



**PUBLIC  
PARTICIPATION  
IN LAW REFORM**

**Revision of  
Namibia's  
Draft Child  
Care and  
Protection Bill**

**FINAL REPORT  
2010**



**unicef**   
unite for children

*“... a nation which fails to nurture, protect, educate and advance the rights and interests of its children today will be all the poorer for it when they are adults tomorrow. We cannot make a better investment for the future of this nation than the one we make in our children.”*

Hon Justice Peter Shivute,  
Chief Justice of Namibia,  
Address at the Closing Session  
of the Technical Workshop on the  
Child Care and Protection Bill,  
19 August 2009



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# Acknowledgements

In 2009, the Ministry of Gender Equality and Child Welfare (MGE CW) embarked on an extensive consultation process to guide the revision of the Child Care and Protection Bill with technical assistance and support from UNICEF and the Legal Assistance Centre (LAC). The consultation team would like to thank everyone who contributed to the success of this project.

An appendix to this report is available on request, in electronic form only, from the MGE CW or the LAC. The appendix contains details of all the people who provided input to the revision of the Child Care and Protection Bill.

This report was compiled for the Ministry by the Legal Assistance Centre (Dianne Hubbard and Rachel Coomer) with the assistance of Hennie Potgieter (legal drafter, South Africa), Professor Julia Sloth-Nielsen (Dean of the Law Faculty, University of the Western Cape) and Dr Elizabeth Terry (Design & Development Services, Windhoek).

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An electronic version of this publication is available on the websites of all three partners.

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# Foreword



A safe childhood is every child's right, and strong laws and policies are essential to meet this right. Namibia's Child Care and Protection Bill, once enacted, will bring national legislation in relation to child care and protection in line with the provisions of the Convention on the Rights of the Child, signed by Namibia in 1990.

By repealing the antiquated Children's Act 33 of 1960, its enactment will allow for a more comprehensive, protective environment for children. The new Act will substantially improve the child care and protection system in Namibia and will promote the best interests, safety and well-being of the child. The Act will also recognise that services for children should be provided in a manner that respects children's need for continuity of care and stability, taking into consideration the physical, mental and emotional needs and differences that exist among children. With the impact of the HIV pandemic on communities, families and children alongside the continued poverty and high inequity across Namibian society, the Act will serve to ensure that all children are treated equally under law, and that the integrity of the family unit is supported.

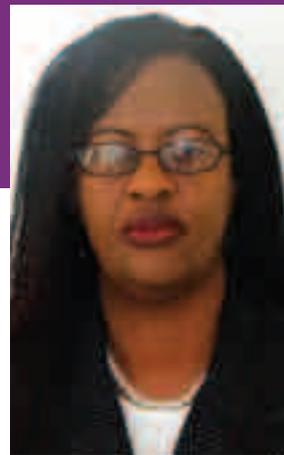
The Government of Namibia, under the leadership of the Ministry of Gender Equality and Child Welfare, is to be congratulated for undertaking a process of legislative review and reform to develop the proposed bill which was a remarkable and unique example of democracy and public participation – including children – in law-making. UNICEF was privileged to have been a part of this important legislative reform process.

The process was a true example of a human rights-based approach, by involving all duty bearers and rights claim holders, including vulnerable and marginalised children. The regional and national consultation meetings, extensive media campaign and active engagement of children through a Children's Reference Group parallel to the Technical Working Group, are just some of the elements of the process described in this publication which ensured that the end product has taken into account and respected the views and perspectives of the entire Namibian society. The collaboration between the Ministry of Gender Equality and Child Welfare and the Legal Assistance Centre outlined in this publication is an exemplary example of civil society working in close collaboration with government to achieve legislative reform.

We are optimistic that this documentation of the legislative reform process for the Child Care and Protection Bill will assist towards its promulgation and enactment, and towards the goal of ensuring a comprehensive protective environment for all Namibia's children.

**Ian MacLeod**  
UNICEF Representative

# Preface



The Namibian Constitution enshrines the rights of children to life, health, education and a decent standard of living. The Namibian Government has signed and ratified key international Conventions, including the Convention on the Rights of the Child, to uphold children's rights and freedoms.

The necessity to ensure children receive protection, care and support in a changing context resulted in the Ministry of Gender Equality and Child Welfare drafting the Child Care and Protection Bill. This is to replace the outdated Children's Act 33 of 1960. The Ministry of Gender Equality and Child Welfare, mandated with ensuring efficient child welfare services and promotion of children's well-being and rights, recognised the importance of legislation to provide an enabling environment for the fulfilment of children's rights. This was even more relevant within the context of the HIV/AIDS pandemic where Namibian children are facing serious development challenges.

By utilising a rights-based approach, the drafting process of the Child Care Protection Bill has taken into account the reality behind enacting and reforming laws. In order for the reform to be effective, it was conducted in a participatory manner, engaging with vulnerable and marginalised stakeholders, and particularly taking into account the views of children and women. Extensive consultations took place with constituency, regional and national stakeholders to take into account the institutional requirements for the effective implementation of the law. Gender considerations were incorporated to reflect the particular vulnerabilities of children and women.

The Ministry of Gender Equality and Child Welfare would like to thank UNICEF for their financial and technical support towards this process, and their continued support to the Government to ensure a legislative framework for the fulfilment of the rights of children and women in Namibia. The Ministry recognises the important role of the Legal Assistance Centre in promoting human rights in Namibia, and particularly their expertise on the promotion of children's rights.

This document provides a summary of the various forms of consultation undertaken during the revision of the Child Care and Protection Bill. It provides a basis for future law reform processes and presents an excellent example of how to include children and the public in the law-making process.

**Sirkka Ausiku**

Permanent Secretary

Ministry of Gender Equality and Child Welfare



*“... we in Namibia are obliged to develop policies and to take action to protect and advance the rights and interests of our children.”*

Hon Justice Peter Shivute, Chief Justice of Namibia,  
Address at the Closing Session of the Technical Workshop  
on the Child Care and Protection Bill, 19 August 2009



Demonstration  
on Parliament  
steps, 2006

# OVERVIEW OF THE CONSULTATION PROCESS

## 1. The importance of public participation

A democratic nation requires public participation in all decision-making processes. The simplest form of participation is through casting a vote in elections. However, more than this is required for a strong democracy. Citizens in democratic countries have the right to voice their concerns to government, and governments should encourage citizens to give input on key issues that will affect them. In a strong democracy, many people will get involved in decision-making processes because they care about the outcome, and because they know that their opinions will be considered. While government decisions cannot incorporate every opinion, a clear and transparent public participation process allows citizens to know that a final decision will take their viewpoints into consideration.

*All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form and join political parties and; subject to such qualifications prescribed by law as are necessary in a democratic society, to participate in the conduct of public affairs, whether directly or through freely chosen representatives.*

Constitution of Namibia, Article 17(1)

*“The child should grow in the community whereby she or he must know her or his rights. As Namibians we must educate our young ones on how to develop this country.” – SMS*

In 2009, the Ministry of Gender Equality and Child Welfare embarked on an extensive consultation process to guide the revision of a preliminary draft of the Child Care and Protection Bill. This bill, set to become the key piece of children’s legislation in Namibia, covered more than 200 pages and 20 different topics. The Ministry wanted to obtain public input to ensure that the final legislation would be based on the needs of people in Namibia. Because the draft was so extensive, there was no one expert or group who could give sufficient input. Instead, the voices of many stakeholders – service providers, parents, children, grandparents, extended family and community members – were all needed to ensure that the bill would be in the best form for tabling in Parliament.

The consultation process for the revision of the Child Care and Protection Bill is the largest ever conducted in Namibia to date, involving regional, national and international meetings; dissemination of information through newspapers, magazines, letters, factsheets, radio, television and the internet; and a capability to receive input via text message, email, internet, telephone, fax or post. Because the proposed law is for and about children, special efforts were made to engage children in discussions about the bill and to solicit their opinions, and the feedback received from children proved to be very thoughtful and creative. The consultations with children and youth at various meetings represented almost one-third of the total number of people who participated in face-to-face consultations.

The aim of the various meetings held was to discuss key areas of the proposed bill and the practical implications of the proposed provisions. Participants at the meetings were not required to reach a consensus, and there were widely divergent opinions on many of the topics discussed. This meant that for many areas in the bill, where public opinion was sharply divided, it was necessary for the Ministry of Gender Equality and Child Welfare to make policy decisions. To guide decision-making on difficult topics, persons consulted were asked to provide reasons for their opinions which policy-makers could take into consideration.



This report aims to summarise the various forms of consultation undertaken during the year-long process which took place in 2009, and to highlight key input which resulted from this process. The report also includes commentary on the strengths and weaknesses of the consultation process, in the hope that it can provide a useful model for consultation around future law reforms.

## 2. The background to the bill

The envisaged Child Care and Protection Bill was designed to replace the woefully-outdated Children’s Act 33 of 1960. The 1960 Children’s Act was a South African law which came into effect in Namibia (or “South West Africa” as it was known pre-Independence) on 1 January 1977. This law was inherited by Namibia at Independence and has served as the key piece of children’s legislation in Namibia for over 33 years.

The 1960 Children’s Act covers the following topics:

- ④ children’s courts
- ④ mechanisms for assisting children in need of care and protection
- ④ the registration of child care facilities
- ④ the prevention of neglect, ill-treatment and exploitation of children
- ④ consent to medical treatment and operations on children
- ④ authorisation for grants for places of safety, foster care and child maintenance
- ④ a procedure for obtaining contribution orders from parents for the costs of keeping children in alternative care.



While the obsolete and Western-oriented 1960 law remained in force in Namibia, South Africa replaced it several times over – first by the Child Care Act 74 of 1983 (which was not made applicable to “South West Africa” even though it was not yet an independent nation), and more recently by the Children’s Act 38 of 2005.

Shortly after Namibia became independent in 1990, it became clear that the 1960 Children’s Act required amendment to be more appropriate for the new Namibia. In 1994, the Ministry of Health and Social Services commissioned the Legal Assistance Centre and the Human Rights and Documentation Centre to prepare draft children’s legislation. To make the law less unwieldy, the initial draft legislation was split into two pieces on the basis of the subject matter – a Children’s Status Bill and a Child Care and Protection Bill. This early drafting process took place in consultation with persons who work with children in various capacities throughout Namibia, by means of a national workshop held in June 1994. The draft bills were subsequently delayed by a change of Ministers. Then, before the bills had moved forward in the drafting process, responsibility for them passed to the new Ministry of Women Affairs and Child Welfare which came into existence in 2000.<sup>1</sup>

<sup>1</sup> The Ministry of Women Affairs and Child Welfare was renamed the Ministry of Gender Equality and Child Welfare in 2005.

Since the draft bills had lain dormant for some time, the Ministry of Women Affairs and Child Welfare solicited additional input from interested parties. Both pieces of draft children’s legislation were discussed at a three-day workshop held near Windhoek in October 2001, while a smaller group of stakeholders continued discussion on the Children’s Status Bill at a workshop in Windhoek in April 2002. The Ministry appointed a Task Force of persons with expertise in children’s issues to propose refinements to the two draft bills on the basis of the recommendations made at these workshops. The Task Force was chaired by the Permanent Secretary of the Ministry of Women Affairs and Child Welfare and included representatives from the Ministry of Health and Social Services, the Ministry of Justice, the Ministry of Home Affairs, the Office of the Attorney General and the Legal Assistance Centre. The Task Force met during 2002 and early 2003. The draft legislation was submitted to the technical legal drafters in the Ministry of Justice in 2003, along with minutes of the Task Force meetings containing recommendations for revision.

The Children’s Status Bill was tabled in Parliament in 2003 and passed in late 2006 after extensive amendments were made to it at Cabinet and as a result of committee hearings held by both the National Assembly and the National Council. As discussed in this report, this piecemeal approach to revision of the law resulted in some technical flaws which came to light during subsequent implementation.

Changes in personnel at the Ministry of Gender Equality and Child Welfare in respect of both the Minister and the Permanent Secretary interrupted the progress of the lengthier Child Care and Protection Bill, which remained with the technical drafters at the Ministry of Justice until mid-2008.

In 2008 the Child Care and Protection Bill was identified as a law reform priority and the revision process was restarted. As South Africa had recently replaced its child protection law, the draft provided by the Ministry of Justice to the Ministry of Gender Equality and Child Welfare for review was based primarily on South Africa’s new Children’s Act 38 of 2005 rather than on the previous Namibian drafts.



March in Windhoek’s main street, 2004

Another new round of public and stakeholder consultation was proposed because of the extended lapse of time since the last broad public consultations, as well as developments in the field of child protection and the changing needs of Namibian children during the intervening period.



## STATEMENT BY CHIEF JUSTICE OF NAMIBIA

The world in 1960 was very different to the one we are living in today. Emerging from the devastation of a World War slightly more than a decade earlier, a new generation, the so-called Baby Boomers had to face up to an era of dramatic social and political change. It was no different in Africa with many nations seeking to cast away the yoke of colonialism and to find their freedom. The face of the Southern African Region also looked markedly different to the one we see today: it was contorted and scarred by the injustices and indignities of colonialism, apartheid and racial discrimination... It was in this

time and within this socio-economic and political context that the Children's Act 1960 was passed by the South African Parliament.

As you may be aware, the Act was not applied here upon its promulgation – that was only done in 1977. Needless to say, it was therefore not designed with ... [the] social and cultural attitudes and values of our people in mind...

So much has happened in the half century which followed its promulgation. We found our Independence – ironically, it was by and large the post-war generation which helped to bear the Torch of Freedom. In the preamble to our Constitution which we wrote for ourselves and our children, we drew on the universal principle articulated in the first paragraph of the Universal Declaration of Human Rights that “the recognition of the inherent dignity and of the equal and inalienable rights of all members of human family is the foundation of freedom, justice and peace”; we guaranteed the fundamental rights which had been denied our people for so long and, in that, we expressly recognised and entrenched in Article 15 the rights of children.

It is of particular significance... that one of the very first international conventions acceded to and ratified by this new Nation was the Convention on the Rights of the Child. The Convention, in the words of UNICEF, “sets out the rights that must be realized for children to develop their full potential, free from hunger and want, neglect and abuse. It reflects a new vision of the child. Children are neither the property of their parents nor are they helpless objects of charity. The Convention offers a vision of the child as an individual and as a member of the family and the community, with rights and responsibilities appropriate to his or her age and stage of development”...

... [T]he Ministry of Gender Equality and Child Welfare has taken up the challenge to initiate the repeal of outdated and significantly inadequate legislation passed half a century ago and later applied here without first seeking to incorporate therein the will and values of the Namibian people. The Ministry has taken a significant step close to bring draft legislation to Parliament which conforms to our duties and obligation under the Constitution and International Law, most significantly, the human rights standards articulated in the Convention on the Rights of the Child.

... [I]t is apparent to me that the complexity and sheer scale of the task at hand require broad consultations and extensive resources. I therefore wish to commend the Ministry for the onerous task they have taken upon themselves and to encourage it in this important endeavour. Moreover, in meeting this challenge by launching a multi-faceted consultative process, deliberating with stakeholders, inviting public participation, seeking technical and legal support from the Legal Assistance Centre and other practitioners and academics, [and] conducting a comparative study of similar legislation elsewhere in the region, I daresay that the Ministry and its partner organisations have set high standards in consultative and transparent legislation which will hopefully be emulated in future ...

... For the reasons given at the outset, the Bill cannot become an Act of Parliament a moment too soon. If that were to happen, our courts would be in possession of a most powerful tool to give our children the best protection they deserve.

Hon Justice Peter Shivute, Chief Justice of Namibia,  
Address at the Closing Session of the Technical Workshop on the Child Care and Protection Bill, 19 August 2009

## 3. The consultation process

*The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at ... encouragement of the mass of the population through education and other activities and through their organisations to influence Government policy by debating its decisions.*

Namibian Constitution, Article 95(k)

### 3.1 Planning the consultation process

Effective consultation was deemed to be important for several reasons:

- ④ Public involvement in the reform process helps to raise awareness of the legal issues and creates a sense of ownership.
- ④ Insufficient consultation before tabling can result in a lengthy hearings process by Parliamentary committees, which could delay the passage of the bill considerably.
- ④ Failure to refine the bill before tabling it in Parliament could result in a number of last-minute individual amendments which might not harmonise well with the overall framework of the law.
- ④ Widespread consultation helps to prepare and equip service providers to understand the need for the new law and to be more prepared for effective implementation.

#### OBJECTIVES OF THE REVISION PROCESS

- (a) to refine the draft Child Care and Protection Bill so as to ensure its appropriateness to the Namibian situation
- (b) to draw on the experience of other African countries with recent law reforms on similar issues, particularly South Africa which shares a common legal history with Namibia on children's rights
- (c) to raise the level of public awareness of the forthcoming law and provide opportunities for public input which would advance overall awareness and understanding of children's rights in Namibia
- (d) to consult service providers and other stakeholders on various thematic topics covered in the draft law, to ensure that the proposals for law reform would be appropriate and feasible to implement in practice.

The Ministry of Gender Equality and Child Welfare worked together with UNICEF and the Legal Assistance Centre to prepare a strategy for effective consultation with service providers, specialists, and the general public. UNICEF was a key partner because of its international mandate on children. UNICEF recommended that the Ministry engage the

Legal Assistance Centre because of its extensive experience in the field of human rights, and its previous involvement with the draft bill; because the draft legislation had been managed by two different ministries since its initial formulation, the Legal Assistance Centre was the only institution which had consistently remained involved with the bill since its inception in 1994. UNICEF facilitated the partnership between the Ministry and the Legal Assistance Centre and funded the work of the Legal Assistance Centre in the revision process.

The final concept for the 2009 consultation process prepared by the Ministry together with UNICEF and the Legal Assistance Centre was approved by the Orphans and Vulnerable Children Permanent Task Force (OVC-PTF) in June 2008. This Task Force has a national membership of approximately 50 people. Members are identified by the Ministry due to their involvement in child welfare issues, and it was considered that approval from these key stakeholders would indicate that the plan was suitable for national implementation. The OVC-PTF approved the proposed plan but recommended that it should be supervised by a small committee which could give ongoing guidance. As a result, the Ministry convened a “Technical Working Group” chaired by the Permanent Secretary of the Ministry of Gender Equality and Child Welfare (MGECW) and consisting of representatives of MGECW, UNICEF, the Legal Assistance Centre, the Ministry of Justice and the Law Reform and Development Commission. The Technical Working Group met regularly to plan, guide, supervise and assess the consultation process.

## The Technical Working Group



### Front row from the left:

**Dianne Hubbard** (Legal Assistance Centre), **Sirkka Ausiku** (Permanent Secretary) and **Mona Zatjirua** (Ministry of Gender Equality and Child Welfare).

### Back row from the left:

**Joyce Nakuta** (Ministry of Gender Equality and Child Welfare); **Marianna Garofalo** (UNICEF); **Victor Shipoh** (Ministry of Gender Equality and Child Welfare); **Rachel Coomer** and **Yolande Engelbrecht** (Legal Assistance Centre).

### Members of the technical working group not pictured:

Ministry of Gender Equality and Child Welfare: **Helena Andjamba**; **Celeste Feris**; **Sophia Kavaongelwa**.

Ministry of Justice: **Willem Bekker**; **Felicity !Owoses-/Goagoses**; **Tousy Namiseb**.

UNICEF: **Connie Botma**; **Matthew Dalling**.

Additional international expertise was engaged to enable Namibia to draw on the experiences of other countries which have recently passed similar laws. Professor Julia Sloth-Nielsen, Dean of the Law Faculty at the University of the Western Cape and widely acknowledged as one of Africa's foremost child law experts, led the international team. The involvement of the international experts was also designed to provide an opportunity for information exchange between Namibian professionals who work with children and their counterparts in other countries.



The process of revising the preliminary draft bill included several stages and was aimed at being as comprehensive and as inclusive as possible. The process consisted of four main components:

- (1) development of supporting materials;
- (2) media outreach and requests for stakeholder and community feedback;
- (3) regional, national and international meetings; and
- (4) the collation of information culminating in the revision of the draft bill.

This chapter provides an overview of the key steps in the consultation process. More detail about each of the steps can be found in the subsequent chapters of this report.

## THE KEY STEPS IN THE CONSULTATION PROCESS

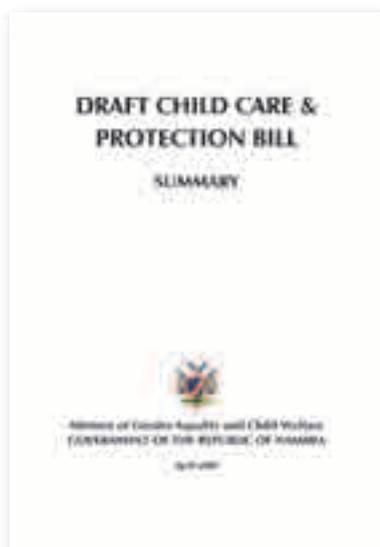
1. **Materials development:** preparation of fact sheets on specific thematic areas in the bill and simple-language summary of entire bill
2. **Media outreach:** intensive media campaign to inform public of proposals and inviting input by text message, email, internet, telephone, fax or post
3. **Children's consultations:** consultations with children via various meetings and workshops
4. **Workshops with adult stakeholders:** regional workshops inviting adult stakeholders from all 13 regions to discuss key aspects of bill, and thematic workshops attended by national and international experts
5. **International comparison:** comparison of draft Namibian bill with new South African law on children
6. **Written input:** invitations to key stakeholders to give more detailed input on the draft bill in writing
7. **Collation of input:** compiling input received via all channels by topic, for reference in revision of draft bill
8. **Revision of draft bill:** Ministerial decisions on issues raised during consultations and incorporation of changes into the draft bill, resulting in a final draft bill ready for tabling in Cabinet.

## 3.2 Materials development

An essential component of the process was extensive preparation, research and analysis before the public consultations started. With the help of the Legal Assistance Centre, the Ministry collected information on international guidelines and the approaches taken in other countries on all of the many different topics covered by the preliminary draft bill. This extensive background information was used as the basis for publications and workshop inputs. With information about different models and different options used elsewhere in the world, people were able to engage in more informed debate about what might work well for Namibia.

To make the information accessible to the general public, the Ministry needed to convert the bill into user-friendly materials for adults and children. To do this, the Ministry produced the following documents:

- ④ one -page “factsheets” on 21 topics in the bill, with selected factsheets converted into more child-friendly forms
- ④ a simple-language summary of the bill
- ④ a user-friendly layout of the entire draft bill, with commentary on some of the key issues to encourage discussion.

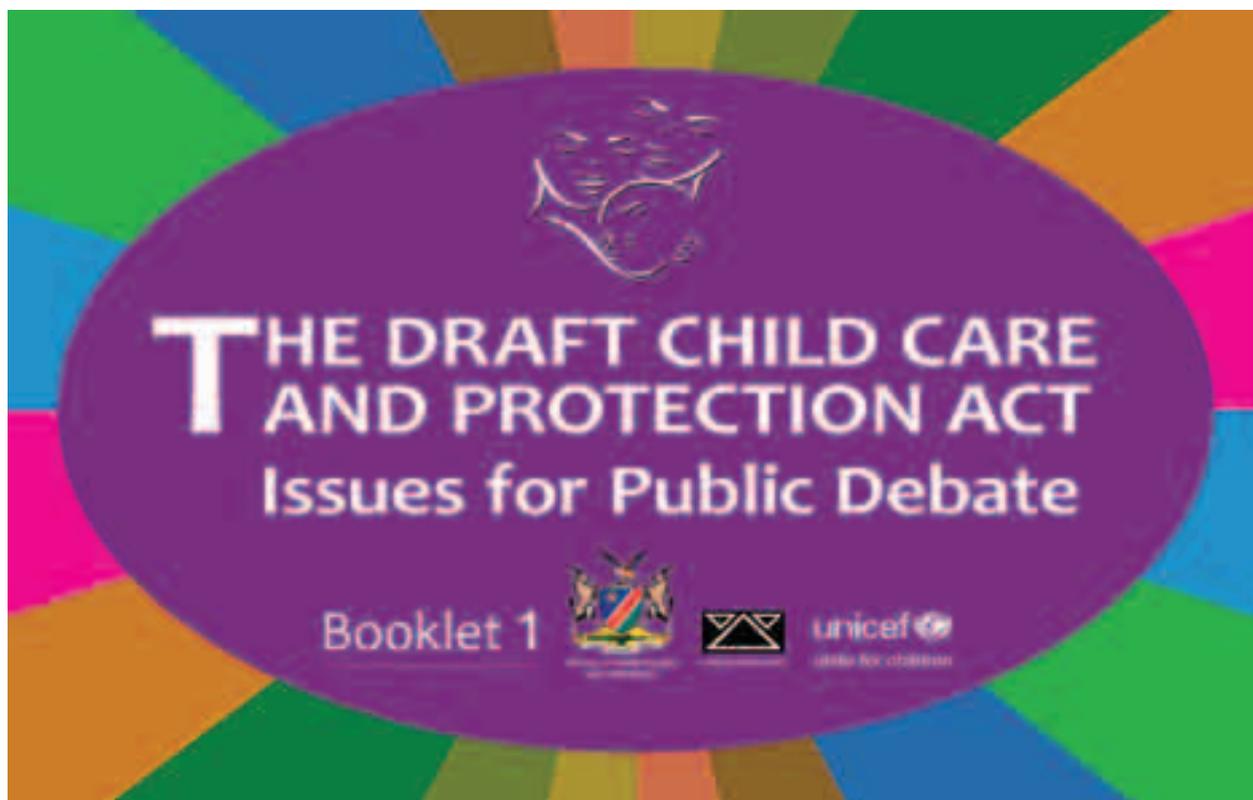


The factsheets were central to all stages of the revision process. Each factsheet was designed to contain the key information required for readers to discuss, debate or comment on the issues. Most of the factsheets summarised the current law, the proposed law and the approaches taken in a few other countries. Many used examples or charts to make issues clearer. All were designed in a colourful and easy-to-read format.

Although English is the official language of Namibia, many people continue to be more comfortable communicating in one of the many indigenous languages. To ensure that the information about the bill was effectively communicated, the factsheets were translated

into four other languages: Afrikaans, Oshiwambo, Nama/Damara and Rukwangali. Budgetary constraints did not allow for translation into additional languages. In fact, the original budget was designed to cover only English plus three languages, but the team managed to stretch this to include an additional language. The languages for the translations were selected by the Technical Working Group.

Individual factsheets on different topics were distributed directly and at workshops to government, stakeholders, non-governmental organisations, community members and journalists. The factsheets were distributed to the public both individually and combined into booklet form, and factsheet booklets in various languages were distributed as inserts in national newspapers. Electronic versions of the factsheets were posted on the Legal Assistance Centre and UNICEF websites for universal access. Information in the factsheets was also used as the basis for workshop presentations.



### 3.3 Media outreach

Namibia has a population of 1.8 million people. However, population density is low, with just two people per square kilometre and only one in three people living in urban areas.<sup>2</sup> This means that spreading information to all corners of the country can be challenging.

To ensure that information about the bill was disseminated as widely as possible, the Ministry used a variety of different methods:

- ④ factsheet booklets disseminated in three languages as inserts in three different national **newspapers**
- ④ **articles and opinion pieces** in various newspapers
- ④ feature articles written for local **magazines** with youth appeal such as *OYO young, latest and cool*, *Sister Namibia* and *Real magazine*
- ④ programmes on national and local **radio** stations
- ④ presentations on national **television** talk shows
- ④ **press releases** and **media briefings** distributed to journalists individually and at group meetings and media workshops
- ④ information distributed by **email**
- ④ information made available on the **internet**.

<sup>2</sup> Ministry of Health and Social Services, *Namibian Demographic and Health Survey 2006-07*. Windhoek, 2008.



Article in *Sister* magazine, July 2009



Article in *OYO* magazine, May 2009



A dedicated service was set up to allow members of the general public to send text messages about the bill, since this easy and inexpensive method of communication is generally very popular in Namibia. The two key cellphone service providers in Namibia allow free text messages during specific time slots, so most cellphone users would have been able to send text messages free of charge if they wished. This optimised the accessibility of the law reform process for all sectors of society. Text message response proved to be best when stimulated by radio programmes about some of the specific themes in the bill. Over 200 text messages were received, in English and Oshiwambo.

Text message received in June 2009

People were also able to give comments about issues covered by the bill via the internet through a dedicated group on the popular social networking site, *Facebook*. This group had a membership of 275 at its peak, including many Namibian teens. (Following on the pioneering use of *Facebook* for this kind of discussion in Namibia, other local organisations have started to use *Facebook* as a forum for the discussion of topical issues. For example, in early 2010, the daily newspaper *The Namibian* created a page to discuss the 2010/2011 budget.)



Public input was also invited by the more traditional methods of telephone, post, fax or email. However, very few comments were received through these channels. Email was the most popular of these four options.

## 3.4 Children's consultations

Specific activities in the consultation process were designed to obtain input from children and young people. These activities were led by a Children's Reference Group which met on a monthly basis to direct the children's consultation process. Advice on outreach methodology was sought from a small group of organisations which regularly work with children in Namibia. Following the advice given by these experts, the consultants engaged to lead the youth consultations adapted the adult information materials for use by a younger audience. They also trained facilitators from organisations that already work with young people, to equip them to discuss the bill and collect input in the process of their ongoing activities throughout the country. The team also held direct children's consultations in three regions which were targeted because they were under-represented in other consultative efforts.

The facilitators who were trained to host sessions about the draft bill conducted somewhat fewer workshops than anticipated, but the input from young people who were reached was fruitful. The children who took part in the consultations seemed eager to offer suggestions, and their input included creative songs, poems and drawings.

Further children's input was sought by means of a competition to see who could submit the most thoughtful input, and the detailed entries received showed a high level of effort.



## 3.5 Workshops with adult stakeholders

The Ministry convened three main sets of consultative meetings with adult stakeholders:

- ④ **regional workshops** inviting participants from all 13 regions;
- ④ **national workshops** involving key Namibian stakeholders and international guests; and
- ④ **a technical workshop with Namibian and South African lawyers and other service providers**, to discuss and compare aspects of the draft Namibian bill with the comparable South African law.

The initial workplan envisaged an additional written comparison of the Namibian bill and the South African law, but because of the limited availability of legal experts working the field of child law, the comparative analysis ultimately took the form of thematic presentations comparing the two documents at the technical workshop – which facilitated discussion and debate on comparative issues.

A number of other consultation meetings were held during the revision process. These included discussions about the bill at a national meeting which brought together all **magistrates** in the country, presentations given at national conferences of **youth and youth workers** organised by Yelula/U-Khâi, LifeLine/ChildLine Namibia and the National Youth Council, and a discussion of proposed revisions with **social workers** from all over Namibia at a national meeting convened by the Orphans and Vulnerable Children Permanent Task Force. Smaller meetings with **specific stakeholder groups** were also held.

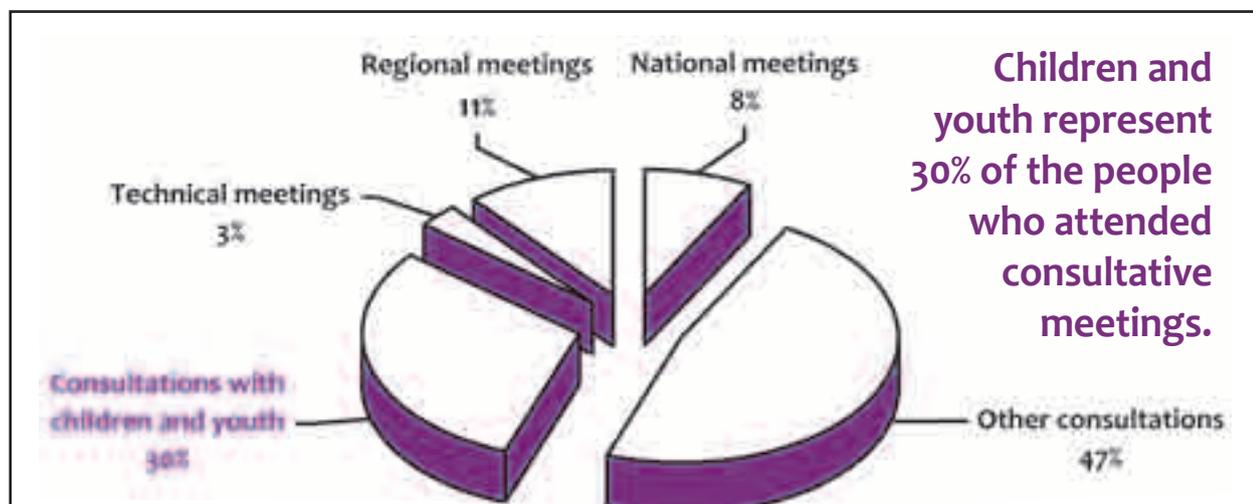


The national workshops focussed attention on the detail of practical mechanisms in the draft law, while the discussions at the regional meetings were of a broader nature. The input from international guests allowed Namibia to learn from her neighbours, by highlighting best practices to follow and mistakes to avoid.

A total of 1387 adults and children attended one or more of the 39 workshops, conferences, consultations, focus group discussions or other meetings held to discuss the revision of the preliminary draft of the Child Care and Protection Bill. Many of these participants were social workers or others who work with children professionally. Participants also included representatives from regional government, regional offices of the Ministry and local non-governmental organisations, along with traditional leaders, religious leaders and community activists. Approximately 30% of the participants were children and youth.



CCPA workshop participants in Rundu



## 3.6 Written input from stakeholders

Copies of the draft bill and the simple-language summary were distributed in hard copy and electronic form to key stakeholders with an accompanying request for written input. The covering letters drew the attention of specific stakeholders to various sections of the bill which might be of particular interest to those stakeholders. For example, groups involved in the issue of HIV/AIDS were invited to give particular attention to the sections of the bill addressing HIV testing of children. We received approximately one response for every eight bills distributed.

## 3.7 Additional sources of information

During the consultation period, the Ministry of Gender Equality and Child Welfare also commissioned three studies, supported by UNICEF, which provided useful information for the revision of the draft bill. The respective aims of these studies were to assess (1) foster care systems in Namibia,<sup>3</sup> (2) capacity to manage alternative care<sup>4</sup> and (3) options for a new system of grants for children.<sup>5</sup>

The purpose of the foster care assessment was to evaluate the role of foster care within the overall framework of alternative care for children; to analyse policy, law, standards and practice in the provision of alternative care; to assess capacity to implement, monitor and report by government and civil society at national, regional and local levels; and to develop recommendations for managing systems of alternative care.

The alternative care study was designed to assess the capacity to manage alternative care systems in Namibia through an analysis of the standards and quality of residential care in the country, and to make recommendations for future approaches to alternative care.

The focus of the grant study was to draft proposals for a viable new approach to replace the existing system, which was determined to be costly and unwieldy to implement.

The results and conclusions of these three studies informed the revision of the bill. Reports on these studies have been produced separately.<sup>6</sup>

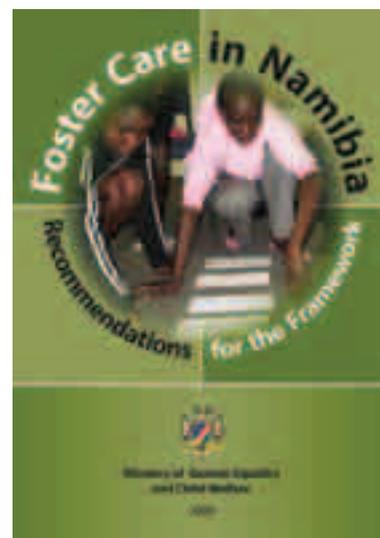
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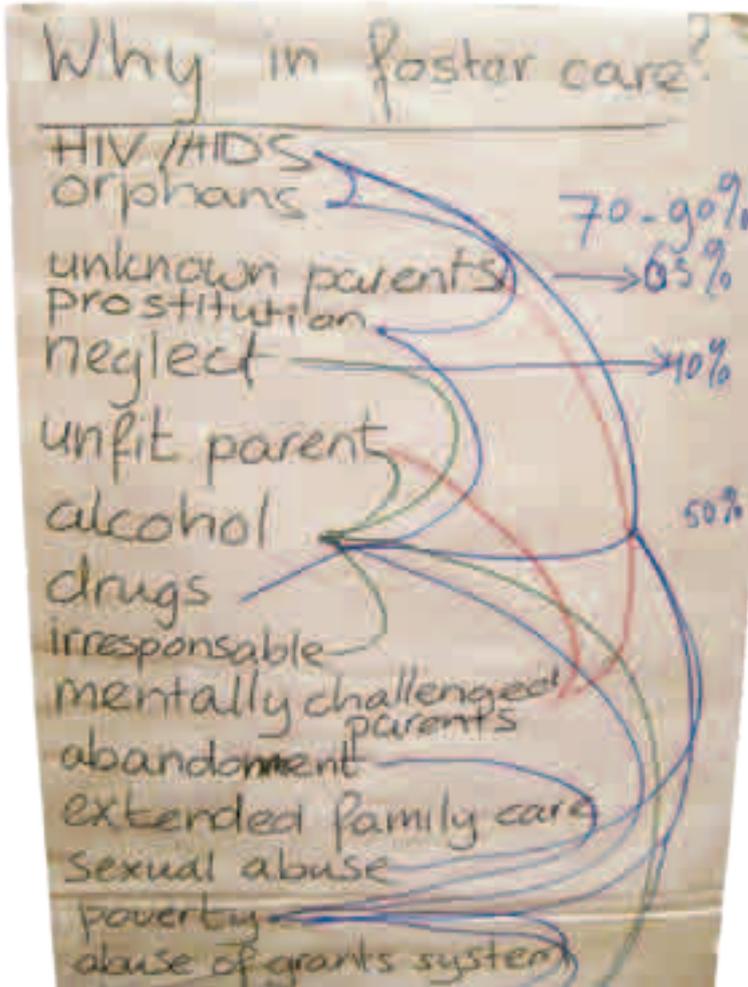
<sup>3</sup> The Ministry commissioned international consultant Bep van Sloten to conduct this study with technical and financial support from UNICEF.

<sup>4</sup> The Ministry commissioned international consultant Andrew Dunn to conduct this study with technical and financial support from UNICEF.

<sup>5</sup> The Ministry commissioned the Human Sciences Research Council (HSRC) to conduct this study with technical and financial support from UNICEF.

<sup>6</sup> Copies of these reports may be obtained from the MGECW or UNICEF.





## My Family



# MATERIALS DEVELOPMENT

## 1. Overview of materials developed

The Technical Working Group attributes much of the success of the consultation process to the extensive preparation and materials development. It is not very useful to ask stakeholders to comment on a proposed law without some background information highlighting national and international debates on key issues. The materials developed by the team were designed to unpack complex issues by breaking them down into a series of questions which stakeholders could consider and respond to.

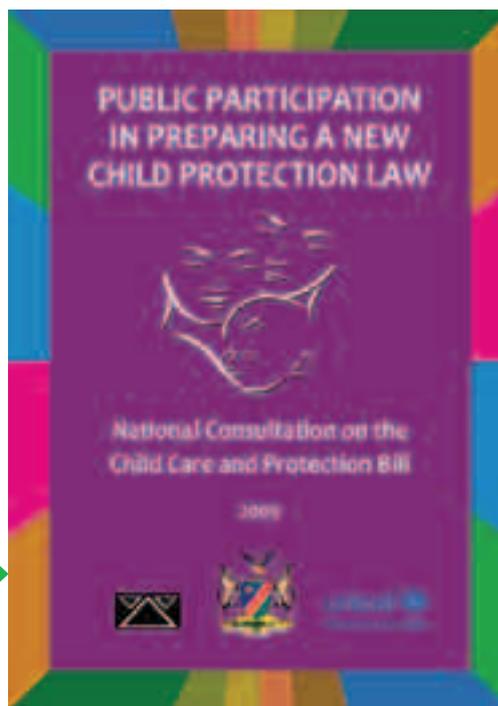
An experienced lay-out artist was engaged to develop a particular “look” for the set of materials, including a logo which could be used to “brand” the materials for easier identification.

The Ministry would like to thank Perri Caplan for designing the eye-catching logo and for making the adult materials so bright, clear and visually appealing. Draft design concepts were considered and approved by the Technical Working Group. The design concept chosen was suggestive of a rainbow, in keeping with the goal of making the materials colourful and appealing. The logo showed a child situated in the context of a loving family, represented somewhat abstractly so that it could signify any loving family members and not necessarily a “nuclear family” of mother, father and child.



## MATERIALS PREPARED FOR THE CONSULTATION PROCESS

1. **Background analysis:** an extensive preliminary paper on the key topics covered in the bill, including statistics, information on comparative laws and international guidelines and other background material
2. **Factsheets:** 21 one-page factsheets on the different topics in the bill to present issues for discussion in an accessible form; 18 of these factsheets were translated into four local languages, and booklets compiling key factsheets were prepared for distribution in three languages
3. **Bill summary:** a simple-language summary of the preliminary draft bill
4. **Text of draft bill with commentary:** a user-friendly layout of the entire draft bill, with commentary on some of the key issues to encourage discussion
5. **Materials for children:** child-friendly versions of factsheets on key topics, combined into a short booklet for use in children's consultations
6. **Short booklet on the consultation process:** a 20-page publication about the key steps in the consultation process
7. **Final report on the consultation process and its outcome:** a full report on the process and the input received.



## 2. Background research

The Ministry commissioned the Legal Assistance Centre (LAC) to carry out background research which could inform the consultation process. The LAC involved 12 legally-trained volunteers and interns in assisting with comparative law research on specific



topics, working under the supervision of the project coordinator (an experienced lawyer) over several months. The LAC collected and compiled statistics from the Ministry and from Commissioners of Child Welfare. The researchers also collected preliminary analysis from international experts on issues with particular international dimensions, such as child trafficking. The background research also compared the preliminary draft with relevant international conventions and guidelines.

The resulting analysis of the preliminary draft bill ran to some 365 pages. It was not formally published,<sup>7</sup> but utilised as a resource for the drafting of simple-language factsheets, commentary on specific provisions of the bill and an informed summary of the bill. It also proved to be an invaluable resource for the preparation of workshop inputs, and a reference tool for workshop facilitators to assist them in responding to questions which arose during group discussions.

### 3. Factsheets

The Ministry, with the assistance of the Technical Working Group, produced 21 one-page factsheets on the different topics in the bill to explain issues for debate in an accessible form. The factsheets were translated into Afrikaans, Oshiwambo, Nama/Damara and Rukwangali. Budgetary constraints did not allow for translation into additional languages.

**Factsheets on the following topics were produced:**

1. Overview of the bill
2. Objectives and guiding principles
3. Age of majority
4. Parenting plans
5. Children's Ombudsman
6. Child Welfare Advisory Council
7. Probation officers
8. Children's Courts
9. Legal representation
10. Contribution orders
11. Prevention and early intervention services
12. Facilities that care for children
13. Child trafficking
14. Age of medical consent
15. Corporal punishment
16. Children in need of protection
17. National Child Protection Register
18. Foster care
19. Other child protection measures
20. What is missing – part a
21. What is missing – part b



<sup>7</sup> Although the preliminary analysis was not formally published during the consultation process, it may be adapted in future to serve as an informative commentary on the final version of the Child Care and Protection Act. Plans for such a publication are under discussion at the time of writing.



DRAFT CHILD CARE AND PROTECTION ACT – ISSUES FOR PUBLIC DEBATE

# CHILD WELFARE ADVISORY COUNCIL

## What is the Child Welfare Advisory Council and what would it do?

A Child Welfare Advisory Council would be a government-appointed body with the task of promoting the rights and interests of children in society. It would be somewhat similar to Namibia's Labour Advisory Council which advises on issues relating to the Labour Act.

The draft Child Care and Protection Act gives the following key functions to the Child Welfare Advisory Council:

- ④ to advise the Minister of Gender Equality and Child Welfare on child welfare services
- ④ to advise any government body involved in implementing the Child Care and Protection Act
- ④ to recommend new laws or amendments to existing laws on child welfare
- ④ to design programmes for the protection or care of children
- ④ to monitor the implementation of the Child Care and Protection Act and related laws
- ④ to encourage the involvement of non-governmental organisations and members of the community at large in matters relating to child welfare.

Every government ministry that performs work related to child welfare would submit a report on its implementation of the Child Care and Protection Act to the Council each year. In turn, the Council would submit an annual report to the Minister of Gender and Child Welfare. This report would also be tabled in Parliament. Through this reporting system, the Child Welfare Advisory Council would monitor the national implementation of the Child Care and Protection Act and related laws.

## Who would be on the Child Welfare Advisory Council?

The draft Child Care and Protection Act says that the Council would be composed of 15 members appointed by the Minister of Gender and Child Welfare:

- ④ 8 government stakeholders
- ④ 4 private sector stakeholders
- ④ 3 community stakeholders.

The chairperson is chosen by members of the committee. At least eight members of the Council must be women. The basic terms of office are three years, with the option of re-appointment.

The public stakeholders would be chosen from a list of nominations submitted by interested parties to the Ministry of Gender and Child Welfare. This means that representatives from churches or traditional authorities may be chosen to sit on the council, but this is not guaranteed. Some countries make sure that certain interest groups are represented, by requiring that some Council members are drawn from churches, traditional authorities, social services and sometimes international agencies such as UNICEF.

## What do other countries do?

Kenya, Zimbabwe and Sierra Leone are examples of African countries with councils on children's services. Zimbabwe's council has a budget and can fund activities and programmes relating to child welfare. Kenya's council is involved in planning, financing and co-ordinating child rights and welfare activities and can make regulations. The council in Sierra Leone has supporting structures in each village and chiefdom. Should Namibia's council draw on any of these examples?

Please turn the page to find out how to contribute your opinions to the public debate on this issue.



## DRAFT CHILD CARE AND PROTECTION ACT – ISSUES FOR PUBLIC DEBATE

# PARENTING PLANS

### Protecting the best interests of a child

Sometimes more than one person has responsibility for a child, and in some cases this can lead to conflict. It may be that the child's parents cannot agree. It may be that the child is in the care of someone other than the parents, such as a grandmother or a close family friend or foster parents. To help protect the best interests of the child in such situations, the draft Child Care and Protection Act provides for **parenting plans**.

### What is a parenting plan?

A parenting plan is an agreement that can cover any aspect of parental authority. It might be an agreement between parents, or it might involve extended family members or others who help care for a child. A parenting plan might include agreements on:

- 🕒 where and with whom the child lives;
- 🕒 payment of maintenance;
- 🕒 maintaining contact with the child;
- 🕒 schooling and religious upbringing of the child.

Parenting plans are optional and voluntary. They may not be needed in all situations.

### Why are parenting plans needed?

Parenting plans are intended to help prevent disputes. Parenting plans can help families make decisions before problems occur, to reduce the potential for conflict and protect the best interests of the child.

One reason to make a parenting plan could be if the parent of the child is not taking care of the child on a daily basis. For example, it might be useful to have an agreement between the parents of a child and the grandmother who is taking care of the child while the parents are working in the city:

*Peter and Mary have a daughter. The daughter is living with Mary's mother. Peter, Mary and Mary's mother make an agreement saying that Peter and Mary will both contribute to the child's maintenance. The agreement says that Mary's mother must consult Peter and Mary before she decides on a school for their daughter, and it says how often they will both visit.*

Parenting plans could be used by parents who have divorced, so they can continue to co-operate in raising their children. They could also be used by unmarried parents to decide on each parent's role in the child's upbringing. The draft Child Care and Protection Bill does not currently provide sufficient information on who can make parenting plans.

### How should a parenting plan be made?

The draft Child Care and Protection Act currently says that if the care-givers of a child want to make a parenting plan, they **must** get help from a lawyer, social worker or psychologist, and they **must** ask a social worker or another suitably qualified person to talk through the issues with them if they are struggling to reach agreement.

The parenting plan **must** be in writing, and signed by all the parties to the agreement. It **may** be registered with a legal practitioner **or** made into a court order. The people who make the plan do not have to register it if they do not want to, but making it into a court order could help with enforcing it.

Making the agreement formal by writing it down will help if someone later wants to argue about what was agreed. But getting help from a lawyer, social worker or psychologist may be difficult for many people in Namibia.

### Enforcement of parenting plans

The draft Child Care and Protection Act does not currently provide sufficient direction on how parenting plans would be enforced. The Children's Status Act 6 of 2006 already provides procedures for dealing with disputes between unmarried parents about custody, guardianship and access. These are designed to be simple and inexpensive procedures which do not require a lawyer. One option would be to have similar procedures in the Child Care and Protection Act. It would probably be easiest for both members of the public and children's court personnel if there is one basic procedure for addressing family disputes of a similar nature.

Please turn the page to find out how to contribute your opinions to the public debate on this issue.

All of the factsheets were designed in a colourful, lively and easy-to-read format. Most of the factsheets summarised the current law, the proposed law and the approaches taken in to the issue in question in a few other countries. Some provided statistics to contextualise issues – such as the number of Namibian children in foster care (14 000 in 2009), and the number of adoptions registered annually in Namibia (about 80 per year as of 2009). Many factsheets used examples or charts to make issues clearer, such as the flow chart shown below which illustrated the proposed procedure for dealing with a report that a child may be in need of protective services.



All of the factsheets included a list of questions intended to inspire discussion. Much time was spent on framing clear and useful questions that would do more than simply measure public opinion, by collecting more detailed information on the pros and cons of various approaches. Some questions were open-ended while others were more definitive, in an effort to produce clear opinions about issues as well as explanations about the reasons behind those opinions.

To give a concrete example, one factsheet asked the public whether the bill should provide for mandatory reporting of suspected child abuse and neglect by all people, or just for professionals working with children. While it was useful to know how many people preferred one of the other of these options, it was even more useful to know *why*. So the factsheet discussing this issue presented an additional series of questions for stakeholders, to elicit as much information as possible on the considerations underlying their recommendations for mandatory or voluntary reporting.

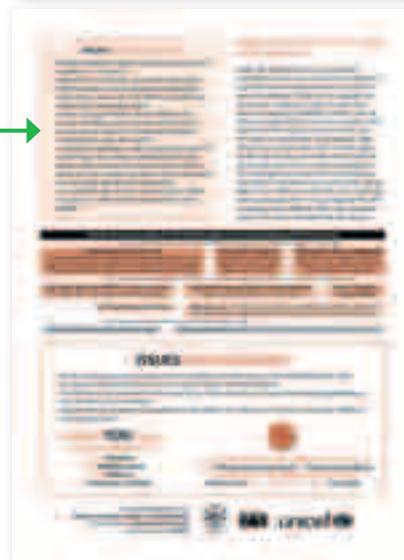
The detailed questioning encouraged more detailed feedback. This in turn allowed for summaries of key considerations such as the one shown in the box on pages 25-26, which could give more meaningful guidance to policy-makers than a simple report-back of the numbers of people who “voted” for one option over another.

## MANDATORY v VOLUNTARY REPORTING

Issues for discussion presented in the relevant factsheet →

### ISSUES FOR DISCUSSION

- ⑨ Should reporting of children in need of protection be mandatory or voluntary?
- ⑨ Should there be different rules about reporting for different people, such as mandatory reporting for professionals who work with children and voluntary reporting for the general public?
- ⑨ Is there a danger that ill or injured children will not get the medical care that they need if doctors and nurses are required to violate doctor-patient confidentiality and make reports?
- ⑨ If mandatory reporting is required, this would mean that a parent must report abuse committed by the other parent. Failure to report the abuse could be punished. Would it be fair to punish this parent? What if this parent was also being abused by the other parent?
- ⑨ Is a criminal charge the best punishment for a failure to report, or is there a better sanction that can be applied?



## FEEDBACK ON MANDATORY v VOLUNTARY REPORTING OF CHILD ABUSE AND NEGLECT

The revised bill proposes **mandatory reporting for professionals** and **voluntary reporting for other people** on the grounds that resources should be focused on assisting children, rather than on prosecuting members of the general public for failure to report child abuse or neglect. The theory is that public awareness campaigns to encourage voluntary reporting would probably be more effective and efficient than the threat of criminal punishment.

During the consultations, public opinion was divided on whether there should be mandatory reporting for everyone, or whether this mandatory duty should apply only to professionals.

People who supported **mandatory reporting by everyone** made the following points:

- ⊕ It will help protect children, who are an especially vulnerable group.
- ⊕ It will increase the number of cases of child abuse and neglect which are reported to authorities.
- ⊕ It raises awareness of the need for everyone in society to work together to protect children.
- ⊕ It will help overcome the perception that family matters are always private ones.
- ⊕ It may help family members or community members justify their reporting of abuse by other family members/community members.
- ⊕ Some children will never encounter professionals such as doctors.

People who supported **mandatory reporting only by professionals who work with children** made the following points:

- ⊕ There is a culture of fear and silence and a law on mandatory reporting will not overcome this
- ⊕ It is better to encourage reporting by members of the public than to punish failure to report as a crime. There should be encouragement through public awareness campaigns.
- ⊕ Untrained people will not make accurate reports. This could result in stigma against someone who was not actually an abuser. Non-professionals will also not be sure when there is enough evidence to warrant a report – how sure do you have to be about the abuse?
- ⊕ There may be so many reports that there are not enough social workers to investigate them.
- ⊕ Mandatory reporting by everyone may lead to further abuse as a reaction to a report, or the withdrawal of family support and assistance. It could break down trust and family relationships.
- ⊕ Mandatory reporting by everyone may deny children and families the opportunity of finding other ways to deal with the problem. Someone should speak to the parents to see whether the situation can be improved before the case is reported. It will also put members of the public in a difficult position if the child does not think that there is a problem or does not want it reported.
- ⊕ Family members may be afraid of the consequences of reporting abuse by other family members. (Some suggested that an exception to the criminal penalty could be provided for a spouse or family member who does not report because of fear.)
- ⊕ What happens to the child if both parents are punished (one for being abusive and one for not reporting it)?

**Some people offered other suggestions:**

- ⊕ Some said that mandatory reporting should apply to all persons, but that there should be stiffer penalties for professionals who fail to report. Members of the public should have punishments like community service, not imprisonment.
- ⊕ Some emphasised the need to ensure that the identity of anyone who reports abuse is kept confidential. (This is now covered in the bill.)
- ⊕ Almost everyone consulted emphasised the need to make sure that anyone who reports abuse in good faith is not liable in any way if they are wrong. (This is now covered in the bill.)



Although English is the official language of Namibia, there are more than 11 indigenous languages and more than 50% of the population speaks Oshiwambo.<sup>8</sup> Daily newspapers are published in English, Afrikaans, Oshiwambo and German, and a monthly supplement appears in one national newspaper with articles in a number of other indigenous languages. Producing the consultation materials in English alone would have been cheaper, faster and easier, but would have prevented us from reaching a substantial proportion of the population. One of the objectives of the project was to “raise the level of public awareness of the forthcoming law and provide opportunities for public input which would advance overall awareness and understanding of children’s rights in Namibia”, and this could only be achieved if the information was provided in multiple languages.

The adult factsheets were produced in English first, and then translated into Oshiwambo, Afrikaans, Rukwangali and Damara/Nama. The translations went through a thorough review process. Following the initial translation, they were checked by two proofreaders who back-translated the information to check for errors prior to lay-out. After lay-out, the translation was checked again by the original translator. As many people in Namibia speak multiple languages, members of the Technical Working Group with the requisite language skills were requested to proofread the factsheets as a final test. This was extremely important because of the influence of dialect, and because ways of explaining abstract concepts are often more variable in indigenous languages than in English.

Despite the rigorous process followed for translation, the team still experienced challenges. The Afrikaans translations in particular required considerable amendment prior to printing. As Afrikaans is likely to be the second or third most common language spoken throughout Namibia, it was important to get the translation right and the timeline was delayed to ensure that an accurate translation was achieved. We allocated two-three months to translate the factsheets as we knew from experience that this is a challenging process. On reflection, even this amount of time was not enough. The translations into four languages involved a team of 14 people – one translator and

<sup>8</sup> Ministry of Health and Social Services, *Namibian Demographic and Health Survey 2006-07*, Windhoek, 2008.

two people to check the translation for each language, plus two additional translators who were called upon due to the size of the job. The amount of material to be translated was also large, even though we omitted some of the more specialised topics (such as legal representation) – in total, 18 double-sided factsheets, amounting to 36 fairly dense pages of material, were translated into each language. One of the most important learning points from this process is to allocate sufficient time for translation. While we make this point throughout our report on the consultation process, a generous timeline is particularly important for translations. Translating material on law requires care and accuracy to ensure that the clear and correct information is disseminated to the public.

The time and money spent translating the factsheets was worth the effort. The Afrikaans and Oshiwambo translations were disseminated as inserts through the newspapers, and the Rukwangali and Damara/Nama translations were distributed by the Ministry’s regional offices. We also sent copies of all of the translations to indigenous language radio stations. The impact of the translated factsheets can be seen through the email and text message responses received in Afrikaans and Oshiwambo. It is unlikely that people would have responded in these languages if the information had been disseminated only in English. It is also possible that some responses in English may have been inspired by information read in one of the indigenous languages. It is difficult to quantify the precise impact and value of the translated factsheets, but the Ministry is convinced that it is necessary to utilise as many local languages as possible in a national initiative such as this one.

As noted in Chapter 1, the factsheets were central to all stages of the revision process. Individual factsheets on different topics were distributed to stakeholders directly and at workshops, and factsheet booklets in three languages were distributed as inserts in national newspapers (a form of media outreach described in further detail in Chapter 3). The electronic versions of the factsheets posted on the Legal Assistance Centre and UNICEF websites reached both national and international audiences. The factsheets were also used as reference points for discussions in a range of forums. Through the use of the factsheets, the massive bill was broken down into manageable bites which could be more easily comprehended and debated.

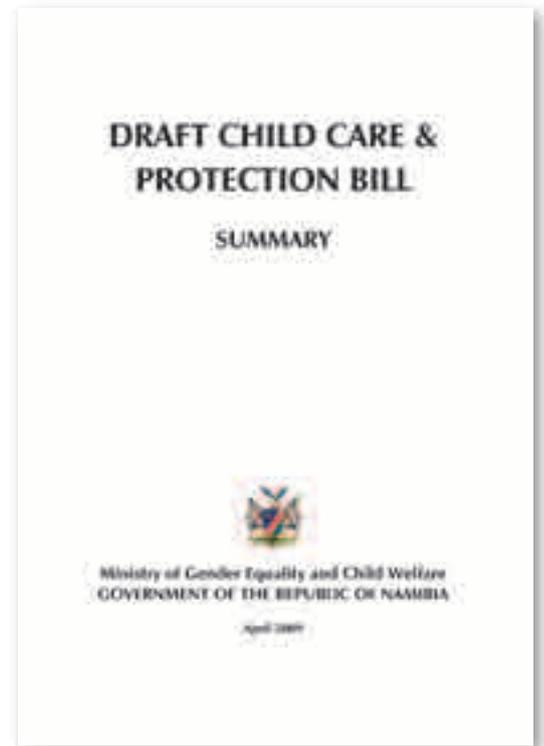
The factsheet concept will continue to be used as the revised bill moves forward. The factsheets will be adapted to reflect the content of the final bill, and then used as workshop hand-outs and in other educational efforts by the Ministry and its partners once the bill becomes law.



## 4. Bill summary

To supplement the factsheets aimed primarily at the general public, the Ministry commissioned the Legal Assistance Centre to prepare a simple-language summary of the entire bill for stakeholders.

This summary began with a brief overview of the relevant provisions of the Namibian Constitution and key international conventions on children. It then summarised the entire bill in the simplest possible language, organised as clearly as possible in order to be accessible to all stakeholders. For example, the box below shows the summary of the provisions in the preliminary draft bill on child-headed households.



### 19.1 Child-headed households

The draft Bill includes a section allowing the Minister to recognise a household as a “child-headed household” if the following three circumstances are present: (1) the parent or care-giver of the household is terminally ill or has died; (2) there is no adult family member available to care for the children in the household; and (3) a child has assumed the role of care-giver in respect of some other child in the household.

Every child-headed household must be placed under the supervision of an adult named by the children’s court, or named by a state agency or NGO designated by the Minister. The designated state agency or NGO may collect and administer any grants to which the household is entitled.

The adult selected to supervise the child-headed household, or the state agency or NGO involved, may not take any decisions about the household without consulting (a) the child who heads the household and (b) the other children if they are of sufficient age, maturity and development for this. The child who heads the household may take all day-to-day decisions about the household and the children in it as if that child were an adult care-giver.

A child-headed household may not be excluded from any aid, relief or programme aimed at poor households just because it is headed by a child.

The bill summary also included brief background information on some of the more complex issues. For example, the box on the next page reproduces an introduction to the concepts of foster care and kinship care which was included in the bill summary.

## 13.1 Foster care and kinship care

The term “foster care” is used to cover a variety of different kinds of care. In developed countries it usually refers to formal, temporary placements made by the state with families who are monitored and compensated to some degree. This kind of care is usually for a limited period, until the child can return home or move into a more permanent placement such as adoption.

However, in many developing countries, fostering more often takes the form of “kinship care”. Kinship care is the full-time care of a child by a relative or another member of the extended family (or even by a close family friend). It may be a means to provide care for a child or to give a child access to education. The child may be expected to do some kind of work for the foster family. Kinship care is the primary mechanism which allows children orphaned by HIV/AIDS in family care in their communities. Kinship care is often informal and unregulated by the State.

Kinship care is common in sub-Saharan Africa. Children may be sent to relatives to learn a trade or attend school, with the costs of the child’s schooling and maintenance being paid by the host family or the sending family, or being shared between the two. Children may be sent to a household with higher social standing, often moving from a rural to an urban area, in arrangements which are sometimes called “alliance fostering”. Such fostering is not seen as an emergency measure, but as a positive way to give children additional skills, experiences and opportunities. Children who live with extended family members act as “ambassadors” for their families and reinforce important networks of relationships. This results in the reallocation of resources within an extended kin group, which can maximise financial security. Social ties are strengthened through shared obligations and mutual assistance. In this kind of kinship care, the biological parents or parents retain rights over their children. The parents may visit the child, contribute to the child’s upkeep or direct the child to return home at some point.

Some draw a distinction between such positively-motivated kinship care and “crisis fostering”, when children are moved because of some negative event such as the death of a care-giver, or because a relative is barren.

In both instances, kinship care provides the benefit of flexibility. It essentially allows extended families to adjust household sizes, and to spread the cost of parenting over a wider network of kin. It can give mothers women greater scope to engage in income-generating activities, and possibly to remit some of this income to the person caring for the child.

It has been noted that these flexible arrangements take place in cultural contexts where it is not viewed as being normal or necessary for the biological parents to take primacy in looking after the child. For example, even if the mother is present in the household, others such as an older sibling, a grandmother or some other family member may play a large role in looking after the child from infancy; “care by a diversity of household members may be taken for granted”.

A recent study found that foster care in Namibia most often takes the form of kinship care, as opposed to the traditional notion of foster care by unrelated adults, and that it is often motivated by the desire to get access to the foster care grant. In early 2009, the Ministry of Gender Equality and Child Welfare paid foster care grants to almost 14 000 children.

### **Advantages of kinship care**

- It allows family relationships to continue and preserves a sense of family identity.
- It maintains the child within the child's own family, culture and community.
- It avoids the anxieties which are likely to result from placements with unfamiliar adults.
- In many communities, it is a cultural norm for children to be cared for by a larger circle of relatives than just the biological mother or father, which can be an enriching experience.

### **Disadvantages of kinship care**

- Children may be treated differently from the caretaker's own children. They may be exploited, abused or denied access to education and health services.
- It may delay reunification of a child with the child's parents because the family is comfortable with the situation, because of the there are financial incentives to the arrangement or because there is less intervention from social workers to motivate reunification.
- If arranged informally, there is no assessment or monitoring by social workers to ensure that the arrangement is in the child's best interests.
- Carers may be over-burdened with children to care for, especially in the context of the HIV/AIDS pandemic.

Once the law is finalised, there are plans to update and adapt the bill summary, supplemented with additional examples and illustrations, as an educational publication for service providers and community groups with an interest in the new law.

*“The production and use of simple, accessible materials was integral to the success of this consultation.”*

**Helena Andjamba**, Director of Child Welfare,  
Ministry of Gender Equality and Child Welfare

## 5. Full text of draft bill with commentary

Stakeholders were also provided with a user-friendly layout of the entire draft bill, with commentary on some of the key issues to encourage discussion. The commentary was printed in boxes in a different colour type to clearly distinguish it from the actual provisions of the preliminary draft bill.



The commentary boxes provided a variety of background information. For example, some commentary boxes contrasted draft provisions with analogous provisions in similar legislation in other African countries such as Ghana, Kenya, Sierra Leone and South Africa – as in the case of the provision below which prohibits the sale of alcohol to children at places of entertainment.

(3) Alcohol or tobacco products may not be sold to children at places of entertainment.

The corresponding provision in South Africa prohibits alcohol from being “sold, served or made available” to children at such entertainments.

Other commentary boxes pointed out aspects of the draft which were not clear – as illustrated by the commentary below on the preliminary provision on the maximum number of children in foster care.

### Number of children to be placed in foster care

88. Not more than three children may be placed in foster care with a person, except where –

- (a) the children are siblings or related; or
- (b) the court considers this for any other reason to be in the best interest of all the children.

The analogous South African provision sets the limit at six children. One question is how this will be measured. The draft says that no more than three children will be placed in foster care “with a person”. What if a married couple apply to be foster parents together – can three children be placed with each of them for a total household of six? Another issue is whether or not the number of children other than foster children already in the foster household should be taken into consideration. For example, should a foster parent who is already caring for three of her own children be treated the same as a foster parent who has no children of her own?

Still other commentary boxes provided background material on difficult issues, such as whether or not there should be a 60-day waiting period before an adoption order is made final so that the biological parents giving up the child for adoption have time to reconsider their decision.

#### **60-DAY WAITING PERIOD**

In South Africa, the 60-day waiting period provided for in the Children’s Act 2005 was a continuation of an existing practice, whereas in Namibia this is a new innovation.

The South African Law Reform Commission found that many respondents recommended against the retention of the 60-day ‘cooling-off’ period for the following reasons: (a) the uncertainty caused by the delay is traumatic to both adoptive parents and birth parents; (b) the waiting period can hamper bonding between the prospective adoptive parents and the child; (c) the objective of the waiting period could be served by counselling to birth parents, to ensure that the decision to give a child up for adoption has been thoroughly considered; and (d) some Commissioners of Child Welfare place babies in places of safety during this 60-day period which has a negative impact on the bonding process. On the other hand, some persons consulted argued for the retention of the 60-day period. Reasons offered were (a) it is important to observe the placement and to establish whether or not bonding has taken place during this 60-day period; (b) the circumstances of the birth mother might also change and cause her to want to withdraw her consent; (c) a lifetime decision like adoption should be well-considered by all parties involved; and (d) adoptive parents can be counselled to accept this risk and the waiting period gives them sufficient time to evaluate the success of the placement before the adoption is finalised. Some persons consulted suggested a much shorter period, such as 30 days. The Commission ultimately recommended the retention of the 60-day cooling off period, having been persuaded that proper pre –and post-adoption counselling should prevent difficulties from arising.

The 60-day period is retained in the South African Children’s Act 2005, and it has been asserted that this is a positive outcome:

The decision to give a child up for adoption is difficult and needs careful consideration on the part of the consenting party. The 60 days is a cooling-off period which gives the consenting party an opportunity to fully reflect on their decision before it becomes final. It also offers a safeguard against any form of pressure which may have been brought to bear on the consenting party, and may have led to an ill-formed or premature decision to give the child up for adoption.

# 6. Materials for children

For consultations aimed specifically at children, factsheets on key topics were converted into a more child-friendly form and put together in a short booklet which was suggestive of a colouring book or comic. The development of the children’s materials was carried out by a team of consultants with specific experience in working with children, under the guidance of a Children’s Reference Group assembled to advise on the children’s consultations.

Although there was unfortunately insufficient money in the consultation budget to reproduce the children’s booklet in colour, it was nevertheless made appealing through the use of photographs, graphics and a lively lay-out. The black-and-white format also allowed for easy photocopying if additional copies of the booklet were needed. There was a special effort to speak directly to children in very simple language, and to provide exercises which appealed directly for input. The children’s booklet also included a glossary at the back. Sample sections are shown below and on the next two pages.

The Ministry would like to thank Dr Elizabeth Terry of Design and Development Services for her creative work in designing attractive and effective children’s materials under tight time and budget constraints.



## OVERVIEW OF THE PROPOSED CHILD CARE & PROTECTION ACT

Just like schools have school rules, such as ‘come on time’, ‘don’t bunk’, ‘don’t bring sharp objects to school’, Namibia has many rules which are called laws. Namibia’s main law on children is the Children’s Act 33 of 1960. Namibia kept this law from South Africa at independence. So this law is very old and no longer the best law for Namibia. The Ministry of Gender Equality and Child Welfare wants to replace the old law with a new law: the *Child Care and Protection Act*. The Ministry wants YOUR help in creating this law to make it a good law that really protects and assists Namibian children.

**Do you think YOU can help?**

**Did you know?**

An **Act** is a **Law** when it has been passed in Parliament.

When an **Act** is still in a **draft** or **proposed** form it is called a **Bill**.



## CHILDREN AND ALCOHOL

Namibia has a problem of children drinking alcohol. A health study found that among 13-16 year-olds, 11% of girls and 18% of boys use alcohol regularly, and that over 28% of youths aged 13-30 drink alcohol weekly, and almost 7% drink alcohol daily. To help with this problem, the Child Care and Protection Bill could amend the Liquor Act 6 of 1998 to make the current rules clearer and to expand them to cover areas which are currently left out, for example:

- ⇒ Stop children under the age of 18 from being in drinking places (e.g. bars, shebeens) except when accompanied by a parent or guardian.
- ⇒ Make people who sell alcohol confirm the age of the buyer by checking their ID.
- ⇒ Make the penalties stronger if the buyer gives a false ID to the seller.
- ⇒ Define situations where alcohol can be supplied to persons under age 18 (e.g. religious ceremony)
- ⇒ Forbid the making of homebrew (e.g. tombo, kaalgat) by children under age 18.
- ⇒ Put in place more restrictive rules for persons under age 21 who drink and drive.

?

Do YOU agree with these ways to stop children drinking?

?

What else should be put into the law?



# RIGHTS AND RESPONSIBILITIES

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

## What should Namibia do?

	<p style="text-align: center;"><b>Kenya's Children's Act 2001</b></p> <p>This law says that a child has a responsibility to:</p> <ul style="list-style-type: none"> <li>⇒ respect his parents, superiors and elders at all times and assist them in case of need;</li> <li>⇒ serve his national community by placing his physical and intellectual abilities at its service;</li> <li>⇒ preserve and strengthen social and national solidarity; and</li> <li>⇒ preserve and strengthen the positive cultural values of his community in his relations with other members of that community.</li> </ul> <p><b>Could any of these create problems?</b></p>
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If you think the Child Care and Protection Act should include a section on children's rights and responsibilities, what rights and responsibilities should be including?	
List some Rights	List some Responsibilities
How should these rights and these responsibilities be enforced (put in force)?	Can you think of any misunderstandings that might happen if children and their parents know the children's rights and responsibilities?
Rights:   Responsibilities:	Example: Would a girl have to have sex with her father if he forces her because she is told to always obey her parents? Would a boy refuse to wash the dishes and make his bed because he has learned that no child under 14 should work?

# **YOU CAN CONTRIBUTE TO THE CHILD CARE AND PROTECTION BILL IN TWO DIFFERENT WAYS: COMMENTS OR CONTEST**

The Ministry of Gender Equality and Child Welfare wants to make sure that the Child Care and Protection Bill meets the needs of children in Namibia today. We are providing information about the proposed new law through **this booklet**, in newspapers and magazines, on radio and television, through community organisations and through workshops in parts of the country. Help the Ministry of Gender Equality and Child Welfare to hear your views on what should go into the Child Care and Protection Bill.

We want **YOU**, as Namibian children and youth, to tell us about the problems faced by you or children in your community or school. We want **YOUR** opinions on the proposed topics for the new law.

We want to know what else **YOU** think should be included in the new law.

## **YOU can give us your ideas in two different ways:**

**No. 1**

**YOU can send your comments on any of the topics that interest YOU by:**

SMS: 0814241591

Email: [CCPA@lac.org.na](mailto:CCPA@lac.org.na)

Fax: 088613715

Post: LAC PO Box 604, Windhoek

**Make sure you include your AGE when you make your comment or suggestion.**

and/or

**No. 2**

### **CCPA CONTEST: MY IDEAS ON THE CHILD CARE AND PROTECTION BILL**

Enter the contest by answering the questions on the next pages. Cut out or copy the pages with the questions and your answers. Send it all to the Legal Assistance Centre (LAC) by fax or post as above or by hand delivery to the LAC office at 4 Körner Street, Windhoek. Or type your answers and send it by email to [CCPA@lac.org.na](mailto:CCPA@lac.org.na) For any letters, write in 'CCPA Kids Contest' on the envelope. For any emails, type into the subject area: 'CCPA Kids Contest'

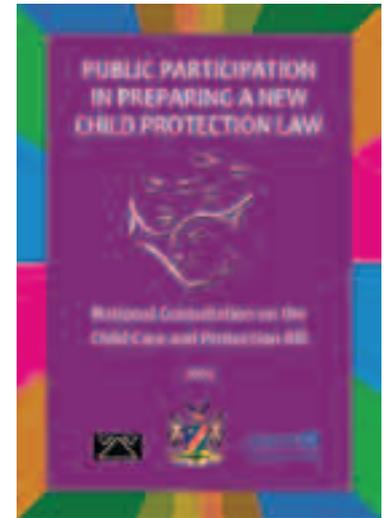
If YOU complete all the questions, YOU might win a great prize: The child or youth (12-21 years of age) who provides the best input (the most thoughtful ideas) will win a prize. We have prizes for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> place. Make sure your answers reach the LAC by the deadline date.

**<< First Prize: Mp3 Player sponsored by JAC-MAT! >>**

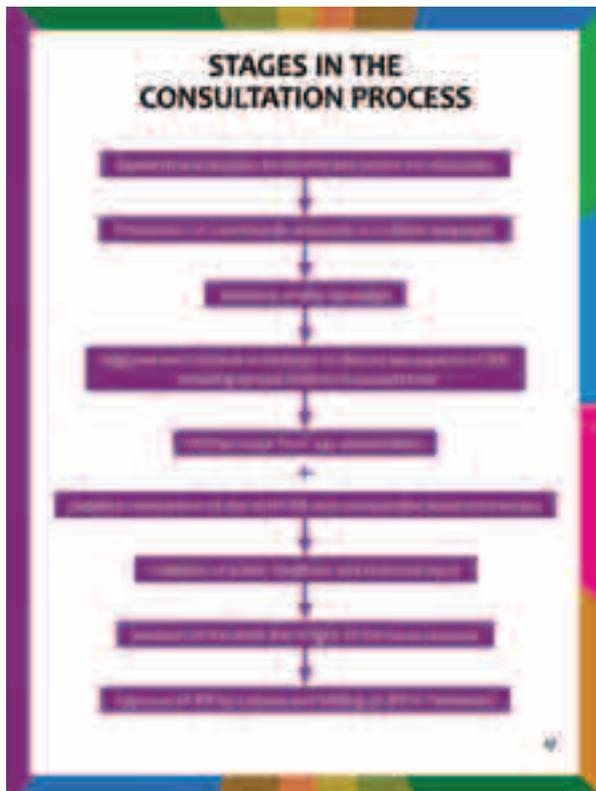
**DEADLINE for both: 7 September 2009!**

## 7. Short booklet on the consultation process

Midway during the consultations, the Ministry produced a 20-page publication about the consultation process. This simple document was designed to inform Parliamentarians, stakeholders and the public about the process. The document summarised the steps in the consultation process and reported the impact that had been achieved at that stage. Following an approach similar to that used for the factsheets, the document is easy-to-read, colourful and contains many visuals.



This booklet was intended to provide an accessible, public version of the overall strategy used to revise the bill. The publication of the strategy in this manner ensured that the entire process was understandable to the public, including the step-by-step plans for public consultation and how the feedback received would be used.



The booklet was produced midway through the consultation process because some stakeholders were concerned about the length of the process. The Ministry knew that a thorough consultation was essential to the development of a good bill, and did not want to be pressured to accelerate the remaining steps. At the time that this document was published, consultations with key groups such as magistrates had not yet taken place, and related research reports commissioned by the Ministry on alternative care and grants were not yet ready. To have halted the consultation process at this point would have meant that the bill would not have benefited from these key sources of input.

The publication was helpful in reassuring Parliamentarians and other stakeholders about the value of the consultation process. While a document of this nature is not essential, particularly if funds are limited, such a publication can be extremely useful to explain why a consultation process is being implemented. This may be particularly relevant for countries where public consultation on law reform is not common. The timing of when to produce such a document can vary. In future law reform processes, the government may choose to produce such a publication at the end of the consultation process, to summarise what has taken place. In other situations, the government might choose to produce a similar publication at the beginning of a consultation process, to outline the planned procedure.

The value of this publication has been acknowledged internationally. For example the Global Programme on Parliamentary Strengthening based at UNDP's Brussels Office has requested permission to post the publication on their website.<sup>9</sup> The publication is also available on the Ministry's *Namibian child* website<sup>10</sup> and on the Legal Assistance Centre and UNICEF websites.<sup>11</sup> The publication also has long-term value, as it will serve as a short, accessible summary of this more-detailed report on the consultation process.

## 8. Final report on the consultation process and outcome

This report is the final product in the series of materials produced in connection with the consultation process. Individual reports were prepared and filed for each workshop and consultation, but the Ministry concluded that it would be difficult for policy-makers and stakeholders to wade through a plethora of individual reports and far more useful to compile them into one unified final report. The individual reports and workshop presentations were utilised as reference points for the re-drafting of the bill and for discussions of the revisions at various meetings of the Technical Working Group.

It is the hope of the Ministry that this report will be useful to Namibian Parliamentarians and policy-makers as an indication of the reasoning behind the Ministry's recommendations on various aspects of child protection issues, and as a guide to consultation around other law and policy issues in Namibia and elsewhere.

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<sup>9</sup> AGORA, the Portal for Parliamentary Development, is a one-stop reference centre and hub for knowledge sharing on parliamentary development: <[www.agora-parl.org](http://www.agora-parl.org)>. The portal aims to be the world's premier resource for information on parliamentary development. AGORA has three main objectives: (1) To act as a hub of information and expertise on parliamentary development programmes; (2) To promote the global streamlining of parliamentary development activities and advocate for parliamentary development worldwide; (3) To consolidate knowledge and expertise, and to create an active online community for those working in parliaments and in the field of parliamentary development.

<sup>10</sup> The Namibian Child Wiki is a collaborative website for sharing information to help the children of Namibia: <[www.namchild.gov.na](http://www.namchild.gov.na)>.

<sup>11</sup> The homepage for the Legal Assistance Centre is: <[www.lac.org.na](http://www.lac.org.na)>. The Child Care and Protection Bill materials can be accessed through the following link: <[www.lac.org.na/ccpa.html](http://www.lac.org.na/ccpa.html)>.

# MEDIA OUTREACH

## 1. Overview of media outreach

A number of different methods were used to engage the media, including the dissemination of factsheets about key topics in the draft bill and a summary of the bill, the production of radio show guides, the submission of articles to newspapers and magazines and personal appearances on radio and television by members of the Technical Working Group. The popularity of social networking via the internet was also utilised through the development of a *Facebook* discussion group.

This summary gives some indication of the estimated readership of the print media utilised, and the broadcast footprints of radio and television in Namibia. However, the numbers provided throughout this report for persons consulted refer only to people who were reached directly, and exclude persons who may have read articles about the Child Care and Protection Bill in newspapers and magazines, or heard about it on radio or television broadcasts.

*“Having had the advantage of reading the public statements and fact sheets issued by or on behalf of the Ministry, it is apparent to me that the complexity and sheer scale of the task at hand require broad consultations and extensive resources.”*

**Hon Justice Peter Shivute**, Chief Justice of Namibia,  
Address at the Closing Session of the Technical Workshop on the  
Child Care and Protection Bill, 19 August 2009

*“In rural area child abuse is viewed as a means of disciplining a child I therefore reject traditional leaders to mediate on children issues.” – SMS*

## 2. Distribution of factsheets as newspaper inserts

The factsheets were distributed in the form of booklets inserted into national newspapers. As the chart below shows, a total of 121 000 booklets in three languages were distributed throughout the country.

Daily newspapers in Namibia currently publish articles in English, Afrikaans and Oshiwambo. Therefore we chose to prepare booklets for insertion into the newspapers in these three languages, as we knew that readers in these languages could be reached through this channel.

Based on a survey of readership levels, and considering that the inserts were released on different days, the Ministry estimates that approximately 40% of the Namibian population would have seen at least one of the booklets.

NEWSPAPER INSERTS	
DETAILS	TOTAL CIRCULATION
English booklet inserted in two English daily newspapers	58 000
Afrikaans booklet inserted in the national Afrikaans newspaper	22 000
Oshiwambo booklet inserted in one national English newspaper which contains a daily Oshiwambo section	41 000
<b>Total circulation of the three different newspapers utilised</b>	<b>80 000</b>
Based on a survey of readership levels, and considering that the inserts were released on different days, the Ministry estimates that approximately 40% of the Namibian population would have seen at least one of the booklets.	

The factsheets were also distributed through other channels such as workshops and conferences and made available on the internet. They were used to brief journalists and to explain issues to workshop participants.

The factsheets were well-received by people who work with children and by the general public. Namibia has also received compliments from international child law experts on the quality and usability of the factsheets.

*“The factsheets are very good and provide clear guidance for workshopping.”*

**Professor Julia Sloth-Nielsen,**  
Dean of the Law Faculty, University of the Western Cape, South Africa

*“I must commend the person or persons responsible for doing the factsheets – they succeed in conveying legal technical issues in a language that I think most would be able to understand.”*

Hennie Potgieter, legal drafter, South Africa

### 3. Media workshop for journalists

Initial contact with the media was made in April when an informal meeting with journalists was convened by the Technical Working Group to introduce Professor Julia Sloth-Nielsen, who headed the team of international experts which advised the Ministry.

Shortly afterwards, factsheets, press statements and other briefing materials were distributed to the media, but these materials tended to be used only once for a feature or not at all. The Technical Working Group realised that continued engagement of the media would be required for ongoing coverage.

As a result, the team decided to convene a workshop with radio journalists on 3 June 2009. The aim was to increase media interest in the consultation process by providing journalists with an opportunity to learn more about the draft bill, and to engage in debates on some of the most interesting issues.

Eleven people from seven media outlets sent representatives to the workshop. At the workshop, journalists were provided with information about the consultation process, including key dates (such as the dates of the remaining regional and national workshops). The workshop also discussed the possible use of international days (such as the Day of the African Child) as media hooks. Contact details for the members of the Technical



A staff member of the Legal Assistance Centre giving input at the media workshop

Working Group were provided, along with press releases on the consultation process and factsheets about the bill.

The participants discussed age of majority, age of consent to medical testing, adoption, corporal punishment and access to contraceptives. As the intention of the workshop was to engage the media in stimulating debate on such issues with the public, the meeting focused on airing different views rather than on reaching a consensus. All of the topics discussed interested the group and there was considerable discussion around each issue. This showed the journalists how relevant the topics in question are to the public; if the journalists were getting into heated debates about the issues, it is likely that their audiences would do the same.

The following outcomes from the workshop were noted:

- ④ NBC (Namibia's national broadcaster)<sup>12</sup> and One Africa (a private television station) screened excerpts from the workshop on the television news that evening.
- ④ NBC television news attended the national meetings that were held a few weeks later and filmed the opening for screening on its daily news programme.
- ④ FM 99 hosted a 15-minute slot on the bill in the following week.
- ④ The representative from Base FM recorded quotes from the facilitator to air at a later time.
- ④ Radio Wave featured the national meetings as its lead news item on the day the meetings started.
- ④ FM 99 maintained contact with the consultation team and reported on the subsequent national and regional meetings.
- ④ Base FM hosted a live "Speakers Corner" event to celebrate the Day of the African Child, and invited the Legal Assistance Centre to make a presentation on the process of revising the draft bill.
- ④ Radio Setswana presented the following shows in a single week:
  1. Definition of a Child
  2. Age of Consent for Medical Treatment & HIV testing
  3. Adoption
  4. Corporal Punishment

The success of the workshop indicates that distributing information materials is not sufficient to engage the media effectively. It may be the bulk of information provided was off-putting – although the Namibian media is usually quick to respond to press releases, 21 factsheets on a complex law may have been too intimidating. Involving individual journalists in a lively discussion of some of the most interesting topics in the draft bill proved to be a good stimulus to increased media coverage.

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<sup>12</sup> NBC stands for Namibian Broadcasting Corporation, established by the Namibian Broadcasting Act 9 of 1991.

# 4. Media coverage

## 4.1 Newspapers

A total of 25 articles, opinion pieces, letters and text messages on the bill appeared in national newspapers over a period of seven months. This meant that an average of 3.5 articles was published each month. The maximum coverage in a single month was seven articles during June 2009, as three regional and national meetings were held during that month and covered by various media outlets. The minimum number of articles was two per month in both September and October 2009 as the consultation process was coming to a close by that stage.

Articles were published in all the major daily and weekly newspapers, namely in the dailies *The Namibian*, *Die Republikein* and *New Era*, and the weeklies *Southern Times*, *The Economist* and *Independent Mirror*.<sup>13</sup> Some of the articles were written on behalf of the Ministry by the Legal Assistance Centre. Others were written by staff reporters. The coverage also included opinion pieces from two non-governmental organisations (the Basic Income Grant Coalition and Ombetja Yehinga Organisation), a letter to the editor, and text messages sent to an English-language newspaper that publishes a daily page of such messages.

<sup>13</sup> The *Independent Mirror* has subsequently been discontinued.



Article on *The Southern Times* website, posted on 26 April 2009



Article by the Legal Assistance Centre in *The Namibian* on 21 May 2009

## NEWSPAPER COVERAGE OF THE CONSULTATION PROCESS

	Date	Where	What	Details
1	20 April 2009	<i>New Era</i>	<b>Article:</b> “Child Law under Revision” – overview of bill	staff reporter
2	24 April 2009	<i>The Economist</i>	<b>Article:</b> “Law reform essential in combating child abuse”	staff reporter
3	26 April 2009	<i>Southern Times</i>	<b>Article:</b> “Namibia reviews child protection laws”	Lahja Nashuuta
4	7 May 2009	<i>The Namibian</i>	<b>Photo</b> of group from Keetmanshoop workshop, with explanatory caption	submitted by Rachel Coomer, Legal Assistance Centre
5	29 May 2009	<i>The Namibian</i>	<b>Opinion piece:</b> “Protecting the next generation: Have your say on the Child Care and Protection Bill.”	Rachel Coomer, Legal Assistance Centre
6	29 May 2009	<i>The Namibian</i>	<b>Photo</b> of group from Ongwediva workshop, with explanatory caption	staff reporter
7	5 June 2009	<i>The Namibian</i>	<b>Write-up</b> of Ongwediva workshop	staff reporter
8	8 June 2009	<i>The Namibian</i>	<b>Notable quote</b> (a regular feature in this newspaper)	Ongwediva Councillor Thikameni Ekanjjo
9	12 June 2009	<i>The Economist</i>	<b>Article:</b> “Child Care and Protection Bill revised”	staff reporter
10	16 June 2009 (Day of the African Child)	<i>The Namibian</i>	<b>Article in Youth Paper:</b> “Should Namibia lower its age of majority to 18?”	youth opinions compiled by Mark Nonkes, Legal Assistance Centre
11	19 June 2009	<i>The Namibian</i>	<b>Text message</b>	unnamed individual
12	23 June 2009	<i>The Namibian</i>	<b>Text message</b>	unnamed individual
13	24 June 2009	<i>The Namibian</i>	<b>Article:</b> “Children have their day and their say on issues of the day” – a report on the LifeLine/ ChildLine Namibia national conference	staff reporter
14	30 June 2009	<i>The Namibian</i>	<b>Article in Youth Paper:</b> “At what age should young people be able to access contraceptives?”	youth opinions compiled by Mark Nonkes, Legal Assistance Centre

## NEWSPAPER COVERAGE OF THE CONSULTATION PROCESS

	Date	Where	What	Details
15	7 Aug 2009	<i>The Namibian</i>	<b>Letter:</b> “A BIG grant for little people?” (support for the provision of a universal welfare grant from a local NGO)	Basic Income Grant Coalition
16	11 Aug 2009	<i>The Namibian</i>	<b>Text message</b>	unnamed individual
17	18 Aug 2009	<i>The Namibian</i>	<b>Opinion piece:</b> “A pill too hard to swallow” (on access to contraceptives)	Phillippe Talivera, Ombetja Yehinga Organisation
18	18 Aug 2009	<i>The Namibian</i>	<b>Photo</b> of Children’s Reference Group, with explanatory caption	staff reporter
19	21 Aug 2009	<i>The Namibian</i>	<b>Text messages</b> (two)	unnamed individuals
20	28 Aug 2009	<i>Independent Mirror</i>	<b>Article:</b> “Children in Namibia remain at risk. New Act requires public input”	staff reporter
21	31 Aug 2009	<i>New Era</i>	<b>Article:</b> “Children the best investment” (report on speech given by Hon Justice Peter Shivute, Chief Justice of Namibia at the technical workshop)	staff reporter
22	4 Sept 2009	<i>The Namibian</i>	<b>Letter:</b> “Sex and the youth” (response to opinion piece from Ombetja Yehinga Organisation)	community member
23	4 Sept 2009	<i>The Economist</i>	<b>Article:</b> “Children need more protection – Shivute” (report on speech given by Hon Justice Peter Shivute, Chief Justice of Namibia at the technical workshop)	staff reporter
24	1 Oct 2009	<i>The Namibian</i>	<b>Opinion piece:</b> “Intercountry adoption: The complexities behind the conflict”	Dianne Hubbard & Rachel Coomer, Legal Assistance Centre
25	12 Oct 2009	<i>New Era</i>	<b>Article:</b> “Hague secretariat rep on fact-finding mission” (report on the invitation extended by the Ministry of Gender Equality and Child Welfare to the Hague Conference on Private International Law for assistance in drafting provisions on intercountry adoption)	staff reporter

**Children are powerless, yet priceless, have quiet voices, yet so expressive.**

**Ongwediva Councillor Thikameni Ekandjo**  
at a public meeting to discuss the Child Care and Protection Bill due to be tabled  
in Parliament later in the year, *The Namibian*, Notable Quote, 8 June 2009

**On the draft Child Care Protection Act, I commend the UNICEF, LAC and the Ministry of Gender Equality & Child Welfare for their joint brilliant initiative. We need to join hands to save children. Our opinions are on the way. Namibia is fully behind you. We hope to see the bill being tabled in Parliament soon. What an excellent move!**

*The Namibian*, text message, 19 June 2009

**On the Draft Child Protection Bill: the unmarried fathers will be wanting to take care of the child to get the maintenance grant and other funds of the child, but not really because of the love of the child, nor in the best interests of the child. The law must consider that any foster carer must be the close family of the mother and that is very important in Namibia. It has a strongly cultural value until the child is seven years old. This always happened when the mother passed away! Traditional law must be strong.**

*The Namibian*, text message, 23 June 2009

**I just want to thank LAC, Ministry of Gender, UNICEF and CCPA [Child Care and Protection Act] for a nice workshop that took place last Saturday at Hochland High School regarding the new law for the Namibian children. Thank you for caring. We Namibian children really appreciate the effort and hard work you put in.**

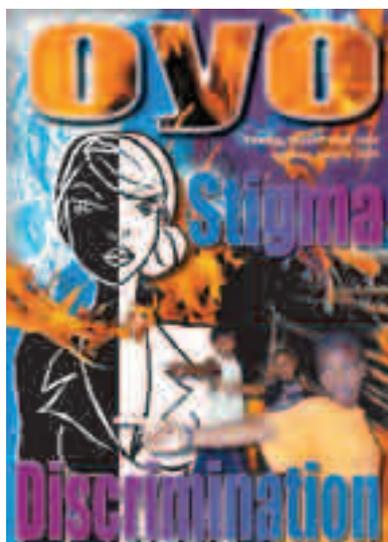
*The Namibian*, text message, 21 August 2009

**I was at a CCPA [Child Care and Protection Act] workshop for children at Hochland High School that was conducted by the LAC [Legal Assistance Centre], and I must say that it was very important for the children in Namibia. Thank you Ministry of Gender, LAC and UNICEF for working so hard for the Namibian children.**

*The Namibian*, text message, 21 August 2009

## 4.2 Magazines

Eight articles relating to the bill and the consultation process appeared in Namibian magazines over a period of 10 months. The articles were published in magazines produced by three local non-governmental organisations: Ombetja Yehinga Organisation, Sister Namibia and the Namibia Non-Governmental Organisation Forum Trust (NANGOF Trust, the umbrella body for NGOs in Namibia).



### Ombetja Yehinga Organisation (OYO)

The Ombetja Yehinga Organisation (OYO) is a Namibian trust which aims to create social awareness among young people using the arts. OYO works with young people to target social issues – such as HIV prevention, sexual and reproductive health, children’s and human rights, gender, gender-based violence, alcohol and drug abuse, stigma and discrimination – through writing, drama, dance, music, and the visual arts. One of the programmes run by the organisation is the creation of a quarterly magazine *OYO, Young, latest and cool*. The magazine provides young people with a platform to share with others their stories, poems, drawings and questions about HIV/AIDS and social issues that affect them, their families and communities. The magazine is currently distributed to AIDS awareness clubs and youth groups in Kunene and Erongo regions as well as to schools, libraries, youth centres, governmental organisations and non-governmental organisations throughout Namibia. It is estimated that the magazine is read by over 80 000 children, young people, and adults across Namibia.<sup>14</sup>

OYO collaborated with the Legal Assistance Centre to develop the concept for the 2009 September edition of the magazine. The Legal Assistance Centre proposed a range of topics that might be of interest to OYO readers. The editor of the magazine chose the

<sup>14</sup> For more information see the Ombetja Yehinga Organisation website: <<http://ombetja.org/index.html>>.

topic of corporal punishment and developed a magazine edition around this issue. The edition was entitled “*Discipline and Punishment*”. To generate the inputs for the magazine, the OYO team ran workshops about the topic in question. The Legal Assistance Centre provided a training blueprint about alternatives to corporal punishment and background materials.

This is an example of how law reform topics can sometimes be integrated into the activities of other organisations without additional cost. OYO already had funds available to produce the September edition of the magazine. The proposed topic was within their area of interest and therefore did not require additional work or additional funds. The fact that the magazine is read by over 80 000 children, young people and adults meant that it was a very effective forum for spreading information and soliciting opinions from young people.

In addition to this magazine edition on corporal punishment, three other editions of the OYO magazine included articles about topics in the draft Child Care and Protection Bill. The consultation team used two methods for including articles in the magazine. In the March and May editions, a page in the magazine was allocated for the article in question. In the April edition, the article was printed separately as a loose-leaf page and included in the magazine as an insert. The different methods of presentation did not appear to affect the level of response. However we believe that alternating between having an article published in the magazine and using an insert was useful because the different formats helped to attract readers’ attention.

**WHOSE LIFE IS IT ANYWAY?**

**What should the age of medical consent be in Namibia?**

**Options**

Option	For	Against
1. Consent to any medical or surgical procedure should be given by the patient after reaching the age of 18.	This option is the most straightforward. It is clear that a person who is 18 years old is old enough to make their own decisions. It is also clear that a person who is 17 years old is not old enough to make their own decisions.	It is not clear if the doctor is a doctor or a nurse. If the doctor is a doctor, the doctor should be allowed to make the decision. If the doctor is a nurse, the nurse should be allowed to make the decision.
2. The age of consent to any medical or surgical procedure should be lowered from 18 to 14.	This is the most common argument. It is based on the fact that a person who is 14 years old is old enough to make their own decisions. It is also clear that a person who is 13 years old is not old enough to make their own decisions.	Although a 14-year-old is old enough to make their own decisions, it is not clear if they are old enough to make their own decisions about their own bodies. It is also clear that a person who is 13 years old is not old enough to make their own decisions.
3. The age of consent to any medical or surgical procedure should be lowered from 18 to 12.	This is the most common argument. It is based on the fact that a person who is 12 years old is old enough to make their own decisions. It is also clear that a person who is 11 years old is not old enough to make their own decisions.	It is not clear if a 12-year-old is old enough to make their own decisions about their own bodies. It is also clear that a person who is 11 years old is not old enough to make their own decisions.

**WHAT DO OTHER COUNTRIES DO?**

The age of consent to any medical or surgical procedure varies from country to country. In some countries, the age of consent is 18. In other countries, the age of consent is 16. In some countries, the age of consent is 14. In some countries, the age of consent is 12.

**Questions for discussion**

- Should the age of consent to any medical or surgical procedure be lowered from 18 to 14?
- Should the age of consent to any medical or surgical procedure be lowered from 18 to 12?
- Should the age of consent to any medical or surgical procedure be lowered from 18 to 10?
- Should the age of consent to any medical or surgical procedure be lowered from 18 to 8?

**WHY SHOULD YOU CARE?**

The age of consent to any medical or surgical procedure is a very important issue. It is important because it affects the lives of many people. It is important because it affects the lives of many people. It is important because it affects the lives of many people.

Comments on corporal punishment in response to the dedicated magazine issue on this topic were collected by the OYO team. The comments for the topics discussed in individual articles in the other magazine issues were sent directly to the consultation team. This means that the input on corporal punishment in response to the magazine article can be quantified, but not for the other topics; members of the public who contributed input did not generally identify what inspired them to contribute comments.

OYO estimates that they received over 2000 comments from young people on corporal punishment, in addition to the comments published in that issue of the magazine. All of these comments have been reviewed and the Legal Assistance Centre will include the information in a monograph about corporal punishment to be published in 2010.

## **Sister Namibia**

Sister Namibia is a feminist organisation based in Windhoek.<sup>15</sup> The vision of Sister Namibia is to recognise, protect and celebrate the full personhood of all women and girls including respect for dignity, diversity, bodily integrity and sexual choices. Sister Namibia aims to inspire and equip women to make free choices and act as agents of change in relationships, communities and for themselves. The group uses education, information, collective action and celebration to achieve this goal. Current activities of the organisation include publishing a monthly magazine, presenting a weekly radio show on Base FM community radio, and campaigning for women's sexual and reproductive health and rights. The circulation of the *Sister Namibia* magazine is 9000, including a broad range of recipients: Windhoek-based NGOs, all secondary schools in Namibia, the libraries of all educational institutions, youth and community resource centres and teacher resource centres, Cabinet ministers, Members of Parliament, staff of the Ministry of Gender Equality and Child Welfare in the head office and in all 13 regional offices, the 52 local councils and 13 regional councils, the Office of the President, all United Nations agencies, all Namibian embassies abroad, selected foreign embassies in Windhoek and Pretoria, staff at the City of Windhoek municipality, the Osire refugee camp, correctional institutions and the women's holding cells at the Katutura Prison, all traditional authorities, the heads of member churches of the Council of Churches in Namibia, AIDS awareness clubs at the University of Namibia, media students at the Polytechnic of Namibia, all 11 language services at NBC Radio, NBC-TV and the National Library of Namibia.

Sister Namibia published three articles on the draft Child Care and Protection Bill in different issues of its magazine. One article was about the revision process, a second was about the LifeLine/ChildLine Namibia national conference where issues in the bill were discussed and a third article was about adoption.

*REAL* was a separate four-issue publication produced in 2009 by Sister Namibia. The magazine was written by young Namibian women, and aimed at a target audience of

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<sup>15</sup> For more information see the Sister Namibia website: <[www.sisternamibia.org](http://www.sisternamibia.org)>.

# Let's Realise! All Change Starts With Us!

## A NATIONAL CONFERENCE FOR CHILDREN

By Natasha Kayle

In June 120 children from all 13 regions got together in Okahandja for a week to make a change for their future at the *Let's Realise Conference* hosted by Lifeline/ChildLine Namibia with funding from Intrahealth and UNICEF. The conference aimed to extend the current platform opened by *Uitani ChildLine Radio* on NBC National Radio, Base FM and Omulunga Radio to create an environment where children could participate and discuss challenges such as HIV and stigma, discrimination, the new child protection bill and sex and sexuality.

### Breaking through myths and fear

The session on HIV and Stigma was opened by two youths from Khomas Region, Ndilimeke Phillipus (12) and Rejoice Amunyela (14) who acknowledged that sometimes they are afraid of playing with children with the virus out of fear and a lack of knowledge. The ChildLine team facilitated a session to shed more light on high and low risk behaviours to break through the fear. The children formulated recommendations for government, parents, educators, peers and themselves to make a change. Government was requested to build more voluntary counselling and testing centres and health care centres in the south, to include HIV topics for debate by the youth parliament and for politicians and prominent Namibians to stand up and speak out on how HIV has affected their lives. The children would also like to see more white people in advertising campaigns to break through myths and misconceptions. They agreed that peers and the *Let's Realise* children should be patient, open, supportive and tolerant of others. They should stand up for what they know is right.

### Challenging discrimination

The second theme was discrimination against people living with HIV, people with a disability, racism and tribalism. It kicked off with a rap written by some of the delegates, and by a testimony from two participants from the school for the hearing impaired. Their stories touched the hearts of those present and showed how even small actions and comments can be very hurtful. The children learnt to walk in another's shoes through a 'discrimination game' in which their faces were painted in different colours and they received different treatment, such as getting lunch first, having to sit on the floor, or be blindfolded for a session. The recommen-

dations from this session included a call for parliament to be gender balanced, for children with disabilities to be integrated into mainstream classes, and for the code of conduct in schools to prohibit discrimination.

### The age of consent

The third topic under discussion was the new Child Care and Protection Bill. The *Let's Realise* delegates want to see proper schools in rural areas, and teachers who lead by example. Special children's courts should be developed and cases should be dealt with faster. As for the age of consent for HIV and pregnancy testing - this should be brought down and children should be able to get protection for themselves and their peers. The wellbeing of children should always come first.

### Gender and sexuality

The last session opened a platform for debate around gender, gender roles and gender norms. It also approached subjects such as prostitution, intergenerational relationships and homosexuality. The children agreed that women and men should be treated equally and given the same opportunities instead of being forced into a box because of their sex. The importance of standing up for yourself against people with money and influence such as sugar daddies and sugar mummies was highlighted, as were questions concerning the effects of being sexually active at a young age. The youth had lots of questions concerning homosexuality and the rights of gay people. They agreed that all people should be treated fairly and not be discriminated against. This means that homosexual people should also have the right to wed.

To put it in the words of Rivaldo, an 11-year-old delegate from Gobabis, "what I will remember the most is that all change starts with us! I can and must make a change for me and others." ♀



A delegate at the children's conference in Okahandja

Mark Nonikes

their peers. Twelve girls aged between 14 and 18 attended a half-day session at the Legal Assistance Centre to learn about the draft Child Care and Protection Bill. The intention was for the girls to select any topics that were of interest and write an article on those topics for publication in the magazine. As a result of the half-day discussion of the draft bill, an article on the age of consent for HIV testing was published in the August edition of *REAL* magazine.

## Namibia Non-Governmental Organisation Forum Trust (NANGOF Trust)

The NANGOF Trust was founded in October 2007 with the aim to serve as a platform in which Namibian non-governmental organisations, community based organisations and other civil society organisations can join forces, so that they will be capable of more effectively pursuing their goals, as well as engaging the Namibian Government, donors and organisations with similar objectives.<sup>16</sup> The vision for NANGOF Trust is to become a vibrant umbrella organisation of well-governed civil society organisations, actively contributing individually and jointly towards sustainable development and socio-economic justice in Namibia.

*Civic Voice* is a quarterly magazine of the NANGOF Trust which is supported by the European Commission. The primary focus of the magazine is to focus on the work and the programmes of the NANGOF Trust. Since the NANGOF Trust is an umbrella organisation, contributions from member organisations are also published. The first issue of the magazine was published in September 2009. The Legal Assistance Centre submitted an article for this premier issue on the role of civil society in law reform, using the Child Care and Protection Bill as a topical example.

<sup>16</sup> For more information see the NANGOF trust website: <[www.nangoftrust.org.na](http://www.nangoftrust.org.na)>.



Article by the Legal Assistance Centre in the premier issue of *Civic Voice*

## MAGAZINE COVERAGE OF THE CONSULTATION PROCESS

Date	Where	What	Author
March 2009	OYO Young Latest and Cool	“Contraceptives: How old do you have to be to get them?”	Rachel Coomer, Legal Assistance Centre
April 2009	OYO Young Latest and Cool	“Whose life is it anyway? What should the age of medical consent be in Namibia?”	Rachel Coomer, Legal Assistance Centre
May 2009	OYO Young Latest and Cool	“Testing, testing, 1,2 3” (article on access to HIV testing)	Rachel Coomer, Legal Assistance Centre
July 2009	Sister Namibia	(1) “Consulting the public on the new Child Care and Protection Act”  (2) “Let’s Realise! All change starts with us! A national conference for children” (report on the LifeLine/ ChildLine Namibia national conference)	Rachel Coomer, Legal Assistance Centre  LifeLine /ChildLine Namibia
August 2009	REAL magazine	“How young is too young? At what age should children be able to have an HIV test without needing the permission of their parents?”	Alushe Gabriel, REAL journalist
September 2009	OYO Young Latest and Cool	“Treat other people as you want them to treat you” (article about corporal punishment)	Rachel Coomer, Legal Assistance Centre
September 2009	Civic Voice (NANGOF quarterly magazine)	“The role of civil society in law reform”	Rachel Coomer, Legal Assistance Centre
December 2009	Sister Namibia	“Adoption in Namibia”	Sister Namibia

*“By writing opinion pieces and magazine articles, we were able to engage the interest of the public in many different ways.”*

Rachel Coomer, Legal Assistance Centre



Rachel Coomer

**Sample of comments published in  
OYO Young Latest and Cool: Discipline and Punishment  
(September 2009)**

One day my teacher beat me because I was playing in class while she was teaching. She beat me with a very big stick on my hand. I felt very bad, and it made me hate the teacher. I started crying. Being beaten wasn't very nice; my teacher told me that if I continued to cry she would beat me again, so I kept quiet because I was afraid of being beaten twice.

Beating is wrong. Beating people is like forcing them to feel pain in their bodies. If parents keep on beating their children, those children will end up beating their husbands or wives and children when they grow up.

If a child does something wrong like stealing cattle, then that child should be beaten. If a child comes to school late then the child should be punished so that he or she doesn't repeat the same mistake. If you don't take action, that child will just do it again.

Last year my brother dropped out of school because of corporal punishment. A teacher was asking my brother about a topic that he had never even heard about, and as he didn't know anything about it, the teacher wrote his name in the prefect's book and punished him by making him remove big stones from the school grounds. Let's stop corporal punishment in schools.

Corporal punishment helped me a lot. When I got beaten I started thinking that I should study even harder to avoid more beatings. I also went to other learners to help me if I didn't understand my schoolwork because I didn't want to get a beating for getting it wrong.

Corporal punishment is a bad thing because you might hurt someone so badly that the person starts bleeding. When I was in Grade 1, my teacher sent me to her house near the school to go and get her bread. Her mother gave me the bread and on my way back the bread fell on the ground, but I picked it up and brought it to the teacher. She said that she would punish me; then she took a stick and hit me on the head, and I started bleeding.

I was never disciplined by my parents. As a result I was punished a lot at school; this was how I learnt what was right and what was wrong.

My mother beats me. I ask myself what I did to her, and I feel bad. I am only 12 years old and in Grade 6. What did I do, for her to beat me?

People believe that to be a man means to beat your children. That's nonsense. I'm a man but I'll never beat my children.

Learners failing tests should be beaten, or the principal should have a serious talk with them and give them five hours of detention. Girls who fall pregnant should never be taken back; they should leave school and make space for others to learn something.

At my lower primary school in 2003, the teacher would beat me to the maximum whenever I didn't do my homework. I ended up being afraid that if I went to school he would beat me again, so I dropped out of school for one year. It was bad.

## 4.3 Radio

A total of 38 radio slots were broadcast at the initiative of the Technical Working Group, or with the knowledge of the team. Copies of the factsheets (in various languages) were sent to the following nine radio stations:

1. NBC National Radio Service
2. NBC Oshiwambo Radio Service
3. NBC Oshihherero Radio Service
4. NBC Setswana Radio Service
5. NBC Afrikaans Radio Service
6. Channel 7
7. Radio 99
8. Radio Kosmos
9. Radio Kudu.

The radio stations which gave the most coverage to the revision process were Base FM and NBC National Radio. A number of other stations, including NBC Oshiwambo and NBC Setswana and the commercial stations FM 99, Kosmos radio and Channel 7 also broadcast information about the revision of the draft bill. The shortest slots were interviews or news soundbites, while the longest were one-hour call-in shows. The range of ways in which information was disseminated on radio allowed for the exposure of a wide range of listeners to the consultation process.

The Legal Assistance Centre has a weekly slot on the NBC National radio programme *Your Rights Right Now*. Staff from the Legal Assistance Centre appear on the show each week to discuss a human rights or law related topic. During 2009, eight of the shows were devoted to discussing topics in the draft bill. The consultation team compiled the scripts used on *Your Rights Right Now* into a booklet for distribution to other stations. Three of the shows were also recorded on disc and distributed with the booklets.

A separate set of scripts were drafted for Yelula/U-Khâi. Yelula/U-Khâi is a Namibian



non-governmental organisation which works with communities, individuals and marginalised groups in rural Namibia to strengthen their resources and support their vision in responding to the HIV/AIDS pandemic.<sup>17</sup> The organisation has a head office in Windhoek and regional offices in the north and south. One of their outreach projects in the north is a live radio show in Oshiwambo which is broadcast every Thursday on the NBC Oshiwambo station. The consultation team provided Yelula/U-Khâi with a booklet of eight one-page information sheets that could be used to host eight different shows about the draft bill. These information sheets contained less detail than the *Your Rights Right Now* scripts, as the intention was to make the information as quick and easy to use as possible. Yelula/U-Khâi were also provided with the *Your Rights Right Now* scripts and the factsheets, which they could use if they wanted to spend more time preparing a discussion about some of the issues in the draft bill.

The team provided these layers of information because the provision of the factsheets on their own did not appear to be sufficient to motivate radio broadcasters to host radio shows on the bill. The theory was that a wider variety of information might suit different approaches to radio programming and a variety of different time slots. The one-page information sheets in the Yelula/U-Khâi booklet provided the most basic information which would be sufficient to inform a radio discussion. A presenter who wanted more information could refer to the factsheets. A presenter who wanted more content could refer to the *Your Rights Right Now* script booklet, where the scripts included quotes and soundbites from community members which could be used to expand a radio programme. Alternatively the presenter might choose to record new comments from his or her own community about the topic discussed, or ask listeners to phone in live to the show. By providing this kind of layered information, we attempted to cater for all levels of interest and to help presenters get a quick grasp of key topics.

In most cases it was not possible to correlate feedback received by text message, post, fax or email with any particular radio broadcast. However we noted that between 2-8 July 2009, a large number of text messages were received in Oshiwambo about access to contraceptives. This pattern was not seen again. It indicated that a number of people had heard a radio show about on the topic of access to contraceptives in the Child Care and Protection Bill and had been motivated to provide feedback; we know that during this time, Yelula/U-Khâi were discussing the draft bill and it is likely that it was their show that generated the input. This is a good example of how some topics can really excite the interest of the public. Some of the responses received are shown on the next page.<sup>18</sup> These examples show the strength and breadth of opinion. The responses also show that people are interested in interacting with radio show productions and that this method of communication was effective during the consultation process.

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<sup>17</sup> For more information see the Yelula/U-Khâi website: < [www.yelula.com](http://www.yelula.com) >.

<sup>18</sup> Gabriel Augustus from the Legal Assistance Centre translated all text messages into English where necessary. Obvious grammar and spelling errors have been corrected.

## RADIO COVERAGE OF CONSULTATION PROCESS

	Date	Where	What	Details
1	9 March 2009	Base FM	The importance of public participation in law reform	Rachel Coomer, Legal Assistance Centre
2	16 April 2009	Base FM	Newsbeat: Overview of the Child Care and Protection Bill and its contents	Rachel Coomer, Legal Assistance Centre
3	20 April 2009	Base FM	Overview of the Child Care and Protection Bill and its contents	Mark Nonkes, Legal Assistance Centre
4	21 April 2009	Base FM	Piki Piki radio programme: discussion about corporal punishment	Felicity !Owoses-/Goagoses, Ministry of Justice & Mark Nonkes, Legal Assistance Centre
5	22 April 2009	NBC National Radio	Overview of the Child Care and Protection Bill and its contents	Mark Nonkes, Legal Assistance Centre
6	22 April 2009	NBC National Radio	Overview of the Child Care and Protection Bill and its contents (pre-recorded)	Rachel Coomer, Legal Assistance Centre
7	28 April 2009	Base FM	Consent to medical procedures, contraceptives & testing	Mark Nonkes, Legal Assistance Centre
8	29 April 2009	NBC National Radio	What should the definition of a child be? (pre-recorded)	Mark Nonkes, Legal Assistance Centre
9	29 April 2009	FM 99	5pm news: Overview of the Child Care and Protection Bill and its contents	Mark Nonkes, Legal Assistance Centre
10	5 May 2009	Base FM	Baby dumping (as an issue missing from the preliminary draft of the Child Care and Protection Bill)	Rachel Coomer, Legal Assistance Centre
11	6 May 2009	NBC National Radio	Corporal punishment (pre-recorded)	Rachel Coomer, Legal Assistance Centre
12	13 May 2009	NBC National Radio	Age of consent to medical procedures, contraceptives and HIV testing (pre-recorded)	Mark Nonkes, Legal Assistance Centre
13	13 May 2009	FM 99	Live report - feedback from the Rundu regional meeting	Joyce Nakuta, Ministry of Gender Equality and Child Welfare
14	20 May 2009	NBC National Radio	The role of youth participation (pre-recorded)	Anne Joyce, Legal Assistance Centre & Sannicia Katala, Young Achievers
15	2 June 2009	Kosmos	Overview of the revision process (pre-recorded)	Rachel Coomer, Legal Assistance Centre
16	4 June 2009	FM 99	The role of the media in generating debate about issues in the Child Care and Protection Bill (pre-recorded)	Rachel Coomer, Legal Assistance Centre
17-20	June 2009 (daily broadcasts over five days)	Radio Setswana	What should the definition of a child be? What should the age of consent for medical treatment and HIV testing be? Adoption Corporal punishment	Radio Setswana

21	4 June 2009	Base FM	1pm news: Report on progress on the revision of the Child Care and Protection Bill	Base FM
22	5 June 2009	NBC National Radio	Foster care (pre-recorded)	Rachel Coomer, Legal Assistance Centre
23	8 June 2009	Radio Wave	7pm news: Report on the progress of the national consultation meetings	Radio Wave
24	11 June 2009	NBC English Radio	Adoption (pre-recorded)	Mark Nonkes, Legal Assistance Centre
25	16 June 2009	FM 99	Report on the progress of the national consultation meetings	FM 99
26	21 June 2009	FM 99	Report on progress on the revision of the Child Care and Protection Bill	FM 99
27	16 June 2009	Base FM	Speakers Corner event to celebrate the Day of the African Child	Mark Nonkes & Rachel Coomer, Legal Assistance Centre
28	17 June 2009	Base FM	Interview about the LifeLine/ChildLine Namibia national conference (at which the Child Care and Protection Bill was discussed)	Natasha Kayle (LifeLine/ChildLine Namibia)
29	7 July 2009	FM 99	Live report: feedback from the Otjiwarongo regional meeting	Lucia Eises, Ministry of Gender Equality and Child Welfare
30	7 July 2009	NBC Oshiwambo	Live report: feedback from the Otjiwarongo regional meeting	Victor Shipoh, Ministry of Gender Equality and Child Welfare
31	7 July 2009	NBC Oshihherero	Live report: feedback from the Otjiwarongo regional meeting	Victor Shipoh, Ministry of Gender Equality and Child Welfare
32	10 July 2009	Base FM	Update on the revision process for the Child Care and Protection Bill	Mark Nonkes, Legal Assistance Centre
33	15 July 2009	NBC National Radio	Does Namibia need a National Child Protection Register? (pre-recorded)	Rachel Coomer, Legal Assistance Centre
34	20 July 2009	Base FM	Corporal punishment	Mark Nonkes, Legal Assistance Centre
35	July 2009 Date not specified	NBC Oshiwambo	Report on progress on the revision of the Child Care and Protection Bill	Immanuel Iita, Legal Assistance Centre North office
36	July 2009 Date not specified	NBC Oshiwambo	Report on progress on the revision of the Child Care and Protection Bill	Immanuel Iita, Legal Assistance Centre North office
37	10 August 2009	NBC Radio Setswana	Report on progress on the revision of the Child Care and Protection Bill	Mark Nonkes, Legal Assistance Centre
38	24 Sept 2009	Channel 7	Report on progress on the revision of the Child Care and Protection Bill (pre-recorded)	Celeste Feris, Ministry of Gender Equality and Child Welfare & Rachel Coomer, Legal Assistance Centre

## Text messages received in response to a radio show on access to contraceptives

I think 14 years is fine, doesn't matter to deprive family planning, she will end up pregnant.

Kids should enjoy their rights but in any event parents should decide on their behalf.

I support the age and myself I am also 15.

I am really thankful for your wonderful opinion, myself agree that children should access family planning.

Age 14 sounds very immature in any event, alternatively we must check the understanding of that particular child.

Children must be at the age of 20 otherwise we will destroy the nation.

I am suggesting that children should have access to family planning at the age of 14, the reason being kids are growing fast and know a lot.

Children at the age of 14 got freedom to decide for themselves, why some are falling pregnant? So 14 years is fine.

Women age 14 is reasonable, some of them are matured enough but also parents should take part in any decision.

Children will now spread the diseases because they failed to utilise condoms and this big guys are now targeting this young girls.

It seems that if a 14 year old receives family planning at the same time she must also get married and we must tell people to fear God.

It true that children above 13 should have access to family planning in order to stop unwanted pregnancy.

I am supporting age 14 is reasonable today kids are not the same as in the past.

*Although a range of opinions were given, the majority of text messages on this topic supported setting the age for access to contraceptives at 14.*



Images from the Base FM Speaker's Corner event to celebrate the Day of the African Child on 16 June 2009

## 4.4 Television

The consultation process was featured on television nine times over a seven-month period. This was through news coverage (four times), the talk show *Tupopyeni* (three times) and the breakfast programme *Good Morning Namibia* (twice). Most of the television coverage was by the Namibian Broadcasting Corporation (NBC), the national broadcaster, although there was also some exposure on One Africa, which is a private television station.

We cannot comment on whether these shows generated significant feedback, as the feedback which came in cannot be specifically correlated with the outreach. However, as 37% of Namibia households own a television,<sup>19</sup> it is reasonable to assume that the television coverage helped to disseminate information about the draft bill and to generate public interest.

<sup>19</sup> Ministry of Health and Social Services, *Namibian Demographic and Health Survey 2006-07*. Windhoek, 2008.

## TELEVISION COVERAGE OF THE CONSULTATION PROCESS

	Date	Where	What	Details
1	22 April 2009	Tupopyeni (NBC)	Interview on the Child Care and Protection Bill and its contents (pre-recorded)	Helena Andjama, Ministry of Gender Equality and Child Welfare; Dianne Hubbard, Legal Assistance Centre & Professor Julia Sloth-Nielsen, international expert
2	3 June 2009	One Africa	Excerpts from media workshop & interview	Rachel Coomer & Mark Nonkes, Legal Assistance Centre
3	3 June 2009	NBC news	Excerpts from media workshop	Rachel Coomer & Mark Nonkes, Legal Assistance Centre
4	8 June 2009	NBC news	Filmed opening of national workshops	
5	3 June 2009	Tupopyeni (NBC)	Update on revision process (pre-recorded)	Celeste Feris and Loide Mbenzi, Ministry of Gender Equality and Child Welfare & Rachel Coomer, Legal Assistance Centre
6	7 July 2009	NBC news	Live report: feedback from the Otjiwarongo regional meeting	Victor Shipoh, Ministry of Gender Equality and Child Welfare
7	1 August 2009	Tupopyeni (NBC)	Report on the progress on the revision of the Child Care and Protection Bill	Celeste Feris and Loide Nekundi, Ministry of Gender Equality and Child Welfare: Rachel Coomer, Legal Assistance Centre; Renette Louw, social worker, Motor Vehicle Accident Fund; Kaarina Amutenya, children's consultant; Emil Seibeb, radio show presenter & Martha Olga, radio show presenter
8	13 August 2009	Good Morning Namibia (NBC)	Discussion about upcoming comparative meeting of the Child Care and Protection Bill and the South African Children's Act	Celeste Feris, Ministry of Gender Equality and Child Welfare
9	16 October 2009	Good Morning Namibia (NBC)	Discussion about the visit by a representative of the Hague Conference to discuss whether Namibian should ratify all the Hague Conventions on children, and to assist with the provisions on intercountry adoption in the Child Care and Protection Bill	Sirkka Ausiku, Permanent Secretary, Ministry of Gender Equality and Child Welfare & William Duncan, Deputy Secretary General, Hague Conference on Private International Law

## 5. Use of the internet

The internet was used in many different ways during the consultation process – as a discussion forum (through the use of the popular social networking site *Facebook*), to circulate information (through the placement of information in e-newsletters) and as an electronic media outlet (through the publishing of articles on various websites). A total of seven topics were discussed on *Facebook*, five e-newsletters reported on the consultation process and two articles were published electronically by InterPress Services.

In addition to being virtually cost-free, the use of electronic communication is also very quick and direct. For example, email was a key channel for information exchange between the Technical Working Group and international experts. Furthermore, when challenges were experienced in ensuring that written invitations were received timeously by all relevant people, email and e-newsletters provided a useful supplement to written invitations.

### 5.1 Facebook

*Facebook* is a social networking website which is free to anyone who wants to use it. It allows people to post information about themselves and to “make friends” with each other for the purposes of sharing information. A popular activity on *Facebook* is the formation of groups of people supporting a common cause. Any *Facebook* user can join any group which is established on the website, and contribute to group discussions. The consultation team set up a *Facebook* group on the draft bill, entitled *Protecting Children’s Rights in Namibia*. The Legal Assistance Centre hosted the group on behalf of the Ministry and solicited input by posting discussion questions on particular topics. The replies to



these questions were visible to the entire group. To facilitate the discussion, the Legal Assistance Centre would often post a question and then add to the discussion at a later stage to provide further information or clarification. In January 2010 there were 294 members in this group. A total of seven topics were discussed. Information about the feedback received via *Facebook* is reported in Chapter 9.

### Topics of discussion on Facebook group “PROTECTING CHILDREN’S RIGHTS IN NAMIBIA”

1. What problems do children in Namibia face?
2. How old should you be to have access to contraceptives?
3. Should parents be allowed to beat their children?
4. What should the age of majority be in Namibia?
5. Is child trafficking a problem in Namibia?
6. Should the Child Care and Protection Act also include a section on children’s responsibilities?
7. What types of sexual abuse do children need protection from?

## 5.2 E-newsletters and websites

In addition to submitting an article to the quarterly NANGOF magazine (*Civic Voice*), the Technical Working Group also arranged for information about the consultation process to be included in four of the monthly NANGOF e-newsletters. This newsletter is emailed to NANGOF’s 32 member organisations, as well as any other partners on its mailing list. The placement of information in this newsletter helped to ensure that civil society was kept updated about the consultation process. The newsletters also included notifications about upcoming consultations about the bill, which helped improve attendance at these meetings. This was a very convenient method of communicating with civil society.

Information was also posted on the Children’s Rights and Information Network (CRIN) website and notice of this posting circulated on that organisation’s e-newsletter. CRIN is an independent, not-for-profit organisation registered in the United Kingdom. Its mission is to equip the global child rights community with the information it needs to ensure the implementation of children’s rights. CRIN has a membership of more than 2100 organisations in 150 countries.<sup>20</sup> This means that news of Namibia’s consultations on child protection was circulated worldwide. The Technical Working Group members received emails from international colleagues who had seen the information in the CRIN newsletter.

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<sup>20</sup> For more information see the CRIN website: <[www.crin.org](http://www.crin.org)>.



**Just saw on CRIN that a consultation process has started for the CCPA [Child Care and Protection Act] and that Julia Sloth Nielsen is going to be involved! So excited to hear the news. Julia presented and participated at consultative meetings in Tanzania and Zanzibar before Christmas and she really energised and focussed the debate especially in Zanzibar! It was amazing... Good luck! Looking forward to seeing the developments!**

**Sarah Field**, former intern at the Legal Assistance Centre  
now working in the area of child protection

The Legal Assistance Centre website was also used as a focal point for information. It included dedicated pages containing all the information produced, such as the factsheets, the annotated bill and summary and “podcasts” of some of the radio shows. In 2009, there were over 13 000 visits to the website, involving 8027 unique visitors. People from Namibia viewed the page most, followed by visitors from South Africa and America. Approximately 30 000 pages on the website were viewed, and the Child Care and Protection Bill pages were amongst the top ten.<sup>21</sup>

<sup>21</sup> The other nine pages visited were more general, including the pages “about the Legal Assistance Centre” and its publications.

## INTERNET COVERAGE OF THE CONSULTATION PROCESS

	Date	Where	What
1	20 March 2009	NANGOF e-newsletter	information on consultation process & call to participate
2	21 April 2009	Facebook	Facebook group launched Topic for discussion: What problems do children in Namibia face? End of April: 124 members
3	April 2009	LAC website www.lac.org.na	dedicated webpage on Child Care & Protection Bill created
4	21 April 2009	CRIN e-newsletter	“Namibia: Child law under revision”
5	5 May 2009	Facebook	Topic for discussion: What should the age of majority be in Namibia?
6	15 May 2009	NANGOF e-newsletter	information on consultation process & call to participate
7	27 May 2009	Facebook	Topic for discussion: How old should you be to have access to contraceptives?
8	9 June 2009	Facebook	Topic for discussion: Should parents be allowed to beat their children?
9	12 June 2009	NANGOF e-newsletter	update on progress of consultation activities
10	26 June 2009	Facebook	Topic for discussion: Is child trafficking a problem in Namibia?
11	24 July 2009	InterPress Services (IPS)	article containing overview of the process for revising the Child Care and Protection Bill (author: Servaas van den Bosch, IPS)
12	30 July 2009	Facebook	Topic for discussion: Should the Child Care and Protection Act also include a section on children's responsibilities? End of July: 266 members
13	25 Aug 2009	InterPress Services (IPS)	article on the national consultation workshops (author: Servaas van den Bosch, IPS)
14	28 Aug 2009	NANGOF e-newsletter	announcement that stakeholder consultation is underway
15	August 2009	CRIN www.crin.org	information about the revision process posted on organisation's website (press releases, bill summary, newspaper articles)
16	1 Sept 2009	Facebook	Topic for discussion: What types of sexual abuse do children need protection from? End of August: 275 members

# 6. Other media outreach

## 6.1 Public holidays

The 2009 Day of the African Child was used as a focal point of attention for the Child Care and Protection Bill. On that day (16 June), an article appeared in the *YouthPaper* (a weekly supplement to *The Namibian*, which is a nationally-distributed newspaper) and coverage was also given to the bill on the Base FM Speaker's Corner event.

### Should Namibia Lower its Age of Majority to 18?

The YouthPaper asked a group of young people what they thought about changing the Age of Majority and asked the different ages when one becomes an adult. Here's what a few had to say!

**Suzanni Shiloh, 16, Grade 11, Oshana Secondary High School**

...the age of majority is 21, which is a bit old. I think it should be 18. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult.

**Audrey Innes, 18, Ella Du Plessis**

...the age of majority is 21, which is a bit old. I think it should be 18. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult.

**Uyo Moshale, 19, Jan Jonker Afrikaans High**

...the age of majority is 21, which is a bit old. I think it should be 18. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult.

**Estherina Kogeeke, 18, Jan Jonker Afrikaans**

...the age of majority is 21, which is a bit old. I think it should be 18. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult.

**Freda Scharia, 21, Swellendam, Physically Active Youth**

...the age of majority is 21, which is a bit old. I think it should be 18. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult.

**Berthe Maseko, 16, Grade 11, Oshana Secondary**

...the age of majority is 21, which is a bit old. I think it should be 18. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult.

**Estherina Kogeeke, 18, Jan Jonker Afrikaans**

...the age of majority is 21, which is a bit old. I think it should be 18. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult.

**Estherina Kogeeke, 18, Jan Jonker Afrikaans**

...the age of majority is 21, which is a bit old. I think it should be 18. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult.

**Estherina Kogeeke, 18, Jan Jonker Afrikaans**

...the age of majority is 21, which is a bit old. I think it should be 18. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult. I think it should be 18 because it is a good age to be an adult.

The article published in the YouthPaper on 16 June 2009. The text is reproduced on the next four pages of this report.

## SHOULD NAMIBIA LOWER ITS AGE OF MAJORITY TO 18?

Currently, Namibia's age of majority is set at 21, according to a 1972 law called the Age of Majority Act. In some countries, the age of majority is set at 18. That means at 18, young people are entitled to full legal rights and responsibilities.

However, the draft Child Care and Protection Act defines a child as being someone below the age of 18. As it currently stands in Namibia, children under 21 are considered minors. However, they are given certain rights as they mature. At 16, a person has the legal right to make a will, open and operate a bank account and consent to sexual activity. So maybe Namibia's age of majority should be lowered to 18. At 18, a person has the legal right to: work in any type of job, drive, buy alcohol, gamble, obtain a firearm, vote, give consent to medical treatment or be tried for a crime as an adult and be locked up in prison with adults. However, a person must be 21 before they can legally enter into contracts without the assistance from their responsible parent or guardian. Minors cannot get married without the consent of their parents or guardians. The government must also give permission to marry if the child is younger than 18. Minors cannot sell or mortgage land. Minors cannot administer money or property which they have inherited. Essentially what this means is a person can be locked up with adults in prison, buy a gun and vote but not sign a cellphone contract without their parents consent.

The YouthPaper asked a couple of young people what they thought about changing the Age of Majority and about the different ages which are appropriate for young people to do things. Here's what a few had to say:

### **Suzandi Shifier, 16, Grade 11, David Bezuidenhout High School**

As a minor, society allows me limited rights only. I'm very happy with the limited rights I have. Imagine if I were to be given all rights. Mentally I wouldn't be ready to handle all of them. My life would be clashing at all corners. The basic rights that I'm allowed are more than enough to help me develop positively into adulthood.

The common right wanted by most 16 year olds would be the right to free education. A lot of minors are less fortunate and would really love to help themselves out of their difficult situations. But the fact that they have to pay to go to school discourages them.

Here are some of my rights as a 16 year old living in Namibia.

I have a right to make a will and this be accepted by other people. But it will be my responsibility to make the right choices. That's why I would advise every 16-year-old to consult older people before making decisions. I also have the right to open and operate a bank account and this comes with a lot of responsibility. I also have the right to consent to sexual activity. But even though I have the right to sexual activity, mentally and emotionally I'm not ready for that. With having sex has a lot of consequences.

Two years from now I will be 18 years. At this age I will be allowed to do more things. For example, I will be allowed to drive a car and drink alcohol. In some countries 16 year olds are allowed to drive and consume alcohol. But with driving a car and drinking alcohol comes a lot of risk. I feel the rights of an 18 year old in Namibia are perfectly suited for their mental capacity.

However, I am against the lowering of the age of majority from 21 years to 18 years. A person at the age of 18 is still a teenager. They are still very dependent on their parents and guardians. A person at the age of 21 is independent and responsible. Therefore I feel the age of majority should be held at 21 years.

### **Audrey Innes, 18, Ella Du Plessis**

I don't think 18 year olds should be locked up in a police cell with adults. If an 18 year old is still considered a minor under the law, how can they be combined in one cell with adults. Adults can take advantage of these minors and rape can take place. Later, it would scar you and could end up making you go mental. I think they should keep minors and adults in different cells.

### **Uys Mushalwa, 18, Jan Jonker Afrikaaner High**

In my view, a child is a young person who is not yet 18 years old. Being 18 means that a person is becoming an adult; there are more responsibilities and they are getting greater. I personally feel that what people are allowed to do at this age is quite fair considering the fact that you can make your choices and know the consequences of them. This makes you responsible for your choices.

One benefit of being 18 is that you can go out to clubs. I don't know if this is a good idea as it could distract you from your studies. Being able to get a job or a drivers license are good things because both help you become independent. Some 18 year olds take wrong paths and make wrong choices because of peer pressure. Some follow the rules and some do not.

There are certain important things that people do not feel ready for even though they are allowed. I personally don't feel ready to vote, just because I don't know very much about politics.

I don't think the age of majority should be brought down to 18 because too many wrong choices would be made and many 18 year olds are not mature enough to be responsible for their actions. But I do agree with having any job and being able to drive at 18.

### **Chollastica Goagoses, 18, Jan Jonker Afrikanner**

Tradition is respected by law. But in some traditions, parents decide that girls should get married to older men at a young age. Some are as young as nine when they are considered a woman because they have started menstruating. But a young girl should not get married. Could she really be a wife who can take on the full responsibility of a house? This leads to young girls being abused. Traditional beliefs have to follow the law as well. Traditional parents or a traditional group need to make sure a child is protected until they are a major.

**Franz Saharia, 21, Youth Leader, Physically Active Youth**

When under the age of 18 one is usually considered to be a minor child by law because the law believes that you are young and unable to take on the world. I agree with this.

I think that 16 and 17 year olds believe that they can look after themselves but in fact they cannot. Life is a mental game and minors are missing an adult mind.

Minors gradually acquire more and more legal rights as they mature. It seems as though law makers are trying to prepare minors for adulthood.

A 16 year old can make a will and open a bank account. I agree that these are good steps. A 16 year old can also consent to sexual activity. This one is debatable. Maybe this is allowed because it is too difficult to control though.

When I was 16, I didn't know very much. I was still in high school and very dependent on my parents. I lived under my parents rules and I was not allowed to do certain things like coming home late for example. Looking back now, I understand why.

An 18 year old can obtain a firearm license, buy alcohol, drive, and even vote.

As I grew older, my parents gave me certain rights and when I turned 18, I became a man of my own.

The major issue here is the rule though about the age of majority which at the moment is set at 21 in Namibia.

Personally I think that it should be lowered to age 18 now. There actually is not much difference between what an 18 year old can do and what a 21 year old can do right now. If an 18 year old can buy alcohol, own a gun, gamble and even be locked up in prison with adults why deny them the right to the age of majority?

**Bertha Mauano, 16, Grade 12, David Besuidenhout**

I think people should also be permitted the right to work at any type of job they want at 16. My mom is a domestic worker. I have passed my first term, but do not have any money for Tertiary Education. Imagine the crisis I'm in. I've looked for jobs everywhere to support my further education. But they have all turned me down because of my age.

Our government should also look at the Grade 10 failures and school drop-outs. They should realise that most of them are minors. They roam around the streets because they have nothing to do or don't have the finances to repeat Grade 10. If 16 year olds were given the right to work in a job, the number of street hangouts would drop.

**Emarehi Christy Oherein, 17, Ella Du Plessis**

As a minor, I am not allowed to administer money or property that I have inherited. This means that I'll be denied access to what is rightfully mine. But what happens when I don't have a parent or a guardian? What happens when I have siblings to take care of and I don't have a job? What happens when I'm the sole bread winner in my family and yet I have a trust fund or inheritance that I'm unable to administer. The government should seriously consider lowering the age of majority for minors to administer money or property which they have inherited. The Proposed Child Care & Protection Act should be there to care for

me and yet, under current Namibian law, I'm restrained from using money to actually care for myself and my family.

**Alushe Gabriel, 18, Grade 12, Jan Jonker Afrikaaner**

Currently the age at which alcohol can be obtained in Namibia is 18. However, in society, minors have access to alcohol as early as the ages of four and five. Having shebeens and bars in our neighbourhoods is looked upon as being normal. Parents and the community at large turn a blind eye. However, we often don't know the long term effects that alcohol has on our bodies. Most of us minors know that if you drink in excess you will get drunk, tipsy and have a terrible hangover the next day. But, alcohol is actually a depressant, can be addictive and can have long term health affects. I suggest that our government have an annual Alcohol Awareness campaign to educate 18-year-olds about what drinking alcohol can mean.

**What do you think?**

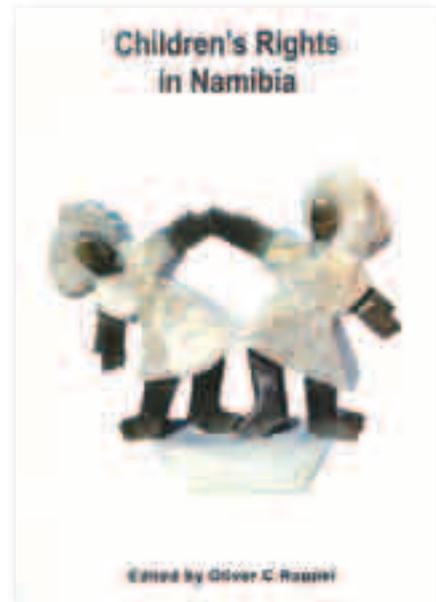
Have your say. Should Namibia lower its age of Majority to 18? Why or Why Not? Send a sms with your thoughts and comments on this topic to the committee drafting the legislation to 081-424-1591.

The Legal Assistance Centre is providing technical assistance to the Ministry of Gender Equality & Child Welfare Bill on the revision process. It is supported by UNICEF. *Article provided by the LAC.*



## 6.2 Book chapters

In 2009, the Konrad Adenauer Foundation, in association with the Human Rights and Document Centre at the University of Namibia, published a book entitled *Children's Rights in Namibia*. Two chapters were devoted to the Child Care and Protection Bill: (1) “*A major decision: Considering the Age of Majority in Namibia*”, written by Rachel Coomer and Dianne Hubbard (Legal Assistance Centre) and (2) “*Work in Progress: The Child Care and Protection Act in Namibia*”, written by Lena N Kangandjela and Clever Mapaire. This book was launched on 21 November 2009, distributed widely to Namibian individuals and groups which work with children, and posted in full on the website of the Konrad Adenauer Foundation.<sup>22</sup>



## 7. Assessment

The use of the media to communicate about the revision of the draft Child Care and Protection Bill was extremely successful. Maintaining media engagement was time-consuming, but it was worth the effort as we achieved constant media coverage throughout the consultation period. For further large-scale law reform processes we recommend inclusion of a dedicated media liaison person. One of the objectives of the consultation process was general education about issues pertaining to children's rights, and a dedicated media liaison officer would have been able to utilise media outreach more generally to expand on this role.

The key to successful media outreach is a diverse use of communication mechanisms. A variety of communication methods allows for wide public engagement, and ensures that the messages remain interesting and relevant to the public.

The diversity of methods used was particularly relevant in Namibia due to the communication challenges faced by the country. Namibia is a large country (covering approximately 824 000 square kilometres) with a low population density (just two people per square kilometre). Practically, this means that getting information to people can be a problem. A further challenge is the fact that Namibia has one of the most unequal distributions of wealth in the world. The wide disparity in resources means that there is a wide disparity in the ways people are able to access information. The simplest forms of modern media, such as the use of email and the internet, are not accessible for many people in Namibia. It was against this backdrop that a diverse and accessible media campaign was developed.

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<sup>22</sup> The book chapters can be found at <[www.kas.de/proj/home/pub/8/2/year-2009/dokument\\_id-18139/index.html](http://www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html)>.

# CHILDREN'S CONSULTATIONS

## 1. Overview of children's consultation process

As children were the focus of the proposed bill, soliciting input from children and youth was a key element of the consultation process. The objectives of the children's consultations were as follows:

- (a) to allow children to raise issues and concerns that child law or policy could address;
- (b) to provide children with sufficient and appropriate information on key issues in the preliminary draft bill so that they could participate in an informed discussion of the issues;
- (c) to record and report on input from children so that this input could be used to shape the law and its accompanying regulations; and
- (d) to ensure that children who participated in the consultation process received feedback on its outcomes.

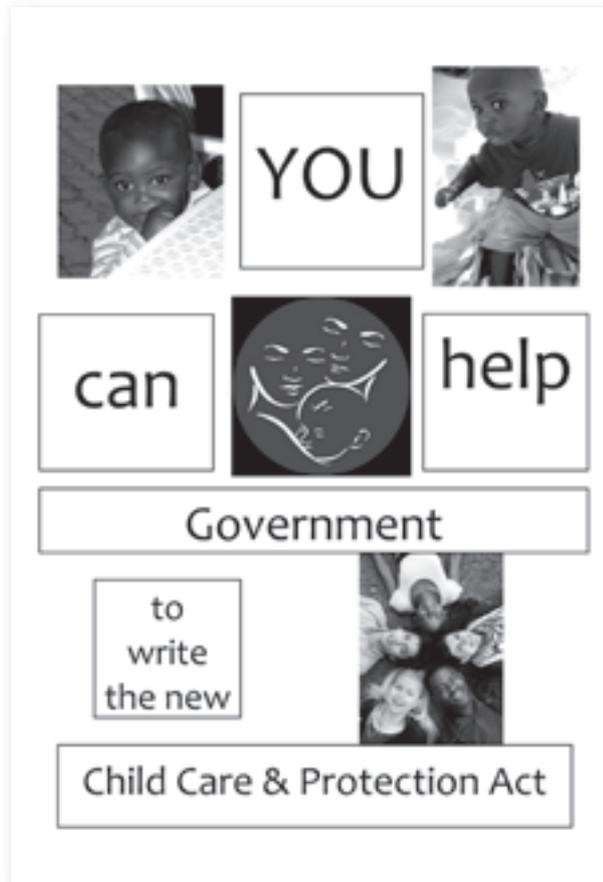
*"I think there should be other groups such as this one, that will allow a platform for youngsters to shed some light on what they think and I think that would also allow the government to understand the mindset of the teenagers."*

Member of the children's reference group

*"I think what should be done to resolve the underlying problems is the child should be given all the necessary support." – SMS*

## KEY STEPS IN THE CHILDREN'S CONSULTATION PROCESS

1. **Planning:** an initial planning meeting with key children's organisations in Namibia to plan an effective strategy
2. **Child guidance:** monthly meetings of a Children's Reference Group which guided the process and identified key issues in the draft bill which would be of interest to children
3. **Development of child-friendly materials:** the development of consultation materials to be used by children and the distribution of these materials
4. **Facilitator training:** the training of facilitators with previous experience in working with children, so that they could incorporate consultations about the draft bill into the ongoing work of their organisations
5. **Workshops:** the hosting of four regional workshops held specifically to discuss the draft bill, and additional consultation sessions at other workshops and conferences where members of the Ministry's team gave presentations about the draft bill.
6. **Feedback:** reporting back to the children on the revision of the draft bill so that they could see how their input helped to shape the bill.



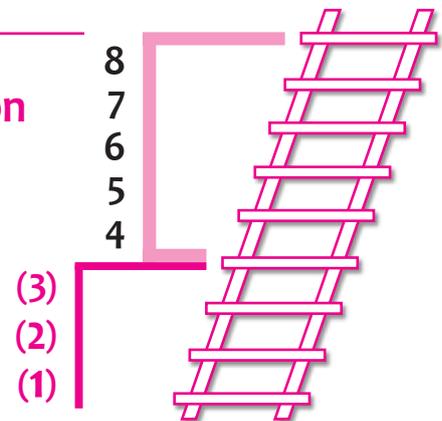
One of the materials produced for the consultation with children – a child-friendly booklet about the factsheets

The children’s consultation process was conceptualised at an initial planning meeting with representatives from key children’s organisations in Namibia. The intention was to draw on previous experiences and contacts to ensure that the involvement of children was participatory and effective. Representatives from Family Health International, Positive Vibes, Yelula/U-Khâi, LifeLine/ChildLine Namibia, the Legal Assistance Centre and two independent consultants attended a half-day planning meeting on 10 March 2009. The participants discussed the Ministry’s initial idea of holding a national workshop to which children from all regions would be invited, and suggested that it would be more effective to hold smaller regional consultations – which could potentially involve more children and also allow for more active participation by the children. Based on the additional time that would be required for the facilitation of such meetings, the group recommended that a specific team of consultants should be engaged to manage the youth consultations.

Ethical and effective child participation requires special considerations. The participants at the initial planning meeting stressed the importance of running truly participatory children’s workshops which are as high as possible on the “ladder” of participation show below.

## Ladder of Child and Youth Participation

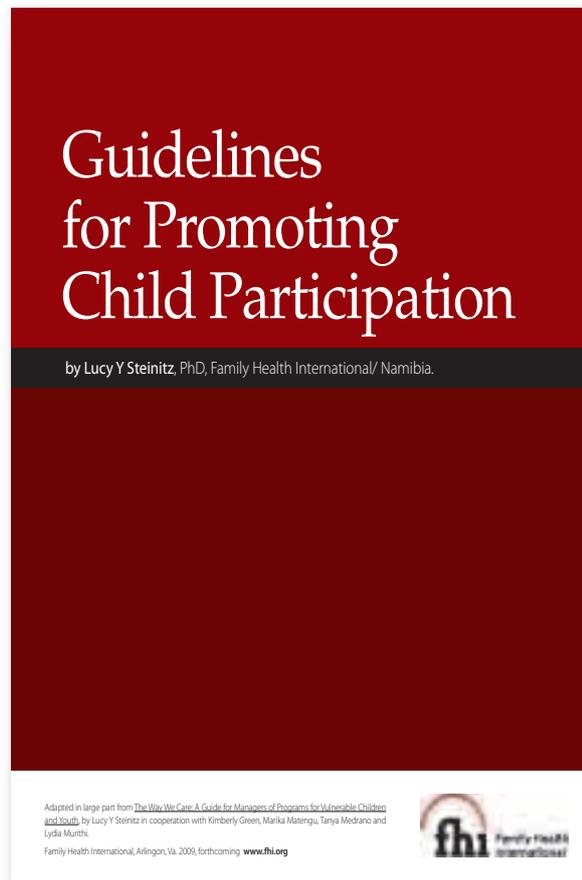
8. **Child/youth-initiated, shared decisions with adults:** when projects are initiated by youth and decision-making is shared among youth and adults in a way which empowers youth and allows them to access and learn from adult expertise
7. **Child/youth-initiated and directed:** when young people initiate and direct a project and adults are involved only in a supportive role
6. **Adult-initiated, shared decisions with children/youth:** when projects are initiated by adults but the decision-making is shared with the young people
5. **Consulted and informed:** when youth give advice on projects designed and run by adults, and are informed about how their input will be used and on the outcomes of the decisions made by adults
4. **Assigned but informed:** where youth are assigned a specific role and informed about how and why they are being involved



- (3) **Tokenism:** where young people appear to be given a voice, but in fact have little or no choice about what they do or how they participate
- (2) **Decoration:** where young people are used to help or “bolster” a cause in a relatively indirect way, although adults do not pretend that the cause is inspired by youth
- (1) **Manipulation:** where adults use youth to support causes and pretend that the causes are inspired by youth.

Source: Sourced by Dr L Steinitz of Family Health International and based on S Arnstein, “A Ladder of Citizen Participation”, JAIP, Vol 35, No 4, July 1969, pp 216-224, as adopted by Roger Hart; see [www.mcs.bc.ca/ya\\_ladd.htm](http://www.mcs.bc.ca/ya_ladd.htm) and “Background Handouts” in Youth Participation Guide, YouthNet Project, Family Health International, USAID, 2005.

Dr Lucy Steinitz from Family Health International offered to draft guidelines on ethical procedures for child participation. For example, child participation should always be voluntary, informed, meaningful, respectful and safe. Written consent by the child and his/her guardian ensures the principle of *voluntary participation*. To be *informed*, children should know about the background, purpose, risks and possible outcomes of their participation. *Meaningful participation* means that the exercise should have a realistic and constructive purpose. *Respect for child participation* means that the contributions the child makes should be listened to and valued. The information should also be confidential, or shared to a wider extent according to the consent the child has given. *Safe participation* should mean that the child is not at risk of physical, psychological or emotional harm through the exercise. In addition to being used to guide the children's consultations around the draft Child Care and Protection Bill, these guidelines were subsequently published by Family Health International,<sup>23</sup> providing a good example of how one process can lead to other projects.



Based on the recommendations from the planning meeting, the Technical Working Group engaged Dr Elizabeth Terry, Director of Design and Development Services (a social science research and training company), to put together a team of trainers with solid experience working with children and youth.

The initial planning meeting was very useful in mapping out a process which ensured that the key target group would be sufficiently engaged in the consultation process. However we recommend that this type of planning meeting should ideally be held earlier, before the budget and timeframe for the overall consultation are finalised, to ensure that adequate funds and time are allocated for outreach to key target groups. In this case, because the detailed planning meeting was held after the budget was already in place, there were insufficient funds for all the outreach activities proposed at this meeting. Feedback from the children's consultants also suggested that a larger budget and a longer timeframe would have increased the level of input from children.

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<sup>23</sup> Dr LY Steinitz, *Guidelines for Promoting Child Participation*, Family Health International/Namibia, 2009.

## THE CHILDREN'S CONSULTATION TEAM

**Dr Elizabeth Terry**, Director of Design and Development Services  
**Kaarina Amutenya**, Acting Director of !Nara Training Centre  
**Shelene Gentz**, registered psychologist  
**Enteny Cloete, Flavian Libita** and **Dominic Kalokela**: young researchers



Dr Elizabeth Terry



Kaarina Amutenya



Shelene Gentz

### Members of the children's reference group

(five of the members are pictured on the right):

**Alushe Gabriel, Faith Comfort Mamombe, Natasja Magorokosho, Petrus Eliazer, Counney Kemp, Frans Sakaria, Uys Mushabwa, Nadine Boois, Sharonice Busch, Treza Cooper, Ilandra Louw, Salmi Joseph, Lucas Ashipala, Ndaty Tshilunga, Jeffrey Kazombiye.**



The first task in the outreach to children was to assemble a Children's Reference Group to act as a steering committee for the children's consultations. Members were between 15 and 21 years of age, and were chosen based on the leadership positions they held within their community, school or non-governmental organisation. The group was composed of children based in Windhoek only, as the costs and logistics of travel for regular meetings made it impractical to include children from other areas. The Children's Reference Group met monthly throughout the process, to advise the children's consultation team on mechanisms for soliciting input from children. For example, the Children's Reference Group selected topics from the bill to be prioritised

for discussion at workshops with children, and helped to develop the children's consultation materials.

Acting on the basis of feedback and guidance from the Children's Reference Group, the children's consultation team managed the bulk of the youth consultations. Technical Working Group members assisted by taking responsibility for facilitating sessions on the draft bill at additional child or youth workshops and conferences, such as national conferences of Yelula/U-Khâi and LifeLine/ChildLine Namibia.

In addition to working directly with children, the children's consultants together with UNICEF provided specialised training on the bill to facilitators with previous experience in working with children. A total of 30 people attended these training sessions. The intention was to equip regional organisations which already work with children to host additional workshops. This introduced a "ripple effect" to the consultation process which helped to maximise human and financial resources to reach as many children as possible. This is an example of the importance of involving civil society in a consultation process, as it allows messages and information to be disseminated in the widest possible way while also providing opportunities for information-sharing and skills transfer that can have a positive effect after the consultation is over. However, when considering using such a "ripple" approach, it is important to allow for some extra expenses which may arise from this technique; for example, in this case, some of the regional facilitators requested funds to host dedicated workshops on the proposed bill.



Workshop for facilitators



Presentation by a Legal Assistance Centre representative



Presentation by a ChildLine representative

Children attending presentations on the CCPA



In total, the consultants held three facilitators' training workshops and twelve children's workshops. These included four regional workshops hosted directly by the children's consultants, and eight workshops hosted by the trained facilitators. These workshops attempted to obtain a cross-section of views by location (Khomas, Caprivi and Erongo regions) and age (participants ranged from age 11 to 21 years). Almost all the children under age 18 were learners, while some of the youth (age 18 and older) had dropped out of school or had completed their studies.

A child-friendly booklet containing a contest built around input on the bill was distributed to all workshop participants, as well as at the Ongwediva Trade Fair in Oshana Region.<sup>24</sup> Jac-Mat, a local electronics supplier, provided the first prize of an MP4 player, and the Legal Assistance Centre donated smaller prizes for the runners-up.<sup>25</sup>

In total, children's input was obtained directly from 188 children and youth through this process: 174 workshop participants, nine contest participants and five members of the Children's Reference Group who took part in discussion of the bill at group meetings.

<sup>24</sup> The Ongwediva Trade Fair is one of two national trade fairs held each year in Namibia. The other trade fair is held in Windhoek. Consultation materials on the Child Care and Protection Bill were also distributed at the Windhoek Show, which took place near the close of the consultation process.

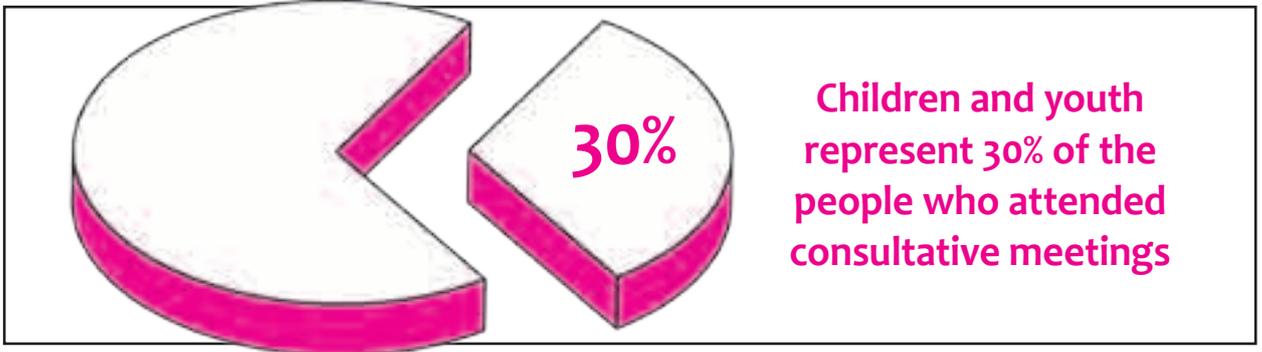
<sup>25</sup> Details of the winners and entrants are listed in an appendix to this report, which is available on request from the Ministry or the Legal Assistance Centre.

The dedicated children’s consultations were supplemented by presentations about the draft bill at other workshops and conferences, in an effort to reach as many children as possible.

Insofar as possible, the children who participated in dedicated workshops on the draft bill were contacted again at the end of the consultation process and provided with a summary of the overall input from children and information on how this input was being used in the revision of the draft bill.

<b>SUMMARY OF CHILDREN AND YOUTH WHO ATTENDED CONSULTATIONS*</b>		
<b>Month workshop was conducted</b>	<b>Description of workshop</b>	<b>Number of participants and age range</b>
February 2009	Workshop with youth journalists (REAL magazine)	12 girls aged 14-18
May 2009	Workshop with Young Achievers	18 girls and boys (teenagers)
June 2009	Second workshop with youth journalists (REAL magazine)	6 girls aged 14-18
June 2009	LifeLine/ChildLine Namibia annual conference	100 girls and boys aged 10-17
June 2009 onwards	Workshops hosted by the children’s consultants and the trained facilitators (12 children’s workshops)	174 boys and girls aged 11-23
June–October 2009	Children’s Reference Group Meetings (6 meetings)	15 girls and boys aged 16-21
July 2009	2 workshops with learners from Khomas High School	60 girls and boys aged 15-17
September 2009	Workshop with children from the Windhoek SOS Children’s Village	18 girls and boys aged 9-13
October 2009	Workshop with children from the Windhoek Eros Children’s Home	16 girls and boys aged 10-20
<b>Total</b>	<b>26 workshops</b>	<b>419</b>

\* In some cases there may be a duplication in counting people who attended multiple workshops and meetings. For example, children who attended the LifeLine/ChildLine national conference may have attended other meetings as well. It would not be practical to search through the participant lists to ensure that each person was counted only once.



A total of 419 children or youth were consulted about the revision of the Child Care and Protection Bill at 26 different workshops or conferences. The consultations with children and youth represent 30% of all the people consulted through workshops or other meetings.

**“Any child capable of forming a view has the right to express views freely in all matters affecting him or her.”**

CRC Article 12(1)



A child's drawing showing resources needed at child care facilities

## 2. Feedback from consultations with children and youth

### 2.1 Rights and responsibilities

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

All of the 97 respondents who answered this question said that "children's rights and responsibilities" should both be covered in the Child Care and Protection Bill. Top of the list for "rights" included: shelter, education, freedom of speech, right to a name/identity, food and nutrition, right of choice, to have fun/to play, and to be loved and cared for. The most often-cited "responsibilities" were: to attend school regularly, to be responsible for one's own actions, to help at home, to follow rules and regulations, and to respect/obey/love your parents.

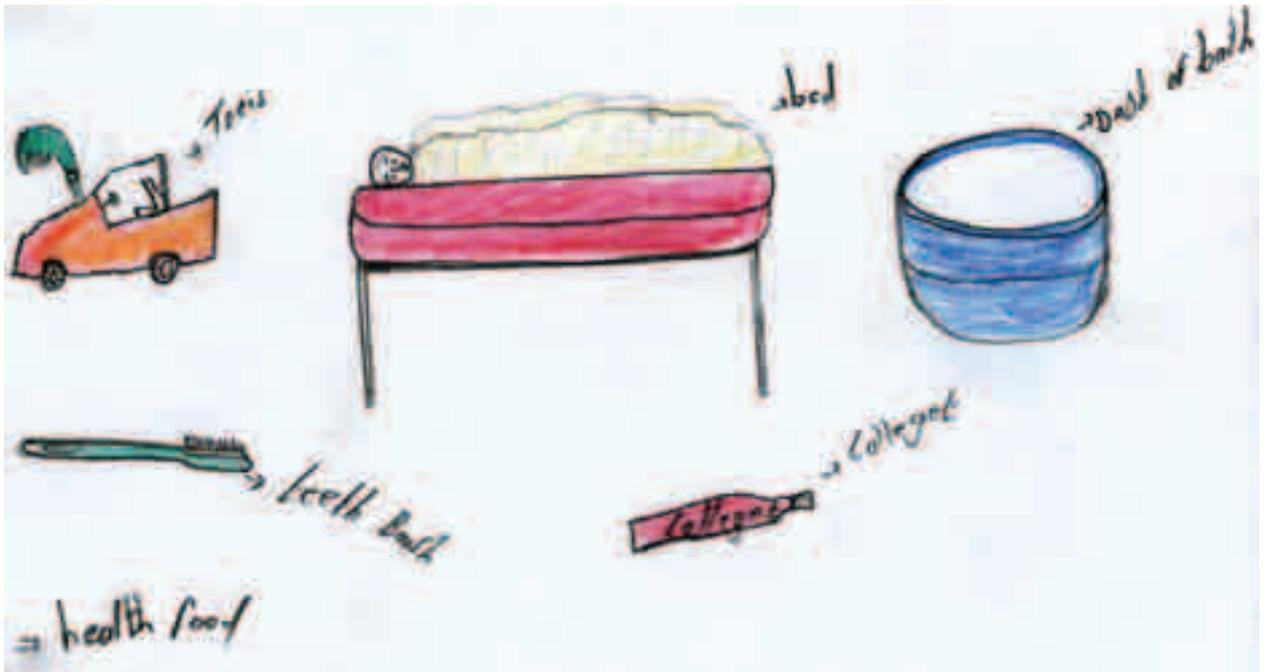
#### ONE GROUP OF FIVE CHILDREN LINKED EACH "RIGHT" TO A CORRESPONDING "RESPONSIBILITY"

Children have the right to....	and then must take the responsibility to...
Education	study, be committed, and focused on their school work. Children should grab the opportunity of education with both hands.
Shelter	be safe and feel protected.
Parents	obey the rules set up for them and also love their parents.
Medical treatment & examinations	follow safety rules and maintain personal hygiene.
Express themselves	tolerate others.
Clothing	wear clothing without being half naked, and look after their clothes.
Fun	play only at safe playgrounds and obey parents.
A name	respect others for the sake of dignity.
Life	celebrate everything with thanks.

“Most children are willing to accept responsibility.”

“All children should have the right to say ‘no’ to something that makes them unhappy.”

Comments from children



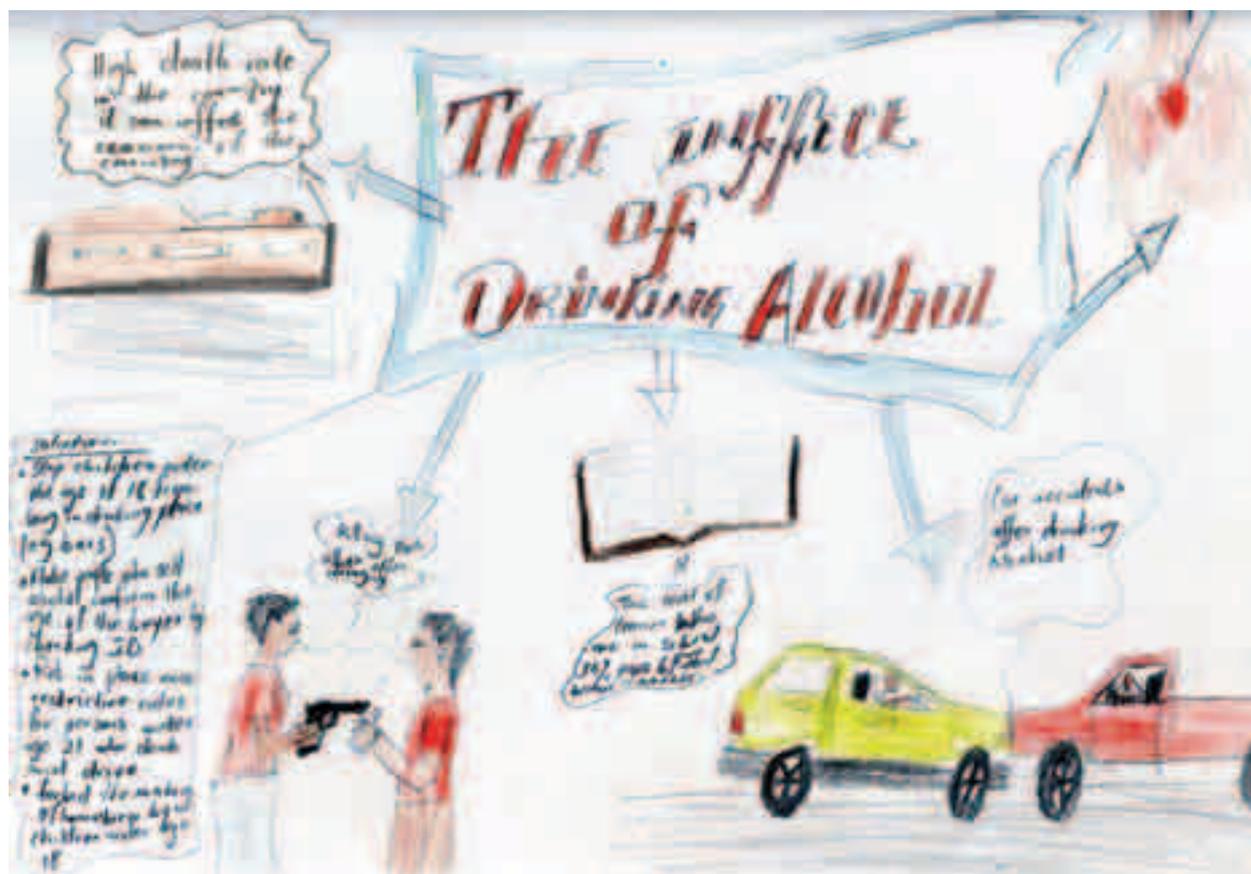
A child's drawing showing resources needed at child care facilities

## 2.2 Age of majority

Most countries in the world set the age of majority at 18. Since 1972, the age of majority in Namibia has been 21. However, many of the laws in Namibia already allow 16- or 18-year-olds to have certain responsibilities. For example an 18-year-old can vote, drive, drink, own a gun and be locked up in a police cell with adults, but it is not until 21 that a person can independently enter into contracts, bring or defend a court case, sell or mortgage land or manage money or property which they have inherited. Minors cannot enter into a civil marriage without the consent of their responsible parent or guardian. The United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child both define children as persons under 18. The Committee which monitors the UN Convention encourages countries to harmonise the definition of “child” and the age of majority if they are not already the same. What should the age of majority be in Namibia?

Children’s opinions on the age of majority were almost evenly divided: 55 children felt that the age of majority should be changed to 18 years, while 47 said the age should remain at 21 years. The main basis for this division of opinion was simply differing ideas on when children acquire sufficient maturity and responsibility to make their own decisions. In another question, 78% of the children responding said that it was acceptable to have various ages for various rights. The remaining 22% said there should be one set age for all rights.

COMMENTS FROM CHILDREN ON THE AGE OF MAJORITY	
For keeping the age of majority at 21	For lowering the age of majority to 18
“A lot of children are not responsible enough at 18.”	“The 21 year thing is just a tradition.”
“Will an 18-year-old be able to make good use of inheritance? Maturity does not come with age, experience is the best teacher.”	“It should be 18, because children who stay with their parents until they are 21 are just lazy.”
“It should stay 21 because at 21 you can take better care of yourself when you leave home. 18 year olds just think of parties, drinking and having fun. At 21 your maturity is better developed and you have more life experience.”	“Government allows us to drive, to vote, to be locked up at 18, so why can’t the age of majority be 18?”
“18 can be a bit too soon and 21 can be a bit too late.”	



A child’s drawing to illustrate the problems of underage drinking

## 2.3 Consent for medical interventions

The age of consent for medical treatment and surgical operations under the 1960 Children's Act is 18. Should the new law deal with this issue by similarly setting an age of consent, or by using some other standard such as an assessment of the child's maturity? Or some combination of age and maturity? If the new law specifies an age for consent, what should that age be? Related questions for consideration were how the law on children should deal with consent to HIV tests, access to contraceptives and pregnancy tests.

### Medical treatment and surgical operations

Almost half of the children (89 of 188) indicated that the ability to consent to medical *treatment* should be based on "level of maturity and age". The next most cited response (38) was for "age only". The highest number of children felt that the relevant age should be 16 years for consent to medical treatment, with the next highest-rated opinion being 18 years.

Almost half of the children (85 of 188) indicated that the ability to consent to *surgical operations* should only be given to people who have reached the age of 21 years. The next most cited response (43) suggested the age of 18 years for this purpose.

In discussing this question, some children emphasised the need for parental guidance, while others were worried about children who might become ill when their parents were not available to assist. There was a wide range of opinions on when children acquire sufficient maturity to make medical decisions on their own. However, there was a general sense that a child should be older to make decisions about surgery than about other medical treatment, as surgery was perceived by many children as being more serious (which is often, but not always, the case). Many children pointed to the need for a special procedure for emergency situations where parents are not available (which was already provided in both current law and the draft bill).

**"If the condition and treatment is not too serious then a 14-year-old can give own consent."**

**"Children under 16 do not always know how to explain their illness; doctors should therefore always do a full check-up."**

**"Some treatments will not be understood for a child at 16, but other treatments will be easy to understand."**

**"People under the age of 21 may make wrong decisions."**

Comments from children

## Consent to HIV tests

Regarding consent for HIV testing, one-third of the children felt that the ability to consent should be based on “age only” with the age being 14 years. The next most cited response (41) recommended basing consent on the level of “maturity and age”, with the age most commonly cited being 13 years. This response was closely followed by 38 children who believed that all children under 21 years of age should be allowed to have HIV testing only with consent from their parents or guardians.

When asked if it should be easier for a child to be able to provide their own consent for an HIV test than other medical interventions, the responses were fairly evenly spilt across the three options: some children said “Yes”, some said “No”, and some felt that children’s ability to consent should be based on the specific circumstances of why they want an HIV test – such as whether they were sexually active or not.

Some worried about children who would learn they were HIV positive, and might then fall into depression or even commit suicide without emotional support from their parents. On the other hand, it was also acknowledged that some children might want to be tested without wanting their parents to know they were sexually active. It was also suggested that some parents might be reluctant to allow a child to be tested in a case where the child may have contracted HIV at birth. Concerns were raised about children who are survivors of sexual abuse and want to know their HIV status without having to reveal the abuse to family members, and about families where parents would be reluctant to allow testing because of the stigma which still surrounds HIV in some communities. Participants were divided between concerns about children who might need to know their HIV status even if their parents were not likely to agree to testing, and concerns that children in such situations might not get the support they need if they were allowed to give independent consent to HIV tests.

**“Some children might be afraid of their parents, but are involved in sex, thus going for testing is the right thing to do.”**

**“Some children are sexually active at 12 and might be infected; the sooner they know the better.”**

**“A child younger than 15 needs the support of an adult before going for a test.”**

**“This is a disease where genuine support is needed. For any one under 21, they need their parents’ or guardians’ support.”**

Comments from children

## Access to contraceptives

Almost one third of the children felt that ability to access contraceptives should be based on the child's "level of maturity and age" with most suggesting age 16, followed closely by age 14. One reason cited for the preference for a relatively young age for access to contraceptives was that children do not always want their parents to find out what they are doing, meaning that requiring parental consent for contraception might result in conflict between parent and child. Many children thought that access to contraceptives should be tied to the age at which children are generally becoming sexually active; although there was some disagreement on what this age is, many children thought that it was age 16.<sup>26</sup>

**“At 12 years, a child should know what the body is capable of and be able to influence it without having to tell anyone, as this is a very personal and intimate thing.”**

**“Most of the children infected and pregnant are around the age of 14, so contraceptives should be distributed to them.”**

**“Most children are having sex by 16 years.”**

Comments from children

When asked if there should be different rules about access to condoms compared to access to other forms of contraceptives, the vast majority of children responding to this question said “yes”. The most common reasons given for this answer were (a) that condoms should be easier to access because they provide protection against sexually transmitted infections, not only pregnancy; and (b) if other contraceptives are not used correctly, serious complications can result.

<sup>26</sup> The age of consent for sexual activity is sixteen in Namibia, in terms of section 14 of the Combating of Immoral Practices Act 21 of 1980, read together with the Combating of Rape Act 8 of 2000. However, these laws apply only where there is an age gap of three years or more between the persons involved.



A child's drawing showing resources needed at child care facilities

“Some parents are irresponsible and as a result are not always available for their children so that contraceptives can be taken regularly.”

“Doctors giving out contraceptives should ask questions such as, ‘Do you know the risks, side effects, benefits, and implications of using this contraceptive?’ ”

“Too many kids are raped these days by family members or strangers.”

Comments from children

## Pregnancy tests

Most children who commented on pregnancy tests felt that girls who reached age 12 should be able to access a pregnancy test without the consent of their parents or guardians. The reasons given were that some children are sexually active at this age, and “even if a girl is not sexually active, she may have been abused or raped.”

## Determining maturity

When asked how “level of maturity” should be defined for purposes of medical consent, and who should judge this level of maturity, most children felt that children themselves would be the best judges of their own maturity level. Other common answers included



A child's drawing to illustrate the problems of underage drinking

doctors, teachers and the child's parents or foster parents. However, several children raised the practical problem that doctors are often very busy and wondered if they would realistically have time to assess a child's maturity.

The most common maturity test proposed was whether the children demonstrated sufficient knowledge of their illnesses. Some thought that emotional stability should be assessed, while others stressed the child's level of responsibility. In the case of HIV tests, several children suggested that pre-test counselling could be utilised a forum for assessing maturity.

**“The child’s knowledge around the disease should be determined.”**

**“If a child comes alone but talks easily about their symptoms and has the necessary fees, then s/he should be judged as ‘mature enough’.”**

Comments from children

## 2.4 Mandatory reporting for children in need of protection

Child abuse and neglect usually take place privately in the home, with no witnesses other than the parents and children. Reporting laws are designed to bring cases of possible wrongdoing to the attention of public authorities who are in a position to help. Mandatory reporting laws are laws that *require* people to report cases if they suspect that a child is being mistreated. Voluntary reporting laws are laws that *encourage* people to report cases if they suspect that a child is being mistreated. Should reporting of children in need of protection be mandatory or voluntary? Should there be different rules about reporting for different people, such as mandatory reporting for professionals who work with children and voluntary reporting for the general public?

Of the 102 children who responded to the question of whether reporting of child abuse should be mandatory or voluntary, 69% said that reporting should be mandatory. The most frequent reasons given for this view included: to stop the abuse and neglect; to prevent children from being seriously injured or even killed; that reporting will empower children to stand up against abuse because they will know that there is a place they can seek protection; and that mandatory reporting will raise awareness of the need to work together to protect children.

Nearly one-third of the children consulted said that reporting should not be mandatory for the general public, but only for professionals. They felt that mandatory reporting

would lead to more abuse as a reaction to the report, and that children might be reluctant to seek help if they know the case must be reported.

For mandatory reporting for all:

“The parents will only further neglect the child if it is *not* reported.”

“The child will be helped if other people find out.”

Against mandatory reporting for all:

“The parent will kill the child if they learn they have been reported.”

“It can cause family quarrels.”

For mandatory reporting only by professionals who work with children:

“Professionals are responsible for protecting children. They should be punished if they do not fulfil their duty by reporting.”

“Reporting should be mandatory for professionals, but they should not make the report without the abused child’s permission.”

Comments from children



A child's drawing showing resources needed at child care facilities

## 2.5 Foster care and facilities for children

### Foster care

The version of foster care contained in the Children's Act 1960 is a Western model based on foster care situations where people who are strangers to a child take care of the child for a short temporary period, until the child can either return home or be placed for adoption. However in Namibia, most foster parents are members of the extended family and the child is often cared for by them for long periods of time. In other countries, this type of care is often called kinship care. Should there be separate definitions and provisions for foster care and kinship care? Should there be less monitoring of kinship carers? Should kinship carers also be eligible to receive state grants? Other questions for discussion were: what type of decisions should foster parents be able to make and how many children should a foster parent or family be permitted to care for?

The children consulted made a variety of recommendations regarding foster care and foster parents. Some of their key recommendations were as follows:

- ☉ There should be regular checks of the child's living conditions.
- ☉ There should be more visits by social workers to foster parents so that abuse by foster parents can be limited.
- ☉ Let a child of 15 years or older be the one to decide if there should be surprise checks on the family after three months to see if the living conditions of the child are good.
- ☉ The grant amount of N\$200 should be increased so that more children can be fostered.
- ☉ The money that foster parents are receiving from the foster grants is not enough, and children are suffering due to this.
- ☉ In a situation when the foster parent dies, the child should receive the foster grant directly, especially when the child is above the age of 18 and still in school or tertiary education.
- ☉ Government should pay for medical bills and clothes for foster children.
- ☉ Foster parents should always be able to decide on medical care.
- ☉ Foster parents should not drink alcohol.
- ☉ Foster parents should have no criminal record.

When asked if the number of children that a foster parent/foster family can accept should be limited, the children consulted gave two main responses: (1) the number should be limited to three children; or (2) the number should depend on the circumstances. Some suggested circumstances were the financial situation of the foster parents, and the total number of children in the family – including the number of biological children the foster family already have together with the number of children they want to foster.

Only one child felt that the current foster grant was acceptable. Almost all said the amount of the grant should be increased. The response to the question about who should receive foster grants was quite close: 36 children said that all foster parents should get a state grant, while 28 felt that the grant must be “means-tested” and provided only to poorer foster parents. Only a few children discussed the question of giving foster grants to relatives versus strangers, but almost all of them said that relatives who are fostering a child should receive the same grant as any other foster parents.

Most of the children consulted thought that it would be useful to have “something in-between” adoption and foster care, such as “permanent foster care” where the biological family can still have some legal rights and obligations for the child. Many thought that severing all ties with biological parents would be inadvisable even if a child was cared for by extended family members or foster parents on a long-term basis. For example, many children thought that knowing the biological family will give children in foster care a sense of belonging and knowing “their roots”, or that children might be enriched by being cared for by “two families”.

## Songs

### Where do we go from here?

No parents  
Our mommy has gone, gone away  
Daddy's no where to be found  
And now we are three  
With no home, no shelter and no food

(Chorus)

We are standing in the middle of nowhere  
Figuring out why this world is so cold  
No one to love us  
Better home, that's what we need

(Rap)

We are standing in the middle of nowhere  
With no place to go at all  
We hope for a better place  
We wanna feel the love  
We wanna feel the touch  
Of a lovely caring hand  
Now listen to my peeps as they  
As they go along just to finish this favourite song  
Every child needs a home, someone to care for them  
Someone to love them  
Call a foster home or adopt a child  
A foster mom approved by the law  
Adoption parents with no criminal records  
Take care of my brothers and sisters!

### Is There Still Hope?

Oh God, Why is this happening to me?  
I used to live a happy life  
But now my life is a living hell  
Look at me, Oh God  
I receive grants from the  
government  
But my life is like a street kid's life  
My needs and wants are not met  
I go to school with an empty stomach  
My clothes are all torn and so are  
my shoes  
I do not get the love that a child  
needs  
My foster parents abuse me and  
they always look down on me  
Is there still hope  
For me oh God

When we came into this world  
It was not by chance  
But because we have a purpose to  
fulfil  
We should never feel unloved  
because there is only one person  
That loves us more than anyone else!

Composed by children at a consultative meeting

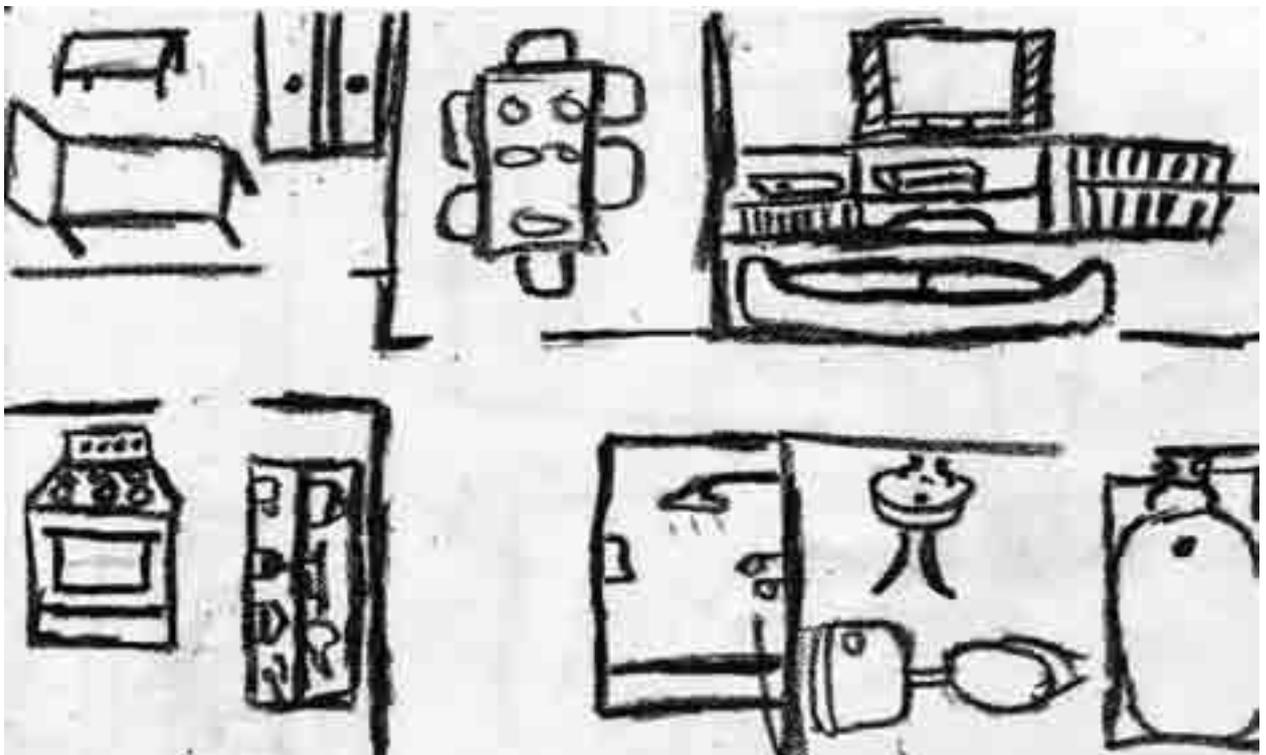
“The more money you have, the more kids you can foster.”

“You need to have a job before you can foster a child. It does not have to be a fancy job, as long as you can provide for the children.”

“Social workers just do their visits after a number of years, so foster families still do not take care of the children properly.”

“Children must also be involved in the decision about the potential foster parents.”

Comments from children



A child's drawing showing resources needed at child care facilities

## Facilities that care for children

There are a number of facilities that provide care for children, such as children's homes, crèches, day care centres, shelters and places of safety. What are the minimum standards that should apply to all alternative care facilities? What arrangements should be made for children reach the age of majority whilst in alternative care? How often should facilities and placements of children in these facilities be monitored?

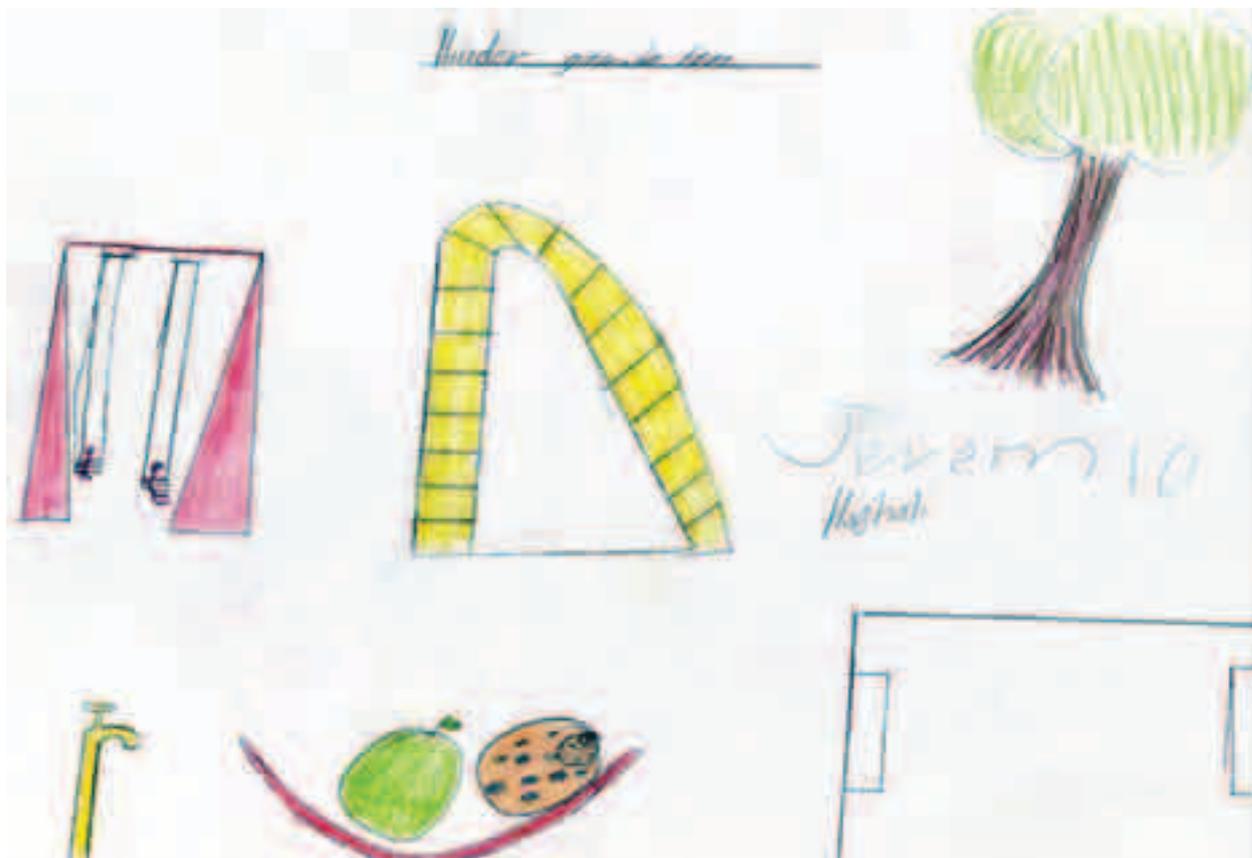
The children consulted offered more than 80 ideas for basic requirements or minimum standards that should apply to any facilities caring for children. The top suggestions were (in order of frequency of response):

- ④ food
- ④ clean drinking water
- ④ clean toilets
- ④ playgrounds
- ④ hygienic conditions
- ④ warm comfortable beds
- ④ a comfortable friendly environment
- ④ hot showers
- ④ love and care with lots of hugs
- ④ other children to play with
- ④ sports facilities
- ④ educational activities
- ④ toys and games
- ④ teachers or other adults to supervise the children.

The children's main suggestions for ways to ensure that these standards were met were: (1) government should inspect the facilities once or twice per month; and (2) funds should be provided to build and upgrade facilities.



A child's drawing showing resources needed at child care facilities



A child's drawing showing resources needed at child care facilities

The children also offered ideas on how to prepare children in residential child care facilities to live independently. Top responses included:

- ☉ the children should be allowed to remain at the facilities until they are 21 years of age;
- ☉ lifeskills programmes should be conducted at the facilities;
- ☉ assistance should be provided to help the children find other accommodation; and
- ☉ assistance should be provided to help children obtain all the necessary documents, like birth certificates.

**“Motherly love must be in abundance.”**

**“The adults and teachers at the facilities should teach the children well as they are the leaders of tomorrow.”**

**“A place for relaxation is needed for a grown-child to go and sit and think about many things he/she went through.”**

**“Government should invest more money in children's homes.”**

**“The children should show appreciation for what is done for them.”**

Comments from children

## 2.6 Child-headed households

The preliminary draft bill identified a child-headed household as a household where all three of the following circumstances are present; (1) the parent or care-giver of the household is terminally ill or has died; (2) there is no adult family member available to care for the children in the household; and (3) a child has assumed the role of care-giver for some other child in the household. Are these criteria correct to identify child-headed households?

The children consulted listed various criteria which should be used to identify a child-headed household. Key indicators suggested were: 1) if the parents had left the home, died, or were too ill to take care of the children; and 2) if a child has dropped out of school to take care of siblings. Of the 14 children who responded to this question, all felt that the youngest age at which a child could head a household would be 16 years.

**Question: What should be the minimum age of a child for them to be able to stay as the head of the household?**

**Answer: Age 16**

- Ⓢ **“A 16-year-old is grown up, ‘knows about life’, and can take care of other children.”**
- Ⓢ **“A 14-year-old is still too young to do all the things needed to be done around the house.”**
- Ⓢ **“A 10-year-old might not know what is right and what is wrong, or good and bad.”**

Comments from children

## 2.7 Baby-dumping

Baby-dumping and infanticide are significant problems in Namibia. Some countries, such as the United States, have enacted “safe haven” laws. The purpose of these laws is to encourage parents – usually mothers – to leave unwanted babies in a safe place (such as a hospital or police station) where the baby will receive proper care and protection until an adoptive home can be found. Legal safeguards are needed for these safe drop-off places to make sure that they are not misused. Should Namibia introduce safe haven provisions into the new law?

Some countries make infanticide a separate crime to murder, to allow courts to more easily take into consideration factors like post-partum depression (a hormonally-influenced depression which some mothers experience after giving birth). Should infanticide be a different criminal offence to murder?

Of the 93 children responding to the questions on safe haven laws, 91% felt that Namibia should create such laws to help prevent infanticide. The most prevalent reasons were: to reduce the high rate of babies being dumped and dying; to reduce the number of “backstreet” abortions, and to acknowledge that some mothers are forced to dump their babies because of circumstances (such as poverty, forced sex, unplanned pregnancy or being a teenage mother). However, 74% of the respondents said that a person who dumps a baby somewhere other than a safe haven should be charged with murder if the baby dies.

#### Support for safe haven provisions

“If you don’t want your child, you can give it to a children’s home so that people can take care of the child. After all you can go and visit your child often just to know you are his/her mother.”

“I don’t think it’s good to throw your child away. You were the one who brought the child in the world. Even if you are young you can’t do that. That child can be raised by someone else and become something in life. If you don’t want the child, take him or her to a safe place where he/she can be taken care of.”

#### Opposition to safe haven provisions

“No, girls that get pregnant should be taught to take responsibility for their actions. The safe haven law would be an easy way out for many girls. Why should tax payers pay for someone else’s mistake? These facilities will cost the government a lot of money.”

“If you knew you didn’t want a baby, why didn’t you use contraceptives?”

#### General comments

“The baby is innocent and that baby may have a wonderful experience in life or even become the next president. No one has a right to take anyone’s life and that baby has a right to live.”

“Any new mother who does this to her new born baby is definitely not in her normal state of mind. Some sort of mental disorder must have triggered her horrific actions, such as post-partum psychosis, post-natal depression, or bipolar disorder. Although the baby died, the mother should be given psychological help and treatment/ medication, because she did not entirely know what she was doing.”

Comments from children

## 2.8 Hazardous child labour

Article 15 of the Namibian Constitution protects children against exploitative labour practices. Namibia has also signed the International Labour Organisation (ILO) Convention on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour. The Labour Act 11 of 2007 gives effect to the Constitution and the ILO Convention. The Child Care and Protection Bill would complement the Labour Act by providing additional provisions on the worst forms of child labour. What types of “work” or “labour” are children being forced to do in Namibia and what should the law say about these offences? What should the law say about children participating in activities such as acting, modelling, advertisements, beauty pageants or other performances?

The children consulted listed a total of more than 40 labour activities that the law should prohibit as hazardous labour for children. Top responses were:

- ④ mining activities
- ④ selling alcohol or working in any place that sells alcohol
- ④ selling drugs
- ④ sexual exploitation such as prostitution and pornography
- ④ looking after livestock.

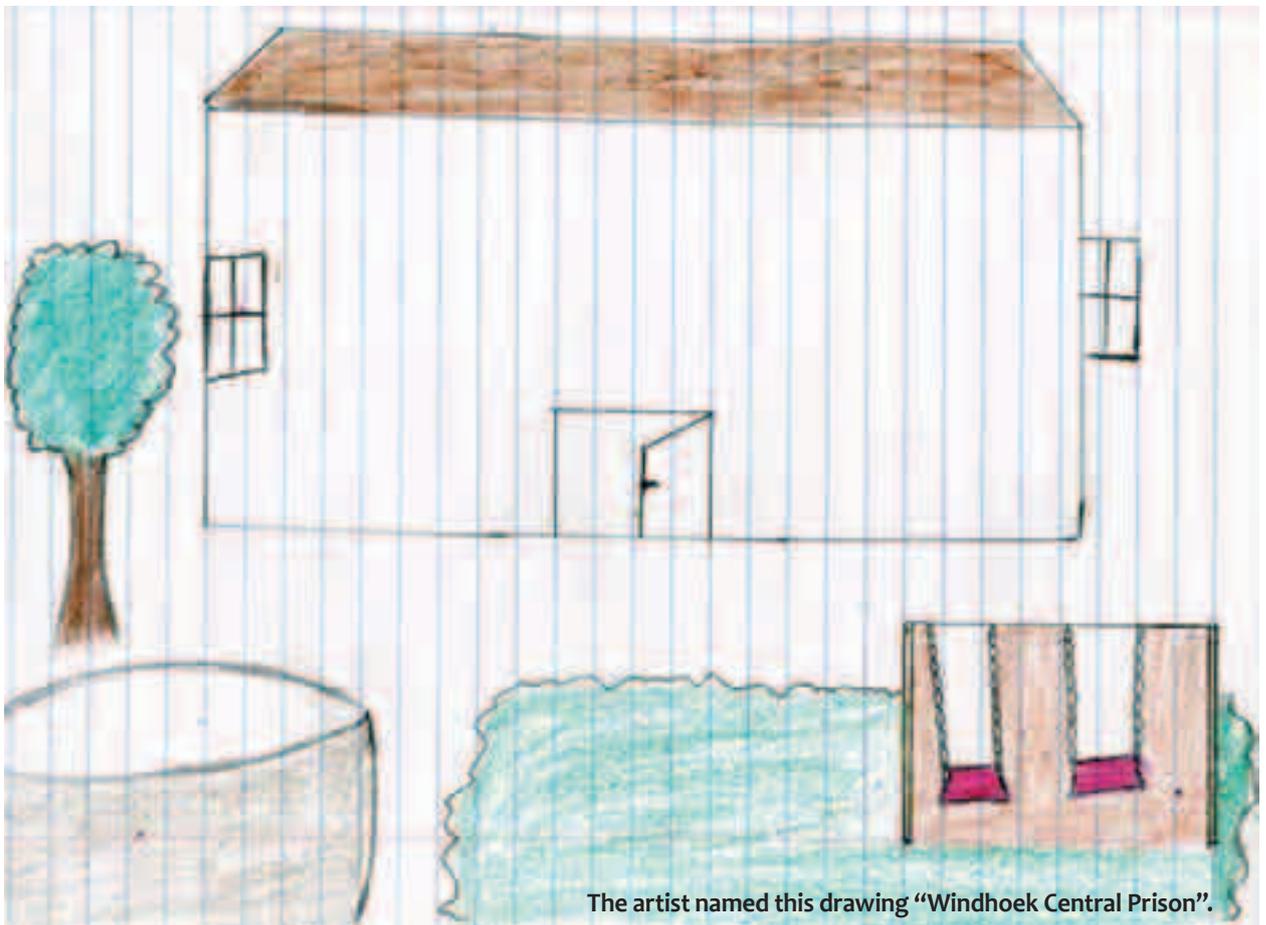
The children said that these forms of labour should be against the law because they have a negative effect on a child’s schooling and can harm the child’s health and life.

Nine children who entered the contest answered a question about how to treat acting, modelling, beauty pageants and dancing for financial reward. They generally felt that these activities were acceptable and should not be prohibited. Some felt that any money earned through such activities should go to both the child and the child’s parents, while some said that the money should go to the parents only and some said to the child only.

**“They are children, so they should not be exposed to danger.”**

**“Selling tombo [homebrew], especially at night, would be bad for a child, especially a girl.”**

Comments from children



The artist named this drawing “Windhoek Central Prison”.

(One of the youth consultations was conducted at the prison. Twelve boys aged 18-21 participated.)

## 2.9 Harmful cultural practices

While some traditional cultural practices are beneficial to all members of a cultural group, others can be harmful to specific people within a culture, such as women and children. It has been reported that some children in Namibia, especially girls, are subjected to some harmful traditional practices. What harmful cultural practices affect children in Namibia? What should the new law say about harmful cultural practices?

The children who were consulted provided a total of almost 40 cultural practices that they thought should be prohibited. Top responses were:

- ⊗ forced child marriages
- ⊗ male circumcision
- ⊗ female genital mutilation
- ⊗ cutting on the cheeks or back with blades
- ⊗ sexual initiation
- ⊗ dropping out of school to herd cattle.

## HARMFUL CULTURAL PRACTICES NAMED BY 10 OR MORE CHILDREN

Harmful practice	Number of responses
Forced child engagement and child marriage	92
Male circumcision (circumcision of the penis with blades – without medical care)	82
Female genital mutilation (hurting or cutting the private parts of a girl or woman)	36
Cutting on cheeks or back with blades	35
Sexual initiation – uncle or someone in the family having sex with the niece to show she will be “a good wife”	32
Lobola	20
Abortion	19
Consulting traditional healers	19
Marriages between cousins or siblings	17
Puberty ceremonies/menstruation “parties” (rites of passage)	15
Having sex with virgins to cure HIV/AIDS on witchdoctor’s order	15
Children not having a right to inheritance from their fathers (ie inheritance goes to the father’s family)	14
Killing children for body parts	14
Traditional education	14
Polygamy	10
Wife inheritance (widows being forced to marry their husbands’ brothers)	10

### General comments:

**“Children are suffering because of traditional beliefs.”**

**“No person can make a child to take part in any cultural practice that can hurt a child.”**

**“Traditional cultural practices are beliefs held by members of the community for far too long and they can become outdated.”**

Comments from children

**Specific practices:**

**“Circumcision should be done in proper medical facilities.”**

**“Forced circumcision should be banned and circumcision should be done out of free will (when the person is old enough to make a choice).”**

**“Sexual initiation should be considered as a serious crime.”**

**“Marriage between cousins causes babies to be born with abnormalities.”**

**“Children should not be involved in witchcraft.”**

Comments from children

## 2.10 Corporal punishment

Corporal punishment is when a person in authority uses physical force with the intention of causing pain, discomfort or fear 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. 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. At least 25 countries have banned all forms of corporal punishment, including corporal punishment in the home. What should the Child Care and Protection Bill say about how children should be punished?

Corporal punishment was deemed unacceptable by the majority of children consulted. None felt that all types of corporal punishment should be allowed, although a small number of children thought that spanking and hitting a child with the hand was acceptable. Here are some of the reasons offered by children for opposing corporal punishment in the home:

- ④ Corporal punishment is like child abuse.
- ④ Corporal punishment teaches children that abuse and violence is acceptable and they will use this in the future themselves.
- ④ Corporal punishment will not solve the problems and will only make matters worse.
- ④ The child will hold a grudge against the abuser.
- ④ The child will have low self-esteem.
- ④ The child’s way of thinking and acting will become disturbed.
- ④ The child might become abusive towards others.
- ④ It might kill the child.

Various responses were given by the children as to how they would like to be disciplined by their parents. Top answers were explaining what they have done wrong and/or taking away privileges. Some children also felt that, in the first instance, parents should set ground rules so a child knows what is expected.

**“Taking away privileges connected to the wrongdoing, for example: 1) talking on the cell phone while cooking and the food burns, then take away the phone for a set period of time; 2) if grades are dropping because watching too much TV, then take out the TV antenna; 3) if I carelessly spend my pocket money then I should have to work for it, such as washing dishes.”**

Comment from a child

## **Song**

**What is acceptable for punishment?**

**Jobs like watering, raking, and removing weeds in a garden.**

**What is not acceptable in corporal punishment?**

**Smacking, spanking, slapping, beating and kicking!!**

**What should be done?**

**We should just advise the child.**

**And take to the social worker for more advice and prevent corporal punishment.**

Composed by children at a consultative meeting

## **2.11 Other problems that children face**

The children consulted listed various other problems that they thought should be addressed in the Child Care and Protection Bill:

- ⊗ teenage pregnancies
- ⊗ drug abuse
- ⊗ grants for orphans and vulnerable children
- ⊗ financial problems of children and their families
- ⊗ children lacking food and nutrition
- ⊗ children used by adults to commit crime
- ⊗ a requirement that Namibia’s Constitution must be taught in schools
- ⊗ children who have no one to help with their homework
- ⊗ children who bunk school
- ⊗ children being disruptive in school and bringing weapons to school
- ⊗ bad behaviour at school: smoking, drinking alcohol, sniffing glue, kissing in the toilets, not respecting teachers

- ⦿ teachers beating children or calling children bad names
- ⦿ the need for all children to attend pre-school/kindergarten
- ⦿ community playgrounds which must be safe and accessible to all children
- ⦿ early dating by children
- ⦿ children roaming the streets after school.

Although not all of these topics would be appropriate for the proposed legislation, the issues proposed are listed here as an indicator of the children’s concerns.

## 2.12 Summary of key responses

SUMMARY OF FEEDBACK FROM CONSULTATIONS WITH CHILDREN AND YOUTH	
At what age should a child be able to independently consent to medical treatment?	Almost half said “level of maturity and age” Next most cited response: “age only” Most recommended age: 16 Next most recommended age: 18
At what age should a child be able to independently consent to surgery?	Almost half said 21 years. Next most recommended age: 18
At what age should a child be able to independently consent to an HIV test?	One-third said the test should be “age only” & recommended age 14.  About one-third said the test should be “the level of maturity and age”, and recommended age 13.  About one-third said that all children under 21 years of age should have consent from their parents or guardians.
At what age should a child be able to have access to contraceptives?	Recommended age: 16, closely followed by 14 Young people should have easier access to condoms than other contraceptives.
At what age should a child be able to independently take a pregnancy test?	Majority view: age 12
What should be the maximum number of children a foster parent can accept?	Responses split between three, and “dependent on circumstances”.
Should the law require mandatory or voluntary reporting of child abuse?	70% supported mandatory reporting by all persons.
What should the age of majority be?	Answers almost evenly split between age 18 and age 21.
Should there be safe havens for unwanted infants in Namibia?	Almost all said yes.
Should the bill include children’s responsibilities as well as children’s rights?	All participants said yes.
Views on corporal punishment	Deemed unacceptable by majority.

### 3. Other youth consultations

There were several other consultations with children and young people:<sup>27</sup>

- ④ workshop with youth journalists for *REAL* magazine – February 2009
- ④ hosting of an intern from a local youth group at the Legal Assistance Centre – May 2009
- ④ presentation at the LifeLine/ChildLine Namibia annual conference – June 2009
- ④ consultations with students from Khomas Regional High School – July 2009
- ④ two children’s workshops to discuss terminology: do any key child protection terms have equivalents in indigenous Namibian languages which are widely understood by speakers of most languages?<sup>28</sup> – September/October 2009

#### **REAL magazine**

*REAL* magazine was a 4-issue publication produced in 2009 by a local non-governmental organisation, *Sister Namibia*.<sup>29</sup> Twelve girls aged between 14 and 18 attended a half-day session at the Legal Assistance Centre to learn about the draft Child Care and Protection Bill. The intention was for the girls to select any topics that were of interest and write an article on those topics for publication in the magazine. An article on the age of consent for HIV testing was published in the August edition of the magazine.



The session at the Legal Assistance Centre, for 12 girls to learn about the draft bill and write articles for *REAL*

<sup>27</sup> In addition to the meetings listed here, the Legal Assistance Centre also conducted a number of smaller workshops with children during this time period where aspects of the draft bill were discussed. Because these meetings were fairly small and confined to limited topics, their details have not been reported

<sup>28</sup> The aim here was to see if there were universally-understood words which might help to Namibianise or Africanise the law, in the sense way that terms like “uhuru”, “lobola” and “kapana” are widely understood and used by a range of language-speakers.

<sup>29</sup> *REAL* magazine was a UNICEF-supported magazine hosted by the local non-governmental organisation *Sister Namibia*. The magazine was written by young Namibian women, and aimed at a target audience of their peers. The project lasted for one year.



The same session at the Legal Assistance Centre

## Young Achievers intern

The Legal Assistance Centre hosted an intern from the youth group *Young Achievers*<sup>30</sup> for one week in May 2009. The aim of the internship was to allow the student to learn more about the consultation process and to listen to her input on how the children's consultations could be managed. The intern, Saancia Katale, reviewed the outreach materials and made comments on them from a youth perspective. She also recorded a radio programme about the importance of child participation in the revision of the Child Care and Protection Bill, for the Namibian Broadcasting Corporation radio show entitled *Your Rights Right Now*. With the assistance of Legal Assistance Centre staff, she facilitated a workshop with approximately 18 members of her youth group to discuss the issue of corporal punishment. Opinions on this topic were mixed; some of the comments are shown on the following page:

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<sup>30</sup> Young Achievers is a group founded by the US Peace Corps. Its goal is to ensure that every member of the group completes tertiary education. To help reach this goal, the members meet once a week to discuss their progress, hear about peoples' successes, choose people to attend interesting events in town and listen to guest speakers.

OPINIONS ON CORPORAL PUNISHMENT YOUNG ACHIEVERS WORKSHOP, MAY 2009

For corporal punishment	Against corporal punishment
Consider the values that society holds. The Bible and the Qur'an both talk about corporal punishment being OK for punishment once in a while, when necessary. We need to have boundaries and be able to say that the child will be spanked next time.	I know of a case where the child didn't want to study and the mother beat her. That child went to the police and showed marks on her body and the police said the mother would be in big trouble if it ever happened again
Like the daughter of my friend. If you say not to do something she just doesn't get it. You have to spank her.	You shouldn't make a child feel pain or make him feel very bad just to punish him.
Gentle talk doesn't protect a child from a hot pot! And if the child spills the hot pot, he/she will get hurt by that anyway. <i>(But the reply was that you wouldn't wait for that to happen, you'd move the child.)</i>	If I say DONT, I don't do the child any emotional harm.
If you hit a child after he has done something wrong, he will realise that he has done something wrong. The children who grow into abusive adults are the ones that get beaten every day for no good reason, not the ones who get spanked for doing something bad.	I never said I didn't want to study but forcing me with beatings would never have made me more obedient. I know why I am going to school.
I'll tell you who becomes a violent adult. It's a boy who watches his mother get abused every day by his father, it's not the ones who get punished for doing wrong.	I tried beating my younger sister but it didn't make her obey.
I think that corporal punishment should be brought back into the schools as well. In the old days kids passed their grades and the system was much better. Now it's worse since corporal punishment was stopped.	Beating breaks kids down; it doesn't do them any good.
Parents know why their kids should stay in school. That's why they beat them.	My little cousin knows I study and I talk to her and she wants to study too. I talk to my little sister as well. Talking works.
For shoplifting, beating is the only thing to do.	If children are really bad you should take them to prison and show them how bad it is and tell them that is where they will end up.
Corporal punishment is a solution when children don't listen at a certain point.	Parents should be educated to alternate ways of punishing children, like taking away toys, giving them time out, talking to them with respect – NOT beating, kicking, etc.

## LifeLine/ChildLine Namibia annual conference

From 13-17 June 2009, 100 children from all thirteen regions gathered in Okahandja at the “Let’s Realise Conference” hosted by LifeLine/ChildLine Namibia. The aim of the conference was to extend the current platform of discussing issues related to child protection through the Uitani ChildLine Radio initiative, and to create a conducive environment where children could discuss challenges such as HIV, stigma, discrimination, sexuality and the new Child Care and Protection Bill. The children attending the conference were ages 10-17.

At this conference, the Legal Assistance Centre gave a half-day presentation on the bill. The focus of the presentation was twofold. First the children were told about the international agreements which Namibia has signed, with emphasis on the principles that the best interests of the child are paramount in decision-making around children, and that children must be consulted in decisions which affect them. This explained why children and young people were being consulted about the forthcoming law. The process of how a bill becomes a law was also discussed. The children enjoyed the presentation and many cited the discussion of how a bill became a law as their favourite part of the session.

This is an example of how the consultation process can have a wider impact on political involvement that extends beyond talking about the immediate issues at hand. Such outreach has helped to establish the potential for future consultations with these youth about law reform issues.

The discussions at this workshop touched on situations where children need protection, alternative care facilities, protection against sexually transmitted infections (including HIV), foster homes, child-headed households and children’s courts. The conference participants recommended that more attention should be given to establishing proper schools in rural areas, and that teachers should be better educated and willing to get additional training. They also thought government should ensure that teachers lead by example, citing cases where this has not happened.

The conference participants also felt that there should be a central place where children could go to get information on their problems and concerns. They stressed that children often end up helping each other rather than receiving help from adults (although this comment should be qualified by the fact that LifeLine/ChildLine Namibia focuses on empowering young people to help each other). Furthermore, they suggested that special children’s courts should be developed and that court processes involving children should be faster.

Smaller groups of conference participants discussed age of majority, age of medical treatment, HIV testing and access to contraceptives. The children concluded that the age of consent for HIV and pregnancy testing should be lower than the current age of 18, and that children should be able to get contraceptives for themselves and their peers.

These topics led on to a discussion about *why* youth engage in sex at an early age – again illustrating how the consultation process inspired discussions of issues beyond those covered in the bill. For example, one point readily agreed upon was that much sex was purely experimentation, acting out things seen by children in the media. Others said that having sex with a prospective boss was a way to get a job when other methods failed. Some children said that people have sex in order to spread HIV because they are angry and so that they will not feel so alone with the disease. Information like this about the wider context of some of the issues addressed in the draft bill has allowed for a better understanding of how the provisions in the bill should be drafted.

One group touched on the issue of corporal punishment, but decided that it is a very difficult issue and reached no conclusions.

The children at this conference were adamant that they should be taking a greater interest in issues that affect them and that they should be consulted more often. Many were determined to let their voices be heard more often. They also felt that adults should be more inclined to listen. This event was an effective forum for consultation, as children attended from across the country, allowing a national spread of viewpoints and opinions to be collected.



## **Consultation with Khomas Regional High School students**

The Legal Assistance Centre was invited twice to Khomas Regional High School to discuss key provisions in the draft bill. The main focus of these discussions was discipline and issues relating to corporal punishment. Approximately 60 learners participated in the sessions. The majority of students admitted to being beaten, in one form or another, at their homes but said they did not want to beat their own children in the future.

It became clear from these discussions as well as many others, that education about alternatives to corporal punishment is needed, as the learners reported that many parents know only of corporal punishment as a form of discipline. The learners acknowledged that discipline is required when children misbehave, but felt that children should not be disciplined using corporal punishment. They recommended that discussion should almost always be the first remedy. In response to the question “how they would like your parents to discipline you?”, only one participant suggested the use of corporal punishment. The most common recommendations for appropriate discipline were taking away privileges, such as sweets, toys or permission to go out with friends.

### Opinions about corporal punishment at Khomas High School

“I will make sure to talk to (my child) and make them aware they did wrong and why it was wrong. Then I would expect an apology. I would also double check what people are doing around them are doing and look at what they are watching, reading and listening to.”

“I as a parent will personally sit down my child and talk to them in the most convincing and calm manner. I cannot insult, I have to set an example. I would ground them for misbehaving and being disrespectful. I think that’s the only way he will understand.”

“I would love my parents to treat me in a way that benefits my future. I would love my parents to by me the necessary materials that contribute to better grades. If I don’t show any improvement then they can come and check the environment where I have my classes.”

## 4. Assessment of the children’s consultations

The input received from children was generally of a very good quality, and we were impressed with the creativity and thoughtfulness of the feedback. Some children provided fascinating stories, poems, songs and drawings which made their input very powerful and memorable.

As in the case of adult consultations, the children consulted expressed a range of opinions rather than consensus on many issues; in such cases, the reasons which the children gave for their opinions were taken into consideration by the Ministry in making policy decisions on contentious issues.

A number of learning points from the children’s consultations can be identified. The consultations with young people proved to be much harder to schedule than the consultations with adults, due to school holidays and examination periods. Another problem was a lack of continuity in the Children’s Reference Group, with different members attending different meetings.

We also expected the facilitators who were already involved in groups that regularly work with children to hold more consultative meetings than they did, or to include discussions of the bill at more forums with children which were already scheduled. Even though provision was made to supply a small budget to those facilitators who wanted

to hold a dedicated workshop on the topic, this approach resulted in a lower rate of response than anticipated. When funds are allocated to external parties, documentation is a necessity and it appears that sometimes this necessary accountability is too much of a burden. Another problem may stem from the communication challenges in Namibia. Few people have access to internet or fax and the postal service is slow. Therefore difficulties in communicating may be partly responsible for the low uptake of available funds.

Although challenges were experienced in the children's consultation process, many of the young participants gave positive feedback. Some of the comments are shown below:

- ☉ **“To me it was very beneficial because I learned a lot from the bill and in future will remember this good experience and I would like to be part of the team with more people involved, just for the youth to get ideas. I learned things that I never knew about children and how they must be taken good care of.”**
- ☉ **“It was a lovely experience and I made new friends. I have learned to care more about my rights as a young Namibian citizen. I will definitely consult a constitution book some day. I have always wanted to be politically involved or rather just voice my opinion about certain disturbing matters. Before I never really knew how to go about it, but I sort of have an idea now.”**
- ☉ **“The experience was extraordinary, encouraging and made me very determined to attend all meetings as it was very informative from the first time I attended. I met different people with different opinions and views and it was good being part of such a big important process. This process has open my mind, heart and intellectual abilities to be open minded, to be responsible for important things in life, and to take up challenges in life.”**

The participants of the Children's Reference Group gave feedback about how the process could have been improved:

- ☉ **More commitment by the children leading the process:**
  - ☉ **“I would have started making sure chosen members were completely dedicated. If the selected member knew he/she could not really come than I would suggest someone else to be chosen from that same group that really would be there all the time...”**
  - ☉ **“The facilitators should have pushed us more to attend the meetings and get involved in raising awareness about the issues in our schools and communities”.**
- ☉ **Intensified children's activities:** More regular meetings and contact were recommended “to keep the process alive”.
  - ☉ **“Daily contact or contact at least once or twice in the week would have been important to let members know that this is something serious and there are actual activities being held and by giving feedback on the process.”**

- ⑨ “I think the bill needed to be introduced to us earlier, like in the first month of the year and we needed to meet twice a week for us to get more involved in the bill.”
- ⑨ “Children’s Reference Group members should have been in regular contact with each other.”
- ⑨ More involvement of schools:
  - ⑨ “Young people do not really read newspapers; working with schools could have worked better.”
  - ⑨ “I felt ‘funny’ about wanting to introduce the topic at my school when no one (teachers, management, learners) knew about the Child Care and Protection Bill.”
  - ⑨ “I did not think the kids at my school would take me seriously. I needed support from the school leadership [to be able to present information on the Bill].”

Based on the feedback received we can identify several ways to improve consultations with children. Firstly, there is a need to have frequent meetings with key youth participants where possible (weekly instead of monthly was suggested), and to have greater contact between meetings. Linking the Children’s Reference Group to wider activities, such as presentations at schools or involvement in regional meetings held to discuss the bill with adults, might also have been useful. One of the most effective methods of child participation is allowing children to conceive ideas for their own involvement. Some of the members of the Children’s Reference Group had good ideas for activities they wanted to undertake themselves, but were in many cases unable to carry out their ideas within the allotted timeframe, especially with school exams looming for many of the members. Furthermore, in some cases, the children needed more adult back-up than could be provided to implement their suggestions, because of the increased management time and additional funds which would have been entailed. Therefore, to improve the involvement of children in future consultation processes, the role of child participation should be carefully considered during the planning and budgeting stages and sufficient money allocated for child-directed initiatives.

The children’s consultation team also gave feedback about the children’s consultation process. They found that organising the Children’s Reference Group meetings was challenging. Email was the fastest and easiest means of communication but few of the participants had access to email. Phone calls and text messages were effective in contacting the group members, but these methods were time-consuming and did not allow for the exchange of documents in advance of the meetings. Calls to cell phones also accumulated costs quickly – a factor to consider when working on a low budget.

Another challenge was finding meeting times that were convenient to all participants, to fit around school, extracurricular activities and study time. The facilitators recommended that if a sufficient budget were available, the ideal would be a weekend meeting followed by a repeat of the same discussion during the week.

The facilitators also recommended that the Ministry of Education should be involved more in the consultation process, which could have helped the Children’s Reference Group members to further discuss the draft bill at their schools.

Child participants generally welcomed the opportunity to give input on the proposed bill, and the views they offered were definitely useful in re-shaping the bill. Children who attended feedback meetings commented that they felt proud to have been part of the consultation process, and that they felt that they had been part of something important.

**“This is our own law and I hope we covered the Namibian children sufficiently”.**

Remark by one child at a feedback meeting



# REGIONAL WORKSHOPS

## 1. Overview of regional workshops

A total of four regional workshops were held in the following locations: Keetmanshoop (28–30 April 2009); Rundu (12–14 May 2009); Ongwediva (26–28 May 2009); and Otjiwarongo (7–9 July 2009). The four workshops involved participants from all 13 regions. The meetings were led by different facilitators, including Helena Andjamba (MGECW); Joyce Nakuta (MGECW); Celeste Feris (MGECW); Loide Mbenzi (MGECW); Lucia Eises (MGECW); Mona Zatjirua (MGECW); and Rachel Coomer (LAC).

The same topics were discussed at all four meetings:

- ☉ children in need of care and protection;
- ☉ foster care;
- ☉ adoption;
- ☉ facilities which care for children; and
- ☉ prevention and early intervention services.

*“In order to have a good law, we need to cover all loopholes.”*

Comment by a prosecutor

Each meeting lasted for a period of three days. Although this did not allow for enough time to discuss all the issues in the bill, most participants were happy with the length of the meeting. There were numerous issues to discuss and not all of the issues could be fully debated. However at all of the regional meetings, the three days were spent in intensive debate and the time allocated for discussions was maximised. For a bill of this size, we would recommend consultative meetings of two-three days, depending on the budget.

It was intended that the participants should receive the factsheets about the bill in advance. This presented a challenge as the postal system in Namibia is ineffective and many people do not have internet access. To overcome this, the Ministry tried to distribute the factsheets through their regional offices. This worked to some extent but not all participants received the factsheets before the meetings. A learning point from here is that there is a need to make specific advance plans for the distribution of material which is intended to be read in advance of consultative meetings, depending on the situation and budget.

A range of participants attended the regional meetings. Participants included representatives from various Ministries (Ministry of Gender Equality and Child Welfare, Ministry of Health and Social Services, Ministry of Education, Ministry of Justice and Ministry of Safety and Security), magistrates, regional councillors, religious leaders, traditional leaders, community members and representatives from non-governmental organisations, parastatals and child-care facilities.<sup>31</sup>

The range of people attending the regional meetings produced a wide range of views. The participants were not pushed to reach a consensus, as the aim of the consultations was to listen to the range of views expressed rather than to make specific decisions. While attendance levels were lower than expected at some meetings, the majority of people who attended participated actively in the discussions and the result was rich and useful feedback.

One of the challenges experienced was trying to ensure that representatives from all regions attended the four meetings. At all of the meetings, the majority of participants were from the host region. It was not possible to host consultations in each of Namibia's 13 regions given the available time and money. To promote attendance at future regional consultations, greater ministerial liaison is required to ensure that representatives from all targeted regions participate. Furthermore, whilst protocol requires invitations to be sent to senior officials, the participants often commented that they received notice of the meetings from their superiors at a late stage. The facilitators noted that it is important to ensure that attendance is confirmed at an early stage to allow for appropriate preparation and distribution of relevant materials in advance. This would also allow time for participants to consult with their colleagues or constituencies about their inputs.

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<sup>31</sup> A list of participants is included in an appendix to this report, which is available on request from the Ministry or the Legal Assistance Centre.

A total of 159 people were consulted at the regional workshops. This represents 11% of the people who attended consultative meetings about the revision of the Child Care and Protection Bill.



Participants who attended the regional workshops represent 11% of the people who attended consultative meetings.



A working group in Keetmanshoop



A working group in Onwediviva



A working group in Otjivarongo



A working group in Rundu

*“This room is small but the topic is big.  
We are doing important work.  
We all need to contribute our best.”*

Comment by a regional participant

## 2. Feedback

The results of the regional workshop discussions are presented here in table form to show how opinions compared or contrasted across the country.

### 2.1 Children in need of care or protection

**Should the Act refer to a child “in need of care”, a child “in need of protection” or a child “in need of care or protection”?**

The Children’s Act of 1960 currently uses the term “child in need of care”. The majority of people consulted felt that the definition should include the terms care *and* protection in order to cater for all types of children in need. The alternative definition “child in need of protective services” was proposed in the Ongwediva meeting and was well received, as some people argued that *all* children are in need of care and/or protection.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
“children in need of care and protection”	“children in need of care and/or protection” or “children in need of care, support or protection”	“children in need of care and protection” or “children in need of care and/or protection” or “children in need of protective services”	“children in need of care and/or protection”

**What criteria for a child “in need of protection” are missing from the bill?**

The participants were presented with a draft definition of a child “in need of protection” as a child who:

- (a) is abandoned or orphaned and insufficient provision has been made for the care of the child;
- (b) is engaged in behaviour that is, or is likely to be, harmful and the parent or guardian or care-giver is unable or unwilling to control that behaviour;
- (c) lives or works on the streets or begs for a living;
- (d) lives in or is exposed to circumstances which may seriously harm the physical, mental or social welfare of the child;
- (e) is in a state of physical or mental neglect;
- (f) may be at risk if returned to the custody of the parent, guardian or the person in whose care the child is, as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social welfare of the child; or
- (g) is being, or is likely to be maltreated or abused by a person having the care custody, control or charge of the child.

They were asked to suggest any additional criteria which should be included in this definition.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
<ul style="list-style-type: none"> <li>• child-headed households</li> <li>• children in conflict with the law</li> <li>• children infected by HIV or other chronic illnesses</li> <li>• children who are disabled or with learning disabilities</li> <li>• children exposed to harmful cultural practices</li> <li>• victims of incest</li> </ul>	<ul style="list-style-type: none"> <li>• children affected by lack of parenting skills</li> <li>• children engaging in commercial sex work</li> <li>• early child marriages / cohabiting children (maybe to obtain access to any grants)</li> <li>• child-headed households</li> <li>• children with HIV/AIDS</li> </ul>	<ul style="list-style-type: none"> <li>• child who are trafficked</li> <li>• victims of psychological abuse</li> <li>• children in prostitution</li> <li>• victims of child labour</li> <li>• children with a chronic illness (including HIV/AIDS)</li> <li>• an “at risk” category for situations where child is not yet in need of protection</li> </ul>	<ul style="list-style-type: none"> <li>• children denied access to basic rights or services</li> <li>• children affected by child prostitution, early marriages and child labour</li> <li>• children affected by harmful religious and cultural practices</li> <li>• a general clause to cater for future unforeseen circumstances</li> </ul>



In addition to the comments in the table, the participants from Keetmanshoop and Otjiwarongo recommended incorporation of the following points from the Kenyan Children’s Act, covering a child –

- ⦿ who has no parent or the parent has been imprisoned;
- ⦿ whose parents or guardian find difficulty in parenting;
- ⦿ who is truant or is falling into bad associations;
- ⦿ who is prevented from receiving education;
- ⦿ who, being a female, is subjected or is likely to be subjected to female circumcision or early marriage or to customs and practices prejudicial to the child’s life, education and health;
- ⦿ who is being kept in any premises which, in the opinion of a medical officer, are overcrowded, unsanitary or dangerous;
- ⦿ who is exposed to domestic violence;
- ⦿ who is pregnant;
- ⦿ who is terminally ill, or whose parent is terminally ill;
- ⦿ who is disabled and is being unlawfully confined or ill treated;
- ⦿ who has been sexually abused or is likely to be exposed to sexual abuse and exploitation including prostitution and pornography;
- ⦿ who is engaged in any work likely to harm his health, education, mental or moral development;
- ⦿ who is displaced as a consequence of war, civil disturbances or natural disasters;
- ⦿ who is a member of the same household as a child against whom any such offence has been committed, or is a member of the same household as a person who has been convicted of such an offence against a child; or
- ⦿ who is engaged in the use of, or trafficking of drugs or any other substance that may be declared harmful by the Minister responsible for health.<sup>32</sup>

The participants from Keetmanshoop also recommended that the Namibian law should incorporate the following provisions from children’s legislation in New Zealand and Ghana:

### **New Zealand**

- ⦿ “In the case of a child of or over the age of 10 years and under 14 years, the child has committed an offence or offences the number, nature, or magnitude of which is such as to give serious concern for the wellbeing of the child;”<sup>33</sup> (The group suggested that this provision should be included without the age limitation.)

### **Ghana**

- ⦿ a child who “is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child”;
- ⦿ a child who “is wandering and has no home or settled place of abode or visible means of subsistence”.<sup>34</sup>

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<sup>32</sup> Based on Kenya’s Children’s Act 2001, section 119.

<sup>33</sup> New Zealand’s Children, Young Persons, and Their Families Act 1989, section 14.

<sup>34</sup> Ghana’s Children’s Act 1998, section 18.

## Should the law provide for mandatory or voluntary reporting for a child “in need of protection”?

Reporting laws are designed to bring cases of possible child abuse or neglect to the attention of public authorities who are in a position to help. Mandatory reporting laws *require* people to report cases if they suspect that a child is being mistreated, while voluntary reporting laws *encourage* people to report such cases.

The issue of mandatory versus voluntary reporting was hotly debated at the regional meetings. Some people strongly supported mandatory reporting for all people on the grounds that this would remove the burden of responsibility – a person who *had* to report could do so without fear of blame. However other people were concerned about a requirement for all people to report, feeling that it was inappropriate to punish failure to report with a fine or a prison sentence.<sup>35</sup> Overall no consensus was obtained.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
mandatory for all	mandatory reporting for all professionals with contact with children & voluntary for the ordinary person/community	mandatory for all	no definitive answer

**“At least it is reported and something is done.”**

Comment by a participant favouring mandatory reporting for all



Keetmanshoop



Ongwediva

<sup>35</sup> In terms of the preliminary draft bill, failure to comply with the reporting requirements could be punished with a fine of up to N\$20 000 or imprisonment for a period not exceeding five years, or both.

## What should trigger an investigation into whether a child is “in need of protection”?

The draft bill contained limited reasons to trigger an investigation: (a) a case is reported to a social worker/the police; (b) evidence is given under oath to a Commissioner of the Child Welfare; (c) a court which is conducting a case orders an investigation; or (d) social worker or police intervention. Various recommendations for other circumstances which should trigger an investigation were proposed.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
<ul style="list-style-type: none"> <li>• children regularly in conflict with the law</li> <li>• children unwilling to stay with their families</li> <li>• children not progressing at school as expected (eg a change in behaviour)</li> <li>• children with behavioral problems at school or home</li> <li>• children with poor backgrounds wearing expensive clothes (perhaps an indicator of drug trafficking)</li> <li>• recommendations from the proposed Children’s Ombudsman</li> <li>• recommendations from the proposed Child Welfare and Advisory Council</li> </ul>	<ul style="list-style-type: none"> <li>• investigation motivated by information collected/reported by researchers (It was explained that it is common for researchers to come to the region and investigate social situations.)</li> <li>• investigation based on information reported in the media</li> <li>• school drop-outs</li> <li>• children involved in alcohol or drug abuse</li> <li>• children abused by their parents</li> <li>• observation by social workers, police, teachers</li> </ul>	<ul style="list-style-type: none"> <li>• A magistrate stated that reports are made directly to prosecutors and then referred to a social worker and suggested that the bill should include this option to reflect the reality of current practice.</li> <li>• It was suggested that it should also be possible to make reports to regional counselors and traditional courts. Any teacher who has a reason to suspect abuse should be able to report, and any case of child labour should be investigated by a social worker.</li> </ul>	<ul style="list-style-type: none"> <li>• victims of child trafficking</li> <li>• street-children</li> <li>• orphans</li> <li>• children involved in drug trafficking</li> <li>• children habitually absent from school</li> <li>• children with financial problems</li> <li>• where there is a problematic parental attitude</li> <li>• situations where children are sent to other towns because of overcrowded schools</li> <li>• juvenile offenders</li> <li>• young pregnant girls</li> <li>• children infected with sexually transmitted infections</li> </ul>

At all meetings, the participants agreed with the proposed list below:

- any child named in a protection order issued under the Combating of Domestic Violence Act 4 of 2003
- any child named as a victim of any crime against the person in a police docket  
(*The participants from Otjiwarongo disagreed with the recommendation of any child named in a police docket. The group said that the police should consider the nature of the case, and felt that not all cases where children are named as victims necessarily need investigation.*)
- any child involved in a case referred for investigation by the Children’s Ombudsperson or the Child Welfare Advisory Council
- any child found to have been trafficked
- any child (or perhaps children below a certain age) found living on the streets.

## Is there a need for another legal category to cover children in less drastic situations, such as a child “at risk”?

The preliminary draft bill provided a definition of “a child in need of protection” who requires state intervention. The workshop facilitators asked the participants whether the bill should provide another category of a child “at risk” (or similar) to justify preventative services. No definitive answer was given. Some people felt that the term “at risk” was too general and could include too many scenarios that should not enter the court system. However other participants felt that “prevention is better than cure” and that a category such as “children at risk” would help address issues before they become more serious.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
no	mixed opinions; general feelings were no	mixed	yes

**“It doesn’t matter what the situation is, I prefer to see a child remain with the family.”**

Comment from participant favouring the provision of preventative services to families at risk

**“We are not prophets, there is no need to fight a battle that doesn’t exist.”**

Comment from participant concerned about the court’s ability to identify risk



## 2.2 Foster care and kinship care

### Definition of foster care

The majority of children placed in foster care in Namibia are cared for by relatives rather than being placed in the care of foster parents who are unknown to them. The use of “kinship care” is a long-standing practise and the involvement of the court in this process can often add delays and expense to the government as well as the family. However under the current system, extended family members are normally not eligible for state grants unless the family caring for the child have been approved as “foster parents” through the court process. To improve the efficiency of the system, the possibility of including the concept of “kinship care” in the draft bill was discussed.

The debate centred around the question of how kinship care should differ from foster care. Opinions on this topic were mixed, and participants would often change their opinions from one standpoint to another as the discussion progressed. At the start of the discussion, many participants supported the inclusion of kinship care. However, when the facilitator explained the legal implications of being the designated kinship carer, many participants changed their minds. Overall, participants remained undecided about how to integrate the cultural acceptance of kinship care with the applicable legal requirements and safeguards, although most were agreed that the Western-based concept of foster care in the preliminary draft bill was not a good fit with practice on the ground.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
There should be no differences in the types of foster care.	Categorise foster care into kinship care and non-relative care.  All types of foster care should receive the same level of monitoring but approval of kinship care should be faster.	No consensus.  All types of foster care should receive the same level of monitoring.	No consensus.  Permanent foster placements should be permitted.

### Number of children to be cared for by foster parents

Participants were asked to consider whether the bill should specify how many children a foster parent can care for. There was a general concern that siblings cared for by relatives should not be split up. Three of the four groups stated that there should be no limit to the number of children that may be cared for in kinship care. The recommendation for the maximum number of children who could be cared for by non-related foster parents ranged from three to six.



Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
foster care: 6 children, to include the total number of children in the household	no more than 3 foster children should be permitted per family	foster care: 5-6, to include the total number of children in the household	to be decided on a case-by-case basis depending on the social worker report and the family's financial situation
no limits for kinship care	number of biological children should be considered, as well as the family's ability to maintain the children	no limits for kinship care	

### Grants for foster care

There are four main types of grants currently available for the care and protection of children in Namibia (1) means-tested child maintenance grants; (2) non-means-tested foster care grants; (3) allowances paid to children's homes and places of safety; and (4) grants for children with disabilities. Regional workshop participants were asked to consider whether these grants and the associated regulations are sufficient, and what criteria should be applied for state grants for children. Only participants at one regional meeting (Otjiwarongo) supported a means-tested grant for foster care; the participants at the other three meetings felt that there should not be a means test for any form of foster care. The main reason offered for this view was that taking a child who is not your own into the family involves a financial burden which should be acknowledged, regardless of whether or not the child is a relative. Participants in three of the four meetings agreed that kinship and non-kinship carers should receive the same amount of money, with the same reasoning being the basis for this opinion.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
no means test	no means test	no consensus on proposed changes	means test for foster care grants
kinship and non-kinship carers to receive the same amount	kinship and non-kinship carers to receive the same amount	more monitoring of the process required	kinship and non-kinship carers to receive the same amount.
no support for a grant for all children	must continue until child has reached the age of 21		
	N\$300/month + funeral benefit		

**“There is a big problem with enrolment of children at schools. In Omaheke, schools will rather enroll children who can pay rather than the ones who must be exempted.”**

Comment by a participant supporting automatic exemption of children receiving grants from school fees

Otjiwarongo participants



*“We are all learning and should not just learn, but try to develop in the best possible way for our children.”*

Comment by a regional participant



## 2.3 Adoption

### Adoption specifications

Adoption is internationally acknowledged as a valuable way of affording children the benefits of family life which might not otherwise be available to them. However, only a small number of Namibian children (about 80) are adopted each year. Participants explained the low number of formal adoptions on the grounds that family ties are very important in Namibian cultures, and that the breaking of these ties through adoption is not acceptable for many families. A further reason was a lack of public awareness about adoption.

Participants were asked to consider what the law should say about who can adopt a child. Should single people be allowed to adopt children of the opposite sex? Should there be a fixed minimum or maximum age for an adoptive parent, or a fixed age gap between the adoptive parent and the adopted child?

There was consensus that single people should be able to adopt (as at present), but that joint brother-sister adoptions should not be permitted. The participants explained that a child adopted by a brother and sister might call them mother and father, whereas this relationship between the brother and sister is not accurate or appropriate. Furthermore, the brother or sister may wish to marry, which would complicate their relationship with the child. It was generally recommended that an adoptive parent should be aged 25 years or older. Most participants felt that a person under the age of 25 is not mature enough to cope with the adoption of a child. Some groups suggested setting an upper age limit of 50-55 years because of concerns that an older person might not be fit enough to care for a child.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
Single people should be allowed to adopt. Require a 25-year age gap if a single person is adopting a child of the opposite sex.	Single people should be allowed to adopt.	Single people should be allowed to adopt.	Single people should be allowed to adopt but only with conditions.
Joint brother & sister adoptions should not be permitted.	Joint brother & sister adoptions should not be permitted.	Joint brother & sister adoptions should not be permitted.	Joint brother & sister adoptions should not be permitted.
Adoptive parents should be at least 25 years old.	Adoptive parents should be between 21-50 years old.	Adoptive parents should be at least 25 years old.	Adoptive parents should be between 25-55 years old.

## Surname of an adopted child

Some children's laws specify how the surname of a child should be decided. The participants at the regional meetings were asked to consider what the Namibian law should say on this issue. All participants felt that the decision on the adopted child's surname should be made by the adoptive parents (or by the court as an alternative, as recommended by the Keetmanshoop participants). This is because the child has become part of the new family and should be recognised as such.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
decision made either by the adoptive parents or the court	discretion of the adoptive parent	discretion of the adoptive parent	discretion of the adoptive parent

## Cooling-off period

The preliminary draft bill proposed a "cooling-off" period of 60 days after an adoption is approved in principle, during which time a biological parent could withdraw consent to the adoption. The issue of the cooling-off period was intensively debated throughout the consultation process. At the regional consultations, participants generally felt that there should be a cooling-off period of between 60 and 90 days. The participants recommended this time period to ensure that the biological parents would have enough time to consider their decision carefully.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
60 days/ 90 days	60 days	60 days/ 90 days	60 days

## Should a minor be able to give a child up for adoption without input from that minor’s parent or guardian?

There was no consensus on this question. One group at one of the regional meetings said that a minor parent should be able to place a child in foster care until the minor parent reaches the age of majority, at which point the parent may authorise the adoption without assistance. Other participants felt that a minor parent is too young to make a decision on adoption and should be guided by his or her own parent or guardian. This viewpoint was opposed by participants who were concerned that some minors may not want to inform a parent or guardian of the pregnancy; if the minor parent were required to inform a parent or guardian of an intended adoption, the minor parent might choose the option of infanticide or baby-dumping rather than adoption.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
no conclusion	input from parent or guardian caregiver required	consent from the minor only	minor and parents should give joint consent



## At what age should a child also give consent to being adopted?

The proposed age at which a child should have the right to consent to being adopted ranged from 7-14. No consensus was reached. The debate centred around whether a young child is mature enough to make such an important decision. Some people felt that a young child could be bribed by the adoptive parent with promises of toys or sweets. Other participants felt that children of a young age know who they want to care for them and should be allowed to participate in this decision.



Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
age 7-10	age 14	age 10-14	age 10-12

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

The issue of intercountry adoption was broadly discussed, and possible legislation to protect against abuses was debated. Many participants were concerned that intercountry adoptions would result in children being taken out of Namibia too easily. As one participant said, “Since we are few in this country we don’t want to create a situation in which our children are given away.” There was a strong feeling that Namibia should aim to look after its own children rather than allowing foreigners to take the children away. Some participants said that Namibia is doing enough to care for its children and that intercountry adoption is not needed. Three of the groups stated that prospective adoptive parents from outside the country should be temporarily resident in Namibia, suggesting timeframes for residence ranging from one-two months to one year. The participants felt this would allow the parents to have a better understanding of the Namibian cultural setting and would show that the parents were committed to the adoption. The timeframes recommended were based on international examples of intercountry adoption law.

Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
Overall, there were no particular or strong concerns about intercountry adoption. It was considered acceptable.	Adoptive parents for intercountry adoptions should be a married couple.  Adoptive parents should stay in Namibia for at least 6 months and be certified fit to adopt by their own country.	After an application has been granted, there should be a 12-month monitoring period during which time the family group must stay in Namibia. The adoption order could be cancelled if things do not go well.	Adoptive parents should be temporary or permanent residents for 1 or 2 months.

## 2.4 Child care facilities

### What should the minimum standards be for child care facilities?

There are a number of facilities that provide care for children, such as children's homes, crèches, day care centres, shelters and places of safety. The participants came up with a range of recommendations for minimum standards at such child care facilities.



Keetmanshoop	Rundu	Ongwediva	Otjiwarongo
<ul style="list-style-type: none"> <li>• access to medication and education</li> <li>• social worker/ counselor at residential facilities, school counselors attached to day care centres</li> <li>• access for disabled children</li> <li>• 1:6 staff to child ratio in residential home, adjusted for age</li> <li>• care plans made and fulfilled</li> <li>• food nutritious and culturally based if possible</li> <li>• a study area if possible</li> <li>• support for children with learning difficulties</li> <li>• 5-year plan for the running of the facility</li> </ul>	<ul style="list-style-type: none"> <li>• first aid facilities</li> <li>• transitional or exit homes</li> <li>• fences around the facility</li> <li>• storerooms</li> <li>• skilled personnel</li> <li>• adequate accommodation</li> <li>• adequate beds, bedding and places to sleep (where overnight accommodation is provided)</li> </ul>	<ul style="list-style-type: none"> <li>• staff training</li> <li>• a specified child:staff ratio &amp; child:space ratio</li> <li>• background checks on staff</li> <li>• consideration of religious beliefs</li> <li>• regulations on the ages of children who share rooms, to avoid the mixing of older and younger children</li> <li>• diet should contain staples children will be eating when/if returned home</li> <li>• evidence of sustainability for the home</li> <li>• separate amenities for girls and boys</li> <li>• a place to sleep</li> <li>• staff trained in first aid</li> <li>• provisions for children with disabilities</li> <li>• programmes for the children</li> <li>• provision for the emotional needs of children</li> </ul>	<ul style="list-style-type: none"> <li>• a safe and secure place to play</li> <li>• security</li> <li>• availability of at least three days nutritious food</li> <li>• a trained first aider and provision of a first aid kit</li> <li>• access to health care facilities and education</li> <li>• place to study</li> <li>• access to wheelchair facilities</li> <li>• regular updating on relevant information to staff</li> </ul>

*“We act on the reality of today, so all our actions are in good faith. The future is unpredictable, so let’s try to help the children the best we can and have a positive attitude.”*

Comment by a Deputy Director from the Ministry of Education

## 2.5 Other issues

The regional meetings also provided time on the agenda to discuss additional topics identified by the participants from amongst the many issues covered by the draft bill. Some of these discussions are summarised below. These topics were not discussed at all of the regional meetings.

### Corporal punishment

Corporal punishment is when a person in authority uses physical force with the intention of causing pain, discomfort or fear for disciplinary purposes. Corporal punishment is used in many Namibian homes, but has in some cases escalated into excessive physical force, with the result that some children have been seriously injured, burned, or even beaten to death. At least 26 countries have banned all forms of corporal punishment, including corporal punishment of children by their parents. The preliminary draft bill included provisions that would limit or prevent the use of corporal punishment.

Most participants were unhappy with the idea that future provisions on corporal punishment would be more restrictive than the current law. However the participants generally understood the rationale for the proposed provisions and although they did not want the change, they accepted that change was likely due to the international agreements that guarantee respect for human dignity and prohibit the use of degrading treatment or punishment.<sup>36</sup>

The clearest statement on corporal punishment of children is contained in Article 19 of the Convention on the Rights of the Child, which requires that State Parties take –

*all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.*<sup>37</sup>

The Namibian Constitution also protects the dignity of all persons in a provision which was relied upon by Namibia's Supreme Court to ban corporal punishment in schools

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<sup>36</sup> Relevant agreements to which Namibia is a party include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the African Charter on Human and Peoples Rights and the African Charter on the Rights and Welfare of the Child.

<sup>37</sup> Convention on the Rights of the Child, Article 19.

and could be equally applied to the home.<sup>38</sup> These provisions were discussed with the participants, and the need for the legislation to reflect the conventions and agreements was accepted by some although not all participants.

**“If a teacher beats a child at school, he or she will be charged, but if a parent beats his or her child it is discipline.”**

Comment by a regional participant

## National Child Protection Register

The preliminary draft bill proposed a National Child Protection Register which would list all known perpetrators of child abuse. The aim of the list would be to ensure that offenders do not work with children in the future. The register would be maintained by the Ministry of Gender Equality and Child Welfare and would be similar to the sex offender registers which are used in some countries. The participants from Keetmanshoop agreed that a National Child Protection Register would be useful. The participants from Ongwediva were undecided. Some of the participants felt that a register would help to quickly identify an abuser, particularly if the abuser moved to a new area. Other participants were concerned that there would still be abusers who would not be on the list, and they questioned the expense and effort of developing a list in light of this possibility. Some participants were concerned that innocent people could mistakenly be put onto the register.

## Child responsibilities

Rights and responsibilities generally go together. Some countries include children’s responsibilities in their laws along with children’s rights. For example, the Children’s Act in Kenya includes a section on children’s responsibilities. The African Charter on the Rights and Welfare of the Child also includes a provision on child responsibilities.

The participants from Keetmanshoop and Rundu strongly supported the inclusion of child responsibilities in the bill, on the grounds that the responsibilities which go along with children’s rights are often ignored. Children’s responsibilities were not discussed in Ongwediva or Otjiwarongo.

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<sup>38</sup> Article 8 Respect for Human Dignity

- (1) The dignity of all persons shall be inviolable
- (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
  - (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

The case referred to is *Ex Parte Attorney-General: In Re Corporal Punishment by Organs of State* 1991 NR 178 (SC).

**“Where there are rights, there should be responsibilities and children, like adults, have responsibilities.”**

Comment by a Regional Councillor

## Age of majority

Most countries in the world set the age of majority at 18. The age of majority in Namibia is currently 21, although 16 or 18 year-olds have certain rights and responsibilities. For example an 18-year-old can vote, drive, drink, own a gun and be locked up in a police cell with adults, but it is not until 21 that a person can independently enter into contracts, bring or defend a court case, sell or mortgage land or manage money or property which they have inherited. Minors cannot enter into a civil marriage without the consent of their responsible parent or guardian. The United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child both define children as persons under 18. The Committee which monitors the UN Convention encourages countries to harmonise the definition of “child” and the age of majority if they are not already the same.

There were mixed opinions in all groups but overall the majority view recommended leaving the age of majority at 21. This was because many participants felt strongly that a person under the age of 21 would not be mature enough for adult responsibilities. However other participants argued that this assessment may be more of a perception than a reality; as one participant asked, “why is a child who goes to university a child, but a child who stays at home has to become an adult?”.

**“We should not forget that the law should change with society.”**

Comment by a magistrate who supported lowering the age of majority to 18

## Parenting plans

Sometimes more than one person has responsibility for a child, and in some cases this can lead to conflict. It may be that the child’s parents are living apart and cannot agree. It may be that the child is in the care of someone other than the parents, such as a grandmother or a close family friend or foster parents. To help protect the best interests of the child in such situations, the preliminary draft bill provided for parenting plans. These plans would set out the roles and responsibilities of different parties caring for the child, and could be registered with children’s courts. The preliminary draft bill required that parties seek assistance from a lawyer if they wanted to register their parenting plans. The Otjiwarongo participants did not agree that a lawyer should be required to register parenting plans due to the cost involved. They suggested that a parenting plan should be an attachment to a maintenance order made by a court. They also felt that if custodianship is decided by the court, then parenting plans should be as well.

### 3. Assessment of regional meetings

Attendance at the various regional meetings was generally good, with the primary limitation being the available budget. There was a high level of interest from participants, and all of the meetings promoted discussion and produced important recommendations for improving the bill.

The consistent provision of materials prior to the meeting would have assisted the depth of discussion. However, the participants were able to take the materials away and had the opportunity to provide further comments in their own time. The participants were also given spare copies of factsheets to distribute to colleagues or interested parties in their communities.

More regional meetings could have been conducted if the budget for the consultation had been larger. However more regional meetings would also have affected the timeline for the consultation. The four meetings were held every other week over two months, which is already a considerable amount of time. The close spacing of the workshops also placed pressure on the facilitators, as preparation and report writing had to be completed in the intervening weeks – and Ministry staff had to attend to their other work responsibilities during these periods. Without a much larger group of facilitators who were free of all other tasks, it would not have been possible to hold the workshops on a tighter schedule. These considerations illustrate the importance of allowing sufficient time for wide consultation on a complex law or policy.

Overall the participants reported that they were satisfied with the regional meetings, and the opinions collected provided useful feedback. The regional meetings allowed the Technical Working Group to develop a deeper understanding of the broad issues surrounding the bill which guided final decision-making by the Ministry, even in cases where the persons consulted disagreed.

**As discussed in the introduction, the role of the consultation process was not only to provide input for revising the preliminary draft bill, but also to increase awareness about child protection issues in general. One example which indicates that this objective was successfully achieved is the fact that a participant from the Ongwediva regional meeting contacted the consultancy team after the workshop to say that he is planning to form a children's rights and protection forum in Oniipa.**

# NATIONAL WORKSHOPS

## 1. Overview of national workshops

The Ministry convened national workshops in Windhoek over a five-day period from 8-12 June 2009, to discuss a range of specific topics from the draft bill. The aim of these meetings was to consult service providers and other stakeholders from national offices on key provisions, to ensure that the proposals for law reform would be appropriate and feasible to implement in practice. The national workshops discussed provisions in the bill in more detail than was possible in the regional workshops, as most of the participants at the

*“Children are powerless but priceless. Their childhood is happening today and not in the future.”*

Hon Marlene Mungunda,  
Minister of Gender Equality  
and Child Welfare



Hon Marlene Mungunda

*“The general Ombudsmen can have more responsibility while making use of existing structures, its only a mater of adding job description.” – SMS*

national workshops had a greater level of familiarity with the underlying children's legislation and issues.

Different topics were discussed on different days. Although some people attended for the entire week, others came only on the days which were relevant to their knowledge and interests. The topics discussed were:

- ④ children's court procedures and legal representation for children
- ④ protection against trafficking, exploitation and other harms
- ④ age of consent for various medical procedures and age of majority
- ④ adoption
- ④ children in need of protection and options for alternative care.

Many of the presenters at the conference were international guests. These guests were asked to give information about child legislation in their own countries and to comment on the comparable provisions in the Namibian bill. This permitted a broader discussion of the issues and allowed for a wider understanding of potential challenges relating to the proposed new legislation. The input of the international guests was invaluable to the process, and we highly recommend the involvement of international guests in other consultations around proposed laws and policies.

## **PRESENTERS AT THE NATIONAL CONSULTATIONS**

- ④ **Dr Jacqueline Gallinetti** (University of the Western Cape, South Africa)
- ④ **Ms Denni Leppan** (Assistant Commissioner of Child Welfare, South Africa)
- ④ **Ms Yumma Mookray** (Miller du Toit, Cloete Inc, South Africa)
- ④ **Ms Dianne Hubbard** (Legal Assistance Centre, Namibia)
- ④ **Adv Beatri Kruger** (University of the Free State, South Africa)
- ④ **Dr Elizabeth Terry** (Consultant, Namibia)
- ④ **Ms Felicita Hikuam** (AIDS Rights Alliance for Southern Africa, Namibia)
- ④ **Dr Paul Ludik** (Director, National Forensic Science Institute of Namibia)
- ④ **Ms Marianna Garofalo** (UNICEF, Namibia)
- ④ **Dr Lea Mwambene** (University of the Western Cape, South Africa)
- ④ **Dr Itumeleng Kimane** (National University of Lesotho, Lesotho)
- ④ **Ms Carina du Toit** (Centre for Child Law, South Africa)
- ④ **Ms Estelle Laubuschagne** (Private Social Worker, Church Benevolence Board, Namibia)
- ④ **Ms Celeste Feris** (Control Social Worker, MGECW, Namibia)
- ④ **Dr Lucy Steinitz** (Family Health International, Namibia)
- ④ **Ms Milly Pekeur** (Resources Aimed at the Prevention of Child Abuse and Neglect – "RAPCAN", South Africa)
- ④ **Ms Bep van Sloten** (Better Care Network, The Netherlands)
- ④ **Mr Matthew Dalling** (UNICEF, Namibia)



**Sirkka Ausiku,  
Permanent Secretary  
of Gender Equality  
and Child Welfare**

Most of the Namibian participants were professionals who would be directly involved or affected in some way with the implementation of the new law – including social workers, staff of Woman and Child Protection Units and representatives from the Ministries such as the Ministry of Gender Equality and Child Welfare, Ministry of Health and Social Services, and Ministry of Justice.<sup>39</sup>



**Dianne  
Hubbard,  
Legal  
Assistance  
Centre**

The national workshops were very successful and well-attended by appropriate stakeholders. One of the reasons for the good attendance was the practical fact that participants were not required to travel far distances to attend the workshops and could return home each night. This also reduced the workshop budgets. As these workshops were based in the capital city, media coverage was also easy to arrange. This increased the profile of the workshops and promoted attendance. The Minister of Gender Equality and Child Welfare opened the workshop series, again increasing their public profile. The international experts provided useful practical perspectives and innovative ideas.

The workshop discussions were generally very lively and productive, and the participants gave very positive feedback.



**Joyce Nakuta, MGECW**



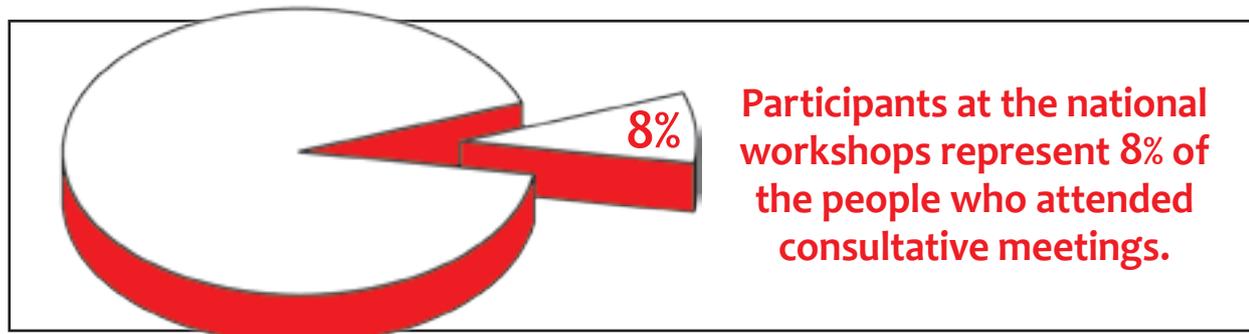
**Victor  
Shipoh,  
MGECW**



**Celeste Feris, MGECW**

<sup>39</sup> A list of participants is included in an appendix to this report, which is available on request from the Ministry or the Legal Assistance Centre.

Each of the national meetings was structured as an independent meeting. The cumulative attendance at the five national meetings was 115, although it should be noted that many of the participants attended more than one of the workshops in the week-long series. The cumulative attendance represents 8% of the people who attended consultative meetings about the revision of the Child Care and Protection Bill.



## 2. Feedback

The comments below summarise inputs from guests who made presentations at the national workshops together with feedback from other participants in discussion sessions. As discussed above, many of the presenters were international guests. Therefore the focus of the report below is on elements that were missing from Namibia's preliminary draft bill or different from the approaches taken in other child protection laws.

*“Thanks so much to you all - it was a privilege for me to meet you and attend the workshop! You are dedicated and inspiring - I think you are really doing an excellent job!”*

Adv Beatri Kruger, University of the Free State, South Africa

*“I would like to thank you so much for inviting me. I had such a wonderful time. I learnt a lot during the presentations and discussions.”*

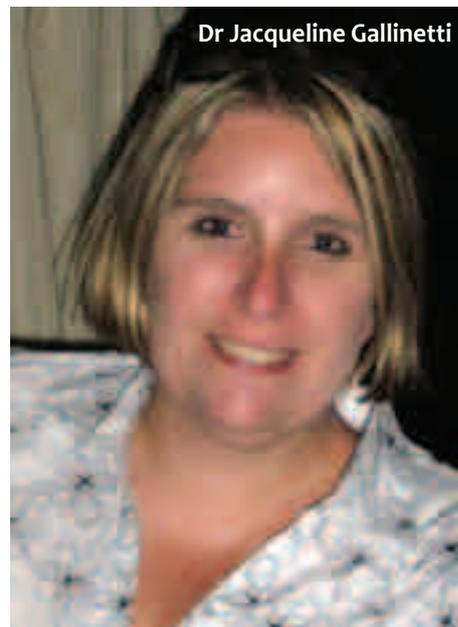
Dr Lea Mwambene, University of the Western Cape, South Africa

## 2.1 Children’s court procedures and legal representation for children

In Namibia, as in South Africa, the children’s court now has jurisdiction over many family matters which were previously the province of the High Court. Whilst this increased jurisdiction has made the courts more accessible in many ways, it has also presented a number of challenges.

### Children’s court assistants

Under the current Children’s Act 1960, children appearing before children’s court are most often assisted in practice, if at all, by prosecutors who are children’s courts assistants by virtue of their posts as prosecutors.<sup>40</sup> The current law also authorises the Minister of Justice to appoint dedicated children’s court assistants for children’s court proceedings “who may adduce any available evidence relevant to those proceedings and who may at such proceedings cross-examine any witness giving evidence thereat whom he did not call, and who shall generally assist the said court in performing its functions”.<sup>41</sup> However, it appears that there are no dedicated children’s court assistants in place in Namibia, meaning that only prosecutors are available to serve these functions when necessary.<sup>42</sup> In practice, workshop participants reported that prosecutors are called upon only in complex cases where the child has no legal representative so that there is someone to assist the child in placing relevant evidence before court; the role of an assistant in such cases is important because the magistrate cannot effectively fill this function while maintaining the required neutrality.



There was no provision in the preliminary draft bill for dedicated children’s courts assistants, or for prosecutors to serve this function. The workshop recommended that the bill should provide for dedicated children’s court assistants, but should also mandate prosecutors to continue to serve this function where there is no specialised assistant and no legal representative available – such as in remote areas.

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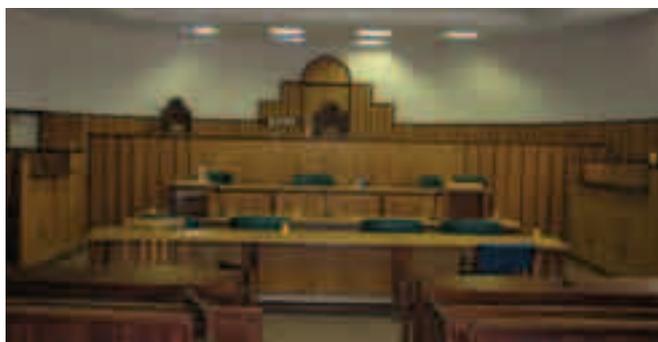
<sup>40</sup> Section 6(7) of the Children’s Act 33 of 1960 states: “Any officer delegated by an Attorney-General to conduct prosecutions at the public instance before the magistrate’s court of any district shall be *ex officio* a children’s court assistant of any children’s court held within that district.”

<sup>41</sup> Id, section 6(6).

<sup>42</sup> Information from Magistrate Horn.

## Family advocates

The international delegates stated that it is an area of concern that Namibia does not have an institution similar to the South African Family Advocate. Family Advocates, who are state-employed, essentially have the jurisdiction to deal with all minor children – whether born inside or outside of marriage – on the request of the court or any party. They render an extremely helpful service and are heavily relied upon in South African legislation to safeguard the child’s best interests, especially in situations where a child’s parents are in dispute. Their role is essentially three-fold: to monitor, to mediate and to evaluate what is in a child’s best interests. In South Africa, the initial concern was that there was insufficient attention to the needs of children in divorce cases. The current system was modelled on a Canadian institution and introduced in South Africa by the 1987 Mediation in Certain Divorce Matters Act.<sup>43</sup> The mandate of the Family Advocate was subsequently extended beyond divorce to decisions on parental responsibility for children born to unmarried parents. The South African experts recommended that Namibia should consider introducing a structure like the South African Family Advocate – but they also suggested that if Family Advocates are not provided for, children’s court assistants could be used to address this need. Children’s court assistants may, however, need special training to fulfill this function adequately.



**“Children’s courts are the orphans of the justice system.”**

**Dr Jacqueline Gallinetti,**  
University of the Western Cape,  
South Africa

## The role of private social workers

The workshop recommended that the role of private social workers should be clearly defined and limited, because the Ministry does not currently have sufficient control over their activities to ensure accountability. Moreover, the bill should be clear on what categories of social workers are authorised to carry out which functions. Different categories of social workers and auxiliary social workers could be authorised for different functions, based on criteria such as level of experience.

<sup>43</sup> The Mediation in Certain Divorce Matters Act 2 of 1987.

In South Africa, private social workers cannot appear in children’s court care proceedings, which are the province of designated government social workers only. However, private social workers can be approved to do certain tasks relating to the adoption process.

Participants suggested that the forthcoming Namibian law should authorise regulations on the authority of different categories of social workers to act under different portions of the bill, with adoptions in particular requiring an advanced level of experience. The meeting also agreed that the term “probation officer” should be limited to the criminal context, for consistency with the internationally-understood meaning of this term.<sup>44</sup>

## Lay forums for resolving family disputes outside court

The preliminary draft bill contained provisions designed to reduce the number of cases that must be decided in court. In cases which do not involve allegations of child abuse, the draft bill authorised the court to order the people involved to try to reach agreement between themselves on the problem, before the case comes to the court. The draft bill provided that the parties could be directed to attempt settlement at one of the following types of meetings (1) a **pre-hearing conference**: a private meeting held with the goal of reaching agreement on some or all of the issues in dispute (usually more effective if facilitated by a neutral person trained in mediation) or (2) a **lay-forum**: referral to a social worker or a traditional leader who can help the family try to reach agreement through mediation. Both alternatives will usually involve all people concerned in the case – including the child. A third option that was not included in the preliminary draft bill is **family group meetings**. Family group meetings started in New Zealand as a way to incorporate traditional Maori customs into the law and are now used in many countries, including South Africa and the United Kingdom.

Overall the group recommendation was that pre-hearing conferences should be mandatory, while lay forums, including mediation and family group meetings, should be voluntary. The child must participate, but no lawyers should be present (to avoid an adversarial situation). Mediation and family group meetings should be “off-the-record” (like settlement negotiations in a civil case); the only report-back to the court should be on any agreement reached, or a report that mediation or a family group meeting was tried but failed. This will make it possible for the people who participate to speak openly and freely, without fear of saying something that could be used against them in court. It was noted that the procedure should be flexible; the South African model is too rigid on this score, while the English model was considered to be a better example.

The preliminary draft bill excluded cases involving physical or sexual abuse from both pre-hearing conferences and lay forums. However workshop participants recommended

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<sup>44</sup> The term “probation officer” in the 1960 Children’s Act denotes any social worker approved to perform official duties under the law. There is no option in the current law for assigning different responsibilities to different categories of social workers.

that while cases involving physical or sexual abuse should be excluded from mediation, they not be excluded from pre-hearing conferences, which are convened not to resolve issues but rather to delineate the issues in dispute and reduce the evidence which must be presented at trial. They can thus make the hearing faster and less traumatic for the child. For example, the parties might agree at a pre-hearing conference that a child has specified injuries, but disagree only on how the injuries were sustained; such an agreement would reduce the need for lengthy medical evidence in court.

## Vulnerable witness provisions

Participants unanimously recommended importing the vulnerable witness provisions in their entirety from the criminal context (where they have been applied by an amendment to the Criminal Procedure Act<sup>45</sup>) into the Child Care and Protection Bill. These provisions authorise measures such as the use of intermediaries for questioning children and testimony behind a one-way screen or via closed-circuit television. The workshop strongly advised the application of these provisions to children's court proceedings and administrative proceedings involving children, for consistency and improved protection of children.



## Legal representation

The preliminary draft bill discussed at the workshop addressed legal representation for children by providing for referral of children's court cases to the Legal Aid Board. Persons consulted identified two problems which should be addressed in the bill: (1) When will legal representation be in the child's best interests? The local and international experts consulted recommended that it is better to provide guidelines for the court on this point, to guide its exercise of discretion. For example, legal representation would be in the child's best interests if the parents have a factual dispute, if both parents have legal representation or if the child disagrees with the social worker's recommendation. (2) In the preliminary draft bill, the decision on child representation was to be made by the Legal Aid Board, which is not experienced in children's court matters (but rather in criminal cases). A means test would not really make sense in the children's court context (where the issue may involve the removal of the child from the care of the parent), but the preliminary draft provided no clear standards to apply. The international experts suggested that the draft

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<sup>45</sup> See Criminal Procedure Amendment Act 24 of 2003, which amended Namibia's Criminal Procedure Act 51 of 1977. (The Criminal Procedure Act 25 of 2004 has been passed by Parliament, but it has not yet come into force. Therefore the 1977 Criminal Procedure Act, as amended, is still the relevant law.)

should provide clear criteria for the provision of state-funded legal representation for children. They also recommended a system of accreditation for legal practitioners who wish to represent children in children's courts, to ensure that they have the necessary background and experience to deal with such cases.

## Other recommendations on children's courts

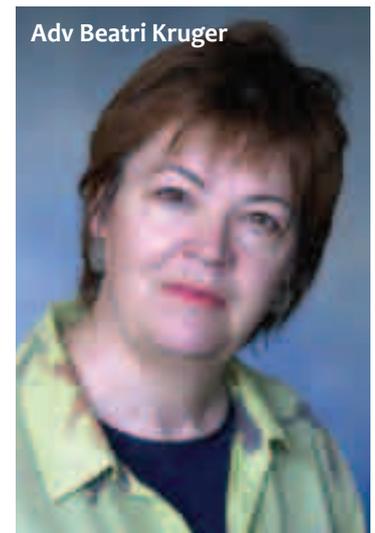
Workshop participants made the following key recommendations pertaining to children's courts:

- (1) Ensure that training of key roleplayers – including social workers, magistrates and clerks of court – takes place *before* the law comes into force.
- (2) Ensure that the necessary resources are available to implement the law. In particular, it will be necessary to assess the need for more court staff, social workers and legal aid lawyers.

## 2.2 Protection against trafficking, exploitation, and other harms

### Child trafficking

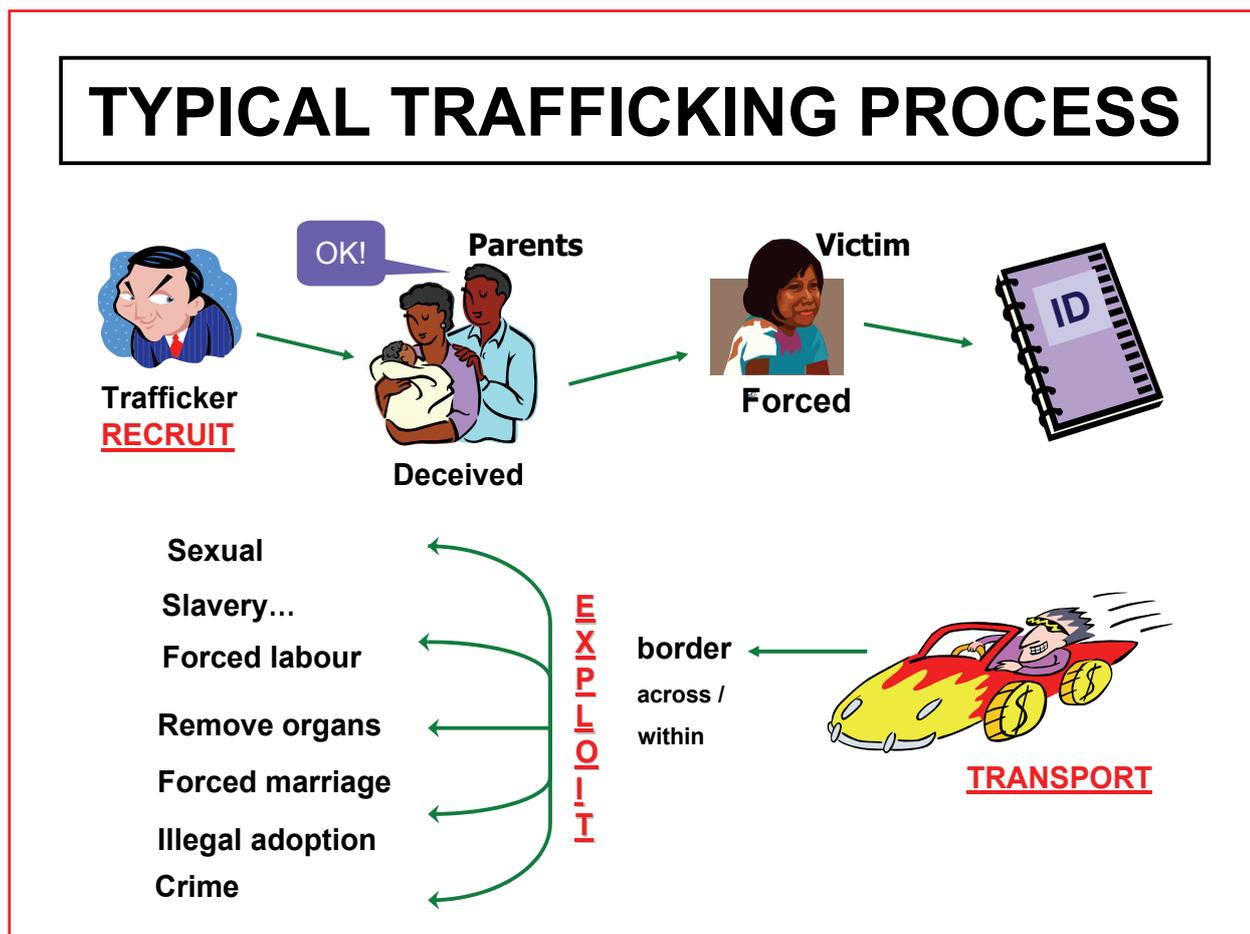
Trafficking of humans is an international problem. There is international consensus that trafficking should be managed on an international level because no country is untouched, and because in most cases trafficking involves the movement of a person across international borders. Therefore, it is recommended that countries incorporate international standards into their domestic laws. Against this background, the input of the international guests on the discussion of this topic was particularly useful. Experts on child trafficking noted that there were three potential weaknesses in the definition of trafficking in the preliminary draft bill:



- (a) The Namibian definition of trafficking needed to more closely aligned with regional and international standards. Guidelines for creating a definition of trafficking in persons can be derived from the Palermo Protocol which Namibia has adopted. In South Africa, laws against trafficking provide *greater* protection than the Palermo Protocol because additional provisions have been included to cover in-country trafficking. There are also provisions in the South African legislation which expand the elements of action, means and exploitation that constitute trafficking. The Namibian definition should also align with Southern African Development Community-wide legislation, as cross-border issues are more difficult to address if there are big differences in terminology.

The definition of trafficking is crucial. For example, a recent three-year research project in Namibia based on the Palermo definition of trafficking found some 15-20 cases of trafficking – mostly internal, with a few involving children from Angola and Zambia. However, if the narrower International Labour Organisation (ILO) criteria are applied (requiring that the child must be held in “slave-like conditions” as a means of control over the child’s movement), then only three of cases in the sample meet the definition. How trafficking is defined will determine what situations are covered by the law.

- (b) The preliminary Namibian bill referred to the “means” used to traffic persons in respect of both adults and children, whereas international law says that the means used should be irrelevant to the trafficking of children since they are incapable of providing meaningful consent. South African law refers to means for adults, but not for children. The experts recommended that the term “means” should be removed from the Namibian provision.
- (c) The preliminary Namibian bill did not provide any enumerated examples of “exploitation”, whereas the South African law lists specific types of exploitation such as “slavery” and the harvesting of body parts (not just organs), to cover exploitation for *muti*. The experts advised Namibia to refer to the South African Development Community’s strategic plan on trafficking with reference to these definitions.



One of the slides in Adv Beatri Kruger’s presentation

Other points on trafficking were also made:

- ④ As a measure for preventing trafficking, Namibia could require any agency that wants to advertise, offer or recruit Namibian children for jobs abroad to register with the government and to provide contact details.
- ④ The preliminary draft bill covered situations where a child is returned to the country of origin or the place from which the child was trafficked. The workshop recommended that this provision should be amended to allow for the additional possibility of returning the child to the country where the child's parent or other responsible caregiver resides, if this would be in the best interests of the child.
- ④ It was recommended that the provisions in the preliminary draft bill on extra-territorial jurisdiction should be broadened for greater efficacy, and harmonised with Namibia's extradition legislation.
- ④ There was some discussion regarding whether the Child Care and Protection Bill was the correct place for provisions on trafficking. South Africa is already in the process of developing a specific trafficking law. Namibia could eventually follow suit, or amend its Prevention of Organised Crime Act 29 of 2004, to keep legislation on trafficking for both adults and children within one statute and to co-ordinate management of a child in a trafficking situation with criminal prosecution of the trafficker. However, it was generally agreed that provisions on child trafficking should be placed in the Child Care and Protection Act at least as an interim measure, to avoid any delay in tackling this problem; if a specialised trafficking law is enacted at a later date, it would not be a difficult matter to transfer the provisions on children at that stage.



Criticisms of the provisions on trafficking in the preliminary draft bill were also made in a report entitled “*A Baseline Assessment of Human Trafficking in Namibia*” compiled for the Ministry of Gender Equality and Child Welfare and the Ministry of Agriculture, Water & Forestry, by a team of researchers under the guidance of international trafficking expert, Prof Susan Kreston:<sup>46</sup>

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<sup>46</sup> Ministry of Gender Equality and Child Welfare in collaboration with the Ministry of Agriculture, Water & Forestry, *A Baseline Assessment of Human Trafficking in Namibia – A Nationally Representative Qualitative Assessment*, Windhoek: Ministry of Gender Equality and Child Welfare, June 2009.

*While the Bill does address both prosecution and victim protection, it contains no prevention component, and has yet to be enacted, thus eliminating it from the arsenal available to investigators, prosecutors and victims. It is also restricted by its mandate to deal only with cases of trafficking in children, thus it does not grant full protection to all victims. Finally, the definition it gives of trafficking varies from that used in international instruments and that to which Namibia is committed.*

*In light of the difficulties outlined above, amendments to the existing legal framework should include:*

- *First and foremost, enactment of a comprehensive, stand-alone law on prevention and combating of trafficking in persons, in all its forms.*
- *The law should specifically distinguish between adult- and child- trafficking, in terms of the elements of these two, distinct crimes.*
- *Terms such as “abuse of power,” “exploitation” and “forced labour” should be clearly defined.*
- *The law should criminalise not simply the supply side of trafficking, but also the demand side, including knowingly using the services of victims. Supply and demand must be met with equally harsh punishments.*
- *A specific tolling of any statute of limitations on trafficking in the event of the suspect or defendant leaving the jurisdictional confines of Namibia.*
- *Criminalise the facilitation of trafficking.*
- *Victims should be immune from prosecution for crimes committed as a direct and immediate result of being trafficked, such as immigration violations.*
- *Prevention should be addressed, including a component on public awareness and information dissemination.*
- *Victim-assistance initiatives, including return and reintegration of the victim into his or her community, must be included.*
- *Especially in the case of foreign child victims, inclusion of a mandatory social services investigation into whether the victim can be returned to her/his country of origin without fear of re-victimisation.*
- *Protocols for identification and protection of victims of trafficking.*
- *Provision for foreign victims not to be summarily deported.*
- *An extra-territorial jurisdiction component should be included, to allow for prosecution of Namibian nationals and permanent residents, whether they commit this crime in Namibia, or abroad.*
- *A requirement of statistical recording of trafficking investigations, prosecutions and sentences.*
- *Inclusion of a provisional status on the trafficking component contained in pending legislation such as the Child Care and Protection Bill, so that when a stand-alone trafficking Act comes into existence, those trafficking provisions will be repealed and replaced with the broader legislation.*
- *Harmonise existing national laws on such crimes as abduction and smuggling with trafficking legislation to ensure the greatest legal cohesion of anti-trafficking laws.<sup>47</sup>*

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<sup>47</sup> Id, at pages 75-76.

## Child labour

Child exploitation relates to the exploitation or utilisation of children as a resource, usually involving a profit, without consideration for their well-being. Children may also be exploited for selfish purposes, such as in forms of sexual abuse where the only “profit” is the personal gratification of the abuser. Children can be more profitable to traffic than drugs because drugs must be replenished when sold, whereas a child may be trafficked repeatedly. The forms of exploitation can be non-commercial (family abuse, rape, paedophilia, forced marriage) or commercial (prostitution, sex-tourism, pornography) and can encompass child trafficking, child labour and the use of children to commit crimes.



“Child labour” is work performed by persons under 18, whereas “child work” is work children can do that does not affect schooling or development, such as reasonable participation in household chores. Child labour is characterised as exploitative, hazardous or inappropriate for a child’s age. It is detrimental to the child’s social, physical, mental, spiritual and social well-being and interferes with the child’s education. Child labour is typified by interference with the child’s basic human rights. For example, if a child is required to work at his parent’s fish and chip shop after school from 14h30 to 22h00, this is exploitative because the child cannot do homework and cannot otherwise carry on a normal child’s life which includes time to play and socialise. Child work, such as washing the family car, is acceptable unless it is excessive. Once it becomes excessive, child work becomes child labour. The International Labour Organisation (ILO) has created a specific definition for the *worst forms of child labour* as a means to address the most critical types of child labour and as a route towards meeting the long-term goal of eliminating all forms of child labour.<sup>48</sup>

Hazardous work is the largest category of the *worst forms of child labour*. Children in Namibia are engaged in hazardous work in both formal and informal sectors, according to a recent survey.<sup>49</sup> Hazardous work performed by children encompasses retail and

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<sup>48</sup> The International Labour Organization Convention No. 182 (Article 3) defines the worst forms of child labour as: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

<sup>49</sup> Dr M E Terry, *Elimination of Child Labour in Namibia: A discussion document on what is known, existing policy and programmes and possible gaps*, Windhoek: Ministry of Labour and Social Welfare, 2007 at pages 59-60.

other services, and in production and manufacturing. For example, off-loading trucks is hazardous in some cases due to the toxic nature of some of the materials and the heavy weight of the loads. Street vending is hazardous because it is on the street, can involve children being out at night, and carries the risk of exposure to crime. It was suggested that there is a need for provisions in the bill to supplement the Labour Act 2007 by providing a more clear definition of hazardous labour.

The provision on the worst forms of child labour contained in the preliminary draft bill was considered insufficiently detailed to serve as a basis for criminal charges, in addition to overlapping in a confusing way with the chapter of the draft bill on child trafficking. The workshop concluded that this section should be re-visited.

Regarding the worst forms of child labour, several other weaknesses were identified in the preliminary draft bill:

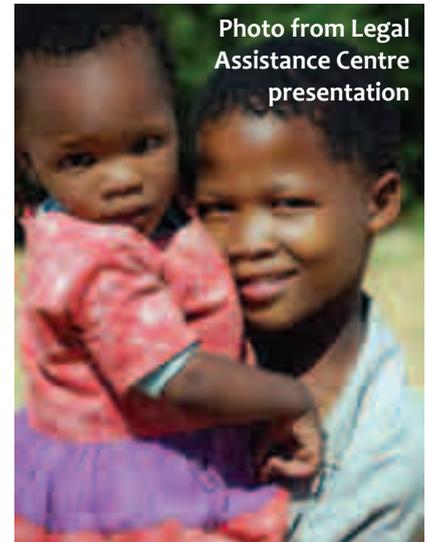
- ⊗ It would be useful for the bill to cover key gaps in the laws on child prostitution, child pornography and child sexual exploitation as an urgent matter, although it is not the place for a comprehensive legislative treatment of these topics. A priority issue should be to ensure that child victims of any of these crimes are covered by the protective services provided for in the bill. It is also necessary to ensure that basic criminal offences associated with such exploitation are covered. These issues could be more comprehensively addressed in subsequent specialised legislation.
- ⊗ The preliminary draft bill lacks a link between child labour and children in need of protective services. A working child is not automatically in need of protection, but the situation should trigger a social worker investigation to find out what circumstances led to the child labour, to determine whether protective services might be needed.



Children's drawings from Dr Terry's presentation

## Child-headed households

The preliminary draft bill identified a child-headed household as a household where all three of the following circumstances are present: (1) the parent or care-giver of the household is terminally ill or has died; (2) there is no adult family member available to care for the children in the household; and (3) a child has assumed the role of care-giver for some other child in the household. It was recommended that the draft provisions on this topic should be re-examined in view of the following key differences between the South African provisions and the Namibian provisions:



- ⑤ South Africa uses the criteria of a child who is “abandoned”, but the Namibian draft did not cover this possibility; if this term is added, there must also be a clear definition of what constitutes abandonment.<sup>50</sup>
- ⑤ South Africa provides an age limit for children who can be in charge of households, while the Namibian draft did not. One possible approach is to say that if the oldest child is under age 16, or perhaps age 14, then all children in the household are in need of protection. It would also be possible to leave this question to the discretion of the Minister.
- ⑤ South Africa clearly allows either the adult supervisor of the household or the child heading the household to collect grants – the Namibian draft seems to do the same, but is less clear.
- ⑤ Child-headed households need to be supervised, and the collection of state maintenance grants for child-headed households needs to be regulated. Regulations regarding the receipt of funds should hold accountable adults who collect such money on behalf of children. Workshop participants recommended that all decisions regarding a child in child-headed household should involve consultation with the affected children. Another suggestion for ensuring accountability is to establish a complaints mechanism whereby misuse of monies for child-headed households could be reported to relevant non-governmental organisations or organs of state.
- ⑤ Unlike the South African law, the Namibian draft included no “best interests of the child test” for determining disputes which arise in respect of a child-headed household. This is an important difference: although an adult may be required to consult a child, if there is no best interests test, how is a decision made if there is a dispute between the child and the adult?
- ⑤ Namibia needs to make a link between the provisions on child-headed households and the procedures for children in need of protection. Sometimes children involved in a child-headed household may also be children in need of protection. Not all children in a child-headed household will be children in need of protection, but this circumstance should be a trigger for a social worker assessment.

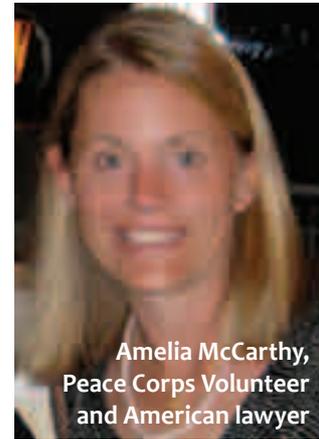
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<sup>50</sup> The preliminary draft bill defined the term “abandoned” for other purposes, but experts thought that the definition lacked sufficient detail.

## Child safety at places of entertainment

The preliminary draft bill proposed rules for situations where three criteria were present in combination:

- ④ access to an entertainment venue involves stairs, escalators or lifts;
- ④ the majority of the people attending the entertainment will be children; and
- ④ the total number of people in attendance (adults plus children) is expected to be more than 50.



In such cases, the owner or entertainment provider must determine the maximum number of people who can be safely accommodated on the premises, station a sufficient number of adult attendants to ensure that this number is not exceeded, control the movement of people while they are entering and leaving and take other reasonable safety precautions.

The international guests pointed out a small but important difference between the South African Act and the Namibian draft: Namibia uses “and” where South Africa uses “or”. This completely changes the applicability of the safety provisions. The experts recommended that Namibia consider making a change from “and” to “or”, or otherwise re-draft to ensure that a greater number of entertainment venues are covered by this provision. The importance of involving international experts is clearly illustrated in this situation – the difference spotted involves just one word and could be easily missed. However because the experts were familiar with similar laws in their own countries, they were able to easily identify this important distinction.



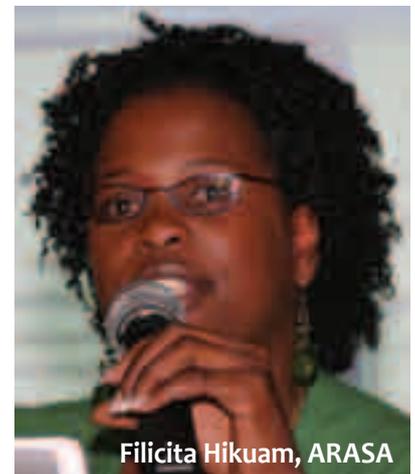
## 2.3 Age of consent for various medical procedures and age of majority

### Age of consent for medical treatment and surgery

Under Namibia's current Children's Act 1960, a child must be 18 years old to be competent to consent to medical treatment or surgery. In South Africa, a child must be 12 years old and have sufficient maturity to consent to medical treatment, while a parent or guardian's additional consent is required for surgery. Zimbabwe has taken a different tactic, as consent cannot be given until the age of 18, but a magistrate can intervene. In Kenya, a double test requires that the child have reached at least 15 years of age and have sufficient maturity. New Zealand's legislation cuts in the opposite direction: 16-year-olds are allowed to consent, but younger children may also give consent if they demonstrate competence. Quite different from all of the other models discussed, British Columbia in Canada employs a presumption of competence.

The AIDS and Rights Alliance for Southern Africa (ARASA) gave a presentation on this topic and made the following recommendations:

- ⑤ Create a single norm for consent to all health-related interventions in the legislation. ARASA suggested an “age 12 plus maturity requirement” in line with the English law approach.<sup>51</sup>
- ⑤ Include norms in the legislation for the process of HIV testing to ensure that it is done appropriately. Follow South Africa's legislation (which addresses the child's best interests, consent to such tests by parents and children, counselling requirements and confidentiality), but ideally without singling out HIV testing.
- ⑤ Create a separate right to access contraceptives and contraceptive advice, since not all forms of contraceptives would be considered “medical treatment”. This should be applicable to children from the age of 12 years, where they have sufficient maturity. The provision on access to contraceptives should also cover confidentiality.



These recommendations were then debated by the group, but no consensus was reached.

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<sup>51</sup> See *Gillick v West Norfolk and Wisbech Area Health Authority and the DHSS* [1985] 3 All ER 402 (HL). The standard applied by the court in this case is as follows: “As a matter of law the parental right to determine whether or not their minor child below the age of sixteen will have medical treatment terminates if and when the child achieves sufficient understanding and intelligence to understand fully what is proposed.” The medical practitioner who will be administering the treatment is able to decide on the maturity and competency of the child.

Participants noted the need for better service provision, stating that Namibia has not yet fully succeeded in its efforts to establish adolescent-friendly health services. The positive benefits of legislation allowing certain children the power to give independent consent to HIV testing and access to contraceptives may not be realised without improved services, especially in the area of counselling to support children who are seeking testing, treatment or contraceptives.

Dr Paul Ludik, Director of the National Forensic Science Institute, recommended that it would be better to use the term “medical intervention” as opposed to “medical treatment”, as this would include things like diagnostic tests and forensic medical examinations. The definition of this term should also cover dental and psychological interventions. This should also allow for intervention in emergency situations which are not “medical treatment” in the strict sense – such as dealing with a child’s threat of suicide.



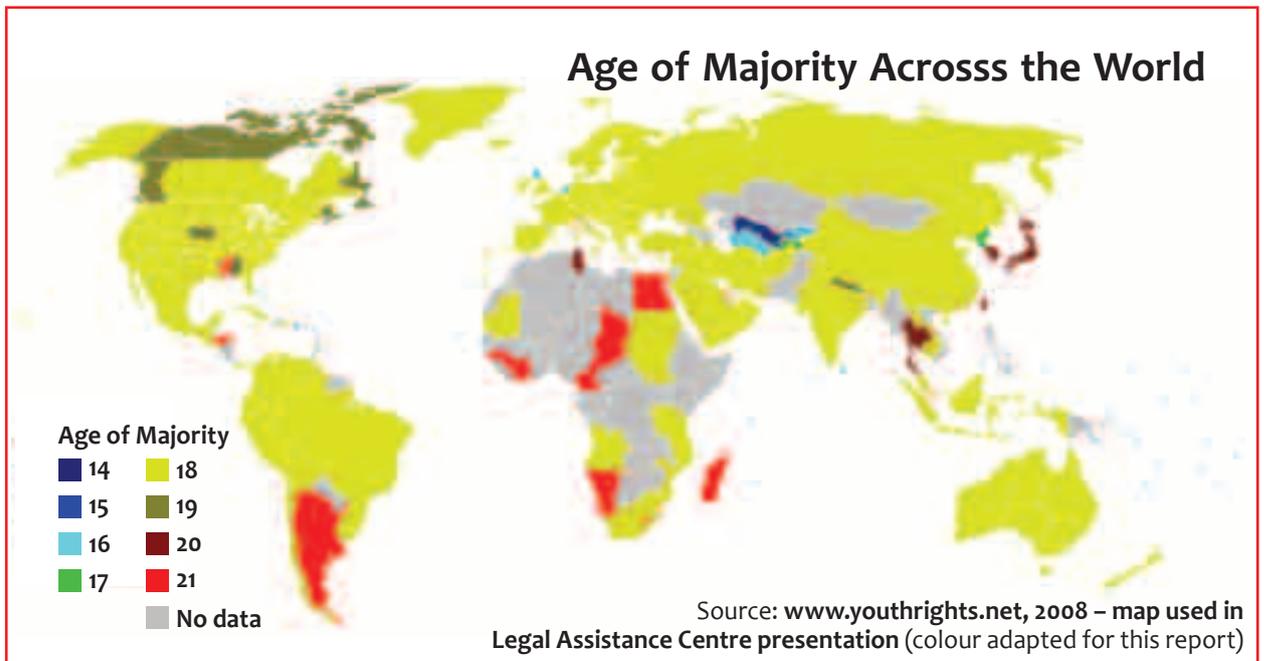
Looking more specifically at the topic of forensic medical examinations, it was recommended that the law should make explicit provision for the examination of children where abuse is suspected, as abuse is often perpetrated against children by family members who would be reluctant to allow the collection of medical evidence. The doctor should be empowered in cases of suspected child neglect or abuse to examine the child victim, and to use local anaesthetic for this purpose if this would be in the best interests of the child, without the consent of the parent or guardian. If general anaesthetic is to be used (which involves greater risks), the doctor should be required to get the consent of a parent or guardian, or alternatively the superintendent of the hospital or the regional director of the clinic.

## **Age of majority**

Three youths of varying ages were asked to give short presentations at the national meeting on whether they were content with the rights they possessed, and on their views about whether the age of majority should be reduced from 21 years to 18 years.

If this change is made, 18-year-olds would be able to enter independently into contracts, bring or defend a court case, independently consent to civil marriage, sell or mortgage land, and independently use or manage money or property which they have inherited.

A 16-year-old, an 18-year-old and a 21-year-old spoke. Two of them were against lowering the age of majority to 18 years since “people at that age are still teenagers and usually still dependent on their parents” and “not mature enough to be responsible for their actions”. The third asserted that the age of majority should be lowered to 18 years “since there is already little difference between what 18-year-olds and 21-year-olds can do”.



The United Nations Convention on the Rights of the Child and the African Charter on the Rights and the Welfare of the Child both define a child as a person under the age of 18 years, and most countries in the world have set the age of majority to reflect this. Some exceptions include Namibia, Cameroon, Chad, Lesotho, Swaziland, Madagascar and Egypt, which have set the age of majority at 21 – although some of these countries, such as Lesotho, are already in the process of lowering the age of majority to 18.

Workshop participants debated the issue of whether Namibia should lower the age of majority from 21 to 18 at some length, with mixed views being expressed. As a background to the debate, one participant noted that many parents are disempowered by socioeconomic conditions and the erosion of traditional ways, so they find it very difficult to control children – even children of ages 9 to 12. Often, both parents have to work and there is no time to control or guide children at an adequate level. Situations such as this often force children to take on adult responsibilities, such as in cases where older daughters raise younger children.

Some participants felt that the age of majority should be lowered to 18. Reasons given included the need to facilitate independent access to employment, which might decrease the number of street children since some children take to the streets because they cannot get jobs. Other participants noted that most children between the ages of 18 and 20 are no longer in school.<sup>52</sup> It was also noted that inheritance is a problem for some

<sup>52</sup> According to the 2001 census, there were 116 194 persons aged 18-20 in Namibia. National Planning Commission (NPC), *2001 Namibia Population and Housing Census, Final report: Detailed tables*, Windhoek: NPC, 2003 at page 1. In 2007, there were 44 564 children in this age group at school, which is about 38% of the census figure. Education Management Information System, *Education Statistics 2007*, Windhoek: Ministry of Education, Table 25. Allowing for the differences in years between these two sources, it is likely that almost two-thirds of Namibians in this age group are no longer attending school.

children, who struggle to access money for their basic needs from the State Guardian's Fund. A social worker employed by the Motor Vehicle Accident Fund stated that accessing money after a parent has died can be problematic for minors; she felt the Fund should be able to emancipate children to enable them to access funds directly, as some children can be disadvantaged by the current restrictions.

Other participants felt that the age of majority should remain at 21. They noted that some children have not completed grade 12 by the age of 18 and are not independent from their parents. It was also argued that very few children throughout the country are fully economically or emotionally independent at 18 years old. Other areas of concern were the impact of lowering the age of majority on maintenance<sup>53</sup> and on children resident in children's homes, who might be required to leave at 18 rather than 21 if the age of majority is lowered (unless the law makes special provision for this situation, as South Africa has done).

Shortly after this workshop was held, the *YouthPaper* supplement of *The Namibian* newspaper published an article about the debate on age of majority. Some of the comments given at the workshop and then printed in the newspaper are reported in Chapter 3 of this report, on pages 66-68.



### Youth who contributed to the debate on age of majority



Suzandi Shifier, 16, Grade 11,  
David Bezuidenhout High School



Uys Mushalwa, 18,  
Jan Jonker Afrikaaner High



Franz Saharia, 21, Youth Leader,  
Physically Active Youth

<sup>53</sup> The Maintenance Act 9 of 2003 already provides that maintenance orders will normally cease when the child in question turns 18, but allows for such orders to be extended to age 21 in appropriate situations.

## 2.4 Adoption

Adoption is a controversial issue in many countries. Debate has arisen over the prevalence of irregular adoptions, and whether attempts to prevent abuse have led to unduly cumbersome regulations that leave children to languish in unhealthy situations. Current Namibian law on adoption is not based on the internationally-accepted principle



of the best interests of the child and also fails to cater for intercountry adoption even as a last resort. Namibia's High Court ruled in the 2004 *Detmold* case that the section of the Children's Act 1960 stating that children born to Namibian parents can be adopted only by Namibian citizens was unconstitutional discrimination, as well as being in conflict with the constitutional right of every child to a family.<sup>54</sup>

The Child Care and Protection Bill would change the national law on adoption to ensure consistency with international legal standards and best practices.

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<sup>54</sup> *Detmold and Another v Minister of Health and Social Services and Others* 2004 NR 174 (HC). Section 71(2)(f) of the Children's Act allows adoption of children born to Namibian citizens only by Namibian citizens resident in Namibia, with the possibility of Ministerial approval to waive this rule in only two limited circumstances: (1) where the applicant is resident outside Namibia but is a Namibian citizen OR a relative of the child or (2) where the applicant has the necessary qualifications for Namibian citizenship AND has already made application for naturalisation.

The High Court ruled that this section is in conflict with Article 14(3) of the Namibian Constitution because it would deprive the child in question of the opportunity to grow up in a family, in direct violation of the right to found a family. Article 14(3) provides that "The family is the natural and fundamental group unit of society and is entitled to protection by society and state". The Court found that adoption is a valuable way of affording children the benefits of family life which might not otherwise be available to them, and that forbidding the adoption of children born to Namibian parents by non-Namibians violates the Constitutional principle because it may be that adoption by foreigners will provide the best family environment for a child born to a Namibian parent: "Their exclusion defeats the very essence and social purpose of adoption which is to provide the stability, commitment, affection and support important to a child's development, which can be offered by suitably qualified persons."

The High Court also ruled that the provision in question is in conflict with the principle of equality before the law guaranteed in Article 10(1) of the Namibian Constitution for two reasons. First, it treats children born to Namibian parents less favourably than children born to non-Namibian parents in Namibia, since the latter group of children could still be adopted by foreigners. Secondly, a foreigner who is not eligible for Namibian citizenship or does not wish to be a Namibian citizen could never adopt a Namibian child, and so is treated less favourably than a Namibian citizen. The Court found that these distinctions are not based on a rational connection to a legitimate purpose, as the differentiations in question may have the effect of excluding children from adoption by persons who may provide them the best hope of a secure and stable future and family life.

**“The family should suit the child, rather than the child should suit the family.”**

Carina du Toit, lawyer, South Africa

The debate about adoption started with an assessment of how the preliminary draft bill differs from the current adoption process, noting that:

- ⦿ it makes provision for adoption plans;
- ⦿ it includes a “cooling-off period” of 60 days during which the biological parent can withdraw consent;
- ⦿ it requires consent from unmarried fathers (building on the right of consent given to unmarried fathers by the 2006 Children’s Status Act<sup>55</sup>); and
- ⦿ it appears to require a social worker report discussing the suitability of the adoption at the time of the initial adoption application.

The proposed “cooling-off period” was a subject of extensive debate. The discussion focused mainly on the duration of the cooling-off period. Some people argued for a long cooling-off period (such as 60-90 days), while other people argued that it should be shorter (such as 30 days). At this meeting, participants noted the following reasons for and against a long cooling-off period:

**Convention on the Rights of the Child**

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative parties, the best interests of the child shall be a primary consideration.*

Slide in Legal Assistance Centre presentation

<sup>55</sup> Children’s Status Act 6 of 2006, sections 13(7)(a), 13(8) and 13(9).

ARGUMENTS AGAINST A LONG COOLING-OFF PERIOD	ARGUMENTS IN FAVOUR OF A LONG COOLING-OFF PERIOD
<p>Effective counselling to a birth mother before and after the birth could ensure that she understands the full meaning of adoption, and help her to be sure of her own mind on the adoption decision.</p>	<p>Social workers reported that biological mothers who give up their babies at birth often have a change of heart. Some mothers do not realise when they give consent that adoption is really final.</p>
<p>Birth mothers may change their minds after the baby has bonded with the adoptive parents. This can be very traumatic for the adoptive parents.</p>	<p>Social workers need to assess where the child to be adopted should stay during the cooling-off period. It may be best for a baby to go straight to the adoptive parents to facilitate bonding and breast-feeding. In some countries, such as the Netherlands, the children stay with specially-trained foster parents during the cooling-off period. If the child is placed with the adoptive parents before the consent is final, the adoptive parents would need counselling to prepare them for the risk that the birth parent might change her mind. The social worker should use discretion on whether or not to place the baby with the adoptive parents during the cooling-off period.</p>
<p>A cooling-off period could open the door to abuses in situations where birth mothers change their minds after taking some form of benefit from the adoptive parents, such as funds to give birth in a private hospital.</p>	<p>There is a need for rules on whether a birth mother must re-pay legitimate expenses covered by adoptive parents if she later changes her mind (assuming that the change of heart was in good faith).</p>
<p>The proposed cooling-off period protects only the birth parents, and does not allow the adoptive parents to change their minds. In this sense, it is not reciprocal.</p>	<p>The waiting period can allow the social worker to better assess which adoptive parent will be best for a particular baby, after it becomes evident (for example) that if the baby cries a lot or is “easier” to handle.</p>
<p>Most participants at this workshop seemed to think that the proposed cooling-off period should be shorter than the proposed 60 days, with several social workers suggesting 1-2 weeks or 30 days.</p>	

The current law gives permission for a child to consent to adoption from the age of ten years, while the preliminary draft bill proposed consent from the age of 14 years. A suggestion was made that the law should remove the reference to 14 years and base the child’s ability to consent on “sufficient maturity” instead.

Although there was not unanimous agreement, most participants (including all the social workers present) recommended setting the minimum age for adoptive parents at age 25 or similar. Most participants also agreed that a minimum age standard is necessary, rather than determining maturity completely on a case-by-case basis. However, it was suggested that any minimum age requirement should make provision for exceptions in appropriate cases, where the social worker is satisfied that the requisite maturity is present.

**“Potential adoptive parents need to understand the consequences of adoption such as potential discrimination in schools or by extended family members, and attachment issues. The child may later in life resent the adoption. Dealing with these issues requires a high level of maturity.”**

**Bep van Sloten**, Consultant in Child and Youth Care, Netherlands

Participants also put forward the following recommendations on adoption:

- ④ The bill should provide a framework for permanent foster care as an alternative to adoption.
- ④ The bill should be clear on the qualifications for designated social workers who can do adoptions and other specialised tasks. This should include only government social workers or approved agencies – not individual social workers in private practice. There should also be fee structures and regulations for social workers.
- ④ Provisions for pre-adoption training and counselling should be included in the bill. There is also a need to educate extended family members, and to give ongoing support to adoptive parents, such as through support groups.
- ④ The requirement in the preliminary draft bill that consent for the adoption of a child of a minor mother or father must be given by the minor parent’s own parent or guardian is a bad one. This grandparent may not even know about the baby. The birth parents should make the decision, even if they are minors.
- ④ Any child over the age of seven should have the right to be heard in court on adoption. Courts must give a child a right to express his or her views on the matter, even if the child is not sufficiently mature to give “consent”.
- ④ The bill should prevent a biological parent from blocking an adoption if that parent is not willing to step in and take responsibility for the child.
- ④ Namibia should follow South Africa by giving explicit priority to adoption by extended family members or foster parents, who should be considered as adoptive parents before anyone else.
- ④ Although preserving an adopted child’s cultural identity is important, the paramount consideration in adoption should be providing a good family environment.
- ④ There should be a preference for “open adoptions” which allow the child to maintain contact with family roots and siblings.
- ④ A social worker should monitor the integration of a child into his her adoptive family for a period of 12 months.

- ⊗ There should be regulations –
  - (i) specifying what efforts must be made to locate persons whose whereabouts are unknown, for purposes of obtaining consent to adoptions;
  - (ii) on what a social worker’s report should cover when investigating the background of the prospective adoptive parents;
  - (iii) on payment for adoption services to individuals or organisations, to prevent conflict of interests from arising;
  - (v) on the procedure for determining the age of a child to be adopted; and
  - (vi) on the requirements with which a child welfare organisation must comply for accreditation to provide adoption services.
- ⊗ Official adoption registers should include information on –
  - (i) the number of adoptions approved annually;
  - (ii) personal details of all adopted children, their biological parents and adoptive parents; and
  - (iii) particulars of appeals against adoption orders.
- ⊗ Some participants suggested that that same-sex partners should be allowed to adopt children jointly, but the majority of participants felt that such a rule would be inadvisable, or unacceptable in Namibia’s current political climate.

## Intercountry adoptions

For intercountry adoptions, participants overwhelmingly recommended that Namibia should ratify the Hague Convention on Intercountry Adoptions, which regulates intercountry adoption as a last resort when no suitable in-country placement can be found for a particular child. If Namibia takes this step, the new child law should then contain provisions on –

- (i) international co-operation;
- (ii) the establishment of a central authority;
- (iii) the functions of the central authority;
- (iv) accreditation of social workers to provide intercountry adoption services; and
- (v) procedures for entering into adoption working agreements with specific countries.

Some participants suggested a residency period of 6-8 weeks for non-Namibian parents who wish to adopt Namibian children.



Dr Lucy Steinitz presenting

It was noted that adoption is not well-understood by the general public, meaning that there is a need for public education on this issue.

**“One of the responsibilities in any adoption is to educate the adoptive parents about how to raise a non-biological child.”**

Dr Lucy Steinitz, intercountry adoptive parent

## A PARENT AND CHILD SHARE THEIR EXPERIENCE OF INTERCOUNTRY ADOPTION

**What follows is a summary of the presentation of Dr Lucy Steinitz (Dr Kiekebusch-Steinitz) on her personal experience of intercountry adoption. Dr Steinitz, who now lives in Namibia, adopted two children from Guatemala, Elsitá and Sergio, while resident in the United States.**

Dr Steinitz moved to Namibia from the United States 12 years ago together with her husband and her two adopted children. Both children were adopted through intercountry adoptions. In preparation for being adoptive parents, Dr Steinitz and her husband took a course for prospective adoptive parents. They were the subjects of a home study in their country of residence (the USA) to be assessed for their suitability as adoptive parents. They also spent time in the country of their future adopted children (Guatemala). This process was in compliance with the Hague Convention.

During the investigation process, the couple were subject to many inquiries, such as a search of court and police records and interviews with friends and neighbours about their characters. The home study looked at the family's living space and checked to see if they had enough money for basic necessities.

Their first adopted child, Elsitá, was adopted from Guatemala at age six months in 1986. The family celebrates Elsitá's birthday and the day she was adopted. Dr Steinitz explained how she told her daughter that she believes her biological parents think of her on her birthday and that they are looking at the same moon and stars while thinking of her. This is one way the family has applied the training they received on the importance of acknowledging the birth mother to the child.

Their second adopted child, Sergio, was adopted from Guatemala two years later at the age of seven months. She describes the siblings (who are not birth siblings) as being "emotionally as tied as any two siblings could be". She felt that adopting two children from the same country would enable them to support each other, which proved to be important for them.

Dr Steinitz shared the "challenges of taking a child that had experienced a great loss," referring to the loss of her children's biological parents. In disciplining her children, Dr Steinitz ensured she never suggested she would ever give her children up because adopted children have a fundamental insecurity about being accepted.

Knowing her children "had a history before they were ours", she incorporated parts of her children's heritage in the decoration of their bedrooms and through teaching them about Guatemala through travel, history and language skills. A Spanish-speaking nanny was employed so that she could speak Spanish with the children. When the children were older, the family took a trip to Guatemala so that the children could connect with their birth heritage. These are examples of how a child's birth heritage can be respected in a cross-cultural adoption. The multi-cultural heritage needs to be approached as a richness and not as a loss.

Dr Steinitz noted that all children have issues regarding identity, but that these can be intensified in the case of an adopted child.

**Elsita, who is now a young adult, was invited to attend the workshop to give her perspective as a child adopted through an intercountry adoption. She was unable to accept the invitation to attend the meeting but sent the following letter to be read out to the group.**

*Hello Everybody,*

*This is Elsita Kiekebusch writing. As my mother probably explained to you already, I was adopted at the age of 6 months from Guatemala, a country in Latin America. I lived in the United States until age 11 at which point I moved to Namibia with my family.*

*I do not know the details of my birth, but I do know that I ended up living in an over-crowded orphanage in Guatemala's capital city before*

*being adopted and moving to the USA. As you can imagine, my life is certainly quite different than what it might have been had I not been adopted. I think one of the most widely cited positive aspects of adoption is the change in the level of opportunity that one experiences when adopted from a disadvantaged background into a more privileged environment. Material wealth comes to mind, but basic advantages such as education and health care are clearly invaluable. My life in the USA (and also Namibia) has certainly been less danger-filled in comparison to the then war-torn Guatemala. However, to me, one cannot overlook the emotional benefits of being adopted into a caring and stable family environment.*

*One of the fears accompanying international adoption that I have come across here in Namibia, is that an adopted person will lose their connection to their biological family, their ancestors and their heritage. These are definitely real losses, and have given me cause to more strongly consider my own identity. My younger brother (not biologically related) is also adopted, and he is the one and only person I know who can share the same unique story as my own. I know that we both sometimes speculate about our biological relatives. We wonder what they are like, what they believe in and all the might-have-beens. It seems obvious to me that the cutting off of these familial ties has more to do with the extreme circumstances of my birth and subsequent abandonment than the adoption itself. Adoption has allowed me to find a new and wonderful family and home.*

*It follows that in my "new" life I was also given the opportunity to reconnect with my heritage. I have been given the great gift of parents that have always encouraged me to explore my roots. I have traveled to and lived in several parts of Latin America (including Guatemala) in my adult life. I have learned about the history and culture of Guatemala and also to speak Spanish (the official language there.) Perhaps for some people who are adopted, learning about their country of origin isn't a priority, but this has always been very important to me.*

*Adoption has probably been the single most defining event of my life. And I'm pretty happy to report that it has worked out very well for me. For children who do not have a family of their own, it can provide a great opportunity – a second chance at life.*

*Sincerely, Elsita*



Elsita (left) and Lucy

## 2.5 Children in need of protection and options for alternative care

Drawing from  
Dr Lucy Steinitz's  
presentation on  
adoption



### Child protection

Under both the Children's Act of 1960 and the preliminary draft bill, the suspicion that a child is in need of care or protection is the trigger for initiation of investigation while a finding that a child is in fact in need of care or protection is the justification for removal of the child from the home environment and placement in alternative care (or other interventions).

Workshop participants suggested that a broader set of criteria should be identified to act as triggers for a social worker investigation, and suggested the following:

- ⊗ a child living in a child-headed household
- ⊗ a child working in child labour
- ⊗ a victim of child trafficking
- ⊗ a child whose parent is imprisoned
- ⊗ a child with a drug or alcohol problem
- ⊗ a child experiencing "barriers to learning"
- ⊗ a foetus being affected by the pregnant mother's conduct
- ⊗ a child begging or selling goods on the streets
- ⊗ a child below a set age who is found to be pregnant
- ⊗ child victims of crime against the person
- ⊗ children living in a violent environment, including children named in a protection order issued under the Combating of Domestic Violence Act
- ⊗ children exposed to pornography or violence via the internet or other computer or cell phone technology
- ⊗ children who are being exposed to an environment of prostitution or immorality, but (as in Kenya) with an exception for a parent who is engaged in sex work for a living but is not exposing the child to it
- ⊗ children who have been kicked out of their homes because of their religious views, because of a pregnancy, etc
- ⊗ any child involved in a case referred for investigation by the Children's Ombudsperson or the Child Welfare Advisory Council (both of which are new institutions proposed in the draft bill)
- ⊗ any child (or perhaps children below a certain age) found living on the streets.

The following suggestions were made in respect of the criteria for finding a child to be in need of protection:

- ⑥ The criteria should be consistent with the Demographic and Health Survey definition of a “vulnerable child”.<sup>56</sup>
- ⑥ The criteria should cover a child who is being indirectly affected by family violence, to cover a situation where, for example, the father is beating the mother but not the child.
- ⑥ The preliminary draft bill covers a child who “is engaged in behaviour that is, or is likely to be harmful and the parent or guardian or the person in whose care the child is, is unable or unwilling to control that behaviour”. Participants suggested that this reference to harmful behaviour should clearly include both behaviour that could be harmful *to the child in question*, and behaviour which is or could be harmful *to others*.
- ⑥ The list should include a child with a drug or alcohol problem who is not receiving support or treatment. (The caveat is important as the goal would be to target children who are not already receiving help.)

In a range of narrow circumstances a child can be removed from the home. This may occur with or without a warrant before a child protection hearing, or as a result of a court order made at the conclusion of a child protection hearing. It was recommended that the procedures for emergency removals need to be examined carefully and compared with the current procedures, to see if there are sufficient safeguards – especially for removal without a warrant. It was noted that places of safety do not want to accept children from emergency removals because they get “dumped” there for too long, and that there is a need for safeguards to ensure that this does not happen.

Care Patterns of Children							
	Malawi	South Africa	Swaziland	Zambia	Sierra Leone	Ghana	Namibia
Number of children	6 m	18+ m	530,000	4.5m	3+m	11m	1m
Living with father only	3%	3%	6%	3%		4.7%	4%
Living with mother only	20%	38%	38%	23%		24%	33%
Living with both parents	58%	34%	22%	62%	50%	51%	26%
Both parents alive but living elsewhere	11%	24%	19%	8.1%	20%	13%	24%
Double orphans	3.5%	3.5%	4.4%	2.9%		0.6%	2%

Slide from UNICEF presentation

<sup>56</sup> The 2006-2007 DHS defined a vulnerable child as a child below age 18 who has a chronically ill parent or who lives in a household where an adult has been chronically ill or has died in the 12 months preceding the survey. “Chronically ill” is defined as an adult who cannot take part in basic household chores for at least three of the last 12 months.

## Foster care

Foster care in Namibia is mainly provided by extended family members, which would be more properly referred to as “kinship care”. Unfortunately, many families have been disrupted by HIV/AIDS, violence or other factors, and cannot provide care or are overly burdened by trying to provide this care. There is only one formal foster care project in Namibia. It is called Hope Ministries and operates in Arandis and Rehoboth.



A grants system is currently in place, with grants going to foster parents who have court approval. But much kinship care goes unregistered, meaning that many families receive no government funds. The application procedure for being formally recognised as a foster parent is complicated and time consuming, so many families caring for children never become eligible to receive grants. It was noted at the workshop that the current Namibian foster care grant (N\$200 per month for the first child plus general household expenses, and an additional N\$100 for additional children) is equivalent to the means-tested state maintenance grant available to a child’s parents, and is much lower than the South African foster care grant (R680 per month per child<sup>57</sup>).

A UNICEF-sponsored study on foster care was designed to assess Namibia’s current foster care system in more detail. The study consisted of statistical analysis combined with focus group discussions and key informant interviews in rural and urban areas in Omusati, Omaheke, and Khomas, and consultations with regionally-based social workers.<sup>58</sup> Bep van Sloten, the consultant who carried out this study, gave a presentation on the research findings at one of the national workshops.

According to this study, it is clear that there are a range of different roles for which foster care could be utilised in Namibia: (1) **short term foster care** for emergencies or for short absences of a caregiver; (2) **longer-term foster care** for stays of over 6 months; (3) **permanent foster care** which could be established as an alternative to adoption; and (4) **respite foster care** on weekends or holidays, which can be used to give regular caregivers a break from their duties. The study recommended that **kinship care** needs to be superimposed on the range of options presented above, allowing family members to provide any of these forms of care.

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<sup>57</sup> As of April 2009. The amount increases each year. South African rand and Namibian dollars are equivalent, meaning that the South African foster care grant is more than three times the amount of the corresponding Namibian grant.

<sup>58</sup> This study was conducted by international consultant Bep van Sloten, who attended the national workshops. Another more general UNICEF-sponsored study of alternative care in Namibia was conducted by international consultant Andrew Dunn. Information about these studies or a copy of the resulting reports may be obtained from the Ministry or UNICEF.

In many other countries, specialised foster care organisations perform placement functions. These organisations maintain trained foster care workers and kinship care workers. They are responsible for recruitment, assessment, support, supervision and evaluation of foster parents and children in foster care. The organisations are also responsible for contact with the biological families and reunification services and support. In many countries, extended family is the first but not always the preferred option, depending on the needs of the child.

After considering the models presented, the workshop agreed that Namibian law should separate kinship care from “non-relative foster care”. Kinship care should be authorised through less formal procedures, while a system of formalised, non-relative foster care should be developed as an alternative to residential care where suitable kinship care is not available. It was also recommended that kinship care should be the preferred option where possible. This approach should reduce the high foster care caseloads currently carried by social workers, which restricts their ability to do more preventative work and engage in efforts to assist and reunite families.

It was also unanimously recommended that the system of grants should be reviewed to ensure that cash transfers reach the most vulnerable children. A related recommendation was that any child who has been placed in foster care, and any other child receiving a state grant, should be automatically exempted from school fees – as the grant otherwise becomes simply a transfer from one ministry’s budget to another’s.

Participants also recommended a recruitment campaign for non-relative foster carers who could look after children currently in residential care facilities, including recruitment and training of specialised foster carers for special groups of children. Cluster foster care systems like the Hope Ministries model could be utilised more broadly. (“Cluster foster care” is an alternative to a children’s home with a more family-like environment, where a few foster families live together with small groups of children.) The need for ongoing support for foster parents was also emphasised, perhaps by means of support groups for foster parents and foster children.

**“Families should be monitored so that the money actually goes where it should. The grants are some people’s only source of income, which paves the way for abuse of the system.”**

Comment by social worker



Needs of children fostered – photo from Bep van Sloten’s study on foster care in Namibia

## Other forms of alternative care

A UNICEF representative briefed the workshop on institutional care from a global perspective. Most children in institutional care have one or two parents living (very few are double orphans), and poverty is often the key reason why children end up in residential child care facilities. There are concerns that children in such facilities may have psychosocial and developmental problems, and that they will not acquire the skills necessary to establish a future family life. Children are at risk of violence and abuse in institutions, especially if they are disabled. Standards of safety, hygiene, nutrition and healthcare are often quite low. In the long-term, children may have trouble adjusting to life outside institutions. While regulation of residential child care facilities may help, alternative forms of care for children are preferable to institutional facilities (which are also not financially feasible). Children should stay with their families whenever possible, but where separation from the immediate family is unavoidable, alternatives to institutional care should normally be the first option. When institutional care must be used, minimum standards and good oversight are imperative.



LIVING ARRANGEMENTS FOR CHILDREN UNDER AGE 15		
	2000 Namibia Demographic Health Survey	2006 Namibia Demographic Health Survey
Children living with both parents	26%	27%
Children living with mother only	33%	34%
Children living with father only	4%	5%
Children living with neither parent	33%	34%
Children living with neither parent although both are alive	26%	24%*

These statistics were summarised in the workshop presentation given by UNICEF. This table is based on one in the final consultancy report on alternative care in Namibia: Andrew Dunn, *Capacity to Manage Alternative Care: Assessment Report for Namibia*, Nairobi: UNICEF, 2008.

Workshop participants recommended that placement in institutions must be either a last option or a positive choice because of a particular child's needs. Although some institutions do not want to take children with behaviour problems, residential child care facilities should be catering for children who cannot be placed in foster care. There is also a need to ensure that children placed in alternative care are monitored on an ongoing basis to ensure that they are returned to their families or placed in kinship or foster care if possible, rather than languishing in institutions. It was suggested that family meetings could be used to help decide on an appropriate long-term plan for a particular child.

It was noted that there is also a need for facilities to serve the function of what were once called "reform schools". There is currently no institution in Namibia which caters for children who need to be in secure care, such as children who have committed criminal offences or have severe behavioural problems.



Magistrate Denni Leppan

## 2.6 Additional recommendations

The draft Child Care and Protection Bill does not deal with the treatment of young offenders, as this is expected to be the subject of a separate Child Justice Bill. However, as the Child Justice Bill has not yet moved forward, it was suggested that the draft Child Care and Protection Bill could, as an interim measure, require the separation of juveniles and adults who are in custody.

It was also suggested that the forthcoming law should provide for standards for shelters for battered women and their children.



Bep van Sloten and Lea Mwambene

*“First and foremost, I would like to express my appreciation for the opportunity I had to attend the workshops regarding the Child Care and Protection Bill.”*

Estelle Laubuschagne, social worker  
for the Church Benevolence Board



Dianne Hubbard and  
Felicita Hikuam

*“The meetings last week were very interesting and the resource persons from South Africa and Lesotho made good contributions!”*

Bep van Sloten, Consultant in  
Child and Youth Care, The Netherlands

### 3. Assessment

The national meetings were very successful. A number of international guests attended the meetings despite the challenges in co-ordinating the schedules of people with heavy workloads and international commitments. One difficulty encountered was identifying an appropriate range of international participants who were available for the relevant workshop dates. The team had hoped to involve social workers from other countries who could exchange ideas with Namibian social workers, but this effort was unsuccessful; this is an initiative which could be tried again during planning for implementation of the forthcoming law.

The Namibian meetings were held over a period of five days. They could have been split up and held over a few weeks. This would have introduced more flexibility into the schedule for international guests. However it may have presented more of a challenge for local guests who may be less able to attend a set of meetings spread over a longer time period. There was also a fear that other issues might take precedence over the workshops if momentum was lost between meetings spread out over several weeks.

The decision to address different themes on different days worked well, as participants could attend all of the sessions, or only those which pertained to their specific expertise. Almost every person who attended the workshop took an active part in discussions, and made recommendations or suggestions on some of the topics.

The national and international guests who made presentations were well-prepared and tailored their presentations to the Namibian situation, by focusing on contrasts and comparisons between Namibia and other countries. This made the presentations well-focused and useful in sparking discussion about appropriate models and options for Namibia.

The Technical Working Group maintained contact with all of the international guests after the workshops. Despite only being asked to give input at the national meetings, some guests were eager to continue their involvement and attended the technical meeting held later in the year or provided subsequent written feedback. The continued contact is also helpful from a broader perspective, as the Ministry now has the opportunity to involve international experts with some background in the Namibian law and process in other projects where relevant.

*“I have enjoyed interacting with your process and am sure that we could work together in future. I have learned a lot and have made valuable contacts.”*

Milly Pekeur, RAPCAN (Resources Aimed at the Prevention of Child Abuse and Neglect), South Africa

# TECHNICAL WORKSHOP

## 1. Overview of technical workshop

A three-day technical workshop was held from 17-19 August 2009 with the aim of comparing and contrasting the preliminary draft of the Namibian bill with the South African Children's Act. This comparison was important given the common legal background on child protection in the two countries. Since many of the provisions in the Namibian draft were similar or even identical to provisions in the South African law, experts from South Africa were invited to attend this meeting to assist with the analysis of the Namibian draft. The input of the South African experts was considered to be particularly useful as South Africa's early experience with its new law has highlighted challenges that can be avoided in Namibia.<sup>59</sup> Some of the experts who attended were the same as those who participated in the previous national meetings, while some new international guests were also invited.

The South African guests were asked to facilitate the meeting. This ensured that the meeting focused on the comparative issues and did not digress significantly into other debates. As at the national meetings, the input of the international guests was invaluable to the discussions.

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<sup>59</sup> One of these challenges was the fact that the Act came into force in two parts, and amendments to the Act were made before the entire Act was enforced. Forty-three of the 315 sections in the South African Act commenced on 1 July 2007 and the remainder came into force only on 1 April 2010. It was recommended that Namibia should strive for a smoother transition.

The main topics discussed at the technical workshop were as follows:

- ④ essential aspects of child protection;
- ④ adoption, trafficking and children's courts (including the role of social workers and the resolution of issues outside the court room); and
- ④ prevention and early intervention services, parenting plans and alternative care.

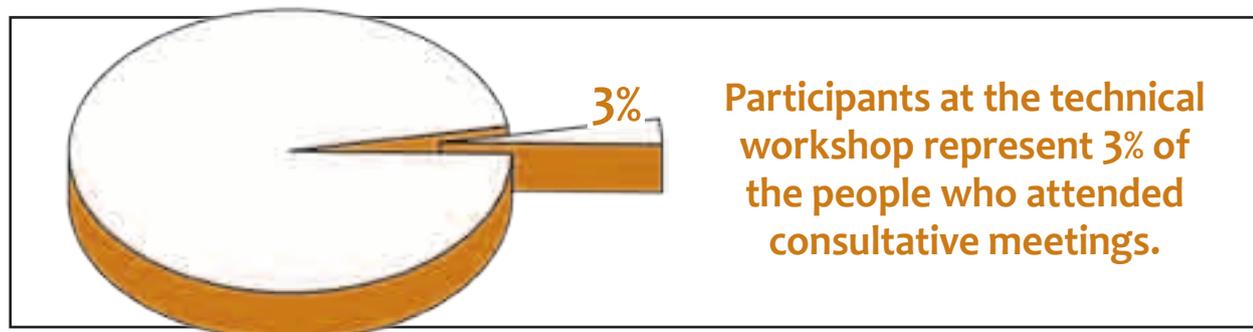
This meeting was held towards the end of the period of public consultations, so discussions began to move away from broad issues towards the formulation of specific legislative provisions. Input from Namibia's legal drafters was crucial at this forum.

## PRESENTERS AND EXPERT GUESTS AT THE TECHNICAL WORKSHOP

- ④ **Professor Julia Sloth-Nielsen** (Dean of the Law Faculty, University of the Western Cape, South Africa)
- ④ **Dr Jacqueline Gallinetti** (University of the Western Cape, South Africa)
- ④ **Ms Carina du Toit** (Centre for Child Law, South Africa)
- ④ **Ms Patmavathi Moodley** (Director: Legal Administration, Department of Justice and Constitutional Development, Ministry of Justice, South Africa)
- ④ **Adv Hennie Potgieter** (Private Legal Consultant, South Africa).

As at the national workshops held in June, most of the Namibian participants at the technical workshop were professionals who would be directly involved or affected in some way with the implementation of the new law, including the Ombudsman, several High Court judges, the Chief of Lower Courts, a long-serving Commissioner of Child Welfare, social workers, legal practitioners and representatives of non-governmental organisations.<sup>60</sup>

A total of 43 people attended this comparative meeting. This represents 3% of the people who attended workshops on the revision of the Child Care and Protection Bill.



<sup>60</sup> A list of participants is included in an appendix to this report, which is available on request from the Ministry or the Legal Assistance Centre.

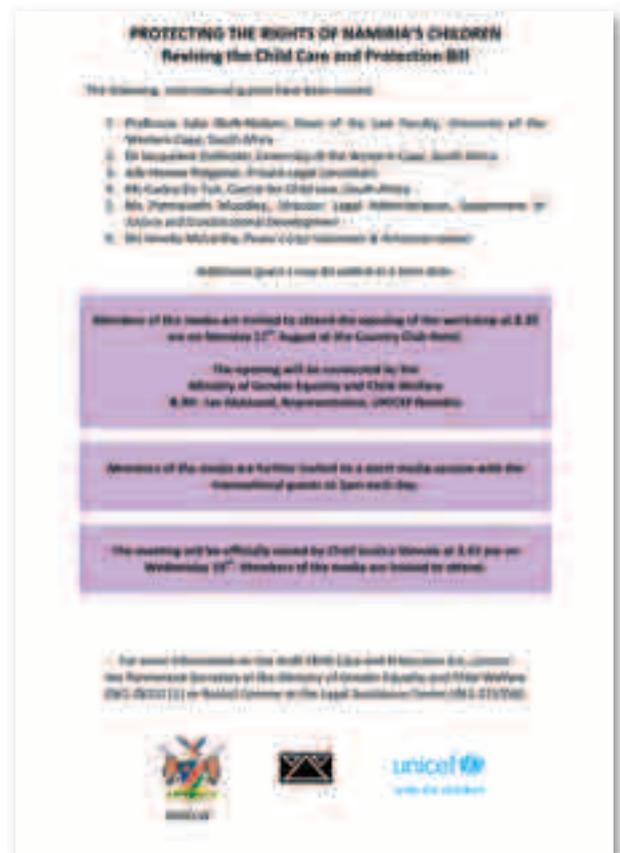
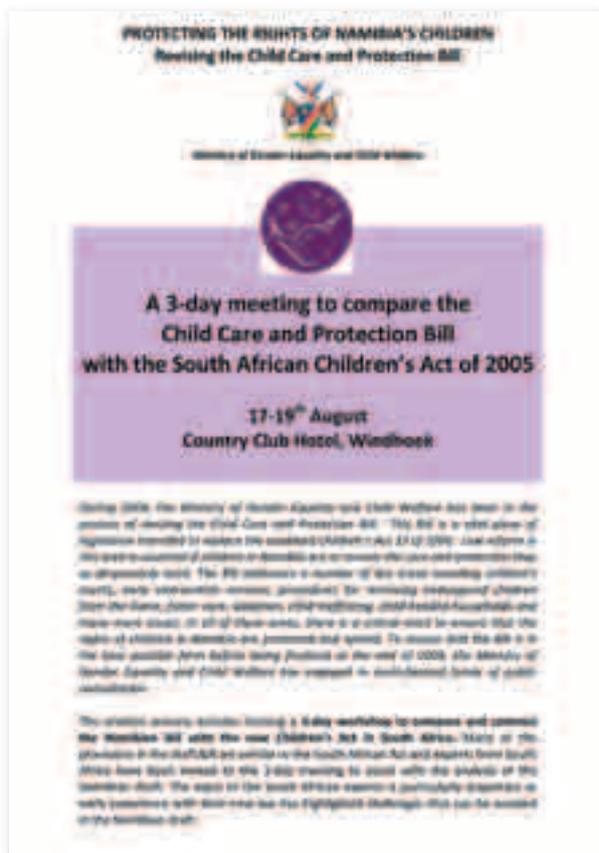
Other high-level support included the presence of the UNICEF Special Representative and a closing address by the Hon Justice Peter Shivute, Chief Justice of Namibia. The involvement of prominent officials helped to continue to engage the media in reporting on the consultative process and was a motivating factor for stakeholders and the general public to continue to participate.



Hon Justice Peter Shivute and Helena Andjamba, Ministry of Gender Equality and Child Welfare

**“...a nation which fails to nurture, protect, educate and advance the rights and interests of its children today will be all the poorer for it when they are adults tomorrow. We cannot make a better investment for the future of this nation than the one we make in our children.”**

**Hon Justice Peter Shivute**, Chief Justice of Namibia,  
Address at the Closing Session of the Technical Workshop on the Child Care and Protection Bill, 19 August 2009



The press release on the workshop. The third and fourth pages contained biographies of the international guests.

## 2. Input and feedback

Because much of the discussion which took place at this workshop was of a technical legal nature, not all aspects of the discussion will be of general interest. Therefore, this report will focus on the more general topics, rather than on technical matters which were incorporated into the re-drafting process.



Professor Julia Sloth-Nielsen  
(centre)

Professor Sloth-Nielsen gave an overview of some of the challenges stakeholders have experienced with the **new South African Children's Act**. One of these challenges has been public acceptance of some of the new rules contained in the bill. For example, the public is concerned about the age at which children can now access contraceptives without parental knowledge or assistance. Also, the sections dealing with the rights of unmarried fathers (which were only partially operative at the time of this meeting) have proved to be very onerous for roleplayers such as the Office of the Family Advocate.

Professor Sloth-Nielsen recommended that to facilitate the **implementation process** of the Namibian Child Care and Protection Act, the Ministry should consider how the public will be educated about the Act and should plan carefully for the budgetary and resource needs that stakeholders will experience.

Professor Sloth-Nielsen also stressed the importance of planning the drafting process for the **regulations**. The South African regulations are very lengthy and include numerous forms which are intended to ease the application of the law and standardise the information required. Sufficient time to draft such extensive regulations is essential.

A major difference between the South African Children's Act and Namibia's Child Care and Protection Bill is the fact that the South African law contains a chapter on "the parent/child relationship". This chapter centres around the concept of **parental responsibility** rather than parental authority. The transition from parental authority to parental responsibility is an international trend in child legislation that Namibia should consider.

It would be difficult to make a complete switchover from the notions of "custody", "guardianship" and "access" to the concept of parental responsibility in the Child Care and Protection Bill as these traditional concepts are operative in a number of other legal contexts, such as divorce law and the Children's Status Act 2006. However, in light of the importance of the parental responsibility principle, the participants agreed that the concept should be introduced in Namibia.



For this and other reasons, participants agreed that the **Children’s Status Act** should be repealed and replaced with parallel provisions in the Child Care and Protection Act. This amalgamation would ensure that core concepts – such as the best interests of the child, the principle and procedures for child participation, the guidelines for legal representation for children and provisions for mediation and other lay forums – would operate consistently. A further reason to incorporate the provisions from the Children’s Status Act is that parenting plans, which are provided for in the Child Care and Protection Bill, would hang rather uncomfortably without the context contained in the Children’s Status Act. Since the provisions in the Children’s Status Act were already extensively debated in Parliament, the melding of the two laws would not seek to change any of the basic principles in the Children’s Status Act but would simply harmonise them with the overarching Child Care and Protection Bill.

Looking at the definitions in the draft bill, Professor Sloth-Nielsen noted that the South African list is more comprehensive in many respects. For example, some **definitions** in the preliminary draft bill were incomplete, such as those for “intercountry adoption” and “educational and vocational training centres”.

Professor Sloth-Nielsen also suggested that the preliminary draft bill was not really an “Africanised” law. For example, the approach to **foster care** in the preliminary draft did not include the “African” concept of kinship care. Many participants at the regional consultations had supported the inclusion of kinship care in the bill, and this viewpoint was supported by the participants at the technical workshop.

Professor Sloth-Nielsen stated that the guiding principles of child legislation should include the **domestication of the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child**. She agreed with the recommendation made by the Legal Assistance Centre that a much more substantive list of principles should be developed. For example, both the UN Convention and the African Charter require the prohibition of harmful social, cultural and religious practices; this

is addressed in the South African Children's Act<sup>61</sup> but not in the preliminary Namibian draft. Another area which was inadequately addressed in the Namibian draft was child placement, including the principle of subsidiarity (the preference for placement of a child within a country, with intercountry adoption being a last resort) which is emphasised in the African Charter.

Other topics addressed in the South African law but omitted from the preliminary Namibian draft include the **right of access to court** and **methods for the enforcement of rights**. Professor Sloth-Nielsen explained that although the guiding principles in the South African Act can be described as a “quite a motley assortment”, they could nevertheless serve as a useful reference point for developing a more comprehensive Namibian children's law.

Patmavathi Moodley gave a presentation on **the role and function of the children's court**. She noted that the Namibian draft has similar provisions as its South African counterpart on this topic. However the Namibian draft appears to contain some misplaced provisions. For example, the definitions and powers of probation officers appear to be out of place in this draft, which does not otherwise deal with young offenders. However, although the placement of these provisions is not ideal, participants agreed that in light of the political decision to create a separate law on juvenile justice, the provisions relating to probation officers should remain in the Child Care and Protection Bill until they can be addressed in future by the forthcoming Child Justice Bill.



Approaches to the **reporting of child abuse** was another topic considered at this workshop. The South African law requires compulsory reporting by professionals working with children and voluntary reporting by members of the public. Compulsory reporting for community members who do not fall within the designated category was discarded as an option in the South African legislation due to fears that this would overload the child protection system and compromise the provision of assistance that children in need should receive. Moreover, in the United States it has been shown that a high proportion of abuse cases reported by the general public are ultimately “unfounded”, wasting scarce

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<sup>61</sup> South African Children's Act 38 of 2005, section 12.

social work resources in follow-up. Finally, in the African context where a high number of children are potentially neglected as a result of dire poverty, through no fault of the parent or caregiver, care has to be taken to focus on deliberate neglect (where the parents or caretakers are able to provide for the child but fail to do so). Overall, the participants at this workshop recommended that mandatory reporting should be limited to professionals working with children.

The workshop participants spent some time discussing technical aspects of **child protection** proceedings in the Namibian draft, and how best to incorporate prevention and early intervention services. Participants noted that the South African provisions on prevention and early intervention were based on the work of the South African Inter-Ministerial Committee on Young People at Risk, and that international guidance on preventative measures can be obtained from various treaties and policy documents. Referring again to the importance of the regulations, Professor Sloth-Nieslen informed the participants that the South African regulations provide for a risk assessment framework to assist social workers in recommending what form of intervention may be necessary. A similar guideline could be included in the Namibian regulations.

The discussion then turned to the procedures for **emergency removal of a child from the home**. The preliminary Namibian draft required a Commissioner of Child Welfare to find the removal “necessary for safety and welfare of child”. Professor Sloth-Nieslen argued that this is quite a low threshold for such a drastic intervention, and that the draft’s authorisation to police, a social worker or any other person to effect a removal was possibly too wide. She recommended that Namibia should consider increasing the threshold for intervention to a “substantial risk of serious harm” and allow only police or a social worker to take this step. Participants also discussed mechanisms for encouraging the use of court warrants for such removals except in cases of imminent danger to the child in question, noting that the South African Children’s Act provides for sanctions for the misuse of powers of removal by the police or social workers.

On the question of a **National Child Protection Register** as provided for in the South African Children’s Act, the participants considered whether a centralised register of such information would be a suitable mechanism for Namibia. This topic was a source of much discussion and debate. The preliminary Namibian draft proposed that the Ministry maintain a register of perpetrators of child abuse, with the goal of ensuring that such persons do not work with children in the future. Some countries use a different form of “child protection register” or “child abuse register” which focuses on recording reports of suspected abuse to facilitate the monitoring of children at risk and the compilation of statistical data about child abuse. Some countries, such as South Africa, utilise both types of registers. After extensive discussion, most participants recommended that a centralised register of this type would not be the best option for Namibia given the high costs required to set up and maintain such a register. It was suggested that requiring police clearance certificates for persons seeking to work directly with children would be a more viable alternative.

Carina Du Toit discussed the draft provisions on **adoption**. She informed the participants of South African constitutional cases addressing an unmarried father's right to consent to his child's adoption and the prohibition on joint adoption by same-sex life partners. It was noted that the Namibian draft bill would require the consent of both parents, with certain general exceptions, but was silent on joint adoption by same-sex couples.



Ms du Toit also highlighted the following innovations in the South African Act:

- ☉ a person may not be disqualified from adopting by virtue of financial status;
- ☉ a person who adopts a child may apply for means-tested social assistance;
- ☉ a biological father who is not a guardian, and a foster parent, both have the right to be considered as adoptive parents when a child becomes available for adoption but if they have not applied for adoption of the child within 30 days of receiving the notice of the child's availability for adoption, they are considered to have elected not to adopt the child;
- ☉ family members who have given notice that they are interested in adopting a child have the right to be considered as potential adoptive parents when the child becomes available for adoption;
- ☉ a person who is not suitable to work with children may not adopt a child.

Some, but not all, of these issues were reflected in the preliminary Namibian draft.

The issue of **intercountry adoption** drew heated responses from the audience. Although most participants agreed that there is some potential role for intercountry adoption in Namibia, there was disagreement about the extent to which it is needed, approaches to the "last resort" principle and the role of various authorities and stakeholders including the Ministry and the courts. The South African experts strongly recommended that Namibia should consider ratifying the Hague Conventions on intercountry adoption and international child abduction, and recommended that Namibia seek international technical assistance in the furtherance of this goal.

The need for technical assistance was highlighted by the fact that the preliminary draft bill failed to identify a Central Authority for intercountry adoptions, as required by the Hague Convention. It also neglected to specify who may facilitate an intercountry adoption. A decision on this point is crucial to allow for the regulation of social work practice and fees in this area. Similar questions arose as to what Namibian authorities should be permitted to conclude working agreements on adoption with foreign agencies or governments. Another anomaly was noted in connection with the adoption order

itself; the draft bill stated that an intercountry adoption order may be made by the Children’s Court if the Minister has agreed to the adoption, but failed to clarify who makes the final decision: the Minister or the magistrate? It was generally agreed that the draft provisions on adoption, and intercountry adoption in particular, needed further attention to address issues such as these.

The final area of discussion was **other protective measures for children**. The participants at this meeting were in unanimous agreement about the need to provide protective measures for child victims of trafficking in the Namibian legislation. A similar consensus was expressed at the national workshops in June. Participants were less convinced of the need for extensive measures to protect children in large public gatherings, such as through a system of local authority licensing, given that Namibia is a small country with few mass events targetting children. The proposal to include a focal point for children within the Office of the Ombudsman, as opposed to creating a completely new structure, was widely supported.

Due to the time spent discussing draft provision in the bill, only a short time was available to discuss **strategies for implementation**. A chapter on implementation had been included in the South African Bill but was removed prior to tabling in Parliament. But the South African experts recommended that Namibia should consider the inclusion of monitoring and oversight mechanisms that are in keeping with local conditions.

The Ministry discussed its implementation plans with the participants, acknowledging the need for training of social workers and careful drafting of regulations to accompany the new law.

The importance of the new law was emphasised by the **closing speaker, Chief Justice Peter Shivute**, who referred to the urgent need to overhaul the apartheid-era legislation governing child protection in Namibia, already more than 30 years in operation and long overdue for replacement. He expressed strong support for the consultative process, and for protective legislation which would serve the current needs of Namibian children.



Helena Andjamba  
(MGE CW) presenting



Hon Justice Shivute,  
closing presentation

### 3. Additional topics which should be included in the bill

Participants at this meeting were asked to identify topics that were missing from the preliminary draft bill. Because there was no time remaining to discuss this topic as a group, a paper listing possible additional topics was circulated; each participant could identify topics of concern from this list and then return it to the workshop facilitators.

The table below summarises the responses given, by indicating the number of “votes” for each topic suggested by the workshop organisers. The topics identified for inclusion by the highest numbers of participants were sexual exploitation, child trafficking, exemption from school fees and measures to address baby-dumping and infanticide.

TOPICS IDENTIFIED BY THE PARTICIPANTS THAT ARE MISSING FROM THE BILL	
<b>Sexual exploitation</b>	<b>9</b>
(a) child pornography	3
• criminal provisions for producers/consumers	3
• assistance for child victims	4
(b) child prostitution	4
• criminal provisions for clients /pimps	5
• assistance for child victims	4
• grooming or other specific sexual offences	5
<b>Child trafficking</b>	<b>8</b>
(a) criminal provisions for child traffickers	4
(b) assistance for child victims	6
<b>School fee exemptions (at least for children receiving grants)</b>	<b>8</b>
<b>Baby-dumping / infanticide</b>	<b>7</b>
(a) safe haven provisions	5
<b>International child abduction (Hague Convention)</b>	<b>6</b>
<b>Health fee exemptions for children receiving grants</b>	<b>6</b>
<b>Grants</b>	<b>5</b>
<b>Amendments to Children’s Status Act to address gaps and/or transform custody and access into parental rights and responsibilities</b>	<b>5</b>
<b>Children infected with or affected by HIV</b>	<b>5</b>
<b>Child &amp; youth centres (or similar) for children with behavioural problems</b>	<b>5</b>
<b>Stronger provisions on children &amp; alcohol</b>	<b>4</b>
<b>Enabling provisions for other Hague Conventions</b>	<b>4</b>
<b>Harmful social and cultural practices</b>	<b>5</b>
<b>Child responsibilities</b>	<b>3</b>
<b>Namibian children outside national borders</b>	<b>3</b>
<b>Children in prison with parents</b>	<b>3</b>
<b>Children with disabilities</b>	<b>3</b>
<b>Refuge and immigrant children</b>	<b>2</b>
<b>Interim provisions on child justice</b>	<b>2</b>
<b>Child labour at home</b>	<b>2</b>

“The Ministry has taken a significant step closer to bring draft legislation to Parliament which conforms to our duties and obligations under the Constitution and International Law, most significantly, the human rights standards articulated in the Convention on the Rights of the Child...

... It is apparent to me that the complexity and sheer scale of the task at hand require broad consultations and extensive resources. I therefore wish to commend the Ministry for the onerous task they have taken upon themselves and to encourage it in this important endeavour. Moreover, in meeting this challenge by launching a multi-faceted consultative process, deliberating with stakeholders, inviting public participation, seeking technical and legal support from the Legal Assistance Centre and other practitioners and academics, conducting a comparative study of similar legislation elsewhere in the region, I daresay that the Ministry and its partner organisations have set high standards in consultative and transparent legislation which will hopefully be emulated in future.”

**Hon Justice Peter Shivute**, Chief Justice of Namibia,  
Address at the Closing Session of the Technical Workshop on the  
Child Care and Protection Bill, 19 August 2009



## 4. Assessment

The technical workshop was extremely successful. In light of the more technical level of debate, persons with extensive experience in child law were targeted as guests. The participation of both state and private social workers allowed for a useful variety of perspectives on the role of social workers in respect of various areas covered by the proposed bill.

Because many of the international guests had also attended one of the previous national workshops, some discussions covered the same ground as those previous workshops, albeit in more technical detail. The technical workshop would have been more fruitful if we could have secured the attendance of more South African and Namibian legal practitioners and child protection service providers. In particular, it would have been useful to have heard about the experience of South African social workers in the implementation of South Africa's new children's law, but the Ministry and its team were unfortunately unable to secure the attendance of any of these very busy services providers from South Africa. This points to the need for forward planning over a longer time frame for international meetings of this nature.

The presentations about the challenges in the development of the South African Children's Act were particularly informative. It was useful for the Namibian participants to gain insight into the political compromises behind some of the provisions in the South African law, in order to better assess the suitability of some of these provisions as models for Namibian legislation. The South African experience also highlighted the need to prepare for the process of drafting the substantial regulations which will be needed to accompany the final law, and to make early plans for thorough training of service providers.

While it may not always be relevant to host a technical comparative workshop in other cases of law reform, it is an option that should be considered. It is very useful to hear first-hand about the challenges and successes of other countries which have faced similar problems and challenges, and particularly from countries with similar socio-economic profiles. Where funding is an issue, a smaller and shorter working group meeting could be substituted for a public workshop.

*“As a result of the many suggestions received during the consultation process, the draft bill is undergoing a radical transformation.”*

Felicity !Owoses-/Goagoses, Ministry of Justice

# OTHER CONSULTATIONS

## 1. Overview of additional consultations

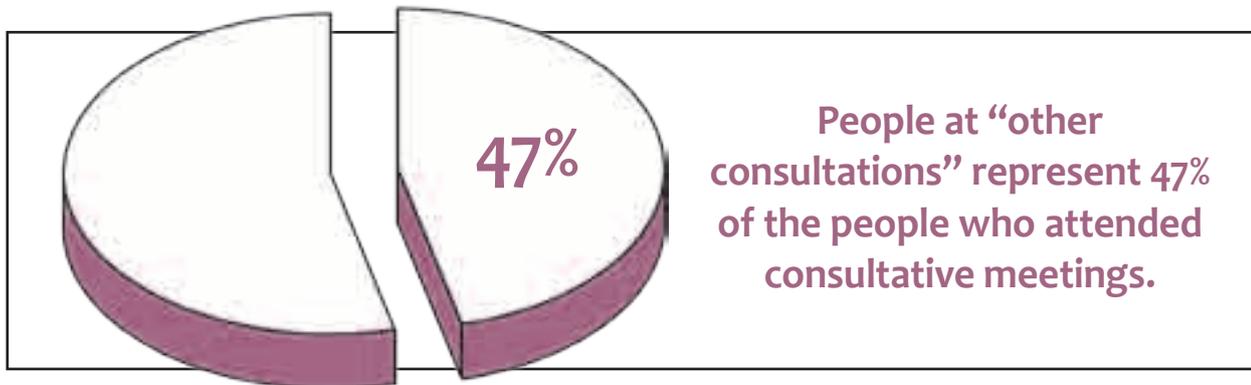
A number of other workshops and meetings were conducted during the consultation process, in addition to the events initially planned. Many of these took place because of interest expressed by organisations which work with children. Other additional opportunities for consultation came to light as a result of discussions with key stakeholders and community members.

The additional consultations were as follows:

- ④ Second National Youth AIDS Conference, National Youth Council – Walvis Bay, April 2009
- ④ community workshop to pre-test radio scripts on the draft bill – Oshana Region, May 2009
- ④ Yelula/U-Khâi Annual Conference – North, Oshakati, August 2009
- ④ Yelula/U-Khâi Annual Conference – South, Lüderitz, September 2009
- ④ Magistrate’s Annual Conference – Swakopmund, September 2009
- ④ workshop with representative from the Hague Convention – Windhoek, October 2010
- ④ Orphans and Vulnerable Children Permanent Task Force (OVC-PTF) – Windhoek, October 2010
- ④ Women’s Action for Development National Conference – Windhoek, October 2010

*“Family mediation should only take place with an order from court and the mediator should report back to court and the social worker is the right person to mediate.” – SMS*

A total of 651 people were consulted, or received information, at these additional meetings.<sup>62</sup> This represents 47% of the people who attended workshops about the revision of the Child Care and Protection Bill.



## 2. Feedback from additional consultations

### Second National Youth AIDS Conference

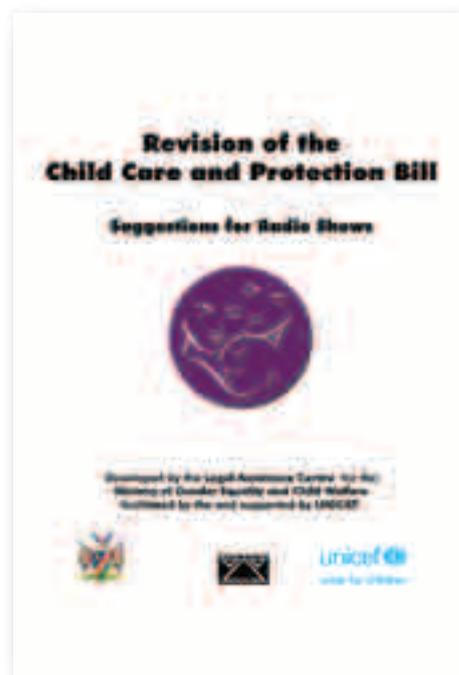
The Legal Assistance Centre gave a presentation on the age of consent for medical testing at the second National Youth AIDS Conference held in Walvis Bay from 28 April-1 May 2009. The theme of the conference was “Let’s make a move towards zero tolerance for HIV”. The aim of the conference was to get the youth of the country, under the auspices of the National Youth Council of Namibia, to come together and share ideas on how to move forward in combating HIV/AIDS.

All the regions in Namibia were represented at the conference through the attendance of regional representatives of key ministries and members of various non-governmental and community-based organisations. Also in attendance were representatives from the Angolan, Swazi and Zimbabwean National Youth Councils. The design of the conference did not allow feedback to be collected at the meeting, but the input provided was designed to enable and encourage participants to provide input on the revision of the draft bill at a later stage. About 30 people attended the presentation on the draft Child Care and Protection Bill, which was one of several simultaneous presentations at the conference.

<sup>62</sup> This total includes the participants from the media workshop reported in Chapter 3. It also includes the adult facilitators trained for the children’s consultations and the adults who attended the LifeLine/ChildLine national conference discussed in Chapter 4. (The total number of children consulted in those meetings is reported in Chapter 4, but the adults who were present at those meetings were not included in the totals for child participation.)

## Community workshop to pre-test radio scripts

On 19 May 2009, 14 people from the Oshana region attended a community workshop on media and the Child Care and Protection Bill facilitated by the Legal Assistance Centre. The workshop was designed to inform the community about the consultation process, to generate feedback on various topics in the bill and to test the effectiveness of radio scripts that were being used in the media campaign. Topics of discussion included the definition of a child; age of consent to access contraceptives and have an HIV test; foster care; child trafficking and corporal punishment.



There was general consensus from the participants that age of majority should remain at 21, because they felt that people under the age of 18 are not mature enough for adult responsibilities. Participants were also in agreement that children should be able to access contraceptives from age 14, because some children are sexually active from ages as young as nine. Consensus was not reached on the other issues discussed.

## Yelula/U-Khâi conferences

Yelula/U-Khâi is a Namibian non-governmental organisation that works with communities, individuals and marginalised groups in rural Namibia to strengthen their resources and support their vision in responding to the HIV and AIDS pandemic.<sup>63</sup> In 2009 the organisation hosted two regional conferences around the theme of orphans and vulnerable children and HIV/AIDS, under the title “Children Count! Ensuring children’s access to services treatment and support.” The overall objective of the two conferences was to work with organisations and community members to ensure that vulnerable children, including children living with HIV and AIDS, have better access to services, treatment and support.

The northern conference, held in Oshakati from 18-20 August 2009, involved approximately 150 participants from the four north-central regions (Ohangwena, Oshikoto, Omusati and Oshana), including care-givers, teachers, representatives of relevant ministries and organisations, and individual community members working with children. The southern conference, held in Lüderitz from 16-18 September 2009, involved a similar number of participants from the central and southern regions (Khomas, Karas and Hardap).

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<sup>63</sup> For more information see the Yelula/U-Khâi website: <http://www.yelula.com>.

The Technical Working Group was invited to give presentations about the consultation process and to lead small group discussions about specific topics at each of the two conferences. Four small group discussions were conducted at each conference, with approximately 35-40 participants in each group. Each group discussed different topics: (1) age of consent to medical interventions; (2) child-headed households; (3) children in need of protection; and (4) foster care.



One group at each conference discussed the age of consent to medical interventions. There were mixed views amongst these participants on the appropriate age of consent for medical treatment. The majority of group participants favoured 18 as the age of consent for HIV-testing, although some recommended a lower age. (A single person wanted to raise the age to 20.) These groups also discussed the appropriate age of majority as an associated issue, and almost all of the group participants favoured retaining 21 as the relevant age.

A second group at each conference discussed the definition of child-headed households and the provisions that should be included in the bill for the management of these households. There was no consensus on the age at which a child can head a child-headed household. Some participants thought that the child heading the household should be 18 or even 21, although the majority said that there should be no set age due to differing maturities. Similar answers were given at the Yelula/U-Khâi North and South conferences, although participants at the southern conference argued more strongly for allowing children to head households from age 15-16. Most participants agreed that a supervising adult should receive grants on behalf of such households, but some suggested that the money should be transferred to the child's bank account. To avoid possible problems with the adult overseeing the household, it was suggested that there should also be a paid regional representative supervising child-headed households in the region. Alternatively there could be two supervising adults per child-headed household as a safeguard. Participants also pointed to the need for a succession plan in case the child heading the household should die. As it is possible for a minor to marry in some situations, participants suggested that there might also be a need to consider what should happen to the household and the grant if the child heading the household were to marry.

A third group at each conference discussed children in need of protection. There was consensus that there should be a mandatory reporting requirement for people working with children. Some participants strongly felt that all adults ought to be required to report a possible case of child abuse or neglect because children are a vulnerable social group, but this view was not unanimous. These groups also debated the topic of corporal punishment, which was considered generally acceptable.

A fourth group at each conference discussed foster care. Rather than recommending changes to the framework for foster care, these groups emphasised improved service provision. They recommended that a maximum of three–six children should be fostered in a single family. Similar comments on this topic were given at both Yelula/U-Khâi North and South conferences.

## Magistrate’s Annual Conference

Discussions of the preliminary draft bill and related issues were allocated 1.5 days at the week-long Magistrate’s Annual Conference hosted by the Magistrate’s Commission in Swakopmund from 7-9 September 2009.

The assembly of all of the country’s magistrates under one roof for the purposes of judicial training represented a unique opportunity to address the entire lower court judiciary. This was no small feat in a country as vast as Namibia, where some magistrates had to travel for two days to attend the training, and where *ad hoc* replacement personnel had to be recruited to staff the courts for the duration of the training because the vast majority of magistrates are alone on the bench and their absence meant *de facto* closure of the courts of the country for the week.

There were a total of about 65 people in attendance, including the bulk of the nation’s magistrates, two High Court judges (one of whom is the Head of the Magistrate’s Commission), the Chief of Lower Courts, and senior personnel from the Legal Aid Board and the Office of the Attorney-General. Presentations on the draft bill and related topics were given by Professor Julia Sloth-Nielsen, University of the Western Cape, South Africa; Magistrate Daniel Thulare, Senior Magistrate South Africa; and Dianne Hubbard of the Legal Assistance Centre.

Most of the magistrates present reported that they had not previously received any specific training on the topic of child rights and child protection. The starting point of the discussion was the history, background and significance of the United Nations Convention on the Rights of the Child, along with the jurisprudential underpinnings which guide its interpretation.



Magistrate Daniel Thulare



Prof Julia Sloth-Nielsen



Dianne Hubbard

Significant periods were spent discussing:

- ④ the best interests of the child and the application of this principle in international and domestic law;
- ④ child participation, including its application in lower court proceedings related to adoption, foster care, and child protection;
- ④ preservation of identity in the context of adoption and how to protect this right in the context of safe havens for new-born babies;
- ④ separation of children from parents, including the concept of institutionalisation as a matter of last resort; and
- ④ violence against children, including corporal punishment in homes and schools
- ④ intercountry adoption.

The discussion concentrated mainly on the chapters of the preliminary draft bill dealing with the role of children's courts and Commissioners of Child Welfare (since all magistrates will be Commissioners of Child Welfare under the new dispensation). Particular attention was given to proposals to expand the functions and powers of the children's court to child protection procedures and to mechanisms for making children's courts more activist and rights-oriented. There was general agreement with the approach to these issues taken in the preliminary draft bill. The assembled magistrates were happy with the expanded powers which they would have under the new law and found the proposed list of orders appropriate as child protection measures. All of the participants agreed with the need for specialisation and advanced training for the presiding officers of children's courts.

In considering the role of lay forums, the group was concerned about possible confusion between the formal jurisdiction of community courts (which overlap with traditional authorities but do not include all traditional authorities), and the mediating role which might be played by traditional authorities. There was some ambivalence about the involvement of traditional authorities in formal mediation under the proposed statute, although the mediating role of traditional leaders under customary law was recognised and appreciated. Some participants suggested that lay forums should perhaps remain completely outside the province of professional mediators so as to remain accessible. There was also strong support for making provision for family group meetings as forums for the possible resolution of conflicts in advance of court cases. Some magistrates expressed concern about the provision allowing information from mediations and other law forums to be communicated to the court; it was suggested that this should be limited to information about the outcome of the proceedings, so that participants would be able to speak freely without fears of prejudicing their rights in a subsequent court case.

The assembled magistrates generally agreed that there was a need to re-conceptualise foster care. They broadly approved the idea of introducing the concept of "kinship care" as a separate channel from formal foster care, to provide for a more nuanced and African form of foster care. The magistrates strongly supported a change in the legal framework which would free the courts from the time-consuming practice of approving foster care

by family members purely for the purposes of making it possible for them to access grants for such children. They felt that overhauling this system would free resources for more targeted child protection work.

There was a unanimous recommendation that Namibia should adopt the Hague Convention on Intercountry Adoption, as the best method for regulating such adoptions and preventing abuses.

One session was devoted to a discussion of the relationship between the Children's Status Act 2006 and the draft Child Care and Protection Bill. During the 1990s, when the need to replace the Children's Act of 1960 first became evident, government made a decision to divide the new legislation into two statutes: a Children's Status Act and a Child Care and Protection Act. The idea was that the Children's Status Act would cover two main topics which were not addressed by the Children's Act 1960: (1) the status of a child born to parents who are not married; and (2) the status of a child whose parents or guardian had died; the Child Care and Protection Act would cover the remaining issues relating to child protection and replace the 1960 Children's Act.

The Children's Status Act was passed in 2006, after extensive debate both inside and outside Parliament, and came into force in 2008. However some technical and procedural aspects of the Children's Status Act have proved to be problematic in practice, and questions arose about how best to harmonise this Act with the forthcoming Child Care and Protection Act since both would cover children's court procedures and factors for assessing the best interests of the child. These issues were discussed at length at the magistrates' conference.

The magistrates present were asked to give an estimate of their experience with the Children's Status Act since it came into force on 3 November 2008. It appears that there have been at least 124 cases heard under this law since its inception, mostly in respect of children born outside marriage, with very few cases dealing with guardianship for children after the death of a parent or guardian.

The magistrates overwhelmingly recommended that the ideal would be to repeal the Children's Status Act and re-enact it as part of the Child Care and Protection Act for greater harmonisation. They also agreed that this opportunity should be used to correct some technical problems in the Children's Status Act. Otherwise, there might be conflicting standards on matters such as child participation and legal representation in children's courts, which could cause confusion. In addition, magistrates made the following key recommendations about needed improvements to the Children's Status Act:

- ☉ It would be useful to move away from parent-centred concepts of custody, guardianship and access towards "parental rights and responsibilities" which are more child-centred and give more emphasis to the responsibilities which go along with rights. The existing legal concepts are difficult for the public to understand and do not sit well alongside customary law concepts.

- ④ The procedure for interim custody should be eliminated to avoid abuse. As currently conceptualised, this procedure could inspire a tug of war over physical custody of a child since the Act allows only a parent with physical custody to request an interim custody order. Participants also cited instances where a father applies for interim custody and then requests a maintenance order against the mother – all from a desire for revenge instead of a concern for the child’s wellbeing. Participants also felt that the differences in procedure between interim custody applications and normal custody applications had no rational basis.
- ④ Magistrates strongly suggested that social worker reports should be mandatory in proceedings which consider access, custody or guardianship, as the court will otherwise lack the necessary information to make a decision on what is in the best interests of the child. The court should consider the social worker’s report before making a decision even if there is no opposition to the application.
- ④ Legal representation for children should be ordered by the court if necessary, rather than being based on an administrative decision of the Legal Aid Board. If the court feels that substantial injustice may result without such representation, then its decision should be final and not dependent on any further administrative decision, as an aspect of judicial independence.
- ④ The procedure for granting guardianship over a child after the death of a parent or guardian is strongly in need of amendment and clarification. For example, if someone who is applying for guardianship states that the deceased parent or guardian left no will, this person should be required to provide a certification from the Master of the High Court that no valid will exists; otherwise it will be difficult for magistrates to verify the assertion. There is also a need for clarification on how the procedure should work if more than one person has applied to be a child’s guardian.

Magistrate Thulare, a South African magistrate who presented several sessions at the conference, also provided useful comments on the issue of age of majority, emphasising the potential problems of having one definition of a child (under age 18) and another for a minor (under age 21), as this would leave persons between age 18 and 21 in any uneasy borderland – minors, but not children. He recommended that the law on this point must be harmonised, so that children do not lose the protections afforded to children before gaining the autonomy afforded to majors.

## Workshop with Hague representative

The Ministry of Gender Equality and Child Welfare invited William Duncan, Deputy Secretary General of the Hague Conference on Private International Law, to visit Namibia in October 2009, to assist Namibia with understanding the import of the four key Hague Conventions pertaining to children (dealing with international cooperation around intercountry adoption, civil abduction, child protection and child support). He also advised on draft provisions for the Child Care and Protection Bill which would be effective for domesticating these four conventions.

“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



## THE KEY HAGUE CONVENTIONS CONCERNING CHILDREN

- 1. Hague Convention on the Civil Aspects of International Child Abduction, 1980:** 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. There are some exceptions, such as in the case of a grave risk of physical or psychological harm to the child.
- 2. Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993.** This Convention establishes safeguards to ensure that intercountry adoptions take place in the best interests of the child. It recognises that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her country of origin. However, it requires that possibilities for the placement of the child within the country of origin be considered first. The Convention establishes a system of co-operation between authorities in countries of origin and receiving countries, designed to ensure that intercountry adoption takes place under conditions which help to guarantee sound adoption practices and prevent abuses such as the abduction, sale or traffic in children.
- 3. Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996:** This treaty provides a structure for effective international co-operation in child protection matters. The rules for co-operation can apply to matters such as parental responsibility; custody, access and guardianship rights; the designation and functions of any person or body which has charge of a child's person or property, or represents or assists a child; foster care and institutional placements; and administration of a child's property.
- 4. Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, 2007 (not yet in force internationally):** This new Convention is designed to offer children and other dependants a simpler, swifter, more cost-effective international system for the recovery of maintenance. It is intended to create systems for international cooperation in the enforcement of maintenance orders.

# Hague Secretariat rep on fact-finding mission

By Staff Reporter

**WINDHOEK** – Deputy Secretary General from The Hague Secretariat, William Duncan, is in the country to undertake a fact-finding mission on the situation of child welfare and protection in Namibia.

The Deputy Secretary General, who will be in Namibia until Friday, will explain the implications and processes of ratifying various conventions on children.

Permanent Secretary in the Ministry of Gender Equality and Child Welfare, Sirkka Ausiku, said Duncan will also provide technical assistance to her ministry as well as the Ministry of Justice (legal drafters) in aligning the draft Child Care and Protection Bill to The Hague Conventions.

The Ministry of Gender Equality and Child Welfare has reached the finalisation stage of drafting the Child Care and Protection Bill.

"The ministry would like to use his visit as an opportunity to align it to international conventions, which Namibia may ratify in the future," commented the Permanent Secretary.

Namibia has not ratified The Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, the Convention on Civil Aspects of International Child Abduction, the Child Protection Convention, or the Convention on the International Recovery of Child Support and other forms of family maintenance.

Ratification of the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption will provide an accepted international framework with safeguards for arranging inter-country adoption, ensuring that

local options are initially explored.

It gives effect to Article 21 of the UN Convention on the Rights of the Child, and the United Nations Committee on the Rights of the Child regularly recommends that non-Contracting States join the convention.

The convention on the Civil Aspects of International Child Abduction aims to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

The convention on the international recovery of child support and other forms of family maintenance aims to ensure the effective international recovery of child support and other forms of family maintenance.

The Hague Convention of October 19, 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children covers a wide range of civil measures of protection concerning children, from orders concerning parental responsibility and contact to public measures of protection or care, and from matters of representation to the protection of children's property.

While in the country, apart from government officials, Duncan will also meet the Law Society of Namibia and the Legal Assistance Centre.

The delegation will also conduct a workshop with stakeholders including the civil society on Wednesday.

The Ministry of Gender Equality and Child Welfare, with support from UNICEF, is hosting the Deputy Secretary General from The Hague Secretariat.

Individual and group meetings with Mr Duncan involved Ministry personnel, UNICEF, the Legal Assistance Centre, state and private social workers, legal practitioners, legal drafters from the Ministry of Justice and representatives of the Attorney-General's Office and the Ministry of Foreign Affairs, amongst others. A group meeting bringing together different stakeholders took place from 10-16 October 2009. Mr Duncan also made an appearance on NBC television with representatives from the Ministry, to explain the Hague Conventions on children in an accessible manner to the general public.

It was strongly recommended that Namibia should adopt all four Hague Conventions on children. Ministry of Justice officials advised on the ratification process, and outlined a timetable and action steps to achieve this goal. It is anticipated that the conventions will be signed prior to the enactment of the Child Care and Protection Act, which will contain appropriate implementation provisions for all four. The relevant implementing provisions in the new law can be brought into force at the same time that the Conventions become operational in respect of Namibia.

## **Orphan and Vulnerable Children Permanent Task Force (OVC-PTF)**

A one-day meeting was held with the OVC-PTF on 26 October 2009 to update the members on the progress with revising the preliminary bill to incorporate the input received to date. This particular OVC-PTF meeting was attended by about 30 persons, primarily social workers from various regions in Namibia. Acting on behalf of the Ministry, the Technical Working Group gave a detailed presentation on the revised bill and the participants offered suggestions for some minor amendments to improve the wording of specific sections.



The Orphans and Vulnerable Children Permanent Task Force

# Women's Action for Development National Conference

Acting on behalf of the Ministry, the Legal Assistance Centre gave an all-day presentation on 27 October 2009 to 120 members of a local non-governmental organisation, Women's Action for Development. The participants were from all 104 constituencies in Namibia. This forum did not provide the opportunity to collect feedback on the bill, but participants were informed on how they could provide feedback through email, post, fax or text message. To help make topics in the draft bill vivid to participants, a local theatre company (the Quiet Storm Theatre Collective) was engaged to assist the participants to present their own dramas about situations pertaining to provisions in the bill. The drama exercises energised the group and helped them to explore attitudes about children in more depth than is usual in ordinary group discussions. The use of drama was very effective and could be utilised to a much larger extent in future consultation initiatives.

## 3. Assessment

These "other consultations" represented 47% of the people consulted at workshops and conferences. This is the more than the amount of people consulted at the national and regional workshops combined. None of these consultations were planned, but they proved to be very useful. Whilst feedback mechanisms could be challenging (for example, there was no opportunity to collect feedback at the National Youth Council conference or the Women's Action for Development conference), these events presented important awareness-raising opportunities. One of the objectives of the consultation process was public education on child protection issues, and these "other" consultations played a fundamental role in this regard. In light of the value unplanned consultations can bring to a process, a budget should be allocated for such eventualities. Costs encountered included travel expenses for facilitators and materials. Where the need to host additional meetings is identified (for example, in the case of the meeting with the representative from the Hague Conference), all logistical costs must be covered. Therefore a sufficient, and sufficiently flexible, budget should be allocated to allow consultation processes to take advantage of unplanned opportunities which arise.

*"The national process of consulting various partners and stakeholders ensured that the legislative reform undertaken for children was rights-based: it was conducted in a participatory manner and included vulnerable and marginalised stakeholders, and particularly provided a platform for the views of children and women."*

Matthew Dalling, UNICEF

# DIVERSE FEEDBACK

## 1. Introduction

The media outreach elicited wide-ranging responses from interested persons who submitted their views by means of post, fax, text messages, postings on the *Facebook* website and email submissions. All responses were logged first by date and then by topic. This dual logging allowed us to track progress over time and interest in different topic areas.

An assessment of the chronological logging shows that it took time to engage public interest. We also learnt that it is necessary to devote a considerable amount of time and energy to media work in order to sustain media coverage of a complex issue over time. For example, coverage and feedback on various issues was very good during June 2009, in the wake of one of the media workshops; however in July 2009, when the Technical Working Group was not able to place as much focus on media outreach, there was a corresponding decrease in media coverage and public responses.

A wide range of people responded to the call for input. Those who responded ranged from representatives of non-governmental organisations to community members. Responses were also received from state parties (for example the Office of the European Commission in Namibia) and from international organisations (for example the Global Initiative to End All Corporal Punishment of Children). This breadth of response indicates that the solicitation of input successfully targeted all sectors of society.

*“The National Child Protection Register is a good idea. Some people who work with children do abuse them. Only adult abusers should be placed on the list.”*

– SMS

The use of tools such as *Facebook*<sup>64</sup> and text messages was intended to increase accessibility to the consultation process for the general public – text messages are cheap and easy to send, and the *Facebook* page was intended to target young people in particular (since this social networking site is very popular with youth). The team anticipated that text messages, particularly in response to radio shows, would be particularly popular with rural youth, while *Facebook* is a channel of communication which is more often utilised by urban youth with access to the internet. These assumptions appeared to prove true in practice. The goal was to combine different methods of outreach to reach different segments of society.

The use of *Facebook* provided a welcome opportunity for interactive discussions on specific issues. Setting up a *Facebook* group was free and it required relatively little management to run the site. Therefore, although it was not a prime collection point for national feedback due to the limited accessibility to the internet in Namibia, the amount of feedback received through this channel was worth the time invested. In other countries the use of *Facebook* may play a more prominent role in public consultations.

Some input was received by means of all of the channels for feedback which were made available. Text messages proved to be the most popular channel of communication for the general public. The consultation team set up a dedicated line to receive text messages. This allowed people to give fast feedback at any time, from any place. It was also more accessible for younger people and people living in rural areas than email, fax or post. The cost of sending a text message was the same as a standard text messages. This meant that it was a communication method open to all, as the two largest cellphone service providers in Namibia often make provision for free text messages to be sent at certain times or on certain days. Over 200 text messages were received over a period of three months.

The methodology used by the consultation teams to receive text messages was not designed to send responses. On reflection, we should have clarified this in the outreach materials as some people sent questions to the number provided. Team members were able to respond by telephone, but there was often a delay as the receipt of text messages was not instantaneous. Telephone responses also had higher cost implications. If this method is used again, the public should be informed that responses will not be sent, or the ability to respond to text messages should be arranged.

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<sup>64</sup> As explained in Chapter 3, *Facebook* is a social networking website which is free to anyone who wants to use it. It allows people to post information about themselves and to “make friends” with each other for the purposes of sharing information. A popular activity on *Facebook* is the formation of groups of people supporting a common cause. Any *Facebook* user can join any group which is established in the website, and contribute to group discussions. The consultation team set up a *Facebook* group on the draft bill, entitled *Protecting Children’s Rights in Namibia*. The Legal Assistance Centre hosted the group on behalf of the Ministry and solicited input by posting discussion questions on particular topics. Any member of the group could post replies or comments which would then be visible to the entire group. The Legal Assistance Centre as host would often post a question and then add to the discussion at a later stage to provide further information or clarification. In January 2010 there were 294 members in this group. A total of seven topics were discussed on the *Facebook* page.

We had expected to receive fairly short responses via *Facebook* and text message. However, as shown by the examples quoted below, these channels were also used to give detailed motivations for opinions offered.

Many emails, letters and faxes commented on multiple aspects of the draft bill. It was encouraging to see that there were a number of members of the public who were willing to take the time to respond at length. A learning point from this is that public interest should not be underestimated, and that many people are eager to be involved in law reform processes.

We received the least amount of input through the post. In the 21<sup>st</sup> century, it is more common for people to use other means of communication such as email, text messages or fax. However ensuring that people knew that there was a postal option meant that feedback was accessible to all. This is particularly important in countries such as Namibia where electronic technology is not always accessible.



Virtually all the post, fax and email responses were received in English. Some emails were received in Afrikaans.<sup>65</sup> In contrast, the responses by text message were received in English and Oshiwambo.<sup>66</sup>

Some topics clearly inspired more input than others. For example, the topics of consent to medical treatment and corporal punishment received a higher number of responses

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<sup>65</sup> Yolande Engelbrecht and Grace Kapere of the Legal Assistance Centre translated responses in Afrikaans into English.

<sup>66</sup> Gabriel Augustus of the Legal Assistance Centre translated Oshiwambo text messages into English.

than topics such as prevention and early intervention services or mandatory versus compulsory reporting of child protection issues. It was not unexpected that some of the more controversial and accessible topics inspired greater levels of public interest than technical and procedural matters which are of more interest to specialists.

Topics that were discussed in the media received more responses than those that were discussed only at workshops. For example, the question of at what age a child should be able to access medical treatment was discussed on the radio far more than the topic of prevention and early intervention services. This is because access to medical treatment is more immediately interesting and relevant to the daily lives of people in Namibia. In contrast, the topic of prevention and intervention services is more obscure to the public.

There was a particular period of time where many Oshiwambo text messages were logged, corresponding to the period when a series of radio shows were being broadcast in Oshiwambo. Therefore, feedback is often a reflection of the media outreach initiated by interested stakeholders, such as radio stations, rather than a reflection of which topics were of the greatest public interest or which language groups in Namibia were most eager to give input on the proposed law.

In future instances of law reform, if feedback on specific topics is desired, this should be promoted through a concerted outreach effort involving intensive media contact – especially if the topics are not particularly controversial or not of natural public interest. A balance was achieved in the course of the consultation around the Child Care and Protection Bill, as topics of less interests to the general public were often of great interest to service providers and specialists who attended regional or national workshops.



The back cover of the factsheet booklet inserted in national newspapers. The details of how to respond with comments are clearly shown.

## 2. Sample feedback

### 2.1 General comments

The first factsheet produced gave an overview of the contents of the preliminary draft bill, and asked members of the public to provide information on the problems that children face in Namibia and on other issues which should be covered in the Child Care and Protection Bill. The aim of these general questions was to make sure that feedback would not be confined to specific topics placed on the table for discussion, and to encourage comments from people who might have specific concerns that were not directly covered by the draft. For example, one of the responses reproduced below discusses specific challenges faced by the San people in Namibia. Such general feedback will be useful to the Ministry, even in instances where the proposed law is not the right place to address some of the problems identified by the public.

Subsequent factsheets contained more specific questions relating to the draft bill. This approach ensured that we received a mix of general and specific feedback.

A sample of the general feedback received is shown on the following pages. Obvious grammar, punctuation and spelling errors have been corrected for purposes of this publication.

#### Email:

- **The child should not only have rights. The responsibility of the child towards society and not only the right of the child should be looked at. If well taken care of, the child must be obedient, respectful, study to provide good results etc.**
- **How does the draft Act deal with a child/children who abuses or manipulates the parent in the name of the right of the child?**
- **Does the draft Act cover negative influences and/or incitement towards the parent by another parent or family members, eg in-laws?**
- **Does the draft Act cover abuse of maintenance money by the mother of the child?**
- **If custody is given to for example the grandparent or the mother, does the draft Act cover the need for the parent still to be involved with the upbringing of this child? Should he form part of a parenting plan?**
- **Should the draft Act not make it a legal obligation for stepparents and stepchildren (especially after the death of one the biological parents or in case of divorce) to undergo compulsory counseling? When the father is bereaved the new mother and children should be counseled to understand what a stepmother is and stepchildren are. Sometimes, the stepparent abuses the child and the child abuses the stepparent, poor relations etc.**
- **Does the draft Act cover the part where the child blatantly refuses to attend school although he/she is well taken care of? The Act should make it compulsory for a child to be in school. If not, either the parent or the child needs to be punished.**
- **Does the draft Act cover the plight of children with disability?**

## Email:

First and foremost I would like to say the idea of wide circulation for the Draft Child Care and Protection Act for input from the public is a great one. Congratulations!

I have four points of concern from the draft act:

1. Under Prevention and Early Intervention Services one of the objectives is “to reduce substance abuse and pregnancy in teenagers”. If teenage pregnancy was such a big concern and needs to be addressed, would the weighing in of the law by increasing the age of consent to sexual activity from 16 to 20 (the end of teenage period) not help? Or is the law saying to teenagers “you can have sex but don’t fall pregnant”?
2. Under children’s court – family mediation, if traditional leaders will be entrusted with the important responsibility then they will definitely need training on children’s rights and be made to understand the way they might have conducted business in the past may not necessarily be correct and that the law takes precedence when traditions and the law don’t reconcile. More importantly they should be made aware of the consequences of bad decisions that may be detrimental to the well being of children and that ignorance of the law is no defence.
3. Under adoption – what is the reasoning that “single people should be allowed to adopt children of the same sex?” *[Note: There was an error in the question supplied in the relevant factsheet, which should have asked “should single people be allowed to adopt children of the opposite sex?” This error was not picked up until this query was received.]*
4. Still under adoption – if the “cooling-off” period is meant to have the birth parents experience what it will be like not to have their child with them, then it would be better to have the child live in a transitional home – neither with the adoptive nor the birth parents. This is because the possible withdrawal of consent may be devastating on the adoptive parents as some degree of bonding may have taken place and my guess is that potential adoptive parents may not want to be used as real life guinea pigs.

The argument in favour of the 60 days cooling-off period that says that “the circumstances of the birth parents might change and cause them to want to withdraw consent” can only make sense if it is not time bound (60 days) as personal circumstance can change anytime. So why limit it to 60 days or four years for that matter?

## Facebook posting:

Some children have less chances to access education either through unintentional or intentional discrimination. San children by circumstances of their low economic position obviously find it harder to access education logistically. However if they do make it to enrolment assuming free education through OVC status (and I imagine this applies to all OVCs) schools will discriminate at this stage to ensure the children receiving places will be fully funded ie not OVCs relying on government legislation which doesn’t appear to have financial backing.

I find Namibia generally has good policies – the problem is they don’t seem to filter down to ground level or be adequately enforced. For example, corporal punishment – supposed to be banned in schools, but openly used in most if not all. This is another deterrent to young San remaining in school. Would be good to see more awareness raising at grassroots and better enforcement.

### Facebook posting:

I do believe that the most relevant problem affecting children in Namibia is HIV. The pandemic of HIV and AIDS affects a very large number of children, sometimes directly (being HIV+ themselves), sometimes indirectly (having parents/caregivers HIV+). This is the root cause of many other problems touching children, such as access to education, poverty, lack of food, and all sort of abuse. I think it is something we all should take into account when we discuss about child protection and when we think about measures to be implemented in order to ensure children's rights.

Could any law related to child protection issues have the effect of stopping the HIV spread, raise awareness on the problem?

### Facebook posting:

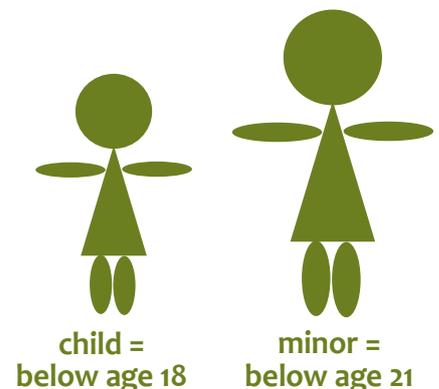
There is a lack of proper schooling facilities in rural schools, where some children have to learn in tents.

### Text message:

- Concerning facilities that care for children, I believe that school hostels should be included.
- This is not absolutely clear from your pamphlet.

## 2.2 Age of majority

The public made many diverse comments on what the age of majority should be by means of emails and text messages, and through a discussion of this question on *Facebook*. A sample of the feedback received on age of majority is shown below:



### Email:

I am a 19-year-old student at the University of Cape Town in South Africa. When at university I am, according to South African Law, a major. I can perform any legal act without my parents' knowledge or consent and am entirely independent. However as soon as I return home for the holidays I have to have my parents' permission and 'help' with any contract or other legal proceeding I want to engage in. This seems ridiculous as I certainly do not become less mature as I pass through passport control at the boarder. I think you are doing a fantastic job and should be congratulated on all the hard work you are doing!

### Facebook posting:

The CRC [Convention on the Rights of the Child] sets the age of majority at 18 (Article 1). As Namibia has signed the convention soon after independence and has accepted all its provisions, it would make sense to set the majority at 18. However, the Convention itself states that the majority can be attained earlier/later, under the law applicable to the child in every single country. This means that even if the age of majority is officially 18, the law can set a range of things a person can do by reaching that stage of life (right to vote, open a bank account, get driving licence...), and what [a person] can't do (in some European countries even if the majority is set at 18, people need to reach the age of 21 to vote for the political elections), and what a person can do even if below 18 years (e.g. alcohol consumption, sexual consent...).

### Facebook posting:

In Namibia as soon as you turn 18 and complete school you are regarded as an adult. You maybe start working, get your own place and be your own boss. There is no restriction to what can or cannot be done when you provide for yourself. Nobody stands in your way whether you are voting, consuming alcohol or having sex. Parents will only regard their kids ready when they turn 21 (it is tradition) although the kid has been providing for himself. The age of majority should be 18, there is enough time for trial and error to experiment and hopefully this three years between 18-21 will be an eye-opener for kids to start reacting seriously and mature for the rest of the years ahead.

### Facebook posting:

At the moment the legal age of majority is 21 years. As to whether or not this can be changed, it has to depend on a lot of factors and this cannot be done unilaterally. An individual in my opinion is mature when they are capable of making a mature decision about a situation that they find themselves in. To decide this issue, I need to be informed as to why there is a need in our society to have a legally defined age of majority. Effective protection of children's rights lies in education and not on the legally regulated age of majority. We can have a discussion about children's rights. We can even have statutes and regulatory bodies aimed at protecting those rights, but if the children are not educated about their rights, they are not even aware that they have those rights and as such the children will not know when those rights are violated. So at the moment and until such a time that a vigorous educational campaign teaching the children about their rights is embarked upon, I believe the age of majority should remain as it is, 21 years.

### Facebook posting:

I think the age of majority in Namibia creates problems. Many teens finish school at age 18 and also get their drivers' licenses then. This means increased freedom as well as possibly moving out of their parents' house to go to university. So, teens essentially take on much of the responsibility and freedom associated with adulthood, except that they still need their parents' permission to sign a contract. This becomes a logistical problem if the teen is living far from home, but it also doesn't make sense to me that teens essentially become adults in all but name at 18.

### Facebook posting:

Well, let me lead you into life in the rural areas. Children live with their parents right until they get married, only then do they move out to their husband's place, that is for the ladies and for the men, they are actually given a space within the household to start their family. In such a case, the parents are the ones who cater for the everyday needs of the individual. Reducing the age of majority to 18 hence in this context will really not do much of a difference. As a social worker, I have found 29-year-old women who have children out of wedlock coming to my office to complain that their parents are not taking good care of them. This just shows that it is the norm for the parents to take care of them even though they have reached that age of majority and are not mature enough to actually make decisions for themselves that will benefit them. Not to generalise, but in such a case it would be risky to hence reduce the age of majority to 18 because they are not mature enough to handle most responsibility that will come with it. But then again, not all children are like that.

## 2.3 Children's Ombudsperson and Child Welfare Advisory Council



We received feedback on the topic of the Children's Ombudsperson by text message and email. As discussed above, we had expected the text message responses to be fairly simple and limited to more general comments. However we were pleased to see that people even took the opportunity to respond by text message to more detailed issues such as these.

### Text message:

- I think that the child welfare advisory council should have at least two social workers (compulsory). We already have the Ombudsman. Why two?

### Email:

I read the provisions carefully, eg on the child welfare advisory council. Is it possible to incorporate the principle of children's participation, or more broadly that – "on all issues affecting the welfare of children, the voices of people most closely affected by the issues should be heard and considered, including the voices of children themselves"?

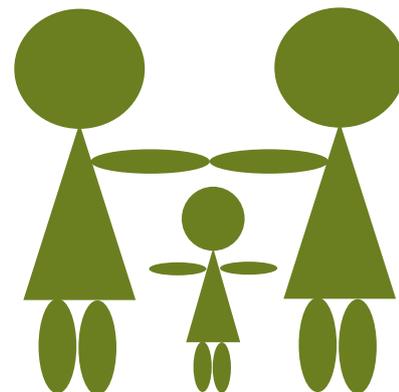
I am not sure that a permanent seat or two on the welfare council is the best idea. (With just one kid or two, it could feel intimidating to the children and like tokenism; also how would they always know about the particular issues at hand?) But I think the principle of child-participation (also in the UN Charter on the Rights of the Child) stands for itself, and I would like to see this incorporated into this part of the bill and possibly other areas, as well.

## Email:

- I think Namibia would need such a Council.
- Such a Council would not duplicate the Children’s Ombudsman provided their areas of work are clearly demarcated. The Ombudsman has judiciary authority and the Council should have just advisory authority.
- The Act should specify the “three community stakeholders” in order to get a wide and effective representation.
- I am not sure about the existing structures. Should there be any useful ones, use them rather than creating new structures.
- According to recent press reports the present Ombudsman is flooded with complaints so that he can hardly cope. Recommendations coming from his office are not really implemented and followed up. That seems that the actual work is not really going on. If that Ombudsman now will have to monitor children’s protection he would surely be even more overworked. For that reason a separate Children’s Ombudsman would make the work burden easier and more effective.
- Since there are already structures, they should be used and the channels coming from the Ombudsman’s office should be cleared to make his work more effective than is as present happening.
- That person should have a sound legal training and experience of court in order to be on par with the present Ombudsman. Some training in social welfare should be an added advantage.
- The term of office should be four years with a maximum of one re-appointment.
- The Council should have a broader role like general monitoring, research and recommendations. The Council would have 15 members who could share these tasks much more easily and would be much closer to the children. The Children’s Ombudsman should have a narrow, much more legal role.
- If cooperation is expected, the two Ombudsmen should be equal in all respects. If one is in a lesser position then all work concerning children will be added to the more senior one.
- I reckon that the Children’s Act 6 of 2006 is adequate. *[Note: The meaning of this comment is unclear. There is no Children’s Act 6 of 2006. There is the Children’s Act 33 of 1960 and the Children’s Status Act 6 of 2006. The topics covered in the Children’s Status Act differ from those covered in the Child Care and Protection Bill.]*

## 2.4 Mediation

The preliminary draft bill included provisions designed to reduce the number of cases that must be decided in court. In cases which do not involve allegations of child abuse, the court can order the people involved to try to reach agreement between themselves on the problem, before it goes to court. Input about mediation was sent via text messages. The topic of mediation was not discussed in detail at the regional or national meetings, or at other workshops or conferences. Therefore it is likely that the feedback was received in response to the factsheets, which were widely distributed. This indicates that the factsheets were effective in stimulating input from the public.



### Text messages:

- Family mediation should only take place with an order from court and the mediator should report back to court and the social worker is the right person to mediate.
- In rural areas child abuse is viewed as a means of disciplining a child, I therefore reject traditional leaders to mediate on children issues.

## 2.5 Adoption

We received a number of text messages on the topic of adoption. The issues surrounding adoption were also strongly debated at workshops. The option of providing input by text message allowed people who had not been able to attend the workshops an opportunity to provide feedback on this topic. Examples of some of the text messages are shown below. The topics covered in these text messages indicates that they were written in response to the questions posed on the factsheet on adoption, which cited the law in Kenya as one comparative example.



### Text messages:

- Unmarried couples must not adopt a child together.
- Of course there must be a fixed age for an adoptive parent.
- For adopting let's follow the Kenya style to adopt, with 20 years age gap and 50 years as maximum age for adopting, 6 years to reside in Namibia.

## 2.6 National Child Protection Register

The preliminary draft bill included a proposal for a National Child Protection Register. This register would list all known perpetrators of child abuse. The aim of the list would be to ensure that offenders do not work with children in the future. The register would be maintained by the Ministry and would be similar to sex offender registers which are used in some countries. Support for a National Child Protection Register was given



through email, one web posting and a text message. However, at the regional and national workshops, the majority viewpoint was that a National Child Protection Register would require too many resources to establish and maintain, and that the same objective could

be more effectively accomplished by requiring police clearance certificates with respect to certain offences for persons who will be working with children. The request for feedback through post, fax, email and text message allowed a wider range of opinion to be obtained than would have been achieved through workshops alone, but of course with this kind of input the benefit of the group discussion and debate is absent.

### Email:

- Yes, in Namibia people who work with children (like teachers) have committed child abuse.
- Checking criminal records is one way, but child abuse may not be on record. If someone applies for another job a confidential discussion with the supervisor with specific questions on child abuse could help more. If someone applies for a job for the first time, the employer can only rely on a police clearance and a testimonial form the trainer. Concerning his job there will not be a track record yet.
- If child abuse has been proved in a court it is then not unfair to place somebody's name on such Register. It is quite problematic if other people except a judge and the Children's Ombudsman may place names on the Register.
- I think it should not be the same National Child Protection Register, but it would be useful to keep such a register by social workers especially with a view to possible assistance to that child in his way of growing up, in other words a record register not so much of a "punitive" Register but rather a record of children that may need assistance by social workers, who are at special risk. I am afraid that a child whose name was put on the National Child Protection Register would be barred from many future careers. With children there is still hope of a change to the better. A certain 'bad behaviour' may not be there forever. With adults the situation is different.
- Possibly the National Child Protection Register could include parties, the offenders and harmed children. Adult offenders may not abuse the same child that was abused already once but turn to another child.
- The information is sufficient especially since the matter has served before a court.
- That is the typical problem of any "black listing". How does one prove one's rehabilitation? Could there not be relapses as with alcoholics and drug addicts who went through a rehabilitation course but fall back once they have to prove themselves in real life? I am afraid "black listing" is forever. That puts principally a question mark on the creation of a National Child Protection Register.

### Website posting from Home for the Hopeless:<sup>67</sup>

A Child Protection Register would enable HHP [Hope for the Hopeless] to conduct a check prior to accepting staff or volunteers who are unsuitable to work with children. This would provide an added safety measure to guarantee that the safety of the children is the first priority of the organisation.

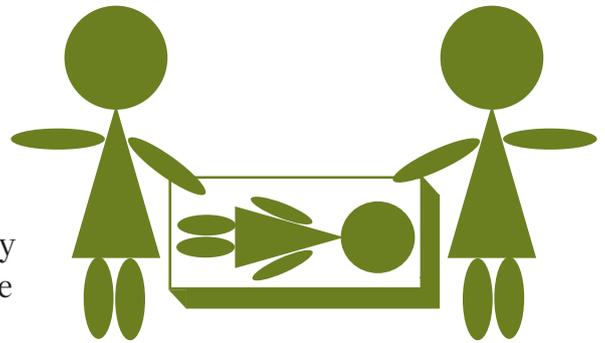
<sup>67</sup> This organisation sent a representative to one of the regional workshops and then subsequently posted opinions about some of the issues on its own website.

### Text message:

- The National Child Protection Register is a good idea. Some people who work with children
- do abuse them. Only adult abusers should be placed on the list.

## 2.7 Child trafficking

Only a small number of people provided feedback about child trafficking. This may be because the problem is not currently widespread in Namibia. However, the possibility that child trafficking might increase in the future was noted at the national workshops.



### Facebook posting:

I don't think it is a major issue in Namibia. There are not very many cases of child trafficking here, so more time, effort and money should be spent on more pressing and widespread issues.

### Facebook posting:

I'm not aware of any cases involving child trafficking, but human trafficking yes. But in case there are any it should be addressed before getting out of hand, in that it should not be allowed to become a problem, as it's another task to find a solution thereto. Rather address the core issues that may lead to child trafficking and if it is already a problem, eradicate it by striking at the core bone from which it struck.

## 2.8 Corporal punishment

The topic of corporal punishment engaged substantial debate at all stages of the consultation process. The fact that the Global Initiative to End All Corporal Punishment of Children provided feedback is an indicator of the wide-reaching impact of the outreach process. Through the use of electronic media, information about the bill has been accessible not only to Namibians but also to interested international parties. Overall, the feedback received from the public on the topic of corporal punishment supported the use of alternative forms of discipline and called for a reduction in the level of corporal punishment in Namibia. The written responses received about corporal punishment were more supportive of the reduction of corporal punishment than the workshop discussions. This is yet another indication of how the different channels offered for feedback increased the diversity of opinion put forward.



## Email:

- The Act should include a clause that alternative forms of punishment are preferable to any kind of corporal punishment. It should also state that it is the duty and right of parents to discipline their children in a loving way avoiding harsh corporal punishment.
- Spanking is a minor form of corporal punishment that is permissible. The Act should clarify what is meant by “harmful corporal punishment”. This clarification would be needed for social and police workers and medical staff in order to identify abuse of children.
- The Act should somehow state that punishment resulting in psychological harm should also be avoided. Parents could harm a child psychologically with humiliating words.
- Once the Act is in place an awareness campaign through the media would be needed. People directly involved with monitoring child welfare would need a workshop. The Ministry of Education could be involved by instructing headmasters that one parent evening at pre-schools and all schools should be conducted only about the new Act. Possibly somebody from the Ministry of Child Welfare could act as speaker.

## Email from Global Initiative to End All Corporal Punishment of Children:

There is accelerating progress globally towards prohibiting and eliminating corporal punishment of children, including within the family. More than 100 states have prohibited all school corporal punishment; nearly 150 have prohibited judicial corporal punishment. Twenty four states have prohibited it in all settings, including the home, with reforms planned in up to a further 25.

Each of the nine regional consultations held in connection with the UN Secretary General’s Study on Violence against Children called for prohibition of all corporal punishment. In October 2006, the report of the Study was presented to the General Assembly: it recommended that all corporal punishment of children be prohibited by the year 2009.

The Global Initiative respectfully urges the Namibian Government to re-draft the Child Care and Protection Bill 2009 to include explicit prohibition of all corporal punishment and all other forms of cruel or degrading punishment or treatment of children, including within the family home.

## Facebook posting:

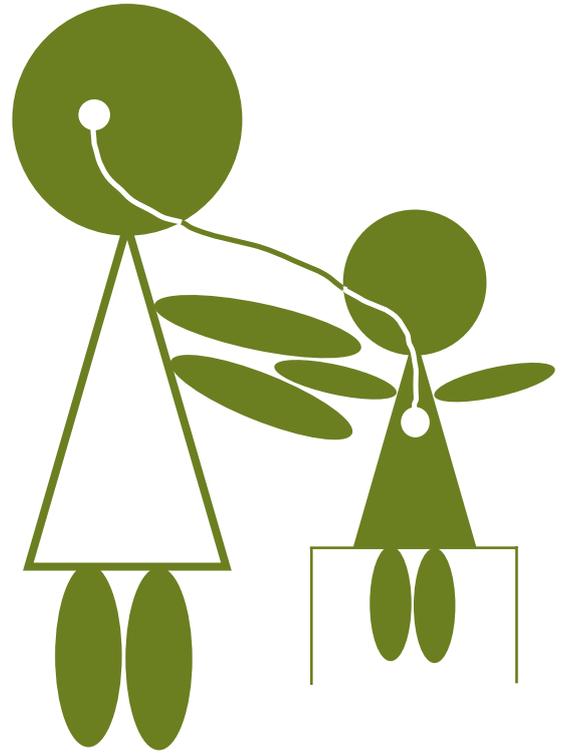
There are a lot of aspects that needs to be taken in consideration with corporal punishment. From personal experiences corporal punishment has not killed anyone yet, at least to my knowledge. We were beaten by teachers in school and at home by parents and most of us didn’t turn out that bad. A little punishment from time to time is not so bad, it’s just to get the kid back on the right track. Look at what is currently happening in schools, kids doing what they want and that leads to the poor passing rate in our schools and all this after corporal punishment went out.

Corporal punishment can be controlled, especially at home where parents normally go overboard with the punishments and can lead to fatalities. Kids need to know that they will be heard in cases of abuse and excessive punishment.

Corporal punishment has got its positives and negatives, but a little discipline hopefully won’t kill anyone.

## 2.9 Consent to medical treatment and surgery

The question of at what age a child should be able to independently access medical treatment, surgery, contraceptives and HIV testing inspired a lot of feedback. One of the reasons for this was because it was a popular topic of discussion at workshops and on the radio. Unlike some of the more challenging issues, such as corporal punishment, or the more complicated issues, such as how to define a child in need of protection, the topic of access to medical services was easy to understand and is very relevant to people. Access to contraceptives in particular inspired much comment. A wide range of opinions was offered.



### Email:

I followed your programme today on Oshiwambo radio station on the right law to be moved from 18 years of age to 14 years of age. I strongly agree with the motion without any strings attached. Currently young ones look much more mature and engage in adult activities at those tender ages because of their body sizes and mentally they are at a fast pace compared to years back. The right to be moved to 14 years of age will allow the young ones to openly engage in adult activities, even though I am not motivating young adulthood here, but the fact still remains that if we keep away the rights, they will continue doing it in thickets. The moment they keep doing that and that in thickets, precautions will not be taken during the process because obviously a parent will not approve if they are to take parents for approvals.

I usually tell people not to confuse theory and practicals, theoretically we are saying adult activities like sex are only for adults, but practically it is not like that and will never be. If you deny a 14-year-old girl contraceptive pills at the government hospital, she can easily send an older friend, go to the pharmacy, ask a boyfriend to get them for her, etc and get her hands on them. This all means that these people are mature enough, that's why they can go to such troubles of looking for those kind of services. I can assure you that a young, inexperienced person will never go look for birth pills, but the fact that someone has guts to go look for such service is because he/she have been in the industry already and knows what to expect and what not.

As I listen to some callers, I may say that they are not confident on themselves as a nation that we can do it like the South Africans and Botswana to name a few, the 18 years of age is an adopted law, but not ours. It is time now for us to shine with our own law at the age 14.

## Email:

From my side I think young girls should not be given pills or an injection before the age of 18, because it's only when you are 18 when you really know what you are doing. I did not see it helpful to our kids, young sister when we try to protect them from falling pregnant while we did not care of them dying from AIDS. Giving them contraceptives is just promoting the spread of STDs, young minds are only afraid of falling pregnant so the moment you protect them from that then you have opened a door for them to go and have unprotected sex.

## Facebook posting:

This is not an easy linear question to answer, the answer would vary according to the child's personal, family and home circumstances. Issues such as culture, religion and the individuals own physical, sexual and psychological maturity and awareness. In my view each should be evaluated individually which is of course impossible to do. Problem is in my experience with "tweens" is if they decide to become sexually active they will do it without parental consent, then it is better for them to have access to contraception and be educated on the risks and counseled about their decision, family counseling is also critical. Their own sexual protection and health including STD risks particularly HIV should be high on the agenda.

## Facebook posting:

With all the sexually transmitted diseases that are going around, contraceptives should be given to anybody that has reached the age of puberty. With everything being so easily accessible (alcohol, drugs) this at the end leads to unprotected sex, which leads to STDs [sexually transmitted diseases]. The downside of giving contraceptives freely will give kids the idea of having the freedom of just jumping into bed with anyone.

If the Namibian education system gives scholars the proper education about HIV related diseases and teenage pregnancy, then I think that contraceptives will be used more regularly and after thinking about what the causes will be after having unprotected sex. With a lot of countries anybody will have sex whether they have protection or not.

Prevention is better than cure and in this case we need to prevent teenage pregnancies taking place and try to reduce HIV in Namibia.

Contraceptives should be freely accessible to anyone that is ready to have sex. Either they get it freely or they have unprotected sex and that will have huge consequences.

## Facebook posting:

Great topic. While I do support making contraceptives available to youth for the obvious reasons, I wrestle with the messages that this sends. I really would like to see some data on any research that has been done regarding this topic.

### Facebook posting:

It is not about age really but rather, when you have reached a maturity stage where you are able to portray understanding capability of what contraceptives are and the negative and positive effects of using them.

### Facebook posting:

Hi there, kids are getting pregnant from as early as 15 years old, so I think that they should start using it from when they get their first period. Sometimes these kids are raped and end up pregnant, sometimes they just want to have sex, they have unprotected sex and end up pregnant.

### Facebook posting:

As soon as the individual has reached the human reproductive cycle, (namely when the individual becomes of a child rearing age). Depending on the development cycle of the particular individual, this can be as young as 12 years old, or even younger. Bottom line, sex education should form part of the school curriculum, because these days children are experimenting with sex at a very young age and we the adults have the responsibility of teaching them the risks including the available preventative measures for unwanted pregnancies. At least with sex education, the children can make an informed decision.

### Facebook posting:

This is an important issue which should be addressed by this draft bill. A woman's first menstruation typically occurs around the age of 12. I agree with the previous contributor that this should be the age by which children should be allowed to have access to contraceptives. It's not sensible to deny the fact that children are not having sex. A holistic approach that includes access to contraceptives methods such as condoms and AIDS education should be used to protect children from sexually transmitted infections (STIs), including HIV.

### Text messages:

- I think that children must just be allowed to be tested at any age just for them to keep on taking care of themselves.
- The age of medical consent must be 14 in Namibia.
- Kids must be given a right to control their health because some kids are mature at the age of 14 to 15.
- Contraceptives must be allowed at the age of 16 years, then a person is old enough.
- As a teenager, I did not think its really healthy for the teen to use a contraceptive, you do not have to go for sex if you know you are not ready to be a parent.
- 14-year-olds should be allowed to access contraceptives without parents' consent because the fact is they are having sex and they are at risk of pregnancies and STDs.

## 2.10 Rights and responsibilities

The topic of rights and responsibilities received little written input. However where input was offered, there was unanimous agreement that the law should also include a section on the child responsibilities to balance child rights. The first sample comment below was part of a longer email that commented on a number of topics.

### Email:

The child should not only have rights. The responsibility of the child towards society and not only of the right of the child should be looked at. If well taken care of, the child must be obedient, respectful, study to provide good results etc.

### Email:

I do think it [the draft Bill] should contain children's responsibilities, as this reflects both African heritage and culture, as well as the provisions within the African Charter on the Rights and Welfare of the Child, which Namibia is a ratifying party, thereby legally obliged to adhere to all the provisions within. By following the guide within the Charter and the four core principles underpinning international child law (best interests, non-discrimination, participation, right to life, survival and development) then children remain protected and not exploited through the provisions of child responsibilities. This language of 'duties' in Africa underpins the human rights regime, and to ignore it is to ignore important aspects of African culture and law. The African Charter on the Rights and Welfare of the Child is the blueprint (alongside its sister Convention, the UN CRC [Convention on the Rights of the Child]) for the understanding and implementation of children rights in Africa. Article 31 of the ACRWC [African Charter on the Rights and Welfare of the Child] contains children's responsibilities, the content of this provision should guide the content of responsibilities within the Child Care and Protection Act. By including the responsibilities considered positive and advantageous to the development of the child, provides protection for children from other issues which may be considered as 'responsibilities' but in fact are exploitative or violate the child's right to development, as the list could be deemed exhaustive and thus protect children from these other exploitative notions of responsibilities, it is all down to drafting and interpretation.

## 2.11 Prevention and early intervention services

Little public input was offered on the topic of prevention and early intervention. One of the reasons for this was the fact that the concept as defined in the draft bill is new and the topic may have been hard to understand for some people. The input that follows is from RAPCAN (Resources Aimed at the Prevention of Child Abuse and Neglect), a non-governmental organisation in South Africa. Again this is an example of how the public outreach reached beyond the borders of Namibia.

### Email from RAPCAN:

The use of the work 'must' in terms of the obligation of the state to provide such services further gives us the tool we require to ensure the provision of funding towards such services – we are very aware that as civil society we will need to use this as a lobbying point over the next phase (5 – 10 years). So while we will not see widespread prevention programmes at scale in the next two years we feel that the framing of the provision is very positive.

There are a number of aims and objectives that can be achieved through prevention and early intervention services:

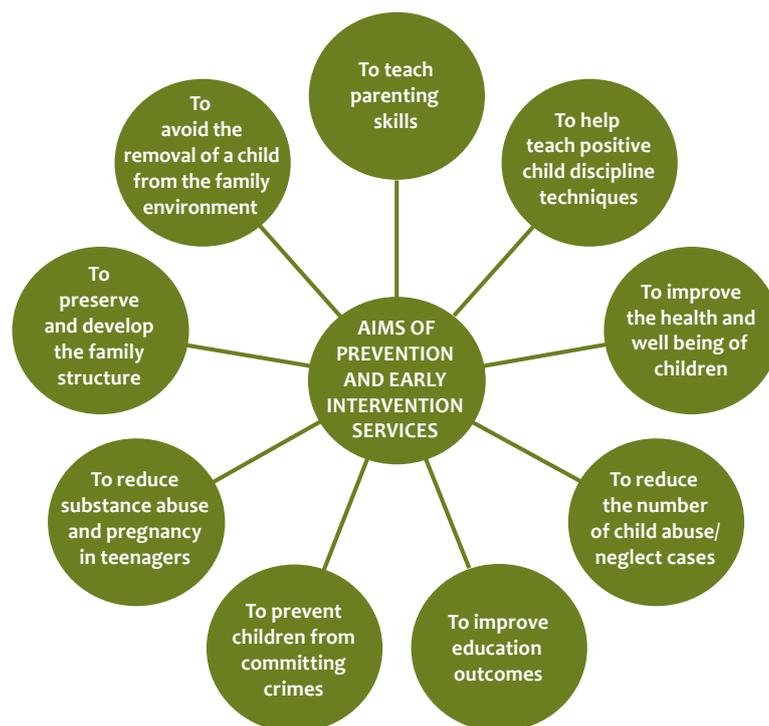


Diagram from the factsheet on prevention and early intervention services

## 2.12 Mandatory versus compulsory reporting

There was also little public input on the topic of mandatory versus compulsory reporting on child protection matters. Below is a website posting from Hope for the Hopeless, a non-governmental organisation based in Otjiwarongo, Namibia. A representative from the organisation attended the Otjiwarongo regional workshop and subsequently made the post below on the organisation's website. This is a good example of how the workshops stimulated further input into the bill. It is also an example of the ripple effect, empowering partners to extend the reach of information about the revision of the bill to more people.

### Website posting from Home for the Hopeless:

The new law will work alongside childcare facilities to ensure that Namibian children are receiving the best possible care by their parent, guardian or caregiver. The possibility exists that Namibia may institute mandatory reporting measures for professionals working with children or all Namibians. Regardless of the proposed reporting aspect, the new law will promote awareness about children in need of protection to the community to ensure that everyone is educated about the steps required to ensure notification of the proper authorities.

A representative from the Omukumo Kindergarden (Ohangwena) provided feedback to the drafting team about the importance of male engagement in the care and protection of children. While such a requirement cannot easily be provided for in legislation, the feedback is a good example of how the consultation process engaged the public and ignited debate not only about the bill but also about wider issues. And, as a start toward this goal, a provision about the composition of the National Advisory Council<sup>68</sup> on Children which initially guaranteed places for women on this Council was altered to provide for “gender balance”.

### 3. Assessment

The quality and breadth of the feedback received from the public was impressive. We had not anticipated that members of the public would be interested in commenting on specialised issues such as mediation, or the proposed Child Welfare Advisory Council. The fact that they did was wonderful and illustrates the willingness of the public to participate in law reform.

The extent of the feedback was fairly low. This was always expected, as Namibia has not yet developed a sufficiently vocal civil society. Therefore, the relatively modest volume of responses received could be easily managed by the consultation team. In consultation processes involving large populations, more time and resources would be needed to organise feedback from the public into a form that could be usefully referenced.

The fact that feedback was received through a number of different mediums indicates that the process was accessible to the public. We strongly recommend that as many mechanisms as possible are made available for public responses, to suit people from different walks of life.

It should be noted that the responses to individual questions were generally short. Even when community members provided feedback on a number of areas, the individual inputs were short. Questions for discussion should be designed with this in mind. Asking the public to motivate an opinion (asking, for example, “why do you think this is a problem?”) may not generate sufficiently-detailed responses. Instead, questions should focus on answers that can be answered relatively simply with face-to-face consultations being the focus for more lengthy inputs.

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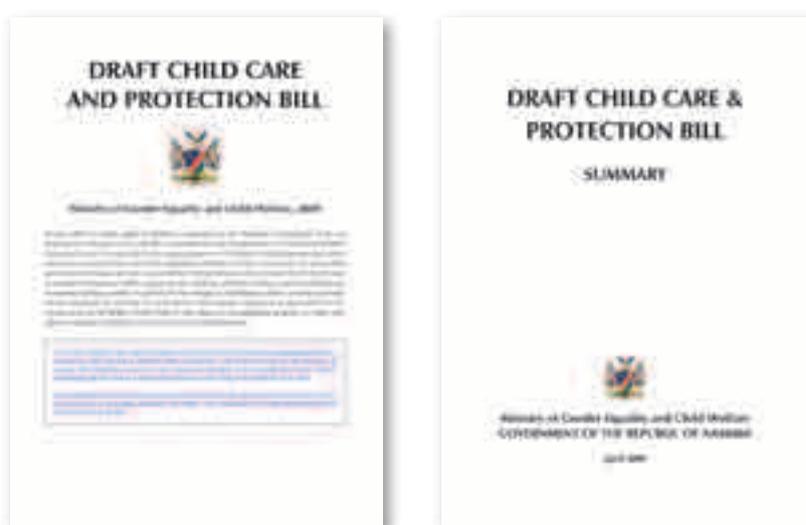
<sup>68</sup> The preliminary draft bill referred to this body as the “Child Welfare Advisory Council”. It was re-named in the revised draft bill, as the use of the term “child welfare” is in decline internationally. The new name is also more comprehensive.

# WRITTEN FEEDBACK FROM STAKEHOLDERS

## 1. Overview

The initial phases of the consultation process invited broad public input on key issues, such as the age at which a child should be able to independently access medical treatment, or public opinion on the use of corporal punishment as a form of discipline. At a later stage, the process moved towards gaining more detailed input on specific issues from individuals and organisations which have some experience with children's issues.

To achieve this goal, stakeholders with specific expertise were asked to provide written comments on the draft bill. This was facilitated by the circulation of the simple-language summary of the bill along with an annotated copy of the bill itself.



*“Concerning facilities that care for children, I believe that school hostels should be included. This is not absolutely clear from your pamphlet.” – SMS*

The annotated bill included a number of commentary boxes. These explained the provisions and defined some of the issues that should be considered. Feedback from people who commented on the bill indicated that the commentary boxes were very helpful. The bill is over 200 pages long and difficult to digest. The commentary boxes helped to call attention to problematic issues and to identify the most important points for discussion.

## EXAMPLE OF COMMENTARY IN ANNOTATED DRAFT BILL

A commentary box appeared below the definition of “street child” in the draft bill, to provide the reader with a wider understanding of the issue.

“street child” means a child who –

- (a) because of abuse, neglect, poverty, community upheaval or any other reason, has left his or her home, family or community and lives, begs or works on the streets; or
- (b) because of inadequate care, begs or works on the streets but returns home at night;
- (c) is living on the street and is mainly concerned with survival and shelter; or
- (d) is detached from his or her family and –
  - (i) lives in a temporary shelter such as a transit facility or abandoned house or building; or
  - (ii) moves from one place to another; or
- (e) remains in contact with his or her family but because of poverty, overcrowding, sexual abuse or other abuses within the family, spends some nights and most days on the street; or
- (f) is in institutional care and has come from a situation of homelessness and seems at risk of returning to a homeless existence; and

The Orphans and Vulnerable Children (OVC) Permanent Task Force mentioned, in connection with the National Plan of Action on OVC, that it is more sensitive to use a phrase such as a “child living on the street” instead of “street child” (in the same way that “children with disabilities” is generally preferred over “disabled child”).

The South African Children’s Act 2005 uses the following definition:

**‘street child’** means a child who –

- (a) because of abuse, neglect, poverty, community upheaval or any other reason, has left his or her home, family or community and lives, begs or works on the streets; or
- (b) because of inadequate care, begs or works on the streets but returns home at night.

A covering letter from the Permanent Secretary of the Ministry was included in each package of materials sent to stakeholders to motivate responses. This letter was individualised for each stakeholder, calling the attention of that stakeholder to particular issues in the draft bill which would probably be of particular interest to that stakeholder.

For example, groups working with HIV/AIDS were urged to comment on the wording of the section prohibiting discrimination on the basis of HIV status, and organisations working in the field of disability were invited to comment on whether the existing draft caters adequately for the protection of children with disabilities. Other stakeholders were invited to review the entire bill or to choose specific areas of interest to comment on. Factsheets on selected topics, similarly chosen to match the stakeholders' specialities, were included in the information package.

The materials in the information package sent to stakeholders were also available in electronic form on the Legal Assistance Centre and UNICEF websites and were emailed to any person who requested them.

Stakeholders were invited to direct written feedback to the Ministry or the Legal Assistance Centre, and where necessary individual interviews were conducted with stakeholders to discuss selected issues in more detail. Feedback was invited by post, email or fax, and responses were sent through all three means.

A total of 144 information packages were delivered to key stakeholders, with invitations to offer written comment on the preliminary draft bill. The majority of these were delivered to representatives of organisations based in Windhoek, although packages were also posted to relevant organisations and stakeholders across the country. Information was also emailed to stakeholders, including a few experts outside Namibia.<sup>69</sup>

We received approximately one response for every eight bills distributed. This response was lower than expected. One reason for this may have been the fact that many of the stakeholders had already been included in the consultations through the regional and national workshops. Another reason is purely practical, and sadly unavoidable – the large size of the bill. Much work was done to make the material as user-friendly as possible through the production of factsheets, a bill summary and commentaries to accompany the text of the bill. However, the length of the bill could not be changed and it may have been off-putting to some people.

Another factor may be that the consultation process around the Child Care and Protection Bill is the first law reform consultation in Namibia to take place on such a broad scale. People may not have understood the value which would be placed on their opinions, or may not have realised that their opinions could really change the draft bill. An important phase of follow-up to the consultation process will to disseminate information on how public and stakeholder input contributed to the revision of the draft. We hope that such feedback will convince the public that their input is valued and that participation in law reform processes is worth the time and effort involved.

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<sup>69</sup> A list of individuals and organisations who were sent information packages and invited to submit written comments is included in an appendix to this report, which is available from the Ministry or the Legal Assistance Centre on request.

## ORGANISATIONS AND INDIVIDUALS WHO SUBMITTED DETAILED WRITTEN INPUT

1. Church Alliance for Orphans (Dr Henry Platt)
2. Church Benevolence Board (Estelle Labuschagne)
3. Family Health International (Dr Lucy Steinitz)
4. Film Association of Namibia
5. Friendly Haven Shelter
6. Law Society of Namibia
7. Michelle McLean Children Trust
8. National Planning Commission
9. National Society for Human Rights
10. Nedbank Namibia (Manager: Development & Support)
11. Office of the Ombudsman
12. Office of the Prosecutor-General (Advocate Nyoni)
13. Self-regulating Alcohol Industry Forum
14. Women's Leadership Centre
15. Women's Action for Development
16. Adv B Kruger, international expert on trafficking
17. Adv C van der Westhuizen, private legal practitioner
18. Sonja Gierse-Arsten, PhD candidate conducting research in Namibia



“A word of appreciation for the great work.”

Church Alliance for Orphans

## 2. Summary of written responses from stakeholders

### 2.1 Age of majority

As discussed previously in this report, one issue for discussion was how to handle the fact that the draft bill defined a child as a person under age 18 while the age of majority in Namibia stands at age 21.

Support for lowering the age of majority to 18 was given by the Church Alliance for Orphans and a PhD student who conducted research in Namibia. The Law Society did not comment specifically on what the age of majority should be, but recommended that if the age of majority remains at 21, provisions should be made for persons between the ages of 18-21 as

these persons would be neither children nor majors. Women’s Action for Development was hesitant to support the lowering of majority to 18 years but similarly noted that the bill would create a grey area between 18 and 21, when a person is not a child but is still a “minor”.

## 2.2 Designated social workers

The preliminary draft bill provides for two types of social workers – social workers and designated social workers. A designated social worker means a social worker who is designated on the basis of experience and qualification by the Minister of Gender Equality and Child Welfare to perform specific duties under the law; social workers who are not designated social workers may not perform these duties.

The Church Alliance for Orphans, the Church Benevolence Board and the Law Society suggested that the definition of a designated social worker should be broad enough to allow private social workers to engage in certain functions. Social workers from the Ministry of Gender Equality and Child Welfare suggested that private social workers permitted to perform statutory work should work under Ministerial supervision and channel all cases through control social workers at the Ministry. One example given was that adoption cases should be channelled through the Ministry before the case is presented to the children’s court. The Ministry social workers also suggested that the Ministry must have party status in all adoptions so that they can intervene if needed. This opinion was supported by an advocate who handles court cases involving children, who noted that the current role of the Registrar of Adoptions is not clear.

The Ministry social workers recommended that certificates should be issued to designated social workers as evidence of their authorisation and that the authorisation should be periodically renewed. They also suggested that a fee structure for private social workers should be prescribed.

Stakeholders also urged the use of auxiliary social workers or other personnel to help social workers with the increased workload that the implementation of the bill may entail.

The Ministry social workers agreed with the recommendation that social workers designated as “probation officers” should have specific functions relating to criminal justice, and that not all social workers should automatically be probation officers (as is the current practice).



**“National Society for Human Rights presents its compliments to Honourable Minister of Gender Equality and Child Welfare and congratulates Honourable Marlene Mungunda and her entire staff on the preparation of the Child Care and Protection Bill.”**

**National Society for Human Rights**

## 2.3 Definitions

### Abandonment

Several stakeholders recommended that the term “abandonment” must be clearly defined so that it can be consistently applied to children when determining whether they were in need of protection or available for adoption.

### Caregiver, primary caretaker and guardian

Women’s Action for Development noted that many people in Namibia understand the term guardian to mean someone who cares for a child when the child is not with the parent. They noted that there is a need to clarify the terminology in the bill regarding the various persons who may care for children, and to ensure that community members understand the different terms. While some of these terms have fixed legal meanings, this point is a useful one to guide public education on the law once it is final.



**WOMEN'S ACTION FOR  
DEVELOPMENT**

**“On behalf of the Management of “Women’s Action for Development, I wish to extend my sincere congratulations and appreciation towards the Ministry of Gender Equality and Child Welfare on its work on the draft ‘Child Care and Protection Bill’ and for extending an invitation to the organisation to submit its comments to the Ministry.”**

**Veronica de Klerk,**  
Executive Director, Women’s Action for Development (WAD)

## 2.4 Best interests of the child

One of the objectives of the Child Care and Protection Bill is to promote the best interests of the child, which is also the guiding standard under the United Nations Convention on the Rights of the Child. This means the best interests of a particular child should guide any decision about that child. The preliminary draft bill included a long list of factors which decision-makers should consider when deciding whether an intervention or action is in the best interests of a child (such as the child’s sex, age, background, maturity, level of development and cultural, ethnic and religious identity, as well as the impact of any disability or chronic illness). The PhD student recommended that the proposed criteria for the best interests of the child should include an assessment of the attitude of the parent, which could include the behaviour of the parent, such as addiction to alcohol or drugs.

## 2.5 Rights and responsibilities

Some countries have decided to include children’s responsibilities in their child laws alongside children’s rights. For example, the Children’s Act in Kenya includes a section on the responsibilities of children. The African Charter on the Rights and Welfare of the Child also includes sections on children’s responsibilities. Many stakeholders supported the inclusion of children’s responsibilities in the law, to emphasise the point that rights and responsibilities go together.



**“On behalf of the members of SAIF, I thank you for the opportunity to participate in this policy process.”**

**Patricia Hoeksema,**  
Chairperson, Self-regulating Alcohol Industry Forum (SAIF)

## 2.6 Child Welfare Advisory Council and Children’s Ombudsman

The preliminary draft bill provided for a Child Welfare and Advisory Council, which would be a government-appointed body with the task of promoting the rights and interests of children in society. (The idea was that it would be somewhat similar to Namibia’s Labour Advisory Council which advises on issues relating to the Labour Act.) The preliminary draft bill also provided for a Children’s Ombudsman, who would be charged with protecting and promoting the rights and interests of children. As Namibia already has a general Ombudsman, it was necessary to consider how the two officials could work together.

Most stakeholders who responded gave support to a Child Welfare and Advisory Council and a Children’s Ombudsman.

Women’s Action for Development (WAD) supported the establishment of a Child Welfare Advisory Council and a Children’s Ombudsman and suggested that Child Welfare Advisory Council should consider the inclusion of specific interest groups, such as churches, traditional authorities and social welfare organisations. WAD did not support the provision of a permanent place on such a council for international organisations such as UNICEF or the World Health Organisation, on the grounds that such organisations are not always permanently based in the country. WAD felt that new regional structures are not required to support the council as there are sufficient structures in place that could play this role. Family Health International recommended that the mandate of the Child Welfare Advisory Council should include review of child placements for quality assurance and to assist with specific cases that resulted in conflict.

The Law Society reported that there was divided opinion within the society as to whether the Children's Ombudsman should be independent or a member of the present Ombudsman's Office. Family Health International supported a tie-in between the Children's Ombudsman and the existing Ombudsman.

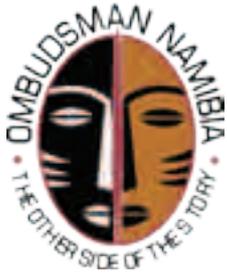
Regardless of the placement of the Children's Ombudsman, the Law Society recommended that this official's qualifications and powers should be specified in the law in greater detail.

The Office of the Ombudsman provided written feedback and met with Technical Working Group members on multiple occasions to discuss the most effective method of incorporating a Children's Ombudsman into Namibian law and structures. The conclusion of the Office was that it would be best to add an official with a specific focus on children's rights to the existing Office within a planned new directorate on human rights, rather than creating a separate body. The Ombudsman noted that the Office already has the jurisdiction, accessibility, capacity, authorisation and powers to incorporate the proposed role, and that utilising a single office would provide for a more cost-effective operation – particularly with respect to outreach work in Namibia's 13 regions.

	<p>“Thank you very much for giving the Michelle McLean Children Trust the opportunity to share in this all important piece of possible legislation. It is very much appreciated.”</p>	<p>Michelle McLean Children Trust</p>
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*“Children are powerless but priceless, have quiet voices, yet so expressive. We speak a lot about children and how important they are, make a reference to the children as being the future nation, but they are living right now, their childhood is happening today and not in the future, therefore we need to actively participate in the discussion and make worthy contributions.”*

Ongwediva Councillor Thikameni Ekandjo,  
speaking at a public meeting to discuss the Child Care and Protection Bill,  
quoted in *The Namibian* on 5 June 2009.



## THE ROLE OF THE CHILDREN'S OMBUDSMAN: Opinion of the Office of the Ombudsman

The Office of the Ombudsman would like to congratulate the Ministry of Gender Equality and Child Welfare on its extensive public consultation on the Child Care and Protection Bill, which is sure to make the final law more responsive to the needs of Namibia.

In response to the Ministry's invitation for input, we would like to highlight one area of the bill that has not yet received sufficient attention – the question of whether or not Namibia should appoint a Children's Ombudsman. Namibia recently announced the position of a Media Ombudsman. The time is ripe to discuss whether there is also a need for Children's Ombudsman. Article 4 of the Convention on the Right of the Child (CRC) obliges state parties to *"undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention"* The Committee on the Rights of Child recognizes independent National Human Rights Institutions, such as an Ombudsman, as important mechanisms to promote and ensure the implementation of the Convention and considers the establishment of such institutions to fall within the commitment made by State parties upon ratification to ensure the implementation of the Convention.

The Ombudsman is an independent public official with a Constitutionally-mandated role that includes a duty to investigate complaints concerning violations of fundamental rights and freedoms by any person, abuse of power by government officials and the over-utilization of natural resources or environmental degradation. The Office of the Ombudsman also conducts research and makes recommendations for law and policy reform. The strategic goal of making the Office of the Ombudsman more visible in Namibia and more accessible to the entire Namibia population has been met with astounding success. Two regional offices were established during 2005 in Keetmanshoop with 21 additional visiting points and Oshakati with 41 additional visiting points. Places that are not covered by the regional offices are covered by investigators from head office who conduct complaint intake clinics at 50 visiting points. The establishment of the regional offices would have remained a strategy or dream were it not for the financial assistance and encouragement which the Office received from the Embassies of the Royal Netherlands and Finland. With their financial assistance we were able to run the regional offices until the end of 2006. The intention was then expressed to place a regional representative and permanent investigating staff at the regional offices. This is now a reality because both regional offices have each three investigators and an office administrator to serve the citizens in their regions. The intention is to open an additional regional office at Swakopmund during this financial year to serve the Erongo Region and another in the Otjozondjupa Region during the next financial year.

It is clear that much progress is being made in Namibia. However children's rights in Namibia have not yet received the attention they deserve. This is because although children do have rights, it is often an adult who must ensure the realisation of these rights. In a country such as Namibia, not all adults are able to help children realise their rights. Many examples can be cited of situations where human rights, not just children's

rights, have been ignored. Namibia has a rapidly emerging uranium mining industry, but unless land and environment rights are protected, decisions about the use of our natural resources may have detrimental consequences. HIV/AIDS is a constant issue, and the related discrimination and stigmatisation affect the lives of many people in Namibia. Namibia has a high rate of gender-based violence and there is still a long way to go to achieve gender equality. With what sometimes seems like overwhelming issues to fight, the plight of children can all too easily be overlooked, ignored or misunderstood. One just has to look at the challenges people face obtaining birth certificates, child maintenance grants or access to education to see that the need to strengthen children's rights in Namibia cannot be ignored.

Norway was the first country in the world to provide for the position of a Children's Ombudsman in 1981. Eight years later, the Children's Ombudsman reviewed progress: *"it's difficult to predict what the situation for children's rights would have been without the Ombudsman, but it is probably safe to say that the results would not have come as fast as they have. There is no doubt that the Ombudsman can start an initiative with fewer difficulties than institutions or persons who might be restricted by loyalties to an institution or political leadership"*.

Such a statement could apply to Namibia as much as it does to Norway. Namibia has been independent for 19 years; celebrations for 20 years of freedom are just around the corner. But whilst we can celebrate enormous progress in many areas, changes in the arena of children's rights have been slower than they could have been. For example according to the latest Demographic and Health Survey, secondary school attendance, at just 40% and 53% for boys and girls respectively, lags far behind our success at increasing primary school enrolment. Only 49% of children under the age of 2 have a birth certificate and 92% of orphans and vulnerable children between the ages of 0-4 do not receive basic support services. Children's rights exist but their implementation has not yet been sufficiently effective.

It is for these reasons and many more that the Office of the Ombudsman would welcome the implementation of a Children's Ombudsman. We envisage a Children's Ombudsman who would focus on four key tasks: (1) monitoring the implementation of law and policy on children's rights (2) spearheading advocacy campaigns on key children's rights issues to raise public awareness at grassroots level (3) representing children in test cases to advance jurisprudence on child rights where necessary and (4) liaising with officials in similar posts in other countries, to help Namibia keep abreast of vital developments and best practices in the field. Through these means, children's rights can be fully realised in Namibia.

Since Namibia already has the Office of the Ombudsman, we suggest that the proposed Children's Ombudsman should be incorporated into the existing structure. The Committee on the Right of the Child found that specialist independent human rights institutions for children have been established by a growing number of State parties. However, the Committee is of the view that "where resources are limited, consideration must be given to ensuring that the available resources are used most effectively for the promotion and protection of everyone's human rights, including children's, and in this context development of a broad-based National Human Rights Institution that includes a specific focus on children is likely to constitute the best approach. A broad-based National Human Rights Institution should

include within its structure either an identifiable commissioner specifically responsible for children's rights or a specific section or division responsible for children's rights".

Namibia is a country that has limited resources. Therefore it is sensible to try and make the best use of existing options. The Office of the Ombudsman as a typical broad-based national human rights institution is one of the independent mechanisms which can perform the functions of promoting, protecting and monitoring implementation of a number of Conventions. This makes internal and international cooperation all the more important and indeed vital necessary. The Office of the Ombudsman is a member of the International Coordinating Committee of National Human Rights Institution for the Promotion and Protection of Human Rights, the Network for African National Human Rights Institutions, the International Ombudsman Institute, the African Ombudsman and Mediators Association and the Commonwealth Forum of National Human Rights Institutions.

The Office of the Ombudsman complies with the requirements laid down by the Committee on the Rights of the Child. However, it must be stated that there has been little change over the years in the manner in which we have exercised our powers and carried out our duties and functions. Our approach over the years had been to investigate and resolve mostly maladministration complaints due to a lack of capacity to deal properly with complaints relating to human rights. However this approach is outdated and not in line with worldwide practice, which is to engage in large-scale education efforts in order to become proactive, rather than re-active.

For the reasons set out above, the Office of the Ombudsman is of the view that it would make more sense to strengthen the Office of the Ombudsman with human and financial resources to include within its structure a directorate for human rights, with a specific focus on children's rights. The inauguration of a dedicated staff member within the Office of the Ombudsman with a focus on children's rights would not only economise, but would also connect the protection of children rights provided for in Namibia's Constitution with the protection of other constitutional rights and freedoms. At a practical level, it would also enable the Children's Ombudsman to work within the framework of the Ombudsman Act, which already sets forth powers and procedures for investigations to facilitate the work of the Ombudsman's staff, and to utilise the regional structures, outreach programmes and investigation mechanisms which already exist for the general work of the Office of the Ombudsman.

Through the public consultation process for the Child Care and Protection Bill, the Ministry of Gender Equality and Child Welfare has made substantial progress in highlighting the importance and value of children's rights in Namibia. The Office of the Ombudsman supports this endeavour and would welcome the opportunity to further the progress of children's rights in Namibia through the addition of a Children's Ombudsman to the Office. To paraphrase the sentiments of the first Children's Ombudsman in Norway, it will be difficult to predict what the situation for children's rights in Namibia will be without a Children's Ombudsman, but it is probably safe to say that positive results will not come as fast as they would with a dedicated child protector to help advance children's rights.

**Letter submitted to the Permanent Secretary of the Ministry of Gender Equality and Child Welfare summarising the viewpoint of the Office of the Ombudsman**

## 2.7 Parenting plans

Sometimes more than one person has responsibility for a child, and in some cases this can lead to conflict. It may be that the child's parents cannot agree. It may be that the child is in the care of someone other than the parents, such as a grandmother or a close family friend or foster parents. To help protect the best interests of the child in such situations, the preliminary draft bill provided for parenting plans.

Stakeholders gave support for the concept of parenting plans, provided that the procedure for development and registration of parenting plans was accessible to poorer communities. The Law Society recommended that a parenting plan should require the assistance of a legal practitioner only when the parties cannot come to a mutual agreement. Women's Action for Development (WAD) recommended that parenting plans should specify where a child stays during the holiday period, who covers travel costs, and whether the parents/caregivers agree that the child is mature enough to make independent medical decisions. WAD also noted the need for an enforcement mechanism for parenting plans which are made into court orders.

## 2.8 Mandatory versus voluntary reporting

Reporting laws are designed to bring cases of possible child abuse or neglect to the attention of public authorities who are in a position to help. Mandatory reporting laws *require* people to report cases if they suspect that a child is being mistreated, while voluntary reporting laws *encourage* people to report cases if they suspect that a child is being mistreated. The majority view of the stakeholders who gave written comment was that professionals working with children should be required to report, while reporting should be voluntary for all other people.

## 2.9 Prevention and early intervention

Prevention and early intervention services are services that are designed to reduce the risk of violence or other harm within the family environment. A number of stakeholders supported the idea of allowing a court to order families to receive prevention or early intervention services if the child is deemed to be at risk of becoming a child in need of protection.

The preliminary draft bill included a broad list of potential prevention and intervention services. Women's Action for Development recommended that the list of services should include spiritual guidance and psycho-social services which deal with trauma and build a child's self-image to strengthen the child against being a victim of abuse.

## 2.10 Child protection proceedings

Women's Action for Development supported the concept of using pre-hearing conferences, which are meetings held prior to a court hearing to try and reduce the issues in dispute.

The Church Benevolence Board recommended that the time period for a social worker to investigate a child protection case before it goes before a children's court should be increased from 30 to 60 days.

With regard to legal representation in child protection cases, the Law Society recommended that prosecutors continue to be automatically designated as children's court assistants (as under the current law) so that they can be delegated to assist if legal representation is not readily available. Women's Action for Development supported the inclusion of provisions to allow for independent legal representation.

Although the preliminary draft included an extensive list of possible court orders, to allow courts to tailor their orders to fit the situation of particular children, the Law Society recommended adding a general catch-all provision authorising the children's courts to make any order that would be in the best interests of the child.

A private legal practitioner recommended that the rules of the children's court should be revised and streamlined in order to ensure that litigation is expedited and cost effective.

## 2.11 Foster care

The preliminary draft bill generally followed the existing framework for foster care. However, social workers consulted by international expert Bep van Sloten in the course of a study on foster care options undertaken on behalf of the Ministry and UNICEF, supported the need to reconceptualise foster care by separating such care into (a) kinship care – which refers to any private arrangement made between the child's parent and a family member or friend for the care of a child and (b) foster care – which refers to care by strangers who have applied to the Ministry to be foster parents and have received training for this role. A kinship carer should have some basic parental rights and responsibilities, but the parent should retain the essential aspects of custody and guardianship, such as the ability to end the arrangement and to decide on major matters such as consent to the marriage of a minor. If a disagreement arises in the context of kinship care, the family should be able to approach a social worker to arrange a family group meeting to help decide the matter.

The Church Benevolence Board (composed of private social workers) did not support the need to register a list of prospective foster parents. Their justification was that private organisations often have their own lists and the proposed central list would be an unnecessary duplication.

The Church Benevolence Board further recommended that the maximum number of children fostered should be measured with respect to the *household* rather in terms of an individual carer. Women's Action for Development recommended that in general, a maximum of three foster children should be placed with a single foster parent, while Ministry social workers supported the placement of a maximum of six children per foster parent.

## 2.12 Residential child care facilities

There are a number of facilities that provide care for children, such as children's homes, crèches, day care centres, shelters and places of safety. In terms of the preliminary draft bill, these facilities must be registered with the Ministry of Gender Equality and Child Welfare, and must comply with minimum standards prescribed by legislation.

The Church Alliance for Orphans recommended that community hostels should be registered as they are currently not covered by any legislation. Social workers from the Ministry recommended that early childhood development centres should also be registered under the forthcoming law. The Friendly Haven Shelter recommended that facilities should be required to renew registration certificates on an annual basis.

The Michelle McLean Children Trust supported the need for simple provisions regarding minimum standards as many people who wish to care for children may not be able to do so if the standards are too complex. The Trust also recommended that a list of registered facilities should be published in the government gazette, to assist with the identification of approved facilities that would be eligible to receive funds from donors.

The Ministry organised a small meeting with some of its key social workers to discuss feedback received on residential child care facilities during the course of the foster care study commissioned by the Ministry. The social workers at the meeting identified a need for the Ministry to have greater powers to inspect and monitor homes for children, and suggested that homes should be penalised if they refuse to allow a social worker access to inspect the facility. They noted that a penalty is also required for homes that refuse to register, although conditional registration should be permitted for homes that are not yet up to standard but are taking good faith steps to meet the requirements.

## 2.13 Adoption

One issue relating to the provisions on adoption in the preliminary draft concerns the waiting period (or "cooling off period"), which is a designated time between the point when consent is given by the biological parent(s) and the point when the adoption is made final by court order. The intention of this waiting period is to allow time for the biological parents to reconsider the decision to give a child up for adoption. Internationally, waiting periods commonly range from 30-90 days. The Church Alliance for Orphans

(CAFO) recommended that the waiting period should be 60 days. Women's Action for Development (WAD) recommended a shorter 30-day waiting period.

CAFO and WAD both recommended a defined age gap between the prospective adoptive parent and the child. Social workers from the Ministry recommended that the minimum age for adoption should be 25.

The Law Society was of the opinion that the law should set a definitive age at which the child must give consent for adoption. In contrast, WAD did not support setting a specific age at which a child must give consent for adoption, as opposed to tying consent to the maturity of a specific child.

The Law Society recommended that it should be possible to apply to rescind an adoption order if this would be in the best interests of the child, without requiring any other reasons.

A private legal practitioner noted the need for more provisions on intercountry adoption, including details of timelines and roles and responsibilities.

There was universal support for a ban on advertising for adoption and surrogate mothers.

Two personal interviews were conducted with stakeholders on the topic of adoption. One interviewee was a legal practitioner working in the field of family law who is also an adoptive parent, and the other was an adoptive parent working for a Namibian non-governmental organisation. These two stakeholders had differing views regarding the provisions that should be included in the bill. For example, while one had concerns about the necessity of a waiting period, particularly if it is a baby who is being adopted, the other felt that a waiting period was essential.

One of the adoptive parents interviewed had adopted her child through the South African adoption system. She noted that there were some differences in the system compared to the Namibian process, such as the fact she had to prove that she was healthy and had at least 20 years to live, and that she had to attend compulsory parenting classes. She suggested that Namibia might consider incorporating requirements such as these.

## 2.14 Grants

There are four types of grants available for the care and protection of children in Namibia in terms of the Children's Act of 1960: (1) child maintenance grants; (2) foster care grants; (3) allowances paid to children's homes and places of safety; and (4) grants for children with disabilities. The preliminary draft bill made no provision for any grants. Stakeholders were asked to consider what type of child-related grants were needed in Namibia.

Many of the Ministry social workers supported the concept of a universal child care grant, explaining that a means-tested grant will still miss the most marginalised persons

with the least resources. However, if no universal child grant is implemented, they recommended that there should be a means-tested child maintenance grant which could be made available to kinship carers as well as parents. Courts should not be involved in the authorisation of grants for kinship carers, as this currently takes up too much court and social worker time without providing any clear protections for the children involved.

The Michelle McLean Children Trust cited concern about delays in processing grants for children in places of safety. They noted the need to revise the process.

## 2.15 Consent to medical interventions

### Consent to medical treatment and surgery

The age of consent for medical treatment and surgical operations under the 1960 Children's Act is 18. Stakeholders were asked to consider whether this is adequate, or whether the Child Care and Protection Bill should set a lower age of consent or use some other standard such as an assessment of the child's maturity. Few written comments were received on this topic. The Church Benevolence Board recommended that a child should be able to consent to surgery only at age 18. The PhD student recommended age 16 for both medical treatment and surgery, but suggested making a differentiation between medical and cosmetic treatment.

### Consent to HIV testing

Stakeholders were also invited to comment on the age at which a child should be able to get an HIV test without parental permission. Few written comments were received on this topic, and none from organisations working in the field of HIV/AIDS. Those who did comment expressed concern that although a child should be able to independently consent to HIV and other medical testing, the child might still need adult support to deal with test outcomes. To overcome this problem, one individual stakeholder recommended that a child should be accompanied by an adult of his or her choosing rather than specifying that the adult must be the parent or guardian (who might not be supportive).

## 2.16 Child labour

The preliminary draft bill included some general provisions about the worst forms of child labour. Stakeholders were asked to give examples of the worst forms of child labour. One individual stakeholder recommended that the law should make it a crime to let a child work during school hours. This stakeholder also called for the expansion of the proposed provision on sexual exploitation to include pornography, child prostitution and other forms of sexual exploitation. The National Society for Human Rights proposed that the provisions on the worst forms of child labour should protect children under the age 18 against recruitment into armed forces and use in armed conflicts.

## 2.17 Child-headed households

The preliminary draft bill identified a child-headed household as a household where all three of the following circumstances are present: (1) the parent or care-giver of the household is terminally ill or has died; (2) there is no adult family member available to care for the children in the household; and (3) a child has assumed the role of care-giver for some other child in the household. The bill also provides for the role of an adult to oversee the household. One set of written comments, echoing a recommendation made in some of the consultative meetings, supported the need for a simple complaints mechanism for children living in child-headed households.

## 2.18 Harmful cultural practices

The preliminary draft bill did not include any statement on harmful cultural practices, even though this issue is addressed in the African Charter on the Rights and Welfare of Children.<sup>70</sup> One individual stakeholder recommended the inclusion of a provision prohibiting harmful cultural practices such as this: “No child should be subjected to female genital mutilation, some forms of male circumcision, sexual initiation, early marriage and betrothal or any other cultural practices which are harmful to the child’s physical and mental well-being”.

Women’s Leadership Centre provided a list of harmful cultural practices they had identified during research conducted in the Caprivi region. These include:

- ☉ *malebe* (stretching the labia minora)
- ☉ *kukonyiwa inge ku omile* (dry sex)
- ☉ *sikenge* (initiation)
- ☉ *kutamunwa* (testing for sexual readiness)
- ☉ *mulaleka* (having sex with someone who is asleep)
- ☉ *kufwamena* (widow cleansing)
- ☉ *lipazo* (scarification)
- ☉ *ku zwisa sijabana* (removal of growths)
- ☉ arranged and forced marriages.

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<sup>70</sup> Article 21 of the African Charter reads as follows:

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
  - (a) those customs and practices prejudicial to the health or life of the child; and
  - (b) those customs and practices discriminatory to the child on the grounds of sex or other status.
2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

## Child trafficking

Responses on the provisions for trafficking were received from Adv Beatri Kruger, a senior lecturer in criminal law at the University of the Free State whose current research focuses on trafficking and from Adv Nyoni, Chief Legal Officer and the Head of Sexual Offences, Domestic Violence and Maintenance Unit in the Office of the Prosecutor-General.

These inputs noted that the definition of trafficking in the bill should be aligned with international definitions and adjusted to cover trafficking within Namibia as well as cross-border activity. They also recommended that the criminal offences in the bill should cover not just individuals, but also legal persons such as companies and travel agencies which may be involved in human trafficking.

The preliminary bill provided for the return of a child to the place from which he or she was trafficked. The comments recommended that the bill should additionally allow for the return of a child to an alternative location if it is not safe or appropriate to return the child to the original location.

It was suggested that there should be protection for the privacy of victims of trafficking and some provision to ensure that foreign victims of trafficking who find themselves in Namibia are able to receive key state services.

Technical recommendations were made regarding extra-territorial jurisdiction, the prohibition of criminal prosecution of victims of trafficking for violation of immigration laws and the wording of some provisions on protective measures for trafficking victims.

## Underage drinking

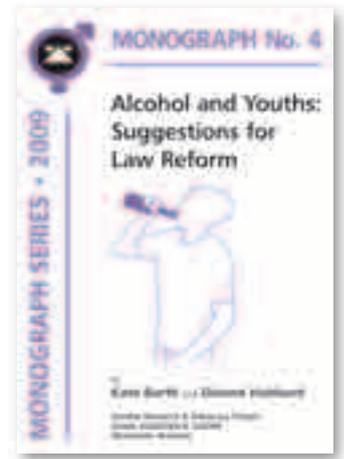
The Self-regulating Alcohol Industry Forum (SAIF) provided feedback on the possibility of including provisions on underage drinking in the bill. The preliminary draft bill was silent on this topic, but proposals for law reform in this area had been discussed in a monograph published in early 2009 by the Legal Assistance Centre.<sup>71</sup> A summary of these proposals was included in the factsheets to spark further discussion. The key proposals were as follows:

1. Prohibit children under the age of 18 from being in certain types of drinking establishments except when accompanied by a parent or guardian.
2. Require alcohol sellers to confirm the age of the buyer by checking identification and strengthen penalties for presentation of false identification by the buyer.
3. Make alcohol suppliers and sellers legally obliged to check the age of the buyer through an identification check and strengthen penalties for presentation of false identification.
4. Clarify situations where alcohol can be supplied to persons under age 18 (for example as a religious sacrament, or in moderate amounts for older children drinking under parental supervision).

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<sup>71</sup> Legal Assistance Centre, *Monograph 4 - Alcohol and Youths: Suggestions for Law Reform*, 2009.

5. Prohibit manufacture of homebrew by children under age 18.
6. Define certain types of coerced, induced or permitted alcohol consumption by children as a form of child abuse by the adults who are involved.
7. Put in place more restrictive rules for persons under age 21 who drink and drive.



SAIF was in agreement with all recommendations except for the proposal for more restrictive rules on drinking and driving for persons under age 21. SAIF noted that this may not address the real issue as research suggests that young adults will always be a high risk category, prone to irresponsible and impulsive behaviour. This implies that irrespective of what the drink-drive limit is, they engage in high risk behaviour. SAIF also noted that there is not enough evidence to support a correlation between more restrictive rules for under-21s and lower levels of crashes or fatalities. Instead, SAIF recommended that effective law enforcement and high visibility campaigns by police and road traffic personnel would be effective in curbing the incidence of drunken driving.

Further support for the recommendations on underage drinking comes from the people consulted during the drafting of the monograph, namely René Adams (Coalition on Responsible Drinking), Verona de Preez (Etagama Rehabilitation and Resource Centre), Maretha Maree (University of Namibia), Connie Botma (UNICEF), Dr Johnny Strijdom and Patricia Hoeksema (Namibian Breweries, also chairperson of SAIF).

**“The alcohol industry firmly believes that alcohol-related harm can only be addressed through a targeted approach. As such, we are pleased to note the extensive work that has gone into addressing issues pertaining to children and alcohol.”**

**Patricia Hoeksema, Chairperson, Self-regulating Alcohol Industry Forum (SAIF)**

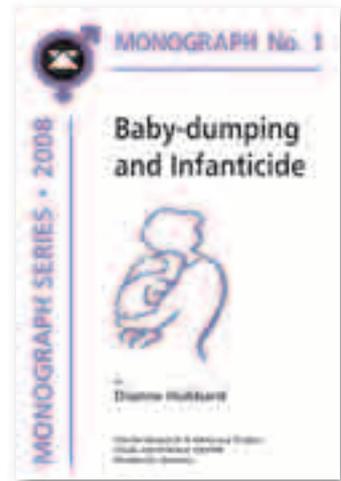
## Baby-dumping

Baby-dumping and infanticide are significant problems in Namibia, although we have no national statistics. While the killing of a baby is a crime, it can be difficult to judge these cases because of the complex physical, mental and emotional factors involved – such as a special form of depression called “post-partum depression” that some new mothers experience. Some countries make infanticide a separate crime to murder. The Legal Assistance Centre made a series of recommendations to address baby-dumping in a monograph published in 2008.<sup>72</sup>

<sup>72</sup> Legal Assistance Centre, *Monograph 1: Baby-dumping and Infanticide*, 2008

Namibia's existing legal framework would need only minimal alteration to provide for safe places to leave unwanted babies. The key changes would be:

1. to provide that parents who leave infants at designated places (such as hospitals) will not be prosecuted for child abandonment;
2. to provide safeguards for fathers and other family members who might be willing to take responsibility for the child by providing for registers similar to the putative father registers used in the United States;
3. to ensure that the forthcoming law reforms on adoptions provide for abandonment as a grounds for dispensing with parental consent to adoption, perhaps with a short period during which either parent could reclaim the infant; and
4. to ensure that no child is put up for adoption before police reports of missing children are checked (as a safeguard against fraudulent misuse of safe havens).



These recommendations formed the basis of discussion about the revision of the draft bill. Several stakeholders who gave written input supported the proposals to include provisions to address baby-dumping.

### 3. Assessment

The level of response for the written consultations was lower than expected. However, where responses were received, the extent and breadth of input was good. Some organisations, such as Women's Action for Development and the Law Society, provided detailed comments about many sections of the bill. Other organisations, such as the National Society for Human Rights or the Michelle McClean Trust, provided comments only on a few selected topics. Both forms of feedback were welcomed.

As discussed in the introduction, the low level of response may have been due to the fact that the other avenues for input were particularly effective, and people felt that they had already given their opinions in various workshops and meetings. It also indicates that appeals for written input should not replace forums which allow for face-to-face discussions amongst experts.

The experience with this bill also shows that, due to competing interests, the involvement of key expert stakeholders is likely to be fairly limited. Thus, appeals to expert stakeholders for written feedback cannot replace the role of experts hired to analyse and revise the bill. Therefore a sufficient budget is needed to ensure that appropriate experts can be hired to assist with work on a law reform project.

# INCORPORATING THE INPUT

## 1. Collating the input

In order to make the data received from the various forms of consultation usable, it was necessary to collate the input by topic. This was done on behalf of the Ministry by the Legal Assistance Centre. The input was logged into tables arranged by topic, for easy reference. These tables indicated the source of the input, such as whether it came from a children's consultation, an adult workshop, a member of the public or a stakeholder. The purpose of this identification was to help to weigh opinion properly for purposes of revising the bill. For example, the opinions of social workers were particularly important on the issue of investigating potential child protection cases, while children's opinions on minimum standards in residential child care facilities were of particular relevance.

The public consultation process was designed to be as inclusive and as flexible as possible. It was not designed as a research study. For example, the responses received do not come from a representative sample of Namibians. This means that it would have been meaningless to compile detailed statistical summaries, such as recording how many people consulted preferred an age of majority of 18 compared to those who preferred 21. The purpose of the consultations was to give some indication of the range and division of opinion, and to record the reasons given to motivate different positions in order to guide policy decisions on controversial matters. Therefore detailed breakdowns of opinion are not reported.

*“What happen with step children to a father if the mother past away and the biological father who did not fulfill parental responsible want his kids back?”*

– SMS

## SAMPLE ENTRY FROM TABLE COLLATING THE INPUT RECEIVED

### Objectives and Guiding Principles of the Child Care and Protection Act

Comment	Source (media)	Date	Information about person (age, sex, occupation)	Town and region	Any other details
<p>The discussion on the medical decisions children should be allowed to make diverted to a discussion about the rights of children and whether children should be children or whether the law should give children the right to decide certain issues affecting them.</p> <p>There was concern that the bill is placing too much of a burden on children and that this ruins their childhood. There was also a concern that the bill is proposing too many different ages where decisions can be made. This was felt to be confusing for the service providers.</p> <p>One participant was particularly strong in her opinion that children should be allowed to be children and that the bill is giving them too many responsibilities.</p> <p>The discussion also led to a debate on rights vs. responsibilities. The group agreed with the proposal to include children's responsibilities in the bill as this would help to ensure that child do not abuse their rights. The group were not concerned that a violation of responsibilities could not be punished. A regional school counsellor commented that although responsibilities could help, they are insufficient if teachers and other adults are not respectful to children.</p>	Regional Meeting	28-30 April 2009	A group of 38 adults from various Ministries (Health, Gender, Education, Justice & Safety & Security), NGO's, Community Members and Foundations, Regional Councilors, Women and Child Protection Services and Churches.	Keetmanshoop, Karas	Comments are taken from the group as a whole during facilitated discussions about children in need of care and protection, foster care and adoption, facilities that care for children and early intervention services.

## 2. Revising the bill

The collated input was given to a technical team which revised the preliminary draft bill in consultation with the Ministry and the Technical Working Group, with regular advice from legal drafters in the Ministry of Justice.

The revision of the draft was done primarily by Dianne Hubbard of the Legal Assistance Centre and Adv Hennie Potgieter, a professional legal drafter who is based in South Africa and was employed as a consultant. Adv Potgieter was chosen because of his experience with drafting children’s legislation in a number of countries in Southern Africa. Mr Willem Bekker of the Ministry of Justice also contributed invaluable advice.

The Technical Working Group agreed that the revised draft should be considered by Namibia’s Cabinet and then referred to the legal drafters in the Ministry of Justice for final technical attention before being tabled in Parliament.

The revised draft incorporates brief commentary designed to assist policy-makers in navigating the bill and understanding the purpose of certain provisions.

In December 2009, the revised bill was presented to the Technical Working Group, which approved it, with a few amendments, for purposes of presentation to Cabinet.

## 3. The magnitude of change

The exciting outcome of the consultation process is that it fundamentally changed the draft bill; as one of the legal drafters in the Ministry of Justice commented, “This bill is completely different from the one we started with.”



The revised bill included provisions on the following topics, which had not been addressed at all in the preliminary draft bill:

- ⦿ children's responsibilities
- ⦿ family meetings
- ⦿ incorporation of vulnerable witness provisions previously applicable only in the criminal justice context into all children's court proceedings
- ⦿ forensic examination of children who may be victims of criminal child abuse or neglect
- ⦿ grants for children
- ⦿ baby-dumping
- ⦿ underage drinking
- ⦿ the four key Hague Conventions on children
- ⦿ the registration of early childhood development centres, shelters for abused women and children, and community hostels
- ⦿ harmful cultural practices
- ⦿ refugee and immigrant children
- ⦿ the special needs of children with disabilities.

## EXAMPLES OF NEW PROVISIONS ADDED TO THE REVISED BILL

### **Children's duties and responsibilities**

In the application of this Act, and in any proceedings, actions and decisions by any organ of state concerning any child, due regard must be had to the duties and responsibilities of a child to –

- (a) work for the cohesion of the family, to respect the rights of his or her family members and to assist his or her family members in times of need;
- (b) serve his or her community, to respect the rights of all members of the community and to preserve and strengthen the positive cultural values of his or her community in the spirit of tolerance, dialogue and consultation;
- (c) serve his or her nation, to respect the rights of all other persons in Namibia and to preserve and strengthen national solidarity; and
- (d) contribute to the general moral well-being of society, provided that due regard must be given to the age, maturity, stage of development and ability of a child and to such limitations as are contained in this Act.

### **Family access to children in alternative placements**

A children's court making an order that a child be placed in alternative care may make an order regarding regular access to such child by any member of the child's family, including a step-parent, or any other person if the court finds that such access would be in the child's best interests, and may impose such conditions relating to such access as it deems fit.

The revised bill also contained a new approach to kinship care and foster care which was completely different from both existing law and the proposals in the preliminary draft. This is an important change as it moves the bill from being centred around Western concepts of child care and protection to a reflection of the specific needs of children in Namibia. While international examples of care and protection are extremely important, there is always a need to localise approaches to ensure that they are relevant. The provisions for kinship care are one such example. The importance of this change in the bill is reflected by the fact it is one of the few revisions in the bill that received virtually unanimous support from community members and stakeholders.

Another fundamental change which resulted from the consultation process is the incorporation of the Children's Status Act into the revised Child Care and Protection Bill, to ensure the full harmonisation of these two laws. This idea was motivated by the magistrates who deal with cases under the Children's Status Act, and then widely supported by other stakeholders who work directly with the laws in question.

The original idea to create a new Children's Ombudsman was modified to create a Children's Advocate in the existing Office of the Ombudsman, acting on advice on how to make the most efficient use of limited financial and human resources.

Some of the proposals in the preliminary draft bill were not retained in the revised bill. For example, the proposal for a National Child Protection Register was rejected by most people consulted. This is another example of how international practice must be assessed for suitability in Namibia. The South African experts discussed the positives and negatives of implementing a child protection register. One of the major disadvantages is the cost involved in setting up and running the register. Namibia has a very small population and alternative methods can be used here to fulfil the same function served elsewhere by such a register. In this case, all people working with children will be required to produce a police clearance certificate.

Many other smaller but equally important changes were made. For example, a proposed provision on parenting plans remained in the revised bill. This concept, based on South African practice, is completely new to Namibia but found approval amongst those consulted. However, a requirement in the initial proposal that a lawyer must assist in the development of a parenting plan has been removed. This is important because lawyers are inaccessible and unaffordable to many people in Namibia.

The revised bill also incorporates new terminology designed to move away from outdated concepts of "child welfare" which have been internationally replaced by an emphasis on "child protection", and to signal a break with past practice and philosophy towards a new and more child-centred approach. Thus, for example, Commissioners of Child Welfare have become Children's Commissioners, and what the preliminary draft called the Child Welfare Advisory Council has been re-termed the National Advisory Council on Children.

The institutions for troubled children which were long ago referred to as “reform schools”, then later on as “schools of industries”, were called “educational and vocational training centres” in the preliminary draft. Because this term proved to cause confusion during the public consultations, these institutions have been re-named “education and development centres” in the revised draft. This terminology reflects the fact that the primary function of these facilities is not to train children for jobs, but to assist them with behavioural issues so that they can develop into well-functioning adults.

The internationally-used term “residential child care facility” has been introduced into the revised bill as a category of facilities which includes places of safety, children’s homes and education and development centres – since there is common ground between all sorts of places where children are cared for a residential basis.

Many other draft provisions have been revised to incorporate suggestions from members of the public and stakeholders. Some examples are shown below.

## EXAMPLES OF THE REVISION OF THE BILL TO INCORPORATE SUGGESTED IMPROVEMENTS

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### Criteria for child-headed households

#### PRELIMINARY DRAFT

The Minister may recognise a household as a child-headed household if –

- (a) the parent or care-giver of the household is terminally ill or has died;
- (b) no adult family member is available to provide care for the children in the household; and
- (c) a child has assumed the role of care-giver in respect of a child in the household.

#### REVISED DRAFT

The Minister may recognise a household as a child-headed household if –

- (a) the parent or care-giver of the household is **chronically or** terminally ill, **has abandoned the children in the household** or has died;
- (b) no **suitable** adult family member is available to provide care for the children in the household;
- (c) a child has assumed the role of care-giver in respect of a child in the household; and
- (d) **it is in the best interests of the children in the household.**

# Functions of National Advisory Council on Children

## PRELIMINARY DRAFT

The functions of the Council are to –

- (a) advise the Minister on matters relating to the welfare of children who receive services under this Act and any other law relating to child welfare;
- (b) advise and assist, where appropriate, any organ of state in the carrying out of their functions and duties under this Act;
- (c) advise the Minister and where appropriate any organ of state on the need for, and initiation and or amendment of laws on matters relating to the welfare of children;
- (d) prepare and submit annual reports to the Minister respecting activities of the Council and the exercise of duties and functions of the Children's Ombudsperson;
- (e) design and propose for adoption, to the Minister and where appropriate organs of state, programs of prevention, protection or care, as the Council considers necessary for the best interests of children;
- (f) study and investigate the implementation of this Act and other laws related to it for the purpose of making such recommendations for improvement, to the Minister or any other relevant organ of state, as the Council considers necessary for the best interests of children; and
- (g) perform any other function assigned to it by the Minister.

## REVISED DRAFT

The functions of the Council are to –

- (a) **encourage inter-sectoral cooperation on matters relating to children;**
- (b) advise government on matters relating to the welfare of children who receive services under this Act and any other law relating to **children;**
- (c) advise and assist, where appropriate, any organ of state in the carrying out of their functions and duties under this Act **and any other law relating to children;**
- (d) advise the Minister and where appropriate, any organ of state on the need for **reform of the law on matters relating to children;**
- (e) prepare and submit annual reports to the Minister relating to the activities of the Council;
- (f) **design and propose programmes of prevention, protection or care, as the Council considers necessary in the best interests of children, for consideration by the Minister and where appropriate, organs of state;**
- (g) study, investigate **and monitor** the implementation of this Act and other laws related to it for the purpose of making such recommendations for improvement to the Minister or any other relevant organ of state, as the Council considers to be in the best interests of children; and
- (h) perform any other function assigned to it by the Minister.

The revised draft incorporates decisions made by the Ministry on a number of contentious issues. For example, it lowers Namibia's age of majority from 21 to 18, and makes 14 the age of independent consent for medical interventions other than surgery (provided that the individual child in question also satisfies the medical practitioner that he or she possesses sufficient maturity to understand the intervention in question and its consequences). It was difficult for the Ministry to make decisions on these issues, as there was no clear public consensus. However, the Ministry was guided by the reasons put forward in the public debates around the various options. While the final decisions on such matters will ultimately rest with the Namibian Parliament, the consultation process has enabled the Ministry to make informed recommendations based on a sound assessment of the pros and cons pertaining to various issues.

One of the most exciting changes is the "Namibianisation" of the draft bill. Whereas the preliminary draft drew heavily on provisions in the recently-enacted South African Children's Act, the revised draft is now tailored to suit the Namibian situation. It continues to draw on precedent and best practices from other countries in the region, including South Africa, but it is now a bill which can be identified as being uniquely Namibian.

While the final Namibian law may serve as a model for other countries who are reforming their children protection laws, it is the Ministry's hope is that the consultation process itself will also be used as a model for other countries to enable them to draft new laws which reflect their own country's individual needs and priorities.

*"The Office of the Ombudsman would like to congratulate the Ministry of Gender Equality and Child Welfare on its extensive public consultation on the Child Care and Protection Bill, which is sure to make the final law more responsive to the needs of Namibia."*

Letter submitted to the Permanent Secretary  
of the Ministry of Gender Equality and Child Welfare  
summarising the viewpoint of the Office of the Ombudsman

# CONCLUSION

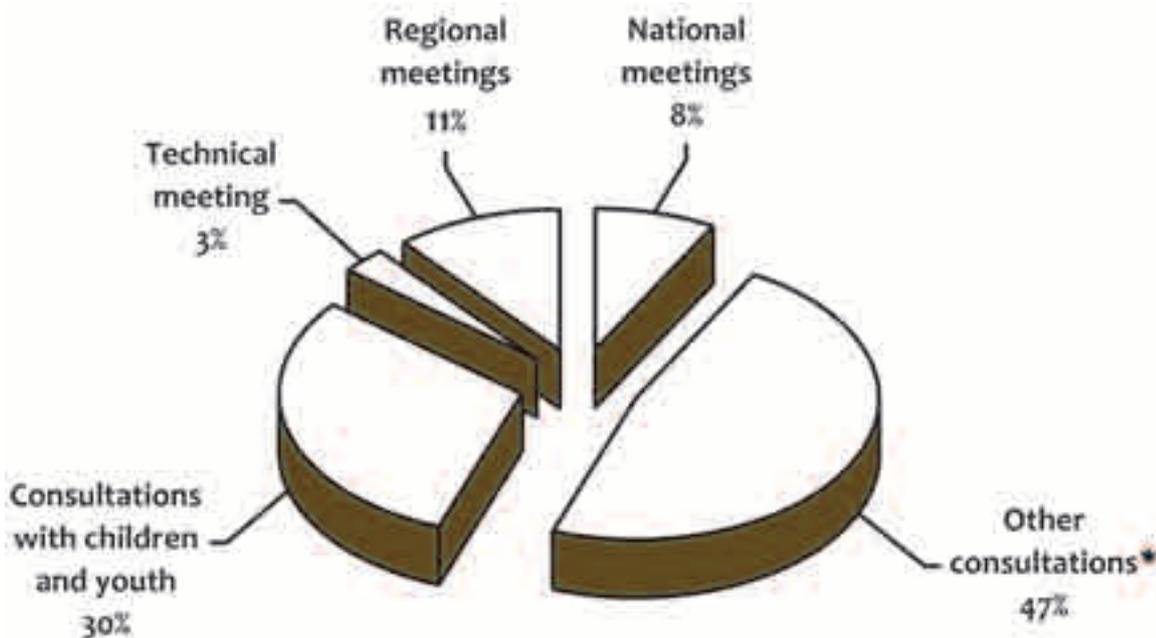
## 1. Highlights of a successful process

The revision process of the Child Care and Protection Bill is 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. Some of the highlights from the revision process are as follows:

- ⦿ Twenty-one different factsheets were produced about the Child Care and Protection Bill. The factsheets were produced in a total of five languages.
- ⦿ Approximately 40% of the Namibian population would have seen information about the draft bill in factsheets circulated as newspaper inserts in three languages.
- ⦿ Regional consultations involved participants from all 13 regions in Namibia.
- ⦿ National consultations involved international guests from three continents.
- ⦿ Children and youth represent 30% of all people consulted.
- ⦿ 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.
- ⦿ About 47% of the people who attended workshops and conferences about the draft bill did so at meetings that had not been originally planned – a reflection of the public interest in the topic and a lesson in the importance of flexibility.

*“Yes, parenting plans will be useful. There are many children whose parents are divorced and always fight over him/her.” – SMS*

- ⦿ At least 38 radio slots were broadcast – and possibly many more.
- ⦿ A total of 25 articles, opinion pieces, letters or text messages on the bill appeared in Namibian newspapers over a period of seven months.
- ⦿ Eight articles appeared in Namibian magazines over a period of ten months.
- ⦿ The consultation process was featured on television nine times.
- ⦿ A total of seven topics were discussed on *Facebook* in a group which ultimately had almost 300 members.
- ⦿ Information about the revision process was circulated in five electronic-newsletters, both national and international.
- ⦿ One in eight people who were asked for detailed written input responded with submissions.



A series of workshops, meetings and conferences were held to consult with the public. The majority of the persons reached took place through unplanned consultations, which shows that the need to be alert to unplanned opportunities, and to budget for them, is extremely important. The second largest group was consultations targeting children and youth. The fact that almost one-third of all people consulted were children and youth is a major achievement.

\* “Other consultations” describes the workshops and meetings conducted during the consultation process in addition to the events originally planned. These are detailed in Chapter 8 and include meetings convened by Yelula/U-Khâi, the National Youth Council, LifeLine/ChildLine, the Magistrates Commission and the Orphans and Vulnerable Children Permanent Task Force, amongst others.

## 2. Successful partnering

The consultation around the Child Care and Protection Bill was led by the Ministry, with UNICEF and the Legal Assistance Centre as key partners. The successful implementation of the process shows how partnerships between government, international organisations and local non-governmental organisations can be extremely successful. None of the three organisations would have been able to implement the revision process as effectively alone. As a result, the combined effectiveness of the partners was greater than the sum of the individual impact the partners could have had.

This cooperative approach also demonstrates the importance of joint efforts between government and civil society in law reform initiatives. Without a strong civil society, it would be harder for government to get feedback from the people it is supposed to serve. Non-governmental organisations help bring people with common interests together so that they can express their opinions to government more effectively. This certainly proved to be true in respect of the activities conducted around the Child Care and Protection Bill; without the additional input from civil society, the total input received would have been radically reduced.

## 3. Key recommendations for effective public consultations

Many of the techniques used in this consultation process were new, not only to Namibia but also to the region. Some of the most successful activities, such as the development of factsheets, feedback by text message and the development of a *Facebook* group are already being replicated internationally. The use of Namibia's law reform process as a best practice model is already starting to emerge. To assist others who may embark on similar processes, we have included recommendations throughout this report on how to optimise public consultations on law reform.

The key points for successful consultation may be summarised as follows:

- ④ Encourage multi-sectoral involvement in the leadership team.
- ④ Allocate a significant amount of time for research and preparation before the consultation process starts, so that information can be compiled on the national and international context and on best practices in other countries.
- ④ Allow time to develop accessible, well-written and well-researched materials for the public and the media.
- ④ Engage the media. Consider assigning a dedicated media liaison person for a set period of time during the process to keep the issue alive in the media.

- ☉ Make special efforts to target the groups of people most affected by the issue – children in this case. For other laws or issues, key groups might be women, communal farmers or people working in certain sectors.
- ☉ Ensure that feedback mechanisms are simple and easy for the public to use.
- ☉ Consider appointing a dedicated person to compile and organise the public feedback into a usable form.
- ☉ Use partner organisations for a “ripple effect” – but plan for unexpected expenses which may arise from this technique.
- ☉ Use as many different means as possible to engage the public, to ensure that different communities are engaged in the process.

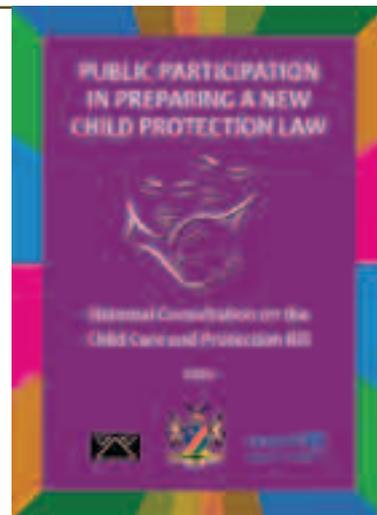
Every law reform initiative will be different. However, the overall goal of consultation remains the same – to maximise public involvement through accessible means. Involving the public is hard work. Maintaining media interest is time-consuming. The budget and timeframe for consultation around law reform needs to reflect these challenges. The budget also needs to be flexible to allow for adaptations to the process during the implementation phase, and to allow for new ideas to be included as the process develops. The goal of public participation in law reform should be to develop community- and stakeholder-led initiatives. This can only be achieved through a flexible consultation process.

While a generous budget is ideal for a national consultation process, the ideas in this report can be scaled up or down as needed. The use of the internet is often a low cost method of soliciting feedback. The incorporation of law reform issues into existing conferences is one way to lower logistical costs. The involvement of the media can reduce the need to produce separate documents about the proposed legal changes. The role of the consultation team is to maximise opportunities within the framework of the available budget.

Second to budget, the most important consideration is the timeline. Because Namibia’s child protection law had already suffered so many delays in moving forward, the Ministry set a tight timeline. The consultation team was given just 12 months to plan the project, consult with the public and incorporate the input into a revised version of the bill. In light of the size of the bill, this deadline was near impossible to meet. However, the deadline was met and the consultation was completed on schedule. The unpaid work and overtime contributed by many people during the process must be acknowledged.

If this process were replicated, we would recommend a longer timeline for such an extensive consultation process. If the methodology for consultation around Namibia’s Child Care and Protection Bill is used as a model, more than one year should be allotted to conduct effective consultation and revision on a bill of this size. A more realistic timeline for such a process might be eighteen months, although nine months to one year would be a feasible timeframe for a less complex law reform proposal. A longer timeline can also help in situations where there are smaller budgets as it allows time to wait for national conferences, or to arrange for regular media coverage of the specific aspects of the proposed law.

A summary document about the key steps, successes and challenges of the revision process for the Child Care and Protection Bill is available from the Ministry of Gender Equality and Child Welfare, UNICEF or the Legal Assistance Centre. It is also available on the Ministry website: <[www.namchild.gov.na](http://www.namchild.gov.na)> and the Legal Assistance Centre website: <[www.lac.org.na](http://www.lac.org.na)>. This document provides a short outline of steps in the consultation process which would be useful to others embarking on similar enterprises.



## 4. Conclusion

Many people were involved in the revision process of the Child Care and Protection Bill. The list of individuals who deserve thanks is too long to include in this report. However, the Ministry would like to acknowledge the key team members involved, namely UNICEF, the Legal Assistance Centre, the children's consultants led by Dr Elizabeth Terry and the international consultants led by Professor Julia Sloth-Nielsen.

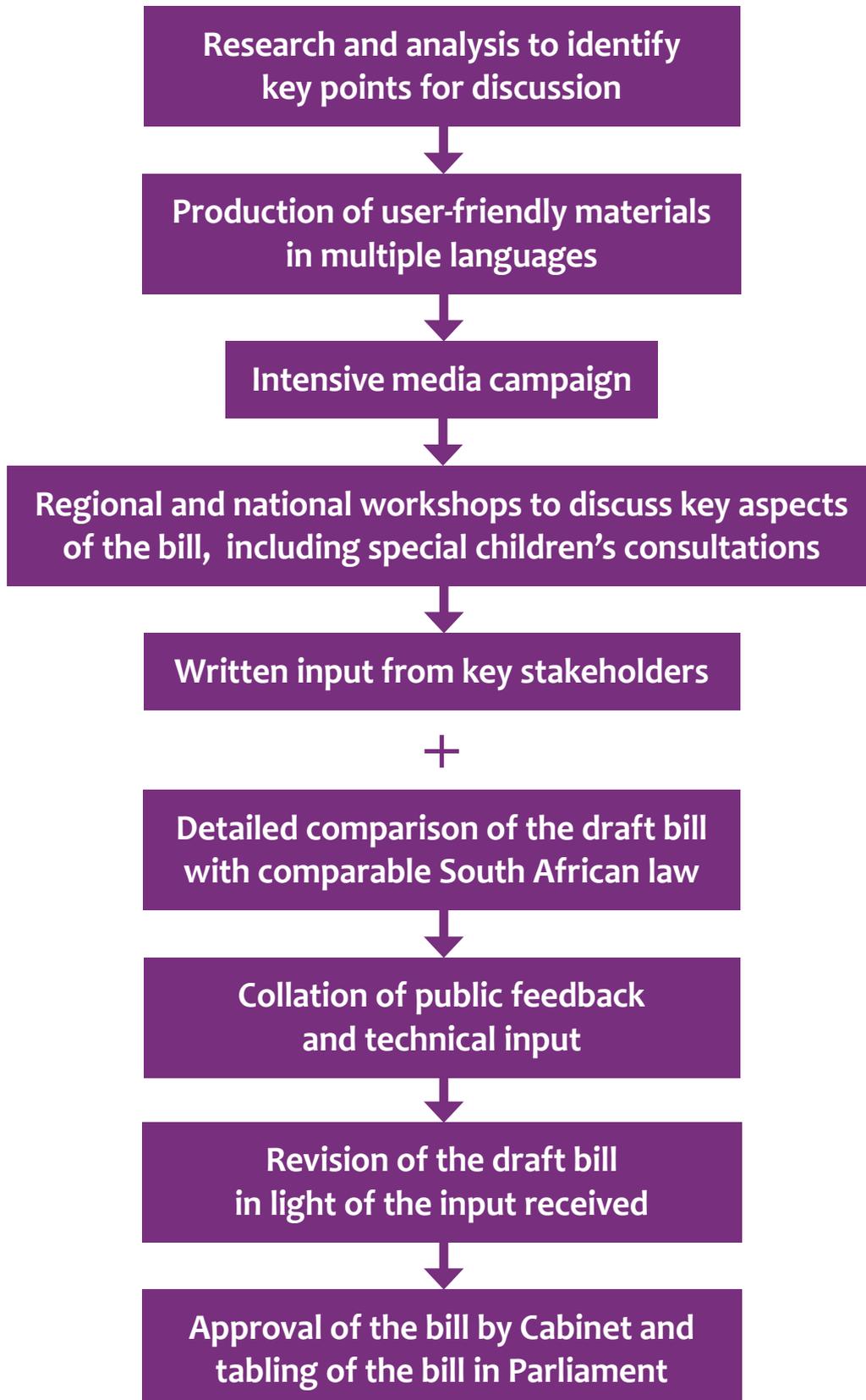
The Ministry would also like to extend its appreciation to all the persons and organisations who gave input on this bill. Not all of the inputs could be included in this report, but all responses were used to develop the revised bill.

The consultation process around the Child Care and Protection Bill is an important landmark in the history of law reform in Namibia. The large-scale involvement of the public has truly shown that Namibia is a democratic nation. Year after year the voice of Namibian civil society is growing, and the Ministry anticipates many further successful consultations with the public in future. The fact that close to one-third of all people consulted were children and youth is a major achievement, and we hope that this is a step towards encouraging more participatory democracy in the next generation.

In addition to providing input for the revision of the proposed law, we believe that the consultation process has been invaluable in raising public awareness of child protection issues. Thus, it is the Ministry's conviction that the consultative process has helped to advance children's rights in Namibia.

It is with thanks to everyone involved that the Ministry concludes this report.

# STAGES IN THE CONSULTATION PROCESS



# HIGHLIGHTS OF A SUCCESSFUL PROCESS

The revision process of the Child Care and Protection Bill is 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. Some of the highlights from the revision process are as follows:

- ⑨ Twenty-one different **factsheets** were produced about the Child Care and Protection Bill. The factsheets were produced in a total of **five languages**.
- ⑨ Approximately 40% of the Namibian population would have seen information about the draft bill in factsheets circulated as **newspaper inserts** in three languages.
- ⑨ **Regional consultations** involved participants from all 13 regions in Namibia.
- ⑨ **National consultations** involved international guests 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 About 47% of the people who attended workshops and conferences about the draft bill did so at meetings that had not been originally planned – a **reflection of the public interest** in the topic and a **lesson in the importance of flexibility**.
- ⑨ At least 38 **radio slots** were broadcast – and possibly many more.
- ⑨ A total of 25 **articles, opinion pieces, letters or text messages** on the bill appeared in Namibian newspapers over a period of seven months.
- ⑨ Eight articles appeared in Namibian **magazines** over a period of ten months.
- ⑨ The consultation process was featured on **television** nine times.
- ⑨ A total of seven topics were discussed on **Facebook** in a group which ultimately had almost 300 members.
- ⑨ Information about the revision process was circulated in five **electronic-newsletters**, both national and international.
- ⑨ One in eight people who were asked for **detailed written input** responded with submissions.

