



WOMEN'S LEGAL CENTRE



**GENDERING ACCOUNTABILITY: STRENGTHENING OVERSIGHT OF
GENDER-BASED VIOLENCE**

Roundtable Report

African Policing Civilian Oversight Forum & Women's Legal Centre

Cape Town

3 December 2014

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1. INTRODUCTION

On 3 December 2014, the African Policing Civilian Oversight Forum (APCOF) and Women's Legal Centre (WLC) co-hosted a roundtable discussion on strengthening oversight of gender-based violence. The purpose of the roundtable was to facilitate discussion between civil society and government on the challenges faced by victims of gender-based violence when accessing criminal justice services to emphasise the need for gendering accountability. The event was held in Cape Town and attended by: South African Police Services (SAPS), National Prosecuting Authority (NPA), Department of Justice and Constitutional Development (DOJCD), Civilian Secretariat of Police (CSP) Western Cape Department of Community Safety, APCOF, University of Witwatersrand Institute for Social and Economic Research (WISER), South African Human Rights Commission (SAHRC), Parliamentary Research Unit, St. Anne's Home, Sweat/Sonke Gender Justice, Heinrich Boell Foundation, University of Stellenbosch, and WLC.

Melanie Lue Dugmore from APCOF opened the event, the first in a series of discussions hosted by APCOF and its partners to engage on the complexities of gender and policing. The objectives of the roundtable were to gain a deeper understanding of accountability mechanisms in terms of the Domestic Violence Act, the difficulties faced by victims when accessing services within the criminal justice system, and the challenges encountered by government in providing comprehensive services to victims.

2. PRESENTATIONS

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 Accessing Justice for Victims of Gender-Based Violence

Laeqa Soobedaar, from the Women’s Legal Centre (WLC), conducted the second presentation, which looked at the lived realities faced by women who attempt to access justice services following an incident of gender-based violence. After providing an overview of statistics relating to interim protection orders, finalised protection orders and warrants of arrest for breach of protection orders, Laeqa outlined the key responsibilities of the police. These include: (i) initial reporting of domestic violence; (ii) service of protection orders; and (iii) enforcement of protection orders. In addition to various challenges experienced by women at the protection order phase, Laeqa explained that women also experience challenges when laying complaints, which

include: gender bias; disillusionment with criminal justice system; delays in the processing of complaints; lack of updates regarding the progress of complaints; and lack of knowledge of the complaints procedure. Laeeqa's presentation also acknowledged shortcomings by the police, which includes: problems with implementation of the Domestic Violence Act, lack of reporting by SAPS of domestic violence statistics; failure to complete domestic violence incident forms; failure to update domestic violence register; and lack of compliance with Parliamentary reporting obligations. Other systemic challenges highlighted include: lack of support services, abuse of protection orders through cross-applications; imposed quota system with the number of protection orders processed by the police station in one day; and delays/repeated postponements of court proceedings. The presentation concluded with three recommendations: (1) maintain separate statistics for domestic violence cases; (2) ensure that oversight of implementation of the DVA is informed by the experiences of complainants; and (3) reassess the complaints procedure for addressing instances of police non-compliance.

3. PANEL INPUTS

After the presentations, Joy Watson, chaired a discussion with members from the Civilian Secretariat of Police (CSP), National Prosecuting Authority (NPA), Department of Justice and Correctional Services (DOJCS), South African Police Services (SAPS), and Western Cape Department of Community Safety (WCDCS). Below is a summary of the key topics, concerns and issues presented by each department:

- **Civilian Secretariat of Police**

- When CSP started gathering information two years ago relating to implementation of the DVA, very little information was known. Now there is a much better sense of what the problems and shortcomings are by the police.
- The next step is to engage communities on what their experiences have been when trying to access services from SAPS in terms of the DVA. There are plans to roll-out community satisfaction surveys.

- There are plans to establish a compliance forum that deals specifically with the DVA, the findings of which will be used to inform CSP recommendations to SAPS.
- Training materials have been assessed and found to contain good content, but implementation has been poor. The CSP is in the process of conducting a report.
- **Western Cape Department of Community Safety**
 - There are power struggles within SAPS about having provincial government conduct oversight of the police because it is a national body. These challenges exist at national level (mainly by management) and less at station level.
 - Important developments emanated from the Khayelitsha Commission of Inquiry, specifically in relation to the obligations of provincial government to monitor the police, which resonates with the Constitutional Court judgment.
 - SAPS needs to establish performance agreements with provincial commissioners, and these provincial commissioners should engage civil society organisations within the province to create diagonal mechanisms of accountability.
 - An analysis of transgressions should be conducted to determine trends in incidents of non-compliance with the DVA and the adherence to disciplinary recommendations.
- **National Prosecuting Authority**
 - When complainants in domestic violence cases come to court and make an application to withdraw the case, NPA is required to look into why the victim wants to withdraw and recommend other avenues for intervention, such as mediation, conciliation programmes, and other forms of intervention.
 - The NPA is working to ensure that prosecutors do not perpetuate the stigma that DV is a 'private matter' and that women should tolerate abuse.
 - The Gender Justice Forum is a key oversight mechanism that provides training to frontline workers, such as clerks and paralegals.
- **South African Police Services**
 - Western Cape division of SAPS has the highest number of reported cases of gender-based violence, which SAPS perceives as a positive because it demonstrates that people have confidence in the police.

- The biggest challenge when it comes to the processing of domestic violence cases is updating Domestic Violence Registers, which are sometimes seen as an administrative burden by police officers. Officers are often left with the choice of whether to write reports or respond to crimes, which raises issues of capacity.
- The service of protection orders is a problem. In terms of the DVA, the clerk of the court is allowed to serve protection orders but never do. The police are burdened by this responsibility, so other departments need to step in and play a role in this aspect of service delivery.
- The processing and administration of protection orders is a problem – if there is a challenge at court, the clerk must send the protection order to the police, and many times the victim is asked to deliver it to the police station, which places an unnecessary burden on the victim.
- One of the key challenges is the lack of shelters available to victims of domestic violence. SAPS don't know what to do with the victim when there is no place for safety. This is a chronic problem in rural areas.

4. DISCUSSION

After the presentations concluded, the discussion opened up for questions to be directed at the panelists. Some of the issues and areas of concern raised included the following:

- Who is monitoring the programmes that are being implemented? It would be useful to conduct an audit to see what works and what doesn't to replicate good practices and roll them out in other stations.
- Are there any initiatives that look at spending? There are instances where under-resourced police stations still manage to perform well. Is this an issue of training and leadership? We need to understand how to perform even in the absence of large amounts of resources.

- Is the SAPS Domestic Violence Strategy in the public domain? Civil society has an important role to play to ensure that it addresses the various issues with domestic violence.
- Has there been an analysis of why some provinces are better at monitoring the SAPS than others? How can we incentivise other provinces to do the same?
- Have any costing studies been conducted to assess whether the funding provided to stations is sufficient? And if not, where the gaps in funding need to be address?
- Is there a common understanding of what it means to ‘professionalise the police’? Is building trust between the police and community members a priority of this initiative? Have there been any efforts to dismantle harmful socially constructed norms within the police regarding gender?
- Are there any plans to strengthen the disciplinary measures for police non-compliance and misconduct? It seems that police officers get slaps on the wrist and then go on their way without ever having to deal with the consequences of their actions? Is any research being done on the effectiveness of the SAPS disciplinary procedures?
- There is a huge challenge faced by civil society in engaging provinces to be more proactive in the monitoring of police. How should we go about engaging them?

The responses provided by government include the following:

- One of the biggest challenges with the policing of domestic violence is that the National Instructions are too cumbersome. The CSP should look at ways to simplify the instructions to make it more manageable for SAPS.
- Although lack of resources is a problem, the way to address this is to look at how resources are being distributed rather than directing more resources at every station. It is difficult to justify an increase in spending with the various developmental challenges this country is facing. The issue lies at the management level at local stations.
- There is a comprehensive professionalization programme, which also recognizes good police work rather than just focusing on the bad. The biggest challenge is that there is not enough systems to acknowledge good police work and to deal with bad police work.
- Reports on the monitoring of SAPS go to the provincial standing committee. The best way to engage with the provinces is to go directly to the provincial commissioner.

- There has been no specific costing study on domestic violence.
- SAPS has consequences for misconduct, and non-compliance with the DVA amounts to misconduct. The disciplinary regulations require SAPS to provide the Secretariat with an explanation when the police decide not to comply with the recommendations from IPID.
- SAPS has implemented intersectoral workshops, which spell out roles and responsibilities.
- Training programmes are available on all levels, including commanders. There are processes in place to enhance the training programmes provided to high level officials.
- In the Western Cape, the Department of Community Safety pushed for the compliance forum and the issue of having a designated domestic violence officer and SAPS responded.
- There are challenges with provincial monitoring of police and initiatives are in place to develop standard operating procedures.
- Consultative forums are used to monitor implementation of recommendations from IPID.
- A big challenge is the absence of an information management system. There should be a portal that monitors non-compliance and disciplinary issues by station in order to develop strategic interventions at the station level.
- If a police officer has committed a crime, it depends on the SPP to report the issue to the NPA; the NPA has no obligation to prosecute, which is an issue to take forward.
- The Gender Justice Forum offers a multidisciplinary approach to gender-based violence, which involves all governmental departments.
- CSP is in the process of refining its monitoring tool for implementation of the DVA; we are trying to channel complaints in a way that helps us identify where the problems are.
- There are some communication challenges with CSP, so it would be helpful if the NPA could provide us with reports it hears of regarding police non-compliance with DVA.
- The complaints management process within SAPS is currently being revised; assisted from the DPME has been requested to assist with the process.
- Minister is responsible for implementing 13 pieces of legislation, of which the DVA is just one. To make an impact, we need to focus our attention on the legislation to ensure government understands it.

5. DISCUSSION - 'A WAY FORWARD'

At the end of discussion, APCOF chaired a discussion on 'a way forward' regarding gendering accountability, specifically in relation to the criminal justice system's response to gender-based violence. Although a lot of work is currently being done, there is room for increased collaboration between government and civil society. Accordingly, some of the issues that were identified as key areas to focus on include the following:

- A need to advocate for the complaints mechanisms that were lost when the mandate to monitor compliance with the DVA was transferred from IPID to the CSP, specifically through the amendment of the regulation.
- Increased use of horizontal mechanisms of accountability, specifically compliance forums in order to build spaces with more capacity, knowledge and research. Perhaps a way to do this would be creating CSP reference groups at the provincial level. The National Development Plan's chapter on safety and security specifically mentions the importance of bringing in external expertise to assess the policing environment.
- Fostering increased collaboration between civil society and national parliament.
- Taking a thematic approach to the monitoring of DVA implementation, specifically in terms of enforcing a uniform monitoring tool that is used across the provinces.
- A gendered approach to policing does not just involve domestic and gender-based violence. It should take a holistic and intersectoral approach to deal with the complexities of gender and violence and the role of gender bias in policing.

6. CLOSING

Shireen Motara from the Women's Legal Centre closed the meeting by thanking participants, for engaging in a meaningful and productive discussion on the complexities of gendering accountability in instances of gender-based violence. She noted that although a lot of work is currently being done, there is room for increased collaboration between government and civil society, and it will be important to ensure that these engagements continue to take place going forward.

