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## **WOMEN'S JUSTICE AND EMPOWERMENT INITIATIVE**

### **REPORT ON THE PROCEEDINGS OF THE SECOND ANNUAL SEXUAL OFFENCES INDABA**

**MAY 18-20, 2009**

**Submitted July 31, 2009**

This publication was produced for review by the United States Agency for International Development. It was prepared by RTI International.

# **Women's Justice and Empowerment Initiative (WJEI)**

Report on the Proceedings of the Second Annual Sexual Offences Indaba, May 18-20, 2009  
USAID Contract Number 674-C-00-08-00071-00  
RTI Contract Number 0211905  
July 31, 2009

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# 1. BACKGROUND

South Africa faces a globally unprecedented burden of morbidity and mortality from violence, injuries and sexual offences. Sexual offences constitute more than 20% of the cases within the criminal justice system<sup>i</sup>. Women, children, youth and people with disabilities are reportedly the highest risk group vulnerable and susceptible to sexual offences. South Africa also faces an overwhelming problem of gender-based violence a reflection on the massive violation of the human rights of women and girls and one of the key drivers of the HIV epidemic amongst women and children. For men, the constructions of masculinity which are predicated on gender hierarchy and valorise toughness and risk taking are a key driver of the problem of gender-based violence, as well as the related problem of HIV<sup>ii</sup>.

Research findings from various studies conducted nationwide indicate that 73% of men who will rape do so within the first 20 years<sup>iii</sup>, a phenomena that is an indictment to human and individual safety and security issues, social and the criminal justice system. This does not only highlight the magnitude and increasing scale of the problem but also points to the link/synergistic relationship that exists between HIV, AIDS, sexually transmitted infections (STIs), mental health, alcohol and substance abuse, violence and sexual assault. In addition poor public health, criminal and social justice processes subject survivors to secondary victimisation and further trauma.

In Gauteng (GP) in 2003, of the one in thirty (1: 35) rapes reported to the police the majority of the case were of children aged from 1 to 3 years<sup>iv</sup>. This once more reflects on the gravity of the public health problem and the inherent risks thereof on clinical, psychological, emotional, physical, mental health status of the survivor. Consequences of violence and sexual assault range from poor /deteriorating health status, alcohol abuse, depression, HIV infection, unwanted pregnancy. Poor access to qualitative comprehensive health care and criminal justice services by most survivors, given the high prevalence of HIV, sexual assault and violence nationwide can be attributed to the poor reporting of such cases.

Furthermore, despite the existence of progressive legislation, policies and frameworks within South Africa individuals, society, communities, government and civil society service providers and law enforcement agencies tasked with implementing and recognition of such human rights are still plagued with prejudice, stigmatization, discrimination and poor service delivery instead are perpetuating and promoting gender injustices *viz.* Gugu Dlamini who was stoned to death for having disclosed her HIV status, *etc.*

It is against this background that the InterDepartmental Management Team (IDMT) has since 2008 undertaken annual Sexual Offences Indaba (SOI) with a view to share multidisciplinary interventions in the fight against gender injustices. Herewith being discussed is the report on the proceedings of the second annual SOI held at the Emperor's Palace, Gauteng from 18 -20 May 2009.

## 2. OBJECTIVES

- a) To review progress on the implementation prevention, response, support, monitoring and monitoring of programmes on sexual offences;
- b) To strengthen intersectoral coordination and cooperation structure and mechanisms and joint planning;
- c) To consult and plan with stakeholders on the roll out of the multidisciplinary services within the Thuthuzela Care Centres (TCCs);

- d) To confirm priority areas and identify new areas for the roll out of the TCCs and
- e) To identify champions.

### **3. NATIONAL OVERVIEW OF SEXUAL VIOLENCE MANAGEMENT AND PRIORITISATION**

The opening and welcome address was delivered by the acting Chief Executive Officer (CEO) for the National Prosecuting Authority (NPA). Reference was made to the fact that sexual offences constitute more than 20% of the cases within the criminal justice system. Through the indaba, a call was made by the CEO to ensure that the deliberations ensured sharing of experiences beyond the criminal justice system on a multidisciplinary approach in dealing with sexual offences, violence and human trafficking.

#### **3.1 Purpose of 2009 and Alignment to 2008 Indaba**

The Special Director: Public Prosecutions (SDPP) – Sexual Offences and Community Affairs (SOCA), Advocate Thoko Majokweni unit presented the purpose of 2009 Indaba aligning it with the previous year's Indaba. The SOCA proclamation that guides the operations of SOCA through development of prosecution mechanisms, maintenance, child justice, domestic violence and sexual offences was outlined. Guided by the six principles in good governance the following were identified as the purpose for Indaba:

- the creation of a collective understanding of the purpose of the collaborator to achieve high levels of good governance in managing gender based violence and sexual offences amongst women and children;
- Performing effectively within agreed principles about clearly defined parameters, functions and roles in development and implementation of strategies; interventions aimed at accelerating protection, response, monitoring and evaluation mechanisms of programmes addressing gender injustices and
- Establishment and promotion of the values of partnership by strengthening coordination and cooperation mechanisms and structures with stakeholders through consultative and participatory approaches;
- Consolidation and mapping out of the roll out plan for new TCCs, and maintenance plan for existing 17 TCCs and
- The roll out implementation plan on prevention, response, monitoring and evaluation of the 365 Days National Action Plan (NAP).

#### **3.2 Message of Support from USAID**

On behalf of the USAID mission for Southern Africa, Gary Juste, Deputy Director; USAID Southern Africa delivered the message for support which reiterated that the indaba meant discussion of a serious topic. . Indeed, the subject of “combating and preventing violence against women and children” is important to this country’s safety and security<sup>v</sup>. The most important aim is to enable women and children to enjoy their fundamental human rights. International experience from USAID development work, Africa as well as on other continents, including Russia demonstrate the similarities that plague most of these countries grappling to improve the well-being of their citizens. One of the common dilemmas reflected being cultural and gender exploitation that fuels abuse and violence. However USAID deals

with each country uniquely in a coordinated response to address and end domestic violence. USAID has a long-standing partnership with the South African Government to strengthen the country's response to eliminate violence against women and children, and to help victims to cope with their traumas. The Women's Justice & Empowerment Initiative (WJEI) is one of USAID's key programmes in the fight against gender injustices. This Indaba is a reflection on the commitment to deal effectively with South Africa's serious problem of sexual and gender-based violence. The purpose of the indaba therefore can be outlined as follows:

- To reflect on the progress South Africa has made in dealing with sexual and gender- based violence;
- To identify and address persisting challenges in a frank and collaborative manner, recognizing that we all have a role to ensure the success of this Program;
- To share our respective knowledge, concerns and best practices, and
- To begin developing a feasible and sustainable plan to dramatically increase the level of services available to victims of violence. Part of this goal will be realized by expanding and strengthening the South Africa's Government's Thuthuzela Care Centre (TCC) network.

As a partner of the Thuthuzela initiative, USAID recognises the importance of the Indaba to lay the groundwork for a successful national roll-out of such facilities and services. This forum provided a unique opportunity for stakeholders to come together to discuss their needs, concerns and action plans with a view to strategise issues such as resources, governance, sustainability and collectively identify specific sites for the next phase of the roll-out and agree on a strategy to take the program forward.

Through the WJEI program

- access to services would be improved by rolling out multidisciplinary services within existing and upcoming TCCS;
- increase quality of care for victims /survivors through improved quality and consistency of services, and
- Ensure sustainability through capacity development of stakeholders.

Thus through the Indaba different partners would plan together and share best multidisciplinary services approaches in dealing with sexual offences. Thus this is a unique opportunity to share such experiences.

### **3.3 Message of Support from Danish Government**

The occasion was referred to as an opportunity to demonstrate commitment to care and support. The following partners were acknowledged government, civil society, Danish government, UNICEF.

### **3.4 Message of Support from InterDepartmental Management Team**

On behalf of the Interdepartmental Management Team (IDMT), the Deputy Chair – Mmabatho Ramagoshi delivered the message of support. Through programmes, the IDMT ensures that victims and survivors of gender based violence are treated with dignity by adopting a multi-disciplinary approach in providing services. The IDMT consists of the

following departments Justice and Constitutional Development, National Prosecuting Authority, Social Development, South African Police, Correctional Services, Treasury, Health and Education. Other partners include South African Broadcasting Cooperation (SABC), civil society organisations, Religious and Traditional Leaders.

The approach adopted by the Team is anchored on the following three pillars namely prevention, reaction and support. Different Departments lead/work together in implementing programmes guided by the 365 Days National Action Plan.

The following achievements have been noted regarding the fight against gender injustices:

- Integrated training domestic violence manual,
- Sexual Offences training manual,
- Research Why men rape
- UN study on violence against women and children of 2006 in which the UN SG Kofi Annan referred to the South African multidisciplinary model as the best practice model - TCC model. The model has since been adopted in Chile, Mozambique and to be started in Vienna.
- Risks and threats of children being pimped and trafficked during the upcoming Confederations Cup in June 2009 and other international events such the 2010 Soccer World Cup, Cricket, *etc.*
- Sexual offences training-the first time ever training of first responders like 10111, CPU, Front line Officers at the Family Violence Child Protection Sexual Violence Unit, the investigations and detection of sexual offences-Partnership with the Women Justice Empowerment Initiative (WJEI) funded by the UN government and
- Strategy to assist government to deal with Trafficking in Persons (TIP).

The Department of Justice and Constitutional Development (DoJ & CD) is the lead Department on gender justice issues and the Minister reports quarterly on progress in programmes aimed at eradicating gender injustices to Parliament. A clarion call was made by IDMT to the Minister of DoJ & CD to invite the following Ministers to participate in the Inter Ministerial Committee (IMC) of Gender Justice – South African Police (SAP), Social Development, Correctional Services, Health, Treasury, Communications, Local Government and Traditional Affairs. In addition to give a directive to the IDMT to submit quarterly progress report and resource the program appropriately. Presently, programs are donor funded instead of fiscal funding.

The challenge with response programmes since there is a lot of recidivism there is an urgent need to set an InterMinisterial Committee, replicate and strengthen the IDMT structure at provincial and local level and ensure effective rehabilitation programmes of offenders. In addition the IDMT needs to ensure that the 365 Days National Action Plan (NAP) is a reality and not only during 16 days of Activism, has streamline all programmed that support victims / survivors of gender based violence.

The following recommendations were made to be tabled to the Minister of DoJ & CD:

- Establishment of the National Committee on Gender Justice consisting of government, civil society, business, religious and traditional leaders. The Committee to consist of all the Ministers together with the other partners identified;
- The Minister of Justice and Constitutional Development to be the Chairperson with the partners occupying the Deputy Chairperson position;
- The IDMT to report quarterly to this bigger Forum;
- The National Commission on Gender Justice to meet quarterly and
- Provide common funding for GBV that should benefit both Government and Civil Society.

The conclusion was that IDMT had to give the Minister the full brief and to request the Minister to support and be the champion of gender justice programmes in SA to protect women and children.

### 3.5 Keynote Address

The keynote address was delivered by the Acting National Director: Public Prosecutions, Advocate Mpshe who referred to women as givers/providers of life, grandmothers, wives, sisters and friends to a multitude of others. Yet, they are losers of life - through the daily scourge of rape, sexual and domestic violence perpetrated in South Africa as many women and girls innocently walk to the shop, walk to taxi ranks to catch buses to go to work or school, or forget to lock themselves behind the doors of their own homes. Thus they are not safe at work, school or home which is a tragedy. Increasingly men and young boys, as well as homosexuals, are coming forward – encouraging – yet perplexing as one is safe from this very personal and humiliating crime.

The number of rapes reported in South Africa remains high while there are still a large percentage of unreported rapes. While this can be blamed on history, oppression, emasculation, and substance abuse or excusable, it is critical to be mindful of the emerging threat of trafficking in persons -young women and children as 2010 looms. A question directed to the participants was whether women and children would ever be set free by making environments safe for them even during the evening. The inability to make environments safe for children and women is an indictment to society and communities and also a reflection that there are a lot of wrongs whether reported or unreported due to intimidations, threats and imposition by adults to these children.

The commitment of government to make South Africa safe for all is evidenced by pieces of legislation like the Criminal Law (Sexual Offences and Related matters) Amendment Act, No 32 of 2007 which ensures that rape and trafficking are comprehensively and judiciously handled within the criminal justice system *for example* through:

- repealing the common law offence of rape and replacing it with a new expanded statutory offence of rape, applicable to all forms of sexual penetration without consent irrespective of gender;
- aiming to address the particular vulnerability of children and persons who are mentally disabled in respect of sexual abuse or exploitation;
- affording a victim of certain sexual offences the right to require that the alleged perpetrator be tested for his or her HIV status;
- making interim provision relating to the trafficking in persons for sexual purposes. This legislation serves no purpose 'real piece' of legislation for SA's 48 million. It is therefore the duty of this forum to develop strategies to combat this scourge amongst women and children, to assist to realise government's vision through the implementation of Sexual Offences, Domestic Violence and Children's Acts. These pieces of legislation have to be made effective and realisable through a forum of this nature. There is also a need to create structures that make us accountable to each other for instance when convictions are made sentences should be commensurate to the offences committed. The following examples of cases were cited *viz.* A 16 year old Howick rapist was jailed for 15 years by the Pietermaritzburg High Court on Tuesday last week, after he pleaded guilty to three rapes. Acting Judge Rose Mogwera said the 23 year old victim and her bother, which had to watch his sister's gang rape, would suffer psychologically for the rest of their lives.
- especially although convictions are made, the sentences are not commensurate to the offences committed. It is necessary therefore to ensure that sentences

send a clear message to perpetrators and prospective perpetrators. The ability of the gender justice programmes to deal with feminisation of HIV and AIDS and gender based violence in dedicated sexual offences courts and designated multidisciplinary facilities in order to ensure safe environments for the children and women. The DPP WC made a call to initiate coordination and cooperation mechanisms with the Minister of Women, Children, Youth and People with Disabilities and DoJ & CD. DPP EC emphasised the need to communicate properly, poor reporting of sexual offences attributable to slow processes/challenges within the courts due to capacity issues within the prosecutors, investigators and medico-legal evidence. A call for capacity building within the different departments.

## **4. CONTEXTUALISATION OF SEXUAL VIOLENCE IN SOUTH AFRICA**

### **4.1 An Overview of the Challenges of Violence against Women and Rape and their Links to HIV**

The Director from the Medical Research Council for Gender & Health Research Unit & Secretary of the Sexual Violence Research Initiative (SVRI), Prof Rachel Jewkes presented an overview of the challenges of violence against women and rape and the link with HIV. South Africa faces a globally unprecedented burden of morbidity and mortality from violence and injuries. The latter is the second leading cause of death in the country (after HIV) and the leading risk factor after unsafe sex for loss of Disability Adjusted Life Years. The rate of female homicide by an intimate partner is six times the global average, with a woman killed every 6 hours by her husband or boyfriend. Twenty five percent (25%) of women in general population and in 40-50% in targeted studies have been a victim of physical intimate partner violence.

Research findings report that over 40% of men have perpetrated violence against a female partner and 73% of men who will rape do so within the first 20 years. In Gauteng during 2003, 1 in 35 rapes reported to the police were of children within the ages 1 to 3 years while 40% of all rapes reported to the police are of children under 18 years and 15% are of children under 12. 40% of all rapes reported to the police are of children under 18 years and 15% are of children under 12.

There is compelling evidence that women who are abused and men who abuse are more likely to have HIV. Women who have experienced physical/sexual intimate partner violence are 54% more likely to have HIV<sup>vi</sup>. Men who have perpetrated physical/sexual intimate partner violence are more than twice likely to have HIV (adjusted Odds Ratio 2.23)<sup>vii</sup>. This highlights not only the magnitude of the problem but also the sociological link between HIV, AIDS and violence.

Consequences of gender based violence either sociological or healthwise are massive *viz.* poor health, alcohol abuse, depression, HIV infection, mental health. Social dynamics underpinning the problem of violence against women and children are poverty and inequality. The latter is inseparably linked from other dynamics *viz.* economic development, social stratification, conflicts, *etc.* Research on 63 countries shows South Africa has the worst income inequality and homicide rates of any of these countries. Thus income inequality and unemployment were more consistent correlates of homicide than any other indicator across the countries.

Childhood and intergenerational cycling of violence through exposure to violence during childhood predisposes and makes both boys and girls susceptible to violence and abuse and simultaneously increases the risk of abuse as adults.

There are two hypothesised key pathways from gender based violence to increased HIV positivity in women the direct through rape, traumatic sex, violence) and an indirect pathway via gender power inequity relationships which reduces protective powers, altered sense of self, substance use and abuse. South Africa has the highest per capita alcohol consumption levels per drinker in the world and the majority of perpetrators of sexual violence are very often drunk. Altered sense of self also predisposes victims/survivors, reduces the women's ability to leave violent relationships and enhances risks of re-victimisation. Furthermore the rate of fire arms deaths which are preventable nationally is the reported to be highest in the worldwide. Constructions of masculinity that are predicted on marked gender hierarchy and valourise toughness, bravery and defence of honour readily translate into risk-taking and a readiness to use violence in conflict or to assert power. This results in a huge burden of violence and death from violence between men as well as the burden of violence against women. A gender transformative programme for HIV prevention and response that aims to improve sexual and reproductive health through building stronger, more gender-equitable relationships using participatory multidisciplinary approaches and emphasising critical reflection and skills building is critical to fight the scourge.

#### **4.2 The Feminisation of HIV and AIDS and its Links to Sexual and Gender Based Violence**

The African Union Goodwill Ambassador and Champion for the Improvement of Maternal and Child Health in Africa beyond 2015, Dr Manto Tshabalala-Msimang said that the issues of Sexual and Gender Based Violence as well as HIV and AIDs are very important because of the way they negatively affect the very fabric of our society. Some of the predisposing factors to both HIV infections and Gender based violence are similar.

Issues such as the unequal status of women and girls in society, poverty and unemployment, illiteracy and the patriarchal society are some of the underlying predisposing factors to both violence and more risk to HIV infection. Such socio-cultural and economic shortcomings end up denying women full enjoyment of their human rights. Violence itself is a great risk factor to women and girls getting infected with HIV.

It has been observed that HIV and AIDS tend to affect more women. Statistics show that more women get infected partly because of their biological make up. According to UNAIDS the male to female spread of HIV infection is 4 times more efficient than the female to male infection. This unequal spread is also aggravated by the unequal gender relations which disempower the women and girls from negotiating safe sexual and reproductive practices and taking decisions with their own bodies. This exposes women to infection with HIV and if they attempt to demand safe sex they are sometimes sexually violated and physically abused. This implies that unless the issue of gender inequality is addressed through change of behavior of both boys and men, the violence that we see may not abate so easily. It is unfortunate that if young children grow up in an environment of violence they begin to accept it as normal behavior and then perpetuate it. It is critical therefore that the cycle of violence be broken through early grooming of children to know the correct behavior.

When relatives and family members are ill from AIDs or any other illnesses it is often the women and girls as primary care givers that care for the ill person. In fact the theme of the 53<sup>rd</sup> UN Commission on the Status of Women was on equal sharing of tasks between women and men as it relates to HIV and AIDs. Many women and girls have missed opportunities to develop themselves and live better lives because they are busy with caring

for other members of the family. This result in them being dependent on their partners for their daily needs and survival .They are therefore put at great risk of being violated and abused. It is critical that sharing of responsibilities in the family should become the norm even before there is illness. There needs to be greater efforts at narrowing the gender disparities.

The disproportionate spread of HIV infections among women and girls is also a human rights issue. Many countries in the developing world do not have specific laws to empower women. Even those which have them have a challenge with enforcement. This is partly due to the difficulty in regulating and legislation human behavior. Some of the Socio -cultural beliefs still perpetuate harmful practices which demean women and girls. It is necessary for all stake holders to take an active part in this moral regeneration to stop the violence against women and children and also reduce the risk of HIV infection among women.

The recent interest in collaboration to address the harmful practices such as the abduction and forced early marriages (ukuthwala) which still exist in some areas of this country is worth pursuing. In this regard one hopes that we shall not lose momentum in addressing this issue and protect girls so that they can develop in a healthy environment.

As a country the Constitution has enshrines equality regardless of gender, race and class. There are good legislations and policies which safeguard the human rights of women. However there is still a challenge of harmful practices in some areas such as the high incidence of rape. However, the ongoing poverty and under development remains a strong catalyst to the negative behavior of sexual and gender based violence against women which continues to plague the country and continent. However acknowledgement of the good work which has been done in safeguarding women's rights by the many organisations in the country and also the establishment of places of safety like the Thuthuzela Care Centres are worth recognition.

On a bigger scale the issue of conflicts aggravates women's risk to the exposure to sexual, gender based violence and HIV. Peace and conflict resolutions are therefore critical to protect women and children from exposure to these social ills.

In addition the task as an AU Goodwill Ambassador and Champion for the Improvement of Maternal and Child Health in Africa will be naught if the issues of poverty, violence, gender disparities which expose women and girls to increased risk of HIV Infection are not addressed. It is in the interest of the whole of Africa that these issues are addressed in a holistic manner. A lot of advocacy is needed so that there can be change in behavior. Governments, civil society, the private sector, traditional leaders and faith based organisations all need to work together to stop this feminization of HIV and the Gender based violence in our society. If not addressed holistically, it continues to threaten the efforts aimed at having a free, loving and empowering environment within which our women and children live. It also robs the country of their valuable contribution. As Africa strives to achieve the Millennium Development Goals together with the rest of the world; let us speak out about some of the ills that threaten society.

All participants in the Indaba were encouraged to be involved in one way or another in safeguarding the rights of women and allow them to enjoy freedom and good health which they deserve. Condoning the status quo with our silence will not help. Prevention strategies must address the wide range of gender inequalities that promote the dissemination of HIV.

Together women and girls could be freed from the fear of violence and abuse as well as empower them with strategies to prevent infection with HIV. Let the men continue to take an active role in this campaign to empower women and girls.

## 5. MILESTONES TOWARDS PREVENTION OF SEXUAL VIOLENCE

### 5.1 Tsireledzani! *prevent, respond, and support*: South Africa's approach to human trafficking

The National Coordinator: Tsireledzani Programme, Malebo Kotu-Rammopo of the National Prosecuting Authority presented the South African approach to trafficking in persons (TIP). The South African government as a signatory of several international agreements is obliged to counter and prevent the problem of trafficking in persons which is a form sexual and gender based violence. These agreements include the Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children (Parlemo Protocol<sup>viii</sup>), supplementing the United Nations Convention Against Transnational Organised Crime of 2000, and the International Labour Organisation (ILO) Convention 182 on the Worst forms of Child Labour. The following are obligations of ratifying States *viz.* criminalise trafficking, investigate, prosecute and convict traffickers and undertake border control measures. Furthermore in accordance with the means of each State provide measures to protect & assist victims, train law enforcement and border officials, inform & educate victims, potential victims & general public and cooperate with each other and civil society as per resolution of the United Nations Conference of the Parties to the Convention – Vienna, 8 to 18 Oct 2008.

In 2003, the National Prosecuting Authority (NPA)'s Sexual Offences and Community Affairs (SOCA) unit established an intersectoral task team on human trafficking made up of several government departments namely the South African Police Services (SAPS), Departments of Social Development (DoSD), Justice and Constitutional Development (DoJ & CD), Home Affairs (DoHA), Correctional Services (DoCS), Health (DoH), Education (DoE), National Intelligence Agency (NIA), organised crime units, the IOM, International Organisation on Labour (IOL), the United Nations Office of Drugs and Crime (UNODC) and civil society through a number of non-governmental, community based and faith based organisations (NGOs, CBOs, FBOs). The SOCA unit has since established a sectional unit the Programme Coordinating Unit (PCU). The latter is the implementing agent for the programme of assistance to the South African government to prevent, react to Human Trafficking and provide support to victims of the crime since December 2007 to December 2010. The programme is donor supported by the European Union (EU).

The programme has the following strategic objectives:

- Make people less vulnerable to being trafficked;
- Rescue more victims and better protect them;
- Track, disrupt and punish perpetrators more successfully;
- Mainstream trafficking into work of all Departments;

In order to deepen the understanding of TIP, a research study has since been commenced from 1 March 2009 to determine the extent of Trafficking/Vulnerable Groups, Drivers, Perpetrators, Beneficiaries; a Reference Group has to be established and Research Findings would be presented on a National Conference. As means of strengthening coordination and cooperation mechanisms and structures, the following activities have been undertaken *viz.*:

- A national conference was held in Durban from 25 to 27 March 2009 which culminated in the development of National Action Plan;
- Support to National Task Team by the NPA, DoJCD, DoHA, DoSD, SAPS, DoL, IOM, UNODC, Molo Songololo; consultative forum meetings are frequently being

hosted with interested stakeholders, e.g. other departments, NGOs & Foreign Missions) has been strengthened;

- Establishment of KZN Provincial Task Team while other provincial task teams viz. Mpumalanga, Limpopo, Western Cape, Free State, Gauteng and Eastern Cape have been prioritized;
- An expert Response Team for case management through the Southern African Immigration Liaison (SAIL) and the Secretariat for Programme Steering Committee consisting of NPA, DoJCD, Safety & Security, DSD, DoE, DoH, DCS, National Treasury, DHA, DoL to be formed and
- The Regional Conference to be held in Johannesburg from 13 to 15 July 2009 to deliberate on Regional Co-operation Mechanisms, share best practices and targeted Regional interventions.

Capacity building and development are critical in the fight against TIP

Interim Training Workshops nationally (July to Dec 2008)

1 048 officials from DHA, SAPS, NPS (NPS, DSO, AFU & WPU), DSD, DoH, Civil society and Media trained on IOM material;

Curriculum Development; Focus Groups for curriculum development at and National Provincial sites

Monitoring and Evaluation of trainers from July 2009

Status Quo;

Focus Groups for curriculum development held at national Determination of provincial sites

Legal NGOs Workshop – Johannesburg, 17 to 19 March 2009;

Seven ad hoc workshops (until Aug **2009**);

The process of developing South African legislative frameworks specific to countering human trafficking is in a relatively advanced stage. In partnership with the abovementioned government departments, Chapter 9 institutions, business and civil society are developing strategies and measures that address prevention, response, support, monitoring and evaluation of human trafficking. Such strategies are guided by human rights, social justice, child care, maintenance, domestic and gender based violence, public health particularly HIV and AIDS, individual and human security, socio-economic, political issues and gender based injustices in relation to governance, democracy, power relations and decision making.

A conference on Human Trafficking has since been undertaken in Elangeni Hotel, Durban from 25 –27 March 2009 whose theme was “**Tsireledzani** (meaning **Protect**) South Africa against Human Trafficking”. The following sub-themes which resonate with sexual offences, social ills and risks to HIV infection guided plenary and group discussions during the conference proceedings:

- Prevention,
- Support (Victim Empowerment, witness protection and Offender Reintegration) and
- Response (Investigation, Prosecution, Mutual Legal Assistance and Asset Forfeiture).

The national conference proceedings culminated in a framework of an integrated Action Plan on Human Trafficking. The following have since been identified as critical for the human trafficking project viz.

- Identification of human trafficking persons pathways through research;
- Development of information systems either passive or active surveillance systems to improve reporting mechanisms and processes;
- Training/ Capacity Building;
- Gender Issues;
- Coordination and cooperation mechanisms through PCU to ensure establishment of Provincial, District, Local, Traditional and Civil Society Coordination Structures
- Public Awareness and education and
- Research to inform and guide legislative processes and interventions.

A regional conference is scheduled to take place from 13 – 15 July 2009.

## **5.2 Consolidated Departmental Priorities**

The Programme Manager for Response, Ntomboxolo Bikitsha presented the consolidated departmental priorities.

## **5.3 Pilot TCC Information Management System (TIMS)**

The Programme Manager for Monitoring and Evaluation, Esther Maluleke presented the Thuthuzela Information Management System (TIMS). This is an information management system which combines medical data, psycho-social information, and legal case information on survivors/victims based on existing holistic Monitoring and Evaluation (M&E) system of the Southern Hemisphere and the audit conducted by ECI Africa on compliance with National Protocol for Post Exposure Prophylaxis (PEP).

The data system is easy to use: Data is entered into a web browser which is similar to using Google – but deeper. One can either search for patient information, or view detailed patient records. Through the network data can periodically be sent to Sexual Offences and Community Affairs (SOCA) unit. The system is very reliable even if Internet connection is down, one may still perform data entry and view records. In addition the system is very secure – logging in is with a username/password.

The following targets in terms of developing the system have been agreed upon viz.

- Pilot site 1 deployment in June 2009;
- Pilot site 2 deployment in July 2009;
- Pilot evaluation, training programme preparation from September 2009 to February 2010 and
- Begin deployment in March 2010.

The data system is currently under development and captures data for the following areas:

- Rape survivor contact information (demographics);
- Intake (Intake, Relevant Medical information, Incident Details, Case Report Request);
- Docket (Non-Arrest Docket, Arrest Docket, Further Appearance, Case Finalisation);
- Information about the perpetrator
- Referrals
- Consultations and
- Court Preparation.

Information from TIMS feeds into operations, enterprise management and governance at the NPA. Furthermore the data will help the NPA see how well the TCCs operate and to determine future resource identification and identify gaps to determine resource expenditure which informs optimal capacity utilisation.

Reports that can be generated from the data system would reflect on external referral records, record the number of survivors who underwent court preparation, staff register – report on staff training, Statistics, number of rape cases, number of cases that received PEP, stakeholder coordination and case manager reports. Training requirements to use the data system entail basic PC skills and familiarity with a web browser.

## **6. RESPONSE PROGRAMMES TO GENDER BASED VIOLENCE**

### **6.1 Sexual Orientation, Gender Identity and Violence - Gay and Lesbian transgender hate crimes**

A presentation on Gay and Lesbian transgender hate crimes which reflected on some of the experiences of many women and transgender people in particular in South Africa was delivered by Phumi Mtetwa from the Lesbian and Gay Equality Project (LGEP). Since the late 90s organisations like the LGEP, has been documenting and challenging what is now commonly called *Hate Crimes* across the country.

The United Nations Interrogational Crime and Justice Research Institute defines Hate Crimes as: “Threats or acts of violence directed against an individual or group pertaining to a category of persons perceived by the perpetrator[s] as having unacceptable characteristics beliefs, values or lifestyles”. Hate crimes, therefore, have been broadly defined to include those motivated by animus [a feeling or display of animosity] on the basis of the victim’s race, religion, ethnicity, gender, sexual orientation, mental and physical disabilities, or other similar forms of discrimination<sup>ix</sup>.

In South Africa, hate speech and crime is recognized only if it is racist and perpetuate racism. There are fifteen hate crimes known to the LGEP since 2004. Four shocked the nation as they were reported by the media:

- Zoliswa Nonkonyane, 19 yrs old, stoned to death in Khayelitsha, Cape Town in early 2006;
- Sizakele Sigasa and Salome Moosa, in their early 30s, raped and shot to death on 7 July 2007, in Meadowlands, Soweto;
- Eudy Simelane, 31yrs, suspected to have been raped before being stabbed to death over 20 times in Kwa-Thema, Ekurhuleni, in April 2008; and
- Desmond “Daisy” Dube, a drag queen, shot dead for being *isitabane* in Yeoville, Johannesburg, in June 2008.

There are a number of known people who survived murder and are brave to tell of the horrific experiences and circumstances of their near death experiences. Unfortunately, it is still difficult to open a criminal case against the perpetrators, even if they are known to the victim/survivor. Why?

Out of the four (4) hate crimes perpetuated against lesbians/gays that made to the public, only two (2) cases have made it to courts, but not without difficulties. Most of these cases do not get reported, investigated nor undergo prosecution due to a number of reasons *viz.* prejudice - the Police Services’ setting is still hostile to victims/survivors of sexual violence

generally, and particularly to people who don't appear as "they should". In addition, the investigations often delay the criminal justice procedures, with reasons attributed to shortage of resources. Some activists have also argued that the profile of the case determines the extent or priority it will be given. Other challenges within the criminal justice are evidence collection, recording and reporting particularly, forensic evidence to determine sexual assault / rape. The courts also cite case overload as reasons for delays, leading to repeated postponements, even when the case is at a stage where evidence can be heard and judgment rendered.

In South Africa, as it may be true for others as well, despite the progressive legislation that recognizes sexual diversity, many, especially those tasked with safeguarding rights, still do not understand the meaning of our laws and / or refuse to honor their responsibilities when it comes to LGBTI people because, among other reasons, of continued prejudices.

The approaches used working to eliminate all forms of violence, require an added understanding that further questions our own understanding of gender and sex, both as social constructs and biological assignments. The great contribution of the women's movement in introducing "gender" as an important aspect of understanding inequalities, femininity, masculinity and societal constructions should be acknowledged.

To date sex classification still refers to male and female and assumes there is nothing else that exists. Such statements alienate and refuse to recognize the existence of intersex people - people born with full or partial genitalia of both sexes, or with underdeveloped or ambiguous genitalia, or with unusual hormone or chemical combinations. In an interview with Intersex South Africa – an NGO concerned with the rights of Intersex people – it is estimated that at least 1 in 2 000 [there is no proper registration in South Africa] intersex baby is born nationally. Coupling this figure with the total number of babies born, this reflects on the high number of intersex babies born and the levels of violation of their rights to choose a sex cannot be described.

The other important point I would like to make is related to gender roles, and this is quite evident in the unfortunate deaths of black lesbians in the last few years. Preliminary findings from a study conducted by the LGEP with other partners and Human Rights Watch, due for release towards the end of the year, indicate that black lesbians who have been victims of rape and murder, majority known to have lived as out lesbians, were attacked because of the way they dressed, walked, talked and 'performed male', as the most evident feature as opposed to who they consensually sleep with. That is, they transgressed the traditional gender role of 'a proper woman', 'wanting to be man', as one witness in a case stated, and thus 'needed a lesson' so as to not behave as a man. Although the majority is lesbians, it is also true that others were attacked because they were perceived to be lesbians. So, gender identity and presentation is an aspect that must be taken seriously, particularly in the investigation and prosecution of these crimes.

It was unfortunate to hear at the rendering of a judgment recently that neither sexual orientation nor gender identity had anything to do with a brutal murder of a lesbian woman, despite the evidence before the court, showing identity as having been an aggravating factor.

The other aspects not to shy away from are related to race and ethnicity, particularly in how they reinforce stereotypes that can lead to the commitment of violent crimes. If society, communities and the criminal justice continue to ignore the signs, and only singing to the tune of our rainbow nation, we will not meet the goals of out-rooting violence and prejudice in our communities.

The truth is that the hateful crimes we have to deal with occur mostly in black townships, often when tracking back the steps of the victims they often start at a tavern or a bar. Additionally, in the two cases currently before courts, the co-accused was between the ages of 16 and 24 at the time of arrest.

In the abovementioned research, it was worrying to discover the extent to which these crimes are also “an acceptance of violence as a characteristic of township life.” This is coupled with the constant danger and fear people feel whilst openly talking of self-policing, as a major prevention initiative to stop crime. Another theme that was strong in the research is the importance of family support and of non-discrimination in schools and churches, as well as the need for community education on sexual orientation and gender identity/presentation.

There are some parallels to draw from specific incidents of sexual violence like last year’s Noord Street mini-skirt debacle. The same on women wearing pants in KZN, or an HIV positive woman murdered in Khayelitsha because of her status, and the xenophobic attacks [also on women] as some South Africans waged war on non-SA nationals last year. The question to ask would be what to make of this?

In conclusion, it should be emphasized that:

Legislation in South Africa has to include a broader definition of hate crimes to contribute to efforts of combating and preventing the prevalence of such crimes. This will enable knowledge and understanding of what such crimes exactly are, especially for all in the criminal justice - [Parliamentary drive]. Insistence on the use of forensic kits whenever evidence is collected by criminal justice agents *viz.* Police; Justice; Health Ministries]. There is a need to deepen understanding of sexual orientation and gender identity and ‘performance’ or transgression, especially by moving away from ‘traditional’ norms and stereotypes.

Whilst there may be dedicated courts to deal with sexual offences, efforts and resources must be employed to sensitise, capacitate the criminal justice system at all court levels to enable them to be able to deal appropriately with such crimes. Equally, all court officials must be trained to deal with these matters, particularly investigators, prosecutors and the judiciary.

Innovative multidisciplinary approaches are needed to effectively utilise the limited resources, identify community initiatives that can speak to the diversity of the population without weakening desired outcomes. This must be integrated to family support initiatives; educational institutions through the curriculum and extra curricula activities educate educators, learners and communities on non-violence as a value and faith based organisations like churches [recognizing the important role it still plays in society] who can join in community education on sexual orientation and gender identity/presentation.

Equally, multidisciplinary services within support centres, like Thuthuzela Care Centre models, need to understand the multiple identities of women and be able to embrace all women and people who don’t categorise themselves in any gender/sex, that come for help to them, which is still a challenge in many similar centres that respond to victims/survivors of sexual abuse/rape across the country.

There are community policing initiatives that should be strengthened by a positive involvement of the South African Police.

For all of partners fighting the scourge of sexual and gender based violence, there is a need to deepen analysis and understanding of the social realities of South Africa today, otherwise the aims are likely to come short.

These conditions confirm the deep social crisis: the poor and the working class are perpetually in a cycle of rot, marginalisation, thin social capital, vulnerability, *etc.* Out of these conditions various ideologies get reproduced and responses to the crisis also develop. Ideologies such as religious fundamentalism retreat to tradition that seeks to exclude ethnicity and tribalism, conservative forms of morality, *etc.* Responses: [positive ones] solidarity groups, care centres, [negative ones] crime, various forms/degrees of violence;

poverty, disease and ignorance in essence. How are these conditions to be addressed? A reflection on what the relevance of these conditions for equality and justice is critical? For safety? For bodily integrity, autonomy and self determination? Can we strengthen the spaces for government structures and civil society, including popular peoples' initiatives, to dramatise responses to this crisis and forcefully project it onto the public sphere? This is possible and is very urgent by using a victim/survivor friendly language that does not undermine the very efforts we are engaged in.

It is therefore necessary not use a language that is sexist, racist, homophobic and fails to recognise the diversity of peoples in the world. The LGEP will certainly partner in such initiatives and contribute in any way possible. A clarion call was made to challenge individual/personal, societal, community, cultural stereotypes with a view to address gender injustices and promote human rights.

## **6.2 Preliminary findings of the National Audit of Multidisciplinary Sexual Violence Services 2009**

The presentation on the preliminary findings of the National Audit of Multi Disciplinary Services in South Africa was done by Tamara Braam & Advocate Brandon Lawrence. The study was dedicated to the millions of rape survivors in South Africa who have had the courage to report their rapes and been failed by the criminal justice system, those survivors who have been too fearful to report their rapes, to the young victims who have been raped by a family member who is a breadwinner and are scared to break the silence, for those who have been raped by a partner and blackmailed into silence by flowers and broken promises, for those who are picking up the pieces of their lives after this horrific form of violation.

# **7. PROVINCIAL CONSULTATIONS AND ACTION PLANS TOWARDS THE ROLL-OUT OF MULTIDISCIPLINARY SERVICES**

Provincial action plans were presented at plenary.

## **8. CONCLUSION**

Strategic and operational outcomes for the Second Annual Sexual Offences Indaba presented by the Deputy were outlined as follows:

- Provincial Action Plans for FY2009/10 consolidated;
- Provincial and local coordination and cooperation structures and mechanisms outlined with a view to strengthen intersectoral collaboration, implementation of provincial action plans, monitoring and evaluation;
- Preliminary findings of the National Audit of the Multidisciplinary Services presented to guide roll out plan of additional Thuthuzela Care Centres;
- Establishment of a reference group within the Justice Crime Prevention Strategy (JCPS) and Social Cluster to look at administrative data management and ensure

that suitable/relevant indicators on gender based violence and sexual offences are incorporated;

- Strengthen and integrate strategies and activities on the link that exists between sexual offences with HIV and AIDS, mental health, drug and substance abuse, poverty, *etc.* Thus programme alignment is critical
- Engagement on consultative processes by the JCPS and Social Cluster in particular DoJ & CD, DoH and DoSD with a view to develop and agree on appropriate responses that deal with data collection, collation and management within health care facilities, courts, police stations, *etc.*
- Although the political commitment is there, the challenge currently is cooperative governance issues which defeat the effort towards an integrated multisectoral response/action
- Need for an integrated capacity development programme for law enforcement agencies, criminal justice agents, health and social welfare professionals – currently such a programme is conducted by IDMT as the Women Justice Empowerment Initiative (WJEI)
- To ensure replication of IDMT at provincial and local levels and also to include civil society.
- A proposal that the Minister: DoJ & CD chairs an InterMinisterial Committee (IMC) constituted by the Ministers of the departments serving at IDMT
- Ensure that the Strategy for Trafficking in Persons (TIP) for 2010 and upcoming international events to be hosted by South Africa is in place
- To undertake a strategic planning workshop for IDMT as a matter of urgency
- Preliminary findings from the National Audit of Multidisciplinary Services confirm the need to expand specialised/designated services *viz.* dedicated sexual offences/gender based violence courts, *etc.*

Common issues that emerged during the presentation of the provincial action plans are the following:

- Strengthening of intersectoral and multisectoral collaboration by also reviving and strengthening existing intersectoral committees in some provinces. A call for the development and finalization of either a Memorandum of Understanding (MoU) or a Service Level Agreement (SLA) as a gateway to forge cooperation of key stakeholders at different service delivery levels *viz.* government departments using clusters at national, provincial and local municipalities, civil society inclusive of non-governmental (NGOs) faith based (FBOs) and community based organisations (CBOs).
- Human, Financial and Operational Resources – Speeding up the appointment of suitable personnel to coordinate, manage, monitor and evaluate service delivery issues in the multidisciplinary service centres *viz.* TCCs. Identify personnel skills and knowledge capabilities with a view to respond to personnel capacity needs and expectations through training and capacity development. A need for accreditation and recognition of specialities of some professionals *e.g.* forensic nurses by respective professional bodies in terms of additional qualifications and alignment with South African Qualifications Association (SAQA). Recognition and remuneration of personnel through systems such as the Performance Management Development Scheme (PMDS) and Occupational Service Dispensation (OSD) in the field of work. In addition there is a need for an integrated resource plan in terms of human resource training, development, project management, monitoring and evaluation plan. A clear funding plan from all partners of sexual and gender based violence activities.
- Infrastructure – Action on provision of spaces for TCCs regarding finalization of refurbishment processes, resourcing (financial, human and operational),

maintenance and upgrading of existing crisis centres. in addition other related logistics that ensure improvement of access to the TCCs need to be strengthened such as transport.

- Monitoring and evaluation – A need to develop an integrated monitoring and evaluation plan and tools whose indicators would be linked to the SLAs and the TCC blueprint.
- Strengthen and improve integrated service delivery issues using the audit tool such as collaboration and cooperation of key stakeholders, commitment to SLA, project plans, budget alignment, meetings, reporting, monitoring and evaluation plan, training and capacity development, marketing of TCCs and use of the audit findings as an advocacy tool.

## 9. ENDNOTES

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<sup>i</sup> Dr K De Wee, Acting Chief Executive Officer: National Prosecuting Authority. Welcoming Address – The Second Annual Sexual Offences Indaba 18 May 2009.

<sup>ii</sup> Prof Rachel Jewkes, Gender and Health Group, Medical Research Council, Pretoria. The Second Annual Sexual Offences Indaba 18-20 May 2009.

<sup>iii</sup> *Ibid*

<sup>iv</sup> *Ibid*

<sup>v</sup> Gary Juste, Deputy Director; USAID Southern Africa. the Second Annual Sexual Offences Indaba 18 May, 2009

<sup>vi</sup> Dunkle *et al*, 2004

<sup>vii</sup> Jewkes *et al*, 2008

<sup>viii</sup> Parlemo Protocol - Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children.

<sup>ix</sup> P Mtetwa, Lesbian and Gay Equality Project, South Africa. The Second Annual Sexual Offences Indaba 18-20 May 2009.