



SUBMISSION BY ILITHA LABANTU:

THE SOUTH AFRICAN LAW REFORM COMMISSION

PROJECT 100: DOMESTIC VIOLENCE: THE CRIMINAL LAW RESPONSE

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Introduction

Ilitha Labantu is a social justice community organisation based in Gugulethu township, Cape Town. It is a psycho-social service and educational organization with a specific focus on addressing violence against women, children, vulnerable groups and supporting those affected by it.

The scope of our work is centred around meeting the needs of communities affected by high levels of violence and limited socio-economic opportunities. Located within the residential areas of its target group, we provide easily accessible services to Gender-Based Violence and Femicide survivors, victim families and the broader community. This violence perpetrated against women denies women in both townships and rural areas an opportunity and legal right to live in an environment that is healthy and conducive for them to thrive.

1. Do the existing substantive crimes adequately cover domestic violence?

The existing substantive laws do not adequately cover and address the unique characteristics of domestic violence such as the emotional, financial and social effects on the victims, families and communities. To a far larger extent, a culture of male domination and the private space in which domestic violence happens, women and children have been conditioned to accept as a norm. The majority of people facing DV overwhelmingly being female and often encounter challenges in accessing justice and protection.

Even the crimes against the person(substantive crimes) include but not limited to assassination, assault, battery, child abuse, defamation, harassment, homicide, intimidation, kidnapping, murder, invasion of privacy, stalking, torture, bigamy, cybersex, trafficking, incest, indecent exposure, obscenity, pedophilia, prostitution, rape, sex trafficking, sexual assault and sexual slavery, there is no real protection if these are committed in the context of domestic violence. For example, it is generally acceptable that it is okay for a man to hit a woman, more so in the domestic space.

The law should be strengthened in the way it responds to domestic violence and criminalising any act of domestic violence is the way to go. This will enable the police and the courts to take seriously the obligation to hold the perpetrators of domestic violence accountable and to ensure protection and support to victims of domestic violence.

2. If you believe that there should be a single offence of domestic violence, how should it be framed?

Yes, Domestic violence should be a single offence on par with other substantive crimes to show that the government is taking this matter seriously. Even though victims have the opportunity to pursue a civil remedy such as eviction from the common home, this simply means there is no criminal behaviour attached to domestic violence and perpetrators are often not arrested or detained except in the cases where a complainant institutes criminal charges. Attached to domestic there should be an automatic eviction of the perpetrator from the home. According to the Domestic Violence Act No. 116 of 1998 it is: any form of abuse which includes physical, sexual, emotional, psychological or economic harassment, damage to property, stalking, entry into a person's property without their consent and any other abusive or controlling behaviour where such a conduct causes harm or may cause harm to your health, safety or well being.

3. If you believe that additional substantive crimes, for instance strangulation/suffocation are needed, how should they be framed?

They fall directly under physical abuse but there is need to enunciate strangulation/suffocation as sub types under physical abuse. Now more than ever, there is an overwhelming need for the criminalization of domestic violence. This will mean that Domestic Violence will now easily be defined as a crime. The subtypes will then identify any action which are criminal in nature, prosecutable with a range of penalties for the offenders, hopefully deterring would be offenders.

4. If you believe that there should not be additional substantive crimes, what additional legislative measures or other measures might be required to ensure that the act of strangulation or domestic violence is treated with the necessary caution?

The point of departure which needs to be corrected mostly when assessing domestic violence is the degree of physical injuries, without which, a complainant is not taken seriously. An intimate relationship is more complex such that it is very easy for a partner to be emotionally and psychologically abusive without inflicting physical harm on the complainant. It is for this reason that complainants need the assurance that their complaints are taken seriously and in confidence when they report to the police.

Victims should have support and assistance to empower them as they go through the court process. Information should include having knowledge of their rights and remedies available for them and how to access these without being degraded or suffering secondary victimization. The entire court processes and procedures, Magistrates and Prosecutors should be sensitive to the needs of women to promote wellness and encourage reporting of domestic violence.

5. What measures should be put in place or changed to remove barriers to accessing the criminal justice system for victims of domestic violence?

The Domestic violence law is currently inadequate as it does not place perpetrators in the firing line of a criminal charge. Even though the complainant applies for a protection order which somewhat guarantees their safety, the complainant is not obliged to open a criminal case. This clearly does not deter the perpetrator in the majority of cases as evidenced by the repeat offenders. When complainants report that the perpetrator has violated the protection order, they usually do not get the full protection afforded by the protection order. As enunciated, the only crime that the perpetrator will be charged with is violating the protection order.

The justice processes should also be heavily scrutinised as some police officers fail to investigate reported cases within reasonable time. We might even suggest corruption within the justice structures who often release perpetrators after receiving bribes and also destroying of collected evidence or not collating and recording enough evidence in the docket to make a strong case for the prosecution. Within the frame work it should also ensure that it is the women who is protected by the state to stay in the house with the children while this case is being investigated and the perpetrator is evicted immediately to ensure the safety of the women and her children.

The common law crimes which are defined in the Domestic Violence act should be punishable, it should naturally follow that once a protection order has been granted, a criminal process should ensue.

The Domestic Violence provides for a civil remedy and capacitating the Domestic Violence to provide for criminal charges would go a long way in deterring would be offenders. Indeed, holding offenders of criminal

6. Should a victim of domestic violence have the choice of engaging a civil remedy rather than a criminal one to address domestic violence? Please explain your reasoning.

There shouldn't be a choice of having to choose between a civil remedy and a criminal one. No one should be given an option to choose between these as the victim will always be at a disadvantage. Perpetrators who have means will always be abusive because they can pay their way out and this will not end Domestic Violence. While the criminal charge will be the first charge, civil proceedings must also ensue for any complainant who has suffered any financial loss because of domestic violence. The Domestic Violence Amendment Act is highly lauded as it provides in section 7(4) as follows

“ the court may order the respondent to pay emergency monetary relief having regard to the financial needs and resources of the complainant and the respondent and such order has the effect of a civil judgment of a magistrate's court”

This monetary relief refers to compensation for monetary losses suffered by the a complainant before or at the time of issue of a protection order as a result of the domestic violence and includes, loss of earnings, medical, optical, dental, relocation, accommodation, transport, household necessities, education expenses.

The criminal remedy should be mandatory and the civil remedy can be optional. As the victim should have a choice to sue the perpetrator for lose of income due to injuries, times spent recovery, psychological breakdown and being away from work or business etc

7. What additional sentencing or preventative measures might be required? For instance, should it be possible to forewarn a victim/potential victim of the potential danger a repeat offender of a domestic violence offence might hold and if so, how?

Additional sentencing and preventive measures would go a long way as these would likely deter potential perpetrators of domestic violence. Criminal charges for domestic violence must be comparable to those for other violent crimes.

A prison sentence would be very welcome instead of a warning or eviction from the shared residence. A sentence should take into account the severity of the physical and psychological harm by analysing the victims impact statements.

Furthermore, a by default system, for every perpetrator of Domestic Violence should be set up such that all perpetrators of domestic violence have to undergo a programme such as anger rehabilitation programme and psychiatric assessments and registration on the domestic violence perpetrators list (that should be made public) just like the one for sex offenders and this can forewarn a victim/potential victim of the potential danger a repeat offender. This may also extend further to future employers just as there is a provision not to allow persons who have been convicted of sexual offences with children or vulnerable people to work within the sphere of children or vulnerable people or progressive institutions that believe in gender equality

Monetary fines would also ensure that survivors are compensated for the pain and suffering that they have undergone as a result of domestic violence. Domestic violence often results in the victim needing to find safer accommodation and needing medical treatment for both physical and psychological trauma.

Repeat offenders should be sanctioned heavily taking into account the need for safety of the victim and additional safety measures should be put in place for witness protection during and after criminal proceedings.

There should also be fines or warning for Police Officer / Officials who fail to heed the call of assistance coming from victims of domestic violence. Police Stations should have a stricter monitoring policy when it comes to complaints laid by victims for noneassistance from a specific police station as they have a clear mandate and responsibility as per the Domestic Violence Act.