TSHWARANANG
LEGAL ADVOCACY CENTRE
TO END VIOLENCE AGAINST WOMEN

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Implementing the Domestic Violence Act in Acornhoek, Mpumalanga

Lisa Vetten, Francois van Jaarsveld, Phineas Riba and Lindiwe Makhunga

South Africa's Domestic Violence Act 116 of 1998 (DVA) is widely regarded as being one of the more progressive examples of such legislation internationally.[1] Since coming into effect in 1999, the Act has also been the subject of a number of studies examining whether or not it has actually lived up to expectation. To date, eleven studies covering a total of 19 courts have been undertaken in the provinces of the Western Cape,[2,3] Gauteng,[4,5,6] KwaZulu-Natal[7,4] and Free State.[4] However, while instructive, these studies do not provide a comprehensive and representative picture of the Act's implementation in many parts of the country. This research brief aims to contribute further to the picture developing nationally around the Act by presenting findings from three courts (both rural and peri-urban) in the Bushbuckridge municipality of Mpumalanga province.

The Domestic Violence Act

The DVA introduced a number of innovations in relation to how domestic violence is dealt with by the courts and police. **These include:**

- South Africa's first definition of domestic violence, which includes a broad range of behaviours within its ambit;
- The recognition that abuse can occur in a variety of familial and domestic relationships and the extension of the law's protection to these relationships;
- Empowering magistrates to order the abuser (or respondent) not to commit any act of domestic violence (nor engage anyone else to perpetrate such behaviour), nor enter the family home or his/her partner's workplace. Respondents may also be instructed to leave the residence while continuing to pay rent or mortgage as well as providing money for food and other necessary household expenses. In some circumstances, respondents may be prevented from having contact with a child or children. In addition, courts may order the police to remove the respondent's guns or other dangerous weapons, as well as provide a protective escort to the victim (or applicant) while she fetches clothing or other personal items from the home;
- Making it obligatory for the police to assist complainants in domestic violence cases and providing for mandatory oversight of the police's adherence to these statutory obligations. Police officers' failure to comply with the Act, its regulations or police instructions, constitutes misconduct which must be reported to the Independent Complaints Directorate (ICD), the civilian oversight body established in terms of the 1995 South African Police Service Act. The station commander is also required to institute a disciplinary action against the police officer(s) concerned; and
- Finally, in addition to service of orders on the applicant and respondent, certified copies of the protection orders and accompanying warrants of arrest must also be forwarded by the clerk of the court to the police station of the applicant's choice.

The Tshwaranang office and Police Station in Acornhoek, Mpumalanga

Tshwaranang Legal Advocacy Centre to End Violence Against Women (TLAC)
Johannesburg
Tel: 011-403-8230/4267, Fax: 011-403-4275
Acornhoek
Tel: 013-795-5294, Fax: 013-795-5024
www.tlac.org.za

1. Methodology in a nutshell

Acornhoek is a rural area located in the Bushbuckridge municipality of Mpumalanga province. It is also the site of an office established by the Tshwaranang Legal Advocacy Centre ("Tshwaranang") in 2007 to provide paralegal and lay counselling services to women experiencing various forms of gender-based violence. To coincide with the opening of the office, we undertook research examining women's use of services in Acornhoek following an incident of domestic violence. This research brief reports on that aspect of the study examining the implementation of the DVA in the area.

Sources of information

Fieldwork was conducted at one police station, Acornhoek, and the three courts within whose jurisdiction the police station fell. These included the two magistrates' courts of Thulamahashe (Mhlala) and Bushbuckridge and the periodic court based in Acornhoek. The eighteen-month time frame covered by the study dated from 1 January 2006 to 31 July 2007.

Data was collected from three sources at Acornhoek police station: the Occurrence Book (OB), the Domestic Violence (DV) register and criminal case dockets. The OB should record everything that happens in a station, including all complaints and requests for police assistance received from members of the public, as well as the police officers' responses to these complaints. The DV register should contain information about the dates, times and places of the incidents as well as the types of abuse experienced by victims. Again, responses to such complaints must be recorded, including whether the perpetrator was arrested or had appeared in court.

At the courts, information was collected from the domestic violence files and court books. The applications for protection orders contained in the domestic violence files captured demographic data and statements about the incidents, as well as a list of actions the applicants requested the respondents to be prohibited from engaging in. Files also contained the interim protection order, the return of service, as well as information about the final hearing. The court books contained information about the day's proceedings in each court. Breaches of protection orders were extracted from this book.

We undertook a census of all sources of data because in some instances the total number of cases was unknown and, when it was known, the number of cases was too small to justify sampling.

Finally, in addition to the record reviews we also conducted twenty-three interviews with court staff and members of the SAPS.

2. Results: The implementation of the DVA by the SAPS

The next sections of the brief reports on selected aspects of the implementation of the DVA in Acornhoek. Where possible, these findings are contrasted with those of other studies on the subject. However, it must be noted at the outset that the various studies around the DVA have asked different research questions and relied on different samples and methodologies to arrive at their particular findings. Such divergent approaches inevitably both complicate and limit the extent to which comparisons can reasonably be made.

Police recordkeeping

The National Instruction on Domestic Violence states that the police must keep record of their assistance to complainants in either the station's OB, or in individual police officers' pocket books [section 7(4)]. In addition, as per section 12 of National Instruction, all reported domestic violence incidents must be recorded in the DV Register (SAPS 508 (b), not just those incidents for which criminal cases are opened.

Of the 416 incidents of domestic violence gathered from the OB, the DV Register and the case dockets, only 19 (5%) had been recorded in the DV Register. Six months' worth of entries was also missing from the DV Register. The interviews revealed members' ignorance of the existence of the DV Register and where it was kept. Respondents also admitted to being too busy to fill out the Register. Notably, 17 of the 19 incidents recorded in the DV Register had resulted in charges being laid, suggesting that the more 'serious' cases were being recorded in the Register.

- Acornhoek was not unique in failing to maintain their records in accordance with the DVA. It is a persistent and repeated complaint by the ICD that stations fail to keep the prescribed records.[3] In another study conducted in the Western Cape, police officers claimed that the repeated withdrawal of domestic violence cases led them to avoid recording cases in order to decrease their workload.[2]

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Police responses to complaints of domestic violence

In terms of section 2 of the DVA, the police are obliged to inform complainants of their right to apply for a protection order and/or lay a criminal charge; assist her/him in finding alternative accommodation; collect personal items from his/her residence and obtain medical treatment if necessary. Police are further obligated to serve notice on the abuser to appear in court; serve protection orders on abusers; arrest an abuser (without a warrant) who has breached a protection order or committed a crime and remove weapons from the abuser or from the home.

Again, a disjuncture between the DVA's provisions and the police's application of those provisions was identified. Legal remedies such as a protection order, or criminal charges, appear to have been suggested in just over one in four matters (22.8%) recorded in the OB. More frequently, the police reported being unable to find the perpetrator and took matters no further (32.7% of cases). In a further 14% of cases the parties and their families were left to settle matters amongst themselves, either at the police's suggestion or their own. In those 11.3% of cases where the victim did not wish to pursue criminal charges, the complaint appears to have been left at that and no further options explored. In more than one in five cases (27.9%), no information regarding the police's intervention was recorded.

Table 1: Resolutions of domestic violence incidents recorded in the OB

	N=373
SAPS cannot find perpetrator	32.7%
No record of follow up	27.9%
SAPS warned perpetrator	14.5%
Victim did not want to pursue criminal charges	11.3%
Case opened	6.7%
SAPS asks family member of perpetrator to tell perpetrator to behave/fix problem	6.2%
Family/couple say they will resolve the matter	5.9%
SAPS advises victim to obtain a protection order	4.8%
SAPS cannot find victim	4%
SAPS asks family/families/couple to resolve the problem	1.9%
Other	11.5%

- Another Western Cape study also comments on the police's inconsistent application of their legislated duties. Women interviewed in Paarl and Bellville described their contact with the police as being 'fraught with frustration' and characterised by inadequate assistance, general apathy and, on a few occasions, racist attitudes.[3]

3. The Courts' implementation of the DVA

Who applied for protection orders?

In total, 519 applications for protection orders were made at the three magistrates' courts. Thulamahashe accounted for 256 cases (49.3%), Bushbuckridge 213 cases (41%) and Acornhoek 50 cases (9.6%). Three-quarters of applications (74.3%) were made by individuals seeking protection from their intimate partners and 25.7% by people seeking protection from a family member. As other studies have found, the great majority of applications for protection orders were made by women. In our study women brought 82.5% of applications for protection orders and men 17.5%.

- The proportion of men applying for protection orders appears to vary by area. In Alberton, Gauteng Province, 14.8% applications were brought by men while 22.1% of applications made at Temba Court in the same province were brought by men.[5] By contrast, in the Western Cape, male applicants filed 27% and 29.5% of all applications at the Paarl and Bellville courts respectively.[3]

Table 2 shows significant differences along gender lines in terms of who protection was sought from. More than three-quarters (78.3%) of women sought protection from their intimate male partners in comparison to just over half (55.7%) of men.

- These proportions are very similar to those found by the only other study to compare applicants' relationship types by sex. Here it was found that 70% of women and 56% of men sought protection from their intimate partners.[8]

Table 2: Comparison between family and intimate partner domestic violence applications, by sex

	Female applicants N=419	Male applicants N=89
Intimate partner	322 (78.3%)	49 (55.7%)
Family member	89 (21.7%)	39 (44.3%)

Age of applicants

In our study the average mean age of applicants seeking protection from their intimate partners was 33.2 years.

- This is similar to other studies where women ranged in age from 34.5 years to 38.1 years.[2,3,8]

More than one in three (36.9%) of those applying for protection were estranged or divorced from their former intimate partners. This proportion is higher than that found in other studies.

- In Paarl and Bellville in the Western Cape, the proportion of former partners was 11.4% and 10.8% respectively.[3]
- Another Western Cape study conducted at three courts found former partners to comprise 16.4% of their sample.[2]
- At Alberton and Temba courts in Gauteng the percentage of former partners was 19% and 11% respectively.[5]

On average, those seeking protection from a family member were aged 45.7 years, with an adult child being the family member applicants were most likely to seek protection from. By contrast, children almost never sought protection from a parent. This does not imply that children are rarely abused by their parents. Rather, it shows that child abuse is addressed very indirectly through a protection order. While the DVA states that a minor can apply for a protection order without the assistance of an adult, the courts remain practically inaccessible to children whose caregivers perpetrate the abuse, or who are not willing to apply for a protection order on the child's behalf. Instead, as is shown in the next section, the need for children to be protected is most frequently addressed within the context of their mother's abuse.

Table 3: Applicants' relationships to respondents, by relationship type

Respondent a family member	N=128	Respondent an intimate partner	N=371
Child	53.1%	Married	42.3%
Sibling	16.4%	Estranged or former partners	36.9%
Aunt/uncle-in-laws	14.1%	Going out together	12.7%
Other	11.7%	Co-habiting	5.4%
Parent	4.7%	Extra-marital partner	2.7%

Nature and extent of abuse

Almost half (48.8%) of all applications made reference to the abuse of others in addition to the applicant. These other victims were most likely to be children (64.9%), followed by other adult family members (42.7%).

- The abuse of children was also referred to in 69.2% of applications made at Paarl and 69.4% of Bellville applications.[3]
- At Alberton 63% of applications referred to others being abused, with children comprising 74% of those others. At Temba 41% of applications made reference to the abuse of others, with children mentioned 84% of the time in such applications.[5]

In over two-thirds (69.5%) of applications at least one other prior incident of abuse was referred to. This shows that the majority of applicants turned to the courts when the abuse was repeated, rather than treating a court order as their first option.

More than a third of applications (37.2%) stated that a weapon had been used during one of the episodes of abuse to either threaten (63.4%) or hurt (50.2%) the applicant. Weapons cited in applications included knives and other sharp instruments (42%), blunt instruments (39.9%) and guns (24.4%).

- The percentage of applications referring to weapons corresponds with other studies. At these five courts references to weapons ranged from 37.6% to 48.0% of all applications.[2,5]

4. From application to finalisation: The attrition of protection order applications

The process of obtaining a protection order can be summarised as follows:

1. The applicant goes to court and fills out an application for a protection order.
2. The magistrate considers the application and, if it is deemed urgent, authorises an interim protection order. A suspended warrant of arrest is also issued to the applicant. A date is then set for the respondent to come to court and explain why the protection order should not be confirmed and made final.
3. Notice must then be served on the respondent informing him or her that an interim protection order has been granted against them and that they should attend court on the specified date to contest the protection order. Proof that the notice has been served must be returned to court in the form of a return of service. The return of service is essential because an interim protection order is not enforceable until it can be shown that the respondent is aware of its terms.
4. Both the respondent and applicant return to court on the specified date to allow the magistrate to hear representations from both parties. The magistrate then decides whether to confirm or dismiss the protection order. The magistrate may also withdraw the application, strike it from the court roll altogether, or amend its terms.

Court recordkeeping

As with the police records, our analysis of these court processes was also constrained by inadequate and incomplete recordkeeping.

The DVA requires the court to issue an interim protection order if there is evidence on the face of the application of a domestic violence incident(s), as well as a risk of undue hardship if an interim order is not issued. At our study sites more than a third of applications did not specify urgency. When they did, fear of being killed by the respondent was most likely to be cited. The section on urgency was simply left blank in up to 17.0% of applications.

Table 4: Reasons for urgency, by relationship type

	Intimate partner (N=371)	Family member (N=128)
Fear of self/others being killed	40.7%	36.7%
Reiteration of request for assistance from the court	24.3%	29.7%
Fear of further abuse of self/others	22.4%	19.5%
This section left blank	17.0%	13.3%
Other	1.8%	2.3%

Other documents were either missing or not authorised:

- *Of the interim protection orders*: 4.6% were not authorised and 1.9% of orders were missing;
- *Of the returns of service*: 56.6% were missing from the files.
- *Of the final protection orders*: 26.6% were not authorised and 19.0% were missing. Effectively, 45.6% of final orders were not properly authorised;
- *Of the warrants of arrest*: 5.9% were unauthorised and copies of the warrants were missing from 19.4% of files
- Again, inadequate and incomplete recordkeeping was not unique to our sites but also noted at the Johannesburg family court,[6] as well as a number of Western Cape courts.[2,3]

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Return of service

As table 5 will show, there were clear problems with serving the notice of the protection order in Acornhoek, with only 43.4% of domestic violence files overall containing this document. At Bushbuckridge court, the percentage of files containing returns of service dropped to 31.0%.

Interviews with court staff highlighted troubling court practices around the return of service.

Firstly, all three courts made it the applicant's responsibility to take the notice to appear in court to the police for service. Bushbuckridge and Acornhoek courts typically also expected the applicant to bring the return of service back to court once the notice had been served, while at Thulamhashe, the police generally brought the return of service back to the court. This procedure places a financial burden on applicants to travel back and forth to the court, as well as to the police station. Many applicants might also not understand the nature of the return of service and the reason for returning it to court. This seemed evident from some of the case examples offered by the interviewees. Interviewees referred to instances where both the applicant and respondent arrived at court for the final hearing where it was subsequently discovered that the notice had not been served. In such cases the respondent would be served there and then at court.

Secondly, in some instances it seemed the clerks also expected applicants to hand the notice to the respondent themselves, without the police's intercession. They were also expected to look for respondents as well, at their own cost. This practice potentially risks applicants' safety.

Thirdly, courts made no effort to verify whether or not the notice had been served, relying on applicants to arrive on the date of the final hearing with the return of service in hand. When the applicant did not arrive it was simply assumed that the notice had not been served and matters left at that.

The procedures followed by the three courts do not accord well with the provisions of the DVA. In terms of the DVA, the return of service may be served by the sheriff, the police, or the clerk of the court. The National Instruction further requires that where the police effect service, this must be done without delay to protect the applicant.

The police did however, experience practical difficulties in serving the notice. Respondents were said to evade the police and even disappear into other provinces which led to the police having to make a number of efforts to locate them.

- This particular problem has been noted at other courts. In a study examining the costs of implementing the DVA, police officers were found to delay serving orders as they found locating respondents time-consuming. The serving of notices was sometimes delayed in favour of more 'pressing' police matters unless the order was urgent.[9]

Confirmation of the protection order

Table 5 shows how all applications for protection orders were dealt with in our study. Significant differences are evident across the three sites, with Thulamahashe court least likely to finalise protection orders.

Just over a third (36.6%) of interim protection orders was ultimately confirmed. In more than another third of cases (37.0%) the outcome of the final hearing could not be determined due either to no details being provided on the relevant form (20.4%), or to the final protection order being missing from the files (16.6%).

- The percentage of interim protection orders made final varies across courts. At Paarl court 54.6% of orders were finalised (6.6% unknown) while Bellville finalised 40.3% of interim orders (23.5% unknown).[3]
- At George 11.9% of orders were confirmed (the outcome of the final hearing was unknown for 87.4% of applications). Mitchell's Plain finalised 35.8% of applications (with outcomes unknown for 56.6% of applications) and Cape Town 37.6% (outcomes unknown for 12.9% of cases).[2]
- Unusually, 79% of applications were confirmed at Alberton court and 66% at Temba Court.[5]

Factors associated with confirmation of the protection order

We then examined the association between different variables and the finalisation of protection orders, beginning with the attendance of the parties at court.

Overall, 41.8% of applicants and 38.0% of respondents were present at the final hearing, with both parties in attendance on 34.9% of occasions.

- **The presence of the applicant significantly affected the likelihood of the order being confirmed.**
  Only 15.6% of protection orders were confirmed in the absence of the applicant as opposed to 65.9% of orders being finalised when the applicant was present (p=0.000).
- **The presence of the respondent significantly affected the likelihood of the order being confirmed.**
  While 21.4% of orders were confirmed in the respondent's absence, 61.4% were confirmed when he was present (p=0.000). It is likely then that protection orders stood a greater chance of being confirmed when both parties attended court.
- **The choice of court also significantly affected the likelihood of an order being finalised.**
  Bushbuckridge confirmed 46.0% of interim protection orders, Thulamamhashe 27.0% and Acornhoek 46.0% (p=0.000). Given that neither the applicants nor the respondents were significantly more likely to return to any one of the three courts, it is possible that where a final hearing is conducted may be more likely to affect application outcome, than the presence of the parties.
- **The type of relationship between the parties significantly affects the likelihood of an order being finalised.**
  Protection orders were significantly more likely to be confirmed when the parties were intimate partners, than when they were family members (82.1% vs 17.9% of confirmations) (p=0.003).
- **Successfully serving the notice of the interim protection order significantly affects the likelihood of the protection order being finalised.**
  In half of cases (50.9%) where the notice was successfully served, the protection order was confirmed. However, only 25.3% of those orders where the notice had either not been served, or it was unknown if it had been served, were finalised (p=0.000). In 81.6% of cases where notice was served on the respondent, s/he was the applicant's intimate partner. However, where the respondent was a family member of the respondent, only 18.4% of notices were served. This difference is significant (p=001).

Table 5: The attrition of protection order applications, overall and by court

	Overall	Bushbuckridge	Acornhoek	Thulamahashe
Number of applications made	519 (100%)	213 (100%)	50 (100%)	256 (100%)
Number of interim protection orders granted	491 (94.6%)	193 (90.6%)	44 (88.0%)	254 (99.2%)
Number of returns of service served	225 (43.4%)	66 (31.0%)	23 (46.0%)	141 (55.1%)
Number of protection orders confirmed and made final	190 (36.6%)	98 (46.0%)	23 (46.0%)	69 (27.0%)

5. Concluding discussion

- Our examination of the implementation of the DVA in Acornhoek both confirms and differs from the findings of other studies. In 2001 for example, recordkeeping was noted as sub-standard.[2,3] In our review of records for 2006 and 2007 recordkeeping was still of a poor standard. Our data supports other studies' findings that those seeking protection from their intimate partners are typically in their thirties and that child abuse is often concurrent with intimate partner violence. As in other studies, more than a third of applications for protection orders in Acornhoek made reference to the involvement of weapons in the abuse. Finally, a previous finding that men are more likely than women to seek protection from family members is also corroborated by our study.

- In terms of differences, we have pointed to how the female to male ratio of applicants varies across the country, as does the proportion of estranged partners from whom protection is sought. In all studies, the number of protection orders confirmed varied across courts. We have shown that in Acornhoek the difference in the percentage of protection orders finalised by each court is significant and that access to the law's protection is indeed dependent upon the court one applies to.

- Further, the links between the police and courts around serving the notice appeared non-existent, while the sheriff was very rarely used at all. As a result, a set of state responsibilities and costs was effectively being shifted onto applicants. Ultimately, given the costs, the inconvenience and the low percentage of protection orders confirmed, it must be asked whether the DVA did indeed deliver on its promise of protection to the majority of applicants in Acornhoek.

Endnotes

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