



women + men against child abuse

Submission to the Portfolio Committee of Justice and Correctional Services on the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill

3 February 2015

For attention: Hon. M. Motshekga, Chairperson
The Portfolio Committee on Justice and Constitutional Development
Parliament
cbalie@parliament.gov.za

Submitted by Women And Men Against Child Abuse (WMACA)
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This submission refers to the Amendment of section 15 and section 16 of Act 32 of 2007 and to the Amendment of section 46 and section 47 and section 48 of Act 32 of 2007.

WMACA Background

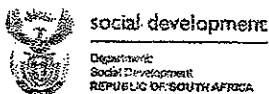
Established in 1997, Women & Men Against Child Abuse is a Non-profit organisation committed to fighting for the rights of the child and to end the abuse of children in South Africa, through a multifaceted and aggressive offensive against any form of abuse and gender violence.

Under the umbrella body of WMACA there are three Kidz Clinics – in Alexandra, Boksburg and Pretoria - and various prevention and diversion programmes to assist abused children.

KIDZ CLINICS

Our Kidz Clinics provide a range of comprehensive, professional, CHILD-FRIENDLY treatment services to the victims of child abuse, and have assisted more than 17,000 children from 2000 to date.

The Kidz Clinics function within the parameters of a medico-legal and social work structure where strict and professional standards are maintained.



Non Profit Company Reg. No. 2000/010605/08 NPC • Section 18A PBO No. 18/11/13/3256 • NPO No. 005-213-NPO
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Our approach is completely victim-centred, to alleviate the secondary abuse that, sadly, too often goes along with disclosing these very intimate and serious crimes.

WMACA's views to the Amendment of section 15 and section 16 of Act 32 of 2007:

1. We support the amendment bill because sexual activity between adolescents should not be criminal.

The fact that it is a crime means that some children are humiliated publically for doing things that are personal and normal for their age group. Some are interrogated by police and prosecutors. Some have to go to trial. Some have their names put on the sex offender register for the rest of their lives.

2. We are NOT saying that teenagers should have sex; we do not think that teenagers should be encouraged to have sex.

This bill (to change the law) is NOT about encouraging teenagers to have sex but more importantly aims at protecting teenagers from becoming criminals when they do things that are normal. At the same time it still says that it is a crime for any person to force or manipulate someone else into any sexual activity and that adults who have sex with teenagers or children are committing crimes even if the teenager or child gave their consent.

Most people agree that we want to find effective ways of helping teenagers decide to have sex at later ages. We can see that the current law has not worked to prevent adolescent sex or sexual activity. The high incidence of teenage pregnancies is enough evidence.

The harmful effects of Sections 15 and 16 of the current Act which criminalises sexual conduct between age 12 -16 years, exposes children to the criminal justice system, denies access to health care and counselling on sexual decision making, discourages communication on sexual matters between children and adults and enforces mandatory reporting by adults.

WMACA's position and experience on children's sexual autonomy rights:

Research tells us that when we build good relationships between children and adults, where they can talk about their feelings and their experiences, and when they can access resources and services without being judged that they are more likely to get help and many decide to have sex at later ages.

Attempting to use adult power to control adolescent behaviour could lead to more harm than good.

Humiliating and withholding sexuality information from adolescents is harmful to their positive growth and development.

By making all forms of sexual activity between consenting teens criminal the current law has done more harm. It exposes teenagers to public scrutiny, humiliation and shame. It is a barrier to teenagers accessing health services and emotional support and it shuts down communication

between adolescents and adults – their parents, other family members, teachers and health workers.

WMACA'S recommendations:

It is necessary to invest in supporting schools, health service providers, community structures, churches, interface organisations to communicate with children and adolescents about relationships and sexual choices.

The issue of 'consent' can be very complicated, sometimes teenagers say yes because there is so much pressure on them to have sex. This pressure comes from their peers, but it also comes from living conditions, from seeing sex on TV, magazines and the internet.

Teenagers need guidance, communication and support from non-judgemental adults to help them understand these difficult processes. We need to empower our teenagers to make decisions that are healthy for them.

Many of us are worried about teenagers having sex when they are too young to really understand the consequences. We are worried about them having unprotected sex. We are worried about adults who manipulate teenagers into having sex with them. We want laws and programmes that help to address these problems.

We need to take action in helping teenagers make responsible and healthy decisions about their relationships and sexual activity to help prevent them making choices that they are not ready for. The law already provides for situations where there is coercion or abuse of power, in those situations where someone gives consent, it can be considered rape.

WMACA'S views to Amendment of section 46 and section 47 and section 48 of Act 32 of 2007:

3. The provisions which automatically place the names of convicted child sex offenders on the Sex Offender Register are a problem. Some children have their names placed on the register for minor offences, even where both children involved gave their consent, some of them may never have their names taken off resulting in devastating consequences on the child's future.

WMACA'S recommendations:

There needs to be a process in court to decide if a child's name should go on the register. This will require some form of assessment by a specialist before a court can include a child offenders name in a 'child offender' section of the Register.

Automatically placing child offenders on the Register is in contradiction of the principle that child offenders be treated differently to adult offenders and requires individual assessment.

Any assessments should be paid for by the state to make sure that ALL children who are convicted have equal access to assessments.

Clear guidelines need to be developed to determine that only children found guilty and sentenced for very serious sexual offences get included on a separate section for child offenders on the Register.

Regulations and definitions of serious crimes for which a child offender would need to be included on the Register, must be made clear. Currently kissing and touching for example are criminalised and to place children on the Register for these activities is definitely in violation of the principle of prioritising the 'best interests of the child'.

All child sex offenders on the child offender list should have equal access to state assessments conducted by the Department of Justice to have the opportunity for their case and names to be removed from the Register.

Research has shown that children who commit sexual offences do not become adult sex offenders preying on children and most child offenders do not commit a sexual offence again.

The State must with immediate effect review the current Sex Offenders Register and remove child offenders who should not be on the Register unless a Court recommends that they remain on a child offenders list on the Register after the child offender has been assessed by a specialist.

Conclusion

WMACA supports the proposed amendments decriminalising consensual sexual activities amongst adolescents. However, WMACA does not support the provisions with regards to the placement of child offenders on the Sex Offences Register. The provisions proposed in the Bill need to be reviewed.

The State must invest in prevention programmes to protect the rights of children to positively affect the lives of all members of our society.

NOTES

WMACA is a member organisation of the Shukumisa Campaign and we have endorsed their submission and that of the Community Law Centre, University of the Western Cape And Centre for Justice and Crime Prevention.

WOMEN & MEN AGAINST CHILD ABUSE

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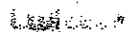
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We are a registered Non-profit organisation, with Section 18A Tax status, and are BEE compliant.

