

# JUVENILE JUSTICE: A NAMIBIAN OVERVIEW

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## I. COUNTRY PROFILE: NAMIBIA

Located in South-West Africa, Namibia is an immense country of 825,615 square kilometres (Southern African Development Community, 2012). According to the National Planning Commission (2012), Namibia had a population of approximately 2.1 million in 2011. An average population density of less than three (about 2.77) people per square kilometre was reported by the World Bank for Namibia for 2010. This positions Namibia as the world's fifth least densely populated country after Greenland, the Falkland Islands, the Pitcairn Islands and Mongolia respectively (Worldatlas, 2015). Considering the country's small population, it is relatively diverse in language. While English is the official language in the country, about 30 languages are spoken in Namibia.

Economically, the country is making strides. However, major struggles are experienced with high rates of unemployment, especially amongst young people. Defining youth as individuals aged 15 to 34 years, the Namibia Statistics Agency (2015) identified the youth unemployment rate for 2014 as 39.2 percent. This is much higher than the overall unemployment rate of 28.1 percent, which takes into account all individuals from the age of 15. These estimates are based on a restrictive definition of unemployment, which is strictly limited to persons either actively in the hunt for work or those available for work during the reference period (Namibia Statistics Agency). The broad unemployment rate, which is inclusive of individuals not actively seeking work is, naturally, expected to be significantly higher.

The unemployment rate in the country is disconcerting, particularly in view of perceptions that persistent unemployment among the youth in the country is a contributing factor to the high crime rate in the country. A report by a local newspaper implied that the high unemployment rate amongst the youth serves as a motive for them to engage in offences such as house-breaking, armed robberies, car theft, stock theft and money laundering (Sinvula, 2014).

This idea seems to be corroborated by findings by the Namibian Correctional Service that "Education, Training and Employability" is the Dynamic Risk Factor most associated with offending in the country. Using a sample size of 619 that was drawn in March 2016 from offenders incarcerated at correctional facilities where the country's Offender Risk Management Correctional Strategy is implemented, the Service was able to establish that 70 percent of the sample had Education Training and Employability as a high risk factor, which means that lack of opportunity for employment disposed those offenders to offending (Namibian Correctional Service, 2016).

Similarly, the Namibian Correctional Service (2016) was able to identify that House Breaking with Intent to Steal and Stock Theft were respectively the offences mostly committed by offenders under its care. Both these classes of offenders can be linked to lack of employment. A synopsis of young offenders aged 14 to 17 identifies that their offences were largely economic in nature (Feris, 2013). Hence, it can be theorised that offences committed by the youth in Namibia seem to be primarily of a social nature.

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**Figure 1: Location of Namibia on Map of Africa**



The crime rates in the country unfortunately continue to escalate, particularly those of a violent nature. According to the United Nations Office on Drugs and Crime (2013), the country's homicide rates have unremittingly increased during the observed period of 2008 to 2012. The average total of offenders in Namibian Correctional institutions stands at approximately 4,200 annually, which represents an incarceration rate of about 267 per hundred thousand. During the last financial year alone (April 2015-March 2016) a total of 3,637 offenders were admitted into custody countrywide, of which only 117 were juveniles, with juveniles identified to be individuals under the age of 18 (Namibian Correctional Service, 2016). These figures exclude individuals admitted to police holding cells.

The national crime statistics indicate that for the years 2014 and 2015 a total of 93 juvenile arrests were made countrywide and an additional 45 arrests were made from January to March 2016. Offences committed by juveniles during this period varied in severity. Most arrests related to house-breaking of residential premises, assault with the intent to do grievous bodily harm, theft, rape and common assault. Arrests made for those cases during the last three years were 23, 17, 16, 12 and 10, respectively (Namibian Police Force, 2016).

## II. THE NAMIBIAN JUVENILE JUSTICE SYSTEM

Children that come into conflict with the law in Namibia are, first and foremost, protected by the Constitution of the Republic of Namibia (amended 1998), which is the supreme law of the country. Provision is, for example, made by that instrument under Article 15 for children "not to be detained in terms of any law authorising preventative detention, if they are under the age of 16".

However, there is no specific legislation for children caught up in the meshes of the criminal justice system. The Criminal Procedure Act (51 of 1977), which generally makes provision for procedures and

related matters in criminal proceedings is also applicable in the case of juveniles. Nevertheless, there is legislation which gives effect to the rights of children in general (as contained in the Namibian Constitution and international agreements binding on Namibia): There is a newly instituted Child Care and Protection Act (3 of 2015), but that legislation has not yet been brought into force.

As prescribed in the Child Care and Protection Act (3 of 2015), a child is defined as “a person who has not attained the age of 18 years” (Child Care and Protection Act, 2015, s 1). Amongst others, the Child Care and Protection Act (2015) makes provision for child protection centres, children’s courts, children’s commissioners and children’s court assistants, which points towards some consideration made for the needs of juvenile offenders.

While this statute is still to be instituted, concern for the protection of juvenile offenders has a long history in Namibia and can be traced back to earlier eras through the Criminal Procedure Act (s, 254 (1)) where, as a case in point, reference is made to the need to try accused persons under the age of 18 in a children’s court and in accordance with the Children’s Act, 1960 (Act 33 of 1960). The Children’s Act 33 of 1960 is the legislation presently in force while awaiting enactment of the new Child Care and Protection Act (3 of 2015).

Some of the measures put in place since Namibia’s independence to address the unsatisfactory conditions under which juvenile offenders were confined particularly prior to the country’s independence include a screening programme of children throughout the criminal justice system as well as life skills diversion programmes, which were aimed at warranting that juvenile offenders received appropriate interventions in line with their needs (Kamwanyah, 2013).

Schemes such as incorporating Juvenile Justice Training in the training of police officers, the establishment of an Inter-Ministerial Committee on Juvenile Justice, the segregation of juveniles from adults at police holding cells, the development of diversion programmes, amongst others, are further brought to attention (Kamwanyah, 2013). While some effort has evidently been made over the years to address issues relating to juvenile justice, progress seems to occur at a marginal pace. The extent to which the newly established Child Care and Protection Act 3 of 2015 will be enacted remains to be seen as various challenges are encountered in the implementation of interventions targeted at young offenders.

### **III. MEASURES FOR JUVENILE OFFENDERS**

In principle, pre-trial diversion for juvenile offenders occurs at three levels in Namibia: 1. Diversion from arrest and pre-trial detention through mediation between victims and offenders and also through the avoidance of detention by linking up children in conflict with the law with family members; 2. Diversion from court procedures by linking juveniles into a life skills programme; 3. Diversion from incarceration in the form of community-based alternative sentencing options (such as Community Service Orders and probation). Additionally, certain orders can be issued as a form of diversion such as an order for the child to spend a certain number of hours with his/her family, an order for the child to associate with people who can act as a positive influence on the child, an order for the child to attend school every day for a specified period, and an order obligating a child to comply with certain standards of behaviour set out in terms of an agreement between the child and his/her family (Legal Assistance Centre, 2002).

The extent to which these diversion programmes are, however, presently implemented is sketchy. As cited from Hoff (2009), Feris (2013) reveals that owing to a lack of skilled personnel, diversion programmes for juveniles are currently only conducted in the capital city of Namibia, Windhoek, whereas the vastness of the country is alluded to as the reason screening of juveniles only occurs on a weekly basis in areas outside of Windhoek.

During the period of April 2015 to March 2016 alone, 729 juveniles participated in a life skills diversion programme, while a total of 1,038 went through the screening process (Ministry of Gender Equality and Child Welfare, 2016.) On the other hand, 948 Community Service Orders were issued since the introduction of the programme in the country in 2006 to December 2015. Although Community Service in Namibia targets young offenders, it should be noted that the sentencing scheme is extended to other individuals meeting set criteria (Namibian Correctional Service, 2003). As much as this reflects that there has been an

increase in the number of youthful offenders that have participated in the country's diversion programmes over the last number of years, not enough appears to be done to ensure that incarceration is restricted to the most deserving cases.

According to the Namibia Community Service Orders Manual (Namibian Correctional Service, 2003), an offender's sentence length is the starting point for the issuing of a Community Service Order. As is explained, Community Service Orders can be considered for any individual with an effective prison term of one year or less as such a person is perceived to be a non-serious offender, although this is subject to the individual meeting the other laid down criteria such as whether the offender is employed, is a first offender, has a fixed residential address, has family dependants, is unable to pay a fine, amongst others.

Almost half (44 %) of the offenders incarcerated during the financial year April 2015-March 2016 were meted sentences of less than 6 months. Despite these statistics not being limited to individuals under the age of 18, this statistic is suggestive of the country's reluctance to employ the least restrictive measures for those finding themselves in conflict with the legal system.

Feris (2013) corroborates this with her observation that a substantial number of juvenile offenders in Namibia end up under confinement, whereas other services earmarked to protect that population group either are totally lacking or are inadequately implemented. A case in point is the reported absence of minimum guidelines for the treatment of juvenile offenders particularly during the pre-trial and pre-detention/diversion processes. She continues to highlight that hiccups are experienced with the operations of the country's Inter-Ministerial Committee on Child Justice that was put in place to coordinate related activities.

Thus, while notable strides have been made in the systems dealing with children in conflict with the law, the country still has a lot of ground to cover to ensure that it has a criminal justice system that truly meets the needs of the young offender.

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