

Siyabamkela Mthonjeni - Submissions [B18-2014]_191

From: Cindy-Joy Balie
To: Mthonjeni, Siyabamkela
Date: 2015/01/29 01:16 PM
Subject: Submissions [B18-2014]_191

Errol Naidoo <enaidoo@familypolicyinstitute.com> 1/29/2015 1:09 PM

Dear Ms Balie,

The following is Family Policy Institute's submission on the Bill mentioned below. I would appreciate the opportunity of making an oral presentation to the Committee.

Kind regards

Errol Naidoo

Attention: Cindy Balie

Secretary of the Justice & Correctional Services
Portfolio Committee. Parliament of South Africa

Family Policy Institute
Submission on the
Criminal Law (Sexual Offences & Related Matters)
Amendment Act Amendment Bill (B18 – 2014)

Date: 29 January 2015

Prepared by: Errol Naidoo

Family Policy Institute believes the family is the most fundamental institution of society and as such deserves the support and protection of government. In fact, the family must be the central focus of governments social policy development.

Research overwhelmingly indicates that the biological two-parent family is the best environment for raising, nurturing and protecting children. The breakdown of the family in South Africa therefore presents the single greatest threat to the health, stability and overall welfare of children in society.

The alarming rise in premature sexual activity between children of increasingly younger age groups is a tragic indication of family dysfunction in South Africa as well as a timely warning of growing parental neglect, the collapse of traditional family structures and the spiritual and moral degeneration of greater society.

Children function best in a loving, stable family environment. The consequences of the steady disintegration of family life in South Africa has been especially devastating to vulnerable children. Many children who come from dysfunctional homes in which the father figure is mostly absent are prone to crime, anti-social behaviour, alcohol and drug addictions, teen pregnancies, school drop-outs, gangsterism, psychological and emotional problems and low self-esteem.

Society is only as strong as the family. Consequently, it is in government and society's best interest to strengthen, protect and promote a healthy, stable and loving family life. The family is the building block of society. When these building blocks weaken and disintegrate, our entire social structure is at risk of collapse.

Children today are the future parents and leaders of our nation. As such, it is essential that society provides the correct moral foundations to help children develop a healthy and responsible lifestyle. Government and civil society must always act in the best interest of the child. However, the best interest of the child involves not only protecting children from abuse, exploitation and harm but also ensuring that they fully understand the consequences of bad choices. Premature sexual activity is one such choice that vulnerable children need guidance with.

Family Policy Institute rejects the notion that sexual experimentation or sexual expression by children are a normal part of their adolescent development. Children as young as 12 to 16 years old cannot be considered psychologically and emotionally mature to make decisions concerning sexual activity, nor can they fully comprehend the longterm implications of their decisions.

South African law stipulates that teenagers can only vote or obtain a drivers license at age 18 or older. These laws suggests that teens younger than 18 years are not considered mature enough to make important decisions like voting nor are they ready to drive a vehicle responsibly. Yet, the law declares that children between the ages of 12 and 16 years old possess the psychological and emotional maturity to make sexual choices that could profoundly affect the quality of their lives in a manner much more significant than voting or driving a vehicle.

Family Policy Institute agrees that children of all ages must not be humiliated, victimised or exploited by the law. The criminal justice system was established to uphold the law of the land as well as the constitutional rights of all citizens without fear or favour. Besides ensuring that justice is always served, the law must also facilitate correction and restoration for offenders. That is why we believe that simply decriminalising sexual activity between children of ages 12 to 16 years old will not alleviate or stop the long-term damage suffered by children.

Sexual experimentation or sexual expression by children as young as 12 to 16 is surely considered taboo under any regime. It is neither healthy nor affirming.

It is, however, a tragic consequence of our highly sexualised culture, driven in part by a sex-obsessed and sex saturated popular media. For the last decade the news-media reported in various articles that a growing number of children – some as young as 8 years old – were exposed to internet pornography. Children with smartphones are increasingly susceptible to exposure to hard-core pornography. Many young children exposed to online pornography subsequently produced their own pornographic videos (considered child pornography) which they shared with friends. This abomination is called "sexting."

Parliament must also consider the possibility that when consensual sex between children in the age groups 12 to 16 is decriminalised, the filming of, and distribution of these sexual acts may be deemed legal and acceptable. Thus, the law would inadvertently provide child pornographers a legal loophole.

As a result of the wide availability and easy access to online pornography in South Africa, a growing number of children are exposed to images and videos that their underdeveloped minds cannot analyse nor comprehend. The tragic incidences of child-on-child sexual abuse has increased alarmingly in South Africa due to the fact that children are increasingly exposed to sexually explicit media that appear to normalise deviant sexual practises. As a consequence, the decriminalisation of consensual sex between 12 to 16 year olds will serve only to exacerbate this trend, not curb it.

A nation is judged by the manner in which it protects the most vulnerable members of its society. Tragically, the abuse and exploitation of vulnerable children are at an all time high in South Africa. The rape and sexual abuse of children, including babies of four months old are regularly reported in the news

-media. Child abuse, especially sexual abuse of children, is another clear indication that South Africa is not a normal, healthy society. Sexual perversion and sexually deviant behaviour appear to be the norm. The intolerable high rates of rape, sexual abuse and exploitation of women are another indication that South African society is struggling to create a social environment that respects, protects and honour women and children.

Government, in partnership with civil society are responsible for reversing this terrible trend. The key to normalising a society with a healthy outlook on sex and sexual identity – is the restoration of the family unit. Healthy, stable families are more likely to produce healthy and stable family members, just like dysfunctional families are more likely to produce dysfunctional individuals. Children are first taught moral values like honesty, integrity and respect for others - in the family environment. When the family structure collapses and parental authority is absent, children typically learn their lifeskills on the street. The alarming moral breakdown in South African society is a scary indicator that street values has replaced family values in many peoples lives.

Government then, must utilise the criminalise justice system to engender respect for the law and restore order in an increasingly lawless society. Normalising and making acceptable sexual activity between children of ages 12 to 16 years old weakens and destabilises the family structure because it undermines parental authority. The potential harm to children involved in premature sexual activity are many and varied. Contracting HIV/AIDS and other STD's is always a clear and present danger for teens in a nation with some of the highest sexually transmitted infection rates in the world. Other debilitating threats include teen pregnancies, that usually ends childrens educational careers, poverty, increase in fatherless homes, and single parent families, growing abortions and welfare dependancy, phsychological and emotional problems and feelings of hopelessness and despair. As a result, the negative consequences for teens far outweigh any benefits that may be derived from decriminalised sexual activity.

Government must thus resort back to its founding legislative principles regarding children as codified in Section 28 of the Constitution, in which the well-being of children in any respect are of paramount importance. Specifically, Section 28(2) states that; *"A child's best interest are of paramount importance in every matter concerning a child"*. In our legal system there exists various rules regarding minors, such as the rebuttable presumption of innocence placed on those aged between the ages of 10 and 14. The reasoning behind this is that children between these ages are still grasping the moral basis of their conduct, some of whom had not had the parental guidance to educate them on the topic. Surely then a nation cannot allow such young minds the legal right to engage in the most intimate of activities.

We have degraded tremendously as a society if we are reconsidering legalizing what we for so long considered a sordid act. An act so despicable we deemed it "Statutory Rape". We can surely gauge the disapproval of legislators by their use of such powerful words, such as 'rape', which bears only one connotation.

Given South Africa's high rates of sexual crimes against women and children, the question legislators must consider is whether they can afford to make the wrong decision on this issue...


Family Policy Institute therefore encourages Parliament to use every legislative means possible to protect children from abuse, harm, and every other form of exploitation. We also appeal to Parliament to utilise the law to protect children from making bad choices especially those choices that are detrimental to their health and future wellbeing: Children must be encouraged and persuaded to delay sexual activity until they are psychologically and emotionally mature to understand the full implications of their decisions. *The delay of sexual expression will also serve to focus children's minds on important objectives like obtaining a good education and positively contributing to society.*

Family Policy Institute suggests that Parliament considers increasing the age of consent for sexual activity to 18 years. This would support other legislation in South Africa recognising that children are only mature enough to make decisions concerning their health, governance and future at 18 years old.

Family Policy Institute also urges Parliament to legislate some form of intervention by the Department of Social Services. As adults we must acknowledge that when children as young as 12, 13, 14, 15 and 16 engage in sexual activity, it is an indication of a lack of parental supervision and or family breakdown. Children engaging in casual sex at such young ages need help and support from government and civil society - not affirmation by the criminal justice system that their conduct is regarded as normal and acceptable.

We believe the Constitutional Court ruling that struck down the legal provisions that criminalises consensual sex between children in the age groups 12 to 16 years old did not consider the full scope and implications of this decision. In addition, we believe the Court relied too heavily on academic expert opinion that advances a liberal and humanistic worldview of sexuality to the exclusion of more spiritual and family centered viewpoints. There is research emerging indicating that the brains of individuals are only fully developed at age 23. Scientific and medical research must be considered when deciding on the legal rights of children concerning decisions of sexuality - consensual or otherwise.


Finally, we pray that Parliament will seriously apply its mind to these considerations and make the best possible decisions in the best interest of our children's health, safety, stability, overall welfare and future.



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