

# BECOMING PREGNANT FROM RAPE: YOUR OPTIONS

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## (1) Keeping the child

### Does the rapist have to be listed as the father on the child's birth certificate?

No. The rape survivor can register the child's birth on her own, without any consent or involvement of the rapist. She cannot be forced to give information about the identity of the child's father. Where the pregnancy resulted from rape, the identity of the father on the birth certificate can just be left blank. (All of the rules are gender-neutral, but pregnancy resulting from rape almost always involves female rape survivors and male rapists.)

### Does the rapist father have any rights if the rape survivor decides to keep the child?

If a rape survivor decides to keep the child, the convicted rapist does not have any automatic rights to custody, guardianship, or access. The rapist could apply to the court for an order granting any of these rights if this was for some reason in the child's best interests, but this would be unlikely except in very unusual cases – perhaps where the rape took place within a marriage, and the child born out of the rape developed a relationship with the rapist.

### Must the rapist contribute to the maintenance of the child?

Yes. Just like any other parent, the rapist parent must contribute to the maintenance of the child. But the child does *not* have a matching duty to pay maintenance to the rapist parent if that parent should ever need help.

### What if the rape survivor is worried about being able to support the child financially?

The Ministry of Gender Equality, Poverty Eradication and Social Welfare provides State maintenance grants for children in need. The child of a rape survivor might be eligible for this grant, particularly if the rapist is in prison.

## (2) Kinship care

### What is kinship care?

Kinship care is the care of a child by a member of the child's family or extended family. It is normally a voluntary arrangement made by the parent or guardian of the child with the kinship care-giver. It can be an informal arrangement, without any written agreement. But the parent and the kinship care-giver can make a written agreement so that they have a clear understanding with each other about the child's care. The arrangement with the kinship care-giver might be a short-term or a long-term one. The parent can end the kinship care arrangement at any time. The arrangement does not alter the parent's rights and responsibilities for the child.

### How could kinship care be helpful after a rape?

A rape is a very traumatic experience. Becoming pregnant as a result of a rape makes the experience even harder. A rape survivor might not be ready to care for the child right after giving birth. The option of kinship care might be useful in a situation where the mother cannot take care of the child or is not ready to do this, and there are family members who are willing to step in to help.



### What happens to a State maintenance grant for a child if the child is placed in kinship care?

A State maintenance grant is always paid to the person who is actually caring for a child, no matter who applied for the grant. A kinship care-giver can also apply for a State maintenance grant for the child, but this requires a written agreement about the

arrangement which must be registered

at a children's court – to prove that the arrangement really is in place.

## (3) Adoption

### What is adoption?

Adoption is when a parent gives consent for another person to become the legal parent of the child. The Ministry of Gender Equality, Poverty Eradication and Social Welfare keeps a list of children who are eligible to be adopted and people who are suitable to adopt a child, after giving careful investigation into their situation and their fitness to take care of children.

After a court makes an adoption order, the adoptive parent becomes the legal parent of the child in every way. The biological parent has no rights and duties in respect of the child any more. After an adoption, the child's birth certificate is changed to list the adoptive parents as the child's parents.

### Will the child know the biological parent's identity?

Adoptions can be "disclosed", meaning that the adoptive parents and the biological parents know each other's identities, or "non-disclosed", meaning that this information is kept confidential. In a disclosed adoption, the adoptive parent and the biological parent can make an adoption plan that covers issues like occasional contact or the sharing of news about the child – but only if they both want to do this.

In any kind of adoption, the adopted child can access information from the Ministry about the identity of the biological parent after reaching age 18.

### If a rape survivor wants to put the child up for adoption, is consent needed from the rapist?

No. If the children's court confirms that the child was conceived through rape, the father's consent is not required to give the child up for adoption. This finding can take place before the rape trial. It is not necessary to wait for a conviction in the rape case before giving the child up for adoption.

### What if the rape survivor is a minor child?

If the rape survivor is under age 18, the rape survivor's parent or guardian must *also* give consent to the adoption. Note that assistance by *one* parent (or legal guardian) is sufficient. But the children's court can give an order saying that the rape survivor does not need a parent's consent to decide on adoption if the court decides that this would be in the best interests of both the rape survivor and the child whose adoption is under consideration.

### What if the rape survivor does not want anyone to know that she was raped or that she became pregnant?

The rape survivor can leave the baby in the care of someone at a safe place – such as a police station, hospital or safe haven that is set up for this purpose – without giving anyone her name. The child will be treated as an abandoned child and put up for adoption.

## (4) Legal abortion after a rape

### If a woman becomes pregnant from rape, can she get a legal abortion?

Yes. The Abortion and Sterilization Act 2 of 1975 provides for legal abortions in cases of rape. But anyone seeking an abortion after a rape must act quickly. Most doctors will not perform an abortion if the pregnancy is advanced, and abortions become more risky for the woman later in the pregnancy. *You should act quickly so that you get the abortion within three months after the rape.*

### What are the requirements to get a legal abortion after a rape?

- 1) **Two medical certificates:** Two doctors must each provide a written certificate stating that they believe the pregnancy is the result of rape. One of the doctors must be a doctor employed by the State. If a charge of rape was laid with the police, the State-employed doctor should be the same doctor who examined the woman for medical evidence of the rape.
- 2) **A certificate from a magistrate:** A certificate issued by a magistrate saying that the pregnancy likely resulted from a rape and that the woman has either laid a charge with the police, or showed a good reason for failing to lay a charge. The woman must give the magistrate a statement under oath about the circumstances of the rape and the pregnancy. The magistrate may ask the woman or any other person questions before deciding whether to give the certificate.

### What doctors can give the required certificates?

The two doctors must have certain qualifications.

- ▶ Both doctors must be registered medical practitioners.
- ▶ At least one of the two doctors must have been practicing in Namibia for at least four years.
- ▶ The two doctors must not be practicing in the same partnership or working for the same employer.
- ▶ Neither of the doctors who gives the certificate can perform the abortion. The abortion must be done by a third independent doctor. This doctor can be a State doctor or a private doctor, but abortions can be carried out only in a State facility or in a private facility that is approved for this purpose.

### What magistrate can give the required certificate?

The certificate can be issued by any magistrate in the same general area as where the rape took place. (Magistrates' courts around the country are divided into five different groups centred around Windhoek, Oshakati, Otjiwarongo, Keetmanshoop and Rundu.)

### Is it necessary to lay a charge of rape first?

No. But if no charge was laid, the woman must provide a good reason to the magistrate for why she has not gone to the police.

### If the woman has laid a charge with the police, does the rapist need to be convicted before the abortion can take place?

No. An abortion must be in the early stages of a pregnancy, and it is very unlikely the criminal trial would be concluded in time.

### Where will the abortion take place?

The abortion must be performed in a State hospital or clinic, or in a private hospital approved by the Minister of Health and Social Services to perform abortions – but, as of mid-2021, no private facilities had been approved for this purpose. The certificates must be provided to a doctor who is in charge of the medical facility or to a doctor designated by the head of the medical facility for this purpose.

### What if the rape survivor is a child?

The Child Care and Protection Act 3 of 2015 allows 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 medical intervention. But if the medical intervention involves a surgical operation, consent must also be given for any child under age 18 by a parent or guardian of the child (or the child's care-giver if there is no parent or guardian). So the consent needed in the case of a child would depend on the procedure that is going to be used for abortion.

### What if the rape survivor is too young to give the necessary medical consent?

If the rape survivor is too young to give consent to the abortion, her parent or guardian must provide consent. But it is possible to get consent from the Minister of Gender Equality, Poverty Eradication and Social Welfare or a from a children's court instead.

Any person with an interest in the well-being of a child can request the **Minister** to give consent to a medical intervention or a surgical operation in any one of four situations:

- 1) The Minister can give consent if the parent, guardian or care-giver of the child **unreasonably refuses** to give consent or to assist the child with consent to a surgical operation.
- 2) The Minister can give consent if the parent, guardian or care-giver of the child is **incapable** of giving consent or assisting the child in giving consent. *For example, the only surviving parent might have a severe mental disability, or be unconscious because the entire family was in a road accident. The Minister may require medical evidence of the incapacity.*
- 3) The Minister can give consent if the parent, guardian or care-giver of the child **cannot be traced**. *For example, this situation might arise where an abandoned child has been found in the veld. In other situations, the Minister may require evidence on why tracing is not possible or feasible.*
- 4) The Minister can give consent if the parent, guardian or care-giver of the child is **deceased**. *The Minister may request a death certificate.*

If the Minister refuses consent in any of these instances, any person with an interest in the well-being of the child may apply to a **children's court** for consent. But it is not possible to approach the children's court for consent before first asking the Minister.

**If you are struggling to decide what to do about a pregnancy that results from a rape, it is a good idea to speak to a social worker, a pastor, a counsellor or a trusted friend.**



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