



THE GENDERED NATURE OF POLICING: REVIEWING PROGRESS IN CRIMINAL JUSTICE RESPONSES

Roundtable Report

African Policing Civilian Oversight Forum & Institute for Security Studies

Pretoria

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1. INTRODUCTION

On 27 July 2015, the African Policing Civilian Oversight Forum (APCOF) and Institute for Security Studies (ISS) co-hosted a roundtable discussion on the gendered nature of policing, held at the ISS Pretoria office. The purpose of the roundtable was to facilitate discussion between experts, practitioners, civil society and government on the gendered nature of policing to promote debate on issues. The following organisations and government departments were present at the workshop: South African Police Services (SAPS), National Prosecuting Authority (NPA), Department of Justice and Constitutional Development (DOJCD), APCOF, ISS, Gun Free South Africa, Gender Health and Justice Research Unit at the University of Cape Town (GHJRU), University of Witwatersrand Institute for Social and Economic Research (WISER), Foundation for Human Rights, Tshwaranang Legal Advocacy Centre (TLAC), Sonke Gender Justice, Greater Rape Intervention Project (GRIP), Teddy Bear Clinic, and NISSA Institute for Women's Development.

Melanie Lue Dugmore from APCOF opened the event and explained that APCOF and ISS had been engaged in an ongoing discussion on the complexities of gender and policing and wanted to continue the debate with stakeholders in Gauteng in light of recent developments surrounding the White Paper on Policing, White Paper on Safety & Security and the Firearms Control Amendment Bill. Melanie explained that objectives of the roundtable were to gain a deeper understanding of the conceptual debates surrounding gender and policing and to find ways of bridging the gap between the two disciplines; to develop an effective critique of the police by paying specific attention to the impact of patriarchal norms and gender stereotypes on the effectiveness of policing; and to discuss upcoming opportunities to influence the environment on gender and policing, specifically by engaging on the White Paper on Policing, the White Paper on Safety and Security, and the Firearms Control Amendments Bill.

2. PRESENTATIONS

Dr. Lillian Artz, from the GHJRU, introduced the next session, which involved presentations by Lisa Vetten, Joy Watson, Virginia Magwaza and David Bruce, each of whom presented on a different issue within the broader debate on gender and policing.

2.1 Gendering Accountability – The Domestic Violence Act

Lisa Vetten, research associate from WISER, conducted the first presentation, which looked at the accountability framework provided under the Domestic Violence Act. After mapping the structure of accountability mechanisms, specifically in terms of their horizontal, vertical and diagonal elements, Lisa explained how policing is, in many ways, ‘a gendered enterprise’, meaning that when women enter the criminal justice system, they typically feature as victims, which has serious implications for the way in which police respond to incidents of gender-based violence. Accordingly, Lisa’s presentation motivated for a gendered approach to accountability, which considers the following: (i) legal accountability (i.e. gender stereotypes in decision-making); (ii) political accountability (women’s participation in political enterprise); (iii) fiscal accountability (to what extent do budget

allocations reflect the needs of women); and (iv) administrative accountability (to what extent does gender feature as an element of performance indicators). Although the current accountability structure for SAPS is extensive, with the Civilian Secretariat of Police, Independent Police Investigative Directorate, SAPS Directorate, Human Resources Division and Visible Policing, the emphasis has been on answerability (calling SAPS to answer for its actions), rather than enforceability (calling on SAPS to fulfill their legal obligations). With regard to SAPS performance in terms of the Domestic Violence Act, Lisa motivated for moving away from a punitive approach for non-compliance and moving towards a review of the systemic and structural problems within SAPS, specifically in regard to its views on gender. Lisa also argued that renewed attention should be given to the enforceability of the Domestic Violence Act as a measure of accountability.

2.2 Challenges in the Policing of Sexual Offences

Joy Watson, an independent researcher, conducted the second presentation, which looked at the challenges in the policing of sexual offences, specifically in terms of the services provided to victims following an incident of sexual violence. Based on a series of interviews with members of SAPS, the National Prosecuting Authority (NPA), and the Department of Justice and Constitutional Development (DOJCD), Joy identified five key areas in the criminal justice system that frustrate access to justice: (i) most victims do not get access to adequate information from the time of reporting a sexual offences to the time the matter is heard in court; (ii) there is limited, if any, access to case-specific information (i.e. victims are unaware of the status of their cases or whether more information is required in order to press charges); (iii) inadequate psycho-social support to victims, which serves as a significant deterrent to victims in pursuing their cases in court; (iv) lack of coordination between line service departments reduces the effectiveness of service deliver to victims; and (v) the absence of an effective complaint mechanism when things go wrong makes it impossible for victims to seek redress for a lack of service delivery.

Although the legislative framework and policy directives are clear on SAPS's responsibilities for policing of sexual offences, specifically in terms of the Sexual Offences

Act and the National Instructions on Sexual Offences, data demonstrates that in practice, these obligations are not fulfilled. Accordingly, Joy argued that enhanced accountability mechanisms are needed for the effective functioning of the criminal justice system's response to sexual offences, which includes: (i) ensuring the proper functioning of structures mandated in terms of the Sexual Offences Act; (ii) strengthening citizen complaints mechanisms; (iii) eliminating corruption in police; (iv) disaggregating data, specifically the different types of sexual offences; and (v) improving compliance with the National Instructions, specifically the way in which cases are investigated and the administration of rape kits.

2.3 Policing and the LGBTI Sector

Virginia Magwaza, from the Foundation for Human Rights, conducted the third presentation, which looked at the experiences of LGBTI persons in accessing services from the criminal justice system following incidents of sexual and gender-based crimes. The challenges include the following: (1) frontline staff often inflict secondary victimisation on the people who attempt to access services because of bias against LGBTI persons; (2) police officers also inflict secondary victimisation on LGBTI persons when they report incidents of crime and violence, specifically in terms of the types of questions that are asked before providing access to services; (3) the cultural and traditional values of SAPS members and of health care workers often inflict harm on LGBTI persons, as personnel often judge and reprimand such persons rather than provide them with services; and (4) LGBTI persons are often denied access to information relating to the reports that have been lodged.

A series of attacks against LGBTI persons in 2011 motivated for various mechanisms to be put in place, such as the National Task Team, Provincial Task Teams and the Rapid Response Team. However, as LGBTI persons still face systemic discrimination when they encounter the criminal justice system, new approaches are required. Some of proposed approaches involve: (1) engaging in dialogues with communities, school bodies and traditional authorities; (2) promoting awareness for LGBTI rights in schools; (3) promoting awareness for LGBTI rights within Community Advice Offices; (4) promoting awareness for

LGBTI rights using community radio stations; and (5) integrating LGBTI rights with all other issues, including youth resilience, xenophobia, workers' rights, and children's rights.

2.4 Policing and Young Men

David Bruce, also an independent researcher, conducted the fourth presentation, which looked at the treatment of young men in the criminal justice system, specifically the ways in which they are marginalised, victimised, brutalised, and criminalised by police. David's presentation began with a discussion on the 'constituencies of victims' in post-Apartheid South Africa, specifically in relation to women, foreigners, LGBTI persons, children, in order to demonstrate how young men have been isolated from conversations about victims. In this regard, the approach SAPS has taken is to police all young black men as perpetrators, rather than as victims, even though they comprise roughly almost 90% of all victims of crimes. The blurred lines between 'victim' and 'perpetrator' have resulted in all young men (and black men in particular), experiencing intense racial bias within the criminal justice system. In addition to enduring incidents of excessive force and police brutality, young black men experience many instances of profiling by SAPS personnel and private security companies because they are automatically classified as perpetrators. In addition to recognising young men as a vulnerable group, both as victims and as perpetrators, David motivated for greater awareness of racial bias within the criminal justice system, to prioritise the types of violence experienced by young men, and to direct efforts on primary prevention by focusing on parenting programmes and youth resilience. In addition, David emphasised the need to enhance the effectiveness of procedural justice mechanisms and alternative forms of correction, such as use of diversion programmes provided in terms of the Child Justice Act.

3. DISCUSSION WITH PRESENTERS

At the conclusion of the presentations, Dr. Lillian Artz chaired an interactive dialogue between the presenters and roundtable participants. Some of the key topics, concerns and issues include the following:

- Systemic prejudice against young men is the reason they have been ignored as victims.
- There is no international or national policy dealing with young men as victims – the general belief is that all young men are perpetrators, not victims, and that they deserve to die which is why there are no interventions for them.
- South African society is blind to vulnerabilities of men because it consistently structures women as vulnerable. Categories of persons must not be required to compete for recognition as victims – rather, the focus should be on understanding the gendered nature of violence and how violence ‘genders’ both young men and women.
- There should be a more inclusive approach to identifying victims of violence. Police are often victims of violence but are rarely recognised as such. Speaking of victims and perpetrators in generalisations should be avoided.
- Acquaintance violence between young men is similar to domestic violence in that it is ‘messy’, the victim and perpetrator know each other, and the line between victim and perpetrator is not always clear. We need to be paying more attention to these issues as well, especially as they relate to young men’s experience with violence and the criminal justice system.
- Socialisation of men and women into violence.
 - Violence is highly gendered and women and men are socialised into violence in different ways. For men, violence is a vehicle for proving their masculinity, while for women, violence is often taught as an inevitable part of their reality.
- Violence is not only gendered, but violence also genders. For example, the rape of men in prison is meant to ‘feminise them’, while the rape of a young woman is often

mean to prove one's worth as a man, specifically in relation to gang initiation practices.

- Violence will never be taken seriously if there is not an increase in convictions.
- Alternative ways of responding to domestic violence.
 - Are there other ways of responding to domestic violence? Is there an approach that does not rely so heavily on the police? Are there alternative solutions outside the criminal justice system for victims?
- The sector has spent a lot of time saying what's wrong, but hasn't spent enough time coming up with alternatives.
- Lack of capacity, accountability and competency within the police. There are various issues relating to shortcomings within the police, but are researchers working to understand the nature of these issues? What is happening within the institution to cause police to become demoralised and discouraged because of the environment in which they work? Yes, victims need the support of the police, but who is supporting the police?
- Domestic violence is 'messy' – it involves emotional and financial bonds – which is hard for the police because it isn't clean or clear-cut. If police are going to continue to be responsible for responding to domestic violence, they need training and other support to deal with these complexities.
- There is limited accountability within SAPS and almost no consequences for bad policing. There is also systemic corruption that interferes with the functioning of the police. SAPS' institutional culture needs to change to ensure it functions efficiently.

- Not all police members or police stations perform badly – focus should also be given to those that are doing well, despite lack of resources, to identifying good practices, and recognising the good work that is being done.
- Poor investigation practices by police.
- The National Instructions are very clear about the manner in which police must investigate sexual offences, but how realistic is it to think that SAPS will actually do this?
- The NPA relies heavily on the quality of SAPS criminal investigations – if SAPS doesn't collect enough evidence or if the crime scene is tainted in any way, then the NPA is unlikely to proceed with the case because of the minimal chance for conviction.
- Lack of service delivery for victims of gender-based violence. Victims do not receive adequate support by the police, the courts or the social workers to stand trial, which makes it impossible for the NPA to prosecute. Although there are instances of excellence in the service delivery some victims receive from the criminal justice system, there are systemic challenges that exist. There was a shift in 2009 in the national political landscape, which caused victims of gender-based violence to lose its place in the list of national priorities, and we, as civil society, need to understand what's going on.
- Absence of public support for LGBTI rights. Although efforts have been made to introduce rights curriculum at schools and to highlight bullying that is directed at LGBTI persons or involves homophobic/transphobic/intersexphobic slurs, the School Governing Bodies (which are responsible for developing Learning Codes of Conduct) are often more homophobic than the other learners. Last year, seven girls were expelled from school based on suspicions that they were gay – the School Governing Bodies have done nothing in response.

- Generalisations about the performance of the police are harmful.
 - It is not helpful to make generalisations about the police. These discussions make it sound like police are doing nothing right, but most of them are trying their best. When SAPS hears of incidents of police misconduct, the officer(s) responsible is dismissed.
 - Rather than focus on what the police are doing wrong, more constructive criticism is needed.

- Lack of resources frustrates the effectiveness of the police.
 - SAPS is under-resourced, but police are trying their best. There is continuous training to provide police officers with support on how to implement National Instructions when responding to sexual violence and gender-based violence.

4. PANEL INPUTS BY GOVERNMENT OFFICIALS AND CIVIL SOCIETY

After the first panel discussion, Romi Sigsworth of ISS chaired a discussion with representatives from SAPS, NPA and DOJCD as well as a representative from GRIP. Romi introduced the discussion by asking government representatives to offer insight into what needs to change, whether there are innovative ways to respond to the challenges of the gendered nature of policing, and what those would look like.

- The first person to present was the National Head of Family Violence, Child Protection and Sexual Offences (FCS) Unit of SAPS, Major General Yvonne Botsheleng, who provided an overview of the various initiatives the FCS has taken to respond to gender-based violence. The initiatives highlighted include: (i) introduction of 176 specialised units with approximately 2,500 officers to deal with gender-based violence; (ii) use of visible policing; (iii) responding to electronically committed crimes, including child pornography; (iv) use of social workers to deal with crimes against children; (v) rolling out 989 victim-friendly rooms at stations across the country; (vi) establishment of desks to deal with victims of human

trafficking; (vii) increase in the number of convictions for sexual offences and gender based violence by working closely with the NPA; (viii) involvement with the Women's Network which deals with gender issues, specifically efforts relating to the sensitisation of crimes against women and children in schools; and (ix) institution of a youth forum in SAPS, where young men are engaged in substance abuse prevention. Major-General Botsheleng concluded her presentation by stating that the withdrawal of cases often has more to do with the victim not providing enough information than problems with service delivery, and that crime prevention and intervention is not only the responsibility of police, but of the country as a whole.

- The second speaker was Advocate Vusi Mbamali from the NPA, who suggested that a proper intervention would be to coordinate and integrate the activities of the criminal justice cluster. Different stakeholders are responsible for different services, but there is a need to structure these activities to improve the lives of victims. He mentioned that the Domestic Violence Committee within the DoJCD works on improving the enforcement of the Domestic Violence Act and the development of a domestic violence strategy, but that the approach tends to be reactive rather than proactive. Accordingly, he suggested that the Committee be used to incorporate the experiences of all the relevant role players to devise responsive and sustainable solutions. One of the key challenges noted by Advocate Mbamali was the lack of evidence in court when it comes to prosecuting rape cases, which usually results from issues relating to investigations by the police or because the victim does not provide sufficient information, and that presiding officers will not try a case if there is not enough information to get a conviction. He also mentioned that there are a total of 380 courts in the country, with each one considered a domestic violence court, and that the NPA is in the process of doing research to develop a model to benefit the victims of domestic violence. He also mentioned that the NPA has started to train clerks and traditional leaders on domestic violence, as these are often the first people victims encounter when they report an incident of domestic violence. In addition, there is an effort to encourage men to take more responsibility for the care and protection of women and to use traditional courts to resolve domestic disputes.

- The third speaker was Advocate Aaron Raletjena from the Department of Justice and Constitutional Development, who began the presentation by questioning the relevance of the Domestic Violence Act in the South African context, specifically in terms of whether it was appropriate to insert a model that worked in Canada into South Africa. In addition, he also expressed concern about the provisions that call on a clerk of the court to serve as a legal representative for a victim of domestic violence because it creates a conflict of interest and interferes with the defendant's right of access to justice. Another concern Advocate Raletjena expressed with the Domestic Violence Act is that it is civilly driven, rather than criminally driven, which makes it confusing for the police to navigate and for the NPA to prosecute, which is why his department is looking at the possibility of introducing various amendments. The motivation behind the revisions is to make the DVA simpler for prosecutors to implement and enforce. Advocate Raletjena supported general concerns about data collection practices within the NPA, specifically in terms of how it records the individual rather than the number of incidents, which can be problematic when it comes to sentencing. He also stated that violence against LGBTI persons should be treated as aggravating circumstances in order to obtain longer sentences for people who commit acts of crime and violence against these persons. On the same note, he also mentioned the danger of referring to the rape of LGBTI persons as 'corrective rape' because of the confusing messages it sends to people who are unaware of the nuances of the term.
- The fourth and final speaker was Lungile Kubheka from GRIP, who stated that although civil society organisations that represent victims of crime and gender-based violence are satisfied with the policies and legislation, frustrations arise over the lack of implementation. In addition, low conviction rates remain a huge problem, not only because it perpetuates a culture of impunity, but also because it discourages victims from reporting. Lungile observed that although the representatives from SAPS, NPA and the DOJCD spoke of several programmes that are supposed to respond to the needs of victims, civil society sits with a different

reality. Lungile concluded by calling on all stakeholders to work together to understand the gaps that exist in order to promote more effective response to the problems on the ground.

5. PANEL 2 – DISCUSSION WITH GOVERNMENT REPRESENTATIVES

At the conclusion of the presentations, Romi Sigsworth chaired an interactive dialogue between the presenters and roundtable participants. Some of the key topics, concerns and issues include the following:

- A reduction in the number of reported crimes does not mean there are fewer incidents of violence.
- Generally, higher levels of reporting reflect higher levels of trust in the system. The focus of the criminal justice system should be on service delivery, which includes ensuring that proper victim statements are taken, victims engage in a proper pre-trial consultation process prior to going through the system, and that victims get a respectful response from the police.
- SAPS is generally resistant to making its data publically available.
- It is difficult to engage with the criminal justice sector and to get access to information that can enable civil society organisations to assist in making the criminal justice system more effective. Civil society tries to engage with criminal justice institutions, but it is becoming increasingly difficult for civil society to access critical information.
- The problem is not the Domestic Violence Act; but rather its lack of implementation.
- The DVA is modelled after the Namibian Act; it creates both criminal and civil remedies for victims of domestic violence. There is nothing wrong with the DVA; it just needs simple implementation.
- When is the revision of the DVA taking place and when are the documents going to be made available for public comment?

- What is the benefit to criminalising domestic violence if the acts that constitute domestic violence are already criminal acts?
- Greater attention needs to be directed at understanding the perpetrators.
- More attention to why people are violent rather than the structural problems in responding to violence is required in order to understand why people commit crime and violence, which in turn will strengthen interventions.
- South African society condones violence; cultural change is needed.
- Increased services for victims of crime and violence.
- Victims who are from poor and rural areas require increased levels of intervention from the state and their needs should be prioritised accordingly. Although psychosocial support is necessary, many victims require socio-economic support to leave abusive partners.
- Support for victims cannot only be provided by the criminal justice system; other sectors need to be involved in assisting victims of gender-based violence.
- Stronger partnerships need to be fostered between government and civil society.
- Civil society organisations play a strong oversight role and need to continue providing assistance to government in understanding its shortcomings. Criticism needs to be more constructive and less negative.

CLOSURE

At the end of discussion, Romi thanked the panellists and members of the audience for participating in the roundtable. Gareth Newham gave the closing remarks in which he highlighted the importance of engaging in constructive dialogue with key stakeholders in order to understand the challenges encountered from both ends of the problem. Gareth concluded by observing that part of what needs to be done to enhance the effectiveness of gender and policing is to learn about what is being done.