

**Evangelical Christian Advocacy in post-Apartheid
South Africa: The case study of the decriminalization
of the child sex provisions of the Criminal Law (Sexual
Offenses and Related Matters) Amendment Act.**

BY

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Psalm 68 states that God places the solitary in families.

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DECLARATION

I declare that this research is my own work and that it has not been previously submitted to any institution for degree purposes and that all quotations and sources have been duly acknowledged.

Signature:..... Date:.....

Student: Naresh Singh

As the supervisor to the candidate, I hereby approve this dissertation for submission

Signature:..... Date:.....

Supervisor: Dr F. G. Settler

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

ANC	African National Conference
CAN	Christian Action Network
CLA	Christian Lawyer Association
CSO	Civil Society Organization
CTOP	Choice of Termination of Pregnancy
DFL	Doctors For Life
FBO	Faith Based Organization
FPI	Family Policy Institute
JASA	Justice Alliance of South Africa
JG	Joshua Generation
MASA	Marriage Alliance of South Africa
RAPCAN	Resources Aimed to Protect Child Abuse and Neglect
SANNC	South African
SOA	Sexual Offences Act
SA	South Africa
TBC	Teddy Bear Clinic
TEASA	The Evangelical Alliance of South Africa
US	United States
UNICEF	United Nations Children's Fund

Key Terms

Evangelical:

This concept describes those Christians who advocate the message of justification by grace through faith alone (Truesdale and Lyons, 1986 94-95). According to Truesdale and Lyons the concept comes from the Greek word for gospel (good news) and the leaders of the protestant reformation were among the first Christians to be called evangelical. Today, there are numerous evangelical church denominations. They are united in their emphasis on the need for personal salvation. They also believe in the deity of Christ and the authority of the scriptures.

Evangelical Church:

It is an umbrella term covering different groupings and theological emphases (Larsen 2007:1-15, Schreiter 2011:88-92) related to belief in the authority of the bible and the deity of Christ. Broadly speaking, the Evangelical church could be characterized its belief in upholding biblical revelation, believing in the centrality of Jesus' cross and resurrection for salvation of sin and the ministry of the Holy Spirit in and through those saved, leading to personal conversion and enthusiastic participation in mission, evangelization or disciple-making (Nkansah-Obrempong 2010:294)

Advocacy:

The Encyclopedia of Social Work (1995:4) defines advocacy as the “the act of directly representing , defending, intervening, supporting or recommending a course of action on behalf of one or more individuals, groups or communities.” This put simply means acting on behalf of person(s) or communities to initiate change.

Abstract

In December 2007 South Africa passed the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 to regulate sexual offences. The Act made it a sexual offence for children aged 12–16 to engage in consensual sex. However, in 2011 the constitutionality of these provisions was challenged when the children’s organizations, Teddy Bear Clinic and RAPCAN applied to the North Gauteng High Court to have these provisions declared as not serve the best interest of children. This successful legal challenge to the child sex provisions of the new Sexual Offences Act and the subsequent Constitutional Court ruling provoked a lot of public debate among faith communities and children’s rights organization.

While in the immediate aftermath of Apartheid, the Evangelical Church in South Africa appeared ambivalent about its role in public culture and about its relation to the State. However in relation to legislation pertaining to sexual and moral ethics, such as abortion, homosexuality and corruption, the evangelical church seemed to have found its voice. It is in this context that through this case study that I examine the Evangelical churches strategies for advocacy on a national level in South Africa. By examining the social, legal and theological debates related to this new Sexual Offence Act, as well as the formal submission made to parliament by evangelical Christian groups, I hope to demonstrate the prevailing discourses around advocacy and lobbyism within this faith community. The primary objective of this research is to interrogate Evangelical Christian lobbyism and advocacy in response to the decriminalization of the child sex provision of new Sexual Offences Act.

The case studies will use archival research (Case Law and, public debates, parliamentary submissions and court papers) as primary data collection methods related to the child sex provisions of the new Sexual Offense Act. This study utilized discourse analysis of legal document and religious literature related to the case study. I sought to examine advocacy and collaboration with the State through the lens of social construction.

From my discursive reading of the Evangelical submissions the discourse themes appeared as dominant. I used discourse analysis to show that that there is much more going on when people

communicate than simply the transfer of information. To demonstrate this I discussed the following themes which in my emerged from the parliamentary submissions: of guardianship, moral autonomy, age of consent and sexual relationships. These themes offered insight into evangelical motivations for advocacy which is dualistic by inwardly focusing on its membership through theological input and outwardly contesting the State on matters that challenges its beliefs.

Finally, the study contributed to the growing body of research related to Evangelical advocacy at the intersection of Church and State in a plural society. This research also made some contribution in understanding the role of Evangelical advocacy in the arena of socio-legal debates and contestation in the public sphere in a plural post-apartheid South Africa as demonstrated by the submissions documented by the other research consulted.

KEY WORDS

Evangelicals, Advocacy, Decriminalization, Case Law, Child sexuality, Discourse Analysis and State

Table of Contents

CHAPTER 1: INTRODUCTION AND BACKGROUND TO THE STUDY	3
1.1 Introduction	3
1.2 Context and background	3
1.3 The problem statement.....	7
1.4 Purpose of the study:	8
1.5 Central research question and sub-questions.....	8
1.6 Significance of the study	9
1.7 Personal statement and ethical considerations.....	11
1.8 Conclusion.....	13
CHAPTER 2: LITERATURE REVIEW	15
2.1 Introduction	15
2.2 Advocacy	15
2.3 Evangelical advocacy.....	17
2.4 Advocacy in South Africa	18
2.5 Socio-legal debates about sexual ethics and morality in South Africa	22
CHAPTER 3: RESEARCH METHODOLOGY AND THEORETICAL FRAMEWORK 27	
3.1 Introduction	27
3.2 Research design.....	28
3.2.1 <i>Qualitative research</i>	28
3.2.2 <i>Case study</i>	29
3.3 Research methods.....	30
3.3.1 <i>Archival research</i>	31
3.3.2 <i>Critical discourse analysis</i>	32
CHAPTER 4: DATA ANALYSIS	34
4.1 Introduction	34
4.2 Case law related to the Decriminalization of Child Sex Provisions	35
4.2.1 <i>Teddy Bear/ RAPCAN vs Minister of Justice (2013) ZACC 35</i>	35
4.2.2 <i>Pretoria High Court Judgement in Case ZACC 35</i>	37
4.2.3 <i>Constitutional Court</i>	38
4.3 Values and ideologies that underpin Child Sex Legislation.....	39
4.4 Parliamentary submissions by faith-based organizations regarding SOA.....	42
4.4.1 <i>Family Policy Institute (FPI)</i>	42
4.4.2 <i>Christian Action Network for Reformation and Revival (CAN)</i>	43
4.4.3 <i>Joshua Generation Church (JG)</i>	44
4.4.4 <i>Justice Alliance of South Africa (JASA)</i>	46
4.5 Emerging themes and discourses in FBO parliamentary submissions.....	47
4.5.1 <i>Guardianship</i>	48
4.5.2 <i>Moral autonomy</i>	50
4.5.3 <i>Age of consent</i>	52
4.5.4 <i>Family Policy Institute statement</i>	53

4.5.5 <i>Sexual relations</i>	54
4.6 Conclusion	58
CHAPTER 5: EVANGELICAL RESPONSES TO CHILD SEX PROVISIONS IN THE NEW SEXUAL OFFENCES ACT, 2007	60
5.1 Church and state: an Evangelical perspective	60
5.2 Contemporary Evangelical contestation: rights versus faith	65
5.3 Theological and ideological bases of Evangelical advocacy in post-apartheid SA	68
5.3.1 <i>Theological imperative</i>	68
5.3.2 <i>The Christological imperative</i>	70
5.3.3 <i>Biblical imperative</i>	71
5.3.4 <i>Historical imperative</i>	73
5.4 Conclusion	77
CHAPTER 6: CONCLUSION	78
6.1 Introduction	78
6.2 Brief overview of findings:	78
6.2.1 <i>Discourse of guardianship</i>	79
6.2.2 <i>Discourse of moral autonomy</i>	79
6.2.3 <i>Discourse of age of consent</i>	79
6.2.4 <i>Discourse of sexual relations</i>	80
6.3 Evaluation of study	80
6.4 Implications of research	81
6.5 Recommendations of further research	82
6.7 Conclusion	83
BIBLIOGRAPHY	84
APPENDICES	95
CHRONOLOGY OF CHILD-SEX LEGISLATION AFTER 1994	104

CHAPTER 1: INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

This introductory chapter presents a concise background and motivation for the study. I introduce the study by locating it in a particular context and spelling out the objectives and research questions. I also present the significance of the study and provide definitions of the key terms used within the text. The purpose of the study is to explore how evangelical Christians and organizations in South Africa engage with the State and civil society in relation to particular legal and social debates related to child sexual ethics. With regard to my research topic, I located theological and legal debates related to sex, and child sex in particular, at the heart of evangelical Christian ethics. Due to the nature and sensitivity of the study, I will focus on the debates around and related to child sex provisions of 2007, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007). That the amendment of the law made it legal for children between the ages of 12 and 16 to have sex, and that those who care for them, civil servants or health practitioners are no longer liable to report incidents of such sexual activity – this generated grave concern among evangelicals. In this study, I trace the various strategies and advocacy practices employed by evangelical Christians in their engagement with the post-Apartheid State. This chapter provides an introduction to the overall study through citing the context and motivation for the study, as well as its significance for understanding the role and place of Christian advocacy in contemporary South Africa.

1.2 Context and background

Armugam (2014:3) stated that within Christianity, there has been a significant historical commitment to social action by evangelicals. The transformation of society has always been an essential part of Christian missions starting with the forerunners of the Protestant missionary movement. This was most evident in the traditions of Puritanism, Pietism and Moravianism all of

which sought to advocate living by an alternate set of social, theological and political values. Elsewhere, and at other times Christians, believed that the Wesleyan or evangelical revivals would ignite a broader social revival. Such movements attempted to transform their own societies through a commitment to both evangelization and service to the poor. A key development was the growth of evangelical confidence from the 1970s onwards as the movement gained momentum and legitimacy within mainstream Christianity (Chester 2004). A more outward looking evangelical Christian faith was apparent at the Lausanne Conference of 1974 where a covenant was made that declared that “*we affirm that both evangelical and socio-political involvement are part of our Christian duty*”. This led some scholar to surmise that Lausanne Conference “reconceived global moderate evangelicals as a synthesis of evangelism and social action and initiated a postcolonial re- conception of global evangelicalism” (Warner 2008:9)

In the immediate aftermath of the Lausanne Conference, evangelical social action movements emerged in Britain and in parts of Europe, culminating in what evangelical theologian John Stott describes as a “turning point for the worldwide evangelical constituency” (2006:31). Since then, this commitment to social action has grown in the global evangelical community – including in the South African context. As a further reflection on the history of evangelical commitment, the Lausanne Movement in its ‘Cape Town Commitment of 2010’ illustrated the increasingly dynamic nature of modern evangelical commitment to social action. Despite its radical founding vision in the 1970s, The Lausanne Movement in 2010 seems to make a rather weak commitment to advocacy through active social action, especially in partnership with evangelicals in the global South (Green 2011). It is clear that evangelicals across the spectrum have played a significant role in South Africa’s democratization. The advent of the new dispensation in 1994 was accompanied by a kind of amnesia about past theological and ideological justifications of Apartheid as the new possibilities of democracy were embraced (Balcolmb 2004:34). Balcolmb (2004) argues that these post-Apartheid church-State challenges cannot be addressed only by legal instruments but come from changed habits and dispositions. For Balcolmb, the church must take an active advocacy role, collaborating with civil society actors in dealing with current social challenges – and for South African leaders, in all sectors of society and especially in government, to act with moral courage and conviction. According to Balcomb (2004:8). Evangelicals have played a significant role in the democratization of South Africa.

Balcolmb (2004:8) addresses the role of evangelicals in the democratization process by referring to key figures in the Evangelical movement. These figures include Bishop Frank Retief of CESA, Ray McCauley of Rhema, Michael Cassidy of Africa Enterprise, Nicholas Bhengu of the Back to God movement and Frank Chikane. According to Balcomb, he chose these individuals because: (1) they are, or have been, leading figures whose interventions have influenced or are influencing the South African political scene; (2) they are all evangelical but represent different modes of intervention in the political arena; and (3) they are broadly representative of wider and important groupings within South African evangelicalism (2004:9). Balcomb further argues that their role vary from active opposition to socio-political change and preservation of the status quo, to apparent neutrality and indifference, to active participation in the democratic processes of change, including the formation of an evangelical political party, the ACDP (2004: 29).

For much of the last 100 years, the church in South Africa assumed a prophetic role as it sought to fight for non-racialism, economic justice and social equality. According to Bentley (2013) in Christianity in South Africa has had a long history of engaging state and society on a variety of issues ranging from governance and leadership to daily moral problems. According to Bentley, the Christian Church in South Africa took a prominent social position from colonial times, right to the end of the apartheid era (2013:551-556).

Since the end of Apartheid however a number of commentators have raised questions about the role and visibility of the church. After introducing Nelson Mandela as the newly elected President of a democratic South Africa on the stairs of the Union Building in April 1994 Bishop Desmond Tutu exclaimed: “Now I am going back to the church to do the real business of the church and leave politics to those well qualified to do it” (*Challenge* 22 June 1994). Similarly, Bishop Manas Buthelezi, a black theologian and former president of the South African Council of Churches, stated in his farewell speech in 1997 that: “Now I am going to serve the real church” (*Challenge* 13 October 1998).

Even at the Anglican Churches’ Leeds conference in 1993 Archbishop Desmond Tutu confessed:

We had a common position, our stand against apartheid. I now realize what I did not previously, that it is a great deal easier to be against. ... Now that apartheid is being dismantled we are finding that it is not quite so simple to define what we

are for. ... We no longer meet regularly as church leaders because the tyranny is over. ... We knew what we were against and we opposed that fairly effectively. It is not nearly so easy to say what we are for and we appear to be dithering, not quite knowing where we want to go or how to get there. (Tutu 1995: 96).

In response to this, many church leaders agreed and withdrew their involvement from public issues, and concentrated instead on ecclesial matters. It was mostly mainline protestant churches that retreated to denominational enclaves, whilst paradoxically the more conservative evangelical groups moved into the center as they opposed government's policies on moral issues such as abortion, same-sex relationships and contraception for young people. Notwithstanding the South African focus on racial reconciliation, it must be noted that that among religious persons in general, and evangelical in particular, moral issues related to bodily integrity and life such as sexual ethics and abortion, rates significantly higher in their moral index. For example, Steven Kull et al (2011) in their survey on "Faith and global Policy Challenges" noted that hunger, abortion and loss of life rated 3-4 times higher among persons of faith. Similarly Peifer et al (2012) argues that evangelicals tend to frame their approach to environmental matters in terms of rhetoric of custodianship, while I would suggest that for evangelicals, sexual ethics are more vociferously defended in terms of moral order and bodily integrity.

Although there is no empirical evidence that the statements by the Bishop Desmond Tutu and Dr Manas Buthelezi led to the church's withdrawal from the public sphere, they do however, give us a window into the changing nature of church-state relations in the immediate aftermath of Apartheid. In 2012, in the British context, Bishop George Carey sought to write in the defense of traditional values and biblical principles because he felt that to hold these ideals were seen as unfashionable. Reflecting on the role of the Christian in society, he wrote:

we cannot retreat to a privatized ghetto because the gospel concerns the whole of life. There is no —privatized morality because the whole of life is based on morality. Faith is necessarily public..... Believers cannot simply divest

themselves of their faith when they enter politics or engage in public debate (Carey 2012: 78).

Thus, it is in the context of the shifting terrain and increasing ‘ambivalence’ of the church towards the State that I hope to look at the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) – and at its child sex provision, in particular to examine the particular positions evangelicals assume in relation to the post-Apartheid State.

It is in this context that this study takes its starting point, looking at the case law, parliamentary debates and media storm that surrounded the High Court application from Teddy Bear Clinic and RAPCAN to have a section of the law revised that would decriminalize sex between young people aged 12 to 16. This court case, as well as the subsequent media and political debates, sparked national protests from the evangelical sector of the church, with accusation of moral degeneracy being flung about, while others pleaded with church leaders to intervene. While the Teddy Bear Clinic and RAPCAN Case, for many evangelicals, challenged faith in their understanding of the Christian moral foundation of society, it significantly illustrates some of the new ways in which evangelical churches and faith-based institutions advocate around particular social, moral and ethical issues in the post-Apartheid society.

1.3 The problem statement

The primary purpose of this research is to interrogate advocacy in response to the decriminalization of the child sex provision of new Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) – hereinafter referred to as the Sexual Offences Act. The study will be concerned with South African case laws and their impact on evangelical advocacy groups. By taking a sociological approach I hope to gain empirical knowledge and an understanding of how the law and legal proceedings impact on the parties involved, and what kind of civil society responses it generates. This case study will examine the Evangelical churches’ strategies for advocacy on a national level in South Africa by examining the social, legal and theological debates related to this new Sexual Offences Act and associated debates. The primary objective of this research is to interrogate Evangelical Christian advocacy in response to the decriminalization of the child sex provision of new Sexual Offences Act.

1.4 Purpose of the study:

The purpose of this study is to examine the advocacy practices of The Evangelical Church in post-apartheid South Africa. This study further examines the ambivalence and lack of scholarly material produced. In order to achieve the set aim of the research, I have devised the following objectives:

1. To examine the historical nature of Evangelical Christian advocacy in South Africa;
2. To analyze the responses of Evangelical churches and advocacy groups to the child sex provisions of Criminal Law (Sexual offences and related matters) Amendment Act in South Africa of 2007; and
3. To understand how Evangelical Christian engagements the proposed amendments to the child sex provisions of Criminal Law (Sexual Offences and Related matters) Amendment Act, shaped strategies and practices of Christian advocacy in South Africa.

1.5 Central research question and sub-questions

My central research question is:

What has been the role and character of Evangelical Christian advocacy in lobbying for the rights of the child in relation to the child sex provision of the new Sexual Offences Act?

My Sub-questions are:

1. What has been the nature of Evangelical Christian advocacy in South Africa?
2. How, and on what theological bases have the Evangelical churches and advocacy groups responded to proposed child sex provision of the new Sexual Offences Act?
3. How have Christian engagements with recent case law shaped the strategies and practices of Evangelical Christian advocacy in South Africa?

The contestation between supporters and critics of the Amendment of the new Sexual Offences Act concerning its implementation, monitoring and enforcement seems quite significantly to be an issue of social contract. Enlightenment philosopher Jean-Jacques Rousseau asserted that legislation find its meaning and validity through civic participation. He argued that executive administration is flawed when it regarded itself as superior to those they manage and that it would result in inevitable conflicts of agendas and interests. He argued that the “people being subject to the laws, ought to be their author: the conditions of the society ought to be regulated solely by those who come together to form it” (Rousseau 2005: 41). It is with this idea of civic participation that I proceeded to conduct my study.

Evangelicals have historically been most vocal around issues of sexual and moral ethics such as abortion, sexuality, corruption and freedom of religion. My inquiry was to ascertain whether their strategies impact in contributing to legal parliamentary debates? In particular I hope to ascertain the shape and nature of their lobbyism and advocacy.

1.6 Significance of the study

In 2007, the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007 (Act No. 32 of 2007); widely referred to as the Sexual Offences Act, replaced the Sexual Offences Act of 1957 (Act No. 23 of 1957, originally the Immorality Act 1957). This Act broadened the range of acts that constitutes sexual offences, and standardized the age of consent for heterosexual and homosexual sex, as well as it sought to provide for a range of services to victims of sexual violence.

The problematic implications of the Sexual Offences Act for adolescents did not become apparent until the Johannesburg, Jules High School case in 2010. A 15-year-old girl reported that she had been drugged and raped by two boys, aged 14 and 16, on the sports grounds of her high school. Although she later “confessed” that the sex was consensual, it nonetheless resulted in a charge with contravening Section 15 of the Sexual Offences Act. As a result of this case, attention was drawn to Sections 15 and 16 of the Act, this attention that was carried all the way through to the Constitutional Court.

Following this, the *Teddy Bear Clinic for Abused Children, RAPCAN and Others v the Minister of Justice and Constitutional Development and Others* brought an application before the High Court, and later, before the Constitutional Court, which succeeded in determining that Sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters Amendment Act 2007) are unconstitutional insofar as they criminalize consensual sexual conduct between adolescents (children between the ages of 12 and 15 (below 16 years of age). In 2013, the Constitutional Court gave parliament 18 months to fix the legislation. The committee applied for extension to ensure that the civil society has adequate time to have further submissions made.

Most parliamentary submissions and related debates did not support the criminalization of children who engage in consensual sexual acts. Many, however, resisted the idea that children may take part in sexual activity, and looked to the State to enforce the point that children should not be having sex. The oppositions also spoke to issues related to the role of civil society, FBOs, traditional and faith leaders and caregivers. in providing children with the guidance and advice with regards to sex and sexuality. Some, like the Kingdom Governance Movement, an evangelical group, argued that decriminalizing sex between children was akin to legalising sex between children, and encouraging of a society in which it is acceptable for children and adolescents to have sex. For others still, there was concern that decriminalization would increase the risk of teenage pregnancy, STDs, and that would make it even more difficult for girls to prove that they were raped or sexually assaulted (CAN 2014:2).

This challenge to the child sex provisions of the new Sexual Offences Act and the subsequent court ruling provoked a lot of public debate among faith communities and children's rights activists. MP Steve Swart (ACDP), for example, discussed this matter on SABC 2's television programme "Interface" (15 October 2014 on) and the *Star* newspapers, among others, covered the story under the headline, "Sex between 12 and 16 okay".¹ While some in the children's rights sector celebrated the move towards decriminalization, others expressed dismay. Errol Naidoo of The Family Policy Institute, an evangelical Christian think tank, made oral presentations to parliament opposing the proposed amendments on the grounds that it increased the vulnerability of children in South Africa. Mkhangelisi Matomela of the Kingdom Governance Movement (KGM) told Parliament's justice committee that the campaign of decriminalizing sex between

¹ Yolande Du Preez, "Sex Between 12 and 10 okay", *The Star* – January 16, 2013

children was planned by agents of Satan to corrupt society. Elsewhere he was quoted as saying “we must not allow our democratic institutions to be used as agents for the forces of darkness”.² While neither Matomela nor Swart represent mainstream evangelical Christian churches, they nonetheless captured the sentiments that were widely felt among evangelicals.

To this end, I have sought to consider the various case law and public debates pertaining to the amendment of the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007 (Act No. 32 of 2007) – and at its child sex provision in particular to the advocacy responses from post-Apartheid evangelicals as they sought to lobby churches and government on the issues of decriminalization of child sex in the post-Apartheid context.

1.7 Personal statement and ethical considerations

In this Masters project, my primary interest was with researching the role of Evangelical Advocacy in post-apartheid South Africa in relation to the amendments of the provisions of the SOA in relation to children. However, while working on the project I increasingly came to appreciate that evangelical advocacy is developing a global significance, and I wanted to explore the shape and form of this advocacy in post-apartheid South Africa.

My first encounter with advocacy was in my final year of high school as a disempowered young Indian in post-apartheid South Africa. I had passed matric and had no finances to enter university. The thought that struck me amidst my sense of helplessness was a demand for change my circumstances although I could not label the word. Change was necessary and it could not happen without confronting social disparity. Over the years my understanding of the field has increased.

Today, I am a senior elder of an apostolic Church in the South of Durban and active in social activism. Part of our key ethos as a faith community is to contribute to the transformation of the nation. Since I graduated from university, I also worked for the faith-based organisation, Focus on the Family, as a projects facilitator. In this role I did workshop with young people and educators at schools nationally, where I came to understand some of the challenges that learners

² Thulani Gqirana, “Public weighs in on bid to decriminalize teen sex” Mail & Guardian on 4 March 2015

face in the area of sexuality ranging from rape, teenage pregnancy and HIV and AIDS. During my time there I always felt that there must be more that can be done to help young people and their families.

For most people in my faith community, to talk about sex is a taboo in the church and many refrain from talking about it because of the ways it has been stigmatized. Although at my Church, and at my workplace, we hold the view the pre-marital sex is undesirable, we recognize that young people are sexually curious, often sexually active and as such we are seeking ways to build constructive ways to nurture young people's sexuality. I see myself as an individual who is willing to swim against the tide in the context of perceived silence and stigma about sex. Although I belong to a faith community that is involved at grassroots levels with child sexuality, I engaged in this study to critically examine how evangelicals responded to post-Apartheid legislation that sought to decriminalize child sex.

The decriminalization of the child sex provisions of the Sexual Offences Act almost immediately generated an outcry from the church. I was again struck by the fact that whenever there appear to be socio-moral issues around sex, the Evangelical 'voice' has become loud. And yet, despite a lot of public outcry from evangelicals there is very little academic reflection. I hope with this case to address this gap between evangelical discontent and understanding evangelical strategies for advocacy.

Doing my Masters studies in the sociology of religion gave me an opportunity to reflect on the issue away from the theological restriction of my faith tradition. It also motivated me to pursue research on the role of evangelical advocacy based on case study in post-apartheid South Africa. I found that through attending the postgraduate seminars I came to understand the value of critical thinking, and reading comparative scholarly material that expanded my worldview on why, and how evangelicals advocate around public sexual ethics and issues.

Personally, I do not have any objections to the provision of the decriminalization of the new Sexual Offences Act, which I believe does more to protect children. I have found the project both challenging and rewarding, and in the end learnt more about my own faith tradition than I expected to do.

1.8 Conclusion

In this chapter, I have sought to introduce advocacy as an emerging aspect of church-state relations in the post-Apartheid South Africa. I also sought to link the practice of evangelical advocacy in relation to the decriminalization of the child sex provision of the new Sexual Offences Act. I have tried to sketch the extent to the public interest and outcry in relation to government law making process as it pertain to making legal sex between young persons, otherwise considered minors. Through this I have sought to outline the background to both the real world problem for evangelical Christians and lawmakers, as well as to motivate the significance of this study to our understanding of advocacy and lobbyism after Apartheid. Finally, I have made an attempt to reflect on my own position as a researcher, with close relations and ties to the evangelical Christian community, but who nonetheless here attempts to engage in a critical reflection not only about the ethics and morality that characterizes evangelicalism, but also the practices and strategies employed by Evangelicals to advocate their particular brand of morality.

Chapter 1 outlines the background and motivation of the research, and it presents the research problem, the objectives of the research and the central research questions that have guided the study. Finally, I provide a definition of the terms and concepts I make use of, as well as a brief chapter outline. In chapter 2, I discuss the body of academic literature that deals with the relationship between the Evangelical church and the State, as well as contestation concerning advocacy in relation to the advocacy regarding the decriminalization of the amendments to the SOA. This review is presented thematically, and analyzes available literature on (1) Advocacy and Evangelical advocacy from an international and national perspective, and (2) socio-legal engagement with sexual morality and ethics in South Africa. I focus in particular on those scholars that contribute to debates from a theological perspective, and make use of perspectives from sociological scholars as a lens through which to examine the text.

In Chapter 3, I present an overview of the research methodology that has guided and given shape to this study. I outline the rationale for using a case study approach when studying advocacy strategies of Evangelical churches in South Africa. The primary objective of this research study is to interrogate Evangelical Christian lobbyism and advocacy in response to the decriminalization of the child sex provision of new SOA. In chapter 4, I present the method of

data collection, interpretation and analysis. In Chapter 5, I interrogate Evangelical responses to the Child Sex Provisions in the new SOA of 2007. In the final chapter, Chapter 6, I present a concluding discussion of the research findings, and make some recommendations and suggestions for future research.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

In this chapter I will discuss the literature concerning the subject of this study. According to Brink (1996) a literature review involves reading, understanding and forming conclusions about theory and the published research to address a specific topic under discussion. Burns and Grove (2003:55), furthermore note that a literature review is done so as to acquire knowledge for use in practice or to provide a basis for conducting a study. In this present chapter, I will discuss the body of academic literature that deals with the relationship between the Evangelical church and the State, and the advocacy in contestation to the decriminalization of the amendments to the SOA.

This literature will employ a thematic approach to identify and analyze already existing scholarship on (1) Advocacy and Evangelical advocacy from an international and national perspective, and (2) socio-legal engagement with sexual morality and ethics in South Africa. In this discussion, the focus is on scholars that contribute from theological perspectives and that use sociological scholars as a lens through which to examine sexual morality and ethics.

2.2 Advocacy

In this section of literature concerning advocacy I proceed from general to specific, from advocacy (in general) to more clearly defined ideas about international advocacy. In this literature review I use scholars who have written on advocacy in general, followed by authors who have written on Evangelical advocacy in South Africa and finally Internationally.

Advocacy, in its broadest sense refers to a range of activities, including organizing, lobbying and campaigning. An advocacy campaign publicly promotes an agenda, involving platforms where a wide audience can hear the advocate's message. The research of the following scholars outline the variety in approaches to, and understandings of, advocacy. Levy (1974:59) states that there are more than ninety different types of advocacy accounted for by experts. These definitions are

a clear indication of the variety and existing types of advocacy. In seeking to clarify on the different types of advocacy, VeneKlasen and Miller explain that the “diverse advocacy approaches are not just different ways of reaching a similar end. They embody different values, political views, and goals, and thus seek different ends” (2007:17). Levy (1974), as well as VeneKlasen and Miller (2007) has argued that those engaging in advocacy must be clear about the expected outcomes and the methods of engagement. The Encyclopedia of Social Work (1995:4) defines advocacy as the “the act of directly representing, defending, intervening, supporting or recommending a course of action on behalf of one or more individuals, groups or communities.” This, put simply, means acting on behalf of in order to initiate change. This is significant for this study as it seeks to examine the shape and role of Evangelical advocacy in post-apartheid South Africa. The following scholars comment on social justice advocacy. Klugman (2010:2) explains that in advocacy from a social justice perspective citizens must engage the State in legal debate and contestation. She states that “social justice advocacy works for structural and enduring changes that increase the power of those who are most disadvantaged politically, economically and socially.” For Habib “advancing social justice is linked to advancing substantive participatory democracy and human development so that people are protected and empowered to remove “unfreedoms” and flourish as human beings” (2011:11).

Gaventa explains that advocacy will allow for citizen participation in the democratic process. In keeping with the idea of citizen participation, Yamin (2009:11) concludes that citizens have the right of participation and this will free people from being subjective to the State through restraining political processes. Research conducted by Handmaker (2009) introduces the changing aspects of civic-state interactions aimed at the state or governments in their attempt to protect human rights. Handmaker uses the lens of refugees to examine the state and civic tension. Handmaker (2009:51) strengthens the need for citizen participation and further argues that: “a socio-legal perspective on human rights offers greater possibilities for understanding the potential and limitations of human rights, and the legal process through which human rights are advocated”. The following scholars comment on the significant role of agency in advocacy. According to Cohen (2001:7-8), advocacy is made up of organized actions that intend to influence public attitudes and policy. For Cohen (2001), citizen-centered advocacy is an organized political process that involves the matched efforts to change policies. Ajulu and Gibbs (1999) posit that agencies (NGOs and CSOs) are important for lobbying the State. They further

argue that: “it is entirely valid and proper that NGOs and CSOs should position themselves within a particular set of values to be clear about the aims and objectives of their advocacy”. (Ajulu and Gibbs 1999:11). Habib (2003) argues for advocacy by civil society as agency for change. In his words: “without such a moral center underpinning South African society, poverty, inequality and underdevelopment, and their consequences, are likely to be with citizens for the foreseeable future.” (Habib 2003:41).

2.3 Evangelical advocacy

Evangelicals have played a significant role in advocacy both locally in South Africa and globally. In this section I focus on the scholarship of Armugam, Graham and Noll to outline, briefly, a history of advocacy. Armugam (2014:3) provides a brief history of international advocacy, wherein he illustrates the shift of advocacy based on morals towards a reliance on human rights discourse. Armugam explains that advocacy emerged in the 1800s voluntarily by activism (2014:3). It was in part advocacy that contributed to the abolishing of slavery. He further adds that advocacy in the North was often started by politicians and agencies that will advocate along moral lines. However as advocacy developed it became the role of professionals. Nichols (2009:628-629) traces evangelical involvement in the US focusing on three important historical movements that mark the connection of Evangelicals and social action. He outlines it as the abolition of the slave trade, the temperance movement, and the modern anti-abortion movement.

Elaine Graham (2013:159) in her writing on advocacy explains the resurgence by showing that in the 1970s evangelical organizations were formed in the US to equip evangelicals to advocate and lobby in mainstream politics. Christian Voice (1974), Focus on the Family (1979) and the Moral Majority (1979) are the organizations that marked the progressive shift from personal evangelism to public engagement. Mark Noll (1994) on the other hand argues that in the US advocacy was rooted in moral activism instead of political State engagement. However there has been progressive development. He further argues that until the 20th century concern for political engagement was replaced by personal evangelism and personal piety. This was characteristic of the Christian church specifically the Evangelicals.

This was characterized into the late 20th century with the formation of the Christian Right an evangelical Christian agency. However, scholars like Davis (2009:90) argue that there has been a shift in State engagement with formation of organizations like Evangelicals for Social Action (ESA) and evangelical think tanks like Center for Public Justice. Davis (2009:90) argues that it is becoming evident that evangelicals are engaging the State. He further asserts that there has been a shift from moral activism to political engagement. This is evidenced by statements made in the National Association of Evangelicals in their 2004 policy document which stated that “but in the interim, the Lord calls the church to speak prophetically to society and to work for the renewal and reform of its structures” (NAE 2004). Davis (2009) further asserts that with the formation of the International Justice Mission, Evangelicals are now advocating on a global front against conflict diamonds, sex trafficking and child labor.

According to Graham (2013:167) the 21st century is characterized by a new generation of evangelical leaders, especially in the United States. Many of these are associated with the ‘Emergent [or Emerging] Church’ movement (Graham 2013:167). They are politically engaged, socially liberal and theologically progressive. Metaphors of ‘pathways’, ‘journeying’ and ‘growth’ rather than conversion appear to find greater resonance for these leaders, who are also looking beyond Scripture for spiritual resources within patristic, Celtic and monastic traditions (Emergent Village 2012). A number of these leaders have courted controversy by questioning staple evangelical doctrines such as penal substitutionary atonement, while many (such as Brian McLaren in the US and Steve Chalke in the UK), have been outspoken in supporting same-sex relationships.

2.4 Advocacy in South Africa

Advocacy is not a new phenomenon in South Africa. Christian Advocacy is alive in South Africa and was evident with the liberation struggle. Many faith-based agencies resisted the Apartheid state in hope of a free and democratic South Africa. This included figures like Desmond Tutu and Frank Chikane. Albie Sachs (2008) maintained that advocacy is essential to ensure social change. He further argued that social transformation will be hindered if advocacy efforts in post-Apartheid South Africa become weakened. Sachs (2008) emphasized the need for mobilizing the

private and non-profit making sectors in a global effort of international co-operation. Sachs is of the view that consistent organized advocacy is needed for the implementation of change in South Africa and the status quo can be changed by pressure. Settler (2013) contributes to this discussion on active citizenship. In his article ‘Civic and Legal Contestation of the National policy on Religious Education’, Settler (2013) explores the contestations over the direction of the religion education policy by various faith communities and the State. This is one of those changes that the New South Africa was confronted with. He argues that lobbying and advocacy amongst faith groups is increasingly informed by Jean-Jacques Rousseau’s idea that legislation finds meaning and validity through citizen participation (Settler 2013).

In his article ‘The Role of the Church in the Development of Participatory Democracy in SA, Kumalo (2009) outlines the role of the church in the public space. This is important because it positions the Evangelicals in ways that explain their emergence in a broader Christian community. Kumalo (2009:247-248) introduces the history of the church and State participation, and reflects on a democratic South Africa in ways that explain how Church-State relationships can currently be described as a form of critical solidarity. He invokes Villa-Vicencio (1992:27) who stated that this means “that the church supports those government initiatives that promote justice, peace and democracy whilst continuing to protest against unjust policies and protecting the interest of the poor and minority groups.” With this concept of critical solidarity in mind, Kumalo (2009) goes on to trace the stages through which church-state relations have developed in the history of South Africa in order to lay a foundation. This is significant to this study because it shows the development of advocacy through the church in South Africa.

According to Kumalo (2009:248) church-state relationships have evolved through five generations. He makes reference to the first generation from 1652-1800, the period of the arrival of the Dutch settlers mainly from the Dutch Reformed Church. Kumalo further clarifies that following the Union of South Africa (1910), church-state-relations from 1912-1960 were demonstrated by ‘critical opposition’ because at this time some sections of the European churches and the majority of black churches began to resist the government’s policies. From 1961-1990, the church-state relations became a matter of intensive resistance. However, this refers to churches that resisted the state. The period of resistance led to the Cottesloe Consultation, the work of the Rev Beyers Naude and the Christian Institute, the growth of the

initiatives such as the Black Consciousness Movement, (BCM), Black Theology, and The Message of the People of South Africa, the banning of the ANC and the Pan Africanist Congress (PAC) the Programme to Combat Racism (PCM) and the formation of The Evangelical Association of South Africa (TEASA). TEASA is an inclusive Evangelical body that advocates on a number of issues.

According to Kumalo (2009) from 1991-1994 the activist-church under the leadership of the SACC played a mediatory role, by standing between the apartheid government and liberation organizations to facilitate negotiations and ultimately the elections in 1994. After 1994, South Africa was declared a neutral-religious state that recognizes all faiths and permits the observances of religious practices in its institutions without being biased in favor of any particular religion. In this period the church defined its relationship with the state as one of critical solidarity.

Similarly to Kumalo, Balcolmb (2004) writes on the role of the Evangelicals and democratic South Africa *From Apartheid to the New Dispensation: Evangelicals and the Democratization of South Africa*. Balcolmb proposed to show how evangelicals have played a role in South Africa's democratic process. While his work shows a strong Biblicist component, he sets out to identify and discuss key evangelical players in late Apartheid South Africa. To illustrate his point he draws attention to four figures: Michael Cassidy represents 'mainline' evangelicals; Nicholas Bhengu who represents Pentecostal evangelicals; Ray McCauley representing the Charismatic evangelicals; and Frank Retief represents non-Pentecostal evangelicals. He also includes Frank Chikane who represents Pentecostal evangelicalism. Balcolmb (2004:10) finally seeks to show how they reached out to different demographic groups in South Africa. In this era Shongwane (1998) writes that the Church that wants to remain relevant must be involved in transforming the nation through the promotion of justice and humanity. Shongwane (1998) invokes the Constitution as an opportunity to advocate. According to him the church has to help the state to ensure the principles written in the Constitution are enacted. The Church must play a supportive role and be a moral conscience of the nation. For Shongwane (1998), the Church must help society to redefine and establish proper values.

In reflecting on the role of the church in South Africa, Molefe (2001:2), in his article 'Christian engaging in Public Policy', argued that all citizens have rights and the responsibilities to

participate fully in civil society. He further states that all citizens have the right and responsibility to influence the laws and policies of our nation. Villa-Vicencio advocated this notion in his book *Between Christ and Caesar: Classical and Contemporary Texts in Church and State* (1986) that the church must identify the moment of prophetic resistance to the State. Villa–Vicencio (1986: xi) argues that because the church is a God-given, the church must actively engage the State. While both Molefe and Villa-Vicencio advocate for church involvement with the State; Molefe (2001) advocates for prophetic resistance and Villa-Vicencio for common good.

Gibbs and Ajulu (1999:13-15) in their article ‘The role of the church in advocacy’ argue that Christian agency must engage state through advocacy and they assert that Archbishop Tutu, for example, could have not have played the role he did outside of the church. They further argue that although advocacy in Africa remains relatively weak, the church has a critical contribution to make (Gibbs and Ajulu 1999:13-15). Goranzon argues that for the church – “to be prophetic is when a person or group takes a stance for truth, justice and reconciliation and thereby criticizes the society or part of that society, and does this by divine inspiration.” (2010:343). Zabatiero (2012:67-69) in reflecting on the Church-State contestation likewise suggests that pragmatically that the voices of theology should be in tune with the cries of the people. Lorenzon (2006:193) argues for a theological basis for human rights advocacy in his article ‘Freedom from Fear: Christian Faith and Human Rights today’, Here he examines the role of the church in crisis and questions the faith response of the church, he also examines the relationship between Christian faith and the international human rights (Lorenzon 2006). Lorenzon (2006) is of the opinion that many theologians tread cautiously around the idea of human rights and some become suspicious. Some withdraw whilst others engage. He uses Christ example to engage and proposes a schema for Evangelical engagement. Moreover, he posits that there is a theological imperative, a Christological imperative and Biblical Imperative for active church and State engagements (Lorenzon 2006:201-205).

Tamale (2014), in her work ‘Exploring the contours of African sexualities: Religion, Law and Power’, makes some observations that are significant for this study. She explains that as the old adage goes, ‘knowledge is power’. She argues that those who come from a religious vantage point should not define marriage for those who are non-religious. To illustrate this, she

introduces the Italian theorist, Antonio Gramsci, who coined the concept of ‘hegemony’ to illustrate how systems of power are constructed through knowledge. Hegemonic power convinces people to subscribe to the social values and norms of an inherently exploitative system. Tamale (2014:162) emphasizes that the concepts of sin (religious), taboo (cultural) and criminalization (legislation) play a crucial role in constructing sexuality and the manner in which African people experience it. She adds media outlets, cultural leaders, religious leaders and mainstream educationists enact a regulatory and controlling role. She further explains the “law, culture, religion, media and educational textbooks to disseminate and legitimize these ‘truths’, thereby enforcing compliance. ‘Truth’ frameworks about good, respectable, normal sexuality as well as those for bad, immoral and unnatural sexuality are constructed by hegemonic discourses” (Tamale 2014:156). Tamale (2014) believes that there are influences that shape sexual identity, and that sexual decision making and sexuality are in part controlled, and produced often by the State. Thus it is with this in mind that I now turn to the discussion of literature related to law, governance and the production of sexual morality in South Africa.

2.5 Socio-legal debates about sexual ethics and morality in South Africa

With the emergence of a New South Africa and its Constitution there is a ‘public space’ accessible to all faiths in a plural society. Since the advent of democracy, there has been Church-State contestation on the introduction of the National Curriculum, the amendment of the Choice to terminate pregnancy, and the highly contested same-sex marriage (Preston 2003). The Evangelical Church, although in some sectors ambivalent has capitalized on this freedom of the Constitution and has engaged the State on these issues often from a moral perspective.

Kotze and Steenkamp (2009:60) comment that public opinion in South Africa tend to be traditional and that it leans toward orthodoxy. They are of the view that many South Africans believe that the same sex marriage and abortion is unjustified and that they insist on family values. Thus Kotze and Steenkamp argue that there is tension between the country’s new Constitution and a large proportion of its constituency who confess Christianity as their faith. For them it is therefore important to pay attention to the views of everyday citizens in the areas of sexuality and abortion (2009:60). Bretherton (2006:197) argues that when confronted with moral

problems, the church develops specific patterns of thought and action. Bretherton (2006) suggests that the churches response is not individual but rather that it is often articulated in the context of society where the church looks for ways to witness from a social perspective.

Balcolmb (2004:9) echoes the perceived ambivalence of evangelicals in relation to the post-Apartheid State. Balcolmb (2004) further adds that many evangelicals have taken the position to condemn the Constitution's emphasis on individual rights and civil liberties when it comes to freedom of speech and choice. He argues that evangelicals contest the States pro-choice position on abortion, the forbidding of discrimination based on gender or sexual orientation, and its tolerance of pornography. Balcolmb (2004) further argues that many advocate on human rights - including the recognition of gays and lesbians, the rejection of the death penalty, a pro-choice emphasis on abortion, and the recognition of the rights of criminals. This has stirred advocacy in the evangelical quarters.

One of the key debates regarding morality in South Africa was the Choice on Termination of Pregnancy Act of 1996. McGill (2006) adds that many Christians believe that abortion is murder, and thus inherently immoral. McGill (2006: 221) argues that since many South Africans are believed to be Christians, they perceive this as intrusive and believe that the “right” to abortion may be used to override the consciences of those who object to abortion. Therefore there must be contestation. Evangelicals believe that the liberality of our Constitution jeopardizes the morality and conscience of the church in South Africa.

Gordon (2005) states that the law before 1996 allowed abortion only when pregnancy resulted from rape or when the birth would be a danger to the woman. Gordon (2005) cites the Evangelical Alliance of South Africa as among those who contested the new legislation because they thought it would result in increased numbers of abortions. Kotze and Steenkamp (2009) remind us that strong debates have been waged between ‘pro-life’ and ‘pro-choice’ groups in the public sphere. They recall that when in May 2004 the Constitutional Court upheld the right of women aged younger than 18 years to undergo abortions without their parents’ permission, it was the evangelical group, Doctors for Life who challenged the ruling. McGill (2006) focuses on the evangelical lobby by looking at submissions made by Evangelical organizations, such as the Christian Lawyers Association (CLA). The CLA of South Africa brought two high profile cases to court that challenged to abortion on demand. In the first, where the CLA argued that the

unborn child's right to life was infringed by abortion and in the second CLA case, the CLA argued that minor females were incapable of consenting to abortion without assistance.

McGill (2006) draws attention to evangelical lobbying of the 2004 Parliamentary hearings on the amendments to the CTOP Act, by citing contributions from a wide range of organizations, including, Christian View Network, Human Life International, Pro-Life South Africa, The Evangelical Alliance of South Africa (TEASA), Healthcare Christian Fellowship, Africa Christian Action, the SA Catholic Bishops, Crisis Pregnancy Centre's in South Africa, Africa Cares, and *Tydskrif vir Christelike Wetenskap*. This is an important observation because it demonstrates evangelical activism in post-apartheid South Africa. McGill (2006:213) makes the following observations about evangelicals engagement with the state:

“the church must be a critical voice to the State in law making. It must determine justice and the protection of vulnerable members of society. We realize we will never attain the ideal society, but we can determine whether we are moving closer to what we would see as God's will for his people, or whether we are moving further away. These submissions display the robust Evangelical contestation from a moral perspective.”

The Pastoral Statement on Termination of Pregnancy by the 'Evangelical Lutheran Church in Southern Africa (1997) asserted that the church needed to be a critical voice to the state when it makes its laws. In a pastoral statement the Lutheran church asserted that:

We realize we will never attain the ideal society, but we can determine whether we are moving closer to what we would see as God's will for his people, or whether we are moving further away, the revised law on abortion was passed in 1996. It is important that we understand the reasons for the law, and the problems that brought it into being.... When speaking to the State, we speak as Christians.

The Termination of the Choice of pregnancy is an example similar to the decriminalization of the child sex provision of the new Sexual Offences Act. It generated public debate and contestation from the church as written in this chapter. The Evangelicals amongst other Christian

organizations, contested in submissions and although they lost remain undeterred in their advocacy regarding moral issues.

Elsewhere, Pepler (2004:54) offers a theological perspective on the same sex marriage debate and concludes; “God prescribes the way in which we should live in order that we may have the freedom. He argues that to compromise on issues such as homosexuality and its ultimate expression in same-sex marriage is to withhold the greatest good from individuals and society”. Marta Axner (2013:116), in her work ‘Public Religions in Swedish Media’, examines the role of the State and church in Sweden and in particular she explores the question of whether theology or religious authority should be used to debate legislation and public policy. Axner (2013:116) argues that when the State decides to change the traditional concept of marriages whilst including same sex couples, it forces others to accept this view. These tensions highlighted by Axner are of national and global significance.

Wike and Horowitz (2013) in *The Global Divide on Homosexuality* found that its survey findings were very similar to the 2011 Pew Global Survey of Evangelical Protestant Leaders who attended the 2010 Evangelical Lausanne Conference in Cape Town—where the American Christian Right ex-gay group which believes that prayers and therapy can cure homosexuality, Exodus Global Alliance, presented papers on homosexuality. They confirmed the idea that evangelical leaders, 98% of Africans and 87% of Americans were opposed to homosexuality (Pew Forum 2011).

On the South African front, Robinson and Swanepoel (2004) in their exploration of the status of same-sex marriages in South Africa argue that marriage in South African common law was previously defined as the legally recognized voluntary union for life in common of one man and one woman to the exclusion of all others while it lasts. Various debates were made (2004:8) in contestation by the traditional view of marriage and evangelicals felt they were defeated once the State gave full recognition to all unions regardless of sexual orientation.

Tamale (2014) writes that even in South Africa, many want to re-instate the hegemonic discourse. Tamale comments on the ‘moral regeneration movement’ which attempted to renew spirituality and morality of South Africans. She reminds her readers that President Zuma himself is on record as saying that same-sex marriages were “a disgrace to the nation and to God’, a

taboo that could not be tolerated in ‘any normal society’ (2014:167). In their article, ‘Legislative and Policy Development 2012/2013’ Paula Proudlock, Lori Lake and Lucy Jamieson argue that the general “lack of coherence between the Sexual Offences Act, Children’s Act, the ISHP and the National Contraception Policy in relation to the provision of sexual and reproductive health and social services to adolescents is concerning” (2013: 20). They argue that the result of this incoherence of policies and laws, result in confusion among the various professionals on how to serve the child’s best interest.

Likewise, Hoffman-Wanderer, Carmody, Chai. and Röhrs’s critical report “Condoms? Yes! Sex? No!” (2013) document and analyze the experiences, challenges and best practices in providing sexual and reproductive health services to teenagers aged 12 – 15 years. This report also highlights the conflicting laws that make up the legal framework on sexual and reproductive health for adolescents, and how this threatens to undermine the best interests of the child. Wanderer et al. (2013) critically ask: “how can legislature protect the right of a 12 year old girl to confidentiality when accessing termination to pregnancy whilst simultaneously requires the nurse who provides to report the girls sexual activity to the police?”. Ann Strode, Catherine Slack and Zaynab Essack’s ‘Child Consent in South African Law: Implications for researchers’ (2010), argue that the South African parliament has taken an inconsistent route to clarify the capacity of children to consent and hence these inconsistencies which make it difficult for stakeholders who work with children to ensure they act lawfully. Further, McGrath, Nyirenda, Hosegood and Newell (2009), in their article “Age at First Sex in Rural South Africa”, argue that the State has the responsibility to ensure that policies are in place to educate young people about the risks of early sexual debut. It is precisely into this context over the contestation about the capacity of children to give consent over their bodies this study wishes to engage with the New Sexual Offences Act and the Evangelical responses thereto.

CHAPTER 3: RESEARCH METHODOLOGY AND THEORETICAL FRAMEWORK

3.1 Introduction

As already pointed out, this study was an exploration of Evangelical Christian Advocacy in post-Apartheid South Africa. It was based on case studies related to the decriminalization of the child sex provisions of the Criminal Law (Sexual Offenses and Related Matters) Amendment Act (2007). In the process of this exploration, I examined how the Evangelical church advocates for children's rights in the post-apartheid South African context. More specifically, the study examined Evangelical churches' strategies for advocacy on a national level in South Africa, by examining the social, legal and theological debates related to this new SOA and other 'the right of a child' cases.

The study involved an interrogation of Evangelical Christian lobbyism and advocacy in response to the decriminalization of the child sex provision of new SOA. South African case laws and their impact on the Evangelical Lobbying groups remained the part of the unit of analysis. The sociological approach used in this study sought to generate empirical data in order to understand how the law, and legal proceedings, impacted on the parties involved. The Apartheid State was built on the idea of parliamentary sovereignty; wherein the rule was that any law passed had legal force. This legal regime was replaced by a deliberate separation of power into executive, administrative and judicial. In this doctrine, the judiciary has the power to review and test the validity of laws passed by parliament, and can therefore declare legislation unconstitutional if it is not consistent with the constitution. If the Constitutional Court has declared a law unconstitutional, parliament has to fix the situation, and ensure that the law is brought in line with the constitution. The Criminal Law (Sexual Offenses and Related Matters) Amendment Bill resulted from the courts' powers of judicial review.

3.2 Research design

A research design is a plan or blueprint of how the researcher intends conducting the research because this is what directs the researcher into the research process (Mouton 2001:55). The choice of research methods used depends on what the researcher is trying to find out (Silverman 2001:25). In the context of this study, the phenomenon under consideration was legal case law on the decriminalization of aspects of new Sexual Offenses Act in South Africa. As a case study this research will focus on the legal and theological contestations surrounding the proposed amendments new Sexual Offenses Act. A case study is a specific instance that is frequently designed to illustrate a more general principle (Nisbet and Watt 184:72) and it is a study of an instance in action (Adelman et al .1980). Robson (2002) argues that case studies develop a theories that can help researchers understand other similar cases, phenomena or situations.

3.2.1 Qualitative research

Qualitative research is used to gain a “greater depth of understanding” about an issue or topic of interest, and involves a set of strategies unique from the measurement-focused approaches of quantitative studies (Berg and Lune 2014:2). Denzin and Lincoln (1994:2) define qualitative research as follows:

“Qualitative research is multi-method in focus, involving an interpretive, naturalistic approach to subject matter. This means that qualitative researchers study things in their natural settings, attempting to make sense of or interpret phenomena in terms of the meanings people bring to them”.

I chose to conduct this study as a qualitative, single case study, which, according to Babbie and Mouton, (2001:280), is an intensive investigation of a single unit. This design is useful in gaining understanding of a circumstance within a specific context (Henning, Gravett and Van Rensburg 2002; Lundeberg, Levin and Harrington 1999). Mike's experiences of transition were considered within a natural context, which allowed for us to gain a close, in-depth, and first-hand understanding of a situation by using direct observations to generate data in natural settings and to consider the "real-life context" of the case, which was a naturalistic case study (Yin 2001;

Naumes and Naumes 1999). In this instance, we wished to uncover the advocacy strategies of the Evangelical Church by examining the Evangelical response to the case (Babbie and Mouton 2001:282; Richard, Taylor, Ramsamy and Richards 1999). Creswell argues that qualitative research involves situations where the researcher is one of the instruments of data collection as he or she “gathers words or pictures, analyzes them inductively, focuses on the meaning of participants, and describes a process that is expressive and persuasive in language” (1998:14).

With this general understanding of qualitative inquiry, case study research is discussed next. Case studies answer to questions of why and how, providing context and offering a complete picture of what happened and why. Therefore they are appropriate when there is an interesting story to be told (Tellis, 1997).

3.2.2 Case study

This study is based on a case study method of enquiry. A case study is seen by Yin (2003) as an essential form of social enquiry. He defines it as a method that investigates a contemporary phenomenon within its real life context. Furthermore, the case study method can be used to document and analyze the outcomes of public or privately supported policy interventions.

The research object in a case study can be a program, an entity, an organization, a person or a group of people. These objects are likely to be intricately connected to political, social, historical and personal issues thus providing wide-ranging possibilities for questions and adding complexity to the case study (Soy 1977). This assertion is the reason for the choice of the case study method for this study. To this end, various case law and public debates pertaining to the amendment of the child sex provision of the new Sexual Offences Act, post-apartheid evangelical contestations and/or lobbyism, and the churches’ perspective on issue to advocate for or against in the post-apartheid context, are examined in this case study. This case study will examine that gap between the case and the Evangelical Christian response thereto. But, what does casing entails? Discussions of a case study abound in the literature, but the following two scholars’ views arguably capture the essence of this strategy. Merriam (1988: 21) writes: "A qualitative case study is an intensive, holistic description and analysis of a single instance, phenomenon or social unit". For Thomas (2004), a case study represents a detailed examination

of a single example of a class of phenomena, that is, it strives towards a thorough examination of one or a small number of instances of the unit of research interest. A case study is “the collection and presentation of detailed information about a particular participant, looking intensely at an individual or small participant pool, drawing conclusions only about that participant or group and only in that specific context” (Smith 2007:34) Their ability to investigate cases in depth and to employ multiple sources of evidence makes them useful tools for descriptive research studies where the focus is on a specific situation or context where generalizability is less important and in applied research, for example, in describing the implementation of a program or policy. It is in answers to ‘how’ and ‘why’ questions, however, that case study research comes into its own (Yin 1998), for both theory building and theory testing. In explanatory research, for instance, case studies offer the possibility of investigating causal mechanisms and the specific contexts in which they are activated (George and Bennet 2005).

In December 2007 South Africa passed the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007. The Act sought to clarify statutory sexual offences, and introduce measures to protect children, and persons with mental disability against sexual predators. However, within a few years, the constitutionality of these provisions were challenged by the children’s organizations, Teddy Bear Clinic and RAPCAN who, in the North Gauteng High Court, argued that the standing provisions do not serve the best interest of children.³ It is with regards to evangelical opposition to this High Court case and related public political debates that I set out to examine evangelical Christian advocacy.

3.3 Research methods

As already pointed out, the research was a case study of legal case law on the decriminalization of aspects of new Sexual Offences Act in South Africa. As a case study, this research was focused on the legal and theological contestations surrounding the proposed amendments new Sexual Offences Act. A case study, although often focused on a single case, is nevertheless used

³ Teddy Bear Clinic for the Abused Children and Another v Minister of Justice and Constitutional Development and Another (73300/10) [2013] ZAGPPHC 1 (4 January 2013)

to illustrate a more general principle (Nisbet and Watt 184:72). Robson (2002:183) argues that case studies develop theories that can help researchers understand other similar cases, phenomena or situations. According to Cohen (2008:253), case studies can establish cause and effect; they observe effects in real contexts, recognizing that context is a powerful determinant of both causes and effects. For the citizenship in South Africa the amendment of the law was the cause and the effects were reflected by advocacy. Case studies involve looking at a case or phenomenon in its real life context, usually employing many types of data (Robson 2002:178). For Robson (2002), it is the meaning rather than frequency is a hallmark of case studies, in that it offers the researcher perspectives into the real dynamics of particular situations and the affected people.

3.3.1 Archival research

The case studies used archival research (Case Law and, public debates, parliamentary submissions and court papers) as primary data collection methods related to the child sex provisions of the new Sexual Offense Act. These records I sought were held either in institutional archive repositories, or in the custody of the organization (whether a government body, business, family, or other agency) that originally generated or accumulated them, or in that of a successor body.

As such, I had to approach a series of evangelical faith based organization to collect materials related to the case study. In August 2015, I travelled to Cape Town to get materials produced for parliament, as well as other case material. During this time I met with parliamentarian Steve Swart of the African Christian Democratic Party and gathered copies of the various parliamentary submissions.

In order to source the most relevant case law I regularly consulted the Southern African legal Information Institute (SAFLII), a SADC regional online archive of case law and judgments, and I consulted the Department of Justice both regionally and nationally. The respective archives that I consulted, and the evangelical organizations I visited in Cape Town, provided me with more than enough material to complete my study. All the material to be accessed will be on public record, as thus no special permission to access data will be required.

3.3.2 Critical discourse analysis

My primary method for reading the archival material was discourse analysis. French philosopher and historian Michel Foucault (1977) theorized that "discourses" (the ways we speak and think about our reality) structure our 'truth' and 'reality', and can be used to reinforce inequitable power relations. However, they can also be used to subvert and resist these power relations. In the article 'Churches and public policy discourse in South Africa' Koopmans (nd.) posits that participation in policy discourse is prophetic. I used discourse analysis to read the text and case study to unearth the ideological and theological discourses that have shaped the evolution of the legislations and the evangelical opposition thereto.

Foucault's notion of discourse offered a useful theoretical framework with which to elaborate this, since it is effectively an analysis of the way language works to create a world of meaning that elicits in its audience a certain set of attitudes and responses. Foucault argued that discourse "serves to order the world in particular ways that convince by their seeming naturalism.... demarcating the boundary between truth and falsehood, normality and deviance (1983:206).

Carey (2012) argued that approaching evangelical advocacy as a discursive phenomenon, therefore, constituted through particular ways of speaking and thinking, enabled me to examine more closely the theological world-view that is constructed. Carey writes:

"we cannot retreat to a privatized ghetto because the gospel concerns the whole of life. There is no privatized morality because the whole of life is based on morality" (2012: 78).

Filtered through a conservative evangelical sensibility, engagement with and opposition to seemingly offensive legislation becomes an act of personal witness to an objective, God-given moral order that has been disrupted. For many evangelicals in South Africa, such amendments as being investigated here represents the erosion of their rights and freedoms, and thus become essentially a moral crusade.

Van Dijk (2001) suggests that critical discourse analysis studies the way social power abuse, dominance and inequality are enacted, reproduced and resisted by text and talk in the social and

political context. Discourse therefore seeks to understand, expose, and ultimately resist social inequality. Discourse analysis is based on the understanding that there is much more going on when people communicate than simply the transfer of information. To this end I use this “way of reading” as a method to examine the social and legal motivations related to the child sex provision of the new Sexual offenses Act, as well as to understand the theological motivations that have shaped Christian advocacy in relation to this and other matters. Discourse analysis as a social critique “is concerned with exposing the ways in which language conspires to legitimate and perpetuate unequal power relations” (Willig 1999:10). When discourses are embedded and acted upon in relations of power, they necessarily also have political effects (Burr 1995). Finally, we are reminded that discourse can be both the instrument and an effect of power (Foucault 1978 cited in Parker 2005:year).

Looking more closely at this insight and its particular application to this research, it is important to recognize in the ways that power are produced and resisted both legal and psychological discourse. In legal judgments and amendments there is always a construction at play and ultimately there is power. Finally, decision made in court have a material impact on the individual, which in turn has social and political implications once such a decision becomes precedent.

White illustrates this duality by stating that:

“Law is not just, or primarily, a set of commands working their way down from a group of legislators, bureaucrats, and judges to a population made the objects of manipulation through a series of incentives or disincentives. It is instead, a culture of argument perpetually remade by its participants in which rhetoric is understood as the art of establishing the probable by arguing from our sense of the possible” (1985:686).

CHAPTER 4: DATA ANALYSIS

4.1 Introduction

In December 2007 South Africa passed the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007. The Act set out to clarify statutory sexual offences and in particular how its application and interpretation related to children and people with disabilities. The Act had three provisions related to children; (1) the Act made it a sexual offence for children aged 12–16 to engage in consensual sex; (2) the Act criminalized penetrative sex between an adult and a child of 12 to 16, despite consent; (3) the Act provided that other sexual activities between children do not lead to prosecution. The Act obliged adults to report a known sexual offence to the police – even if those involved are consenting adolescents (Section 15, 16, and 56 (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007).

Within a few years of these provisions coming into law, Teddy Bear Clinic and RAPCAN who in the North Gauteng High Court (*Teddy Bear Clinic for the Abused Children and Another v Minister of Justice and Constitutional Development and Another* (73300/10) [2013] ZAGPPHC 1 (4 January 2013)) argued that they (the provisions) did not serve the best interest of children. The Minister of Justice and Constitutional Development opposed the application. In the judgment, the court noted that despite their differences, all the parties to the case agreed that “it is a common and normal part of sexual development for children to explore and experiment in sexual behaviours with their peers”.

The court found that the duty to report sexually active adolescents limits the ability of adults to provide education, guidance and support to children in their sexual development. Finally, the court found that the Act constitutes an “unjustified intrusion of control into the intimate and private sphere of children’s relationships in a manner that will cause severe harm” (*Teddy Bear Clinic for Abused Children, and Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) v. Minister Of Justice And Constitutional Development Case* (Case Number 73300/10)). This challenge to the child sex provisions of the Sexual Offences Act and the

subsequent court ruling provoked a lot of public debate among faith communities and children's rights activists.

4.2 Case law related to the Decriminalization of Child Sex Provisions

4.2.1 Teddy Bear/ RAPCAN vs Minister of Justice (2013) ZACC 35

During 2013, two child rights organization, RAPCAN and Teddy Bear Clinic, sought to challenge the constitutionality of two legal provisions of the Sexual Offense and Related Act. The provisions (1) made sex between 12-16 year olds unlawful, and (2) it legally obligated adults to report incident of sex between 12-16 year olds. In their application the applicants asked the court to rule the provisions unconstitutional. The applicants, however, in their founding affidavit to Pretoria High Court, did not seek to challenge the criminalizing of adults who engage in consensual sexual activity with children. The provisions were as follows:

“the Act also makes it a sexual offence for children aged 12–16 to engage in consensual sex”

“the Act criminalizes penetrative sex between an adult and a child of 12 to 16, despite consent”⁴

Teddy Bear Clinic, the first applicant, is a non-profit organization based in Johannesburg General Hospital and the Department of Paediatrics of the Medical School of the University of Witwatersrand. RAPCAN, the second applicant, was the second applicant is a non-profit organization based in Cape Town. They provide education and training in the field of child abuse prevention. Together they challenged the constitutionality of the sexual offences legislation in that it criminalized adolescent children for engaging in consensual sexual activity.

⁴ (The Preamble of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007, page 15 of the *RAPCAN/Teddy Bear vs Minister of Justice (2013) ZACC 35*).

In their application, they argued that Section 15 and 16 of the Principal Act contain provisions relating to sexual penetration and sexual violation with a child, despite consent is an offence. The applicants in this particular case raised the objection that these sections failed to provide clarity in respect of sexual activity between children hence criminalizing consensual sexual intercourse between children. The applicants sought an amendment to these provisions so much so that it will still operate, but specify the age of the child. The applicants further sought to amend various definitions in the Act, such as “sexual penetration”, “sexual violation” as these definitions encapsulate conduct such as kissing, light petting, which virtually every normal adolescent participates in at some stage or another, and cannot amount to an offence subject to criminalization.

Following a 22-month deliberation in the Pretoria High Court, Judge Rabie ruled in their favour and rendered the child sex provisions of the Sexual Offences and Related Matters Amendment Act (Act 32 of 2007) unconstitutional. The 2007 Sexual Offences Legislation was at the forefront of this matter as the applicants sought to challenge the Constitutionality of certain Sections of the Act in question.

The sections in question are 15, 16 and 56 (2) of the said Act.

- Section 15 pertains to “Acts of consensual sexual violation with certain children (statutory rape)”.
- Section 16 pertains to “Acts of consensual sexual violation with certain children (statutory sexual assault)”
- Section 56 (2) pertains to defences in respect to Section 15 and 16 above.

The abovementioned provisions were found to be criminalizing a wide range of consensual sexual activity between children, thus, exposing them to the risks of being incarcerated simply for engaging in adolescent sexual behaviour. The applicants in their arguments did not seek to substitute the provisions of Section 15 and 16 but rather to amend these sections so as to ensure that it clearly prevents children from being criminalized for engaging in consensual sexual behaviour. All parties agreed that the purpose of the Principal Act rightfully criminalized all forms of sexual abuse and exploitation, but that it failed to take into account the risk of criminalizing adolescents for engaging in consensual sexual intercourse. Criminalization of

adolescent sex was argued to be something that would impact on their development and social standing.

4.2.2 Pretoria High Court Judgement in Case ZACC 35

In the abovementioned case the applicants challenged the constitutional validity of Sections 15, 16 as well as Section 56 (2) of the Criminal Law (Sexual Offences) Amendment Act 32 of 2007 in so far as it criminalizes consensual sexual activities involving children. Judge Rabie held that:

“in order to properly understand the nature of the application brought about by the applicant one has to understand the definitions of the words child, sexual penetration and sexual violation” (2013).

It was further stated that many children these days are engaging in behaviour such as kissing and heavy petting. These activities are common cause amongst children that are growing with racing hormones. The danger, however, lies in that fact that these behaviours fall within the definition of sexual penetration and sexual violation. The applicants therefore saw the danger that lay within the 2007 Act and hence lodged the application to properly address the danger that could put the lives of the children in jeopardy for their adolescent behaviour.

Judge Rabie made it clear that whenever a law which is inconsistent with the Constitution is challenged there are three alternatives available. Firstly the law can be declared invalid. Secondly the invalid part could be severed from the law so as to bring it in line. Finally, words could be read into the law to rectify the defect. In the case of *Teddy Bear/ RAPCAN vs Minister of Justice*, they sought to read words into the Section 15 and 16 of the 2007 so as to ensure that children engaging in consensual sexual activity will not be held criminally liable.

The Respondents strongly opposed the application on the basis that the impugned provisions do not violate any Constitutional rights of the children and that the impugned provisions must also be read in line with other statutes designed for the Protection and Promotion of the rights and interests of the children. Judge Rabie held that according to the evidence presented in the application, it clearly indicates that the impugned provisions may cause harm to the children. The

applicants also challenged Section 56 (2) which contain the defences that are available in respect to Sections 15 and 16.

The Respondents further sought to close their argument by raising the Limitation Clause found in Section 36 of the Constitution and averred that the rights of the children can be limited when weighing the interests of the children's sexual autonomy rights as against the governmental objective sought to be achieved and that such a limitation is justifiable.

4.2.3 Constitutional Court

Judge Rabie concluded that the applicants had made out a prime facie case and therefore found in favour of the applicants and made the following order;

“Section 15 and 16 are found to be invalid in so far as they impose criminal liability on children.”

“In order to remedy the defect the method of reading words into the said Section 172 (2) (a) of the Constitution provides that no ruling on any law being inconsistent with the Constitution will have any effect until it is confirmed by the Constitutional court. The Judgment by the High Court in respect of finding that section 15 and 16 of the sexual offences legislation being unconstitutional in that it violates the rights of adolescent children had no effect until that Judgment was confirmed by the Constitutional court of South Africa to be in fact unconstitutional. Any law which is deemed to be inconsistent with the Constitution must in fact be so to be unconstitutional by the said court.

Subsequent to the High Court finding that Section 15 and 16 were not consistent with the Constitution and hence was unconstitutional in so much as Section 15 and 16 infringes upon adolescent children's right to dignity and privacy as well as not being in the best interest of children as provided for in Section 28 (2) of the Constitutional, this Judgment has no effect or force until confirmed by the Constitutional court of South Africa.

Judge Khampepe, the Judge presiding over the Constitutional Court confirmed the judgment of the High Court that the sexual offences legislation did in fact violate the rights of children for engaging in consensual sexual activity and therefore rendered the following judgment:

“Section 15 and 16 are declared inconsistent with the Constitution and invalid to the extent they impose criminal liability on children under the age of 16”

Section 15 and 16 contains the aspects that deal with statutory rape and assault which were found to be unconstitutional, so much so that they criminalize adolescent children for engaging in consensual sexual activity. The High Court therefore found in favour of the applicants and ruled the sections unconstitutional and allowed the provisions to amend by reading words into the current sections so as to bring them in line with being constitutional.

4.3 Values and ideologies that underpin Child Sex Legislation

Sexual Offences against children is a very complex area of law that not only affects the children as mere victims, but contributes adversely towards the interests of justice and the community at large. Sexual violence is a serious infringement upon a child’s rights, and one that can result in significant physical and psychological trauma to the child. The World Health Organization (WHO) released a study in 2002, titled “World report on violence and health’ (Krug, Dahlberg, Mercy, Zwi and Lozano 2002), that revealed that approximately 223 million children have been victims to sexual violence involving physical contact.

Human dignity and equality

Human Dignity is further confirmed in Section 10 of our Constitution: “Everyone has inherent dignity and the right to have their dignity respected and protected” (Ch. 2: p.6). Children are fragile and sensitive beings and are required to be protected, and their environment must be one of safety and conducive towards growth and development. The sexual offences legislation was formulated and codified upon the basis of Human Dignity that requires absolute compliance Children require the support and guidance that must be balanced by their parents and guardians

to enable them to make healthy choices. This right is enshrined in the Constitution through the child's right to family care, and parental care Section 28 (1) (b), the state has a duty to progressively realize these rights for the children, by placing a duty upon the parents and care givers of a child to ensure that children's right to dignity is not being violated.

The right to bodily integrity and privacy

Sexual violence attacks against women woman have escalated in South Africa. It is at this juncture that there was a call for the enforcement and protection of woman Rights to bodily integrity and privacy. Despite various concerted campaigns to create awareness over the right of woman abuse there is no sign of gender violence abating.

The state has a duty to protect women and children from sexual violence, and also places a duty upon the courts to develop and promote the spirit, purport and objects of the Bill of Rights. Young adolescent girls fall within the category as the women, hence my references to women includes also adolescent girls.

South Africa has a complex set of societal factors that contribute to the nature and extent of sexual violence in society. It is a country burdened with a violent past, a legacy of poverty, coupled with social and cultural norms that promote and sustain gender inequality.

Sexual offence legislation has had to address the abovementioned to extent that various provisions have been incorporated into the legislation to mitigate and limit the sexual violence against women. It is predominantly women who experience sexual assault at the hands of a men; this directly violates their rights to privacy, dignity and bodily integrity. Adolescent girls suffer disproportionate harm, due to the fact that only women can fall pregnant after sexual assault, and that many young girls are stigmatized and marginalized after falling pregnant following sexual assault. The state has a duty to protect women from sexual violence; this places a duty upon the courts to develop and promote the spirit, purport and objects of the Bill of Rights.

Discrimination and violence against women and girls also amounts to a violation of their right to equality; everyone is equal before the law and requires equal protection and benefit of the law. Although girls and women constitute the majority victims of sexual violence, boys and men in South Africa are also affected. The World Health Organization states that “where the ideology of male superiority is strong – emphasizing dominance, physical strength and male honor – rape is more common” (Krug, Dahlberg, Mercy, Zwi and Lozano 2002:162). This means that while women and girls constitute the majority of victims of sexual abuse and violence, the underlying causes, and possibilities for change, have to do with men and boys, and with challenging cultures of male superiority and violent masculinity.

The best interests of the child

Section 28 of the Constitution is entitled “CHILDREN”; this section contains the constitutional rights of the children. Section 28 (2) states that “A child’s best interest are of paramount importance in every matter concerning the child”. The sexual offences legislation is richly influenced by the provisions of the Constitution to ensure compliance and avoiding any constitutional challenges. The Child Justice Act 75 of 2008 indicate that “any legislation affecting children is governed by the following: all proceedings, actions or decisions in a manner concerning a child must respect, protect, promote and fulfill the child’s fundamental rights; Such proceedings, actions, must promote the child’s inherent dignity and a fair and equitable treatment of the child and protect the child from unfair discrimination on any ground.” It is clearly evident that children and their rights are of paramount importance not just within South Africa but internationally as well.

Religious values and ideologies regarding the sexual offences legislation

The Constitution also ensures that everybody enjoys the right to Freedom of religion, belief and opinion. The section dealing with the same issue is Section 15 of the Constitution that states that everybody has the right to freedom of conscience, religion, thought, belief and opinion. An amplification of Section 15 is Section 31 (1) persons belonging to a cultural, religious or

linguistic community may not be denied the right, with other members, to enjoy their culture. It is within this context that the church has an opportunity to have a voice amongst the other voices. The Evangelical Church has recognized that this is a valuable platform to contest legislation and make submissions.

4.4 Parliamentary submissions by faith-based organizations regarding SOA

Prior to the proposed amendments of the sexual offences legislation of South Africa, many religious, non-governmental, non-profit organizations objected to the proposed amendments, which ultimately would result in the decriminalization of children consenting to consensual sexual activity with one another. The organizations profiled below were given an opportunity to raise their objections to the Parliamentary Portfolio Committee in the form of Parliamentary Submissions. The Submissions must contain details of their objections/arguments as to why the amendments should not become promulgated as law, as well as submit their own proposed amendments that would be in line to their values and beliefs coupled with the best interest of child.

The following faith-based organizations (FBO) will make up the core writing on my discussion on Parliamentary Submission; Family Policy Institute, Christian Action Network, Joshua Generation and the Justice Alliance of South Africa.

4.4.1 Family Policy Institute (FPI)

The Family Policy Institute is a faith-based organization primarily focused on the institution of marriage and family as the cornerstone of society. Their submission was prepared by FPI Director, Dr. Errol Naidoo, on the 27th January 2015. The submission highlighted the Institutes rejection of the notion that sexual experimentation or sexual expression by children are a normal part of their adolescent development, as children as young as 12 to 16 cannot be considered psychologically and emotionally mature to make decisions concerning sexual activity. FPI submitted a two-part submission. Part one focused on the vital importance and role of the family in raising, nurturing and protecting children. This is illustrated by the statements below:

“Governments must not usurp the legitimate authority of parents” (FPI 2015:5).

“Children function best in a loving stable family environment” (FPI 2015:8).

Part Two focused on the role of government to strengthen and undergird the family in support of its critical role as society’s most fundamental institution as made clear in the following line:

“Healthy, stable families are more likely to produce healthy and stable family members, just like dysfunctional families are more likely to produce dysfunctional individuals” (FPI 2015:3).

Family Policy Institute’s submission to parliament gripped my attention in so far as the submission was built and centred on the vital importance and role of the family in raising, nurturing and protecting children. FPI believed that the proposed amendments to the sexual offences legislation lost perspective as to the pivotal role of the family (more specifically mothers and fathers) plays in the upbringing and development of a child. They hinted the failure to locate family as the centre of society was source of moral degeneration. The following line from their submission to parliament makes this clear: “The alarming moral breakdown in South African society is a scary indicator that street values have replaced family values in many people’s lives” (FPI 2015:10).

Further FPI stated that “the alarming rise in premature sexual activity between children of increasingly younger age groups is a tragic indication of the family dysfunction in South Africa as well as a timely warning of growing parental neglect, the collapse of traditional family structures and the spiritual, moral degeneration of greater society” (2015:11).” The submission was based on doctrine of principals, focusing on how children can function best in a loving stable environment, and how government has a corresponding duty to support and protect families so that society can become strong as a family.

4.4.2 Christian Action Network for Reformation and Revival (CAN)

The Christian Action Network is an umbrella body of Christian congregations and organizations that stand together to uphold pro-life and pro-family values in South Africa. The parliamentary

submission for the network was prepared by their International Co-ordinator, Taryn Hodgson on the 15th of March 2015. The submission concentrated on the high number of risks that children will be exposed to when the sexual activity between children aged 12-16 is no longer a criminal act. For CAN, the change in law will further add to an already hyper-sexualized culture. The Network believes very strongly that the Act, in its current form, drives adolescent sexual exploration underground and thus has the ramification of causing real sexual assault remaining undisclosed for the fear of being held criminally liable.

“Young people today face incredible peer pressure in a hyper sexualized and violent society” (CAN 2015:2).

CAN is of the view that belief in God should be incorporated into developing and or amending any law. More specifically, the Christian Action Network, being Christian in belief, subscribes to the teachings and values of the Bible. Furthermore, the CAN submission focused on the age of consent, and the need for bible based teaching about sex. They believe that the most important aspect is the need for prayer and bible reading in schools.

“There is a massive difference in intellectual and emotional maturity between a twelve and fourteen year old” (CAN 2015:2).

“Can a twelve year old give informed consent?” (CAN 2015:4).

The Network motivated for principles and ethics that protect and prevent children from engaging in sexual activity because sexual activity between children aged 12 to 16 years will have serious physical and emotional consequences. Finally, CAN, in their submission to parliament, accused the State of failing to take into account the religious beliefs of the children as well as the family environment and upbringing of the children.

4.4.3 Joshua Generation Church (JG)

The Joshua Generation church is an evangelical church that is involved in public life through seminars, teachings, and mass prayer meetings in strategic city locations. JG are actively involved in lobbying government on various issues ranging such corporal punishment, religious

freedom and opposition to the recognition of same-sex unions. Pastor Andrew Selly, senior pastor of the Joshua Generation Church and senior leader of the global partnership of churches, was responsible for the Submission to Parliament, which was drafted on the 1st of January 2015. The submission was centred on the claim that most South Africans regard themselves as Christians and subscribe to the teachings of the Bible. JG felt that they were morally directed by the biblical teaching against pre-marital sex and promoting hetero-normative sexuality. In their submission it is pointed out that

“75% of South Africa subscribe to the Bible and are of the moral conviction that sexual intimacy should only take place in the context of a marital union between a man and a woman” (JG 2015:1).

They further argue that sexual intercourse is an intimate act that is shared between two adults as part of their souls is exchanged in the act; you become emotionally tied to the other. Engaging in any form of sexual act requires both parties to have a sound mind and body coupled with a great deal of emotional and psychological stability, as indicated by the statement below:

“Psychological, emotional and/or social risks associated with sexual experimentation at an early age” (JG 2015:1).

“Sexual intimacy should only take place in the context of a marital union between a man and women” (JG 2015:1-2).

Further elaborating on the need for sex between adults only, Joshua Generation objected to the proposed amendment of the Sexual Offences Bill towards the lowering of the age for sexual consent. They argue that children should be aware of the clear boundaries that are in place in respect of sexual activity and the punishment that is accompanied with over stepping those boundaries. For JG, the proposed amendments were clearly not in the best interest of children in South Africa, and will only serve to exacerbate the moral crises that our country already finds itself.

“Perpetrators of rape always say the victim has given consent” (JG 2015:2).

“Rape is very traumatic as it subjects him to double injury” (JG 2015:2).

As indicated above, Joshua Generation argued that the lowering the age of consent will increase the likelihood of rape because children will be regarded as being ‘capable’ of consenting to sexual activity. Further, they argued that younger children will likely become prey to the older kids who will now have a defence in law by claiming that “consent was given”. Finally, JG, invoking a mental health argument, raised the problems that younger children will now be forced to go to court to disprove consent, being subject to harsh cross-examination, and further possible trauma.

4.4.4 Justice Alliance of South Africa (JASA)

The Justice Alliance of South Africa (JASA) is a coalition of corporations, individuals and churches committed to upholding and fighting for justice and the highest moral standards in South African society. Their Constitution provides that they should work through Parliament, the courts, the media and in any other proper way to achieve this end. Justice Alliance of South Africa is a non-profit association advocates for Judaeo-Christian values in the laws of the Republic of South Africa, through means of litigation in the courts and submissions to Parliament. JASA was actively involved in processes related to the Sexual Offences legislation, as well as matters related to the risks of STD’s and HIV infection amongst the children, the emotional and psychological impact on the child’s life, the high rate of unwanted pregnancies, and the long term health risks of abortions. John Smyth made this submission on the 3 February 2015.

JASA’s submission to parliament focussed on age of consent, risk and the need for sanction. JASA argued that adolescents are not emotionally or relationally mature enough for sexual activity, though they acknowledge that these activities are bound to occur amongst the teenagers. They cite that many are often times do not understand what informed consent means, and hence comply with sexual pressure. To illustrate the problem of peer pressure, JASA in their submission stated that:

“Very few if any children understand the legal doctrine of ‘informed consent’”
(JASA 2015:2).

JASA highlighted the various concerns that simply an amendment to the Bill was not realistic and that a number of aggravating and mitigation circumstances had to be taken into account. In this regard they pointed to risks that young people face and their limited autonomy

“Children need and appreciate boundaries” (JASA 2015:5).

“There must be deterrent to sexual intercourse because children don’t know the risks” (JASA 2015:3).

JASA also posited for the protection of younger children and argued that there must be deterrent because of the risks. They stated that “children need to appreciate boundaries” (JASA 2015:5). They further argued that similarly as the law has age limits for alcohol and tobacco, sexual decisions are critical and must be taken as a moral one with boundaries.

The above four submissions have been made by evangelical faith-based organizations and associations. Their common theological objections have been based on age of consent, morality and family. Their submissions also are similar as regards legal parity, although they have distinct approaches. FPI ground their submission in family and reject the notion that sexual experimentation is normative. FPI, together with JASA, concur that sanctions are important for the protection of children. JASA, however, believes that parents who are aware of the fact that their children are engaging in penetrative sex should be charged. CAN and JG take a Biblicism stance and advocate that Bible reading will help children navigate these challenges. They advocate for Bible reading that will act as a moral compass and contribute to moral regeneration. JG also argued for a pre-marital sex message and in their view it contributes to serious emotional challenges and advocate for counselling as an alternative. Despite the various objections from evangelical and other groups to the child sex-provisions of Act 32 of 2007 (Act 32 of 2007), parliament decided to enact the amendments proposed by the constitutional court. The revised act finally became law when it was published in the government gazette on the 15 July 2015

4.5 Emerging themes and discourses in FBO parliamentary submissions

As I read the parliamentary submissions and responses to the TB-RAPCAN Case court case and from my reading of the above submissions discourse themes appeared as dominant. This chapter

aims to provide an analysis of the research in relation to the literature consulted for the study and the data gathered from the evangelical parliamentary submissions.

From my discourse analysis the above mentioned submissions I sought to identify values and discourses that were seen as operating in the text. Van Dijk (2001) suggests that critical discourse analysis studies the way that the abuse social power, dominance and inequality are enacted, reproduced and resisted by text and talk in the social and political context. Discourse therefore seeks to understand, expose, and ultimately resist social inequality. I sought to use discourse analysis to show that the understanding that there is much more going on when people communicate than simply the transfer of information. To demonstrate this I discuss below the themes which in my view emerged from the parliamentary submissions: of guardianship, moral autonomy, age of consent and sexual relationships.

4.5.1 Guardianship

In academic discourse about family, hegemonic family is described in a particular way. The most common type of guardians are the children's parents, termed natural guardians. Natural guardianship is shared by the parents. Generally, one parent, often the father, will act on the children's behalf, administer property and ratify any contracts they may enter into, but both parents have equal rights in this regard. According to Ratele (2012:554) healthy, ordered families play an important role in the State. The Green Paper on Families Promoting Family stated that the family is “to play its critical roles of socialization, nurturing, care and protection” (3 October 2011). Elsewhere the Department of Social Development argued that among the forces that have weakened family life are absent fathers, HIV&AIDS, high levels of poverty and gender inequity. It is into this context that the Family Policy Institute conducts its work and advocates for the privileging and the protection of the family as the foundation of a healthy society.

“Children function in a loving stable family environment” (FPI)

Errol Naidoo (2015:1) argues that family is the key decision maker in a child's sexuality and that a stable home is responsible for the shaping of a child's sexual identity. According to Naidoo for FPI a key discourse that emerges is located in this statement *healthy, stable families are more*

likely to produce healthy and stable family members, just like dysfunctional families are more likely to produce dysfunctional individuals (2015:4). Family Policy Institute asserts that the sexual identity is defined by the stability of a home. The idealized family as described in these discourses appears over time through certain practices. These factors include a healthy marriage, financial stability and a safe place which are ideals propagated by Family Policy Institute.

FPI further asserts that “the alarming moral breakdown in South African society is a scary indicator that street values has replaced family values in many people’s lives” (2015:4). This discourse is critical to this thinking that sexuality of children and their choices have derived from the ‘street’ and the family is secondary to these decisions. Naidoo (2015) ascribes the alarming rise of premature sexual activity between children of a younger age to dysfunctional families and he further explains that the collapse of traditional family structures is a direct outcome. Parents are positioned in contradictory ways in these discourse. On the one hand they are positioned as adults who are ultimately responsible for guiding and monitoring youth sexuality. On the other hand, however, they are constructed as failures and responsible for problematic youth sexual behavior.

The following statement was made by JASA in regards to guardianship and children.

A parent or guardian who knowingly permits a child under 14 years of age to engage in penetrative sexual intercourse shall be guilty of an offence” (2015:2)

Although the Justice Alliance of South Africa did not invoke family in the same manner as the Family Policy Institute, they nonetheless invoke, through the above statement, guardianship and parenting as the locus for family stability. In their comments they also hold family responsible for the sexual decisions of their children and in the following statement they infer that for our ‘own children’ there should be deterrents. JASA opposed the decriminalization of child sex simply on the basis that they realized that for their own children and others there must be some deterrent to early sexual intercourse (2015:1). Through this JASA is effectively appealing for a separate, religiously informed legal regime that allows them to introduce deterrents. JASA implies that guardians and parents are responsible for their children’s sexual protection. Ratele (2012:55) argues that there are other modes of family existing in tandem, and beyond the idea of the nuclear family that is not easily accommodated within such a heteronormative discourse.

Ratele further argues that there has been a shift from heteronormative families towards other forms and modes of family construction in South Africa. Hence themes like guardianship are invaluable for socio-legal challenges. Elsewhere, Nel (2000) argues that children learn about family, interaction with the world and God through the institution of family. For Nel and others the family is responsible for a child's moral and sexual education, and not the state. Anderson (2001:260-263) argues that family is not just a structure, but a process where identity, character and spiritual formation can take place.

For these evangelical faith-based organizations, guardians and families play an important role in the development of a child's values and morals. Families can help their children learn how to reflect morally by engaging them in discussions about real life issues in an encouraging manner. However, evangelicals appear slow to recognize that there needs to be a more nuanced understanding of the concept of family, and that there is an increasing shift to other modes of family and guardianship. From this analysis on guardianship, I conclude that although there are significant changes in the construct of family, for evangelicals guardianship remains the locus for the development of children's sexuality.

4.5.2 Moral autonomy

Moral autonomy appears as another key theme in my analysis of the Evangelical submissions. Moral autonomy refers to the age-appropriate distinction of understanding right and wrong, and includes the capacity to deliberate and to give oneself the moral law, rather than merely heeding the injunctions of others. Shermer, a well-known American psychologist, defines morality as "right and wrong thoughts and behavior in the context of the rules of a social group" (2004:6). For Shermer morality is defined by the child's social group including different modes of family. Shermer further argues that sexuality is morality, largely informed by Cartesian and Judeo-Christian moral ideals such as self-control, willpower, and purity. This understanding is evident also in the submission by the Family Policy Institute:

"The alarming moral breakdown in South African society is a scary indicator that street values has replaced family values in many people's lives" (2015: 4)

Moral autonomy is one of the key discourses identified in this case study. For FPI moral autonomy is defined by a value system derived from family, and moral breakdown is seen as an outcome from deviation from the morality produced through healthy family models. For Naidoo and his colleagues at FPI, sexual experimentation among children is symptomatic of the moral breakdown of society. Another example can be found in the submission by CAN. CAN has argued that the decline in morality as a result of the negative impact of pornography as evidenced in their lament that “porn is available to children everywhere” (2015: 3)

In their submission, Joshua Generation argue that: “at least 75% of South Africa subscribe to the Bible and are of the moral conviction that sexual intimacy should only take place in the context of a marital union between a man and a woman” (2015:1). Thus, for Joshua Generation a child’s understanding of right and wrong – their moral development - is informed by the Bible, and bible-based teaching. Based on this theological position, they persistently argue that sex before marriage is immoral and that marriage is an acceptable container for sex, where it is meant for procreation and recreation. It is clear from the submission by Joshua Generation and Christian Action Network that they do not believe that children can have moral autonomy, but that this is something acquired in adulthood, as a result of bible-based education. In this discourse, children are constructed as dependent, and not autonomous, with regards to their sexuality. For most evangelicals, morality is defined by the Bible and most other sources, including the State are viewed as having potential to corrupt Christian morality. At the center of these arguments we find that for Evangelicals there is a moral code or theology in operation which is derived by the Word of God (Theology of Biblicism). Foucault (1987:25-30) also suggests that morality vacillates between two axes – as a set of prescriptions by agents such as the family, society, educational institutions, and churches. On the other hand we have autonomy, where the individuals interact with these moral codes to develop their own position. Kamli (1984:1) defines autonomy as “being governed by oneself”.

According to Spohn (2000:127) morality is developed by community. Spohn argues that once a child connects to society morality is reinforced in schools, youth groups, and other associations. Nonetheless, it appears that most submissions from the faith based organization does not draw on social or psychological theories related to autonomy but instead privileges the bible as sole basis for development. Finally, morality is argued to be something acquired and learned from a social

or religious community, and definitely as incomplete in children – and a dimension that is complimented by the overseeing adults.

4.5.3 Age of consent

The age of consent exists to protect children. Lowering the age of consent would see an entire age group (16 year-olds) previously deprived of a legal protection, enjoy legal protection from potentially predatory adults. Most of the faith-based organizations above are of the view that sex is not an activity for children. For example, Joshua Generation argued that there are many activities that are unlawful for someone under the age of 18 such as gambling, driving a car, buy alcohol, voting, or the right to get married. As such they challenged the idea that the age of consent for sex be lowered to 16 years of age. JG and CAN wrote the following in their submissions:

“If the law has already set 18 years as the minimum threshold for those things, surely the same threshold will apply for consensual sex” (JG 2015:2).

“There is a massive difference in intellectual and emotional maturity between a twelve and fourteen year old” (CAN 2015:2).

The quotes made it clear that the submissions made by the evangelicals sought to show how the laws regarding age of consent are contradictory. They argued that it does not make sense to provide younger people with sexual choices when the promotion of abstinence is an alternative. Most of the sex education is school-based, provided by non-state actors and it is limited. Many take a biological perspective, and religious groups and parent associations define the parameters and content for age appropriateness. However, policy makers promote the heteronormative nuclear family thus demonizes other forms. This undermining is “challenging to guardianship because many men and women that do not ‘fit’ this normative framework” (Holborn and Eddy 2011).

The above quotes focus on the key challenges made by these submissions and the reason this generated public debate. Family Policy Institute takes a strong conservative evangelical stance by stating that sex outside of marriage is a taboo. The dominant conception of childhood is that

of a time of innocence. CAN poses an important question: “Can a twelve year old give informed consent?” (2015:2). FPI believes that children thus need to be protected from premature exposure to what is considered to be adult experiences (for example, sex). According to FYI (2015:3) children learn moral values at home like respect and honesty. FYI further asserts that when the State normalizes sexual activity between twelve and sixteen year olds it undermines parental authority.

However, McLeod (2006:127) argues, to the contrary, that this idea treats children as passive, asexual beings who are at risk. He asserts that child sexuality should be acknowledged in a positive way. Yet, commonly, when sexuality is evidenced, the adult response is moralistic and prohibitive. This “transition discourse” positions adolescents as lacking rationality and, therefore, as “inferior” to adults (MacLeod, 2006: 127). MacLeod (2006) further argues that discourses that are prohibitive reproduce ideas about an unsettled transition from a distinct phase of adolescence to adulthood. He is of the opinion that this kind of discursive language assumes that youth are immature and incapable of making healthy sexual choices (2006:127).

Nyanzi (2011:495) also argues that youth are seen as “as inert and homogenous beings” who are sexually innocent. This kind of thinking continues to inform scholarly works and policies that work to prohibit, ban and punish the sexualisation of minors. Nyanzi believes that this negative construction inhibits positive intervention because of this kind of stigma. Adults who produce the material are experienced as “paternalistic, patronizing and presumptuous. Hence the delivery is perceived as overt” (Nyanzi 2011:495).

4.5.4 Family Policy Institute statement

“The youth were depicted as sexually innocent and thus at risk, this framing the responses to prohibit, ban and moralize, and not support young people to develop their own sexual agency” (FPI 2015:4).

This discourse of innocence is a dominant discourse of the Evangelical and is alluded to in these submissions. According to Frizelle a key aspect of the debate was absent: “What was never present in this discourse was a mention of consensual, pleasurable and active youth sexuality.

Yet the reality was that despite the prevalence of sexual violence in South Africa, by the age of 15 many young people were engaging in consensual sexual behavior” (2013). Research conducted by Human Science Research Council (Richter et al. 2015) explains youth viewing sexuality in a positive manner, and that many youth were already experimenting with sex. From this discussion I gather that youth sexuality is contested both nationally and internationally. At the center of this contestation is the state, FBOs and NGOs, as well as parents who are for and against legislating the sexuality of children and youth.

A core concern in these debates is the way in which some schools, religious groups and governments attempt to control sex, and enforce ideas about sex as exclusively heteronormative, in marriage, and procreational. In this, positive sexuality is overlooked, although it is central to development, and human well-being. The World Health Organization offers a broad definition of sexuality, wherein the role of sexuality is emphasised:

“Sexuality is a central aspect of being human throughout life, which encompasses sex, gender identity and role, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behavior, practices, roles and relationships. While sexuality can include all these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors” (World Health Organization, 2006:5)

For Evangelicals age of consent is bounded to parental authority and their view is that this right must be protected by the State.

4.5.5 Sexual relations

Nigerian scholar, Ojo in his work ‘Religion and Sexuality: Individuality, Choice and Sexual Rights in Nigerian Christianity’ (2005), explains that chastity is central to the Christian perspective with regards to sexuality. He argues that it is around this concept that abstinence from pre-marital sex is taught, around which healthy relationships between boys and girls is

promoted. He further argues that for Christians chastity defines sexual relations, marriage and how sexual rights can be expressed (Ojo 2005). Similar discursive ideals emerged in the Evangelical submissions under discussion. For FYI “sexual experimentation or sexual expression by children as young as 12 to 16 is surely considered taboo under any regime” (2015:2). This is evidenced by the preceding statement by FPI the dominant discourse of childhood is that of a time of innocence. This ideology sees the demand to protect children. Children are therefore perceived as asexual and therefore under risk in need of parental protection. As childhood sexuality is not acknowledged, it is a taboo subject. Adults respond in a moral and prohibitive manner when children manifest sexuality.

According to the FPI “decriminalizing sexual activity between children of ages 12 to 16 years old will not alleviate or stop the long-term damage suffered by children” (2015:2). In the article, “Sex, Gender and Childhood” it is reported that since children are aware of sex from the age of five, there is a need for open discussions around sex and gender at an early age. They argue that a balanced view on sexuality will help youth to develop a healthy ideal and hence minimize the risk. However, the processes of international law, the concept of children’s rights has served to portray all children and youth as innocent and vulnerable and in need of adult protection.

FPI and other evangelical groups are of the view that premature sexual activity and casual sex has negative consequences, and therefore the family and state must play a preserving and protective role. According to the FPI “the alarming rise in premature sexual activity between children of increasingly younger age groups is a tragic indication of family dysfunction in South Africa” (2015:1). As a result, they argue, the state needs to intervene; “children engaging in casual sex at such young ages need help and support from government and civil society - not affirmation by the criminal justice system that their conduct is regarded as normal and acceptable” (FPI 2015:4)

De Boeck and Honwana (2005:3) are of the opinion that what evangelicals are propagating is a negative universal standard. The Evangelical church holds to the view that children are too young to make decisions regarding sexuality, and if government sanctions the age of alcohol consumption and the age of driving then the State, it is argued by Evangelicals, must sanction the age of consent. An important point in arguing for government sanctions is the argument that the consequences of consensual sex ‘the age of innocence’ must not be underplayed.

In this section, I have not engaged in an extensive critical analysis, but rather used some of the techniques of discourse analysis to help us explore how the discursive object (Willig 2008) of youth sexuality is constructed as predominately problematic in this section of parliamentary submissions and to locate this construction within a number of wider discourses (Willig 2008). The above statements made by FPI, explain the dominance of pre-marital sex as a discourse in South Africa. FPI from an evangelical makes a strong hegemonic statement that sexual expression between 12 and 15 olds is taboo. FPI further argue that the alarming rate is a direct result of a dysfunctional family. From this statement it is clear that for Evangelical pre-marital sex is not normative, hence for them decriminalization, although well intentioned, will contribute to growing sexual promiscuity. They further contend that children need support from the government as they seek to learn about their sexuality instead of being encouraged to explore without direction. The submissions from both Joshua Generation (JG) and the Christian Action Network (CAN) make these positions clear:

“various other psychological, emotional and/or social risks associated with sexual experimentation” (JG 2015)

“Many children in South Africa come from a background where they simply do not realize they have the right to say ‘no’” (CAN 2015)

From the above quote, I argue that JG and CAN also debate that pre-marital sex has emotional consequences and many children are pressurized and at risk because they are not equipped to say ‘no’. I recognize that premarital sex appears as a theme in the Evangelical submissions made to parliament.

Mashau provides a brief definition for premarital sex, and sees it is “sexual intercourse engaged in by a person or persons who are not yet married” (2011:1). This is in line with the traditional Christian sexual ethic, which maintains that sexual intercourse is to be reserved for marriage, specifically monogamous marriage. Joshua Generation, representing a global partnership of evangelical churches, made the following statement that “75% of South Africans subscribe to the Bible and are of the moral conviction that sexual intimacy should only take place in the context of a marital union between a man and women” (2015:1). This is the general perception and teaching of the evangelical church. According to Mashau (2011) sex before marriage is a sin and

is not permissible according to the Bible. God designed sex in such a way that it must be enjoyed and be fulfilled within the confines of a mutually faithful, monogamous relationship. Premarital sex and cohabitation amongst African youth is a matter of disobeying God and therefore, a call to repentance is the message that the church should propagate at such a time as this (Mashau 2011).

I see this discourse of ‘say no’ as a great disadvantage to children. Children are thought how to avoid been kidnapped or trafficked by saying no to sweets and so on. Yet, parents do not talk to children about sex. from my perspective CAN clearly expresses ignorance, or lack of knowledge, regarding children. Coleman and Charles (2009) write that “young people do not wake up on their thirteenth birthday, somehow transformed into a sexual being overnight.” Hence, Kretzchmar and Hulley (1998:51) argue for parents and guardians to try and understand sexual experimentation. They assert that being a sexual is a very basic element of our humanness, and that one’s sexual identities closely tied to our self-understanding and the way in which we relate to others and the world around us. Similarly, Daniel Louw (2008:353) argues that sexuality touches every area of life and that sexuality is also a spiritual issue as it as can be described as the longing for the other. Emphasising the relationship between faith and sexuality, Ellen (2006:5) points out that for religious persons, sexuality and spirituality are closely linked. Hence, she argues, conversations about and education on sex and sexuality should be more positive, also within religious families. Ellen (2006) argues that a positive outlook on youth sexuality will promote a healthy message and help them to avoid risks.

For the Family Policy Institute there are various “other psychological, emotional and/or social risks associated with sexual experimentation” (2015:2). This includes HIV, suicide, depression and teenage pregnancy. These risks not only impact the children but jeopardize the wellbeing of the family. “Children engaging in casual sex at such young ages need help and support from government and civil society - not affirmation by the criminal justice system that their conduct is regarded as normal explain that I and acceptable” (FPI 2015:4).

From my analysis, four distinct themes have emerged: guardianship, moral autonomy, age of consent and sexual relations. The formulation of themes in this chapter was guided by the Evangelical parliamentary submissions made by CAN, FPI, JASA and JG. In the discourse analysis of the submissions to the amendment to the provisions of the SOA, these themes

emerged through discursive analysis. These themes are also seen in the theological perspectives of evangelicals. For Evangelical Christians, sexual rights can only be exercised as prescribed by the church and not society or the State. In this regard, Ojo (2005:12-13) makes an interesting observation regarding the Evangelical position. I refer to Ojo because his paradigm is congruent to the frame of thoughts posited in this research. Ojo (2005:12) explains that there is a distinct difference between secular freedom and the church. He further emphasizes that Christians make choices according to the Bible. He endorses this view by further arguing that the Scriptures caution against the negative consequences of the wrong choices. Hence he posits the following ideal that good choices result in divine blessing, happiness and total wellbeing, while wrong choices bring untold misery. Ojo (2005) is further of the opinion that although, current human rights may question this pressure to choose well and to follow the conservative position on controlled sexuality. Evangelicals insist that this is the only way to empower individuals to experience wellbeing and meaningful sexuality and hence avoiding the risks discussed. In my understanding child sexual relationships for the evangelicals are defined by the Bible and parents or guardians. Evangelicals see the nuances that have emerged out of the amendment of the SOA as a threat and therefore not in the best interests of the child.

4.6 Conclusion

The Sexual Offences Legislation of South Africa is a very sensitive body of legislation, insofar as it does not operate or function in isolation. Any violation of the provisions of the Act has direct implications towards the Criminal Law Act, Civil Procedure Act, as well as various other statutes of law. Men, women and children are all affected by acts of sexual violence and exploitation. There is a direct duty upon the state (National Prosecuting Authority) to ensure that those who commit acts of sexual violence are properly punished in terms of the Criminal Law Act.

In this study, I recognize that, as South Africans, we have a wonderful opportunity and right to participate and engage in the process of law-making. Evangelicals have embraced this by consistent contestation on moral issues. This is a right of citizens to participate in law-, and state-making was hard won and we continue to struggle for its realization. The recent need for

addressing consensual sexual activity between adolescent girls and boys was regarded as a precautionary measure to ensure that children engaging in consensual sexual activity will not be criminalized, and that adults who commit acts of sexual penetration with adolescents, despite consent, will be prosecuted and held responsible for their actions.

For the purpose of analyzing data, I utilized discourse analysis where the evangelical submissions were coded and classified into themes in relation to the overall focus of the study. In this research study, I made use of discourse analysis because it is a way to expose what is happening.

Discourse analysis is based on the understanding that there is much more going on when people communicate than simply the transfer of information. To this end I used this “way of reading” as a method to examine the social and legal motivations related to the child sex provision of the new Sexual offenses Act and to understand the theological motivations that has shaped Christian advocacy in relation to this and other matters. I also used social construct as the primary theory for the examination of the contestation the rights of the child. What for one person is a right, for another it may appear as a constraint. Through the lens of social construction, I have set out to examine of the contestations the child sex provision of the new Sexual Offences Act. Finally, what for Teddy Bear and RAPCAN appears as a right of the child, evangelical Christian lobbyist view as restraint and violation of the right of the child.

The themes that emerged and discussed and the basis for evangelical contestation, are moral autonomy, age of consent, guardianship and sexual relationships. According to my observation, these themes represent the Evangelical view that there are other ramifications and nuances to the amendment of the SOA, and that the view of the constituency of Evangelical South Africans are important for navigating a way forward, prioritizing the rights of the child.

As Evangelicals, we now have the opportunities, right and resources to contest moral and political issues in a plural society and must utilize this space effectively. With the family under threat, Evangelicals need to continue in advocacy. The Bill has already been passed and Evangelicals need to provide an alternate for what they argue by continuing to theologically enforce these values and engage with State in post–Apartheid South Africa.

CHAPTER 5: EVANGELICAL RESPONSES TO CHILD SEX PROVISIONS IN THE NEW SEXUAL OFFENCES ACT, 2007

5.1 Church and state: an Evangelical perspective

After the dawning of the rainbow nation in 1994, a new era was signaled in South African history. This was a very interesting time for South Africa also involved redefining of Church and State relationships. South Africa became a country with a liberal Constitution, a Constitution not only guaranteeing freedom of religion, but ensuring that the State would be grounded in the principles set out in the Constitution. The Constitution allowed the judiciary to serve as the formal “watchdog” of any entity in South African society, including Church and State to ensure basic rights and overall cohesion of the community

Balcolmb (2004), an evangelical scholar that has written many articles, explains that the quality of our democratic life is intimately bound up with the quality of our Church-State relations. The aim of this work has been to direct attention to the contribution evangelical churches can offer towards the nurturing of a responsible citizenship in political life together. The idea of responsible citizenship is meant to indicate the role played by ordinary and individual people in working towards the common good. For le Bruyns (n.d) notions of responsible citizenship incorporate religious ideals of hope, power and grace. In his argument, each of these aspects can make a contribution to the role of churches in public life as they exercise their political citizenship. In reflecting on the role of the church in a democratic South Africa, Molefe (2001) in his article “Christians Engaging in Public Policy” argues that all citizens have rights and responsibility to participate fully in civil society and that all citizens have the right and responsibility to influence the laws and policies of our nation. Molefe (2001) contends that in this regard, Christians have a vital and necessary role to play and can do so by actively influencing public debates and legislation. It is in this context that he argues that “all public policy, whether it regards children’s’ rights, employment, or taxation, should be of concern to the faith community. Public policy addresses the very same concerns of the Church namely the responsibility we have to one another” (Molefe 2001:2).

Also, Villa-Vicencio (1986) in his book *Between Christ and Caesar: Classical and Contemporary Texts in Church and State* concurs with Molefe's notion that all public policy should be of concern to the faith community. Villa-Vicencio particularly highlights the role of the church to identify the moment of prophetic resistance to the state, which is theologically not unrelated to the affirmation of government as a God-given institution for the common good of society (Villa-Vicencio 1986:xi). In the submissions made to parliament in contestation the Evangelicals demonstrate this prophetic resistance.

Elsewhere, Gibbs and Ajulu in their article 'The Role of the Church in Advocacy' assert that in the struggle against Apartheid "Archbishop Tutu, for instance, could have not played the role he has played in South Africa from outside the church" (1999:35). Gibbs and Ajulu argue that although advocacy in Africa remains relatively weak, the church has a critical contribution to advocacy (1999:13-15). Goranzon, writing about the significance of the Kairos document in the church's struggle against apartheid, reminds us that "to be prophetic is when a person or group takes a stance for truth, justice and reconciliation and thereby criticizes the society or part of the society, and does this by divine inspiration" (2010:343). This criticism is evident by the robust rhetoric the SOA has generated, and the submissions made by CAN, JASA, FPI and JASA in contestation of the then proposed amendments.

In speaking to this critical transition, Smith introduces his article 'Religion and the State', by stating that with the advent of a democratic South Africa number of changes were introduced. With the adoption of the 1996 Constitution, a new model of religion-state relations was instituted that fundamentally altered the interaction between religious groups and the new government Smith (2005:1). Smith (2005:2) states that the formal model of religion-state relations that progresses in a given country is based on three elements: the text in its Constitution, legislation, and judicial interpretations of such legislation. Part of my research sought to examine this paradigm. He further explains that if you view potential models as a continuum between religious dominance of the state on the one hand, and state dominance of religion on the other, we can locate three major models as points on the scale. Evangelicals in post-Apartheid South Africa, like other Christian traditions, are in transition in their relationship with State. They are at the forefront of moral contestations as reflected in the Literature review and in examining

Smith's theory insofar as they locate themselves in a relationship of critical solidarity with the state.

For Smith (2005), when 'religion dominates the state' there is particular religion that controls the government and the legal system. Where the 'State dominates religion', there is often a secular, totalitarian state that controls religious practice in the public domain. There is no private sphere in this model, hence religious groups are tolerated as long as they comply with the state ideology. The final position is one that advocates for 'the separation of religion and state'. In this model, freedom of religion is guaranteed, and each sphere is granted some amount of autonomy. Smith (2005) further explains that the majority of countries in the world today accept a model with some amount of separation between the domains of religion and state. The model takes varying forms, depending on the particular context of each country.

Smith (2005:10) explains that currently South Africa seems to be moving in two directions at once: South Africa seems to be moving towards greater interaction between religion and the state and towards the privatization of religious groups. It appears that religion been absorbed into government, while at the same time faith communities voluntarily relegating themselves to the private sphere resulting in a more entrenched separation between religion and state. For Smit such a movement can limit the positive influence of religion on public life as well as private moral formation.

The Constitution established a tension between the right to religious self-determination and individual human rights. It remains to be seen how this tension will be resolved in practice. The decriminalization of the SOA is such a case. Evangelicals tend to lean towards Sachs argument regards church and state. Sachs (1991:39) then continues by saying that in the light of South Africa's history and culture, something along the lines of the third option mentioned above would achieve the greatest support, namely, a secular state with active interaction between the state and religious organisations.

However, in navigating this interaction between church and state Koopman cautions the church in South Africa from showing uncritical loyalty to the state. Koopman's second group apparently strived to resist the temptation of political correctness and a consequent uncritical stance towards the government in order to regain public credibility. Koopman explains this role clearly the

prophetic role of the church, therefore, seems to entail: discerning the focus for the agendas of church and society, representing the vision of a morally good society, engaging critically and constructively with society and the state and participating in transformation practice. This understanding of prophetic speaking applies to churches in post-apartheid South Africa as well.

Importantly, the legislation that we study in the amendment of SOA signals a responsiveness of the government to the evangelical movement and legitimizes a new role for religion within politics. The fact that the legal process spanned over 22 months and serious deliberation and examination was given to all applicants including evangelical submissions display this responsiveness of government. The goals and actions of the evangelical movement such as TEASA, FPI, CAN, WORLD VISION and JG are specifically geared toward creating a larger space for religion within the government. Hence I argue that by creating distinctly new relationships between church and state, the evangelical movement is changing South African legal and political culture. Religiously based policies are not just about the tangible effects of legislation and administration; they are symbols that signal the consolidation of political power to concerned constituencies. In this regard Mofokeng's statements were of significance to me. Mofokeng believes that in statements made to parliament that:

“Unfortunately some of the laws passed by our new democratic parliament tend to encourage the moral decay in our society. We are speaking about the laws that legalise abortion, legitimize homosexuality and allow the publication of pornography” (2001:56).

Mofokeng continues by holding the position that the church has the right to question the laws that are passed by Parliament. This study positions itself in such statements by contesting the amendment to the SOA. Mofokeng asserts that congregations are speaking out “Some members of our churches are law-abiding citizens. We respect the law, the Constitution and our legitimate rulers. But that does not mean that we cannot question some of our new laws just as we questioned the laws of the past.” In the Evangelical contestation various congregations collaborated with JG and CAN to make the voice of the church be heard in a plural space. (Ngada and Mofokeng 2001:56). It is clear that Tlhagale and Mofokeng at least are not silent or hesitant to address government when they feel that its decisions are not sound” (Ngada and Mofokeng 2001:56).

Nthla (2005:6) further argues that as South Africa shifted away from apartheid and systemic racial oppression towards racial reconciliation, the social consciousness of many of the Pentecostal-Charismatic Evangelical churches that were previously socially irrelevant and politically naïve are awaking, enabling them to play a significant role in nation building. This can be seen in the formation of TEASA, which “has brought evangelicals of various denominations, mission agencies, races and streams together for mutual sharing and witness” (Nthla 2005:16). As a result there was a clear shift in the way the church related to the Apartheid government to how they related to the democratic government. A key term in post-apartheid church-state relations in South Africa is ‘critical solidarity’, a term coined by Allan Boesak. Elaborating on critical solidarity, Kumalo writes that:

“means that the church supports initiatives which promote justice, peace, democracy, protecting the interest of those vulnerable and minority groups while continuing to protest against unjust policies that the democratic government put in place” (2007:5).

This approach argues that there needs to be a new model of engagement wherein the church is neither absorbed nor functions as an enemy of the state. Rather, it is argued, the church should maintain its independent and critical position from which it can engage the state. Kumalo cites Tinyiko Maluleke to make the following argument “we must move away from the two extreme models of church-state interaction: lapdog or cat and mouse” (Ecumenical Consultation Report, 23-26 March 2003).

Through my examination of the different models of State and Church contestations, I would like to invoke Kumalo and his thoughts on critical solidarity. Kumalo (2007) asserts: “the notion of critical solidarity “is built on the foundations of liberation theology and theologies of reconstruction, which continues the tradition of God’s preferential option for the poor. It also calls for obeying the laws of the country only if they are not contrary to the laws of God, (Acts 4:19, 5:29). The churches also base their participation on the text that says, “The earth is of the Lord and all that is in it”, (Psalm 24:1) thus bringing congruence between ecclesial and societal issues” (Kumalo 2007:5).

Evangelicals in post-apartheid South Africa have sought to interact with the State. They have done so by continued contestation of the State on moral issues like abortion, the same sex

marriage and amendment of the SOA. There has been a criticism that Evangelicals have only contested on moral issues however they remain relentless in pursuit of making the voice of the Evangelicals been heard.

5.2 Contemporary Evangelical contestation: rights versus faith

‘Faith versus Right’ has been a historical and global debate. Post-Apartheid South Africa is found in the midst of these cross winds blowing in South African landscape. In this regard, I attempt to show how the Evangelicals position themselves by using the schema of Thorwald Lorenzon. In his article “Christian Faith and Human Rights”, Lorenzon (2009) contends that the Christian faith concerned about what is going on in the world and that they contribute to the world-wide soft revolution that trusts in freedom, peace and justice rather than security and fear. In the following section I will use Lorenzon’s schema as the basis for Christian social action (2009:193). In the context of the contestations about the capacity of children to give consent over their bodies, and the general social and legal sentiment that children ought to be protected from harm Lorenzon’s schema provides a useful framework for evangelical Christian reflection.

Commenting on South Africa and the discourse of rights, Kotze and Steenkamp (2009:55) explain that public opinion is largely ‘traditionalist’ in South Africa, in the sense that most adults believe that homosexuality and abortion, among others, are undesirable. Kotze and Steenkamp (2009) argue that policy-makers must recognize the extent to which South Africans hold these traditionalist views in the areas of sexuality and abortion.

From a biblical perspective, Evangelicals believe that human dignity is first and foremost defined in relationship to God. Hence, dignity should be defended and upheld in the face of all those forces that would compromise, violate or deny a person’s human dignity. Graham (2013), in her book *Between a Rock and Hard Place*, explains that among many conservative evangelicals in the UK, opposition to the liberalization of laws on homosexuality, abortion and divorce has tended to be voiced in moral and biblical terms. She further suggests that with the advent of new equality and diversity legislation in the early twenty-first century, there has been shift of public orientation towards rights-based discourses. Finally, she suggests that, in light of these changes,

conservative religious groups have been required to adopt similar political and legal strategies to those whose rights they seek to limit or reverse (Graham 2013).

In his article 'Faith and Human Rights', Lorenzon (2006) explains that the church invokes suspicion when human rights are mentioned. Often the church maintains that faith must be concerned with the Bible and God, while human rights are secular, and thus concerned with what is happening in the material world. Some evangelical schools of thought let the church be concerned with heaven and leave the earth to politicians and corporations. Lorenzon provides a schema for the role of the church, and I will draw from his work to explain. He advocates that human rights contain the seed of the hope for an open and fair society (Lorenzon 2006:197). He further argues that human rights cover a wide range of issues ranging from the right to life, liberty and human dignity.

Graham (2013) argues that in a democracy we must also argue the Christian case publicly. She advocates a position that suggests that the nation is also a moral and spiritual community, hence Christians ought to be involved in areas of governance and economics. Some evangelical Christians uphold that individuals have no rights, as they have been saved by grace, and therefore cannot invoke human rights. Others argue that human rights are a secular concept that Christians should distance themselves from. Some Evangelical Christians, however, argue that human rights cannot be ignored, and that much there is a strong link between human rights and Christian advocacy. Especially when the latter has borrowed on human rights discourse to make claims. Making use of a human rights approach can be a useful approach to contextualising biblical principles (Gordon and Evans 2002:51).

An organisation that uses this approach is Tearfund, and evangelical Christian relief and development agency. They present an argument regards State and Faith interaction. They provide insight on how to engage as a Christian with this debate and approach. Tearfund believes that a person who has a relationship with God, is responsible to God as well as other human beings. Nevertheless, they argue that people have rights, because of the responsibility given to them by God. In this line of argument, responsibility towards others is seen as responsibility towards God (Exodus 22:22, James 1:27). For them the human dignity and rights assume meaning because of the relationship that has been forged with God. Like Israel had covenant rights because God made a promise to them when they agreed the covenant (Genesis 12:3) so to, they believe that

confessional communities are in a covenantal relationship with God. Finally, evangelical communities assume that their right and covenant is assured because of the assurance gained from the faithfulness of God's promise.

The focus of an Evangelical Christian approach to human rights is a primary search to ensure and defend the rights of others. However, in cases of persecution the church may seek its right to exist and Christians their right to public worship and to have equal access to jobs, public services and in contestation over child sex legislation. In this specific amendment of legislation I argue that the family and child have rights. Engaged evangelicals advocate *for* a 'contextualisation' strategy that involves drawing on human rights language in agreement with the rights to life and to education. They argue that a useful way of ensuring policy change in a secular environment is to draw on language common to that setting.

Another approach to the inclusion of human rights, is to emphasise the collective nature of rights (rather than the current emphasis on individual rights). Here, a focus on rights of oppressed and poor communities is particularly important. In cases where, for example, people have been displaced from their land and their homes, evangelical Christian groups can lobby on the basis of rights to security and/or rights to land, to ensure that justice is served. FPI, JASA, JG, TBC and RAPCAN have adopted this strategy in their advocacy. Evangelical Christians often believe that alienation from the world, if done out of faith, serves the interest of the gospel – and thus they do so willingly (1 Corinthians 9). This suspension of rights is however not interpreted as them not having any rights. Here, human rights discourse offers a clear legal framework for working to eradicate the most serious forms of abuse and ensure basic standards of living are fulfilled. For Evangelical Christians a common belief is that these ideas about human rights are first learned within the family, and that it is through socialisation that children are taught to be tolerant of various views.

5.3 Theological and ideological bases of Evangelical advocacy in post-apartheid SA

5.3.1 Theological imperative

For Evangelicals a clear theological basis is an imperative in every area of life. God is at the center of life and every life decision. Lorenzon (2006:2001) identifies that for Christians God is the creator and sustainer of heaven and earth. He further asserts that in Christ God has manifested Gods passion for Creation. All things are reconciled in Christ. He makes an argument for that Christians are to keep ‘human life human life’ and hence committed to a Rights culture. Theological paradigm of evangelical Christians as ambassadors and how they initiate that ambassadorial role in the Republic of South African is often articulated as citizens of heaven. Robert Davis explains that scripture provides two extremely powerful images of the followers of Christ on how Evangelicals engage in advocacy. According to Peter 2:9-11 “you are a chosen people, a royal priesthood, a holy nation”.

According to 2. Corinthians 5, Paul adds a critical role to our identity as been ambassadors. This identity places the follower of Christ in a critical position of being an ambassador of a sovereign carrying out a sovereigns wishes, representing the sovereign’s policies, practices and wishes in the nations of the earth. Davis (n.d) explains that our role of advocates is grounded first and foremost in our identity as who we are in Christ. He further explains that ambassadors do seek to influence outcomes and achieve policy change that is in the nations they represent. The submissions made by CAN, FPI, JASA and JG all as evangelical affinity hence carry a theological imperative and their submissions imply an ambassadorial role. These evangelical organizations demonstrate that in making submissions to parliament they are ambassadors of Christ. However this is the theological basis and the evangelical need to locate a way to interface with the challenges facing society on the ground.

Further, Botha (2010:16) adds that there is a definite link between the material order and the moral order, between morality and spirituality. Human beings can only be fully human and moral when we relate to God and one another. The scriptural basis for this is the creation stories in Genesis 1 and 2 (see also John 1:1–4; Colossians 1:15–17). All existence is subject to God, and finds its meaning in God and the revelation he provides in Scripture. Evangelicals believe that

the acceptance of this biblical worldview will restore our moral character. According to Kretzschmar (2007), Christians, who claim to live according to the moral norms and values derived from the Bible and are followers of Jesus Christ, the formation of all believers, especially leaders, is an inescapable task. It is inescapable because of passages such as the Ten Commandments (Exodus 20:1–20, Deuteronomy 5:1–33), the Sermon on the Mount (Matt 5–7), and the stress on moral character and behavior in passages such as Colossians 3:1–17, 1 Timothy 3:1–13, and 2 Peter 1:3–11. On a global level, scholars such as Zacharias argue consistently that Evangelicals will have a theological lens that help them to navigate important life decisions. We see this discourse on morality evident in the submissions made to Parliament: “The alarming moral breakdown in South African society is a scary indicator that street values has replaced family values in many people’s lives” (FPI 2015: 1).

FPI is a strong proponent for families in South Africa, and reflect a belief that the degeneration in society is a direct outcome of an increase in immorality. The JG is in agreement, and they argue that the majority of South Africans believe in the Bible and they believe that pre-marital sex is immoral. These contestations are in direct conflict with the autonomy that the State advocates. For Evangelicals, sexual decisions are guided by parents, and should be invoked by the State.

Commenting on morality, Giles Stephens (2008) argues that Christian moral choices are made within the territory of the Republic of South Africa, and within the framework of its foundational law; the Constitution of the Republic of South Africa. While for some Christians, the imperatives of the Gospel and imperatives of the Constitution are inextricably linked, ethically and morally (Romans 13:1-7), other believe that in a secular state these are almost always in conflict. As with the commands of the Gospel, a Christian must also make daily moral choices between various, and sometimes conflicting, commands of the Constitution. Hence, the contestations by FPI, JASA, CAN and JG are also moral contestations. A critical issue for Christians who are subject to the Constitution and the government, is that conflicts will arise. Conflicts may arise between the law of the Gospel, expressed inter alia in Matthew 4:18-32; 22:34-40; 10:38 – which are coercive as the 'Judgement of the Nations' illustrates in Matthew 25:31-46 –, and the Constitutional demands expressed in Constitutional law. It is into this gap that the Evangelical voice is beginning to be heard, especially on moral issues such as abortion and same-sex

relationships. It is not the task of this study, however, to cover every aspect of Christian concern for life and attitudes to life, but out of necessity it chooses to limit itself to the amendment of the SOA and the Evangelical response. The Evangelical submissions focused on morals and they invoked the reality of negative consequences when these moral lines are crossed. Finally, they propose marriage as the only container for sexual relations and they believe this breakdown has contributed to the moral degeneration of the society. These boundaries are violated when children engage in immoral behaviour defined as pre-marital sex.

For JG and FPI, moral decay has the consequences of increases in the spread of HIV, increases in the number of abortions. Hence, the JG asserts that the emotional challenges associated with the amendments have far reaching implications. Stegen introduces TEASA and other evangelical agencies in advocating in post-Apartheid South Africa, including Family Policy Institute. South Africans should not perpetuate the disastrous myth of religious neutrality. Stegen argues that although government may legislate on morality, that is not to say that the government can make people moral because for evangelicals only the gospel can do that. He invokes the vow made by the 1000 ministers and Christian workers who attended the Fourth Kwasizabantu Ministers' Conference in 1992: 'We reaffirm our obedience and unconditional loyalty to our Sovereign Lord, Jesus Christ. "God forbid that we should forsake the Lord to serve other gods ... the Lord our God will we serve, and his voice will we obey"' (Stegen) as indicative of the kind of relation evangelicals imagine in relation to the state.

5.3.2 The Christological imperative

Christology is key to evangelical Christians. Evangelicals view God incarnate in Christ embodies and as self-giving, compassionate solidarity. They believe that Christ decisively transforms the marginalization of those without rights, by fully identifying with them. Thus a new order is created, bringing possibilities for creative transformation wherever there is contempt for human life and denial of human rights.

There are scriptures that posit "in him was life, move and have our being". For evangelicals this means that our lives are intertwined in Christ. A clear Christology will regulate our behaviour and our choices. In Lorenzon's (2006) 'Christological imperative', Christians orient themselves

through explaining Jesus in context of the cross, his death and resurrection. He suggest that the resurrection of the crucified Christ means that God has changed reality, God has initiated faith and provided the content of that faith. He asserts that Jesus life was a prophetic critique of the dehumanising structures of the day (Lorenzon 2006). We cannot understand Jesus as the Christ apart from his passion to make and keep human life human.

For a Christian, imperatives of the Gospel and imperatives of the Constitution are inextricably linked, ethically and morally (Romans 13:1-7). Wright argues that if we are going to adopt a Christological framework we have to challenge the symbols of our day - power, autonomy and violence. In emphasizing the Christological imperative I reflected on the campaign called, "what would Jesus do?" which became popular in the United States in the 1990s. The campaign begun as a personal motto for Evangelical Christians, as a reminder to act in a way that would demonstrate the love of Jesus. The original question "what would Jesus do?" (WWJD) has been taken seriously by millions of Christian teenagers who have worn it over the last 20 years as a reminder to live their life in the right way. Evangelical youth and children made important moral decisions based on WWJD, and the wristbands were a symbol of their commitment to Faith. Similarly different sectors of the Evangelical church argue for different things. Focus on the Family, an evangelical proponent of 'No Apologies', has an abstinence pledge card that they hand out, and they encourage learners making a pledge to purity. These cards according to them are symbolic of abstinence which is value of Evangelicals. There are also other programs that have been facilitated by Evangelicals, such as the purity ring.

5.3.3 Biblical imperative

According to Lorenzon (2006) the Bible is the source for Christian Theology and praxis. He explains that God has no other passion but to make human life fully human. He asserts that the prophets condemned those leaders in religious, economic and political institutions that are not concerned with protecting the dignity of human persons (Lorenzon 2006). CAN made their parliamentary submissions and described it as building on the "word". For them advocacy as a concept is rooted in the Bible: "Give justice to the weak and the fatherless" (Psalm 82:3).

Botha (2010) introduces the Biblical imperative as the holistic spirituality of the Bible is indispensable within the field of Christian spirituality. He goes on to argue that 2. Timothy 3:16 declares that “all Scripture is breathed out by God and profitable for teaching, for reproof, for correction, and for training in righteousness”. Furthermore, Botha argues (2010) Paul stresses the divine origin and authority of Scripture as God's revelation to us. Elsewhere, Schneiders discusses the central role of Scripture in early Christian spirituality: “every word of the sacred text was pregnant with divine meaning and everything of religious significance was expressed in the context of biblical categories and by means of biblical language” (1985:4). This includes the proclamation of the gospel, catechesis and the formation of new converts. Theology consisted largely of exegesis of Scripture. An underlying assumption of early Christian exegesis was that biblical interpretation was both the work of demanding scholarship and faithful contemplation.

Lorezon asserts that “if the church wants to be found where Jesus Christ is active in the world, then it must show healing, saving, liberating solidarity with those whose human dignity has been injured or threatened” (2006). FPI, JASA and CAN demonstrate this by advocating for children – whose dignity they argue is threatened. The Bible is central to evangelicals’ theology: as a source of doctrine, and to their practice, in terms of daily reading, devotion, corporate study and preaching as scriptural exegesis and exposition. For many commentators the emphasis on the primary authority of the Bible has been a feature of Protestant faith since the Reformation, and stands in contrast with those who have stressed the authority of Church tradition, or reason. All this springs from the doctrine of sola Scriptura and a conviction that the Bible is uniquely divinely inspired and authoritative. Larsen states that:

“there is strong, confident, uniform Evangelical consensus on the inspiration, authority, uniqueness, and sufficiency of Scripture, as well as on its complete trustworthiness in matters of Christian faith and practice” (2007:8).

In developing its mission statement the Christian Institute (the anti-apartheid contextual theology think tank) strongly reflects such a biblical perspective when it states that: “we are committed to the truths of historic, biblical Christianity including ...The inspiration of the Holy Scripture in its entirety by God’s Spirit through the human authors, and its revelation of God’s truth to humanity”. Similarly, Joshua Generation in the post-Apartheid era makes the following statements regards the Bible: “South Africa subscribes to the Bible and are of the moral

conviction that sexual intimacy should only take place in the context of a marital union between a man and a woman” (2015:1).

By legalizing, and thus morally endorsing, consensual sex between children, government and the law, JG argues, find themselves at loggerheads with ‘the people’. In addition, the State is in direction contention with the Bible which is the final authority for South African Christians. JG advocates that the majority of people in South Africa are Bible believing constituents. An evangelical approach to the authority of the Scriptures involves the following principles –as noted by Lloyd-Jones (1973:30-50) – that Evangelical Christians believe the whole Bible is the word of God, and when we speak of the authority of Scripture we mean “that property by which it demands faith and obedience to all its declarations”. The biblical doctrine of Scripture implies that the Bible itself claims that authority and we must submit to it. The question of the authority of the Scriptures is ultimately a matter of faith and not of argument.

5.3.4 Historical imperative

Since the beginning of time human beings have lived in families. As such, families may be considered the pillars of society; they influence how societies are structured and organised, and how they function. The family is both a social and a biological unit. Importantly, families provide psychological, emotional and material support for its members, and they play an important role in socialization processes. Families transmit values, norms and social mores between and across generations, and are a cornerstone of most communities. Families have, however, undergone major changes over the last centuries. Important changes have taken place with regards to how we imagine, for example, the concept of marriage and the bearing and raising of children; religion, governance, authority, the value and importance of education, and the rule of law. Responsibilities and obligations to both family and community members, and society in general are also defined within the family milieu. This is evident in the following quotes from the submission made by FPI:

“Children function in a loving stable family environment” (FPI 2015:1).

“Healthy, stable families are more likely to produce healthy and stable family members, just like dysfunctional families are more likely to produce dysfunctional individuals” (FPI 2015:4).

“The alarming moral breakdown in South African society is a scary indicator that street values has replaced family values in many people’s lives” (FPI 2015:4).

As a historical imperative the family has been at the center of society. The above-mentioned discourses mention the emphasis on family. FPI and the other submissions are rooted in Evangelism who has family as one of the key tenets of their Faith. FPI is a family policy proponent and advocate for the protection of the family, which they argue is under attack by the State. FPI, in their submission, believe that family is the most fundamental institution of society (2015:1), and they assert that society is only as strong as family (2015:2). Hence, it is their opinion that government must protect children from making bad decisions by sanctioning child sex. The concept of the ‘nuclear family’ has evolved and in the South African context, and, in practice, there are currently various and varied forms and constructions of families. Hence, Evangelical advocates and advocacy groups need to form strategies on how to work with children that come from families that cannot be considered ‘nuclear’. In this, there needs to be further interrogation of the concept of the heteronormative nuclear family as the ideal. For real and meaningful change to take place, policies and programs must not only recognize and affirm these myriad forms of families to be effective, but also ensure that the traditional, heteronormative family does not become the blind-spot when addressing young people’s sexuality

Another global organization that is based in South Africa is World Vision, an organization working for the wellbeing and rights of the child. As an Evangelical organization they believe that according to scripture, the need to respect the life of children begins at conception. As a result of this stance, World Vision builds on pro-life policy, programming and advocacy. In so doing, World Vision argues that Jesus saw children as individuals, not just as parts of the bigger collective family. They draw on the New Testament to substantiate this position:

“Let the little children come to me, and do not hinder them, for the kingdom of God belongs to such as these. I tell you the truth, anyone who will not receive the kingdom of

God like a little child will never enter it.’ And he took the children in his arms, put his hands on them and blessed them” (Mark 10:14–16, NIV).

“Whoever welcomes one of these little children in my name welcomes me; and whoever welcomes me does not welcome me but the one who sent me” (Mark 9:37, NIV).

“And if anyone causes one of these little ones who believe in me to sin, it would be better for him to be thrown into the sea with a large millstone tied around his neck” (Mark 9:42, NIV).

According to World Vision, by treating children as a model of faith (i.e., faith must be childlike; Mark 10:14–16, Matt. 18:3, 21:14–16) Jesus emphasised the importance of each personal individually relying on God. Here, again, the underline the position that children are individuals, not incomplete adults. World Vision further argue that as a result the bible illustrates that children should be able to have expectations of their parents, as their parents do of their neighbors. Hence, an important part of Christian parenting should be concerned with ensuring that children understand that their own rights must be balanced against their responsibilities towards other people, and to God.

I, further argue that beyond parental rights that parents must communicate with their children. One of the difficult topics to approach is that of sex. In the Southern African context sex tends to be a taboo topic in communities, and most sex education takes place in schools, although this is often limited. In sex education provided by non-state actors, a biological perspective is often emphasised, and parents and religious groups are able to define what is age appropriate content. The submissions made by FPI and other organizations, argue that it is critical for parents to get involved in sexuality dialogue. Yet, discussions of sexuality are tense, at both international and national levels. The sexuality of young people is often particularly contested. At the centre of many debates about the sexuality of young people are issues related to heteronormativity. Particularly the idea that sex should always be heterosexual, between married people and for reasons of procreation. Invocations of the ‘rights’ of young people, and in particular their right to be independent, to participate and make decision about their own lives, are hence often seen as a threat to the security and/or authority of families and governments.

For FPI sexuality and discussions around the topic appear to be taboo as reflected in the following: “sexual experimentation or sexual expression by children as young as 12 to 16 is surely considered taboo under any regime” (FPI 2015:3). FPI requires that government respects the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. This is explained in their statement that “Governments must not usurp the legitimate authority of parents” (FPI 2015:1). Here, the family is seen as the institution that protects, nurtures and guides the child. FPI argue that children are taught sound moral values, like honesty and respect, at home. When the family order collapses then children are forced to learn lifeskills from the street. FPI believe that the key to normalizing a society with a healthy outlook on sex and sexual identity is the restoration of the family unit.

Some Evangelical advocacy groups contend that the concept of the “evolving capacities of the child” limits parental involvement as the adolescent become capable of making independent decision. Stegen (132) argues for parental protection and states there should be a recognition of the rights of the parents to raise their children in the ways of God. Neutrality in the name of religious freedom must cause chaos in the classroom.

In South Africa this is of particular importance. Our Department of Health and Population Development has opted for a humanistic point of view, and most of its educational publications about sex and AIDS are seemingly anti-Christian. The unwavering theme is: ‘It is better not to have sex before marriage but when you do this is how to do it safely - with a condom!’. The ‘neutral’ state that decides that an individual’s decisions are more important than biblical law, finds itself in conflict with God’s commands to parents. Hence, FPI feels that parental authority has been usurped. Most countries that are secular, or tend in that direction, have child-abuse laws that impose severe limitations on freedom of religion for parents (although child-abuse laws should be present to protect children from sexual and physical abuse). These laws have come to be interpreted as meaning that any parent who gives his or her child a hiding finds himself in difficulty with the law.

Hence, the FPI argues that the secular state finds itself in direct opposition to the Bible, where it is proclaimed that “The rod of correction imparts wisdom, but a child left to himself disgrace his mother” (Proverbs 29:15). The neutral state makes laws that claim greater wisdom than the Bible

by outlawing the loving parental ‘rod of correction’ and demanding that the child ‘be left to itself’ (this is euphemistically termed ‘child- empowerment’). Is it not clear from the above examples that, when a government refuses to acknowledge a superior source for its law, it becomes a law unto itself and it begins the slippery slide into totalitarianism and the accompanying collapse of freedom of religion?

5.4 Conclusion

Evangelicals in post-apartheid South Africa have used socio-legal contestation. Cases they have contested have been the abortion law and the same sex marriage contestation. Although Evangelicals may seem ambivalent and loud regards moral issues, they have, nevertheless, managed to consistently contend in the public space without giving up. Although they have not won – paradoxically they have won through contestation by trying to occupy a space in our plural South Africa hence ensuring for the voice of the church to be heard. Although there are similarities in the theological content, there are big differences with regards to the political interventions of evangelical groups. Evangelicals are spread across the scale from active opposition to change, to indifference, to active participation in democratic processes and movements for change.

Balcolmb (2004) explains that Evangelicals appear intolerant to sexual moral issues. Yet it is not appropriate to conclude that because evangelicals are 'intolerant' with respect to these issues that Evangelicals are unable to contribute to democracy. He makes the following key statement, that resonates strongly with the focus of my study: “their dynamic exercise of their constitutionally protected right to express themselves on these issues demonstrates that, rather than being alienated from the New South Africa, they regard themselves as citizens who have a stake in its well-being. And they are contributing to a healthy climate of debate essential to any democracy” (Balcolmb 2004:32). This study has attempted to show this evangelical response and active participation underpinned by their faith and theological values that frame their lives.

CHAPTER 6: CONCLUSION

6.1 Introduction

This case study has examined strategies and approaches to advocacy among Evangelical organizations in South Africa. I set out to do this through an examination of the social, legal and theological debates related to the Sexual Offences Act of 2007, as well as other related legislation. In particular, this research project sought to interrogate Evangelical Christian advocacy in its response to the decriminalization of the child sex provision of SOA of 2007. The research findings show that although evangelicals were actively involved in activism during the struggle for liberation in South Africa, post-apartheid South Africa has seen a more marked resurgence of Evangelical advocacy, particularly in relation to sexual and moral issues. Evangelicals were pro-active in activism against introduction of legislation about the Choice of Termination of pregnancy, same-sex marriage, and in this case about the child sex provisions of the new Sexual offences Act. In this study, I found that while most evangelicals are not against the decriminalization of the sex between minors, they wish children to be protected from the risks of ‘premature’ and ‘experimental’ sex such as teenage pregnancy, abortion, rape and HIV.

In order to achieve its aim examined specifically examined Evangelical submissions to parliamentary debates related to the Bill, which later became the ACT. In addition to the parliamentary submission, I also reviewed and analyzed case law, and High Court and Constitutional Court judgments related to the decriminalization of the child sex provisions of the new SOA. The following sections gives a brief summary and overview of the key findings.

6.2 Brief overview of findings:

Following a discourse analysis examination of the data generated, the following discourses were identified in the texts examined: a discourse of guardianship, a discourse of moral autonomy, a discourse of age of consent, and, finally, a discourse of sexual relations. I will summarise these, respectively.

6.2.1 Discourse of guardianship

The research findings showed that guardianship appeared as an important discourse for the care of the child's well-being and best interest. The analysis reflected that most Evangelical faith-based organizations held that children cannot care for themselves, look after their own property or make decisions on such matters as their education therefore the law ought to similarly make provisions for a person or persons to be appointed to look after their interests and to care for them. Half of the submissions analyzed cited parental authority over their children's well-being as a biblical imperative, and that they found the legislation to be undermining their freedom of religion rights. The study found that for most Evangelical organizations considered, the idea of Christian family was seen as being under threat, due to an increased recognition of other forms of family in existence. In response, this study argued that Evangelicals felt that sexual development, protection and teaching is the responsibility of guardians, not the State.

6.2.2 Discourse of moral autonomy

The research also found moral autonomy emerged as another key theme. In my analysis of the Evangelical submissions to parliament, and the high court judgments, moral autonomy was cited as central to the arguments around sex between minors. The study demonstrated that morality is shaped by family and multiple other contributing factors, such as the media. From the arguments made, Evangelicals have held to the view that family and the Bible played a significant role in developing morality in the life of the child whilst other groups argued that this devalued the rights and sexual autonomy of the child. Evangelicals felt that morality cannot be legislated, but that it is formed in the context of family and guardians. The study observed that it is not the function of the state to legislate on personal morality. Rather, laws have to be contextually sensitive and take the conditions and social situations within a particular society into account.

6.2.3 Discourse of age of consent

The research also showed that the parliamentary submissions by selected Evangelical organizations demonstrated some form of affirmation, ambivalence and stigmatization towards

the amendment of the SOA, especially with regards to a lowering of the age of consent. The analysis reflected that the age of consent will remove protection and expose children to risks. The analysis reflects that legislators need to critique themselves regards the safety of the child and monitor the implementation. The analysis shows Evangelicals are seen as protectionist and regulatory to young people's sexuality by regulating it through corrective measures like their sermons, teachings and youth meetings they remain unrelenting. The discussions dealing with the age of consent in this research focused on the context of protecting vulnerable young individuals and encouraging social stability. FPI for example argues that the family guards children until they are able to develop the capacities of reason and autonomy. The study also further showed that child safety, health, marriage and the family should be taken into account when considering a reduction in the age of consent.

6.2.4 Discourse of sexual relations

Finally, the research reflected the most Evangelical organizations considered sexual dialogue as taboo. It was further observed that pre-marital text was seen as unbiblical and not acceptable. Values of chastity, abstinence and purity were propagated by the Evangelical submissions. The study further illustrated that Evangelicals showed concern about the messages that would be relayed from the lowering of sex. For Evangelicals these messages are dangerous and signal that sex is normative for youth. The study is of the view that it will have a damaging effect on the health and wellbeing of children which is currently a national crises. Furthermore the findings showed that the State has sanctioned that children cannot gamble, buy alcohol, obtain a driver's license or own a firearm. Hence the laws appeared as conflicting and a common view shared by the evangelical submissions was that young people do not have the physical, emotional and psychological maturity necessary to cope with the consequences of sexual activity.

6.3 Evaluation of study

The contribution of this research study is to understand the influence that Evangelical advocacy makes in redefining and contestation of the law in post-apartheid South Africa. This research

readily acknowledges the negative and positive contributions that Evangelical advocacy has made have made in with regards to contestation of the amendments to the sexual provisions regards children. This outcome is not only the result of a close reading of the available literature, but also of parliamentary submissions by Evangelical organizations. This study shows in the new era of a democratic South Africa Evangelical organizations have embraced the public sphere by contesting laws that conflict with its belief system and the perceived threat against the culture of family.

This research also makes a contribution in understanding the role of Evangelical advocacy in the arena of socio-legal debates, and contestation in the public sphere in a plural post-apartheid South Africa. I think one cannot universalize the notion that Christian beliefs dominate in bringing opposition to SOA, CTOP and same-sex debates. Instead, the research has shown that evangelical beliefs can be an asset in influencing the state and society to critically consider the best interests of the child by demonstrating the values that underpins the legislation, e.g., human dignity and bodily integrity. This research also makes a contribution to understanding the role that advocacy plays in the social justice arena, and the freedom given to all citizens in a participatory democracy. In the current research, Evangelical advocacy is both an asset and a deficit in the provision of systems in those seeking to advocate. There is also a lack of consolidation amongst Evangelicals who represent a broad constituency.

6.4 Implications of research

This study aimed to contribute to the body of literature on evangelical advocacy. Important information from the research findings identifies that much needs to be done to make evangelical advocacy and child sexuality a part of public discussions, also in the academic disciplines. From a social constructionist paradigm, nothing happens in isolation, hence academic discourse will contribute to the breaking of silences amongst Evangelicals regarding children, youth, sexuality and the law. The implications are that guardians and parents play an invaluable role in the formation of the sexuality of children. For evangelicals this responsibility should not be abdicated to the State. On the other hand, the State must also engage its constituency, the majority of whom confess to be Christians, in the development of the law. The passing of the

SOA in 2007, although it protects children from criminalization, has left a gap that is conflicting with other child laws and subtly remove parental guidance and family influence. South Africa is already facing an HIV pandemic, and laws that permit sanction freedoms have the potential to further entrench this problem.

6.5 Signposts for future Evangelical Engagement

From this study, I would argue that Evangelical advocacy appears rather weak. Many State organizations have a strong infrastructure to shape public debate on sexuality. Organizations like the FPI and TEASA, have increasing influence over evangelical advocacy in post-apartheid South Africa. This case study of child sex-provision of the 2007 SOA, demonstrates that Evangelicals not only have an appetite for lobbying but also that they do so in a plural society. The study also illustrates that the construction of alternate discourses in an inter-faith community will facilitate a strengthening of the Evangelical position. The study also suggests that Evangelical Christians well positioned to challenge the State, and that they do not need to be co-opted or coerced into discourses of state-making. Hence, I recommend that it is important for Evangelicals to continue to embrace the public sphere because it is through their input, alongside that of other religious institutions, that can shape the moral character of our new democracy.

In comparison to their Northern counterparts, much work needs to be done with regards to scholarly work on advocacy and activism in South Africa, particularly the advocacy work of Evangelical FBO's. This study recommends that Evangelicals continue to participate with the state and not just as has been suggested as only having a voice regards certain issues but instead use all mechanisms including CSOs and literature production to strengthen its position. The study also suggests that further scholarly work be produced to demonstrate how evangelical advocacy will mature as it continues to meaningfully engage with the state, whether in counsel, or in contest, and as find its own unique space in a global contested plural space.

6.7 Conclusion

In conclusion I quote from Davis (2009:91), in a statement where he refers to the National Association of Evangelicals:

“We know that we must wait for God to bring about the fullness of Christ’s return. But in the interim, the Lord calls the church to speak prophetically to society and work for the renewal and reform of its structures...As Christians engaged in public policy, we must do detailed social, economic and jurisprudential analysis if we are to understand our society, and wisely apply our normative vision to political questions” (NAE 2004)

This study, in its examination of the advocacy work of Evangelical organizations found the evangelical community to be robust and determined in its engagement with social, legal and theological debates related to the Sexual Offences Act of 2007. What in the final analysis is clear, is that while South Africa faces a myriad of social and ethical challenges, evangelicals *only* seek to activate their religious and social resources to contest those moral and ethical maneuvers of state which they are confident about effecting. Their success lies not simply in their biblicalism but in their ability to harness the religious sympathies not only from their faith community but also from those that operate outside the evangelical community but nonetheless lack the language to express their uneasiness with legislation. Evangelicals in South Africa have demonstrated that through the establishment of dedicated think tanks and research institutes, they have developed the mechanism and knowledge resources to contest and shape government policy with a significant degree of success.

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APPENDICES

CHRONOLOGY OF CHILD-SEX LEGISLATION AFTER 1994

The Sexual Offences legislation is a specific body of laws that was developed to address the various forms of sexual abuse which often goes across unnoticed and leaving the victims open to further abuse. The incidence and prevalence of rape and related sexual offences required the Legislator to create a law so versatile that it encapsulates all aspects of the sexual related offences. Within this body of laws, a specific set of provisions have been developed that not only deals with sex between adults and minors but also, more recently with this issues of sex between minors.

1996 COMMISSION IN TO SEXUAL OFFENCES BY AND AGAINST CHILDREN

In line with the South African Constitution, and various International Instruments were consulted to develop these policies such as “The Children’s Act 38 of 2005”, “African Charter on the Rights and Welfare of the Child” the commission developed a comprehensive child protection and statutory framework policy.

2007 THE CRIMINAL LAW (SEXUAL OFFENCES) AMENDMENT ACT 32 OF 2007

The Criminal Law (sexual offences) Amendment Act came into operation and effect on the 16 December 2007. This act has drastically introduced changes to the provisions on sexual offences and most importantly introduces and affects the punishment of sexual crimes. The act introduces various duties on reporting such crimes as well as providing the relevant authorities such as the South African Police Services, Courts a greater platform to address and penalize matters of this nature.

The Criminal Law (Sexual Offences) Amendment Act 32 of 2007 is a very persuasive piece of legislation that contains dedicated provisions for how matters of sex between minors must be dealt with, and provision for protection of children through special sex-crime courts.

2013 TEDDY BEAR CLINIC VS THE MINSITER OF JUSTICE (2013) ZACC 35

This case was heard on the 10 October 2013 at Constitutional Court. In the abovementioned case the applicants challenged the constitutional validity of Sections 15, 16 as well as Section 56 (2) of the Criminal law (sexual offences) amendment act 32 Of 2007 in so far as it criminalizes consensual sexual activities involving children. Decision in the case was as follows:

1. Section 15 and 16 are found to be invalid in so far as it imposes criminal liability on children.

2015 THE CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT NO 5 OF 2015

The decision of the aforementioned case was the Section 15 and 16 of the 2007 Act was unconstitutional insofar as they criminalize consensual sexual conduct between adolescents. With much argument, debate and petitioning the 2015 Act inevitably was passed as law on the 7 July 2015. The enactment of the 2015 Act is three fold, on the one hand it seeks to adjudicate upon the criminal behavior and exposure; and on the second hand it seeks to protect the rights of certain children by not holding them criminally liable; and on the third hand it seek to discourage adolescents from prematurely engaging in consensual sexual conduct which may harm their development, and increase the likelihood of risks associated with sexual conduct materializing.