

Disrupting Harm

Evidence from 13 countries on the context, threats, and children's perspectives of online child sexual exploitation and abuse.

Legal Analysis of OCSEA related Provisions in Namibia

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This report is a summary of preliminary data collected for this research project. The perspectives contained herein represent the individuals interviewed and surveyed. Support from the Fund to End Violence Against Children does not constitute endorsement.

International, Regional and National Commitments and Legislation on Sexual Exploitation of Children

Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council		
International Instruments		Date of ratification/accession
Convention on the Rights of the Child - 1989		28 September 1998
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000		16 April 2002
Optional Protocol on a Communication Procedure - 2011		-
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)		15 November 2000
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organised Crime)		16 August 2002
Regional Instruments		Date of ratification/accession
African Charter on the Rights and Welfare of the Child-1990		23 July 2004
African Union Convention on Cybercrime- 2014		25 January 2019
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (OPSC review)	Initial report overdue since 2004	

General Issues Related to Children's Rights

In Namibia, the Child Care and Protection Act of 2015 defines a 'child' as "a person who has not attained the age of 18 years".¹ This definition is **consistent across all national legislation**.

Furthermore, the Child Care and Protection Act establishes the age of majority to be 18.² The Act further states that, except when expressly stated, the definition of the age of majority under the Act would apply to the interpretation of the expressions "minor", "major", "majority", "full age", etc. used in statutory provisions.³ Therefore, the **alternative terminologies** used in the Act mirror the definition of a 'child'.

Pursuant to the provisions of the Combating of Immoral Practices Act of 1980 (as amended), the **age of sexual consent** for both boys and girls is 16 years.⁴ Accordingly, having "sexual acts" with children under 16 years is an offence.⁵ The definition of "sexual act" is the same as provided under the Combating of Rape Act of 2000⁶ and includes penetrative as well as non-penetrative sexual acts.⁷ A person cannot be held guilty for this offence if they are married to the child in question (under general or customary law).⁸ This exception inadvertently legalises sexual abuse of those children married before attaining the legal age.

The Namibian legislation is ambiguous on whether consensual sexual acts between children under 18 years are criminalised or not. Consequently, there is no criterion to determine whether such consent is **voluntary, well-informed, and mutual**. Notwithstanding, the legislation establishes a **close-in-age exception** for persons who are not more than 3 years older than the child.⁹

It is worth noting that homosexuality is criminalised under the colonial sodomy law (uncodified).¹⁰ The sodomy law criminalises consensual sex between males.¹¹ While this law is still in force, its enforcement is sporadic and atypical, and its constitutionality is unclear, as the Constitution guarantees non-discrimination and other protections.¹² Given the legal age of sexual consent, this law may hamper

¹ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 1.

² Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 10(1).

³ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 10(4).

⁴ Republic of Namibia. (1980). [The Combating of Immoral Practices Act No. 21 of 1980 \(as amended in 2000\)](#), Section 14.

⁵ Republic of Namibia. (1980). [The Combating of Immoral Practices Act No. 21 of 1980 \(as amended in 2000\)](#), Section 14(a).

⁶ Republic of Namibia. (1980). [The Combating of Immoral Practices Act No. 21 of 1980 \(as amended in 2000\)](#), Section 1.

⁷ Republic of Namibia. (2000). [The Combating of Rape Act No. 8 of 2000](#), Section 1(1).

⁸ Republic of Namibia. (1980). [The Combating of Immoral Practices Act No. 21 of 1980 \(as amended in 2000\)](#), Section 14(ii).

⁹ Republic of Namibia. (1980). [The Combating of Immoral Practices Act No. 21 of 1980 \(as amended in 2000\)](#), Section 14(i); Republic of Namibia. (2000). [The Combating of Rape Act No. 8 of 2000](#), Section 2(2)(d).

¹⁰ The Namibian. (2020). [Outright calls for scrapping of sodomy law](#).

¹¹ ILGA World. (2019). [State-Sponsored Homophobia 2019: Global Legislation Overview Update](#), P. 49; 170.

¹² Information received via personal communication with field researcher.

reporting of online child exploitation and abuse (OCSEA) offences due to the stigma associated with homosexuality (though advocacy efforts are making strides toward lessening the stigma) as well as fear of prosecution, which could be exploited by offenders.¹³

The **legal working age** is 14 years.¹⁴ The minimum age for employment in **hazardous** work is 16 years. A child aged 14-16 cannot be employed in or made to perform hazardous work or work that interferes with their education or is harmful to their health or physical, mental, social, moral, or spiritual development.¹⁵ Children aged 16-18 cannot be employed for night shifts between 8 pm-7 am¹⁶ and for underground work, mine work, construction or demolition work, factory, power stations, etc.¹⁷

In theory, the **minimum age of criminal responsibility** is 7 years.¹⁸ However, children aged 7-14 years are presumed to be incapable of wrongdoing.¹⁹ Hence, the State must prove that the child accused of committing a wrongful act knowingly committed the said act and understood the nature of the consequences resulting from it.²⁰ Although children below 14 are presumed to be incapable of wrongdoing (and despite the age of sexual consent for both boys and girls being set at 16 years of age), it is noteworthy that boys under 14 years of age are not presumed to lack the capacity of having sexual intercourse or performing an act of sexual nature.²¹ This inconsistency in the law could imply that boys below 14 years of age can be punished for committing sexual offences. Furthermore, the Constitution of Namibia states that “no law authorising preventive detention shall permit children under the age of 16 years to be detained”.²²

The **legal age of marriage** for both boys and girls is 18 years.²³ However, children below 18 years can marry with the written permission of either the Minister of Home Affairs or any public service member authorised in their behalf, or with the consent of a court or judge.²⁴ Furthermore, persons below 21 years need parental consent to get married.

¹³ Josenhans, V., Kavenagh, M., Smith, S., & Wekerle, C. (2019). [Gender, rights and responsibilities: The need for a global analysis of the sexual exploitation of boys](#). *Child Abuse & Neglect*, P. 6.

¹⁴ Republic of Namibia. (2007). [The Labour Act 11 of 2007 \(as amended in 2012\)](#), Section 3(2).

¹⁵ Republic of Namibia. (2014). [The Constitution of the Republic of Namibia \(as amended in 2014\)](#), Article 15(2).

¹⁶ Republic of Namibia. (2007). [The Labour Act 11 of 2007 \(as amended in 2012\)](#), Section 3(1)(c).

¹⁷ Republic of Namibia. (2007). [The Labour Act 11 of 2007 \(as amended in 2012\)](#), Section 3(1)(d).

¹⁸ Committee on the Rights of the Child. (1993). [Initial Report submitted by Namibia under Article 44 of the Convention](#), CRC/C/3/Add. 12, P. 11, Paragraph 40.

¹⁹ Committee on the Rights of the Child. (1993). [Initial Report submitted by Namibia under Article 44 of the Convention](#), CRC/C/3/Add. 12, P. 11, Paragraph 40.

²⁰ Committee on the Rights of the Child. (1993). [Initial Report submitted by Namibia under Article 44 of the Convention](#), CRC/C/3/Add. 12, P. 11, Paragraph 40.

²¹ Republic of Namibia. (2008). [The Combating of Rape Act No. 8 of 2000](#), Section 4.

²² Republic of Namibia. (2014). [The Constitution of the Republic of Namibia \(as amended in 2014\)](#), Article 15(5).

²³ Republic of Namibia. (1961). [The Marriage Act No. 25 of 1961 \(as amended in 2019\)](#), Section 26.

²⁴ Republic of Namibia. (1961). [The Marriage Act No. 25 of 1961 \(as amended in 2019\)](#), Section 26.

Online Child Sexual Exploitation and Abuse

The Child Care and Protection Act addresses the offences relating to child sexual abuse material. Under the Act, it is prohibited to “induce, procure, offer, allow or **cause** a child to be used for purposes of creating child pornography, whether for reward or not.”²⁵ This essentially criminalises the production of child sexual abuse material.

It is disappointing that the national legislation does not contain any **definition** of child sexual abuse material. Therefore, it is not clear what types of material are criminalised.

Moreover, from the way the abovementioned provision is formulated, it appears that the legislation does not criminalise computer/digitally generated child sexual abuse material including realistic images of non-existent children (**virtual child sexual abuse material**) or material that depicts a **person appearing to be a minor** engaged in sexually explicit conduct.

Besides, the Child Care and Protection Act does not criminalise other acts related to child sexual abuse material such as **viewing, distributing, disseminating, importing, exporting, offering, selling, or possessing** child sexual abuse material. **Knowingly obtaining access to child sexual abuse material** and **merely possessing child sexual abuse material** for personal consumption are also yet to be criminalised.

Furthermore, the provisions do not explicitly apply to conduct carried out in the **online environment** or using information and communication technologies. It is noteworthy that the Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media adopted by the Editor’s Forum of Namibia (EFN) in 2017, prohibits print, broadcast, and online media organisations from publishing “child pornography”,²⁶ which includes content that depicts “the fondling or touching of breasts, genitalia or the anus”.²⁷ The violations of this Code do not entail any criminal liabilities.

More recently in 2018, the Communications Regulatory Authority of Namibia adopted the Broadcasting Code for Broadcasting Licensees. The provisions of the Code aim at, *inter alia*, “the protection of privacy, children and victims of sexual abuse from inappropriate or harmful broadcast communications”.²⁸ Accordingly, a “broadcasting licensee may not broadcast material which contains, or which judged within the context contains, a scene or scenes, simulated or real, of any of the following: (a) child pornography

²⁵ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 234(1)(d).

²⁶ Editor’s Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 1, Rule 11.1.2.

²⁷ Editor’s Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 1, Rule 1(g)(iv).

²⁸ Communications Regulatory Authority of Namibia. (2018). [Notice of Intention to Prescribe a Broadcasting Code \(General Notice No. 192\)](#), Schedule 1, Concise Statement of Purpose.

[...]”.²⁹ The Code defines child sexual abuse material as “the fondling or touching of breasts, genitalia or the anus and any other inappropriate touching of a child of a sexual nature”.³⁰

In addition, the Publications Act of 1974 prohibits the production, distribution, importation or possession of certain publications which are “undesirable”.³¹ Whilst the Act defines “undesirable” as offensive or harmful to public morals,³² it does not specify if these would include child sexual abuse material, though the “plain meaning doctrine” would imply it does.³³

The Draft Electronic Transactions and Cybercrime Bill proposes to create new provisions on child sexual abuse material so as to criminalise offering, distributing, procuring, possessing, or accessing child sexual abuse material.³⁴ The Bill is still under discussion in Parliament and has been delayed in its process to become law due to a new government coming in earlier this year as well as the Covid-19 crisis and the resulting Government shutdown.³⁵ The Bill also contains a definition of child sexual abuse material.³⁶ It defines child sexual abuse material as “the depiction by means of images, sounds, text or in any other manner of a real or imaginary person who is under the age of eighteen years, who appears to be under the age of eighteen years or who is represented or held out to be below that age (referred to in this definition as “the child”) – (a) while performing a sexual act; (b) in such a manner that it strongly suggests that the child is performing such an act or is inviting such an act; (c) while engaging in other sexually explicit conduct where the material is calculated or appears to be calculated to stimulate erotic, sadistic or masochistic feelings or emotions”.³⁷ This definition covers all forms of material, including audio and written material. In addition, it covers virtual child sexual abuse material and materials that depict a person appearing to be a child. Therefore, this definition is in line with the OPSC.

At present, the scope of laws criminalising child sexual abuse material-related acts is limited in Namibia. Moreover, the Namibian legislation fails to define child sexual abuse material, although the term has been used in various laws, bylaws, rules, etc.

Besides, the Namibian legislation does not criminalise other manifestations of OCSEA, such as **live streaming** of sexual abuse material, **online grooming**, **online sexual extortion** or bullying of a child through **online sexual harassment**.

²⁹ Communications Regulatory Authority of Namibia. (2018). [Broadcasting Code for Broadcasting Licensees issued in terms of Section 89 of the Communications Act, 2009 \(General Notice No. 602\)](#), Rule 5.

³⁰ Communications Regulatory Authority of Namibia. (2018). [Broadcasting Code for Broadcasting Licensees issued in terms of Section 89 of the Communications Act, 2009 \(General Notice No. 602\)](#), Rule 1.

³¹ Republic of Namibia. (1974). [The Publications Act No. 42 of 1974 \(as amended in 1998\)](#), Section 8.

³² Republic of Namibia. (1974). [The Publications Act No. 42 of 1974 \(as amended in 1998\)](#), Section 47.

³³ Information received via personal communication with the field researcher. To be kept only if confirmed in fieldwork.

³⁴ Republic of Namibia. (2016). [Draft Electronic Transactions and Cybercrime Bill](#), Section 66.

³⁵ Information received via personal communication with the ECPAT Member in the country.

³⁶ Republic of Namibia. (2016). [Draft Electronic Transactions and Cybercrime Bill](#), Section 62.

³⁷ Republic of Namibia. (2016). [Draft Electronic Transactions and Cybercrime Bill](#), Section 62.

Another grey area in the legislation is the absence of a provision that excludes a **child's criminal liability** for producing and sharing child sexual abuse material, especially when compelled to do so because the child is in an abusive/exploitative situation.

Furthermore, the legislation does not criminalise the **attempt** of the abovementioned offences. Notwithstanding, the Criminal Procedure Act punishes the attempt of all criminal offences in general and hence, may be applicable to OCSEA offences.³⁸

The abovementioned provisions apply to **all children below 18 years** and to both **girls** and **boys** with no distinction.

Ignorance of the age of the victim cannot be pleaded by the offender as an excuse for their conduct. It is, however, available as a possible mitigating factor at sentencing.³⁹

In Namibia, **Internet Service Providers (ISPs)** do not have a reporting obligation related to child sexual abuse material offences carried out through their services.

The Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media makes it the obligation of online media members of the EFN to draft their own User-Generated Online Content (UGC) policy. "Online media" means "the media which is published over the Internet, and includes, without limitation, web-sites, blogs, and social media".⁴⁰ According to the Code, all the online media members are required to have a UGC policy covering moderation and/or removal of user-generated content on the platforms hosted by them.⁴¹ A UGC policy must be consistent with the Constitution of the Republic of Namibia.⁴² A UGC policy can expressly prohibit certain content.⁴³ The Code directs the online media members to monitor online forums directed at children and young persons.⁴⁴ Undoubtedly, the provisions of the Code could be used to ensure the online protection of children to an extent, however, the Code lacks the force of law. Also, it is only applicable in the case of media organisations that are part of EFN.⁴⁵ The Code would be inapplicable where the online content is hosted by organisations not legally authorised to do so or on illegal platforms, for instance, the dark web.

Moreover, there are no regulations in place for **cybercafé owners** to report and prevent cases of OCSEA.

³⁸ Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Section 256.

³⁹ Information received personal communication with ECPAT member in the country.

⁴⁰ Editor's Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 1, Rule 1(f).

⁴¹ Editor's Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 1, Rule 24.3.

⁴² Editor's Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 1, Rule 24.3.

⁴³ Editor's Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 1, Rule 24.9.

⁴⁴ Editor's Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 1, Rule 25.1.

⁴⁵ Editor's Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 2, Rule 2.5.3.

Hence, it must be affirmed that, in its current state, the Namibian legislation does not adequately criminalise OCSEA in line with international instruments such as the OPSC. However, the adoption of the abovementioned Draft Electronic Transactions and Cybercrime Bill into law could go a long way towards adequately prohibiting OCSEA offences.

It is worth noting that, according to the Constitution of Namibia, “Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding on Namibia under this Constitution shall form part of the law of Namibia.”⁴⁶ Therefore, in the absence of a robust legal framework governing OCSEA, the OPSC could be relied upon to prosecute offenders for OCSEA offences not currently penalised in Namibia.

⁴⁶ Republic of Namibia. [The Constitution of the Republic of Namibia \(as amended in 2014\)](#), Article 144.

Extraterritoriality and Extradition

In Namibia, no **extraterritorial jurisdiction** for criminal offences, including OCSEA offences, has been established by law.

An offence is **extraditable** if it is covered within the meaning of an extraditable offence under the Extradition Act. Accordingly, an extraditable offence is “an act, including an act of omission, committed within the jurisdiction of a country contemplated in section 4(1) which constitutes under the laws of that country an offence punishable with imprisonment for a period of 12 months or more and which, if it had occurred in Namibia, would have constituted under the laws of Namibia an offence punishable with imprisonment for a period of 12 months or more.”⁴⁷ This implies that those OCSEA offences that are currently criminalised in Namibia are extraditable. Furthermore, this provision incorporates the **principle of double criminality**.⁴⁸

Furthermore, the Extradition Act states that for an offence to be extraditable, it shall not matter that the “terminology which denotes the offence is not the same as, or that the conduct constituting the offence is not placed in the same category as, or that the constituent elements of the offence differ from, a similar offence in Namibia...”⁴⁹

Pursuant to the Extradition Act, extradition can take place between Namibia and any other country which either has a treaty with Namibia or has been specified in the presidential proclamation for purposes of this Act.⁵⁰

It is noteworthy that, in 2006, Namibia ratified the 2002 Protocol on Extradition of the South African Development Community (SADC).⁵¹ The SADC Protocol on Extradition aims at promoting effective co-operation in the prevention and suppression of crime at national and transnational levels.⁵² In accordance with the protocol, each of the 14 member states agrees “to extradite to the other, in accordance with the provisions of this Protocol and their respective domestic law, any person within its jurisdiction who is wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence”.⁵³ The protocol, however, incorporates the principle of double criminality.⁵⁴

In terms of **restrictions** on extradition, it is pivotal to note the Extradition Act requires the state requesting extradition to submit evidence that proves a *prima facie* case against the accused.⁵⁵ In the words of the Supreme Court of Namibia, “this section does not only require *prima facie* evidence of the commission of

⁴⁷ Republic of Namibia. (1996). [The Extradition Act No. 11 of 1996](#), Section 3.

⁴⁸ Supreme Court of Namibia. (2006). [Hans-Jurgen Gunther Koch v. the State](#), Case No. SA13/2005.

⁴⁹ Republic of Namibia. (1996). [The Extradition Act No. 11 of 1996](#), Section 3(2)(a).

⁵⁰ Republic of Namibia. (1996). [The Extradition Act No. 11 of 1996](#), Section 4(1).

⁵¹ The Namibia. (2006). [Criminals put on notice as Nam signs extradition treaty](#).

⁵² South African Development Community. (2002). [Protocol on Extradition](#), Preamble.

⁵³ South African Development Community. (2002). [Protocol on Extradition](#), Article 2.

⁵⁴ South African Development Community. (2002). [Protocol on Extradition](#), Article 3(1) read with 3(5).

⁵⁵ Republic of Namibia. (1996). [The Extradition Act No. 11 of 1996](#), Section 8(1)(c).

the extraditable offence but also *prima facie* evidence that the offence was committed by the person whose extradition is requested”.⁵⁶ This requirement places an unnecessary burden on the states and sets the bar too high. In 2006, the Supreme Court cautioned the Government about the same and asked the legislature to amend the Extradition Act.⁵⁷ Consequently, in 2014, this resulted in the failure of an attempt to extradite a French citizen to India, where he was alleged to have committed sexual offences against children.⁵⁸ However, the Government is yet to amend the law.

⁵⁶ Supreme Court of Namibia. (2006). [Hans-Jurgen Gunther Koch v. the State](#), Case No. SA13/2005.

⁵⁷ Supreme Court of Namibia. (2006). [Hans-Jurgen Gunther Koch v. the State](#), Case No. SA13/2005.

⁵⁸ The Namibian. (2014). [Extradition Act sets bar too high](#).

Other OCSEA-Related Provisions

As discussed in the preceding section, the Namibian legislation does not adequately criminalise OCSEA offences. Consequently, the **penalties** provided for OCSEA offences are practically non-existent.

In Namibia, any person who induces, procures, offers, allows or causes a child to be used for purposes of creating child sexual abuse material is liable to be punished with a fine up to N\$50,000 (approx. US\$3,358 as of March 2021) or to an imprisonment term up to 10 years, or both.⁵⁹

The Namibian legislation does not expressly impose any liabilities on **legal entities** for the commission of OCSEA offences. Notwithstanding, legal entities such as online media organisations or companies that are members of the EFN, may have to incur some civil liabilities for violating the rules set forth in the Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media, which includes publishing child sexual abuse material. For committing a first time offence, they may be subjected to a caution or reprimand or other direction, such as the publication of an apology.⁶⁰ For making subsequent violations of the Code, they may be subjected to a fine not exceeding N\$50,000 (approx. US\$3,358 as of March 2021).⁶¹ The Code does not clarify how many subsequent violations are needed for the application of the fine.

There are no legal provisions that provide for the **seizure and confiscation** of any goods relating to or proceeds derived from OCSEA offences. The Criminal Procedure Act, which provides for the confiscation and forfeiture of weapons, instruments, and other articles used in the commission of an offence, could be applicable in the case of OCSEA offences as well.⁶²

Currently, the Namibian legislation does not prohibit all forms of **advertising** or **promoting** OCSEA offences.

Moreover, the national legislation does not explicitly impose more severe sentences for **recidivists** who commit OCSEA offences. Nevertheless, under the Criminal Procedure Act, the courts have the power to declare a person who has been convicted of one or more offences and is considered as a threat to the community, as a habitual criminal.⁶³ Accordingly, a habitual criminal is dealt with under the law relating to correctional facilities,⁶⁴ that is the Correctional Service Act of 2012.

⁵⁹ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 234(7).

⁶⁰ Editor's Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 2, Rule 6.2.

⁶¹ Editor's Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 2, Rule 6.2.5.

⁶² Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Sections 20 and 35.

⁶³ Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Sections 276(1)(d) and 286.

⁶⁴ Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Section 286(3).

The Child Care and Protection Act provides for the establishment of a **registry** of convicted offenders.⁶⁵ The list of offences for which this registry has to be maintained includes “any offence relating to the manufacture, distribution or possession of pornography”.⁶⁶ Currently, there is no such registry in practice.⁶⁷

Furthermore, the persons included in the register may be barred from holding certain **positions involving or facilitating contact with children**.⁶⁸ Such persons may not be allowed to act as alternative caregivers foster parents or provide child social support and protection services, or run or manage or assist in institutions for children.⁶⁹ This provision is strictly complied with in practice.⁷⁰

Currently, there are no **data retention and preservation laws** and procedures in Namibia that allow for the retention and preservation of digital evidence in the case of OCSEA offences.

⁶⁵ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 238(10).

⁶⁶ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 238(8)(g).

⁶⁷ Information received via personal communication with ECPAT Member in the country.

⁶⁸ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 238(1).

⁶⁹ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 238(3).

⁷⁰ Information received via personal communication with ECPAT Member in the country.

Access to Justice and Remedies

National complaint mechanisms and reporting

The Child Care and Protection Act imposes mandatory duties on **professionals working with children** to report suspected cases where a child may be in need of protective services.⁷¹ A child is in need of protective services if they are, *inter alia*,: (1) a victim of child labour; (2) engaged in commercial sex work or subjected to sexual exploitation of any form; or (3) a victim of any serious crime against their person.⁷² Such a child must be referred to a designated social worker for investigation.⁷³ A child victim of an OCSEA offence can potentially be considered a child in need of protective services. Accordingly, reporting mandatory duties arguably exist in case of OCSEA cases as well. The professionals who are obligated to report are teachers, principals, psychologists, doctors, therapists, legal practitioners, social workers, etc.⁷⁴ Failure to abide by this duty entails a fine up to N\$20,000 (approx. US\$1,343 as of March 2021) or an imprisonment term of maximum 5 years, or both.⁷⁵ Furthermore, the professionals who report to the police or social workers have the right to keep their identities confidential.⁷⁶ Professionals were provided with training by the Ministry of Gender on their mandated reporting status as well as the penalties for failing to report. Most are acting in accordance with their mandate, though some may still fail to report. A large number of cases under this mandated reporting come from the education sector.⁷⁷

Further, reporting by **private citizens** is mandatory in certain cases. Pursuant to the provisions of the Child Care and Protection Act, any person who becomes aware of the fact that a child is being employed in any form of exploitative labour, including the creation of child sexual abuse material, must immediately report to the police.⁷⁸ The police are under a duty to refer the child to a designated social worker for investigation within 24 hours of receiving such a report.⁷⁹ The Act does not seem to impose any liabilities on private citizens or the police for failing to comply with their respective reporting obligations.

Additionally, a person who is the owner, tenant, lessor, occupier, or manager of any premises on which any exploitative form of child labour has occurred must report such occurrence to the police promptly.

⁷¹ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 131.

⁷² Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 130(2).

⁷³ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 132(1).

⁷⁴ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 132(2).

⁷⁵ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 132(6).

⁷⁶ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 132(5).

⁷⁷ Information received via personal communication with ECPAT Member in the country.

⁷⁸ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 234(6).

⁷⁹ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 234(6).

Failure to abide by this duty entails a fine up to N\$20,000 (approx. US\$1,343 as of March 2021) or an imprisonment term of maximum of 5 years or both.⁸⁰

Besides, the Child Care and Protection Act permits self-reporting by children who need care and protection.⁸¹

The Child Care and Protection Act establishes a system for **receiving and addressing reports**.⁸² A police officer or social worker who receives a report must take reasonable steps to ensure the safety or well-being of the child victim.⁸³ The Act prescribes a detailed procedure to be followed for the investigation by the police or the social worker.⁸⁴ After the conclusion of the investigation, the next stage is where a children's court conducts a protection hearing to decide whether a child needs protection or not.⁸⁵

The Child Care and Protection Act also provides for the appointment of Children's Advocate in the Office of the Ombudsman⁸⁶ with the power to receive and investigate complaints, from any source, concerning children.⁸⁷

It is noteworthy that a victim report is not generally required to initiate criminal proceedings in Namibia. According to the Criminal Procedure Act, the State has the "authority to institute and to conduct a prosecution in respect of *any* offence".⁸⁸ All criminal cases are prosecuted *ex officio* by the Office of the Attorney-General.⁸⁹ The power to prosecute criminal cases may be delegated by the Attorney-General to a public prosecutor.⁹⁰ In cases where the attorney-general refuses or declines to prosecute a case, prosecution may also take place via private prosecution.⁹¹ In the case of a child victim, the private prosecutor may be the child's legal guardian or curator.⁹²

Additionally, the Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media establishes a complaints mechanism comprising of a Media Ombudsman, Media Complaints

⁸⁰ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 234(8).

⁸¹ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 133.

⁸² Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 134.

⁸³ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 134(1).

⁸⁴ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Sections 134-141.

⁸⁵ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 142.

⁸⁶ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 25(1).

⁸⁷ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 25(1).

⁸⁸ Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Section 2.

⁸⁹ Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Sections 3 and 4.

⁹⁰ Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Section 4(b).

⁹¹ Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Section 7.

⁹² Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Section 7(1)(d).

Committee and Media Appeals Committee.⁹³ The Code states that the hearings of the Media Complaints Committee appeal shall be open to the public unless the identity of a child or sexual assault victim is at stake.⁹⁴

It appears that an **anonymous complaint** is sufficient to open an investigation in case of a formal legal proceeding. However, anonymous complaints are not accepted under the complaints mechanism established by the Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media.⁹⁵

The national legislation does not prescribe any **statutory limitations** specifically for the prosecution of OCSEA offences. However, as per the provisions of the Criminal Procedure Act, “the right to institute a prosecution for any offence, other than an offence in respect of which the sentence of death may be imposed, shall, unless some other period is expressly provided by law, lapse after the expiration of a period of twenty years from the time when the offence was committed”.⁹⁶ Therefore, the period of limitations applicable in the case of OCSEA offences currently criminalised by Namibian laws is 20 years.

Under the Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media, a complaint must be filed within 30 days from the date of the publication or broadcast of the material which forms the basis of the complaint.⁹⁷

The above-mentioned provisions apply to **girls and boys** with no distinction.

A **non-national victim** of OCSEA can also be considered a child in need of protective services⁹⁸ and hence, is eligible to receive the same services as well as treatment as that provided to a national child victim of OCSEA.

Child-sensitive justice

The Child Care and Protection Act provides for the establishment of children’s courts. Accordingly, a magistrate’s court can act as a children’s court with jurisdiction over matters arising under the Child Care

⁹³ Editor’s Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 2, Rule 1.

⁹⁴ Editor’s Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 2, Rule 3.5.

⁹⁵ Editor’s Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 2, Rule 2.5.1.

⁹⁶ Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended\)](#), Section 18(1).

⁹⁷ Editor’s Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 2, Rule 2.3.

⁹⁸ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 131(1)(g).

and Protection Act.⁹⁹ A children's court must be presided over by a children's commissioner.¹⁰⁰ To promote child-sensitive justice, the Act further provides that the children's court's hearings should take place in a non-formal, child-friendly manner and in buildings not ordinarily used for criminal trials.¹⁰¹

In terms of **child-friendly interview methods**, the Act sets forth that the children's court's hearings should be held in closed rooms and in the presence of a limited number of persons.¹⁰² The court may also allow the child victim to consult privately with the presiding children's commissioner.¹⁰³ If it is in the best interests of the child, the court may allow the child not to participate in the proceedings or give their views, but the reasons for non-participation have to be recorded in writing.¹⁰⁴

Besides, the Criminal Procedure Act provides special arrangements for vulnerable witnesses, which include child victims of sexual offences.¹⁰⁵ These special arrangements include, among other things, using privacy screens or video links, rearrangement of the furniture in a courtroom, relocation of the trial and examination with the help of a support person.¹⁰⁶

Currently, there are no legal provisions that ensure that **psychological assistance and support** are provided to child victims of OCSEA offences during legal proceedings. Moreover, the laws do not ensure that **non-governmental organisations** can assist/support victims, at their request, during the investigation and judicial proceedings.

A child is entitled to appoint a legal practitioner of their choice at their expense. However, where a child does not have any legal practitioner, the court can appoint one.¹⁰⁷ A child is eligible to receive **free legal aid** under the Legal Aid Act of 1990 if their parents, guardian, or other persons are unable to bear the costs of the legal practitioner.¹⁰⁸ The cost of legal services provided to the child may also be borne by the other parties to the proceedings.¹⁰⁹

It is the duty of the presiding children's commissioner to provide **information related to the proceedings in a child-friendly manner** to ensure participation to the full extent of such a child or person's abilities.¹¹⁰

⁹⁹ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 38(1).

¹⁰⁰ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 38(4).

¹⁰¹ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Sections 54 and 56(2).

¹⁰² Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 55.

¹⁰³ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 55(2)(f).

¹⁰⁴ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Sections 56(6)(a) and 57(1).

¹⁰⁵ Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Section 158.

¹⁰⁶ Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Section 158.

¹⁰⁷ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 58.

¹⁰⁸ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 58(3).

¹⁰⁹ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 58(3).

¹¹⁰ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 56(5).

To fully protect the **privacy** of the child victims, the Child Care and Protection Act prohibits the publication of any information relating to the proceedings which may lead to the **identification of the child**.¹¹¹ For failure to abide by this legal duty, a person can be subjected to a fine not exceeding N\$100,000 (approx. US\$6,715 as of March 2021) or imprisonment up to 5 years, or both. Furthermore, the records of the proceedings of a children's court are considered confidential and may only be disclosed in exceptional circumstances.¹¹² Legal entities like media houses, newspaper companies, etc. can also be punished for violating these provisions.¹¹³

Additionally, the records of the hearings conducted by the Media Ombudsman or the Media Complaints Committee or the Media Appeals Committee, which pertain to a child victim, are kept confidential.¹¹⁴

The Broadcasting Code for Broadcasting Licensees also prohibits broadcasting licensees from revealing the identity of child victims of sexual violence, whether as part of the news or otherwise, without prior consent from the parents or guardians of the child.¹¹⁵

To protect the **safety** of the child victims, the Child Care and Protection provides for the establishment of places of safety for temporary reception and care of children.¹¹⁶ In addition, the Act provides for the establishment of shelter facilities "used for the purpose of providing basic services, including overnight accommodation, to (a) abused adults and children".¹¹⁷

The abovementioned provisions apply both **boys and girls with no distinction**.

These provisions may also apply to **non-national victims** of OCSEA, albeit implicitly.¹¹⁸

It is worth noting that the Witness Protection Act 11 of 2017, which has been passed by Parliament but is yet to be brought into force, contains various enabling provisions to ensure the safety and protection of witnesses of crimes. Unfortunately, the Act does not cover child victims and witnesses of OCSEA offences.¹¹⁹

¹¹¹ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 61.

¹¹² Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended\)](#), Section 62.

¹¹³ Information received via personal communication with the ECPAT member in the country.

¹¹⁴ Editor's Forum of Namibia. (2017). [Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media](#), Schedule 2, Rule 6.6.

¹¹⁵ Communications Regulatory Authority of Namibia. (2018). [Broadcasting Code for Broadcasting Licensees issued in terms of Section 89 of the Communications Act, 2009 \(General Notice No. 602\)](#), Rule 4(7).

¹¹⁶ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 64.

¹¹⁷ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 67(1)(a).

¹¹⁸ Information received via personal communication with the ECPAT member in the country.

¹¹⁹ Republic of Namibia. (2017). [The Witness Protection Act No. 10 of 2017](#), Schedule.

Access to recovery and reintegration

In Namibia, the national legislation does not expressly guarantee the right to **recovery and rehabilitation** to child victims of OCSEA. Moreover, there are no **specific programmes** for the support and reintegration of these children.

The Child Care and Protection Act permits the minister to deploy resources for implementing prevention and early intervention services, facilities, and programmes to achieve the objectives of the Act.¹²⁰ Prevention and early intervention services must be aimed at, among other things, “providing psychological, rehabilitation and therapeutic programmes for children”.¹²¹ It may also include components aimed at “addressing specific issues affecting or potentially affecting families in the community, such as gender-based violence, health and nutrition issues, reproductive and sexual health issues, child labour, child trafficking or child behaviour problems”.¹²²

The abovementioned provisions apply to both **boys** and **girls** equally.

As mentioned previously, these provisions may also apply to **non-national victims** of OCSEA, albeit implicitly.

Access to compensation

Child victims of OCSEA have the possibility of seeking **compensation** from convicted perpetrators. Pursuant to the provisions of the Child Care and Protection Act, if a person is convicted in any proceedings undertaken by the Children’s Advocate, the court may make the award of compensation against such person notwithstanding that the injured person has not applied for compensation.¹²³ Therefore, child victims do not need to pursue an **independent civil suit** and can be awarded compensation in the judgment of the **criminal proceeding**.

Currently, victims of OCSEA offences may not have the possibility of seeking compensation through country-managed funds. Although the Child Care and Protection Act provides for the establishment of a Children’s **Fund**,¹²⁴ the Act does not state whether this fund can be used for compensating victims of crime.

¹²⁰ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 129(1).

¹²¹ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 130(3)(e).

¹²² Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 130(4)(g).

¹²³ Republic of Namibia. (1977). [The Criminal Procedure Act No. 51 of 1977 \(as amended in 2012\)](#), Section 300(1)(b).

¹²⁴ Republic of Namibia. (2015). [The Child Care and Protection Act No. 3 of 2015 \(as amended in 2018\)](#), Section 26(1).