



CENTRE FOR CHILD LAW



NGOs ASK CONCOURT TO PROTECT CHILDREN FROM HARM CAUSED BY SEX OFFENDERS REGISTER

Position Statements of the *amici curiae*

What the *amici* argue

- Child offenders' names should not be automatically included on the sex offender's register.
- One of the most flawed assumptions underpinning the automatic registration of child sexual offenders is that child sex offenders go on to become adult sexual offenders. Evidence does not support this assumption.
- We need an individualised assessment, by a suitably qualified professional, on each case before a court can consider placing a child's name on the register.

What the *amici* DO NOT argue

- We are not saying that child offenders' names should never be included on the register.
- We are not making any arguments in regards to adults and their inclusion on the register.

The difference between sentencing and inclusion on the sex offender register

Not including a child offender's name on the register does not affect the sentencing for the offence. The process of determining whether a child offender's name should be included in the register occurs after sentencing for the crime has been completed, thus children convicted of sexual offences will still be sentenced and will still have a criminal record.

Legal points that will be considered at the hearing

The High Court found the provision requiring automatic inclusion on the register to be unconstitutional because it offends the rule of '*audi alterem partem*'. This means that a party in a court case must be given a chance to argue their side – in this case, to argue why they should not go on the register. The *amici curiae* agree with this, but also say that another reason why this part of the law is unconstitutional is because it prevents a court from being able to consider the best interests (required in s 28(2) of the Constitution) of each child



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offender on a case-by-case basis – thus conflicting with the principle of individualised sentencing, which is very important in child justice.

A further legal point is that the High Court found the law unconstitutional with regard to all offenders, not just child offenders. The *amici curiae* argue that the court could not do this, because the case was about a child offender, and all the arguments before the High Court were about child offenders being placed on the register. The court can only raise constitutional questions of its own accord when it is essential to do so, and on the facts of the case it was not necessary to decide whether the law is unconstitutional vis-à-vis adults. The *amici curiae* therefore argue that the finding of constitutional invalidity should be limited to child offenders only.

About the amici

Childline South Africa is a non-governmental organisation that offers programmes that aim to provide support services to child victims of sexual offences. It also provides early intervention programmes that target children at risk.

The Teddy Bear Clinic for Abused Children also provides programmes to child victims of sexual offences. It has recently also begun offering diversion programmes for child sex offenders.

Of the three organisations, NICRO works primarily with child offenders. NICRO provides diversion services, non-custodial sentencing services and re-integration services. These three service streams access offenders at different points in the criminal justice system.