



Children's Rights Centre

Newsbytes on Children's Rights: December 2010

CONTENTS:

1. **16 Days of Activism against Violence to Women and Children** – Some practical actions for 365 DAYS A YEAR.
2. **World AIDS Day** and a message from a child.
3. **Human Rights Day** – We celebrate the CONSTITUTIONAL CHALLENGE to law that criminalises consensual sexual acts between children

1. **16 Days of Activism against Violence to Women and Children: Some practical actions for 365 DAYS A YEAR.**

Sixteen Days of Activism is a global campaign which takes place in the period 25 November to 10 December to raise awareness around gender based violence. The theme in South Africa is: **Score a goal for gender equality: Halve gender based violence by 2015**, which is also the main target around gender violence in the SADC Protocol on Gender and Development.

Global focus - This year's global theme is **Structures of Violence: Defining the intersections of Militarism and Violence against Women.**

Southern Africa will launch the global theme under the banner: **War and peace at home and in the region.** Militarism is the belief or desire of a government or people that a country should maintain a strong military capability and be prepared to use it aggressively to defend or promote national interests.

Call to Action

The Children's Rights Centre queries the 'awareness raising' emphasis and asks the question – what **actions** can be taken to build a culture of peace and non-violence? How can we in practice build good relationships at home, at school, at work, in our community, organisations, and in our political structures? Here are just a few suggestions:

- (1) Help the mother/caregiver and babies to form warm attachments – this has been proved to be essential for later warm and responsible relationships and a caring attitude to others. We can all support pregnant and new mothers – at home, at work, in health-care situations, in crèche situations – we can all support Baby-Friendly Hospitals. Special support is needed for mothers whose babies are born with a disability. We can all support and cheer on mothers who give their babies 'kangaroo care' and breastfeed in public!
- (2) Play with the children in our lives – at home, school, community or wherever. Play helps children to share, negotiate, keep to rules, communicate – all the skills they need to be caring and responsible citizens now and in the future.
- (3) Discuss books, videos and Television with children so that you can help them be critical and build their own value-systems.

2. **World AIDS Day** and a message from a child

The voice of an 11 year old child:

“No child should be born with HIV; no child should be an orphan because of HIV; no child should die due to lack of access to treatment,” urged Ebube Sylvia Taylor, an eleven year old born free of HIV, to world leaders gathered in New York to share progress made towards achieving the Millennium Development Goals by 2015.

Message from UNAIDS Executive Director:

We have halted and begun to reverse the epidemic.

Fewer people are becoming infected with HIV and fewer people are dying from AIDS. We must be proud of these successes and the potential of our shared future – breakthroughs in a prevention revolution are at hand with a new microbicide gel holding promise for a generation of women who will be able to initiate usage and take control of their ability to stop HIV. Political breakthroughs will be achieved as more countries abolish discriminatory practices led by voices of a new law commission, and Treatment 2.0 – a breakthrough that could save an additional 10 million lives.

However, we are not yet in a position to say “mission accomplished”.

Growth in investment for the AIDS response has flattened for the first time in 2009. Demand is outstripping supply. Stigma, discrimination, and bad laws continue to place roadblocks for people living with HIV and people on the margins.

To fulfill Ebube’s hope, we must break the trajectory of the AIDS epidemic by redoubling our efforts to ensure countries meet their goals towards universal access to HIV prevention, treatment, care and support. We must leverage the growing integration of AIDS with maternal and child health and all of our Millennium Development Goals.

We know that there are solutions. We know that there is political and societal will to bring change. The real challenge is following through. This new fourth decade of the epidemic should be one of moving towards efficient, focused and scaled-up programmes to accelerate progress for **Results! Results! Results!**

Michel Sidibé
UNAIDS Executive Director
Under Secretary-General of the United Nations

The theme for World AIDS Day 2010 is

Universal Access & Human Rights

3. Human Rights Day – we celebrate the Constitutional challenge to law criminalising consensual sexual acts between children

On 29 November 2010 Teddy Bear Clinic and RAPCAN (the Applicants) filed court papers with the North Gauteng High Court which challenge the constitutionality of the laws that criminalise children between 12 and 16 years of age who are consensually involved in sexual activity with each other. **This is the law under which the National Director of Public Prosecutions has recently made a decision to prosecute the children involved in the Jules High School incident.**

The Minister of Justice and Constitutional Development and the National Director of Public Prosecutions are called upon to respond. Teddy Bear Clinic and RAPCAN are both organisations that have an established track record of dealing with sexually abused children.

The relevant sections of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 currently provide that children between the ages of 12 and 16 years of age can face criminal charges if they consent to acts of sexual penetration (Section 15) and also if they consent to sexual activity that includes kissing and petting (Section 16). Moreover, if these cases are prosecuted, both or all the children must be prosecuted – the prosecutor does not have discretion not to charge one of them.

The Applicants contend that criminalising consensual sexual activities in this way is in breach of such children's constitutional rights and in breach of South Africa's international law obligations.

Criminalising and prosecuting such children for consensual sexual activities has the following effects:

- it unnecessarily stigmatises them as criminals and sex offenders;
- it brands certain activities which may be a normal part of the development of adolescents' sexuality as abnormal, deviant and wrong;
- it impedes children's access to reproductive and other health care and counselling services; and
- it has the potential to subject them unnecessarily to the invasive and stressful processes of the criminal justice system.

These negative consequences are compounded by the provisions dealing with the Sex Offenders' Register and the reporting obligations which are inappropriate for children.

Criminalising adolescents under the consensual sexual violation offence violates the constitutional principle that children's best interests are of paramount importance in all matters concerning children and also the constitutional rights to human dignity, freedom and security of the person and privacy, which underpin children's rights. The violation of the 'best interests' principle is particularly deplorable when Section 16 requires that an adolescent who is more than two years younger than the other offending adolescent must be prosecuted with the older adolescent.

You can find the media release and the full court papers on the Centre for Child Law website at www.centreforchildlaw.co.za