

Revision of the Child Care and Protection Bill

Suggestions for Radio Shows



**Developed by the Legal Assistance Centre for the
Ministry of Gender Equality and Child Welfare
facilitated by the and supported by UNICEF.**



This document is intended to assist radio show presenters discuss topics related to the Child Care and Protection Bill. Each page is a show summary that includes a possible introduction and key questions for discussion. Factsheets on these topics have been enclosed to provide further information for discussion. Additional factsheets on further topics have also been included should there be further opportunities to discuss some of the other topics.

Feedback from the listeners on these radio shows is very important if changes are to be made to the law. Please forward all feedback that you receive to Rachel Coomer at the Legal Assistance Centre:

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For more information on the draft Child Care and Protection Act, contact **Monalisa Zatjirua** (061 2833116) or **Celeste Feris** (061 2833179) at the Ministry of Gender Equality and Child Welfare, or **Rachel Coomer** at the Legal Assistance Centre (061 223356).

RADIO SCRIPT 1:

Overview & Objectives of Proposed CCPA

Namibia's main law on children is the **Children's Act 33 of 1960**, which was inherited from South Africa at independence. This law is very outdated. It is also a colonial law which is not well-suited to African situations. The Ministry of Gender Equality and Child Welfare wants to replace the old law with a new **Child Care and Protection Act**. The new law should work better to protect and assist Namibian children.

Law reform in this area is essential if children in Namibia are to receive the care and protection they so desperately need. The Bill addresses a number of key areas including age of majority, consent to medical treatment, consent to access contraceptives, consent to HIV testing, foster care and adoption. There are many other areas that the bill covers as well.

The Ministry of Gender Equality and Child Welfare wants to raise the level of public awareness of the forthcoming law and provide opportunities for public input, which will advance overall awareness and understanding of children's rights in Namibia. One of the ways the Ministry is doing this is by asking radio shows, such as this one, to discuss the issues with their listeners. Therefore we will be talking about a number of the issues covered in the bill in the coming week.

QUESTION FOR DISCUSSION

1. What problems do children in Namibia face?

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RADIO SHOW 2:

Age of Majority

Currently, Namibia's age of majority is set at 21, according to a 1972 law called the Age of Majority Act.

However, the draft Child Care and Protection Act defines a child as being someone below the age of 18. This is in line with the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Both documents define the age of a child as a person below 18.

Although the age of majority is 21 in Namibia, minors are given certain rights as they mature.

At age 16, a person has the legal right to make a will, open and operate a bank account and consent to sexual activity.

At age 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.

At age 21, a person has full legal capacity.

QUESTIONS FOR DISCUSSION

1. What should the age of majority be and why?
 - a. Do you think 18-year-olds (or even 16 year-olds) ready for the full responsibilities of being an adult?
 - b. Are 18 year-olds (or 16 year-olds) ready to enter into legally binding contracts?
 - c. Are 18 year-olds (or 16 year-olds) responsible enough to make personal and business decisions without parental consent?

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RADIO SHOW 3:

Consent to medical treatment

The current law sets the age for access to medical treatment at 18. The draft Child Care and Protection Act would allow children to give consent to medical treatment if they are at least 14 years old AND mature enough to understand the benefits, risks, and implications of the treatment.

In situations where an operation is required, the drafts says that a child may also give consent at the age of 14 if he or she is mature enough – but in this case the parent or guardian must also give consent.

Examples to consider:

- *A 10 year-old boy is dying from cancer. He has one month left to live. Should he be allowed to decide on the treatment that he receives?*
- *A 17 year-old girl wants to have bigger breasts. Should she be allowed to decide to have cosmetic surgery?*

QUESTION FOR DISCUSSION

1. At what age should a child be able to consent to medical treatment without the permission of a parent?

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RADIO SHOW 4:

Consent to HIV testing

The draft Child Care and Protection Act proposes that children who are 14 years of age OR children who are mature enough to understand the implications may have an HIV test. This could mean that a mature 10 year-old would be allowed to consent to an HIV test. The draft law says that the test may only be given if the child receives proper counselling before and after the test.

In South Africa, a child over the age of 12 may consent to having an HIV test. In the United States of America, most states allow minors to consent to testing and treatment for all types of sexually transmitted infections. Some states specify that the minor must be a certain age (generally 12 or 14), although most do not set a specific age of consent.

QUESTIONS FOR DISCUSSION

- At what age should a child be able to consent to an HIV test without the permission of a parent?
- Should it be easier for a child to consent to having an HIV test compared to other medical interventions?
- Children may not want their parents to know about any medical issues which relate to sexual activity. Should there be similar provisions on pregnancy testing and testing for other sexually transmitted infections as for HIV testing?

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RADIO SHOW 5:

Access to contraceptives

The current law sets the age for access to medical treatment at 18. The law is not clear about access to contraceptives. It is likely that access to contraceptives that are a type of medical intervention, such as the contraceptive pill and the injection, would be covered by this provision. Access to condoms and femidoms is probably not covered by this provision.

The proposed new law would set the age for accessing medical treatment, which probably includes contraceptives such as the pill and the injection without parental consent at 14.

There is quite a bit of variation from country to country. In Ghana, contraceptives and reproductive health services are provided to any adolescents and couples engaging in sexual activity regardless of age. In Zimbabwe clinics are supposed to provide contraceptives to people over the age of 16. In South Africa, children may have access to contraceptives from the age of 12. If they visit a clinic to get a prescription, they must also be given counselling.

QUESTION FOR DISCUSSION

1. At what age should children be able to access contraceptives without the permission of a parent?

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RADIO SHOW 6:

Child trafficking

Child trafficking is defined as moving a child from one place to another for the purpose of using that child for sex work or forced labour. Poverty, crime and violence contribute to child trafficking. Sometimes parents or other adults responsible for the child agree to the trafficking because they think that the child will have a better life in the new situation. It is a crime for anyone to help with child trafficking in any way. This includes knowingly providing accommodation for children who are being trafficked, or supplying information to traffickers to assist them in trafficking.

Reports of two recent items in The Namibian to illustrate the problem:

The Namibian, June 6, 2008

A US State Dept report on child slavery noted that Namibia may be a destination country for child trafficking although it is not known how big a problem this is. Cases were reported of Zambian and Angolan children trafficked to Namibia for domestic servitude among other things. The report also noted that there is also evidence that small numbers of Namibian children are being trafficked within the country for domestic servitude, forced agricultural labour, cattle herding and possibly vending.

The Namibian, February 1, 2008

Delegates to the first ever conference on child labour were told that Zambian girls as young as 12 years were being trafficked to the Caprivi region with the promise of going to school but find themselves exploited as domestic workers instead. Boys of school going age from Zambia and Angola are brought in to herd cattle in northern Namibia. Children are also used to commit adult crimes while sexual exploitation of girls in return for food, money, school fees and school uniforms are on the increase.

QUESTIONS FOR DISCUSSION

1. Are you aware of children in Namibia who may be the victims of child trafficking?
2. What should happen when a family member trafficks a child for their own profit or benefit?
3. Should family members be treated more gently by the law if the family is desperately poor or if the family believes the child will have a chance at a better future?

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RADIO SHOW 7:

Foster Care

There are 14,000 children in Namibia in foster care, most of whom are in the care of relatives but some are living with strangers. The international definition is that foster care is a short-term placement of children. However, in countries like Namibia, there is kinship care where extended relatives look after children in their family. This is a type of foster care but their stay with the relatives is often long-term rather than short-term.

The current law is based on a different vision of foster care. It is based on the idea that foster care is when 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.

The rules and regulations for grants for children in Namibia are complicated:

- A biological parent can get a state maintenance grant if the other parent is dead, in prison or receiving an old age pension or disability grant and the income of the parent making the application is less than N\$1000/month. This grant is N\$200/month for the first child and N\$100/month for each additional child up to a total of six children.
- A foster parent can get a grant of N\$200/month for the first foster child and N\$100/month for each additional foster child. There is no means test.
- People who adopt children are not eligible for any grants.

QUESTIONS FOR DISCUSSION

1. Do foster grants affect people's decisions about whether or not to foster a child?
2. Foster parents can receive a grant whilst adoptive parents cannot. Does this stop some people from adopting children
3. Should foster care grants be means tested so that people who earn above a certain amount do not receive a grant because they do not need it so much, or should a grant be available to all foster parents?

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RADIO SHOW 8:

Adoption

The Namibian Constitution says that the family is the natural and fundamental group unit of society and is entitled to protection by the state. There 14,000 children in foster care in Namibia but only 80 are adopted each year? Are the rules too tough or are there other reasons why adoptions are not taking place?

The draft Child Care and Protection Act makes the following provisions for adoption:

The following people may adopt a child (if approved by a social worker and the court):

- ✓ A husband and wife
- ✓ A step parent
- ✓ A widow or widower
- ✓ A divorced or unmarried person
- ✓ A relative of the child

An adoptive parent should be 18 years old. This is lower than the old law, where an adoptive parent had to be 25 years old. At the moment, the law does not say that there must be a certain age gap between parent and adopted child, although some other countries specify this. It is also proposed that the law will allow for intercountry adoptions in cases where a placement with a family in Namibia cannot be found.

QUESTIONS FOR DISCUSSION

1. Why are so few children being adopted in Namibia?
2. Should there be a fixed minimum age for a adoptive parent or a fixed minimum age gap between an adoptive parent and child or should it be decided on a case by case basis?
3. How can a Namibian child's cultural connections best be preserved in cases where an inter country adoption is determined to be in the best interests of the child?

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