

**Alternative report to Namibia's
first, second and third periodic reports on the implementation of the United
Nations Convention on the Rights of the Child and two optional protocols
(1997-2008)**

**prepared by
Gender Research & Advocacy Project
Legal Assistance Centre**



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FOREWORD

This report was prepared by the Gender Research and Advocacy Project of the Legal Assistance Centre. The report was circulated to a wide range of non-governmental organisations for input and comment. The report was also discussed on *Good Morning Namibia*, which is the Namibian Broadcasting Corporation's breakfast television programme. Viewers, including members of the public, were encouraged to contact the Legal Assistance Centre with input. The Legal Assistance Centre also offered to facilitate a briefing meeting with members of the NGO Forum of Namibia (NANGOF), but this offer was not taken up.

Comments were received from the Ombetja Yehinga Organisation, which works with youth around the issue of HIV/AIDS and from Friendly Haven, a shelter for battered women. A third civil society organisation, Women's Action for Development, acknowledged the request for input but wrote that they did not have capacity to provide comments in the available timeframe. All comments provided have been incorporated.

The majority of topics covered in this report are based on information resulting from research, advocacy and outreach work conducted by the Legal Assistance Centre. Some topics have been included because the issues are so pressing we believe that the topics must be highlighted. The report has been structured in the same order as the official state report. The purpose of this alternative report is to provide supplementary information for areas of particular concern, to include information that we feel was missing from the state report and to note a few minor errors in the state report. We have tried to include the most up-to-date information possible. Given that Namibia has a small population and limited resources, some studies on certain topics are conducted on an irregular basis. Therefore the data cited in some sections of this report is sometimes a few years out of date.

The official state report covers progress made between 1997 and 2008. Given that this supplementary report was drafted in 2011/2012 we have included progress between 2009-2012 where we believe this information is important.

It should be noted that the government gave civil society the opportunity to give input to the government's official first, second and third combined report on the implementation of the Convention on the Rights of the Child and the two optional protocols 1997-2008 (hereafter referred to as *the state report*) and it is our opinion that the report has included a fair representation of the comments we made to the government during the drafting process.

It is also our view that the state report is generally frank and open about key problematic issues and shortcomings.

Acronyms

BIG	Basic Income Grant
CRC	Convention on the Rights of the Child
DHS	Demographic and Health Survey
LAC	Legal Assistance Centre
GRN	Government of the Republic of Namibia
MGECW	Ministry of Gender Equality and Child Welfare
OVC-PFT	Orphans and Vulnerable Children Permanent Task Force
NEPRU	Namibian Economic Policy Research Unit

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1. INTRODUCTION

Children and youth in Namibia are vulnerable in many ways. The National Demographic and Health Survey 2006/7 found that 15.4% of teenagers aged 15-19 in Namibia had already begun bearing children.¹ Furthermore, in 2009, 1 493 girls were reported to have dropped out of school due to pregnancy – a figure which probably understates the true picture.² Child and youth alcohol use and abuse is another factor of concern. A 2006 study found that about one out of ten 10- to 14-year-olds in the survey had already started using alcohol, as well as about three out of ten 15- to 24-year-olds. In both age groups, 6% of those who had tried alcohol were already drinking daily.³ In addition to affecting children's health, alcohol abuse also has ramifications for vulnerability to violence and to earlier and riskier sexual activity. Economic vulnerability is also a concern. Poverty levels in Namibia are a major issue. Approximately 27.6% of people in Namibia are classified as poor and 13.8% as severely poor. Poverty is particularly high for female-headed households, with 30.4% of households headed by women being poor and 15.1% severely poor, compared with the 25.8% of households headed by men being poor and 12.9% severely poor.⁴ As in many countries, women are predominately the caregivers of children. Persons between the ages of 15-34 years constitute the age group hardest hit by unemployment in Namibia, with an average unemployment rate of almost 60%; the youngest people within this age bracket are the most affected, with an unemployment rate of 83.6% for 15-19 year olds and 67.4% for 20-24 year olds.⁵ This is a factor which makes these young people more vulnerable to exploitation. Another problem experienced by some children in Namibia is child abuse and sexual violence. Given the high level of intimate partner and other forms of domestic violence, children are also often indirect victims of domestic violence in the family.⁶ Children are also subject to neglect and discrimination due to poverty, a lack of social and government services and inadequate community support. There is also a clear need for more proactive public programmes to address the needs of children and their families, with a particular focus on marginalised groups, including children with disabilities and indigenous minorities.

Fortunately, overall the government of Namibia has made considerable effort in a number of areas to improve its adherence to the principles enshrined in the Convention on the Rights of the Child (CRC). Of note, the government has engaged with civil society in its efforts to adhere to the CRC through requests for input, response to criticisms and the development of successful partnerships. The most notable development in recent years is the government's preparation of an updated draft of the Child Care and Protection Bill, a comprehensive piece of children's legislation that will replace the Children's Act of 1960 and bring Namibia's key children's legislation in line with the CRC. The development of the latest draft of the Child Care and Protection Bill was overseen by a successful partnership between government, the United Nations (through support from UNICEF) and civil society (through support from the Legal Assistance Centre). The consultation on the bill was the largest of its kind ever to be conducted in Namibia, with approximately one-third of the input being gathered from children.⁷ Provided that the Child Care and Protection Bill is passed by Parliament and brought into force in a timely fashion, the development of this bill will be a major step forward for Namibia. The government has also made other legislative progress. For example the

¹ *Namibia Demographic and Health Survey 2006-07*, Windhoek: Ministry of Health and Social Services, 2008 at 50-51.

² Education Management Information System, *Education Statistics 2009*, Windhoek: Ministry of Education, 2010.

³ UNICEF, *Knowledge, Attitudes, Practice and Behaviour Study in Namibia: Key Findings*, Windhoek: UNICEF, 2006 at 20-21.

⁴ According to the 2008 report *Review of Poverty and Inequality in Namibia*, people are defined as poor if they subsist on less than N\$262.45 per day and severely poor if they subsist on N\$184.56 per day. This estimate is based on the 2003 household income and expenditure report. Adjusted for change over time and current exchange rates, the upper poverty line is now approximately N\$430.40 (US\$53.71). Central Bureau of Statistics, *Review of Poverty and Inequality in Namibia*, Windhoek, Namibia: National Planning Commission, 2008 at 3, 6 and 8. Figures for adjustment based on personal communication with UNICEF Namibia.

⁵ Ministry of Labour and Social Welfare, *Namibia Labour Force Survey 2008*, Windhoek: Ministry of Labour and Social Welfare, 2010 at 65.

⁶ Ministry of Gender Equality and Child Welfare, *National plan of action on gender-based violence 2012-2016*, Windhoek: Ministry of Gender Equality and Child Welfare, in development. See section 8.3 for more information on child abuse.

⁷ Ministry of Gender Research Equality and Child Welfare, Legal Assistance Centre and UNICEF, *Public Participation in Law Reform: Revision of Namibia's Child Care and Protection Bill*, Windhoek: Government of the Republic of Namibia/UNICEF, 2010.

Maintenance Act 9 of 2003 and the Children's Status Act of 2006 remove discrimination against children born outside of marriage and make all children equal in the eyes of the law, regardless of order of birth, sex or for any other personal characteristic. We would like to commend the government on taking these steps at addressing discrimination against children.

However it must be noted that the government is extremely slow to achieve change. For example, the first draft of the Child Care and Protection Bill was developed in 1994. The latest draft, finalised in 2009, has still not gone to Parliament. The Child Justice Bill, also initiated in 1994, is another example of legislation that has stalled. Little progress has also been made in a number of other areas affecting children. For example there is a critical need for law reform on divorce, customary marriage, marital property, intestate inheritance, cohabitation and maintenance from deceaseds' estates. Whilst the government's Law Reform and Development Commission has conducted research and proposed draft legislation in most of these areas, progress has been slow without apparent cause. Further delays have been seen in revising newer legislation that requires only minor modifications. For example, the Combating of Rape Act 8 of 2000 is cited internationally as a piece of model legislation.⁸ However no legislation is perfect and in 2007 the Legal Assistance Centre launched a report which noted a number of areas where the legislation could be improved, including measures for the better protection of children raped by persons in positions of power over them (such as teachers) and clearer procedures for dealing with child witnesses.⁹ Despite the Law Reform and Development Commission's acceptance of the need for the proposed revisions,¹⁰ the amendments have still not been made.

The government is also slow at implementing legalisation and policies. For example the Ministry of Education policy on the prevention and management of learner pregnancy was approved by Cabinet in 2009 but to date has been inadequately implemented (see section 7.2). A contributing factor is the fact that government initiatives stall following the development of action plans, monitoring tools and baseline assessments, resulting in a plethora of excellent plans on paper but flawed implementation in practice. Some of the financial and human resources spent on projects which assess and reassess the context of the problems being targeted or plan and re-plan responsive actions could be better spent actually implementing initiatives to address these problems. Furthermore whilst the government develops strong legislation and policies, it often allocates insufficient resources for their implementation, indicating both a lack of financial planning and a lack of commitment to the principles contained in these tools. An additional overriding issue is various forms of corruption which lead to the ineffective use of state resources and undermine the integrity of service provision.¹¹

Another area of concern is the government's lack of regard for rigorous adherence to international conventions. For example, in 1999, a Namibian legal case was referred to the United Nations Committee

⁸ Namibia's laws on rape and domestic violence are cited as model legislation in the following publication: Canadian HIV/AIDS Legal Network, *Respect, Protect and Fulfill: Legislating for Women's Rights in the Context of HIV/AIDS. Volume One: Sexual and Domestic Violence*, Canada: Canadian HIV/AIDS Legal Network, 2009.

⁹ Legal Assistance Centre (LAC), *Rape in Namibia: An assessment of the operation of the Combating of Rape Act 8 of 2000*, Windhoek: LAC, 2006.

¹⁰ Namibia's Law Reform and Development Commission circulated an Issue Paper based on the Legal Assistance Centre proposals in 2008, and held a stakeholder workshop on the topic in June 2008. This was followed by a Discussion Paper summarising the public comments and the outcome of the discussions at the 2008 workshop, and a follow-up stakeholder workshop in June 2009. Most of the tabled proposals received unanimous support from stakeholders, but as of 2010, the Law Reform and Development Commission had not published its final recommendations.

¹¹ The Bertelsmann Transformation Index 2010 report gives the following description of corruption in Namibia: "In everyday life, corruption does not play a very significant role. Compared to other African countries, one can say that petty corruption is not as widespread. However, grand corruption cases are imposing serious threats to Namibia's small economy. It is also suggested that nepotism and favouritism are widespread but mostly go unproven and thus under-reported." Quoted in Clement Daniels and Frederico Links, "Towards a national integrity system: Assessing the appropriateness and effectiveness of anti-corruption and related legislation in Namibia", Anti-Corruption Research Programme Paper 1, Windhoek: Institute of Public Policy and Research, 2011. See also E Tjirera and G Hopwood, *The ACC in action: What does the track record say?* Windhoek: Institute of Public Policy and Research, 2011; C Keulder and T Wise, *Public perceptions on corruption in Namibia*, Windhoek: Institute of Public Policy and Research, 2003.

which oversees the International Covenant on Civil and Political Rights.¹² In 2002 the Committee ruled that the Namibian law was in conflict with the covenant and gave the Namibian government 90 days to report on what it had done to rectify the problem.¹³ However, more than nine years after the decision of the international forum, the impugned provisions of the relevant statute remain unchanged. More generally, there is a need for more attention to compliance in terms of both domesticating international conventions and taking action on monitoring committee recommendations. Another example is that Namibia did not submit a periodic report to the Committee on the Convention on the Rights of the Child until 2009 and has not yet submitted a report to the Committee on the African Charter on the Rights and Welfare of the Child, despite the fact that the first report on Namibia's adherence to the Charter was due in 2004.¹⁴

CLUSTER I: GENERAL MEASURES OF IMPLEMENTATION

1.1 The status of social work in Namibia

One of the most pressing issues that limits the government's ability to implement the principles enshrined in the CRC is the shortage of social workers in the country. The state report cites a ratio of one social worker to 13 519 people.¹⁵ Given that the country has a population density of two people per square kilometre, this ratio clearly does not allow social workers to adequately fulfil their mandate. Throughout the state report, the government comprehensively discusses the problems associated with the inadequate number of social workers. However the problem of inadequate social workers is a good example of the government's slow response to need. The problem has long been recognised and the issue has been included in numerous reports and action plans. However real and effective change in increasing the number of social workers has not yet happened.

The state report does cite methods the government is using to increase the number of social workers such as through efforts to increase the enrolment of social work students, hiring of foreign social workers and inter-ministerial partnerships.¹⁶ We support these proposals and would like to encourage the government to implement or continue to implement these recommendations. One means to review the burden placed on social workers could be a multi-sectoral national workshop on the state of social work in Namibia as recommended in the government's draft national plan of action for gender-based violence. We also support this proposal.¹⁷

An associated problem, as noted in the government report, is the fact that social workers are often burdened with administrative work that competes with their ability to fulfil their therapeutic functions.¹⁸ This and other challenges with working conditions impacts of the retention rate of state social workers.¹⁹

¹² *Müller v President of the Republic of Namibia* 1999 NR 190 (SC). When Mr Müller married Ms Engelhard, he wanted to adopt her surname, so that the two of them could operate their jewellery business under her more distinctive and well-established business name. Under Namibian law, she could have simply started using his surname if she wished – but he could assume her surname only by going through a formal name change procedure which involved extra effort and expense. The Supreme Court ruled that this particular differentiation did not amount to unfair discrimination. However the United Nations Committee which oversees the International Covenant on Civil and Political Rights ruled in 2002 that the different procedures for dealing with surnames *do* constitute unfair sex discrimination in terms of the International Covenant, and directed Namibia to take steps to remedy the discrimination in the Aliens Act (Act No. 1 of 1937), section 9(1).

¹³ UN Human Rights Committee, Communication No. 919/2000, CCPR/C/74/D/919/2000, 28 June 2002.

¹⁴ The ACRWC came into effect in Namibia on 26 August 2004. Article 43 of the Charter states that state parties should submit their first progress report within two years of entry into force of the Charter for the state party concerned, with subsequent reports being submitted every three years thereafter.

¹⁵ Republic of Namibia. *First, second and third periodic reports on the implementation of the United Nations Convention on the Rights of the Child and two optional protocols*. 1997-2008. Windhoek, Namibia: Ministry of Gender Equality and Child Welfare, 2009 (hereinafter "*Namibia CRC Report 1997-2008*") at 15.

¹⁶ *Namibia CRC Report 1997-2008* at 17 and 86-87.

¹⁷ Ministry of Gender Equality and Child Welfare, *National plan of action on gender-based violence 2012-2016*, Windhoek: Ministry of Gender Equality and Child Welfare, in development.

¹⁸ *Namibia CRC Report 1997-2008* at 86-87.

¹⁹ Ministry of Gender Equality and Child Welfare, *A human resources and capacity gap analysis: Improving child welfare services*, Windhoek, Ministry of Gender Equality and Child Welfare 2007, at 24.

The Child Care and Protection Bill contains measures that will assist in alleviating the burden of work on social workers. For example the bill provides for foster care and kinship care – the latter being care of children by extended family members. Kinship carers will not have to go through a formal review process with the court.²⁰ The resulting change should significantly reduce the administrative burden which currently affects government social workers. Further information on grants is discussed under section 5.1. The bill also provides for auxiliary social workers and community child care workers who will assist social workers with administrative work, allowing social workers to spend a greater amount of time focusing on their therapeutic functions.²¹

Recommendations

We recommend that the government take steps to increase the number of social workers and to address their administrative burdens as a matter of urgency.

We recommend that the provisions on foster care, kinship care and social work in the Child Care and Protection Bill remain as currently drafted and that the bill be passed and brought into force as soon as possible

The government should host a national workshop on the state of social work in Namibia, with the goal of development additional recommendations for the strengthening of this sector.

CLUSTER II: DEFINITION OF THE CHILD

2.1 Age of majority and marriage

The state report notes that the government is intending to lower the age of majority from 21 to 18.²² We support this proposal. Lowering the age of majority will be a practical solution to addressing social and economic needs of young people in Namibia as well as bringing Namibia in line with international practice. Furthermore, as the state report notes, the legislation already allows 18 year-olds to fulfil a number of “adult” functions such as working in any type of job and voting.²³ This leaves a difficult period between ages 18 and 21 where minors lack the protections afforded to children under age 18 without having the full privileges of adulthood. Lowering the age of majority would address this problem.

It should be noted that whilst the Child Care and Protection Bill will lower the age of majority, the bill will still require a person below the age of 21 years who wishes to get married to obtain consent from his or her parents (unless he or she is emancipated by court order).²⁴

Recommendations

We recommend that the provision lowering the age of majority in the Child Care and Protection Bill remain as currently drafted and that the bill be passed and brought into force as soon as possible.

Ideally, we recommend that the age of consent for marriage without permission of the parents should be the same as the age of majority, although this issue should not be allowed to derail the larger issue of lowering the age of majority.

²⁰ The majority of foster care in Namibia is kinship care, and at present, if a kinship care-giver wishes to access a grant, he or she must be registered as a foster parent through a formal court-review process. Child Care and Protection Bill, 15 December 2011, Chapters 8 and 12.

²¹ Child Care and Protection Bill, 15 December 2011, section 29.

²² *Namibia CRC Report 1997-2008* at 20.

²³ *Namibia CRC Report 1997-2008* at 22.

²⁴ Child Care and Protection Bill, 15 December 2011, section 208 (2)(b).

CLUSTER III: GENERAL PRINCIPLES

3.1 Hague conventions pertaining to children

Namibia's adherence to principles in the CRC will be improved through accession to the four Hague agreements pertaining to children.²⁵ The government has indicated its intention of signing these agreements and the Child Care and Protection Bill will include mechanisms for Namibia to implement these conventions.²⁶ Further discussion on the Hague convention on adoption is included in section 5.2.

3.2 The role of civil society in Namibia

Non-governmental organisations advocating for the rights of children and those working with children are largely funded by international organisations. Given that Namibia is classified as an upper-middle income country,²⁷ gaining access to donor funding is becoming extremely difficult. However the work of civil society remains crucial to the welfare of children given the numerous problems experienced by children in Namibia.

Recommendations

We recommend that the government sign the four Hague conventions pertaining to children and pass and bring into force the Child Care and Protection Bill which includes the mechanisms to bring these conventions into effect.

The government should make funding available for civil society organisations which work on children's issues, and continue the trend of successful working partnerships with civil society in this field.

CLUSTER IV: CIVIL RIGHTS AND FREEDOMS

4.1 Birth registration

Birth registration is low in Namibia.²⁸ However the government is making praiseworthy efforts to improve this situation. For example in 2008 the total number of children registered at hospital-based facilities was 1748. This rose to 23 575 in 2010.²⁹

One contributing factor towards the low level of birth registration is the fact that the law that governs birth registration (the Births, Marriages and Deaths Registration Act 81 of 1963) is outdated and unclear.³⁰ Another problem is that there are no rules regarding the documentation that is required to register a child and no rules regarding the choice of surname for a child who is abandoned where there is no information regarding the parents of the child.

²⁵ The four Conventions referred to are the Hague Convention on Protection of Children and Co-Operation in respect of Intercountry Adoption; Hague Convention on the Civil Aspects of International Child Abduction; Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children; and Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

²⁶ Child Care and Protection Bill, 15 December 2011.

²⁷ World Bank *Country and Lending Groups*, available at http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,contentMDK:20421402~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html#Upper_middle_income

²⁸ As noted in the state report, "according to the 2006/7 Demographic and Health Survey, only 60% of children under the age of five have birth certificate". *Namibia CRC Report 1997-2008* at 39.

²⁹ Ministry of Home Affairs and Immigration, *Ministry of Home Affairs and Immigration operational framework for 2012-2013*, Windhoek: Ministry of Home Affairs and Immigration, 2011 at 18.

³⁰ Births, Marriages and Deaths Registration Act 81 of 1963, section 10(1).

The government has recognised some of these problems and the government report states that some of the burdensome requirements have been scrapped.³¹ However, although the Ministry of Home Affairs and Immigration may have changed its policy on birth registration, the law remains unchanged and until the Ministry changes the legislation it has limited options for changing the procedures for birth registration given that the rule of law must be respected.

In addition to problems with the law, there is also a general lack of understanding on how to register a child. In 2011 the Legal Assistance Centre published a comic and pamphlet on how to register the birth of a child. The responses we received showed that many people are confused about the registration process, indicating a need for increased public awareness initiatives.

4.2 Citizenship

A problem related to birth registration is that fact that the government has not clarified the procedure for the registration of birth of children born in Namibia to non-Namibian parents. At present the law is unclear on this matter. According to the Namibian Constitution, a child whose father or mother is ordinarily resident in Namibia at the time of the birth is entitled to Namibian citizenship.³² However the Constitution does not define the term “ordinarily resident” and this has caused confusion with the public as well as within the Ministry, as in some instances clerks refuse to grant a birth certificate in these circumstances whilst in other instances the child is provided with a “non-Namibian birth certificate” which could be erroneous (since frontline service providers would not be in position to determine whether a parent was “ordinarily resident”) and a basis for unwarranted discrimination against that child.

Recommendations

We recommend that the law on birth registration should be revised to place an equal and gender-neutral duty on both parents to register the birth of a child, and to clarify and simplify the procedures for birth registration.

We recommend that the Ministry of Home Affairs and Immigration increases its outreach activities to inform the public on how to register the birth of a child.

The Ministry of Home Affairs should clarify the law on the registration of children born in Namibia to non-Namibian parents to ensure that all children born in Namibia have the right to a name through the provision of a birth certificate and that all births which take place within the country are registered promptly.

³¹ The government report states: “[t]here used to be a requirement that both a child’s mother and father be listed on the birth certificate. This was originally done in order to provide full information for children. However, the requirement has, in practice, prevented birth registrations because some fathers refuse to sign the forms. The requirement that both parents sign the form has therefore been scrapped. The implementation of this change in signing requirements has been inconsistently applied, however, and some children are still being prevented from receiving a birth certificate. Namibia CRC Report 1997-2008 at 39. To give further background - the Act gives the duty to the *father* to register the birth of the child rather than making it the primary duty of either parent to register the child. Furthermore, in cases of children born outside of marriage, no person will be listed as the father of the child on the birth register unless both the mother and father jointly agree to enter the father’s name and the *father* has made a written statement in the presence of the registrar or assistant registrar acknowledging the child as his. The mother does not have to provide written consent if the father is the one registering the child, and an affidavit from the father in his absence is not sufficient – this can create difficulties as some fathers are reportedly reluctant to participate in the registration process. A further problem is that whilst an unmarried mother can register her child in her surname with the option to change the child’s surname to the father’s at a later date, the application to change the child’s surname must be made by the child. Whilst requiring child participation is an important principle that should not be lost, it is not suitable for children who do not have the requisite capacity to make this application. It would be more appropriate to also allow the mother or guardian of the child to make the application where relevant (in cases where the child is not of the age, maturity and stage of development as to be able to participate in the matter, or where the child requests the assistance of his or her parent or guardian).

³² Constitution of Namibia, Article 4. There are exceptions for diplomatic personnel and armed forces.

4.3 Corporal punishment

Corporal punishment is common form of discipline in Namibia used in both school and home settings. However, as noted in the state report, whilst the use of corporal punishment in schools is already prohibited by the Education Act 16 of 2001 some schools still allow its use³³

Unfortunately, as illustrated by a lack of further information in the state report, whilst the government recognises the problem, it is not doing enough to enforce the ban. The Legal Assistance Centre receives requests for help from parents and sometimes directly from children who are being beaten at school. There is a clear need for better enforcement by government and for more proactive action on this issue. There is also a need for more public awareness about alternatives; the Legal Assistance Centre has produced a number of public education materials on alternatives to corporal punishment including a film, comics, factsheet and poster and interest from schools and members of the public has been strong, pointing to a need for more extensive information on alternative approaches to discipline.

The state report does not comment on the use of corporal punishment in the home, despite its use being common. At present, “reasonable chastisement” of a child is a common-law defence to the crime of assault for parents.³⁴ The Child Care and Protection Bill will emphasise the need to bring parental discipline in line with the Constitution³⁵ by stating that “*a person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, must respect the child’s right to dignity as conferred by section 8 of the Constitution of the Republic of Namibia*”.³⁶ The Child Care and Protection Bill will also explicitly prohibit the use of corporal punishment in alternative care.³⁷ The Legal Assistance Centre supports the provisions in the Child Care and Protection Bill.

Public support for the abolition of corporal punishment is mixed. For example a 2007-2008 study conducted by the Social Impact Assessment and Policy Analysis Corporation in 8 regions in Namibia found that 40% of respondents spanked, hit or slapped a child on the bottom with a bare hand, and approximately 30% hit a child on the bottom or elsewhere with something such as a belt, hairbrush, stick or other hard object. However despite this, more than half of the respondents in the study said that it was not necessary to physically punish children as part of their upbringing, and many people understood domestic violence as including family violence against children.³⁸

Whilst adult opinion on the use of corporal punishment is varied, a clearer picture from youth is evident. A report by the Legal Assistance Centre based on input collected by the Ombetja Yehinga Organisation shows that whilst some children support the use of corporal punishment as a means of discipline, the majority are in favour of the abolishment of corporal punishment in all settings. The report contains a summary of the opinions of Namibian children based on responses from over 2000 children collected as part of the public consultation process around the Child Care and Protection Bill. Some children gave information about how they are beaten, indicating that beatings on the hands, buttocks and around the head are common, along with the use of sticks to beat children. Common reasons for beating were failure at school or failure to help with chores around the home. The most revealing comments from the children concerned how they feel about being beaten – they reported anger, unhappiness and even thoughts of committing suicide. Many believe that corporal punishment leads to increased aggression by children, and many gave examples of alternatives to

³³ *Namibia CRC Report 1997-2008* at 16 and 40.

³⁴ This means that if a child laid a criminal charge of assault against a parent, the parent could defeat the charge by arguing that the physical punishment fell into the category of “reasonable chastisement”.

³⁵ Article 8 of the Namibian Constitution provides that the dignity of all persons shall be inviolable.

³⁶ Child Care and Protection Bill, 15 December 2011, section 210(1). This provision mirrors the wording used in Article 5 of the African Charter on the Rights and Welfare of the Child.

³⁷ A person may not administer corporal punishment to a child at any residential child care facility, place of care, shelter, early childhood development centre, school, including a private or government school, or to a child in foster care, prison or any other form of alternative care resulting from a court order. Child Care and Protection Bill, 15 December 2011, section 210(3).

³⁸ Legal Assistance Centre, *Corporal punishment: National and international perspectives*, Windhoek: Legal Assistance Centre, 2010 at 35-36.

corporal punishment that parents and teachers could use. The children reported being beaten both at home and at school.

***Feedback from youth taken from
Corporal Punishment: National and International Perspectives***³⁹

“Girls in my school are beaten on hands and boys on buttocks. I don’t like it because it makes me feel bad and I sometimes think of committing suicide. If I do something wrong I should be punished by cleaning the school yard. I feel hurt when I get beaten and my heart breaks. My body is left with pain and so I feel really bad.”

“Last Friday, I went swimming in my clothes and my mother sjamboked until the blood came out.”

“I remember a lady who burnt her stepkids with hot coals in their mouths, because they ate chicken meat from the pot.”

Recommendations

The Ministry of Education should take a zero-tolerance policy on the use of corporal punishment in schools, using the disciplinary procedures available in the legislation to ensure compliance with the law.

We recommend that the provisions dealing with corporal punishment in the Child Care and Protection Bill remain as currently drafted and that the bill be passed and brought into force as soon as possible.

The government and civil society should do more to increase public awareness about alternatives to corporal punishment.

4.4 Baby dumping and infanticide

Namibia is experiencing the problem of baby-dumping. However although incidents are frequently reported in the newspapers, quantifying the true extent of problem is challenging because baby-dumping and infanticide are not specific crimes. This means that cases that are reported to the police are usually recorded as charges of concealment of birth combined with charges of abandonment, manslaughter, murder or attempted murder. Information on charges of concealment of birth is reported is likely to considerably underestimate the problem.⁴⁰

Research has shown that 19% of 265 girls aged 15-24 surveyed in a small study had already been pregnant – with a shocking 40% of these pregnancies resulting from forced sex. This finding is reinforced by national police statistics which show that one-third of all rape victims are under the age of 18.⁴¹ It is clear that there are a number of factors that are causing women to take the desperate step of dumping their babies. One contributing factor is that many people are unaware of their options if they are pregnant and do not want the baby. Financial distress is another common problem that appears to push women into considering dumping their babies. There is also little awareness about postnatal depression.

An associated issue is the fact that the law on abortion is very restrictive and few people are aware of the limited situations where abortion is permitted. Police statistics from 2008 report that 15 people including three juveniles (two males and one female) were charged under the Abortion and Sterilization Act 2 of 1975.⁴² Another factor is access to contraceptives, as discussed under section 4.5.

³⁹ *Id* at 49 and 50.

⁴⁰ 2003 = 6; 2004 = 13; 2005 = 17; 2006 = 15; 2007 = 23. Namibian Police, 2008, data reported in D Hubbard, *Baby-dumping and infanticide*, Windhoek: Legal Assistance Centre, 2008 at 2.

⁴¹ UNICEF, *Knowledge, attitudes, practice and behaviour (KAPB) study in Namibia: Key findings*, Windhoek: UNICEF, 2006 at 9; *Rape in Namibia: An assessment of the operation of the Combating of Rape Act 8 of 2000*, Windhoek: Legal Assistance Centre, 2006.

⁴² National Crime Statistics for 2008 provided to the Legal Assistance Centre by the Ministry of Safety and Security.

The Legal Assistance Centre published a report on baby dumping and infanticide in 2008, bringing the issue into the public spotlight.⁴³ Following the publication of the LAC report, government and local non-governmental organisations have started to implement some strategies to address the baby dumping:

- The Child Care and Protection Bill includes a provision that will allow a parent to leave a child at a designated safe place without committing an offence of abandonment.⁴⁴
- The Ministry of Education has implemented a new policy on the prevention and management of learner pregnancy. The main focus of the policy is prevention of learner pregnancy, including the encouragement of abstinence and the communication of values such as gender equality and respect for individual autonomy. However whilst the policy was approved by Cabinet in 2009, the Ministry has made limited effort in disseminating the policy to schools and has not followed the implementation strategy outlined in the policy. The problem of learner pregnancy is further discussed under section 7.2
- The Ministry of Gender Equality and Child Welfare selected infanticide as one of three specific topics highlighted in a national campaign on gender-based violence launched in 2010.⁴⁵ A range of materials in local languages were developed including radio dramas, posters, newspapers adverts, television adverts and billboards.
- Local non-governmental organisations have produced information materials on baby-dumping.

In 2011 the Ministry of Gender Equality and Child Welfare and the Ministry of Youth, National Service, Sport and Culture with the support of UNICEF and the Legal Assistance Centre, conducted a nationwide poll asking the general public why baby dumping is such a problem in Namibia and how the government can address it. The questions were published in *The Namibian* and *Die Republikein* newspapers and interested persons were asked to respond by text message. Input from the public was anonymous and confidential, allowing anyone who wanted to respond to give their input. The results show that the public wants more information about preventing pregnancies and about alternatives to baby dumping such as foster care, adoption and institutional care. Government, with the support of UNICEF and the Legal Assistance Centre, has responded to this need through the production of a comic and a factsheet series.

The state report omits any mention of the problem of babydumping. However we do not believe that this omission is due to a lack of recognition of the problem, given that the state report is for the period of 1994-2008 and the issue of babydumping only gained notable public attention after this period. This comment is substantiated by the fact that the problem is recognised in the government's draft national plan of action for gender-based violence.⁴⁶

Recommendations

We recommend that the Ministry of Gender Equality and Child Welfare ensure that the public is better aware of alternatives to baby dumping and infanticide by publicising information about options such as adoption and foster care and by ensuring there is better public awareness about problems such as postnatal depression.

We recommend that the provision on dealing with abandoned children left with approved authorities in the Child Care and Protection Bill remain as currently drafted and that the bill be passed and brought into force as soon as possible, with widespread publicity about the approved places where babies can be left anonymously.

⁴³ D Hubbard, *Baby-dumping and infanticide*, Windhoek: Legal Assistance Centre, 2008.

⁴⁴ Child Care and Protection Bill, 15 December 2011, section 209.

⁴⁵ The three topics were (1) infanticide; (2) trafficking; and (3) passion killing.

⁴⁶ Ministry of Gender Equality and Child Welfare, *National plan of action on gender-based violence 2012-2016*, Windhoek: Ministry of Gender Equality and Child Welfare, in development.

We recommend that the Ministry of Education should allocate sufficient resources to allow for the effective implementation of its policy on the prevention and management of learner pregnancy.

4.5 Access to contraceptives (see also section 6.6 on HIV)

The right to healthcare should include access to contraceptives.⁴⁷ However access to contraceptives is a controversial topic in Namibian society. Currently there is confusion in the law and policy and the government appears unwilling to give guidance on this specific aspect of the right to health. This comment is illustrated by the fact that the state report does not discuss access to contraceptives despite the fact that Namibia has a high rate of pregnancy at a young age.⁴⁸

National data shows that only about half of sexually-active teenagers between the ages of 15-19 use any modern method of contraception.⁴⁹ Given the high rate of HIV infection in the country, this means that many young people are at risk of infection.

The problem is also illustrated by queries the Legal Assistance Centre received during the consultations on the Child Care and Protection Bill (the public were asked at what age children should be permitted to independently access medically-defined contraceptives):

If a child access the family planning while small will it make her not to have children in the future?

Is it possible to start family planning while I am having a small baby?

Is it possible for me to take family planning while I have already one child?

I use pills but only nite time not always is this the right way of doing it

Gender norms influence access to contraceptives. For example according to outreach conducted by the Ombetja Yehinga Organisation, many people still believe that the man/boy should provide the condom. While educating young girls is recognised as being extremely important, developing male role models is still underestimated. The Ombetja Yehinga Organisation did some ground breaking work with a photo exhibition of “The Caring Namibian Man” in 2005-2006. However much more work is needed to address gender norms.

Access to contraceptives is currently governed by the general medical treatment section of the Children’s Act 33 of 1960 which sets the age of consent to medical treatment and operations at 18.⁵⁰ Access to information about reproductive health, and access to contraceptives that do not fall under the terminology of medical treatment, is governed by policy. Namibia’s 2011 National Standards for Adolescent-friendly Health Services places a strong emphasis on providing adolescents with information about reproductive health.⁵¹ However neither this nor any other policy quantifies the age at which service providers may provide

⁴⁷ Secretary General, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, United Nations General Assembly, 66th session, August 2011 at paragraph 55.

⁴⁸ The median age at first birth for age group 25-49 is 21.4 years and 15.4% of adolescents between the age of 15-19 have already begun child-bearing. Ministry of Health and Social Services, *Namibia Demographic and Health Survey 2006-2007*, Windhoek: Ministry of Health and Social Services, 2008 at 49-51.

⁴⁹ 44.2% do not use any modern method of contraception. Ministry of Health and Social Services, *Namibia Demographic and Health Survey 2006-2007*, Windhoek: Ministry of Health and Social Services, 2008 at 61.

⁵⁰ Any person over the age of eighteen years shall be competent to consent without the assistance of his parent or guardian to the performance of any operation upon or any medical treatment of himself. Children’s Act 33 of 1960, 20 (8) (A). This section is the only section addressing age of consent to medical treatment, and it therefore appears to govern all forms of medical treatment, including provision of contraceptives which would fall into the category of “treatment”.

⁵¹ Ministry of Health and Social Services, *National Standards for Adolescent-friendly Health Services* at 3.5.4.

adolescents with contraceptives that are not medical treatments. Due to this lack of guidance, some service providers are unwilling to provide them to adolescents.⁵²

The community at large is also unwilling to discuss reproductive health issues.⁵³ This indicates that there is a role for principals, teachers and school guidance counsellors to play in bridging the gap to provide an alternate and possibly more accessible source of information and advice on reproductive health and contraception for adolescents.

A provision to allow access to contraceptives without parental permission at age 14 was included in an early draft of the Child Care and Protection Bill. However prevailing political attitudes suggest that it is unlikely that this provision will remain in the draft that is taken to Parliament. Whilst it is not critical for this provision to be included in the legislation since strong and well-implemented policy measures could accomplish the same objective, there is a clear need for improvement in specific guidance from the government on adolescent access to contraceptives and confidential information about family planning.

Recommendations

We recommend that the Ministry of Health and Social Services provide clearer guidance to service providers on when they should provide children and adolescents with various forms of contraceptives, and encourage non-judgemental and confidential family planning services for adolescents, with appropriate action and support where child sexual abuse is suspected. As frontline service providers, nurses should be provided with training on how to provide youth-friendly health services. This training and information should include support for children in same-sex relationships.

We recommend that the government conduct regular monitoring of service-providers dealing with adolescent health services and implement controls where service provision is not in line with policy.

CLUSTER V: FAMILY ENVIRONMENT AND ALTERNATIVE CARE

5.1 Grants

The Ministry of Gender Equality and Child Welfare provides a state maintenance grant,⁵⁴ a special maintenance grant for children with disabilities,⁵⁵ a foster care grant⁵⁶ and a place of safety allowance.⁵⁷

⁵² Although condoms were seen as available in respondents' communities, they were not always believed to be accessible. In fact, few participants described feeling confident and comfortable accessing condoms, expressing concerns about the possibility of being seen getting condoms and fears of negative responses from others, most specifically from health care workers. UNICEF, *HIV vulnerability of adolescent girls in Namibia: the known and the unknown*, Windhoek: UNICEF, 2011 at 26. Anecdotal reports to the Legal Assistance Centre and Ombetja Yehinga Organisation confirm this finding.

⁵³ See foreword in Ministry of Health and Social Services, *National Policy for Reproductive Health, 2001* at ii: "Adolescent Reproductive Health and Sexuality have been neglected areas in Namibia. This is attributed to numerous taboos and myths resulting from limited communication between parent and child, teacher and learner, as well as adolescent and health worker. More crucially, the community at large is not prepared to discuss sexuality issues."

⁵⁴ A biological parent who earns less than N\$1000 per month and supports a child under 18 years of age, where either the other parent receives an old-age pension or a disability grant, or is unemployed or is in prison for six months or longer; or has died is eligible for this grant. The grant is N\$200 per month per child. Ministry of Gender Equality and Child Welfare, *Child welfare grants in Namibia* (pamphlet), 2010.

⁵⁵ Children with a disability under age 16 are eligible for this grant, which is N\$200 per month per child. *Ibid.*

⁵⁶ Any person who undertakes the temporary care of any child found to be in need of care and placed in this person's custody in terms of the Children's Act 33 of 1960 is eligible for this grant. The grant is N\$200 per month per child. *Ibid.*

⁵⁷ This grant is available to any person or place in whose care a child under 18 years of age is placed by a court in terms of section 33 of the Children's Act of 1960 (or the relevant section of the Child Care and Protection Act which will replace the Children's Act). The grant is N\$10 per child per day. *Ibid.*

Whilst the Ministry has successfully expanded coverage of grants in recent years,⁵⁸ the grant criteria remain restrictive and are not appropriate for targeting children most in need. For example many foster parents are actually members of the child's extended family. However, to access financial support from the government, the family member must go through a cumbersome court process to be made an official foster parent even though the caregiver is unlikely to care for any children other than relatives. Another example is the fact that the state maintenance grant, which is intended to assist families in greatest need, is only available to families where there is one biological parent caring for the child; there are no grants for two-parent households living in poverty, for children living in child-headed households or for children under the care of extended family members who have not formally been designated as foster parents

The government is attempting to address these problems, as noted in the state report.⁵⁹ The Child Care and Protection Bill will improve access to the state maintenance grant by allowing two-parent families, children in child-headed households and children in informal "foster care" with extended family members will be eligible for such grants, once they have registered documentation that they are in fact caring for the child in question.⁶⁰ The bill is also expected to lower the means-test threshold.⁶¹ The Child Care and Protection Bill is also expected to introduce a short-term emergency grant.⁶²

However even when the Child Care and Protection Bill is passed and the mechanisms to access grants are streamlined, it is likely that many people who are eligible for grants may still not be accessing them due to a lack of awareness about this option or a lack of understanding of how to access the grants.⁶³ The government has identified problems associated with disbursement and must make efforts to ensure that problems still applicable to the new legislation are addressed.⁶⁴

The state report fails to mention that civil society in Namibia has trialled a basic income grant (BIG).⁶⁵ The project was designed and implemented by the Namibian Basic Income Grant Coalition⁶⁶ and is the first universal cash-transfer pilot project in the world. The project piloted the Namibian Government's NAMTAX

⁵⁸ For example in 2005, the state maintenance grant was available for a total of three not six children per family and the means threshold was for the biological parent to be earning less than N\$500/month. Legal Assistance Centre, *Guide to the Maintenance Act*, Windhoek: Legal Assistance Centre, 2005 at 71.

⁵⁹ *Namibia CRC Report 1997-2008* at 18.

⁶⁰ As discussed in section 1.1, the Child Care and Protection Bill will make a distinction between foster care and kinship care. A child will be in foster care when a person outside of his or her family takes care of the child. Kinship care will be when someone from the child's extended family takes care of him or her. Child Care and Protection Bill, 15 December 2011, Chapters 8 and 12.

⁶¹ As noted below, we support a universal grant for children rather than means-tested grants. However, as long as a means test is being used, the government should review the means-threshold annually to ensure that the grants requirements are realistic.

⁶² Child Care and Protection Bill, 15 December 2011, Chapter 17; draft regulations, October 2011, Chapter 15.

⁶³ The state report states that in February 2009, 59 698 maintenance, foster care and disability grants were distributed across Namibia. Republic of Namibia. *Namibia CRC Report 1997-2008* at 47. This seems inadequate when measured against Namibia's high levels of poverty (see the introduction to this submission).

⁶⁴ Some of the barriers to accessing the maintenance grant and foster care grants cited by participants of a study conducted by the Ministry of Gender Equality and Child Welfare were: the transport costs associated with the grant application process; lack of awareness and incorrect application of eligibility criteria; bureaucratic challenges such as misplaced files, perceived inefficiency of officials and the need for repeat visits; and problems with essential documentation, especially birth and death certificates. Some of the factors mentioned that facilitate access to the grants were: having all the relevant documentation; knowing someone who can assist with the application process; and a willingness to make personal sacrifices in terms of time and expenses. Ministry of Gender Equality and Child Welfare, *The effectiveness of child welfare grants in Namibia. Study findings and technical notes*, Windhoek: Ministry of Gender Equality and Child Welfare, 2010.

⁶⁵ The BIG pilot project was run for a period of 24 months up to December 2009. All residents below the age of 60 years living in the trial project area received a grant of N\$100 per person per month, without any conditions being attached.

⁶⁶ The BIG Coalition consists of four major civil society umbrella bodies in Namibia, namely, Council of Churches (CCN), the Namibian Union of Namibian Workers (NUNW), the Namibian NGO Forum (NANGOF) and the Namibian Network of AIDS Service Organisations (NANASO). This wide-ranging membership illustrates the breadth of support from civil society for this grant, which has clearly been shown to have beneficial impacts on the lives of children.

recommendation of a BIG for Namibia. Funds to start the pilot project were raised through voluntary contributions from supporters of the idea from all sections of Namibia's society, and by support from people, churches, organisations and donors in other countries. The main advantage of a non-means tested grant is the cost-effectiveness of the administration compared to a means-tested global grant which would take up time and resources that could be better deployed in other areas, such as child protection and support – particularly given Namibia's small and sparsely-spread population.

The grant resulted in a significant drop in household poverty. Looking at the indicators which showed specific results that benefited children:

- The BIG resulted in a huge reduction in child malnutrition. Using a World Health Organisation measurement technique, the data shows that children's weight-for-age improved rapidly and significantly, from 42% of underweight children in November 2007 to 17% in June 2008 and 10% in November 2008.
- Before the introduction of the BIG, almost half of the school-going children did not attend school regularly. Pass rates stood at about 40% and drop-out rates were high. Many parents were unable to pay school fees. After the introduction of the BIG, more than double the number of parents paid school fees (90%) and most of the children now have school uniforms. Non-attendance due to financial reasons dropped by 42% and this rate would have been even higher without the effects of migration towards Otjivero-Omitara. Drop-out rates at the school fell from almost 40% in November 2007 to 5% in June 2008 and further to almost 0% in November 2008.⁶⁷

However government has been dismissive of the idea and has refused to engage in a meaningful discussion of its pros and cons. Furthermore the government has given the project limited recognition, by omitting any mention of it in the state report or the recent study on child welfare grants.⁶⁸

Recommendations

We recommend that the provisions on grants contained in the Child Care and Protection Bill remain as currently drafted and that the bill be passed and brought into force as soon as possible. The government should regularly review the grant requirements to ensure that they are in line with inflation.

We recommend that the government engage in discussions about the feasibility of implementing a basic income grant, or at least a basic income grant for children.

5.2 Adoption

Namibia approves a relatively small number of adoptions each year, with an average of about 80 adoptions registered each year in recent years. In comparison, as of February 2009, there were some 13 800 children in foster care.⁶⁹

Current Namibian law on adoption has been found to contain some discriminatory provisions and is not based on the internationally-accepted principle of the best interests of the child.⁷⁰ In the 2004 *Detmold* case, the High Court held that the section of the Children's Act placing a blanket prohibition on the adoption of children born to Namibian parents by non-Namibian citizens was unconstitutionally discriminatory as well as

⁶⁷ C Haarmann et al, *Making the difference! The BIG in Namibia. Basic income grant assessment report, April 2009*, Windhoek: Basic Income Grant Coalition at 13-17.

⁶⁸ Ministry of Gender Equality and Child Welfare, *The effectiveness of child welfare grants in Namibia: Study findings and technical notes*, Windhoek: Ministry of Gender Equality and Child Welfare, 2010.

⁶⁹ Statistics provided by J Nakuta, Ministry of Gender Equality and Child Welfare.

⁷⁰ Children's Act 33 of 1960; *Detmold and Another v Minister of Health and Social Services and Others* 2004 NR 174 (HC).

being in conflict with the constitutional right of every child to a family.⁷¹ The High Court held that the section was unconstitutional and struck down the offending provision with immediate effect.

The lack of basic mechanisms such as a national register of prospective adoptive parents to check whether local options are available means that essential protections for children are currently missing. The Child Care and Protection Bill will change the national law on adoption to ensure consistency with international legal standards and best practices. The bill includes mechanisms for Namibia to implement the Hague Convention on Protection of Children and Co-Operation in respect of Intercountry Adoption, which the government indicates that it intends to accede to.⁷² Accession to this Convention is urgent in light of anecdotal evidence suggesting that various forms of baby-shopping by foreigners are increasing in Namibia.⁷³

However in the interim period, there is an urgent need to address the issue of inter-country adoptions following the 2004 court case. The government has failed to act on the High Court ruling and has not updated the regulations of the Children's Act to provide adequate protection for children undergoing inter-country adoptions. These problems are not reported in the official state report, indicating that whilst the government was resistant to the *Detmold* adoption, it appears unconcerned over the need to protect children that may be adopted internationally before the Child Care and Protection Bill comes into force.

Recommendations

We recommend that the provisions on adoption in the Child Care and Protection Bill, including those pertaining to accession to the Hague Convention on Protection of Children and Co-Operation in respect of Intercountry Adoption, remain as currently drafted and that the bill be passed and brought into force alongside accession to this Hague Convention as soon as possible.

We recommend that in the intervening period the Ministry of Gender Equality and Child Welfare update the regulations on inter-country adoption to provide as much additional protection against inappropriate inter-country adoptions as is possible under the existing legislative framework.

CLUSTER VI: BASIC HEALTH AND WELFARE

6.1 Comprehensive national programmes – monitoring

The state report cites the operation of the Permanent Task Force that monitors orphans and vulnerable children (OVC-PTF).⁷⁴ The Legal Assistance Centre would like to commend the government on the

⁷¹ *Detmold and Another v Minister of Health and Social Services and Others* 2004 NR 174 (HC). This case concerned the adoption of a Namibian child by German nationals who were permanent residents of Namibia. The parents had been living in Namibia long enough to become naturalized Namibian citizens, but did not want to exercise this option because of Namibia's prohibition on dual citizenship. The suitability of the applicants to adopt the child was not in dispute; the couple had been providing foster care to the child since May 2000 and the unmarried biological mother had agreed to the adoption. However, section 71(2)(f) of the Children's Act precluded the adoption of a Namibian child by non-Namibian parents, and none of the narrow exceptions to that general rule provided for in the law was applicable. The prospective adoptive parents argued that section 71(2)(f) was unconstitutional because it was not in the best interests of the child, a standard contained in Article 15(1) in the Constitution of Namibia: "Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of the child, as far as possible, the right to be cared for by their parents." Secondly, they argued that the section was unconstitutional because it was inconsistent with Article 14(3), which provides that, "The family is the natural and fundamental group of unit of society and the State." Lastly, they argued that section 71(2)(f) was in conflict with Article 10(1), which provides that "All persons shall be equal before the law." The Government initially opposed the application because it was concerned about the potential creation of a lacuna in the law pending the passage of the Child Care and Protection Bill, but withdrew its opposition before the case was decided.

⁷² Child Care and Protection Bill, 15 December 2011.

⁷³ Personal communications to the Legal Assistance Centre.

⁷⁴ Republic of Namibia, *First, second and third periodic reports on the implementation of the United Nations Convention on the Rights of the Child and two optional protocols*. 1997-2008. Windhoek: Ministry of Gender Equality and Child Welfare, 2009 at 50.

effectiveness of this committee.⁷⁵ Whilst our main criticism towards the government throughout this report is a lack of implementation and action, this committee is an example of a good practice due to the regular convening of its members and the number of outputs that have been associated with the task force.⁷⁶

6.2 Breastfeeding

The state report shows that the percentage of mothers who exclusively breastfeed their children for 0-2 months is 53.6%, dropping to 22.9% for children aged 2-3 months and further dropping to 5.7% for children aged 4.5 months.⁷⁷ This rapid decrease is a concern given the high rate of HIV infection in Namibia and the importance of avoiding mixed feeding at a young age for these infants. One contributing factor is the fact that maternity leave is only three months, with one month taken before the birth of the child. Given that the World Health Organisation recommends that mothers should exclusively breastfeed their children for six months,⁷⁸ the maternity leave provision is a push factor for many mothers to wean their children early. Another contributing factor is the lack of public awareness about the advantages of exclusive breastfeeding for six months.

Recommendations

We recommend that the government review the law on maternity leave to consider the viability of allowing women six months maternity leave.

We recommend that the government increase its public education on the advantages of exclusive breastfeeding for six months, with a particular focus on the provision of information about breastfeeding by HIV positive mothers.

6.3 Children with disabilities

The government is not doing enough to meet the needs of children with disabilities. Educational services for children with disabilities or disorders are provided through a total of nine special schools. Mainstream schools accept learners with learning disabilities but often do not have special facilities to assist these learners. Statistical data from the Ministry of Education reports that 32,169 learners with disabilities were enrolled in the education system in 2009.⁷⁹

Table 1: Children with disabilities enrolled in the education system and type of disability⁸⁰

Total	Both Visual and Hearing	Partially blind	Totally blind	Hard of Hearing	Deaf	Epileptic	Behavioural Disorder	Mild Intellectual	Severe Intellectual	Physical	Learning Disorder	Autistic	Other
32 169	919	4 309	196	4 929	614	1 331	5 308	3 596	1 039	1 376	7 057	316	1 179

⁷⁵ It can be argued that one limiting factor associated with the committee is that it is chaired by a Director of the Ministry of Gender Equality and Child Welfare. This chairmanship is too low-level to be effective in developing effective cross-Ministerial commitments. Therefore the impact of the committee's work is limited by the lack of governmental support at a high level. However a counter-argument is that if a higher-level chair was appointed, the committee might meet less frequently due to competing commitments of the chairperson. Thus overall the LAC is satisfied with the chairmanship of the committee.

⁷⁶ For example, in 2009 the Ministry of Gender Equality and Child Welfare prepared and published minimum standards for residential child care facilities. This report was overseen by the OVC-PTF. Ministry of Gender Equality and Child Welfare, *Minimum standards for residential child care facilities*, Windhoek: Ministry of Gender Equality and Child Welfare, 2009.

⁷⁷ *Namibia CRC Report 1997-2008* at 60.

⁷⁸ World Health Organisation, *Global strategy for infant and young child feeding*, Geneva: World Health Organisation, 2003.

⁷⁹ Education Management Information System, *Education statistics 2009*, Windhoek, Namibia: Ministry of Education, 2009, table 61.

⁸⁰ Id.

A further problem is access to healthcare services. The state report notes that patients at state health facilities are expected to pay a fee of approximately US\$1 per visit and, although a waiver system exists, the government admits that it is “uneven” in its application.⁸¹ A recent small study assessing the experiencing of parents of children with learning disabilities or mental health problems regarding access to healthcare services noted that many patients are not exempted from this fee and some do not access healthcare services because of the cost involved.⁸² Given that even such small amounts of money can be a barrier which prevents parents from accessing healthcare services for children, this issue is a much bigger problem than the state report indicates – for children with health problems generally, and particularly for children with disabilities.

There are a number of structures aimed at addressing disability in Namibia such as a Disability Unit within the Office of the Prime Minister and a National Disability Council. However despite the existence of these structures, there appears to be limited action directed at persons with disabilities. For example, according to the most recent annual report from the Office of the Prime Minister (2008-2009), the Disability Unit did not appear to conduct any activities regarding accessing or improving access to healthcare services for children with disabilities.⁸³ The functioning of the National Disability Council also appears to be problematic. The state report states that “*Namibia’s National Disability Council Act (No. 26 of 2004) creates a council tasked with monitoring the implementation of Namibia’s National Policy on Disability. This policy, which was adopted by Cabinet in 1997, identifies children with disabilities as a key target group.*”⁸⁴

However, there are no available reports documenting actions conducted by the Council; although government ministries are required to submit a report on the implementation of Disability Policy to the Council, such reports have not been submitted. Neither has the Council drafted annual reports which should be submitted to the Minister of Health and Social Services and then to the National Assembly as required by the National Disability Council Act.

Recommendations

The Ministry of Health and Social Services should take practical proactive steps to ensure that the small fee charged to state patients is not functioning to discourage parents from accessing health care for children.

The Ministry of Education should provide more support for children with disabilities in the context of mainstream education.

The Ministry of Health and Social Services should implement the recommendations for improvement of services from its 2008 Health and Social Services System Review (as noted in the state report).⁸⁵

6.4 Mental health

Namibia is one of the many countries across the world struggling to address the needs of children with mental health problems.⁸⁶ However the state report provides little information on this topic, stating that there is no data available for the number of children with disabilities living in institutions (including institutions

⁸¹ *Namibia CRC Report 1997-2008* at 53.

⁸² R Coomer, *Experiences of parents of children with mental disability regarding access to mental health care*. Cape Town: University of the Western Cape, 2011 (thesis) at 107.

⁸³ Office of the Prime Minister, *Annual report 2008-2009*. Windhoek: Office of the Prime Minister, 2009 at 5.

⁸⁴ *Namibia CRC Report 1997-2008* at 53.

⁸⁵ *Id* at 63.

⁸⁶ The current level of service provision is lower than government projections. The second National Development Plan (effective 2001/2002 - 2005/2006) recommended that 80% of health facilities should have personnel trained in mental health. However, the third National Development Plan (effective 2007/2008 - 2011/2012) reports that this has been achieved in only 10% of health facilities. The report does not assess the quality of service delivery in the 10% of health facilities now equipped. National Planning Commission. *Third National Development Plan (NDP3) 2007/2008-2011/12, Volume I*, Windhoek: National Planning Commission, 2008 at 28.

for mental illnesses) or outside their families (such as in foster care).⁸⁷ The lack of information reported suggests that this issue is such a low priority that even data-collection is lacking (although it should be noted that some of the data cited in this report only became available after the reporting period). However the government has recognised that mental health disorders are a major cause of morbidity and mortality in the country in other reports.⁸⁸ As noted in the state report, the government has signed the United Nations Convention on the Rights of People with Disabilities and the state report does include a frank recognition of the problems associated with service provision for people with disabilities which is relevant to children with mental health disorders.⁸⁹ However, given the prevalence of the problem (as the discussion below indicates), we believe that there is a need for an explicit focus on the problem of children with mental health disorders.

The 2006 Namibia Inter-Census Demographic Survey reports that 5% of people in Namibia have a disability. Of this percentage, 11% are classified as having a mental health disability.⁹⁰ The survey does not cite separate data on the incidence of mental health disabilities in children. A 2008 Ministry of Health report estimates that 2.34% of the population were treated for mental health disorders.⁹¹ These statistics suggest that the incidence of mental health disorders in Namibia is lower than the global estimates (a 10% incidence rate for adults and 20% incidence rate for children).⁹² However it is likely that this is due to a lack of recognition of mental health problems rather than a lack of morbidity.⁹³

There is limited information available about the mental health needs of children in Namibia. Namibian data from the Global School-based Student Health Survey conducted by the World Health Organisation which analysed five Southern African countries⁹⁴ showed that 32.2% of male students and 31.8% of female students in Namibia reported making a plan for how they would commit suicide during the 12 months prior to the survey, and 36.6% Namibian students had actually attempted suicide, with 9.8% of the males and 9.5% of the females having attempted suicide *twice or more* in the previous year.⁹⁵ This shocking finding is

⁸⁷ *Namibia CRC Report 1997-2008* at 56.

⁸⁸ Ministry of Health and Social Services. *Health and Social Services System Review*, Windhoek: Ministry of Health and Social Services, 2008 at 72.

⁸⁹ See *Namibia CRC Report 1997-2008* at 61-62.

⁹⁰ *2006 Namibia Inter-censal Demographic Survey*, Windhoek, Namibia, National Planning Commission, 2010 at 16-17.

⁹¹ *Health and Social Services System Review*, Windhoek: Ministry of Health and Social Services, 2008 at 72 reports that 42,124 people with a mental health diagnosis (2.34% of the population) were treated at outpatient clinics, while 40,940 of these people who revisited outpatient clinics were admitted owing to a mental health disorder between April 2007 and March 2008. Incidence figures cited in 2005 are similar, estimating that 2-3% of adults in Namibia have serious mental health disorders and 10% have common mental health disorders, whilst 0.1-1% of children under the age of 15 have serious mental health disorders, with an additional 1% having learning or behavioural problems. *National Mental Health Policy*, Windhoek: Ministry of Health and Social Services, 2005 at 5.

⁹² V Patel, "Alcohol use and mental health in developing countries", *Annals of Epidemiology*, 17 (5; Supplement), S87-S92; World Health Organization, *Mental health atlas 2005*, Geneva: World Health Organisation.

⁹³ Data from neighbouring South Africa also suggests that the information for Namibia underestimates the true incidence of mental health disabilities and disorders. The South African Stress and Health (SASH) study, the first large-scale population-based study of common mental disorders conducted in South Africa, showed an adult prevalence of mental health disorders in 30.3% of the study participants. As Namibia and South Africa have many social and historical similarities, the data can be used to suggest that there is also a high level of unmet need for mental health services in Namibia. AA Herman et al, "The South African Stress and Health (SASH) study: 12-month and lifetime prevalence of common mental disorders", *South African Medical Journal*, 99, 339-344, 2009.

⁹⁴ DW Brown et al, "Exposure to physical and sexual violence and adverse health behaviours in African children: Results from the Global School-based Student Health Survey", *Bulletin of the World Health Organization*, 87, 447-455 (2009); Exposure to physical and sexual violence and adverse health behaviours in African children: Results from the Global School-based Student Health Survey, *Bulletin of the World Health Organization*, 87, 447-455. The survey covered 22,656 students altogether, and 6367 students in Namibia (28% of the total).

⁹⁵ *Report on the Namibia school-based student health survey 2004*, Windhoek: Ministry of Health and Social Services, 2008 at 19-20.

supported by a comment in the Namibian Mental Health Policy which also reports suicide and suicide ideation to be a concern.⁹⁶

The state report notes the incidence of child suicide in Namibia but reports only data from the Namibian Police. The failure to cite other sources, such as the data above, suggests that the government may not be alert to the severity of the problem.⁹⁷

Although Namibia has a law and a policy on mental health, both are outdated. The Ministry has developed new draft legislation to replace the Act and an eighth draft of a Mental Health Bill was circulated in 2011. However, the drafting process has been ongoing for many years and it is unknown whether a new law will be enacted in the near future. The consequences of insufficient protection for children with mental illnesses have been seen with the most recent example being an urgent application brought by the Legal Assistance Centre in 2010 to transfer a 15-year-old mentally ill boy from Windhoek Central Hospital following his alleged rape. Reports of sexual abuse and the vulnerability of children with mental health disorders have also been reported.⁹⁸ The Legal Assistance Centre has made recommendations for the improvement of legislation to improve the management of rape cases involving children with disabilities (particularly mental disabilities).⁹⁹

The Mental Health Policy is also outdated as the health assessment used for the basis of the policy was conducted in 1996 - nine years before the policy was finally published. The policy is further weakened by the fact that Namibia does not have a separate policy for the mental health of children, despite this recommendation from the World Health Organisation.¹⁰⁰

According to Namibia's Mental Health Policy, a total of 211 psychiatric beds provide for the mental health needs of 1.8 million people in Namibia.¹⁰¹ Private facilities are provided at three centres.¹⁰² In 2011 the Health Professions Council of Namibia reported that there are 90 registered psychologists which is the equivalent of four psychologists per 100 000 of the population.¹⁰³ Published information on mental health resources for children is not available as Namibia did not provide data for the World Health Organisation Child and Adolescent Mental Health Resources assessment. The majority of services for children with learning disabilities and mental health problems are provided by civil society.

Public awareness about mental health conditions is also limited, with the public having few places at which to access information. Research also suggests that families sometimes struggle to adapt to the needs of a child with a mental health disorder.¹⁰⁴ The government should do more to proactively provide training and support for families with children with special needs.

⁹⁶ Ministry of Health and Social Services, *National Mental Health Policy*, Windhoek: Ministry of Health and Social Services, 2005.

⁹⁷ *Namibia CRC Report 1997-2008* at 29.

⁹⁸ *Rape in Namibia: An assessment of the operation of the Combating of Rape Act 8 of 2000*, Windhoek: Legal Assistance Centre, 2006 at 168; R Coomer, *Experiences of parents of children with mental disability regarding access to mental health care*. Cape Town: University of the Western Cape (thesis), 2011 at 95.

⁹⁹ *Rape in Namibia: An assessment of the operation of the Combating of Rape Act 8 of 2000*, Windhoek: Legal Assistance Centre, 2006.

¹⁰⁰ World Health Organization. *Child mental health policies and plans. Mental Health Policy and Service Guidance Package*. Geneva: World Health Organisation, 2003.

¹⁰¹ There are 112 beds at the Windhoek Central Hospital and 90 beds at the Oshakati Psychiatric Unit. There is also a mental health unit in Rundu State Hospital, managed under the auspices of the mental health unit at the Windhoek Central Hospital. Emergency mental health services are available at district hospitals. *National Mental Health Policy*. Windhoek: Ministry of Health and Social Services, 2005 at 6.

¹⁰² The organisation Leonard Cheshire has two residential facilities in Namibia offering services for children with disabilities. The Okonguarri Psychotherapeutic Centre also offers services.

¹⁰³ Information on the number of mental health care professionals working with children is not recorded by the Health Professions Council.

¹⁰⁴ R Coomer, *Experiences of parents of children with mental disability regarding access to mental health care*. University of the Western Cape, (thesis), 2011.

A further problem is that medical insurance providers discriminate clients who are suffering from mental as opposed to physical health problems.¹⁰⁵ Given the lack of awareness about mental health disorders, few people have the capacity to lobby against these discriminatory provisions.

Recommendations

The government should hold accountable structures developed to address the needs of people with disabilities, to ensure that they fulfil their mandates.

Given the paucity of data, the government should conduct research to assess the needs of children with learning disabilities and mental health problems in all regions of Namibia.

The government should prioritise revision of its mental health legislation and policy and ensure widespread consultation during this process.

The Ministry of Safety and Security should improve the management of rape cases involving children with mental illnesses or disabilities and other reports of abuse of children with mental health challenges.

The Ministry of Health and Social Services should increase service provision for mental health patients, including the decentralisation of services.

The Ministry of Health and Social Services should increase public awareness about common mental health disorders and ensure that members of the public know how to access therapeutic services.

Given that the majority of services are provided by civil society, the government should collaborate with these organisations as a first step towards increasing the level of service provision.

6.5 Maternal mortality

The state report notes that although the rate of maternal mortality is rising, there are large sampling errors associated with the data.¹⁰⁶ However, despite this caveat it is clear that maternal mortality has risen.¹⁰⁷ Research from the government has shown that contributing factors include insufficient availability of emergency care facilities and inequitable distribution of services across the country.¹⁰⁸ The high rate of HIV infection in the country is also a contributing factor as HIV positive mothers are more susceptible to malaria, tuberculosis and other diseases due to immunodeficiency and these diseases contribute to the increase in maternal mortality.¹⁰⁹

The report also states that “in terms of prenatal care, the majority of women made at least four visits for care. In urban areas the rate was 73.0%; in rural areas, it was 68.4%.”¹¹⁰ However, whilst the majority of pregnant women made at least four visits for care, the type of service accessed differs as a greater proportion of expectant mothers in urban areas receive antenatal care from a doctor compared with a fewer women in rural areas.¹¹¹ In addition, only a small minority of women make their first antenatal visit in either their first or second trimesters (32.6% and 38.3% respectively).¹¹²

¹⁰⁵ *Id* at 44 and 112.

¹⁰⁶ *Namibia CRC Report 1997-2008* at 59.

¹⁰⁷ *Namibia Demographic and Health Survey 2006-2007*, Windhoek: Ministry of Health and Social Service, 2008 at 113.

¹⁰⁸ Ministry of Health and Social Services, *Report on needs assessment for emergency obstetrics care*, Windhoek: Ministry of Health and Social Services, 2006 at 87.

¹⁰⁹ Directorate of Special Programmes, *Progress report on the third medium term plan on HIV/AIDS*. Windhoek: Ministry of Health and Social Services, 2009 at xi.

¹¹⁰ *Namibia CRC Report 1997-2008* at 59.

¹¹¹ *Namibia Demographic and Health Survey 2006-2007*, Windhoek: Ministry of Health and Social Service, 2008 at 115-117.

¹¹² *Id* at 118-119.

The percentage of women receiving assisted deliveries by trained personnel has risen from 75% in 2000 to 81.4% in 2006-07.¹¹³ Data is also available for post-natal services. Postnatal services were provided to 65% of women within two days of birth. Approximately 20% of women did not receive any post-natal care.¹¹⁴

Whilst free maternal healthcare is available, only 11.7% of women do not pay for the delivery of their child.¹¹⁵

Recommendations

The government should provide more maternal healthcare services including training for birth assistants, a more equitable distribution of trained staff between urban and rural areas, and incentives for healthcare professionals to work in the public rather than private sector.¹¹⁶

The government should increase its public awareness activities to encourage pregnant women to seek skilled medical attention from their first trimester of pregnancy and to continue these health care services after the birth of their child.

The government should ensure that pregnant women have access to free medical services where necessary.

6.6 Children infected with HIV/AIDS (see also section 4.5 on contraceptives)

The state report notes that “in 2008, 14 400 children under the age of 18 were known to be infected by the HIV virus”.¹¹⁷ A recent study shows that one in five HIV infections occur in adolescent girls.¹¹⁸

Although the government has a policy in place to address HIV/AIDS in the education sector, some provisions in the policy are not being fully implemented. For example the policy states that schools should make condoms accessible to learners.¹¹⁹ However many schools refuse to abide by this recommendation. They either refuse to provide condoms or provide them in an inaccessible place, such as in the Principal’s office, expecting learners to ask for them from the Principal. The Ombetja Yehinga Organisation has addressed this issue several times with schools in the Kunene and Erongo region, and some have now begun to accept the idea of condom distribution. However there is still a long way to go to achieve effective change across the country. Another problem is that many children live in school hostels because their homes are far away from the schools, but insufficient supervision of these children means that they engage in unsafe sexual activity and other risky behaviour.

“In some schools, after my visit, learners follow me to the car and ask me for condoms. They are so happy when I can give them boxes of condoms. They really want to have save sex but feel they can’t support from the school. They only practice unprotected sex because condoms are nowhere to be found.”

Report from the Ombetja Yehinga Organisation’s regional coordinator, 2011

¹¹³ *Id* at 124.

¹¹⁴ *Id* at 123-124.

¹¹⁵ *Id* at 131.

¹¹⁶ These recommendations are taken from UNICEF, *A time of joy, a time of challenge. The health of mothers and newborns in Namibia*, Windhoek: UNICEF, 2009 at 7.

¹¹⁷ *Namibia CRC Report 1997-2008* at 60..

¹¹⁸ UNICEF, *HIV vulnerability of adolescent girls in Namibia: the known and the unknown*, Windhoek: UNICEF, 2011.

¹¹⁹ “Each learner, student and education sector employee has the responsibility to protect him or herself against HIV infection or reinfection, as the case may be. This responsibility shall be recognized and supported by appropriate continuing life skills, sexual health and HIV/AIDS education programmes and the provision of condoms in educational institutions and hostels.” Ministry of Basic Education, Sport and Culture and Ministry of Higher Education, Training and Employment Creation, *National policy on HIV/AIDS for the education sector*, Windhoek: Government of Namibia, 2003 at 11.1.

Currently Namibian policy provides that the age of consent to HIV-testing in Namibia is 16 years. There is an exception, however, for children who are pregnant or married – in these cases the child may get tested at any age without parental consent.¹²⁰ Based on outreach conducted by the Ombetja Yehinga Organisation, the fact that children under the age of 16 cannot access an HIV test without parental consent leads to many children not knowing their HIV status and potentially being at risk of infection as a consequence.

The Child Care and Protection Bill will lower the age of consent to HIV-testing to 14. Children under the age of 14 may consent to an HIV test if they are of sufficient maturity to understand the benefits, risks and social implications of such a test. The bill includes a number of safeguards to support children who ask for an HIV test, such as requiring the child to receive counselling before and after the test.¹²¹

Recommendations

We recommend that the provisions pertaining to HIV testing in the Child Care and Protection Bill remain as currently drafted and that the bill be passed and brought into force as soon as possible.

The Ministry of Education should ensure the policy on HIV/AIDS for the education sector is implemented and learners can have easy, practical access to condoms as well as educational material about HIV and other sexually transmitted infections.

CLUSTER VII: EDUCATION, LEISURE AND CULTURAL ACTIVITIES

7.1 Access to education

The Constitution of Namibia says that all children shall receive a free primary education.¹²² However section 25 of the Education Act authorises school boards to establish school development funds for purposes such as the development of school facilities and improved educational, sport and cultural activities.¹²³ Although schools are not permitted to refuse a child whose parents or caregiver cannot pay towards the fund, in reality many children are excluded from school on this basis.¹²⁴

In 2011 the Legal Assistance Centre produced a comic on how to get an exemption from paying the school development fund. The feedback we received from the public suggests that many people are unaware that they can get an exemption, do not understand the procedure for requesting an exemption, or are unaware of how to get assistance when a school unreasonably refuses to grant an exemption.

Whilst the problem is recognised in the state report, there is an absence of appropriate action to remedy the problem.¹²⁵

The government has made some efforts to alleviate this problem through provisions in the Child Care and Protection Bill. The bill states that a child in receipt of a state maintenance grant or a child who has been placed in foster care or a residential child care facility by a court order is entitled to free basic education in state schools, including automatic exemption from contributions to a School Development Fund (as well as subsidised school uniforms, shoes and stationery; free basic health care; and exemption from payment of any fees when applying for official documents from any organ of state).¹²⁶ In 2010 the Ministry of Education

¹²⁰ Ministry of Health and Social Services, *Guidelines for Voluntary Counselling and Testing*, 2006 (updated 2011).

¹²¹ Child Care and Protection Bill, 15 December 2011, section 201-203.

¹²² “Primary education shall be compulsory and the State shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge.” Constitution of Namibia, Article 20(2).

¹²³ Education Act 16 of 2001, section 25(1); Regulation 12, Government Notice 187 of 2002 (Government Gazette 2841).

¹²⁴ Several studies by different agencies have consistently called attention to this problem, as conceded by the Namibian government in its latest Universal Periodic Review to the United Nations Human Rights Council.

¹²⁵ *Namibia CRC Report 1997-2008* at 30.

¹²⁶ Child Care and Protection Bill, 15 December 2011, Chapter 17 and draft regulations, October 2011, 223.

held a national conference on education at which the abolition of the school development fund was discussed. However such discussions have been ongoing for many years with little progress. The Legal Assistance Centre strongly supports the abolition of the fund as it is our opinion that the scheme of school development fund contributions is inconsistent with the Namibian Constitution and applicable international law, and should be repealed in favour of genuine free primary education for all as promised by the Constitution.

Further problems are the lack of quality of education in some schools and the lack of support for learners who fail their examinations at Grade 10 (age 16) and are not able to continue their studies. There are only five vocational training centres in Namibia and these are insufficient to meet need.¹²⁷

Recommendations

The school development fund scheme should be repealed in favour of genuine free primary education for all as promised by the Constitution.

Whilst the abolition of the school development fund is considered, the government should take steps to ensure that children who qualify for exemption from the school development fund do in fact receive this exemption.

7.2 Learner pregnancy

Official statistics on pregnancy-related school drop-outs in Namibia for 2009 show that a total of 1735 learners dropped out for this reason – with 96% of them being girls. Information from other sources indicates that the official figures may be an underestimate.¹²⁸

The state report makes scant mention of this problem. However, the issue was largely only brought into the public spotlight at the end of 2008 when the Ministry of Education started its consultations on a new policy.¹²⁹ This policy was developed with the support of civil society through the facilitation of the project by the Legal Assistance Centre. Furthermore a report on young people’s beliefs and attitudes toward gender, sexuality and traditions released in 2010 by the Legal Assistance Centre and the Ombetja Yehinga Organisation suggests that one contributing factor towards pregnancy is the existence of unequal relationships (such as “sugar daddy”/“sugar mummy” relationships).¹³⁰

The main focus of the policy is prevention of learner pregnancy, including the encouragement of abstinence and the communication of values such as gender equality and respect for individual autonomy. The Legal Assistance Centre would like to commend the government on this progressive policy which we believe, if properly implemented, will be effective in addressing the problem of learner pregnancy. However whilst the policy was approved by Cabinet in 2009, the Ministry has made limited strides in disseminating the policy to schools and has not followed the implementation strategy outlined in the policy. For example the policy requires the Ministry of Education to develop information packages for schools to help schools implement the policy. The Ministry of Education only started the production of these packages in 2011. The policy also requires schools to consider the safety of the school environment. This should include practical measures such as ensuring that the grounds of the schools are separated from public areas by fences or similar and that

¹²⁷ Ministry of Gender Equality and Child Welfare, *National Country Report 2005-2009 on the implementation of the Beijing Platform for Action +15*, Windhoek: Ministry of Gender Equality and Child Welfare, 2010 at 25.

¹²⁸ Education Management Information System, *Education statistics 2009*, Windhoek, Ministry of Education, table 65.

¹²⁹ Ministry of Education, *Policy for the prevention and management of learner pregnancy*, 2009.

¹³⁰ S LaFont, *Beliefs and attitudes toward gender, sexuality and traditions amongst Namibian Youth*, Windhoek, Legal Assistance Centre and Ombetja Yehinga Organisation, 2010 at 77-85. Participants interviewed were between the ages of 16-20. The results showed that 20-year-olds were most likely (45%) to agree with asymmetrical age relationships whilst the 16-year-olds were the least likely (27%) to agree. This may be because a 40-year-old does not seem so old to a 20-year-old or it could also be that 20-year-olds are under more pressure to be financially independent and they realise the economic advantages that may come with being involved with an older person. There was also some indication that differences in opinion exist between cultural groups.

toilets and bathroom doors have locks. During outreach activities, the Legal Assistance Centre and Ombetja Yehinga Organisation have noted the impact of practical issues such as these on the safety of learners.

Recommendation

We recommend that the Ministry of Education should allocate sufficient resources to allow for the effective implementation of its policy on the prevention and management of learner pregnancy.

CLUSTER VIII: SPECIAL PROTECTION MEASURES

8.1 Juvenile justice

The section of the state report on juvenile justice contains a number of factual errors. The report states that “*legislation such as Children’s Act (No. 33 of 1960) and the more recent Criminal Procedure Amendment Act (No. 24 of 2003) provides a basis for the juvenile justice system*”.¹³¹ This is incorrect, as the two cited laws do not deal with juvenile justice in any significant way. Whilst some provisions of the Criminal Procedure Act (No. 51 of 1977) provide for special procedures for accused persons under age 18, there is no adequate legislative basis for a juvenile justice system.

The report also states that a Child Justice Bill has been tabled in Parliament.¹³² This is incorrect. A draft Child Justice Bill, first initiated in 1994, has not yet progressed to Parliament despite the fact that there is a clear need for such legislation. Although an inter-ministerial task force was set up to progress the bill, the committee does not appear to be functioning.

The state report also states that diversion programmes are in place.¹³³ However it should be noted that these are of limited capacity and are insufficient to meet need. Furthermore, the scale of these programmes has drastically decreased since a civil society-government partnership was ended because donor funding for the civil society role could not be sustained.

Thirdly the state report notes that “*special protection measures have been built into the justice system, including juvenile courts*”.¹³⁴ This statement is incorrect as Namibia does not have any dedicated juvenile courts, although it does have some child-friendly court facilities which are primarily aimed at child victims and one dedicated Children’s Court which deals with civil matters concerning children. In any event, given Namibia’s size and sparse population, dedicated courts are not as crucial as more early intervention initiatives for children and adolescents who have not yet come into conflict with the law but have been identified as being in need of support.

The Child Care and Protection Bill, the focus of which is not juvenile justice, does contain some interim provisions in this area given the lack of alternative legislation. For example the bill states that children in state custody should be kept separate from adults and be permitted visits from parents, guardians, legal representatives, social workers, probation officers, health workers, religious counsellors and any other person who in terms of any law is entitled to visit the child, provided that such visit is in the best interests of the child.¹³⁵ The Child Care and Protection Bill also contains provisions for child detention centres.¹³⁶ The long-term goal is to establish centres for the reception, care and training of children with special requirements, such as those awaiting trial or sentence, or those who have behavioural or emotional difficulties which require a secure facility.

Currently there is one prison facility for juveniles. The government originally intended that the Elizabeth Nepemba Prison be only for children; however adults are now also hosted at the prison as the facility is too

¹³¹ *Namibia CRC Report 1997-2008* at 75.

¹³² *Id* at 13.

¹³³ *Id* at 17.

¹³⁴ *Id* at 73.

¹³⁵ Child Care and Protection Bill, 15 December 2011, section 233.

¹³⁶ *Id*, section 64.

big and costly to host juveniles only.¹³⁷ Also of concern is the lack of accessible reports on the situation of children in prison.

Recommendations

We recommend that the provision pertaining to juvenile justice in the Child Care and Protection Bill remain as currently drafted and that the bill be passed and brought into force as soon as possible.

We recommend that the government prioritise the development of an updated Child Justice Bill and that this bill is circulated for public comment as soon as possible.

The government should provide more early intervention and diversion programmes as well as a custodial facility for juvenile offenders with the appropriate associated therapeutic and rehabilitation programmes.

8.2 Child labour

In addition to the actions taken by the government to address child labour as noted in the state report,¹³⁸ the Child Care and Protection Bill includes provisions to address some of the worst forms of child labour which are not adequately covered by the provisions in the Labour Act (Act No. 11 of 2007).¹³⁹

Recommendation

We recommend that the provision pertaining to child labour in the Child Care and Protection Bill remain as currently drafted and that the bill be passed and brought into force as soon as possible.

8.3 Child abuse

Gender-based violence against children often goes unreported. However violence against children is a problem that has been identified by Namibian children themselves. For example, in 2008, “abuse and violence” was the second most common reason that children approached LifeLine/ChildLine Namibia for assistance.¹⁴⁰

The 2004 Namibia School-based Student Health Survey found that one-fifth of all the students surveyed had been physically forced to have sexual intercourse, with no differences between males and females on this score.¹⁴¹ A 2006 Namibian study found that one out of four of the 10- to 14-year-old respondents in the sample had experienced one or more forms of sexual abuse by a parent or caregiver, as well as 15% of the 15- to 24-year-olds.¹⁴² Another study released in the same year noted that national police statistics indicate that just over one-third of all victims of reported cases of rape and attempted rape were under age 18 (of this figure, 95% were girls and 5% were boys).¹⁴³ A 2007 study also found that many orphans and vulnerable

¹³⁷ Legal Assistance Centre, personal communication with Ministry of Gender Equality and Child Welfare.

¹³⁸ See *Namibia CRC Report 1997-2008* at 74.

¹³⁹ For example, this Bill includes prohibitions on using children in slavery or forced labour, in armed forces or in any armed conflict, for commercial sexual exploitation, child pornography, drug production, drug trafficking or the commission of any other crime, or for begging. See Child Care and Protection Bill, 15 December 2011, section 215.

¹⁴⁰ About 17% of the almost 12 000 children who contacted this service by telephone or in person by this Namibian service sought help with a problem related to abuse or violence, which was second only to general requests for information. Child Helpline International, *Connecting to Children: A compilation of child helpline 2008 data* (7th edition), Amsterdam: Child Helpline International, 2009 at 188.

¹⁴¹ This study included information collected from 6367 Namibian learners in grades 7- 9. *Report on the Namibia School-Based Student Health Survey 2004*, Windhoek: Ministry of Health and Social Services, 2008.

¹⁴² The sample included 1000 respondents in total; 318 10- to 14-year-olds, 372 15- to 19-year-olds still in school, 160 15- to 24-year-olds out of school and 150 adults 30 years of age and older. Research Facilitation Services, *Knowledge, Attitudes, Practice And Behaviour Study*, Windhoek: UNICEF, 2006.

¹⁴³ *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000*, Windhoek: Legal Assistance Centre, 2006 at 164.

children experience abuse and maltreatment in their homes, particularly from their caregivers, including abusive forms of punishment, sexual abuse and emotional abuse. Particular problems were noted where the caregiver was a step-parent.¹⁴⁴ A study by the Legal Assistance Centre examining the implementation of the Combating of Domestic Violence Act found that by the end of 2008 (five years after the Act came into force), children under the age of 18 accounted for 67%, of persons affected by domestic violence for whom ages were given.¹⁴⁵ This study found that the impact of domestic violence inflicted in the presence of children is a neglected issue, with the courts largely failing to implement the mechanism whereby protection orders involving children are supposed to be referred to the Ministry of Gender Equality and Child Welfare for monitoring and social worker investigation.¹⁴⁶

The state report recognises that the Combating of Domestic Violence Act provides this protection but does not comment on how this provision is being implemented in practice.¹⁴⁷ Given the lack of recognition of the problem, including a lack of data reported on children affected by domestic violence, it appears that the government is not sufficiently aware of the extent of the problem and is not recognising the severe impact that exposure to domestic violence can have on children.

Sexual initiation practices are also a concern for some children in some Namibian cultures.¹⁴⁸ The Child Care and Protection Bill contains a provision protecting children from social, cultural and religious practices which are detrimental to their well-being. The bill further allows the Minister of Gender Equality and Child Welfare, after consultation with interested parties, including traditional leaders, to prohibit specific social, cultural or religious practices by regulation, including but not limited to any form of sexual initiation.¹⁴⁹

Namibia has fifteen specialist police stations, Woman and Child Protection Units, intended to provide services for victims of gender-based violence. These units are located in all 13 regions of Namibia. However, as noted in the state report, “*although the Woman and Child Protection Units (WCPUs) are meeting with some success, they are not yet providing the intended level of service across the board, and they lack sufficient specialist capacity to comprehensively address sexual abuse and domestic violence perpetrated against children. There is also a profound need for more intensive training of government personnel who provide services for children.*”¹⁵⁰

The level of service provision at these units is inadequate and the Ministry of Safety and Security provides insufficient resources for their effective operation; they do not receive a dedicated budget from Parliament.¹⁵¹ The Woman and Child Protection Units often lack capacity to provide an adequate response, and there is an absence of standard operating procedures to ensure that victims of violence are provided with integrated services.¹⁵² The frequent turnover of police personnel staffing the Units is also mitigates against optimal police response. These problems must be given attention if the Units are to fulfil their mandate effectively.

¹⁴⁴ ‘*I just want to have a good life*’: OVC and human rights in five regions of Namibia, Windhoek: Legal Assistance Centre, undated; Gender Research and Advocacy Project, *Stepfamilies in Namibia. A study of the situation of stepparents and stepchildren and recommendation for law reform*, Windhoek: Legal Assistance Centre, 2011.

¹⁴⁵ *Seeking Safety: Domestic Violence in Namibia and the Combating of Domestic Violence Act 4 of 2003*, Windhoek: Legal Assistance Centre, in press, at 284.

¹⁴⁶ Only 7-8% of the interim protection orders indicated that the Ministry of Gender Equality and Social Welfare was to be notified. *Id* at 451.

¹⁴⁷ *Namibia CRC Report 1997-2008* at 77.

¹⁴⁸ See for example, Elizabeth !Khaxas, *Women’s rights, violent and oppressive cultural practices and HIV/AIDS: A case study of the Caprivi Region in Namibia*, Windhoek: Women’s Leadership Centre, 2006.

¹⁴⁹ Child Care and Protection Bill, 15 December 2011, section 208.

¹⁵⁰ *Namibia CRC Report 1997-2008* at 18.

¹⁵¹ It should be noted that the state report incorrectly states that “*the MOHSS and the Namibian Police jointly host the units*”. Although other ministries supply social worker services, the Ministry of Safety and Security (under which the Namibian police resort) alone hosts the units. *Namibia CRC Report 1997-2008* at 43.

¹⁵² Desert Soul, *Namibia: Assessment of woman and child protection services in five regions to inform development of an integrated system*, Windhoek: Ministry of Safety and Security and Ministry of Gender Equality and Child Welfare, forthcoming 2012.

The Ministry of Gender Equality and Child Welfare is working to improve the situation by developing integrated centres around the Units. For example in 2011 the Ministry opened a shelter in the Kavango region and has plans to open shelters in all regions. However, the positive effect of more resources will be hampered by the shortage of social workers, as without this service, vitally-needed therapeutic interventions will not be provided to child victims of violence.

The Ombetja Yehinga Organisation works with learners in four regions of Namibia and has found that many children who have been abused do not know where to go to get help. Whilst organisations such as the Legal Assistance Centre have produced information materials on what to do if you are raped, and ChildLine provides a toll-free child abuse number, there is a need for greater dissemination of relevant information.

Recommendations

We recommend that the government should make addressing violence against children a priority, such as by increased public awareness raising, more preventative and remedial action by an increased cadre of social workers and intensified training of Principals, teachers and school guidance counsellors in how to identify signs of child abuse and how to provide support. Government should also ensure better data collection through the police service on the incidence of cases of child abuse to better monitor the incidence and response to child abuse.

The Ministry of Safety and Security should prioritise the improvement of service provision at the Woman and Child Protection Units including the provision of a dedicated budget for the operation of these units.

Government should increase awareness amongst youth about how to access services if they have been abused. Where materials and services are already available through civil society, the government should support the expansion of these initiatives.

We recommend that the provision pertaining to harmful cultural practices in the Child Care and Protection Bill remain as currently drafted and that the bill be passed and brought into force as soon as possible.

ADDITIONAL SPECIFIC COMMENTS ON THE STATE REPORT

Page 6

“The Legal Aid Programme fulfils the constitutional requirement that any indigent Namibian be provided with legal representation.”

Currently most funds are allocated to criminal cases, although some funds are allocated for divorce and other family issues. The Child Care and Protection Bill provides for legal representation for children and this provision will be a significant change in role of legal aid in Namibia.¹⁵³

Recommendation

We recommend that the provision pertaining to legal representation for children in the Child Care and Protection Bill remains as currently drafted and that the bill be passed and brought into force as soon as possible. The government must ensure that sufficient funds are allocated for the legal representation of children.

Page 6

“The Law Development and Legislative Drafting Programme undertakes research and provides support for the creation of laws. It supports the Law Reform and Development Commission, which has been active in

¹⁵³ Child Care and Protection Bill, 15 December 2011, section 53.

both removing discriminatory statutes inherited from the apartheid era and drafting legislation that conforms to international standards.”

Whilst the Law Reform and Development Commission has done good work, their recommendations on repeal of discriminatory laws and proposed family law reforms are not being taken forward by the Ministry of Justice. The Commission does not have power to introduce legislation in Parliament and is therefore unable to progress its recommendations. For example, draft laws on divorce and customary marriage proposed by the Law Reform and Development Commission (both of which would provide greater protection to affected children) were presented to the Minister of Justice in 2004 but have yet to move forward.

Recommendation

We recommend that the Law Reform and Development Commission be empowered to introduce legislation into Parliament in its own right.

Page 11

Since the state report was published, the Prevention of Organised Crime Act has come into force.¹⁵⁴

Page 18

“The Divorce Bill is in draft form; it provides strong protection for the best interests of the child and gender-neutral approaches to determine who is to have custody of the child. This Bill has caused some controversy, however, and as a result has been under discussion since 2004.”

We are not aware of any controversy about this bill and the existence of the draft is little-known by the general public. There appears little reason for the bill to have stalled other than lack of political will to move it forward, as is the case with a number of other pieces of draft family-related legislation. One noteworthy aspect of the proposed Divorce Bill, which was prepared with input from the legal profession and some civil society groups, is its increased attention to ensuring the best interests of children of a marriage as a pre-condition to the grant of divorce

Recommendation

We recommend that the Divorce Bill be tabled in Parliament as soon as possible.

Page 18

“Some members of the law enforcement establishment note that there is a lack of legislation on trafficking. While the Prevention of Organised Crime Act makes trafficking a crime, the Act has yet to be applied.”

The Child Care and Protection Bill also contains provisions to address the trafficking of children. The Bill defines trafficking in line with international conventions, prohibits the practice of child trafficking as well as activities associated with such trafficking (for example, harbouring a child who is being trafficked), and provides for assistance for any child who is the victim of trafficking including the repatriation of Namibian children and defining how children trafficked to Namibia should be assisted.¹⁵⁵

Recommendation

We recommend that the provisions pertaining to trafficking in the Child Care and Protection Bill remain as currently drafted and that the bill be passed and brought into force as soon as possible.

¹⁵⁴ It came into force on 5 May 2009. Government Notice 77/2009, Government Gazette 4254.

¹⁵⁵ Child Care and Protection Bill, 15 December 2011, Chapter 15.

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“Article 15 of the Namibian Constitution defines childhood as ending at the age of 16. However, this definition is contradicted by legislation.”

This statement is incorrect. Article 15 of the Constitution and relevant legislation set differing age limits for different purposes,¹⁵⁶ which we believe to be consistent with the CRC in the sense of striking an appropriate balance between protecting children, respecting their evolving capacities and providing for appropriate forms of autonomy.¹⁵⁷

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“(Para. 22) Furthermore, the Committee suggests that the State party undertake measures and programmes to educate the general public on parental responsibilities and to consider the possibility of providing counselling in this regard. In addition, the Committee recommends that the State party, in its efforts to further disseminate awareness of the Convention on the Rights of the Child, make widely available, by appropriate means, the State party report, the summary records and the concluding observations by the Committee.

In response, there has been mixed progress in this regard. Efforts to educate the public on parental responsibilities have previously lacked focus and coordination, but with the MGECW now being the lead ministry for such efforts, progress is being made. Various institutions are also making efforts to educate parents on their responsibilities. In addition, advocacy linked to national and international days for children’s rights is part of the strategy to increase awareness of parental responsibilities. Although the CRC has been disseminated through various institutions, it has not been translated into local languages. The initial State party report and the concluding observations by the Committee have not been widely distributed.”

Whilst it is true that the government is making progress in educating the general public on parental responsibilities, the government is not making sufficient efforts to address this problem in the context of the need for this support. The government does recognise this problem in its report,¹⁵⁸ but awareness should not be a substitute for action. Recent studies by the Legal Assistance Centre, such as a study on the status of stepchildren,¹⁵⁹ suggest that many children in Namibia are vulnerable to discrimination and abuse within the family. There is a clear need for a greater emphasis on proactive public programmes on parenting skills.

As noted above, the government states that *“the CRC has been disseminated through various institutions”*. One child-friendly initiative has been the production of a Namibian-ised illustrated version of the CRC. However, the concluding observations of the monitoring committee should be made more widely available as such observations (on the CRC and other conventions) are generally not reported in the Namibian media

¹⁵⁶ Namibian Constitution, Article 15, Children's Rights:

(2) Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development. For the purposes of this SubArticle children shall be persons under the age of sixteen (16) years.

(3) No children under the age of fourteen (14) years shall be employed to work in any factory or mine, save under conditions and circumstances regulated by Act of Parliament. Nothing in this Sub-Article shall be construed as derogating in any way from Sub-Article (2) hereof.

(5) No law authorising preventive detention shall permit children under the age of sixteen (16) years to be detained.

¹⁵⁷ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2007 at 4-5.

¹⁵⁸ *Namibia CRC Report 1997-2008* at 48: *“The GRN is also aware of the need to provide support for parents in meeting those responsibilities”*.

¹⁵⁹ Gender Research and Advocacy Project, *Stepfamilies in Namibia. A study of the situation of stepparents and stepchildren and recommendation for law reform*, Windhoek: Legal Assistance Centre, 2011.

or otherwise popularised within Namibia. The Ombetja Yehinga Organisation notes that based on their outreach activities, very few young people know their rights, and even less have ever heard of the CRC. For example, eight OYO dancers who attended the Southern African Child Rights Conference in 2011 reported: *“This conference was all about children’s rights, and sometimes it felt as if we were from another planet. We were all young people, so we were children not so long ago. Yet we had no idea about these rights. We felt that in our country, Namibia, children’s rights and policies are not well addressed and implemented, and they are definitively not known to everyone.”*

Recommendation

We recommend that government issue a press release or convene a press conference to communicate the Committee’s comments to the general public.

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“The Maintenance Act (No. 9 of 2003) was passed in order to establish a framework for holding parents accountable for the maintenance of their children. The problems which have been experienced with implementation of this Act are now being addressed.”

We do not believe that the problems with the implementation of this Act are being addressed. Clerks or court, magistrates and prosecutors need more training on the Act, with better follow-up, monitoring and supervision following training. The Act also provides for maintenance investigators, but there is no maintenance investigator in the country nine years after the Act came into force.

Recommendation

We recommend continued and intensified attention to the implementation of this key law on maintenance.

Page 64

The state report pays little attention to pre-primary education. This aspect of education is under-resourced in Namibia and more focus is needed to improve in this area, as illustrated by the lack of utilisation of pre-primary educational services; the total national enrolment at pre-primary level in 2009 was 6,141. In contrast, enrolment in Grade 1 in the same year was 65,276.¹⁶⁰ Government has started to recognise this need; there is a provision on early childhood development centres in the Child Care and Protection Bill,¹⁶¹ and in 2011 the Ministry of Education developed a syllabus for pre-primary education¹⁶² and conducted a review of early childhood development and pre-primary education. However, the draft report on the review suggests that there is a lack of coherence and sustained good practice within the sector.¹⁶³

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“The new Criminal Procedure Amendment Act (No. 24 of 2003) provides for compensation for all crime victims as part of the criminal case.”

This statement is incorrect. At present, compensation in the course of a criminal trial is covered by the Criminal Procedure Act 51 of 1977, which provides for compensation only where a crime results in “damage to or loss of property (including money)”.¹⁶⁴ The Criminal Procedure Act 25 of 2004 (passed by Parliament but not yet brought into force) would broaden the possibilities for victim compensation by covering “injury, damage or loss, whether patrimonial or otherwise” resulting from a criminal offence. Under the 2004 Act,

¹⁶⁰ Education Management Information System, *Education Statistics 2009*, Windhoek: Ministry of Education, 2011, tables 11 and 22.

¹⁶¹ Child Care and Protection Bill, 15 December 2011, section 61.

¹⁶² Ministry of Education, *Pre-primary syllabus*, Windhoek: Government of Namibia, 2011.

¹⁶³ Ministry of Education, *Review of the Early Childhood Development and Pre Primary Education*, draft report.

¹⁶⁴ Criminal Procedure Act 51 of 1977, section 300.

where there is a criminal conviction, victim compensation in respect of the crime can be requested by the victim, the victim's legal practitioner or the prosecutor acting on the instructions of the victim. The presiding officer must inform the victim of the right to apply for compensation. If compensation for an injury has already been paid to the victim by a community court in terms of customary law, then no further compensation for that injury can be made in the context of the criminal case.¹⁶⁵ The expanded possibility of obtaining victim compensation in the criminal case is an aid to efficiency, as evidence which has already been heard at the trial may be relevant to the amount of damages which would be compensated.

Recommendation

If the Criminal Procedure Act 25 of 2004 is not ever brought into force (because of concerns about many issues it contains and the lack of consultation with the legal profession during its preparation), the expanded provision on victim compensation should be added to the existing Criminal Procedure Act, with adequate mechanisms to ensure that child victims are eligible to obtain such compensation even in cases where the parent or guardian is the offender or for some other reason unwilling to assist the child to seek compensation

CONCLUSION

In conclusion, the government of Namibia is to be commended for its candid and realistic assessment of problems faced by children in Namibia. However the recognition of the problem is not enough. The government is extremely slow to implement change and praise for the government is hollow when equal praise cannot be given for changes that it has effected.

One key step forward would be the passage and enactment of the Child Care and Protection Bill, which should be tabled in Parliament in 2012. The widespread public consultation around this bill, which included dedicated efforts to secure input from children and has been cited as a best practice example, has helped raise the profile of children's rights and children's issues in Namibia. This momentum should be followed up with speedy passage of the bill, and with training of service providers and public awareness-raising to ensure its effective implementation. Particularly noteworthy aspects of this Bill include its establishment of a Children's Advocate in the Office of the Ombudsman and a National Advisory Council on Children, and its emphasis on child participation. It could serve as a flagship for the advancement of the CRC in Namibia.

This report suggests that whilst the government has made progress in a number of areas it is clear that the government must focus more attention on a number of family-law issues if the lives of children are to be improved. For example whilst the Legal Assistance Centre would like to commend the government on areas where it has made significant progress at improving the lives of children in Namibia – such as by removing discrimination against children through the enactment of laws such as the Children's Status Act and the Maintenance Act - there are numerous law reforms that are still critically needed in addition to the Child Care and Protection Bill, including law reforms in the areas of divorce, customary marriage, marital property, intestate inheritance, cohabitation and maintenance from deceased estates.

In addition to law reform, there is an important need for the government to proactively address the care of children through initiatives such as programmes on parenting skills, alternatives to corporal punishment and how to deal with children with special needs.

The Legal Assistance Centre would like to strongly encourage the government to focus on implementing the large number of recommendations and projects already in progress. If such steps were to be taken, the government would be able to achieve some extremely positive results.

¹⁶⁵ Criminal Procedure Act 25 of 2004, section 326.