

# Strengthening Domestic Violence Act

## Next ten years

The Domestic Violence Act is an important law that has been widely used. Yet as **Lisa Vetten** explains there are some very real problems with the Act's implementation. These challenges were laid out to Parliament's new Portfolio and Select Committees on Women, Youth, Children and People with Disabilities.

South Africa's much-anticipated Domestic Violence Act (DVA) came into effect in December 1999 and has been in operation for just over a decade. Regarded as one of the more progressive examples of such legislation internationally, it also appears to have been well used.

In 2004 at least 157 931 women and men applied to the courts for protection orders in terms of the DVA. But has the DVA lived up to its promise? This was the question asked by Parliament's newly-formed Portfolio and Select Committees on Women, Youth, Children and People with Disabilities (the Committee).

On 28 and 29 October 2009 the Committee held public hearings around the implementation of the DVA. On the strength of the testimonies of individual women who had experienced domestic violence, as well as submissions made by shelters and organisations, it was clear that much still needs to be done by the courts and police to strengthen the workings of the DVA.

The hearings also highlighted the much greater role that housing, social services and health sectors needs to play in future.

### PROBLEMS WITH POLICE & COURTS

The DVA and associated SAPS National Instructions place a number of responsibilities on the police. Some of the most important of these include:

- providing information about counselling services to victims of domestic violence, as well as helping them to find suitable shelter and obtain medical treatment where necessary;
- providing a protective escort to women who want to collect personal items from their homes;
- serving notice on the abuser to appear in court and serving the actual protection orders;
- arresting an abuser who has breached a protection order, or committed a crime (even without a warrant);
- removing weapons from the abuser, or from the home; and
- recording all cases of domestic violence in the station's Domestic Violence Register.

Should the police fail to carry out any of these duties, they can be charged with misconduct and disciplinary proceedings instituted. All cases of DVA-related misconduct must also be reported to the

Independent Complaints Directorate (ICD). Both the ICD and the police must submit reports to parliament every six months recording the number and nature of complaints made against police officers, as well as the actions taken to deal with such complaints.

In theory, these provisions should ensure police compliance with the DVA. In practice, this has not been the case. In 2008, for example, the ICD audited 434 stations around the country to examine their adherence to the DVA's obligations. Only 14% of these stations complied fully with the DVA's provisions.

One of the most common complaints against the police is that they fail to arrest the abuser. This failure has serious repercussions. In *The Minister of Safety and Security and Others v WH* the court ruled in favour of Mrs White who sued the police for damages when they failed to arrest her abusive husband for violating the conditions of the protection order. Their inaction resulted in Mrs White being raped by her husband.

Another real obstacle to women's access to the DVA's protection is the procedure for serving both the notice to the abuser to appear in

court, as well as the actual protection order itself. This step in the process is crucial because the protection order cannot come into effect unless the abuser has been informed of its existence and also given the opportunity to come to court and give his/her version of events.

At some courts, clerks instruct women to take the orders to the police station and organise service with the police even though this should be the clerk's responsibility. Still other clerks expect women to serve the abuser with the notice and the order. Both approaches are highly inconvenient, if not dangerous, to women.

The police station responsible for service may not be in the immediate vicinity of the court, requiring women to make a further trip at additional cost and, once at the station, to negotiate with the police around service.

The police are also not always successful in serving the papers. This is due to a shortage of vehicles, which particularly hampers service in rural areas where the geographical distances between police stations and villages may be great. Also sometimes abusers are untraceable or police have the incorrect or incomplete addresses for abusers.

Because locating abusers can be time-consuming, police members have been known to leave service of the papers to the next shift. However, those working on the next shift were often unwilling to serve the orders because the orders were not originally received by them. As a result, serving of notices is sometimes delayed in favour of more 'pressing' police matters - unless the order is seen as urgent.

All these reasons may explain why many protection orders are not successfully served. For example, in one study of 450 applications made



at nine courts, less than half (46%) of the protection orders were successfully served. In another study only 50% were served.

Like the police, a number of courts do not exercise the care they should around the paper work required by the DVA. Forms are lost, incomplete, unsigned (which means they have no binding force) or misfiled. These poor record-keeping practices may invalidate individual women's protection orders, or require them to start the process all over again.

Incomplete records also affect prosecutions, appeals, as well as applications for further warrants of arrest and other court proceedings such as divorce and custody matters.

What is also concerning is how few women actually obtain final protection orders. Various studies have been carried out over the years to evaluate the

implementation of the DVA. Of the 19 different courts reviewed, no more than four courts made more than 50% of the protection orders final. Two of these studies also showed that some courts are far less likely to grant final protection orders than others. This is worrying because it suggests bias on the part of some magistrates.

Problems of bias and the failure to follow procedures could be addressed through training. Unfortunately, not nearly enough training of police officers and court officials has taken place.

Since 2007 both the SAPS and the ICD, in their six-monthly reports to parliament have identified inadequate training as a major challenge to implementing the DVA. In his 2009 report to Parliament the Auditor-General also commented on how few police officers had attended training around domestic violence and victim empowerment.

It is difficult to know how many court officials have been trained around the DVA because there is no obligation on the Department of Justice to report to Parliament on this matter. But interviews at courts suggest that many clerks, as well as some magistrates, have never attended formal training on this issue.

### NEED FOR TOTAL RESPONSE

There are many things both the courts and police could be doing to make the DVA more effective. But for the law to be truly effective, the courts and police will need far more support from the health, housing and social services' sectors than is currently the case.

For example, while the DVA placed obligations on the police to assist women to obtain health-care services, as well as access to counselling services and shelters, it placed no corresponding obligations on health or social service providers to make such services available.

Further, domestic violence exposes its victims to significant and different forms of hardships. While the courts can intervene by providing protection orders, they cannot supply the full range of assistance required by victims.

At a minimum, women may require health care, counselling services, alternative accommodation and economic assistance, in addition to a protection order. However, not only are referral systems between the courts and most agencies undeveloped, but services are also non-existent due to the fact that there are often no services - particularly in rural areas.

Generally, while the absence of services is most stark in rural areas, the number of organisations overall that deal specifically with domestic violence is small. Indeed, although a precise figure is hard to come by, it

would seem that no more than 80 domestic violence shelters exist in the whole of South Africa.

### GOING FORWARD

Very many challenges to the effective implementation of the DVA were raised during the hearings and the Committee has no shortage of work ahead in exercising its oversight function in future. Below are some of the recommendations put forward by organisations to the Committee.

Firstly, there needs to be the development of a comprehensive, integrated national strategy to end domestic violence. Although the DVA creates a police and court response to the problem of domestic violence, important as this intervention is, it is insufficient. What is needed is a comprehensive and wide-ranging response to domestic violence in which the police and justice system play an important role, rather than the only role.

A strategy should require the participation of a range of departments so as to address the policing, justice, health, housing, shelter, psycho-social, employment and economic needs of abused women and their children.

A carefully-monitored strategy for working with abusers, as well as preventing domestic violence in future is also needed. Such interventions are the responsibility of government, business, trade unions, community structures and non-profit organisations - all of whom should contribute equally to the development of such a strategy.

Secondly, there was the recommendation that a strategy needs to come up with approaches to address the marginalisation of some groups from the Act's protection. The DVA is under-utilised by people with disabilities, gay and lesbian couples, as well as

refugee women and undocumented migrant women.

Steps need to be taken to increase their use of the Act. These may include training court personnel around sexual orientation, disability, xenophobia and prejudice. Because violence in same-sex relationships, as well as in disabled people's relationships is often hidden, campaigns also need to raise awareness of the existence of such violence.

Thirdly, a recommendation was made to recognise the links between child abuse and domestic violence. Children are affected by the abuse of their mothers and may also suffer abuse themselves. However, children very rarely feature in interventions addressing domestic violence. Equally, mothers are very rarely considered in interventions addressing child abuse. These two problems need to be better-integrated in policy and practice.

Finally, it was recommended that the Department of Justice and Independent Complaints Directorate's regulations in terms of the DVA should be revised, as well as the police's National Instructions. These revisions need to address the problems around service of the notice and order; provide guidelines around arrest; establish a performance monitoring framework; create training norms and standards; and ensure that both the police and the DoJ and ICD put aside adequate budgets to support the DVA's implementation.

The Department of Social Development's support including counselling services and shelters must also be monitored. LB

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