

**SUBMISSION TO THE PORTFOLIO  
COMMITTEE ON WOMEN, YOUTH,  
CHILDREN AND PEOPLE WITH DISABILITIES  
ON  
THE 11-YEAR IMPLEMENTATION OF THE  
DOMESTIC VIOLENCE ACT (116 OF 1998)**

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## 1. INTRODUCTION

Following the announcement by the Portfolio Committee on Women, Youth, Children and People with Disabilities (“the Committee) that it would host public hearings on the implementation of the Domestic Violence Act No. 116 of 1998 (“the DVA”) over the last 11 years since its promulgation, the Gender Advocacy Programme (GAP) and the Western Cape Network on Violence Against Women (WCNOVAW) partnered to initiate a process to mobilize civil society organizations working in the area of domestic violence in the Western Cape to respond to this invitation. A workshop involving various civil society providers of services to victims of domestic violence was held, and a task team was subsequently established to coordinate a joint submission to the Committee.

Organisations who participated in drafting this submission include:

GAP	Gender Advocacy Programme
MOSAIC	Training, Service & Healing Center for Women Noncedo Bulana - Activist
RAPCAN	Resources Aimed at the Prevention of Child Abuse and Neglect
REACH	Rural Education, Awareness and Community Health
SAFFI	South African Faith & Family Institute
SBC	Saartjie Baartman Center for Women and Children
SMSA	Shelter Movement of South Africa Sisters Inc.
WCND	Western Cape Network on Disability
WCNOVAW	Western Cape Network On Violence Against Women
WCSEFG	Western Cape Shelter Focus Group
WOA	Women of Action
WLC	Women's Legal Centre

This submission will be centered on the participating organisations' experiences with clients who are survivors of domestic violence, the courts, the South African Police Service ("the SAPS"), the Department of Health ("the DOH"), private medical practitioners and the impact of the general lack of state resources that are required to give effect to the DVA from the perspective of the specific groups of individuals that we work with, such as socio-economically disadvantaged persons, disabled persons, farm and rural women and children. It will focus on the challenges that have impeded the implementation of the DVA over the last eleven years by highlighting these challenges and making recommendations on how these challenges can be overcome. Recommendations will be made as practically and realistically as possible and where necessary and appropriate, legislative amendments to the provisions of the DVA will be proposed with a view to giving effect to the purpose and preamble to the DVA from the perspective of advancing South African women's legal and constitutional rights and the exercise of those rights.

Please note the following:

**"complainant"** will be used where appropriate to describe the person who is the survivor of domestic violence or the person who applies for a protection order against the alleged perpetrator of domestic violence;

**"complainant"**, **"survivor of domestic violence"**, **"victim"** and **"survivor"** will be used interchangeably;

**"alleged perpetrator"** refers to the Respondent in the court procedures relevant to the application for, issue of and enforcement of protection orders by the SAPS.

Reference is often made to the "survivor" or "victim" as a woman in this submission on the basis that the vast majority of survivors/victims of domestic violence are women who are subjected to violence perpetrated by men, generally and specifically in the "domestic" context. This does not in any way dismiss the impact of domestic violence on men, children, the elderly and the disabled.

This submission does not purport to record all the factors that impede the implementation of the DVA or to provide all possible recommendations to overcome the factors that impede the implementation of the DVA and accordingly, should not be construed as such.

This submission does also not purport to have covered or have made reference to all issues pertaining to all categories of people and women in terms of race, age, class, religious affiliation, cultural identity, sexual orientation and socio-economic status who are grossly affected by the lack of implementation of the DVA. In addition, it does not make extensive reference to different categories of domestic relationships, nor related gender based violence issues.

## 2. BACKGROUND TO SUBMISSION

The promulgation of the DVA eleven years ago was a positive government initiative committing the state and members of society to the eradication of violence against women.

The DVA has reinforced women's fundamental human rights to human dignity, equality, freedom, bodily integrity and the right to be free from violence from public and private sources by placing positive duties on the state to protect women from domestic violence and puts in place procedures to be followed to prevent domestic violence and punish perpetrators of domestic violence.

Despite the purpose of the DVA, domestic violence in South Africa continues to pose a grave threat to women as evidenced by the high occurrence rate and the gravity of the acts perpetrated against women.

The implementation of the DVA has proven to be problematic as state departments fail to fulfill their legal duties by not complying with the prescribed duties as set out in the DVA or by inefficiently executing these duties.

This failure to fulfill duties or the inefficient execution of these duties have resulted in serious consequences such as the death or serious physical injury to complainants of domestic violence and/or the complainant's loved ones; long-term psychological damage which has resulted in the complainant murdering or injuring the perpetrator of domestic violence; a lack of respect of the rule of law; loss of faith in legal system; state and individual violations of fundamental human rights resulting in the perpetuation of inequality which leads to unfair discrimination, and ultimately violence against women.

It is accepted that the state is under-resourced as the DVA has increased the duties of SAPS members, prosecutors, and the courts and has created a need for shelters and housing for survivors of domestic violence without allocating additional resources. Costs in relation to re-allocation, will be dealt with in more detail later on in this submission.

### 3. PROBLEMS WITH THE VICTIM EMPOWERMENT PROGRAMME (VEP)

The following problems have been identified in relation to the Victim Empowerment Programme (VEP) insofar as it pertains to providing support to domestic violence complainants:

- § On the whole, women do not know their rights in terms of the access to services that domestic violence complainants are entitled to. As a result, they have to contend with a myriad of bad service-related problems such as the lack of sensitivity of government officials. To a large extent, existing public aware campaigns are run by civil society organisations through NGOs and CBOs. Government needs to do far more to raise public awareness in terms of the rights of victims of domestic violence.

- § The component of the VEP that deals with training justice and police officials to introduce greater victim sensitivity is ineffectual and needs to be reassessed.
- § The component of the VEP that deals with the provision of basic information to complainants regarding the progress of all cases as well as information that allows complainants to lay complaints more easily is not functioning as it should.
- § The Service Charter for Victims of Crime in South Africa outlines 7 key rights that victims are entitled to. In practice these rights are not being realised:
- Ø In terms of the right to be treated with fairness and respect for dignity and privacy, complainants are often subjected to secondary victimisation by the lack of dignity accorded to them by Government officials.
  - Ø In terms of the right to offer information, many women are denied this right by not being afforded an opportunity to participate in criminal justice proceedings such as bail, trial sentencing and parole board hearings.
  - Ø In terms of the right to receive information, many women are not informed of their rights in their language of choice, are not informed of available services, their role in the case, the projected duration of the case, the status of the case and of their right to have the prosecutor inform their employer of their absence from work.
  - Ø In terms of the right to protection which entails being free from intimidation and harassment, inadequate resource allocation

currently reduces this right to existing only on paper without any real means of its practical enforcement.

Ø In terms of the right to assistance such as access to social, health, counselling and legal services, much documented evidence exists of the extent to which this right has been violated.

Ø In terms of the right of victims of violent crime to compensation, many women are still unable to access compensation for loss of or damage to their property.

Ø In terms of the right to restitution, many women have been denied restitution where they have unlawfully been dispossessed of their goods and/ or property.

§ The Minimum Standards for Service Delivery in Victim Empowerment defines the acceptable levels of standards of service delivery expected by Government in providing support to victims of crime. The Minimum Standards includes specific provision for victims of domestic violence its access to shelters, the safety and security of victims, health-care provision and being consulted with regards to the development of their care plan. To a large extent, Government service delivery appears to be largely oblivious to the provisions of the required minimum standards of service delivery.

§ Neither the Victims' Charter nor the Minimum Standards define secondary victimisation. It is imperative that this is done so that Government Departments have an understanding of secondary victimisation and in so doing, are in a position to prevent re-traumatisation through appropriate institutional responses.

- § There is a need to monitor the implementation of the Uniform Protocol on Victim Empowerment and the Integrated Victim Empowerment Policy.
- § The VEP currently does not have a monitoring and evaluation strategy in place and this needs to be addressed in consultation with civil society.
- § There is currently a process underway to assess whether there is a need for Victim Empowerment legislation. There is a dire need for such legislation that protects the rights of victims of violent crime and provides for legal recourse in instances where their rights have been violated. This process should be expedited and consultations conducted with civil society.
- § There is a need to reassess the process making grants available to civil society organisations providing services to domestic violence complainants. For example, shelters are unable to apply for such grants as they are not considered to be providing a “direct service”.

## **Recommendations**

- § **Assessment of policy provisions:** This would entail a process of bringing together some of the disparate policy documents that deal with support provided to victims of gender-based violence. Ways of synergising the VEP, the Victims’ Charter, the Minimum Standards for Service Delivery and the Uniform Protocol on Victim Management need to be found. In addition to this, ways of addressing the serious impediments that stand in the way of giving effect to the substance of these policies need to be found. The Victims’ Charter and the Minimum Standards for Service delivery have been implemented sporadically and there is a need to radically improve upon monitoring and evaluation mechanisms in this regard. Clear implementation strategies must be set in place for giving

effect to these policies. As part of this process, Government officials involved in rendering services to victims must have a very clear sense of the role that they need to play and the importance of this role within the context of trauma experienced by victims.

§ **Need for greater inter-sectoral collaboration:** Whilst the VEP is commendable as an initiative that seeks to synergise and bring together different roleplayers in the criminal justice system, there is much room for improvement in ensuring improved collaboration and information-sharing between the different roleplayers. In addition, Government departments need to be held accountable in instances of non-performance.

§ **Adequate resource allocation to give effect to policy provisions:** This pertains to resources for infrastructure, facilities, human resources with appropriate skills and training, the creation of supportive contexts and structures, practical support provided to victims in the form of counselling, access to shelters etc. Currently, the appropriation of resources to victim support is hopelessly inadequate and serious intervention is required if Government is serious about giving effect to the policy framework in this regard.

§ **Improving upon services provided by SAPS:** There is a need for the Independent Complaints Directorate (ICD) to periodically assess compliance with related legislation and policies in terms of service provision by the SAPS to victims of gender-based violence and to devise appropriate interventions in this regard.

§ **Creating a victim-friendly legal system:** This should entail the development of a resource centre to advise and assist law-makers, judicial officers, prosecutors and lawyers in developing specific practices and

processes required to implement and integrate victim support into the legal system.

§ **Need for appropriate health care:** The health care provided to victims must entail comprehensive medical management of victims of gender-based crime. This should include providing victims with a detailed medical examination, the treatment of sexually transmitted infections, an assessment of the patient's risk of falling pregnant, the documentation of all injuries, the collection of forensic evidence and provisions for mental health care where required.

§ **Avoid secondary victimisation by meeting the basic needs of victims:** For many years, the provision of support, counselling and shelters to victims of gender-based crime has been provided by women's networks and organisations with very little government support. The state needs to invest more resources into victim and survivor counselling centres and shelters and greater effort needs to be made to meeting the practical needs of victims such as access to transport, assistance with moving possessions from a place of residence, access to a meal, access to an overnight sleeping facility etc.

§ **Needs of secondary victims:** The current policy framework does not adequately address the needs of secondary victims of gender-based violence. For example, the support required by children who witness domestic violence need to be provided for. This is an area that requires extensive consultation and further research.

§ **Reassess funding criteria for VEP grants to civil society organisations:** Grants should be made available to shelters given that they provide a critical service to victims of domestic violence. In addition, the requirements for applying for grants should be reconsidered as the

applications process is intricate and requires high levels of literacy and proficiency in English. Many rural organisations are thus reluctant to apply.

§ **Victim Empowerment Legislation:** There is a need to expedite the promulgation of appropriate legislation which is developed in close consultation with civil society.

#### 4. THE IMPLEMENTATION OF THE DVA BY THE COURTS

The following problems have been identified in relation to the courts' implementation of the DVA:

§ Complainants are often not assisted by domestic violence clerks at the courts on the day of attendance at the court for purposes of obtaining a protection order. This is due to the fact that clerks only attend to applications for protection orders before a certain time of the day as the remainder of the day is set aside for the issuing of orders by a Magistrate.

§ Domestic violence clerks do not inform complainants that protection orders can be obtained at courts after ordinary court hours where the order is required urgently to avoid the complainant from suffering undue hardship if the application is not dealt with immediately.

§ Complainants are treated insensitively by domestic violence clerks and magistrates and have indicated that their experiences with the courts have been re-traumatising.

§ Specialised courts should be set up that are dedicated to only dealing with domestic violence matters. This will prevent delays in hearings and will improve access to court assistance and quality of services provided to

complainants as clerks and magistrates will become specialists in domestic violence matters.

- § Complainants experience difficulties in dealing with domestic violence clerks and magistrates due to language barriers. This results in complainants not knowing their rights and understanding the court procedures.
- § Complainants with hearing disabilities experience difficulty in fully understanding their rights and the court procedures in the absence of a sign language interpreter.
- § Documents relevant for the application and processing of a protection order are not made available in braille for visually impaired complainants. Even though visually impaired complainants are informed of the contents of these documents, the courts should make braille versions of the documents available to visually impaired complainants so that they may fully understand their rights and the court procedure.
- § The court proceedings in terms of the issue of a final protection order is often delayed by SAPS members' failure to serve interim protection orders and notices to appear on alleged perpetrators of domestic violence, within a reasonable period of time or at all.
- § In proceedings where the court considers the issue of the final protection order and where only the alleged perpetrator of domestic violence has employed the services of a legal representative, the complainant's case is often prejudiced by the lack of legal representation even where the alleged perpetrator's legal representative is prohibited from cross-examining the complainant. This is due to a lack of understanding of the court proceedings and the laws of evidence on the part of the complainant as

the complainant often fails to answer questions put to her by the court adequately as she either does not understand the impact of the answers she provides or reasons as to why the question has been put to her. Accordingly, the complainant's case is not fully and properly put to the court and the Respondent ultimately stands a better chance of convincing the court, on a balance of probabilities, that he has not committed the act of domestic violence in question. In addition, complainants are sometimes re-traumatized by having to give testimony and find the legal representation of the Respondent intimidating in the absence of a legal representative representing the complainant.

- § Complainants often suffer undue mental stress or suffering during the court proceedings, particularly due to fear of cross-examination, which is hostile in nature and can re-victimise the complainant as opposed to empowering her. There also needs to be regard for the impact that the alleged acts of domestic violence have had on the complainant, the fear the complainant is experiencing in speaking out about the domestic violence and the intimidating nature of court proceedings.
- § Domestic violence clerks of the court often omit to inform complainants of their right to lay a criminal charge in addition to applying for a protection order. This omission results in them not laying criminal charges for a criminal offence that corresponds with the alleged act of domestic violence.
- § Magistrates do not have the power to subpoena witnesses to provide evidence in support of the complainant's case. Witnesses are often not willing to provide evidence due to fear or the perception that domestic violence matters are "family or personal matters" and not the community's generally. A witness's evidence could determine the issuing of a protection

order and will secure the issue of more protection orders in the interest of protecting women from violence.

§ Magistrates are often limited in taking steps to protect and provide for the safety and well-being of complainants where they believe that the complainant's safety and well-being is at risk and where SAPS intervention, as a law enforcement agency, may be suitable to prevent further harm to the complainant.

§ Courts are not located in rural and farming communities. Women are required to travel long distances to access courts and often leave the courts without assistance as some courts only deal with domestic violence matters on certain days and at certain times. These women also often have to sacrifice their income on the days they are attending the court. They accordingly do not return to the courts for assistance.

### **Recommendations:**

§ More domestic violence clerks and magistrates should be appointed at courts to facilitate the process of applying for protection orders and to ensure that complainants are attended to when approaching the court for assistance. This will also improve the quality of service provided to complainants.

§ Courts should be compelled to display notices in all official South African languages indicating that complainants can obtain protection orders after court hours where the complainant will suffer undue hardship should the application for the protection order not be dealt with immediately.

§ More magistrates should be appointed to facilitate the issue of more protection orders and to reduce the waiting time for court dates.

- § Domestic violence clerks should undergo training on the gravity and high occurrence rate of domestic violence and violence against women generally in addition to gender consciousness training to understand the importance of the DVA and protection orders as well as the important roles that they play in preventing and protecting women from violence.
- § Magistrates should undergo training in gender consciousness and training on the impact of violence on women to ensure sensitivity towards complainants and to make the court process less hostile for complainants.
- § Interpreters should be made available for complainants to ensure that they understand their rights and court procedures. This is particularly important during hearings.
- § Sign language interpreters should be made available to ensure that complainants understand their rights and court procedures. This is particularly important during hearings.
- § All documents relevant to the application for and processing of a protection order should be made available in Braille so that visually impaired complainants can access written versions of the documents and fully understand their rights and the court procedures.
- § The DVA should be amended to include a provision that the court identifies a particular SAPS member to attend to the service of interim protection orders and notices to appear. Should the identified SAPS member fail to comply with the court's order, such SAPS member should be held guilty of contempt of court and liable for a fine or imprisonment not exceeding six months upon conviction. Such an amendment and extension of the courts' powers is likely to improve service delivery on the

part of SAPS members and will serve as a form of compliance with the state's constitutional duty to protect women from violence and will give effect to the purpose of the DVA. It will also create awareness amongst SAPS members and the judiciary court staff dealing with domestic violence cases about the seriousness of domestic violence.

- § The DVA should be amended to provide for the appointment of a legal representative for the complainant, especially in circumstances where the alleged perpetrator has employed the services of legal representative. In addition, where the complainant is economically disempowered and cannot afford to pay for legal representation, the court should appoint a Legal Aid attorney to represent the client. This will of course expand on Legal Aid's mandate substantially. It follows that Legal Aid's mandate should be expanded on to include domestic violence cases. This is important to afford complainants the opportunity to put a strong case before the court and will have the direct impact of increasing the number of protection orders issued against perpetrators of domestic violence.
- § Magistrates should inform complainants of their right to lay a criminal charge in addition to applying for a protection order to ensure that complainants are aware of all the options at their disposal. In some circumstances the laying of a criminal charge and subsequent arrest of the perpetrator can prevent further harm being caused to the complainant.
- § Where the complainant is likely to suffer undue mental stress or suffering due to the proceedings, the alleged perpetrator or his legal representative should not be permitted to directly cross-examine the witness. The court should devise mechanisms to relay questions arising from cross-examination to the complainant in a manner that minimizes the mental stress to the complainant.

- § Magistrates should have the power to subpoena witnesses on the return date in order to properly assess the complainant's case. Witness protection should be made available to the witness in circumstances where the witness fears retaliation by the alleged perpetrator, and the alleged perpetrator should be warned against retaliation.
- § The court's powers should be extended, in respect of the conditions that it is permitted to impose protection orders, to allow the court to issue an order directing the station commander of the relevant police station to investigate a matter with a view to possible criminal prosecution and to report to the court on the outcome of the investigation, within a prescribed period of time, where the court believes that the complainant's safety and well-being is at stake. Where a station commander fails to comply with the court's directions within the prescribed time period, she or he should be held in contempt of court and should be liable for a fine or imprisonment not exceeding 6 months upon conviction.
- § Courts should be set up in rural and farming communities to facilitate rural and farm women's access to protection orders, or circuit courts should make regular attendances at rural and farming communities to attend to domestic violence matters.

## 5. THE IMPLEMENTATION OF THE DVA BY THE SOUTH AFRICAN POLICE SERVICE

The following problems have been identified in relation to the implementation of the DVA by the SAPS:

- § In some areas complainants are turned away at police stations located closest to where they reside and are directed to other police stations as they claim to only deal with complainants located within a certain part of the area (for example, Khayelitsha). Complainants are directed to other

police stations even in circumstances where the assistance with domestic violence is required urgently.

- § SAPS members fail to record complaints of domestic violence on a register. Station commanders must inspect registers on a regular basis and must hold SAPS members responsible for failing to update registers.
  
- § SAPS members fail to serve or delay in serving interim protection orders and notices to appear on the alleged perpetrators of the domestic violence which results in the delay in the issue of protection orders.
  
- § SAPS members fail to or delay in arresting perpetrators of domestic violence in terms of a valid warrant of arrest. Many complainants have been subjected to further acts of domestic violence during the time of the lodging of the warrant of arrest with the SAPS and the time of arrest.
  
- § SAPS members fail to arrest alleged perpetrators where complainants report that harm is imminent and where the complainant is in possession of a protection order but not a valid warrant of arrest. They neglect to comply with the relevant provision either because they are not aware of the duty to arrest in these circumstances, incorrectly interpret the provision in terms of establishing when harm is imminent and/or fail to understand the potential consequences of failing to arrest the alleged perpetrator.
  
- § SAPS members deal with complainants in an insensitive manner which subjects complainants to secondary-victimisation.
  
- § SAPS members fail to confiscate firearms and other dangerous weapons in the possession of the alleged perpetrator of domestic violence as prescribed in the DVA. The continued possession of a firearm or other dangerous weapon by an alleged perpetrator poses a direct threat of harm

to the complainant and has resulted in the complainant being subjected to added violence.

- § SAPS members fail to advise complainants of the option to apply for a protection order in circumstances where the complainant approaches the SAPS to lay a criminal charge against a person with whom she is in “a domestic relationship” as defined in the DVA.
- § SAPS members fail to protect complainants by assisting them in arranging suitable shelter, obtaining medical treatment and accompanying them to collect personal property from the residence or property accessible to the alleged perpetrator of domestic violence in terms of the DVA.
- § Complainants have indicated that there are not enough SAPS members to assist them with their protection order complaints. This results in complainants waiting to be attended to for extended periods of time as well as SAPS members not complying with their duties in terms of the DVA at all or delaying in executing these duties.
- § Women complainants have indicated that they would prefer dealing with female SAPS members in relation to domestic violence matters as they are of the view that women SAPS members are more sensitive to domestic violence matters.
- § Complainants in rural and farming communities experience problems in accessing SAPS services as they reside far from the location of police stations. Traveling to police stations is also problematic as there are no or limited public transportation and where public transport is available, the cost thereof is high.

- § Woman from rural and farm areas have indicated that SAPS members omit to attend at the farm or the rural area to assist complainants when complainants contact SAPS members for assistance telephonically. SAPS members have informed complainants that police vans are not available for attendances outside of police stations.
- § In the event of intoxicated complainants contacting/attending at the police station for assistance with domestic violence, SAPS members refuse to assist them on the basis that they are intoxicated. Complainants are told to return to or visit the police station when they are sober. Complainants are often subjected to further domestic violence when SAPS members have refused to assist them.
- § Women from farms and rural areas have indicated that there have been circumstances where they have been assaulted by SAPS members when calling on SAPS assistance with a domestic violence matter.
- § Dockets for criminal cases in respect of contraventions of the conditions in protection orders are not lodged with the court timeously for the hearing of the matter or are lost. This often results in complainants withdrawing the case or delays the court process.
- § Complainants with hearing disabilities sometimes experience problems in their dealings with SAPS members as they do not fully understand SAPS members responses to their queries or request for assistance with domestic violence.
- § Physically disabled complainants struggle in accessing police stations where wheelchair ramps and lifts are not available. Suitable toilet facilities are also sometimes not available.

## **Recommendations**

- § Processes for checks and balances need to be put in place and need to be exercised within the SAPS, and disciplinary steps must be taken internally and followed through in the event of SAPS members failing to comply with their duties in terms of the DVA.
  
- § SAPS members must be trained on the provisions of the DVA that they are required to comply with as well as on the impact of their failure to comply with these provisions.
  
- § SAPS members need to undergo gender consciousness training as well as training on the issues contributing to, and impact of violence against women. This will improve quality of service and service delivery as SAPS members will have a better understanding of the importance of the role that they play in implementing the provisions of the DVA.
  
- § The imminent harm provision in the DVA needs to be amended to expand on the definition of “imminent harm” and the circumstances under which SAPS members should arrest alleged perpetrators. Specific training must be provided to SAPS members on this provision.
  
- § An integrated domestic violence database accessible to SAPS members and domestic violence clerks at the courts should be created so that the status of protection orders and warrants of arrest can be accessed by SAPS members. This will enable SAPS members to track repeat domestic violence perpetrators and to act more speedily on complainants’ reports of contraventions of existing protection orders.
  
- § More SAPS members should be appointed to deal with domestic violence matters.

- § More female SAPS members need to be appointed to assist women complainants of domestic violence.
- § More police vehicles must be made available to SAPS members to facilitate attendance at complainants' homes or places outside of the police station.
- § Designated SAPS members should be allocated to deal with domestic violence matters. Complainants will be assisted more speedily, quality of service and service delivery will improve and SAPS members will become specialists in domestic violence matters.
- § SAPS members and civil society organisations should support each other and work together in relation to protecting complainants of domestic violence.
- § Police stations need to be set up in all farm and rural areas to facilitate complainants' access to SAPS services.
- § All police stations must assist all complainants irrespective of where the complainant resides specifically where the complaint is of an urgent nature.
- § Once a criminal case is opened against the perpetrator for contravening the conditions of the protection order, SAPS members need to be diligent around the handling of dockets and must ensure that the court is provided with the docket timeously for purposes of the hearing.
- § Sign language interpreters should be made available to complainants at police stations to ensure that complainants with hearing disabilities can be properly assisted.

§ All police stations should have built in ramps for physically disabled complainants using wheelchairs or alternatively, should have lifts to ensure that physically disabled complainants can access police stations with as little difficulty as possible. Suitable toilet facilities should also be available.

## 6. HEALTH AND PSYCHO-SOCIAL SERVICES

Domestic violence profoundly impacts on the physical, mental, sexual health and general well being of a survivor of domestic violence. These factors are often ignored and have manifested themselves in the lack of availability of health and psycho-social services and poor quality of the services that are available to survivors of domestic violence.

Mosaic conducted a study on the impact of domestic violence on survivors whilst offering support to the survivors during the court process. The study indicated that 63% of complainants are subjected to physical abuse, 94% of complainants are subjected to psychological abuse, 13% are subjected to sexual abuse and 99% are subjected to verbal abuse. All these forms of domestic violence directly impact on the survivor's physical, mental and sexual health.

Domestic violence results in a range of health related problems some of which are non fatal and others fatal including for example, permanent disability, pregnancy complications, sexually transmitted infections, depression and anxiety, drug and alcohol abuse, self harm or suicide, AIDS related mortality and maternal mortality.

Accordingly, the availability of health and psycho-social services and the quality of these services is imperative to give effect to the purpose of the DVA.

The following problems have been identified in respect of health and psycho-social services for survivors of domestic violence:

- § The DVA does not set out the roles and duties of the Department of Health.
- § No policy framework exists for the health sector in relation to domestic violence. A policy framework needs to be developed in terms of the DVA.
- § There is a lack of availability of public health and psycho-social services and a low quality of services being provided by existing health and psycho-social services.
- § The state has a shortage of psychiatrists and psychologists to provide the necessary psychological support to survivors.
- § Available counselling services are provided by under-qualified and inexperienced counsellors who can only deal with specific mental health issues.
- § The DVA does not provide for psycho-social support. The DVA must be amended to provide for psycho-social support for survivors of domestic violence.
- § Survivors of domestic violence who are receiving psycho-social treatment are receiving such treatment for short periods of time without considering the nature, extent and impact of the domestic violence that the survivor was subjected to.

- § Children who have been subjected to domestic violence or who have witnessed domestic violence do not receive mental health assistance from the public sector.
- § Survivors of sexual abuse within the context of a “domestic relationship” are not receiving counselling on the correlation between the violence that they have been subjected to and the sexual and reproductive problems that they experience, for example, the treatment of sexually transmitted infections, pregnancy related problems and cervical health issues etc.
- § Survivors of domestic violence are often dealt with insensitively by the relevant health and psycho-social care practitioners.
- § There is a lack of health and psycho-social support services for women on farms and rural areas. Medical treatment is only available for survivors of domestic violence on certain days of the week and ambulances are not available in emergencies. A mobile clinic visits some rural and farming areas once a month. Survivors are required to travel long distances to access health and psycho-social services outside of rural and farm areas. This is costly and results in survivors losing out on their wages or salary.
- § Where survivors from rural areas and farms do obtain psycho-social services, the psycho-social service provider often fails to understand the specific challenges that rural and farm communities face.
- § Where survivors from rural and farm communities do receive medical attention health care practitioners divulge confidential information in relation to their health to third parties in rural and farming communities.

## **Recommendations**

- § The creation of a health policy framework (prescribing department of health's duties) in terms of the DVA.
- § The appointment of more qualified state psychiatrists and psychologists and related mental health care practitioners.
- § Counsellors, not qualified as psychiatrists or psychologists) should receive additional and continuous training on counselling techniques with a view to expanding on their knowledge.
- § Complainants must receive counselling and psychiatric and psychological treatment for a period of time required in consideration of the nature, extent and impact of the domestic violence.
- § The DVA must be amended to provide for psycho-social support for survivors of domestic violence. The Department of Health and civil society organisations should work together to provide more survivors with assistance and to improve on the quality of services provided to survivors.
- § Counselling programmes must be set up to counsel survivors of sexual abuse and the consequences and impact of sexual abuse specifically.
- § Health and psycho-social care practitioners must be trained on issues relating to domestic violence and gender consciousness to improve on the services provided to survivors and specifically to ensure that survivors are dealt with sensitively.

- § The state should fund civil society organisations to provide survivors with psycho-social services to expand on psycho-social services available to survivors.
- § Thuthuzela Centres should extend their services to survivors of domestic violence.
- § Health and psycho-social services must be made available to survivors in farm and rural areas. Such health care services must be accessible 24 hours a day to provide for emergency situations.
- § Mobile clinics should visit farm and rural areas more frequently.
- § Psycho-social service providers must be trained on the challenges experienced in rural and farm communities and how these challenges exacerbate the impact of domestic violence.
- § Health practitioner and patient confidentiality must be upheld. It is therefore important that providers of health-related services should be sensitised in this regard.

## 7. SHELTERS AND HOUSING

The following problems have been identified in relation to shelters and housing for survivors of domestic violence:

- § Lack of availability of shelters and special needs housing for survivors of gender based violence in instances where they vacate the marital home or home shared with the perpetrator of domestic violence

- § Lack of availability of government housing after survivors leave shelters.
- § Lack of collaborative engagement with existing shelters and the state.
- § Insufficient government funding for shelters and housing.
- § Survivors of domestic violence do not have housing after exiting shelters. They often become destitute or return to abusive situations.
- § Shelter advocates indicate that survivors of domestic violence are prohibited from purchasing immovable property from local government if they had purchased immovable property during the course of a previous marriage or before they separated from their husbands or partners.
- § There is no congruence between the Housing Act and the DVA to advance women's access to sustainable human settlement. Shelter advocates note with great concern that their efforts to ensure safety and hope of a better future free from violence and abuse are often rendered fruitless when they approach government to assist with housing.
- § Survivors in farm and rural communities mainly reside on and work on the same property. Vacating the home results in the survivor becoming unemployed, with no recourse.
- § No or few shelters are located in farm and rural communities. Survivors are required to travel long distances to access shelters. Traveling costs are high.

- § Due to a low income and seasonal work survivors in farms and rural areas cannot afford to purchase immovable property that is considered to be “cheap”.
- § Shelter and houses provided to physically disabled survivors are not always “disability friendly” to the extent that the buildings do not have wheel-chair ramps, lifts and corridors, doors and toilets that can be accessed by wheel-chairs. The same applies for facilities that are elderly friendly.

### **Recommendations**

- § The DVA must provide for funding of shelters. Currently government subsidies (per woman per month) still vary from shelter to shelter. Shelters ought to be funded comprehensively taking into account the specialised nature of their services.
- § The DVA must stipulate that the marital status of a survivor of domestic violence must not hinder access to government resources such as access to housing.
- § The DVA must be amended to provide that perpetrators of domestic violence who share residence with the survivor be removed from the premises and placed in alternative residence such as shelters, centres etc to ensure that survivors are protected.
- § The Housing Act must recognise the varied housing needs of survivors of domestic violence. It is recommended that sheltering be incorporated into the government’s temporary / transitional housing programmes. Access to more permanent housing should be made available to women exiting shelters.

- § Increase number of shelters in farm and rural areas and support existing shelters and initiatives in rural areas.
- § Survivors of domestic violence should be prioritized on government subsidised housing allocation lists.
- § Shelters should provide more skills development programmes to train survivors so that they can obtain employment.
- § Shelter and houses provided to physically disabled and elderly survivors should be “disability friendly” to the extent that they should have wheel-chair ramps, lifts and corridors, doors and toilets that can be accessed by wheel-chairs.

## 8. THE IMPLEMENTATION OF THE DVA AND CHILDREN

The following problems have been identified in relation to the implementation of the DVA with respect to children who are survivors of domestic violence or who have witnessed domestic violence within their homes:

- § Despite the DVA’s commitment to provide protection to children, it fails in fulfilling this purpose on the basis that it does not provide mechanisms that facilitate children’s effective engagement with the legal processes relevant to domestic violence and lacks a needs-responsive approach in terms of children.
- § Key role-players like the SAPS and courts do not have guidelines on how to address domestic violence against children, particularly in respect of how children should be supported and protected from secondary-victimisation.

- § In the public sector, facilities providing services for children and adolescents suffering from the effects of domestic violence such as emotional distress, anxiety and developmental disorders, including learning disabilities are sparse, and located mostly in the major urban centres.
- § The few facilities in urban areas are usually overextended, and are unable to assist all children in need of care and support. This means that the majority of child survivors of domestic violence are disenfranchised by the system.
- § Children and adolescents in the smaller towns and in the rural areas usually do not have access to health and psycho-social services.<sup>1</sup>

### **Recommendations**

- § The principle of the “best interests of the child” must be recognised in the DVA and must be supported with provisions to guide service providers on how to apply this principle in domestic violence matters concerning children.
- § Guidelines must be developed to strengthen identification and screening of the needs of children exposed to domestic violence. In order to ensure that this is implemented such guidelines should be created in terms of the provisions of the DVA. Such guidelines should be developed for the departments of Education, Social Development, Health and Justice as well as the SAPS.

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<sup>1</sup> Benn, 2007, op Cit

- § Measures must be included in the DVA for the provision of appropriate mental health and psychosocial services by the Departments of Social Development and Health, these services must seek to address trauma experienced by child and adult survivors of domestic violence and to respond to the range of other needs of these individuals. The DVA must be amended to mandate the provision of such services through an appropriate enabling clause.
- § The development and introduction of services must prioritise areas with the greatest need, in particular rural and farm areas.
- § The SAPS, Department of Justice and Constitutional Development, Department of Education and the Department of Health must ensure a framework for funding and providing in-service training to key staff dealing with children. This training must include information on the impact of domestic violence on children as well as appropriate responses from the relevant department.<sup>2</sup>

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<sup>2</sup> These recommendations have been included in the individual submission by RAPCAN: Resources Aimed at the Prevention of Child Abuse and Neglect, Submission to the Portfolio Committee and Select Committee on Women, Youth, Children and People with Disabilities on the 11 Year Evaluation of the Domestic Violence Act No 116 of 1998, 16 October 2009

## 9. LIST OF ENDORSEMENTS

The following organisations have endorsed this submission:

Gender Advocacy Programme (GAP)

Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN)

Women on Farms Project (WFP)

Place of Hope Shelter

Saartjie Baartman Centre for Women and Children

Safe House Stellenbosch

Sisters Incorporated

St. Annes' Homes

Dusk to Dawn Shelter

Klein Begin

Care Haven

Buiten Nur

Quahnita Samie

Western Cape Network on Violence Against Women (WCNVAW) - including its

Shelter Focus Group)

The New Women's Movement