

## ACDP STEVE SWART MISLEADING COMMENTS ON THE PROPOSED BILL TO DECRIMINALISE CONSENSUAL SEX BETWEEN ADOLESCENTS

**FOR IMMEDIATE RELEASE: 03 February 2015**

The Centre for Child Law is deeply concerned about comments from MP Steve Swart regarding the decision of the Constitutional Court in *Teddy Bear Clinic and others v The Minister of Justice and Constitutional Development and another*. Mr Swart is misleading Parliament and the public with comments that the decision of the Constitutional Court was based on one expert opinion and that it will lead to abuse of younger children by 15 and 16 “predators”.

In the *Teddy Bear Clinic* decision, the Constitutional Court declared the criminalisation of consensual sexual behaviour between adolescents unconstitutional. There were affidavits before court from leading experts in education, paediatrics and adolescent sexuality.

It is misleading and incorrect for Mr Swart to State that the Constitutional Court based its decision on only one opinion. The Justice Alliance of South Africa (JASA), an amicus curiae in the case, put up 137 pages of authorities to support their position against decriminalisation and they were given time to make oral submissions. In addition, they filed 6 expert affidavits and two studies totalling 101 pages. The Applicants submitted 5 expert affidavits as well as the expert opinion referred to by Mr Swart which was based on 43 national and international studies.

The Constitutional Court found the criminalisation of consensual sexual acts between adolescents unconstitutional despite all this evidence by JASA. Mr Swart is disrespecting the decision of the Constitutional Court by doubting their decision that children should not be treated as criminals for **consensual** sexual acts by insisting that they must still be criminalised.

In addition, Mr Swart’s repeated suggestion that child “predators” will abuse other children is similarly misplaced and disingenuous. The court case and sections under debate do not concern any actions that may be construed as non-consensual, either through violence, coercion or abuse of power. It deals only with situations where two children are willingly engaging in sexual conduct. Any actions that were not consensual will still amount to a sexual offence.

Parliament must now debate new sections to amend the unconstitutional provisions. The Bill currently before parliament provides that adolescents who are older than 12 but younger

than 16 may not be charged with a crime if they engage in consensual sexual acts. In addition, a person who is 16 or 17 years old who engages in a consensual sexual act with a child who is younger than 16 will also be guilty of an offence if there the age gap between the two children is more than two years.

We stress that the proposed amendments do not lower the age of consent to sex. An adult, a person who is 18 years or older, may still not engage in any consensual sexual acts with a person who is below the age of 16. Moreover, we emphasise again that the amendments only apply to sexual acts between adolescents that are **consensual**. Any non-consensual sexual behaviour remains criminal and punishable under the Act.

As emphasised by the Constitutional Court in the matter *Teddy Bear Clinic and Rapcan v Minister of Justice and Constitutional Development*, the responsibility for engaging with and educating adolescents about healthy sexual behaviours lies with parents, schools, religious organisations and other community based interventions and not with the criminal justice system.

**Ends.**

---

For more information please contact:

Ann Skelton at **Centre for Child Law**: 012 420 4502/082 443 2702

Carina du Toit at **Centre for Child Law**: 012 420 4502/071 603 8292