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## IS IT REALLY RAPE?

By: RACHEL COOMER



**FOR some time the media has been reporting the case of Julian Assange (founder of Wikileaks) who has been accused of rape, two cases of sexual molestation and one case of unlawful coercion by two women.**

The incidents are said to have occurred in August 2010 in Sweden. Currently the British court is considering whether Assange should be extradited to Sweden for questioning. (Assange has not yet been charged with any offence but is wanted for questioning by the Swedish police.) The range of commentaries on this case and the varying information reported show that the Assange case is complicated to say the least. The purpose of this article is not to consider the case in question, or the rights and wrongs of the allegations, but rather to look at the broader picture regarding situations when a person is coerced into having sex without a condom or when a person is coerced into having sex after asking the other person to stop.

The Namibian Combating of Rape Act states that rape is committed when a person intentionally, under coercive circumstances commits, or continues to commit a sexual act. The reference to "continuing to commit a sexual act" means that even if both partners agree to a sexual act, it becomes rape if one person changes his or her mind and wants to stop but the other person continues with the sexual act by employing some form of coercion.

To use a practical example, if a boyfriend and girlfriend decide to have sex for the first time but the girlfriend changes her mind once they are in bed, it is rape if the boyfriend continues to have sex with her by force. It is not rape if a boyfriend and girlfriend decide to have sex but after the act, the

girlfriend decides that she did not want to have sex. It would also be rape if a couple agree to have sex but one of them wants to stop on finding they do not have a condom, but then the other threatens violence to the extent that the unwilling partner feels unable to escape from the situation and is thus coerced into having sex.

Situations where persons have been forced to have sex without a condom against their will have been reported in Namibia. As detailed in the LAC 2006 report Rape in Namibia, such situations have been reported in marriage and by prostitutes.

The problem of prostitutes being forced to have sex without a condom was originally reported in the LAC 2002 publication Whose body is it: Commercial sex work and the law in Namibia and again in 2008 publication Help Wanted: Sex Workers in Katutura, Namibia. As stated by one of the sex workers interviewed in the 2002 report: "One hit me with a beer glass on my forehead because I wanted him to use a condom. I wanted to go to the police office to lay a charge. But could not, because I was blinded with blood and could not recognise the registration number of the vehicle.

Addressing violence against prostitutes is challenging in Namibia, as many sex workers are afraid to report cases of violence or rape to the police. Debate on how to address this problem must continue. The problem of rape in marriage however, has already been addressed in the Combating of Rape Act. Marriage is not a defence against rape. Unfortunately, despite the clarity of this provision, some people in Namibia are unaware of the law or refuse to accept the provision.

In an effort to increase community awareness, the LAC produced a comic on rape in marriage in 2010. The comic was distributed as inserts in The Namibian and Republikein, in three languages (English, Oshiwambo and Afrikaans). The LAC received many SMS and email responses to the comic. The responses have ranged from appreciation for the comic to requests for more information about specific situations. An SMS about the comic was also published in The Namibian on 6 September: "There's a booklet in The Namibian about rape in marriage. I'm sure 95 per cent if not 100 per cent are repeatedly raped. But I know because of fear for our lives and that of leaving our kids behind, many of us will never report it". We hope that the comic will go some way in helping to reduce the incidence of rape in marriage in Namibia.

The Swedish law on rape (the Sexual Crimes Act of 2005) has been criticised for making the definition of rape too broad as the conviction rate remains low even though the number of reported rape cases has increased since the law was enacted. The same criticism has been applied to the Namibian law on rape. However rather than creating new crimes, crimes that were previously reported in Namibia as indecent assault are now registered as rape. It is also important to note that in both Sweden and Namibia, the new laws have helped to raise public awareness and encourage more people to report these crimes to the police. Many people still do not report cases of rape but the number of reported cases is increasing year by year. Although this could be a sign that more rape are taking place, it could also indicate that barriers against reporting cases of rape are gradually being broken down.

The Assange case is relevant to Namibia because the alleged wrongs also occur in Namibia. The Assange case is complicated by accusations of honeytraps and political motivations behind the accusations. Thus this article does not comment on this specific case. But what is relevant to Namibia is the fact that rapes do occur when one person changes his or her mind along the way but is coerced into having sex, or when a person is coerced into having sex without a condom. These acts are offences under the Combating of Rape Act and the cases can be reported to the Woman and Child Protection Unit or police 24 hours a day. The Legal Assistance Centre hopes that the current debate will help to encourage yet more people to go to the police when they have been raped or abused.

\* Rachel Coomer is the Public Outreach Manager with the Gender Research and Advocacy Project of the Legal Assistance Centre.

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