



Tshwaranang Legal Advocacy Centre, the Heinrich Böll Foundation and the Community Law Centre
Parliamentary Programme

Seminar

The Right and the Real: A Shadow Report Analysing Selected Government Departments' Implementation
of the 1998 Domestic Violence Act and the 2007 Sexual Offences Act.

19 May 2011

Heinrich Böll Foundation

The Avalon Building 123 Hope Street, Gardens, Cape Town



This workshop was supported by funding from the European Union

The Right and the Real: A Shadow Report Analysing Selected Government Departments' Implementation of the 1998 Domestic Violence Act and the 2007 Sexual Offences Act.

1. Towards the effective implementation of the DVA and the SOA: Introduction

On May 16th 2011, the Tshwaranang Legal Advocacy Centre (TLAC), in partnership with Heinrich Böll Foundation (HBF) and the Parliamentary Programme of the Community Law Centre, UWC hosted a seminar to present the findings of the research conducted by the Tshwaranang Legal Advocacy Centre, with the support of the Heinrich Böll Foundation. The research conducted by Lisa Vetten examines the progress made by five government departments in implementing the Domestic Violence Act and the Sexual Offences Act. The research report gives a comprehensive overview of key thematic areas in the implementation of the two Acts, by the Departments of Justice and Constitution Development, Police, Health, Social Development and Correctional Services. The report looks at the departments' annual reports, budgets, and strategic plans.

The research findings attest to the pertinent role of Portfolio Committees in exercising oversight on the departments. One of the key features of the research report, highlights the potential for civil society to work with Portfolio Committees, to hold departments accountable to the progressive implementation of the two pieces of legislation, therefore ensuring compliance with the provisions of the two acts.

The seminar explored the targeted departments' implementation progress to date, ways in which Parliament's oversight role can be further strengthened and most importantly, how civil society organisations can hold government to account on their constitutional obligations to respect, protect and promote the rights of women in this regard.

2. Participation

Attendance at the seminar included Members of Parliament's Research Unit, representatives from Portfolio Committee on Correctional Services, and a representative from the Department of Health. A number of representatives of civil society organisations were also in attendance. These were: Women on Farms (WFP), Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN), Sisters Incorporated, National Institute for Crime Prevention and Rehabilitation of Offenders (NICRO), UCT Children's Institute (CI), Rape Crisis Cape Town Trust, Women's Legal Centre, Commission for Gender Equality, Saartjie Baartman Centre, Rural Education Advocacy and Community Health (REACH). In addition to the Heinrich Boll Foundation, another funder organisation in attendance was Oxfam Canada.

3. Introduction and Welcome

Keren Ben-Zeev of the Heinrich Boll Foundation, welcomed participants and introduced the seminar, she thanked the Tshwaranang Legal Advocacy Centre for undertaking the research in partnership with Heinrich Boll. Further she thanked the CLC for co-hosting this workshop.

4. Department focused Presentations

The following sets out a detailed sequential summary of the presentations made by Lisa Vetten and discussions that resulted.

The seminar presentations were divided into three according to the key departments under review. Part one focused on the findings from the South African Police Service, Part two discussed the Department of Justice and Constitutional Development, including the National Prosecuting Authority and part three provided insight into the current practices by departments of Social Development and Health. The subsequent paragraphs of this report summarises some of the key points of discussion.

For detailed findings please refer to Ms Lisa Vetten's presentation. The full power point presentation will be forwarded to delegates in due course.

4.1. SAPS

Key points arising out of the presentation regarding the SAPS

- The SAPS have repeatedly articulated that addressing violence against women is a priority since 1996.
- The SAPS are mandated by the legislation and the national instructions, that they are required to submit reports to parliament every six months and to report misconduct to the ICD.
- The ICD are mandated to monitor compliance with aspects of the DVA and SAPS National instructions, receive and follow up on complaints.
- ICD visits to police stations to monitor compliance show a very low rate of compliance.
- Where the ICD to investigate and make recommendations, these are not followed up on by the police.
- The SAPS have only submitted 3 out of a possible 20 reports to parliament regarding the DVA and none regarding the SOA.
- Training on both Acts has been inadequate and no budget has been allocated to this.
- The SAPS have a number of other activities related to implementing the SOA and DVA.
- Research tracking reporting at different police stations shows alarming and dramatic fluctuations in the numbers of reported cases. These fluctuations cannot be explained in rises and dropping in sexual offence rates in those areas. Other factors are affecting these. Targets to drop the reporting of serious and violent crime have created perverse incentives which result in cases being refused or charged as other less serious crimes.

Discussion relating to the responsibilities of the SAPS

Access to Justice

Issues of access to justice and what this means were raised.

Vetten explained that the current practice in terms of measuring access to justice was through decreasing crimes and through performance indicators. She asserted that measuring access to justice from the police's point of view entails the police lumping together detection rates, victims withdrawals, declaring the case unfounded and withdrawal of cases. However from a victims' point of view this is difficult as it is possible that the police could decide that the victim is telling lies, therefore they could withdraw a case because they think it is unfounded.

She asserted that with these possibilities, one would have to move measurement to something that is victim centred, that looks at victims access to justice and shifts away from being defined. The indicators around

justice are system centred and tell very little about how victims experience the system, and how far they are getting in the system. Related to this is the possibility of the police inflating conviction rates. In addition to this it is hard to get a sense of how the police measure conviction, because how the police measure conviction, is completely different from what the department of Justice measures convictions. Vetten concluded that the question of how to measure access to justice is not well done, by either the police or the department of Justice.

Methods used by Police

Following the question of measuring access to justice by the police, a question arose as to formula or method used by the police to reduce statistics, the standards the police employ and whether these are scientific.

Vetten explained that she did not think there was scientific way to reduce the number of rape and domestic violence cases every day. Asserting that this approach is a mistake, she stated that reducing statistics was a long term endeavour, and not something that the department can get right in one year.

She further explained that the way the Police prevent the rise in cases is to look for serial rapists and arrest these, which is also important, in addition they do not release men on bail, so they can go out and rape yet again. She asserted that they can also prevent by properly implementing law, "so that you can have arrests, so that you have convictions, so that you can have an effective criminal justice system, that acts as a deterrent."

She asserted that these are areas where the police should be putting their energy. Since the police cannot actually prevent cases and given the extent of under reporting," their strategy should be to increase reporting, that should be their policy goal." She recommended that this would be a key point for Parliament to push.

Effective implementation of legislation

The question of ensuring effective implementation by departments was raised, for instance in the case of the protection from harassment bill.

Vetten explained that her recommendation was that parliament should create a parliamentary roster which schedules reports by departments, parliament to set criteria as to how this is to be done, in addition to establish guidelines which give precise direction with regards to what reports should cover and what the content of reports should entail. These could include concrete information around how many police officers were trained, the legal obligations of departments, timeframes for delivery and so forth.

Another recommendation from Vetten is that Parliament should have public hearings around the annual reports where you invite submission from civil society organisations to tell you what they have experienced.

Meaningful categories for SAPS to track realistically

In light of the research findings around counting prevention, a question was raised as to Vetten's recommendation with regards to categories that SAPS could track progress realistically

Vetten explained that when measuring police performance, it is a must to measure what police do. Therefore the following are categories that could be tracked:

- Accepting of Reports
 - Although at times this can be influenced by police officers discretion as to the likelihood of arrests in certain cases, the accepting of reports, is an important category.
- Arrests of perpetrators
- Reporting on how many cases are declared unfounded,
- How many arrests are made
- How many cases the police withdraw,
- The basis on which the police withdraw cases, as this should largely be a court decision,
- Disaggregated Data
 - Pointing to political will, it was recommended that police start disaggregating data by adult and by child cases, to highlight the “ differential” treatment of child and adult victims.
- Withdrawals and Unfounded cases

Policy problems as result of political will or lack of capacity

A question around the kinds of problems emanating from the research findings, with regards to which result from lack of political will and those resulting from a lack of capacity.

Vetten explained that in terms of political will there seems to be much rhetorical commitment but not much in terms of operation. She expressed concern over the national budgets and how these do not reflect priority to matters that predominantly and disproportionately affect women, raising questions of how women as tax payers benefit from their taxes.

She made an example of the Child Justice Act and noted that there seems to be more will to implement that, Vetten explained that she was not sure if it was due to the individuals dealing with child justice and those dealing with sexual offences. She highlighted that in terms of political will it could seem as if child justice is somewhat more important, when looking at the amount of space the department devoted to it in the annual reports and the amount of thinking that goes into it, which differs from reports on sexual offences.

Vetten asserted that problems might be as a result of both political will and capacity. Since capacity follows from will. In the same manner as budgets are a result of political will, where someone makes choices as to what to prioritise.

The role of the ICD

A question was raised around the role of the ICD, in light of the new legislation, where some cases are said to be removed from the ICD to the Secretariat. Clarity was sought as to whether the ICD would only investigate acts perpetrated by members of the police. A recommendation was sought as in relation to DVA matters, whether SAPS have a unit that only deals with DVA matters.

Vetten asserted that Parliament pushes the relevant departments to develop and gazette for comments and engage around regulations in this area.

She stated that, although she had not seen the last version of the bill, she was aware of the fact that the IPID bill does away with reporting to the ICD. However there is no guidance as to how reporting will work in light of this provision.

She stated that this raised a number of issues one of which, entails looking at opening up to public scrutiny cases where a case involves a member of the public. Although these cases would involve issues around labour proceedings between employer and employee, cases could not be treated as mere internal disciplinary matters, since the transgression occurred in relation to a member of the public, the public would have an interest in those proceedings. She explained that this might require change to the SAPS Act.

Scepticism about change in light of conservatism among SAPS officials

A concern was raised by a participant around the high levels of conservatism experienced in interactions with SAPS members.

Agreeing that conservatism is an enormous problem, in terms of negative stereotypes and attitudes towards issues of gender, seen as in police attitudes around the reasons women seek protection orders, Vetten stated this problem can only be tackled with training.

She stressed that legislation needs to be in place to ensure that if police have attitudes they cannot be allowed to exercise these at work and ensure that legislation is enforceable.

She asserted that there is a need for a policing strategy for domestic violence, because it is not like rape, most of it is never going to result in a criminal charge, in addition not all women want to pursue resolution through the courts, does that mean they get no protection. She stated that there is a need to think broadly around policing domestic violence.

South Africa lacking a coordinated response and strategy challenges and prospects

A lack of a coordinated response by departments was raised as a concern in relation to progress towards resolving the issues going forward.

Vetten explained that there seems to be no coordinated national strategy with regards to prevention, therefore it was difficult to know what works. She stated that the issue is a subject of a much bigger discussion, however it does not seem to be going anywhere very focused.

Station audits and compliance

A participant explained that the current practice and procedure for station audits and compliance has been developed and implemented for a good period and is reportedly working. There is concern over the new bill and how in criminal cases against police officials, monitoring functions might be taken away, which might affect progress in this area.

Authority responsible for police training on DVA and SOA

A question was raised as to who the responsible authority is, charged with the responsibility for ensuring that Police officials are adequately trained to implement the DVA and the SOA, in particular.

Vetten explained that in reading recent minutes, there clearly is a problem with police training generally, therefore many of the problems mentioned are not just specific to these particular pieces of legislation, they are in the context of a dysfunctional system generally. Vetten stated that this is challenging as it is hard to fix up one aspect of a dysfunctional system, when the entire system is not working well.

In addition she highlighted the fact that there is no consistent assessment criteria or competency testing of police once they have completed the training to check if they actually are competent. She recommended training to have a built in assessment criteria.

Structure versus content

She stated that this raises questions of whether all police officers should be implementing these legislation or have a specialised approach.

While there are pro and cons, to both approaches, Vetten cautioned against what she calls a common mistake in terms of policy and law, where form and structure is prioritised over content and substance. This has resulted in a mistaken view that once a structure is set up, something is being done about the problem. Asserting that structure should follow content, She recommended a shift from counting and creating structures and focus on content and substance, which is more challenging.

4.2. Department of Justice and Constitutional Development and the National Prosecuting Authority.

Key points from presentation relating to Department of Justice and Constitutional Development and the National Prosecuting Authority.

- Noted a shift in language from gender equality to vulnerability
- The Department have been slow in fulfilling obligations under the DVA
- Reports give little information regarding training on the DVA and SOA
- Budgets are weak, including public communication but little else
- Lack of performance measures
- No priority projects contribute to gender equity.
- The NPA have no objectives regarding DVA
- SOA Directives have been developed but not gazetted, nor implementation and training report to parliament.
- Emphasis is on the development of Thuthuzela care centres above other measures.
- Funding comes from donor's not from National budget.
- Tend to prioritise services to children.
- Sexual offences courts are closing down, there is a significant drop in their number.

Discussion on the DoJ and NPA

Departments' response to findings and plans to address challenges

A concern was raised as to whether departments recognised these challenges as recognised problems to be addressed.

Vetten explained that the Department of Justice and Constitutional development has established Justice Footprint some years ago, which was meant to streamline procedures and integrate all these systems and start standardising practice. She stated that this has not been implemented as there are no resources to fund this operation, in light of all other challenges faced by some courts still not computerised. Therefore there is a plan but it is taking a long time.

Thuthuzela Care Centres (TCCs)

Responding to a question around the Thuthuzela Care Centres, Vetten explained that her study received a lot of information through their access to information applications on the TCC, however due to the wealth of information received decided to use some of the data and possibly consider the data as part of a separate study. She reported that USAID commissioned research in to the TCCs. Some of the findings point to the fact that not all Centres were blueprint compliant. Although funds were spent developing a complex and sophisticated system with indicators, there has been no report as to how the extent to which the TCCs were meeting these indicators she mentioned various challenges with accessing information on the TCCs.

In addition it was reported that, some of the problems that got in the way of the functioning of the TCCs included issues of buy in from the Health department, where a prosecuting authority had set up a service in a health facility, which required health budgets, funding and health personnel.

TCC are reported to be functioning between normal business hours, which posed a problem with regards to those needing to access specialised services during weekends and or at night, would not be able to, especially since many rape incidents take place at night and some over weekends.

Other difficulties included the fact that within the departments of health some sexual offences fall under maternal, child and women's health directorate and some fall under medico - legal and clinical units. The two have focused areas of specialisations and therefore approaches, which have been reported as causing some difficulty.

Restorative Justice

A question from the floor enquired as to the use of restorative justice, in either domestic violence or sexual offences cases and whether there is space for such in domestic violence cases.

Vetten explained that departments do talk about restorative justice as separate and an alternative tool to alternative dispute resolution (ADR), they are creating a distinction between the two. She stated that there could be space for restorative justice however the department need to say what they are doing and open it up to public scrutiny for comment on its appropriateness. She stated that while there might be space to use these, some complainants might be pressured into accepting plea bargains under coercive circumstances, therefore she recommends that debate, discussion and guidance has to be had as to how to apply restorative justice, as at times it can be appropriate while at times, not.

Prioritising children over women

A concern from the floor raised the issue of the distinction made between adult women victims and child victims, in relation to a seemingly "differential" services delivered and/or treatment by members of the South African Police Services (SAPS).

Vetten explained that the department of Justice does not keep data on child victims, but on child perpetrators, making it hard to understand what is going on with child victims and courts. Data is available from the NPA, which is for use of the TCCs. It was reported that there were about ten thousand more rapes reported by adults than children, there should be a breakdown of those user services, to resemble the numbers. The fact that this is not the case, raises questions around equal access. Although younger children need specially trained professionals in areas such as children's cognitive development, which is not an argument against specialised services for children. Vetten asserted that the lack of correlating data between statistics collected by the police which does not resemble official statistics, might be pointing to women not

making it beyond the police station, where it has been reported that in cases involving children, detectives had been reported to taking children to hospitals, while in cases involving adult women, these were given the J88 form to complete and make their way to the hospital or were dropped off at hospitals without further assistance from the police.

She asserted that the figures either reflect a lot of loss of adult women cases at the health care facility stage or they are reflective of the police deciding to rather take a child to the hospital and let the adult make their own means to access the hospital.

This differential treatment was reported as most evident in cases involving adolescent girls.

4.3. Departments of Social Development and Health

Summary of presentation relating to the departments of Social Development and Health

- The DSD has no formal role in the SOA
- It is not obligated in legislation to provide shelter or any other services
- The DoH has no legislated obligations under the DVA
- The DoH has not provided reports on training and implementation to parliament under the SOA to date.
- Directives are late and there have been problems with the designation of facilities.
- Training health service providers is inadequate and different standards apply in different provinces.

Discussion relating to Social Development and Health

Shelters and the commitment to the MDGs

A participant explained that there is no legislation around shelters. She enquired as to whose obligation it is to provide shelters. She enquired as to since according to the MDGs, shelters were to be up and running by 2015, who is holding who accountable to ensure that this happens and who is supposed to have these shelters up and running.

Vetten explained that in terms of the MDGs, Government signed the MDGs therefore government is responsible for meeting those targets. The way they meet their commitment is that they provide funding to CSOs to provide services and to implement shelters for women.

Contradictory aspects of the DVA, Sexual Offences, Termination of Pregnancy, and Children's Acts

A concern was raised with regards to issues that affect compliance, and whether the seemingly contradictory aspects of the provisions of different legislations were considered to a factor that affects implementation.

A participant reported that RAPCAN and the Teddy Bear Clinic launched a Constitutional court Challenge to deal with certain aspects of the provisions in the sexual offences act.

Vetten explained that the legal aspect of the research encompasses the laws, the content of the laws, the extent to which the laws are implemented, what the courts do and what the police do, all that would be the legal dimension of accountability, so the legal incorporates all these.

In addition to legal measures to get departments to do what they are supposed to, there needs to be a strong political force that is able to engage politically, in any society these things will only happen and when they change it is a reflection of the strength of the people who are pushing for change.

Current practice with regards to content of Training on DVA and SOA

There was a concern enquiring as to while the research implies that there has been no training of officials on the sexual offences act, there has been training taking place, where the maternal, child and women's health was reported to have introduced training that looked at survivors of sexual assaults, some aspect of this training manual was reportedly used by clinical forensic medicine unit to train doctors and nurses, this has led to some confusions around the content of training.

Vetten explained that the Department of Health had an idea to roll out training programme that was developed by the MRC, which did not take place except in the Free State. She recommended that training be tabled and made available publicly so as to be subjected to scrutiny and potential improvement of content, and deal with issues of what is meant by training, whose content is being used, and the methodologies employed.

A similar process was reported, where the population council, one of the development partners, took aspects of PEP training and trained nurses, this training was tabled.

Disaggregated data according to the rural urban divide

A participant from the floor requested the research could look into data that is disaggregated along the rural urban divide. To reflect the dynamics of power and power imbalance with regards to access, where medical services cannot reach women who work and live on farms as farms are private property, whether there is a case to be made or not depends on the discretion of the farm owner or factory owner.

Therefore in addition to holding government to account, there needs to be a reflection of the role of business and the private sector.

4.4. General Recommendations and Discussion

Summary of presentation

- Vetten noted that one of the obstacles for parliament was the time available for oversight, in competition with other responsibilities and breaks such as the world cup, local elections etc.
- Use the Money Bills Act to allow committees to engage more critically in departmental budgets for implementation. Committees should hold public hearings on these budgets. In addition full reporting on donor funding to parliament is necessary.
- Committees should play a strong role to assess departmental strategic plans etc.
- Budget votes should be examined against a list of legislated obligations.
- Committees need to schedule meetings with departments along the timeframes set in legislation.
- Legislative obligations should be part of performance indicators for departments.
- More critical engagement with statistics is needed.
- Committees should call on departments to account for their current failure to meet obligations.
- A diverse range of NGOs must be engaged in these processes.

Discussion on general issues and recommendations

- The Portfolio Committee on Corrections, had a “people’s budget process” where a small group of organisations underwent the department’s budgeting process. This could be taken up and be replicated across other Portfolio Committees.
- There is a need to emphasise joint accountability by clusters.
- Although the Department of Correctional Services is seen as playing an ancillary role, there are emerging issues and research on sexual offences in police custody and rape in prisons.
- There is a need, through training, to influence the mindset of civil servants and their approach to impact as opposed to merely implementing provisions of legislations and performance indicators.
- A recommendation was raised that Civil society push government to take up the nurturing of values as a state function.
- A request for data to be used by CSOs to use in arguments with Parliament and government was made
- A recommendation was made for Shelters keeping record of the number of women they turn away daily as a way to keep statistics.
- A further concern was raised around the training of the Police on the DVA is needed.
- The Gender Equality Bill civil society process in Cape Town:
 - Women on Farms and sister organisations held a workshop on this Draft Bill. Some CSOs held that it was worthwhile to engage with the Draft Bill, some held the effort and investment of resources into holding departments accountable might not be the best use of energy and resources.
 - The workshop agreed that CSO work together collective issues, a coordinatoing group will be taking the issues forward post the workshop.
- Matters arising in relation to the department of Health
 - There is need for capacity development for the department of health to develop a health sector response to domestic violence and sexual offences or maybe broadly to gender based violence.
 - The lack of documenting and minimal reporting does not do justice to the good work done by departments.
 - There needs to be greater cooperation between and across programmes within the department to pull resources, to have a comprehensive approach, to eliminate completion, to ensure impact and increase accountability and locating of responsibility.
- Training: the need for more scrutiny on content of training and follow up. Caution no to treat training as the panacea since training still fails due to circumstances, selections, management, and performance management related issues.
- Statistics: there is a need to obtain the right statistics, and explore whether the right questions are being asked.
- The opportunity to use the money Act process, to pursue similar budget processes conducted by PC on Corrections in terms of holding public hearings on budgets.
- Issues of CSO engaging in oversight, research conducted by the CLC on participation of Civil society organisations in Parliament shows an emphasis on the legislative process and little engagement in oversight. We must explore opportunities to increase the space in the parliamentary agenda, engage on oversight, and to sustain such efforts.

5. Concluding Comments: Suggestions for follow up actions

A number of concluding comments were put forward by Ms Vetten.

- There is a need to look at what is happening with the Maintenance Act, talking about rural women, what has happened to the recognition of customary marriages, because all these legislation has implications
 - One could look in particular at what the department of health is doing on access to PEP and compulsory testing so there are layers and layers, of which to look at oversight,
 - This could become an ongoing project if people think this is a useful approach, also at this point we are thinking is there a way, we have done our analysis, but it would also be useful to see if people find this useful, to be a part and participate in the next set of report.
 - This could bring in another dimension which look at how, as service users implement, and how they experience implementation, because this is only looking at government documentation, it would very useful to start looking at how, we pull in civil society, information, how do we contribute as civil society..
 - Organisations are welcome to use the report once printed in any way organisations find useful.
 - There might be a way to get the Provincial legislatures to play a bigger role, by using Legislatures' video conferencing facilities, more people could participate in processes in their own provinces, by going to their Provincial legislatures and engage via video conferencing facilities. This could assist in cutting costs around flights and accommodation, in addition this might bring in a greater diversity to the process.
 - While recognising that not all government officials are lazy, there might be a need to understand better, the kinds of issues within government that changes people and stops them from acting.
 - In addition to points made, non implementation is also affected by a mental shift in departments. Attributed to an increasing worldwide trend of corporatising government and bureaucracy, this is seen in department's performance indicators, language and reference to customers, shoppers and clients as opposed to citizens with rights to claim.
 - The process begun by Tshwaranang through this research is an ongoing and open ended process, since it does not stop with passing the law and policy, therefore efforts need to be sustained.
-