

**"Marriage is Like Sitting on Red Coals":
A case study of domestic violence in four villages of the Moretele
District, Tshwane Metropole**

by

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Chapter 1: Introduction

Men's violence and ill-treatment of their intimate female partners is widespread in South Africa. In an effort to curb such abuse and provide comprehensive protection to those subjected to it, the government passed the Domestic Violence Act (DVA) in 1998 (no 118 of 1998). While some studies have investigated aspects of the implementation of the Act, most notably in the Western Cape (Parenzee, Artz, and Moul, 2001; Mathews and Abrahams, 2001), there has been little documented exploration of the interaction between culture and tradition and women's recourse to the DVA. Certainly there are studies examining community perceptions of domestic violence (Jewkes, Penn-Kekana, Levin, Ratsaka and Schrieber, 1999; Blumberg, Swartz and Roper, 1996) but these have not explored how relationship status also mediates the nature of assistance available to women seeking help with domestic violence. These are important key omissions, as this case study shows. It explores how, in one district, men and women are embedded in a range of community beliefs and practices that shape not only responses to domestic violence, but also the nature of assistance provided. This context not only affects when, how and which women use the Act, but also highlights how a variety of institutions mediate women's access to the criminal justice system.

The first chapter of the report contextualises the study and describes the Moretele District. It also outlines the study methodology. The [next chapter](#) presents findings from the focus groups conducted in the district. These findings situate domestic violence within a complex set of roles and rules for men and women which not only prescribe how they should behave in relationships with one another, but also provide an understanding of the role these norms play in creating situations that allow for the emergence of abuse, as well as determining the nature of recourse available to women. Building on what community members said in the focus groups, chapters [three](#) and [four](#) then explore criminal justice system responses to domestic violence. Chapter three presents findings from interviews with police officers stationed in the district studied, while chapter four reports on the local court's response to domestic violence. This chapter is based on an analysis of applications for protection orders at Temba magistrates' court, the court servicing Moretele District. The report ends with a brief overall conclusion that offers some thoughts around addressing domestic violence in ways that engage with people's traditions and cultures.

1.1 Abuse and Intimate Relationships in South Africa

Violence is present in very many of South Africa's communities. One study surveying 1 306 women in three provinces found that 27% of women in the Eastern Cape, 28% of women in Mpumalanga and 19% of women in the Northern Province had been physically abused in their lifetimes by a current or ex-partner (Jewkes et al, 1999). The same study investigated the prevalence of emotional and financial abuse experienced by women in the year prior to the study and found that 51% of women in the Eastern Cape, 50% in Mpumalanga and 40% in Northern Province were subjected to these types of abuse (*ibid*). Another study, undertaken with a sample of 168 women drawn from 15 rural communities in the Southern Cape, estimated that on average 80% of rural women are victims of domestic violence (Artz, 1999). Interviews conducted with 1 394 men working for three Cape Town municipalities found that approximately 44% of the men were willing to admit that they abused their female partners (Abrahams, Jewkes, and Laubsher, 1999). National figures for intimate femicide (men's killing of their intimate female partners) suggest that this most

lethal form of domestic violence is prevalent in South Africa. In 1999, 8,8 per 100 000 of the female population aged 14 years and older died at the hands of their partners - the highest rate ever reported in research anywhere in the world ([Mathews, Abrahams, Martin, Vetten, Van der Merwe and Jewkes, 2004](#)).

The national femicide study is also significant for how it highlights the particular risk faced by women in co-habiting relationships in comparison to women in other types of relationships. Fifty per cent of women in this study were killed by partners with whom they cohabited, 30% by men they were dating and 18% by the men they were married to (*ibid*). No other South African studies examine the effect of relationship status on domestic violence. Theories attempting to explain this association between relationship type and violence in intimate relationships have not been advanced either.

One may speculate that this vulnerability to violence is perhaps linked in part to the inferior legal status of cohabiting relationships, with women in such domestic partnerships enjoy few legal protections. Currently no duty of support is created between the parties, meaning that they are neither entitled to inherit upon the death of the other (unless specifically nominated as a beneficiary in the will) and nor does any proprietary claim against the parties' estate exist. The South African Law Reform Commission (SALRC), in its discussion paper on domestic partnerships, recognised that while cohabitation may be a matter of choice for the middle class, "it is a real problem out of the control of most poor women" (2001: 18). Apartheid law (such as the Group Areas Act, influx control and the pass law system) played a significant role in the disintegration of African families, which was also hastened along by migrant labour. Poverty and unemployment have also been cited as additional key reasons why women remain in relationships where men chose not to marry them (*ibid*: 18 – 20).

The need to legally recognise cohabiting relationships becomes all the more important in light of the fact that marriage may no longer represent the most common form in which men and women live together. South African statistics suggest that increasing numbers of people do not marry. The 1996 census data showed that approximately 1.2 million people were cohabiting with a partner. Other research has suggested that the rate of marriage is declining, with Statistics SA showing a decrease of 2 168 officially recorded marriages between 2003 to 2004 (the latest data available). The 2001 census data also shows that significant numbers of men and women cohabit rather than marry:

- In the age group 20 – 24 years, just under 10% of African, coloured and white women were living with a partner (the figure for Indian women was 2.4%);
- In the age group 25 – 29 years, the figures were 14.4%, 12.6% and 8.8% respectively (at 2.7%, the figure for Indian women living with a partner continued to remain significantly lower than for other race groups)

The 2001 census reveals that where women do marry, they tend to do so at younger ages than men across all race groups, for example, in the age group 20 – 24 years, 93.1% of African men had never been married, compared to 80.3% of African women. For Indians or Asians, the figures were 84.5% of men compared to 65.6% of women. It further shows that significant numbers of people do not marry at all. In the age category 35 – 39 years, 33.6% and 33.4% of African women and African men respectively, had never been married – the highest proportion amongst all race groups.

It is a significant oversight on the part of the law to ignore the growing number of South African women who are not marrying.

1.2 The Domestic Violence Act (No. 116 of 1998)

The DVA provides a civil remedy for persons affected by domestic violence and allows a protection order to be granted to an applicant ('the complainant') against the perpetrator of the abuse ('the respondent'). The DVA was passed in response to the inadequacy of the Prevention of Family Violence Act (PFVA) to address domestic violence. The shortcomings of the PFVA which the DVA sought to address include: lack of a definition of domestic violence; failure to explicitly make provision for a range of domestic violence relationships; lack of creative remedies; lack of clarity regarding the role of various stakeholders; and a lack of provision for sanction where various role players failed to perform their duties in relation to the Act.

The DVA provides for:

- A detailed definition of domestic violence. The definition includes physical, verbal, economic, sexual, emotional and psychological abuse, stalking, damage to property, entry into the complainant's residence without her consent, intimidation, harassment, and 'any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.'
- A range of relationships. Those covered by the Act include: a marriage relationship (whether the marriage subsists or not, including marriage according to any law, custom or religion); cohabitating relationship (past or present); same sex or heterosexual relationships; parents of a child; family members related by blood, affinity or adoption; engagement, dating or customary relationship including an actual or perceived romantic, intimate or sexual relationship of any duration; or persons who share or recently shared the same residence.
- A speedy procedure for obtaining a protection order.
- The duties and powers of the police, clerks of the court, prosecutors and magistrates when dealing with domestic violence cases.

Failure to comply with a protection order issued in terms of the Act is a criminal offence. The police are mainly entrusted with the criminal aspects of the Act: securing the safety of victims, laying criminal charges, conducting criminal investigations and gathering evidence where a criminal offence was committed in the process of committing an act of domestic violence or where an abuser has breached a protection order.

1.3 Research Area and Sites

The field research was conducted in the Moretele municipal area, one of five local municipalities in the Bojanala District Municipality in the North-West Province. The Bojanala district is situated in the north-eastern corner of the North West Province and includes the towns of Rustenburg, Brits and Sun City. The Moretele Local Municipality consists of 22 wards and spans 1369.299210 square kilometres.

In 2001, the total population of the Moretele Local Municipality stood at 177,905. Poverty

levels are high, with 134,358 individual members of the population reporting no source of monthly income, and a further 26,863 reporting a monthly income of R800 or less in 2001. In this same year, unemployment levels (excluding those members of the population classified as not economically active) stood at 42%. However, since a significant proportion of the unemployed are excluded in these more conservative estimates, it can be assumed that unemployment levels are substantially higher than 42%. There are no gender-disaggregated unemployment statistics readily available.

Of the population over the age of 20 years in 2001, 17% had no schooling, 8% had completed primary school, 18% had passed Grade 12, and only 4% had obtained a higher educational qualification.

Table 1, presented below, provides an indication of levels of particular crimes reported between April 2004 – March 2005 at three of the police stations servicing the Moretele District. (Data for the fourth station, Carousel, was not available from the SAPS website). These stations serve the four villages where the focus groups were conducted.

Crime category	Temba	Cyferskuil	Makapanstad
Murder	61	2	9
Rape	354	20	65
Attempted murder	119	3	24
Assault with intent to inflict grievous bodily harm	1 279	35	182
Common assault	966	23	124

1.4 Research Methodology

This study comprised of three different research components, each with its own research methodology.

1.4.1 Community Perceptions of Domestic Violence

A team of three researchers undertook fieldwork during the period January to March 2005. In January, a series of orientation visits was undertaken and briefing meetings held with a range of stakeholders including the House of Traditional Leaders, councillors and staff of the Moretele municipality, the four traditional councils, district health services, high-ranking staff of four police stations servicing the locality, and representatives of local Community-Based and Non-Governmental Organisations.

The field researchers visited each of the research sites at least twice prior to conducting the field research: the first visit was made with the support of the traditional council and involved meetings with various local organisations and stakeholders at a village level. The second visit deepened the researchers' engagement with local organisations and enabled the finalisation of the field research arrangements.

Twenty focus group discussions were conducted in the four research sites (five focus

groups per research site) in February and March 2005. For the qualitative element of the study, four research sites were randomly selected, one in each of the four traditional authority areas in the municipal area. The sites were Bollantlokwe village under Kgosi Makapan; Ratjjepane village under Kgosi Mathibe; Little village under Kgosi Nawa; and Greenside village under Kgosi Maubane.

A focus group discussion guide was developed by the research team – the project leader and the three field researchers – and served as a guide to the facilitation of the focus group discussions.

The following focus group discussions were conducted in each research site:

- Traditional leaders/structure;
- Women organised by traditional leaders;
- Mothers of children organised through a local school;
- Women teachers; and
- Representatives of local civil society structures, such as the Community Policing Forum (CPF), churches, health and development committees, and any local service organisations.

Demographic data is available for 12 of the 18 focus groups. The groups for which demographic information is available were all women, and therefore encompass the focus groups of women teachers, mothers of children and women organised by the traditional leaders. No demographic data is available for the focus groups of traditional leaders and the civil society groups, comprising a mix of men and women.

Just over 100 women were reached through the 12 focus groups for which demographic information is available. The youngest participant in the group discussions was 22 years of age and the eldest was 81 years. Women in the focus groups of traditional leaders were most likely to be middle-aged and elderly, with a median age of 65 years. Focus groups of teachers and mothers were usually comprised of women under the age of 50 years, with a median age for teachers being 43 years, and 42 years for mothers.

Of the eight focus groups of women not employed as teachers, only three women (4%) were employed, with two of these indicating that this employment was on a part-time or temporary basis.

In terms of educational levels achieved, all but one of the teachers had obtained post-matric qualifications. Of the balance of the research participants for which data is available, 29% had obtained some level of primary school education, 23% had obtained a Standard 6 (Grade 8) pass, 10% had passed their matric (Grade 12) and 6% had obtained a tertiary qualification.

With regard to marital status, a full 76% of the research participants were married either under civil (the majority) or customary law. Twenty-two participants (22%) and ten teachers (32% of teachers) were single.

Tapes of two of the focus group discussions unfortunately went missing, and the analysis

therefore only draws on discussions held in eighteen of the focus group discussions. A list of the focus group discussions, and the acronyms used in the report when quoting from these discussions, is attached as Appendix A.

The taped discussions were transcribed by a team of two translators and written notes of the focus group discussions were used as the basis for analysis. Where basic demographic and background information was available for focus group participants, these were tabulated and analysed. A data coding system was developed to order and code hundreds of pages of data. Compilation sheets were usefully employed to summarise and compare data across the different categories of research participants.

1.4.2 Police Perceptions of Domestic Violence and Responses to Domestic Violence in the Moretele District

Semi-structured interviews were held with 8 members of the South African Police Service (SAPS) stationed at the Carousel, Cyferskuil, Makapanstad and Temba police stations situated within the Moretele Traditional Authority areas under study. An interview was also held with a member of the Tshwane Metropolitan Police Department whose area of jurisdiction overlaps with some of the Moretele Traditional Authority areas.

One of the shortcomings of this section of the study is that not all interview questions could be thoroughly explored during the interviews. Police authorities were somewhat reluctant to give us permission to interview SAPS members for this research and when permission was ultimately granted, our field workers were restricted to one hour per police station. Two police officers were interviewed at each station, and this limited the scope and depth of the interviews.

1.4.3 The Implementation of the Domestic Violence Act at Temba Court

A retrospective review of applications for protection orders registered over a two year period at Temba court was undertaken. Written permission to conduct the study was obtained from the Department of Justice and the Chief Magistrate of Temba court on condition that no identifying information of the applicants or respondents would be used in the report, and that these persons would not be contacted. A structured questionnaire was designed to document the contents of the court files in accordance with the information required on the application for a protection order. Data that was captured included particulars of the applicant and respondent, the acts of domestic violence, other persons affected by the abuse, the urgency of the application, details of orders requested and granted, the status of the interim and final protection order, and contraventions of the protection orders where applicable. Fieldworkers were trained to collect the data. The data was coded and entered in a computer programme, and appropriate statistics were used to analyse the data using SPSS version 10.

There were a number of limitations to this part of the study. Several applications for protection orders were lost or unaccounted for from the required time period. Reasons for this could not be conclusively established, but Mathews and Abrahams (2001), who encountered a similar problem in their Western Cape study, suggested that it may be due to cases being investigated at the time and hence files being with other personnel, that high caseloads created the possibility of misfiling, or that files were lost or destroyed on purpose through interference from perpetrators. What information was available was often scanty,

and it is recognised that the findings may be an under-representation of usage and implementation of the DVA. The accuracy of the data was also questioned in a small proportion of cases (for example, in some forms the interim order was granted before the date of application), and to preserve the integrity of the data, any irregular information was captured as unknown. Finally, as information is reported from only one site, it cannot be assumed that the findings are generalisable to all semi-urban courts.

Chapter 2: Community Perceptions of Domestic Violence

2.1 Introduction

This chapter is an analysis of focus group discussions held with women organised by traditional structures, traditional leaders, mothers of children organised through a local school, women teachers and representatives of local civil society structures such as churches, health and development committees and some local service organisations, with a view to explore their understanding of and responses to domestic violence.

This chapter explores:

- the gender roles and rules that govern relations between men and women;
- the extent to which traditional gender roles are still observed in the villages under study;
- how these rules and roles are enforced and who exercises authority over women;
- women's experience of marriage;
- community perceptions of violence in intimate relationships and the reasons for the violence; and
- how the community expects unmarried, married and cohabitating women to respond to domestic violence, recourse options available to each group, as well as some of the social and economic obstacles that women confront when seeking support for physical abuse in intimate relationships.

A brief conclusion is set out at the end of this chapter.

2.2 Violence in Intimate Relationships

All of the groups acknowledged that violence in all forms of intimate relationships is a feature of the villages they reside in. Most of the discussion centred on physical violence, although other forms of domestic violence such as financial abuse, sexual violence and emotional or psychological abuse were also raised in a few of the groups. This section will focus on physical violence, and will also include some discussion on sexual abuse (marital rape), since these were the substantive issues discussed in the groups. The group discussions on emotional/psychological and financial abuse were, unfortunately, too limited to draw any meaningful conclusions from and have therefore been excluded from this analysis.

2.2.1 The Function of Social Roles and Rules: Authority Established

Rules are the codification of a given set of gender roles and relations prescribed for men and women in a given context. Rules are key to the regulation of relations between and

behaviours of men and women. Rules governing relationships and gender roles are important in fostering an understanding of practices, beliefs and traditions that shape perceptions of domestic violence, with the violation of rules and the failure to fulfil expected roles often used as justification for domestic violence.

The myriad rules and prescriptions relating to gender roles and relations are mainly applied to women, the work they must do, the role they must play in family and society, who they may associate with, their movements, and so on. These rules aim to keep women, and to a lesser extent men, in their place. The traditional structure places men as the head of the household with authority and power over wives and children; women perform their designated roles of wives and mothers and subsume themselves within these societal roles. This section explores views and perceptions of the gender roles assigned to men and women, the rules and practices that underpin these roles, and discusses the reported challenges to these.

Participants in ten of the focus groups conducted held a very traditional notion of womanhood, centring on the woman's role as wife and mother. A theme that ran through seven of the groups was the imperative to protect girls and women's sexual 'integrity' and regulate their sexual conduct throughout their life stages. In only three of the groups did participants emphasise the importance of young women prioritising their education, obtaining employment and saving their money. Some of the respondents were clearly quite critical of the differential and unequal treatment of boys/men and girls/women. These participants contested the myriad rules that girls and women are expected to adhere to:

Most of the time rules only apply to women and I don't think it is fair when the same rules are not told to men. [The elders] only tell [the man] that it is okay for him to have more than one partner, they would say to a woman she should let her husband be. I have never heard them saying to a man he should love his wife. (GT)

There is a layered development of rules over the various stages of a woman's life. The regulation of a woman's contact with members of the opposite sex – and related thereto her movements, dress and even her relationships with other women – are consolidated over these life phases. From childhood, a girl is groomed and prepared for marriage, and the role through which she – and her family – will be realised. A young woman who fulfils her domestic responsibilities and duties, and follows prescriptions on movement and behaviour (being obedient, respectful, dressing modestly etc.) is respected, and similarly, is perceived to be showing respect for herself, her elders and her parents. The reputation and integrity of a family stands or falls according to the extent to which its members have schooled their daughter to be a good, obedient and respectful wife. This is because women are described as the property of the family, especially of the father as head of the family. Preserving their integrity by raising a respectable wife for a man brings status to a family, and 'protects *magadi*'. There is tremendous social pressure on women to fulfil the prescription for a 'good wife'. The behaviour of a woman through the phases of courtship and marriage is indicative of the status and reputation of the family. This focus on a woman's behaviour may account for the disproportionate responsibility women carry to ensure the success of their marriages and the reason why women often opt not to leave abusive relationships.

Enforcement, and the locus of this enforcement (i.e. the person who holds the authority to

enforce the rules), is central to the notion of rules. This is critical to a discussion on domestic violence, since it is in the perceived or actual breach of laws that women are subject to discipline and, in most cases, to violence. Some women adhere to the rules on the surface, but subtly push the boundaries and manipulate the rules. Thus, the direct challenge to the rules may emerge from women's rebellion.

2.2.2 Roles, Rules and Authority Prior to Marriage

In the different stages of a woman's cycle of intimate relationships, the 'holder' of authority over the woman for the enforcement of social rules varies.

Dating relationships A young girl of dating age is expected to conform to certain rules related to conduct, work and relations with the opposite sex. A desirable daughter is described in general terms as one who is humble and respectful; attends school; does household duties; is home on time before sunset; does not spend a lot of time hanging around with friends ('naughty girls') in the streets; listens to her parents; wears modest clothing; and does not fall pregnant. A girl should behave respectably – be good and obedient – if she is to be a 'real woman'. A young woman will not be respected if her house is dirty: she must do household chores, washing and ironing, and keep herself and the house clean. The extent to which a young woman observes these rules determines the likelihood of her being a good wife and thus her candidacy for marriage.

Manners mean a lot and they would get married if they behave themselves.
Who wants her son to marry some rough and uncultured young woman? We
prepare our daughters for the future when we do that. (LT)

When a woman is of dating age, the imperative driving the rules to oversee and regulate women's relations with men is to ensure that a young woman does not fall pregnant outside of marriage. This is explained in different ways – for some participants, a young woman falling pregnant damages her prospects for marriage and the realisation of her most significant role in life. Young women who openly consort with young men and flaunt their relationships are characterised as 'bad', disrespectful and, at the extreme, whores. Their behaviour speaks badly of the family, who are condemned alongside their disrespectful daughters. A pregnant daughter, or daughter with child, is damaged goods/property and will not fetch 'good *magadi*'. At the extreme, respondents in one of the groups talked about 'their *lobola*' being damaged by a pregnancy outside of marriage.

As a parent you monitor your child (that is the girl child). Boys can easily trick
and she can shame the family by falling pregnant. If she falls pregnant you will
not get the *magadi* you deserve like other men. (BTL)

Some participants were of the view that a young woman falling pregnant damages her prospects for study and the possibility of building an independent life. In this view, women's role in society is perceived as encompassing a life and possibilities beyond or inclusive of marriage. The research participants who emphasised the importance of young women prioritising their education, obtaining employment and saving their money characterised marriage as onerous to women, and wished to see young women having a greater freedom of choice before them.

I will tell [my daughter] that education is important for her freedom and happiness. I will also tell her that she must work first before she can get married, that marriage is not easy. She must have money before she can commit herself. She must not have boyfriends before she has finished matric and is working. She must be afraid of men and stay away from them. (GM)

From when a woman is of dating age until her betrothal, the locus of authority over a woman lies with her parents (particularly her father). The parents are responsible for articulating and enforcing socially or traditionally-sanctioned rules for their children, with a special emphasis on their girl children. The parents (again, particularly the father) are also responsible for disciplining a woman or young girl when she has 'misbehaved'.

Across the groups, there seemed to be general acceptance that a boy dating a girl has no or minimal 'right' to exercise control over her behaviour, and physical violence as a mechanism for 'disciplining' girls and women that are either flouting, or are perceived to be flouting, rules is generally not tolerated. Because the locus of authority over a young girl is her father – and the daughter is the property of the family, and the father more specifically – the condemnation of the violence perpetrated by a boy dating a girl is related to the violation/damage of the property belonging to the father. The boy is disrespecting the father – overstepping his position and therefore challenging the powers of the legitimate holder/s of authority – if he beats the girl.

No man is allowed to touch my daughter unless she is married to that person. He is disrespectful of me if he beats her. He clearly shows that he will abuse her if he marries her. You can discipline your wife not someone you are not married to and did not pay *magadi* for. (BTL)

Some respondents rejected violence in dating relationships altogether as a matter of principle, and made no reference to the locus of authority. Where there is disagreement between and within groups on violence in dating relationships, the differences centred more on whether boys have a 'right' to discipline girls. Beating a woman is a 'right' or prerogative earned through marriage. Participants in seven of the focus groups condemned young men for beating their girlfriends. In five of the groups participants reasoned that the young men have not paid *magadi* and therefore have 'no right' to beat the girl, suggesting that some participants believe that married men are permitted to beat their wives. Their opposition to the violence principally relates to the question of authority. The locus of authority for disciplining a woman lies with her father/parents until she is married. In the balance of the groups, participants indicated that violence ('the hand') does not resolve matters of the heart, and that alternative ways need to be found to solve problems and conflicts arising in dating relationships.

Participants in six of the focus groups indicate that the young woman is generally held responsible for the violence resulting from a misdemeanour, usually related to some breach in the social rules governing young women's behaviour. Examples given here include a young woman dating other young men or being seen with other young men; shouting at her boyfriend or speaking to him disrespectfully; failing to take instruction from her boyfriend or inform him of her whereabouts.

While not conclusive, the focus group discussions suggested that beatings may be justified

where a young woman is perceived to be or is actually 'playing the field' (seeing a number of boys simultaneously), a contravention of a most deeply held social rule.

If the boy found the girl with another boy he had the right to beat her. He must call the girl to order and teach her that she should not be going out with a lot of people. (GM)

Moreover, a few of the research participants equated beatings with love and care:

You see sometimes the boy hits the girl out of love and care. He is serious about her and has good intentions to marry her but she is messing him around. He is just threatening her to stop misbehaving. Maybe he does not want people to see that his girlfriend is misbehaving and people will lose respect for her. (BWTL)

Once *magadi* has been paid but before the woman leaves her parents' home

Once *magadi* is paid, a further layer of rules is added – a young woman is advised to 'choose her friends carefully'; inform her parents about her movements; change her dress (she is no longer attracting a potential husband); and is generally not permitted to socialise with the opposite sex (in settings that might open the possibility for sexual liaison, for example, parties or taverns). She is also required to increase her household duties to prepare herself for taking care of her husband and keeping him clean and respectable.

On the payment of *magadi*, control over a young woman's behaviour shifts towards a greater, but not necessarily equal, role for the male partner. There seems to be a tacit acceptance that he has a role to play in monitoring and regulating her behaviour – preserving her integrity and standing as his future wife. The research suggests some notion of joint custodianship if *magadi* has been paid for a woman. There is, however, some variation in understanding as to how a male partner may exercise this role as joint custodian. Participants in some of the groups indicated that a man who is engaged to a woman is permitted to verbally reprimand her and draw the attention of her parents, usually the father, to 'poor or bad behaviour'. The father is, however, principally responsible for checking the behaviour of the woman for whom *magadi* has been paid.

Cohabiting relationships

In two of the groups comprised of men and women associated with the institution of traditional leadership, some of the participants were deeply critical of the practice of cohabitation. The perceived increase in cohabitating relationships, for which women are principally blamed, is closely associated with the progressive disintegration of the institution of marriage. Some of the participants in the traditional leaders group characterised women in cohabitating relationships as lacking in self respect because they give themselves freely to men by moving in with them before the payment of *magadi*. They also perceive cohabitating women as manipulative and self-seeking, whose primary reason for entering into these relationships is to extract resources and financial support from powerless men. Women are accused of bringing shame on themselves and their families by entering into cohabitating relationships. A woman in a cohabiting relationship is also perceived to be causing problems for herself because the man's family does not know her and will not come to her assistance if she has marital problems. Her children will not bear her partner's name, which is considered a disgrace. They will also not be recognised by her husband's family.

Women who are in such unions have endless problems. The families of the man do not know their kids and in some instances they do not want them. The ancestors do not also know the kids or where the kids are. Women should not marry themselves; it is too shameful to their families. The people stop respecting them. (BTL)

Cohabitation is seen to undermine the essence of marriage as it has been practiced traditionally in a number of ways. Firstly, the union is not negotiated between the families. Participants talk about people 'marrying themselves'. *Magadi* is not paid and there is, therefore, no binding of the two families through marriage. Secondly, and most importantly for understanding the resistance to cohabitation, through marriage men are traditionally vested with the status of head of the household, which brings with it a number of privileges and, to a much lesser extent, obligations. Marriage is recognised by the families of the husband and wife, and accords the husband's family a particular role in the regulation of relations between the two parties. Women and men who cohabit therefore place themselves, to some extent, outside the box of marriage and the complex rules, prescriptions and codes that structure relations between men and women in the most primary social institution, that of marriage.

2.2.3 Roles, Rules and Authority in Marriage

Further rules are imposed on a woman entering into marriage. She is told to respect her husband as head of the household (she must realise that she is not his equal); be humble and respectful; never question a man; never shout back; keep her man clean and respectable; never question a man's whereabouts; endure his affairs; undertake domestic work for her in-laws; respect and adapt to the ways of her in-laws; have meals prepared on time; take care of the children; and always inform her husband of her whereabouts. Women take sole responsibility for household chores and once they have children, they take sole responsibility for rearing them. Men's responsibility is to work in order to provide for their family and to exercise authority over their wives and children.

Once the woman is living with her husband, the locus of authority shifts very clearly from her father to the husband. The authority to regulate a woman's behaviour, set rules for conduct and check 'unacceptable' behaviour is located with the husband, and to a lesser extent, with his parents if the couple resides in the home of the in-laws. The key issue related to the authority of a husband over his wife is whether he is permitted to discipline or chastise (i.e. beat) her.

A central theme running through the research, and articulated by the female participants specifically, is that of the hardship of marriage. This is related to the definition of women's central roles in life as wife and mother. Many of the female participants spoke of the difficulties they have to endure in marriage.

A woman can work six to six, twenty-four hours. (RM)

When he gets home from work he just sits there and I become his slave. (RM)

Two women provided a powerful analysis of the weave of institutions, idiomatic expressions and practices that enforce and reinforce men's power over women. In their

analysis, these inequalities create the conditions for violence against women and keep women locked into abusive and unhappy relationships:

This treatment men give woman is brought about by the unequal powers and idioms given to women and men. The one idiom about men says 'monna ke thaka o nabile' ... 'man is like a pumpkin leaves, he stretches as he likes' and the other says 'lebitla la monna le tseleng.' Man's grave is by the roadside' (figuratively, this means that a man is not bound by marriage and could end up anywhere). But then again it says about women 'lebitla la mosadi le bohadi' ... 'woman's grave is at her in-laws' (figuratively, this means a woman may not leave her in-laws homestead under any circumstances). This is a very oppressive idiom. It locks women in abusive relationships while at the same time there are those idioms like the one mentioned before that men are free to explore their potentials. All this is said to give men power over women. Women are told to stay in marriages that do not work. Men can have affairs and make mistakes but a woman could not. In some cases a man who is having an affair would give all his salaries to his girlfriend and come home with no money for the children. When you ask him about the money he will say he was robbed on his way home. But then you wonder on which way home because he came home very late. (GCS)

While some women commented on the hardship of marriage, and offered a critique of this, other participants talked about hardship and difficulty as duties that married women must bear. On the payment of *magadi* and just prior to the traditional wedding ceremony, a woman is counselled by her father and the female elders in her family to prepare herself for the drudgery and hardship of married life.

(In the wedding ceremony) ... the girl is told about the burden of being married and what is expected from her as a woman. The elderly women keep telling her about being a real woman and building a family. (BTL)

In the Little Teachers group, some of the women contested this prescription and indicated a shift, saying that women are now realising themselves and obtaining more meaning in their lives.

The division of labour

Many of the rules governing gender relations in marriage pertain to the division of labour. A fairly traditional division of labour was described by many of the participants. For some types of work, there is a very strict division of labour. Chores such as changing nappies or feeding the baby, ironing, washing the clothing of other family members, or polishing the floor is almost unquestionably women's work and forms part of the duties they must fulfil as 'good' wives. A woman can never (or very rarely) ask or tell a man to perform a domestic duty, although some participants did indicate that she can do so if she is occupied with another domestic task that requires her pressing attention. Some participants indicated that a woman could respectfully ask a man to perform a domestic duty if they are alone. But repeated requests may be interpreted as 'disrespectful or undermining' of the man and may result in a beating. Participants in seven of the focus groups indicated that it is forbidden for a woman to ask a man in the presence of others to perform a domestic task. Participants in six focus groups mentioned that a man may undertake certain domestic responsibilities if he volunteers.

Participants in five of the groups (interestingly, three were groups of traditional leaders, and one of women associated with the institution of traditional leadership) talked about the need for flexibility in determining the division of labour, and acknowledged that the division of labour might vary from one family to another depending on what has been negotiated between the parties. There was an acknowledgement in these groups that some men do help women at home. The practical circumstances of the family are very important in determining the division of labour. For example, a male participant in the Bollantlokwe Traditional Leaders group mentioned that he lives alone with his wife and hence assists with domestic duties. Participants in six of the focus groups mentioned a few common points of flexibility in the division of labour: when a woman is sick or is away visiting family/attending to social duties, such as funerals, then it is permissible for men to take on expanded domestic responsibilities. However, if a woman is sick or tired she is still expected to take primary responsibility for the care of babies; men may only assist.

Some of the research participants in the Greenside Teachers group commented, on an abstract level, that the traditional division of labour is unfair to women and should be challenged. Some of the positions articulated through this group may reflect their class location – employed women have more leverage because of their economic independence. An income also presents the woman with options, such as employing domestic assistance from outside the home.

A man is supposed to know his wife's weaknesses as much as a woman should know her husband's weaknesses. If he knows that his wife does not like doing the washing he should employ someone to come and do the washing, as much as if he knows that his wife cannot cook he should also employ someone who can cook in the house and he should do that in the name of love. I don't want to condone violence. (GT)

Some of the group participants talked about changing practices, or at least about a desire to change practice. In six of the groups, participants commented that household chores are taught to boys and that it is acceptable to have sons cleaning the house.

There is a young boy at home whom you won't find playing on the street. He stays at home and does his school work. If you can visit my place and enquire from my father about the person who is cooking he would tell you it is that boy. (LCS)

While changes to the division of labour are not traditionally sanctioned, some marriages, even amongst the older generation, may see men taking on more domestic responsibilities. Some men in the Little Traditional Leaders group reported that they do assist with childcare, such as taking babies to the clinic, changing nappies and assisting with feeding. Participants in other focus groups reported the following:

Well if you are busy and he is doing nothing I guess he should help you if he loves you.

My husband used to help me all the time. (LM)

I would make an example of myself, I have a five year old and her father used to wake up and feed him during the night and I would just sleep so that in the morning I would be the one who will take care of the child. (RWTL)

One woman commented that 'real men' assist their wives, while another alluded to the 'new rights' creating the conditions for a fairer division of labour. Women who work may obtain more assistance than non-working women (although this did not clearly emerge from the research), and the practice of husbands and wives establishing homes away from his in-laws may facilitate a different and more equitable division of labour:

Today marriages are not the same as it was. Today you will find a husband and wife who are both working and when they come home from work they have to help each other like when I'm busy with the baby he has to prepare the fire so that I can start cooking. It is not the same as women who got married many years ago because they used to stay at home with their mothers-in-law hundred percent. (GWTL)

Some participants talked about the need for a fairer division of labour, but did not necessarily refer to a change in existing practice. In general terms, respondents felt that a husband and wife should help one another in the home, with a particular emphasis on men assisting women with childcare and when women are busy with other domestic chores.

A man and a woman should help each other, yes, you married her but you should help each other. (GTL)

If he gets married he must be told that his wife is not a slave ... (LM)

2.2.5 Why do Men Beat Women?

The research sought to uncover how people explain the abuse of women within intimate relationships. Domestic violence must be located and understood in relation to gender relations, which find concrete expression through the 'rules' that govern the day to day work, conduct and behaviour of men and women. Across the groups, explanations for domestic violence are located in, and responses sought through, the actual and perceived flouting of these rules and conventions by women.

People's views on violence, and whether it is justifiable or not, are deeply personal and influenced by the specific circumstances surrounding an incident. The factors that would seem to inform a person's response to violence are diverse and include:

- The type of relationship: whether the parties are cohabiting, dating or married;
- The details of the circumstances leading up to the 'incident of violence' (here people require the fine details of exactly what happened before the beating – what happened, who said what, who did what? etc.);
- The history of the relationship, and more specifically, a history of abuse (it would seem that a pattern of ongoing abuse deeply influences people's responses to the violence);
- If there is a pattern of abuse in a relationship and traditional mechanisms have been activated to deal with the problem, this also determines people's responses. If the

traditional mediation has previously found one of the parties 'guilty', and they continue to display the same behaviour then they are considered to be undermining the power of the elders; and

- The nature of the alleged 'violation' of rules – if a 'petty' rule has been broken then violence is more likely to be condemned as inappropriate. If the 'violation' is of a substantive rule guiding gender relations, then the violence may be condoned.

Violence in marriage

Some informants rejected domestic violence in marriage outright no matter the circumstances. Participants in five of the groups specifically mentioned that there is no justification for a man to beat a woman - even if she is at fault for having breached established rules, 'he is wrong to hit her' (GM, LM).

Nowadays beating a woman does not work and should not be used. Some men still use it but they know that it is old fashioned and illegal. (RCS)

None of the research participants explicitly stated that physical abuse is an acceptable method of 'disciplining' women in the context of marriage. However, it can be inferred from the discussion on violence in dating relationships that on the payment of *magadi* or at the conclusion of marriage, physical violence may, under certain circumstances and in certain quarters, be regarded as a legitimate tool for disciplining women who overstep or challenge social rules and boundaries. This was the position expressed by participants in five of the focus group discussions.

We tell him that he will beat her when he has paid *magadi* for her and she is his wife. (LT)

A boy has no right to beat a girl up, especially if he did not even pay a cent for her. I will ask him if he is married to my daughter, and if not, I will then ask him what gave him the powers to beat her up. (BTL)

Even where there is a tacit acceptance of a man's authority to discipline his wife, some participants pointed to limitations on the exercise of this authority:

If the woman has gone back to her family, the man's family must follow her ... The woman's family will then say they have the child there with them but she is complaining about the way the husband is treating her. Then the man's family will ask for forgiveness ... The woman's family can ask money or cow for damages to their daughter. They then tell the man that when he married her they gave him her body but her head belongs to them. 'Re gofa mmele wa ngwana wa rona but tlhoho ya gae ke ya rona, o gopole seo ka metlha ...' meaning we are giving you her body but her head belongs to us (that means that he can use her body for his pleasure and to carry his children but her life still belongs to her parents ... he should not kill her if he does not want her any more. He does not have a right to hit her). (BWTL)

Some informants indicated that there must be a reason for the violence, and often attributed the problem to the woman. In seven of the focus groups, some participants indicated that

men hit women for a good reason. She must have provoked it in some way or asked for it or have done something wrong – and the 'provoking' lies in the challenging (perceived or actual) of the rules governing relations between men and women. When a man's traditionally privileged role is challenged, then the woman will be disciplined (beaten). Beatings are often justified on this basis. In the Bollontlokwe Traditional Leaders group, participants assumed that women 'ask' to be beaten.

You don't have a right to hit your wife - you must hit her for a reason and not without a valid reason. (LTL)

Some participants adopted a more nuanced view on the beating of women who shout at or contradict their husbands. The participants who spoke to this issue condemned the use of violence, but simultaneously also criticised the behaviour of women who are 'disrespectful' towards their husbands. They advocated alternative remedies to the resolution of the problem. Women should take personal responsibility for fulfilling the social rule that women treat their husbands with respect and never raise their voices to them. Alternatively, traditional dispute resolution mechanisms should be activated, involving members of the husband's family in resolving the dispute. Some participants also indicated that the woman could be sent back to her family to be 'taught manners'. Despite opposing violence as a means for 'disciplining' women who misbehave, the intention of the alternative remedies offered up was to restore women to their traditional roles and ensure that they adhere to the given social rules ordering relations between men and women.

Some participants in nine of the focus groups argued that it is acceptable for men to beat women if they don't talk 'properly and respectfully' to their husbands. Violence is especially justified if the woman 'disrespects' her husband in public.

Some participants in nine of the focus groups indicated that domestic violence may be justified in instances where the woman has failed to perform her domestic duties and, more importantly, if she asks or tells a man to perform domestic work, particularly in the presence of others. This breach undermines and challenges the traditional roles of men and women in the household and is seen as illustrating a woman's disrespect for her husband. If a woman tells a man to do domestic work then 'she is asking for it' and will get exactly what she deserves. However, the specific agreements that have been struck between a husband and wife regarding the division of labour are also important in determining how people view domestic violence. In the Bollantlokwe Civil Society group, some participants acknowledged that if a husband has been performing domestic duties and then beats a woman for asking him to undertake a domestic chore, he would be in the wrong. Some participants in the Bollantlokwe Teachers group indicated that men who are married to working women need to take more responsibility for domestic work, and condemned a man for beating his wife for failing in her domestic duties if she had good reason.

Participants in ten of the focus groups indicated that domestic violence may also be justified if a woman is having an affair, or if her husband or male partner suspects that she may be having an affair. This suspicion may arise when a woman fails to inform her husband or partner of her movements, when she is seen in the company of other men, when she refuses him sex, or when she socialises ('goes to parties') without her male partner or husband. As previously discussed, women's movements are controlled to regulate her contact with the outside world and especially with other men. It may therefore also be

justifiable for a man to beat a woman if she fails to seek his 'permission' to go out, or inform him of her movements. This prescription and justification for violence applies to marital relationships, and also to relationships in which *magadi* has already been paid for the woman but she may not be residing with the man.

The final major justification for domestic violence relates to the prescription that wives must service their husbands sexually. In the context of the fear around the transmission of HIV/AIDS, this prescription is coming under a degree of criticism and pressure, with some women asserting that men's conjugal rights must be limited. Read together with the social belief or prescription that men have affairs, women are fearful of contracting HIV/AIDS and some assert that women should have the counterbalancing right to insist that their husbands use condoms or that women be empowered to deny men their conjugal rights.

Women are also beaten for failing to perform their domestic duties. This was raised in eleven of the focus groups. Women are reportedly beaten if they do not take good care of the house, do not cook on time, loiter on the streets if the house is not clean, fail to do the washing and ironing, or do not take adequate care of the children.

It is the woman's responsibility to keep her man clean. That's why most men will beat their wives and if the elders are called in to help the woman will definitely be found guilty and negligent. She will be told that she provoked the man. (BTL)

In nine of the groups, participants mentioned that women are beaten if they ask men to perform domestic duties:

In our culture a baby belongs to its mother. The woman cannot ask a man to change the baby's nappy. Even if she is tired she is a mother and has to get up. That is why some men beat their wives - because they are disrespected and undermined. If Selina comes to me as my daughter-in-law I would tell her that she was asking for it. (BCS)

In six of the groups, participants mentioned that women are beaten for misusing household finances to gamble and drink. The Little Teachers group indicated that this is a primary reason for men beating women.

Participants in nine of the focus groups indicated that women are beaten for answering their husbands back, being 'cheeky' or disrespectful, and/or raising their voices to their husbands, especially in public. These behaviours are characterised as disrespectful and undermining of men.

A key reason given for violence in intimate relationships relates to women violating, or at least perceived to be violating, a set of rules that regulate and circumscribe women's relations with and interactions with other men. Women are beaten for having an affair, for suspicions that they might be having an affair, for failing to dress according to their husband's rules, and even for 'just looking beautiful'.

At some point when he suspects that a woman is having an affair or when she is

having it the men get so angry they can even kill you for that. It is an insult on men for their women to be having affairs with other men. (GM)

(Girls will be beaten) ... when a man will take money from his home and give it to [his girlfriend] and the girl is seeing other men ... they say wa jewa (a man who is used for his money). (RWTL)

Some men would beat a woman because they are jealous. If the wife is always clean and she is beautiful ... (LM)

A husband may beat a woman up during her pregnancy because of his suspicion that the child was not his. This illustrates the link between a perceived violation of a cardinal rule relating to fidelity and domestic violence.

He even beat me when I was pregnant. One time I was so ill I thought I was going to have the baby in 7 months ... He said that he does not think that the baby is his. He has been suspecting it for a long time. Then I understood why he beat me like he did during that pregnancy. (GCS)

Women are also beaten for not informing their husband or boyfriend of their whereabouts, or not seeking their permission to go somewhere. This rule relates quite centrally to the regulation of women's movements and their interactions with other men. Women who fail to seek permission to move outside of the home are often suspected of having affairs. This reason was raised in four of the focus groups.

Sometimes a guy comes to your house and does not find you, he will beat you when he sees you because he thinks you were with other men or boyfriends. If you go to a party without telling him, it's going to be a problem; he will kill you. (LCS)

In ten of the focus groups, participants indicated that men beat women for refusing to have sex with them. A key rule that underpins a traditional concept of marriage is that the woman must service her husband sexually. Where a woman refuses to perform this duty, she may be accused of having an affair, and is often beaten. In the Little Traditional Leaders group, participants said that a man might kill a woman for refusing him sex. Participants in one of the groups of traditional leaders indicated that this is a primary reason for domestic violence.

Some men would beat their wives or girlfriends if they refuse to sleep with them. Some men think that you are having an affair if you refuse to sleep with him. (GM)

Participants in eight of the groups indicated that women are beaten for inquiring after men's sexual liaisons or affairs. As referred to above, women are strictly instructed at the time of marriage to accept men's affairs, to not 'follow their men around', and never inquire about a man's movements outside of the home. Women who inquire after men's affairs are, therefore, violating a key rule underpinning marriage.

Some men when they are guilty they become abusive and defensive. They use

terror to avoid answering questions. He might beat her up terribly for asking him about his life. He will even accuse her of spying on him. (BCS)

Participants in five of the groups talked about men beating women who exercise independence because they earn their own money, refuse to submit to the authority of men by, for example, not handing over the earnings or grant money that they may have access to, or by asserting their rights against him. Mention was made that unemployed men beat women, suggesting that where there is a dislocation in traditional roles men might turn to violence to assert their authority over women. These reasons are the most explicit evidence of men beating women to maintain traditional relations of authority and assert traditional roles for men and women.

When a woman is working and the husband is not, he will become jealous of her and start accusing her of having an extra marital affair. Maybe when a woman comes home late from work the husband will say it is because she is having an affair. (GT)

There is also a case of the man who beats his wife for her money. The man does not work and the woman works. He demands money from her for liquor and if she refuses to give him money he beats her. Last time he broke her arm. (GCS)

The group discussions suggest that domestic violence may be more readily justified if it comes around the breach of rules that require women to: (a) treat and speak to their husbands with 'respect' (i.e. honour his position as head of household and take instruction from him); (b) undertake their domestic duties (cook, clean, wash and iron and take care of the children); (c) be sexually faithful to their husband/male partner (including the set of sub-rules concerning the regulation of her movements and interactions with other men); and (d) related to the previous point, service their husband sexually.

Participants also referred to the following as explanations for domestic violence:

- The abuse of alcohol by men. It is important to note that while some of the participants in five of the groups did raise this point, it was also contested. Some women pointed out that the abuse has little to do with alcohol, but rather that men carry grudges from 'unresolved' issues during the week and then wait for the weekend, when they are drunk, to raise the problem, which is then used as a pretext for beating the woman.
- Some of the women in four of the focus groups indicated that mothers-in-law play a role in fomenting violence. They may complain to the husband about the woman's behaviour, that she is not taking care of them or mistreating them. They may even encourage their sons to beat their wives.
- Stepchildren also create difficulties and conflicts in marriages, which contribute to domestic violence. Participants in two of the groups talked about stepchildren lying to their fathers about mistreatment by their stepmothers, which may lead some men to beat their wives.
- A woman may also be beaten when she terminates a relationship. Participants in two of the focus groups raised this issue, with one participant indicating that men might even go so far as to kill a woman 'who dumps him' (LT).
- A theme that also emerged in the group discussions was that men beat women

because they love them and care for them:

Justice has a problem that is why he doesn't want Conny to have friends, he is jealous and where does jealousy come from - love - and that is what makes him to beat her. (RWTL)

Therefore, the underlying rationale for domestic violence is that because women are the property of men (whether father or husband, and in some instances, male partner) and under the control of men, men's status and standing in society is closely tied to women's behaviour. A woman whose actual or perceived behaviour does not conform to established social rules is showing disrespect to herself, her husband and her family, and should be punished. 'Disciplining' a woman – restoring or ensuring her compliance to rules and prescriptions relating to women's role and conduct in a given social context – therefore establishes a woman's respectability and status, and by association that of her husband, male partner and family as a whole.

2.3 Recourse

This section discusses research participants' views on the different options available to women seeking recourse for abuse in different types of intimate relationships. The discussion begins with a description of some of the social and economic obstacles women confront when seeking support for physical abuse in intimate relationships. The options available to women vary according to the type of intimate relationship, the history of abuse, and previous efforts to address the violence. In discussing the different options, the analysis reflects participants' views of both traditional mediation and the criminal justice system.

2.3.1 Domestic Violence – The Silent Scourge

Participants in seven of the focus groups mentioned that women, married and single, tend not to disclose abuse. The reasons given to explain women's silence are the following:

- Marriage is regarded as a private family matter that is dealt with internally and not disclosed to the wider public;
- Women's fear of shaming themselves and their family; especially because a woman is often blamed for causing the violence by flouting traditional and social rules, thereby bringing her husband, his family and her parents into disrepute;
- On marriage, women are advised to endure the problems and difficulties of marriage and not to leave even when circumstances are hard;
- The absence of a person women can talk to in confidence contributes to why women rarely talk about the abuse;
- Young people conceal their dating relationships from their parents and elders which results in young women having few options for support when they confront violence in their relationships with young men; and
- The fear of the marital relationship breaking down, leaving women and their children without means of support.

Other focus group participants suggested that the silence surrounding domestic violence, and the requirement that these be treated as private, family matters, is a practice of the past and may be changing. Some women implicitly critiqued the silence surrounding domestic

violence and the related requirement that women endure abuse and mistreatment in marriage. However, a few participants offered an explicit critique of the silencing of women, and the effect that this has on them.

The women should also not keep secrets about how their men treat them. The majority of women are sitting on very hot coals. They do not want to tell in case they shame their husbands and themselves. They will not tell any one until the situation gets out of control. (BTL)

2.3.2 Recourse in Dating Relationships

Participants in eleven of the focus groups indicated that when a young woman has been beaten by her boyfriend, the family of the girl should seek a meeting with the boy's family to discuss the matter. It would, therefore, seem that a *traditional approach of reconciliation* is favoured over the more confrontational recourse through the criminal justice system. The support for this approach may, in part, be attributed to the more rural context in which the research was undertaken. It is likely that most young men and women that are dating reside in the same village, and there is thus an imperative to retain and build relationships between residents rather than undermine them by involving the police and courts.

The process usually followed is that the young woman's parents (and/or members of her family), accompanied by the young woman, visit the boyfriend's parents. The young man and woman are each given an opportunity to give their version of events. The focus of the mediation process is to build an understanding of the incident of abuse and the circumstances surrounding it; to locate the party at fault; and to advise the parties on how they should behave in future. The young man is typically instructed not to beat his girlfriend, while the young woman is advised to change her behaviour. The boy may also be advised to report any 'misbehaviour' on the part of the young woman to her parents, usually the father. The mediation is, therefore, focused on two outcomes: restoring the locus of authority over a young woman to its legitimate place, that of her parents or father; and restoring relationships and reconciling the parties by identifying the 'source' of the problem and instructing the parties to conform to given social rules. Hence, some participants indicated that the focus of the mediation may not necessarily be to end the relationship.

If he beats a girl we must go to his family to report the deed. The mother must ask some friends or relatives to escort her to the boy's home. She asks people to escort her as witnesses and normally as the parent she will be very angry and just shout and fight. The father can also go but also with relatives or friends. The girl must come along with them. When they get to the boy's home they report the issue then the mother or father of the boy will call him and ask him if it is true he did beat the girl up. The girl will be asked to relate what happened in front of every one and then the boy will be asked why he beat the girl. (BWTL)

Participants in seven of the focus groups indicated that they would report the abuse to the police. The following reasons were presented for seeking recourse through the criminal justice system:

- the young man has 'no right' to hit their daughter and that abuse is wrong;

- it is not possible to pursue traditional reconciliation when there is abuse in a dating relationship because *magadi* has not been paid, and the families have therefore not been united through marriage;
- if the young woman has been seriously harmed;
- if the young man came from a dysfunctional or poor family.

Participants in five of the focus groups indicated a 'phased' approach to resolving the problem of abuse in dating relationships. They would first seek reconciliation through the traditional dispute resolution process, and would involve the police only if this route failed to resolve differences and deliver the results they had anticipated, either immediately or in the short to medium-term. An immediate expectation might be for the young man's family to attend to medical expenses and/or pay damages for the harm that the young woman has incurred.

We have a right to fine the parents a cow or some money for damages ... If she is injured ... the boy's family will have to pay for the medical costs and buy fruits for her until she is well again. I am not going to nurse her back to health on my own. If they refuse they know that I can lay a charge against their son ... (BTL)

In the short to medium-term, some participants expected that traditional dispute resolution would end the violence. As such, three of the participants clearly indicated that if the young man beats his girlfriend again then they would lay charges against him.

(If we have already discussed with the boyfriend and he beats her again) - I will report him. We don't have time for him now. (GTL)

Participants in three of the focus groups flagged other forms of recourse for dealing with abuse in dating relationships. In one case, a young woman's brothers beat her boyfriend for abusing her, and in another, a mother went to the boy's parents and told them he should stop seeing her daughter. Another participant mentioned that she would take the matter of abuse to the *lekgotla* (traditional committee).

2.3.3 Recourse in Relationships in which Magadi has been Paid

The research suggests that once *magadi* is paid, but the woman is not yet residing with her husband/in-laws, a traditional mediation process is supported in cases of violence in a relationship. The payment of *magadi*, which binds the two families, is a critical element in the constitution of a customary marriage and there is a strong desire to resolve conflicts and differences rather than exacerbate them. Involving the police and the courts in such matters was perceived as inevitably leading to the breakdown of the marriage.

The different views held by participants as to whom the woman should approach for assistance in the case of domestic violence, reflects her 'in limbo' status. Some participants indicated that the woman should advise her parents and representatives of the woman's family – either her parents or the aunts and uncles (*maditsela*) that were negotiating the marriage – should visit the family of the fiancé to discuss the matter. The man and woman would be asked to explain what happened and why he beat her. The matter they fought over would be discussed and the two parties would be advised accordingly. Typically, the young

man is told not to hit his fiancée ('we address the issue of the hand first before addressing the reason why he did it', BCS), while the young woman is instructed to change her behaviour to that befitting a woman for whom *magadi* has been paid.

If my daughter comes home beaten by her fiancé I will want to know why she was beaten. I will then ask her aunts and uncles who were receiving her *lobola* to go to the boy's home and find out why he did this. If they find out she was wrong she would be told that she must listen to the rules and laws her husband lays down for her. The man has paid *lobola* and can put limitations on where she goes, with whom does she go around with, can choose friends for her and also tell her how to dress. (BWTL)

Another view is that the woman should not approach her family, but must rather speak to her mother-in-law or the man's uncles. The rationale is that the parents of the woman will be biased towards her and therefore cannot deal with the matter 'objectively'.

Participants in two focus groups indicated that it would be acceptable for the young woman to report a first incident of abuse to the police. Participants in four focus groups explicitly opposed the involvement of the police. Some participants in one of the focus groups indicated that the matter should be reported to the police if the traditional mediation process fails – if the man does not respect the process, if one of the parties is dissatisfied with the outcome of the traditional mediation process, and/or if the man assaults the woman again.

Participants in the Little Traditional Leaders focus group described a 'tiered' system of recourse. Women must 'visit' each of these levels sequentially in order to obtain support:

[He paid *lobola*, then finds her at a shebeen and hits her] In that case we go to their families and talk to them, if we don't reach an agreement we then go to the community council ... if that doesn't help we go to the police forum ... If we spoke to the family, the community council and police forum and [are] still not able to solve the case we will then say we are defeated. (LTL)

[The police] know how it works. They know that ... it must be dealt with in a certain way, that's why they send her back home [if woman has not discussed the problem with his parents first]. (LTL)

Participants in two of the focus groups indicated that a woman who is abused by her fiancée would be advised to break up the relationship. This opinion does not seem to be widely held.

2.3.4 Recourse for Women in Cohabiting Relationships

There was limited discussion on abuse in relationships in which a man and woman cohabit but are not married. Participants in two of the focus groups indicated that in such relationships the option open to women confronting abuse is to go to the police. Women may face particular constraints exercising this option. One participant mentioned that women might not go to the police for fear of the relationship ending and being left alone with the children.

She can only run to the police station and that destroys many marriages. The men in such relationships might choose to leave because they are afraid of being arrested. (BTL)

The women are also afraid to be left with children so they don't normally go to police, not unless the abuse is severe or in most cases when they have new boyfriends. (BTL)

A teacher from Greenside Village expressed the perception that 'when you go to the police they would say the woman should pack her things and go because they are not even married' (GT).

Women would not be in a position to solicit support from the parents of her partner as the couple are not traditionally married, and no *magadi* has been paid. The woman is therefore not regarded as a member of his family.

Both parents and the ancestors do not bless the marriage. The *magadi* that united the two families was never paid and that causes problems. In that case women from such unions cannot claim any help from his in laws. She has no right to run to them for help. (BTL)

Participants from two focus groups indicated that tribal structures do not attend to the complaints of women complaining of abuse in a cohabiting relationship.

2.3.5 Recourse for Married Women

Traditional mediation

Participants in eleven of the focus groups indicated that married women confronting problems of domestic violence must follow the traditional mediation route. The prescribed route is for a woman to report cases of domestic violence to her in-laws, or alternatively to the uncles (or aunts) of her husband who negotiated the marriage (*maditsela*). After *magadi* has been paid and a woman has been married traditionally, she is no longer regarded as a member of her family. She is therefore required to address the problems with her 'new' family.

Procedurally, members of his family (whoever has been approached with the woman's complaint) would convene a discussion involving the husband, wife and members of his family. Each of the parties would be given an opportunity to recount their version of events, and are then advised accordingly. It would seem that the man is generally instructed not to beat his wife, while the woman is advised to remedy the behaviour that 'provoked' the beating. Both parties would be counselled or guided on how to deal with domestic problems and conflicts in the future.

Culturally in cases of misunderstanding the woman should report to her in-laws and not go to her mother's house so as to have a strong case against the abusive/violent husband. The same applies to the man in the event of any problems with the wife he must also report to his in-laws or the elders who were present when they got married; they are the ones to resolve their problem. (LTL)

If the woman is not satisfied with the outcome of the mediation led by members of his family, if he beats her again or if his family is unable to resolve the problem, then the woman or his family may seek assistance from her parents. Participants in five of the focus groups reported this as the next step in a tiered system of options for recourse. The woman's family may play a variety of roles. Firstly, they may send a delegation of family members to his family to discuss the problem. Secondly, the man's family may invite the woman's family to a roundtable discussion. Finally, the woman may return to her family home, in which case his family is traditionally required to follow her and enter into negotiations with her family. Her family may require compensation and are also permitted to counsel the husband.

If her in-laws side with their son then she can go back to her home and explain to her father why she has returned. Her parents would then wait for her in laws to follow her. When they arrive her parents would state her complaint and demand a cow as a fine. They will then tell her to go back to her husband after they have talked with him. (BTL)

The research also elicited people's views on the traditional dispute resolution process married women are expected to follow when they are confronted with domestic violence. Women participants in five of the focus groups were critical of traditional dispute resolution as they feel it is biased towards men. Participants indicated that the elders will usually ask why he hit you and will normally conclude that the woman provoked the assault. Women in the Greenside Teachers group were particularly critical of the attitude of elders to men's affairs in the context of HIV/AIDS. They argue that the elders condone men's affairs and simultaneously insist on men's conjugal rights within marriage, which places women at risk of contracting STDs and HIV.

Male camaraderie can also leave a woman feeling that justice has not been done and can result in her further isolation. One woman recounted her experience of enlisting the support of her uncle to intervene after her husband had assaulted her:

I remember my situation when I just got married. He beat me up in the evening and I went to tell my uncle about it. I went to the uncle that I know was very harsh and strict. I knew he would be angry with him and try to confront him. When we arrived with my uncle at my place I left them alone to talk. A few minutes later my husband came back to the bedroom to take some money and asked me what does my uncle drink. He bought the beers and they discussed the matter while still drinking. My uncle was not angry with him any more. He did not shout at him or tell him that he must never repeat it again. He kept saying that marriage needs patience and understanding. He did not ask him why he beat and that he should never do it again. He then started counselling us about the challenges of the marriage. After that he just left, drunk. Thereafter my situation got worse and I had no one to go to now. I knew that if I brought my uncles he would buy them beer and they would not discipline him. (GCS)

There is a specific critique of the role of mothers-in-law to whom the woman might report the domestic violence. Women participants in three of the focus groups complained that the majority of mothers-in-law stand with their son against the wife, and fail to resolve the problem. They mentioned that some mothers-in-law actively foment conflict between their

sons and their daughters-in-law.

Only about 20% of mothers in law genuinely try to resolve the problems but the majority of them stand with their children. They will not address the dispute fairly, they always say that a woman should respect her husband and must not complain too much. They don't want to let go of their children and interfere too much. (GM)

Community members

Participants in four of the focus groups mentioned that the Tribal Council, teachers, neighbours and social workers play a minor role in matters of domestic violence. Teachers, through changes registered in the performance and behaviour of their pupils, may come to realise that there is a problem within a family. Teachers in the Greenside Village indicated that they might visit the family and if domestic violence is identified as a problem, they would usually refer the parents to social workers.

And sometimes we have problems with husbands when we suggest Social Workers and you know how stubborn these men can be, they will say you want them to talk to a young girl (Social Worker) about their problems. (GT)

Participants in two of the focus groups indicated that the support of social workers should be sought in instances where the husband abuses his wife on an ongoing basis, and where traditional dispute resolution options have not achieved any impact.

The research was not able to clarify the role of the Tribal Council or court in matters of domestic violence. While the involvement of traditional leaders in local dispute resolution processes, usually led by the Community Policing Forum (CPF), was identified, there has been no specific reference to the role of Tribal Councils. One participant from the Bollontlokwe group of traditional leaders indicated that:

Most of the domestic violence cases go straight to the police stations but there are those that still go to the Chief. Depending on how the two parties involved feel about their matter, the headman can suggest that the case be referred to the Chief. The council does deal with domestic related cases. (BTL)

CPF intervention

Participants in three of the focus groups indicated a role for the CPF in solving problems of domestic violence in marriage. Two options were outlined in this regard. Firstly, if a woman has alerted her parents to the domestic violence and they have sought a meeting with the man's family but the process has not yielded a satisfactory outcome, the woman and her family may approach the CPF for a letter to go to the police station. Secondly, the CPF may undertake a dispute resolution process that would involve the families of the man and woman, CPF members and traditional leaders. Both parties are given the opportunity to recount their stories about the domestic violence, and the CPF is required to locate the problem (the party to blame). Participants in the Ratjjepane Civil Society focus group indicated that they usually find that the woman is 'in the wrong'.

The CPF may issue the woman complainant with a letter to go to the police if she is

dissatisfied with 'the ruling' of the CPF, or if the husband does not arrive for the dispute resolution meeting. The Ratjjepane group indicated that the police usually consult with the CPF on the outcome of the mediation process.

Police intervention

Participants in only one of the focus groups indicated that a married woman could go directly to the police, without passing through the traditional dispute resolution process, in order to open a case. The participants who spoke of this option indicated that the in-laws usually take sides and complained that the parents 'drag out the issue'.

Participants in four focus groups indicated that a married woman should take her case directly to the police (two groups indicated that it should be done via the CPF) if she has been seriously injured; for example, if her arm is broken. No other injuries were mentioned so it is difficult to ascertain specifically when this option would apply.

A more general view, indicated in six of the focus groups, is that a married woman may seek assistance from the police once she has pursued or exhausted options within the system of traditional mediation, and the physical abuse continues.

Participants in eight focus groups were generally critical of involving the police or the courts in matters of domestic violence in marriage. Participants in four focus groups offered only general statements opposing the intervention of the police and the courts, so it was not clear exactly what they are opposed to. Their statements could be read as a blanket opposition indicating that women should never make contact with the police, even if it is to have a person 'with authority' warn the abuser, which seems to be the intention of some women who approach the police. These statements could also be interpreted to mean that a woman should not phone the police, or solicit the support of others to contact the police, to request intervention in instances where the woman's life may be under threat. A more narrow interpretation is that women should not open criminal cases or obtain protection orders against their husbands.

In cases of marital rape, participants in nine of the focus groups indicated that a woman should bypass traditional systems and 'go straight' to the police station. It was not always clear what research participants meant when they talked about going to the police. Participants in four of the focus groups indicated that, if their husband raped them, they would lodge a complaint with their in-laws. Other participants variously suggested that the social workers should be asked to intervene, that the woman should bring the matter to the Tribal Council, and one other woman participant indicated that she would 'pack her bags and go back to my home. The man is not interested in the marriage and building a home' (GCS).

A participant in the Little Civil Society group raised the point of the expectations of women vis-à-vis the police (and by association, the CPF):

That's why we avoid taking certain decisions because if ... the CPF gets hold of the husband and he is arrested, the family starves then the woman comes back and says that the CPF arrested her husband, but all along she wanted him reprimanded. The kids are now starving and once the husband comes back from

being arrested, I'm sure that the love is gone. (LCS)

Participants in two of the focus groups clarified that they do not necessarily wish to bring charges, have their husbands arrested, appear in court and be sentenced to time in jail. Their wish instead is for the police (people whom they perceive to carry a measure of authority) to warn their husbands.

How can they arrest him? I just want them to warn him and tell him not to force himself on me. (LM)

Other women were educated about the implications of bringing a charge of marital rape against their husbands. They wished to have their husbands arrested for the crime of marital rape and see him serve time in jail, and were prepared to risk losing their marriage.

Protection orders

Participants in six of the focus groups registered a specific opposition to protection orders. The major concern with protection orders was the perception that protection orders undermined given social relations between husbands and wives. Men served with protection orders no longer know how 'to handle their wives', and the orders are perceived to undermine the power of the head of the household. Sexual relations are interfered with, either because the man is not permitted to enter the bedroom, or because he is 'scared' to ask for sex. Moreover, there is a view that women become 'cheeky and disrespectful' to their husbands and no longer seek their husband's permission to move outside of the domestic sphere.

There is this thing called Protection Order. It is very bad and destroys a lot of families. It creates hatred and men tend to hate their wives because they do not know how to handle them any more. They withdraw and become distant, they come home late just to sleep and they drink a lot to cover the frustration. It is very difficult to even ask her to make love to you as a man if she has a protection order against him. (BTL)

Participants in six of the groups indicated that 'involving the police and the courts', whether mentioned more generally or with specific reference to protection orders, signals the end of the marriage. Protection orders create 'anger and hatred' between the husband, his family and the wife, and may lead some men to pursue affairs outside of the marriage and/or leave their wives.

If you apply for a protection order against your husband whilst living with your husband that means your marriage is over. They will tell him that he is not allowed to come close to you, that means he is not allowed to come to your bedroom ... (GM)

Participants in two of the groups contrasted the criminal justice system against traditional methods of mediation and found the former wanting. These participants argued that men and women should deal with conflicts culturally, and that 'matters of the heart' cannot be dealt with through the law. They emphasised that traditional mediation helps to build families and address the underlying problems, while the criminal justice system destroys

marriages. Importantly, a participant in the group of Bollantlokwe traditional leaders emphasised that the criminal justice system does not offer women the remedies they seek – an end to the violence, but not the destruction of their marriage.

Separation and/or divorce

There were very diverse views on the option of a woman separating from her husband, and seeking a divorce. Participants in five of the focus groups advised that women should leave husbands who are repeatedly abusive, and where all available options for local or traditional dispute resolution have been exhausted.

It is not right to tell women to stay in such marriages or with men who abuse them ... she must just go back to her home. (BWTL)

There is nothing like 'till death do us part' ... you know that every month you are going to have a blue eye; he will end up killing you. You must walk out. He will make sure that you die because you will go to the police station. (GCS)

There are however, numerous constraints to women leaving a marriage. The first major constraint is the prescription to women that they must make their marriages work by enduring hardship and difficulty. A failed marriage is a sign that 'you are not a real woman'.

Are you saying she must just go and see how she supports the kids? She cannot take the kids that belong to another surname and family back to her family ... Her kids need their father and she should stay and make the marriage work. We did that, we worked on our marriages and they eventually worked. She will not be a real woman if she just packs her bags and goes back to her home. Then she was not ready for a marriage at all. She should have known that marriage comes with big responsibilities. Lenyalo ho tshwana le o dula mashala a hlenng (meaning marriage is like sitting on red coals). If one has chosen to be a woman one must stay and work on the marriage. (BWTL)

The second major constraint confronting women is the dilemma of how they will support themselves and their children.

Some would rather divorce than stay in abusive marriages. Even divorcing is difficult for a woman who has children because the man can just choose to refuse to pay the child support. The financial burden of single parenting is locking the women in their unhappy marriages. His family too would support that he should not pay maintenance because the children belong with him and if you leave him you should leave him with his kids. (BCS)

One participant from a focus group of women in Ratjiepene indicated that some women fear that their husbands will kill them if they leave.

2.4 Conclusion

Most research participants hold a traditional notion of womanhood, centred on a woman's role as wife and mother, for which a girl is groomed from childhood. Characteristics of womanhood are attributes such as respect, humility, diligent performance of household

duties, and obedience. On the contrary, there does not seem to be an equal emphasis on roles and rules to be observed by boys and men, nor does the transgression of rules by men attract sanction. Boys are groomed to provide for and protect their families and so become the head of the household. As men, they are expected to provide for their families, head the household and exercise authority over women. This perpetuates a power imbalance between men and women reinforced and perpetuated by rules, gender roles and idioms, all of which are oppressive towards women and lock women into abusive relationships while giving men the freedom to explore their potential.

All focus groups believe that violence in all its forms is a feature in intimate relationships in the villages in which they reside. Research participants located domestic violence within the context of rules that govern relations between men and women, with the actual or perceived flouting of these rules given as explanations for domestic violence. Where violence follows the infraction of traditional rules by women (whether married or in a dating relationship), there is a tendency to blame women for it. Participants' views on domestic violence (whether they believe it is justified or whether they reject it), are deeply personal and seem to be influenced by factors such as the type of relationship, circumstances leading up to the incidence of violence, the history of abuse in the relationship, the nature of the violation, and whether traditional dispute resolution mechanisms were previously resorted to.

According to most research participants, factors such as type of intimate relationship, the history of violence in the relationship and previous efforts to address the violence tend to inform the recourse likely to be taken by woman in resolving the violence. Women, single or married, tend not to disclose the violence for the following reasons: domestic violence is regarded as a private matter to be managed within the family; fear of shaming themselves and damaging the reputation of their family; and fear that reporting the violence will lead to a breakdown of the relationship, leaving them (and in marriage, their children) without financial support. That young persons conceal dating relationships from their parents also means that they cannot report abuse when it occurs in these relationships.

Two approaches seem to be followed to address the violence in both marriage and dating relationships. Favoured by virtually all participants in relation to marriage relationships, and by some participants in relation to dating relationships, is a conciliatory approach to ending violence whereby a mediation is held between the two families with a view to understand the abuse, the circumstances that led to it, locate the party at fault and advise the parties on how to behave in the future. The second is a confrontational approach which entails reporting the matter to the police with a view to ensure the punishment of the offender. Most participants believed that where domestic violence has resulted in serious injury, the conciliatory route would not be appropriate, even where the parties are married, and the matter should be reported to the police at once.

In relation to dating relationships, those who favour a conciliatory approach believe that it serves to preserve the relationship between the two families because, in most cases, they live in the same village. Others, however, believe that the matter should be reported to the police because *magadi* has not been paid and the two families have not been joined in marriage, therefore the woman's family has no basis for meeting with the man's family to discuss the abuse.

Disturbingly, the CPF seems to be playing a filtering role in domestic violence matters by attempting to resolve the issue through mediation and giving women permission to approach the police only when mediation has failed or when the abuse has continued after mediation. According to research participants, tribal councils, teachers and social workers play a very limited role in domestic violence matters.

When attempting to leave abusive marriages, women face serious constraints. They are bound by the prescriptions that it is their responsibility to make their marriages work by enduring hardship and difficulty, and that they bear responsibility for the abuse by flouting gender rules and not fulfilling their roles. They are concerned about how they will support their children and themselves, as most women are economically dependant on their husbands. Some women fear that their husbands will kill them if they leave.

Chapter 3: Police Perceptions of and Responses to Domestic Violence

3.1 Introduction

This chapter sets out the analysis of semi-structured interviews held with members of the South African Police Service (SAPS) stationed at police stations within the Moretele Traditional Authority areas under study, as well as an interview with a member of the Tshwane Metropolitan Police Service (TMPS) whose area of jurisdiction overlaps with some of the Moretele Traditional Authority areas. The chapter also integrates the focus group discussion on the role of the CPF in domestic violence cases.

The chapter explores the extent to which the police response to domestic violence is influenced by community perceptions of domestic violence. The chapter also explores the police perceptions of violence in intimate relationships, looking specifically at the prevalence of domestic violence in the villages under study, typical domestic violence cases handled by the police officers interviewed, types of relationships in which domestic violence occurs, police perceptions of causes of domestic violence, the nature of disputes underlying domestic violence cases reported to the police, and police opinions of the CPF and other community structures involved in domestic violence cases. The chapter examines the police response to violence in intimate relationships, looking specifically at police understanding of the Domestic Violence Act and procedures to be followed under the Act, referral networks and police collaboration with other role players, problems typically encountered by the police when dealing with domestic violence cases, and the impact of domestic violence cases on the personal lives of the police. A summary of findings and a brief conclusion is set out at the end of the chapter.

3.2 The Duties of the Police under Section 2 of the Domestic Violence Act

The DVA does not criminalise domestic violence. It only criminalises the breach of a protection order. However, certain types of domestic violence constitute recognised crimes, such as common assault, assault with intent to cause grievous bodily harm, attempted murder, damage to property, trespassing, rape, incest, crimen injuria, etc. Where such conduct has been committed, a woman may lay criminal charges in addition to applying for a protection order.

The police are a key role player in relation to the DVA. Out of concern for the casual

manner in which the police responded to domestic violence incidents in the past, the legislature made provision for the duties of the police in the DVA. This provision is aimed at ensuring an adequate police response to domestic violence by making it obligatory for the police to assist complainants in domestic violence cases. Section 2 of the Act requires the police to:

- Inform complainants of their right to apply for a protection order, lay a criminal charge, or both, where the incident of domestic violence involves a criminal offence;
- Hand to the complainant a notice that informs the complainant of the contents of the Act and the remedies available to the complainant under the Act, as well as explain the contents of the notice to the complainant;
- Assist the complainant to find a suitable shelter and to obtain medical treatment;
- Serve a notice on the abuser to appear in court;
- Serve protection orders on abusers;
- Without a warrant, arrest an abuser who at the scene of domestic violence the police suspect of having committed an act containing an element of violence against the complainant;
- Arrest an abuser who has allegedly breached the terms of the protection order, where there are reasonable grounds to suspect that the complainant may suffer imminent harm;
- Where there are insufficient grounds to arrest an abuser, issue him with a notice to appear in court on charges of contravening the protection order;
- If directed by the court in terms of a court order, accompany the complainant to her home to collect personal belongings;
- Seize any arms or dangerous weapons from an individual that has threatened or expressed an intention to kill or injure any person in a domestic relationship, or if the possession of the weapon is not in the best interests of the individual.

In addition to the above duties, the National Instructions issued under the South African Police Service Act require the police to take reasonable steps to gain entry into a building under the following circumstances:

- Where there are reasonable grounds to believe that an offence containing an element of violence has been committed;
- The complainant is inside a dwelling and entry into the dwelling is refused;
- There are reasonable grounds to believe that the complainant is in imminent danger.

If a police officer fails to comply with his duties under the DVA or the National Instructions, the station commander where the police officer is stationed is required to:

- Institute a disciplinary action against the police officer concerned and charge him with misconduct;
- Keep a record of complaints received against its members, disciplinary proceedings instituted and decisions made as a result of the proceedings;
- Forward the record of complaints, hearings and recommendations to the Area Commissioner on a monthly basis.

The Area Commissioner is required to forward the record of complaints, hearings and

recommendations to the National Commissioner. The National Commissioner is required to submit a report to parliament on a six-monthly basis, setting out:

- The number and particulars of complaints received against its members;
- Details of disciplinary proceedings instituted as a result of the misconduct and the decisions which emanated from the proceedings;
- Steps taken by the Independent Complaints Directorate against a police officer who violated his duties under the DVA or the National Police Instructions.

3.3 Police Perceptions of Domestic Violence in the Moretele District

3.3.1 Frequency of Domestic Violence

According to police officers interviewed, domestic violence is highly prevalent in the Moretele area. Although the police outlined the collection of statistics on domestic violence as one of the roles played by the CPF, no statistics were provided to the research team. When asked about the prevalence of domestic violence in the Moretele area, some of the police officers interviewed said:

It is happening almost every day. The rate is very high. There isn't a day that goes by without us issuing a protection order or warning letter.¹

Most of the domestic violence incidents described by the police in the interviews seem to be criminal cases involving serious injury or murder. These included a case in which a man murdered his ex-girlfriend with the help of his friends and secretly buried her; a man who threatened to shoot his family and then kill himself; a boyfriend who shot his girlfriend; a woman who requested a warning letter to be issued against her husband for economic and verbal abuse; and a case of assault with intend to cause grievous bodily harm described in the following statement:

It was a case of SM who was staying here at Majaneng, I opened two cases for her both of assault GBH then she came back and told us that she was withdrawing the case and was forgiving her husband. The last time she came here to open a case because her husband had assaulted her and bit her under her left breast and was admitted in hospital. The fight started when she went to attend the wedding and when she came back her husband demanded to know where she was and she told him that she was from a wedding and her husband started beating her because he said she did not tell him when she left for the wedding. When he bit her she screamed and told their child to boil water so that they can pour over him so that he can stop biting her ... So when the child was bringing boiling water something tripped her and she fell that is when the woman grabbed his penis and when he felt the pain, he let go of her and that is when she escaped and ran to the police station. She was admitted to hospital for a couple of days and when I went to visit her in hospital I had no choice but to open a case of assault GBH.

It is unclear from the interviews whether these cases stand out due to their seriousness or whether they truly represent a typical domestic violence case handled by the police in the Moretele Traditional Authority areas. However, these cases are consistent with the

community perception that married women should prefer informal family mechanisms to the confrontational criminal justice system and that domestic violence should only be reported to the police where serious injury is sustained or where a woman has been killed.

Domestic violence incidents reported to the police involving a boyfriend and girlfriend seemed to be consistent with the community perception that a boyfriend has no authority to discipline his girlfriend, and that if he beats her up the appropriate step would be to report the incident to the police because resolving the case between the two families would be inappropriate. On the other hand, the seriousness of the domestic violence incidents between boyfriend and girlfriend in these cases would have prompted recourse through the criminal justice system even where the woman's family would have preferred to maintain peaceful relations with the abuser's family.

Only one of the seven incidents related by the police involved a non-physical form of domestic violence. This is not necessarily out of order because non-physical forms of violence do not constitute a criminal offence unless they involve the breach of an existing protection order. However, none of the police officers made reference to incidents of breaches involving non-physical forms of violence. It is therefore unclear whether such a breach is ever reported to the police and, if so, what the police response to it is.

3.3.2 Types of Relationships in which Domestic Violence Happens

According to the respondents, domestic violence mainly occurs between people who are intimately involved. Only one incident of domestic violence between siblings was referred to during the police interviews. Police officers also indicated that in their experience, it is mostly women who lodge domestic violence cases against men, although there have been several incidents of domestic violence perpetrated by women against men.

Those police officers interviewed perceived a substantial number of domestic violence incidents to occur in dating relationships. This seems to correspond with the perception in some focus groups that domestic violence between boyfriend and girlfriend should be reported to the police. According to some of the police officers interviewed, a number of cases reported to them involve cohabitating partners because, as one of the respondents put it, 'once a man and woman have been living together for more than two years, he starts treating her like his wife.'

3.3.3 Police Perceptions of the Causes of Domestic Violence

Police perceptions of the causes of domestic violence echoed many of those provided by the focus group participants. Some of the reasons cited by police respondents as causes of domestic violence included:

- Provocation by the woman;
- Consumption of alcohol, mainly by the man;
- Men taking out their frustration over other issues on their wives by hitting them;
- Having grown up in an abusive family;
- Starting an intimate relationship at a young age;
- The negative influence of a mother-in-law who does not like her daughter-in-law;
- Extra-marital affairs on the part of one of the parties (whether actual or perceived);

- When a wife confronts her husband about neglecting his duties as a husband and father, for example, the duty to provide for his family;
- When the wife leaves the common household without informing her husband where she is going;
- When a man does not accept that a woman has ended the relationship and has moved on and is now seeing another man;
- When a man suspects that a woman is lying by claiming to work overtime and is instead spending time with other men;
- Lack of trust and communication between husband and wife or girlfriend and boyfriend;
- When a woman confronts a man for not sleeping at home;
- When a man believes that a woman does not properly discharge her duties as a wife, for example, in relation to taking care of the children;
- When a man discovers that the child he always thought is his is in fact not his;
- Women's economic dependency on men tends to increase women's vulnerability to domestic violence;
- When a woman tries to end a relationship and the man does not accept that the woman does not love him anymore;
- Perceived mental illness of the part of the abusive husband or boyfriend.

One police officer stated that the community accepted a man beating his wife for refusing to have sex with him. Some forms of domestic violence were also tolerated by the community. The gist of the responses was that 'subtle' forms of domestic violence were acceptable to the community, such as slapping, emotional abuse and sexual abuse, particularly where a woman refuses to have sex with her husband. A man beating a woman to the extent that she sustains injuries is not considered reasonable chastisement and is found unacceptable.

Only one police respondent informed the field researcher that no matter what the reason, domestic violence is unacceptable,

No, whatever the reason is they don't like it. They know it is a serious problem that needs attention.

3.4 Police Responses to Violence in Intimate Relationships

3.4.1 Respondents' Understanding of the Domestic Violence Act and the Procedures to be followed in Terms of the Act

Training on domestic violence

Virtually all police officers interviewed have been trained on the provisions of the DVA. Most of them were trained at the Hammanskraal Police College. According to police respondents, the content of the training covered the causes of domestic violence, the rights of victims of domestic violence and the procedure to be followed by the police when receiving a domestic violence complaint in terms of the DVA.

We were taught about domestic violence and what it was and how does it happen and this is how we deal with the victim of domestic violence when she/he comes to the police station. If they come here we analyse the problem

and advise the victim to apply for a protection order like if it is emotional abuse or financial abuse. And then if it is physical abuse we would organise a shelter for the victim and then go and arrest the suspect.

The police officers interviewed also demonstrated a basic understanding of the Act. However, it does not seem from the interviews that officers strictly followed the procedures set out in the Act when dealing with domestic violence complaints. During the interviews, none of the police officers made reference to their duties under the DVA. Indeed, it is evident from the interviews that the police do not always comply with their duties when responding to domestic violence complaints. Whether action has ever been taken against members of the SAPS in the Moretele area who fail to comply with their duties in terms of the DVA or the National Instructions was not explored during the research.

Receiving complaints

It appears from the interviews that when lodging domestic violence complaints with the police, women are not always advised of their rights in terms of the DVA or the various remedies available to them under the Act. Only one police officer interviewed informed the field researchers that in addition to accepting the criminal complaint, he also gives women the option to apply for a protection order.

The first step that we do is ask the victim if she wants to open the case and if she doesn't want to open the case we then advise her to go and obtain a protection order. Again the victim can open the case and at the same time apply for a protection order. After that we go and arrest the suspect.

The other police officers interviewed for this research did not seem to advise women of their option to apply for a protection order in addition to laying a criminal charge.

Police conception/understanding of their role

While some of the police officers interviewed understood their role as law enforcement officers in domestic violence cases, others saw themselves as mediators attempting to end the violence in a manner that preserves the relationship.

It was an allegation ... the child opened a case against his parents because they were always fighting in front of the children so we had to go there and we sat both of them down and we talked to them about what they were doing and how it affected the children.

The police officers interviewed mentioned one case where mediation was used and another that was referred to social workers.

He came to tell us that he has made up his mind and that was what he was going to do and I asked him to give me his wife's contact numbers. Fortunately when I called his wife she was in Room 12 applying for a protection order and I asked her to pass here at the police station. I sat them down here in this office and I asked his wife to tell me what she thinks the problem is and she told me that her husband has been suffering from splitting headaches and every time when he experiences headaches that is when he will start to get out of control

and gets very angry and violent. I asked him if he was taking any medication and he said he was and I told him that his headaches are causing him to be violent and he should try to control it and he agreed.

It was a case of a person who came to the police station at Temba ... in fact that person was called to come at the Trauma Centre office and L was assisting him, the case was of domestic violence and was very serious. This man came to the police station to report that he was going to get a gun with 14 bullets to kill all his family and himself. So M and I had to calmly talk to him ... Yes, I was in fact called by L to come to the Trauma Centre and when we got there we found out later that this man had a serious problem and L had to involve the Social Workers ...

One of the police officers interviewed seemed to have the perception that women deliberately pick fights with men because of the protection they receive under the DVA. He therefore adopted the role of mediator to protect the abuser.

But now before we open a case we go to the suspect and find out exactly what happened because this protection order does not only protect woman from their abusive partners but it protect man as well. Most of the time woman will pick a fight with a man because they know that when they run to the police station then the law will be on their side and that is what we are trying to prevent.

Mediation is often used to resolve disputes under customary law. This raises the question of whether the extent to which the police resort to mediation is informed by their cultural background, and whether both African police officers and police officers from other cultural backgrounds prefer to mediate domestic violence cases.

Some focus group participants are of the view that, in most cases, women who apply for protection orders or report domestic violence incidents to the police do not want the police to punish their husbands or boyfriends but simply warn them. One police officer informed our field worker that he does not accede to such demands by women and strictly adheres to his duty to arrest the abuser and serve him with a protection order where one has been issued.

As soon as she has opened a case and she has obtained a protection order then police will take her to the suspect so that we can serve him with papers. Sometimes if the suspect was arrested we go to the cells and serve him with the protection order. Sometimes a woman would say she doesn't want to open a case against her husband, she just wants us to go and talk to him, but we are not allowed to do that. The only way we can help is by serving him with a protection order.

Contrary to their role of receiving criminal complaints, some police officers seem to take it upon themselves to assess the merits of a case in order to decide whether to accept a criminal complaint or not: where the complainant is found to lack credibility, the woman runs the risk that her criminal complaint will not be accepted.

A person can come here claiming that she was raped only to find that boyfriend and a girlfriend will have sex on their own free will and the next morning she is scared to go home. Instead she will go to the police station to open a rape case and when I investigate the case I find that there was no rape. So if you don't interview the victim thoroughly the suspect might go to jail and be charged with rape.

Some police officers also seemed to confuse a protection order, a court order and a warning letter. When asked to explain the difference between a court order and a protection order, police officers had the following to say:

A court order is more of a letter that we issue to a suspect that says that if he continues abusing the complainant we will come back and arrest him and he would have to appear in court and he will be fined. A protection order ... it is almost the same as a court order but protection order has two forms the other one remains with the suspect - that we call it a 'return'.

The complainant is sent to Room 12 where they deal with domestic violence cases. They will sometimes issue a protection order instead of a court order - it depends on how heavy the case is.

There seems to be a practice of serving warning letters on abusers.

Things have changed now. We have a protection order and a warning letter that we issue to the domestic violence victim. Warning letter states that you should stop insulting and assaulting this person and things like that.

It is unclear from where the police derive the authority to issue warning letters. It is possible that warning letters are peace letters issued in terms of the Criminal Procedure Act. A peace letter is less effective than a protection order because it is not a court order. A suspended warrant of arrest is not issued simultaneously with a peace letter and if an abuser continues abusing the complainant after the peace letter is issued, the police may get away with not arresting the abuser. The practice of issuing peace letters is also contrary to the police duties as they are set out in the DVA.

Two police officers said that they believe that the warning letter is ineffective.

But personally I don't think warning letters have a value because you just serve a person with a letter and immediately when the police leave the suspect will continue abusing the complainant.

I feel that the Magistrate office should make a thorough interview because they treat cases very light. You will find that a victim was issued a warning letter instead of a protection order and the case was very serious. They will give them one page and after serving the warning to the suspect immediately after the police have left he will continue abusing the victim. But if he was given a protection order and he continued to abuse the victim then a case would be opened against him of contravention of the protection order because he violated

it and he will be arrested immediately.

3.4.2 Referrals

The police in the Moretele area seem to have a good referral network with social workers and the Jubilee Hospital in relation to domestic violence cases. Some police officers interviewed indicated that they are likely to refer domestic violence cases to a social worker where there is no physical violence involved and the police believe that the parties have a social problem; and are likely to refer the case to the hospital where the victim is injured or where the abuser is believed to be ill.

Because we have formed a partnership with nurses and Social Workers so if I see that this is a social problem I refer them to the Social Worker and if it is a person who sick I don't have to go to the Administration ward I just go straight to the relevant person.

Some of the police officers interviewed seemed to have the perception that some abusers beat up their wives or girlfriends because they are mentally sick.

People didn't believe that he was sick; they thought he just enjoys beating his wife. He asked his wife to forgive him and I said to him it will take more than that. I then took him to Jubilee Hospital where he is being treated.

The perception that an abuser is mentally sick is of concern, as it may lead to avoidance in dealing with the domestic violence incident, indicate sympathy for the abuser, and serve as justification for the failure to provide protection to the victim of domestic violence. Where a police officer believes that an abuser is mentally sick, this does not absolve him of his duty to protect the victim as provided for under the DVA. The Criminal Procedure Act provides for procedures to be followed where there is a suspicion that a person accused of an offence is suffering from mental illness and such procedures do not seem to have been followed in this case.

3.4.3 Problems Typically Encountered when Dealing with Domestic Violence Cases

Limited resources

Limited resources were seen to hamper an effective police response to domestic violence in the relevant Moretele Traditional Authority areas. Low-ranking TMPS members who deal with domestic violence cases on a daily basis have not been trained due to lack of resources. One of the police stations where a police officer was stationed seemed to only have one van:

When the van arrives we then try to tackle the problem because sometimes when the complainant comes the van is out but as soon as it comes we then tackle the problem.

Women withdraw cases or fail to co-operate with the prosecution

Most police officers interviewed complained of women withdrawing cases after reconciling with the abuser. However, some understood that some women who report incidents of domestic violence to the police did not necessarily want the abuser punished but simply

want the police to warn him so that he can stop abusing her. When she comes here she will tell us that her boyfriend slapped her and she wants him to be arrested so that he can think before he hit her next time and when they go to court he will be discharged.

This presents a challenge to the police because, in cases where the police comply with their duties under the DVA despite the woman's wishes and arrest the abuser, she may not ultimately co-operate with the prosecution, resulting in the abuser being discharged. Withdrawal of cases by victims, as well as failure to co-operate with the prosecution resulting in the discharge of the abuser, results in despondency on the part of police officers and may in turn make them reluctant to deal with domestic violence cases in the future, or may result in the police not taking domestic violence cases seriously.

Lack of feedback

Some police officers expected feedback from victims of domestic violence and seemed disappointed when they do not receive any feedback.

Another problem that I'm experiencing a lot is that people will come here with their problems and cry their hearts out to me and I would do everything in my power to assist them and refer them but most of them don't even bother to give me a feedback. I'm not saying they should come here and thank me with money but I need them to come or phone me to say the places that I have referred them to have helped them a lot.

It is unclear whether the police expect feedback from all victims of crime or only from domestic violence victims and if the latter is the case, it is unclear what motivates this expectation. It could be that police officers try in earnest to help domestic violence victims and would derive satisfaction from knowing that the abuse stopped following their intervention.

Some police officers find domestic violence cases complex and feel insecure with the advice they give women. They also seem to take responsibility for the outcome of the case where they should not.

When a person comes here and confides in me, sometimes when the outcome is negative, I ask myself if I have given her a correct advice. And to sit and listen to other people's problem can really drain you emotionally. And if she decides to go back to her abusive husband and he ends up killing her you blame yourself that maybe I didn't give her the right advice. You try your best to give them correct advice and some of them are in denial - they will say it will eventually work out.

Male victims of domestic violence

One of the police officers interviewed complained that male victims of domestic violence are stereotyped and ridiculed by the community when they report domestic violence incidents to the police.

Recently I had a case of three men who came to report that their wives were abusing them and there is no longer respect in the house, the wife is having an

affair. Like I told you before, the wife will refuse to have sex with her husband. And I will also advise them to get a protection order and I will tell other people to stop laughing at other man when they come to report that their wives are abusing them. Mr M came and open a case against his wife and we issued a protection order for him and he recently came and told us that everything was okay, they were no longer fighting at home.

It is interesting to note what this officer considers to be abuse: an affair and the refusal to have sex. These acts do not necessarily constitute abuse but they would appear to violate women's roles as described in the [previous chapter](#).

Vulnerability to violence

Police officers may themselves sometimes be vulnerable to violence when attending the scene of domestic violence, or when they arrest an abuser. One police officer explained how he sustained injuries while trying to arrest an abuser.

I remember one incident where I got injured on my hand and was hospitalized because I was trying to intervene. This man had pending cases against him and was beating his wife so her brother came to the police station around 1am to report his brother-in-law. He told us that his brother-in-law had went to the tavern to drink and we went there to arrest him and he became very violent. That is how I got injured. He even destroyed the police car and the matter went to court where he pleaded guilty to all charges.

3.5 Impact on Police of Dealing with Domestic Violence Cases

Domestic violence cases impact on the personal lives of the police. One police officer informed the field researchers that he is affected by the horrible scenes of domestic violence.

When I have to go to a crime scene and have to go through the scene and sometimes it is horrible and so bad that it affects you.

Some police officers have themselves grown up in abusive families. These officers said that even though they find dealing with domestic violence cases traumatic, the fact that they are personally affected by domestic violence has encouraged them to be more involved in such cases and to go the extra mile.

My parents were living with my younger brother. Then one night they got into a fight because my father was drunk again. Then my younger brother went and fetched the axe and hit my father on the head. I got a call that my younger brother has badly hurt my father and we went there and from there we took him and we came here to the police station while my father was taken to hospital. We decided that my brother should go and stay somewhere else because they will end up killing each other. As I'm speaking to you right now things are going well at home because my father drinks but not that much. So there are cases that will be reported that reminds me of the life I used to live at home. That is why I'm also actively involved in these projects of domestic violence.

To minimise the impact of domestic violence cases on their personal lives, most police officers debrief with their captain, a social worker, or a SAPS psychologist.

We have a Social Worker and I would phone her and tell her everything and I feel fine after a while ... Sometimes I just tell myself that I'm going to deal with these cases on daily basis so I have to be okay, but some days are better than the others ...

'I would normally phone the psychologist that works for the SAPS and I would tell him that 'my friend, I have got this kind of problem', and he helps me to deal with it. At the moment I don't even have a girlfriend but I'm dealing with it one day at the time.'

Some police officers sometimes debrief themselves because it takes too long to see a social worker.

There is a Social Worker and you have to make arrangements to see her because she lives too far. So you have to make arrangements and by the time she finally comes you have long counselled yourself.

3.6 Police Opinions on the Role of Other Structures in Dealing with Domestic Violence

3.6.1 The Role of Family

The role of family elders as the first port of call in resolving domestic violence was highlighted by police officers. The behaviour of most victims who report domestic violence to the police seems consistent with the findings of most research on domestic violence: that is, a woman seldom reports domestic violence to the police after the first incident and normally reports domestic violence to the police after trying non-adversarial methods of resolving the violence, such as requesting the intervention of elderly family members. Women only resort to the police when non-adversarial methods of resolving the violence have not worked. This approach is also corroborated by most focus group participants who prefer informal non-adversarial mechanisms to resolve domestic violence as opposed to the confrontational criminal justice mechanisms. This is particularly pertinent where parties are married to each other - unless a woman has sustained serious injuries, in which case reporting the matter to the police is believed to be appropriate.

It is cases of domestic violence that the complainant doesn't want to open a case but wants us to come and talk to her husband. Most of the time it is minor cases like couple fighting over money and we would normally ask them if they had involved the uncles to try and solve the problem.

According to me, some still believe in the traditional ways of calling aunts and uncles to come and sit down and talk about it but others will just go to the police station to report it and when they come they will tell you that they firstly tried to involve aunts and uncles but in no vain.

Most of the police officers interviewed also seemed to believe that non-violent forms of abuse should not be reported to the police but should be resolved within the family or

through the CPF; for example, emotional abuse, economic abuse and sexual abuse where no serious violence is involved. In protecting women from domestic violence, the police did not seem to see their role as extending beyond the traditional function of protecting life, limb and property.

Cases where a wife will come here and tell us that her husband doesn't give her money anymore or doesn't have sex with her - those types of cases. You cannot open a case against a husband for refusing to sleep with his wife.

Cases where the husband didn't give his wife money. There is no crime there and there is no need to report it to the police station but you cannot tell a victim that is a useless case and they shouldn't have come.

There seems to be a belief among police officers that reporting a domestic violence case to the police might result in the further break down of the relationship, and that women should avoid taking this step particularly if the form of abuse involved is non-violent and has not persisted for a long time. It is also corroborated by the perception of most focus group participants that women who report domestic violence cases to the police do not necessarily want their husbands or boyfriends punished but merely warned, and that the DVA does not give women the relief they want but instead breaks down marriages.

I would firstly advise her to involve her parents before she involves the police because they have this mentality of saying you have opened a case against me and when they go to court the husband will ask her that on such and such a date didn't I give you money, and you will find that it was only on one occasion that he didn't give her money and that is when she came to the police station. That will cause more harm because her husband was embarrassed when he was arrested in front of his children.

3.6.2 The Role of Community Structures

Virtually all the police officers interviewed perceived domestic violence as an unacceptable community problem for which society must take responsibility and concrete steps to eradicate. Respondents informed the field researchers that they see it as the role of the community to educate society about domestic violence by holding regular workshops.

According to most police respondents, the police and the CPF convene community workshops to educate the community about domestic violence. Other police officers emphasised the need to use all possible avenues, such as schools, taverns and taxi ranks, to educate communities about domestic violence.

More workshops and more awareness campaigns, but awareness campaigns needs money so that they can have pamphlets and lot of information so if you have them in your office please give them to us so that we can use them. Even at schools more awareness is needed and not only to children but to the educator as well and if it is possible churches and taverns as well because most of time domestic violence starts there. It might happen that whilst they are drinking the husband will accuse his wife of flirting with another man and fight will start. Even at taxi ranks ... taxi drivers need awareness as well if you can

get different taxi associations then we can talk to them about domestic violence.

One police officer emphasised the need for awareness raising programmes to reflect the lives of targeted communities.

Domestic violence is a very sensitive issue - that is why we need the family's commitments and more workshops for the community. Like the way they are showing it like in Soul City (drama on TV) but they should make it reflect the real life of black people because most of the problems that we encounter are from people who live in informal settlements. What happens is that I meet a girl today and tomorrow we decide to go and live together so we build a shack and maybe her parents don't even know where she is and what happened to her?

The CPF seems to be the main community structure involved with domestic violence cases in the Moretele Traditional Authority areas.

The CPF

The CPF seems to play a very active role in domestic violence cases in the Moretele area, especially where:

- It is seen as important to preserve relationships between people affected by domestic violence; or
- The police would not offer the remedy sought by the complainant, e.g. where the complainant only wants her husband or boyfriend to be warned and not punished.

As discussed in this chapter, the CPF convenes workshops to educate communities on domestic violence. They also collect domestic violence statistics with a view to identifying domestic violence hotspots and targeting these areas for prevention initiatives.

When questioned about the role played by the CPF, the police officers interviewed had this to say:

We have CPF members that try to address the issue of domestic violence in the community. We had a case of two man who used to be friends but were now fighting because the other one had found out that the child that he thought was his was actually his friend's child so they were fighting and the community called us. Just imagine: you think you have a good neighbour, only to find out the worst.

Yes, you will find that each and every community there have a representative that they have chosen and if there is a domestic case they are able to go to the house and talk to the husband and wife without coming to the police station.

The CPF also helps when the husband and a wife fights. If there is a domestic violence then a victim can go and report it to one of the members of the CPF and they will try to solve it and if they can't they will involve the police.

The wife came and opened a case of assault and we could not arrest him

because he is on the run and the community is blaming us for that. They say we don't know how to do our job because they see him coming home every night. I told them that when they see him they should call the police. They can also call the CPF because they also assist the police or they can call their representative from the community they are called Safety and Security who is also part of CPF.

According to some police officers interviewed, if attempts by the CPF to resolve a domestic violence case fail, the CPF refers the matter to the police.

If the CPF feels that the problem is beyond them then they refer it to us the Community Policing Officer. The Community Police Officer will firstly talk to the CPF to find out what happened, then they will all talk to the family to try and solve it.

When asked about the types of cases likely to be reported to the CPF, police officers interviewed had this to say:

Cases like if the husband gave all his money to the wife and she used it all or if the husband drinks too much and pick a fight by dragging out the past. You can report that one but most of the time it is family cases that are reported to the CPF.

It emerged from the police interviews that cases involving non-physical forms of violence are those most likely to be reported to the CPF.

Other community structures

Community structures in the Moretele Traditional Authority areas that are concerned about domestic violence seem to network with a view to raising awareness on child and women abuse in the community, and to facilitate assistance with social grants applications. It is unclear from the interviews what the extent of collaboration between these structures and the police is and whether, beyond raising awareness, these organisations provide any services to victims of domestic violence such as counselling, court preparation and shelter services.

Community organisations also seem to collaborate with social workers.

Because I work hand in hand with social workers most of the time they invited me to come as well as a representative from the Education I can say they invited all the stakeholders. So when they organised the workshop they wanted all the stakeholders to be available that is how Victim Empowerment was formed.

Tribal authorities do not seem to play an active role in domestic violence cases. Police officers interviewed barely commented on the role of traditional authorities. This is surprising given their role in preserving traditional customs and norms, as well as the preference by both the police and parties affected by domestic violence that non-adversarial mechanisms be used to resolve domestic violence before the matter is reported to the

police. It also emerged from the focus group discussions that traditional authorities are rarely involved in domestic violence cases.

On the other hand, the non-involvement of tribal authorities in domestic violence cases may be appropriate because the DVA has not created a scope for their involvement. As one respondent put it, the police have a clearly defined role in handling domestic violence cases:

... no, we have to deal with the problem the way we were taught how to deal with domestic violent cases.

Another respondent saw traditional authorities playing a role in resolving domestic violence cases, with the justice system being a mechanism of last resort where other mechanisms have not proved effective:

They involved them and CPO as well and if there is no solution then they bring it here to us as the justice department.

3.6.3 The Role of the Metropolitan Police

Temba, and hence certain areas within the Moretele Traditional Authority, fall within the jurisdiction of the TMPS. One of the members of the TMPS who was interviewed informed our field worker that the Metro police are increasingly getting involved in domestic violence cases. According to the TMPS police officer, the National Government would like the Metropolitan Police Services (MPS) to start handling domestic violence cases in order to optimise utilisation of state resources. Currently, however, the DVA only sets out the duties of members of the South African Police services in handling domestic violence cases and the Act needs to be amended to bring members of the Metropolitan Police Services within its ambit.

The involvement of TMPS members in domestic violence cases is also limited by the South African Police Service Act. The Act prohibits MPS members from conducting investigations. Therefore TMPS members undertake the following tasks in domestic violence cases:

- Attending to complainants either at the scene of the crime or when they report to the station;
- Handling complaints, and more specifically, taking down statements, securing the victim's safety, accompanying victim to the district surgeon, opening dockets, securing the scene of domestic violence and following up on complaints;
- Testifying in court when called upon to do so.

In serious domestic violence incidents, MPS members are required to secure the scene of domestic violence, ensure the safety of the victim and call SAPS members to collect evidence from the scene. MPS members are also entitled to representation in the CPF in terms of section 64(6) of the SAPS Act and are involved in CPF efforts to combat domestic violence.

According to the TMPS member interviewed, there is a need to train low-ranking TMPS

members on domestic violence. Very limited domestic violence training has taken place within the TMPS, and has targeted members of the management team, who do not deal with domestic violence cases on a daily basis.

The training I underwent was not detailed as it targeted officials in management who do not deal with DV cases daily. Only 1% of officials at Hammankraal Regional 2 were trained on domestic violence. Training is outsourced to UNISA and is very expensive. There are no resources to train the other staff members. Low ranking police officers are yet to be trained. This makes it difficult to charge them with misconduct under the DVA because they are not aware of their duties in terms of the Act.

The role of the MPS in domestic violence cases requires further research.

3.7 Conclusion

An analysis of police interviews indicates a link between the community perceptions of domestic violence, the police perceptions of domestic violence, and the police response to domestic violence incidents. Consequently, there is a certain degree of congruence around what forms of violence the community and the police deem appropriate for women to report to the police. Non-adversarial forms of resolving the violence, such as mediation by the family or the CPF, are generally preferred unless a woman has sustained injuries, in which case reporting the incident to the police is deemed appropriate. Some of the police interviewed appeared to be exercising a considerable amount of discretion in how they dealt with cases, which not always have been to the victim's benefit.

The police response in domestic violence cases is also impacted by a limited understanding of the provisions of the DVA, limited recourses, and the effect of domestic violence on the personal lives of the police. These issues need to be addressed to ensure effective implementation of the DVA by the police. The role of traditional authority structures in domestic violence cases requires a more focused study. Unless the traditional rules and roles that govern relations between men and women are revisited, attempts at curbing domestic violence in the areas under study could be futile even if the DVA is effectively implemented by the police.

Chapter 4: The Implementation of the Domestic Violence Act at Temba Court

4.1 Introduction

Previous reports on the implementation of the DVA have found that it is poorly understood and inconsistently applied (Parenzee et al, 2001), that its effectiveness is limited by court constraints (Mathews and Abrahams, 2001) and that insufficient budget has been allocated to it ([Vetten, Budlender and Schneider, 2005](#)). The findings from the focus groups ([Chapter 2](#)) and police interviews ([Chapter 3](#)) add another dimension to understanding of the Act's implementation. They suggest that many factors influence who has recourse to the criminal justice system and that domestic violence in the areas under study is regarded as a private matter to be resolved within the family or through community structures. This implies that courts and the protection afforded by common law and statute may not be utilised in the first instance.

This chapter reports on who, ultimately, is successful in obtaining the protection of the courts. This section of the study reports on the use and implementation of the DVA at Temba court during 2000 and 2001. This semi-urban court services the broader Moretele area and dealt with 1 819 applications for protection orders in 2004.

The specific objectives of the present study were as follows:

- To describe the social and demographic profile of applicants who applied for protection orders during the sampled time period;
- To describe the profile of the respondents and how they are connected to the applicants;
- To describe the types of domestic violence from which applicants seek protection;
- To describe the details and status of the interim and final protection order, and to infer the implications of these findings for recourse and access to justice in cases of domestic violence;
- To assess how the quantitative findings from the court records of applications for protection orders lead into the qualitative findings in [the next](#) two chapters of the present report.

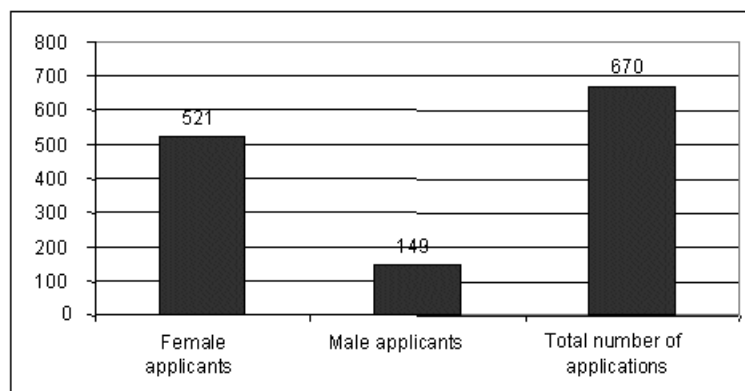
4.2 Findings

4.2.1 Information about the Sample

Information was captured from 670 applications for protection orders registered in 2000 and 2001 (see Figure 1).

- 78% of applicants were women (n = 521).
- 22% of applicants were men (n = 149).

Figure 1: Number of applications from women and men



Ratio:

Applications from women: Applications from men
5:1

- Four out of five respondents were male (80%, n = 533)
- One out of five respondents were female (20%, n = 135).

The category with the highest number of applications was female applicant/male respondent (see Table 1). This included intimate partners, mothers seeking protection from their sons, daughters from their fathers, and sisters from their brothers, amongst others. Unlike Parenzee et al. (2001), who found that male applicant/male respondent had the fewest number of applications, female applicant/female respondent had the fewest number of applications in the present study.

Table 1: Proportion of applications per gender

	Male respondent	Female respondent
Female applicant	72% (n = 477)	6% (n = 40)
Male applicant	8% (n = 55)	14% (n = 94)

The DVA also allows for a protection order to be taken out on behalf of another. While a protection order is typically taken out against one particular individual, an unanticipated occurrence of "multiple respondents" was found in 11 cases. This implied that the protection order, if confirmed, would protect the applicant from both persons. It is unclear from the wording of the relevant section of the DVA² whether this is legitimate or whether it is necessary to have submitted two separate applications.

Case example:

A 78 year old grandmother applied for protection on behalf of her 17-year old grandson. The grandmothers other two granddaughters were allegedly also affected by the abuse. Respondents were her grandson's father and step-mother:

The respondents evicted the children from the house. Children no longer attend school and are staying with their grandmother. The respondent (their father) throws stones at them and their stepmother (second respondent) insults them.

The applicant requested the respondent not to commit any act of domestic violence, not to enlist the help of another to commit domestic violence, not to prevent entry into the house, and not to evict, insult or assault. No record was kept of the return of service. The interim order granted all requests except the term pertaining to enlisting the help of another to commit domestic violence. The hearing occurred 88 days later without postponement and the applicants and the father were present. The order was confirmed and no breach was recorded.

Place of residence

Forty one per cent of the sample resided in areas of the North West Province, 25% resided in parts of Temba, 5% (each) resided in New Eersterus, Stinkwater and Majaneng, and 4% (each) resided in Morokolong and Ramoste village. The remainder were scattered in areas such as Sekamponeng, Suurman and Bosplaas. These settlement areas are typically inhabited by African persons, and while few inhabitants are economically active, employment figures are higher for men than for women according to Census 2001.

Age of applicants

- The highest number of applications came from men and women in their 30s (n = 236), followed by persons in their 40s (n = 160) and then in their 20s (n = 128) (see Table 2).
- The age group with the fewest number of applications were complainants younger than 20 years (see Table 2). This corroborates findings from the rural site of Paarl in the Western Cape (Mathews and Abrahams, 2001).
- The mean age of applicants was 44.85 years (see Table 2). This is older than the mean age of applicants reported in Paarl (31.1 years) (*ibid*), and may be explained by the use of the DVA as a last resort after traditional mediation has been attempted and failed (see [Chapter 2](#)).

Table 2: Age category of applicants X gender (figures may not add up to 100% due to rounding)

	Total applicants (n = 654)	Male applicants (n = 148)	Female applicants (n = 506)
<20 years	1%	1%	1%
21-30 years	20%	11%	22%
31-40 years	36%	27%	39%
41-50 years	25%	27%	24%
51-65 years	13%	26%	9%
65+ years	6%	9%	5%
Mean age	44.85 years (SD=11.87)	49.84 years (SD=12.14)	43.39 years (SD=11.12)

Age of respondents

Respondents tended to be slightly younger than applicants (see Table 3). Comparative findings from other South African studies could not be found.

Table 3: Age category X gender of respondents (figures may not add up to 100% due to rounding)

	Total respondents (n = 493)	Male respondents (n = 402)	Female respondents (n = 89)
<20 years	2%	2%	2%
21-30 years	20%	16%	38%
31-40 years	38%	37%	35%
41-50 years	29%	31%	16%
51-65 years	11%	11%	8%
65+ years	2%	2%	1%
Mean age	43.53 years	44.43 years	40 years

(SD=10.93)

(SD=10.80)

(SD=10.78)

Employment status

- An almost equal proportion of applicants were employed and unemployed (see Table 4). Respondents however, were more likely to be employed than unemployed (see Table 4).
- Female applicants were more likely to be unemployed (50%) than male applicants (32%). Conversely, 50% of male applicants were employed compared to 38% of female applicants.
- The present sample of applicants and respondents were less likely to be employed compared to another rural South African site (applicants employed in Paarl: 61%; respondents employed in Paarl: 58%) (Mathews and Abrahams, 2001).

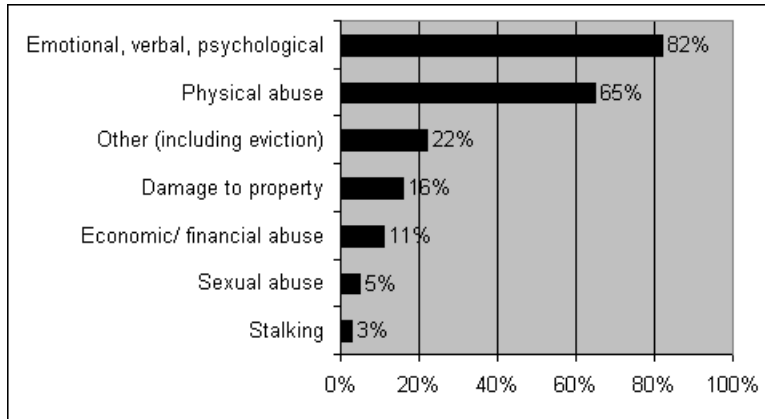
Table 4: Employment status of applicant and respondent (figures may not add up to 100% due to rounding)

	Applicant (n = 659)	Respondent (n = 636)
Employed	41%	49%
Unemployed	46%	38%
Self-employed	4%	5%
Pensioner	7%	2%
Scholar/student	2%	2%
Housewife	<1%	-

4.2.2 The Acts of Domestic Violence

- The quantitative findings show that applicants most commonly seek protection from emotional, verbal, and psychological abuse (see Figure 2). Focus group participants ([Chapter 2](#)) spoke almost exclusively of physical abuse, and protection was sought from this abuse in approximately two-thirds of cases.
- While Mathews and Abrahams (2001) have suggested that economic constraints compel women to remain in abusive relationships, few complainants in the present study sought protection from economic abuse. This may reflect the generally low levels of employment in the area and the few resources that could be abused.
- One in five applicants sought protection from other abuses, such as eviction (see Figure 2).

Figure 2: Types of abuses reported



Men were more likely to seek protection from emotional, verbal and psychological abuse and damage to property, while women were more likely to seek relief from physical abuse, sexual abuse, and other abuses (such as eviction). These differences are not statistically significant.

Table 5: Comparison between abuses reported by male and female applicants (figures may not add up to 100% due to rounding)

	Female applicants (n = 521)	Male applicants (n = 149)
Emotional, verbal, psychological	80%	89%
Physical abuse	71%	43%
Other (including eviction)	24%	15%
Damage to property	14%	25%
Economic/financial abuse	11%	9%
Stalking	3%	3%
Sexual abuse	6%	1%

Specific abuses appear more prevalent in some age cohorts, though complainants in their thirties are more likely to seek relief from all categories of abuse (see Table 6). Stalking was not included due to insufficient sample sizes.

Table 6: Age X type abuse (figures may not add up to 100% due to rounding)

	Physical abuse (n = 426)	Sexual abuse (n = 34)	Emotional abuse (n = 537)	Damage to property (n = 108)	Economic abuse (n = 72)	Other (n = 143)
<20 years	1%	-	<1	-	1%	<1%

21-30 years	20%	35%	18%	14%	25%	10%
31-40 years	39%	41%	36%	33%	29%	43%
41-50 years	22%	24%	25%	26%	25%	26%
51-65 years	12%	-	13%	19%	11%	11%
65+ years	4%	-	7%	7%	8%	9%

4.2.3 The Relationship between the Applicant and Respondent

[Chapter 2](#) reports that recourse from domestic violence is informed by the type of relationship the parties are in, the history of the relationship, and the nature of the abuse. In the present study it was found that:

- 71% of respondents were intimate partners (n = 401);
- 99.9% of these relationships were heterosexual;
- 29% of respondents were family members (n = 192).

Ratio:
 Applications against an intimate partner: Applications against a family member
3:1

Table 7 demonstrates that intimate partner violence is the typical case, but that there is also a significant amount of intra-familial violence.

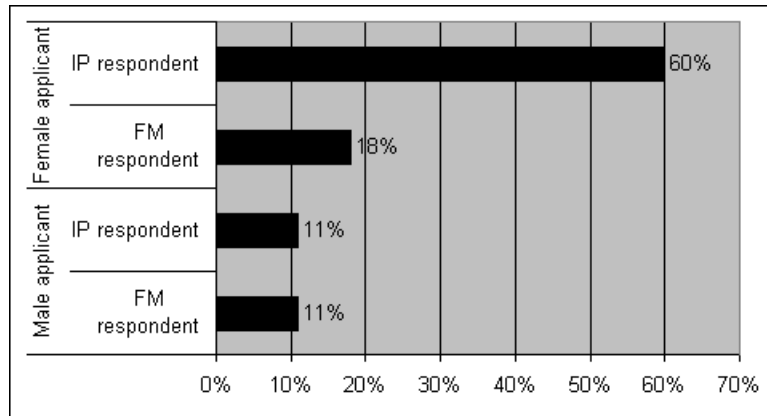
Table 7: Total number of applications against an intimate partner or familial respondent

	Type of respondent	Total number of applications (n = 670)	Total percentage of applications
Female applicant	Intimate Partner	400	60%
	Family Member	118	18%
Male applicant	Intimate Partner	76	11%
	Family Member	71	10%
Unknown		5	1%
Total number of applications against an intimate partner: 476			
Total number of applications against a family member: 189			

Figure 3 demonstrates the total distribution of applications sampled per respondent

category. It shows that the typical application sampled was from women seeking protection from an intimate partner, and that men's applications sampled were almost equally likely to be against an intimate partner and family member.

Figure 3: Total proportion of applications against an intimate partner or familial member



(n = 665)

Intimate partner violence

- 68% of intimate partners were married;
- 11% were dating;
- 10% were formerly dating;
- 8% were cohabiting;
- The remaining 2% were divorced, lovers or other;
- All of the intimate partnerships were heterosexual.

The mean age of applicants seeking protection from an intimate partner (IP) is lower than the overall mean age of applicant reported above.

- Mean age of applicants seeking protection from an IP: 37.8 years
- Mean age of women seeking protection from an IP: 37.10 years
- Mean age of men seeking protection from an IP: 41.48 years

Case example:

38 year old employed female applying for protection from her 39 year old employed husband. Their children are affected by the abuse.

Respondent forces her to admit allegations that she does not know. He insults her every time. When she denies those allegations he assaults in the presence of their children. He threatens to kill her if he can find a gun. He evicts her from their home. He assaulted her and she opened a case of assault with intent to

cause grievous bodily harm. He forces her to have sex with him when she does not want to.

The applicant requested the respondent not commit any act of domestic violence; not to get the help of another to commit domestic violence; not to prevent the complainant or any one living in the shared residence from entering; and not to insult, assault or threaten her or evict her from the house. The interim order was granted and a notice was served to the respondent the same day. The conditions of the interim order were as requested. The hearing took place 22 days later with no postponements and both parties were present. The interim order was confirmed but only in so far as assault and eviction. The order was breached. No information was recorded regarding when the order was breached, the conditions that were breached or whether the applicant was harmed. Recorded information stated that the respondent was found guilty as charged and 'cautioned and discharged'.

[Chapter 2](#) suggests that domestic violence in marital relations is regarded as a family matter that should be dealt with internally through a traditional mediation route. Nonetheless, the findings in this section of the study show that it is married men and women who are most likely to seek protection orders. One in five men also seeks protection from a woman they formerly dated (see Table 8).

Table 8: Comparison between gender of applicant and relationship type (figures may not add up to 100% due to rounding)

	Male applicant (n = 76)	Female applicant (n = 401)
Married	55%	70%
Divorced/separated	3%	1%
Dating	8%	12%
Formerly dating	25%	8%
Cohabiting	7%	8%
Mistress/lover	3%	-
Other	-	1%

In terms of living arrangements, it was anticipated that married and cohabiting parties lived together and divorced, dating or formerly dating parties lived separately. To a large extent this was confirmed, though one in five married couples do not live together.

Table 9 compares the types of abuse men and women seek protection from in two types of intimate relationships, namely marriage and formerly dating. Other intimate relationships were excluded due to insufficient sample sizes.

Table 9: Type of intimate relationship and abuse (figures may not add up to 100% due to rounding)

	Married (including customary and divorced)		Formerly dating	
	Male applicant (n = 42)	Female applicant (n = 282)	Male applicant (n = 19)	Female applicant (n = 30)
Emotional abuse	90%	78%	95%	87%
Physical abuse	40%***	77%***	16%**	53%**
Damage to property	31%**	13%**	26%	17%
Other	12%*	31%*	-	n = 1
Sexual abuse	10%	6%	-	n = 3
Economic abuse	10%	13%	1%	n = 1
Stalking	2%	2%	1%	n = 3

Key: *p < 0.05 **p < 0.01 ***p < 0.001

- Married women are significantly more likely than married men to seek relief from physical abuse and from other abuses such as forced removal from the home.
- Married men are significantly more likely than married women to seek relief from damage to property.
- Women seeking protection from men they formerly dated are also significantly more likely to seek relief from physical abuse.

Intra-familial violence

The focus group discussions concentrated almost exclusively on violence and abuse between intimate partners. It was found in the quantitative study that nearly one in three respondents were family members.

Family respondents were as follows:

- The applicant's children (54%);
- The applicant's brother (16%);
- The applicant's sister (8%);
- The applicant's father (6%);
- The applicant's niece or mother (3%);
- The applicant's uncle (2%), cousin or aunt (1% each), respectively;
- Multiple respondents (6%).

The mean age of applicants seeking protection from a family member (FM) is higher than both the overall mean age of applicant reported in section 3.1.2 and the mean age of intimate partner applicants. This is consistent with the finding that family member applicants are usually the parents of the respondent.

- Mean age of applicants seeking protection from a FM: 47.96 years
- Mean age of women seeking protection from a FM: 46.51 years
- Mean age of men seeking protection from a FM: 50.17 years

Case example:

79 year-old female pensioner applying for protection from her 26 year-old employed grandson who lives in the same household. No other persons are reportedly affected:

Respondent insults applicant and threatens to shoot her. He threatened to burn the house with the applicant inside. Applicant claimed this case was urgent as 'she does not feel safe and she might be killed any time'.

The applicant requested the respondent not commit any act of domestic violence and not to get the help of another to commit domestic violence, not to enter the complainant's residence, and not to insult, assault or threaten her. The order was served six days later to a person over the age of 16 at the respondent's work. The order was served by the sheriff at a cost of R32.75. An interim order was granted the day it was applied for, and granted that the respondent was not to commit any act of domestic violence. The hearing was 56 days later with no postponements. Both the applicant and respondent were present at the hearing, but the order was struck off the roll. No reason was given.

In total, 61% of familial respondents lived with the applicant. Eighty percent of the applicant's children who are alleged perpetrators of abuse live with the applicant. This may point to families living in extended kinship structures, and may explain the higher levels of family violence reported in this semi-urban area compared to urban sites where extended families are less likely to live together ([Vetten and Schneider, 2006](#)).

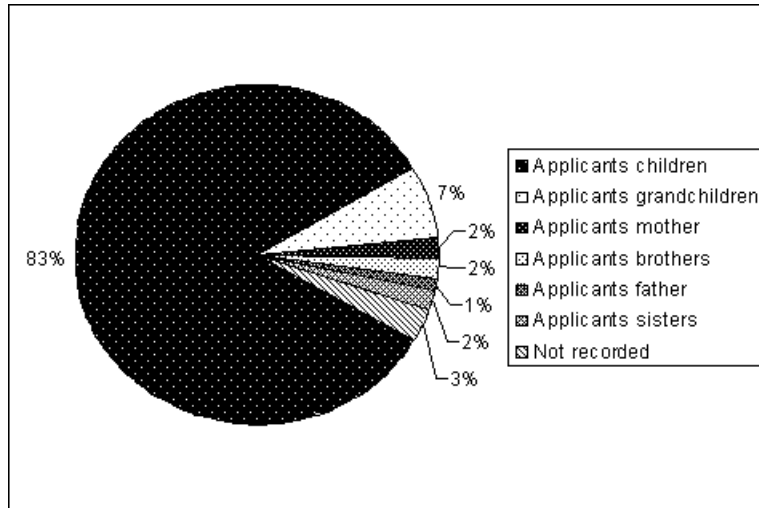
No significant differences were found between the types of abuses men and women seek protection from when the respondent is a family member.

4.2.4 Who Else is Affected by the Abuse?

In accordance with section four of the application, information regarding other persons affected by the abuse, their relationship to the applicant, their age and how they are affected was captured. According to Parenzee et al. (2001), the wording of this section may create confusion for complainants and so it was surmised that more persons may be affected than were reported.

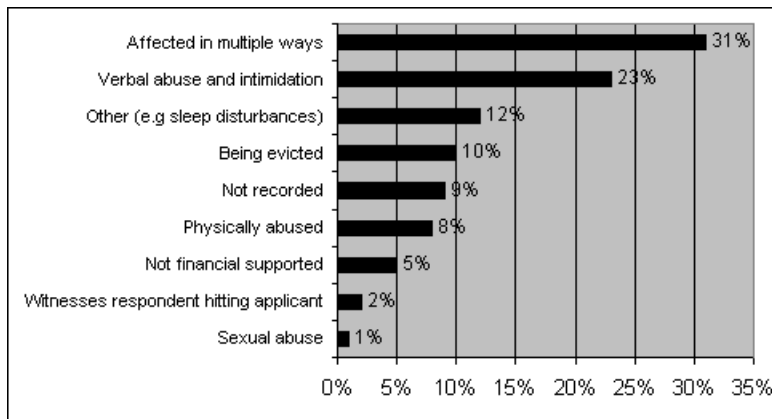
- 41% of applicants report other persons affected by the abuse (n= 326).
- The majority of these persons are the applicants' children (see Figure 4). This corroborates the findings in Mathews and Abrahams (2001).

Figure 4: Other persons affected by the abuse



Children are typically affected in multiple ways (see Figure 5), and are often the primary victims of verbal, physical and sexual abuse, and eviction.

Figure 5: Types of abuse affecting other persons (n = 639)



4.2.5 Weapons Used in the Abuse

In accordance with section 9 (1) of the DVA, the court must order a member of the South African Police Force (SAPS) to seize any dangerous weapon in the possession of the respondent if he or she has threatened to kill a person in a domestic relationship. Weapons were categorised in four ways: gun, knife, sjambok and other. A category of 'multiple weapons' was later created to account for instances where more than one weapon was used (see Table 10).

- A weapon was used in 27% of cases (n = 183).
- The weapon was almost equally likely to be used to threaten the applicant (50% of cases) or to threaten and injure the applicant (45% of cases).

Table 10: Type of weapon used

Type of weapon used	n = 183
Other (including general household items)	55%
Gun	23%
Knife	14%
Multiple weapons	4%
Sjambok	3%

- A gun was used in approximately 1 in 4 cases. This may be an under-representation of gun use as instances of "multiple weapons" may have included guns but were not captured separately.
- Very few applicants (2%) requested the removal of the weapon. This could be explained by applicants not being aware of this term of the protection order. Predictably few protection orders (1%) required the SAPS to seize the weapon.
- In accordance with section 2 (a) of the DVA, court officials are empowered to extend the protection originally requested by the applicant where appropriate. Our findings suggest that this condition is not being enforced, and corroborates the findings from the urban and rural sites in Parenzee et al (2001).

Case example:

35 year-old unemployed female married to the respondent (38 year-old employed male) and living in the same household. Their eight year-old son is reportedly emotionally affected by the respondent's behaviour.

The respondent assaulted the applicant with a gun. They sat down and resolved the problem and he promised not to do it again. Respondent has a tendency of not sleeping at home and when the applicant asks him where he was then he starts to fight her. [Three months later] he stabbed her with a screwdriver on her buttocks. He accuses her of extra marital affairs and threatens to kill her. Applicant wants this to come to an end.

The applicant requested the respondent not commit any act of domestic violence and not to get the help of another to commit domestic violence, and not to assault or threaten to kill her. No request was made for SAPS to seize a weapon. The order was served by the police to the respondent the same day the interim order was granted. The interim order granted that the respondent was not to commit any act of violence, including assault or threats to kill. The matter was heard 83 days later. No further details are provided about its finalisation.

4.2.6 Injuries Recorded

- Injuries were recorded in only 6% of cases (n = 43). The low figure may be

explained by poor recording of information and questions the adequacy and availability of services in the area to abused men and women.

- Information about the type of injury was typically unrecorded (36% of cases). Where known, bruises, swelling and scratches were the most common injury (25%), followed by general injuries (11%), broken bones and stab wounds (9% each), and bites (7%).

4.2.7 Reasons for Urgency of Application

Section 6 of the protection order requests the provision of reasons why the application should be considered as a matter of urgency. Various reasons were coded and more than one reason was allowed.

- Only 5% of applications had reasons for urgency (n = 31).

This figure is likely an underestimation of the number of applications that should have been considered as urgent. Where recorded, urgency was typically around fear of continued or imminent physical danger, or of being killed (see Table 11). In view of the findings that a weapon was used in nearly one in three cases, and that the SAPS were almost never requested to seize the weapon, the findings suggest that the applicant's safety is placed at risk and that the DVA is not always being utilised to its full extent.

Table 11: Reason for urgency of application (n = 31) (figures may not add up to 100% due to rounding)

Afraid the respondent will continue beating, hitting or otherwise physically abusing the applicant	21%
Others: General feelings of being threatened and wanting to protect rights, security purposes	33%
Afraid respondent will carry out threats of killing applicant	29%
For the respondent to stop verbally abusing the applicant (including swearing and insulting)	4%
For the respondent to pay for accommodation and financially support the family	8%
Afraid that the respondent will carry out threats of damaging/selling property	4%

4.2.8 The Interim and Final Protection Order

- 99% of the applicants requested an interim protection order.
- All interim protection orders were granted.
- 96% of interim orders were granted on the day of the application.
- Interim orders were granted the day after application, one was granted 3 days later, one 22 days later, and the longest was 177 days after application.

Section 7 of the DVA sets out the prohibitions that can be enforced on the respondent in the protection order. The applicant is required to select the relief they require and the court may impose any additional conditions which are deemed necessary to protect the safety and wellbeing of the applicant.

Table 12 compares protection requested and protection granted in the interim order. Results show a strange pattern where fewer requests were granted than what was originally applied for in each category. Terms granted in the final order could not be compared due to the paucity of information.

- The terms 'not to commit any act of domestic violence' and 'not to get help to commit an act of domestic violence' were the most commonly requested, though the latter was seldom ordered in the interim order.
- One in five respondents were ordered not enter the applicants place of residence. This was most commonly requested by married and formerly dating parties, as well as in cases where respondents are the applicant's children. Parenzee et al. (2001) note that this is one of the more controversial terms of the order, and effectively suggests that respondents were evicted from their domicile.
- Married parties were most likely to request that the respondent not prevent them from entering the home. This figure is consistent with the number of applicants who seek protection from forced removal from the home.

Table 12: Percentages of protection requested and protection granted

Term of the protection order	Requested (n = 673)	Granted in interim (n = 673)
Not to commit any act of domestic violence	93%	85%
Not to get help to commit any act of domestic violence	92%	12%
Not to enter the complainant's residence	25%	20%
Not to prevent entry into the house	16%	14%
Not to enter the complainant's place of employment	9%	6%

The following requests were made is less than 3% of cases:

1. Physical address of the complainant is not to be disclosed;
2. Respondent to pay mortgage;
3. Respondent to pay monetary relief;
4. Respondent refused contact with children;
5. Respondent granted the following contact with children;
6. Not to enter the shared residence;
7. Not to enter a specified part of the residence;
8. A Peace officer to accompany complainant;
9. The SAPS to retrieve a weapon.

Orders that were not typically requested or granted can be clustered into three types. The first five typically apply to newly divorced or separated couples who are in the process of dividing their assets and planning the custody of their children. The few requests for such orders may be explained by the few divorced and separated complainants seeking

protection orders in the present sample. The few requests for the sixth and seventh orders are difficult to explain but it is possible that complainants were not made aware of these terms, or they may have felt that the terms did not apply to their living circumstances. The eighth and ninth term potentially indicate the under-involvement of the SAPS in cases of domestic violence, suggesting that it may not often extend beyond providing advice, or opening cases of assault.

4.2.9 The Return of Service

In accordance with section 5 (6) of the DVA, the applicant is not protected from domestic violence until the respondent has been served with a notice to appear in court.

- 41% of respondents were served with an order.
- 31% of these orders were served within the first week the interim order was issued. A further 7% were served within one month of the interim order being issued.
- The lengthiest return of service was 547 days³ (approximately 18 months) after the interim order was granted.
- No record of the date of service was kept in 58% of cases. Record keeping of return of service was also identified as a problem in all the research sites in Parenzee et al (2001).
- Reasons for not serving the order were recorded in only four cases and are too few to extrapolate from.

Table 12 shows that the order is typically served to the respondent directly at his or her home. The police serve the overwhelming majority of orders, possibly due to the applicants' economic restraints and inability to pay sheriffs fees. Despite their apparent role in serving orders, the police did not mention their apparent role in return of service in the interviews ([Chapter 4](#)). This is different to Parenzee et al. (2001) who found that in the urban area of George, police tended to serve the order more frequently than the sheriff did, but in Mitchell's plain, an urban area with high levels of poverty and crime, the sheriff was more likely to serve the order than the police. The latter was, however, disputed by the Mitchell's plain police who suggested that they served most of the orders.

Table 12: Information on the return of service (figures may not add up to 100% due to rounding)

How was the order served?* (n=259)	Served to the respondent directly	89%
	Order served to another person over the age of 16	9%
	Unknown	1%
Place where the order was served (n=255)	Respondent's home	83%
	Respondent's workplace	9%
	Unknown	3%
	Other	5%

Person who served the order (n = 287)	Sheriff	20%
	Police	80%
Person who paid for order to be served (n=108)	The state	3%
	The applicant	1%
	Unknown	97%

The cost of service

No service fee was incurred (or was not recorded) in 97% of applications (n = 644). Charges for the remaining orders ranged between R32.75 and R260.30. The differential amounts may be explained by the distances the sheriff is required to travel, the poorly demarcated housing structures in the area, and the need to attempt service on more than one occasion. In all three instances where the order cost R260.30, no record was kept of who paid for the order. Prices for serving orders are, on average, higher in Temba than in the urban research site of Alberton which was sampled for another DVA study ([Vetten and Schneider, 2006](#)). In Alberton, the majority of orders are served by the sheriff, and range between R17.10 and R169.26. This suggests that for rural women in particular, distance, poorly demarcated houses and difficult terrain increases the cost of service.

4.2.10 The Final Hearing

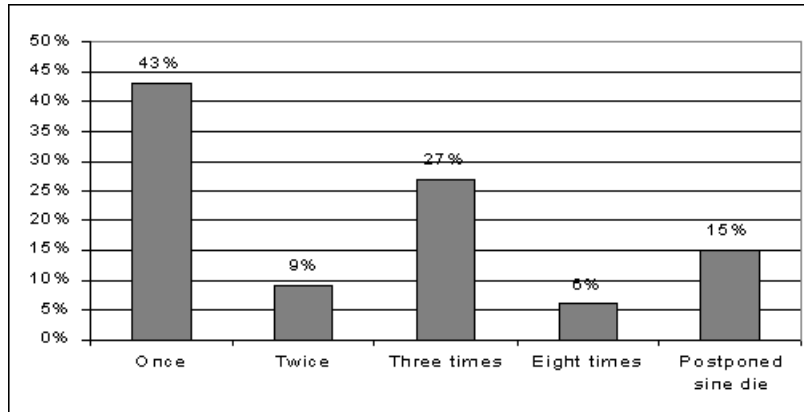
There was no information for approximately 40% of the sample regarding the finalisation of the protection order. This suggests that a large number of cases were poorly recorded or left unfinished.

- Return dates for hearings varied substantially, ranging from the same day the interim order was granted to 336 days thereafter.
- The median return date for the hearing was 63 days.

This return date is approximately double that found in the urban research site Alberton (median return date: 31 days) (*ibid*), but is shorter than return dates in other South African courts (Mitchell's plain: 79 days, George: 71 days) (Parenzee et al, 2001). This lengthy time period may create additional stress for the applicant and place them at greater risk of further abuse. It may also encourage despondency about the usefulness of the protection order and could result in applicants withdrawing their application (*ibid*).

- 30% of applications were postponed (n = 118).
- Orders were typically postponed one or three times (see Figure 6).

Figure 6: number of times hearings were postponed (n = 122)



*Postponed 'sine die' is a legal term meaning postponed indefinitely.

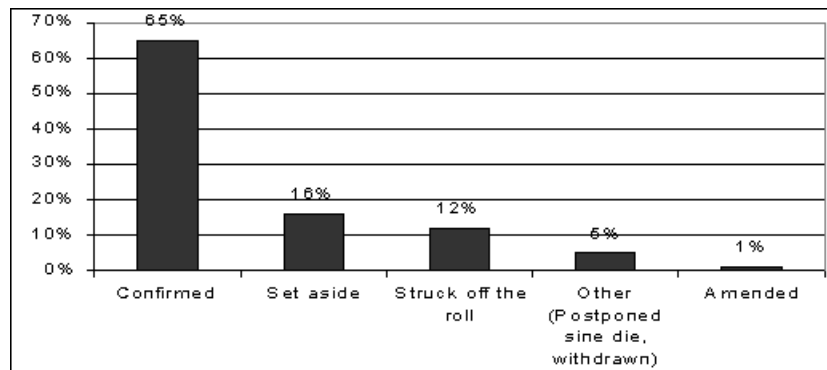
Reasons for the postponements were recorded in only 52 of the 118 postponed cases, and were as follows:

- Allegations against respondent were not true or more evidence was needed (88%);
- Withdrawal/parties agreed to postpone (10%);
- Applicants referred to other services (2%).

The final order

- Two out of three protection orders were confirmed (see Figure 7).
- Interim orders were dismissed for a variety of reasons (n = 34) including withdrawals, no reasons given or agreement to postpone (34%), reconciliation between the parties (26%), the allegations being untrue or requiring more evidence (11%), referrals to other courts (5%), absenteeism (3%), and unrecorded (21%).
- Applications postponed sine die may indicate that parties have decided to settle the matter out of court but to leave the option of a protection order open if the alternative is ineffective. This may point to the community preference for domestic violence to be resolved in traditional and non-public ways (and perhaps even pressure to conform to this preference).

Figure 7: Status of the final protection order (figures may not add up to 100% due to rounding)



Parties present at the final hearing and the status of the final protection order

Information about the parties present at the final hearing was unrecorded in approximately half the cases. Where available, both parties were present in some 7 out of 10 cases. This data shows that the majority of women who apply for protection orders return to court and seldom abandon the application.

Figure 8: Parties present at final hearing (n = 312)

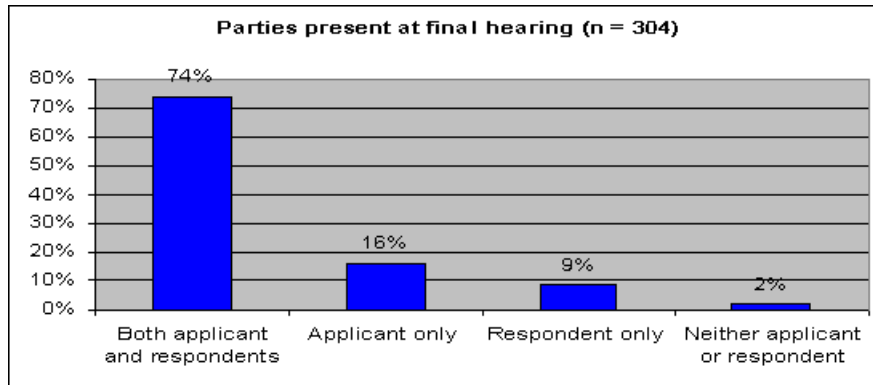


Table 13 demonstrated the relationship between the person attending court and the status of the final protection order.

Table 13: Parties present at court and status of final order

Party present at final hearing	Status of final orders granted
Both applicant and respondent (n = 224)	73% confirmed
	18% set aside
	6% struck off
	3% withdrawn, postponed sine die
Applicant only (n = 43)	74% confirmed
	14% struck off the roll
	7% set aside
	2% withdrawn, postponed sine die
Respondent only (n = 26)	50% struck off the roll
	46% set aside
	4% withdrawn, postponed sine die
	0% confirmed
Neither applicant nor respondent (n = 5)	0% confirmed. All orders were struck off the roll.

Findings suggest that the presence or absence of either of the parties impacts on the granting of the final order.

- Two-thirds of orders were granted when both parties were present.
- When the respondent is absent, the order is confirmed in over two-thirds of cases.
- When only the respondent is present, the order is typically struck off the roll or set aside.
- When neither party was present, all applications were struck off the roll.

4.2.11 Breach of a Protection Order

Protection orders may make respondents angrier and may perpetuate the abuse even after the order is finalised. Despite these possibilities, breaches of protection orders were only recorded in 12% of cases ($n = 74$). This may imply that few breaches actually occurred, but it was surmised that many breaches are unreported, possibly because of fear of repercussions or despondency in any actions being taken against the perpetrator. Orders were breached on the same day the order was granted and up to 650 days after the order was confirmed.

In a small number of cases ($n = 6$) multiple breaches were reported. This was a strange finding as the DVA does not require multiple breaches to occur prior to the respondent being in breach of a protection order. This finding may suggest that police do not arrest the respondent for non-physical violence until the situation becomes life-threatening for the complainant. If this were the case, the police member would be liable to misconduct as per section 18 (4) of the DVA.

Parenzee et al (2001) found that most courts and police are uncertain about the procedure to follow when a breach of protection order has occurred, and that magistrates expressed concern with the little formal training received on dealing with breaches. Police also lacked clarity on their role, and at some police stations, the police arrest the respondent irrespective of the type of breach that has occurred, while at other police stations, an arrest will only be made if the complainant is in danger or fears for his/her life.

4.3 Discussion and Conclusions

Information from the applications for protection orders and their finalisation at Temba court was generally scarce. The quantitative study had many initial problems tracking several applications from the required time period, and much information could not be found. Thus poor recording of information was both a limitation to the research and a finding, as few reasons were given for legal decisions (such as for postponing a case or for not serving a protection order). The consequences of poorly recorded information include court delays and improper and inadequate terms of the protection order to be enforced on the respondent, and will inevitably affect the outcome of the case. The finding implies inadequate case management at Temba court and has worrying implications for access to justice and recourse for those affected by domestic violence. Consequently, only tentative conclusions can be made.

- The study found that protection orders are most commonly sought by married women in their 30s and 40s. That women are older before they seek the protection

of the courts perhaps underscores the degree to which they are required to seek non-legal interventions first before they seek the protection of the law. That women seek such protection also perhaps testifies to the ineffectiveness of these non-legal interventions. We do not, unfortunately have any data regarding whether or not women find the criminal justice system any more responsive.

- This analysis found a relatively high amount of protection being sought from other family members (almost one in three cases). Thus despite the focus groups and police interviewees' emphasis on intimate partner violence, intra-familial violence is clearly of concern in Temba and future research should be carried out in this area.
- Given the very high proportion of interim orders that are issued, complainants appear to be given at least temporary relief. However, the disparity between conditions requested and conditions ordered may reflect inadequately completed application forms, suggest that magistrates typically give less protection than is requested, or that individual requests are subsumed under the first option of 'not to commit any acts of violence'. Applicants also need to wait approximately two months to have a hearing and many cases are postponed at least once. The research concludes that lengthy court dates undermines the ability of the DVA to intervene quickly because the longer an order remains unconfirmed, the more susceptible the complainant is to abuse.

Chapter 5: Overall Conclusions in Brief

This case study has attempted to situate women's use of the criminal justice system within the context of community beliefs around family, men's and women's intimate relationships with each other and masculine authority. It has illustrated how this web of beliefs effectively prevents many cases of domestic violence from reaching the police and courts, with the result that recourse to the criminal justice system is reserved for the few rather than the many. However, women themselves may elect not to turn to the courts or police, perceiving these remedies to be in direct conflict with their families and communities' beliefs and values. Thus, for married women in particular, recourse to the criminal justice system may serve to alienate them from their families and communities. At the same time, even when women do seek the protection of the law, it is clear that sections of both community and policing structures have a vested interest in upholding a particular status quo around marriage, family and masculine authority. They too, act to prevent women from utilising the courts and police stations.

This conflict between the values of community on one hand, and the values of criminal justice system on the other, may be most acute for those rural African women who live under dual legal systems – unlike the overwhelming majority of women from other cultural backgrounds. African families have also borne the destructive brunt of both colonialism and apartheid and within this historical context, strengthening and keeping the family together may assume a greater urgency than it does for other groupings. However, many of these competing values and pressures are also likely to be felt by women who adhere to one or other of South Africa's various religions, as well as those from other cultural backgrounds. It is therefore necessary to carry out further cross-cultural research examining how various groups' values and beliefs encourage or inhibit women's use of legal protections.

At the same time, this study has suggested that court and police remedies do not necessarily

meet women's needs either. The use of the law often appears contingent on women's willingness to have their partners arrested and prosecuted. These sanctions are neither always appropriate nor desired by women, which may again discourage them from seeking legal protection. Under some circumstances, there would certainly seem to be a role for traditional dispute resolution mechanisms. A phased approach comprised of sanctions that progressively increase in seriousness, perhaps culminating in arrest and imprisonment, could well be appropriate in some instances. But as is the case with legal remedies, such mediation is likely to perpetuate oppressive gender relations when practised by those who hold conservative beliefs about men and women. Mediators, like legal officers, thus require training around domestic violence, as well as ongoing monitoring of their interventions. Mediation should also not be imposed on women who wish to resort to the police and courts. Ultimately, if legal systems are to benefit women, they will need fewer gate-keepers committed to upholding oppressive gender norms, and more agents willing to make the law one of a number of tools through which women can seek justice.

Notes:

¹ From the description given by this police officer, a warning letter is most probably a peace letter issued in terms of the Criminal Procedure Act.

² This section defines the term respondent as 'a person who is or has been in a domestic relationship with a complainant and who has committed, or allegedly committed, an act of domestic violence against the complainant'.

³ In this case a grandmother applied for protection on behalf of her grandchildren from the children's father. The respondent is accused of failing to support the grandchildren, assaulting them, insulting them and harassing them. The complainant requested the respondent not commit any domestic violence, not get help to commit domestic violence, not to enter the complainant's residence or employment and not to insult or assault. The children's clothes books and shoes were also requested. The order was served 547 days later by the police by it is unknown to whom the order was served. It was strange that the return date of final hearing was 113 days after the interim order was applied, and that both parties were present. This may suggest that the respondent was told about the order in another way. The order was confirmed.

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