

THE DEATH PENALTY IS NOT THE ANSWER
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In the wake of the recent spate of horrific child abuse and murder, many people in Namibia are calling for a re-introduction of the death penalty. But is this a well-considered response, or just an expression of the desperate need to do *something* to address the situation?

What is it that makes a person capable of raping and murdering a child? Before we can begin to know how to prevent more such tragedies, we must be able to answer that question. Our entire society shares Namibia's past of violent struggle to end oppression. Many people in Namibia live with poverty and frustration. Many people have backgrounds of abuse in their own lives. Many drink too much alcohol. But what is it that turns only *some* of these people, and not others, into child abusers?

As the Legal Assistance Centre pointed out in its recent press statement, the tender age of the recent victims lays bare the real horror of rape. Surely no one is going to argue that children aged 6 and 4 "seduced" their abusers or wore provocative clothing or somehow "asked for it" in any way. The rape of such young children strips bare the usual excuses which are put forward for sexual violence.

But what is it that makes some people in our society capable of viewing tiny children as objects of sexual gratification? The recent explanation offered by one of the perpetrators – "I had the need to have sex" -- is chilling. We need to know more if we are going to understand how such things can happen and what we can do to prevent them.

There *must* be more than sex involved. There must also be deep-seated issues of power and powerlessness. There must be complex mental health issues which need exploration and analysis.

The idea that the death penalty would help with deterrence assumes that would-be criminals make rational decisions. The theory is that a potential rapist and murder would think in advance of the crime: "Perhaps I should not do this deed, because there is a chance that I will be caught, convicted and sentenced to death." Do we really believe that people who are capable of such horrifically violent crimes are going to be so coolly logical and rational? Isn't the real problem indeed that such people lack the ability to control their irrational desires and impulses?

I believe that one strong thing Namibia has in its favour in the daunting task of combating crime is our Constitutional statement of fundamental rights and freedoms. We as a society can speak out confidently against murder because we can say that we as a group do not condone murder –not even state-sanctioned murder in the form of a death penalty. Against the backdrop of our Constitution, we can say that we value the rights of every person in Namibia. With that starting point, those of us who would never think of committing child abuse or murder retain the moral high ground. We make sure that the debate is about rights and morality, and not about who has the most power.

The Constitution is there to remind us of our shared values, even when our gut impulse says that some people do not seem to deserve to live. The Constitution is the national conscience that restrains our impulses, reminding

us to live by our principles and not to give way to dark desires like some of those amongst us have done.

Article 6 of our Constitution, which protects the right to life, is very clear. It says: "The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia." And Article 131 says that no repeal or amendment of the fundamental rights and freedoms which would diminish or detract from them is permissible under this Constitution.

This means that the only way to re-introduce the death penalty is to discard our entire Constitution and begin all over again with the task of defining ourselves as a nation.

None of the rights in our Constitution will have lasting meaning if we are willing to throw them out the window every time they are challenged by the situation on the ground. For example, what will happen in future if some people say that they feel deeply threatened by the Constitutional promise of sexual equality – will we water down that Constitutional promise as well?

We must either stand behind the set of values that the nation adopted unanimously at independence, or else concede that we don't really take them seriously. Weakening even one of those Constitutional premises would by implication weaken them all. It would mean that no one will know in the future which values Namibia will stand behind and which values Namibia will consider expendable.

Is that the kind of message we want to give our children? I believe that what we want to say is that we as a nation value life. Some people's lives have clearly gone terribly, horrifyingly wrong when it is possible for them to kill innocent little children. We might make ourselves feel better if we murder the murders, but perhaps what we need more is to learn from them. *Why* did they do what they did? Is there any way to rehabilitate them? If we could do that, THEN we might really know something useful about how to stop others from committing serious crimes.

I do not believe that re-introducing the death penalty would help to prevent the abuse and murder of children. It might allow the rest of us to feel a little better about the situation, by pretending that we were doing something to prevent such crimes from recurring. But real prevention and deterrence cannot be such a quick fix.

We will have to study and understand the causes of violence in Namibia. And then we will have to do the long, slow, difficult work of changing attitudes about men and women and children, and about sex and violence and human rights -- starting with our nation's youth.

The new laws on rape and domestic violence that have been passed are a part of society's response to the problem, but they were never meant to be the whole response. There is no law that can fix this sickness in our society on its own. Now we have to turn to the harder, messier job of changing hearts and minds.

We don't need to change the Constitution -- we need to work together to make it a living reality.