risk of harm.

Identifying children who are at risk and targeting those families for early intervention can help to prevent child abuse and neglect. For example, early intervention may involve helping family members overcome alcohol or drug abuse or a gambling addiction. It might involve assisting a family where there is a chronically or terminally ill family member, or teaching family members about positive, non-violent ways of resolving disputes. Early intervention services are intended to protect children from future harm. They may also prevent the child from developing emotional or behavioural problems in the future.



## How are these services provided?

There are many different types of prevention and early intervention services. These can include home visits by health workers or social workers, parenting skills programmes, early childhood development programmes, substance abuse programmes or interventions which combine different elements. Some services are suitable for the community in general, while others target particular situations or problems.

Prevention and early intervention programmes must involve families, parents, care-givers and children in identifying and seeking solutions to their problems. These programmes are often cross-cutting – they may involve various government ministries, NGOs and faith-based groups, traditional leaders and the private sector. Protecting children is a task for Namibian society at large.

Participation in most prevention and early intervention programmes is voluntary. But a children's court may order persons to participate in prevention or early intervention services, to prevent harm to a specific child. In some cases, this may be an alternative to removing the child from the home.

It is important to implement good planning, monitoring and evaluation of prevention and early intervention services to ensure that they are effective.





# CHILDREN IN NEED OF PROTECTION

## When does a child need protective services?

A child is definitely in need of protective services if that child:

- 9 is abandoned or orphaned and has insufficient care or support
- 9 is engaged in behaviour likely to be harmful to the child or someone else, and the parent, guardian or care-giver is unable or unwilling to control that behaviour
- 9 lives or works on the streets or begs for a living
- 9 is being, or is likely to be, neglected, maltreated or physically or mentally abused
- 9 is addicted to alcohol or drugs and is without support to obtain treatment
- 9 is involved in a criminal matter
- 9 is an unaccompanied foreign child
- 9 is chronically or terminally ill and lacks a suitable care-giver
- 9 is living in an extremely overcrowded, highly unsanitary or dangerous place.

Depending on the circumstances, a child may be in need of protective services if that child:

- 9 is a victim of child labour, child trafficking, commercial sex work or other forms of sexual exploitation, or a serious crime against the child (such as rape or assault)
- 9 is living in a child-headed household
- 9 lacks a suitable care-giver because his or her parent is in prison
- 9 is under the age of 16 and habitually absent from school
- 9 is under the age of 16 and pregnant or suffering from a sexually transmitted infection (which could be signs of sexual abuse)
- 9 is over the age of 16 and suffering from multiple or repeated sexually transmitted infections
- 9 is exposed to circumstances which may seriously harm the child's physical, mental, emotional or social well-being
- 9 is living in a violent family environment
- 9 is living with a parent, guardian or care-giver who unreasonably withholds consent to necessary medical or therapeutic treatment
- 9 is involved in a case being investigated by the Children's Advocate or the National Advisory Council on Children.

**A suspicion that a child might fall into any of these categories is a trigger for a social worker investigation.**

## Mandatory reporting

Child abuse and neglect usually take place privately, in a home, with no witnesses other than the parents and children. Reporting laws are designed to bring possible problems to the attention of public authorities who are in a position to help. Mandatory reporting *requires* people to report cases if they suspect that a child is being mistreated. People who perform professional or official duties with respect to children must alert police or a government social worker if they become aware of signs that a child may be in need of protective services. Failure to report is a criminal offence, punishable by a fine of up to N\$20 000 or imprisonment for up to five years or both.



The mandatory reporting duty applies to:

- 9 school principals
- 9 teachers and school counsellors
- 9 doctors and dentists
- 9 nurses
- 9 pharmacists
- 9 psychologists and psychological counsellors
- 9 physiotherapists
- 9 speech and occupational therapists
- 9 traditional leaders
- 9 traditional health practitioners
- 9 lawyers (except in the case of privileged communications)
- 9 religious leaders
- 9 labour inspectors
- 9 staff members at registered child care facilities
- 9 social workers who work in private practice or for a child protection organisation
- 9 any other person who performs professional or official duties for children.



## Voluntary reporting

Anyone who believes that a child may need protective services can make a report to a police officer or a government social worker. Children can also report abuse or neglect themselves. Awareness-raising initiatives will be used to encourage members of the public to recognise and report signs that a child needs help.

Anyone who makes a mandatory or voluntary report in good faith is entitled to keep his or her identity confidential and is not liable to a civil claim for defamation.

## Helping a child who is in need of protection

Once a report is made, a social worker will investigate the case. In some cases it may be necessary to remove the child or the alleged offender from the home immediately, to keep the child safe while the investigation is underway.

The children's court will review the social worker's report and hold a hearing if necessary. The child's parent, guardian or care-giver will have a chance to give input. The child's views will also be given due consideration in light of the child's age and maturity.

The court can order a range of interventions to address the problem. If necessary, the court can order that the child must live somewhere else for a specified period, such as in kinship care, foster care or a children's home. The court might also order a particular person to stop abusing the child or having contact with the child. There are many options. The order will depend on the situation.

## Contribution orders

If a child is placed by court order outside the home, the court may order that the parents or guardian pay a contribution towards the child's care — if they have the means to do so. This is similar to a maintenance order, but it is designed to reimburse the state for the costs of the child's alternative care.

During 2003-2011, in Windhoek alone, almost 200 children were removed from their homes annually for their own protection and placed by court order in alternative care.





# FOSTER CARE

## Foster care

In terms of the Child Care and Protection Act, foster care refers to **situations where children are placed by court order with someone unrelated to them.**

People who would like to foster a child apply to a designated social worker to be placed on a list of potential foster parents. The social worker investigates to see if the applicant is suitable, and gives the prospective foster parents appropriate information and training. The Ministry maintains a register of prospective foster parents which social workers draw on as the need arises. Prospective foster parents on the register must renew their application every three years.



Foster parents play a similar function as children's homes, but in a family environment. Children may be placed with foster parents for short temporary periods, or on a longer-term basis — depending on their situation. Placements with foster parents take place *only* by court order.

A foster parent is allowed to care for a maximum of six children, counting both their own children and the foster children placed with them unless the court finds that exceeding this limit is in the best interests of all of the children concerned.

Foster parents are eligible for a foster parent grant to assist with the costs of caring for the children placed with them by the court.

## Kinship care

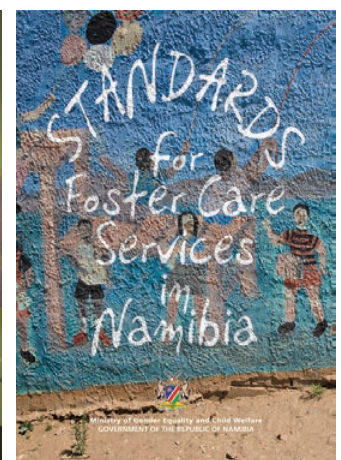
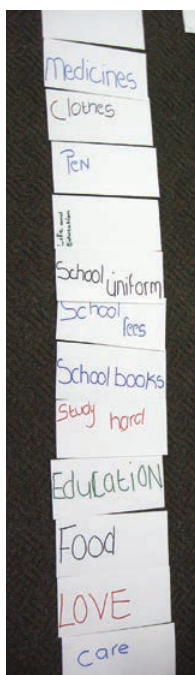
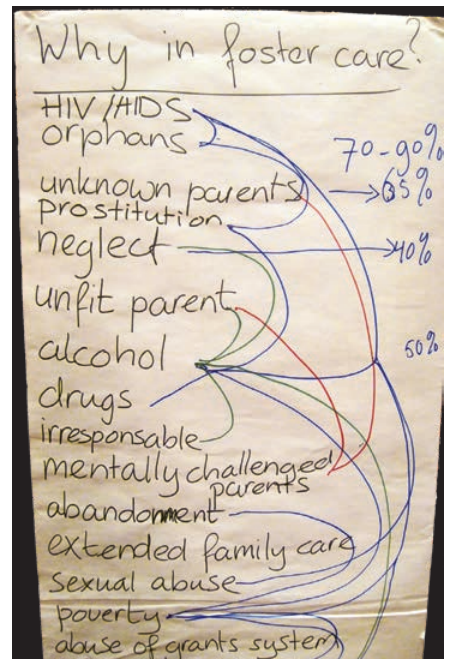
**Kinship care is a new concept in Namibia to cover the situation where a care-giver is an extended family member of the child or a close family friend. In terms of the Child Care and Protection Act, such care-givers are no longer part of the category of foster parents.** Instead, they are known as kinship care-givers. If a kinship care agreement is registered with the court, a kinship care-giver is eligible to apply for the same type of grant as the child's parent.

Registering a kinship care agreement is a simpler process than obtaining a court order for foster care. The registration process is intended to make sure that a grant paid for a particular child goes to the person who is actually caring for that child.

Kinship care is normally a voluntary arrangement made by a family, although a court can place a child in kinship care if this is the best option for the child.

The new distinction between foster care and kinship care removes an unnecessary burden from courts and social workers. It also recognises approaches to child care which are typical in Africa.





Images from the Ministry of Gender Equality and Child Welfare's studies with service providers and children to establish Namibia's standards for foster care services (2011).





# 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:

- ⑤ preserving the child's identity, language, culture and religion where possible
- ⑤ the views of the child (depending on the child's age and maturity)
- ⑤ any reasonable preferences expressed by the parent or guardian who is giving the child up for adoption
- ⑤ 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 framework of the Hague Convention 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.



# CHILD TRAFFICKING

Child trafficking was initially covered by the Child Care and Protection Act, but the provisions on this topic were moved to the **Combating of Trafficking in Persons Act 1 of 2018** (with a few changes).

Child trafficking is committed if certain acts are done for the purpose of exploitation (see the box below). Factors such as poverty, crime and violence can contribute to child trafficking. Where such problems are present, the parents or the child might think that the move will be a chance for a “better” life – such as access to better education or a chance to earn some income.

A few cases of child trafficking have been reported in Namibia, but there may be other cases that are unreported. For example, it appears that children have been brought into Namibia from Angola and Zambia to herd livestock or do domestic work for relatives. It also appears that some children are being exploited within the country to care for livestock, do road construction or sell food. Some children are exploited for sex, and some may even be forced into commercial sex work.

Trafficking of children is a serious crime. A child cannot consent to be trafficked. A parent or guardian cannot give consent to child trafficking. The means by which the trafficking takes place are irrelevant when the victim is a child.

TRAFFICKING IN CHILDREN	
ACTION	EXPLOITATION
<ul style="list-style-type: none"><li>☉ Recruits</li><li>☉ Transports</li><li>☉ Delivers</li><li>☉ Transfers</li><li>☉ Harbours</li><li>☉ Sells</li><li>☉ Exchanges</li><li>☉ Leases</li><li>☉ Receives</li></ul>	<ul style="list-style-type: none"><li>☉ Prostitution or sexual exploitation</li><li>☉ Forced labour or services, prohibited child labour or economic exploitation</li><li>☉ Slavery</li><li>☉ Debt bondage</li><li>☉ Forced marriage</li><li>☉ Involuntary servitude</li><li>☉ Criminal exploitation</li><li>☉ Removal of organs or body parts</li><li>☉ Impregnation of a female against her will for the purpose of selling the child</li><li>☉ Some other kind of exploitation</li></ul>

There are stiff penalties for trafficking. A first offence is punishable by a fine of up to N\$1 million, or imprisonment for up to 30 years, or both. Subsequent convictions are punishable by a fine of up to N\$2,5 million or imprisonment for up to 50 years, or both.

It is also a crime to facilitate trafficking of persons in various ways, such as transporting persons who are being trafficked, providing false identification documents for them or providing premises.



If a parent or guardian was involved in trafficking a child, the law provides a procedure for suspending or terminating that person's parental responsibilities and rights.

One of the most important features of the law is the provision for services to victims of suspected child trafficking – including steps to return children who have been moved across borders to their home countries safely and with the least possible trauma. Trafficked children will be provided with appropriate services, such as shelter, medical attention and counselling. A non-Namibian child who has been trafficked into Namibia has the same right to government services as a Namibian child, including public health care and education services.



To help prevent child trafficking, there are also various offences in the Child Care and Protection Act which relate to unlawful movement of children even in situations where trafficking cannot be proved. It is an offence to remove a child from anyone who is lawfully caring for the child (such as the child's parent or care-giver), or to detain a child in order to keep the child away from the lawful care-giver. It is also illegal to take a child out of Namibia without consent from the child's parents or from a court.

## Special reporting requirements

Any person who has information about child trafficking (or trafficking of an adult) has a duty to make a report to a state social worker or to the police. Reports from members of the public can be made anonymously.

Also, every electronic communication service provider operating in Namibia must make a report to the police if it becomes aware of anything on its system that contains an advertisement or other information that facilitates or promotes child trafficking.

The poster features a photograph of a young girl in a white jacket and a man in a dark suit and scarf standing in a dry, grassy field. The text on the left reads: "she sees her future in medicine". The text on the right reads: "HE SEES HER FUTURE IN SLAVERY". On the far right, in large red letters, it says: "HUMAN TRAFFICKING IS A CRIME." Below this, in red, it says: "REPORT IT TO STOP IT. Call 10111 for help." At the bottom, there are three logos: the MDG IF (MDG ACHIEVEMENT FUND) logo, the "ZERO TOLERANCE FOR GBV" logo, and the Republic of Namibia Ministry of Gender Equality and Child Welfare logo.

she sees her future in medicine

HE SEES HER FUTURE IN SLAVERY

**HUMAN TRAFFICKING IS A CRIME.**

**REPORT IT TO STOP IT.**  
Call 10111 for help.

MDG IF  
MDG ACHIEVEMENT FUND

**ZERO TOLERANCE FOR GBV**

Republic of Namibia  
Ministry of Gender  
Equality and Child Welfare



# CONSENT TO MEDICAL TREATMENT, HIV TESTING AND EXAMINATION IN CASES OF ABUSE

## 1. CONSENT TO MEDICAL INTERVENTION

### Ability to consent to medical interventions

Under the previous law, the age of consent for medical intervention and surgical operations was 18. The Child Care and Protection Act allows children to give consent to medical intervention if they are at least 14 years old AND mature enough to understand the benefits, risks and implications of the medical intervention. But if the medical intervention involves a surgical operation, consent must ALSO be given by a parent or guardian of the child, or the child's care-giver if there is no parent or guardian.

For younger or less mature children, the decision on all medical interventions and surgical operations rests with the child's parent or guardian — but the parent or guardian is expected to consider the views of the child. A parent or guardian may not refuse consent to a medical intervention on religious or cultural grounds unless there is a medically-acceptable alternative. The idea here is that parents are not allowed to impose their beliefs on a child where those beliefs could result in harm to the child. If a child has no parent or guardian, the child's care-giver can give consent in their place.

Children who are competent to give medical consents for themselves can also give consent for medical interventions on their own children, if they already have children of their own.

The term “medical intervention” is broader than “medical treatment”. It includes dental, physiological, psychological and psychiatric interventions. It could include diagnostic tests, treatment or blood transfusions. There is a different process for consent to “surgical operations”.



A “care-giver” is a person other than a parent or guardian who takes primary responsibility for the day-to-day care of a child. This might be, for example, a foster parent or kinship care-giver.

### Who decides if the child is mature enough to understand the medical issues?

The medical practitioner in charge of the case makes this decision, because this is the person who will have responsibility for explaining the medical situation.

### What about emergencies?

The person in charge of a hospital or clinic may consent to a medical intervention or surgical operation on a child if it is necessary to save the child's life or to prevent serious or lasting physical harm or disability — and the situation is so urgent that there is no time to get the normal consent.

### What if a parent is unavailable or incapacitated?

The Minister responsible for child welfare or a children's court has the power to give consent in the place of a parent if that parent is incapable of giving consent (for example, because of being unconscious or mentally ill), cannot readily be traced, or is deceased. Anyone with an interest in the child's well-being (such as a social worker) can apply for this substitute consent.

### What if a parent or a child unreasonably withholds consent?

The Minister responsible for child welfare or the children's court may override a refusal by a parent or a competent child to give consent, if this will be in the child's best interests. Anyone with an interest in the child's well-being can apply to the Minister or the court in this situation.

## 2. CONSENT TO HIV TESTING

The 2018 Namibian Guidelines for Voluntary Counselling and Testing allow consent to HIV-testing at 14 years.

The Act expands on this by making it possible for children who are 14 years of age OR are mature enough to understand the implications of HIV testing to give consent to the test. This could mean, for example, that a mature 10-year-old would be allowed to consent to an HIV test. The law says that the test may be given only if the child receives proper counselling before and after the test.

The rules for HIV-testing are broader than those for other medical interventions. This is because testing is mainly about obtaining information rather than being a physical action carried out on the child's body.

### Who can give consent to an HIV test if the child is not sufficiently mature?

- (a) the parent or guardian, or the child's care-giver if there is no parent or guardian
- (b) the Minister responsible for child welfare
- (c) the children's court.

The procedure for dealing with refusal or inability to give consent will work in the same way as for consent to medical intervention.

### Can an HIV test on a child ever be performed without anyone's consent?

Yes, but only where this is necessary to protect someone else. It is allowed only where the child is pregnant (and there may be a need for steps to prevent mother-to-child transmission) or where someone working with the child in a health setting could have been exposed to the virus (such as in the case of a needle stick, where prophylactic treatment would be required if the child were HIV positive).

### Counselling

The child may be tested only if he or she receives pre- and post-test counselling. The parent, guardian or care-giver should also receive counselling if he or she is aware that the child will be tested.

### Who decides if the child is mature enough to give consent to an HIV test?

The person who does the pre-test counselling.

### Confidentiality

The results of an HIV test are confidential. Consent to disclose the results works in the same way as consent to do the test — unless the results must be disclosed for some legal reason or in terms of a court order. The child's maturity is assessed by the person who does the pre- or post-test counselling. A child who is old enough or mature enough to give consent to the test does not have to disclose the test or the test results to his or her parent.

## 3. CONSENT FOR MEDICAL EXAMINATION OF ABUSED OR NEGLECTED CHILDREN

Someone who has abused or neglected a child may be reluctant to have the child examined or treated, because they want to hide their actions. Even an abused child may sometimes want to protect the parent. For these reasons, there are special provisions to deal with such circumstances.

A medical practitioner may examine a child who is suspected of being a victim of abuse or neglect without the permission of the child's parent, guardian or care-giver (although permission is needed to administer a general anaesthetic). The child must also give permission for the examination if he or she is of sufficient maturity — although the examination can take place even without the child's consent if the reasons for proceeding without consent are recorded. The purpose of the examination can be to treat the child, to collect evidence for court, or both.

The law also contains rules about how to conduct such an examination without causing any unnecessary trauma to the child.





# CORPORAL PUNISHMENT

## What is corporal punishment?

Corporal punishment is when a person in authority uses physical force with the intention of causing pain for disciplinary purposes. Corporal punishment of children usually includes things like smacking, slapping, spanking or beating with the hand or with some implement (like a stick or a belt). It can also involve other things, like kicking, shaking, pinching or burning.

Discipline is meant to teach a person the difference between right and wrong, not to cause injury. There is no need to inflict pain to discipline a child. There are many other forms of discipline which are much more effective.

The use of corporal punishment is not permitted in Namibian schools, although some instances of it are still reported. The Namibian Supreme Court ruled that corporal punishment in schools is a violation of children's constitutional right to human dignity, and the Education Act outlawed it in both public and private schools.

Corporal punishment is used in many homes. There have been cases in Namibia where excessive physical force has been used against children in the home. There are cases where children have been seriously injured or burned. Some children have even been beaten to death.



## Why is corporal punishment a problem?

- Ⓢ Corporal punishment can turn into serious physical abuse.
- Ⓢ Corporal punishment teaches children that violence is an acceptable way of dealing with issues.
- Ⓢ Corporal punishment teaches children that it is okay to use violence against someone you love.
- Ⓢ Corporal punishment makes children more aggressive towards other children.
- Ⓢ Children who are exposed to violence are more likely to be violent as adults.
- Ⓢ Corporal punishment does not teach children the reason why their behaviour was wrong.
- Ⓢ Corporal punishment can affect self-esteem by making the victim feel scared, sad, ashamed or worthless.
- Ⓢ Corporal punishment can destroy the child's relationship with his/her parent or care-giver.

Child discipline is very important — without it, society would have many problems. The question is **what kind** of child discipline is most effective.

***"We will create greater awareness in our communities about the impact of all forms of violence against children, and work actively to change attitudes and practices that perpetuate violence in homes, families, institutions and communities, including corporal punishment, emotional and sexual violence."***

Excerpt from "A Multi-Religious Commitment to Confront Violence against Children recommendations and commitments" endorsed at the Religions for Peace Eighth World Assembly, which brought together more than 800 senior religious leaders from every region of the world and all major faith traditions, representing 70 national and regional inter-religious councils and groups, in Kyoto, Japan, in August 2006.

## Child Care and Protection Act

There are several reasons why the use of corporal punishment in the home is worrying:

- ⑨ Children in Namibia have been seriously injured and killed by such “punishment”.
- ⑨ The Namibian Constitution says that “the dignity of all persons shall be inviolable” and that “no persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.” This includes children.
- ⑨ Namibia has signed international conventions which require that the use of corporal punishment be addressed.

The Child Care and Protection Act says that any person who has control of a child, including the child’s parents, must respect the child’s right to dignity. This means that only forms of discipline which respect the child’s dignity will be allowed in the home. How this is understood in practice would probably develop over time, as alternative forms of discipline are popularised.

The Act also outlaws the use of corporal punishment at any registered facility which cares for children (including children’s homes, shelters, crèches and day care centres), and in any form of alternative care where the child has been placed in terms of a court order (such as foster care or court-ordered kinship care). Corporal punishment of children is also strictly outlawed in public and private schools, and in prisons and police cells. This is because the state has a special responsibility to protect children in situations where it has intervened, or where it is responsible for ensuring that the conditions for children are safe.

The Act also gives the Minister responsible for child welfare a duty to take reasonable steps to promote alternatives to corporal punishment across the country, and to educate the public on the topic of corporal punishment.

### Alternatives to corporal punishment

There are many forms of discipline which are more effective than corporal punishment. Here are some examples:

- (1) **Explain the problem.**
- (2) **Make children take responsibility for their actions:** For example, if the child breaks something, he or she must fix it.
- (3) **“Time out”:** Sometimes children become overexcited, which can lead to bad behaviour. It can be effective to take the child out of the room – to calm down, sit quietly and think about what he or she has done wrong.
- (4) **Take away privileges:** The punishment could be not being allowed to visit friends or to play sport, or not receiving pocket money.

### Against Corporal Punishment of Children

Statement by **Rev Maria Kapere**  
(writing in her personal capacity)  
Windhoek, Namibia, July 2010

Corporal punishment’s usefulness is very limited. When done in anger and with force by teachers and parents it may cause damage rather than transforming an undisciplined child... We as adults are given responsibility over children, and we need to nurture them and take care of them. As adults we should be able to distinguish between what is cruel and what is compassionate, between what is safe and what is unsafe... Violence is not a good teaching tool, discipline is. There is a big difference between discipline and corporal punishment. I am in support of disciplining children. And let it be made clear that discipline does not mean hitting a child. To discipline is to teach a child to do right instead of merely stopping inappropriate behaviour through pain. Discipline, unlike corporal punishment, always leaves a positive impression, it is a means to teach and parent children through love. The goal behind discipline is for children to develop personally, socially and spiritually. We should discipline children in a way that they will feel they are still good and capable people who can make positive changes, versus disciplining them in a way that makes them feel they are bad people who are not capable of anything and who cannot do anything worthwhile. I end with an extract from the Holy Bible: “*Train a child in the way he should go and when he is old he will not turn from it.*” — Proverbs 22:6.



# GENERAL PROTECTIVE MEASURES

- ☉ CHILD EXPLOITATION
- ☉ CHILD SAFETY AT PLACES OF ENTERTAINMENT
- ☉ CHILDREN AND ALCOHOL



## 1. Worst forms of child exploitation

Article 15 of the Namibian Constitution protects children against exploitative labour practices. Namibia has also signed the International Labour Organisation (ILO) Conventions on Minimum Age for Admission to Employment, and on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour. The Labour Act gives effect to the Constitution and the ILO Conventions by making it illegal to employ a child under the age of 14, and by restricting employment for children between the ages of 14 and 18.

The Child Care and Protection Act complements the Labour Act by providing additional provisions on the worse forms of child labour. The Act says that no child may be used in:

- ☉ slavery or practices similar to slavery, including debt bondage
- ☉ public or private armed forces or security forces, or in any armed conflict
- ☉ commercial sex work or pornography
- ☉ drug trafficking
- ☉ begging
- ☉ any form of labour that is likely to be harmful to the child
- ☉ any performance, display, activity, contest or event that is likely to be harmful to the child.

The Act also regulates child participation in activities such as performances, sports activities, beauty contests and cultural events. If the event is a profit-making venture, it will require a licence from a children's commissioner before children may participate. The licence may impose conditions to protect the children involved.

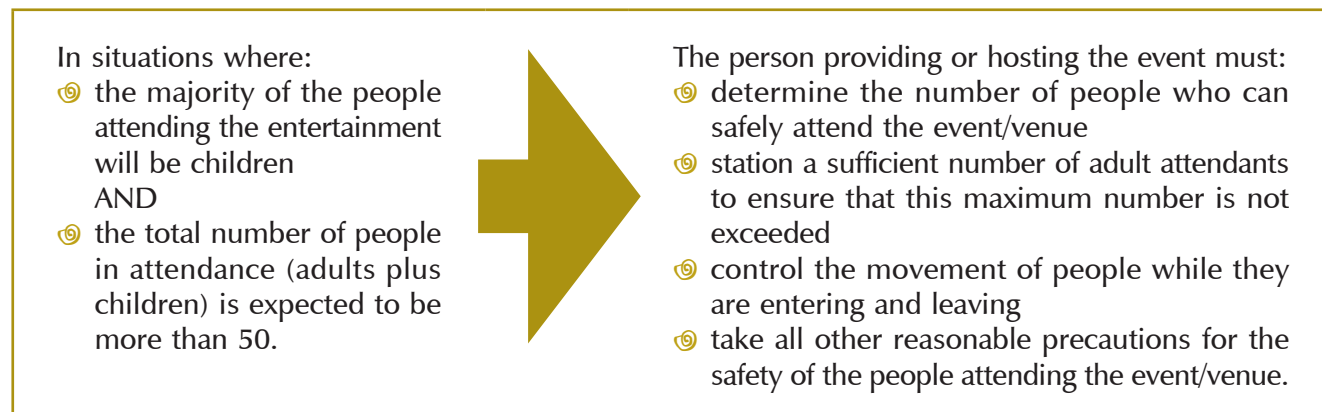
For example, suppose that a child is acting in a school play where tickets are being sold to raise money for new school playground equipment. The school would not require a licence. But if a child is acting in a commercial film, the film-makers would have to obtain a licence which will probably include provisions to make sure that the children are safe and treated without exploitation.

Any person who is aware of a situation of illegal child labour must report it to the police. Failure to report is a criminal offence.



## 2. Child safety at places of entertainment

In certain circumstances, places of entertainment must take steps to ensure that children are entertained in a safe environment.



The Minister can also designate specific places of entertainment, or specific classes of places (such as all miniature golf courses or all public swimming pools) which must comply with the rules on child safety at places of entertainment.

No alcohol or tobacco products may be sold or given away for free to children at places of entertainment.

Police and local or regional officials may inspect places of entertainment which are covered by the law, to make sure that the children are safe and that all the legal rules are being followed.

## 3. Children and alcohol

Underage drinking is a significant problem in Namibia. To address this issue, the Child Care and Protection Act amends the Liquor Act 6 of 1998 to make the current provisions clearer and to cover issues which have been neglected. The amendments:

- ☉ require alcohol sellers to confirm the age of the buyer by checking identification
- ☉ strengthen offences and penalties for using fake IDs, and authorise liquor-licence holders to confiscate fake IDs and hand them over to the police
- ☉ prohibit children under age 18 from being present in certain types of drinking establishments except when accompanied by a parent or guardian
- ☉ prohibit the manufacture of homemade alcoholic beverages by children
- ☉ authorise police to confiscate alcohol from persons under age 18.

These amendments also make it illegal for anyone to sell or provide liquor to a parent or care-giver who is accompanied by a child if the parent or care-giver appears to be intoxicated, or in any other circumstances where there is concern about the child's safety.

The Act also makes it an offence for an adult to force, allow or encourage children to drink alcohol or take illegal drugs. An adult who violates this law could be required to attend an educational programme on the dangers of underage drinking or drug abuse, as well as being subject to a possible fine or prison sentence. This provision is intended to address situations such as where parents take young children to shebeens and give them alcohol to keep them quiet, or where adults try to profit from providing alcohol to children.



# 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.





# PERSONS UNFIT TO WORK WITH CHILDREN

The Act requires police clearance certificates to ensure that persons who work directly with children do not have a previous record of proven violence or child abuse.

## What crimes would disqualify a person from being fit to work with children?

Convictions on the following crimes will disqualify a person from working directly with children:

- ⑨ murder
- ⑨ rape
- ⑨ indecent assault
- ⑨ incest
- ⑨ kidnapping
- ⑨ any statutory sexual offence
- ⑨ any offence relating to pornography
- ⑨ any offence relating to trafficking
- ⑨ abduction (excluding the wrongful removal or retention of a child by a parent with parental responsibilities)
- ⑨ assault with intent to cause grievous bodily harm.



These crimes would disqualify a person from being fit to work with children **regardless of whether the victim was a child or an adult**. A person who uses violence against any other person should not be working closely with children.

## Who is required to get police clearance certificates?

The following people will be required to get police clearance certificates:

- ⑨ persons who operate or have direct access to children at facilities which provide welfare services to children, including child protection organisation, residential child care facilities, places of care, early childhood development centres, shelters, schools or associations that provide welfare services to children.

This would include, for example, school principals, teachers and people who work in children's homes. It would even include a cleaner who works at a school or a children's home, for example, if that cleaner had access to the children. People who prey on children are known to sometimes seek out work in places where children are vulnerable. Anyone who has contact with children at a facility which provides services to children is covered, including volunteers.

- ⑨ prospective foster parents and prospective adoptive parents
- ⑨ an adult designated to supervise a child-headed household
- ⑨ anyone who works in any other form of employment or activity listed by the Minister responsible for child welfare in regulations.

## **What time period is covered?**

A person who has been convicted of one of the listed crimes within the last 10 years is not considered fit to work with children.

## **What about people already working with children when the Act comes into force?**

The Act says that no one may employ a person who has been convicted of one of the listed crimes within the last 10 years in a capacity which involves access to children in any of the listed institutions. The mechanisms for enforcing this rule will be explained in the regulations.

## **Does the police clearance certificate have to be renewed?**

No, but the Ministry responsible for child welfare will keep a register of convictions so that persons who commit any of the specified offences after they have provided their police clearance certificates can be identified and prevented from working with children.

## **What is the penalty for a person working with children who works with children after committing one of the listed offences?**

It is a crime for a person to work with children if he or she has been convicted of one of the listed offences within the last ten years. An employer who allows someone to work in violation of this rule has also committed a criminal offence. The penalty is a fine of up to N\$20 000 or imprisonment for up to five years, or both.



# GRANTS AND EMERGENCY AID

## Grants

The Child Care and Protection Act provides for five types of grants:

- (1) state maintenance grant
- (2) foster parent grant
- (3) residential child care facility grant
- (4) child disability grant
- (5) short-term emergency grant or assistance in kind.

## State maintenance grant

Under the previous rules, only a parent of a child could apply for a grant. The parent was eligible for a grant only if the other parent is deceased, in prison for longer than three months, or receiving an old age pension or disability grant.

Under the Child Care and Protection Act, the state maintenance grant is available to a broader group of persons caring for a child, provided that they meet the grant criteria. This means that the grant application can come from a parent, a legal guardian, a registered kinship care-giver, a child heading a recognised child-headed household or an adult assigned to supervise such a child-headed household. There is no limit to the number of children in a single household who may receive a state maintenance grant, since all children must be treated equally. The other grant criteria will be set in regulations, to allow for flexibility over time.

**Key change:** One key change to the law is allowing registered kinship care-givers to apply for state maintenance grants for the children in their care. Previously, this was possible only if they were formally designated as foster parents by a court order — a burdensome process which has tied up social workers and the children's courts unnecessarily.

## Foster parent grant

A foster parent is eligible to claim a grant for each child placed in his or her care by a court order. This grant is intended to offset the costs of caring for a foster child, keeping in mind that foster care involves caring for an unrelated child. In terms of the Act, foster parents play a similar role as children's homes by taking in children who have no family members to care for them.

## Residential child care facility grant

Approved places of safety, registered children's homes and registered child detention centres are eligible to claim a grant for each child placed in their care by court order.

## Child disability grant

A child may be eligible for a child disability grant if the child has one of the disabilities prescribed in the regulations. A child disability grant is payable *in addition* to any other state grant, and it is paid until the child is old enough to qualify for a disability grant under the National Pensions Act 10 of 1992.

## Short-term emergency grant or assistance in kind

The Ministry responsible for child welfare may provide short-term emergency grants or assistance in kind to families in particular need, such as children in homes affected by illness, accident, death, fire, natural disasters, armed conflict or some other unexpected emergency. For example, emergency aid might be provided to a family whose house has just burned down or a family where both parents were killed in a car accident.

## Automatic exemptions

Any child who receives a state maintenance grant, or who has been placed in alternative care by a court order, is entitled to free basic education in state schools; subsidised school uniforms, shoes and stationary; free basic health care; and exemption from payment of any fees when applying for official government documents.

## Abuse of grant money

It is a crime to receive grant money for a child under false pretences (such as where a person receives money for a child who is not actually in their care), or to use grant money for something other than the child's benefit (such as using the money for drinking or gambling). Anyone who suspects fraud or abuse can ask a social worker to investigate. A person who has been wrongfully receiving a grant, or misusing the money, can be ordered to refund the money to the government.





Ministry of Gender Equality  
and Child Welfare



Legal Assistance Centre



Embassy of Finland  
Windhoek

