Joint Submission to the
Portfolio Committee on Justice and Correctional Services

Domestic Violence Amendment Bill [B20 – 2020]

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For the attention of Mr V Ramaano
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Endorsed by: the National Coalition of Social Services

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Introduction

We welcome this opportunity to engage with the Domestic Violence Amendment Bill, 2020 (the Bill). We acknowledge the effort made by the Department to strengthen various provisions of the Act in order to better safeguard the rights of victims of domestic violence, and to expand certain obligations to other sectors beyond that of police and courts to ensure greater support to those impacted and affected by domestic violence.

This submission represents the views of approximately 100 individuals and institutions, including gender and women's rights organisations, academic institutions, community activists and researchers working in the field of gender-based violence. These include:

- Callas Foundation, a social welfare organisation located in the Cape Flats that provides a feeding Scheme, after-school programme for children, family counselling services, and domestic and sexual violence awareness and psychosocial support
- the Gender, Health and Justice Research Unit, an interdisciplinary research unit which aims to improve service provision to victims of crime, violence and human rights violations, to facilitate violence prevention, and to promote access to justice through interdisciplinary research, advocacy and education;
- The Gendered Violence and Urban Transformation in India and South Africa Project: Faculty of Humanities, University of Johannesburg
- the Cape Town office of the Heinrich Böll Foundation that works towards the promotion of democracy and social justice, human rights and advancing gender equality;
- Lawyers for Human Rights, with a 40-year track record of using the law as a positive instrument for change through strategic litigation, advocacy, law reform, human rights education, and community mobilisation and support;
- Mosaic, an advocacy, counselling and court support services organisation specialising in responding to, and preventing, violence against women;
- the National Shelter Movement of South Africa, a capacity building and advocacy body representing over 90 shelters providing psychosocial, practical, legal support and empowerment services to victims of crime and violence across South Africa including one of the largest shelters in South Africa, and
- the Saartjie Baartman Centre for Women and Children that provides sheltering services to over 100 women at any one time.

Collectively we work directly with multiple facets of domestic violence in South Africa, and in a

variety of modalities, including the direct provision of services to victims; undertaking empirical research on the needs of survivors of domestic violence and the implementation of legislation to safeguard the rights of those impacted by domestic violence; the provision of legal support and representation of those victimised, or otherwise affected, by domestic violence; and the creation of knowledge around multiple aspects of domestic violence.

Our submission is endorsed by the National Coalition of Social Services, a grouping of over 2 000 non-profit organisations providing child protection services, as well as services to older persons, persons with disabilities and victims and survivors of domestic violence

In light of this, we welcome the opportunity to provide further input into the Regulations as they surface.

Our submissions are of two sorts. The one deals with specific sections of the Bill that we have identified as potentially problematic, while the other proposes additional amendments to the Domestic Violence Act (DVA) intended to address long-standing complaints by the legislature and others. Because the reform of particular laws is not an everyday occurrence, we would encourage the department to take the opportunity to address these.

1. General observations

As a general principle, laws ought to be developed to reinforce and harmonise with one another. The iteration of this proposed amendment has made reference to The Firearms Control Act 60 of 2000, The Children's Act 38 of 2005 and The Older Persons Act 13 of 2006 but it has not made reference to The Protection of Harassment Act 17 of 2011.

It is also worth highlighting that continuity must be ensured with provisions of this amendment and those stipulated in the Victim Support Services Amendment Bill, 2019 published by the Department of Social Development particularly in reference to service demands.

2. Amendments to Section 1: Definitions

The definitions contained in the DVA and the changes proposed by this Bill are important for creating a shared understanding of the substance and the intention of the law on domestic violence. Below are our suggestions in this regard, with material changes <u>underlined</u>. ~~Strike-throughs~~ indicate proposed deletion.

Section	Suggested wording/insertion/ Deletion	Comment
NA	**"court"** means any court contemplated in the Magistrates' Courts Act, 1944 (Act 32 of 1944), and does not include traditional courts".	The definition of "court" was provided in the first draft of the Bill but has since been removed. We propose that the definition be re-inserted and that it specify specifically that traditional courts are not authorised to receive applications for, or grant, protection orders.
1(e)	"'**damage to property"** means the wilful damaging or destruction of property~~, including those belonging to a complainant~~ including harm to domesticated animals, whether belonging to a complainant or [in which the complainant has a vested interest] a related person which causes harm to a complainant.	We submit that the inclusion of domestic animals in this law is important. Abusers use threats to harm or kill household pets to coerce and control, and emotionally and psychologically abuse victims.
1(h)(f)	"**domestic relationship"** means a relationship between a complainant and a respondent in any of the following ways: they share or **[recently]** shared the same residence, premises or property ~~within the preceding year~~	We strongly encourage the removal of "within the preceding year". Domestic violence occurs long after the separation of the parties, and complainants are at risk for many years after their 'first report', by example, when they share children.
1(i)	**'domestic violence' means—** Recommend retaining *stalking* (g) And expand definition to include 'abduction' and 'kidnapping'.	Stalking is commonly understood and a widely used term and should therefore not be excluded from the legislation. Refer to comments under section 2.1 for commentary on our suggestion to include abduction and kidnapping in the definition of domestic violence.
1(l)	**Amend:** (d) household ~~necessities~~ expenses	We would recommend that 'necessities' should be amended to 'expenses' to enable applicants to recover existing household expenses which must be met. We suggest this too be included under 1(j)

1(m)	Proposed addition: …. (e) threatening or causing harm to a domesticated household animal."	We submit that the inclusion of domestic animals in this law is important. Abusers use threats to harm or kill household pets as a way to coerce, control, and emotionally and psychologically abuse victims. An example of international inclusion of pets in DV legislation is the US Pet and Women Safety Act of 2017.[1] Recommendations for the inclusion of domestic animals in the Domestic Abuse Bill presented to UK parliament is included in the new Bill.[2]
1(q)	"**intimidation**" means directly or indirectly uttering or conveying a threat to, or causing a complainant or a related person to receive a threat, which induces fear of ~~imminent~~ harm;	Remove 'imminent' in line with remainder of the Bill.
1(s)	"**physical abuse**" means any act or threatened act of physical violence towards a complainant or, in the case of a complainant who is a child, abuse as contemplated in section 1 of the Children's Act, 2005 (Act 38 of 2005); or in the case of a complainant who is an older person as contemplated in section 25(5) and 30 of the Older Persons Act, 2006 (Act 13 of 2006)"	We propose the addition of 'older person' as contemplated in the Older Persons Act.
1(t)	"'**related person"** means any member of the family or household of a complainant, or any other person in a close relationship with the complainant, including persons rendering assistance to the complainant";	The addition refers to persons providing psychosocial, legal, medical, and practical assistance/support services to complainants such as shelters/places of safety, other civil society organisations and institutions.
	Insert new definition **"residence"** means a permanent or temporary residence, premises, or property.	We recommend that where the term "home" is used in the Bill, it is replaced with "residence", as defined here.

2.1 Additional terms requiring definition in the Bill

Ukuthwala, the abduction of women and girls with the intention of forcing them into marriage, is

[1] US Pet and Women Safety Act of 2017 – 115th Congress, US.
[2] https://publications.parliament.uk/pa/cm201919/cmpublic/DomesticAbuse/memo/DAB07.htm

widely recognised in South Africa as contravening the rights of women and girls. Various criminal and civil law remedies have been put in place to deal with the infringement of these rights and their repercussions, such as the Children's Act, the Customary Marriages Act, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, and the Prevention and Combating of Trafficking in Persons Act, amongst other legal provisions and remedies. The South African Law Reform Commission has also investigated the practice of *ukuthwala* to determine if strengthening existing laws will be sufficient or whether new legislation needs to be enacted to curb the practice.

While the Commission's final 2015 paper[3] in this regard ultimately concluded that new legislation is required[4] it also noted that it "might still be necessary to supplement the effectiveness of a new statute by amending various key enactments that already exist."[5] The commission went on to say that "such amendments would insert provisions to deal specifically with some of the effects of the current abuses of *ukuthwala*."[6]

While the Commission's recommendations are still subject to further consideration, we support the need to strengthen existing legislation. Forced marriage is, unquestionably, a form of domestic violence and including it within the Bill both explicitly recognises this and provides a concrete intervention into the practice by enabling a complainant to obtain a protection order against any family member or other person seeking to force her into marriage.

We thus propose the following:

- include a definition of forced marriage as is outline in the Prevention and Combating of Trafficking in Persons Act 7 of 2013. We propose the following inclusion "forced marriage" means a marriage concluded without the consent of each of the parties.
- further consideration should be given as to whether the definition should be expanded to make explicit reference to the practice of *ukuthwala* (and any other similar practice) as recommended in the draft Forced Marriages Act;
- expansion of the definition of domestic violence to include abduction and kidnapping.

3. Proposed insertions of sections 2A and 2B in Act: Duty to assist and inform complainants of rights

The two additions to Section 2 of the principal Act, 'Duty to assist and inform complainants of rights',

[3] South African Law Reform Commission, 2015. Project 138: The Practice of Ukuthwala. Revised Discussion Paper 138. S.l.: South African Law Reform Commission.
[4] Referred to as the Draft Prohibition of Forced Marriages and Child Marriage Act.
[5] South African Law Reform Commission, 2015: 55.
[6] Ibid.

extend the duty to intervene in domestic violence to a range of functionaries,[7] as well as to adult persons generally. It also identifies four categories of persons to whom these obligations apply: children, people with disabilities, older persons and other adult persons not included in the latter two categories. In principle, we welcome the recognition of domestic violence as a multi-faceted problem whose effective resolution requires considerably more than a policing response. However, this section also raises important and complex questions around the recognition of people's autonomy, as well as their rights to dignity and equality.

As a general rule people enjoy autonomy – the right to make decisions about their lives and have control over them. This right should only be overridden under certain limited conditions. One is where people's capacity to make decisions is limited – as in the case of children – or impaired to some extent – as in the case of those with intellectual disabilities. Except where they demonstrate these disabilities, older persons cannot be said to lack capacity, any more than do people whose disability is of a physical nature only (that is, relating to visual, auditory or mobility impairments). These two groups, as well as other adults, cannot arbitrarily be deprived of their decision-making powers. If people with physical disabilities, older persons or other adults are to be denied control over the decisions affecting them, then this must be on different grounds. We suggest that this may only be in contexts where the disability tends towards the severe end of the spectrum (and possibly takes multiple forms) and the person is significantly dependent on others for their physical care. The potential for abuse is heightened under these conditions and protections must be offered against this.

These brief prefatory comments around autonomy inform our recommendations around the mandatory reporting provisions proposed by the Bill.

4.1 2A: Obligation of functionaries relating to domestic violence

In brief, sections 2A(1)(a) and 2A(2) require any functionary who encounters, or suspects they have encountered, a child, a person with a disability or an older person experiencing domestic violence, to report this via a prescribed form which must then be submitted to either the South African Police Service (SAPS) or a social worker. In addition, after completing a risk assessment, the functionary may provide or refer such a complainant to further services.

[7] i.e. defined in the amendment as "a medical practitioner, health service provider, social worker, official in the employ of a public health establishment, educator or a care-giver or any other person or entity designated by the Minister by notice in the Gazette"

In relation to adults, sections 2A(1)(b) and 2A(3), require functionaries to make their reports to the SAPS and social workers only when they know, rather than suspect, that domestic violence is being committed. Functionaries must however, offer a more extensive set of interventions to adults, including providing information about the various legal remedies and other options available to them, as well as a list of shelters and public health establishments which adults can approach for help. Functionaries may also refer adults to further services after the completion or evaluation of a risk assessment.

While parts of 2A, read with the provisions proposed by section 18B, represent an important step towards creating a more comprehensive, multi-dimensional response to domestic violence, the provisions obliging functionaries to report cases of suspected, or known, domestic violence must be qualified. Our commentary and recommendations are set out below.

Commentary:

1. Children

   Sections 150 to 160 of Chapter 9 in the Children's Act 38 of 2005 outline comprehensive procedures for dealing with children in need of care and protection, with situations of domestic violence very clearly included within section 150. Any act of domestic violence committed against a child is therefore, already addressed by the Children's Act which, in conjunction with other legislation, has also established a comprehensive system of child protection to prevent and respond to all forms of child abuse. This is not acknowledged by the Bill or the memorandum on the Bill's objects. Further, while reports of child abuse trigger investigations in terms of the Children's Act, this provision does not; it results in the completion of a form only. The creation of duplicate reporting systems, especially where one is a weaker version of the other, is not recommended. We recommend this provision be removed and replaced with reference to the relevant sections of the Children's Act as the primary piece of legislation in this regard.

2. Older Persons

   The Older Persons Act, number 13 of 2006 is the primary piece of legislation dealing with older persons. Chapter 5 is dedicated to the abuse of older persons and provides important protections in this regard. It is not clear how these provisions enhance or complement these existing systems of protection. Indeed, as noted in relation to children, this provision results in the completion of a form only; no more substantive action is proposed. We recommend that this provision be revised and aligned with the sections reporting and enquiries into older persons' circumstances as set out in Chapter 5 of the Older Persons Act.

3. People with disabilities

   There is currently very limited provision in law for mandatory reporting of violence towards people with disabilities. Children with disabilities are protected by the Children's Act while section 54 of the Criminal Law (Sexual Offences and related matters) Amendment Act 2007 obliges any person who knows, suspects or reasonably believes that a sexual offence has been committed against a person with mental disabilities to report this to a police official. An important gap thus exists in relation to adults. However, provisions mandating reporting of domestic violence against adults with disability cannot have blanket application. Disability ranges from the mild and moderate, to severe and occurs on a spectrum involving mobility, visual, auditory, cognitive and psychosocial impairments. Disabilities may also take single and multiple forms. If we are to recognise people with disabilities' autonomy, dignity and equality, then different approaches to their protection are required which should also not conflate physical disabilities with intellectual and psychosocial disabilities (unless both types are present in the same individual). This provision does not accomplish such nuance and nor does it offer any substantive response to a lacuna in the law; the completion of a form is not sufficient by any stretch of the imagination.

   We recommend that this provision be substantially developed to address this current silence – possibly through extensive regulations and/or separate legislation in this regard.

4. Adult persons

   As able-bodied adults who do not lack mental capacity, and who are not highly dependent on others for physical care, it is entirely unclear as to why this category of persons is included within mandatory reporting provisions. The value and purpose of reporting this category of persons is not evident; no further help appears to be forthcoming as a result of doing so. We consider provisions 2A(3)(b) to be a much more beneficial intervention. The provision of information is a positive duty that enables and enhances autonomy and decision-making, whereas the mere reporting of names serves no apparent practical purpose. We thus recommend the removal of 2A(3)(a) and the strengthening of 2A(3)(b) as follows:

- Clause 2A(3)(b)(i) requires functionaries to provide complainants with the names and contact details of shelters and public health establishments. In terms of 2A(3)(c) they are only required to refer complainants to other services if they have first conducted a risk assessment and evaluated there to be such a need. In practice, a minority of complainants seek (and need) shelter, while the majority seek and require counselling services. The routine first-line response for all complainants should therefore be referral to a domestic violence service, which may be inclusive of shelters.
- We do not support the unguided and unrestricted use of risk assessments as per 2A(3)(c).

Accurately assessing risk, rather than unnecessarily alarming someone – or underestimating their risk – should be left to those with the requisite training and who are preferably based in a support service. We address this further in that part of the submission dealing with 18B(1)(g).

Section 2B: Obligation to report domestic violence and to provide information

Section 2B(1) proposes extending the duty to report domestic violence towards children, people with disabilities and older persons beyond functionaries to any adult person. As we have noted, the Children's Act and the Older Persons' Act already contain comprehensive provisions dealing with children and older persons in need of care and protection. As these are the primary pieces of legislation we recommend again that their provisions be applied. We note again the absence of a nuanced, specific and comprehensive response to people with disabilities and repeat our recommendation to develop an extensive set of regulations in this regard and/or legislation. Again, in relation to all three categories of persons we highlight the limitations of imposing a duty to report merely for the sake of reporting.

Section 2B (1)(b) Obligation to report domestic violence against adults

The requirement in section 2B that any adult report their knowledge of domestic violence committed against adults greatly concerns us. Admittedly there have been instances where adult complainants have asked others to report on their behalf the abuse they have experienced. We do not oppose such reporting when it is at the complainant's request. However, we do not support third parties reporting domestic violence when this is not at the explicit request of the complainant and strongly urge legislators to remove sections 2B (2)(a) and (b). Mandatory reporting undermines adults' autonomy and is not considered good practice. In fact, the World Health Organisation (WHO) strongly discourages its adoption as policy not least because the evidence supporting its application is poor.[8] No matter how well-intentioned, mandatory reporting is bad practice for multiple reasons:

- Mandatory reporting is not favoured by domestic violence complainants who, first and foremost, prioritise interventions aimed at their and their children's safety.[9]
- Taking away complainants' ability to act in their own interests, or exercise choice, is a characteristic feature of abusive relationships – indeed, this is recognized by legislators' definition of controlling behaviour as including the regulation of everyday behaviour. This provision may be well-

[8] WHO. (2013). *Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines*. [Online] Available at: https://apps.who.int/iris/bitstream/handle/10665/85240/9789241548595_eng.pdf;jsessionid=2BE05ACC6CE4E64A6446F3B2C71F8821?sequence=1)

[9] Ibid.

intentioned but it too denies adult complainants' control over key decisions that affect their lives. Further, it implies that complainants' assessments of their circumstances, as well as their choices, cannot be trusted and that others understand their situations and options better than they do. This is a perception shared with abusive partners who frequently justify their control of the complainant on the basis that they know what is best because the complainant is incompetent. Indeed, a great deal of counselling and other therapeutic work with complainants seeks to build their ability to trust their judgement and capacity to act in their own interests. This provision does not respect or support complainants' agency and autonomy. The decision on when to report, who to report to, under what circumstances, must be left to complainants.

- Health, counselling and other emotional and psychological support services are offered – and accepted - on the basis that they are confidential. Mandatory reporting provisions undermine this and will make it necessary to preface every introductory counselling session with all adults with the warning that confidentiality is not guaranteed; should the complainant reveal experiences of domestic violence, the counsellor or therapist will be obliged to report this, regardless of the complainant's wishes. The consequence of this may be either to deter complainants from seeking help, or to the withholding of important information – and ultimately to further isolate them from support.
- It is a form of power to deprive someone of their decision-making, as well as to disregard their wishes. We have already pointed to how this power is exercised by an abusive partner over their victim and how this provision enables a wider group of people to legitimately exercise this power over the victim. It is not appropriate to introduce such a power dynamic into the context of family relationships and friendships which ought to be primary sources of support to victims. Victims should feel they can confide in, trust and rely upon their friends and family – not fear being exposed by them or having their wishes disrespected.
- The likelihood of being criminally charged for failing to report domestic violence may well discourage others from providing assistance to the complainant – including neighbours, friends, family members and colleagues. It may also hinder any witness from providing testimony to the existence/knowledge of domestic violence.
- Mandatory reporting may result in victims themselves being criminalized. For example, a mother who fails to report abuse perpetrated against herself and her children could be convicted for failure to report, even though she may have legitimate reasons for staying silent – such as fear for her life, and the life of her children.

Finally, the proposed amendments are silent on what actions should be followed once a mandatory report has been made, as well as the consequences that should follow. It thus appears as if the only purpose of these provisions is to report complainants – who are not criminals – to the police

and social workers.

What we recommend instead is strengthening the protections offered to those complainants who have reported the violence done to them – those who are electing to bring themselves to the attention of officials but are not receiving the help they request. We address this further in the sections dealing with the proposed directives, 18B.

4. Section 3 of the Act

4.1 Substitution of section 3: Arrest by peace officer without warrant

The current formulation of Section 3(1) states that:

> **3.** (1) A peace officer may, at the scene of an incident of domestic violence, without a warrant, arrest any **[respondent]** person **[at the scene of an incident of domestic violence whom he or she]** who such peace officer reasonably suspects of having committed **[an offence containing an element of violence against a complainant]**—
> *(a)* an act of domestic violence which constitutes an offence in terms of any law; or;
>
> *(b)* referred to in section 17(1)(a) of this Act.
>
> (2) A peace officer must –
>
> (a) arrest a person whom is reasonably suspected of having committed an offence where physical violence is involved.

Firstly, we are concerned about the highly discretionary language of "reasonably suspects". A number of formative studies[10] on the implementation of the Domestic Violence Act (116 of 1998) have highlighted the tendency of the police to not arrest even if there is evidence of an act of domestic violence and to instead encourage complainants to seek a protection order. In addition, between 1 January 2002 and December 2011, the ICD captured a total of 1 403 complaints of police non-compliance with the DVA, with failure to arrest the abuser the most frequent of these complaint (52.1% of all complaints).[11] "Reasonable suspicion" requires further elucidation in the National Instructions. Secondly, while 3(1) of this section refers to suspects having committed "an act of domestic violence which constitutes an offence in terms of any law'"", section 3(2((a) only refers to arrest in the case of physical violence.

[10] Artz, L. & Jefthas, D. (2011). *Reluctance, Retaliation and Repudiation: Attrition of Domestic Violence Cases in the Western Cape*, p. 1-110. South Africa: OSF; Artz, L. (2008). *An Examination of the Attrition of Domestic Violence Cases in the Criminal Justice System on Post-Apartheid South Africa*, p. 1-425. PhD Dissertation. Queen's University Belfast; Combrinck, H., Wakefield, L. (2009). Training for police on the Domestic Violence Act. Community Law Centre, University of the Western Cape; Artz, L., Combrinck, H., Gallinetti J., and Smythe D. (2005). *Commissioned Report on Compliance with the Domestic Violence Act at 29 Priority Police Stations in the Eastern Cape*, p. 1-183. SAPS/European Union; Lugulwana, M. (2009). Department of Community Safety: Secretariate for Safety & Security Compliance Monitoring and Investigation Sub-Directorate Report on Domestic Violence 2008/2009Domestic Violence Register Review at 53 police stations in the Western Cape.

[11] Vetten L (2017). 'A Luta Continua: Police Accountability and the Domestic Violence Act 1998' *South African Crime Quarterly,* 59: 7-18. Available at: http://dx.doi.org/10.17159/2413-3108/2017/v0n59a1690

Also considering:

(a) the proposed revision(s) on the definitions of stalking, harassment or intimidation;
(b) research evidence showing that the relationships of 33% of women killed by their intimate partners in 2009 were marked by a history of domestic violence[12] and that the actuality that a "threat" of violence or death, is a serious risk to complainants[13];
(c) that there are other acts of violence (criminal offences) which may fall under common law, including assault, indecent assault, assault with the intent to do grievous bodily harm, rape and other sexual offences, attempted murder, malicious damage to property, pointing a firearm or crimen injuria. It is suggested that arrest should also occur under other circumstances. We therefore recommend that section 3(2((a) be amended to include:

(2) A peace officer must –

(a) arrest a person whom is reasonably suspected of having committed an offence where physical <u>or sexual</u> violence, <u>stalking, harassment, intimidation, or where a threat or actual use, of a dangerous weapon is involved</u>.

4.2 Insertion of section 3A: Entering of private dwelling for purposes of obtaining evidence

The current formulation of Section 3(1) states that:

> 3A. (1) If a member of the South African Police Service—
> (a) receives a report that an offence containing an element of physical violence has allegedly been committed during an incident of domestic violence; and
> (b) reasonably suspects that a person who may furnish information regarding that alleged offence is in any private dwelling,
> that member may…

We again highlight the highly discretionary nature of "reasonably suspects".

5. Substitution of Section 4 of the Act: Application for a protection order

The collective welcomes and supports the introduction of the submission of online affidavits for applications brought outside of ordinary court hours or on a day which is not an ordinary court

[12] Abrahams N, Mathews S, Jewkes R, Martin LJ and Lombard C. (2012). '*Every eight hours: Intimate femicide in South Africa 10 years later!*' Medical Research Council policy brief [Online] Available at: https://www.samrc.ac.za/sites/default/files/attachments/2016-06-27/everyeighthours.pdf
[13] Klein, A., 2008. *Practical Implications of Current Domestic Violence Research, Part II: Prosecution*, National Institute of Justice, United States of America.

day, and further commends the department for noting that the application "must be lodged with the clerk of the court who [shall forthwith] must immediately submit the application and affidavits to the court".

While we commend this move to an online affidavit submission process and the immediacy on which applications must be attended to, we remain concerned as to the commitment from the court (i.e. magistrates) to avail itself to applicants after hours. Past failures to do so have been well documented. One such study conducted in 2013 in Gauteng found that magistrates and courts were not accessible to persons wanting to apply for protection orders after-hours this placed victims seeking urgent protection from abuse at further harm.[14]

Further, while an online application may now facilitate access to protection order applications after hours for some, this will not be the case for those who may not have access to the necessary infrastructure or financial resources/means to make such an online application. Access to after-hour applications in person must be prioritised in regulations, and as online applications are new, we recommend that regulations be developed that clearly specify time-frames for considering of online applications.

6. Insertion of section 5C: Existing orders and reciprocal orders

We welcome the inclusion of considerations for the duty of the court in respect of existing or reciprocal orders in the Amendment Bill. We further welcome the alignment of this section with the Magistrate Guidelines for the Implementation of the Domestic Violence Act (2008) [15]

In considering the provisions set out in sub-section 2 - where an existing order does exist, we propose the inclusion of one additional provision, as drawn from the Magistrate Guidelines for the Implementation of the Domestic Violence Act (2008) that states:

Where it has been established that a previous protection order is in place, it is recommended that where the original application has not been finalized, an attempt should be made to hear the parties together. A notice to show cause of what should be issued and the return dates amended accordingly.

7. Substitution of section 6 of the Act: Issuing of final protection orders

[14] Taranto,H., Ncube,M, Butterworth, MJ., Sajinovic, S., Massawe, D. and Lopes, C. 2013. Criminal justice responses to domestic violence: Assessing the implementation of the Domestic Violence Act in Gauteng. Johannesburg: Heinrich Boell Foundation and Tswaranang Legal Advocacy Centre.

[15] DOJ&CD. 2008. Guidelines for implementation of the Domestic Violence Act for the magistrates.

With regards to sub section (2B) which reads:

> (2B) If neither the complainant nor respondent appears on the return date contemplated in section 5(3) or (5), and if the court is satisfied that—
>
> (a) proper service has been effected on the respondent; and
>
> (b) the application contains prima facie evidence that the respondent has committed or is committing an act of domestic violence, the court may—
>
> (i) extend the interim protection order and the return date for the hearing of oral evidence;
>
> (ii) set a new return date where no interim order is in place, and the clerk of the court must notify the parties of the extended date; or
>
> (iii) discharge the matter.
>
> (2C) If neither the complainant nor the respondent appears on a return date contemplated in section 5(4), the court may discharge the matter.

With the suggestion of the inclusion of (iii) discharge listed above, we suggest that a matter should never be discharged when neither the complainant nor respondent are present on the first return date. The matter may only be discharged on the return date should again neither complainant or respondent appear before the court.

8. Amendment of section 7 of Act: Orders a court can make

Section 7 of the existing Act states:

> ‘(a) the substitution for subsections (1) and (2) for the following subsections:
>
> “(1) The court may, by means of a protection order referred to in section 5 or 6, prohibit the respondent from –
>
> …
>
> (c) entering a residence shared by the complainant and the respondent: Provided that the court may impose this prohibition only if it appears to be in the best interests of the complainant;’

This provision, however, can in practice appear to conflict with the principles laid out in the *Prevention of Illegal Eviction From, and Unlawful Occupation of Land Act 19 of 1998*. It has had the practical effect of this remedy seldom being afforded to complainants by the courts, as there is uncertainty about the way to apply these two laws, and the orders they allow for, side-by-side.

We submit that this Bill presents the department with an opportunity to address courts’ uncertainty in this regard, towards more consistent and bolder application of this remedy by the courts in the future, creating better protection for complainants. We submit that the Bill should expressly provide clarity, by confirming the superiority of the provisions of the Domestic Violence Act, in the

event of any conflict arising with any other law.

This could be achieved with **an insertion regarding the applicability of the Act**,

> "If any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law, other than the Constitution or an Act of Parliament expressly amending this Act, the provisions of this Act must prevail."

This wording is not inconsistent with existing legislation that seeks to give effect to fundamental rights in the Bill of Rights, and appropriate in achieving the urgent goal of strengthening the overall impact of the Domestic Violence Act in South Africa. This insertion should preferably be made as early in the Act as possible, after Section 1 dealing with Definitions.

Further, as noted earlier, we recommend that where the term "home" is used in the Bill, such as under sub-section (c)(5)(a) - (c) it be replaced with "residence".

9. Amendment of section 8 of the Act: Breach of Protection Order

First, we refer to section 8(4)(b) and 8(4)(c) of the Act.

- Section 8(4)(b) provides for the immediate arrest of a respondent, for alleged search of a protection order, if the SAPS member believes there are "reasonable grounds" to doso.
- Section 8(4)(c) provides for those instances where a protection order has allegedly been breached, but the SAPS member finds that there are "insufficient grounds for arresting the respondent".

Our concern regarding these provisions is similar to that raised in respect of the use of "reasonable suspicion" above, in that SAPS officials may require guidance on what constitutes "reasonable grounds" and what constitute "insufficient grounds", in order to improve the exercise of judgment specifically in relation to domestic violence situations.

While we do not support an exhaustive list of what these grounds may or may not constitute in the primary legislation, we submit that sufficient guidance for SAPS members on assessing "reasonable" or "insufficient" grounds, will be necessary in the revised National Instructions.

Secondly, we refer to section 8(5) of the Act and the addition of section 8(5)(d) proposed by the Bill. We submit that this addition may be misinterpreted as a sine qua non requirement in establishing whether the complainant will suffer harm in the absence of an arrest. Clearly an assessment of whether a complainant suffered harm in the past is only one of several considerations in assessing whether to effect an arrest or not. We therefore submit that the

following phrasing is more appropriate:

"(5) In considering whether or not the complainant or related person is suffering harm or may suffer harm, as contemplated in subsection (4)(b), the member of the South African Police Service must take into account –

(a) any risk to the safety, health or wellbeing of the complainant or related person;

(b) the seriousness of the conduct comprising an alleged breach of the protection order;

(c) the length of time since the alleged breach occurred;

(d) the nature and extent of any harm previously suffered, where relevant, in the domestic relationship by the complainant or related person."

The current SAPS National Instructions are sufficiently prescriptive about police duties on a number of levels, and while these are still not being fully complied with, they do highlight the importance of documenting the history of domestic violence complaints. Section12(3) of the National Instruction 7/1999 specifically states that:

> Members must fully document[16] their responses to every incident of domestic violence on a "Report of Domestic Violence Incident"- form (SAPS 508(a)) regardless of whether or not a criminal offence has been committed. A file with reference 39/4/2/3m must be opened every month and all the forms SAPS 508(a) which are completed during that month, must be filed in it. The month concerned must be recorded after the reference number, for example all the SAPS 508(a) forms which are completed during January 2000 must be filed with the reference 39/4/2/31(/ 2000).

10. Substitution of Section 9 of the Act: Seizure of weapons

The proposed revisions to section 9 of the principle Act (section 11 in the Bill), relating to the seizure of [arms and dangerous] weapons follows:

9. (1) The court must order a member of the South African Police Service to seize any [**arm or dangerous**] weapon in the possession or under the control of a respondent, regardless of the requirements of the respondent's employment to possess such weapon, if the court is satisfied on the evidence placed before it, including any affidavits supporting an application referred to in section 4 (1), that -

(a) the respondent has threatened or expressed the intention to kill or injure himself or herself, [or] any person in [a] the domestic relationship or a related person, whether or not by means of such [arm or dangerous] weapon; or

(b) possession of such [**arm or dangerous**] weapon is not in the best interests of the

[16] Underlined phrases are this writer's emphasis.

respondent or any other person in a domestic relationship, as a result of the respondent's

(i) state of mind or mental condition;

(ii) inclination to violence; or

(iii) use of or dependence on intoxicating liquor or drugs.

We propose the addition of (iv) <u>any previous convictions for violence-related offences</u>, preceded by ;or.

11. Amendment of section 10 of the Act: Variation or setting aside of protection order

There are two areas of the amendment bill which are not adequately addressed. The first relates to the withdrawal of protection orders and the second relates to the duties of police in relation to a violation of the protection order.

In relation to the *withdrawal of orders* we recommend that the court only allow the withdrawal of an interim or final protection order, when it is convinced that the applicant is at no further risk of violence or abuse and that the applicant's withdrawal of the order is not under duress. A request by the applicant should not be sufficient cause to withdraw the application. If the applicant indicates to the court that she/he wishes to withdraw the interim protection order, the court should request that she/he files such request on affidavit. The court may then consider the application and grant the order prayed, refuse the order prayed or postpone the matter.

The Bill is also silent with regard to duties on the police to *proceed with the investigation of cases* if a complainant chooses to withdraw a matter. It is submitted here that where there is *prima facie* evidence of a criminal offence (or violation of the protection order), the police should continue with investigation. While some argue that a complainant should have the right to withdraw a case, others argue that the state should peruse investigations regardless of complainant withdrawal. A middle ground should be established.

It is therefore recommended that should a complaint request that a case be withdrawn, (a) the reasons for this should be documented (in an affidavit by the complainant); (b) it is clear that withdrawal is not being done under duress; and (c) there is clear evidence that children are not likely to be endangered should the case be withdrawn.

We further recommend that the issues relating to the *withdrawal of protection orders* and the *withdrawal of cases* (when a criminal offence or a breach of the protection order) is further specified in both the legislation and the Regulations (Instructions or Directives). We say this with

recognition that the safety of the complainant, in both instances, is absolutely paramount. The decision to grant/allow the withdrawal of a protection order or criminal charge should not be taken lightly and should be done with careful consideration of the reasons submitted for these to be withdrawn.

12. Amendment of section 11 of the Act: Offence of publishing

We submit that the Department should take this opportunity to clarify and develop the provisions in section 11(2) of the Act, relating to the publishing of information on proceedings (including the identity of parties).

At the time that the Act was promulgated in 1998, the act of "publishing" information had a limited meaning, confined to publicly accessible print media such as newspapers, magazines and the like, or television and radio broad casting. However, the act of "publishing" information in 2020 extends to all manner of online activity, and includes posts on social media accounts on platforms such as Facebook and Twitter, personal blogs, and many others.

While it is justifiable to place legal limitations on third parties publishing information about domestic violence proceedings, this limitation becomes questionable as it relates to the parties directly involved in the proceedings. The question arises whether it is justifiable, for example, to legally limit a complainant's ability to talk about her experiences and the process of obtaining a protection order, on her Facebook page:

- Will doing so be a justifiable limit on the complainant's right to freedom of expression, or will it constitute a form of "silencing" a victim?
- Will the privacy settings of her social media account make a difference (publicly accessible, or invisible to those not in the complainant's social network)?
- Will it make a difference if the information being published relates to children linked to the proceedings?

These considerations complicate the concept of "publishing", and how it links to the rights of children, crimen injuria, and defamation – keeping in mind that threats of criminal charges and civil suits are often used by perpetrators as a way of scaring victims of abuse into silence.

We submit that now is the appropriate time to give these provisions further thought, and to develop them in light of the digital age, and at a time in South Africa when victims are being encouraged more than ever to "speak out" and to "break the silence.

13. Proposed amendment of Section 12 of the Act

An earlier version of the Bill extended court jurisdiction to include "place of study" for the complainant. We support this and recommend that it should be extended further to cover "place of study" for the respondent. We recommend the following wording as underlined hereunder:

"Any court within the area in which -

(a) the complainant permanently or temporarily resides, carries on business or is employed, or studies;
(b) the respondent permanently or temporarily resides, carries on business or is employed, or studies; or

(c) the cause of action arose,

has jurisdiction to grant a protection order as contemplated in this Act.

This subsequent version of the Bill has removed the reference to place of study altogether. We are concerned about this as it may limit access to protection orders for students, for whom it may be easier to apply at a court near their place of study, than their place of residence.

14. Amendment of Section 13 of the Act: Service of protection orders

The new version of the Bill amends this section as follows:
"(1) (a) Service of any document in terms of this Act must [forthwith] be effected immediately on the person affected by it at his or her residence or place of business, employment or study in the prescribed manner by the clerk of the court, the sheriff or a peace officer, or as the court may direct;
(b) If a document cannot be served as contemplated in paragraph (a), service must be effected by electronic mail, facsimile, short messaging service or other known social media platforms of the person who must be served, provided that proof of service effected in that manner must be provided to the court; and
(c) If service cannot be effected as contemplated in paragraphs (a) and (b), the clerk of the court must obtain directions from the magistrate on the manner of service."

We support the amendments to the Bill at 13(1)(b) that allow for alternative means of service in the event that personal service is not achieved. However, we believe that some further additions and clarifications are required to this section in order to ensure that complainants are not forced to accept service on behalf of the respondent. This is potentially very dangerous to complainants and has been known to arise where parties share a residence. For example, if a wife has obtained an interim protection order against her husband, and they share a home, service of the interim order happens to take place at a time when the wife is alone in the home, and consequently, she accepts

service of her own protection order against her husband, on his behalf. In this situation, the claimant would then herself have to draw the respondent's attention to the delivery, on his return. This would plainly risk the start or escalation of further violence.

We suggest an addition to S13(1)(A) that specifically makes mention that the Respondent's copy of an order may not be served on the complainant.

To avoid any loopholes, S13(1)(A) should also clarify whether only personal service of all documents will suffice, or whether other forms of legal service (such as annexing to a door of the relevant party's *domicilium citandi et executandi*, or serving on another responsible person on the relevant premises) will be sufficient.

15. Amendment of Section 18 of Act: Oversight mechanisms

Amendment of section 18, as amended by section 36 of Act 1 of 2011

In the main, the purpose of this amendment is to substitute 'Independent Complaints Directorate' (ICD) with 'Civilian Secretariat for Police Service' (CSPS). While this amendment captures the change in name, it does not take into account the change in structure. Where the ICD managed provincial offices that reported directly to the national office of the ICD, the CSPS, by contrast, is a national body which relies on the provincial structures of community safety to undertake monitoring in terms of the DVA. These provincial structures are accountable to the MEC for Safety and not the CSPS. On that basis we propose enhancing national oversight by adding a further layer of provincial oversight. This will require provincial offices of community safety to present the findings of their station audits to the legislature, which must then ensure that the provincial commissioners of police, as well as other relevant SAPS officials, are called to account for their province's performance.

<u>Recommendation 1:</u>

The underlined section represents our recommendation in this regard:

(c) The [**Independent Complaints Directorate**] Civilian Secretariat for the Police, must, every six months, submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4)(a), and setting out the recommendations made in respect of such matters.

(d) <u>The provincial offices for community safety must, every six months, submit a report to the provincial legislature regarding the outcomes of their station audits and the steps taken by the police in response to their findings.</u>

The purpose of oversight is not solely to provide inventories of police inadequacy and the reports and station audits produced as a consequence of this provision should be treated as opportunities for institutional learning and improvement, rather than exercises in finding fault. We therefore propose the following addition to section 19(3)(d)

iii. steps taken as a result of recommendations made by the [**Independent Complaints Directorate**] Civilian Secretariat for the Police, including in relation the findings of individual station audits.".

We propose the following additions to section 19(3) to ensure the timeous and regular submission of the six-monthly reports required by the principal Act: :

(c) The [**Independent Complaints Directorate**] Civilian Secretariat for the Police (CSP), must, every six months, before 31 March 2020, and again before the end of 30 September 2020, submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4)(a),and setting out the recommendations made in respect of such matters.

(d) The National Commissioner of the South African Police Service must, every six months, before 31 March 2020, and again before the end of 30 September 2020 submit a report to Parliament regarding -

Further, section 30 (3)(i) of Chapter Eight in the regulations issued in terms of the CSP Act allows for the establishment of a reference group to advise on matters relating to domestic violence. The CSP should thus consult with the group around the contents of the report prior to its submission to the portfolio committee.

16. Implementing intimate femicide case reviews

It is standard practice in health settings to review patient deaths. These reviews are undertaken partly with the aim of learning how to improve patient care. We suggest that the same ethic should infuse the legal system's response to domestic violence. For when complainants have actively sought the law's protection and died nonetheless, it is key that we understand why the protection order failed in its objective. In 2009, regrettably the only year for which information is available, approximately 5% of women (or one in 20) who died at the hands of their partners that year was in possession of a protection order.[17] Mandatory review of such deaths would immeasurably

[17] Vetten L (2017). 'A Luta Continua: Police Accountability and the Domestic Violence Act 1998' *South African Crime Quarterly,* 59: 7-18. Available at: http://dx.doi.org/10.17159/2413-3108/2017/v0n59a1690

strengthen the practice of risk assessment and potentially protect complainants in future.

As a first step towards this goal we recommend that all intimate femicides be checked against SAPS 508(a), 508(b) and a file of protection orders maintained by the police station in the jurisdiction where the killing occurred. Should the victim have been in possession of a protection order, or in the process of obtaining such an order, then this case must automatically be forwarded to the CSP. In addition, when a child is killed by a parent, their details must also be checked against this documentation to ascertain whether or not one of the parents was in possession of a protection order, or was in the process of applying for one. Where this is found, such cases must also be recorded. The number and details of such cases must be included in the six-monthly reports to parliament. The following amendment to section 19(3)(d)is proposed:

(i) the number and particulars of complaints received against its members in respect of any failure contemplated in subsection (4)(a);

(ii) the disciplinary proceedings instituted as a result thereof and the decisions which emanated from such proceedings; _

(iii) steps taken as a result of recommendations made by the [Independent Complaints Directorate] Civilian Secretariat for the Police; and

(iv) The number of individuals killed while in possession of a protection order, or in the process of applying for one, and a brief summary of the circumstances surrounding each individual's death.

17. Proposed insertions after Section 18 of the Act: Directives

Section 18A - Directives for clerks of the court

We welcome the introduction of directives for clerks of the court. The clerks of the court play a central role in the implementation of the Act, especially in the application for domestic violence protection orders and the services of interim protection orders as outlined in subsection 5(3)(a). We further welcome and support the provision that such directives must provide for adequate disciplinary steps to be taken against a clerk of the court that fails to comply with any directive, and we compel the Director-General to develop a robust monitoring system to systematically track compliance to such directives.

We support the directive to the Director-General: Justice and Constitutional Development to issue such directives, and propose that a timeframe for the issuing and publishing of directives in the

Gazette be set at 12 (twelve) months from promulgation of the amendments.

Section 18B - Directives for the Departments of Health, Social Development, Basic and Higher Education and Training and Communications and Digital Technologies

Section 18B makes it imperative that a range of departments issue directives guiding how they may further the Act's objectives. We welcome these as contributing to the provision of a more comprehensive response to domestic violence. At least some of these directives will apply to non-profit organisations providing various services to complainants of domestic violence. We hp[e that parliament will encourage departments to take this opportunity emanating from government's interest in developing regulations to ensure that organisations involved in this work and directly affected by the content of any proposed regulations play a key role in contributing to their development.

We make the following specific recommendation around 18B(2)(e), the designation of accredited shelters:

Based on experience with the accreditation of shelters housing victims of trafficking, this section should refer to 'registered' rather than 'accredited' shelters. 'Accredited' shelters must meet certain requirements, some of which entail significant costs. If the Department of Social Development's subsidies do not cover these costs than shelters cannot reasonably be expected to meet the requirements. 'Accreditation' can only be made a condition if funding commensurate with its requirements is made available

Finally, we conclude our submission with recommendations for additional directives to address long-standing concerns around the DVA. The opportunity to address persistent areas of complaint should not be missed.

18. Additional recommended directives

We recommend providing clear directives and instructions around the investigation and prosecution of acts of domestic violence. Our suggestions include the following:

1. Clear guidance around how discretion may be exercised in relation to arrests. This should take into account complainants' right to safety and police concerns around being accused of unlawful arrest.
2. Guidance around docket management in relation to the labelling of dockets; noting of any interventions made in terms of the DVA, Children's Act or other relevant legislation; recording of any previous history of domestic violence committed by the suspect towards the complainant (which should also be captured on the relevant DV Incident Report form [SAPS 508(a)].
3. The withdrawal of criminal charges must be carefully considered, with the complainant's safety at

the forefront of all decisions. The SAPS need to develop clear policies to address cases where (a) complainants withdraw complaints of domestic violence, but where there is *prima facie* evidence that a criminal offence has occurred; and (b) complainants withdraw charges/complaints of domestic violence, but there is *clear evidence* that children are likely to be endangered.

4. Guidelines around assessing risk must be developed specifically for police members and prosecutors. These should also set out what additional safety measures must be put in place to protect those complainants who are at high risk of intimidation if they pursue their matters. These may include (but are not limited to) referral to victim support services and opposing bail where the suspect is arrested. Where complainants are assessed as being at high risk of further violence this should be noted in the docket. (i.e. 'high risk').
5. In light of the above points, standing orders on closing of dockets in relation to cases involving domestic violence (for instance, an assault where the complainant and the accused are in a "domestic relationship" as defined by the Domestic Violence Act) must be revisited and compliance enforced with their prescripts.
6. Guidance must be offered in relation to charging suspects with domestic violence and a clear distinction drawn between cases where a protection order is in place and those where the complainant has not obtained an order against the suspect. We recommend that where no protection order is in place, the charges would relate to common law offences such as assault (common) or assault GBH, rape, etc. Where there is a protection order, and the complainant is alleging a breach of the order, the charge would be one of contravention of section 17(a) of DVA. A further charge may be added where the breach of the order also constitutes a criminal offence.

We also propose the following amendments to the National Instructions regarding SAPS 508(a) and (b).

1) Research[18] has shown that when complainants go to the magistrate's courts first, then bring the protection order to the station, the SAPS members do not see any point in filling out the SAPS 508(a), as they were not the point of first report of the incident. The 508(a) assumes that the police are the first point of reporting. The SAPS 508(a) needs to be amended to reflect the possibility that the complainant has sought either a protection order or other provision of service. In absence of

[18] Artz, L. (2014). *Expert Affidavit* for the Western Cape Commission of Inquiry into the Policing System in Khayelitsha (p. 1-54). Evidence-based affidavit submitted to the Western Cape Commission of Inquiry on Policing in Khayelitsha on behalf of the Social Justice Coalition, Ndifuna Ukawzi, Equal Education, Triangle Project and the Treatment Action Campaign: represented by the Legal Resources Centre. PART 2 based on: Artz, L., Combrinck, H., Gallinetti J., and Smythe D. (2005). *Commissioned Report on Compliance with the Domestic Violence Act at 29 Priority Police Stations in the Eastern Cape*, p. 1-183. SAPS/European Union; and Artz, L., & Combrinck, H. (2012). *SAPS National Work Session: Considering Changes to the Domestic Violence Act* (p. 1-51). South Africa: Commissioned by the Gender-based Violence and Victim Empowerment Directorate of the South African Police Service.

this, it appears as if the SAPS have not complied with their duties.

2) The SAPS 508(b) on the other hand, should be filled out "progressively", not just by the reporting officer. This needs to be understood by SAPS members as this breaks the recording chain. In addition, there is information that is required by the Register SAPS 508(b) that members can only really get from the court. This then gives the impression that the SAPS are not completing the Register.

3) The SAP 508(a) form must also be amended to include:

a. A section where the complainant signs the form in addition to the signature of the SAPS member.
b. A section where it can be verified that the complainant has been informed of his/her rights under the DVA.
c. A section denoting whether (i) the accused is in possession of a firearm or dangerous weapon; and (ii) whether the complainant would like that firearm removed.
d. A section to indicate that the complainant is a person with a disability.

4) Should a criminal charge be laid, a copy of the SAPS 508(a) should be put into the docket.

5) Members must be given *more detailed instructions* about how (and why) to fill out the DV Incident Reports (SAPS 508a's) and the DV Registers (SAPS 508b's). It is also crucial that the reasons for recording domestic violence incidents are clearly articulated to members, and that they receive training on how to optimally utilise these records.

6) It is recommended that the SAPS attach a copy of the FORM 1 to SAPS 508(a), with the complainants' signature on FORM 1. The complainant then gets a clean FORM 1 and SAPS has copy of her signed FORM 1.

Additional recommendations

Perusal of parliamentary minutes shows multiple concerns to have been voiced by the legislature regarding compliance with the Act's prescripts. We have proposed some suggestions below.

1) The manner in which compliance is to be assessed by both the SAPS and the CSPS must be set out via instructions and regulations.

a. In relation to SAPS, the instructions should set which structure in the police is responsible for monitoring compliance, how such monitoring should be undertaken, and the timeframes within

which steps must be taken by individual stations to address concerns.

b. Similarly, the CSPS must amend their 2016 regulations to set out the procedures to be followed in assessing compliance; how provincial offices of community safety must deal with complaints of domestic violence specifically (including their powers in this regard); and the mechanisms required to enable the CSPS and SAPS to cooperate around such monitoring, as well as address instances of non- compliance. Finally, clarity must be provided around the role of the reference group advising on matters relating to domestic violence, as allowed for in section 30 (3)(i) of Chapter Eight in the regulations issued in terms of the CSP Act.

2) Our final recommendation deals with the collection and reporting of administrative data on domestic violence by the SAPS, Department of Justice and Correctional Service, and the National Prosecuting Authority. These data are extremely important for understanding the utilisation and effectiveness of the Act, as well as providing transparency on its workings. The availability of such data also allows for the development of more appropriate policy responses and practice, including in relation to risk assessments. better informed public discussion of domestic violence. We propose the following:

a. The SAPS is currently reporting on the number of complaints it is receiving related to domestic violence in the annual crime reports. This should continue. In addition the police should record the number of third party reports received in terms of the obligation to report acts of domestic violence towards children, older persons and people with intellectual and psychosocial disabilities.

b. The Department of Justice and Correctional Services has been reporting on applications for protection orders in its Annual Reports but this not consistent from year to year. We propose the following:

i. Number of individual applications made for protection orders, number of interim applications granted, number of orders made final and number of orders varied or set aside, by province. This is different and in addition to the Department's current reporting on the number of applications sought by abuse type. This data should also report on the number of electronic applications made.

ii. Drawing on the number of domestic violence complaints reported by the police, the Department should report, in collaboration with the National Prosecuting Authority, the number of cases then referred to court and the number of cases finalised. A distinction should be drawn between matters prosecuted in terms of violating the protection order and matters involving other criminal charges (such as assault GBH)

iii. Finally, information should be furnished around the extent to which electronic service providers comply with the prescripts set out in the amendment.