

THE PROVISIONS OF THE SEXUAL OFFENCES BILL IN RELATION TO CHILDREN

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The Sexual Offences Bill was passed by the national assembly earlier this year, it has not yet been debated in the National Council of Provinces. Mostly the provisions of the Bill effect both children and adults, however, certain sections relate specifically to children.

New Sexual Offences

The Bill broadens the definition of rape 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. This means that rape of boys is recognized.

A wide range of non penetrative acts of sexual violation are covered by the crime of *Sexual Assault*.

Any sexual act with a child under 12 is considered a crime under any circumstances.

The act also introduces a range of crimes that relate specifically to children, these include, sexual grooming, sexual exploitation and the use of children in pornography or the display of pornography to children.

The age of consent to sexual activity is still set as 16. In cases where there is sexual penetration and both parties are under the age of 16, prosecution can only be instituted by the National Director of Public Prosecutions and must be instituted against both children. With regard to consensual sexual acts that don't involve penetration there is a defence if both were under 16 at the time and there is no more than a 2 year age difference between them.

Procedure and rules of evidence

The Bill has failed to substantially address the challenges in prosecuting cases of sexual violence against children. Minimal improvements have been made regarding improving access to protective measures such as the CCTV and Intermediary systems that allow children to testify outside of the court room in a separate room. This means that many children and most adolescents will continue to be expected to testify in the presence of the accused and other court role players.

The obligation of the court to treat children's evidence with caution isn't addressed. This is based on the assumption that children are more likely to lie and thus less worthy of belief than adults.

Unnecessary processes that children are put through to assess their competence to testify have not been addressed, this sometimes excludes the evidence of children who are able to describe their experience to the court truthfully.

The Bill provides for a National Policy Framework which is intended to address procedural aspects of the investigation and prosecution, the content of this policy framework will be developed after the bill is enacted. This could potentially address a number of problematic areas relating to investigation and prosecution of children's cases.

Other measures

In addition the Bill:

- Places an obligation on any person who has knowledge of a sexual offence against a child to report such knowledge.
- Creates a Sex Offender Register to prevent offenders who have been convicted of sexual offences against children from working with children. This duplicates some aspects of the register in the Children's Act.
- Provides for compulsory testing of accused for HIV, although this seems positive when taken at face value, the current provisions may negatively effect the complainant in respect of decisions regarding healthcare, emotional stress and exposing complainants in cases where there is no conviction to potential criminal prosecution.
- Provides for post-exposure prophylaxis against HIV infection under certain circumstances.

The Bill does not provide for counseling or therapeutic care to address the psycho-social needs of children.