



THE IMPLICATIONS OF A CHILD BEING PLACED ON THE SEX OFFENDER REGISTER¹

PAN: Children from time to time invites experts in the child rights field to write Opinion Pieces on specific topics to stimulate debate. The opinions expressed in this opinion editorial are those of the author and do not necessarily reflect the views of PAN: Children, HSRC or UNICEF, and neither should it be assumed to do so.

Introduction

“Placement on the register is automatic” (Western Cape High Court – 2013). A 14 – year - old boy who pleaded guilty to a number of counts of sexual offences against younger children was placed on the sex offender’s register for life. This was in addition to the sentence imposed on him being placed in a Child and Youth Care Centre.

The children’s sector expressed outrage against this ruling as it does not make way for individual needs and circumstances.

A clear distinction needs to be made between a low, medium and high risk category of offenders as this will determine the intervention that is needed. Children who fall into the low or medium risk categories should not automatically be placed on the register whereas, a child who pose a high risk may have to be placed on the register after a thorough assessment is conducted by a suitably qualified professional (psychologist, or a psychiatrist).

What does the law say?

It seems as if “a one size fits all” approach has been implemented thus, making no distinction between an adult offender and a child. This is also further compounded by the fact that each and every child is painted with the same brush, meaning that a first time child sex offender will receive the same treatment as a repeated offender with multiple offences and increasing in severity. There is no discretion exercised by the court and all children get placed automatically onto the register. The period for which the name stays on the register would also depend on the duration of the sentence (5, 7, or 10 years). In relation to the Child Justice Act a child who is convicted of

¹ This opinion piece was written for PAN: Children by Dr. Shaheda Omar the Director of the Teddy Bear Clinic for abused children, July 2014.

an offence would have his or her name appear on the register automatically and if the sentence is for 10 years or more it will be almost impossible to expunge the records. Thus influencing and affecting the child's employment and career opportunities.

Why the lawsuit?

This was argued as unconstitutional by the Centre for Child Law, Childline, The Teddy Bear Clinic and NICRO, as it did not make provision for individuation and risk assessment of each child. This was in contravention of the "best interests of the child" principle as it was most restrictive and least empowering for the child. Instead of advancing the rights of children it induced more harm and damage, resulting in secondary trauma to the child.

Why challenge this piece of legislation?

Furthermore, The Teddy Bear Clinic for Abused Children (TTBC) who works with both victims and child sex offenders found that child sex offenders were being singled out hence, suffering from stigmatisation, being labelled and also being denied opportunities to education and other skills based settings. The children demonstrated the typical "damaged goods syndrome" where they assumed all responsibility for their behaviour but also saw themselves as unworthy, dirty, ugly and bad. By living out the script of being labelled, they perpetuate the cycle of violence. In some instances, children manifested suicidal thoughts and demonstrated an unusual preoccupation with suicide which ranged from a detailed plan to a fleeting consideration of killing themselves. This highlighted their feelings of disempowerment which contributed to feelings of helplessness and hopelessness which resulted in self-defeating, self-destructive behavioural patterns such as the abuse of drugs and alcohol and age inappropriate sexualised behaviour.

This piece of legislation instead of enhancing children's lives changed the trajectory or course of development of children. It was in fact more harmful, than helpful.

Why the controversy?

The media misinterpreted the arguments and failed to report that there is in fact a place on the register for a specific category of child sex offenders. As is common practice with both media and the general public in sensationalising, distorting and misconstruing the facts, no mention was

made that the civil society organisations had emphasised the role of immediate and ongoing risk assessment. It was evident from clinical practice that a certain category of children would have to be placed on the register (oppositional defiant disorder, conduct disorder and anti-social personality disorder) as they are a high risk and cannot be excluded from such a register.

Conclusion

The questions we should be asking are: What other deterrent methods do we have? Should assessment and intervention not be regularly and rigorously implemented? Do we really want children to suffer the stigma of shame, humiliation and ridicule and be denied opportunities to education, employment and further development? Research has indicated that children who have received intervention show a favourable prognosis and are less likely to re-offend.

In my view this legislation needs to be declared unconstitutional and be applied with discretion for a specific category of child sex offenders in South Africa.

So, instead of being so punitive we need to invest more in prevention programmes starting with Early Childhood Development Centres programmes, schools, parents, adults and the wider community. It requires systemic intervention.

CURRENT STATUS OF THE CASE

The Constitutional Court judgment declared section 50(2) of the Sexual Offences Act unconstitutional as it required the names of convicted child sex offenders to be entered into the National Sex Offenders' Register. It was declared unconstitutional because it resulted in shame and stigmatisation that would lead to mental and psychological harm.

Hence, this piece of legislation will undergo a law reform process where parliament has been given a year to fix this law.

WHAT DO THE POTENTIAL CHANGES MEAN?

This means that children will be protected facing criminalization and will not suffer secondary victimization. Their opportunities for schooling, travelling and other career developments will not be jeopardised

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Any comments on this Opinion Piece can be sent to children.pan@hsrc.ac.za

First published: July 2014

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