

A major decision: Considering the age of majority in Namibia

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There is always one moment in childhood when the door opens and lets the future in.

Graham Greene (1904–1991), British novelist

We have many names for what we perceive as the different stages of life. In Namibia, people refer to *children*, *adolescents*, *learners*, *the youth*, *majors*, *minors*, *adults* and *elders* – amongst other terms.

Looking only at government, we have the Ministry of Gender Equality and Child Welfare which takes responsibility for children aged 0–18, continuing up to 21 if they are still in school.¹ The Ministry of Youth, National Service, Sport and Culture which defines *youth* as persons aged 15–35.² Our National Policy on Orphans and Vulnerable Children defines an *orphan* as “a child who has lost one or both parents because of death and is under the age of 18 years” and a *vulnerable child* as “a child who needs care and protection”.³ Our National Policy for Reproductive Health defines *adolescent* as a person aged 10–19, and *youth* as persons aged 19–30.⁴

The Namibian Constitution has no definition of *child*, but refers in individual provisions to “children” of up to age 14 or 16.⁵ Across Africa, constitutional provisions refer to children in a variety of ways, using terms such as *minors*, *young persons*, *youth* and *infants*.⁶

So who exactly is a *child*? And at what age should a child become a *major*?

1 Personal communications with Ministry officials.

2 This definition is based on the African Youth Charter ratified by Namibia in February 2008. It came into force in August 2009. See African Union Press Release 142/2009; available at <http://209.85.229.132/u/UAAU?q=cache:RkZuJq8vxHoJ:www.africa-union.org/root/UA/Actualites/2009/juillet/PR%2520142%2520AFRICAN%2520YOUTH%2520CHARTER%2520%2520%2520%252007%252009.doc+african+youth+charter&cd=3&hl=en&ct=clnk&ie=UTF-8>; last accessed 20 September 2009.

3 MWACW (2004).

4 MHSS (2001:para. 2.4).

5 See Articles 15 and 20.

6 Sloth-Nielsen (2008:57).

Majors and minors

The concepts of *minor* and *major* relate to the legal capacity of a person. A person who is a *major* is legally an adult. A major has full legal capacity. This means that people who have reached the age of majority can enter into contracts, bring court cases, and perform other legal acts independently. A *minor* can do many of these things only with assistance from his or her parent or legal guardian.

Some statutes have overridden the common law on minors, by giving minors certain independent legal powers. For example, a person who has reached the age of 16 can make a will,⁷ open and operate a bank account,⁸ and consent to sexual activity.⁹ A person who has reached the age of 18 can vote,¹⁰ drive,¹¹ buy cigarettes and alcohol,¹² gamble,¹³ work in any type of job,¹⁴ obtain a firearm licence,¹⁵ and give independent consent to medical treatment.¹⁶ Compulsory education ends at age 16,¹⁷ while an 18-year-old can be tried and punished for a crime as an adult.¹⁸

But only a person who has reached age 21 can independently bring or defend a court case,¹⁹ enter into fully enforceable contracts,²⁰ enter into a civil marriage without

7 Wills Act, 1953 (No. 7 of 1953).

8 Banking Institutions Act, 1998 (No. 2 of 1998), section 67; Building Societies Act, 1986 (No. 2 of 1986), section 62.

9 Combating of Immoral Practices Act, 1980 (No. 21 of 1980), section 14 (as amended by Act No. 7 of 2000), as read together with the Combating of Rape Act, 2000 (No. 8 of 2000).

10 Namibian Constitution, Article 17.

11 See Road Traffic and Transport Act, 1999 (No. 22 of 1999), section 34. The ages for driving particular types of vehicles are set by regulation.

12 Liquor Act, 1998 (No. 6 of 1998), section 71(1)(s).

13 Casinos and Gambling Houses Act, 1994 (No. 32 of 1994), section 47; Lotteries Act, 1992 (No. 15 of 1992), section 27.

14 Namibian Constitution, Article 15, read together with the Labour Act, 2007 (No. 11 of 2007), section 3.

15 Arms and Ammunition Act, 1996 (No. 7 of 1996), section 3.

16 Children's Act, 1960 (No. 33 of 1960), section 20(8A).

17 Namibian Constitution, Article 20, read together with the Education Act, 2001 (No. 16 of 2001), section 63. There is also a maximum age for school enrolment. Regulations issued in terms of the Education Act provide that persons over the age of 21 may not be admitted to any grade in a state school unless they were enrolled in a state school the previous year and promoted to the next grade. They must otherwise enrol in a state adult education programme or at a private educational institution. Regulations made under the Education Act, Government Notice No. 186 of 28 October 2002 (*Government Gazette* 2841), Regulation 23(5).

18 The special provisions for "juveniles" in the Criminal Procedure Act, 1977 (No. 51 of 1977) and the Prisons Act, 1998 (No. 17 of 1998) apply to persons below the age of 18.

19 A minor has capacity to litigate without the assistance of a parent or guardian in a few specific situations. See Jordaan & Davel (2005:92).

20 A minor can enter into agreements without assistance from a parent or guardian if the minor obtains only rights and no obligations. See (ibid.:64).

parental consent,²¹ sell or mortgage land,²² or administer money or property which they have inherited.²³ Majority also involves some corresponding responsibilities with less advantageous implications; for example, lowering the age of majority would lower the age at which civil claims in respect of minors would prescribe.²⁴ And, of course, the key aspect in many people's minds – an aspect which some might view as protective, while others might view it as a disability – is that minors are still, in principle, subject to parental rights and powers.²⁵

The proposed Child Care and Protection Bill

During the course of 2009, the age of majority has been under discussion across Namibia, as part of a broader discussion about child protection and child rights. The Ministry of Gender Equality and Child Welfare is in the process of finalising a Child Care and Protection Bill, which is intended to replace the Children's Act²⁶ inherited from South Africa at Independence.²⁷ As the Chief Justice of Namibia pointed out in a closing speech at a workshop held to discuss the draft law, the Children's Act is a product of the apartheid government in South Africa and –²⁸

... needless to say, it was therefore not designed with specific reference to the social and cultural attitudes and values of our people.

The first draft of this proposed legislation was prepared in 1994 on behalf of the Ministry of Health and Social Services. Responsibility for the draft subsequently passed to the Ministry of Women Affairs and Child Welfare, which came into existence in 1999. During the last 15 years, the draft has undergone numerous revisions and adaptations, with the most recent version of the proposed statute having been finalised in 2008.

The proposed legislation is a long and complex law which covers many aspects of child care and protection, including children's courts, procedures for removing endangered

21 Marriage Act, 1961 (No. 25 of 1961), sections 24–27. Minors under the age of 18 also need state consent to enter into a civil marriage.

22 Administration of Estates Act, 1965 (No. 66 of 1965), section 80.

23 (*ibid.*:sections 86ff).

24 In terms of section 3 of the Prescription Act, 1969 (No. 68 of 1969), prescription of a minor's claim takes place within three years after the date on which the minor attained majority, depending on when the cause of action arose; no cause of action can prescribe before the lapse of one year from the date on which the claimant became a major.

25 See SALC (1998).

26 No. 33 of 1960.

27 This South African law was made applicable to what was then South West Africa by the Children's Amendment Act, 1973 (No. 74 of 1973), which came into force on 1 January 1977, by virtue of RSA Proclamation 264 of 17 December 1976 (*South African Government Gazette* 5360).

28 Hon. Justice Peter Shivute, Chief Justice of Namibia; "Address at the Closing Session of the Specialist Workshop on the Child Care and Protection Bill", 19 August 2009.

children from their homes, foster care, adoption, child trafficking, child-headed households, the age of consent for medical treatment, proposals for the implementation of a Child Welfare and Advisory Council, and a Children's Ombudsman.

In order to ensure that the proposed legislation would be appropriate for Namibia, in 2009 the Ministry, with technical assistance from the Legal Assistance Centre and support from the United Nations Children's Fund (UNICEF), launched the most thorough consultation process Namibia has ever seen on a proposed piece of legislation. Individual topics in the draft were discussed and debated by adults and children alike at regional and national meetings, on radio and television, and through more 'modern' media such as the short messaging service (SMS) and the Internet social network, Facebook.²⁹ Information about the Bill has also been disseminated through newspaper and magazine articles, booklets inserted into national newspapers, and e-mail and website postings. The information was provided by the Ministry in five languages (Afrikaans, English, *Khoekhoegowab*, *Oshiwambo*, and *Rukwangali*), with the hope that media outlets, particularly local radio stations, would translate the information for broadcasts in additional languages. Given Namibia's low population density, it was vital that as many means as possible were used to ensure that people, both rural and urban, have been able to access information for discussion.

This intensive consultation process was designed to get input from members of the public, service providers and other key stakeholders to ensure that the law would be suitable for Namibia and feasible to implement in practice, and to raise public awareness of the forthcoming law and increase public understanding of children's rights in Namibia.

The draft legislation defines a *child* as "a person who has not attained the age of 18 years";³⁰ yet, unlike an earlier version, it leaves the age of majority unchanged at 21.³¹ As several workshop participants have asked in discussion around the draft legislation, "what happens to a child between the ages of 18 and 21?"³²

29 Facebook is a popular Internet site devoted to social networking. People who participate in Facebook can join discussion groups on topics which interest them. As of 20 September 2009, the discussion group on the Child Care and Protection Bill ("Protecting Children's Rights in Namibia") had 276 members, many of whom were Namibian teens. Active participation in discussion about topics in the Bill has been significantly lower; as of 20 September 2009, there were 33 posts on various discussion topics by a total of 29 people.

30 Ministry of Gender Equality and Child Welfare, Draft Child Care and Protection Bill, 2009, section 1.

31 The age of majority is currently governed by the Age of Majority Act, 1972 (No. 57 of 1972). In terms of this law, which was inherited from South Africa, all persons in Namibia, both male and female, "attain the age of majority when they attain the age of 21 years". This is why 21st birthday parties are often marked with special celebrations. A minor can also attain majority status by concluding a valid civil marriage, or by means of a court order declaring him or her to be a major. For a discussion of the historical aspects of the age of majority, see James (1960); Chanook (2001); Burman (1988).

32 For example, participants at a workshop in Keetmanshoop were worried about the fact that,

This question has led to lively debates on the appropriate age for Namibian children to be treated as adults.

International perspectives on the age of majority

Most countries in the world set the age of majority at 18.³³ However, there are variations, with the age of majority ranging from a low of 14 (for example, in Albania³⁴) to a high of 21 (as in Namibia and Lesotho³⁵). The fact that the age of majority varies by up to seven years shows that this issue is not just about the age a child becomes competent to perform certain legal acts, but also about when a person is considered mature enough to be viewed as an adult according to the cultures of various countries.

The trend towards setting the age of majority at 18 is partly a result of the United Nations Convention on the Rights of the Child, which has been ratified by every country in the world except Somalia and the United States of America.³⁶ Namibia was one of the first countries in the world to ratify the Convention, and the Convention was one of the first international treaties ratified in an independent Namibia.³⁷

In Article 1, the Convention defines a *child* as a person under the age of 18:

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

under the current draft law, foster care would end at the age of 18, while the age of majority remained at 21, thus leaving children in limbo for three years (Keetmanshoop regional meeting, 28–30 April 2009). Women’s Action for Development (WAD), while hesitant to support the lowering of majority to 18 years, similarly expressed concern about the ‘grey area’ between age 18 and 21, when a person was no longer a *child*, but remained a *minor* – with all the legal limitations attached to minority (written submissions by WAD on the Child Care and Protection Bill, 8 September 2009).

33 Article 1 of Council of Europe Resolution (72)29 recommended that the governments of member states lower the age of majority to below 21 years and, if they deemed it advisable, to fix that age at 18 years, provided that states could retain a higher age of capacity for the performance of certain limited and specified acts in fields where they believed that a higher degree of maturity was required. In the Inter-American Human Rights System, there is no specific definition of *child*. See Inter-American Commission on Human Rights (2008).

34 www.interpol.int/Public/Children/SexualAbuse/NationalLaws/CsaAlbania.pdf; last accessed 19 September 2009.

35 www.interpol.int/Public/Children/SexualAbuse/NationalLaws/CsaLesotho.pdf; last accessed 19 September 2009.

36 UNICEF [n.d.]. The UNICEF website reports as follows: “Somalia is currently unable to proceed to ratification as it has no recognized government. By signing the Convention, the United States has signalled its intention to ratify – but has yet to do so” (www.unicef.org/crc/index_30229.html; last accessed 20 September 2009).

37 Namibia ratified the Convention on 30 September 1990, after becoming independent on 21 March 1990.

The Convention does not absolutely require that States Parties lower ages of majority which are higher than 18, since its definition of *child* applies *for the purposes of the Convention*.³⁸ However, the Committee which monitors the Convention encourages countries to harmonise the definition of *child* and the age of majority if they are not already the same, including in countries where the age of majority is higher than 18.³⁹

For example, in 1994, after considering Namibia's first report under the Convention, the Committee noted with concern "the contradictions to be found in national legislation with respect to the definition of the child".⁴⁰

Several other countries have recently been criticised by the Committee for having an age of majority which is higher than 18. For example, Egypt was specifically criticised for having a discrepancy between the definition of *child* in children's legislation and a higher age of majority in other laws:⁴¹

The Committee recommends that the State Party harmonise its legislation in order to avoid the situation where there are effectively two categories of minors: those under 18 years and those between 18 and 20 years of age.

Similarly, in the case of Lesotho, the Committee noted its concern about the contrast between the definition of *child* as a person under 18 years of age and the age of majority set at 21, and recommended that —⁴²

... the State party review, and amend as appropriate, existing legislation in order to harmonize the age of majority and the overall definition of the child.

The main motivation for harmonising the ages is apparently to ensure that children do not lose any of their special legal protections before they acquire complete adult rights.

The International Covenant on Civil and Political Rights does not include a definition of *child* or set any age limits, and the Committee which oversees this Covenant has stated

38 See UNICEF (2007:4); emphasis added.

39 (ibid.:3).

40 CRC/C/15/Add.14, 7 February 1994.

41 CRC/C/15/Add.145, 21 February 2001, paragraphs 27–28.

42 CRC/C/15/Add.147, 21 February 2001, paragraphs 23–24. Other examples include the Committee's concluding comments in respect of Monaco (CRC/C/15/Add.158, 9 July 2001), paragraphs 18–19: "The Committee notes the high age of majority, 21 years, in the State party ... The Committee recommends that the State party proceed with efforts to set the age of majority at 18") and the Comoros (CRC/C/15/Add.141, 23 October 2000, paragraphs 21–22: "The lack of a uniform and clear definition of the age of majority in the Comoran legislation is a matter of concern ... The Committee recommends that the State party continue its efforts to harmonize existing provisions concerning the age of majority to establish one clear age at which the child legally becomes an adult ...").

that the age at which a child attains majority is to be “determined by each State Party in the light of the relevant social and cultural conditions”.⁴³

Article 2 in the African Charter on the Rights and Welfare of the Child also defines a *child* as a person below age 18:

For the purposes of this Charter, a child means every human being below the age of 18 years.

As with the UN Convention on the Rights of the Child, this definition of *child* is only for the purposes of the Charter. It has been noted, however, that the African Charter’s definition of *child* is “stronger” than that in the UN Convention, because it does not allow for any exceptions where national law sets a lower age of majority.⁴⁴

Evolving capacities

Despite defining *child* as a person under 18, the UN Convention on the Rights of the Child recognises that children need varying levels of direction and guidance in accordance with their “evolving capacities”.⁴⁵ A young participant in consultations around Namibia’s Child Care and Protection Bill articulated this principle very clearly by stating that —⁴⁶

... minors gradually acquire more and more legal rights as they mature. It seems as though law makers are trying to prepare minors for adulthood.

The Committee which monitors the Convention on the Rights of the Child requests States Parties to provide information on the ages at which persons in the country acquire decision-making powers over a wide range of issues, including independent consent to medical treatment and surgery, marriage, sexual activity, adoption, and the consumption

43 Human Rights Committee (2006: 183–185, paragraph 4):

The right to special measures of protection belongs to every child because of his status as a minor. Nevertheless, the Covenant does not indicate the age at which he attains his majority. This is to be determined by each State Party in the light of the relevant social and cultural conditions. In this respect, States Parties should indicate in their reports the age at which the child attains his majority in civil matters and assumes criminal responsibility. States Parties should also indicate the age at which a child is legally entitled to work and the age at which s/he is treated as an adult under labour law. States Parties should further indicate the age at which a child is considered adult for the purposes of Article 10, paragraphs 2 and 3. However, the Committee notes that the age for the above purposes should not be set unreasonably low, and that, in any case, a State Party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.

44 See, for example, Mindzie (2007).

45 See Articles 5 and 14.

46 Workshop discussions published by the Legal Assistance Centre in the *YouthPaper*, an insert in *The Namibian* newspaper, on 16 June 2009; comment from a 21-year-old youth leader from the organisation Physically Active Youth.

of alcohol. States must also provide information on the age for criminal responsibility, conscription into the armed forces, and participation in hostilities, as well as the age for capacity to inherit and administer property, give testimony in court, and choose a religion independently. States Parties are also obliged to report on the ages for protective legislation on employment and deprivation of liberty by arrest or detention.⁴⁷ Other issues which have been raised include the ages at which persons can vote, stand for office, acquire a passport independently, join a religious community for life, or have unfettered access to films and other media.⁴⁸

However, a UNICEF handbook on the implementation of the Convention points out that the Committee's request for information on minimum legal ages does not imply that the Convention requires a specific or uniform age for each of these capacities:⁴⁹

... In general, minimum ages that are protective should be set as high as possible (for example protecting children from hazardous labour, criminalization, custodial sentences or involvement in armed conflict). Minimum ages that relate to the child gaining autonomy and to the need for the State to respect the child's civil rights and evolving capacities, demand a more flexible system, sensitive to the needs of the individual child.

Some "minimum age" issues relate both to increased autonomy and to protection. For example, the child's right to seek legal and medical counselling and to lodge complaints without parental consent, and to give testimony in court, may be crucial to protection from violence within the family. It is not in the child's interests that any minimum age should be defined for such purposes.

The Convention provides a framework of principles; it does not provide direction on the specific age, or ages, at which children should acquire such rights. Under article 12, children capable of forming views have the right to express their views freely in all matters affecting them. Their views must be given "due weight in accordance with the age and maturity of the child" ...

Some States, in addition to setting in legislation certain ages for the acquisition of particular rights, include in their law a flexible concept of the child's evolving capacities so that children acquire rights to make decisions for themselves on certain matters once they have acquired "sufficient understanding". The advantage of such formulas is that they avoid rigid age barriers; the disadvantage is that they leave judgments on when children have acquired sufficient understanding to adults, who may not respect the concept of evolving capacities.

Harmonisation of ages for various capacities requires that they be sensibly coordinated, without necessarily being identical.⁵⁰ For example, as the Committee has pointed out,

47 CRC (1996: paragraph 24).

48 UNICEF (2007:6).

49 (ibid.:5).

50 This is an important point which is often misunderstood or oversimplified. For example, a study of child law and policy by the African Child Policy Forum in 19 countries appeals for "a definitive age for children to guide decision-making in all issues affecting children" (2007:28–29). The report goes on to state the following (ibid.):

There are inconsistencies in legal definitions of minimum ages, such as for sexual consent, marriage, completion of basic education and eligibility for employment, which must be addressed in majority of the countries reviewed.

the age at which compulsory education ends should coincide with the age for access to full-time employment. It is also important to ensure that there is no sex discrimination in the setting of ages.⁵¹

Because of the principle of evolving capacities, it is also possible and sometimes logical for certain legal protections to extend beyond the age of majority. For example, in the United States of America, many states set the age of majority at 18, while persons may drink alcohol only at age 21.⁵² In Scotland, young people have full legal capacity at 16 years, but the court may ratify or set aside transactions made by persons between the ages of 16 and 18 if they are “prejudicial”, measured by what an adult acting with “reasonable prudence” in the same set of circumstances would have done.⁵³ In South Africa, although the age of majority is now 18, children who have been placed in alternate care by means of a court order may remain in such care under some circumstances until the end of the year in which they turn 21.⁵⁴ Namibia’s Maintenance Act⁵⁵ provides another example of how such extensions of rights could work; maintenance orders normally terminate when a child reaches age 18, but continue to age 21 —⁵⁶

... if the child is attending an educational institution for the purpose of acquiring a course which would enable him or her to maintain himself or herself.

Some people who have commented on the age of majority question in Namibia have pointed to what they perceive as inconsistencies in Namibia’s current age framework. For example, as a 21-year-old stated, —⁵⁷

51 States Parties are asked to specify in their periodic reports any differences between girls and boys in respect of the definition of *child* under their domestic laws and regulations; CRC (2005: paragraph 19).

52 Further information and a review of American laws and policies on drinking are available at www.alcoholpolicy.niaaa.nih.gov/index.asp?SEC={E0F4FCC5-F475-4CC4-81EF-9CB6A10A902A}&Type=B_BASIC; last accessed 20 September 2009.

53 Age of Legal Capacity (Scotland) Act 1991; available at www.uk-legislation.hmso.gov.uk/acts/acts1991/Ukpga_19910050_en_1; last accessed 21 September 2009. This law also gives children under age 16 the legal capacity to enter into transactions “commonly” entered into by persons of that age, such as buying sweets or railway tickets, but not for unusual contracts such as the purchase of a bicycle or computer. For a summary of the law’s effect, see Bell and Jones (2002:34).

54 Children’s Amendment Act, 2007 (No. 41 of 2007), section 176.

55 No. 9 of 2003.

56 Section 26(1)–(2). *Child* is not defined in the Act; so as the provision now stands, if the age of majority were lowered, the section would appear to allow for an application for extension of a maintenance order to be made only if the application was made before the child’s 18th birthday.

57 Workshop discussions published by the Legal Assistance Centre (LAC) in the *YouthPaper*, an insert in *The Namibian* newspaper, on 16 June 2009; comment from 21-year-old youth leader from the organisation Physically Active Youth.

[P]ersonally I think that it [the age of majority] should be lowered to age 18 now. There actually is not much difference between what an 18-year-old can do and what a 21-year-old can do right now. If an 18-year-old can buy alcohol, own a gun, gamble and even be locked up in prison with adults, why deny them the right to the age of majority?

An 18-year-old had this to say:⁵⁸

I don't think 18-year-olds should be locked up in a police cell with adults. If an 18-year-old is still considered a minor under the law, how can they be combined in one cell with adults? Adults can take advantage of these minors and rape can take place. Later, it would scar you and could end up making you go mental. I think they should keep minors and adults in different cells.

One young person thought that the Namibian age of 16 for sexual consent might be too low,⁵⁹ while some adults suggested that the age at which children could consume alcohol, buy guns, and gamble should be increased to 21.⁶⁰

The Committee which oversees the Convention urges States Parties to review all laws defining *childhood* in any way, to ensure that they are harmonious.⁶¹ UNICEF has described the underlying principles eloquently:⁶²

The Convention on the Rights of the Child sets out the rights that must be realized for children to develop their full potential ... It reflects a new vision of the child. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. The Convention offers a vision of the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development.

Some recent developments in other countries

In a 2002 review of South African legislation on children, the South African Law Reform Commission recommended that the country should define *child* as a person below age 18, and set the age of majority at 18 years as well, with a proviso that parental responsibility and/or state support in respect of such a person may be extended beyond age 18 in special circumstances (e.g. a disabled child or a child still receiving education).⁶³

58 Workshop discussions published by the LAC in the *YouthPaper* on 16 June 2009; comment by 18-year-old learner, Ella Du Plessis Secondary School.

59 Workshop discussions published by the LAC in the *YouthPaper* on 16 June 2009; comment from a 21-year-old youth leader from the organisation Physically Active Youth.

60 National Child Care and Protection Bill workshop held from 8 to 12 June 2009, Windhoek; information from discussions on 10 June 2009.

61 UNICEF (2007:4).

62 Convention on the Rights of the Child: Protecting and realizing children's rights; available at www.unicef.org/crc/index_protecting.html; last accessed 18 September 2009.

63 SALC (2002).

The basis for this recommendation was that “it would better accord with social reality if the age of majority were reduced to 18 years”, and that the age of 21 was “paternalistic” and –⁶⁴

... over[-]inclusive, as it sweeps in many minors who are in fact possessed of the necessary competence to make assessments of what qualifies as their best interests.

Accordingly, South Africa’s Children’s Act⁶⁵ repealed the Age of Majority Act⁶⁶ in South Africa with effect from 1 July 2007, and provided that “[a] child, whether male or female, becomes a major upon reaching the age of 18 years”.⁶⁷ The provision recommended by the South African Law Reform Commission for extending parental responsibility and state support was not included in the final law.

The South African Government’s motivation for the change was –⁶⁸

... that the changed socio-economic and political circumstances in South Africa justify the advancement of the age of majority to 18 years.

It also cited the African Charter on the Rights and Welfare of the Child and the South African Constitution, which includes a section on children’s rights that defines *child* for the purposes of this section as “a person under the age of 18 years”.⁶⁹ Furthermore, it noted the following:⁷⁰

Regarding the age of majority, there has been a grey area in relation to the age of adulthood since 1972 when the Age of Majority Act of 1972 stipulated the age of 21 as the age of majority. “Child” has always been defined as a person under the age of 18. Between 18 and 21 you’re neither a child nor an adult. The Children’s Act, 2005 clarifies that grey area and brings [it] in line with section 28 (3) of the Constitution. Now any person under 18, unless married or emancipated by order of Court, is a child and any person over 18 is an adult.

The change in South Africa has been controversial. Even during consultation meetings around Namibia’s Child Care and Protection Bill, to which experts from South Africa were invited, the experts argued among themselves whether or not the change was right for South Africa. An Assistant Commissioner of Child Welfare felt that it was a mistake to lower the age of majority on the grounds that 18-year-olds were still children in terms of their maturity; many 18-year-olds in South Africa were still in school; and children of that age might still need care within the child protection system. She also expressed concern that lowering the age of majority had complicated access to maintenance for

64 SALC (1998).

65 No. 38 of 2005.

66 No. 57 of 1972.

67 Section 17.

68 Department of Social Development (2007).

69 South African Constitution, Article 28.

70 Department of Social Development (2007).

those above age 18 who were not yet self-supporting.⁷¹ On the other hand, a Senior Lecturer from the University of the Western Cape disagreed, stating that the lowering of the age of majority reflected an important realisation of rights, and that the practical problems which had been experienced could have been addressed by better transition provisions.

Argentina is currently in the process of lowering its age of majority from 21 to 18. The motivation given for this move is as follows:⁷²

The Convention on the Rights of the Child defines a child as being under 18. According to our current legislation, 21 is the age of majority and young people aged 18–21 are considered 'minor adults' who have the capacity to undertake certain actions (for example to vote or go to war) but they cannot marry without parental permission or leave a will.

Japan has recently been deliberating the possibility of lowering the page of majority from 20 to 18. A government subcommittee recommended this change on the grounds that lowering the legal age of adulthood would allow young people to participate in society at an earlier stage, and give them heightened awareness as adults. It would also legally enable 18- and 19-year-olds to make their own decisions about using money. The subcommittee thought that, if young people started taking on the responsibilities of adulthood earlier, their sense of obligation to society would blossom more quickly. Lowering the legal age of adulthood would demonstrate the state's determination for youth "to play the central role in forming the future of this country", the report said, concluding that this would "invigorate Japanese society".⁷³ However, it was also noted that there might be a need to provide young adults with extra protection against consumer fraud. A government opinion poll administered to some 5,000 people found that nearly 70% of respondents were opposed to this move. The most common reasons given for this view were that 18- and 19-year-olds were still economically dependent on their parents, and that people under 20 were not viewed as being sufficient capable of making appropriate judgments or taking responsibility for themselves. At the time of writing, Japan's age of majority remained 20, as the government thought that it would be appropriate to put consumer protection measures into place first.

71 Such majors who seek maintenance would have to bring an action for maintenance themselves (or cede it to someone else, such as a parent or caretaker) and show that they should continue to be entitled to maintenance.

72 Press release entitled "Argentina: Plan to lower age of majority", 28 August 2009; available at www.crin.org/resources/infodetail.asp?id=20761; last accessed 20 September 2009.

73 The information in this paragraph is drawn from Shimbun (2009); Enyo (2009); Kyodo News (2008); and *Weekly Japan Update* (2008). At the time of writing, Article 3 of the Japanese Civil Code still stated that the age of majority was 20. See www.interpol.int/Public/Children/SexualAbuse/NationalLaws/CsaJapan.pdf; last accessed 21 September 2009.

The Namibian debate

Both children and adults in Namibia have differing views on the appropriate age of majority, with most respondents in both groups feeling that the age of majority should remain at 21.

During one workshop, the LAC organised a panel discussion with three young people aged 16, 18 and 21, respectively, to represent the key ages under Namibian law for acquiring various legal capacities. These young people spoke about whether they were content with the rights they possessed, and about whether they believed that the age of majority should be reduced to 18.

The 16-year-old stated that she was generally happy with the limited rights she had at her age, and said she did not feel ready for the rights and responsibilities of adulthood.⁷⁴

Imagine if I were to be given all rights. Mentally I wouldn't be ready to handle all of them. My life would be clashing at all corners. The basic rights that I'm allowed are more than enough to help me develop positively into adulthood ... Two years from now I will be 18 years. At [that] age I will be allowed to do more things. For example, I will be allowed to drive a car and drink alcohol. In some countries 16-year-olds are allowed to drive and consume alcohol. But with driving a car and drinking alcohol comes a lot of risk. I feel the rights of an 18-year-old in Namibia are perfectly suited for their mental capacity. However, I am against the lowering of the age of majority from 21 years to 18 years. A person at the age of 18 is still a teenager. They are still very dependent on their parents and guardians. A person at the age of 21 is independent and responsible. Therefore[,] I feel the age of majority should be held at 21 years.

The 18-year-old similarly expressed satisfaction with his existing level of capacity. For instance, he found it fair that 18-year-olds could have any job and drive, although he worried that 18-year-olds might become distracted from their studies because of their ability to frequent clubs. He also noted that some people were not ready for certain rights even though they were entitled to them, saying that he personally did not feel ready to vote even though he was eligible to do so:⁷⁵

I don't think the age of majority should be brought down to 18 because too many wrong choices would be made and many 18-year-olds are not mature enough to be responsible for their actions.

The 21-year-old noted that he generally approved of the way in which rights were acquired as minors matured. He agreed that 16- and 17-year-olds should not have the full rights of adulthood, since youth at that age were impressionable, but asserted that the age of majority should be reduced to 18 since there was already little difference between

74 Workshop discussions published by the LAC in the *YouthPaper* on 16 June 2009; comment from 16-year-old learner at Dawid Bezuidenhout High School.

75 (ibid.); comment from 18-year-old learner at Jan Jonker Afrikaner High School.

what 18- and 21-year-olds could do. He noted that rural youth may have a different level of sophistication than urban youth, but felt that rural youth would support the idea of lowering the age of majority if they were educated on what it meant.⁷⁶

On Facebook, an 18-year-old Namibian learner lobbied for lowering the age of majority as follows:⁷⁷

I think the age of majority in Namibia creates problems. Many teens finish school at age 18 and also get their drivers' licences then. This means increased freedom as well as possibly moving out of their parents' house to go to university. So, teens essentially take on much of the responsibility and freedom associated with adulthood, except that they still need their parents' permission to sign a contract. This becomes a logistical problem if the teen is living far from home, but it also doesn't make sense to me that teens essentially become adults in all but name at 18.

Further support to change the age of majority came from a Namibian student studying in South Africa:⁷⁸

I am a 19-year-old student at the University of Cape Town in South Africa. When at university, I am, according to South African law, a major; I can perform any legal act without my parents' knowledge or consent and am entirely independent. However, as soon as I return home for the holidays I have to have my parents' permission and 'help' with any contract or other legal proceeding I want to engage in. This seems ridiculous as I certainly do not become less mature as I pass through passport control at the border.

An input from an adult read as follows:⁷⁹

In Namibia, as soon as you turn 18 and complete school, you are regarded as an adult. You maybe start working, get your own place and be[come] your own boss. There are no restrictions to what can or cannot be done when you provide for yourself. Nobody stands in your way whether you are voting, consuming alcohol or having sex. Parents will only regard their kids ready when they turn 21 (it is tradition) although the kid has been providing for himself. The age of majority should be 18; there is enough time for trial and error to experiment and hopefully [those] 3 years between 18–21 will be an eye-opener for kids to start reacting seriously and [maturely] for the rest of the years ahead. [The age of majority should be] 18 years.

At a recent Windhoek workshop conducted with 15 children aged between 13 and 19, the children felt that lowering the age of majority might give 18- to 20-year-olds more responsibility in terms of handling their own legal affairs and money matters. However,

76 (ibid.); comment from 21-year-old youth leader, Physically Active Youth.

77 Comment posted on Facebook discussion group hosted by the LAC, "Protecting children's rights in Namibia", 22 April 2009 (spelling and punctuation corrected).

78 Comment submitted to the LAC by e-mail (spelling and punctuation corrected).

79 Comment posted on Facebook discussion group hosted by the LAC, "Protecting children's rights in Namibia", 13 May 2009 (spelling and punctuation corrected).

overall, only 8 of the 15 children felt that the age of majority should be lowered.⁸⁰ At a second workshop, conducted with 15 other children in the same age group, some of the participants felt that the age of majority should stay at 21 –⁸¹

... because at 21 you can take better care of yourself when you leave home. Eighteen-year-olds just think of parties, drinking and having fun. At 21 your maturity is better developed and you have more life experience.

In contrast, others felt the age of majority should be lowered to 18 because –⁸²

... children who stay with their parents till 21 are just lazy. The key given at 21 is just a tradition, there is really nothing to it. If you can support yourself financially at 18 than you don't need your parents' support. At first maybe an 18 year old will waste but then later will realize their responsibility.

Many people who have commented on the age of majority question have puzzled over how to deal with children who are in vastly different life situations. For example, at one of the regional consultations on the Child Care and Protection Bill, an adult participant argued that when a child left home to study at the University of Namibia, he or she was still considered to be a child; on the other hand, a child who did not go on to further studies was expected to behave like an adult and join the working world. As the participant asked, “Why is a child who goes to university a child, but a child who stays at home has to become an adult?”⁸³

At another meeting, a 16-year-old gave a poignant example of a similar practical concern.⁸⁴

I think people should be permitted the right to work at any type of job they want at 16. My mom is a domestic worker. I have passed my first term [of Grade 12], but do not have any money for tertiary education. Imagine the crisis I'm in. I've looked for jobs everywhere to support my further education. But they have all turned me down because of my age.

A social worker also emphasised the different life situations of different individuals: ⁸⁵

Let me lead you into life in the rural areas. Children live with their parents right until they get married; only then do they move out to their husband's place, that is, for the ladies. And for the men, they are actually given a space within the household to start their family. In such a

80 Workshop conducted by Yolande Engelbrecht, LAC, 8 August 2009.

81 Workshop conducted by Yolande Engelbrecht, LAC, 15 August 2009.

82 (ibid.)

83 Rundu regional consultation, 12–14 May 2009.

84 Panel discussion at workshop on the age of majority hosted by the Ministry of Gender Equality and Child Welfare and the LAC, Windhoek, 10 June 2009, as transcribed by the LAC; comment from 16-year-old learner, Dawid Bezuidenhout High School.

85 Comment posted on Facebook discussion group hosted by the LAC, “Protecting children's rights in Namibia”, 25 June 2009.

case, the parents are the ones who cater for the everyday needs of the individual. Reducing the age of majority to 18, hence, in this context, will really not [make] much of a difference. As a social worker, I have found 29-year-old women who have children out of wedlock coming to my office to complain that their parents are not taking good care of them. This just shows that it is the norm for the parents to take care of them even though they have reached [the] age of majority [but] are not mature enough to actually make decisions for themselves that will benefit them. Not to generalise, but in such a case it would be risky to ... reduce the age of majority to 18 because they are not mature enough to handle most [of the] responsibility that will come with it. But then again, not all children are like that.

At a national workshop, an official from the Ministry of Education commented as follows:⁸⁶

Often, both parents have to work and there is no time to control children or to impose the type of strictures they would like to impose. In the meantime, the children's peers are 'educating' the children, but on other things. Oldest daughters often raise younger children. We need to realise these things. The law needs to empower children to take care of themselves.

This same speaker felt that the age of 21 was more appropriate for privileged children who completed secondary school at age 18, and could have finished three years of tertiary education by the time they turned 21.⁸⁷

Yet, according to 2007 Education Management Information System (EMIS) data from the Ministry of Education, comparatively few children managed to reach Grade 12: the number of children still in school at Grade 12 was only 24% of the number enrolled in school in Grade 1.⁸⁸ Furthermore, the vast majority of Namibian children between the ages of 18 and 21 were no longer in school.⁸⁹ Thus, it is likely that many children in this age group will be in a position where they need to make independent decisions, a right that is currently unavailable to them.

Some people have cited practical concerns. For example, one girl submitted that the government should lower the age of majority so that minors could handle money or property that they had inherited, while another girl emphasised that traditional customs should follow the civil law so that young girls could not be married off to older men by their parents.⁹⁰ A social worker with the Motor Vehicle Accident Fund pointed to

86 National Child Care and Protection Bill workshop held from 8–12 June 2009, Windhoek; information from discussions on 10 June 2009.

87 (ibid.).

88 In 2007, the raw figures for total enrolment were as follows: Grade 1 – 68,861 and Grade 12 – 16,737; Ministry of Education (2008:Table 29).

89 According to the 2001 census, there were 116,194 persons aged 18–20 in Namibia (NPC 2003:1). In 2007, there were 44,564 children in this age group at school, which is about 38% of the census figure (Ministry of Education 2008:Table 25). Allowing for the differences in years between these two sources, it is likely that almost two-thirds of Namibians in this age group are no longer attending school.

90 Workshop discussions published by the LAC in the YouthPaper on 16 June 2009; comment

problems that minors currently had in accessing money after a parent had died, and suggested a need to emancipate children for this purpose in some cases.⁹¹ On the other hand, some parents phoned in to radio chat shows during the consultation process to express fears that they would be unable to control 18-year-olds if the age of majority were lowered.⁹²

Voicing a view similar to that expressed by some in other consultations, a social worker in favour of setting majority at age 18 stated the following:⁹³

Times have changed, so the laws should change as well. The age of majority should be lowered.

Several people who gave input into the question favoured an approach with as much flexibility as possible. For example, some suggested keeping the age of majority at 21 whilst allowing younger children more specific rights, if necessary. Others favoured lowering the age of majority to 18, and yet still setting a higher age for a few things. The example regarding the drinking age in the USA illustrates this option. Another possibility might be to set the age of majority at 18, with a range of exceptions for children who are still in school, so that they can continue to receive state grants or parental maintenance or remain in alternative care.⁹⁴

Conclusion

The decision on the age of majority will not be an easy one. For every comment supporting the need of keep the age of majority at 21, another person supports the need to lower it to 18.

Because there is no clear consensus, Namibia may chose to keep the age of majority at 21. But if this is the case, it will be important to ensure that existing legislation does not leave children between the ages of 18 and 21 in a legal limbo, lacking the protections afforded to ‘children’ as well as the autonomy of adults. If the age of majority is not lowered, it would be necessary in the Child Care and Protection Bill to increase the definition of *child* up to the age of 21 – for at least some key purposes, if not across the board.⁹⁵

from 18-year-old learner, Jan Jonker Afrikaner High School.

91 National Child Care and Protection Bill workshop held from 8–12 June 2009, Windhoek; information from discussions on 10 June 2009. Emancipation refers to the process whereby children under the age of majority who are at least age 18 can apply to the High Court to be declared majors before reaching the age of 21; Age of Majority Act, section 2–3.

92 Radio chat shows monitored by the LAC, March–September 2009.

93 National Child Care and Protection Bill workshop held from 8–12 June 2009, Windhoek; information from discussions on 10 June 2009

94 (ibid.).

95 For example, section 1 of the current Children’s Act defines child as “a person, whether infant or not, who is under the age of 18 years”, but specifies that for certain purposes that

The debate about the prospect of changing the age of majority is exciting in itself, because it promotes discussion and reflection about the meaning of childhood and the rights and responsibilities which go along with increasing maturity.⁹⁶ The topic has inspired discussions on the need to both protect and empower children.

Regardless of which age of majority is chosen, many of the concerns raised can be addressed through careful tailoring of the forthcoming Child Care and Protection Act – and regardless of which age is chosen, the debate has sparked interest in the concept of *maturity* – which may have as much impact on society as the law itself. As a saying by an unknown author puts it, “Childhood is short, maturity is forever”.

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this category will include “a person who is over the age of 18 years but under the age of 21 years”. The specified purposes are alternative care and adoption.

96 As a concrete example, prior to this debate, it appears that most members of the public had never heard of the possibility of the emancipation of a minor; but during the consultation process, the Ministry received SMS input discussing the issue of emancipation, as follows (sent on 12 and 13 June 2009 from separate numbers, and reproduced without corrections):

[SMS 1] Am for lowering the age of majority ... or even if possible can apply 4 emancipation if proven thereof by parents or guardians.

[SMS 2] I do agree with the possible alternative [emancipation] this will help us as a Nation especially the willing minors 2 b declard majors.

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