

The Namibian laws with respect to child contact are derived from the Namibian Constitution ; Child Care and Protection Act 3 of 2015 and the Maintenance Act 9 of 2003

What is child contact?

- Child contact may be defined as the maintenance of a personal relationship with a child. It entitles a person to see, spend time with (visit or be visited) or communicate (through post, all forms of electronic and telephonic communication) with a child who does not live with that person. The child's parent/s or a person other than the child's parent/s (such as grandparent) can obtain the right to contact a child, provided that the contact would serve in the child's best interests.
- The Namibian Constitution provides for and protects the rights of children from birth to a name, to acquire a nationality, and subject to an Act of Parliament enacted or made in the best interests of children, as far as possible the right to know and be cared for by their parents.
- In terms of the Child Care and Protection Act 2015 (Act 3 of 2015) the parental responsibilities and rights that a person may have in respect of a child, include the responsibility and right -
 - to have custody of the child, including responsibility for decisions relating to the child's day-to-day upbringing;
 - to maintain contact with the child;
 - to act as guardian of the child; and
 - to contribute to the maintenance of the child.

How can a person obtain the right to contact a child?

- A parent, including the adoptive parent of a child, the guardian or a member of the child's family or extended family have the right to contact a child as explained below.
- With respect to a parent, it is part of his/her parental responsibilities and rights to have contact with a child.
- Once a person has been duly recognised by the law as an adoptive parent or guardian of a child, their rights and responsibilities include the right to contact a child.
- Both parents of a child born outside marriage have equal rights to custody of the child born outside marriage. This includes the right to contact a child.
- One parent must have custody of the child born outside and both parents may agree on who must have custody. In this case the parents are known as co-holders of parental responsibilities and the agreement;
 - must be in writing and signed by both parents in the presence of two witnesses; and
 - may be accompanied by a parenting plan.
- The parenting plan may include provisions on contact with or access to the child.
- With respect to a member of the child's family or extended family, other than the parent or guardian of the child or a person who has parental responsibilities and rights, they obtain the right to contact a child either with consent of the child's parent or guardian or by a court order that the child has been placed under kinship care.

What will the court consider when granting an order in respect of contact?

- When considering the granting of order in respect child contact, the best interests of the child concerned is the paramount consideration. In determining the best interests of the child, the court must take into account the following factors, where relevant:

- the child's age, maturity and stage of development, sex, background and any other relevant characteristics of the child;
- the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;
- views or opinions expressed by the child with due regard to the child's age, maturity and stage of development;
- the right of the child to know and be cared for by both parents, unless his or her rights are persistently abused by either or both parents or continued contact with either parent or both parents would be detrimental to the child's well-being;
- the nature of the personal relationship between the child and other significant persons in the child's life, including each of the child's parents, any relevant family member, any other care-giver of the child or any other relevant person;
- the attitude of each of the child's parents towards the child and towards the exercise of parental responsibilities and rights in respect of the child;
- the capacity of the parents or any specific parent or of any other care-giver or person to provide for the needs of the child, including emotional and intellectual needs;
- the desirability of keeping siblings together;
- the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from both or either of the parents; or any brother or sister or other child or any other care-giver or person, with whom the child has been living;
- the practical difficulty and expense of a child having contact with the parents or any specific parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents or any specific parent on a regular basis;
- the need for the child to maintain a connection with his or her family, extended family, culture or tradition;
- any disability that the child may have;
- any chronic illness from which the child may suffer;
- the need for the child to be brought up within a stable family environment and where this is not possible, in an environment which , as closely as possible , looks like a caring family environment;
- the need to protect the child from any physical or psychological harm that may be caused by -
 - (a) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation;
 - (b) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person; or
- any family violence involving the child or a family member of the child.

Can the custodian parent/s refuse contact after a court order in respect of such contact was obtained?

- A parent, guardian or other person who has parental responsibilities and rights in respect of a child, care-giver or person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely or temporarily, commits an offence if that parent or care-giver or other person -
 - abuses or deliberately neglects the child; or
 - abandons the child,
- If found guilty, he or she will be liable on to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

- Furthermore, a person who is legally liable to maintain a child commits an offence if that person, while able to do so, fails to provide the child with adequate food, clothing, lodging and medical assistance and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.
- Any person who has a genuine interest in the well-being of a child may lodge a complaint to the clerk of the children's court, to alert the court to the fact that:
 - a natural or legal guardian;
 - or a person appointed as a tutor under letters of tutorship by the Master of the High Court;is not acting in the best interests of the child.

Does a parent have to pay maintenance if s/he is refused contact?

- Both parents of a child have a legal duty to maintain their child. It includes money for food, accommodation, clothing, medical care and education.
- It is the primary responsibility of parents to maintain their child. Even if the child is cared for by someone else, the mother and father both have a duty to maintain the child. If a child is adopted, the adoptive parents have a duty to maintain the child.
- A parent still has the legal duty to maintain his or her child whether a parent has a contact right or not.

May a court order in respect of contact be changed or cancelled?

- If the right to contact a child is made as a result of a parenting plan that was made an order of court , the parenting plan may be amended or terminated or cancelled only by that court if any of the following persons applies (or apply) to the court -
 - one or more of the co-holders of parental responsibilities and rights who are parties to the plan;
 - the child acting with leave of the court; or
 - any other person acting in the interests of the child.
- The court hearing an application may grant the application only if it is in the best interests of the child.
- If the right to contact a child is made as a result of a kinship care agreement, a children's court may, on application by a social worker or any other person who has an interest in the well-being of a child, terminate a kinship care agreement if the court finds that the child is or may be in need of protective services.

What if a dispute exists between the parents in respect of contact?

- A dispute can be referred for mediation to a family meeting, a designated social worker or to the children's court, if the mediation process fails.

For more information and help on this QuickLaw topic you can talk to a Legal Counsellor at your nearest LegalWise Branch or email windhoek@legalwise.na / oshakati@legalwise.na / walvisbay@legalwise.na

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Glossary of terms:

ADOPTIVE PARENT: means a person who has been granted the right to become the parent of a child by adoption under the Child Care and Protection Act 3 of 2015 or any other law.

DESIGNATED SOCIAL WORKER: means a social worker in the employment of the State or a social worker in private practice appointed or designated by the Minister responsible for protection of children for a specific purpose or purposes or a social worker in the employment of a child protection organisation designated by the Minister for a specific purpose or purposes.

KINSHIP CARE: a child is in kinship care if the child has been placed, with the consent of the child's parent or guardian or by order of court, in the care of a member of the child's family or extended family, other than the parent or guardian of the child or a person who has parental responsibilities and rights in respect of the child.

KINSHIP CARE AGREEMENT: it is an agreement entered into by a child's parent or guardian with the kinship care-giver in the absence of a court order. The kinship agreement must be registered with the clerk of the children's court.

KINSHIP CARE GIVER: means a person who has kinship care of a child.

PARENTING PLAN: parenting plan is a plan between co-holders of parental responsibilities and rights in respect of a child determining the exercise of their respective responsibilities and rights in respect of the child.

PROTECTIVE SERVICES: protective services consist of services, arrangements and measures providing for the safety and well being and in the best interests of a child who has been determined by a designated social worker and confirmed by the children's court to be in a state of abuse, neglect, abandonment, criminality etc in terms of the Child Care and Protection Act 3 of 2015.

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