



MOVING THE WHEELS OF JUSTICE TOWARDS COMBATING SEXUAL OFFENCES



THURSDAY DECEMBER 15 2011



Two boys from Duduza the Eastrand who marched in aid of Activism on no violence against women and children.

PICTURE: SWE NINGANE

As this year's 16 Days of Activism Campaign drew to a close on the 10th December, it is appropriate to evaluate the impact of the awareness raised countrywide to stop the violence against women and children.

The basic question that could be asked is whether or not indeed we are making strides through this campaign and related initiatives. This year's programme saw various Government Departments, NGOs, rights organisations and community groups proverbially 'taking up arms' as part of the mobilisation in the fight against gender based violence.

This is a challenge in which we can only succeed in the long run only if as a nation we collectively confront this scourge.

As it is the case with any initiative of this magnitude, decisive leadership is imperative. Granted, willingness to make a change and the drive that maintains the momentum is paramount, however, these are simply not enough without direction as provided through decisive leadership.

Through the annual occasions of the 16 Days of Activism Campaign, government has found appropriate mechanism to lead by example in the mobilisation of society at large.

As we move closer to the peak of activities characteristic of the festive season, the result impact of the 16 Days of Activism must reflect in a significant reduction of sexually motivated violent crimes.

Our Constitution imposes rights as well as obligations of citizenship, and compels all of us to ensure that other people enjoy their rights in the same way as we do.

In response to the negative

Making strides through this campaign

cyclical pattern that accompanies a season of overindulgence, government has galvanised its commitment to the cause of combating sexual violence and related offences against women and children.

Leadership on these programmes is expected from the Department of Justice and Constitutional Development.

These programmes are executed in partnership with the JCPS Cluster departments (namely SAPS, NPA, DOH, DCS, DSD including Department of Woman Children Persons with Disabilities, Legal Aid Board South Africa (DWCPD), Department Basic Education Training (DBET) and National House of Traditional Leaders (NHTL) have been hard at work with the implementation of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

Also known as the Sexual Offences Amendment Act, in an effort to develop systems, processes and frameworks to prevent sexual offences.

Enhanced synergy has been identified as the catalyst that will create an enabling environment for these preventative mechanisms to flourish and prove effective.

This sentiment is reiterated in

one of the conclusions made by the Tshwaranang Legal Advocacy report: "The State is not monolithic - allies can be found and engaged - the importance of politics".

Tshwaranang provides an objective platform for research and the examination of the implementation of policy and law; the provision of comprehensive services to women; and the politics of engaging with state processes around violence against women.

Their research also informs their litigation work, as well as their engagement with law reform and policy formulation processes which is crucial service for those of the receiving end of abuse of women and children.

Despite the continued unacceptable levels of women and children abuse, as a nation we can take pride in that a positive step in the right direction has been taken, with various departments having identified the importance that they each play in the holistic approach to addressing the challenges faced by government.

In a strategic move to improve service delivery to victims and maximise potential output through effective resource management, the departments of Health and of Social Development will also provide the following services to victims of violent and sexual assault:

- THE PROVISION OF PREGNANCY TESTING AND EMERGENCY CONTRACEPTION - In this way, emergency contraception are to be made available for all female victims or survivors of sexual assault or rape in all the designated forensic clinical health facilities.
- THE PROVISION OF HIV COUNSELLING, DIAGNOSTIC TESTING AND POST EXPOSURE PROPHYLAXIS - HIV Counseling is the first step before a test is done on a victim of sexual assault. The aim is to ensure HIV diagnostic testing is done after the victim of sexual assault has been counselled on the first day of presentation to the health facility. A 28 day post exposure Prophylaxis treatment is to be provided for rape survivors.
- THE PROVISION OF TRAUMA COUNSELLING - Victims who are emotionally and psychologically traumatised due to a rape or sexual incident, would be referred to Social Workers for further counselling.
- THE PROVISION OF EMPOWERMENT AND SUPPORT SERVICES - Victims who have been assaulted by family members are referred to Social

Workers for shelter.

The responsibility of reporting any form of sexual violence against vulnerable persons has been placed squarely on all of our shoulders, as attested to by the 16 Days of Activism Against Violence on Women and Children.

This is without exception, as the Sexual Offenders Amended Act 2007 further attests, which also makes it an offence for someone who knows about a rape or sexual crime but fail to report it.

The Sexual Offenders Amendment Act responds to South Africa's obligation to combat and eradicate abuse and violence against women and children, especially sexual violence and trafficking for Sexual purposes.

One of the key elements of the act which serves as a monitoring tool is the National Register for Sex Offenders. The National Register for Sex Offenders records the names and details of all the people who committed sexual offences against a child or a person who is mentally disabled.

The register include the recording of offences committed in or outside the Republic. Government has adopted an incremental approach to the operation of the Act.

This was done to assist departments, particularly with the consultation processes required for finalisation of Regulations, instructions and implementation of the new system.

The National Register for Sex Offenders could not have been introduced at a more appropriate time as we find more often that due to increasingly difficult economic circumstances, informal and small scale child care facilities are popping up.

This translates into an increased window of opportunity for potential offenders to gain access to their unsuspecting victims. It is therefore imperative that parents, legal guardians, care givers, employers and employees familiarise themselves with the Sexual Offenders Amended Act and the National Register for Sexual Offenders mechanisms and functions.

The responsibility of doing due diligence on all employees exposed to minors at any level lies with the employer and this is the standard integral to the verification of qualifications done routinely to all candidate employees.

The Department of Justice and Constitutional Development will be responsible for the administration of the Amended Act and in consultation while the JCPS cluster departments will develop a

National policy Framework.

An inter-sectoral committee will also be established and an annual report provided by them to parliament.

Historically, one of the major misconceptions that most victims of violent and sexual abuse have had is that access to legal representation, with due consideration to the emotional side effects, to offer holistic assistance did not exist.

Legal Aid, being one of the key role players in effecting the paradigm shift in dealing with sexual offences, has taken a firm stance on providing protection and defending the rights of the vulnerable.

In a statement made earlier this month, Legal Aid went on to say, "Internally, Legal Aid SA has established units in some of its justice centres, which focus exclusively on criminal and civil matters involving children."

"This is supported by a Legal Research Initiative, which is designed to enhance the process of dealing with legal matters involving children."

"This is done through weekly updates on new trends in child law, support with drafting heads of argument, researching legal issues in matters involving children or telephonic/email support

on problems experienced by our lawyers in children's matters.

"Legal Aid SA's compulsory in-house legal training programme also ensures that all our lawyers are appropriately equipped to deal with cases involving children competently."

"These initiatives have seen a significant increase in the number of children assisted by Legal Aid SA in criminal and civil matters."

Also noteworthy was the establishment of a call centre, the Legal Aid Advice Line - 0800 110 110, which gives special attention to the civil legal needs of women and children. To date, the call centre has assisted over 13 000 people.

"Women and children are usually the most affected groups in criminal and civil conflicts, and as a result of our human rights approach to delivering services, it comes naturally for Legal Aid SA to do something proactively to protect the rights of these vulnerable groups," says Legal Aid SA Communications Executive, Mpho Phasha.

If the anticipated impact of the 16 Days of Activism has to do with it, come 2012, not only will we be celebrating the beginning of a new year but also the beginning of the end of abuse.

The message from government and the Department of Justice is simple... Offenders beware, big brother is watching! But so is the neighbor next door and the relative of the either the abuser or the abused!

With such comprehensive cooperation and partnerships across the government departments, private sector and broadly speaking civil society, we will indeed make the inroads necessary to successful combat the abuse of women and children in our communities.



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NRSO - PROTECTING OUR CHILDREN AND PERSONS WHO ARE MENTALLY DISABLED AGAINST CONVICTED SEX OFFENDERS

Did you know that with effect from June 2009, every employee in the employ of an employer, who was convicted of a sexual offence against a child or a person who is mentally disabled, irrespective of whether or not such offence was committed or allegedly com-

mitted during the course of his or her employment, MUST WITHOUT DELAY disclose such conviction or finding to his or her employer? Any employee applying for employment to work with children or persons who are mentally disabled, must disclose such conviction or

finding when applying for employment. An employee who fails to comply with this requirement, is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding seven years or to both a fine and such imprisonment.



MOVING THE WHEELS OF JUSTICE TOWARDS COMBATING SEXUAL OFFENCES

It's not always straight forward . . .

THE Department of Justice and Constitutional Development has identified the Lesbian, Gay, Bisexual, Transgender and Intersexed individuals as one of the Vulnerable Groups hence it has a project dealing with matters related thereto on the Chief Directorate: Promotion of the Rights of Vulnerable Groups under Sub directorate: Victim Support.

The main aim of the project is to raise awareness regarding LGBTI related matters and to ensure that the rights in terms of the Constitution are enhanced and promoted so that this community can be treated with dignity and respect in terms of Equality Clause.

Democratic South Africa was founded on a constitution that enshrines the principles of human dignity, equality and social justice. Crimes motivated by prejudice (hate crimes) are not recognized as a separate crime category in South Africa's current legislation.

Research conducted by OUT/UCAP in Gauteng illuminates the nature and prevalence of prejudice motivated hate speech and victimization against LGBTI persons.

Whilst existing policy frameworks within the ambit of the National Empowerment Programme go some way in addressing homophobic discrimination, service provider deprivatization, marginalization, exclusion and targeted victimization, are everyday realities in many communities.

The Department of Justice and Constitutional Development intends focusing on targeted strategies to address LGBTI discrimination which negatively impacts on the extent to which the Criminal Justice System and other service delivery agents can adequately respond.

Hate crimes in South Africa require specific approaches in terms of legislative and policy responses.

The relationship between gender presentation and vulnerability to victimization points to the highly gendered nature of homophobic discrimination.

Internationally, South Africa is commended for its rapid transformation to becoming an open society founded on democratic values and a Constitution that enshrines the principles of human dignity, equality and social justice.

In stark contrast with policy and legislative guarantees for fundamental human rights, endemic crime and violence continue to dominate the country's landscape.

In addition, incidents of prejudice motivated hate speech and victimization have come to the fore, recent examples of which are in the informal settlements in Gauteng, Western Cape and Kwa-Zulu Natal.

Like many South Africans LGBTI people are targets of general violence and crime.

They are stigmatized for their perceived sexual and/or gender deviance. LGBTI people are also frequently discriminated against through Acts, because of the sexual orientation and/or gender identity.

While the National Victim Empowerment Programme (VEP) and Minimum Standards for Service Delivery contained in the Service's Charter for Victims of Crime (Victim's Charter) provide a partial framework with which to address prejudice motivated crimes, service provider discrimination is an everyday reality.

This is especially the case for those victims/survivors who are perceived to differ from the norm.

The treatment of sexual and gender minorities as second class citizens serve as a barrier to accessing constitutionally guaranteed rights and services.

A hate crime is any incident that constitutes a criminal offence, perceived as being motivated, in whole or in part, by prejudice or hate.

Hate crimes constitute criminal acts of prejudice that are committed against people, property, organizations or society because of the group to which they belong or identify with.

Perpetrators seek to demean and/or dehumanise their victims whom they consider different from them based on their actual or perceived race, ethnicity, gender, age, sexual orientation, disability, health status, nationality, social origin, religious convictions, culture, language and other characteristics.

While all crimes have negative consequences for the victim, significant others, the community and society, a special case can be made for hate crimes because they seriously impact on both the individual victim and the larger community to which he or she belongs.

Since the plight of homophobic rape does not only affect the Justice Department but all the Criminal Justice System.

Verbal abuse is the most commonly experienced and least often reported form of victimisation.

Yet, in an exploration of factors affecting vulnerability to depression among the gay men and lesbian women included in this OUT/UCAP Gauteng study, lowered self-esteem and more frequent experiences of hate speech were significant predictors of vulnerability to depression.

Central to ensuring the right to equality, dignity and freedom for all South Africans is the assurance of equal and non-discriminatory access to services.

The South African legislative framework asserts that no one may refuse an LGBTI person a service or treatment, or provide them with inferior services/treatment due to their sexual orientation (RSA, 1996).

Non-discrimination on the basis of both gender and sexual orientation is similarly guaranteed in the Constitution (RSA, 1996).

Respect for the dignity and privacy of individuals, a cornerstone of service delivery policy in South Africa, can facilitate more sensitive and humane care for LGBTI people.

Q: What does LGBTI stand for?

A: L (Lesbian), G (Gay), B (Bisexual), T (Transgender) and I (Intersex).

Q: What is a lesbian person?

A: This is a female person who is sexually, romantically, mentally and emotionally attracted to other females (same-sex attraction).

Q: What is a gay person?

A: This is a male person who is sexually, romantically, mentally and emotionally attracted to other males (same-sex attraction).

Q: What is a bisexual person?

A: This is a male or female person who is sexually and romantically attracted to both sexes.

Q: What is a transgender person?

A: A transgender person is someone whose personal idea of gender does not correlate with his/her assigned gender role. A male can often feel "trapped" in a woman's body and visa versa. These people, although born with particular sex organs, feel that this is a misrepresentation of who they are. They are likely to undergo a sex change, using hormones and/or surgery.

Q: What is an intersex person?

A: An intersex person is someone with a congenital anomaly of the reproductive system. Intersex people are born with external genitalia, internal reproductive organs and/or an endocrine system that are different from most people. They are born with ambiguous sexual organs. It is incorrect to call them hermaphrodites.

Q: Is it true that whenever a gay/lesbian person approaches you it is always to propose sex with you?

A: No. This is an incorrect assumption. Just like all human beings they have a right to choose whom they are attracted to. Gay people won't be attracted to all men just because they are male, and lesbians won't be attracted to all women just because they are female. Not everything is about sexual attraction. They could just be trying to be friendly as any other person would.

Q: Are gay/lesbian/bisexual/transgender people mentally sick and do they have to be cured?

A: No. Homosexuality or being transgender is not an illness or a disorder. Being in this group is as much a human variation as being left-handed – a person's sexual orientation and gender identity are just part of who they are. There is nothing wrong with being an LGBTI person.

Q: Is it true that being lesbian or gay is "un-African" and a Western import?

A: No. There have been many studies and research to support that this has been around the world and in Africa for centuries. It was not necessarily called the names we call them today, neither was it openly expressed as it is today.

Q: Is it true that LGBTI persons are not religious?

A: This is not true. Many gay, lesbian, bisexual, transgender and intersex people are religious. Some religions may consider homosexuality a sin, but many churches, including many Christian churches, welcome and accept all people just the way God created them.

Q: Is it true that lesbian women want to be men and are "butch" in their built?

A: No. Lesbians do not want to be men. They are females who are attracted to other females. Lesbians, who appear to be masculine, do so because this is how they feel comfortable. There is a diversity of gender

expression among all women (and men), no matter their sexual orientation.

Q: If gay/lesbian people adopt children, will they make that child gay?

A: No. Just like a heterosexual couple, they will love and nurture that child. Just like any parents, they will explain to that child when he/she is old enough the nature of their relationship in relation to the broader society. The same applies if you have a father or mother who is an alcoholic or a smoker – that behaviour will not necessarily be adopted by the child as he/she grows older. Those parents will protect that child and accept what their child is regardless.

Q: Are homosexual people perverts, watch pornography and sexually abuse children?

A: There is no evidence to support this. Just like any heterosexual people, they indulge in adult sexual fantasies. There is no evidence to support that gay or lesbian people abuse children any more than heterosexual people. They are normal members of society.

Q: Are there gay and lesbian people that are scared to declare their status because they are afraid of being stereotyped and marginalised?

A: Unfortunately, yes. They may have different reasons but many are scared of being discriminated against at home, work and even in the broader society as a whole.

Q: Are gayness and lesbianism contagious?

A: No. It is not a disease or an illness. They are people just like everyone else and should be treated with the same dignity and respect that every member of society expects to be treated with.

Q: Should I ask a person if I suspect they are gay or lesbian?

A: This is seldom appropriate. Do not make assumptions of their sexual orientation as there are chances of offending people. They have a right to not disclose it if they wish. Many do declare their sexual orientation without being asked. We have to respect who they are.

Q: Can gay, lesbian and transgender people change their sexual orientation or gender identity?

A: No. Efforts to do so are not only unnecessary but most importantly, they are damaging. Research indicates that this does more harm than good. They should be accepted the way they are as they are not infringing on anybody's rights by being themselves.

Q: Do lesbians hate men?

A: No. Just because lesbians are sexually and emotionally attracted to women, it does not mean that they hate men or even dislike them. Many lesbians love men and are friendly with them.

Q: Are bisexual people promiscuous and do they have sex with anyone and everyone at all times?

A: No. Just because they are attracted to both men and women it does not mean that they are promiscuous and sleep around. Many bisexual couples are in committed lasting relationships.

Q: Do lesbian, gay and transgender people always indulge in unsafe sex?

A: No. This is an incorrect assumption. Just like many responsible heterosexuals, many practise

safe sex. There are many organisations that provide counselling and assistance to them on practising safe sex and give guidance to feel confident in who they are.

Q: Can one assume in a lesbian relationship that one of them is "the man" in that relationship?

A: No. Although some lesbian couples are butch/feminine together, both of them are clearly women. Neither wants to be a man nor acts like a man. This type of pairing is not the only evident coupling of lesbians. Women don't claim any "label" of being "the man" just because they are both women.

Q: If I, as a woman, kiss or have sex with a woman or if, as a man, I have sex with another man, does that make me a homosexual?

A: No. This does not automatically make you a homosexual. There are many heterosexual people who enjoy having sex with people of their own sex. It is the intention of the person over and above the sex. It is also an emotional, mental and romantic attraction. They would also want to do the things that "normal" couples do over and above the sex – for example, settling down, raising children together or be a couple in a relationship – that is what makes them homosexual.

Q: As a service-provider, how should I treat gay and lesbian people during the course of my duties?

A: They should be treated with dignity and respect just like any other person. Do not ridicule or be disrespectful to them. Their rights are protected in the Constitution of South Africa just as it is for the rest of society.

The Department of Justice and Constitutional Development endorses the rights of LGBTI people as human rights, which should be enforced and respected at all times.



Frequently Asked Questions on LGBTI

Lesbians, Gays, Bisexuals, Transgender & Intersex rights are Human Rights



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