



## **Gender Violence: An indictment on the Nation and the Criminal Justice System**

**Mogoeng Mogoeng, Chief Justice of the Republic of South Africa SAC-IAWJ, Durban, 09 August 2013**

Programme Director, the President of the International Woman Judges Association ( South African Chapter), Madam Justice Baratang, Mocumie, the Honourable Deputy Judge President Jappie, Prof Reddy, distinguished guests, ladies and gentlemen, I greet you. I particularly want to take this opportunity to wish all the women of South Africa a happy, and fulfilling peaceful Women's Day and women's month. Whenever I am called upon to speak, the question that always runs through my mind is "Do you have a message for this audience? If so, what purpose will your message hopefully, achieve? And it was after the same arduous process of reflection that I settled for the message under the topic: Gender violence: an indictment on the nation and the criminal justice system." This was obviously inspired by the theme of this august body's conference, namely ' A Promise is a Promise : Time for Action to End Violence Against Women'

South Africa is counted among the leading countries in the saddening area of violence against women, rape in particular. The question is, what can be done to address this problem? There appears to be no quick-fix solution to this enormous task.

A starting point should perhaps be an examination of how we raise our children, boys in particular, at home. What role do our educational



institutions, NGO's, various government institutions and religious fellowship centres play in moulding our children to be respectful, loving responsible and caring members of society? Does what they watch on television and cinemas, read in newspapers and magazines and the behaviour of those who ought to be their role models contribute to who they turn out to be and if so, how. And what remedial action should be taken.

It may not be a bad idea I think to sensitize society about available materials and programmes on how to raise children who would turn out to be responsible teenagers and later adults. Do the things we are all exposed to help to encourage respect for others, women in particular and cultivate the kind of morality that would cause men and boys to view sexual abuse and gender violence against women as abominable? Perhaps our teachers at all our institutions starting with kindergarten our religious, civic and traditional leaders should begin to pay special attention to what they can do to contribute to the moral regeneration of our nation.

The toy-guns we buy for our children, the movies they watch and possibly the language employed in addressing issues at home and in the public domain, should perhaps be examined and be debated openly and where necessary possibilities of universal moderation be explored. South Africa never used to be like this: what went wrong, when and why? Again, I think an intensification of the moral regeneration programmes sensitizing society about the humiliating and extremely harmful effect of this abusive behaviour and dealing more firmly with offenders would probably help us regain the respectability we deserve as a nation. It is perhaps also important how we communicate to the victims of crime

and the broader public about the criminal justice system. In the exercise



of our right to criticise underperforming institutions, including the criminal justice system, we must be careful not to exaggerate the extent of the underperformance. If we continually, tell the nation, including criminals, that the system is dysfunctional, we may inadvertently be emboldening criminals to carry on with the abuse and encouraging potential offenders to venture into the abusive space. As we criticise, let us not nullify the important role of the criminal justice system and some of its laudable success stories. We should perhaps explore new ways of communicating our unhappiness without creating the impression that it is an exercise in futility to report and testify in cases involving sexual violence because nothing ever happens to those who commit these crimes. Very painful as it is and disappointing as our performance sometimes is; we should not send out messages to victims of sexual abuse and crime in general; that it is pointless reporting those crimes because impunity is the order of the day. Let us suggest how our criminal justice system can be strengthened to perform better.

I believe that we should all advocate for an integrated criminal justice system. That integrated system will enhance efficiency and effectiveness and will enable us to address gender violence more tellingly in this country.

An essential re-inforcement of that system should begin with well coordinated awareness campaigns by NGOs; institutions like the Human Rights Commission, the Commission on Gender Equality; the justice and security cluster and the Department of Women, Children and People with Disabilities. There must be a collective reflection on the effectiveness or shortcomings of previous and current campaigns and new strategies have got to be developed. We have to study best practices of countries which have grappled with this problem and were able to address it properly. And



the institutions listed above would probably be more impactful if they were to work in partnership and share responsibilities so that so far as possible, they would avoid duplication. A repetition of what others have already done in communities should as far as possible be eliminated to pave the way for the better deployment of scarce resources and for greater impact.

The need to dedicate enough time to dispelling the fear to report crimes of sexual violence against women and girl children and to assist the justice system to successfully prosecute the matter to finality, cannot be overemphasised. Everything must be done to ensure that communities are alive to the crucial role that only they can play, in ensuring that cases of this kind of abuse are not only reported, but successfully prosecuted. Our community policing fora may have to be strengthened to help realise this objective.

The next issue is the need to improve South African Police Services' investigative capacity on an ongoing basis. Purely on the basis that none of us is perfect and there is always room for improvement, we need to ensure that we have a solid team of investigating officers with special skills to investigate crimes of gender violence, that receives regular training. Like all other functionaries in the criminal justice system, these officials must be sensitised to the special care that victims of sexual and other forms of gender violence require.

Many crimes are not successfully prosecuted with the result that innocent people are sometimes convicted and the guilty remain undetected as appeals occasionally demonstrate, owing to our limited investigative capacity, sensitivity and knowledge of cases of violence against women. And this applies to all officials in the system. Remember, when the



community passes a verdict on any key roleplayer in the criminal justice system, all other roleplayers are painted with the same brush. All the more reason for collaboration. The need for urgent and proper medical attention cannot be overemphasised. I know of a few cases where medical reports in cases of sexual violence made a lot of difference in the outcome. Some reports were compiled in a manner that revealed ignorance of the purpose sought to be achieved through the examination. Some doctors confessed their lack of training on how to deal with victims of sexual violence properly and how to complete the relevant forms. This state of affairs at times led to acquittals in circumstances where a conviction should, but for the medical report, according to all indications have followed or vice-versa. This requires proper and urgent attention. Added to this challenge is the inadequacy of laboratories to perform DNA tests expeditiously to contribute to the speedy finalisation of cases involving violence against women and girl children.

Over the years social workers were the least paid graduates in the public service. As a result there were very few students willing to pursue social work as a profession, notwithstanding the non-refundable bursaries that were made available to them. Even those who worked for government left for greener pastures in the private sector. The problem is, in order for the criminal justice system to function well, a good number of properly trained probation officers and intermediaries are required to assist victims of sexual violence and help them through court proceedings. Those intermediaries who should help vulnerable young girls to cope with the arduous task of facing their assailants again and recount what happened, must also be properly trained for the professional execution of that responsibility. Additional specialisation in sexual violence cases must also be developed in the prosecuting authority to beef up existing capacity. More well trained



prosecutors in the area of sexual violence should perhaps be dedicated to sexual offences. But a budget is required to end the moratorium on the appointment of new prosecutors, if new sexual offences courts are to be as effective, as they desperately need to be. Legal representatives from Legal Aid South Africa, the Attorneys and Advocates professions, together with other role players, should also approach these matters with a sense of urgency. Earlier preparation, the introduction of pre-trial conferences even in criminal matters, would help to lessen the postponements and concomitant delays.

The Judiciary must be alive to the need to avoid numerous postponements which tend to prolong the pain and trauma associated with rape and gender violence in general. Delays tend to have the effect of reopening wounds that were either healed or were at an advanced stage of healing, when a delayed trial eventually takes place. The introduction of full-blown judicial case management is key even in the sexual offences courts. A resolution was passed at the Access to Justice Conference held in July 2011 that more sexual offences courts be introduced into the system to create more capacity to deal with cases of sexual violence more effectively and speedily. Minister Jeff Radebe deserves to be commended for implementing this resolution by establishing a good number of new sexual offences courts. This will certainly go a long way towards taking the fight against violence on women and girl-children to a higher level. Judicial Officers, and not the parties, must be allowed to dictate the pace of litigation. We do this always in high-profile matters or multiple-count and multiple-accused cases. They must have the power to schedule conferences aimed at eliminating possible hurdles to the speedy completion of matters. As you know, we are busy with pilot projects in five High Courts including the KZN High Court, which will be rolled out to all High Courts and eventually Magistrates' Courts, in due





course. Regional Courts should also be prioritised since they handle quite a large number of these offences. The Department of Public Works, together with the Department of Justice and Constitutional Development must ensure that the offices and courtrooms necessary to help finalise these cases without delay, are available. The latter Department must also facilitate the creation of additional judicial posts at Regional and High Court levels to ensure that the necessary judicial capacity exists, to cope with the workload. All of the above bring into sharp focus the significance of the National Efficiency Enhancement Committee (NEEC). This, as some of you probably know by now, is a committee that brings together the top leadership of the Judiciary, SAPS, NPA, Legal Aid SA, RAF, LSSA, GCB, Directors General of Public Works, Social Development, Health, Justice, and the National Commissioner of Correctional Services. The objective sought to be achieved is to inject efficiency and effectiveness into the broader justice system. As a result, we are even developing norms and standards on performance monitoring and evaluation of all role players. This is quite apart from those currently being worked on for the Judiciary.

All stakeholders, who are not members of the NEEC, need to explore ways in which they can contribute to the success of the NEEC, because the success of the NEEC is in turn the efficiency and effectiveness of the entire justice system, including the criminal justice system. Different NEEC Sub-Committees have been set up to look into aspects of the operation of the justice system that would facilitate more than satisfactory performance by all key role-players. And each key role-player has been assigned specific tasks to focus on immediately, with a view to improving their institutional performance which would in turn translate into the betterment of the performance of the entire system. The inter-connected nature of the roles of these bodies means that the



entire system depends, for its overall good performance, on the good performance of each of the other key role players.

Government would have to deploy more resources into the entire justice system and treat this cluster as one of the key priority areas, to deal properly with crime in general, and sexual violence offences in particular. Our interaction with other jurisdictions where crime is very low and backlogs equally low led us to the conclusion that we need more well trained investigation officers and more police visibility, efficient correctional officers, legal representatives, competent interpreters, intermediaries, probation officers, medical doctors and Judicial Officers, to mention but some. Our parole system may also have to be reviewed and possibly tightened up a bit. Obviously the relevant Department is better placed to look into this proposition and to reject or adopt it. Modernisation is also called for to facilitate a cost-effective and speedy postponement and disposal of matters in a qualitative way.

THANK YOU AND, ONCE AGAIN, HAPPY WOMEN'S DAY TO YOU ALL