

South African Human Rights Commission dissemination and the DDP collaborative workshop
Sexual Offences Amendment Bill

Venue: Diakonia Council of Churches

Date 24th June 2008

Time 8h30 – 16h00

The purpose of the workshop was to heighten awareness of the provisions of the Sexual Offences Amendment Bill, which was recently signed into law. The Bill comprehensively reviews all aspects of law relating to sexual offences. It deals extensively with sexual abuses of children (both boys and girls) and women. Women and children, being the most vulnerable groups in society, are the most likely to be the victims of sexual abuse. Current statistical evidence suggests that women and children are the worst affected by sexual forms of violence, including spousal abuse, rape and human trafficking for purposes of forced prostitution and pornography.

The Bill was passed after consultation with a broad swathe of social actors/role players such as non-governmental organizations, offenders, government departments, women and children's groups, etc. However, the original Bill lacked adequate public input. Most critics of the current Bill share the view that it is substantially different in a positive way. The NCOP, however, did express a desire to introduce further changes in relation to sentencing, and court procedures. They indicated that this section of the Bill needed to be reviewed on the basis that it does not deal appropriately with court procedures. Support for victims was also not sufficiently addressed in the Bill.

The following are some of the main features of the Bill:

1. Reduction in age at which certain sexual acts are lawful.
2. Defenses available to persons who are under age.
3. Abuse of position of trust.
4. Meaning of "position of trust".
5. Notification requirements for offenders under section 3.
6. Meaning of "sexual offence" for the purposes of certain enactments.
7. Short title, construction, commencement and extent.

Critics observed that the Bill excludes counseling and STI preventative treatment. They argued that whilst the Bill racks up some important achievements in its codification and amendment of the law regarding sexual offences, it does not live up to one of its primary objectives, which is to provide protection and treatment for victims of rape and sexual offences. According to them, one of the major shortfalls of the Bill is that it lacks a comprehensive package of care provisions for victims of sexual violence.

Critics further argued that the proposed compulsory HIV testing for perpetrators of sexual violence presages more harm than good. It creates a false sense of security for the victim by suggesting that an HIV-negative test result means there is no risk of HIV transmission. The alleged offender may be in the 'window' period when being tested. They found it alarming that the Bill conceives it an offence to demand compulsory testing for the alleged offender. On the converse, since on average only between 5% and 9% of reported rape cases result in conviction, those who are acquitted and who were forced to undergo compulsory HIV testing may want to sue the victim for defamation of character. It thus shifts the blame to the victim, who might be dissuaded from seeking such recourse.