

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

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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 at the time. The purpose of the Act was to “afford victims of domestic violence the maximum protection from domestic abuse that the law can provide” (preamble to the DVA 116 of 1998). 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 enables victims (or complainants) of domestic abuse to apply for a protection order against an abuser (or respondent). Victims qualify to apply for a protection order if they are or were in a romantic relationship with the abuser; are the parents or responsible carers of children; or are family members related by consanguinity, affinity or adoption.

The DVA is an impressive piece of legislation, however problems with its implementation has hampered the efficacy of the relief available to victims of domestic violence. In 2009 public hearings on the Act raised a number of concerns by civil society on this. Concerns included (amongst many others) non-compliance with the provisions of the Act; negative attitudes towards victims by the police and court officials; undue delays in processes; and lack of access to courts (whether during or after-hours) as well as ineffective police service in relation to domestic violence.

Governments departments have, since the hearings, reported to parliament on progress made in the implementation of the Act, but has this progress translated into

improved service delivery to victims of domestic violence?

In 2012 the Tshwaranang Legal Advocacy Centre to end violence against women (TLAC) undertook a research study that sought to determine whether challenges raised at the 2009 public hearings are still being faced by victims of domestic violence. The study involved interviewing 151 persons on their experiences of having applied for protection orders at nine courts in Gauteng. Questions asked of participants included what led them to apply for protection orders; where they had learnt about protection orders from; how they rated the 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. The interviews also questioned participants on their experiences of having sought assistance from the police on domestic violence matters.

The brief describes the study methodology used and presents the findings of the study. It also provides some of the contextual analysis and outcomes of the 2009 public hearings. The brief concludes with a number of recommendations proposed to improve court and police services to victims of domestic violence.

Methodology

A total of nine courts from two magisterial districts, Johannesburg and Ekurhuleni (formally known as the East Rand), were monitored during the study. Courts were 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.

Two members of a women’s rights community-based organisation, Remohho, were trained to do the monitoring and interview applicants. Fieldwork was implemented in two stages (10 May—7 June 2012, and 1 October—30 November 2012) and took place three days a week during normal court operating hours (8:00 a.m. to 4:00 pm).

As with all studies, there were some limitations in the methodology. Firstly, applying for protection orders takes a significant amount of time and as such, 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. Secondly, the amount of time that monitors were allowed to spend in courts was not uniform across all the courts as monitoring was dependent on the availability of magistrates and court managers.

Despite these limitations the study provided good qualitative information.

This brief summarises the third and final report that the Heinrich Böll Foundation (HBF) and the Tshwaranang Legal Advocacy Centre to end violence against women (TLAC), have produced in their ‘Enhancing State Response to Gender Based Violence’ project. The project seeks 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 abused women. The project is funded by the European Union.

2009 Public hearings on the DVA

The following are some of the problems raised by civil society in respects of the Act, its provisions and implementation at the public hearings on the DVA which were hosted by the Portfolio and Select Committees on Women, Children and Persons with Disabilities in 2009.. Recommendations made by these committees are also included below.

For the purposes of the TLAC/HBS study only problems encountered and recommendations pertaining to the Department of Justice and Constitutional Development (DOJ&CD) and the Department of Police Services are specified here.

Problems raised

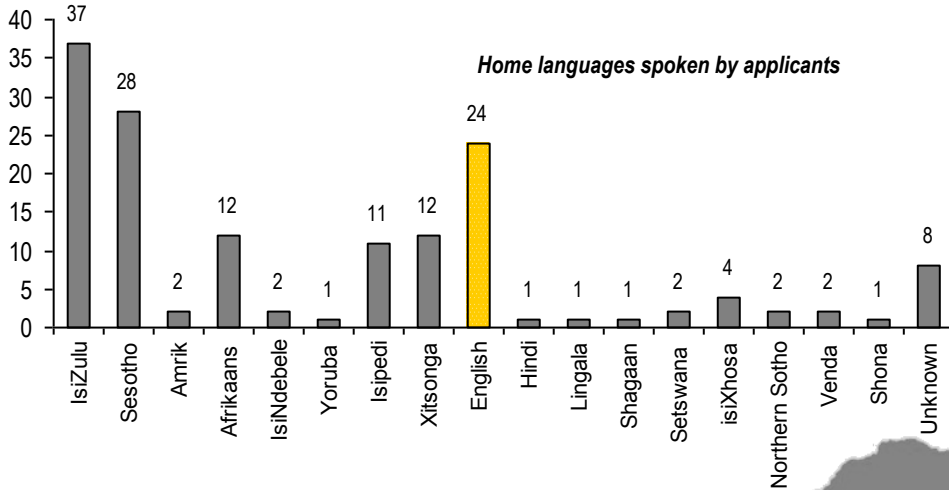
- **Non-compliance with the provisions of the DVA by the police.** Examples cited included refusal or reluctance to serve protection orders or to arrest perpetrators of abuse who had violated the conditions as set out by a protection order. Police officers also often attempted to mediate domestic violence disputes instead of arresting the perpetrators as is required by law.
- **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. Submissions also however referred to the fact 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.
- **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.
- **Lack of privacy in court** when dealing with domestic violence cases also resulted in the further victimisation of victims.

Recommendations

- 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;
- provision of assistance to applicants in the language of their choice;
- Development of training norms and standards for the police on domestic violence; and
- 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.



Sample & Applicant Profiles



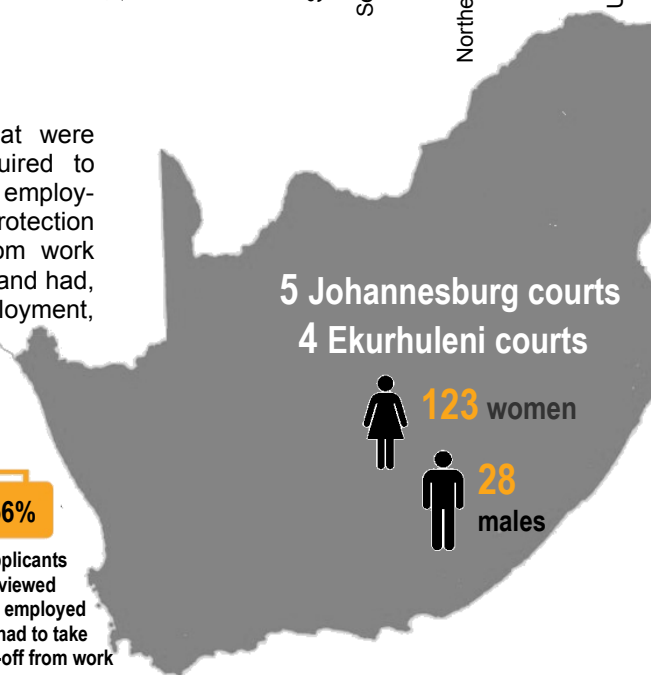
Demographics

151 applicants were interviewed as a part of this study. The demographics of the applicants comprised of 123 females and 28 males. The graph to the left represents the home languages spoken by each applicant. As is evident the graph highlights the vast differences in the origins of the applicants and the cultural differences that are attached to this. **It is important to note that the protection order application form (know as Form 2) is only provided in English.**

Employment

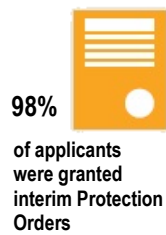
Of the 85 applicants that were employed, 80 were required to take time off from their employment to apply for a protection order. Taking time-off from work posed various challenges and had, for those in casual employment, economic consequences.

“They can be a lot quicker cause my madam doesn’t want me taking time off anytime”



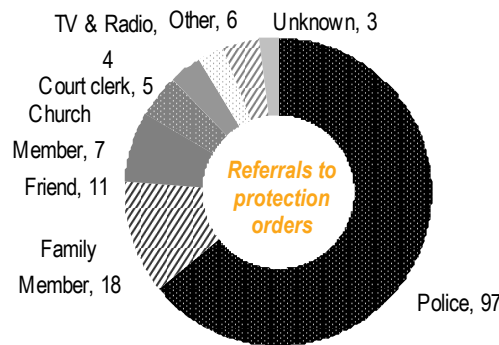
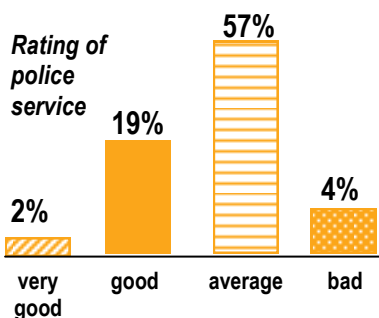
Court services required

146 applicants were applying for interim protection orders and 5 were attending a final hearing. Three applicants were applying for protection orders on behalf of children who were being abused. For 11 applicants, it was not their first time in court to applying for protection orders.



Perceptions of police services

90 applicants requested that the police intervene (to arrest the respondent (majority), to escort the victim to collect belongings, and/or to talk to the respondent). Of the 90 requests, 65 applicants received the assistance that they asked for.



“They should have arrested him because he has been abusing me from that day I went to them till now” Female applicant

Courts	No. of clerks	No. of applicants interviewed
1	5	18
2	1	12
3	4	16
4	4	9
5	2	17
6	1	14
7	4	35
8	3	20
9	2	10
TOTAL	26	151

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
Not to commit any other act, namely:	
(a) stop contacting the complainants family/friends	9
(b) stop taking the complainant's mothers money	1
(c) stop threatening to kill complainant/complainants 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

Shadow report findings

The main findings of the study were:

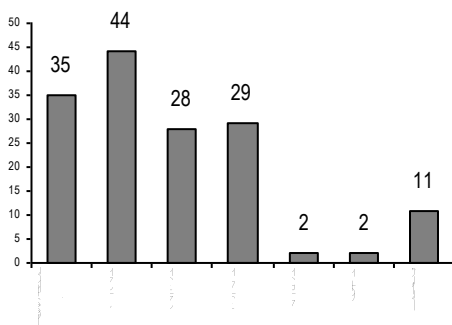
Most applicants were being verbally abused (85%) and physically abused (72%). Applicants were also being threatened with death and harassed at their place of employment. Children, family members and friends of the applicant were also at risk from the abuser. In 40% of cases applicants had requested that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

Females were the majority of applicants but secondary victimisation may prevent male victims from applying for orders. Only 18% of all applicants were male. The proportion of male applicants varied by area however and at one court almost half of the sample (45%) were male. For one male applicant, his experience of having contacted the police for assistance as a male victim of domestic violence was a negative one. 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.

“[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

Applying for protection orders was time-consuming. Of the 151 applicants interviewed, just under a quarter (23%) spent less than an hour in court, while almost equal portions (19%) spent 2–3 hours and 3–4 hours. The longest time spent in court for two applicants was six hours or more.



The waiting period between applying for an interim protection order and returning to court for the final protection

order hearing varied across the courts: about 50% of courts scheduled return dates within two weeks of receipt of the interim order, while at other courts this time could take up to six weeks or longer. For those employed (85) taking time off from work to go to court was challenging and held financial implications. 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.

Completing an application for a protection order is not guaranteed to happen on one day. 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, applicants who do not arrive in court within a specific time are asked to return at

“They did well [in granting the protection order] but she abused me again during the weekend while [I was] still waiting for a protection order.”

male applicant

another time. A third court requested that applicants return the following day for a response to their application. At another court, 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. Time-delays can hold significant implications for those needing protection from abuse.

Clerks did not all assist applicants in completing application orders. Not all clerks assisted applicants and in six instances applicants asked security guards for assistance. Security guards are not trained to do this nor are they expected to. Although clerks always verified that forms were filled in correctly, having to correct errors meant further delays in the process.

Clerks did not always fulfill their duties as prescribed by the DVA. 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. Information not relayed to applicants included the following:

- none of the courts informed applicants that the receipt of a final protection

order was not a guarantee at the final hearing;

- Three applicants were unaware that the police is mandated to arrest the respondent if he/she breaches the conditions of the protection order; and
- at two courts, not all applicants were 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 these applicants receive any other information on how the respondent would be informed of the order applied for.

Applicants are experiencing secondary victimization. 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 three of the courts. Applicants complained of being yelled at; court monitors noted that at one of the courts, clerks were impatient and at times raised their voices or spoke harshly to applicants; and at a third court one applicant commented that the court clerks were rude and had attitude.

Unsuccessful applicants were not always provided with reasons for not being granted a protection order. 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.

Police were the major source of referral to protection orders but failed to provide information on other available remedies to victims of domestic abuse. Out of those interviewed who had sought assistance from the police, only eight people had been informed of their right to lay criminal charges against the perpetrator and only one person was offered assistance to obtain medical treatment as is required by the DVA. While some applicants were happy with the manner in which police responded, several complaints leveled at the police included delays in attending to call outs; attempts at mediating cases instead of arresting the perpetrator; and complaints of not being taken seriously by the police. One applicant stated that she had wished that the police had referred her to a shelter for abused women.

Conclusions & Recommendations

The study finds that **victims of domestic abuse accessing court and police services are still facing challenges similar to those raised at the public hearings** and significant room for the improvement of services exists. The following summarizes key conclusions drawn and sets out a number of recommendations in relation to the findings and the conclusions drawn.

Courts

Main conclusions:

- There was no 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 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.

We recommend the following:

- To streamline and improve court services we recommend the creation of 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.
- Clerks need to be regularly trained on their roles and responsibilities (including the theory of domestic violence) and be monitored that they are implementing 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.
- To 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. 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.

- To assist applicants in filling in the forms by themselves (rather than rely on security guards), applicants should be provided with information pamphlets on processes and procedures related to the protection order. Pamphlets should be available in a variety of languages.
- 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.
- 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.
- 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. This should facilitate the process of applying for the order.

Police

Main conclusions:

- Despite some improvements, police still fail to comply with all provisions of the DVA. This includes: failure to inform victims of their right to lay charges against perpetrators; failure to offer victims assistance in obtaining medical treatment and failure to refer victims to shelters for abused women.
- Police still cite lack of vehicles as reasons for not attending call-outs, and at times state that they are addressing “more pressing” matters than domestic violence.
- Applicants described experiencing secondary victimisation.
- Police at times still attempt to mediate domestic disputes rather than arresting the perpetrator.

We recommend the following:

- Police training on handling domestic violence needs to be improved and implementation monitored. Police must be sensitised to the fact that males deserve equal protection and respect as female victims do.
- The Department of Police Services

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.

- An assessment is required 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. Strategies currently being proposed by the police in addressing this is to prevent victims from being allowed to withdraw charges. Police should consider alternative strategies – some as simple as putting up educational posters and having pamphlets accessible to the public.
- Police officers should 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, victims will 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 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 and other victims of crime in general.
- 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.

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 THEIR 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.

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