



**Women's Legal Centre
Presentation**



**on
the Challenges that Impede the
Implementation of the Domestic Violence
Act (116 of 1998) by the South African
Police Service and Judiciary**

**on
15 October 2009
by
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The Domestic Violence Act ("the Act")

∅ The Purpose of the Act:

- | "To afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby to convey that the State is committed to the elimination of domestic violence."

The Domestic Violence Act

Despite the positive purpose of the Act, and its coming into operation 11 years ago, domestic violence in South Africa continues to pose a grave threat to women with specific regard to its high occurrence rate and the gravity of the acts perpetrated against women

The Domestic Violence Act

The coming into operation of the Act 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

Implementation of the Domestic Violence Act

Enforcement of these rights have proven to be problematic for women in their dealing with state departments as they fail to fulfill their legal duties by:

- ∅ not completing duties prescribed in the Act
- ∅ not following through on procedures set out in Act

Consequences of Failure to Implement the Act

- ∅ Death or serious physical injury to complainant and/or complainant's loved ones
- ∅ Long-term psychological damage which has resulted in complainant murdering or injuring perpetrator
- ∅ Lack of respect of the rule of law
- ∅ Loss of faith in legal system
- ∅ State violations of fundamental human rights
- ∅ Perpetuation of inequality – unfair discrimination – violence against women

Basic Problems with the DVA

∅ Under-resourced:

- | The DVA increased the expectations of the police, prosecutors, and courts without allocating additional resources
- | Over-burdened police and courts

Implementation of the Act by the South African Police Service

- ∅ SAPS members fail to serve or delay in serving interim protection orders and notices to appear on alleged perpetrators
- ∅ SAPS members fail to advise complainants of the right to lay a criminal charge in addition to obtaining a protection order
- ∅ SAPS members fail to arrest alleged perpetrators where complainants report “imminent harm” and are in possession of a protection order but not in possession of a warrant of arrest. SAPS members 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 and fail to understand the potential consequences of failing to arrest the alleged perpetrator.

Implementation of the Act by the SAPS

What steps should be taken to ensure SAPS implementation of the Act?

- ∅ Checks and balances need to be exercised in that disciplinary steps must be taken internally and followed Through
- ∅ SAPS members must be trained on the provisions of the Act that they need to comply with and need to understand the consequences of their actions in addition to receiving gender consciousness and human rights training focusing on violence against women
- ∅ Complaints against SAPS members must be made with the ICD

Implementation of the Act by the Judiciary

§ Court should identify SAPS members who need to attend to specific duties such as the service of interim protection orders, which but for the performance of these duties, the court reasonably believes that the complainant will suffer harm. Failure to comply with these duties should lead to personal liability. Fulfillment of duties and service delivery is likely to improve

Implementation of the Act by the Judiciary

- Ø On the return date, complainant's should be given the opportunity to appoint a legal representative or the court should arrange the appointment of a legal aid attorney where the complainant cannot afford attorneys fees in circumstances where the alleged perpetrator has employed the services of a legal representative
- Ø This will afford the complainant complainant the opportunity to put a proper case before the court

Implementation of the Act by the Judiciary

- Ø 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 repeat the questions, put to the complainant by the alleged perpetrator or his legal representative, to the complainant

Implementation of the Act by the Judiciary

- Ø Magistrates should have the power to subpoena witnesses on the return date in order to properly assess the complainants case

Implementation of the Act by the Judiciary

- ∅ The Court must advise the complainant of the right to lay a criminal charge against the alleged perpetrator and fully explain the difference between the Act's civil law orientated purpose and a criminal charge, where a corresponding criminal offence exists in law

Implementation of the Act by the Judiciary

- ∅ Complainants are often not assisted by domestic violence clerks on the day of attendance at the court for purposes of obtaining a protection order as the clerks only attend to complainants before a certain time of the day as the remainder of the day is set aside for the issuing of orders by a Magistrate. Complainants are also often not advised of the fact that protection orders can be obtained after ordinary court hours where the order is required urgently
- ∅ Additional clerks and Magistrates are required