

## **SEXUAL OFFENCES ACT AMENDMENTS ON TEEN SEXUAL ACTIVITY AND THE SEX OFFENDER REGISTER**

**Media Statement for immediate release**

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**Joint statement by:**

**Childline South Africa; The Community Law Centre, University of the Western Cape; The Centre for Child Law, University of Pretoria; and the Children's Institute, University of Cape Town, the Teddy Bear Clinic for Abused Children; and the Women's Legal Centre**

Today the Portfolio Committee on Justice and Correctional Services was briefed by the Department on an amendment bill to the Sexual Offences Act, which deals with the issues of consenting sexual activity between adolescents and with the placing of the names of child offenders on the National Register for Sex Offenders.

The Committee indicated that they have received over 400 submissions on these issues at this stage and most of the discussion in the meeting focused on the issue of consenting sexual activity between 12 to 15 year olds.

### Consenting sexual activity between adolescents

The bill does not change that any sexual activity without consent remains the very serious crimes of rape or sexual assault even when committed by adolescents.

The bill does not change that any person over the age of 18 (adult) is committing an offence of statutory rape or statutory sexual assault when they engage in such activity with a person from 12 to 15 years (between 12 and 16). For this reason the bill does not lower the age of consent from 16.

The bill does seek to protect adolescents 12, 13, 14 or 15 year olds from being criminalised when they engage in consensual sexual activity with each other. It also adds some protection against 16 and 17 year olds being prosecuted if they engage sexually with other adolescents who are no more than two years younger than them.

Currently the law criminalises adolescents from 12 to 15 for engaging in any consenting sexual activity including kissing, sexual touching, heavy petting as well as sexual intercourse. The fact that it is a crime has extremely serious negative effects on these adolescents. They may be arrested by the police, questioned or interrogated by police and prosecutors, and stand accused in criminal trials. If they are found guilty their names are included in the sex offender register which can have long term effects on their employment options as they reach adulthood.

“This issue raises an emotional response and many people get extremely concerned at the idea that these acts should not be a crime. The most common misconception is that by de-criminalising we are encouraging adolescents to have sex. No one is encouraging adolescents to have sex, in the children's sector, organisations agree that we need to discourage unhealthy sexual behaviours. These are behaviours for which adolescents are not developmentally ready, which may expose them to STIs, teen pregnancy, and emotional distress or psychological trauma.” Explains Shaheda Omar, director of the Teddy Bear Clinic for Abused Children.

*“Our organisations, have seen that criminalizing adolescents can result in public humiliation, shaming and deep long term psychological distress for some adolescents.”* Stated Omar.

*“The current provisions affect girls more negatively than they affect boys, girls are likely to experience greater levels of public shaming and humiliation as a result of being criminalised.”* Argues Sanja Bornmann an attorney at the Womens Legal Centre

Vivienne Mentor-Lalu of the Community Law Centre at the University of the Western

Cape argues that: *“the consequences of this consenting behavior being criminal are extremely severe and are not rational in light of the behavior that is being punished, the current law does more harm than good”*.

*“The Constitutional Court has looked at the issue in great depth and ruled that the law as it currently stands is a violation of adolescent’s rights and that there are more effective and less invasive measures that the state can take to respond to adolescent sexual activity when it is consensual.”* explains Prof. Ann Skelton of the Centre for Child Law at the University of Pretoria.

Organisations working to promote child protection and children’s rights agree that criminalising consenting behavior is not the best way to protect children and that it is a waste of scarce resources which could be used better in the child protection system. They argue that state intervention regarding unhealthy sexual behavior should not be dealt with in criminal law, but rather through laws that require the state to implement programmes to support children, their families and other professionals to help adolescents make healthy and age-appropriate decisions.

Lucy Jamieson a senior researcher at the Children’s Institute, UCT argues that: *“The evidence of what has been shown to work to delay the age that adolescents decide to start having sexual intercourse is not by making it a crime, it is implementing programmes to support parents, teachers, and health professionals to communicate with children and adolescents about relationships and their sexual decisions without judging them.”*

### Children on the National Register for Sex Offenders

The bill also addresses the process that should be followed in placing the names of children who are convicted of sexual offences on the Sex Offender Register. Currently the SOA says that any person who is convicted of a sexual offence must have their name placed on the register, this also applies to children. Once a person’s name is on

the register they may not be employed in any circumstances where they work with children or people with intellectual disabilities, nor may they foster children. Names may be removed from the register after a number of years under certain circumstances and if the person has only been convicted of one offence.

The Constitutional Court ruled that SOA violates the rights of children in conflict with the law. Although the register is an important tool to help us protect children and people with intellectual disabilities from sexual abuse, children who commit sexual offences are more likely to be rehabilitated and are less likely to pose a risk to children in the future.

*“The Sexual Offences Act includes such a wide range of different crimes and some of them when committed by children do not have the same implications as when they are committed by adults against children. For example an adolescent who takes a ‘selfie’ and sends it to their boyfriend or girlfriend can be convicted of two offences and their name must be placed on the register for life, this is unacceptably harsh.”* explains Samantha Waterhouse of the Community Law Centre, UWC.

In addition research indicates that child sex offenders, even of more serious sexual offences, are not necessarily likely to continue to commit sexual offences in adulthood and that they are more likely to respond positively to rehabilitation. The Constitutional Court has stressed that children are developing beings and that the law must take this development into account and not treat them in the same way that it treats adults.

For these reasons organisations are arguing that although some children’s names should be placed on the register, this is not true of all children convicted of sexual offences. They are arguing for there to be a process included in the law in which a court has discretion to order that a child offender’s name be placed on the register and that it should not be automatic. To achieve this they are arguing that children must be assessed by a professional, before the court makes this decision.

The Portfolio Committee plan to hold public hearings on these issues on Tuesday 10

February, however they have indicated that due to the volume of submissions they may have to extend the dates for oral submissions.

**Ends.**

For further comment relating to either of the two issues above contact:

Dumisile Nala	Childline	082 868 3000
Prof Ann Skelton	Centre for Child Law, UP	082 443 2702
Carina du Toit	Centre for Child Law, UP	071 603 8292
Shaheda Omar	Teddy Bear Clinic for Abused Children	083 557 3720
Vivienne Mentor-Lalu	Community Law Centre, UWC	082 494 0788
Sam Waterhouse	Community Law Centre, UWC	084 522 9646
Lucy Jamieson	Children's Institute, UCT	082 388 4815
Sanja Bornmann	Women's Legal Centre	083 522 2933

For more information on the issue of consenting sexual behaviour visit <http://peopletoparliament.org.za/focus-areas/children-rights/campaigns/age-of-consent>