



## **MAKING SURE THAT CONVICTED ABUSERS & SEX OFFENDERS DO NOT WORK WITH CHILDREN**

How can we protect children in Namibia from convicted abusers and sex offenders? There are reports that the “#totalshutdown” movement against gender-based violence will hand a petition to the Ministry of Justice this week, demanding that Namibia establish a national sexual offence registry.

However, Namibia already has a similar mechanism in the Child Care and Protection Act which was passed by Parliament in 2015 and is expected to come into force this year.

The Child Care and Protection Act provides that no one may be employed to work directly with children at an institution which provides welfare services to children if they have been convicted of any of a list of specified offences.

The institutions covered by this rule will include schools, residential child care facilities such as children’s homes, places of care (such as kindergartens, crèches or day care centres), shelters and early childhood development centres. It can be extended by regulation to any other jobs or activities which entail working directly with children. The rule will cover persons engaged on a part-time or full-time basis, and even to volunteers.

The requirement will also apply to persons who manage such facilities, social workers who are authorised to work with children, and persons who wish to be approved as foster parents or adoptive parents.

The offences covered include murder, rape, indecent assault and other sexual offences, incest, serious physical assault, kidnapping or abduction, and crimes relating to pornography or human trafficking. These crimes disqualify a person from working directly with children even if the past crime victim was an adult – on the theory that a person who showed extreme disrespect for human life or dignity in the past is not a suitable person to work with children.

One mechanism for enforcement will be the requirement that prospective employees must present a police clearance certificate certifying that they have not been convicted of any of the listed crimes in the last 10 years if they will be working in any of the specified areas. For example, once the Act comes into force, a person cannot be hired to work as a teacher in a state or private school without providing a police clearance certificate.

Furthermore, if a person who was convicted of one of the specified offences works with children in the specified types of institutions, both that person and the employer have committed a crime and are liable to prosecution. This is the case no matter how long ago the crime was committed. The regulations (which are still to be finalised) may include more detail about how this new rule will be applied in practice.

The punishment for violating the rule is a fine of up to N\$20 000 or imprisonment for up to five years, or both.

As a back-up for the police clearance certificates, the Ministry of Gender Equality and Child Welfare will be required to designate a registrar who will record the names of persons who are convicted of the specified offences. Courts will have a duty to convey information on such convictions to the Ministry once the law is in force. Anyone who has reason to believe that someone working with children has been convicted of one of the specified offences will also have a duty to share this information with the registrar, so that the registrar can check to see if it is accurate.

The Ministry's register will help employers in the affected institutions to know if any of their employees have committed any of the specified offences, so that they can be prevented from working directly with children.

Why limit the ability of people to work with children if they have completed their punishment for committing a criminal offence and re-entered society? Children are particularly vulnerable to harm. Furthermore, the people who work directly with them are likely to play a part in shaping their understanding of the world and their values. This justifies steps to protect children from direct exposure to people who have been found guilty of serious crimes involving sex or violence.

But what about the costs of these mechanisms? The costs of preventing child abuse can outweigh the financial and social costs of addressing the abuse which might otherwise take place. Protecting children from harm is also an investment in the nation's human capital, by ensuring that children can develop to their full potential.

Do the proposed mechanisms go far enough? Perhaps not. In other countries, such mechanisms have been criticised for failing to protect children because many child abusers and sexual offenders are never caught and convicted. That may well be true, but there would be serious Constitutional problems with trying to limit the employment or activities of someone whose wrongdoing had never been proved in court. No mechanism of this type can protect children from someone whose wrongdoing has not yet been brought to light. But protection from some is better than protection from none.

A more manageable expansion could be to increase the time periods covered by the police clearance certificates (which will initially be required to provide information covering the last 10 years). Since the crimes in question are serious ones, prison sentences imposed for them are likely to be long. The time period covered by the police clearance certificates would ideally be longer to take this into account.

The biggest future challenge is likely to be efficient implementation and enforcement, the lack of which so often undermines promising initiatives in Namibia,

The point is that Namibia has already taken important steps which answer the demand to protect children from people with serious criminal pasts. The demand which should be put forward by the public is for the Child Care and Protection Act to be brought into force without further delay.

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