



MASIMANYANE WOMEN'S SUPPORT CENTRE

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Introduction

We would like to thank the Human Rights Council for granting us the opportunity to make this submission under the Universal Periodic Review of South Africa. Masimanyane Women's Support Centre¹ has been in operation since the end of 1995 under its founder and current Executive Director Dr. Lesley Ann Foster. It began initially as a grassroots organisation operating in East London². Masimanyane has been involved in advocacy from its inception and employs a human rights framework informed by CEDAW³ and the Constitution of the Republic of South Africa Act 108 of 1996⁴.

Our submission will focus on areas of great concern for Masimanyane, which are: (1) the prevalence of Gender Based Violence, (2) the Implementation and Effectiveness of the Domestic Violence Act 116 of 1998 and (3) the Realisation of Reproductive and Sexual Health Rights in South Africa. The Constitution sets the framework within which women should be protected from all forms of violence as well as have their reproductive and sexual health rights respected and promoted.

Section 12 of the Bill of Rights⁵ states that:

*“(1) Everyone has the right to freedom and security of person, which includes the right-
(c) to be free from all forms of violence from either public or private sources;
(d) not to be tortured in any way; and
(e) not to be treated or punished in a cruel, inhuman or degrading way.
(2) Everyone has the right to bodily and psychological integrity, which includes the right-
(a) to make decisions concerning reproduction;
(b) to security in and control over their body...”*

The Bill of Rights also contains socio-economic rights that are justiciable and includes section 27, which states that:

*“(1) Everyone has the right to have access to-
(a) health care services, including reproductive health care...
(2) The state must take reasonable legislative and other measures, within its available resources, to achieve progressive realisation of each of these rights.”*

1) Prevalence of Gender Based Violence:

South Africa's Anti-Rape Strategy was implemented in 2003 yet official rape statistics released from 2000 – 2005 indicate an overall national increase in reported rapes from

¹ Hereinafter referred to as 'Masimanyane'.

² East London is a City in the Eastern Cape Province of South Africa.

³ Convention for the Elimination of All Forms of Discrimination Against Women.

⁴ Hereinafter referred to as the 'Constitution'.

⁵ Chapter 2 of the Constitution



52,891 to 65,939⁶. The 2006 statistics indicate a decrease in reported rape cases at 54, 926⁷. National outcry occurred in 2007 when a 15-year-old teenage girl from Polokwane⁸ attempted to lay a charge of rape against a man she claims had been abusing her for years. The victim was arrested for perjury and forced to sit in the back of a police vehicle next to the alleged rapist. The police released the alleged rapist without bringing any charges against him, while the teenage girl was locked up in the police cells for more than a month. She was later released and all charges against her were withdrawn. This case is one of many, which highlights the lack of competent, sensitised and victim centred public servants within the criminal justice system. It also emphasises the lack of policy implementation at local level.

After numerous delays the Criminal Law (Sexual Offences and related matters) Amendment Bill⁹ was passed by the National Assembly on May 22, 2007 and is currently before the National Council of Provinces for concurrence¹⁰. The impact of the delays in passing this legislation was most notably experienced in the notorious case of alleged rapist and current presidential hopeful, Jacob Zuma¹¹. The court allowed for the complainant to be questioned under cross-examination on her previous sexual history and for the defence to adduce evidence around such¹².

In South Africa prevailing traditional beliefs and cultural practices to a large extent inform how women and young girls are treated in their homes, communities and when accessing public services. They are often met with criticism, abuse or violence for speaking or acting outside of social norms. On September 25, 2007 a Chieftainess was murdered in the Eastern Cape because residents could not accept being ruled by a woman. The perpetrators set her kraal alight and advanced their attack on her with gunfire. In recent years media reports have highlighted a trend of “Corrective Rape” which targets lesbian women for rape and assault to *change* their sexual orientation. Black, lesbian women living in townships are the worst affected and most vulnerable to this form of rape.

Research conducted in Cape Town, South Africa, claim that the police and law enforcement agencies perpetrate the highest levels of violence against prostitutes¹³. Prostitutes are harassed, assaulted, arrested, coerced into having sex with police officers

⁶ Inter Departmental Management Team (IDMT) National Anti-Rape Strategy / National Action Plan Support Component.

⁷ IDMT Draft Briefing Document: Response Pillar of the Anti-Rape Strategy. (Although subsequent to the release of the official statistics numerous allegations surfaced around the country that police officials were refusing to take statements from rape victims or not recording complaints as rape charges.)

⁸ Capital of the Limpopo Province

⁹ [B50- 2003]

¹⁰ The Bill seeks to broaden the definition of ‘rape’, which includes any non-consensual act resulting in the penetration of the victim, which in some instances would have been defined as ‘indecent assault’. The definition is gender neutral and has therefore been extended to include men.

¹¹ State v Zuma 2006 SA (WLD)

¹² The Sexual Offences Bill [B50 –2003] does not allow for the previous sexual history of a complainant to be used as evidence in court.

¹³ Masimanyane uses the term “prostitutes” to express its opposition to (a) the sexual exploitation of women by the sex industry and (b) the legitimisation of the exploitation by referring to it as ‘sex work’.



and finally released without any charges being brought against them¹⁴. Prostitution is criminal in South Africa¹⁵. While Masimanyane does not condone any efforts to legalise prostitution it is in favour of initiatives that provide tangible support to prostitutes and allow them to access social and health care services freely without any threat of discrimination or criminal sanctions¹⁶.

Masimanyane has been invited by the South African Police Service to open an office in a police station in East London to assist victims of sexual offences with the necessary counseling support. We have been advised by organisations, who in line with the Victim Empowerment Programme (VEP) have had such collaborations with the State, that these relationships are somewhat skewed and ultimately do not serve the intended purpose of victim centred service delivery. The ineffectiveness of the VEP has been attributed to constraints placed on civil society organisations holding positions in state facilities (like police stations) but who are not afforded any oversight, monitoring or reporting duties or powers.

2) Domestic Violence:

Domestic Violence is an intimate form of Gender Based Violence and a human rights violation, which often goes undetected or is ignored by family and community members because of its private nature. The Domestic Violence Act No. 116 of 1998 defines domestic violence broadly and recognises the lived reality of women by accepting the spaces within which they are likely to suffer violence. The Act extends its application to include violence between cohabiting partners (including same sex partners), persons who are or were dating and even those who have never lived together but share parental responsibilities.

The Act has been in operation for almost ten years and should provide women with adequate protection from domestic violence and serve as a deterrent for perpetrators. Masimanyane has collated statistics from the services it offers women. Two of our offices reported having counselled 374 women for domestic violence between January and August 2007¹⁷. Masimanyane has received positive feedback from clients who have reported cases of domestic violence to the police. They contend that in certain districts police have highlighted domestic violence as a priority and their reaction times and support services have been admirable.

3) Women's Health Rights:

The Eastern Cape is one of the poorest provinces in South Africa with large parts of it being rural, underdeveloped, with poor infrastructure and a history of inadequate service delivery. In 2007 the 'Daily Dispatch' a local Eastern Cape newspaper broke the story

¹⁴ "Policing Sex Workers: A Violation of Rights?" Sex Worker Education & Advocacy Taskforce (SWEAT) <http://www.sweat.org.za/docs/police.pdf> accessed March 2007.

¹⁵ Section 20(1)(aA) of the Sexual Offences Act 23 of 1957

¹⁶ The Sexual Offences Bill [B50 –2003] criminalizes the conduct of both the prostitute and the client of the prostitute.

¹⁷ Our experience in domestic violence matters confirms that by the time that women seek assistance they have already been physically and/or sexually violated on numerous occasions by their partners or former partners.



after a six week investigation into what it described as an *alarming rate of infant mortality* at East London's Frere Hospital¹⁸. The article prompted the Deputy Minister of Health to visit the hospital and declare it a "national emergency". She was shortly thereafter dismissed while the Health Ministry and the Presidency denied the allegations.

Hospital and primary health care policies in the Eastern Cape affect accessibility to reproductive health care services. Barriers like prior confirmation of pregnancy before accessing termination of pregnancy services places indigent women and adolescents in precarious situations. Second trimester terminations, unsafe terminations or unwanted pregnancies are their only outcomes. Only 55% of designated service providers in South Africa are currently operating with women travelling long distances to access termination services, which are over burdened due to medical practitioners that are untrained and unwilling to perform terminations. The State should consider alternatives such as funding civil society organisations to assist with service delivery areas where gaps exist.

The State has attempted to address accessibility issues through the Choice on Termination of Pregnancy Amendment Bill but the legislation has faced major opposition from pro-life groups who successfully challenged the amendments in the Constitutional Court on procedural grounds. Government was given 18 months (until beginning of 2008) by the Constitutional Court to follow proper public consultative processes to have the Amendment Act passed, failing which it will be declared invalid.

Reproductive and sexual health education and information targeting adolescent girls and boys are generally confined to HIV/AIDS education. Although crucial it is necessary to broaden this approach to include practical and appropriate information on the prevention of pregnancy through various contraceptive and barrier methods, early pregnancy detection and physical manifestations of sexual and vaginal infections.

While the vulnerability of girls and women to HIV/AIDS infection through forced sexual encounters as well as their powerlessness to negotiate safe sex in intimate relationships is well recognised, this recognition has not been produced changes in the State's reproductive health care services. The intimate relationship between gender inequity and reproductive health care and rights are best expressed in relation to the mass campaigns conducted to encourage safe sex and to educate the public on the use of (male) condoms. Femidoms have however not received the any such campaigns nor have they been made widely available by the State for women to grow accustomed to or for use on a regular basis. By supplying femidoms to primary health care facilities, the State will be responding to the challenge of women's inability to negotiate condom usage in their sexual relationships and be making a progressive step in HIV/AIDS prevention. Even though they are relatively expensive compared to condoms, femidoms may be a effective preventative measure, therefore making them more cost effective in the long run in comparison to ARV treatment.

¹⁸ The article claimed that a large number of infant mortality at the Hospital was avoidable and was due to negligence, staff shortages and a lack of equipment. Daily Dispatch Special Report Team: "Why Frere's babies die" July 12, 2007.



This Submission has been endorsed by:

1. **The Centre for the Study of Violence & Reconciliation**
2. **Gun Free South Africa**
3. **Ikhwezi Women's Support Centre**
4. **Soul Winners**
5. **Women Against Women Abuse**
6. **Famsa Pietermaritzburg**
7. **Targeted Aids Interventions**
8. **Peddie Women's Support Centre**
9. **Western Cape Network on Violence Against Women**
10. **Thohoyandou Victim Empowerment Programme**
11. **ADAPT**
12. **Oxfam Novib**
13. **Gender Aids Forum**
14. **Women on Farms**
15. **Agisanang Domestic Abuse Prevention & Training**
16. **Empilesweni Aids Education and Training Centre**