

## National Assembly decision on adolescent sex shows common sense among MPs

Released by the Resources Aimed at the Prevention of Child Abuse and Neglect and Community Law Centre, University of the Western Cape in conjunction with the Centre for Child Law and Teddy Bear Clinic

### For immediate release

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Last night, the National Assembly unanimously supported the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill which deals with two issues; the highly controversial decriminalization of consenting sex between adolescents as well as the placement of the names of child sex offenders on the sex offender register. The bill was referred to the National Council of Provinces for Concurrence without any objections from political parties in the National Assembly.

Children's rights organisations have welcomed the measured decisions taken by MPs on the issues, Prof Ann Skelton, Director of the Centre for Child Law argues that *"Parliament's decision is a vote for common sense."*

MPs were also at pains to explain that the bill did not aim to encourage adolescents to have sex, but recognised that treating them as criminals is not the correct solution. Many emphasised the important role of families and other social institutions to educate children and ensure that they make healthy sexual decisions. To emphasise this point the preamble of the Amendment Bill notes that measures aimed at: "discouraging adolescents from prematurely engaging in consensual sexual conduct which may harm their development, and from engaging in sexual conduct in a manner that increases the likelihood of the risks associated with sexual conduct materialising, are legitimate and important".

On 27 May 2015, the Portfolio Committee of Justice and Correctional Services voted on the final Amendment Bill which responded to two Constitutional Court judgments: *The Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another* 2013 (12) BCLR 1429 (CC) which decriminalised consensual sexual acts between adolescents 12 to under 16 years olds; as well as *J v the National Director of Public Prosecutions and Others* [2014] ZACC 13 which declared the automatic inclusion of child sex offenders on the sex offenders register unconstitutional.

*"The Amendment Bill gives effect to the Constitutional Court judgment to decriminalise consensual sexual conduct between adolescents, which goes a long way to developing laws giving effect to children's protection and autonomy rights in a balanced manner."* Explains Christina Nomdo, Executive Director, Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) in Cape Town

The Portfolio Committee received over 1000 submissions and dedicated five days to public hearings on this bill, most of those were focused on the more controversial issue decriminalising of adolescent sex. After much debate, the Amendment Bill records that consensus was reached in the Portfolio Committee that sections 15 and 16 of the Act should be amended to decriminalise consensual sexual acts. It also provides additional protections for 16 and 17 years olds with a 2-year close-in-age defence. In the matter of children being entered into the sexual offences register the amendment introduces a default position that child sex offenders' names do not automatically go on the register, coupled with a procedure for assessment and an opportunity to argue for non-inclusion.

The Amendment Bill does not change the age of consent to sex, this remains at 16 years old, to protect children from adult sexual predators. In last night's debate, political parties emphasised this point, stating that adults will still be prosecuted for engaging in consenting sex with children.

*“RAPCAN applauds the work of the Portfolio Committee and the civil society activists that informed the final version of the Bill. The Bill is a call to action to support adolescents to make informed life choices especially in relation to sexual decision making.” Says Nomdo.*

*Dr Shaheeda Omar, Executive Director, The Teddy Bear Clinic for Abused Children explains further that “Punitive responses are not the answer, empowering children and adolescents to make informed, positive choices - is a better solution.”*

The ANC's Bongani Bongo MP also clearly articulated the new provisions in relation to entering a child's name on the sexual offences register. He noted the three provisions that must be met: the prosecutor must make an application; the child's name must be forwarded to probation services for assessment; and the child must be given the opportunity to make argument why their names should not be entered on the sexual offences register.

*Dr Omar explains that “the provisions that relate to children being assessed before being automatically entered onto the sexual offences register recognises that children have a good chance to be rehabilitated and not all children convicted of sexual offences become sexual predators when they are adults.”*

*“It's encouraging to see a debate in Parliament in which MPs demonstrate that they can take responsible decisions to act in the best interests of children in this country.” States Samantha Waterhouse from the Community Law Centre based at the University of the Western Cape.*

**Ends**

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