

NATIONAL WORKING GROUP ON SEXUAL OFFENCES

PRESS RELEASE MIXED REVIEW FOR THE NEW SEXUAL OFFENCES ACT 14 December 2007

The Sexual Offences Act which has undergone a reform process since 1996 has finally been signed by the President on 13 December 2007. The Act now officially referred to as the Sexual Offences Act 32 of 2007, creates a range of new offences and addresses a wide range of issues relating to the management of sexual offences.

Definitions and New Offences

The definition of rape is extended to include the penetration of the mouth, anus and genital organs of one person with the genital organs or another body part of another person, or an object or part of the body of an animal. *"We welcome provisions in this long awaited Act that recognise the seriousness of oral and anal penetration and the seriousness of sexual violation of boys and men"* says Samantha Waterhouse, Advocacy Manager of Resources Aimed at the Prevention of Child Abuse and Neglect.

The Act also introduces a range of crimes that relate specifically to the sexual exploitation of children and people with mental disability, these include, sexual grooming, sexual exploitation and the use of children or people with mental disabilities in pornography or the display of pornography to children. *"The bill cast's its net wide to criminalise any people who are involved in or gain from these acts in any way"* says Waterhouse.

The Act also creates tighter laws relating to consenting acts between teenagers, it criminalises any sexual activity no matter how light between teenagers under the age of 16 in spite of both parties being willing. Two fourteen year olds kissing consensually is considered criminal in this law. Fortunately the Act builds some protection against prosecution in these cases. These developments are concerning.

Procedure and management of cases

The Act provides for a National Policy Framework which is intended to address procedural aspects of the investigation and prosecution and to ensure parliamentary oversight of implementation. The content of this has yet to be developed by different departments. This has the potential to address current problems and inconsistencies relating to the management of cases by police, health and prosecutors.

The Act has failed to substantially address key challenges in prosecuting cases of sexual violence against children. Minimal improvements have been made regarding improving access to protective measures, meaning that many children and most adolescents and adults will continue to be expected to testify in the presence of the accused.

"There are some very positive developments in this Act," say's Joan Van Niekerk, National Co-ordinator of Childline SA *"But Childline is bitterly disappointed that in terms of procedure the Act does little for children"*

Waterhouse adds that *"Children are subjected to serious trauma in our courts on a daily basis. Although the Act refers to offering complainants the maximum and least traumatising protection possible, it has not done this, it is an extremely concerning gap in the Act"*

Drafting and Implementation

The drafting of the offences is complicated and very confusing, police have not been trained on the implications of the new legislation on statement taking in these cases, this has potentially serious impact for the outcome of these cases in court later.

Sex Offender Register

The Act introduces a Sex Offender Register, this register adds nothing to what is already covered by the Child Protection Register in the Children's Act. *"It is a serious duplication in legislation and will result in resources being spent to establish and maintain two registers. The duplication is alarming, this will involve all civil society organisations and State agencies having to make a double effort to work with two and not one register"* Says Van Niekerk.

In addition the Bill:

- Places an obligation on any person who has knowledge of a sexual offence against a child to report such knowledge.
- Provides for post-exposure prophylaxis against HIV infection.
- Provides for testing of offenders for HIV, the formulation of these provisions are extremely concerning in terms of potential negative consequences to the victim.
- Does not address the counselling and therapeutic needs of children.

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