

**Address by the Deputy Minister of Justice and Constitutional Development,  
the Hon JH Jeffery, MP  
at a webinar hosted by the Institute for Healing of Memories,  
20 July 2021**

Programme Director,  
Everyone joining us on the platform this afternoon,

Good afternoon and thank you for the invitation to participate in this very important discussion on the prevention of so-called “corrective rape” and discuss whether there are adequate legal frameworks to address the challenges of a hetero-normative society. A further question is whether corrective rape needs to be classified as a hate crime.

In addition, how do we change the mind-set of society with respect to homosexuality?

We know that the term “corrective rape” – or sometimes also called “curative rape” – was first used in South Africa in the early 2000s in relation to the rape of lesbians by heterosexual men, with a view to “correcting” or “curing” their sexual orientation.

Today the term is used more broadly to describe the rape of any person because of their sexual orientation, gender identity, gender expression or sex characteristics. And because the rape is perpetrated on this basis, it would automatically make it a hate crime.

And although the term itself may be come from our country, corrective rape is found in many countries, such as India, the USA and countries in the Middle East.

Last year, the Equality & Justice Alliance - which is a consortium of international organisations with expertise in advancing equality - released its report called *“Hate Crimes against the LGBT Community in the Commonwealth:*

*A Situational Analysis*” and found that the pervasiveness of physically and sexually violent homophobia and transphobia was apparent in all studies conducted across African Commonwealth countries.

As you know, South Africa has very progressive legal framework when it comes to equality and the protection and promotion of the rights of LGBTIQ+ persons, but it does not mean that our country is free of discrimination.

The National Task Team (NTT) on the Rights of LGBTI Persons was established in 2011 by the Minister of Justice and Constitutional Development with the aim of strengthening government’s ability to respond to the needs of LGBTIQ+ persons and to strengthen the capacity of civil society organisations to deliver related services.

The NTT comprises of various government departments, Chapter 9 institutions and civil society organisations. The NTT’s Rapid Response Team (RRT) tracks pending cases in the criminal justice system that have been committed against LGBTI persons and includes these cases in a tracking template.

The NTT met recently and was informed that as at the end of June, there are 42 pending hate crime cases on the template. Here in the Western Cape there are 9 murder and 3 rape cases on the template. Of the 42 pending cases, 30 cases are for murder and 12 are for rape.

Out of the 42 pending hate crime cases, approximately 29 hate crime cases were reported from 2020 to date. Of these 29 hate crime cases, 16 are on the court roll with remand dates with the remaining 13 cases still under investigation.

Eight cases have been finalized, some with significant sentences such as, e.g. life imprisonment for rape, 25 years imprisonment for rape, 25 years imprisonment for murder and 14 years imprisonment for rape. Some 14 cases have been closed as undetected due to a lack of evidence, but may be referred to the National Prosecuting Authority to review the dockets.

We know that one of our biggest challenges is that there is a gap or a disconnect between the legal position and reality.

Despite increasing legislative recognition and protection afforded to the LGBTIQ+ persons, we sadly live in a society that is still strongly homophobic. There are still, sadly, people in our society who continuously question or condemn the cultural, religious or social legitimacy of homosexuality.

Discrimination and violent attacks are often part of the daily life of LGBTI persons. We all know the tragic events involving the corrective rapes and murders of Eudy Simelane, Noxolo Nogwaza and Duduzile Zozo, to name a few.

The Prevention of Hate Crimes and Hate Speech Bill is currently before the Parliamentary Portfolio Committee. The Bill has not been passed by Parliament yet and many people ask why it is taking so long.

The Bill is not being processed by the Portfolio Committee at the moment. This is due to the judgments in the *Masuku* and *Qwelane* case matters, which were argued before the Constitutional Court some time ago, still being outstanding.

The definition of hate speech is a matter under consideration by the court and its outcome will be instructive to the legislative process. If the legislation is found not to be constitutionally non-compliant, then the time and resources put into deliberating on a Bill may be wasted if the Court determines an outcome that is not aligned to a Bill being deliberated upon.

I am confident that the Constitutional Court will give its judgment soon - which means that Parliament can proceed with the Bill.

In terms of the Bill a hate crime is regarded as *“an offence recognised under any law, the commission of which by a person is motivated by that person’s prejudice or intolerance towards the victim of the crime in question because of one or more of the following characteristics or perceived characteristics of the*

*victim or his or her family member or the victims association with or support for a group of persons who share the said characteristics -"*

What follows is then a list which includes gender or gender identity and sex which includes intersex and sexual orientation. It is important to note that Bill goes wider than the list of so-called "listed grounds" as found in the Constitution.

So simply put, raping a person because you believe they are a lesbian will be a hate crime.

The effects of a crime being regarded a hate crime is that a more severe sentence may be imposed. It also means that the Director of Public Prosecutions or someone they have delegated must authorise the prosecution; the prosecutor must consider the interest of the victim and the impact of the crime on the victim when dealing with sentence.

The Bill also contains an amendment to include a hate crime of "rape or compelled rape" within the ambit of minimum sentences as provided for the Criminal Law Amendment Act.

It is also important to highlight other pieces of legislation or draft legislation which may further strengthen our response to rape and forms of sexual violence. For example, many of you may be familiar with the three new GBV Bills which are currently before the National Council of Provinces. One of these Bills, the new Criminal and Related Matters Amendment Bill provides for minimum sentences to be imposed in certain circumstances of rape.

But no law can ever be a panacea to rid society of *all* forms of discrimination or hate. We know that there is only so much that one can do by way of legislation. You cannot pass a law that will guarantee that people change their attitudes and prejudices.

We can have the best laws, but our real challenges are in implementation and in changing societal attitudes in our communities.

Our Department is working closely with civil society organisations and religious institutions to combat all forms of gender-based violence as part of our Under the Tree Dialogues, where we speak to men and boys and try to address issues of toxic masculinity and patriarchy.

On-going training and sensitization of front-line staff remains crucial.

I must also highlight the work being done by the Department of Basic Education to combat bullying in schools, and in particular homophobic bullying.

There is a DBE guide which explains what homophobic bullying is and what teachers, learners and parents can do to make schools safer for all learners. It provides clear steps that teachers and learners can take in challenging homophobic bullying in schools and makes it clear that reducing violence and homophobic bullying in schools is not only possible, but indeed benefits all learners and the school community as a whole.

These are all important interventions in changing societal attitudes.

Changing societal attitudes is the only way to ensure that persons are not victims of violence or discrimination in their daily lives on the grounds of their sexual orientation, gender identity, gender expression or sex characteristics.

So we know that what we need to do is two-fold: have the laws in place, but at the same time we need to work at changing societal attitudes. We need to focus on both legislative interventions, as well as non-legislative interventions.

We need to be advocating just as much for acceptance and respect as for legislative change.

I thank you.