

***“Celebrating the Freedom Charter, Enjoying Equal Human Rights for All”***

When thousands of men, women and children marched down the streets of Sharpeville on the 21<sup>st</sup> March 1960, they had no idea what their bravery would conceive. Some 55 years on, many have forgotten about the sacrifices that were made on that fateful day. Dozens of people were killed and scores were injured, all for the rights that many of us enjoy today. It is bearing this in mind that the democratic government declared 21 March as Human Rights Day in South Africa. Human Rights Month is commemorated in March to remind South Africans about the sacrifices that accompanied the struggle for liberation and to celebrate the achievement of democracy.

While many things seemed inconceivable at that time, today, we enjoy the rights that many could not experience during those draconian times.

Yet South Africa has been witness to ugly incidents of **racism** in recent times, the cumulative effect of which could lead many to doubt if non-racialism will ever take root in our country.

**The question is therefore: How far have we come in upholding and protecting the rights of all South Africans and what is the role of the Department of Justice & Constitutional Development in safeguarding these rights?**

South Africa has come a long way towards the realization of human rights with the stage set by the **Bill of Rights** in our Constitution.

The South African Constitution, the supreme law of the country, was signed into law by the late President Nelson Mandela at Sharpeville, on 10 December 1996, symbolically to pay homage to those who were killed so that all could be free from tyranny. Our Constitution remains our foundation for building a democratic, non-racial, non-sexist, united and prosperous society, the rule of law and a Bill of Rights.

Despite our gains, the truth is that the ugly past is not, by any stretch of the imagination, in the distant past. It was only 21 years ago that we rid ourselves from apartheid, a

crime against humanity, and took a decisive step to embark on an uncharted journey of fostering racial harmony.

Nobody said the road ahead was going to be easy. We have encountered speed bumps – and even potholes on the way. Like the incident we recently encountered in the Worcester community with the implementation of the ‘anti-crime card’, which some people hold the view is similar to the ‘dompas’. This ‘anti-crime card’ was issued by the Worcester Community Policing Forum to gardeners, handymen, domestic workers and others working or seeking work in their suburbs, such as Meiringspark, Rouxpark and Panorama, to allegedly assist in curbing crime in the area.

Nonetheless, it is how well we navigate these obstacles that will determine the speed of our journey towards building a single, united nation.

We dare not throw up our arms in despair when we encounter these myriad of obstacles. Apartheid was based on a lie of white supremacy and black inferiority. We defeated that lie on April 27, 1994. However, its residues and legacy – especially racial inequality – persist. Our ability to tackle that will ultimately determine the success of our efforts at nation-building.

This month, we celebrate Human Rights Month under the banner **“Celebrating the Freedom Charter, Enjoying Equal Human Rights for All”**. President Zuma during the State of the Nation Address on 12 February this year said that *“2015, marks 60 years of a historic moment in our history, when South Africans from all walks of life adopted the Freedom Charter in 1955, in Kliptown, Soweto. The 2015 Human Rights Month Celebrations theme arises from the premise that the Freedom Charter is a human rights statement in which this democracy is founded. The Freedom Charter states that South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people it is also the year of re-dedicating ourselves to eradicate racism and all related intolerances in our country”*.

The Freedom Charter and our Constitution compels all of us to build a South Africa that is diverse where all forms of discrimination on the basis of race, gender, religion, culture and sexual orientation is eradicated.

It is our task to work together to foster social cohesion and build a common South African nation.

Today we wish to express not only in words, but through action, our commitment in ensuring that every person enjoys equal rights.

The **Department of Justice & Constitutional Development**, among other things, has a duty to ensure that Constitutional rights are protected through institutions supporting our constitutional democracy. The justice system, therefore, helps to solidify constitutional democracy in our country and resolves individual conflicts within society and the State. The Department is also responsible for the administration and capacitation of the courts.

Institutions such as the South African Human Rights Commission, Commission for Gender Equality, Public Protector, and Commission for the Protection and Promotion of Rights of Cultural, Religious and Linguistic Communities; are constitutionally mandated to assist the public to access their rights through a range of mechanisms.

The **justice system** aims to ensure safety, guard against human rights abuses, protect property, assert legal rights, mediate differences amongst citizens, and prosecute offenders. We have been working on how much faster we can make justice work for you. This we regard as our biggest challenge that we as the criminal justice system (CJS), and as a country, face.

Further, the justice system aims to place a positive duty on the State, non-governmental, community-based and religious organisations to protect and promote the rights of vulnerable groups, in particular women and children. The State does this through a range of dedicated court services such as Equality Courts, maintenance, domestic violence, sexual offences, and child justice and so on.

**Equality Courts** are specialised courts which have been established to hear matters relating to unfair discrimination, hate speech and harassment. The Department has, over the past seven years, established 46 Equality Courts throughout the Western Cape and has appointed and trained 86 Equality Court clerks (who can assist you in

completing the necessary forms to lodge a complaint in the Equality Court). In addition, 48 magistrates have been appointed to preside over Equality Court matters. Equality Courts provide suitable remedies to victims of unfair discrimination and harassment. This is done via a court order against the offender to furnish a public or written apology; or even pay the victim compensation for unfair treatment received. The court may also refer the offender to participate in mediation.

Many people today, particularly those in rural areas, continue to rely on Equality Courts to eradicate racism and other forms of discrimination as they are often worst affected by human rights violations.

Our aim, as the Department of Justice, is to ensure a democratic society that is united in its diversity as guided by the Constitutional principles of equality, fairness, equity, social progression, justice, human dignity and freedom.

Yet, owing to the history of South Africa's past racial discrimination laws, the justice system has distinct shortcomings and challenges. To address these, the Department collaborates with other government departments in the Justice, Crime Prevention and Security (JCPS) Cluster to transform and integrate government programmes aimed at improving services.

The Department of Justice & Constitutional Development is also entrusted with the issue of **access to justice**. Access to justice entails putting in place policies, programmes and other measures aimed at eliminating barriers – physical, geographical, procedural, cognitive, psychological, political, economic and attitudinal – which hinder entry of litigants and other court users into the justice system and limit delivery of justice services.

Part of what makes people unequal before the law is the level of resources they have. This can mean that people may not have the resources to be assisted and defended by a professional lawyer in a court of law. For this reason, government funds **Legal Aid South Africa** to assist people who cannot afford private attorneys or advocates. Legal Aid South Africa represents people who are indigent. They are doing exceptionally good work.

South Africa is also party to various international human rights instruments, such as the United Nations International Convention of Rights of the Child as well as the International Convention on the Elimination of all Forms of Discrimination against Women, and these instruments commit the state to uphold certain legal obligations. So what has been put in place in order to achieve this commitment?

Our Constitution and our legislation (such as the Children's Act, 2005 and Child Justice Act, 2008, etc.) are often hailed as some of the most progressive in the world when it comes to **children's rights**.

This progressive legislation was enacted to protect a child from maltreatment, neglect, abuse or degradation. Yet every day we read in our newspapers real stories about real people, real women and real children, living among us in our communities being raped, murdered or abused. This is the reality we face.

It is against this background that the state has a responsibility to act with due diligence in preventing and combating violence against women and children.

At the launch of the 16 days of Activism Campaign last year, President Zuma said that violence against women and children has continued, despite South Africa having the right policies and legal framework to prevent it.

**So, how do we prevent violence against Women and Children and what can we do better?**

Much has been done to combat violence against women and children. After 1994, special interventions were introduced to address gender-based violence and prevent violence against women and children. These interventions include many pieces of legislation, specialised courts dealing with **sexual offences**, Thuthuzela care centres, specialised police units, victim-friendly rooms at police service points, empowering SAPS members, prosecutors and magistrates with specialised skills and keeping sexual offenders on long-term supervision on their release from prison. We have the Khuseleka One Stop Centres to offer victims of gender-based violence a range of integrated services that include psycho-social support, medical care and shelter services.

Government has re-introduced the specialised Family Violence Child Protection and Sexual Offences Units and, nationally, there are 176 established FCS units attached to all police clusters within SAPS. This has resulted in lengthy convictions being achieved thanks to the dedicated work of detectives and prosecutors.

However, to ensure that persons access these services it is vital that our **communities are aware** of them. It is for this reason that we, as the JCPS Cluster departments, held 7 provincial service delivery meetings, 4 Regional Outreach initiatives and 86 public awareness programmes throughout Women's Month during August 2014 as a build up to last year's 16 Days Campaign. Also, during our Access to Justice Week initiative, 65 legal practitioners rendered legal advice to 450 members of the community. Through these programmes we were fortunate to engage with about 10 000 women from across the Western Cape – from George to Khayelitsha – to empower the most vulnerable in our community on the free services available to them, including maintenance and domestic violence services.

**Domestic violence** touches the lives of all ages, leaving a devastating impact on women, men, and children of every background and circumstance. The family home becomes a place of fear and desperation when a woman is battered by her partner, when a child witnesses the abuse of a loved one, or when a senior person is victimized or neglected by family members.

According to our Department's Annual Report for 2012/2013, there were 246 609 applications for protection orders. This resulted in 151 423 interim orders being granted. Of those, only 88 930 were finalised.

**So, why do victims of domestic violence who apply for a protection order against their abusers, not return to court to finalize those orders?**

Women have told us at our public engagements that they fear reprisal from their abusers and that they are financially dependent on their husbands, fathers, partners and family members. This has increased their vulnerability. It is for this reason that many victims are reluctant to take action against their abusers. Even after reporting the matter to the police, many still go back to request the withdrawal of protection orders. If

women are economically disempowered, their chances of being victims of violence increase.

Another reality is that often fathers don't pay **maintenance** for their minor children. In our community meetings, women also expressed the need for drastic improvement in our child maintenance system so as to ensure that the best interests of their minor children are protected. The message received through this interaction was clear: Defaulters of child maintenance must be brought to book.

It is with this in mind that the Department identified the tracing of maintenance defaulters and beneficiaries through **Operation Isondlo** as the focus for last year's 16 Day Campaign in the Western Cape, in addition to other activities such as all law enforcement agencies committing to give effect to protection orders issued in terms of the Domestic Violence Act.

The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), is another significant milestone for the realization of the protection of the rights of women, children and people with disabilities.

If it is found that an offender committed a sexual offence against a child, then we have to put his or her name on the **National Register for Sex Offenders**. This means that such a person does not have access nor should be given access to institutions such as crèches, schools, hospitals, etc. They will not be allowed to work with or have any access to children or mentally challenged persons.

These are some of the initiatives through which we seek to improve the reality of people's day-to-day lives. These are not pie-in-the-sky programmes that exist only on paper; these interventions that make a real difference on the ground, in the daily lives of women and children.

Today, we remain proud of our Constitution as it flows directly from the Freedom Charter and the fundamental rights entrenched therein.

Yes, we have too many people that still live in abject poverty and have little access to government services – we must continue to strive to improve their circumstances.

By working together we can eradicate crime and also hold the criminal justice system accountable should it act outside the boundaries of the law.

At the same time we condemn, in the strongest of terms, the killing of law enforcement officers and urge communities to work with the police to eliminate this scourge.

We also condemn the violent crimes against women, children, the elderly and members of the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community.

It is for this reason that we must play an active role in Community Safety Forums and we, as a united community, must be at the forefront in ensuring that our communities are and feel safe.

*Speech given to the community of Strandfontein by Adv Hishaam Mohamed at Strandfontein School Hall, Frigate Road, Strandfontein, Mitchell's Plain, in celebration of Human Rights Day, 19 March 2015*