



## Gender Based Violence & the Failure to Implement the Domestic Violence Act

*"Domestic violence is a crime against society; it is not a private matter. This Act responds to the high incidence of domestic violence in South Africa and attempts to protect victims".*

Domestic Violence Act 116 of 1998

### 1. Introduction

Domestic violence, that is violence that occurs at home, is a common feature of domestic life in South Africa.<sup>1</sup> In an effort to address and curb domestic violence the Domestic Violence Act 116 of 1998 was enacted, but the successful implementation of the Act is questionable. According to police statistics for 2009, 57% of women who were murdered died at the hands of their intimate partners. In the same year a Medical Research Council study reported that three women die at the hands of their intimate partner every day. This is five times more than the global average, while the rate of sexual violence is also one of the highest in the world.<sup>2</sup> However, it is important to note that men may also be the victims of domestic violence. Furthermore, domestic violence occurs across class, race, religion and ethnicity.

### 2. Definition

In terms of the Domestic Violence Act, domestic violence includes:

“sexual abuse (whether you are married to the other person or not); physical abuse or assault (for example, slapping, biting, kicking, and threats of physical violence); damage to property or anything you value; stalking (when the other person follows or approaches

you or your children repeatedly); economic abuse, that is, when the other person keeps money to which you are legally entitled from you in an unreasonable manner [...] or disposes of any property (household goods) in which you have interest, without your permission; emotional abuse (that is, degrading or humiliating behaviour, including repeated insults, belittling, cursing and threats); any other controlling or abusive behaviour which poses a threat to your safety, health or well-being”.<sup>3</sup>

These behaviours compromise the dignity, safety, physical integrity and mental health of the victim. Domestic violence has physical, sexual, emotional, psychological or economic consequences, and it is compounded by patriarchy, poverty, and the abuse of alcohol or other addictive substances. Moreover, witnessing family violence as a child is a predictive factor of future abusive behaviour. A recent study by Gender Links found that that the proportion of men who admitted to committing some form of violence against women in their lifetime was high: 78% in Gauteng; 48% in Limpopo; 41% in Kwa-Zulu Natal; and 35% in the Western Cape.<sup>4</sup>

While many men are victims of domestic violence, it is difficult to gauge the exact impact on men due to underreporting. A study conducted by the

Centre for African Justice, Peace and Human Rights found that “[m]en are sadly less likely to report abuse because the stigma attached prevents them from speaking out. Men who may report their experiences of domestic violence to the officials are also at a greater risk of experiencing secondary victimisation by being denied assistance. This is due to the stigma attached to defending themselves against women.”<sup>5</sup>

### **3. What Rights and Protections Are Available?**

In terms of the Domestic Violence Act victims of such violence have the right to apply for a protection order at a magistrate's court. They can also approach any police station for assistance, including having the police accompany them to their home in order to collect belongings; having weapons removed from the abuser; and help in finding suitable temporary shelter, as well as medical attention if needed. Ultimately however, successful protection from the perpetrator is heavily reliant on the SA Police Service, whose responsibility it is to enforce the protection order and to see that the matter proceeds to the courts should the perpetrator violate the conditions set out in the order.

In 2009 one in twenty women killed by their partners was in possession of a protection order.<sup>6</sup> The problem is compounded by the fact that we live in a society of hyper-masculinity, where patriarchal attitudes still predominate; even among law enforcement officers there is thus often a reluctance to act against perpetrators.

Lisa Vetten points out that the Domestic Violence Act “sets out a normative framework for police conduct in relation to domestic violence and couples this to a set of accountability mechanisms.”<sup>7</sup> However, there is considerable reluctance on behalf of the police to interfere in what are perceived to be private matters.

Domestic violence is not seen as a serious enough crime, and the police tend to direct their attention to what they consider more ‘serious crimes’. Proper records are frequently not kept, while proper oversight has been paltry and there has been little standardization of procedures.

Common excuses include a lack of capacity in terms of resources such as vehicles, petrol, and station budgets; and lack of proper training and supervision.

The Domestic Violence Act stipulates that a register reflecting all reports of domestic violence must be maintained at every police station. Furthermore, a publication by the Department of Justice and Constitution Development stated that most police stations have a designated officer to handle cases of domestic violence.<sup>8</sup> But there has been little evidence of this in practice. In an audit of 725 police stations between April 2012 and March 2015, only three were found to be fully compliant with the Domestic Violence Act.<sup>9</sup>

### **4. Litigating the Domestic Violence Act**

Bronwyn Pithey notes that there has been little very little significant litigation on the Act itself, although some technical provisions have been considered by the courts. Furthermore, “ironically, most challenges are made by male applicants and respondents – regarding arrests and access to children.”<sup>10</sup> However, “non-specific litigation (on the Act) has referred to the Act but in the context of damages cases against the police, the rights of the accused in an arrest for a breach of the protection order, and the murder of abusive partner.”<sup>11</sup> Adv Pithey also confirms that “there is a lack of standardisation and consistency in the implementation of the Domestic Violence Act between Magistrates’ Courts and SAPS stations.”<sup>12</sup> In the case of *S v Baloyi and Others* the Constitutional Court found that

“the ineffectiveness of the criminal justice system in addressing family violence intensifies the subordination and helplessness of the victims. This also sends an unmistakable message to the whole of society that the daily trauma of vast numbers of women counts for little. The terrorisation of individual victims is thus compounded by a sense that domestic violence is inevitable. Patterns of systemic behaviour are normalised rather than combated.”<sup>13</sup>

Tarisai Mchuchu of Mosaic, an organization which works to provide support for victims of gender-based violence, says that the legal process is

impeded by “attempts of victims to leave, reconcile, protect and manage relationships” and that they “may be threatened with death or injury if they return to court to finalise their protection orders”.<sup>14</sup> Moreover, applicants for protection orders are often intimidated by the legal process, and have little familial support.

## 5. The Lack of Shelters

It is immensely difficult for a woman to leave her abusive partner, particularly when she is financially dependent on him; and this is even more difficult when there are children involved. There is a desperate need for support services including accommodation, access to social grants/financial support, trauma counseling, employment opportunities, legal advice and medical care. The provision of such services would enable women to “rebuild their lives with confidence that their human rights abuses have been addressed with the necessary respect and appropriate protection.”<sup>15</sup>

During August this year the Centre for Applied Legal Studies (CALS) was engaged in litigation in an urgent attempt to assist a woman, who was previously raped and kidnapped, to gain re-entrance into a gender-based violence shelter after she had been evicted.<sup>16</sup> The eviction would have rendered her homeless. The shelter’s policy is to provide accommodation to women for a period of six months. The judge in the matter found that there was no urgency in this case and proceeded to strike the matter from the roll. Unfortunately,

“the government does not currently have an explicit legal obligation to provide long-term housing to women and children who have experienced violence. What is then created is the current situation that many women and children face, where they do not have an alternative place to live when finishing their short-term stay at a gender-based violence shelter, and will ultimately return to the abuser or become homeless”.<sup>17</sup>

## 6. Children

Criminologist Don Pinnock, reflecting on the crisis of violence between rival gangs in the Western Cape, writes that

“more than half of South African children report physical abuse by caregivers, teachers or relatives, 45% witness violence against a mother by her intimate partner, and one in three young people experience sexual abuse. This teaches children that violence is normal, if not a legitimate form of conflict resolution and expression of power.”<sup>18</sup>

The importance of socialization and the impact of early childhood experiences on violent behavior cannot be overestimated:

“Research has shown that children often behave violently after being exposed to intimate partner violence (IPV). In fact, when children are repeatedly exposed to acts of IPV, their ability to differentiate between violent acts and normal behaviour is impacted negatively. As adults, these children tend to act on the internalized behaviour that they previously witnessed, which, in turn leads to an intergenerational cycle of violence.”<sup>19</sup>

Domestic violence is on the increase, driven by a calamity of socio-economic and psycho-social factors and challenges. Psychologist Debbie Howes suggests that the judgement, guilt and blame involved in domestic violence

“are often projected at children who in turn become further scapegoats for repeated trauma. These patterns often repeat in adulthood where, contrary to what is intended, the abusive cycles are repeated with their own children. By desensitizing and reprocessing these dynamics with children who have been exposed to domestic violence, possibilities for change may arise so that they may grow up as balanced adults as well as empowered role models that facilitate generational constructive change.”<sup>20</sup>

## 7. Conclusion

Respect for human dignity must be reflected in the language we use and in the sentiments we express. Patience, tolerance and the willingness to listen must be cultivated. Positive gender relationships must be promoted in our Early Childhood Development Centres, in our schools, churches and places of work, in our correctional facilities, community centres and trade unions. As a society we must explore different constructs of masculinity.

Speaking at the funeral service for business woman Dr Thandi Ndlovu, who had been a victim of gender-based violence, her friend Kyanyi Chama stated that “you are not hanging dirty linen in public when you speak out and seek help from abuse. Your silence is the one that enables domestic abuse.”<sup>21</sup> South Africa desperately needs more initiatives such as Mosaic’s SAFE Project,

“a co-ordinated community response strategy that will create SAFE Platforms within specific communities where all justice, policing, and CBOs delivering services will work together to protect and empower survivors through creating solutions and making Protection Order enforcement an effective reality for women.”<sup>22</sup>

The Domestic Violence Act is an important tool in the fight against gender-based violence and – properly implemented – would do much to protect the rights of the vulnerable at home. A climate of zero tolerance of such violence must be fostered. In so doing we would build a society “where the awareness of personal dignity becomes the base for relating to others and for confronting the future.”<sup>23</sup>

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<sup>1</sup>On Thursday, 20<sup>th</sup> June the Catholic Parliamentary Liaison Office held a Roundtable Discussion on Gender-Based Violence at the Sun Square Hotel, Gardens. The Roundtable was addressed by Ms Lisa Vetten, Mellon Doctoral Fellow, University of the Witwatersrand; Adv Bronwyn Pithey from the Women’s Legal Centre; and Adv Tarisai Mchuchu from Mosaic

<sup>2</sup> <https://www.csvr.org.za/pdf/CSVr-Violence-Against-Women-in-SA.pdf>

<sup>3</sup> [https://www.saps.gov.za/resource\\_centre/women\\_children/domestic\\_violence.php](https://www.saps.gov.za/resource_centre/women_children/domestic_violence.php)

<sup>4</sup> Gender Link, in ‘Abuse Rooted in Patriarchy’, Business Day 9<sup>th</sup> August 2019

<sup>5</sup> <http://centreforfricajustice.org/male-domestic-violence-in-south-africa-and-nigeria/>

<sup>6</sup> Presentation by Lisa Vetten at the CPLO Roundtable

<sup>7</sup> ‘Police Accountability and the Domestic Violence Act’, Lisa Vetten, in SA crime Quarterly No.59, March 2017

<sup>8</sup> ‘Put a Stop to Domestic Violence-What you need to know’, Department of Justice and Constitutional Development

<sup>9</sup> ‘Police Accountability and the Domestic Violence Act’, Lisa Vetten, in SA crime Quarterly No.59, March 2017

<sup>10</sup> Presentation by Bronwyn Pithey at the CPLO Roundtable

<sup>11</sup> Presentation by Bronwyn Pithey at the CPLO Roundtable

<sup>12</sup> Presentation by Tarisai Mchuchu at the CPLO Roundtable

<sup>13</sup> 2000 (1) BCLR 86 (CC). Quoted in the presentation by Lisa Vetten at the CPLO Roundtable

<sup>14</sup> Presentation by Tarisai Mchuchu at the CPLO Roundtable

<sup>15</sup> ‘When I Call for Help’ Pastoral Statement by the US Catholic Bishops Conference, 1994

<sup>16</sup> <https://www.groundup.org.za/article/women-are-being-evicted-shelters-street/>

<sup>17</sup> <https://www.groundup.org.za/article/women-are-being-evicted-shelters-street/>

<sup>18</sup> [https://www.dailymaverick.co.za/article/2019-08-14-the-tectonic-forces-that-triggered-cape-towns-eruption-of-violence/?tl\\_inbound=1&tl\\_groups\[0\]=80895&tl\\_period\\_type=3&ut](https://www.dailymaverick.co.za/article/2019-08-14-the-tectonic-forces-that-triggered-cape-towns-eruption-of-violence/?tl_inbound=1&tl_groups[0]=80895&tl_period_type=3&ut)

<sup>19</sup> ‘Preventing violence against children: complexities and complementarities: policies, strategies, resourcing and systems’, Sinah Moruane, African Regional Child Trauma Conference, August 2019

<sup>20</sup> ‘Domestic Violence: Unconscious impacts on the child’, Debbie Howes, African Regional Child Trauma Conference, August 2019

<sup>21</sup> [https://www.dailymaverick.co.za/article/2019-09-01-honour-thandis-legacy-speak-out-about-domestic-abuse-urge-family-and-friends/?tl\\_inbound=1&tl\\_groups\[0\]=80895&tl\\_period\\_type=3&ut](https://www.dailymaverick.co.za/article/2019-09-01-honour-thandis-legacy-speak-out-about-domestic-abuse-urge-family-and-friends/?tl_inbound=1&tl_groups[0]=80895&tl_period_type=3&ut)

<sup>22</sup> Presentation by Tarisai Mchuchu at the CPLO Roundtable

<sup>23</sup> Address by Archbishop Silvano Tomasi, Permanent Observer of the Holy See to the United Nations, 23<sup>rd</sup> March 2007.