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INFORMATION ABOUT NAMIBIA'S LAW

Harmful Social, Cultural and Religious Practices: What the Child Care and Protection Act says

Are initiation customs such as *sikenge* and *olufuko* harmful to the girls who take part in them? Press reports on these rituals quote positive and negative perceptions from different participants.

A play on *olufuko* staged in 2018 by students at the Namibia University for Science and Technology similarly dramatised the varying perspectives gleaned from student research and personal experience of the practice.

In 2019, Namrights brought a court case alleging that *olufuko* is a harmful cultural practice that violates the human rights of girls. They asserted that this tradition is “an inherently coercive female sexual initiation practice” which violates the dignity and privacy of girls and women, as well as a form of exploitation designed to encourage investment and attract tourism.

The Court’s opinion took note of the contrasting view that *olufuko* is a ceremony that is meant to provide a transition to adulthood by promoting proper sex education and discouraging sexual encounters by girls before they are sufficiently mature and responsible. It is thus viewed by some as being aimed at preserving girls’ sexual identity, self-respect and family honour.

This court case did not decide which of these views is accurate. In fact, the case never got out of the starting blocks since it failed on the issue of Namrights’ standing to bring the case. The Court dismissed the application, noting that Namrights had presented no evidence pertaining to any girl who had actually been exposed to the ritual, nor any information from a parent or guardian of any such child. Namrights had also not shown that the children who were directly affected (or their parents) were unable to approach the courts themselves, or that it was an organisation with special expertise on the issue of *olufuko*.

Sikenge and *olufuko* are not the only cultural practices which might be considered harmful. People are likely to also have differing opinions on other initiation rites, such as sexual initiation of girls by male relatives or stretching of girl’s genitals in preparation for marriage? What about the circumcision of boys, or piercing the ears of girls? Is it harmful to children to impose such customs before the children are old enough to make their own decisions about their bodies?

The **Child Care and Protection Act** does not define “harmful social, cultural and religious practices”. Instead, it states that a person may not subject a child to any such practices “which are detrimental to his or her well-being.”

This is a very broad and vague description. The Act identifies child marriage as one harmful practice and includes measures to prevent it (which will be the subject of a forthcoming column).

Other specific harmful practices may be identified by the Minister of Gender, after consultation with interested parties (including traditional leaders where relevant), and then prohibited by regulation.

The Act also specifically states that harmful practices may include any form of sexual initiation which, in the Minister's opinion, may be detrimental to the well-being of children.

The **Namibian Constitution** does not give specific guidance on this point. It protects the right to practise any culture, tradition or religion – but only to the extent that this does not impinge on the rights of others. It also preserves customary law, but only to the extent that it does not conflict with any of the provisions of the Constitution or statutory law.

The **Convention on the Rights of the Child (CRC)**, which Namibia has joined, addresses harmful traditional practices primarily in the context of the child's right to health. It obligates States to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children". The Committee that monitors this Convention has emphasised links between sex discrimination and harmful traditional practices worldwide that affect girls disproportionately, such as female genital mutilation, virginity testing and early or forced marriage. It has also expressed concern about male circumcision that takes place in unsafe medical conditions.

Namibia is also a party to the **Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)**, which requires States to take all appropriate measures to "modify the social and cultural patterns of conduct of men and women" in order to eliminate prejudices and practices which are based on sexual inequality or stereotyped roles for men and women.

In 2014, the Committees that monitor the CRC and CEDAW issued a Joint General Recommendation on harmful practices affecting women and children, primarily girls. It called attention in particular to practices such as female genital mutilation, child marriage, polygamy and so-called "honour crimes". It also mentioned the preferential care and treatment of boys in some cultures, virginity testing, scarring, violent initiation rites, widowhood practices, accusations of witchcraft, and body modifications carried out to enhance the beauty or marriageability of girls and women – amongst other practices.

This recommendation calls on governments to make sure that harmful practices are promptly, impartially and independently investigated, and to provide remedies for persons harmed by such practices.

Namibia is also bound by the **African Charter on the Rights and Welfare of the Child**, which obligates States to eliminate "harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child". This treaty expresses particular concern about practices that are prejudicial to the health or life of children, and practices that discriminate on the basis of sex or other status.

The African Committee of Experts on the Rights and Welfare of the Child has pointed to the need to address the underlying factors that support harmful practices, such as poverty, gender discrimination and social exclusion. It has also stressed that "customs, traditions, cultural and religious practices should be kept under continuous review", as they may become distorted over time so that practices which were once acceptable no longer function positively.

So, what is to be done? We suggest an investigation of potentially harmful practices, carried out in consultation with all stakeholders, including the children and youth who are most directly affected. Such an investigation should avoid focusing on any one group, since any of Namibia's religions or diverse cultures could involve practices with harmful effects. Grassroots communities should be involved in identifying traditions that play a constructive role in the life of the community, while also pointing to practices that may foster values contrary to Namibia's commitment to the dignity and equality of all persons.

It is crucial to keep in mind that a cultural social or religious practice may have positive and negative elements. It is not necessary to “throw the baby out with the bathwater”; negative elements of a cultural tradition could be abandoned while the positive attributes are encouraged and developed.

It is also important to ensure that children are not forced or tricked into participating in “traditions” that make them uncomfortable or unsafe.

Children are shaped by example and experience. We live in a country that is seriously marred by interpersonal violence in general, and gender-based violence in particular – and future change is likely to depend on teaching our children positive values now. Traditional practices may well need to be re-examined and adapted to support child protection and welfare if we are going to make Namibia a more peaceful country marked by gender equality and respect for all.

But nothing can be done with a clear-eyed exploration of the facts on the ground. As a start, we urge the Ministry of Gender or the Children’s Advocate in the Office of the Ombudsman to establish a commission to examine the social, cultural and religious traditions affecting Namibian children.

The Child Care and Protection Act provides a framework on this issue, but this framework must be developed and applied in order to prevent harm to Namibia’s children.

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