



SUBMISSION TO THE HIGH LEVEL
WORKING GROUP –
SOCIAL COHESION AND NATION
BUILDING

The Implementation Domestic Violence
Act No. 116 of 1998 from a Grass Roots
Perspective

Contact

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CONTEXT

Domestic violence is a complicated social problem integrally linked with other social problems including child abuse, substance abuse and sexual offenses. South Africa is rated as one of the countries with the highest incidence of domestic violence world-wide. In response to this South Africa has one of the more progressive examples of domestic violence legislation internationally. However, major concerns around domestic violence are the implementation of the Act as well as the availability of resources for victims. Domestic violence is not in itself a crime and the relationship between perpetrators and victims are not recorded or reported on.

RELEVANT LEGISLATION AND POLICY

Domestic violence in South Africa is regulated under the Domestic Violence Act (DVA) No. 116 of 1998. This law was designed to provide the best possible assistance and protection for victims of domestic violence, but has come under heavy scrutiny due to its poor implementation and the recurring cases of domestic violence.

Since 'domestic violence' in itself is not a crime statistics are captured across different categories of criminal offences including, pointing a firearm, intimidation, rape or attempted murder and various others. Violation of protection orders are treated as charges of contempt of court. So, when the South African Police Service (SAPS) reports on crime statistics each year, there is no way to obtain a clear statistic on domestic violence and its relation to other crimes.

Working in this field has shown us that in many cases victims of domestic violence are adult survivors of child abuse. The cyclical nature of domestic violence in our societies is a huge concern. Generally speaking we see abused women seeking assistance from various institutions and organisations as well as the police and courts.

Looking at studies that review protection order applications we see that the majority of protection order applicants since 1999, when the act came into operation, are women. More than two-thirds of these women sought protection from their intimate male partners. Half of the men sought protection from their female partners whilst the other half sought protection from a family member (typically an adult child). These findings suggest that while women may be at risk of domestic violence throughout their lifetimes, men's risk is largely confined to childhood and later adulthood.

The low numbers of protection orders being made final has been linked to various factors including intimidation or promises to behave from the complainant, families mediating or dissuading the complainant from returning to court, difficulties serving the protection orders, red tape and unwillingness to assist with protection orders on the part of the court.

The role of the SAPS has been heavily scrutinised when it comes to the Act. Several studies have focused on the failures of the police nationally (Vetton November 2014). Non-compliance was a major issue highlighted with regard to the reluctance of police officers to issue protection orders or make arrests. This means that justice is not served in these cases as the police are not fulfilling their duty as outlined in Section 2 of the Act. (Farusa July 2015)

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Lack of resources results in a lack of victim friendly centres where trained officers are able to deal with cases in a meaningful way. The fact that resources for NGOs to provide shelter, counselling, skills development and medical and legal assistance to domestic violence and child abuse victims are sorely lacking is clear. This is the type of social problem that requires longer term assistance and the infrastructure to do this is just not available.

Taking all this into consideration and noting that at its most extreme domestic violence will result in death - with four women being killed every day by the men in their lives (Vetton November 2014) it is fair to say that in a nutshell the Act has mixed results. Whilst the legislation in itself is progressive the fact that the implementation of the Act is less than satisfactory is an area for great concern.

GAPS IN IMPLEMENTATION ON A GRASS ROOTS LEVEL

From our experience in the field and taking into account studies on domestic violence we have seen the following gaps in the implementation of the Domestic Violence Act:

SOUTH AFRICAN POLICE SERVICES

The role of the SAP in implementing the Domestic Violence Act is clearly outlined in the Act.

Taking this in to account and looking at these responsibilities from a grass roots level it is clear that SAPS require not only better training with regard to the Act but also assistance from NGOs and organisations to be able to implement the Act.

1. Often these victims have little or no understanding of the Act or what it entails. Providing complainants with written information about their rights in the language of their choice as well as explaining their legal rights is also concerning as we find that this information is often in a form that is just not understood by the complainants and/or the police officials themselves do not understand the Act well enough to explain it.
2. We find that although the Act requires the police to help complainants find suitable shelter, often there just are no such shelters or places of safety to take these complainants to.
3. Although the police are required to serve notice on the abuser to appear in court they often insist on taking the complainant with them to do so causing secondary traumatization. In many cases the process of serving a protection order ends with the complainant finding out they need to accompany the police to serve the order.
4. In many cases we find the police trying to mediate or broker a resolution between the parties instead of arresting the abuser – which results either in a protection order not being taken out in the first place or not being implemented at the time of a breach. As such the complainants often feel that a protection order is nothing but another piece of paper that affords them very little protection.

COURTS

We have experienced a lack of understanding of the Act, from clerks of the court right through to Magistrates.

1. The onus is placed squarely on the victim to collect evidence and provide proof of abuse.
2. Sourcing legal assistance as well as emotional, physical and financial support for victims of domestic violence is a nightmare and we have seen numerous cases where protection orders are thrown out of court whilst defence attorneys play for time and manipulate divorces, maintenance agreements and family advocates reports within protection order applications.
3. We have seen protection orders being used by perpetrators as bargaining chips at divorce hearings.
4. Outside of court rooms complainants are seated with defendants and often by the time the complainant gets into the court room they are too scared to speak up in court. To add to this difficulty often support workers are not allowed into the protection order hearing and an already intimidated complainant is further traumatized by an unsympathetic Magistrate or defence attorney.
5. It is extremely difficult to get emergency financial relief in a protection order as this is referred to maintenance court. Maintenance court takes long periods of time to sort out maintenance issues and whilst this process is being followed often the victims give up and return to their abuser rather than be unable to provide for themselves and/or their children.
6. We have numerous cases where protection orders leave the perpetrator in the house but warn them not to abuse the complaint. This is completely impossible situation causing more harm than good.
7. We have also seen perpetrators taking opposing protection orders against the complainants which just causes a he said, she said situation where actually nobody is protected.
8. We see very few cases where criminal charges are followed through even though enough evidence is given for a protection order.
9. We often hear victims of domestic violence saying that they feel like the criminal due to the way they are treated by the legal system.

NGO's – many of whom, like us, fight an uphill battle negotiating their way through NGO regulations and obtaining funding - have taken over the brunt of the work which was entrusted by law to the police and the courts.

This includes informing the victim about their rights and advising them on how the process of applying for a protection order is carried out. It also includes helping the victim find alternate accommodation and other support services.

PROPOSED SOLUTIONS TO IMPLEMENTATION GAPS

The current situation indicates a failure by the Department of Justice and the SAPS as they are unable to fully carry out the duties which have been mandated to them by law.

1. Domestic violence must be recognised as crime on its own in order to tackle it effectively. At present the Act criminalizes the breach of an order but does not go as far as criminalizing the act of domestic violence itself, thereby offering a form of protection but no actual remedy for the problem.
2. Police perceptions of domestic violence make effective implementation of the Domestic Violence Act very difficult. This unwillingness to intervene in what is perceived as a private interpersonal matter remains a pervasive view amongst police officers. The problem is then one of progressive legislation combined with unformed and unprogressive attitudes.
3. Since victims of domestic violence need longer term assistance to reclaim their place in society the availability of funding and resources to assist NGOs in this field to be able to provide that assistance is imperative.
4. Domestic violence is undeniably a violation of the rights afforded to all *South Africans in the Bill of Rights, Section 10 of the Constitution of South Africa*, as well as the ratified international conventions and treaties such as the *Convention on Elimination of All Forms of Discrimination Against Woman* that demand the protection of the human rights of woman.
5. Clearly the South African criminal justice system has failed to discharge its domestic and international obligation of providing adequate protection for victims, especially women, of domestic violence by neglecting to criminalize domestic violence due to the complicated nature of this social problem.
6. Training and education as well as financial resources need to be made available for the improvement of police, judicial, social welfare and NGO sectors so that the comprehension of the Act broadly can be improved for effective implementation.
7. Specialised domestic violence courts that deal solely with domestic violence issues would greatly reduce the problems of time delays and other issues related to the application of protection orders.
8. Additional research on the psychology and social dynamics underlying domestic violence is also necessary. While there has been a wealth of literature on the formal aspects of domestic violence the subjective psychology and opinion of survivors seems to have been sorely neglected.

CONCLUSION

As a grass roots organization, based in Kimberley but operating nationally via social media, the internet and telephonically we have found that although the legislation surrounding domestic violence, which we have highlighted here, but which is also linked to offences covered by the Sexual Offences Act and Child Protection Act require better implementation.

The SAP, Justice Department, Education Department, Health Department, Social Development and in truth the public at large are lacking in understanding of these laws and the dynamics surrounding these abuses (including their links to substance abuse and health issues) and their cyclical nature in our communities.

In order for our Constitution and really progressive legislation to have any real meaning it needs to bring about change at a grass roots level or remain nice words on paper with little or no effect on the general population.

OPTIMYSTIC BIKERS AGAINST ABUSE

Optimystic Bikers against Abuse is a volunteer based non-profit organisation working in the fields of domestic violence and child abuse with a special focus on adult survivors of abuse.

We provide:

- Provide pastoral counselling services, education programmes and support services
- Raising awareness around issues of domestic violence and child abuse.
- Encouraging and empowering children, men and women to speak out.
- Providing assistance for abused children, men and women to begin and continue their healing journey and live exceptional lives.

Many of our members are survivors of abuse, all are trained in the issues surrounding domestic violence and child abuse.

Founded in 2010 we work not only in Kimberley, where we are based, but through our online presences we work with clients all over the country. We have forged networking alliances with other non-profit organisations and institutions working in this field and are proud of our accomplishments and success rates.

References

Farusa, et al. July 2015. *Domestic Violence Act Does it Protect?* University of Cape Town, Cape Town: UCT Knowledge Co-Op.

Vetton, Lisa. November 2014. *Domestic Violence in South Africa*. Institute for Security Studies.