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Strategic Report on Public Hearings on Implementation of Domestic Violence Act for Portfolio Committee on Women, Youth, Children and Persons with Disabilities

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1. INTRODUCTION

Parliament being comprised of elected representatives of the people of South Africa, takes cognisance of the role of the public in participating and being involved in processes of Parliament and aims to represent and act as a voice of the people. The former Speaker of the National Assembly, the Honourable Mahlangu-Nkabinde, stated that public participation is not only a must because of our constitutional imperatives, but it is also a democratic process that recognises and affirms human dignity. As such, Parliament's initiatives such as Taking Parliament to the People, the People's Assembly, the Women's Parliament and the Youth Parliament are indicative of this as these are opportunities to enhance public participation.¹ Parliament's role as the legislator is not only to pass legislation but to ensure oversight of laws that have come into force. The Domestic Violence Act (No. 116 of 1998) was one of the first pieces of legislation that was developed since the advent of democracy in South Africa and is the primary legislative measure to combat domestic violence in South Africa. However, eleven years since the Domestic Violence Act came into effect the levels of inter-personal violence in the country remain unacceptably high. Given the legislative and policy framework for mitigating domestic violence, along with the services and programmes rendered, it would be important to establish how the Domestic Violence Act has impacted on people affected by domestic violence.

2. RATIONALE FOR HOSTING PUBLIC HEARINGS

The Portfolio Committee on Women, Youth, Children and Persons with Disabilities has embarked on a themed approach per year as a structured means of conducting oversight. Violence was identified as the thematic area for 2009 and as such, a public participation initiative was an opportune way for engaging with the subject matter after intense deliberation with the Executive. It must be noted that the Domestic Violence Act is seen as one of the avenues for understanding key concerns of violence perpetrated against women, children, youth and persons with disabilities. Furthermore, no law acts in isolation and thus an investigation into the implementation of one piece of legislation will invariably highlight the inter-relation of laws and the systemic issues which are cross cutting. Hence it is within the context of violence in South Africa that the Committee is interested in hearing what the impact of the Domestic Violence Act has been in mitigating the scourge of violence. The public hearing provides a space to voice concerns and best practices.

3. AIM

On the 9th September 2009, the Portfolio Committee on Women, Youth, Children and Persons with Disabilities adopted a resolution to host public hearings on the Domestic Violence Act. The aim of the

¹ Parliament of South Africa (2009) Hon. Mahlangu-Nkabinde, Debate of the State of the Nation Address by the Speaker of the National Assembly



public hearings was to ascertain what the impact of the legislation has been on persons affected by violence and abuse, particularly women, children, youth, persons with disabilities, men and the elderly eleven years since the implementation of the Domestic Violence Act.

4. OBJECTIVES

The objectives of the public hearings were to:

- Investigate the incidence of human rights violations with respect to violence and abuse that is perpetrated against, but not limited to, women, children, youth and persons with disabilities;
- Establish whether the Domestic Violence Act has been effectively implemented;
- Identify key challenges with respect to the implementation of the Domestic Violence Act;
- Understand shortcomings in Government's response to domestic violence;
- Identify best practice models that can be up-scaled to mitigate domestic violence;
- Make findings and recommendations – identify short, medium and long-term solutions and action required by Parliament and the Executive.

5. KEY ISSUES IDENTIFIED IN SUBMISSIONS

5.1 GENERAL

The following issues emerged at the public hearings conducted on the Domestic Violence Act, eleven years since its implementation.

- Gender-based violence disproportionately affects women and children. Notwithstanding this, the Committee acknowledges that based on the submissions received, persons with disabilities and women and children living on farms, rural areas and impoverished environments are particularly vulnerable to domestic violence.
- The patriarchal attitudes and differential power dynamics are at the heart of domestic violence.
- Many victims of domestic violence do not know that their rights were violated and struggled to access the appropriate support services.

All concerns that were identified at the hearings have been listed under a specific Government Cluster as it relates to a specific Department with suggested questions for consideration by Members. The following key issues that emerged were cross cutting and related to all Departments responsible for the implementation of the Domestic Violence Act.

Lack of co-ordination

- Overall poor co-ordination of violence prevention sector with a skewed emphasis on a criminal justice measures.
- A lack of an overarching framework and implementation strategy to deal with domestic violence holistically.



- There is confusion as to which Departments leads the implementation of the Domestic Violence Act.
- Referral between Departments is haphazard and follow-up is poor.

Resourcing

- Inadequate resources to combat the scourge of domestic violence. Current budgets are not gender responsive or done from a children's rights perspective nor take into consideration the needs of youth and persons with disabilities. This brings into question how women, children, youth and persons with disabilities are prioritised in departmental spending.

Lack of reliable data

- Lack of credible administrative data and related indicators to effectively monitor and evaluate whether Government's existing programmes are addressing the needs of victims and perpetrators of domestic violence.
- Statistics to effectively monitor and evaluate domestic violence trends are not disaggregated nor reported on timeously.
- Existing information systems between Departments on domestic violence is not compatible.
- There is a lack of an integrated information system to track trends in domestic violence and determine whether the targets set for reducing the incidence and rendering the required programmes in a holistic manner is being achieved.

Faith-based sector

- The Faith Based Sector was identified as a key role player in providing support and assistance to victims of domestic violence as religious leaders are often contacted initially for advice. However, the concerns raised at the public hearings were that religious leaders did not always provide the help victims sought and at times subjecting the victim to secondary abuse.
- The faith based sector has a significant role to play in rendering support to victims of domestic violence. However, reports of concern were raised by women in that they often do not receive the appropriate support they require when requesting assistance from religious leaders.

5.2 PEACE AND SECURITY CLUSTER

5.2.1 Department of Police

Non-compliance

- Non-compliance of Domestic Violence Act.
- Numerous concerns arose regarding protection orders as it relates to ensuring the safety of persons requesting protection orders, the reluctance and often refusal of police officers to serve the order, or to arrest the perpetrator who has violated the protection order.
- Numerous incidents were reported citing appalling attitude of police officials and subjecting victims to secondary abuse.

Protection orders

- Protection orders do not serve the purpose it is intended for.



- The cost implications for serving a protection order are not applied uniformly across the country.
- The undue delay in serving a protection order to an assailant places the victim in grave danger.

Training

- There was lack of training of SAPS officials to deal with victims of domestic violence. *Attitude*
- The monitoring and evaluation of whether officials require training, at what level, as well as if officials are implementing what they know, require serious attention.
- Once-off training is inadequate to ensure officials are equipped to deal with matters related to domestic violence.

Specialised units

- The call for the re-establishment of specialised units such as the Child Protection Units and sexual offences units were welcome but more clarity was sought as to when and how this would be implemented. What progress has been made with respect to the re-introduction of specialised units such as the Child Protection Unit? What provisions have been made to ensure that these units are adequately resourced?
- Not all police stations have trauma centres and as such victims often have to provide statements in an environment that is not conducive.

Lack of resources

- Unavailability of police – stating that victims are too far and they have no vehicles available (particularly in rural areas).
- The behaviour of police officials dealing with victims of domestic violence were reported as being demeaning & discriminatory in many instances. Police officials discouraged women from taking action – police officers often do not inform victims about accessing a protection order or laying a criminal offence – in the case of farm-worker women, police say that “they are drunk farm women” and do not attend to their cases.

Record-keeping

- Domestic violence should be recognised as a reportable category of crime. It was reported that there appears to be a disincentive by police officers to record incidents of domestic violence, abuse and or rape as this would negatively affect their overall performance rating. Hence, incidents of rape are often reported as a common assault or turned away with the same being applied to abuse cases.
- Domestic violence registers are not maintained in the manner that is required.
- Risk assessment needs to be prioritised - is victim safety a priority, especially when people are told to come back tomorrow – will these women come back?
- Firearms to be confiscated when used in threats and licence to be suspended – does this happen?
- Failure to investigate telephonic complaints – reason often = lack of vehicles



Victim Empowerment Programme

- Lack of privacy at many police stations due to absence of trauma rooms or Thuthuzela Centres.
- Lay counsellors assigned to trauma rooms are ill equipped to deal with counselling needs of victims of domestic violence. The training of these volunteer counsellors are not monitored and or evaluated. Inadequate supervision of volunteers. High turnover of volunteers.
- Lack of interdepartmental collaboration between all role players.

Community Police Forums

- Community Police Forums do not appear to be dealing with domestic violence. These forums were seen as often being politicised and their effectiveness varied across the country. Does Community Policing Forum provide any assistance w.r.t. DV cases?

5.2.2 Department of Justice and Constitutional Development

Accessibility

- Accessibility of criminal justice system for persons with disabilities remains problematic. An example cited was that localised sign language is not being used within courts, making communication and interpretation difficult.
- Improvement in accessibility of courts and police – operating hours – not available after hours (access and loss of wages in particular for farm women, shift workers and casual employees)
- Victims of domestic violence are subjected to secondary victimization within the judicial process.
- Many court officials are ill-equipped in dealing with matters related to domestic violence.
- Availability of magistrates after hours is problematic. }

Secondary victimisation

- Victims of domestic violence subject to secondary trauma on account of attitudes of court officials and undue delay in court processes.
- Victims experience secondary victimisation – perpetuated by “notice to show cause”
- How can privacy of DV hearings be ensured – parents, children families are affected – it is a private matter but not dealt with as such as courts are more often than not open to anyone.

Specialisation

- Lack of a child centred approach in matters related to court processes and children as victims of domestic violence e.g. postponement of cases, long waiting periods, attitude of court officials.
- Risk assessment needs to be prioritised - is victim safety a priority, especially when people are told to come back tomorrow – will these women come back?

Co-ordination

- Domestic violence interconnected to divorce and maintenance matters. Thus many cases are combination of criminal and civil matters. However, based on the submissions, many of the victims of domestic violence reported having to engage with the judicial system at multiple



points which is costly, confusing and inefficient at most. The case of an individual is thus not dealt with holistically leaving the onus on the victim.

5.3 SOCIAL SERVICES CLUSTER

5.3.1 Department of Social Development

Psycho-social support

- The current provision of psycho-social services to victims of domestic violence by Government is inadequate. Most victims receive support from non-governmental organizations that are battling financially to survive and render a service.
- Government psycho-social interventions are rendered from a purely bio-medical perspective as opposed to a developmental, community based approach that includes psycho-social rehabilitation. Where medical intervention is provided it is acute at the onset with little or no follow through for the victim after a J88 form has been completed.
- There appears to be inadequate measures in place to ensure the overall safety of children and the need for after-care (i.e. care for child after incidence of DV) – what mechanisms are in place?

Shelters

- Shortage of shelters for women in rural areas – how many shelters are in rural areas, what plans if any are in place to address to the shortfall?
- No policy exists for women who are exiting shelters, to access housing.

Poor co-ordination

- Lack of synergy between the different programmes within the Department of Social Development. As such a victim of domestic violence is often not assessed for social security benefits.

Social security

- Persons with severe mental illness struggle to access disability grants – what measures are in place to ensure that the South African Social Security Agency is accessible?

Psycho-social services

- Family intervention response to victims of domestic violence is inadequate.
- Services are not reaching children – social workers and community workers do not visit children in their homes – children have to go to their offices.

VEP

- The Victim Empowerment Programme has failed many victims of domestic violence.
- VEP is inadequately resourced.
- Lack of guidelines for the Victim Empowerment Programme (VEP) severely impedes of service delivery.
- Lack of support groups for victims of domestic violence.



Lack of human resources

- The high case load of social workers has a direct bearing on whether a victim will indeed access a service. There appears to be an over-reliance on social workers and a lack of a multi-disciplinary team to address domestic violence. Besides social workers what other cadres of professionals are employed as part of a multi-disciplinary team to deal with domestic violence in terms of rendering psycho-social interventions?

5.3.2 Department of Health

- Forensic specialists are scarce resource directly impacting on the ability to render services for victims of domestic violence.
- Poor follow-up of victims of domestic violence after presenting to a health facility.
- Health care professionals have been reported to subject victims of domestic violence to secondary abuse and not held accountable for this.
- Community-based rehabilitation is not reaching victims of domestic violence.
- Lack of knowledge about DVA.
- Attitude of health care professionals to victims of domestic violence subjects victims to secondary trauma.
- Need for holistic care to victims of DV – health, psychosocial – inadequate response hereto for victims and perpetrators.
- Poor follow-up upon discharge. Absence of community rehabilitation.

5.3.3 Department of Human Settlement

- Marital status of DV victim/survivor must not hinder access to government services such as housing.
- Urgent need to respond to secondary housing for victims of domestic violence.
- Limited access to emergency shelter and secondary housing needs of victims of domestic violence requires urgent attention.

5.4 GOVERNANCE CLUSTER

5.4.1 Department of Women, Children and Persons with Disabilities

- Need for new department to take leadership in development of a National Strategic Policy Framework to combat Domestic Violence
- Department to outline specific programmes to address high levels of violence against women, children and persons with disabilities, and to ensure that these programmes are adequately costed and resourced.
- Department to work collaboratively with other departments to ensure implementation of DVA



5.4.2 National Planning Commission & Monitoring and Evaluation

- As the primary bodies responsible for planning and monitoring and evaluation it is imperative that these two bodies are included in the development of a National Strategic Policy Framework for Domestic Violence
- Monitoring and Evaluation important for oversight in terms of implementation of the DVA, as well as holding service delivery departments in relation to the DVA accountable.

6. RECOMMENDATIONS

The Committee has proposed the following recommendations

6.1 Legislative amendments

The following proposed legislative amendments are to be considered by Parliament:

Amend sections of DVA

Firearms

- That a review of training on the DVA and Firearms Control Act (FCA) be conducted. Improved training with disciplinary consequences for police officers not knowing of, or complying with, the National Instruction on Domestic Violence should be considered.
- That to protect the woman from retaliation by the abuser, section 3 of the DVA be amended to direct the peace officer to arrest ('must arrest') instead of offering s/he the option to arrest ('may arrest').
- That police question witnesses at the scene of a domestic violence incident, search for a firearm and remove it, regardless of the state of the alleged abuser or alleged threats with a firearm.
- The strengthening of the interim application order by
 - Introducing more questions relating to the presence of weapons;
 - Transferring of the responsibility for requesting the removal of the gun away from the applicant;
 - Improved wording, making it clearer that the firearm must be removed immediately and not only on the return date when the protection order is made final.
- That Designated Firearms Officers be adequately trained to ensure that applications for firearm licences are adequately investigated notwithstanding the absence of reporting or the non-receipt of protection orders.

ICD

- Amend the legislation pertaining to the ICD in order to widen their powers

Domestic Partnerships legislation

- Prioritise the finalisation of legislation dealing with domestic partnerships



Development of regulations

- Guidelines must be devised for police on when to effect an arrest when confronted with a domestic violence incident.
- Development of a performance monitoring framework.
- Service of the protection order.
- Ensuring the availability of shelter and counselling services.
- Develop norms and standards around training for court personnel.

Regulations by Minister of Justice - Section 19(1)(b)

The existing regulations (R1311, 5 November 1999) be revised in the following manner and then submitted to parliament and gazetted as the Act suggests.

Development of a performance monitoring framework

- A performance monitoring framework is required to assess courts' effective implementation of the Act. Amongst other things, this should assess the quality and completeness of recordkeeping by the courts; the standardisation of processes and procedures across courts – including courts' working hours and their interpretation and application of the DVA's provisions; and making it mandatory that all domestic violence applications be dealt with in private offices where applicants' confidentiality may be maintained.
- The Committee should therefore request the Quality Assurance Division of the Magistrates Commission to outline their current procedures for monitoring court performance in relation to the DVA.
- The Department of Justice and Constitutional Development should present recommendations regarding on how monitoring could be strengthened and its findings made enforceable by courts.

Service of the protection order

- The Department of Justice and Constitutional Development should rework section 15 of the regulations, 'Service of documents', to ensure that courts increase their use of the sheriffs and substantially reduce their use of the police to serve orders and present the proposed amendments to Parliament.
- Relook at guidelines for defining "undue hardship"
- The threshold for assistance adopted in rural areas with respect to sheriff's services should therefore be lower than that applied in urban areas. At this point the section grants too little guidance to clerks, merely stating:

(4) The Complainant or respondent who requires a document to be served in terms of the Act or these regulations shall be responsible for the costs of such service: Provided that the clerk of the court may, after consideration of such proof as he or she may require, direct that



the State must be responsible for the costs of any service in terms of the Act or these regulations if he or she is satisfied that the complainant or respondent as the case may be, or both the complainant and respondent, do not have the means to pay for such costs at the time when service is required.

- The regulations must therefore also make explicit reference to courts' need to take payment of the sheriff's fees into account when compiling their annual budgets.

Ensuring the availability of shelter and counselling services

- The DVA placed no corresponding obligations on health or social service providers to make such services available. This gap weakens referral systems and contributes to fragmenting responses to domestic violence. Section 19(c) allows the Minister to make regulations on "any other matter s/he deems necessary or expedient to be prescribed in order to achieve the objects of this Act."
- The Department of Social Development should be consulted around the guidelines for shelters and services to victims of domestic violence. The documents must clearly articulate how counselling services and shelters will be funded; the training norms and standards, as well as competencies required by those working in this field; the management and recruitment of volunteers; and the nature of interventions required to address domestic violence. These documents should note and address the relationship between child abuse and intimate partner violence and describe how both children's agencies, as well as those dealing with abused women, could address this link.
- Once finalised, these guidelines should be submitted to parliament and gazetted as regulations in terms of 19(1)(c).

General

- The Department of Women, Children and Persons with Disabilities in ^{to lead} consultation with other key stakeholders devise a National Strategic Framework and Implementation Strategy on Domestic Violence. *[to be reworked]*
- The aforementioned policy framework must be adequately costed.
- Strategies should be developed to deal with marginalised groups most vulnerable to domestic violence that do not benefit from the Act's protection such as children, foreign nationals,
- *The Committee to work with PC of Justice & Const. Dev and PC to*

Policing

- Develop norms and standards around training for police. This training framework should be included in the SAPS National Instructions.
- The Department of Police amend their National Instructions to provide clear guidelines around when they should or should not arrest perpetrators of abuse.
- Develop a five year plan for the effective policing of domestic violence. This plan needs to set clear goals, timelines and targets for the effective implementation of the DVA. The role of the



SAPS Evaluation Service in monitoring whether these targets are being met or not should be clearly stated.

- A mechanism should be developed to deal with [withdrawals] or situations where women do not wish to lay charges but nonetheless still require help and protection. [to be referred to Dept of Justice]
- The powers of the ICD should be broadened to enable them to take disciplinary action against personnel which fail to comply with obligations imposed in terms of the Act.

Judiciary

Develop a costed policy and/or legislation around the Family Courts

- The status and future of the Family Courts is unclear. It is recommended that a clear policy be issued in this regard and that the blueprint be elevated to the status of regulations. Clear timeframes and goals for the proliferation of family courts also need to be developed.

Develop norms and standards around training for court personnel

- It is imperative that training standards and norms around the DVA be clearly established by the DoJ&CD. These should include stipulating the basic level of knowledge that magistrates, prosecutors and clerks should demonstrate before being permitted to deal with domestic violence. This training framework should also indicate the basic content of the training, as well as the minimum competence required of those who provide the training. Training also needs to be ongoing, with follow-up courses building on previous training.
- In the case of the DoJ&CD this training framework should be included in the revised regulations.

VEP [Victim Empowerment Programme]

- Requires review – i.t.o. provisions and resourcing
- 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.
- 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.
- Victim Empowerment Legislation: There is a need to expedite the promulgation of appropriate legislation which is developed in close consultation with civil society. [to be followed with SSA]
- Government needs to do far more to raise public awareness in terms of the rights of victims of domestic violence.
- Synergise the VEP, the Victims' Charter, the Minimum Standards for Service Delivery and the Uniform Protocol on Victim Management.



Psycho-social support

- A review of existing services and programmes are done to determine where services are absent or need to be up-scaled.
- An audit of Government personnel rendering psycho-social support be undertaken to determine where the skills shortages are and a plan be devised to address the shortfall.

Oversight

- A mechanism should be devised within Parliament to ensure that the implementation of the DVA is overseen between all Committees concerned.
- Departments report to Committee on an annual basis in terms progress with respect to DVA as per template in Appendix A.
- That Parliament insists on reports from the police on its compliance with the DVA and the FCA as it relates to domestic violence.
- That because of the escalation of domestic violence resulting in family murders committed by officers with access to legal firearms (police, soldiers and security guards), Parliament request reports on the implementation of measures to ensure that all firearms are returned when staff go off duty.
- That Parliament advises the various departments to better publicize the contents of the legislation (DVA and FCA) and the remedies provided therein.

7. CONCLUSIONS

The Committee agreed that the report should be published in the ATC and debated in the National Assembly House in 2010.

FCA [Firearm Control Act]

DVA [Domestic Violence Act]



Appendix A

Provide a list of programmes that the Department has implemented to give effect to the Domestic Violence Act. All information should be disaggregated for the 2008/09 financial year. Also specify whether programmes were targeted at specific groups, i.e. women, children and persons with disabilities.

Programme	Target Group	Budget		Outcome	
		Appropriation	Expenditure	Compliance	Indicators
Provide brief description of programme and objectives		How much funds were allocated for the delivery of this programme?	How much was spent in relation to this programme?	Were the intended outcomes achieved? If not why not.	List the target indicator in relation to each outcome indicator e.g. a target of 1 000 staff trained by 2010 – only 20 staff were trained in 2010