



ADDRESSING CHALLENGES IN POLICING OF SEXUAL OFFENCES AND DOMESTIC VIOLENCE - AREAS FOR REFORM AND REDRESS

Roundtable Report

Sonke Gender Justice, African Policing Civilian Oversight Forum & Women's Legal Centre
Cape Town
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1. INTRODUCTION

On 21 August 2015, Sonke Gender Justice, the African Policing Civilian Oversight Forum (APCOF) and Women's Legal Centre (WLC) co-hosted a roundtable discussion on addressing the challenges of sexual offences and domestic violence. The purpose of the roundtable was to facilitate discussion between civil society, government and South African Police Services (SAPS) on the challenges in policing of sexual offences and domestic violence, and to identify for areas for reform and redress. The event was held at the Sonke Gender Justice offices in Cape Town and attended by: Shukumisa Campaign, Doctors' Without Borders (MSF), the Times Media, the Legal Resource Centre, Heinrich Boell, SWEAT, Sonke Gender Justice, Cape Town Association for the Physically Disabled, Parliamentary Research Unit, Gender Health and Justice Research Unit, APCOF, Mosaic, RAPCAN, TB HIV Care Association, NICRO, Triangle, PKVO SAPS, AIDS legal network, TAC, WLC and SAPS.

Background to Roundtable:

This roundtable is the third in a series of dialogues, hosted by APCOF, and in collaboration with its partners. In November 2014, APCOF together with the WLC hosted a discussion on 'gendering oversight' in Cape Town. On the 21 July 2015, APCOF hosted a roundtable with ISS month, APCOF examining 'gender and policing'.

The first workshop (3 December 2014) focused on strengthening oversight of policing of gender based violence. At the conclusion of the workshop, which was well attended by government stakeholders and civil society, the need for further engagement was emphasised. APCOF then decided to partner with ISS to ensure a broader reach of stakeholders and hosted a workshop in Pretoria.

The second workshop (21 July 2015) examined the gendered nature of policing. This workshop sought to engage with the gendered nature of policing and criminal justice response to gender based violence. The intention being to promote debate on policing and gender, not limited to policing of gender based violence, but to examine the gendered nature of policing approaches and strategies, and the limitations with the current policing paradigm. The format followed included two presentations from Lisa Vetten and Joy Watson, these focus on the challenges in criminal justice responses to domestic violence and sexual offences. These presentations examined the weaknesses in current legislative arrangements, institutional challenges and gaps in the oversight framework, they also made

recommendations on what needs to change and how. Inputs were then received from civil society examining experiences of the LGBTI sector and young men.

The motivation for this workshop was three fold: (i) To develop a clearer understanding of the conceptual debates related to gender and policing and how these inform our policing reality in South Africa. (ii) To understand and develop the critique of current policing approaches, by examining the impact of patriarchy, gender stereotyping and bias on policing approaches and functioning of the criminal justice system. (iii) To stimulate participation in and engagement with key reform opportunities by asking a series of questions:

- What needs to change in the policy, institutional and legislative environment?
- What does it need to look like?
- Where are the gaps, fault lines?
- How do we address these?
- How do we strengthen oversight?

Tania Charles from Sonke Gender Justice opened the event, welcoming all the organisations and promoting a round of introductions where the key issues raised were: (i) the prevention of child abuse and domestic violence, (ii) understanding the role of the police, (iii) co-ordination of gender based violence programmes, (iv) how to take work forward as little has been done since December and (v) where to direct people who call for help. The objectives of the roundtable were to identify areas for reform and how to move forward in addressing the challenges, specifically in policing of sexual offenses and domestic violence.

2. PRESENTATIONS

2.1 Policy Context and Developments

Melanie Lue Dugmore, research director from APCOF, conducted the first presentation, which provided a background to the roundtable discussion though looking at the policy context and developments made so far. It was identified that key to the discussion is how we progress forward.

The White Paper on Policing and White Paper on Safety and Security provide an important opportunity to influence the current policy environment; this paper will inform legislative

reviews/amendments including the Fire-arm Control Amendment Bill, the SAPS Amendment Act. It is critical that as civil society we engage in these processes, as they need to speak to and address the challenges faced by the sector. For example:

- White Paper on Policing - must acknowledge and prioritise policing of gender-based violence, it must provide policy imperatives for changes that need to be affected in legislation, regulations, and police instructions.
- White Paper on Safety and Security - provides a critical opportunity to engage with initiatives to promote a longer-term, multi-sectoral 'all of government approach' to crime and violence prevention.
- The Firearms Control Amendment Bill must speak to gun violence and gun control and address measures to remove guns from the home in cases of complaints of domestic and family violence and fitness to hold firearms, alignment of FAR with DV cases.

APCOF proposes that we all need to engage with these opportunities, if we want a paradigm shift.

The purpose of these discussions to date has been threefold: (i) To bring together policing and gender sectors and provide a platform for engagement amongst all stakeholders: government and civil society. (ii) To share policy developments, challenges and learned experience. (iii) To develop collaboration and partnerships to strengthen civil society responses and engagement with policy makers and implementers.

2.2 Service Provision to Sexual Offences Victims

Joy Watson, Senior Parliamentary Researcher conducted the second presentation, which looked at the service provision offered to sexual offences victims and outlined her study on state accountability to gender-based violence. A background to the study, including the incentives for the study was initially given. The study came about as a result of a project that police researchers in parliament started, and since the shift in the political landscape in 2009 it is increasingly clear that gender has fallen off priorities of the state; the need to address sexual offense statistics really inspired the study due to the lack of attention such issues were being given. Issues with the Family, Violence and Child Protection (FCS) Units were first identified: (i) there are only 176 nationally serving 1 135 police stations, (ii) very tight budgets and operate in a tight environment, (iii) staff turnover is extremely high with a high workload and (iv) certain degree of stigma around accessing. Problems with the collection of police data were also outlined as police do not distinguish between different types of sexual

offence crimes and the quality of the statement taken is very poor. Joy explained the challenges in processing the sexual offences cases with many not going to court (this was compared to examples in India where all sexual offences cases must go to court), the police take a very long time with poor quality investigations and a lack of statements from witnesses and the victim is only informed on the day they are going to court and so have little time to prepare. The newly developed DNA databases were said to be an exciting new development in South Africa as they are a powerful investigative tool, however in practice there are currently only 329 000 profiles. Joy identified further challenges with service provisions provided to include (i) poor healthcare services, (ii) the ineffective use of rape kits, (iii) difficulties in securing DNA evidence, (iv) problems with the infrastructure and running of clinical forensic units, (v) not attached to Thuthuzela Care Centres (TCCs). The presentation concluded with recommendations to service provision for sexual offences victims: (i) adequate resourcing and capacity, (ii) better statistical information, such as mapping of sexual offence cases and releasing statistics in a shorter timeframe, (iii) improvements to monitoring, statement making and an integrated system whereby cases can be tracked and (iv) improved budgeting and accountability.

2.3 Domestic Violence Monitoring and Oversight - The Systemic Flaws

Sanja Bornman from the Women's Legal Centre gave the final presentation complimenting Joy's report and presentation in outlining the systemic flaws of domestic violence monitoring and oversight.

The first serious issue was the Judicial Matters Amendment Bill [B2-2015], of which the PC DOJCD called for comment on 19 June 2015. It was only thanks to Samantha Waterhouse of the Community Law Centre that we were alerted to the fact that the Bill had serious consequences on child justice and, most notably for this discussion, for the Sexual Offences Act (SOA). The Bill states that it amends the SOA 'so as to further regulate the reporting on the implementation of the said Act'; the proposed amendments undermined the obligation on departments to prioritise the implementation of these acts; to do so in collaboration with one another and to report in a consolidated manner. Sanja further outlined how it was also proposed that section 65 of the SOA was to be amended in order to both (i) do away with the need for the Minister of Justice to come to parliament annually and (ii) regulate the reporting obligation to Director General level, where all a DG would have to do is mention what their departments had done in their annual reports.

Questions were asked regarding why such an amendment would ever be proposed as the opposite of push back was received from the department when oral submissions requesting change to the amendment were first initiated. On this point, Sanja concluded that as Joy Watson's report confirms, there is ultimately no good story to tell, and therefore attempts are made to avoid have to tell the story at all.

She went on to outline flaws with section 65 reports to date in not telling us exactly what we need to know. The four key issues noted were: (i) annual reports have not been made on an annual basis, as per the SOA mandate; (ii) reports have not followed a consistent format, and the same information is not reported year on year; (iii) reports are not sufficiently focused on the quality or impact implementation of survivors of sexual offences, and tend to follow a 'tick-box' approach, focussing on quantity over quality of services and (iv) the voice of victims is entirely absent with almost no critical engagement or assessment of the impact of activities, such as training initiatives.

Sanja also identified issues with the Civilian Secretariat of Police (CSP) report, speaking to the implementation of the Domestic Violence Act (DVA). Firstly, station visits by the CSP were sub-standard; only one of the stations visited was 100 per cent compliant with its obligations in terms of DVA, and it appeared that the police officers who had not complied with their obligations had not been disciplined. Secondly, concern has been expressed about the ability of the CSP to do its monitoring job, given that policy and laws still speak about the old Independent Complaints Directorate (ICD), and have not been amended to reflect CSP as the new oversight body, despite their request to the Commissioner to effect these critical changes in the relevant national instructions. Thirdly, the standard operating procedures the CSP and SAPS have tried to develop do not seem to have had any impact. Finally, as pointed out to the committee, the National Police Commissioner has failed to submit bi-annual DVA implementation reports to Parliament, since 2013, despite the obligation in section 18 of the DVA.

Overall, Sanja concluded that it is becoming clearer what a mess the monitoring and reporting systems, in respect of domestic violence are in, with no improvement in service delivery to victims. It is therefore essential to improve the monitoring of the monitoring and call for state accountability in this regard.

3. PLENARY DISCUSSION

After the presentations, Tanya Charles chaired a plenary discussion for questions to be directed at the panellists. Below is a summary of some of the issues and areas of concerns, as well as the responses from the panel:

First round:

- An SAPS officer identified how Western Cape has been commended on being the only province that reports on domestic violence, and therefore would like to see a report on Western Cape police, not just a national report.
- Civil society needs to be better organised, as there is still fragmentation.
- Victims need to be empowered, however issues with people not knowing where to go and access services. Questions what gender-based violence mapping plan could do.
- Issues with the police not receiving adequate training and while plans are drafted question on how to implement them.
- Sex workers need to be more included in the discussion as issues with stigma and police not taking cases seriously.
- A lack of political will from the police was identified, and need to educate people on the ground on how to hold police accountable.

Responses from the panel:

- Sanja agreed that the Western Cape was the only province reporting, and highlighted how while numbers seemed to look differently, are aware that the Western Cape is doing well, and some police officers are doing their best.
- Joy highlighted the need to engage the reports with the voices of the community and join the two stories together. Also agreed that the issue of sex workers must be put on the table and there is a need to somehow hold government accountable. Identified issue in that there is training but needs to be monitored to ensure it is working.
- Melanie reiterated the White Paper issue in that cannot get one department to tell another what to do; instead there is a need for civil society to engage with such legislation. Agreed with Joy that oversight mechanisms are not working and people not being held accountable. With regards to the issue of sex workers; it is addressed in the White Paper on Safety and Security, as it is important to raise the issue of decriminalisation of sex workers, similar to gun violence. Suggested that perhaps it is time to be bold and say what needs to be done, as the government needs to be held accountable to its own commitments.

Second round:

- Need more attention on services for people with disabilities (pwd) in terms of access to police stations, how to break the silence and question as to whether there is a service that can come to them.
- Identified that there should be one case for rape and one murder - asked for clarity on this point.
- Talk of creating a new strategy, but with the current issue of a lack of information available, how can one be held accountable without the evidence?
- Disjoint between policy making and need to acknowledge the challenges, failures should be used by civil society to work out where best impact is.
- Issues of training, attitude, prejudices, and questioned how we can measure the attitudes as we cannot simply rely on legislation? Without training how do we expect people to engage effectively?

Panel responses:

- Sanja agreed that statistics deeply problematic, as each year they say nothing about domestic violence, and even when number of reported rape cases goes down does not mean less rape but more unreported rape. Identifies this as an important case to understand as these are crimes that are happening in people's home where police cannot police, it means we are doing worse and not better.
- Joy acknowledged the key point made on accessibility to pwd.

4. FACILITATED SESSION ON STRATEGISING OF ISSUES FOR FUTURE WORK IN THIS REGARD

A facilitated session was run by Layla A-I Zubaidi from Heinrich Boll Foundation in order to create a 'wish-list' on what needs to be done, how to tackle issues in the future and identify issues that are necessary to work on in coming year. Everyone was divided into small groups to reflect on three issues that need to be collaborated on in the future. A summary of the key issues identified is below.

- Issues focussed on the police:
 - Sufficient and proper police training in order to (i) change attitudes towards sexual violence cases, (ii) make police stations more accessible, especially to pwd, sex workers and LGBTIs, (iii) case by case issues. Also issue of training manual raised.
 - Have police work together with civil society organisations. For example, facilitating workshops in communities in order to build better relationships and enhance public trust.

- Work with the police to try and allow them to understand their importance in the community as we are often far too critical about the police.
- Look more closely into the workload of investigators and re-distribute resources to be more responsive.
- Reformed complaint mechanism, needs to be more transparent about where the community can complain too.
- Civil society strategies needed:
 - Come up with strategies and make use of workshops to be more effective in presenting reports to police and government.
 - Address gaps in the role of civil society. Government departments, other than SAPS need to be held accountable in terms of mapping resources.
 - Importance of civil education and teaching people about what services to expect and where to complain if they do not get these services.
 - Need for civil society to be consolidated, may not always agree on everything, but should agree on a way to move forward on initiatives brought up at workshops. The issue of lack of trust and turf wars among organisations was also raised as an obstacle to coordinated responses to sexual violence
- Victims' experiences:
 - Address safety and protection of victims.
 - Accessibility to information and receive regular follow-ups.
- Dealing with perpetrators
 - Harsher punishment needed.

5. DISCUSSION - 'A WAY FORWARD'

At the end of the discussion, the key issues raised were summarised by Layla.

- Need to fix civil society and how information is to be shared.
- Accessibility and attitude of SAPS needs to be addressed.
- Creation of incentives for better performance and best practise.
- Improved training and knowledge of the law.
- Protection of victims.
- Police resources.

6. CLOSING

Tanya closed the meeting by thanking participants, for engaging in a meaningful and productive discussion. She noted that the discussion on how to move forward will be done electronically. Final issues highlighted were (i) the need for a focus on community engagement and empowerment, (ii) share what we have to empower the community , (iii) need for accountability and collectivisation, (iv) need for broader national mechanism that can hold everything to account under one policy, (v) civil society issues such as lack of trust and turf wars need to be addressed, and (vi) lack of prevention is critical, while much of the discussion was at the policy level there is also a need to consider what we are doing to end gender-based violence.

Final comments from the floor included:

- SAPS would like civil society voice to be heard in the Victim Empowerment Bill.
- Heinrich Ball Foundation stressed the importance to work out how to go on from here.
- Gap in terms of programmes for perpetrators, which should be on the agenda.
- APCOF identified the need to create a platform for engagement, but also a commitment is needed on a policy side to pull a group together in terms of facilitating a way forward.
- Shukumisa campaign highlighted need to focus on 'state accountability' including victim empowerment project and NSP.
- Sonke Gender Justice stressed the need for organisations (55 currently sitting on the issue) to work together and make demands together. Also asked the questions who

else needs to be in the room and how do we understand the relationship between prevention and accountability?

- The need for young people to engage in order to understand about sexual offense was also raised, as the youth voice is currently missing on these platforms.
- The Cape Town Association for the Physically Disabled presented the idea of making more use of local media, such as radio and newspapers, in order to encourage victims, and even perpetrators to speak out.