



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

**Submitted: 03 February 2015**

**Submission compiled by the Shukumisa Campaign  
c/o Rape Crisis, 23 Trill Road, Observatory 7925**

**This submission also serves as a request for the Shukumisa Campaign to make an oral submission on 10 February 2015.**

**Organisational Background**

The Shukumisa Campaign was launched in 2008 by members of the National Working Group on Sexual Offences (NWGSO). The NWGSO was originally formed in 2004 to advocate around the proposed Sexual Offences Bill. On the Bill's enactment in late 2007, the NWGSO turned its focus to the implementation of the Act via the Shukumisa Campaign.

The Shukumisa Campaign is made up of 47 organisations and three individual members and is governed by a steering committee comprising of 10 organisations and the Shukumisa Campaign Coordinator. All nine provinces are represented in the coalition as a whole. It is housed at the offices of the Rape Crisis Cape Town Trust (Rape Crisis) and is assisted administratively by Rape Crisis and the Tshwaranang Legal Advice Centre (TLAC).

Please find a list of all Shukumisa members on pages 5/6 of this document.

**Introduction**

The Shukumisa Campaign was part of a workshop organised by the Community Law Centre, the Children's Institute and the Child Law Centre on 22 – 23 January 2015. The workshop explained the background of the Sexual Offences Act (SOA) Amendment Bill to a number of civil society organisations working in the sector of children and women's rights and support.

After the workshop, the Shukumisa Campaign decided to draft a submission to respond to the call for public comment. Via email and the Facebook page, Shukumisa motivated member organisations to share their views and concerns on the Bill so that these could be incorporated into the submission. The submission reflects the discussion of the workshop as well as feedback from member organisation.

## **Viewpoints and Recommendations**

This submission particularly refers to the **Amendment of section 15 and section 16 of Act 32 of 2007**.

### Viewpoints

1. We support the amendment bill because sexual activity between adolescents should not be criminal.
2. We are NOT saying that teenagers between the ages of 12 and 16 should have sex, we do not think that teenagers should be encouraged to have sex. We do not believe that decriminalising consensual sexual activity will have the effect of encouraging teens to have sex. Neither will the provision of access to education and information have the effect of giving the message to all teens to go out and have sex.
3. Acts of consensual sexual penetration and consensual sexual violation should not be criminalised.
4. Children, or rather adolescents between the ages of 12 and 16 (12, 13, 14 and 15 years old), by nature, will explore their sexuality, including sexual activity among each other. As much as parents and other adults such as legal guardians, teachers, political leaders and representatives of civil society organisations wish that children would only become sexually active at a later stage, the reality proves differently. Sexual exploration is part of the adolescent development. This is also taught at schools which provide sex education as part of life orientation and biology.
5. The current Act makes it a crime for consenting adolescents to even kiss or touch each other's bodies in sexual ways. It goes much further than just sexual intercourse and makes any consenting sexual activity a crime. Relationships between adolescents should not be criminalised as this will stigmatise them and also make targets of them in their communities. Kissing and touching can be seen as the start of building healthy relationships between them as they go into adulthood. These activities should not be seen as criminal activities because this would give a different perception of what relationships should be.
6. Modern society, especially through media and telecommunication, infiltrates young people's minds with images that are increasingly sexual. They are exposed to advertisements, movies, television series and music videos that are highly sexualised. The internet is becoming more widely available, often with unrestricted access to pornography. The lyrics of local and international music are also highly sexual and easily understood by young people. Mobile phones are used to take and distribute photos and videos, often with sexual reference. Shukumisa members have observed that if young people are exposed to this kind of content, there is a desire to imitate and explore. While contemporary society is saturated by sexual imagery, adults are often unwilling and uncomfortable to discuss sex with their children.

This encourages them to self-educate via the internet and their friends. Neither is a good guide to the complexities of intimacy and relationships. But law cannot do what parents and other adults should be doing.

7. Many people see the amendments as an encouragement for teenagers to engage in sexual activity. By making sexual engagements a crime, the Act can be seen as a deterrent for young people to engage in sexual activities at an early age and therefore can be seen as a form of prevention of teenage pregnancies and sexually transmitted diseases (STD).

However, Shukumisa believes that the Act will not serve as a deterrent for sexual engagement among teenagers. Making such actions a crime and labelling young people criminals because of that might even lead to increased high-risk sexual behaviour as it heightens sex as taboo and sexual behaviour will become more secretive.

8. The issue of consent can be very complicated; sometimes teenagers say yes because there is so much pressure on them to have sex. Adolescents are very vulnerable to myths about sex and about women and these are very strong in all parts of our society. Myths such as the idea that you only really love someone if you have sex with them is clearly untrue yet many girls fall prey to this myth. The myth that girls only really like boys who are rough and want to have sex with them is also clearly untrue and yet many boys fall prey to this idea as well. The law already provides for situations where there is coercion or an abuse of power so in those situations where someone does not give consent, it will be considered rape or sexual assault and that will definitely be regarded as criminal.
9. Shukumisa is concerned about the particular stigmatisation of sexually active girls and that through the Act they may be disproportionately affected by criminalisation. Because they fall pregnant, girls' sexual activity is evident in ways that boys' sexual activity can never be and marks girls out for criminalisation. This may contribute to preventing pregnant girls from seeking health care. Further, there is a real risk that girls who initially report rape may find themselves charged with perpetration of a crime. Given how few adolescent boys are raped, this risk is disproportionately faced by girls and may deter them from reporting altogether.
10. The current law has not worked to prevent adolescent sex or sexual activity.
11. By making these actions between consenting teens criminal the current law has done more harm for the following reasons:
  - a. It exposes teenagers to public scrutiny, humiliation and shame
  - b. It stigmatises teenagers
  - c. It is a barrier to teenagers accessing health services and emotional support
  - d. It shuts down communication between adolescents and adults – their parents, other family members, teachers, health workers
  - e. It confuses the complex issue of consent
12. This amendment bill does not change the fact that no adult may ever have sex or engage in sexual activity with a child under the age of 16, even if they give their consent.

## Recommendations

1. The focus should rather be on protecting children from abuse of any kind including sex without their consent instead of criminalising consensual sexual activity.
2. Teenagers need support, guidance, advice and services. The focus should be on how to assist teenagers make responsible and healthy decisions about their relationships and sexual activity. This can also help to prevent teenagers making choices that they make because of peer and other pressure and are not ready for. Some ideas are as follows:
  - a. Invest more in work to support parents to communicate and better understand their children and similarly support teachers to better communicate with their learners.
  - b. Work more with community structures and leaders and faith based groups to help them learn to communicate with children and adolescents about relationships and sexual choices.
  - c. Work more with schools and health service providers.
  - d. Include learning about myths and stereotypes about sex and about men and women in the sex education curriculum of the Life Orientation programme in schools.
3. Provide support to teenagers and girls in particular in negotiating the difficult issues concerning consent and criminalising something consensual will not allow for that to happen.
4. There should be more consideration of indigenous knowledge. This applies particularly to township and rural communities where teenage pregnancy is high and recreational facilities are few. Vanishing practices relating to adolescent development should be revived especially those that allow teenagers to explore their sexuality. Traditional practices such as initiation rituals for boys and girls should be reviewed, debated and adjusted to better fit into modern society and to fulfil the constitutional commitment of gender equality and children's best interests.

This submission also refers to **Amendment of section 46 and section 47 and section 48 of Act 32 of 2007**.

## Viewpoints

1. 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; some of them may never have their names taken off. This can have devastating effects on the child's future. It becomes an even greater concern when young people were in a relationship where both of them gave consent.

## Recommendations

1. 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; any assessments should be paid for by the state to make sure that all children who are convicted have equal access to assessments.

## Contact

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## Shukumisa Members

No	Name	Province
1	Coping Centre	Eastern Cape
2	Dept. of Social Responsibility - Anglican Church	Eastern Cape
3	Ikhwezi Women's Support Centre	Eastern Cape
4	Masimanyane Women's Support Centre	Eastern Cape
5	Peddie Women's Support Centre	Eastern Cape
6	Rape Crisis PE	Eastern Cape
7	Voice Movement Therapy Eastern Cape	Eastern Cape
8	Thusanang Advice Centre	Free State
9	Agisanang Domestic Abuse Prevention and Training (ADAPT)	Gauteng
10	Ekupholeni Mental Health and Trauma	Gauteng
11	Wiser, Wits University	Gauteng
12	NISAA	Gauteng
13	POWA	Gauteng
14	REMMOHO Women's Organisation	Gauteng
15	Sexual Assault Clinic	Gauteng
16	Sonke Gender Justice	Gauteng
17	Teddy Bear Clinic	Gauteng
18	Tshwaranang Legal Advocacy Centre (TLAC)	Gauteng
19	Women and Men Against Child Abuse	Gauteng
20	Childline SA	KZN
21	CINDI Network (KZN)	KZN
22	FAMSA Pietermaritzburg	KZN
23	Justice and Women	KZN
24	Lifeline Durban	KZN
25	Lifeline PMB	KZN
26	Project Empower	KZN
27	Limpopo Legal Advice Centre	Limpopo
28	Thohoyandou Victim Empowerment Project	Limpopo
29	Tipfuxeni	Limpopo
30	GRIP	Mpumalanga
31	Women on Farms	Northern Cape
32	Lethabong	North West
33	AIDS Legal Network	Western Cape

34	Community Law Centre, UWC	Western Cape
35	Epilepsy SA	Western Cape
36	Legal Resource Centre	Western Cape
37	MOSAIC	Western Cape
38	RAPCAN	Western Cape
39	Rape Crisis Cape Town	Western Cape
40	SANAC Women's Sector/ WC Network on Violence Against women	Western Cape
41	Sonke Gender Justice	Western Cape
42	SWEAT / SISONKE	Western Cape
43	Triangle Project	Western Cape
44	Women's Legal Centre	Western Cape
45	UCT GHJRU	Western Cape
46	Women on Farms	Western Cape
47	Women's Legal Centre (WLC)	Western Cape
48	Independent: Debbie Harrison	
49	Independent: Luke Lamprecht	
50	Independent: Kelley Moulton	