

# CRIMINAL JUSTICE RESPONSES TO DOMESTIC VIOLENCE: ASSESSING THE IMPLEMENTATION OF THE DOMESTIC VIOLENCE ACT IN GAUTENG

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# CRIMINAL JUSTICE RESPONSES TO DOMESTIC VIOLENCE: ASSESSING THE IMPLEMENTATION OF THE DOMESTIC VIOLENCE ACT IN GAUTENG

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A shadow report profiling the experiences of persons applying for protection orders at nine courts in Johannesburg and the East Rand, and their experiences of seeking assistance from the police on domestic violence

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Written by Claudia Lopes, Dianne Massawe and Mpiwa Mangwiro

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This publication is the third and final report of a series of shadow reports that the Tshwaranang Legal Advocacy Centre to end violence against women and the Heinrich Böll Foundation have produced in their 'Enhancing State Response to Gender Based Violence' project.



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# GLOSSARY

**Complainant:** “Any person who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence, including any child in the care of the complainant”.<sup>1</sup>

**Docket:** Official proceedings and information for a criminal case that is pending

**Final protection order:** Final ruling of the court granting the applicant relief sought and instructing the abuser (respondent) to desist from abusive behaviour

**Form 2:** Application for a protection order form

**Form 5:** Notice to the respondent to show cause (provide reasons) as to why a protection order should not be issued against him/her

**Interim protection order:** Temporary ruling of the court granting the applicant protection from the abuser (respondent) pending a hearing

**Means test:** Investigation into the financial position of a person applying for aid from public funds

**Peace officer:** A law enforcement officer

**Presiding officer:** Magistrate hearing protection order applications

**Prima facie:** On the face of it/ at first appearance

**Return of service:** Written acknowledgement by a person responsible for delivery of the protection order (normally the sheriff or a police officer) confirming service (handing over) of the protection order to the respondent

**Respondent:** “Any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against the complainant”.<sup>2</sup>

# ACRONYMS

**DOJ&CD:** Department of Justice and Constitutional Development

**DVA:** Domestic Violence Act

**NPO:** Non-profit organisation

**POWA:** People Opposing Women Abuse

**SAPS:** South African Police Services

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<sup>1</sup> Domestic Violence Act 116 of 1998, pg. 2.

<sup>2</sup> Ibid, pg 6.

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# 01

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## EXECUTIVE SUMMARY

In 1998, in recognising the excessive rates of domestic violence in South Africa and in acknowledging that the legal remedies available at the time were ineffective in dealing with the full extent and range of domestic violence, the first post-apartheid government enacted the Domestic Violence Act (DVA). The purpose of this legislation (hereinafter referred to as the Act) was to “*afford victims of domestic violence the maximum protection from domestic abuse that the law can provide*”.

The DVA enables victims of domestic violence (or complainants) to apply for a protection order against the perpetrator of abuse (or respondent). In granting a protection order the court can prohibit the respondent from committing any act, or enlisting the help of other persons to commit any act of domestic violence. The order may also prohibit a respondent from entering a shared residence or part thereof; from having contact with a particular child; and from harassing the complainant at his/her place of employment. Other conditions may also be set such as the respondent being requested to provide

monetary relief to the complainant. If the protection order is granted (whether it be an interim or a final order), a warrant of arrest is also issued enabling the police to arrest the perpetrator if he/she fails to adhere to the terms set out in the order. The respondent is, however, able to argue his/her case at a hearing that is presided over by a magistrate. Protection orders can be applied for at family courts, located in magistrates courts, during court operating hours. Under urgent circumstances applications can be made out of normal court operating hours.

With respect to domestic violence, the role of the court clerk includes informing applicants about the Act, its remedies, the relevant procedures and assisting with the completion of application forms- amongst a number of other duties. The Act as well as the South African Police Services National Instructions, places a duty on the police to assist victims of domestic violence to find suitable shelter, to obtain medical treatment and to collect personal items from his/her residence. The Act also makes provision for the police to serve protection orders on the

# WHILE THE DVA IS AN IMPRESSIVE PIECE OF LEGISLATION, PUBLIC HEARINGS HELD ON THE ACT IN 2009 RAISED A NUMBER OF CONCERNS REGARDING ITS IMPLEMENTATION WHICH HAMPERED THE EFFICACY OF THE RELIEF AVAILABLE TO VICTIMS OF DOMESTIC VIOLENCE.

respondent; to remove dangerous weapons from the respondent, or from the home; and to maintain records of reports of domestic violence in a prescribed manner.

While the DVA is an impressive piece of legislation, public hearings held on the Act in 2009 raised a number of concerns regarding its implementation which hampered the efficacy of the relief available to victims of domestic violence. This included (amongst many others) non-compliance with the provisions of the DVA; negative attitudes towards victims by the police and court officials; undue delays in processes and lack of access to courts and the police.

This publication is the third and final report of a series of shadow reports that the Tshwaranang Legal Advocacy Centre to end violence against women (TLAC) and the Heinrich Böll Foundation (HBF) have produced in their 'Enhancing State Response to Gender Based Violence' project. The report sets out the provisions of the DVA and assesses whether these are being met by profiling the experiences of 151 persons applying for protection orders at nine courts in Johannesburg and East Rand and their experiences of seeking assistance from the police on domestic violence matters.

The findings reveal that there was seldom uniformity in the way that courts handled the process of applying for protection orders. Clerks did not always fulfil their duty. This raises many questions with respects to their training, workload, how much time they have to attend to domestic violence matters as well as how their performance is evaluated and/or monitored. Applicants were often frustrated by the extent of time that they had to wait and at times, by the manner in which they were treated by clerks of the court. Despite the majority of applicants being informed about protection orders by the police, the police are still failing to comply with the provisions of the DVA including not informing victims of their right to lay charges against abusers; failing to offer victims access to medical treatment and to refer victims to shelters for abused women. Applicants cited experiences of secondary victimisation and police attempting to mediate domestic disputes rather than arresting the perpetrator.

The report sets out a number of recommendations in relation to the findings and the conclusions drawn.

An ornate stone archway, likely made of dark grey or black stone, is set against a light-colored stone wall. The arch is decorated with intricate carvings, including a central floral motif and a large, stylized scrollwork element. Above the arch, a window with a dark frame is visible. The archway is supported by a base with decorative panels. The overall appearance is aged and weathered.

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ANNEX

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# 02

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## INTRODUCTION

*“Globally, domestic violence is a very serious social phenomenon. In South Africa, violence against women and children is widespread and on the increase. Family violence is a pervasive and frequently lethal problem that challenges society at every level. Abuse in families has a devastating effect on its victims physically, emotionally, spiritually and financially. Violence threatens the stability of the family and has a negative impact on all family members. It is especially true in the case of children who learn from it that violence is an acceptable way of coping with problems and gaining control over another person. Furthermore, it violates the safety, health, welfare and economies of communities as a result of medical expenses, psychological problems, and loss of productivity. It concerns governments, international communities and civil society, including non-governmental organisations and the private sector, who should address the problem urgently and effectively.” (Van der Hoven, A. 2001)*

### 2.1 Background

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In 1998, the first post-apartheid government enacted the Domestic Violence Act (DVA) in recognition of both the unacceptably high rates of domestic violence and the inefficacy of legislation to afford adequate protection to victims. The purpose of the Act was to *“afford victims of domestic violence the maximum protection from domestic abuse that the law can provide”*.<sup>3</sup>

The DVA is an impressive piece of legislation however implementation of the Act has been problematic. In 2009, civil society submissions presented at the public hearings on the DVA, hosted by the Portfolio and Select Committees on Women, Children and Persons with Disabilities, raised a number of concerns in respects of the Act, its provisions and implementation. In their strategic report on the public hearings, parliamentary researchers Abrahams and Levandale (2009) note the following as some of the key concerns in respects of the judiciary and the police:

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<sup>3</sup> Preamble to the Domestic Violence Act (116 of 1998).

- ***non-compliance with the provisions of the DVA by the police*** inclusive of refusal or reluctance to serve protection orders or to arrest perpetrators of abuse who had violated the conditions as set out by a protection order;
- ***failure of the police to attend to domestic violence call-outs*** reasons cited by police when failing to do so included lack of vehicles to attend to the call-out or that they were attending to other, more pressing matters;
- ***failure to inform victims about their rights*** to apply for protection orders or to lay criminal charges;
- ***“negative”, “demeaning” and “discriminatory” attitude*** of police officers and court officials to victims of domestic violence resulting in the secondary victimisation of victims;
- ***court officials were ill-equipped to deal with matters related to domestic violence***;
- ***magistrates and courts were not accessible to persons wanting to apply for protection orders after-hours*** this placed victims seeking urgent protection from abuse at further harm;
- ***undue delays in court processes*** at times also placed victims at further harm and also had a negative impact on the economic livelihood of employed persons who needed to take time-off from work to attend court, and
- ***lack of privacy in court*** when dealing with domestic violence cases also resulted in the further victimisation of victims.

The submission of the Tshwaranang Legal Advocacy Centre to end violence against

women (TLAC), in collaboration with a range of other organisations, also confirmed that the police were ill-equipped to attend to domestic violence matters. This was informed by two research studies conducted by the organisation which had revealed that police often attempted to mediate domestic violence disputes instead of arresting the perpetrators (as is required by law) and that not all courts adhered to the provisions of the DVA that allowed complainants to apply for protection orders at any time of the day and week.

The public hearings on the DVA proved that problems in the implementation of the Act significantly hampered the efficacy of the relief available to victims of domestic violence. In an effort to address these problems recommendations made by the committees to the Department of Justice and Constitutional Development (DOJ&CD) included the following:

- standardisation of court practice in relation to the DVA (including the court’s working hours);
- a mandatory request that all courts maintain the confidentiality of applicants applying for protection orders by allowing them to do so in private offices;
- improvement on access to courts after-hours;
- the development of norms and standards for the training of court personnel;
- a request for the department to develop strategies to deal with undue delays in court processes;
- improved communication with

applicants including informing them of their rights; and

- provision of assistance to applicants in the language of their choice.<sup>4</sup>

With respect to the police, recommendations made by the committees included, amongst many others, the:

- development of training norms and standards for the police on domestic violence;
- the amendment of the South African Police Services National Instruction to provide guidelines on when police should or should not arrest a perpetrator of domestic violence.<sup>5</sup>

The departments have periodically presented to parliament on progress made in the implementation of recommendations.

In an effort to assess whether similar challenges are still being faced by victims of domestic violence, TLAC monitored nine courts in Johannesburg and East Rand and interviewed applicants on their experience of having applied for protection orders at these courts. Information was also sought on the experiences of applicants in dealing with the police on domestic violence matters. This report outlines the provisions of the DVA, with a particular focus on the processes and procedures in applying for protection orders, the roles played by the courts and the police, and assesses whether the provisions set out in the DVA are being met. The report concludes with practical recommendations for improved service delivery to victims of domestic violence by the courts and the police.

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4 Watson (2011)

5 Matthews (2011)

## 2.2 Methodology

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Prior to the commencement of the field work, two members of a women's rights community-based organisation, Remohho, were identified as suitable monitors to assist with the collection of data. Fieldworkers assisted with the development of a monitoring tool, and were also trained on the DVA and processes involved in applying for a protection order. Fieldworkers also attended weekly briefing sessions where they were able to share some of their observations. Further guidance and training was given where required.

### Field Site Selection and Sampling

A total of nine courts from two magisterial districts (Johannesburg and the East Rand) were monitored for this report. A variety of factors determined the selection of the sites and the number of courts chosen to be monitored. Firstly, TLAC had, through a previous project, developed relationships with a number of senior officials from these magisterial districts. Permission to conduct this study was therefore facilitated as a result of these pre-existing relationships. Secondly, due to limited resources and time, it was not possible to monitor all the courts from these two districts (11 from one and 13 from the other). Courts were therefore selected using a combination of purposive and random sampling. Three of the nine courts were selected based on complaints received from clients as well as a police station on the quality of service at these courts.

### Fieldwork

Fieldwork was implemented in two stages: the first between the 10<sup>th</sup> of May and the 7<sup>th</sup> of June 2012, and the second between the 1<sup>st</sup>

of October and the 30<sup>th</sup> of November 2012. The fieldwork took place when permission for the monitoring of courts was given by the relevant Chief Magistrates. The fieldwork took place every Monday and at least two other days of a working week during normal court operating hours (8:00 a.m. to 4:00 pm). The requirement to include Mondays in the data collection week was informed by a propensity for incidences of domestic violence to peak over weekends. It was therefore assumed that a greater number of people would attempt to apply for a protection order on a Monday than any other day of the week.

Two tools were used to gather data in the field. The first was an interview that was conducted with applicants after they had applied for protection orders. The interview was conducted on a voluntary basis and took no longer than 20 minutes. Participants were asked to:

- describe what led them to apply for a protection order;
- where they had learnt about protection orders;
- how they rated the level of service received;
- the amount of time spent waiting to be assisted by a clerk of the court; and
- the total amount of time spent in court.

If participants had sought assistance from the police on any domestic violence related matter, they were asked to describe the experience and rate the level of service received from the police.

The second tool required fieldworkers to record their observations at each court. Essentially fieldworkers were asked to

note the state of the court, and particularly the waiting area; the number of clerks assisting applicants for protection orders; the attitudes of these clerks where possible; and the role that the security guards played in the process of applying for protection orders. Fieldworkers were also asked to include in their notes, recommendations on how service delivery at these courts could be improved.

To seek input on the findings, two information-sharing workshops were held once the findings had been drafted – one with clerks of the court and magistrates and another with civil society organisations.

To ensure no harm came to respondents the following measures were adopted:

- Confidentiality and privacy was observed at all times. Monitors conducted interviews in a private room, when made available by the court. When no rooms were provided, interviews were conducted out of earshot from other persons;
- Verbal consent from applicants was requested prior to conducting the interview and applicants were informed that they could end the interview at any point;
- A referral list of reputable organisations providing domestic violence-related services, including a list of shelters for abused women, were handed out to the public at the courts.

## **2.3 Limitations of the methodology**

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Applying for protection orders takes a significant amount of time and as such,

# A TOTAL OF NINE COURTS FROM TWO MAGISTERIAL DISTRICTS (JOHANNESBURG AND THE EAST RAND) WERE MONITORED FOR THIS REPORT...THREE OF THE NINE COURTS WERE SELECTED BASED ON COMPLAINTS RECEIVED FROM CLIENTS AS WELL AS A POLICE STATION ON THE QUALITY OF SERVICE AT THESE COURTS.

structuring interviews at the end of such a rigorous process posed a challenge. Several applicants declined to participate or ended interviews prematurely citing time constraints as a factor. Ending interviews prematurely meant that certain sections were not answered thereby reducing the number of fully completed questionnaires. Incomplete questionnaires were discarded.

The amount of time that monitors were allowed to spend in courts was not uniform across all the courts. It was originally intended that monitors were to spend two weeks at each court, but this was not always possible as it was dependant on the availability of magistrates and court managers. Although the two Chief Magistrates have given permission to monitor the courts in their districts, monitors also had to seek permission from the magistrates and managers of the individual courts. In some instances, managers were on leave or the court was too busy to directly assist the monitors, and preferred that the monitoring took place when they were more freely able to assist. This meant that the allotted time of court monitoring over a two week period was reduced to one week at some of the courts.

## **2.4 Structure of the report**

The next section, Chapter 3, of the report provides an overview of the Domestic Violence Act with a particular focus on protection orders. It includes a summary of the procedures to apply for a protection order; the powers of the courts and roles and responsibilities of the clerks of the court and the police.

Chapter 4 contains the case studies of the nine courts that were monitored. This section focuses on applicants' experiences of applying for a protection order from the nine courts. It includes information such as the length of time spent by applicants in courts and who assisted applicants with completion of the required forms. Chapter 5 focuses on applicants' experiences of seeking assistance from the police in domestic violence matters.

Chapter 6 contains a summary of the key findings across all nine case studies. Chapter 7 concludes the report with a number of recommendations to address the findings.

# 03

## THE DVA WITH PARTICULAR REFERENCE TO PROTECTION ORDERS

### 3.1 Introduction

The DVA, although promulgated in 1998, only came into effect in 1999 and replaced the Prevention of Family Violence Act (133 of 1993). The Prevention of Family Violence Act was the first attempt by the national government to respond to domestic violence. This Act was fraught with limitations. In response to the call for the overhaul of the Act by several lobbyists, the South African Law Commission undertook a study on domestic violence and together with a multi-sectoral group set out to identify remedies to address the short-comings of the Prevention of Family Violence Act.<sup>6</sup> These efforts led to the development and promulgation of the DVA.

The DVA, in replacing the Prevention of Family Violence Act, broadened the scope and definition of domestic violence as well as the nature of the domestic relationship.

The DVA defines domestic violence under section one (1) in terms of ten (10)

categories. *These are any actual or threatened incidences of:*

- I. Physical abuse- means any act or threatened act of physical violence towards a complainant (and includes acts of pushing, beating or slapping);
- II. Sexual abuse- means any conduct that abuses, humiliates or degrades or otherwise violates the sexual integrity of the person;
- III. Emotional, verbal and psychological abuse- is defined by the Act as a pattern of degrading or humiliating conduct towards a complainant, including–
  - a) repeated insults, ridicule or name calling;
  - b) repeated threats to cause emotional pain; or
  - c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's privacy, liberty, integrity or security;
- IV. Economic abuse- includes

<sup>6</sup> Parenzee, Artz and Moullet (2001)

- a) the unreasonable deprivation of economic or financial resources to which a complainant is entitled under law or which the complainant requires out of necessity, including household necessities for the complainant, and mortgage bond repayments or payment of rent in respect of the shared residence; or
- b) the unreasonable disposal of household effects or other property in which the complainant has an interest;
- V. Intimidation -means uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear;
- VI. Harassment – means engaging in a pattern of conduct that induces the fear of harm to a complainant including–
- a) repeatedly watching, or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;
- b) repeatedly making telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues;
- c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant;
- VII. Stalking- means repeatedly following, pursuing or accosting the complainant;
- VIII. Damage to property- means the intentional damage or destruction of property belonging to the person or in which the person has an interest.

- IX. Entry into the complainant's residence without consent, where the parties do not share the same residence;
- X. Any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

The Act further defines the domestic relationship as any of the following categories of relationships between the complainant and the respondent<sup>7</sup>:

- They are or were married to each other, including marriage according to any law, custom or religion;
- They (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
- They are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
- They are family members related by consanguinity, affinity or adoption;
- They are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
- They share or recently shared the same residence.

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<sup>7</sup> DVA, pg 4 (vii)

## 3.2 The protection order

The protection order is a legal document that a complainant obtains in order to protect him/herself from the perpetrator of abuse. A complainant may approach any magistrates court closest to where he or she resides permanently or temporarily; or where the abuser resides (if different to the complainant) or works; or at a magistrate court in the area that the abuse occurred in.

To apply for the protection order, the complainant needs to complete a complaints form (known as Form 2) which is available from a clerk of the court at the domestic violence section of the magistrate court. Once the form has been completed, the clerk of the court hands the form to the presiding officer (i.e. magistrate) who then decides, based on the information provided on the form, whether or not an interim protection order should be granted. An interim protection order is issued by the court if sufficient evidence is provided that the complainant in the matter will suffer undue hardship if the protection order is not immediately awarded.<sup>8</sup> Similarly the DVA makes provision for complainants to approach the courts after hours if the situation is grave and an interim protection order is needed immediately - this service is accessed through the police station closest to where the abuse has occurred.

If a complainant is not legally represented, the clerk, as well as the presiding officer, has a duty to inform the complainant of his/her right to lodge criminal charges with the police against the respondent, in addition to seeking a protection order. The DVA also provides for instances where the

complainant is unable to, on his/her own accord or by his/her own hand, apply to court for a protection order. The Act allows for a third party to do so on behalf of the complainant, provided that the third party has the written consent of the complainant to proceed with such an application.<sup>9</sup>

Exceptions to the above rule (where a third party does not require the consent of a complainant before applying for a protection order) are in circumstances where the complainant is a minor; a mentally disabled person; an unconscious person; or a person whom the court is satisfied is unable to provide the required consent.<sup>10</sup>

The court may hear any evidence it considers relevant to the matter if it will assist the court in making a finding in the matter. It is pertinent that in completing the application form, that the complainant is as honest and forthright with the court as possible. Any witness statements and medical evidence should be brought to the attention of the court when applying for relief from abuse. Further matters relating to the perpetrator of abuse (respondent), being in possession of a fire arm or any other dangerous weapon, must be brought to the attention of the presiding officer.

Once issued, the interim protection order only has force or effect after it has been served on the respondent. The order is issued together with a notice for the respondent to appear at court on a date set by the court (referred to as a *return date*)<sup>11</sup>. This is the

<sup>9</sup> Section 4(3) identifies those persons who are able to file for a protection order on behalf of a complainant as any person including a counsellor, health service provider, SAPS member, social worker or teacher.

<sup>10</sup> *ibid*

<sup>11</sup> The clerk of the court should also advise the complainant of the respondent's right to "anticipate" the return

<sup>8</sup> Section 5 of the DVA sets out the basis on which the court grants an interim protection order.



date on which the court will hear evidence from both parties as to why the interim order should or should not be made final<sup>12</sup>. Should an interim protection order not be granted, a notice to appear in court will be served on the respondent calling on him/her to be at court on the set date to present evidence as to why the court should not award a final order to the complainant.

The clerk of the court will arrange for a copy of the interim protection order to be served by the sheriff, or a member of the police, on the respondent. Service by the police is normally only required where there is a likelihood of resistance to service. The complainant is responsible for the costs of service unless, at the time of making the application, the complainant motivates that he/she cannot afford the costs of service and this is accepted.<sup>13</sup>

A survey by TLAC of 13 sheriff's offices in Johannesburg found that the costs associated with serving protection orders varied per office but ranged between R130 to R400. Monies need to be paid before the protection order is served and should the respondent not be available at the designated address at the time that the sheriff intends to serve the notice, the complainant may need to cover the costs of serving the respondent again.

Once the clerk of the court has received a return of service, the complainant will be issued with a certified copy of the (final or interim) protection order and an original warrant of arrest.<sup>14</sup> Every protection order, whether interim or a final, is accompanied

with a warrant of arrest. The police will keep a copy of the warrant should they need to enforce it in future. Should the respondent fail to appear on the return date, the court will only grant the final order if (a) it is satisfied that the respondent was served with the interim protection order or the notice to appear (return of service is returned to the court) and (b) if there is prima facie evidence of domestic violence. If the respondent does appear then the court will hear any evidence previously presented to the court and any additional evidence via affidavit and/or via oral evidence that the court deems necessary in the hearing of the matter. The court will decide on a balance of probabilities (which is much less than the burden of proof in criminal matters that require the standards 'of beyond a reasonable doubt') whether the respondent has committed any acts of domestic violence and as such, determine whether or not to grant a final protection order to the complainant.<sup>15</sup>

### **3.3 The courts powers<sup>16</sup>**

In granting a final protection order (this can also be put in place in an interim order) the court can prohibit the respondent from committing the following acts:

- committing any act of domestic violence;
- enlisting the help of any other person to commit an act of domestic violence;
- entering a residence shared by the complainant and the respondent;
- entering a specified part of a shared residence;
- entering the complainant's residence;
- entering the complainant's place of employment;

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date which will mean that the respondent can bring the return date forward.

12 Section 5 of the DVA

13 Tracey-Leigh Wessels and Associates (<http://www.traceyleighwessels.com>)

14 Section 5(7) (a)-(b)

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15 Section 6 of the DVA

16 Section 7 of the DVA

- preventing the complainant from entering any part of a shared residence;
- seize any arms or dangerous weapon in the respondent's possession;
- a peace officer to accompany the complainant to a specified place to collect personal property;
- to pay emergency monetary relief to the complainant;<sup>17</sup>
- refuse the respondent contact with any child, or order contact with the child on conditions it deems appropriate in the circumstances.

The above relief depends on the nature of the complaint filed with the court. In addition to the remedies stipulated above, the court may order any other relief it deems reasonable.<sup>18</sup>

### **3.4 The role of the clerks of the court in relation to domestic violence**

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The role of the clerks of the court includes the following:<sup>19</sup>

- informing applicants about the Act, its remedies and the relevant procedures;
- assisting applicants with filling out the application forms;
- issuing interim and final protection orders;
- cause the issuing of summonses;
- cause the serving of certified copies of the interim protection order and original warrant of arrests on the respondent; and

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17 Depending on the financial circumstances of both parties, emergency money relief could refer to compensation for monetary losses suffered by a complainant as a result of the domestic violence, including loss of earnings; medical and dental expenses; relocation and accommodation expenses; or household necessities.

18 Section 7(2) & Section 9

19 Artz (2003)

- preparing court files for the magistrate.

### **3.5 The role of the South African Police Service (SAPS) in relation to domestic violence**

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Section 2 of the DVA places duties on all SAPS members to assist and inform complainants of their rights. It reads as follows:

*Any member of the South African Police Service must, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, or when the incident of domestic violence is reported –*

- A. Render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find suitable shelter and to obtain medical treatment;
- B. If it is reasonably possible to do so, hand a notice containing information as prescribed to the complainant in the official language of the complainant's choice; and
- C. If it is reasonably possible to do so, explain to the complainant the content of such notice in the prescribed manner, including the remedies at his or her disposal in terms of this Act and the right to lodge a criminal complaint, if applicable.

Section 3 of the Act authorises a peace officer to arrest, without a warrant, a respondent who is suspected of committing an act of domestic violence.

Section 8 of the Act outlines what should happen with regards to a warrant of arrest upon issuing of a protection order:

(4) (a) A complainant may hand the warrant of arrest together with an affidavit in the prescribed form, wherein it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in the protection order, to any member of the South African Police Service.

(b) If it appears to the member concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the member must forthwith arrest the respondent for allegedly committing the offence referred to in subsection 17 (a).

(c) If the member concerned is of the opinion that there are sufficient grounds for arresting the respondent in terms of paragraph (b), he or she must forthwith hand a written notice to the respondent which –

- (i) specifies the name, the residential address and the occupation or status of the respondent;
- (ii) calls upon the respondent to appear before a court, and on the date and at the time, specified in the notice, on a charge of committing the offence referred to in subsection 17 (a); and
- (iii) contains a certificate signed by the member concerned to the effect that he or she handed the original notice to the respondent and that he or she explained the [importance] thereof to the respondent.

(d) The member must forthwith forward a duplicate original of a notice referred to in paragraph (c) to the clerk of the court concerned, and the mere production in

the court of such a duplicate original shall be prima facie proof that the original thereof was handed to the respondent specified therein.

(5) In considering whether or not the complainant may suffer imminent harm, as contemplated in subsection (4) (b), the member of the South African Police Service must take into account–

- (a) the risk to the safety, health or well-being of the complainant;
- (b) the seriousness of the conduct comprising an alleged breach of the protection order;
- and (c) the length of time since the alleged breach occurred.

(6) Whenever a warrant of arrest is handed to a member of the South African Police Service in terms of subsection (4)(a), the member must inform the complainant of his or her right to simultaneously lay a criminal charge against the respondent, if applicable, and explain to the complainant how to lay such a charge.

In addition, the Act as well as the SAPS National Instructions 7/1999 (version 2 issued on 3 March 2006) sets out further obligations for the police including<sup>20</sup>:

- Helping the victim to collect personal items from his or her residence;
- Serving notice on the abuser to appear in court, as well as serving of protection orders;
- removing weapons from the abuser, or from the home; and
- maintaining records of reports of domestic violence in a prescribed manner.

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<sup>20</sup> Vetten, Leisegang and Haken (2010).



ПОЛІСЬ

# 04

## CASE STUDIES OF NINE COURTS

### Court 1

Magisterial District	Johannesburg
Number of clerks assisting with protection orders	5
Number of magistrates handling domestic violence matters	4
Number of organisations based at the court	2 - People Opposing Women Abuse (POWA) and Mosaic
Number of applicants interviewed	18
Average waiting period from application to hearing	6-8 weeks

#### **Description of court and process to apply for protection orders**

This court is situated in central Johannesburg and as such yields a high case-load due to its centrality and easy accessibility. Five clerks assist with protection orders and four magistrates handle the processing of the applications at this court. In order to apply for a protection order, applicants are

requested to first collect the application form (Form 2) from the clerk of court. Thereafter, applicants are assisted with the completion of the form by two non-profit organisations, POWA and Mosaic. Both organizations have been provided with offices by the court. Once the form has been completed, the applicant is given his/her form to take to the clerk on duty. Applicants sit on benches placed along a corridor while they await

the outcome of their application. Security guards assist with directing people to the right office or queue.

### *User profile*

<b>Applicants Gender</b>	
Female	15
Male	3
<b>N</b>	<b>18</b>

<b>Language of applicants</b>	
Afrikaans	5
Amarik	2
English	1
IsiZulu	3
IsiPedi	1
Ndebele	2
Sesotho	1
Shona	1
Xitsonga	1
Yoruba	1
<b>N</b>	<b>18</b>

Eighty-four percent (84%) of applicants interviewed by court monitors were female. Although Form 2 is only available in English, only one applicant at this court was English speaking.

Of the 18 applicants, the majority (12) were employed and 11 of these applicants had to take time off from work to go to court. Of this group, four had also had to take time off from work to attend court on a previous occasion. The majority of applicants were advised to go to the court to apply for a protection order by the police (11) or by a family member (4). The rest were referred

by a church member (2) and in one case this information was unknown.

### **Terms and granting of the protection order**

In 94% (17) of cases, the protection most often requested by applicants was for the abuser to stop physically and verbally abusing the applicant. In 50% (9) of cases the applicant had also requested that the abuser vacate the home.

All applicants were granted an interim protection order and were informed to take the order to the nearest police station where the police would then serve the respondent. They were also informed that on the return date, the respondent would also be present. The majority were also aware that on the given date, both parties would have to present their side of the story to the magistrate. However, most applicants did not seem aware that having an interim protection order was no guarantee that they would be granted a final protection order.

### **The application experience**

Although POWA and Mosaic assist applicants with the completion of the application form most applicants interviewed were unaware that they had been assisted by either of the two organizations with most (14) citing that a clerk of the court had helped them during the application process. Two of the applicants said that they had completed the forms on their own and in one case the applicant had requested the assistance of a security guard. Security guards are not trained to do this nor are they expected to.

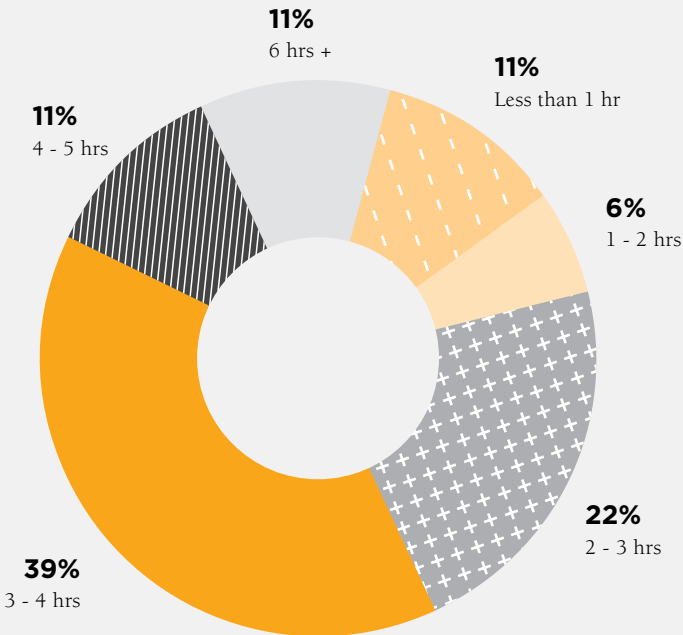
The application process was time-consuming for the majority of applicants. Most waited

between 30 – 59 minutes before being assisted by a clerk of the court. For three people waiting to receive an application form from the clerk took up to 2.5 hours. The total time spent in court for the majority of applicants was 3 – 4 hours however for some the entire process was far more cumbersome with two applicants having spent more than 6 hours in total at the court in one day. One applicant remarked:

**“THEY COULD HAVE BEEN QUICKER BECAUSE NOW I HAVE TO BE ABSENT [FROM WORK]”.**

(FEMALE APPLICANT)

**Total time spent in court**



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## Court 2

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Magisterial District	East Rand
Number of clerks assisting with protection orders	1
Number of magistrates handling domestic violence matters	1
Number of organisations assisting with the completion of applications	0
Number of applicants interviewed	12
Average waiting period from application to hearing	1.5 – 2 weeks

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### Description of court and process to apply for protection orders

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This court is situated in the East Rand. One clerk and one magistrate handle domestic violence matters at this court although this is not their sole responsibility – the clerk also assists with the handling of small claims cases and the magistrate also presides over maintenance cases.

When an applicant approaches the court seeking assistance with a protection order, the clerk assists the applicant in filling in the form. Applicants wait in the corridor near the clerk's office during this process.

Despite the limited staff, court monitors observed that the staff was dedicated to their work and they tried their best to ensure that applicants did not wait any longer than necessary.

### User profile

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#### Applicants Gender

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Female	9
Male	3
<b>N</b>	<b>12</b>

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#### Language of applicants

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English	6
isiZulu	4
Sesotho	1
Xitsonga	1
<b>N</b>	<b>12</b>

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Much like in the first court, the majority of applicants (nine or 75%) present were females, and half of the applicants were English speaking while the other half spoke isiZulu (4), Sesotho (1) and Xitsonga (1). Of the 12 applicants, only four were employed and consequently had to take time off from work to go to court.



## **DESPITE THE LIMITED STAFF, COURT MONITORS OBSERVED THAT THE STAFF WAS DEDICATED TO THEIR WORK AND THEY TRIED THEIR BEST TO ENSURE THAT APPLICANTS DID NOT WAIT ANY LONGER THAN NECESSARY...SOME APPLICANTS HAD HOWEVER SAID THAT THEY HAD BEEN YELLED AT WHICH HAD LEFT THEM FEELING TRAUMATIZED AND UNCOMFORTABLE IN ENGAGING WITH THE COURT.**

Similar to applicants interviewed at the first court, the majority of applicants were advised to go to the court to apply for a protection order by the police (7) or by a family member (3). The remainder were referred by a clerk of the court (1) and a friend (1).

### **Terms and granting of the protection order**

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All applicants requested that the respondent be ordered not to verbally abuse them and in eleven instances this also included physical abuse. Five applicants had requested that the respondent leave the home; six had requested that the respondent desist from calling his or her family; three had requested that the respondent pay them maintenance; and one had specified that the respondent desist from taking her mother's money.

Eleven of the 12 applicants were successful in being granted an interim protection order, although in two instances the successful applicants had highlighted that they had not received all of the protection they had applied for.

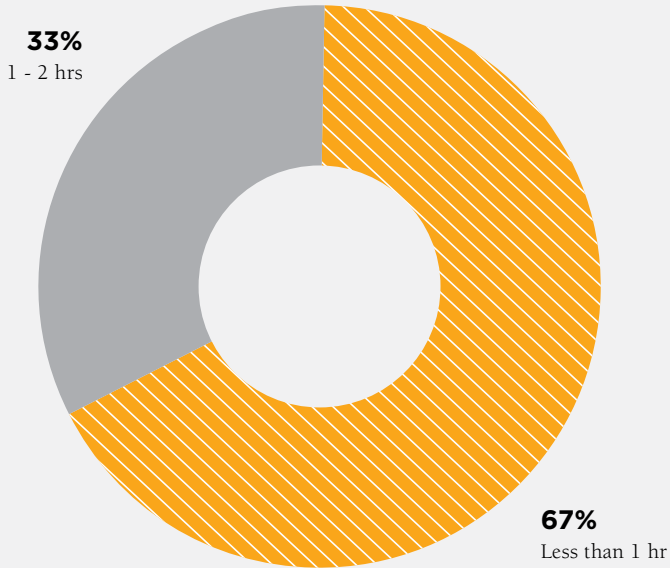
All the applicants were informed of the return date by the clerk of court. They were aware that the respondent would be present on that day too but unaware that the magistrate could, on hearing both sides of the case, choose not to grant a final protection order. All of the applicants had been informed that they should call the police if the respondent ignored any of the interim protection order terms, but only three were aware that the respondent could be arrested in that instance. All of the applicants were asked to take their interim orders to the nearest police station so that these could be served on the respondents by the police.

### **The application experience**

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In comparison to the first court, applicants at this court spent far less time in court. The majority (9) were attended to by the clerk and had received the interim protection order in under an hour. The longest time spent at the court (for one applicant) throughout the process of applying for the order and awaiting an outcome was between 1.5 to 2 hours.

### ***Total time spent in court***



Overall, the majority of applicants were happy with the assistance provided by the clerk of the court. They felt that the different forms required to be completed and the process of applying for the protection order was well explained. Some applicants had however said that they had been yelled at which had left them feeling traumatised and uncomfortable in engaging with the court in future. Statements to this effect included one applicant who commented on the service received:

**“THEY SHOULD STOP SHOUTING AT ME”**

(FEMALE APPLICANT)

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## Court 3

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Magisterial District	Johannesburg
Number of clerks assisting with protection orders	4
Number of magistrates handling domestic violence matters	5
Number of organisations assisting with the completion of applications	0
Number of applicants interviewed	16
Average waiting period from application to hearing	2-4 weeks

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### Description of court and process to apply for protection orders

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The domestic violence section of this court is located in a container outside the court building. Applicants are given forms to complete outside. Once completed, the forms are collected by the clerks. There is no formal waiting area for applicants instead most sit on the ground under a tree. Needless to say, applicants are often forced to withstand harsh weather conditions in the peaks of summer and winter.

Applicants were not assisted by clerks to fill in the forms. Court monitors noted that clerks seemed impatient with applicants seeking clarity on the forms, and would at times raise their voice or use harsh tones when addressing applicants. Clerks also took a long time to collect the forms completed by applicants.

### User profile

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#### Applicants Gender

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Female	15
Male	1
<b>N</b>	<b>16</b>

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#### Language of applicants

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isiZulu	8
Sesotho	6
Sepedi	2
<b>N</b>	<b>16</b>

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Court monitors interviewed 16 applicants of which only one was male. The home language of half (8) of the applicants was isiZulu. Fifty percent of the applicants were employed and had to take the day off from work to go to court. Of this group, six applicants had also had to take time off from work to attend court on a previous occasion.

Two-thirds of the applicants were advised to apply for a protection order by the police. For the remaining four applicants, two were

## THE DOMESTIC VIOLENCE SECTION OF THIS COURT IS LOCATED IN A CONTAINER OUTSIDE THE COURT BUILDING...THERE IS NO FORMAL WAITING AREA FOR APPLICANTS INSTEAD MOST SIT ON THE GROUND UNDER A TREE.

referred by a family member or a friend while two did not specify who had referred them to apply for a protection order.

### **Terms and granting of the protection order**

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In 14 instances, applicants requested that the respondent be ordered not to physically and verbally abuse them and in one instance an applicant specified that the respondent be prevented from threatening to kill her and her children. Seven applicants had requested that the respondent leave the home; five had requested that the respondent pay them maintenance; and five had requested that the respondent stop calling the applicant or going to her workplace. In two separate instances applicants requested that the respondent stop visiting the homes of her friends and family, and that the respondent be ordered to pay the bond on the home until their divorce was finalised.

Fifteen of the 16 applicants were successful in being granted an interim protection order. The unsuccessful applicant was given Form 5 instead and told to return on the next court date as the court felt that her circumstances did not warrant an interim order. She had wanted the court to issue the interim order instructing the respondent to stop calling and insulting her or going to her mother's home to look for her.

Most applicants (14) were informed that on the return date the respondents would also be present at court. Only half of the respondents were aware that they would have to take copies of the interim protection orders to the police to be served on respondents, the other half were not sure of what to do with the interim protection order that was given to them. All the respondents were however aware that they could call the police and have the police arrest the respondent should the respondent ignore the conditions of the order.

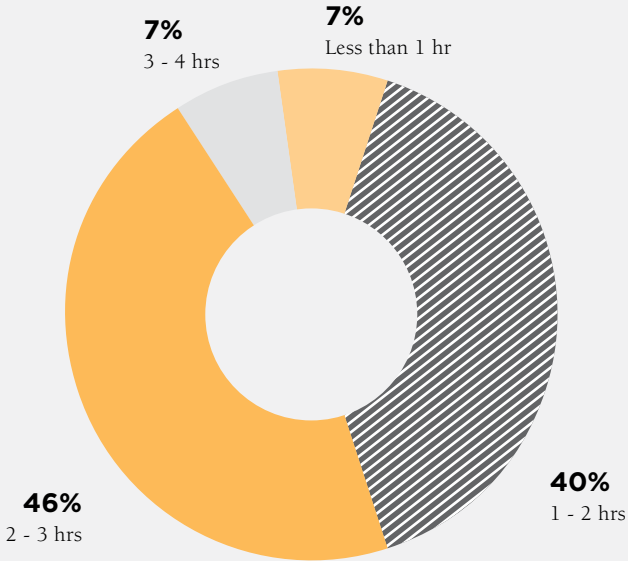
### **The application experience**

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Waiting times for assistance from domestic violence clerks and the overall length of stay at courts was significant with seven applicants waiting between 1 - 2 hours, while eight applicants were made to wait longer than 2 hours. The longest waiting time was 3 – 3.5 hours. Only one applicant was assisted in less than an hour.

Fifteen of the applicants did not receive assistance from the clerks in completing their applications. Although most rated the service received as good, applicants admitted that they had found the completion of the forms difficult without assistance. They also noted that there was no place to sit to fill in the forms and were unsatisfied with waiting a long time before being attended to.

### Total time spent in court



When asked what the courts could do to improve their services, one applicant commented:

**“[THEY MUST] GIVE US A PRIVATE ROOM TO FILL IN THE FORM AND ALSO EXPLAIN TO US HOW TO FILL IN THE FORMS”**

(FEMALE APPLICANT)

Another applicant remarked that the court could improve service delivery by treating applicants better:

**“[THEY MUST] STOP SHOUTING AT US AND MAKING US STAND FOR A LONG TIME OUTSIDE”**

(FEMALE APPLICANT)

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## Court 4

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Magisterial District	Johannesburg
Number of clerks assisting with protection orders	4
Number of magistrates handling domestic violence matters	1
Number of organisations assisting with the completion of applications	0
Number of applicants interviewed	9
Average waiting period from application to hearing	2 weeks

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### Description of court and process to apply for protection orders

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This court is staffed by four domestic violence clerks, and one magistrate who presides over domestic violence cases. Applicants at this court were able to make use of a waiting room during the application process. The application form was briefly explained to the applicants before being handed over to them for completion. Applicants would be called into the clerk's office one at a time to submit their forms and await the outcome.

#### User profile

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##### Applicants Gender

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Female	8
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Male	1
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<b>N</b>	<b>9</b>
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##### Language of applicants

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Afrikaans	4
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English	4
---------	---

Sesotho	1
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<b>N</b>	<b>9</b>
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Nine people were interviewed by court monitors. The majority (8) were female and either spoke English or Afrikaans. Less than half of the applicants (4) were employed and had taken time-off from work to go to court. The majority of applicants (8) were informed about the protection order by the police. The remaining applicant had been advised to apply for a protection order by the clerk of the court.

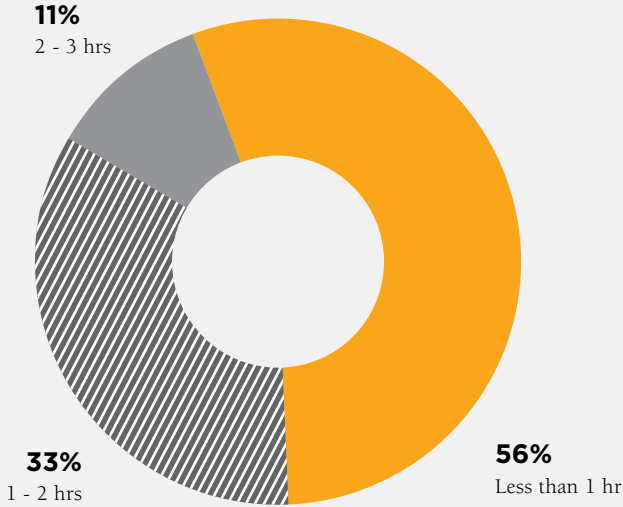
### Terms and granting of the protection order

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Almost all of the applicants (8) had applied for a protection order as a result of physical abuse. All nine applicants experienced verbal abuse. The protection that applicants required also included orders for the respondent to leave the home (3), for the respondent to pay maintenance (3), for the respondent to cease contacting the applicant (1) and for the respondent to stop visiting the home of the applicant's mother (1).

All applicants were granted the interim protection orders.

### ***Total time spent in court***



### **The application experience**

Waiting times for assistance from domestic violence clerks and the overall duration at the court was not as significant as the previous court. Most applicants (5) spent less than an hour at court. The least time an applicant spent in court was 15 minutes while the longest time spent was 2.5 hours.

None of the applicants were assisted by the clerk of court in applying for their protection orders. This was a process that most applicants found challenging as not all were familiar with the form. Applicants requested that the court should improve its services by assisting applicants more, with one person adding:

**“THEY MUST ASSIST IN FILLING UP THE FORMS”**

(FEMALE APPLICANT)

Applicants were also not given sufficient information about the interim protection order from the clerk of court and by and large were not informed of the next steps in the process. Most people rated the service received as average.

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## Court 5

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Magisterial District	Johannesburg
Number of clerks assisting with protection orders	2
Number of magistrates handling domestic violence matters	1
Number of organisations assisting with the completion of applications	0
Number of applicants interviewed	17
Average waiting period from application to hearing	7 – 8 weeks

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### Description of court and process to apply for protection orders

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This court, situated in Johannesburg, is small but accessible to members of the public. During the time-frame of this study, the family court was being moved to a larger court. This court had a relief form for emergency monetary relief to be claimed from the abuser if they needed financial assistance. None of the other courts monitored assisted applicants with this.

Protection order applicants enter the court and wait along the passage until a clerk approaches them. The clerk explains the application form to the applicant in his/her office and hands the form over to the applicant for completion. Once completed, the form is returned to the clerk who then submits it to the magistrate. Clerks also assist in the completion of the form if requested. Applicants are advised to return the following day before lunch to receive feedback on their application.

There is no formal waiting room. An old bench placed along the corridor provides a

sitting area for applicants. Once the bench is fully occupied, applicants stand along the corridor or outside the court building if the passage-way is full.

#### User profile

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##### Applicants Gender

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Female	14
Male	3
<b>N</b>	<b>17</b>

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##### Language of applicants

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Afrikaans	2
English	1
IsiZulu	5
Setswana	1
Sepedi	1
Sesotho	3
IsiXhosa	1
Xitsonga	3
<b>N</b>	<b>17</b>

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The majority of applicants were female and English was not their home-language. The three most common languages spoken amongst applicants was isiZulu (5) followed by Sesotho (3) and Xitsonga (3). Ten of the applicants were employed and nine had requested time off from work to attend court on that day. Five applicants had also previously had to take time off from work for a previous court visit.

In 11 cases, applicants were first informed about the protection order by the police and in two instances by a family member. Other referral sources included a church member, a friend, clerk of the court and in another instance an applicant had learnt about a protection order from watching a television programme.

## Terms and granting of the protection order

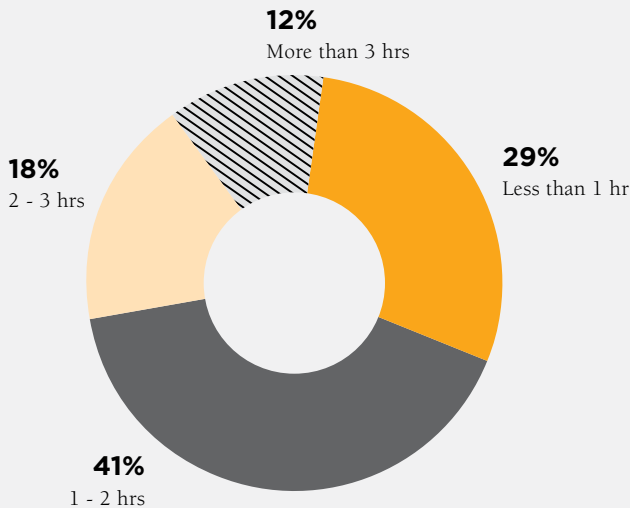
The majority of applicants had requested that the respondent stop verbally abusing (15) and physically abusing (12) the applicant. A total of nine applicants had requested that the respondent leave the home.

All applicants were granted the interim protection order.

## The application experience

The amount of time that applicants spent waiting to get assistance from the clerks varied but most (8 applicants) waited less than 30 minutes. The longest wait before being attended to by a clerk was 1.5 hours

### Total time spent in court



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**CLERKS ASSIST IN THE COMPLETION OF THE FORM IF REQUESTED. [ONCE THE FORM IS COMPLETE AND HAS BEEN SUBMITTED TO THE MAGISTRATE] APPLICANTS ARE ADVISED TO RETURN THE FOLLOWING DAY BEFORE LUNCH TO RECEIVE FEEDBACK ON THEIR APPLICATION.**

(1 applicant). Time spent in court overall took on average of 1 to 2 hours, although for two applicants the entire court experience lasted longer than 3 hours.

Applicants at this court were well informed on what would happen on the return date and all were instructed to take the order to the police station so that it could be served on the respondent. They were also informed that they could call the police for assistance should the respondent breach the conditions of the protection order.

Applicants interviewed were satisfied with the services that they received at the court, particularly because they had all been granted the protection order. Applicants reflected on what receiving the interim protection order meant to them:

**“THEY GRANTED ME THE PROTECTION I ASKED FOR, MAYBE HE IS NOT GOING TO BEAT ME AGAIN”**

(FEMALE APPLICANT)

**“THEY GRANTED ME THE ORDER, HE WILL NOW STOP HIS NONSENSE”**

(FEMALE APPLICANT)

While applicants were overall pleased with the service, the length of time that the process took was however raised as a negative factor and an area that the court would need to work on to improve service delivery to victims of abuse. One applicant noted the following:

**“THEY GAVE ME THE ORDER THOUGH I NEEDED IT YESTERDAY”**

(FEMALE APPLICANT)

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## Court 6

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Magisterial District	Johannesburg
Number of clerks assisting with protection orders	1
Number of magistrates handling domestic violence matters	1
Number of organisations based at the court	1 - POWA
Number of applicants interviewed	14
Average waiting period from application to hearing	2 weeks

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### Description of court and process to apply for protection orders

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This court is based in Johannesburg and was described by court monitors as being “large, spacious and accommodating to the public”. Despite its size, the court is not frequented by many people and there is no formal waiting room for applicants, only benches placed along the corridor.

Applicants are assisted in completing application forms by a domestic violence clerk and POWA a non-profit organisation (NPO). The magistrate who overhears domestic violence matters at this court also attends to domestic violence cases at other courts and therefore was not always available on the days that the monitors were present in court. Therefore applicants requesting a protection order were given the application form to complete and given the option to either complete it in court or to take the form home and return the next day.

The clerk has formed good working relationships with two police officers and refers applicants to them when there is need for additional assistance from police. The NPO conducts workshops with police officers from nearby stations on the DVA.

### User profile

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#### Applicants Gender

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Female	11
Male	3
<b>N</b>	<b>14</b>

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#### Language of applicants

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English	7
Indian	1
IsiZulu	3
Sesotho	1
IsiXhosa	1
Xitsonga	1
<b>N</b>	<b>14</b>

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Fourteen applicants were interviewed by court monitors, the majority of whom were female. The most common home language spoken was English (7) followed by isiZulu (3). Half of the persons interviewed (7) were employed and of these, six had requested time off from work to go to court. Nine of the 14 applicants were applying for protection orders for the first time. Five applicants had gone through the process before.

The police were most often the source of information on protection orders with six of the 14 applicants indicating that they had first heard about protection orders from the police. The remainder of applicants were either referred by friends or by family members.

### **Terms and granting of the protection order**

As in most of the courts monitored, the terms of protection most often requested (in 12 instances) was for the respondent to stop physically and verbally abusing the applicant. Six applicants had requested that the respondent leave the home.

All applicants were granted the interim protection order.

### **The application experience**

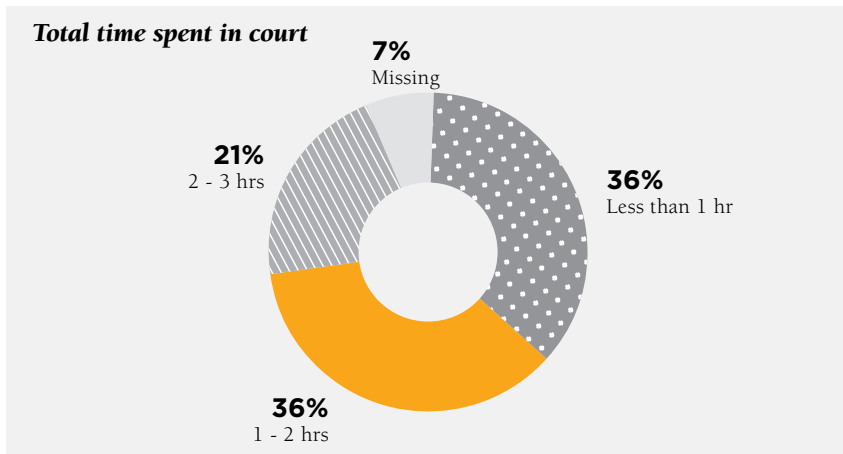
Half of the applicants (7) were assisted by the clerk within 30 minutes of arriving at the court. The longest time applicants had to wait to be assisted by the clerk was less than two hours and this was the case for two of the applicants.

With respect to the overall process, less than half (five) of the 14 applicants had finalised the process within an hour. Another five spent just under two hours at the court while three applicants had waited between 2 – 3 hours. The time spent waiting at the court for one of the applicants was not captured.

Applicants at this court were well informed on all aspects of the process going forward. This included clarity about the return date; that the respondent would be present on the day; that they had to take the protection order to the police so that the officers could serve the respondent; and that they could call the police if the respondent failed to adhere to the conditions stipulated in the interim protection. One applicant was particularly pleased with the service received:

**“THEY ARE NICE AND FRIENDLY, I’M HAPPY”**

(MALE APPLICANT)



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## Court 7

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Magisterial District	East Rand
Number of clerks assisting with protection orders	4
Number of magistrates handling domestic violence matters	1
Number of organisations based at the court	0
Number of applicants interviewed	35
Average waiting period from application to hearing	4 – 6 weeks

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### Description of court and process to apply for protection orders

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This court is based in the East Rand. It is a large court which serves a diverse community. This court was monitored on two occasions and this accounts for the high numbers of applicants interviewed. The section for protection orders is separate from the main court. The court is staffed by four court clerks, one magistrate and a court manager.

When applicants arrive at the court, they are greeted by a security guard who is seated at a table. Applicants are requested to enter their name, the time of their arrival and their reason for coming to court on the notepad that the security provides. Applicants wait until being approached by the domestic violence clerks – this happens periodically as the clerks dart in and out of their office through the course of the day. Complainants attending court for their final hearings are told to arrive before 9:00 a.m. and are advised to wait until their name is called. Any applicant arriving past 3:00 p.m. is told to return the following day. Court monitors noted that this is an instruction given to the

security guards by the clerks of the court. Court monitors also observed one of the clerks informing an applicant to return the following day as the clerk had to leave court by 3:30 p.m. to catch a taxi to avoid arriving late at home.<sup>21</sup>

Persons arriving at the court are first screened by a clerk who determines where the person should go depending on the case they require assistance with. While this is effective in minimising confusion for applicants, it is also a time consuming process which impacts on applicants requiring relevant services from the domestic violence clerks.

Once the clerks determine that the applicant is at the court to apply for a protection order, they hand the application form to the applicant. Court monitors observed that in some instances the clerks did not provide applicants with an explanation of how to complete the form and some had requested the assistance of the security guard on duty. The clerks do however check that all forms are completed correctly before handing them over to the magistrate.

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<sup>21</sup> This information has been shared with the Chief Magistrate and we are informed that this has been addressed.

Applicants have access to a waiting room in close proximity to the offices of the clerks. The waiting area has 20 chairs lined-up against the wall and a table, with four chairs placed around the table for applicants to use when completing the forms. The waiting room is bare of any educational materials or information.

### **User profile**

<b>Applicants Gender</b>	
Female	31
Male	4
<b>N</b>	<b>35</b>

<b>Language of applicants</b>	
Afrikaans	1
English	2
IsiZulu	7
Lingala	1
Northern Sesotho	1
Shagaan	1
Sepedi	5
Setswana	1
Sesotho	6
Xitsonga	1
IsiXhosa	1
Unknown	8
<b>N</b>	<b>35</b>

The majority of persons applying for protection orders were female and the language most often spoken was IsiZulu (7) followed by Sesotho (6) and Sepedi (5). Only two people indicated that English was their first language. Information on the language spoken by 8 applicants was not captured.

From the 35 applicants, 30 were applying for an interim protection order while five were returning to court for the final protection order hearing. The majority of applicants (29) were seeking protection orders for themselves and in one instance the applicant was applying for an interim protection order on behalf of a child. For five applicants this information was undisclosed.

Out of the total number of applicants, 27 were applying for a protection order for the first time. Of the seven who had previously applied for a protection order, four applicants were applying for an order against the same person that they originally had sought protection from.

Seventy percent (25) of applicants were employed and 23 of them had taken time off from work to attend court. Twelve applicants had also previously taken time off work to go to court. Three of the twelve applicants were returning to court for the final protection hearing, while the remainder (9) had returned to court as they had not been assisted at their first visit to the court.

The majority of applicants (22) were informed about protection orders from the police. Other sources of information included family members, friends, church members, clerks of the court, a magistrate and a bank employee. Two applicants learnt about protection orders from the media (radio and television).

### **Terms and granting of the protection order**

Thirty one (31) of the applicants requested that the respondent stop verbally abusing them while in 18 cases applicants had sought relief from physical abuse. Twelve applicants asked the court to assist with getting the

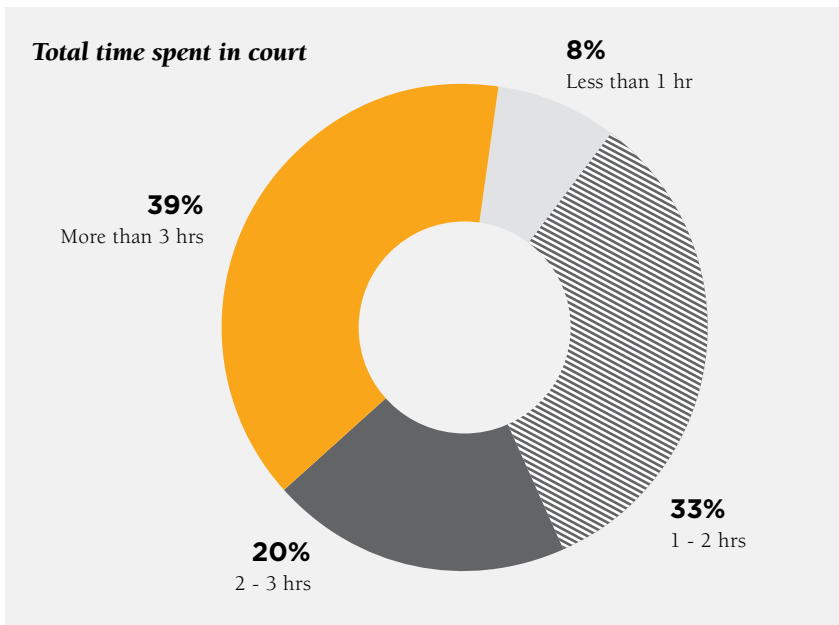
respondent to leave the shared home. In three instances, applicants sought protection from being stalked; threatened by the perpetrator; or had wanted the perpetrator to stop visiting their place of work. One woman was applying for a protection order on behalf of her child. She requested that the order prevent the respondent from seeing the child to stop the child being abused by the father.

Twenty-nine (29) applicants received interim protection orders; three were successful in receiving a final protection order; one issued with a peace letter and two were not issued with anything. When asked to clarify the latter, the applicants did not provide additional information other than to say that they had not been told why they were not eligible for a protection order.

The amount of time that applicants spent waiting to get assistance from court clerks was significant. A little more than half (51%) of applicants waited up to 1 and 1.5 hours before being assisted by the clerk, while 43% waited between 2 – 3 hours. Information on how long two applicants waited before being assisted was not available. Some applicants left the court during this process as they said they did not have the time to waste.

In respect of total time spent in court, only 8% of the sample spent less than one hour, while 39% spent more than three hours in total at the court. Needless to say the majority found the application process significantly time-consuming.

## The application experience



Most often applicants completed the application forms without assistance. On two occasions, applicants had asked the security guard to assist them and on one occasion an applicant had been assisted by a friend as the court was unable to assist the applicant in his/her home language (i.e. Lingala).<sup>22</sup> For some there was no choice but to ask for assistance from others:

**“[THE CLERKS] COULD HAVE HELPED ME WITH THE FORM CAUSE I CAN’T READ OR WRITE”**

(MALE APPLICANT)

Although clerks did not assist all applicants to complete the forms, they verified the information once the form was filled in and fixed errors or amended the information when required. This was required in 11 instances. Only five applicants were guided through the application process.

All applicants were told when to return to court for the final protection hearing. From the date of application, return dates varied from two to six weeks. Having a return date does not however guarantee that the matter will be finalised on the date specified, as was one applicant’s experience. This applicant had spent most of the day<sup>23</sup> waiting for her final protection hearing to start, only to

<sup>22</sup> Lingala is a language predominantly spoken in Congo and partially in Angola and the Central African Republic.

<sup>23</sup> The applicant arrived at the court at around 8:00 a.m. but was only seen by the magistrate a little before 4:00 p.m. The hearing was postponed as neither the applicant nor the respondent had brought witnesses to verify their side of the story.

be informed late in the afternoon that the hearing would be rescheduled to a later date. The return date was further extended as the applicant would have been out of the country on the return date specified. At the interview the applicant lamented:

**“I COME EARLY AND STAY WHOLE DAY HERE AND ONLY COME BACK IN DECEMBER, [THIS IS] TOO LONG”**

(MALE APPLICANT)

Applicants who received the interim orders were instructed to take them to the police station and to call the police should the respondents not adhere to the order. They were informed of what to expect on the return date for the final protection hearing. Although applicants were pleased that they had been granted protection orders, they felt that this court could improve their level of service. Applicants were upset by the way they were treated by clerks – one applicant stated the following:

**“THESE PEOPLE [CLERKS OF THE COURT] ARE RUDE, THEY HAVE ATTITUDE AND STICK UP FOR EACH OTHER”**

(FEMALE APPLICANT)



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As mentioned earlier, the majority of applicants spent a significant portion of their day waiting at court. Applicants were not only frustrated by this but also by the fact that they were never given feedback as to why they had to wait so long or what was contributing to delays. This was a particular sore-point for those who had taken time off from work to attend court, as reflected by two applicants:

**“TIME IS AN ISSUE AS SOME OF US ARE WORKING. I COULDN’T GO TO WORK TODAY BECAUSE OF THE WAITING”**

(FEMALE APPLICANT)

**“THE TIME I SPENT HERE WAITING IS RIDICULOUS CAUSE I HAVE WORK ALSO AND COMMUNICATION IN BETWEEN WOULD HELP”**

(FEMALE APPLICANT)

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The requirement that clerks screen each person entering the court has been noted as a probable contributing factor to the delays. Court monitors also noted that clerks were often found to be on Facebook or playing solitaire while applicants were waiting to be assisted.

Applicants also suggested that clerks explain the process of applying for protection orders better so as to reduce confusion; and to be of more assistance in completing Form 2, as not all applicants were able to read and write. For those who were not issued with protection orders, applicants had suggested that clerks and/or the magistrates provide them with reasons as to why the orders were not granted.

**[TWENTY FIVE] APPLICANTS WERE EMPLOYED AND 23 OF THEM HAD TAKEN TIME OFF FROM WORK TO ATTEND COURT. TWELVE APPLICANTS HAD ALSO PREVIOUSLY TAKEN TIME OFF WORK TO GO TO COURT. [9 APPLICANTS] HAD RETURNED TO COURT AS THEY HAD NOT BEEN ASSISTED AT THEIR FIRST VISIT TO THE COURT.**

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## Court 8

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Magisterial District	East Rand
Number of clerks assisting with protection orders	3
Number of magistrates handling domestic violence matters	1
Number of organisations based at the court	0
Average waiting period from application to hearing	More than 7 weeks
Number of applicants interviewed	20

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### Description of court and process to apply for protection orders

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This court is located in the East Rand and is easily accessible as it is situated near public transport. The majority of applicants interviewed reside in a nearby township, as do the clerks of the court. This was perceived by monitors as beneficial particularly in that they were not able to use transport challenges as an excuse to leave work early as was observed at Court 7.

Applicants arriving at court are given a stub with a number written on it. Once the applicant's number is called, they enter the clerk's office and he/she explains the application form. The applicant is offered the choice of completing the form themselves or having the clerk do it with them. The majority of applicants had preferred the assistance of the clerk in completing the form. Once the form is filled in, the clerk hands it to the magistrate for his/her decision on the application.

Court clerks at this office did not have computers to work on. While this may have possibly hindered some aspects of their work, court monitors saw this as a positive

aspect as it meant that clerks were solely focused on assisting applicants unlike at the previous court.

This court did not have a waiting room but there were plenty of benches for applicants to sit on while waiting.

### User profile

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#### Applicants Gender

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Female	11
Male	9
<b>N</b>	<b>20</b>

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#### Language of applicants

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IsiZulu	3
Northern Sesotho	1
Sepedi	1
Sesotho	7
Venda	2
IsiXhosa	1
Xitsonga	5
<b>N</b>	<b>20</b>

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Unlike other courts, almost half of the applicants (45%) were male. All the applicants spoke languages indigenous to South Africa with the three most common languages spoken being Sesotho (7), Xitsonga (5) and isiZulu (3). While most indicated that they had some understanding of English, they had nonetheless required translation services from court clerks.

Seventy percent of applicants (14) were employed and all had taken time off from work to attend court. Ten of these applicants had to take time off work for a previous court attendance.

Of the 20 applicants interviewed at this court, 18 were applying for a protection order for the first time, while two applicants were re-applying for orders against the same respondents. The two applicants re-applying for the order may have done so as they had either withdrawn the initial order or they were not successful in being granted an order the first time round. Nineteen were applying

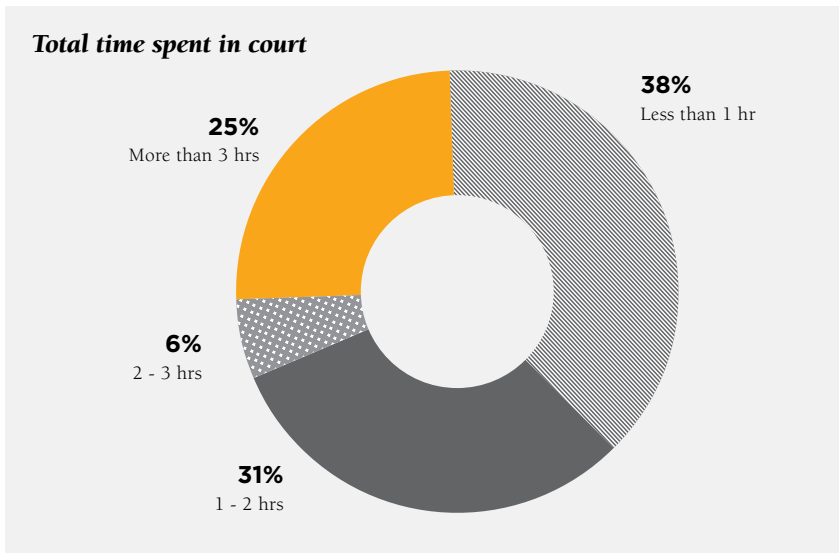
for protection orders for themselves while one was doing so on behalf of a child.

Once again the police were the greatest source of referral with 12 respondents stating that they had heard about protection orders from their local police stations. Other sources of information included church members (3), family members (2), and friends (2). In one instance an applicant had heard about protection orders from a radio programme.

### **Terms and granting of the protection order**

The majority of applicants were applying for protection orders to seek relief from verbal abuse (16) and from physical abuse (14). Nearly half the group (8) wanted respondents to leave the shared home.

All applicants were granted the protection orders applied for inclusive of all conditions stipulated in the application.



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## **The application experience**

Applicants rated the service at this court as good. Although some applicants waited for longer periods than others, they found the number system employed by the court useful as they could roughly judge how long to wait for assistance. Unlike other courts, time was not identified as a problem that needed addressing at this court. A little more than half (51%) of applicants had been attended to within 30 minutes of arriving at the court and a little more than a third of applicants (38%) had spent less than an hour in total in court. Unlike the previous case study, only three people had spent more than three hours in court.

Clerks assisted all but one of the applicants with the completion of the form. Although this delayed the overall process, applicants were appreciative of the support they received particularly as English was not their first language. All applicants were informed about the return date by the clerk of the court and told what would happen when they came back to court. In addition, they were told what to do when they left the court, what the responsibility of the police was in serving the protection order on the respondent and were advised on what to do should the alleged abuser ignore the interim protection order.

**ALL APPLICANTS PERCEIVED THE RECEIPT OF THE INTERIM PROTECTION ORDER AS A TANGIBLE REMEDY FOR THEIR CURRENT DOMESTIC SITUATION, BUT SUGGESTED THAT AN AREA FOR IMPROVEMENT FOR THIS COURT WAS A REDUCTION IN TIME SET FOR THE RETURN DATE. THE LENGTH OF TIME BETWEEN THE APPLICATION AND THE RETURN DATES AT THIS COURT WAS LONGER THAN 6 WEEKS, WITH SOME WAITING TWO MONTHS AND LONGER. ALTHOUGH THE RETURN DATES WERE LENGTHY, HAVING BEEN GRANTED THE INTERIM PROTECTION ORDER ENSURED THAT APPLICANTS HAD SOME FORM OF LEGAL RECOURSE AND PROTECTION AS AFFORDED TO THEM BY THE DVA.**

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## Court 9

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Magisterial District	East Rand
Number of clerks assisting with protection orders	2
Number of magistrates handling domestic violence matters	1
Number of organisations based at the court	0
Average waiting period from application to hearing	2 weeks
Number of applicants interviewed	10

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### Description of court and process to apply for protection orders

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This is a relatively small court situated in the East Rand and one of very few courts in the area that provide protection orders. Although most applicants live in a nearby township the court is not as accessible as most still had to catch two taxis to get to the court.

Protection orders are processed in a container outside the court building. Benches outside the container provide a waiting area; however there is no shelter should it rain. Applicants are kept waiting for long periods of time as this court is only staffed by two clerks. Clerks brief each applicant on the overall process and assist with the completion of the application forms. Should an applicant fill the form in by themselves the clerk verifies that the form is correctly filled in before she hands it to the magistrate. Although clerks were available to complete forms, in some instances applicants asked the security guard on duty for assistance.

### User profile

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#### Applicants Gender

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Female	9
Male	1
<b>N</b>	<b>10</b>

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#### Language of applicants

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English	3
IsiZulu	4
Sepedi	1
Sesotho	2
<b>N</b>	<b>10</b>

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The majority of applicants (9) applying for protection orders were female. The language most often spoken amongst the applicants was IsiZulu (4) followed by English (3).

Ninety percent of the applicants were unemployed and were applying for the protection order for the first time. The only applicant that was employed had taken time-off from work to go to court. This was her second application against the same respondent. In all but one case applicants

were applying for protection orders for themselves.

Two applicants were told about protection orders by a friend and a family member. The rest were referred by the police.

### **Terms and granting of the protection order**

Half of the applicants were in physically abusive relationships and had requested that the respondent be ordered to stop beating them. Six applicants had requested that the respondent be ordered to stop verbally abusing them. Other forms of protection being sought included that the respondent be ordered to stop calling or contacting the applicant (5), to stop visiting the homes of the applicants friends (1), and to stop visiting the applicant at work (1). Two applicants

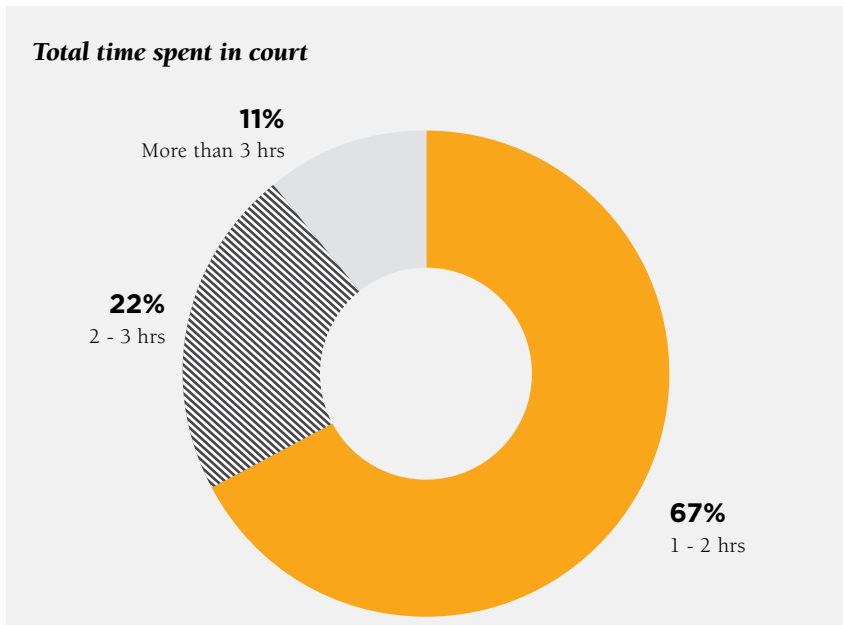
requested that the respondent leave the home and two applicants requested that the applicant stop contacting their children.

All applicants were granted interim protection orders inclusive of all conditions stipulated in the application.

### **The application experience**

Monitors were not able to determine the time that six people had waited before being attended to by court clerks but for four applicants this had taken between 1 to 1.5 hours.

In respects to the total time spent in court, no-one spent less than an hour. The majority (6 applicants) spent between 1 - 2 hours while the longest time spent in court was three hours.



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In seven cases, the clerks assisted applicants with the completion of forms. In two cases, security guards assisted. One person had sought the help of both the security guard and the clerk.

The clerks of this court were relatively thorough in explaining the process to applicants. All applicants were informed to take the interim protection orders to the police station to be served on the respondent. They were also told what would happen on

their return to court for the hearing although this information was limited to both parties being in court and telling their stories – they were not informed that that the interim order may not be finalised on the return date or that they had the option of bringing witnesses with them to strengthen their case. Applicants were instructed to call the police should the respondent ignore any of the conditions set out in the interim order although in one case an applicant was only advised to report the matter to the court.

**APPLICANTS WERE CONTENT WITH THE SERVICES OFFERED AT THIS COURT ALTHOUGH THEY FELT THAT THE CLERKS COULD HAVE PROVIDED THEM WITH MORE INFORMATION. ALTHOUGH THEY WERE NOT TOO CONCERNED ABOUT HAVING TO WAIT LONG AT THE COURT THEY FELT THAT THE WAITING PERIOD BETWEEN RECEIPT OF THE INTERIM PROTECTION ORDER AND THE RETURN DATE FOR THE FINAL PROTECTION ORDER WAS TOO LONG AND SUGGESTED THAT THIS BE REDUCED. APPLICANTS HAD ALSO SUGGESTED THAT PERPETRATORS OF ABUSE NOT BE GIVEN BAIL SHOULD THEY BE ARRESTED FOR CONTRAVENING THE CONDITIONS OF THE ORDER.**

The image shows the exterior of a Magistrate Court. The building is constructed of dark red brick. Above the entrance, there is a white sign with the words "MAGISTRATE COURT" in dark blue, bold, sans-serif capital letters. The entrance area features large glass windows and a set of double glass doors on the left. A metal gate with vertical bars is partially open in the foreground, blocking the path to the entrance. Several people are walking past the gate and the entrance. The scene is captured in daylight, and the overall atmosphere is that of a public, official building.

**MAGISTRATE COURT**



# SUMMARY OF ALL COURTS



**123** female applicants



**28** male applicants



**85** Employed



**24** applicants spoke English



**143** Interim protection orders granted



**26** clerks



**16** magistrates

## Terms of the protection order

Applicants requested that the respondent be ordered to:

No. of requests

Not to commit any act of domestic violence:



(a) physical

**108**



(b) verbal

**128**



Not to enter (i.e. to leave) the shared residence

**61**



Not to enter the Complainant's place of employment

**5**

## Terms of the protection order cont.

Not to commit any other act, namely:

---



(a) stop contacting the complainant's family/friends

9



(b) stop taking the complainant's mother's money

1



(c) stop threatening to kill complainant/complainant's children

2



(d) stop contacting the complainant

8



(e) stop stalking complainant

1

---

Other Conditions:



pay maintenance to the complainant

12



pay the bond

1



is refused contact with a child

3

# 05

## THE POLICE AND HANDLING OF DOMESTIC VIOLENCE CASES

### *Applicants experiences at Court 1*

#### **Assistance requested**

Arrest perpetrator	5
Remove perpetrator from the home	1
<b>N</b>	<b>6</b>

A third of applicants at this court had described seeking support from the police with domestic violence situations. Of the six that went to the police, five had wanted the abuser to be arrested while one had asked for the abuser to be removed from their home. Only two interviewees received the support they had requested and this was related to the arrest of the perpetrator of abuse. One applicant remarked:

**“THEY ARRESTED HER AS THEY SAW THAT I WAS BADLY BURNED BY HER”**

(MALE APPLICANT)

Despite being badly burnt by the perpetrator of abuse, the applicant was not offered assistance to seek medical treatment.

Of those who did not receive the protection requested from the police, one applicant remarked:

**“THEY SHOULD HAVE ARRESTED HIM BECAUSE HE HAS BEEN ABUSING ME FROM THAT DAY I WENT TO THEM TILL NOW”**

(FEMALE APPLICANT)

None of the applicants were informed that they could open a case against the abuser – cases subsequently opened were at the insistence of the applicants.

### *Applicants experiences at Court 2*

<b>Assistance requested</b>	
Arrest perpetrator	5
Escort victim home	2
Talk to perpetrator	3
Remove perpetrator from the home	2
<b>N</b>	<b>12</b>

All applicants interviewed at Court 2 had sought assistance from the police with domestic violence matters. Less than half (42%) had wanted the perpetrator arrested while three had wanted the police to give the perpetrator a warning. Overall applicants were happy with the advice they received on protection orders from the police although some had felt that the police should have responded quicker – one applicant stated:

**“THEY SHOULD HAVE ACTED QUICKLY WHEN WE CALLED THEM TO COME AND ARREST HIM AND NOT MADE US WAIT FOR A LONG TIME BEFORE THEY COULD HELP US”**

(FEMALE APPLICANT)

Only one applicant was informed that she could lay charges against the perpetrator of abuse. She states:

**“THEY ARRESTED MY HUSBAND AFTER OPENING A CASE FOR ME AGAINST HIM”**  
(FEMALE APPLICANT)

### *Applicants experiences at Court 3*

<b>Assistance requested</b>	
Arrest perpetrator	7
Escort victim home	3
Talk to perpetrator	2
Warn the perpetrator to stop provoking victim	1
Open a case against the perpetrator	1
Unknown	1
<b>N</b>	<b>15</b>

Almost all the applicants (15 of the 16) had previously approached the police (from two different police stations in the area) with domestic violence matters. The majority (seven) had asked that the perpetrator be arrested and one person did not disclose the protection they asked for.

Four applicants rated their experience with police service as good while the remainder rated the service they received as average. Some applicants complained about waiting for a long time before the police could help them and in instances where applicants

wanted the perpetrator arrested, they complained that the police had wanted to mediate rather than arrest the perpetrator. This left applicants at further risk of abuse after the police had left. Two applicants were not happy that the perpetrators of abuse were released soon after being arrested. Applicants were not always informed by the police when the perpetrator would be released from custody. This is in violation of their right to information as provided for in the South African Victims Charter.

#### **Applicants experiences at Court 4**

##### **Assistance requested**

Arrest perpetrator	3
Escort victim home	1
Talk to the perpetrator	2
<b>N</b>	<b>6</b>

Six out of the nine applicants at this court had approached the police for assistance. Half of the applicants had wanted the police to arrest the perpetrator and in all cases this was granted. Although applicants were pleased that the police had informed them about the protection order and had assisted them with their requests they rated the overall service received as average. None of the persons interviewed had been informed by the police that they could open a criminal case against the abuser. Cases opened were only done so at the request of the applicant interviewed.

#### **Applicants experiences at Court 5**

##### **Assistance requested**

Arrest perpetrator	2
Warn the perpetrator to stop provoking victim	1
Unknown	9
<b>N</b>	<b>12</b>

Twelve (12) of the 17 applicants went to the police station for matters relating to domestic violence. Only three specified why they had sought support from the police although all had asked the police to open dockets for them. This was done at their insistence and not as a result of being informed that this was an option available to them. No one was offered or asked if they needed medical assistance but all were informed about protection orders.

All applicants stated that the police service received was quick and satisfactory. Two of the three applicants who specified why they had approached the police for help had received the assistance requested. For one applicant the relief provided was temporary however:

**“THEY TOOK HER AWAY BUT SHE WAS BACK LATER AT NIGHT. THEY SHOULD HAVE TOLD HER TO GO SOMEWHERE ELSE AND NOT TO COME BACK TO MY HOUSE”**

(MALE APPLICANT)

### ***Applicants experiences at Court 6***

#### **Assistance requested**

Arrest the perpetrator	3
Unknown	2
<b>N</b>	<b>5</b>

Five of the 14 applicants at Court 6 had previously gone to a police station to seek advice on matters related to domestic violence. Three had asked for the perpetrator to be arrested while two had not specified what help they had sought from the police. All five were informed about opening a case (of which three applicants did) although only two were informed about protection orders. Out of the three persons interviewed that had wanted the perpetrator arrested, two were granted this request while the third said that the police had arrived at her house but had left without doing anything. Information on why this was the case was not provided.

### ***Applicants experiences at Court 7***

#### **Assistance requested**

Arrest the perpetrator	9
Talk to the perpetrator	5
Talk to the perpetrator & withdraw charge	1
Advice	1
Escort victim to collect belongings	1
Referral to social worker	1
<b>N</b>	<b>18</b>

Of the 35 applicants interviewed, 18 had asked assistance from the police on matters related to domestic violence. Only one person required medical assistance and was offered this. In nine cases dockets were opened.

Eighty percent (16) of the applicants had been advised on protection orders and only three had been advised that they could lay charges against the perpetrator.

Fourteen applicants received the assistance that they had requested from the police. In one instance, the applicant had inquired about a protection order but was incorrectly advised to apply for a peace order.

One participant was impressed at how quickly the police had reacted; while others had some grievances which included that perpetrators were not always arrested on the same day that the assistance was requested. Applicants also felt that the police should have given them more advice and wished that the police had followed-up to check on how they were doing after the incident. Two applicants felt that their complaints were not taken seriously:

**“[I WANTED THEM TO] LISTEN TO ME WHEN I TOLD THEM ABOUT MY PROBLEM THAT THE WOMAN I AM STAYING WITH IS ABUSIVE... THEY DID NOT WANT TO LISTEN TO ME WHEN I TOLD THEM I WAS NOT GUILTY OF ANYTHING”**

(MALE APPLICANT)

**“THEY SHOULD HAVE ARRESTED MY HUSBAND BECAUSE HE WAS BUSY THREATENING ME IN FRONT OF THEM”**

(FEMALE APPLICANT)

***Applicants experiences at Court 8***

**Assistance requested**

Arrest the perpetrator	5
Arrest the perpetrator & lay a charge	1
Talk to the perpetrator	1
Advice	1
Unknown	1
<b>N</b>	<b>9</b>

Nine of the 20 applicants had gone to the police station on matters relating to domestic violence. More than half of the sample (6) had wanted the perpetrator to be arrested but only in only two instances did this happen.

The majority of applicants (8) were advised on protection orders. However, no-one was offered the option of laying a charge against the perpetrator.

Five of the nine applicants indicated that they received the assistance that they required from the police but felt that the police could do much better. With regards

to what the police did well, applicants indicated the fact that the police responded was a good sign. Comments by applicants on the service received included:

**“THE POLICE WERE THERE WHEN I NEEDED SOMEONE TO LISTEN”**

(FEMALE APPLICANT)

**“THEY ARRESTED HIM BECAUSE I WAS BRUISED ALL OVER”**

(FEMALE APPLICANT)

This applicant was not however offered medical assistance.

With regards to how police could improve their level of service, one applicant stated that she felt the police had not taken her seriously as she states:

**“[THE POLICE] SHOULD HAVE ARRESTED HIM TO SEE I AM SERIOUS”**

(FEMALE APPLICANT)

### ***Applicants experiences at Court 9***

<b>Assistance requested</b>	
Arrest the perpetrator and remove from home	6
Talk to the perpetrator	1
Advice	2
Escort victim to collect belongings	1
<b>N</b>	<b>10</b>

All ten applicants at this court had gone to the police station on matters relating to domestic violence and all had received the service that they had requested. Seven applicants laid criminal charges against the perpetrators. Nine applicants were informed by the police officer about protection orders.

Although the police provided the assistance that applicants needed from them, applicants had felt that the police could have done more. Suggestions for improvement included the following: that the perpetrator be arrested on the same day that the complaint is laid; that the perpetrator not be granted bail; that the police respond faster to call-outs, including that there is a need for more police officers as well as vehicles to attend to call-outs (i.e. applicants were often told to wait as the vehicle was attending to an emergency or officers had to finish with what they were doing first before they could assist the applicant); and that the police refer abused women to shelters or places of safety.

Some comments from applicants reflecting on the service requested from the police and suggestions for improvement of police service included:

**“[I CALLED THE POLICE SO THAT THEY COULD] TALK TO MY BOYFRIEND AND TELL HIM TO STOP BEATING ME OR HE WOULD BE ARRESTED”**

(FEMALE APPLICANT)

**“[THE POLICE] SHOULD NOT LET US WAIT FOR A LONG TIME”**

(FEMALE APPLICANT)



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# 06

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## SUMMARY OF KEY FINDINGS

### **6.1 Verbal and physical abuse is the most common form of domestic violence that applicants requested protection from**

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The majority of applicants seeking protection orders were being verbally abused (85%) and physically abused (72%). Applicants were also being threatened with death and harassed at their place of employment. Children, family members and friends of the applicant were also at risk from the abuser. In 40% of cases applicants had requested that the respondent vacate the home.

### **6.2 The majority of applicants are females but secondary victimisation may prevent male victims from applying for orders**

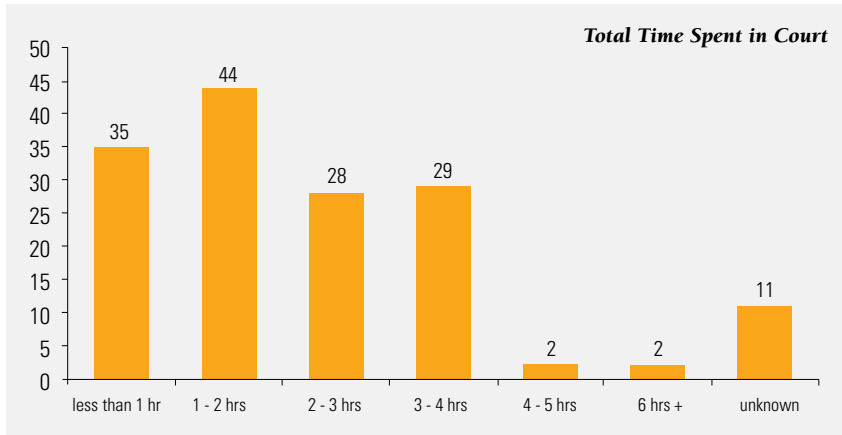
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The DVA is gender inclusive and as such both males and females can utilise the protection mechanism of the Act. Due to the high propensity for violence against women, more often than not the court and

its powers are used by women in abusive relationships. This report finds that women remain the majority of applicants with only 18% of persons interviewed being male. The proportion of men applying for protection orders varied by area however and in court 7 this was significantly evident with 45% of the applicants being male.

This scope of this study does not analyse why more men applied for protection orders at this court versus others, nor does it provide scope to analyse whether the proportion of applications are equivalent to actual experiences of abuse by men. What it does reveal is that for at least one male applicant, his experience of having contacted the police for assistance with domestic violence was a negative one – he stated that the police did not want to listen to him and his complaint that he was being abused by a woman. It is probable that males in abusive relationships may be discouraged from seeking relief from the abuse as a result of negative masculine stereotypes surrounding abuse. This is an area that requires improvement.

### 6.3 Applying for protection orders is time consuming and can be a disincentive



Of the 151 applicants interviewed, just under a quarter (23%) spent less than an hour in court, while almost equal portions (19%) spent between two to three hours and three to four hours. The longest time spent in court for two applicants was six hours or more.

The DVA does not specify what the waiting period, between the date of receipt of the interim protection order and the return court date for the final protection order hearing, should be other than to state that the return date may not be less than 10 days after the order has been served on the respondent. Waiting periods varied between courts with about half scheduling return dates within two weeks of receipt of the interim order, while at other courts this time took up to six weeks or longer.

The time spent waiting in court and the extended periods between receiving the interim order to the final protection hearing was cited by applicants as areas that courts need to improve on.

Over half of the applicants (85) were employed. Taking time off from work to go to court can pose a variety of challenges and stresses, such as loss of productivity and loss of holiday leave. It can also result in loss of wages particularly for those in casual; shift or domestic employment<sup>25</sup>.

**“THEY CAN BE A LOT QUICKER CAUSE MY MADAM DOESN’T WANT ME TAKING TIME OFF FROM WORK ANYTIME”**

(FEMALE APPLICANT, COURT 5)

25 Abrahams and Levendale (2009).

In addition, delays and needing to return to court multiple times costs money – unemployed people or those in low-wage employment cannot always afford the transport costs to court.

The time-consuming process at courts also raises safety concerns. Catching public transport early in the morning, in order to arrive in court before it opens, can place women in danger and at risk of violence. Spending a significant amount of time out of the home can also place a victim of domestic violence at risk of further abuse from the perpetrator who often needs to be in control of where the victim is and what the victim is doing.

These challenges can all be a disincentive for people to make use of protection orders as a remedy to domestic violence. The length of time they spend and will spend at a later stage could impact on applicants following through with the process.

#### **6.4 Completing an application for a protection order is not guaranteed to happen on one day**

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Not all applicants seeking protection orders were able to complete the process on the same day. At one of the courts, a magistrate is shared with other courts and applicants are requested to return when the magistrate is available. At another court, security guards are instructed to not allow applicants entry into the building past a certain time and at the same court a clerk was unable to assist an applicant as she caught public transport home and needed to leave early. A third court had requested that applicants return the following day for a response to their application. In Court 7 the time that it took clerks to attend to applicants was so

excessive that a few applicants wanting to apply for protection orders left before they could even request an application form to complete.

There may be multiple reasons as to why this process is so time-consuming. For one, many people access courts for assistance, magistrates and clerks have heavy case loads and at times deal with a range of other issues (e.g. maintenance and custody matters) in addition to domestic violence matters. Secondly, at some courts, clerks paid significant time and attention to applicants, thoroughly explaining the process to the applicant as well as completing the application form with the applicant.<sup>26</sup> In a study conducted by Vetten, Budlender and Schneider (2005) on the costing of the DVA, clerks reported spending on average 43.6 minutes with each applicant. Within this time, clerks would take a case history; calm the applicant down; inform the applicant on his/her rights and options; assist with the completion of forms and verifying that information was accurate; would take the applicant to see the magistrate and amend the application form should the magistrate request it; issue the return date; inform the applicant about the order and what to expect on the return date. Administrative duties such as photocopying and sorting forms; as well as the calculation of sheriff fees were all factored in. An additional 10 minutes was at times also applicable depending on the location of the photocopier in the court building and whether or not the clerk would need to wait to use the copier, or faced challenges with malfunctioning photocopiers. Taking all of this into account it is not surprising that courts experience delays particularly those that are

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<sup>26</sup> This was not the case at all courts as will be described later in this report.

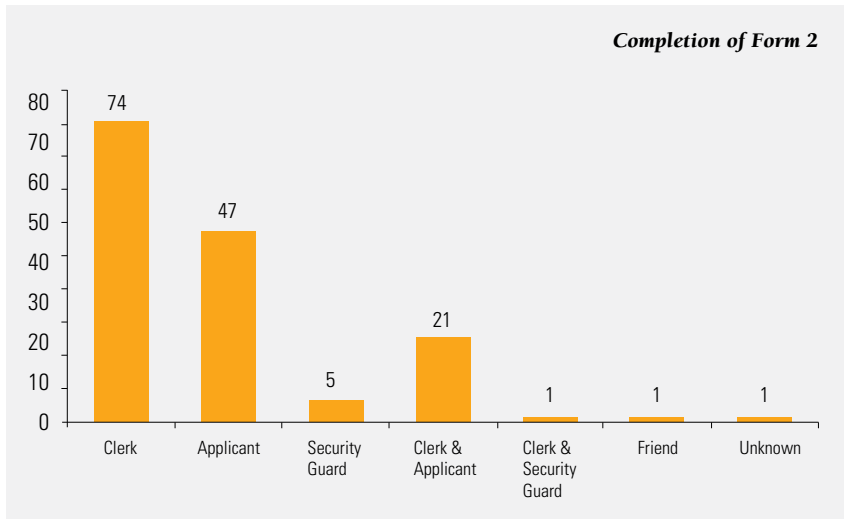
understaffed. It may also account for why some clerks are not as thorough as they should be. Finally, language barriers may also cause delays. Applicants interviewed spoke a wide variety of languages of which the two most common were isiZulu and Sesotho. While some applicants had said that they could understand English most required the assistance of court clerks in translating the application form which is only available in English. Only 16% of applicants named English as their home language.

Regardless of the reasons, time-delays can have significant implications as is evidenced by one applicant's remark:

**“THEY DID WELL [IN GRANTING THE PROTECTION ORDER] BUT SHE ABUSED ME AGAIN DURING THE WEEKEND WHILE STILL WAITING FOR PROTECTION ORDER”**

(MALE APPLICANT, COURT 5)

## 6.5 Not all clerks assisted applicants with the completion of forms



Not all clerks assisted applicants with the completion of Form 2 and in six instances applicants requested the aid of security guards to do so (in five cases the form was solely completed by the security guard and in one instance the application form was completed in part by the security guard and in part by the clerk). The application form is a crucial document that enables the magistrate to judge the severity of the case and decide whether or not to grant an interim protection order. The form therefore needs to be completed with care and with attention to detail. It is worrying that at times applicants had relied on the assistance of security guards with this process. Clerks

did however verify that forms were filled in correctly before handing them to the magistrate. In instances where errors occurred the form has to be filled in again or corrected (depending on the error noted) which meant further delays in the process.

At the information-sharing workshop hosted by TLAC, some clerks admitted that they were hesitant to assist with the completion of the forms as it was not uncommon for applicants to change their story once appearing in front of the magistrate and accuse the clerk of not correctly capturing what they had said. Clerks therefore preferred to not assist in order to avoid being placed in this position.

## 6.6 Clerks are not fulfilling their duties as prescribed by the DVA

The DVA mandates the clerk of the court, in the absence of legal representation, to inform the complainant on the relief available in terms of the Act as well as the complainants' right to lay criminal charges against the respondent if a criminal offence has been committed.<sup>25</sup> As evidenced by the

table below, this report finds that not all the clerks were providing applicants with sufficient information on what to do or what to expect following the court's granting of the interim protection order. Not fully informing applicants about the process negatively impacts on their ability to make informed decisions.

<sup>25</sup> Section 4(2)

Information provided/not provided by clerks of the court	Court Number								
	1	2	3	4	5	6	7	8	9
Return date for final protection order hearing	✓	✓	✓	✓	✓	✓	✓	✓	✓
Serving of order on respondent	✓	✓	×	×	✓	✓	✓	✓	✓
Respondent is present on return date	✓	✓	✓	✓	✓	✓	✓	✓	✓
Each party is expected to present his/her side of the story – parties may request witnesses to testify	✓	✓	✓	✓	✓	✓	✓	✓	✓
Final protection order is not guaranteed on return date	×	×	×	×	×	×	×	×	×
Police are to be contacted if the respondent breaches the PO conditions	✓	✓	✓	✓	✓	✓	✓	✓	✓
Police must arrest respondent if the respondent breaches the PO conditions	✓	×	✓	×	✓	✓	✓	✓	✓

Information not relayed to applicants included that the receipt of a final protection order is not a guarantee at the final hearing and that the police is mandated to arrest the respondent if he/she breaches the conditions of the protection order (at court two, three applicants were unaware that the respondent could be arrested). Of significant concern is that at two courts, applicants were not instructed to take the interim protection orders granted to the police for serving on the respondent (as was done in all the other courts) nor did applicants receive any other information on how the respondent would be informed of the order applied for.

While one could reason that heavy case loads may prevent clerks from being thorough when providing information to applicants, this argument cannot be applied consistently. For example, applicants applying for protection orders at court 4 were the least informed of applicants across all the courts. The court is staffed by four clerks; it had the least number of applicants seeking protection orders from all the courts monitored; none of the clerks had assisted applicants with the completion of Form 2; and the time spent in court was minimal compared to other courts. This suggests that the court is (a) not a particularly busy one or (b) that few people access this court for protection orders and therefore clerks are busy with other matters; or (c) that clerks are not adequately trained; and/or (d) lack sensitivity or interest in assisting applicants

**OF SIGNIFICANT CONCERN IS THAT AT TWO COURTS, APPLICANTS WERE NOT INSTRUCTED TO TAKE THE INTERIM PROTECTION ORDERS GRANTED TO THE POLICE FOR SERVING ON THE RESPONDENT...NOR DID APPLICANTS RECEIVE ANY OTHER INFORMATION ON HOW THE RESPONDENT WOULD BE INFORMED OF THE ORDER APPLIED FOR**

through this process.

## **6.7 Applicants are experiencing secondary victimisation**

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Negative attitudes and lack of sensitivity to the needs of victims of violence was raised by applicants in their interactions with the police and at two of the courts. In court 2 applicants complained of being yelled at and at court 3, court monitors noted that clerks were impatient and at times raised their voices or spoke harshly to applicants during the application process. At court 7, one applicant commented that the court clerks were rude and had attitude. The secondary victimisation of victims of domestic violence was raised as a concern at the 2009 public hearings to the DVA. It remains concerning that this continues to happen.

## **6.8 Unsuccessful applicants were not always provided with reasons for not being granted a protection order**

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Some applicants who were not issued with protection orders stated that they had not been given reasons as to why their protection orders were not granted. This information is a right and raises issues about access to administrative justice. Applicants also require this information in order to determine what other forms of relief they could access.

## 6.9 Police were the major source of referral but failed to provide information on other available remedies to victims of domestic abuse

<b>Assistance requested by the applicant</b>	
Arrest the perpetrator	<b>41</b>
Remove the perpetrator from the house	<b>3</b>
Talk to/warn the perpetrator	<b>16</b>
Lay charges/arrest perpetrator & lay a charge	<b>2</b>
Talk to perpetrator and withdraw case	<b>1</b>
Escort victim home or escort to collect belongings	<b>8</b>
General advice	<b>4</b>
Referral (social worker)	<b>1</b>
Unknown	<b>10</b>

Although the public hearings on the DVA had found that the police were not informing victims of their right to obtain a protection order, this report finds that in 64% of cases the police were the main source of referral for protection orders. It appears that this is an area that the police have improved on. However, upon interviewing applicants on their experiences with the police, only eight people had been informed of their right to lay criminal charges against the perpetrators of abuse and only one person was offered assistance to obtain medical treatment as is required by the DVA.

Most interviewees had rated the level of service received from the police as average and while some were happy with the manner in which police responded, several complaints levelled at the police included delays in attending to call outs; mediating cases instead of arresting the perpetrator; and that the police did not at times seem to take the experiences of victims seriously. In one instance an applicant stated that she had wished that the police had referred her to a shelter for abused women.<sup>27</sup>

<sup>27</sup> Research conducted by TLAC and the Heinrich Böll Foundation in 2012 on shelters for abused women found that the police were not adequately equipped to refer women to shelters and only 22% of women in the profiled Western Cape shelters and 34% of women in Gauteng shelters were referred by the police.

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## CONCLUSIONS & RECOMMENDATIONS

This report finds that victims of domestic abuse accessing court and police services are still facing challenges similar to those raised at the public hearings, and while the DOJ&CD and the Department of Police Services report on progress made in implementing strategies to address the recommendations, this report also finds that significant room for the improvement of services exists. The following summarizes key conclusions drawn with respects to courts and the police and sets out a number of recommendations in relation to the findings and the conclusions drawn.

### **Courts**

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Amongst the courts monitored, there was seldom uniformity in the way that courts handled the process of applying for protection orders. Clerks did not always fulfil their duty which raises questions with respects to their training; their workloads; how much time they have at their disposal to attend to domestic violence matters; and how their performance is evaluated and/or monitored. Applicants were often frustrated by the extent of time that they had to wait and at times by the manner in which they were

treated by clerks of the court. While court clerks had access to offices, applicants were not always provided with comfortable and private environments during the application process – only one court provided applicants with a waiting room, others had benches lined up along passage ways and in two courts, applicants sat outside containers.

This report recommends the following:

- There is a need to create a uniform set of procedures by which courts handle the processing of application forms (including court operating hours). The DOJ&CD should identify “best practice” amongst well-performing courts and ensure that this model is employed throughout courts.
- To limit secondary victimisation all clerks need to be trained on their roles and responsibilities including the theory of domestic violence. Training courses for clerks and magistrates should be run concurrently and at regular intervals. Court personnel need to be monitored to ensure that they are implementing the learning

provided during the training and are providing applicants with the required information.

- More resources need to be channelled to courts to improve staffing and to creating permanent employment for clerks. This was raised as a recommendation by one of the clerks who attended the information-sharing workshop hosted by TLAC. The clerk stated that most clerks are treated as temporary staff which does not help with staff morale. Creating permanent employment for clerks would assist in improved service delivery and in turn would assist in addressing some of the delays.
- To further facilitate the process of applications and reduce delays/waiting periods, the DOJ&CD should consider translating Form 2 in to at least two other languages, such as isiZulu and isiXhosa.<sup>28</sup> In addition courts should have translators on standby to assist non-South African applicants with the completion of forms instead of asking applicants to return once the court has been able to secure translation services.
- The department should also invest in the provision of information pamphlets that should be handed to applicants by clerks. The pamphlet should provide all relevant information on the processes and procedures related to the protection order. Pamphlets should be available in a variety of languages. Having accessible, easy-to-read and understand guidance should empower applicants to fill in the forms themselves (when not assisted by a clerk) rather than requesting the advice or assistance from security guards.

- As some of the applicants had cited media as their source of referral to protection orders, this report recommends that the department make more use of local media to raise awareness on women's rights and provide advice on how to address domestic violence. Local media also has the advantage of local language mediums that is readily understood.
- The department should consider developing working arrangements with civil society organisations (such as POWA and Mosaic) across all the courts monitored. This will assist in reducing delays and contribute towards the reduction in the secondary victimisation that some applicants reported to have experienced.
- POWA and Mosaic must increase their visibility within the courts and market their services to applicants as none of the applicants interviewed that were assisted by these organisations were aware that they were being helped by an organisation and not a clerk of the court.
- A system should be put in place to allow applicants to lay complaints against clerks should they feel that they are not being treated with respect. This should be visible at the courts.
- Courts should also endeavour to create a database of respondents in protection order applications so as to address duplication of cases and minimise abuse of the system. This was raised as a challenge during the TLAC workshop with court clerks and is a suggested recommendation by one of the clerks attending the workshop.

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<sup>28</sup> According to Census 2011, isiZulu and isiXhosa are the two most common languages spoken in South Africa.

- The DOJ&CD should invest in more awareness raising campaigns (particularly using media such as the radio and television as preferred mediums) on the remedies available to victims of domestic violence. A fully informed applicant arriving at the court to apply for a protection order would significantly facilitate the process of applying for the order.

## Police

Despite some improvements, this report finds that the police still fail to comply with the DVA provisions. This includes: failure to inform victims of their right to lay charges/open up cases against perpetrators of abuse; failure to offer victims assistance in obtaining medical treatment and failure to refer victims to shelters for abused women. The report also finds that the police continue to cite lack of vehicles as reasons for not attending call-outs including that at times officers state that they are addressing other “more pressing” matters than domestic violence. Applicants described experiences of secondary victimisation and police attempting to mediate domestic disputes rather than arresting the perpetrator.

This report recommends the following:

- Training materials for police on handling domestic violence needs to be improved and implementation monitored.
- The Department of Police Services should be sensitised to the fact that males can also be victims of domestic violence and deserve equal protection and respect as do female victims.
- The department should ensure that persons making use of police services are aware of how to lay complaints should

they feel they are not being treated fairly and with respect. This should be made visible at each police station

- The department should undergo an assessment as to why the police do not inform victims of their rights to lay charges. Studies suggest that there is a correlation between the police not advising victims to lay charges with the propensity of withdrawal of charges by victims.<sup>29</sup> Strategies currently being proposed to address this include preventing victims from being allowed to withdraw charges. This report is not in a position to argue whether or not this is the most appropriate means to address this but suggests that the police consider alternative strategies – some as simple as putting up educational posters and having pamphlets accessible to the public.
- The department should ensure that police officers have access to information pamphlets that they can take with them when attending to domestic violence call-outs thus ensuring that even if the police are not informing victims of their rights, they will at least have access to resources that provide this information.
- Citing lack of vehicles to attend to domestic violence is a persistent problem that needs addressing. The Department should advocate for an increase in resources to ensure that there are sufficient vehicles to attend to multiple cases at once. Resources need to be used effectively and the police must treat domestic violence cases with seriousness and priority.
- Constant exposure to violence and crime may result in the desensitisation

<sup>29</sup> Vetten, Budlender and Schneider (2005)

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of police to such incidences and to the impact that incidences may have on those affected by such crimes. As a means to preventing or reducing the secondary victimisation that victims may experience, it is recommended that psychological debriefing of police officers attending to violent crimes or traumatic situations should be made compulsory to avoid possible desensitisation to victims of domestic violence amongst other victims of crime.

- All police stations should have a referral directory providing information on shelters and organisations available to assist domestic violence victims. The department should include processes and procedures for referring victims to these services. In addition, all police officers should be acquainted with the directory; be aware of its location within the station and be allowed access to it at all times.

**COMPREHENSIVE TRAINING ON THE PSYCHO-SOCIAL ASPECTS OF DOMESTIC VIOLENCE AND THE LEGAL REQUIREMENTS OF COURT PERSONNEL AND POLICE IN INTERVENING IN THIS IS CRITICAL. DOMESTIC VIOLENCE IS COMPLEX, AND NOT MERELY A CRIMINAL JUSTICE MATTER. IMPROVEMENT IN THE CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE HOWEVER, AFFORDS A MEASURE OF INCREASED SAFETY AND PROTECTION TO VICTIMS AND REDUCES VICTIM'S SENSE OF ISOLATION AND HELPLESSNESS. IT ALSO PROMOTES GREATER FAITH IN ADVANCING A RIGHTS BASED FRAMEWORK AND THE ABILITY OF GOVERNMENT EFFORTS TO REDUCE GENDER BASED VIOLENCE.**





HIGH COURT  
HOGH COURT

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# CRIMINAL JUSTICE RESPONSES TO DOMESTIC VIOLENCE: ASSESSING THE IMPLEMENTATION OF THE DOMESTIC VIOLENCE ACT IN GAUTENG

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In 1998, in recognizing the excessive rates of domestic violence in South Africa and in recognizing that the legal remedies available at the time were ineffective in dealing with the full extent and range of domestic violence, the first post-apartheid government enacted a piece of legislation called the Domestic Violence Act (DVA). The purpose of the Act was to “afford victims of domestic violence the maximum protection from domestic abuse that the law can provide”. The Act is an impressive piece of legislation but the efficacy of the relief that the Act provides to victims of domestic violence has been hampered by the state’s failure to effectively implement it.

In their ‘Enhancing State Response to Gender Based Violence’ project, the Heinrich Böll Foundation and the Tshwaranang Legal Advocacy Centre to end violence against women, seek to promote more just outcomes for survivors of rape and domestic violence through enhancing the capacity of civil society to hold the state accountable for delivering services to women at the forefront of rights abuses.

This publication is the third and final report of a series of shadow reports that this project undertakes.

The report sets out the provisions of the DVA and assesses whether problems with the implementation of this legislation are still being faced by profiling the experiences of 151 people applying for protection orders at nine courts in Johannesburg and East Rand and seeking assistance from the police on domestic violence matters.

