



South Africa: Domestic violence, including legislation, state protection and support services available to victims; ability of women to relocate to Cape Town (2014-May 2015)

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1. Overview

1.1 Frequency

According to the US Department of State's Country Reports on Human Rights Practices for 2013, domestic violence in South Africa is "pervasive" and includes "physical, sexual, emotional, and verbal abuse, as well as harassment and stalking by former partners" (US 27 Feb. 2014, 27). A report by the Southern African Development Community (SADC), an inter-governmental organization comprised of 15 Southern African member states that seek to promote peace, security, and socio-economic development (SADC n.d.), states that according to studies conducted by Gender Links (GL) [1] in the provinces of Gauteng, Limpopo, Western Cape, and KwaZulu Natal, the most common form of gender-based violence perpetrated by men against women "occurs within intimate partnerships" (SADC 2015, 91). Sources estimate that one in four women in South Africa experiences violence by her intimate partner (IGWG n.d.a, 1; US 27 Feb. 2014, 27). The SADC further notes that of the women surveyed by GL, 51 percent in the provinces of Gauteng and Limpopo, 44 percent in the province of Western Cape and 29 percent in the province of KwaZulu-Natal had been victims of domestic violence at some point in their lives (2015, 91). According to a 2012 report published by the South African Medical Research Council (SAMRC), a research organization that seeks to improve "the health of the country's population, through research, development, and technology transfer" (SAMRC n.d.), 56 percent of all female murders are committed by an intimate partner, making domestic violence the main cause of female homicide (ibid. Aug. 2012, 3). In

November 2014, GL similarly published a report stating that the female homicide rate in South Africa is six times higher than the global average and that approximately half of those women are killed by their partner (Nov. 2014, 1).

1.2 Social Attitudes

According to sources, societal norms exacerbate intimate partner violence in South Africa (IGWG n.d.a, 1; SADC 2015, 92). A joint report published by the International Center for Research on Women (ICRW), the Gender-based Violence (GBV) Prevention Network and the SAMRC [2] states that "[d]omestic violence is often perceived as 'normal,' contributing to the intergenerational transmission of violence" (ICRW et al. 2012, 12). According to a report published by the Interagency Gender Working Group (IGWG), a network of NGOs partnered with the US Agency for International Development (USAID) who promote gender equity within population, health, and nutrition programs (IGWG n.d.b), "[i]ntimate partner violence is perceived as a private matter that should not be publicized even to seek legal action" (ibid. n.d.a, 2). An article published by the Associated Press (AP) similarly quotes a South Africa Inter-Ministerial Committee on Violence Against Women and Children report as stating that some domestic violence cases reported to the police or social workers "fell on deaf ears," with complainants told by authorities to resolve the issue with their partners privately (AP 11 Nov. 2013). The study conducted by the SADC in 2015 found that only 2.1 percent of women experiencing sexual violence by an intimate partner in the province of Gauteng reported the matter to the police, while only one in eight women who had been abused by her partner in the province of Limpopo alerted the police (SADC 2015, 101). According to the same source, "[p]atriarchal norms of wife ownership, sexual entitlement following marriage and the legitimacy of violence as a means of controlling wives, drives GBV [gender-based violence] in parts of South Africa" (ibid., 92). AP likewise quotes South African politician Lindiwe Mazibuko as stating that "[w]e live in a deeply patriarchal and injured society where the rights of women are not respected" (AP 11 Nov. 2013).

2. Legislation

Sources indicate that the Domestic Violence Act, 1998 (DVA) [Act 116 of 1998] is the law that addresses domestic violence in South Africa (ISS Nov. 2014, 1; WLC 2014, 1; South Africa n.d.b). An informational pamphlet on the DVA published by the Tshwaranang Legal Advocacy Centre to End Violence Against Women (TLAC), a South African NGO that works to end violence against women and to promote their access to related services (TLAC n.d.b), notes that the Act was created "for the protection of women, men, and children who suffer from abuse in the context of a domestic relationship" (ibid. n.d.a). According to the Institute for Security Studies (ISS), an independent African research organization based in Pretoria that provides policy analysis, training and technical assistance in the domain of human security (ISS n.d.), the DVA "is widely considered one of the more progressive examples of such legislation internationally" (ISS Nov. 2014, 1). The IGWG similarly notes that the DVA "was drafted with the participation of civil society members" and "was supported by many civil society organizations, including women's organizations" (IGWG n.d.a, 3).

The DVA protects South Africans from physical abuse, sexual abuse, emotional, verbal and psychological abuse, stalking, damage to property, intimidation, harassment, unauthorized entry into the victim's residence (if the victim and the accused do not share the same residence), economic abuse and any other "controlling or abusive behavior" that poses a threat to the victim's safety, health, or well-being (South Africa 1998, Art. 1 (viii)).

A pamphlet published by the South African Police Service (SAPS) indicates that a "domestic" partner includes: a person to whom one is married (by civil or customary rites); a partner (same or opposite sex) who has lived in the same residence (whether married, unmarried, or unable to be married); a person with whom one shares parental responsibility; persons related by blood ties, adoption or marriage; a person with whom one has shared an engagement, customary, or dating relationship, "including an actual or perceived romantic, intimate or sexual relationship of any duration"; a person with whom one is sharing the same residence or has "recently" shared the same residence (ibid. n.d.b). The TLAC indicates that the DVA "covers married women, women living-in with their partners, in-laws and everyone sharing residence"

(n.d.a). A copy of South Africa's DVA is attached to this Response.

The IGWG reports that the criminal justice system in South Africa "has been largely unsupportive" of legislative acts pertaining to domestic violence, noting that women who have been the victims of domestic violence "have been re-victimized by the police and other officials" (IGWG n.d.a). A joint report on the implementation of the DVA in the province of Gauteng, published by the Heinrich Böll Stiftung, a think tank closely affiliated with the German Green Party that promotes the development of democratic civil society and equal rights within Germany and abroad (Heinrich Böll Stiftung 17 Jan. 2013), and the TLAC further states that problems concerning the implementation of the DVA in Gauteng have included "(amongst many others) non-compliance with the provision of the DVA; negative attitudes towards victims by the police and court officials; undue delays in processes and lack of access to courts and the police" (Heinrich Böll Stiftung and TLAC 2013, 2). The SADC report indicates that "South Africa has progressive legislation relating to gender-based violence (GBV) but its citizens have given the country low marks in this area, highlighting the difficulty law makers have had in enforcing the laws" (2015, 90). Freedom House's Freedom in the World Report for South Africa for 2015 notes that "[d]espite a robust legal framework criminalizing domestic violence and domestic rape, both are grave problems" (Freedom House 2015).

3. State Protection

3.1 Protection Orders

The DVA gives South Africans the right to apply for a protection order against an abusive partner (South Africa 1998, Art. 4). The Women's Legal Centre (WLC), a non-profit, independently funded legal aid centre based in Cape Town (WLC n.d.), defines a protection order as "[a]n order of the court, where a magistrate lists the various things that an abuser may and may not do, to stop the abuser from abusing" the victim (WLC 2014, 1). Sources further state that a protection order prohibits further abuse by a partner and may also order to take away dangerous weapons from the abuser, to stop the victim from sharing a home with the abuser, that the abuser pay a sum of money to the victim to cover living costs or emergency maintenance costs, and to limit contact between the abuser and the children (ibid., 10; Mosaic n.d.a; South Africa n.d.b). Sources indicate that if granted, protection orders are valid throughout South Africa for an indeterminate amount of years (ibid.; WLC 2014, 5, 15). Articles 4 through 6 of the DVA of South Africa outline the requirements and procedures for obtaining a protection order (South Africa 1998).

Sources indicate that victims can apply for a protection order at the nearest magistrate's court (ibid. n.d.a; WLC 2014, 5; TLAC n.d.a). According to the SAPS, one can also apply for a protection order or lay a criminal charge against the abuser at any police station (South Africa n.d.a). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. The SAPS website indicates that an "interim protection order" can be issued "at any time of the day or night" (South Africa n.d.a). The WLC indicates that victims can apply for a protection order outside regular court working hours if the case is "very urgent" or if the victim can demonstrate that they will "suffer unnecessarily if [the] application is not dealt with immediately" (WLC 2014, 5). Sources further report that when a domestic violence case is filed at a magistrate's court, the magistrate evaluates the victim's application form; if they are satisfied that the victim is in danger of suffering from abuse, an interim protection order is issued (ibid., 7; TLAC n.d.a). A court return date is then set [whether or not an interim protection order is granted (WLC 2014, 8)], where the decision on whether a final protection order will be granted is rendered (TLAC n.d.a; WLC 2014, 9) based on the victim's and the alleged abuser's testimonies (ibid.). Sources also note that if a protection order is granted, the victim receives a warrant of arrest, which may be presented to police at any time if the respondent victimizes the claimant again (ibid., 12; Mosaic n.d.a; TLAC n.d.a).

According to the WLC, "[c]ontravening the terms of a protection order is a criminal offence. The abuser will be required to appear in the criminal court before a magistrate, and might be sent to jail up to 5 years, or ordered to pay a fine, or both" (WLC 2014, 11). Mosaic, a South African NGO that works in the area of violence against women by delivering various prevention and support services to victims (Mosaic n.d.b), indicates that if the accused does not comply with protection orders, the police will have to arrest the

abuser upon reception of the warrant of arrest (ibid. n.d.a). TLAC states that the police "must" arrest the abuser if they committed violence towards a victim who has benefited from protection orders (n.d.a). However, WLC states that "[i]f the police do not arrest the abuser, they must give him a notice to appear in court for contravening the terms of the protection order" (WLC 2014, 11). Sources further indicate that the victim must make a sworn statement explaining how the protection order was violated (ibid.; TLAC n.d.a) and appear in court to provide witness testimony (ibid.).

According to an oversight report on the Department of Justice's response to cases of domestic violence published by the South African Parliament's Research Unit, in 2011, 217,987 interim protection order applications were filed (an average of 18,165 per month), 87,711 final protection orders were granted (an average of 7,309 per month) and 31,397 warrants of arrest were issued for breaches of protection orders (South Africa 2012, 5).

The IGWG report indicates that the application process for protection orders "is lengthy and complicated," while also stating that "[m]ost women lack the education and knowledge to fill out the forms" and that even women who are employed cannot afford the fees for the protection order forms (IGWG n.d.a, 3). The joint Heinrich Böll Stiftung and TLAC report similarly states that "[n]ot all applicants seeking protection orders were able to complete the process on the same day," due, among others, to the unavailability of a magistrate, and also that "delays and needing to return to court multiple times costs money - unemployed people or those in low-wage employment cannot always afford the transport costs to court" (2013, 54).

3.2 Police

Article 2 of the DVA states that South African police officers are obligated to respond to domestic violence calls, assist the complainant in finding shelter or medical treatment, provide the complainant with information regarding their rights under the DVA, and inform them of their right to launch a criminal complaint (South Africa 1998). Further detailing the responsibilities of the SAPS, Article 9 of the DVA states that police are obligated to seize dangerous weapons possessed by a respondent when the court orders to do so, while article 13 provides that they may be mandated to serve documents to respondents related to domestic violence cases (ibid.). A joint report published by the TLAC and several other South African NGOs committed to ending gender-based violence likewise states that

[t]he DVA and associated National Instructions place a number of obligations on the police, including assisting the victim of an incident of domestic violence to find suitable shelter, obtain medical treatment and collect personal items from her/his residence. Police officers are further obligated to serve notice on the abuser to appear in court; serve protection orders; arrest an abuser who has breached a protection order, or committed a crime (even without a warrant); and remove weapons from the abuser, or from the home. (TLAC et al. Oct. 2009, 3)

According to sources, there have been several instances in which police have deviated from protocol in responding to domestic violence cases (Heinrich Böll Stiftung and TLAC 2013, 58; TLAC et al. Oct. 2009, 5). In a survey conducted by the Heinrich Böll Stiftung and TLAC on domestic violence survivors in South Africa, "several complaints" against the police were noted by the study's subjects; these included "delays in attending to call outs; mediating cases instead of arresting the perpetrator; and that the police did not at times seem to take the experiences of victims seriously" (Heinrich Böll Stiftung and TLAC 2013, 58). The report by the South African Parliament's Research Unit further states that police officials are often unwilling to serve protection orders "in favour of more 'pressing' police matters" (South Africa 2012, 2). The joint South African NGO report indicates that members of the SAPS often "display a lack of knowledge regarding the procedures to be followed" (TLAC et al Oct. 2009, 5). Research conducted by the SAMRC likewise states that "case investigation is inadequate" and that "[t]here is a continuing lack of awareness of gender based motivations for the murder of women among police and failure to prioritise these cases" (SAMRC Aug. 2012, 4).

Country Reports 2013 notes that police officers allegedly "treated abused women poorly" (US 27 Feb. 2014, 27). In 2013, AP reported that at least half a dozen police officers had been arrested for rape,

including "an officer accused of raping a woman who came to the police station to report domestic violence" (AP 8 Mar. 2013). AP also reports that in February 2013, "two police officers were arrested for alleged rape; one officer was sentenced to 15 years' imprisonment for shooting and killing his girlfriend and another officer was arrested in the shooting death of a woman he was involved with" (ibid.).

Sources report that the Civilian Secretariat of Police is the organization charged with monitoring the compliance of the police with the DVA (ISS Nov. 2014, 4-5; South Africa [2013], 94). The SAPS Annual Report 2012/13 indicates that the SAPS itself is reporting misconduct cases involving non-compliance with the DVA to the Secretariat (ibid.). The same report states that from 1 April 2012 to 31 March 2013, there were 208 complaints registered against SAPS officers pertaining to domestic violence cases; 200 were registered in the Western Cape, 5 in the Eastern Cape, 1 in the province of Gauteng, and 2 in the North West province (ibid.). Sources report that the SAPS is expected to submit a report to parliament every six months indicating the number of complaints registered and the course of action taken for each case (ibid.; ISS Nov. 2014, 4). According to the ISS, Parliament and the Auditor-General of South Africa both reported that police obligations under the DVA are not "well adhered to by the police, with many stations failing to meet the standards set by the DVA and National Instructions" (ibid.).

3.3 Judiciary

The 2012 report by the South African Parliament's Research Unit states that 386 of South Africa's magistrates' courts are classified as domestic violence courts (South Africa 2012, 3). A July 2014 study published by the WLC, however, states that of the 476 district courts [3], 229 have established domestic violence divisions (WLC July 2014, 17). The same report states that South Africa has 6 "family courts" nationally, noting that "[t]his would seem hopelessly inadequate, given the 246,609 domestic violence civil cases and 11,700 criminal cases in 2012/13" (ibid.). South Africa reportedly has 37 district magistrates who preside over domestic violence cases and 35 clerks (out of 3,670 clerks nationally) who attend to domestic violence matters (ibid.). The report also notes that no domestic violence clerks were appointed in the provinces of Mpumalanga, North West, Limpopo, and Northern Cape (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to Country Reports 2013, abused women were treated "poorly" by court judges (US 27 Feb. 2014, 27). The joint study by Heinrich Böll Stiftung and TLAC indicates that women interviewed for the purpose of the study reported being "yelled at" in court, with clerks at times speaking "harshly" to applicants during the application process (Heinrich Böll Stiftung and TLAC 2013, 57). The same study notes that secondary victimization by the judiciary "continues to happen" (ibid.). The joint South African NGO briefing published in 2009 reports that "[t]he fact that some courts are less likely to finalise protection orders may indicate prejudice on the part of some magistrates towards applicants" (TLAC et al. 2009, 12).

Sources indicate that not all domestic violence courts are open 24 hours a day every day, as mandated under the DVA (ibid., 10; South Africa 2012, 4), and that therefore, access to protection orders outside of regular court hours is a "significant problem" (ibid.).

4. Support Services

4.1 Thuthuzela Care Centres

According to sources, Thuthuzela centres are "one-stop" drop-in facilities designed primarily to provide support services to victims of sexual assault (South Africa n.d.c, 2; UN n.d.). Thuthuzela centres are managed by the National Prosecuting Authority (NPA) of South Africa (Director 28 Apr. 2015; South Africa n.d.c, 2) and more specifically, by their Sexual Offences and Community Affairs Unit (ibid.). The report by the South African Parliament's Research Unit indicates that domestic violence victims are also entitled to benefit from the services offered by the Thuthuzela centres (ibid. 2012, 9).

In correspondence with the Research Directorate, the Director of the SAMRC's Gender & Health Research Unit stated that there are over 50 Thuthuzela centres in South Africa (Director 28 Apr. 2015). The

Parliament's Research Unit similarly reports that there are 27 Thuthuzela centres that offer a full range of services and 25 sites in which "partial services" are available (South Africa 2012, 9). In contrast, the SADC 2015 report states that South Africa currently has 35 such facilities (SADC 2015, 99). According to UNICEF, Thuthuzela Centres are operational in all nine provinces of South Africa (UN n.d.).

Sources indicate that services offered at Thuthuzela Centres include the following:

An investigative officer conducts an interview and takes the victim's statement;

A medical examination by a doctor is conducted;

A social worker or nurse offers counselling;

A referral is made for long-term counselling;

Arrangements are made to find the victim a place of safety, if deemed necessary;

Legal aid is offered, including court case preparation with an assistant officer and consultation with a specialist prosecutor (South Africa n.d.c, 7).

The SADC likewise notes that these one-stop centres provide 24-hour health, counselling, and legal services (SADC 2015, 99).

The South African Parliament's Research Unit states that in the first three quarters of the 2011/2012 year, Thuthuzela centres throughout the country dealt with 985 domestic violence cases (South Africa 2012, 9). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4.2 Shelters

According to the Director of the SAMRC's Gender & Health Research Unit, "South Africa has many shelters" for domestic violence victims, most being located in urban centres like Johannesburg (Director 28 Apr. 2015). The same source states that shelters "vary in size with some larger ones in Johannesburg and many smaller ones run by NGOs. The Department of Social Development has a Victim Empowerment Programme [VEP] and through this, it runs shelters, but there is a shortage of shelter places" (ibid.). A joint report on shelters in South Africa published by the Heinrich Böll Stiftung and TLAC similarly indicates that shelter services are provided by the Department of Social Development's VEP (Heinrich Böll Stiftung and TLAC 2012, 7), but that 60 percent of social welfare services for women and children are undertaken by NGOs (ibid., 9). The SADC report notes that NGOs "depend on international funding" (SADC 2015, 94). The Heinrich Böll Stiftung and TLAC joint study similarly indicates that "[s]ome, but not all" NGOs for women and children receive government funding, and where funding is provided, it covers "only part of the cost" (Heinrich Böll Stiftung and TLAC 2012, 9). According to sources, there is a lack of shelter space for domestic violence victims, particularly in rural areas (US 27 Feb. 2014, 27; ICRW et al. 2012, 13).

The 2012 joint report by the ICRW, GBV Prevention Network and SAMRC states that some shelters refuse to accept women who do not have a protection order or show signs of physical abuse (ibid.).

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4.3 Helplines

Sources state that there is a "Stop Gender Violence" Helpline in South Africa (LLSA n.d.a; TLAC n.d.a; WLC 2014, 16). LifeLine South Africa (LLSA), a South African organization that provides emotional support to individuals who have experienced trauma and distress (LLSA n.d.b), states that the hotline is sponsored by South Africa's Department of Social Development (ibid. n.d.a). The same source indicates that "[t]he line provides anonymous, confidential and accessible telephonic information, counselling and referrals in all 11 official languages to survivors, witnesses and perpetrators of gender-based violence" (ibid.). It is reported to operate every day and at all hours, including on public holidays (ibid.).

The Director of the SAMRC's Gender & Health Research Unit stated that many NGOs provide information to domestic violence survivors via telephone (28 Apr. 2015). The WLC lists a range of support services that domestic violence victims can get in touch with over the phone, including Lifeline, Rape Crisis, SA Depression & Anxiety Group, the Family and Marriage Association of South Africa and the WLC (WLC 2014, 16). There are also legal support services that provide legal aid to domestic violence victims; these include TLAC (TLAC n.d.b) and Mosaic (Mosaic n.d.a).

5. The Ability of Domestic Violence Survivors to Relocate to Cape Town

According to the Director of the SAMRC's Gender & Health Research Unit,

South Africa has no restrictions on freedom of movement and so women may travel anywhere in the country. Getting a job and a place to stay is obviously an obstacle to movement in some cases, but South Africa has a great deal of internal migration, including to Cape Town, and so it is a hurdle that many men and women overcome each year. (28 Apr. 2015)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The IGWG report indicates that a "lack of housing" in South Africa may prevent women from escaping violent intimate relationships (IGWG n.d.a, 1). The joint South African NGO report similarly states that while shelters provide short-term housing solutions for victims of domestic violence, there is an absence of long-term housing solutions and financial assistance that may result in a victim returning to live with the abuser (TLAC et al. Oct. 2009, 15).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] (GL) is a Southern African NGO that is committed to assuring that "women and men are able to participate equally in all aspects of public and private life in accordance with the provisions of the Southern African Development Community (SADC) Protocol on Gender and Development" (GL n.d.).

[2] The ICRW is a global research institute headquartered in Washington DC that seeks to "empower women, advance gender equality and fight poverty in the developing world" (ICRW n.d.). The GBV Prevention Network is a group of individual activists and organizations that operate programs in 18 countries in the East, South, and Horn of Africa to prevent violence against women (GBV Prevention Network n.d.).

[3] South Africa's magistrates' courts include regional courts and district courts (South Africa n.d.).

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Additional Sources Consulted

Oral sources: The following were unable to provide information within the time constraints of this Response: Director, Gender Health and Justice Research Unit, University of Cape Town; Researcher, African Gender Institute, University of Cape Town; South Africa - Police Service.

Attempts to contact the following were unsuccessful within the time constraints of this Response: Director, African Gender Institute, University of Cape Town; Gender Links; Mosaic; Nisaa Institute for Women's Development; Senior Researcher, Gender Health and Justice Research Unit, University of Cape Town; South Africa - Department of Women; Tshwaranang Legal Advocacy Centre.

Internet sites, including: African Union; AllAfrica; Al Jazeera; BBC; Brookings Institution; eoi.net; Factiva; Family and Marriage Society of South Africa; Pan African Women's Organization; Reuters; South Africa - Department of Women, Independent Complaints Directorate of the South African Police Service, Statistics South Africa, Western Cape Government; South Africa Crime Quarterly; South African Institute of Race Relations; UN - Office for the Coordination of Humanitarian Affairs, UN Women; US - Central Intelligence Agency; Woodrow Wilson International Centre for Scholars.

Attachment

South Africa. 1998. Domestic Violence Act, 1998. No. 116 of 1998. [Accessed 21 Apr. 2015]

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