

# Abuse of disabled a national crisis

*Many denied justice as they cannot use voice to communicate*

ROBYN WHITE

IN 2011, the World Health Organisation (WHO) released a report stating that 15% of the global population had a disability.

That's more than 1 billion people. Of those, 200 million had a severe disability, such as the inability to speak.

In South Africa, about 2.9 million people live with a disability, according to Stats South Africa, and 300 000 have been diagnosed with a communication disability and cannot use their voice to communicate.

That is equivalent to triple the seating capacity of FNB stadium in Joburg, the largest in Africa able to accommodate 95 000.

Violence and abuse in South Africa against individuals with disabilities has reached a national crisis.

A national prevalence study published in 2016 estimated that one in three children becomes a victim of sexual violence and physical abuse before the age of 18, while 12% report neglect and 16% report emotional abuse.

Sadly, 60% of sexual abuse cases are withdrawn due to insufficient evidence and the lack of administration of cases.

And, research shows that people with a disability are at high risk of becoming victims of sexual crimes and are often repeat victims.

People with communication disabilities, such as cerebral palsy or autism spectrum disorder, are even more at risk of being victims of sexual crime. They are also more likely to be denied justice because of their inability to communicate.

Too many people believe that testifying in court against a perpetrator will bring secondary trauma to the victim.

On the contrary, research shows that one way of reducing the risk of being a repeat victim of crime is testifying against the alleged perpetrator in court as a witness.

To promote and protect the human rights of persons with disabilities, the UN adopted the Convention on the Rights of Persons with Disabilities in 2006.

The international treaty set the standard and strengthened the legal framework for the recognition of the rights of persons with disabilities.

The convention also seeks to ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.

Article 13 of the convention reports on access to justice and states that all "states" parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations in order to facilitate their effective role as direct and indirect participants,

including as witnesses, in all legal proceedings."

A submission made to the SA Law Commission in 2001 about access to justice for women with psychosocial and intellectual disabilities who had been victims of violence, stated that: "All witnesses be regarded as competent to testify if they can understand the questions put to them and can in return give answers that the court can understand."

Disability advocates need to unpack the term "reasonable accommodation" and use it to assist these individuals to fight for equal access to justice.

The convention defines "reasonable accommodation" as "means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms".

With this definition in mind we need to look at augmentative and alternative communication (AAC) as a valid means of communication for disclosing abuse or other crimes, reporting to the police and testifying in court.

Augmentative and alternative communication is commonly divided into two types of systems:

■ First, unaided communication systems that relies on one's body to convey messages, for example natural gestures, body language, facial expressions and sign language.

■ Second, aided communication systems that require the use of tools or equipment in addition to one's body.

These systems can range from low-technology options such as paper and pencil, communication books or boards to hi-tech speech-generating devices that produce voice output.

Both low and hi-tech communication devices allow the user to use either picture symbols or alphabet letters to create messages.

A 2011 research study conducted at the Centre for Augmentative and Alternative at the University of Pretoria, identified the vocabulary needed to disclose or report crime or abuse in South Africa and, furthermore, a recent master's research study identified the vocabulary needed to testify in court for a person with a communication disability and who had been a victim of crime.

Low-technology communication boards could be used as a resource to help these individuals, their family and legal professionals during the court process.

Further research is under way to investigate how people with communication disabilities who have been victims of crime can be empowered to tell their stories, and assist both them and their families to access the complete criminal justice system – a basic human right that they deserve.

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● *The author thanks and acknowledges her supervisor, Professor Jan Bormman and co-supervisor, Dr Ensa Johnson who contributed to this research study.*



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**Communication for ALL - English Young Communication Board**

How	burn	get	sad	in	family	night
what	don't	know	angry	out	home	food
when	help	look	forced	under	imminent	gun
where	please beg	sex	scared	man/him	police	money
who	stop	scream	alone	sore	toilet	mother
they	tell	steal	ashamed	shy	woman	alcohol
not on this board	touch	swear	bad	clothes	car	school work
hit/punch	bleed	threaten	friendly	doctor	day	father

I can't speak, but can hear and understand you.

I will point where...

Please contact my family

Ask me questions if you need to, but please wait patiently for my answers

Copyright 2011 Bormman, J., Brien, D. N., Karshaw, P. & Ledwaba, G. Institute on Disabilities, Temple University, Centre for Augmentative and Alternative Communication, University of Pretoria.

**Testifying in court**

who	family	boyfriend	girlfriend	man	woman	priest	stranger
driver	neighbour	friend	doctor	child	adult	teacher	police officer
when	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
day	night	before	offer	birthday	christmas	eastern	holidays
where	home	kitchen	livingroom	bedroom	church	garden	school
inside	outside	shock	shops	movies	police station	outside	toilet
how	back	front	apart	forced	licked	punched	tricked
threatened	scared	robbed	spread	egg	stayed	separated	grabbed
what	seeds	alcohol	money	crips	condom	cream	drugs

I cannot speak

but can hear and understand

You can ask me questions but please be patient

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Low-technology communication boards are one of the resources that can be used help someone with communication disability, their family and legal professionals during the court process.

## Dangers of being defender of environmental justice in SA

KIRSTEN YOUNG

THE FIFTH anniversary of the Marikana mine massacre on August 16, 2017 serves as a stark reminder that mining is a very dangerous industry to oppose.

A recent report by Global Witness states that "at least 200 people were killed in 24 countries last year in retaliation for standing up to environmentally destructive industrial projects. That's up from 185 murders in 16 countries in 2015".

This amounts to four reported murders every week.

Mining is the most dangerous industry to oppose with at least 33 of these murders linked to the sector. Women are increasingly in the firing line. Lebogang Ngobeni, from the Fuleni Reserve in KwaZulu-Natal, recently received death threats for appealing a proposed bridge and road development that will open the area to mining.

Other Fuleni activists whose lives have been threatened include Phila Ndimande and Billy Mqondo for leading opposition against Ibutho Coal's proposed open cast coal mine on the boundary of the Hluhluwe iMfolozi Park, a sanctuary with the world's highest concentration of threatened southern white rhino.

Ndimande, Mqondo and Ngobeni live with the awareness that their lives hang in the balance, knowing how dangerous it is to stand up for environmental justice, and for human rights.

The US Environmental Protection Agency defines environmental justice as: "The fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."

In South Africa, defenders of

environmental justice, social and political change are threatened, ridiculed, marginalised and punished. There have been many situations in the struggle against coal mining and other intrusive development in rural areas that have resulted in threats, intimidation and death.

People's homes and cars are burnt. Many have been murdered and the perpetrators get away.

Nonhle Mbuthuma, spokesperson for the Amadiba Crisis Committee (ACC), has spent more than 10 years defending her community's land rights on the Pondoland Wild Coast, against an Australian mining company, Mineral Resources Commodities (MRC).

ACC is also fighting our government and Sanral who want to build a national highway over their land that will facilitate titanium mining of the protected Xolobeni dunes.

Mbuthuma's life is constantly at risk as she is on the same hit list that

fellow murdered activist, "Bazooka" Sikhosiphu Rhadebe, was on. He was murdered on March 22, 2016, the day after Human Rights Day.

As activists for social and environmental justice, we defend human and environmental rights; fighting for the right to a healthy environment, to clean water, to land and the right to life.

As a result, we often clash with political and business interests, with corporations that take over land and natural resources for their own gain.

The mining laws of our country make it particularly easy for them to do so. In acting against these powerful forces, we are often subject to the growing list of corporations or governmental departments that "marginalise defenders, branding their actions 'anti-development'." Many defenders face years of death threats, criminalisation, intimidation and harassment,

but receive little or no protection from authorities".

Our government, from local to national level, often turns a blind eye to intimidation and lack of compliance with the law.

This is particularly noticeable in KwaZulu-Natal where the land falls under the control of the Ingonyama Trust Board. Government structures show reluctance to interfere in areas where the ITB, the traditional councils and the indunas have control.

What they are effectively doing, as is the case in many other countries of the world, is "permitting a level of impunity that allows the vast majority of perpetrators to walk free... Incredibly, it is the activists themselves who are painted as criminals, facing trumped-up criminal charges and aggressive civil cases brought by governments and companies seeking to silence them".

There are many ways to silence

people and an intimidation tactic that is increasing in frequency and often used by corporations or developers against individuals or organisations that oppose their actions is to institute strategic lawsuits against public participation (slapp).

"These lawsuits are a strategic move, brought solely to censor, intimidate, and silence opposition. The typical goals of a slapp are for the defendant to succumb to intimidation, fear, high legal costs or simple exhaustion and ultimately abandon the cause for which they are fighting.

Such lawsuits have been made illegal in many jurisdictions on the grounds that they impede freedom of speech.

"Unfortunately, such suits are not yet illegal in South Africa. Slapps take various forms but the most common is a civil suit for defamation.

Recently, two attorneys from the Centre for Environmental Rights in Cape Town, were served with defamation suits for comments they made about the environmental harm caused in the Western Cape by Tormin mine, owned by ASX-listed MRC. This is the same company wanting to mine the Xolobeni dunes on the Wild Coast.

Environmental defenders and environmental justice activists in South Africa make up a dedicated, committed and extremely brave group that is growing.

Mbuthuma's bravery is renowned "so, when they kill me they must kill me alone, not my family".

And while we're not easily intimidated, whatever intimidation does come our way only makes us more committed to our cause.

● *Young is an attorney specialising in environmental law and environmental justice.*