

Domestic violence in South Africa

Lisa Vetten

Recommendations

In order to combat domestic violence in South Africa, this policy brief recommends that:

- 1** Further research should be conducted on all forms of family violence in South Africa, especially the co-occurrence of child abuse with intimate partner violence. Services may need to be adapted to ensure they address the presence of both forms of violence in families.
- 2** The police should record the relationship between perpetrator and victim and report on this.
- 3** Policies and programmes should be developed to address the economic drivers of domestic violence.
- 4** The state funding of services (including the provision of shelter) to the victims of abuse needs to be improved. Micro-finance, along with the provision of long-term housing, could significantly assist abused women.
- 5** The feasibility of regulating the availability of alcohol should be examined.

Summary

South Africa's response to domestic violence is of relatively recent origin, with 1993 marking both the introduction of the first legal remedy to address domestic violence, and the recognition of marital rape as a crime. This first attempt to deal with domestic violence through legislation, namely the Prevention of Family Violence Act, was further developed and strengthened through the Domestic Violence Act of 1998 (DVA), which is widely considered one of the more progressive examples of such legislation internationally. This policy brief describes the extent and nature of domestic violence in South Africa and considers aspects of the implementation of the DVA, the state's most prominent intervention in the problem of domestic violence.

SOUTH AFRICA'S Domestic Violence Act of 1998 (DVA) casts its net wide to incorporate a range of intimate and family relationships within its ambit. These include heterosexual, gay and lesbian relationships; marriage and co-habitation, as well as dating relationships and relationships that have ended; parent-child relationships, as well as sibling relationships and those between members of the extended family.

Extent and nature of domestic violence in South Africa

Domestic violence is therefore a broad term that encompasses intimate partner violence, child abuse, elder abuse and violence between siblings.

In addition to its presence in different types of family relationships, domestic violence also takes a range of forms. These include:

- Physical and sexual abuse
- Economic abuse, defined as unreasonably depriving family members of economic and financial resources to which they are legally entitled (including by unreasonably disposing of household effects or other property)

- Emotional, verbal and psychological abuse, described by the Act as consisting of a pattern of degrading or humiliating conduct, repeated threats or the repeated exhibition of possessiveness or jealousy which is such as to constitute a serious invasion of the complainant's privacy, liberty, integrity or security
- Any other controlling behaviour such as intimidation, harassment, stalking, damage to property, and entering the victim's home without permission

Measuring the extent of domestic violence therefore requires paying attention to different sorts of familial and intimate relationships, as well as different types of abuse. Police data does not offer a comprehensive guide to this terrain.

Administrative data and domestic violence

There is no crime termed 'domestic violence'. Instead, its multiple forms are captured across a range of different categories of criminal offences such as assault (either common or with intent to cause grievous bodily harm), pointing a firearm, intimidation, rape or attempted murder (among other charges). When violated, protection orders issued in terms of the DVA are dealt with as charges of contempt of court. This is because the abuser has ignored an instruction from the court to refrain from assaulting or otherwise harming the complainant. When the South African Police Service (SAPS) reports on crime statistics each year, it does not say how many of these crimes were perpetrated in the context of domestic violence. Very little can therefore be gleaned from the SAPS' 2012/13 analysis of the crime statistics, which only show common assault to have declined from 280 942 reports in 2003/04 to 172 909 in 2012/13, while assault with intent to cause grievous bodily harm has decreased over the same time period from 260 082 to 185 893 reports.¹

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When analysing police statistics, researchers have found intimate partner violence to be significantly under-reported. Between April 2008 and March 2009, 12 093 women in Gauteng, or 0,3% of the adult female population, reported an assault by an intimate partner to the police. In contrast, during the same time period 18,1% of women in the province reported an experience of violence at the hands of intimate male partners to researchers.²

A case study conducted in one locality in Mpumalanga offers another illustration of how police statistics underestimate the incidence of intimate partner violence in any one area. From 1 January 2006 to 31 July 2007, 942 reports of some form of intimate partner violence were made to one local police station and hospital, as well as to the courts serving the area, with the greatest proportion of these reports (44,6%) identified from police records. However, only 6,7% of these reports made their way into official statistics, as only 63 women pressed charges.³

This case study also points to how abused women seek assistance from a variety of institutions, all of whose records potentially provide additional insight into different aspects of domestic violence. For example, figures supplied by the Department of Justice and Constitutional Development show that over 200 000 people annually

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turned to the courts for protection orders between 2009 and 2011 (although not all were granted the relief they sought).⁴ Utilising the census figures for 2012 (calculating the South African population at 52 274 945 people) it can be estimated that 417 people in every 100 000 applied for protection orders in 2011.

Table 1: Number of protection orders granted from 2009 – 2011

Year	Number of new applications for protection orders
2009	226 402
2010	224 486
2011	217 987
Total	668 875

Source: J Watson, *Justice for domestic violence victims? Key findings of the oversight interventions by the PC and SC on women, children and persons with disabilities with respect to the Department of Justice and Constitutional Development*, Parliament of the Republic of South Africa, 2012

Studies reviewing applications for protection orders in terms of the DVA also provide a glimpse into the troubled nature of family relationships generally.

Violence in the family

Women have constituted the great majority of protection order applicants since the DVA came into operation in 1999, with men comprising between 14,8% at one court⁵ and up to 29,5% of applicants at another.⁶ Reviews of these various applications showed that while more than two-thirds of the women were seeking protection from their intimate male partners, only half of the men sought protection from their female partners, with the remaining half seeking protection from a family member (typically their adult children).⁷ 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.

Children have featured as both victims and perpetrators in studies examining the implementation of the DVA, with adult children being the group from whom applicants were most likely to seek protection, after intimate partners.⁸ Younger children, by contrast, were the group most likely to be identified as being abused in addition to the primary applicant for a protection order.⁹ This suggests that men's violence towards their female partners often co-occurs with child abuse.

Applications for protection orders also illustrated how ending relationships did not necessarily result in an end to abusive behaviour. Former partners were cited in 10,8% of applications at one court¹⁰ and in more than a third of applications (36,9%) at other courts.¹¹

While these studies offer some insight into the nature of domestic violence, neither they nor police data offers accurate indicators of the prevalence of domestic violence. These estimates are better derived from community-based surveys of representative samples of women and men. A few such studies have been conducted in South Africa, chiefly of intimate partner violence, and their findings are summarised next.

Intimate partner violence

Intimate partner violence is the most common form of violence experienced by South African women, according to the South African Stress and Health (SASH) survey conducted by Johns Hopkins University and the University of Cape Town. Such violence was reported by about one in eight women (13,8%) in the study and by 1,3% of men.¹² Other local studies asking women only about their experiences of sexual violence and intimate partner violence have found a higher proportion of women reporting intimate partner violence than that found in the SASH study.

In 1998, one in four women (25%) in the provinces of Limpopo, Mpumalanga and the Eastern Cape reported being physically assaulted by a male partner over the course of their lifetimes, while one in ten (10%) had experienced such violence in the past year.¹³ More recently, research in 2010 found that just under one in five women (18,13%) in Gauteng reported an incident of violence by an intimate partner.¹⁴ Men in some localities have also reported perpetrating violence towards their female partners: 42,3% of a sample of 1 378 men working in Cape Town municipalities admitted to having used physical violence against a partner in the past 10 years and 8,8% to committing such violence in the past year.¹⁵

At its most extreme, domestic violence will result in death. In 1999, South Africa's female homicide rate was six times the global average, with half of these deaths caused by intimate male partners¹⁶ – a phenomenon that has come to be termed 'intimate femicide.' In more everyday terms, this translated into four women killed every day by the men in their lives.¹⁷

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A decade later, when this analysis of female homicides was repeated in 2009, a reduction in the overall female homicide rate was found. However, even though the prevalence of intimate femicide decreased from 8,8/100 000 in 1999 to 5,6/100 000 in 2009, this decline was not large enough to reach statistical

significance. The drop in the number of non-intimate homicides was, however, large enough to be statistically significant.¹⁸ Since the decrease in the number of intimate femicides was not as great as the decrease in the number of non-intimate homicides, intimate femicide is now the leading cause of female homicides. In 1999 it accounted for 50% of female homicides, and in 2009 it accounted for 57% of female homicides.¹⁹

While South Africa's rate of intimate femicide (female homicide) may have been five times the global average in 2009, the prevalence rate of non-lethal intimate partner violence is somewhat less extreme. Drawing on comparable data from 79 countries and two territories, the World Health Organisation (WHO) sought to produce global and regional estimates of the prevalence of intimate partner violence.²⁰ This suggested that about one in three women (30%) globally experienced intimate partner violence.

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This percentage rose to 37% in the African, eastern Mediterranean and South-East Asian regions. The 2010 Global Burden of Disease study provided a slightly lower global average of one in four women (26,4%). Again, these figures fluctuated by geographical region, with two in three women (65,6%) in central sub-Saharan Africa reporting intimate partner violence – the highest prevalence overall. The southern region of sub-Saharan Africa (which includes South Africa) had a rate higher than the global average (29,7% vs. 26,4%) but lower than the average for eastern sub-Saharan Africa (38,8%) and western sub-Saharan Africa (41,8%).²¹

Police duties towards domestic violence complainants

These duties are set out in section 2 of the Act and include:

- Supporting complainants to find suitable shelter or obtain medical treatment
- Providing complainants with written information about their rights in the language of their choice
- Explaining the contents of the notice to complainants and informing them of available criminal and civil remedies
- Serving notice on the abuser to appear in court
- Serving 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
- Accompanying the complainant to collect personal items from her/his residence

Criminal justice system's response to domestic violence

Police and intimate partner violence

South Africa's chief legal response to domestic violence is the DVA, which is also referred to in the Firearms Control Act of 2000. The Firearms Control Act seeks to restrict those with a history of domestic violence from owning firearms, given their role in domestic violence and intimate femicide. Other pieces of legislation relevant to combating domestic violence in its many forms include the Older Person's Act of 2006 and the Children's Act of 2005. The Protection from Harassment Act of 2011 is also important for the protection it offers against electronic harassment. The DVA is, however, the most studied of these laws.

Given the police's lacklustre record of intervening in domestic violence, the DVA sought to place a number of obligations on the police to compel their response (see alongside). Compliance with these prescripts was initially monitored by the Independent Complaints Directorate (ICD), but became the responsibility of the Civilian Secretariat of Police (CSP) in 2012. In addition, the National Commissioner of the SAPS is obliged to submit six-monthly reports to Parliament outlining complaints against police officers, the disciplinary proceedings instituted against those officers, and the police's response to recommendations made by the ICD. Parliament, the ICD and the Auditor-General have all noted that none of these obligations is well adhered to by the police, with many stations failing to meet the standards set by the DVA and National Instructions.

The police's record of cooperation with the ICD regarding complaints levelled against them is similarly mediocre. An analysis of ICD reports for 2001 to 2008 collated 1 121 complaints made against the police, with the most common being the failure to arrest the abuser (52,5% of all complaints). Other complaints included the failure to open criminal cases (14,5%); and the failure to assist victims of domestic violence to find suitable shelter and obtain medical treatment; escort the victim to collect their personal property; and seize any dangerous weapons from the abuser (12,3%). The ICD recommended disciplinary action in 928 (or 82,8%) of the 1 121 complaints referred to it. However, the police instituted disciplinary proceedings in a scant 48 (5,1%) of these cases. In more than two-thirds of cases (68,2%), the police provided either very little or no response to the ICD regarding these disciplinary hearings.²²

The transfer of oversight of the DVA from the ICD to the CSP has not improved the situation. In the first year of its new role the CSP received 22 complaints from three provinces, a 77% decline in the number (94) recorded by the ICD in its final 12-month reporting period.²³

While these findings provide insight into the police's handling of matters related to the DVA, there is almost no equivalent data exploring criminal investigations of intimate partner violence. One exception is the national intimate femicide study, which also allows for some comparison of the quality of investigation and prosecution over time. There was no change in the conviction rate for intimate femicide between 1999 and 2009, while the conviction rate for non-intimate femicide decreased in the decade between these two years. The 1999 study found an increased likelihood of conviction in cases of intimate femicide where a history of domestic violence formed part of trial proceedings.²⁴ However, police attempts to identify a prior history of domestic violence did not increase between 1999 and 2009.²⁵

Courts and intimate partner violence

For protection from violence, victims are as dependent upon the courts as they are on the police. Table 2 illustrates how fewer than half of those who turn to the courts are ultimately afforded their protection (although the proportion appears to be on the increase). During the period 2009–2011, the number of reported violations, or breaches, of protection orders also increased. An increase in the number of protection orders confirmed is to the good; however, it is more difficult to interpret the increase in breaches, which could indicate a decline in the deterrent value of the order or applicants' greater willingness to act on breaches.

Table 2: Percentage of protection orders made final and breached

Year	Number of new applications for protection orders	Number of orders made final (% of applications)	Number of breaches of orders (% of final orders)
2009	226 402	79 098 (34,9%)	15 359 (19,4%)
2010	224 486	80 714 (35,9%)	19 426 (24,1%)
2011	217 987	87 711 (40,2%)	31 397 (35,8%)

Source: J Watson, *Justice for domestic violence victims? Key findings of the oversight interventions by the PC and SC on women, children and persons with disabilities with respect to the Department of Justice and Constitutional Development*, Parliament of the Republic of South Africa, 2012 (calculations author's own).

The low number of protection orders made final is often explained as the result of women's failure to return to court – just as the police's frustration with domestic violence is often attributed to women's propensity to withdraw charges against their abusive partners. Because these explanations tend to frame abused women as intransigent and uncooperative – and thus undeserving of help – it is important to look closely at the various factors contributing to the non-confirmation of protection orders.

Two studies, one of three courts²⁶ and the other of nine courts,²⁷ have investigated factors influencing the finalisation of protection orders. These include:

- The court where the application was made
- Whether or not the interim order had been served
- The presence of the applicant at court
- Whether or not the applicant was a victim of intimate partner violence or intra-familial abuse (the latter group was less likely to return)

Other research has also sought to explore why some women do not return to court for the protection order to be made final. Interviews with 365 such women from four courts in the Western Cape found that in more than one-third of cases the abuse had stopped following the application, regardless of whether the order had been served on or signed by the respondent. On receipt of the order, one in five women reported that the respondent had 'promised' to stop the abuse, while 10% of women indicated that the respondent had begged and

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pleaded for the applicant not to go back and finalise the order. Family members also attempted to either mediate or dissuade the applicant from returning. More worryingly, 18% of the applicants in this study were threatened by the respondent if they returned to court and 10% indicated that the abuse had become worse. Applicants reported being gang-raped, having stones thrown at their windows or being locked and restrained in their homes by the abuser or other family members.²⁸

The courts were also not always helpful to women seeking to obtain their final protection order. In 16% of cases, applicants reported having to go to court three or four times, in addition to phoning the courts, to establish the outcome of their applications for interim protection orders. Nine percent of the women eventually gave

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up trying to obtain their interim protection orders and therefore did not go back to court on the return date for their orders to be made final. Without the interim protection order, they would not have been aware of the return date.²⁹

The DVA therefore has mixed effects. It is capable of bringing some domestic violence to an end but also of aggravating violence (although this outcome is less common). It may thus increase some women's sense of their personal efficacy while it may also disempower others. Such disempowerment is the result not only of their partners' and families' responses but also of the legal system's dysfunction.

Conclusions

Dealing with domestic violence is complicated by the emotional, filial and economic ties between people. It is therefore not as readily resolved by single criminal justice interventions as crimes committed between strangers. This policy brief concludes by setting out some recommendations for combatting this most complex form of violence.

- Data on the full extent of all forms of domestic violence in South Africa is not available. Further research is required in this regard, as is an examination of the inter-relatedness of these different forms of violence, with the co-occurrence of violent acts carrying implications for services. Children, for example, rarely feature in interventions addressing intimate partner violence, while mothers are rarely considered in interventions addressing child abuse.
- The uninformative nature of police statistics needs to be addressed. While it may not be legally practicable to create one crime of domestic violence (given the different acts this would conflate), it is possible for the police to record the relationship between the perpetrator and victim and to routinely report on this.
- Policy and programming addressing the economic determinants of domestic violence are not well developed in South Africa. An Intervention with Microfinance for AIDS and Gender Equity (IMAGE) study tested the effect of microfinance, combined with a gender- and HIV-training curriculum, on domestic violence in eight villages in Limpopo. The programme was shown to reduce domestic violence by 55% in the study sites.³⁰ Such interventions, along with the provision of long-term housing, would significantly assist abused women.

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- Services to those who experience abuse (including the provision of shelter) are not well funded and their reach and scope remain limited. More appropriate state funding policies need to be developed. While programmes to change the behaviour of men who abuse may be helpful, these need to be researched beforehand. As matters currently stand, there is limited evidence of their efficacy.
- There is evidence to support South Africa's current policies on firearms control. In 1999 the rate of gunshot homicides in intimate femicide was 2,7 per 100 000, but by 2009 this had decreased to 1,0 per 100 000, a finding the researchers directly attribute to the introduction of the Firearms Control Act of 2000.³¹ Efforts to regulate the availability of alcohol may also prove helpful.

Notes

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