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A little less conversation, a little more action: The crisis of statutory rape – is it the law, implementation, or culture?

South Africa (SA) faces a concerning rate of consensual, underage sexual activity among adolescents aged 12 - 16 years. This is evidenced by the high incidence of pregnancies and escalating rates of HIV infection within this age group.[1,2] A range of inter-related factors contribute to this early sexual debut, including socioeconomic hardship, entrenched gender inequality, cultural norms and inadequate access to comprehensive sexual health education and reproductive health services.[1,3] These structural and systemic conditions heighten adolescent vulnerability, creating an environment conducive to sexual exploitation, and in some instances, the occurrence of the crime of statutory rape.[1,3]

In response to public concern about this issue, the Parliamentary Portfolio Committee on Women, Youth and Persons with Disabilities (PPC) has launched a public participation process to address what they describe as the 'crisis of statutory rape'.[3-6] These hearings aim to engage the public and key stakeholders – including the SA Police Service (SAPS), the National Prosecuting Authority (NPA), Thuthuzela Care Centres and the Department of Social Development (DSD) – in reviewing existing legislation and proposing amendments to mandatory reporting obligations. A media statement[6] inviting the public to participate in the deliberations noted that the hearings aim to assess the prevalence of statutory rape, improve data accuracy and explore challenges in mandatory reporting and enforcement of the law. Although not clear from the media statement issued, the deliberations thus far indicate that the PPC has framed 'statutory rape' as being sexual intercourse between an adult and a child aged <16 years.[5] The age of consent to sex in SA is 16 years,[7] and consensual sex between adolescents aged 12 - 15 years is not criminalised if the age difference does not exceed 2 years.[8-10]

In this editorial we raise our concerns regarding the way the PPC has framed the issue as relating mainly to the mandatory reporting of the crime of statutory rape, and the need for further legislative reform through more criminalisation measures. It builds on our prior scholarship on teenage pregnancies, blesser relationships, mandatory reporting and the Teddy Bear Clinic case,[1,2,8-13] where we have repeatedly and consistently argued that the criminal law on its own is not the best mechanism for remedying harms resulting from socioeconomic and structural sources.

We argue that the root causes of the problem are structural, social and cultural, and that it is clear that blanket mandatory reporting will have limited, if any, benefit, and instead poses serious unintended consequences for sexually active children between the ages of 12 and 16 years, with little to no impact on the adult perpetrator.

Unpacking the problem

The Sexual Offences and Related Matters Amendment Act 32 of 2007[7] imposes a mandatory obligation to report to SAPS on any individual who has knowledge of, or reasonably suspects, a sexual offence committed against a child. This legal duty is unequivocal – those aware of such offences are not afforded any discretion in deciding whether to report. Failure to comply constitutes a criminal offence. Although underage sex is criminalised and mandatory reporting is required, these laws have done little to deter adults from engaging sexually with children aged 12 - 16.[1,14,15] The persistence of such behaviour suggests a disconnect between the law's intent and its practical enforcement, raising critical questions about the effectiveness of current legal and social interventions.

Over the past decade, there have been two key legal reforms through SORMA[7] – one narrowing the definition of statutory rape, and another expanding mandatory reporting obligations. These reforms aimed to align the law with constitutional principles.[12,16,17]

Despite this legal framework combining criminal sanctions, health rights and mandatory reporting, statutory rape remains widespread. This raises a critical question: why does the problem persist despite these protections? Is the answer as 'simple' as the input from the NPA, SAPS and DSD seem to suggest – that people are just not aware of their s54 mandatory reporting obligations?[5,7] We seek to challenge this narrative.

Considering the literature and the public deliberation comments from attendees and discourse thus far, we argue firstly that for legal responses to be truly effective, both practically and meaningfully, they must be rooted in the lived realities of the communities they seek to serve. Legal reform that overlooks critical factors such as adolescent vulnerability, community complicity and systemic barriers risks being misdirected. Without engaging these underlying conditions, efforts to address statutory rape and sexual exploitation of young girls may fail to confront its root causes, ultimately undermining the intended impact of the law.[1,2,8]

Secondly, mandatory reporting often conflicts with professional ethics. Healthcare workers may be torn between their duty to protect patients' privacy and their obligation to report sex with a young girl.[18] These dynamics complicate the implementation of mandatory reporting obligations, and highlight the need for a more nuanced, context-sensitive approach.

Thirdly, mandatory reporting can inadvertently expose victims to further harm. The process of reporting and subsequent legal proceedings can be invasive, disempowering and emotionally distressing. The fear of automatic reporting may deter adolescents from seeking medical care, counselling, or support services.[5,19] Further, partners may be wealthy or influential and shielded by community silence and social norms that discourage reporting.[20-22] They may also be fathers of a common child, and a report of statutory rape drags the relationship into a public court room.[2] Parental concealment is a recurring theme. In some instances, parents actively obstruct investigations, fearing stigma or loss of financial support.[5,23] Victims often face stigma and pressure to remain silent, especially when offenders are known, familiar, powerful or otherwise influential.[22,24,25]

Conclusion

Nuanced and context-specific modes of remedy are necessary. On their own, stricter and broader mandatory reporting and criminalisation will not have the desired effect of reducing statutory rape and sexual

exploitation of young girls. Nor will it improve case detection, and consequently prosecution rates are likely to remain low, or be driven lower.[21] Cultural norms and statutory rape-supportive/shielding/enabling attitudes among police, prosecutors, institutions, families and communities further undermine enforcement, deterrence and remedy.[5]

To be effective, law reform, and more specifically remedial measures, must be paired with trauma-informed training, community education, psychosocial support and accountability mechanisms.[19,26-28] Without these, legal change risks being symbolic rather than transformative. In short, legal reform must be embedded within a broader ecosystem of social change, institutional capacity and ethical responsiveness to effectively combat statutory rape and sexual exploitation of young girls.

Statutory rape persists in SA not due to a lack of law, but because of poor implementation of laws and policies, poverty, community silence, cultural norms and practices and systemic barriers to justice. Without a reality check of what the real causes of statutory rape are, we cannot even begin to frame a structured and focused response to it, and the PPC deliberations risk being yet another talk-shop.

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