

30 January 2015

To: Secretary of Parliament
Secretary of the Justice & Correctional Services Portfolio Committee
Parliament of South Africa
Cape Town 001

Re: Input into Amendment of Bill

My name is Nthabiseng Moleko, I am a young woman who currently resides in the former homelands of Transkei. I was saddened at the efforts that our government yet again places upon undoing that which needs no undoing. I regularly visit my grandmother eMahlungu, kuQumbu at her home. I am baffled by the lack of opportunities, access and proper education that the young people in that area face. It is the women who suffer greatly, and even in 2015 I see the needs, the suffering and circumstances many young woman encounter in our rural communities. Yet our country is focused on putting efforts, monies and energies in further isolating the rural young woman. Let me explain why I believe this Amendment need not be changed as is currently proposed, reducing the age of sexual of consent. If the issue at hand is the criminal record given to youngsters, why reduce the age and not deal with the issue of the record itself?

My firm belief is that we should rather focus on corrective and restorative justice for those youths who are found to be guilty of breaking that law. Not put the lives of millions of our young people at the mercy of a society that is grappling with teenage pregnancy, unprotected sex amongst adults despite millions spent on campaigns and efforts to reduce that which have been rendered little change if any in behaviour, a violent society where many women are raped and never report it. South Africa has proven unable to contain adult sexual behaviour with our millions of rands poured into campaigns and efforts, we still hold the highest HIV rate in the world beating India. I will further substantiate my points with facts, I will cite various papers and research, but the point I am making is what about the rights of the young

African woman? Where are their rights for protection, their rights for education, their rights to realize their dreams left when this bill is amended. Indeed the male child should not be criminally prosecuted but at whose expense? So the young African girl is further exposed in a society where she is even less protected by the state. I vehemently oppose such and believe that these amendments including sex with a young man/woman under the age of 16 can and should not be encouraged by the government and it would be a grave mistake if the government continues along this trajectory.

Here is why I oppose this bill and its amendments:

- A child who is 12, 13, 14 and 15 can make a mistake in the events leading up to, during and even after having sex, as children are expected to, they are children. And at 12 they should be encouraged to focus on school and measures or policies that take their focus away from school should be opposed. If this child between the age of 12-16 does get pregnant, it is proven (Panday, Makiwane et al, 2009) that only a third of these children who are become mothers actually return to school. The statistics in the rural areas will be far worse due to the system and culture in the rural regions. The South African child, who is most likely going to be most disadvantaged, is the young rural girl child. Their re-entrance into school is further aggravated in areas where there is no support available for that child. That girl, not young man's future is put on hold forever.
- The situation around teenage pregnancy is worst in the rural provinces of our country. In the HSRC study (2009) the research showed that the concentration of learner pregnancies occurred in the Eastern Cape, Kwazulu-Natal and Limpopo. Largely rural provinces, and the issue of sexual favours used to meet personal needs due to poverty one of the reasons that explains such behaviour in areas of poverty and unemployment. If that is the case, where poverty remains unacceptably high we are putting the lives of young, rural woman at

higher risk of pregnancy and contracting HIV. This is likely to worsen in these areas and trapping women in the poverty trap as it occurs in areas where there is unemployment and significant low incomes/high reliance on state grant support. In the rural areas young women do not have the power to decide how and under what conditions they would have sex. It is a man's world and it is likely that the girl child will have no say as to how it should happen. Disempowered and without a voice, it is likely that she may contract an STI, HIV and even get pregnant should the man (or boy child) refuses to use a condom. The Department of Health's National HIV and Syphilis Prevalence Survey South Africa (2008) statistics show that 12.9% of the girl child between 15-19 who is pregnant also contracted HIV.

- Children do not have the mental and psychological development necessary to understand how to use contraception. They cannot make mature decisions, as they have not yet reached maturity until their early 20's. It again has been recorded by the HSRC (2009) that *"Despite high levels of knowledge about modern methods of contraception, a large cohort of young people do not use contraception and many use them inconsistently and incorrectly."* Of course this comes as no surprise, it has been further shown by Bush (2010) that 20% of those aged 12-18 using birth control pill get pregnant within six months. 20% of teens younger than 18 using condoms get pregnant within one year. They are children. Who should be doing their homework, sports, helping in the house and being with family and friends. Basically being children.
- This point is further supported in the A Review of Teenage Pregnancy in South Africa – Experiences of Schooling, and Knowledge and Access to Sexual & Reproductive Health Services Reported commissioned by: Partners in Sexual Health (PSH). The author Willan (2013) cites the South African Youth Risk Behaviour Survey 2008, the National Contraception Policy Guidelines and prominent researchers in

the field such as Panday and Pettifor et al. It is found in Pettifor et al., (2009) found that condom use at first sex among 15-19 years old, was similar among men (44%) and women (53%). However, they also noted that young women who had had their sexual debut at a young age, or whose partner had ever forced them to have sex were less likely to use condoms at their sexual debut. *'The South African Youth Risk Behaviour Survey 2008'* measures condom use at 29% of male and 33% of female (learners from Grades 8 to 11) Children have been shown to not be able to use preventative measures consistently and successfully, as only a third are quoted by the RHRU survey to have used a condom with their most recent partner. This holds consistent for their first partner. Panday et al., (2009) and Pettifor et al., (2009) found that consistent condom use with their first partner was infrequent, only 34-35% of 15-19 year olds reported consistent condom use with their first partner. It is a fact that most children do not use condoms. The unintended consequences of this bill will most certainly be more teenage pregnancies, learners at schools dropping out and more particularly the young rural girl put in a worse off situation. Can this country afford the fiscal and social burden if it is calculated? I doubt it with fiscal austerity measures implemented by Cabinet.

- According to Willan (2013) it has been found that young women who are poor having often to make 'trade-offs' between health and economic security, which can lead to staying in abusive relationships, inter-generational relationships and multiple partners; these situations usually reduce a young women's ability to negotiate when and how to have sex. The KZN Department of Health has even gone further to pilot national campaigns discouraging "sugar daddies" and learners who fall into the trap of these type of relationships due to the unequal power and how poverty can drive a young girl into such situations.
- Surely the law is supposed to look at the unintended consequences that this amendment is likely to have. It is an adult who should be

making decisions about conditions under which to have sex and not children, issues such as contraception and HIV prevention in a child under 16 means we have abandoned children, who are adolescents from being children to becoming fully fledged adults. The law should safeguard the vulnerable and poor, providing boundaries and safety to those who cannot protect themselves. This bill assumes sex to be merely physical, yet it is an emotional, spiritual and physical act. One that impacts self-esteem, teenagers according to Bush (2010) breakup within 6 months of dating. The impact on these children is depression, which at times can lead to suicide, abandonment and lowered self-esteem. The emotional impact of guilt and fear, pain and suffering from breakups may result in impaired ability to form long-term healthy relationships at a later stage in life. A holistic view of this Bill must be taken into account, the impact it will have on the South African child will be devastating.

I appeal to the President, to Parliament, to our judiciary to consider that at stake lies the destiny of South Africa. Our nation lies in the wombs of these children. Yet we refuse to allow them to be children by doing such. Can we please consider that we are further worsening their plight and putting to death the future of thousands of souls and young children who lack the emotional and psychological ability to even grasp the consequences of having sex at such a young age. The age of 16 should remain the age as it is for consensual sex, it should not be lowered. Let us allow our children to indeed be children. Let us stop making children adults and robbing them of their right to be children. It is indeed not fair for adults to slay the hopes of a generation that is to come. Boundaries are in place for children for their own development and growth, it cannot be that in this country no boundaries are placed on our children. I plead with you to reconsider this Bill and not pass it, if you do it will surely mean that we are at war with ourselves as a country.

The recommendations I make are as follows:

1. Disciple and teach learners through Life Orientation and other means to further sexual intimacy and intercourse, teaching them on

abstinence and exercising self control.

2. Incentivize learners to further pursue education and personal development with a stipend [not a loan] to study. A stipend is afforded those who get pregnant through the child grant system, why not offer a similar stipend monthly for those who need financial support?
3. Do a thorough investigation of the financial implication of the amendment of the bill on the fiscus, the likely impact it may have using modeling to project the number of pregnancies, learners that will dropout, the additional burden on the fiscus. The country will have a financial burden to bear with children raising more children. Those who drop out of school and likely to be reliant on state support forever, including their children.
4. The amendment bill should look at ways to increase the age of consensual sex even up to 15 years, and not decrease it. Parliament has leverage to do so.

I would request to make a verbal presentation to the Committee. I believe that these views need to be articulated and stressed for the young, rural, black youth who is not necessarily represented. It is my plea that I be allowed and granted permission to do this verbal presentation.

Submitted by Nthabiseng Moleko

My email: nthabiseng.moleko@gmail.com

My number: 072 786 2308

References:

1. Department of Health. (2008). The National HIV and Syphilis Prevalence Survey South Africa 2007. Pretoria: Department of Health.
2. Panday, S., Makiwane, M., Ranchod, C., & Letsoalo, T. (2009). Teenage pregnancy in South Africa- with a specific focus on school-going learners. Child, Youth, Family and Social Development, Human Sciences Research Council. Pretoria: Department of Basic Education.
3. Bush, F.M. (2010) Adolescent Brain Development and Sexual Decision Making. Presentation done on 14 May 2010, University of Mississippi. Accessed from <http://www.vdh.virginia.gov/LHD/richmondcity/richmondcampaign/documents/2010/ppts/Dr.%20Bush%20Adolescent%20Brain%20Development%20and%20Sexual%20Decision%20Making.ppt>
4. Willan, S. (2013) A Review of Teenage Pregnancy in South Africa – Experiences of Schooling, and Knowledge and Access to Sexual & Reproductive Health Services Reported commissioned by: Partners in Sexual Health (PSH)