

# Work in progress: The Child Care and Protection Act in Namibia

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Feelings of worth can flourish only in an atmosphere where individual differences are appreciated, mistakes are tolerated, communication is open, and rules are flexible – the kind of atmosphere that is found in a nurturing family.

Virginia Satir

## Introduction

In any caring society the importance of child welfare cannot be overemphasised, because the future welfare of the entire community, its growth and development, depends on the health and well-being of its children. Children need to be regarded as valuable national assets because the future well-being of the nation depends on how its children grow up and develop. Since Independence, Namibia has ratified several key international legal instruments aimed at promoting and protecting the rights of children. However, despite considerable achievements over the past 19 years, the Children's Act<sup>1</sup> that regulates the welfare of children is not yet in line with recent international, regional and national developments and challenges. The outdated Act is currently under review in order to tailor it to suit children's needs, as stipulated in the following international laws:

- United Nations Convention on the Rights of the Child (CRC), 1990<sup>2</sup>
- African Charter on the Rights and Welfare of the Child, 1990<sup>3</sup>
- International Labour Organisation (ILO) Convention on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, 1999<sup>4</sup>
- Protocol to the Convention Against Transnational Organised Crime, to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000,<sup>5</sup> and
- Convention on the Rights of Persons with Disabilities, 2006.<sup>6</sup>

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1 No. 33 of 1960.

2 Ratified on 30 September 1990.

3 Ratified on 26 August 2004.

4 Ratified on 15 November 2000.

5 Signed on 13 December 2000.

6 Ratified on 4 December 2007.

Coomer<sup>7</sup> has indicated that there is data to support the need for strong legislation regarding the care and protection of children in Namibia. She has stated that, in order for Namibia to reach the Millennium Development Goals, Vision 2030 and Namibia's full potential, more needs to be done to care for and protect the country's children.

## The constitutional imperative

The Namibian Constitution captures certain rights provided for in the CRC. The Constitution also places a number of obligations on the state to safeguard the rights of all people in Namibia. Apart from the right to vote, all children are entitled to enjoy the rights provided for and entrenched in Chapter 3 of the Constitution. Article 15 therein spells out some salient rights of children which are in line with those provided for in the CRC, as follows:

- (1) 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 children, as far as possible the right to know and be cared for by their parents.
- (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 Sub-Article<sup>8</sup> 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.
- (4) Any arrangement or scheme employed on any farm or other undertaking, the object or effect of which is to compel the minor children of an employee to work for or in the interest of the employer of such employee, shall for the purposes of Article 9 hereof be deemed to constitute an arrangement or scheme to compel the performance of forced labour.
- (5) No law authorising preventive detention shall permit children under the age of sixteen (16) years to be detained.

These rights<sup>9</sup> are protected in terms of Article 5, which states that all fundamental rights and freedoms in the Constitution –

... shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the Courts in the manner hereinafter prescribed.

The inclusion of this right in the Constitution is not surprising since the growing acceptance of the idea that children as a group are entitled to rights is in keeping with

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7 Coomer (2009).

8 Sub-Article 2.

9 Article 15, Namibian Constitution.

the global expansion of human rights discourse following World War II.<sup>10</sup> The immediate post-WWII international human rights declarations articulated the idea that all humans possess certain moral-political claims on their governments and societies, irrespective of their “race, colour, sex, language, religion, national or other social origin” or other social distinctions.<sup>11</sup>

Some authors have noted, however, that the phrase *children’s rights* lacks precision and has been described as “a slogan in search of definition”.<sup>12</sup> The issue of children’s rights is certainly complex and raises philosophical, moral and legal as well as social concerns. Part of this complexity derives from the fact that the term *rights* has been associated with a diversity of meaning as a consequence of the considerable attention it has received and continues to enjoy from political philosophers.<sup>13</sup> But, in part, the complexity also reflects the wide variety of rights claimed for children. John Holt argues the case for an extensive list of rights on behalf of children.<sup>14</sup> This includes the right to vote, work, own property, travel, choose one’s guardian, receive a guaranteed income, assume legal and financial responsibilities, control one’s learning, use drugs, and drive.<sup>15</sup> Farson advocates a similar list in *Birthrights*.<sup>16</sup> Pinchbeck and Hewitt make less ambitious claims in this regard, stressing a child’s right “to adequate food, clothing, medical care, appropriate education and training, protection against exploitation, cruelty and neglect”.<sup>17</sup> Considering this he variety of rights being claimed, the envisaged Child Care and Protection Bill seems to be simplifying some of these philosophical approaches to rights.

This article will try to explore the extent to which the proposed legislation will contribute towards advancing the rights of children in Namibia.

## Background to the proposed legislation

The Ministry of Gender Equality and Child Welfare (MGECW) is in the process of reviewing the envisaged Child Care and Protection Bill in an effort to address the challenges and issues that are being faced by most Namibian children. The Ministry of Justice completed a new working draft of the proposed Bill in 2008. Because of the extended lapse of time since the last public consultations around a previous draft back in 2001, and the many developments in the situation of Namibian children during the intervening period, a new round of public and stakeholder consultations was recently proposed.<sup>18</sup>

10 Stasiulis (2004:3).

11 (ibid.).

12 Rodham (1973:487).

13 Franklin (1986:33).

14 Holt (1996:114–205).

15 (ibid.).

16 Farson (1974).

17 Pinchbeck & Hewitt (1976:347; quoted by Franklin 1986:11); see also Farson (1974:325–328).

18 Hubbard (2009).

The draft legislation provides some general principles to guide its implementation as well as all government actions and decisions affecting an individual child or children in general. The proposed law also provides that all matters affecting children are required to follow the following six basic principles:<sup>19</sup>

- Consistency with the fundamental rights and freedoms as set out in the Constitution, the best interest of the child, and the rights and principles set out in the proposed Act itself
- Respect for the child's dignity
- Fair and equitable treatment of the child
- Protection of the child from unfair discrimination on any ground, including health status or disability, or against the child on the ground of a family member of the child
- Recognition of the child's need to develop and to engage in play and other recreational activities appropriate to its age, and
- Response to the special needs of a child with a disability.

There were numerous unresolved areas of the draft legislation that require specialist as well as public input to ensure that it is suitable for the current environment in Namibia. It was felt that a multimedia project would be beneficial for several reasons:

- Broad consultations would smooth the passage of the Bill through Parliament, and eliminate the need for costly Parliamentary committee hearings
- Public and stakeholder involvement in the law reform process would help to raise awareness of the legal issues and create a sense of ownership, and
- Widespread consultations would help prepare service providers for effective implementation of the new law.

It was against this background that the MGECW and the Legal Assistance Centre (LAC) held a very strong public awareness campaign on the draft legislation. During the campaign, several communication methods were used, including print materials, radio, and television, with special efforts made to involve children to get their input. Regarding printed material, the LAC and the MGECW prepared a summary of the proposed law in the form of 23 one-page fact sheets and produced them in English and indigenous languages.<sup>20</sup> These fact sheets were compiled into booklets which were inserted into local newspapers in three languages. Short message service (sms), the Internet – including the MGECW and LAC websites as well as Facebook – were used in the process as well. The constraints included feedback from communities that live in remote rural areas.

The MGECW also hosted a three-day workshop, which was attended by key international experts whose objective was to compare and contrast the Namibian draft legislation with the South African Children's Act,<sup>21</sup> amended and complemented by the Children's

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19 MGECW (2009a).

20 (ibid).

21 No. 38 of 2005.

Amendment Act.<sup>22</sup> The other objective of the workshop was to provide an opportunity for skills exchange between international resource persons and Namibian professionals who work on children's issues in various institutions in the country.<sup>23</sup>

South Africa has been quite influential in Namibia's law reform in general, and in the area of child law, the involvement of South Africa was prompted by the fact that both countries had used the same (1960) Children's Act, and that they shared a legal and social background. In addition, the members of the consultancy team had worked on children's legislation in various African countries and so could offer a wealth of experience about best practice. On this note, it was appropriate for the two countries to share their experiences with the Namibian Technical Working Group on the proposed law, so that the Namibian people could avoid the challenges in the proposed legislation.<sup>24</sup> Important to note is the involvement of the consultants who provided an opportunity for skills exchange between the international resource people and Namibian professionals who work with children.

The MGECW created a network with most of the service providers and key stakeholders in Namibia, and has consulted them on various thematic topics covered in the draft law in order to ensure that the proposals for law reform are appropriate and feasible to implement.

The MGECW also conducted a workshop concerning the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption 1993 (the *Hague Convention*). A technical expert from the Hague Secretariat attended the workshop and gave advice on the Convention, pledging to continue giving technical support to Namibia. The MGECW, with its stakeholders, is planning to lobby for the ratification of the Hague Convention to strengthen the sections on adoption and other related issues in the draft legislation.<sup>25</sup>

The LAC, who are currently facilitating the process for the MGECW, are collating all comments made so far in order to make the draft law as pertinent to the Namibian situation as possible. The legal drafters from the Ministry of Justice are to meet with the technical committee to finalise some of the technical issues, after which they will prepare the Bill for tabling in Parliament in early 2010. The process will be slightly delayed because of elections.<sup>26</sup> The Ministry is also faced with another task – that of drafting Regulations to the Child Care and Protection Act. This is expected to take place as soon as the Bill

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22 No. 41 of 2007.

23 See <http://www.lac.org.na/projects/grap/Pdf/press-ccpaccommittee.pdf>; last accessed 1 November 2009.

24 See <http://www.lac.org.na/news/pressreleases/pressr-ccpa-children'srights.html>; last accessed 6 November 2009.

25 Interview with Celeste Feris, Social Worker Child Welfare, Ministry of Gender Equality and Child Welfare, 20 October 2009.

26 (ibid.).

is passed by Parliament. Once the new legislation has been enacted, it will replace the outdated Children's Act,<sup>27</sup> as mentioned above, in order to provide a solid foundation for the care and protection of children in Namibia.

The draft legislation covers a wide range of key topics, including the age of majority and issues to do with court procedures for children. Once the legislation is enacted, it will update practices that have changed since 1960. The following paragraphs discuss some important issues dealt with in the draft legislation.

In its preamble, the proposed law states that it was drafted to give effect to certain children's rights as contained in the Namibian Constitution and to set out principles relating to child welfare, as well as to provide for the establishment of institutions for children, such as a Child Welfare Advisory Council, a Children's Ombudsperson, and the appointment of social workers. Also of great importance is the intended establishment of children's courts, the provision and facilitation of early intervention services, and provision for child protection and foster care, children's homes and shelters, and other places of safety and care, as well as educational and vocational training centres, besides providing for the issuing of contribution orders.<sup>28</sup> Furthermore, the draft law intends to cover areas that have been controversial in some jurisdictions, like the adoption of children, and to provide for inter-country adoption. Thus, the proposed legislation aims at giving effect to a number of international conventions ratified by Namibia, namely –

- the CRC,<sup>29</sup> and
- the Protocol to the Convention Against Transnational Organised Crime, to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000.<sup>30</sup>

In this light, the proposed law creates new offences relating to child abuse and neglect, the unlawful removal or detention of a child within Namibia, and the unlawful removal of children from Namibia.

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27 (ibid.).

28 A *contribution order*, according to the draft Child Care and Protection Bill, –

... is a children's court order which requires a parent or some other person who is legally responsible for maintaining a child to contribute to the costs incurred by the state in assisting a child in need of protection or for holding such a child in alternative care.

It is similar to a maintenance order. The proposed law provides for a contribution order for contributions to three categories of costs: (a) maintaining a child in a place of safety, a children's home or an educational and vocational centre, (b) treatment, rehabilitation, counselling or other interventions provided to a child who has been temporarily removed from his/her usual home by a court order, and (c) short-term emergency contributions towards maintenance, treatment or other costs resulting from the special needs of "a child in urgent need".

29 Ratified on 30 September 1990.

30 Signed on 13 December 2000.

It is important to mention that the MGECW, the LAC, the United Nations Children's Fund (UNICEF), and Namibia's Permanent Task Force on Orphans and Vulnerable Children agreed on a process to refine the draft legislation and take it forward. The process is presently guided by a small Technical Working Group chaired by the Permanent Secretary of the MGECW. The team includes representatives from the MGECW, UNICEF, the LAC, the Attorney General's office (which must certify the draft legislation's constitutionality), the legal drafters, and several senior social workers. UNICEF is providing around N\$3 million to fund this process in the hope that it will be possible to draw on Namibia's experience to develop a 'best practice' guide for the Southern African Development Community (SADC) Region.

The Technical Working Group's objectives are to –<sup>31</sup>

- draw on the experiences of other African countries, such as South Africa, who have recently reformed child laws
- raise public awareness of children's rights and obtain public input on the draft legislation, and
- consult service providers and other stakeholders to ensure that the proposed law reform can be implemented in practice.

## **Issues covered by the proposed Child Care and Protection Bill**

It is important to note that the process of reviewing the legislation is under way and the comments below touch only on the draft legislation that has been made public. The authors understand that the draft being commented on below is still in the process of continuous review, and that some concepts may be different when a revised version is made public. Hence, it is impossible to comment on the draft law while it is still confidential. The context reminds us that the law should be seen as a dynamic and evolving phenomenon; and when new developments arise in Namibian child law, updates are absolutely necessary.

The comments below concentrate on general issues rather than technicalities of the draft law. However, scholarly and/or jurisprudential analysis of some of the underlying concepts will be included where warranted.<sup>32</sup>

### **The child**

The concept of *childhood* which emerged with the advent of the 17th century and informs the contemporary account stressed childhood as a time of innocence and weakness for a

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31 Hubbard (2009).

32 The authors' examination of the draft legislation draws on a summary prepared for the Ministry of Gender Equality and Child Welfare by the Legal Assistance Centre and circulated to stakeholders to solicit comment. MGECW (2009a).

child.<sup>33</sup> This perception of childhood bestowed upon adults “the duty ... to safeguard the former and strengthen the latter”.<sup>34</sup> Hence, many changes in children's lives can be dated to the 17th century.

It is imperative, therefore, that before the rights of children are enunciated in any piece of legislation, the term *child* be defined. The definition in the proposed Bill is simplistic and easy to digest in so far as it incorporates the same provisions of the CRC.<sup>35</sup> According to Franklin, the attempt to answer the question *What is a child?* involves extraordinary complexities<sup>36</sup> and simple definitions such as the one in the proposed Bill prove elusive. A little probing dispels certainty and prompts further questions. Franklin also asks whether Western accounts of childhood require reconsideration when confronted with the realities of life in Africa, for example, where economic necessity creates an expectation that children should work from an early age.<sup>37</sup> Franklin adds that, given the variety of the experience of childhood, we should be doubtful about the prospect of alighting upon some simple formula which will capture this diversity.<sup>38</sup>

“... childhood is a fairly recent invention ... Childhood is a European invention of the last 400 years”. Before then, “as soon as the child could live without the constant solicitude of his mother, his nanny, or his cradle rocker, he belonged to an adult society.” – Holt observes that this isolation of childhood as a special phase in life is part of a more general tendency of modern societies to become concerned with age divisions.

Childhood could, thus, be understood to be an artificial period which “has divided that curve of life, that wholeness, into two parts, one called childhood, the other adulthood or maturity”.<sup>39</sup> This means that childhood is not a single universal experience of any fixed duration: it is, rather, a historically shifting, cultural construction.<sup>40</sup>

The existing division between the two age-states is not only arbitrary, but also incoherent.<sup>41</sup> Children are treated in a negative way as ‘non-adults’. Childhood spans a wide age range from early infancy to 18 years, and within this broad span is an enormously varied range of needs, abilities and potentials.<sup>42</sup>

Franklin notes that the most significant changes in young people's lives which occur with the development of childhood involve the curtailment of their sexual relations,

33 Franklin (1986:7).

34 Aries (1972:329).

35 See Article 2 of the Convention.

36 Franklin (1986).

37 (ibid.).

38 (ibid.:8; footnotes omitted).

39 Holt (1996:21).

40 Franklin (1986:8).

41 (ibid.).

42 (ibid.).



their removal from the world of work, and their increased involvement in education and schooling.<sup>43</sup> Furthermore, as regards our understanding of the development and changing character of childhood, the works by Aries, Plumb, Firestone and others are important.<sup>44</sup> We should nonetheless be wary of accepting their findings uncritically, since, as Freeman observes, the evidence offered by history can be selective and “history is written predominantly by upper class male adults”.<sup>45</sup> What is significant about the historical study of childhood is that, while commonplace beliefs currently view childhood as a fixed and immutable state, the suggestion that it has assumed, and could again assume, a radically different form challenges that commonplace view and indicates the potential for change. Conceptions of *childhood* and *adulthood* are continually shifting – and the draft law indicates some of these twists and turns. The areas covered below show the aspirations and determination of Namibian state institutions in respect of reforming child law in the country, and creating a culture of children’s rights.

### **Child Welfare Advisory Council**

The draft law provides for the establishment of a Child Welfare Advisory Council, whose functions include designing and proposing programmes for prevention, protection or care that will advance children’s best interests, as well as monitoring the implementation of the Child Care and Protection Act and any other related laws.<sup>46</sup>

### **Children’s Ombudsperson**

Initially, the proposed Bill provided for a Children’s Ombudsperson who would be appointed by the Minister of Gender Equality and Child Welfare. No qualifications, criteria or terms of office were specified, although it appeared that the Ombudsperson would be a member of the Public Service. This Children’s Ombudsman was, according to the draft law, charged with two primary duties:

- To investigate complaints arising under the Child Care and Protection Act, and
- To monitor the implementation of the CRC and other international instruments relating to child welfare which are binding on Namibia.

Current consultations have led to a new idea about this office. It is expected that the Children’s Ombudsperson under the Bill yet to be made public will not be a separate office from the (national) Ombudsman, an office created by the Constitution.<sup>47</sup> Instead, the Children’s Ombudsperson may be made part of the Office of the (national) Ombudsman, specialising on the protection of children and reporting to the latter.

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43 (ibid.:10).

44 Aries (1996); Firestone (1972); Plumb (1973).

45 Freeman (1983:12); Tucker (1977:16).

46 MGECW (2009a).

47 See Articles 89–94, Namibian Constitution.

## Parenting plans

This provision caters for procedures to help parents and other caregivers to reach an agreement on issues pertaining to the exercise of custody, access and maintenance, as a way of preventing future disputes.<sup>48</sup> Under the Bill that is being commented on – the one which was made public – parenting plans are obliged to serve the best interest of the child. Parties to the parenting plan need to get help from a lawyer, social worker or psychologist, or they have to ask social workers or other suitably qualified person to mediate if they are struggling to reach an agreement.

## Children's courts

Children's courts under the proposed Child Care and Protection Bill would operate in much the same way as they do now under the Children's Act, with a few innovations.

According to the draft legislation, children's courts are, among other functions, charged with overseeing the well-being of children, examining the qualifications of applicants for adoption, and granting adoption orders.

As Devel and Skelton submit, in the context of South Africa, this difficulty arises from the fact that the High Court, which has the widest jurisdiction over matters pertaining to children, is not easily accessible.<sup>49</sup> Furthermore, –<sup>50</sup>

[n]ot only are High Court proceedings very expensive, but their location, divided along provincial lines, makes bringing matters before them very problematic, particularly for children in rural areas across the vast geographical space that South Africa occupies. Although the Legal Aid Board theoretically could assist children financially in accessing the superior courts, the fact of the matter is that children mostly require assistance when their parents, guardians or care-givers are the cause of the issue under determination. In these instances the persons who would ordinarily be the vehicle through which the child's matter is brought to the attention of the courts, or an application for legal aid is made, are the very reason why the child needs assistance, and do not act on behalf of the child in accessing legal representation or access to court. The result is that children are disempowered in accessing judicial determinations.

The children's courts would be ideal for providing such access in every magisterial district. In addition, the costs involved are much lower than those occasioned by the superior courts. The increase in jurisdiction would be welcomed, therefore.

The issue of disputes between parents and young children is not well addressed in the draft legislation. However, in recent years, considerable public attention has been focused on the legislative provision of various state child welfare systems, whereby a court could

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48 MGECW (2009a).

49 Devel & Skelton (2007).

50 (ibid.).

find that “a substantial and presently irreconcilable difference” existed between a young person and his or her parents.<sup>51</sup> Where such differences arise, the government believes greater emphasis has to be placed on seeking to conciliate or mediate between family members with the aim of assisting parents and young people in reaching an agreement, without recourse to the court and adversary proceedings.

### **Prevention and early intervention services**

*Prevention and early intervention services* are those that are designed to protect the child and reduce the risk of violence or other harm within the family environment. For example, if there are family members who abuse alcohol or drugs, helping them with these problems would help protect the child. Identifying children who are at risk and targeting these families for early intervention could help prevent child abuse and neglect. The interventions could also help prevent the child from developing emotional or behavioral problems in the future.

In terms of the draft law, *prevention services* are those provided to families with children “in order to strengthen and build their capacity and self-reliance to address problems that may or are bound to occur in the family environment”. *Early intervention services* are those provided to families “where there are children identified as being vulnerable to or at risk of harm or removal into alternative care”.

### **Children in need of care and protection**

All children need care and protection, of course, but this concept in law means that a child is in need of assistance which is not being provided in the home environment. *Care* is associated with nurturing, while *protection* is associated with safety issues. Various laws use one term or the other to encompass both aspects of a child’s well-being. It is necessary to balance –

- the child’s right to know and be cared for by his/her own family and the family’s corresponding right to maintain its relationship with the child, against
- the child’s need for protection from any significant risk of neglect or abuse.

The draft legislation defines a *child in need of protection* as one who –

- is abandoned or orphaned, and insufficient provision has been made for its care
- is engaged in behaviour that is, or is likely to be, harmful, and the parent or guardian or caregiver is unable or unwilling to control that behaviour
- lives or works on the streets or begs for a living
- lives in or is exposed to circumstances which may seriously harm its physical, mental or social welfare
- is in a state of physical or mental neglect
- may be at risk if returned to the custody of the parent, guardian or the person in whose care the child is, as there is reason to believe that such child will live in or

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51 (ibid.).

be exposed to circumstances which may seriously harm his/her physical, mental or social welfare, or

- is being, or is likely to be maltreated or abused by a person having the care, custody, control or charge of the child.

### **National Child Protection Register**

The draft legislation proposes a National Child Protection Register to list all perpetrators of child abuse in an effort to ensure that they do not work with children in the future. This register resembles the sex offender registers used in some countries. Some countries use a different form of 'child protection register' or 'child abuse register', which focuses on recording reports of suspected abuse to facilitate the monitoring of children at risk and the compilation of statistical data about child abuse. Other countries, such as South Africa, use both types of registers.

### **Foster care**

Foster care law is extraordinarily complex. Much of it is embedded in customary law or unwritten as customary law. In terms of the draft law, a child is in *foster care* if s/he has been placed in the care of a person who is not the parent or guardian of that child in terms of an order from the children's court. A foster parent may be a family member. The draft law stipulates new procedures as regards the placement of children under the care of persons who, temporarily or for longer periods of time, act in the place of parents.

In terms of the draft law that was made public, a children's court may place a child in foster care with a family member who is not its parent or guardian. However, before the court does so, it is obliged to follow the children's court processes stated in Chapter 7 of the proposed legislation to the extent that the provisions of that Chapter are applicable to a particular case.<sup>52</sup> In terms of the draft law, prospective foster parents have to apply to the MGECW to be recognised as a foster parent through a social worker. The social worker is required to examine the applicants' circumstances and report on them to the Minister of Gender Equality and Child Welfare. Children can be placed in foster care only after they have been found by the court to be in need of protection, on the basis of a second social worker's report.

It should be mentioned that the opinion of social workers should not be taken as decisive regarding what the children's court or any other court may order in this regard. This is because, as Ralph says, –<sup>53</sup>

... family assessment as employed generally by counsellors is steeped in the traditions of Western psychology, with its emphasis upon the individual and based upon modern Anglo-European notions of social and family organisations. The prominence of psychological theory

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52 Clause 84(3) of the draft legislation.

53 Ralph (1998:2).

and clinical practice based upon the study of small family groups and individual needs runs counter, however, to an effective understanding of the collectivist nature of Aboriginal family life.

The above position holds true as we consider that the majority of Namibians live according to traditional values and customary laws. The laws of traditional communities and traditional community perspectives are based upon a collectivist view of family and social life, which sees the upbringing of children being the responsibility of the whole community. According to this view, children come to trust in the capacity and commitment of a multitude of people to care for them and nurture them through childhood and into adulthood.<sup>54</sup>

From this perspective, any disruption caused to a child's primary attachment, for example, is outweighed by the benefits arising from the child's exposure to a broader and deeper network of family and kin to whom the child will eventually form strong attachments.<sup>55</sup> The implicit expectation is that children will grow up with a maximum exposure to their cultural heritage and take their place within a traditional society. These views are required to be taken into account. They could also have a specific component directly related to the child's traditional heritage. Like in most traditional communities, a traditionally raised child is able to adapt to different cultures because s/he is already able to adapt to both traditional and non-traditional cultures. That is, s/he has learnt to cope with the differences between Western culture and African traditional culture.

### **Facilities which care for children and contribution orders**

The new Act will provide for various forms of alternative care for children who have been abandoned or are not safe in their usual homes. Such facilities may also be utilised as alternatives to police cells and prisons for young offenders. This section of the draft legislation discusses other forms of alternative care, namely places of safety, children's homes and educational and vocational centres. In addition to these forms of alternative care, the proposed Bill also provides for the registration of "places of care" (which would include crèches, day care centres, and private pre-schools and kindergartens) and shelters.

### **Adoption**

Namibia approves a relatively small number of adoptions each year, with an average of about 80 adoptions registered annually over the last five years. In comparison, as of February 2009, there were almost 14,000 children in foster care.<sup>56</sup> In 2004, the High Court of Namibia ruled in the *Detmold* case<sup>57</sup> that it was unconstitutional to have a blanket rule

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54 (ibid.).

55 (ibid.).

56 MGECW (2009a:58).

57 *Detmold v Minister of Health and Social Services*, 2004 NR 175.

preventing foreigners from adopting Namibian children, because such adoptions might sometimes provide the best family environment for a child. Government did not oppose this case, but recommended that procedures for inter-country adoption be included in the forthcoming Child Care and Protection Act.<sup>58</sup>

It is against the above-mentioned recommendation from government that Namibia decided to include provisions on rules, procedures and safeguards for the adoption of children by Namibians and foreigners. The draft legislation begins by laying out a framework for domestic adoption, with an additional framework on inter-country adoption under the Hague Convention. Namibia has not yet adopted the Hague Convention, but would probably do so as soon as the necessary legislation is in place.<sup>59</sup>

The obligations which arise from the Hague Convention regarding inter-country adoption are well enunciated in the South African Constitutional Court decision relating to *Minister of Welfare and Population Development v Fitzpatrick*.<sup>60</sup>

One of the objectives of the Hague Convention is to establish safeguards to ensure that inter-country adoption takes place in the best interest of the child and with respect for the child's fundamental rights as recognised in international law.<sup>61</sup> Despite the Hague Convention not yet having been ratified by Namibia and, thus, not being part of Namibian law under Article 144 of the Constitution, its provisions are already reflected in the draft legislation. However, the part of the proposed Act that refers to this Hague Convention would only come into force if Namibia ratified it. It is important to note is that the fundamental principles which underlie the Hague Convention are drawn from the CRC,<sup>62</sup> particularly Article 21, which Namibia has ratified.

Article 21 of the CRC provides important protections for children. In accordance with the principle of subsidiarity,<sup>63</sup> Article 21 provides that inter-country adoption may be considered as an alternative means of child care if the child cannot be cared for suitably in terms of domestic measures. Subsidiarity requires that priority be given to placing the child with his or her family of origin, and that domestic measures be given preference over

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58 MGECW (2009a:58).

59 (ibid.).

60 2000 (3) SA 422 (CC); 2000 (7) BCLR 713 (CC). The South African Constitutional Court declared section 18(4) of that country's Child Care Act, 1983 (No. 74 of 1983) unconstitutional, because it expressly prohibited the adoption of South African children by non-South Africans. No inter-country adoption had taken place prior to this decision.

61 See the objects of the Hague Convention as encapsulated in Article 1.

62 CRC.

63 Goldstone J in *Minister of Welfare and Population Development v Fitzpatrick*, 2000 (3) SA 422 (CC) (at para. 23 footnote 13) described *subsidiarity* as "the principle that inter-country adoption should be considered strictly as an alternative to the placement of a child with adoptive parents who reside in the child's country of birth"; see also *AD v DW* [2007] SCA 87 (RSA).

inter-country adoption.<sup>64</sup> Despite the principle of subsidiarity not having been expressly provided for in domestic legislation, our courts are obliged, in terms of Article 15 of the Constitution, to take this into account when assessing the best interest of the child, as it is a well-established principle of international law.<sup>65</sup> The principle of subsidiarity is also enshrined in Article 24(b) of the African Charter, but in somewhat stronger terms, that is, inter-country adoption should only be considered as “the last resort”.<sup>66</sup> Although no express provision is made for the principle of subsidiarity in our law, courts would nevertheless be obliged to take the principle into account when assessing the “best interest of the child”, as enshrined in Article 15(1) of the Constitution, but also in international law.

### Child trafficking

The proposed legislation makes the trafficking of children a crime, and provides for extraterritorial jurisdiction to address trafficking by citizens or permanent residents of Namibia outside the country’s borders. It also provides mechanisms to address trafficking by companies and organisations, by making them liable for involvement in trafficking by their employees and agents.<sup>67</sup> This is done under the doctrine of piercing the corporate veil. In *Cape Pacific Ltd v Lubner Controlling Investments Pty Ltd*,<sup>68</sup> the Appellate Division of the Supreme Court of South Africa (as it then was) expounded on the doctrine of piercing the corporate veil in the following words:<sup>69</sup>

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64 Fact Sheet No. 36 on Inter-country Adoptions, International Social Service General Secretariat, International Reference Centre for the Rights of Children Deprived of their Family; available at [http://www.iss-ssi.org/Resource\\_Centre/New\\_Documents/documents/FactSheetNo36ENG.pdf](http://www.iss-ssi.org/Resource_Centre/New_Documents/documents/FactSheetNo36ENG.pdf); last accessed 9 September 2009.

65 *Minister for Welfare and Population Development v Fitzpatrick*, 2000 (3) SA 422 (CC); 2000 (7) BCLR 713 (CC) (at para. 32 footnote 33). Goldstone J states in para. 32 that one of the concerns that underlies “the principle of subsidiarity are met by the requirement in s 40 of the [Child Care] Act that courts are to take into consideration the religious and cultural background of the child, on the one hand, and the adoptive parents, on the other”. In terms of s 39(1)(b) a court is obliged, when interpreting the Bill of Rights, to consider international law.

66 Article 24 reads, in the relevant part, as follows:  
States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

(a) ...

(b) recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin.

67 See also the position in South Africa, as expounded on in the *Fitzpatrick* case, para. 31.

68 1995 (4) SA 790 (AD).

69 (ibid:822).

But where fraud, dishonesty or other improper conduct ... is found to be present, other considerations will come into play. The need to preserve the separate corporate identity would in circumstances have to be balanced [against] policy considerations which arise in favour of piercing the corporate veil ... and a court will then be entitled to look into substance rather than form in order to arrive at the true facts, and if there has been a misuse of the corporate personality, to disregard it and attribute liability where it should lie.

The rationale for piercing can be seen in the dictum by Goldin J in *RP Crees (Pvt) Ltd v Woodpecker Industries (Pvt) Ltd*,<sup>70</sup> where the court said that “the lifting of the corporate veil is possible” and may be necessary so as to prove who determines or who is responsible for the corporation’s activities and decisions.<sup>71</sup>

Chapter 11 of the draft law regulates the position regarding inter-country adoption. In terms of this Chapter, a person habitually resident in a foreign country who wishes to adopt a child habitually resident in Namibia is required to apply to the competent authority of the country concerned, which authority is tasked with submitting a report to the Namibian Minister. No inter-country adoption is permitted to take place without the latter’s approval. If the central authorities of both countries agree to such adoption, then the application is processed by the children’s court.<sup>72</sup>

This procedure is in line with the Hague Convention, which highlights the international concern focused on child trafficking. The objects of that Convention, according to Article 1, are –

- (a) to establish safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;
- (b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- (c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

In terms of the draft law regarding the behaviour related to the facilitation of trafficking, a person “may” (not *shall*) not knowingly leasing or subleasing or allowing any room, house, building or establishment to be used for the purpose of harbouring a child who is a victim of trafficking; and “may” not advertise, publish, print, broadcast, distribute or cause the advertisement, publication, printing, broadcast or distribution of information that suggests or alludes to trafficking by any means, including the use of the Internet or other information technology.

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70 1975 (4) SA 485 (R) at 491.

71 *RP Crees (Pvt) Ltd v Woodpecker Industries (Pvt) Ltd*, 1975 (4) SA 485 (R), at 487 E–G. This view is supported in a judgement by Margo J in *Gering v Gering & Another*, 1974 (3) SA 358 (W) at 361.

72 MGECW (2009b).



The use of the modal verb *may* could be problematic: it leaves an option open, i.e. a person could be permitted to perform the specified actions under certain circumstances. The proposed legislation does not create clarity on which situations a person is strictly prohibited from performing any such actions. It is not clear why the drafters decided to express this imprecisely because a loophole now seems to have been created.

In comparison with the South African legal position, the problems surrounding the verification of background information from foreign applicants for adoption are dealt with unequivocally: a social worker unable to verify facts relating to the foreign applicant's background would be required to bring such application to the attention of the children's court.<sup>73</sup> Consequently, if the children's court is not satisfied with the verification of any information relevant to the adoption, the application would necessarily have to be denied. This is in the event where the court is unable to satisfy itself on certain matters,<sup>74</sup> and, in terms of section 18 of the South African Children's Act, the court would be obliged to refuse the order.

A related concern in South Africa is that, without bilateral agreements between South Africa and the applicable foreign state, effective post-adoption monitoring would not be possible in respect of inter-country adoptions. This problem exists even with section 18(4)(f) of the South African Children's Act,<sup>75</sup> when South African adoptive parents emigrate. Furthermore, it could take many years to negotiate bilateral agreements with all of the relevant foreign governments. The absence of such agreements alone may present similar problems, which the Namibian legislature should look into.

### **Consent to medical treatment, testing and emergency operations**

It is clear that children need special protection because of their tender age and physique, mental immaturity, and incapacity to look after themselves. Recognising this, the proposed law provides for an age at which a child can consent to medical treatment.

The proposed law introduces a new general rule in terms of which a child may consent to medical treatment. This means that Namibian law will now recognise the 'mature minor rule', which entails that minors can consent to medical treatment. This implies, that if the medical practitioner believes the minor can give informed consent to the treatment and it is in the minor's best interest not to notify his or her parents, the medical practitioner concerned can proceed with the treatment.

The exception is that a child cannot consent if s/he is below 14 years of age, and if s/he is not of sufficient maturity and is mentally incapacitated to understand the benefits, risks, and social and other implications of the treatment.<sup>76</sup> In situations requiring emergency

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73 See *Fitzpatrick*, para. 33.

74 See *Fitzpatrick*, para. 30.

75 No. 38 of 2005.

76 MGECW (2009a).

medical treatment for a child, the draft legislation gives power to the superintendent of a hospital (or the person in charge of the hospital in the absence of the superintendent) to “consent to the medical treatment of or a surgical operation on a child”.<sup>77</sup> The proposed law also provides for conditions to this power, saying that the power can be exercised if –<sup>78</sup>

- the treatment or operation is necessary to preserve the life of the child or to save the child from serious or lasting physical injury or disability, and
- the need for the treatment or operation is so urgent that it cannot be delayed for the purpose of obtaining consent.

A further difficult question for which the draft legislation does not provide an answer concerns consent to abortion: the proposed Bill is silent on this. The legal drafters must have had the Abortion and Sterilisation Act<sup>79</sup> in mind when they omitted this, but the draft law should mention this or at least refer to the said Act, especially considering the issue of abortion where a minor is impregnated without having planned for the pregnancy. It is recommended that the draft legislation include a clause to the effect that an unmarried minor female needs to obtain the consent of one parent or her guardian for abortion. If she is unable to obtain consent from a parent/guardian or chooses not to ask for consent from a parent/guardian, she may petition the High Court to obtain consent since the High Court is the upper guardian of all minors in terms of the common law.

The current age of consent to medical treatment and operations is 18. Public discussions have been ongoing in terms of finding out exactly what the age of consent to medical treatment should be. Young people were also involved in this discussion through radio programmes and Facebook. In order to consent, the child would have to be a certain age and have sufficient maturity and mental capacity to understand the benefits, risks, and social and other implications of the treatment. The same holds true for a child undergoing a surgical operation, but in this case, the child's parent/guardian is obliged to give consent as well. The age had not yet been decided at the time this article was compiled.

There is no standard by means of which to measure the level of maturity or understanding of a child, so it is an intricate matter to ascertain with certainty whether or not a child is mature and understands the surgical procedures s/he will be subjected to. The draft law should cover this loophole.

The proposed legislation also covers the issue of HIV testing for children. It provides that a child may not be tested for HIV unless it is in his/her best interest for the test to be done. In this light, there are two basic areas covered:

- The general circumstances under which a child may be tested for HIV and AIDS, and
- Provisions concerning consent.

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77 (ibid.:70).

78 (ibid.:70).

79 No. 2 of 1975.

The overall ‘best interest of the child’ standard is to prevail generally as regards when it is appropriate to subject a child to an HIV test. There are, however exceptions, to this, and here Namibia borrows from the South African Children’s Act. These exceptions are where a healthcare worker may have come into contact with the body fluids of a potentially HIV-positive child, or where any other person may have done so – but, in the latter instance, prior authorisation needs to be sought from a court, presumably a children’s court.<sup>80</sup>

*General application of the ‘best interest’ principle*

It should be noted at this point that the ‘best interest’ rule is the yardstick guiding the application of the draft legislation in its entirety; but in this context, and particularly in areas concerning child adoption and custody, it should be emphasised that this principle has been the subject of extensive consideration in academic, operational and other circles. Legal documents relating to the protection of children include this principle, as incorporated in the documents of the United Nations High Commissioner for Refugees (UNHCR);<sup>81</sup> but how to apply the principle in practice often remains challenging for the UNHCR and its partners. In addition, limited guidance is available on how to operationalise the principle.

The interpretation and application of the ‘best interest’ principle is obliged to conform with the CRC and other international legal norms, as well as with the guidance provided by the Committee on the Rights of the Child in its 2005 General Comment No. 6, which deals with the treatment of unaccompanied and separated children outside their country of origin. The CRC neither offers a precise definition, nor explicitly outlines common factors of the best interest of the child, but stipulates the following.<sup>82</sup>

In addition to these four principles, the CRC provides for a number of fundamental rights which include, inter alia, the need for protection from abuse, exploitation and neglect, and the importance of the physical and intellectual development of the child. It gives particular attention to the role of the family in providing care to the child, to the special protection needs of children deprived of their family environment and those of asylum-seeking and refugee children.

It should be mentioned here that the principle arising from Article 3 of the CRC, namely that the best interest of the child has to be a primary consideration, needs to be applied in a systematic manner for any action by the UNHCR that affects children under its auspices. It applies to actions affecting children in general or to specific groups of children, as well as to those affecting individual children of concern.

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80 Devel & Skelton (2007:7–38).

81 UNHCR (2008:16).

82 (ibid.).

## Corporal punishment

The draft legislation would require any person who has control of a child, including the child's parents, to respect the child's right to physical integrity. This would include foster parents, primary caretakers and other caregivers. According to the MGECW summary report on the draft law,<sup>83</sup> it is absolutely forbidden for anyone to administer corporal punishment to a child at any place of safety, place of care (which covers crèches, day care centres, etc.) shelter, children's home or educational and vocational centre.<sup>84</sup>

The proposed law also states that any law which allows corporal punishment of a child by a court, including a traditional court, is no longer valid. This rule covers statutes, common law and customary law.<sup>85</sup>

In addition, it should be noted that the proposed legislation covers certain controversial areas in Namibian law regarding corporal punishment. The controversy arises over whether the prohibition of corporal punishment by the Supreme Court in the case of *Ex parte: Attorney-General, In Re: Corporal Punishment by Organs of State*<sup>86</sup> extended to chastisement by traditional authorities, and whether it included chastisement by parents. Although it could be argued that any form of corporal punishment is in contravention of Article 8 of the Constitution, it was not conceivable that the law also forbade parents from disciplining their children by way of corporal punishment.

The blanket prohibition by the proposed law shows that Parliament has statutorily given effect to the findings of the Supreme Court that –<sup>87</sup>

... there is less agreement with regard to the desirability or otherwise of the imposition of corporal punishment, judicially or quasi-judicially ordered to be meted out to juveniles, that is on young persons under the age of 21 years. Even less agreement exists in respect of the desirability or otherwise of corporal punishment in schools. It seems to me that once one has arrived at the conclusion that corporal punishment per se is impairing the dignity of the recipient or subjects him to degrading treatment or even to cruel or inhuman treatment or punishment, it does not in principle matter to what extent such corporal punishment is made subject to restrictions and limiting parameters, even of a substantial kind – even if very moderately applied and subject to very strict controls, the fact remains that any type of corporal punishment results in some impairment of dignity and degrading treatment.

Thus, the draft legislation embodies the contemporary norms, aspirations, expectations and sensitivities of the Namibian people as expressed in its national institutions and Constitution, as well as the emerging consensus of values in the civilised international

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83 MGECW (2009a).

84 (ibid)

85 (ibid.).

86 1991 (3) SA 76 (NmSc).

87 See *Ex parte: Attorney-General, In Re: Corporal Punishment by Organs of State*, 1991 (3) SA 76 (NmSc).

community against torture and inhuman and degrading treatment – in this case in the context of children.<sup>88</sup>

### **Other child protection measures**

The draft law provides for protective measures for children in particularly vulnerable situations such as child-headed households,<sup>89</sup> the worst forms of child labour, child safety at places of entertainment, and crimes related to child abuse and neglect. The issue of child-headed households is an important one in Namibia, where some children have been orphaned due to the high prevalence of HIV. In terms of the proposed legislation, the Minister of Gender Equality and Child Welfare may recognise a household as being *child-headed* if the children's parent or caregiver is terminally ill or has died; if no adult family member is available to provide care for the children in the household; and if a child has assumed the role of caregiver in respect of a sister or brother in the household. The draft law does not define *child-headed household*, but, drawing on the definition of *child* therein, *child-headed household* can be defined as one which is led by a child under the age of 18. This child takes on the responsibilities usually assumed by parents, including providing care to other children. Children as young as 12 head some households in Namibia.

The main event that leads to the establishment of a child-headed household is the death of both parents. However, in some cases, one parent or even both parents are still alive. Other events include parental illness or disability. In some cases, one or both parents have left the family home for some reason. Although there are many documents about teenage pregnancy, this does not appear to have been identified as a factor in causing the establishment of child-headed households.

Circumstances leading to child-headed families differ, but it is conceivable that, in most cases when both parents die, the eldest minor child may take over as the head of the household – thus creating a child-headed household. On other cases, the child-headed household is not established immediately at the time of parental death. Often, the children are cared for initially by a relative, often a grandparent. Only another event, such as the death of that caregiver in turn, can result in a child-headed household being established.

### **Conclusions**

The draft legislation – which is still under review and will still usher in more amendments before reaching Parliament – shows a reform process that will lead to the enactment of the Child Care and Protection Act, which in itself will be a tremendous move for Namibia, and it can be used as one of the best practices in the Southern African Development

88 UNHCR (2008:20).

89 The term *child-headed households* may change in the draft legislation under review and yet to be made public.

Community – if not Africa. This law will provide greater protection and prevention for, and will promote the well-being of, children in Namibia because it encompasses all relevant international instruments that the country has ratified, as well as those that it is considering, like the 1993 Hague Convention. Namibia can be applauded for initiating for such law reform.

Opponents of children's rights believe that young people need to be protected from the adult-centric world, including the decisions and responsibilities of that world.<sup>90</sup> In the adult society, childhood is idealised as a time of innocence, a time free of responsibility and conflict, and a time dominated by play.<sup>91</sup> The majority of opposition stems from concerns related to national sovereignty, state rights, and the parent–child relationship.<sup>92</sup> Financial constraints and the “undercurrent of traditional values in opposition to children's rights” are cited as well.<sup>93</sup> Notably, the concept of *children's rights* has received little attention in the United States – which is, however, in the process of ratifying the CRC.

Nonetheless, in terms of the draft legislation, the state will be responsible for taking all available measures to ensure children's rights are respected, protected and fulfilled. With the draft legislation and the ratification of Conventions giving effect to the rights of children, Namibia will need to constantly review her laws relating to children. This involves assessing national social services; legal, health and educational systems; and the levels of funding made available for these services and systems. Under international law, governments are obliged to take all necessary steps to ensure that the minimum standards set by the CRC are met. States Parties need to help families protect children's rights and create an environment where children can grow and reach their potential. Indeed, Article 41 of the Convention points out that, when a country already has higher legal standards than those seen in the Convention, the higher standards always prevail.

## References

- Amnesty International USA. 2009. *Frequently asked questions about children's rights*. Available at [http://www.amnestyusa.org/children/crn\\_faq.html](http://www.amnestyusa.org/children/crn_faq.html); last accessed 29 September 2009.
- Aries, P. 1996. *Centuries of childhood*. New York: Vintage Books.
- Coomer, R. 2009. “Protecting the next generation: Have your say on the Child Care and Protection Bill”. *The Namibian*, 29 May.
- Covell, K & RB Howe. 2001. *The challenge of children's rights for Canada*. Waterloo: Wilfrid Laurier University Press.
- DeLamater, JD. 2003. *Handbook of social psychology*. New York: Kluwer Academic & Plenum Publishers.

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90 DeLamater (2003:150).

91 Lansdown (1994:33–34).

92 Amnesty International USA (2009).

93 Covell & Howe (2001:158).

- Devel, CJ & AM Skelton. 2007. *Commentary on the Children's Act: Revision Service 1*. Cape Town: Juta & Co. Ltd.
- Farson, RE. 1974. *Birthrights: A Bill of Rights for children*. London/New York: Macmillan.
- Firestone, S. 1972. "Down with childhood". In Firestone, S (Ed.). *The dialectics of sex: The case for a feminist revolution*. New York: Bantam Books.
- Flatham, R. 1976. *The practice of rights*. Cambridge: Cambridge University Press.
- Franklin, B. 1986. *The rights of children*. New York: Basil Blackwell Ltd.
- Freeman, MDA. 1983. *The rights and wrongs of children*. London: Frances Printer.
- Holt, JC. 1996. *Escape from childhood*. Harmondsworth: Penguin.
- Hubbard, D. 2009. *Namibia's Draft Child Care and Protection Bill: Process for public awareness and input*. Windhoek: Legal Assistance Centre.
- International Social Service General Secretariat. 2009. *International Reference Centre for the Rights of Children Deprived of their Family. Fact Sheet No. 36 on Inter-country Adoptions*. Available at [http://www.iss-ssi.org/Resource\\_Centre/New\\_Documents/documents/FactSheetNo36ENG.pdf](http://www.iss-ssi.org/Resource_Centre/New_Documents/documents/FactSheetNo36ENG.pdf); last accessed 23 June 2009.
- Lansdown, G. 1994. "Children's rights". In Mayall, B (Ed.). *Children's childhood: Observed and experienced*. London: The Falmer Press.
- MGECW/Ministry of Gender Equality and Child Welfare. 2009a. *Draft Child Care and Protection Bill: Summary*. Windhoek: MGECW.
- MGECW/Ministry of Gender Equality and Child Welfare. 2009b. *The Draft Child Care and Protection Act: Issues for public debate*. Windhoek: MGECW.
- Plumb, JH. 1973. *In the light of history*. Boston: Houghton Mifflin.
- Ralph, 1998. "The best interests of the Aboriginal child in family law proceedings". *Australian Journal of Family Law*, 2(2):140–149.
- Rodham, H. 1973. "Children under the law". *Harvard Educational Review*, 43(4):487–514.
- Pinchbeck, I & M Hewitt. *Children in English society*, Vol. 2. London: Routledge & Kegan Paul.
- Satir, V. 2009. "A quote on family, flourish, atmosphere, individual, difference, mistakes, toleration, and flexible". Available at [http://www.gaia.com/quotes/virginia\\_satir\\_1](http://www.gaia.com/quotes/virginia_satir_1); last accessed 12 September 2009.
- Starr, RH. 1975. "Children's rights: Countering the opposition". Unpublished paper presented at the 83rd Annual Meeting of the American Psychological Association in Chicago, Illinois, 30 August–3 September 1975.
- Stasiulis, D. 2004. "The active child citizen: Lessons from Canadian policy and the Children's Movement". *Polis Revue Camerounaise De Science Politique*, 12, Numero, Special 2004–2005. Available at <http://www.polis.sciencespobordeaux.fr/vol12ns/stasiulis.pdf>; last accessed 18 September 2009.
- Tucker, N. 1977. *What is a child?*. London: Open Books.
- UNHCR/United Nations High Commissioner for Refugees. 2008. *UNHCR Guidelines on determining the best interests of the child*. Available at <http://www.unhcr.org/refworld/docid/48480c342.html>; last accessed 17 September 2009.

