



Submission: Amendment to the Sexual Offences Act.

Organisational Background

The NACCW has been operational in the area of children's rights and child protection for almost four decades. The organisation has a national membership of 4000 child and youth care workers, and has membership chapters operating in all provinces. Driving the recognition and professionalization of child and youth care workers in South Africa, the NACCW has gained a positive reputation for translating the requirements of the Children's Act into affordable indigenous programs and models.

The Isibindi model, developed by NACCW, is a community-based response to orphans and vulnerable children (OVCs), deeply affected by the HIV/AIDS pandemic. This model addresses the holistic care of OVCs whilst simultaneously addressing the social service workforce gap. Steeped in the Children's Act no. 38 of 2005, this model trains community based child and youth care workers to supervise, and provide care and support to vulnerable children – especially child-headed households. Services are provided at prevention, early intervention and child protection levels.

The core of this model is to provide care for vulnerable children and their families through lifespace (home) and safe space (community) interventions. Lifespace interventions include home visits, teaching life skills and social skills, memory box work, homework supervision, family work, supervision of morning and evening routines, lifespace counselling, play and recreation. The Safe Park provides safe spaces for children to engage in free play and structured activities in their communities under the supervision of CYCWs.

The basic model of care is enhanced by specialized programs addressing various physical, social and emotional needs of children. These additional programs include a short-term residential Child Protection program facilitated during the school holidays; a disability program addressing the needs of children with impairments; non-centrebased Early Childhood Development (ECD) program; grief work and youth empowerment programs. Through the array of child friendly programs, advocacy, care and protection of children's rights are realized.

The National Department of Social Development (NDSD) has recognized Isibindi as a best practice community care model. The adoption of the model resulted in the National Treasury approving a proposal for the scale up of Isibindi projects from 67 to 400 nationally. Over a 5 year roll out process 1.4 million children are expected to access services through this model. In addition, the rollout will create jobs for 10 000 people from these rural communities. NACCW is providing technical support to the Department of Social Development in the scale-up process.

Motivation for Support of the Proposed Amendments to the Sexual Offences Bill

The NACCW is in support of the proposed amendments to the Sexual Offences Bill.

The organisation certainly does not agree with Section 15 and 16 of the Sexual Offences Act which criminalises consensual sexual acts between adolescents aged 12-16 years. What would be the long term benefits of criminalization – none! It would in fact place already burdened adolescents under greater stress. According to the Sexual Offences Act, an adolescent found guilty of such a crime will have to be recorded on the National Child Protection Register. Ultimately the Department of Justice will make a decision when and if the name can be removed from the register. Such punitive measures will have detrimental consequences in adulthood for adolescents whose names continue to appear on the register. Stigmatisation, low self-esteem, shame, guilt, and fear will be some of the repercussions of such an outcome – not pro-social behaviour.

Many studies in Sub Saharan Africa have shown a direct link between poverty and risky sexual behaviour. Through the organisation's work in both rural and semi-urban areas nationally many sexual risk facilitative factors have been identified. These include lack of basic needs, poor housing, school drop-out, transactional sex and poor housing. These factors are exacerbated by the high rate of HIV/AIDS deaths in poor communities. This has burdened extended families who cannot cope with the financial, emotional and physical demands of adolescents and children they are caring for. Such a lack of adult attention impacts on adolescence loneliness, making them more susceptible to peer inclusion, and experimentation with sex and drugs and engagement in high risk behaviour. Many engage in consensual transactional sex as a response to their poor home and financial circumstances. Poor housing allows for limited audio and visual privacy thus exposing children and adolescents to sexual intimacy between adults in the home. Such exposure encourages experimentation and the desire to know about sexuality prematurely. Constant media bombardment has created a highly sexualized society with very limited life-skills programs for adolescents. One cannot therefore ignore the impact the socio-economic state of our country has on the high risk sexual behaviour of adolescents.

The criminalisation of consenting sexual behaviour of children thus further discriminates against children who are already those most at-risk, impoverished and least serviced. Such judgments can only be made when socio-economic and environmental factors are proven to be non-mitigating.

Key to child and youth care work is relationship building, trust and respect. Such trusting relationships often encourage children and adolescents to disclose deep emotions and conflicts. The fear of criminalisation for sexual behaviour negates the potential positive benefit and impact of such caring professional relationships.

The NACCW is not of the opinion that sexual experimentation between consenting adolescents should be encouraged. However, our experience of servicing some of the country's most needy households has shown that the need to support positive choices in adolescents is paramount. All social services workers must abide by the national legislation however, and criminalising adolescent sexual activity would limit the potential for child and youth care workers to provide the careful, non-judgemental support to adolescents in crisis and turmoil that can guide pro-health choices. Indeed it is not our experience that the current Sexual Offences Act has provided a restrictive force on risky adolescent sexual experimentation. It has not had the intended positive impact, but rather impedes the provision of much-needed services

The criminalization of consensual sexual acts between adolescents is in contradiction to the Children's Act. Such criminalization is in direct violation of the best interest principle of child participation. Whilst the latter promotes health, open communication and the value of the

decision-making capabilities of children, the former is punitive. It does not allow for adolescents to make decisions about personal and intimate issues and thus violates their basic human right to privacy, and closes off opportunities to reach out for support in relation to the complex area of negotiating the journey towards healthy sexual lifestyles for fear of reprisal – and criminalisation.

The NACCW is of the opinion that the proposed amendment bill places the correct emphasis on criminal activity in the arena of adolescent sexual experience – i.e. on unequivocally criminalising the engagement of adults in sexual activity with adolescents – even in circumstances where consent may have been provided. This places the emphasis of the Sexual Offences Act where it needs to be – on the protection of adolescents from abuse.

There is further a contradiction between the Sexual Offences Act and the Children's Act since the latter promotes confidential choice making as children over 12 years do not have to have adult consent to access contraception. In contrast, the Sexual Offences Act is criminalizing the engagement in sexual acts of those under 16 years.

However, this criminalising does not, in our considerable experience, act as a deterrent to adolescent sexuality. Sexual experimentation and curiosity is developmentally appropriate adolescent behaviour. To criminalize what is developmentally appropriate infringes on an individual's right to healthy development. Adolescents will lose trust in adults causing the very fibre of society to rupture and disconnect. Despite all the efforts to create awareness on disclosure of HIV status, individuals continue to endure isolation and fear of stigmatisation. Such criminalization will have the same ramifications, preventing adolescents from accessing services, advice and resources that could help with healthy decision making.

Government and civil society have to ensure that resources, skills, programs and knowledge are exhaustively provided in order to delay sexual activity and enhance sexual responsibility in adolescents. Most adolescents negatively affected by the current Act are already burdened by their socio-economic circumstances and should not further be made victims of the very system that is there to empower them.

Recommendations

The following constitute active, positive measures for addressing the real needs of adolescents who are in need of guidance of healthy sexual choices in a highly sexualised world:

- The strengthening of current social protection services, which includes encouraging school enrolment and attendance, greater access to better reproductive healthcare, and further deployment of an empathic social services workforce empowered to gain the confidence of adolescents;
- The provision of more rigorous life skills empowerment opportunities;
- The economic strengthening of caregivers to reduce household economic vulnerability;
- The continued development of a workforce that works in the lifespan of adolescents, including the home, school and community;
- The provision of rigorous parenting skills workshops realistically responding to the realities of parenting difficulties in poor communities.