

# 16 Days of Activism: A Call for Business Activism



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The annual 16 Days of Activism for No Violence Against Women and Children Campaign aims to raise awareness of the enduring and devastating impact that gender-based violence and femicide (GBVF) has on women and children, and on our society more broadly. This year marks the 25<sup>th</sup> anniversary since South Africa initiated the campaign.

Government will this year launch the campaign on 25 November 2023 in Mpumalanga under the overarching theme: "Accelerating actions to end gender-based violence & femicide: leaving no one behind". The sub-theme for this year is: "Safe access for women to clean water: a basic human right".

As is explained, the chosen theme speaks to the importance of ensuring what is referred to as "an all-society and multi-faceted approach to fight GBVF", and that its sub-theme seeks to address barriers women face in safely accessing water and sanitation in South Africa. We are all well-guided by Government's sentiment that the fight against GBVF must be undertaken by us all.

## Sexual Offences and Rape Law Reform

Rape and other forms of sexual abuse are endemic in South Africa. Yet, some of our laws unfairly and unconstitutionally offend the basic human rights of victims of sexual abuse – widely accepted to be predominantly women and girls – when they decide to pursue legal justice. This is but one example of how South African sexual abuse laws lag decades behind international standards. The need for legal reform is urgent, and it is incumbent upon responsible lawyers to drive this change.

The CDH Pro Bono Practice honours this responsibility by pursuing strategic, public interest litigation that upholds or develops the rights of women and girls, aiming to ensure the rights available to them appropriately respond to their lived realities. An example of such a case that has been pursued by the Practice for some time is the constitutional challenge to the Prescription Act 68 of 1969 as it relates to civil claims for sexual abuse. In the Practice's view, section 12(4) of the Prescription Act unconstitutionally infringes several basic rights of victims of sexual abuse by its application of undue evidentiary burdens on the would-be plaintiff where she hopes to keep the doors of court open to her claim. The case relates to two

sisters who suffered sexual abuse in the late 1970s into the 1980s and demonstrates the importance of developing laws to ensure those intended to protect victims of sexual abuse are reflective of the unique circumstances created by these crimes.

## Addressing the shortfalls

The Pro Bono Practice has also undertaken, in partnership with a local women's rights public interest organisation, the review of the Department of Education's Protocols and how they ineffectively protect young learners from exposure to sexual abuse and offer poor protection in cases where abuse has already occurred. Through proposing engagement with the Department to resolve these shortcomings, we recognise the importance of addressing these shortfalls in policy, protocol and legislation before resolution by litigation is the only recourse.

The Pro Bono Practice is among many who are committed to sexual abuse law reform. A seminal case spearheaded by the Embrace Project – and recently joined by the Centre for Applied Legal Studies – is a constitutional challenge to the legal definition of rape, shining a spotlight on the injustices consequent on its current treatment of consent. Two high-profile cases – *Siv Amos* and *Coko v S* – and countless more, have seen rape charges dismissed or overturned on the grounds of a subjective belief of consent, a grave failing of the law to adequately protect a rape survivor. The Embrace Project's constitutional challenge is driven to, in part, move the definition of rape toward placing increased responsibility on the defendant to prove consent. If successful, this will mark an extraordinarily meaningful development in South African law and more appropriately support rape survivors.

## A Struggling Economy's Effect on Women and Children

The fight against GBVF is not only a legal matter. Few would argue that the country's current economic and political environment has become a breeding ground for corruption and injustice – both of which have had dire

consequences for women and girls. Two further matters run by the Pro Bono Practice grapple with this frightening reality. The first concerns SAPS's failure to adhere to its own policy on the detention of transgender persons, and, in contravention thereof, placing a transgender teenage girl in a holding cell with three men. She was consequently raped and sexually abused while in SAPS custody. Not only did SAPS officials not adhere to their policy intended to protect a vulnerable person, but her civil proceedings against the Minister of Police for his vicarious liability went ignored by the Minister's office for nearly 3 years. The Pro Bono Practice has vehemently pursued justice on the victim's behalf and was recently victorious in its bid to persuade the High Court that the Minister's delays should not be condoned, and that the enduring prejudice to the victim must swiftly be brought to an end. The Minister, however, persistent in his stance, has appealed this judgment.

The second matter concerns a minor girl who has been groomed and repeatedly raped by a man of apparent economic and political means, and who befriended her parents to gain access to her. This is his *modus operandi*, and his abuse and violence run rampant in local communities. His means allow him to offer desperately needed financial support to several households, providing a supply of basic necessities, and at times more extravagant gifts, all of which carry the price-tag of the family's blind eye. His strategy thrives in our current economic climate, and it is young girls who pay the ultimate price for their family's economic hardship.

The link between the economic and political state of our country and the continued sexual violence perpetrated against women and girls, is undeniable. With a diminishing quality in leadership and depleting financial reserves, there is a growing contingent of inadequately trained state personnel and members of civil society alike who are susceptible to corruption and influence, resulting in continued harm to vulnerable members of society.

## Call for Corporate Activism

While we heed Government's anti-GBVF calls by pursuing legal reform and strategic litigation, there remain countless opportunities for all members of civil society and the private sector to stand against GBVF. The private sector has opportunities to meaningfully engage with feminising their policies and protocols, extending protections to women. Its CSR initiatives can support public interest organisations who are dedicated to the protection of women and girls. Training seminars and workshops can be offered to the public as a means to upskill and empower women, liberating them from the dangers created by enduring social and economic inequalities. While the Practice is committed to developing and protecting basic human rights through strategic litigation and engagement, the fight against GBVF is not only a legal matter.

It is a fight in which every last one of us must take up arms and embody activism in our personal and professional environments. We implore business and civil society to engage in meaningful activism and reform to prompt the desperately needed change in our country. Let us all consider these 16 Days not as a mere annual perfunctory pause, but as the mark of our long-term commitment to use the resources available to us – private and legal alike – to uphold Constitutional ideals.



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