

Concerns regarding Films and Publications Amendment Bill due to be considered by the National Council of Provinces (NCOP) in the second term (starting 17 April 2018):

Problematic proposals

The Bill proposes:

1. Watering down / narrowing the definition of “XX” material by **only prohibiting** the distribution of ***pornography that contains explicit violence***, which will result in more vile types of pornography and other degrading material becoming legally distributable between adults in South Africa;¹
2. Legalising the **online** distribution of “X18” pornography to adults in South Africa.

Injustice: Why is this problematic?

1. Watering down the “XX” definition (prohibited material):

The proposed amendment to water down the definition of prohibited material that may not be distributed at all in South Africa, is cause for concern. The Films and Publications Act (1996) at present outlaws material that -

- violates/disrespects human dignity,
- is degrading of human beings, and
- incites/promotes causing harm to human beings.

The proposal in the Bill is to replace these three prohibited materials with a single definition prohibiting only **violent** pornography. The unintended consequences are that –

- **non-violent** sexual material that **violates human dignity**,
- ALL **degrading material** that does not contain an element of explicit violence; and
- material that **incites** or promotes **harm** being done to human beings,

will become legally distributable in South Africa.

Submission / Counter-proposal

This proposal cannot be supported, as it constitutes a clear violation of human dignity and will create public safety risks in relation to people inciting others in society to harm themselves and/or others. This is not in the interest of justice or in the public interest and cannot be justified on constitutional grounds.

The counter-proposal therefore is to: Either leave the provisions in the Act untouched (i.e. no amendments) or redraft it to bring it in line with constitutional norms and values.

2. Legalising the *online* distribution of "X18" pornography to adults in South Africa:

There exists well documented scientific research evidence of the extensive individual (physical and psychological), relational and public (health, safety and other social) harms of pornography, which should first be given proper consideration, before a decision is taken about wide-spread dissemination of hard-core pornography to adults in South Africa through the internet.ⁱⁱ

One of the most concerning harms of pornography is the perpetration of sexual violence/abuse against children and women by adult men triggered into these criminal acts through exposure to pornography. [<http://endsexualexploitation.org/violence/>]

Observations:

1. Pornography use is rife in South Africa. [We are in the top 20 of all countries in the world. We are number 1 in the world for accessing pornography via smart phones. [<https://carteblanche.dstv.com/stats-south-africas-porn-habits/>]]
2. Gender-based and domestic sexual violence is rife in South Africa. Mostly adult males exploiting, abusing and violating women and children. [This is a matter of public record.]
3. Research / scientific evidence shows that pornography use is a cause of gender-based / sexual violence.

Inference:

The above observations are cause for proper investigation – preferably by way of official commission of enquiry – to critically consider the consequences for the whole of society when adults are exposed to adult pornography. In light hereof, the policy decision by government and the National Assembly and PCC to legalise the *online* distribution of pornography to ALL adults **without conducting an official and credible investigation into the effects of pornography on South African society**, is difficult to fathom and reckless.

Submission / Counter-proposal

The counter-proposal: In the interim – until such time as an official investigation has been conducted – as far as the distribution of hard-core ("X18" classified) pornography to adults is concerned, the current "licensed adult premises" regime (sections 24(1), (2) and 24A(3) of the Act) strikes a constitutionally justifiable balance between protection from harm and protection of human dignity (on the one hand) and freedom of expression (on the other).

ⁱ **The Act deals with *adult* pornography in two ways – for classification purposes:**

(Note that “*child* pornography” is already illegal in South Africa.)

1. “XX” classification: Obscene material, which may not be distributed **at all**, not even between adults;
2. “X18” classification: Explicit/hard-core adult pornography (falling short of obscenity).

Up to now, the Act has provided that “X18” material may only legally be distributed to and accessed by **adults** within the four walls of a building that has been licenced as an “adult premises” – i.e. **adult** pornography may only be distributed **to adults** in these limited circumstances. All pornography that is currently freely available on the internet, is therefore illegal.

ⁱⁱ Harms include, amongst others:

- Harms to viewers, both adult and children,
- Harms specific to viewers who are children;
- Harms to intimate partners and intimate partner relationships;
- Harms to vulnerable groups in society (e.g. victims of sexual violence and crimes).

Specific forms of harm consist in the following, amongst others:

- loss of interest in sexual encounters with real people (as opposed to online representations), loss of libido;
- erectile dysfunction;
- sexual addiction/compulsivity;
- unhealthy expectations about sex and self-inflicted pressure to live up to imagery in pornography;
- devaluing of the opposite sex by viewing the opposite sex as objects to be used for sexual pleasure;
- acceptance of aggression as being part of a normal sexual experience;
- causing people with a predisposition to violence to act out in sexual violence against intimate partners;
- desensitisation towards and/or acceptance of rape and other sexual crimes;
- greater propensity to divorce and to commit infidelity;
- physiological brain changes which fuel addiction behaviour;
- reduction in individuals’ ability to critically assess harm (at the very least in attitude) towards others, while focusing on the impulsive benefit to themselves.

[http://endsexualexploitation.org/wp-content/uploads/NCOSE_Pornography-Public-Health_RESEARCH-SUMMARY_8-15-17-1.pdf]