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# Dissonance, Discordance, and Disparity: The Impact of Differences in Papers, Processes, and People on Justice for Domestic Violence Survivors in South Africa

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## Abstract

This article explores the disparate and idiosyncratic implementation of the protection order (PO) process at magistrates' courts in South Africa's Western Cape, and the impact of this discordance upon survivors of domestic violence seeking assistance from the justice system. Drawing upon qualitative research undertaken by the authors from 1999 to 2022, we highlight crucial differences in PO papers, processes and actors across magistrates' courts. Contrary to claims that the law is unified and standardized—offering the "maximum level of protection" for all survivors across the country—we illustrate that protection order applicants instead have widely differing experiences, dependent on the procedures, street-level bureaucrats and local legal cultures of their court. These differences have an inequitable and arbitrary effect which often deprives domestic violence survivors of access to justice while blaming those very same applicants for failing to "follow the process".

***Keywords:*** Domestic violence; South Africa; criminal justice; protection order; court; local legal culture.

## Introduction

Domestic violence (DV) survivors who access South Africa's criminal justice system for assistance and protection are often instructed to "follow the process". According to South Africa's Domestic Violence Act (DVA), the "process" involves visiting their local magistrates' court to apply for a protection order (PO). They also have the option to attend the police station to lodge a criminal complaint against their abuser.[1] This PO is supposed to offer the "maximum amount of protection" to survivors within the law. The DVA also sets out the obligations of the South African Police Service (SAPS) and the courts around the implementation of the PO, obligations further emphasized by The *National Strategic Plan on Gender-based Violence and Femicide* (Republic of South Africa, 2020) which articulates a "victim-centred" and accessible system of empowerment. Instead of a streamlined, accessible and transparent process, most survivors encounter a highly idiosyncratic and variable legal system. Differences and often competing approaches are apparent between and across courtrooms in the protection order documents used, the actors operating within the court space, and the processes that determine the survivor's chances of successfully securing a PO and obtaining some measure of support from the criminal justice system.

The perception that the DV legal system is fair, consistent, and easily accessible for all members of the public is fundamentally ruptured by the unique confluence of variability across magistrates courts, and the extent to which each court seems to follow discordant and differing procedures. These include what courts accept and require in a PO application, how magistrates determine the outcome of an affidavit, and the intercession of formal and informal court actors. Survivors who do not complete their applications properly, or who fail to "follow the process" to the letter of the law, are often blamed for institutional failures. In this paper, we argue that the South African DV legal system is a patchwork of processes contingent on the particular workflows, cultures, temporalities, and preferences operating within magistrates' courts. Rather than the uniform, responsive, and "protective" service promised by the DVA, the reality reveals silos and multiple systems of justice which fail to communicate with one another, leaving survivors with limited and often unpredictable allies within the legal sector.

In the 25 years since the passage of the DVA (1998), a number of scholars have indicated the shortcomings of the Act's implementation. Commentary has often focused on the poor training, preparation, and accountability of the police and the responsiveness of the court staff (Artz & Smythe, 2005; Mathews & Abrahams, 2001; Parenzee et al., 2001; Vetten, 2017). We build on this rich corpus of research to argue that justice has not only been delivered "at a snail's pace" (Naidoo, 2006) but to illustrate how the slow and piecemeal method of implementation of the DVA has created discordant networks of justice, each configured around different manners of handling POs. These differences between and across magistrates' courts matter in material and procedural ways—they impact the extent to which DV survivors are able to make use of the law and receive assistance around protection from violence. Indeed, we have even heard survivors accused of "abusing the system"—recasting victims of violence as perpetrators. This accusation presumes a transparent, coherent, and accessible set of legal procedures, failing to account for the reality of the legal variabilities survivors encounter, which we outline in this paper. Instead, greater attention needs to be paid to the pernicious pluralities that determine which survivors of DV are granted protection across the country.

In our analysis, variations of justice for DV survivors in South Africa are understood through three frames: paper-based disparities, process-based disparities, and actor-based disparities. We draw upon data collected as part of several separate research projects on DV service provision carried out between 1999 and 2022 in the Western Cape province of South Africa. These projects involved ethnographic fieldwork, including participant observation at 10 magistrates' courts to document the procedures involved in PO applications; in-depth interviews with criminal justice personnel (police and courts) and DV survivors; and focus groups with non-governmental organisation (NGO) staff providing services in courts. A mix of urban, peri-urban, and rural courts in the study included Cape Town, Mitchell's Plain, Khayelitsha, Philippi, Wynberg, Paarl, Wellington, Atlantis, Bellville, and George.[2] We recognise that courts and communities across South Africa are not uniform. There remain immense disparities and inequities in access to services across the country, organised along geographical, race, and class lines—the enduring remains of apartheid that persist even in the current democratic context. However, under the law, all survivors should have equal access to protection from the court, as a life of freedom from violence is accorded to all South African citizens. We show that the idiosyncrasies of actors, procedures, and the court spaces shape access to justice for survivors, thereby creating—if not reinstating—deep inequalities and inexplicable processes, often to the peril of survivors.

## The Law in Action: Unstable, Adaptive, and Refracted

Social scientists studying legal and juristic processes posit that the law is not always as stable, objective, or coherent as it claims to be. Rather, it should be understood as a multi-scalar social field occupied by various actors wielding differential forms of power depending on their positionalities within the legal system. These actors also carry with them cultural beliefs and values which inform how law is interpreted and practised, creating sites of contestation around the meanings and proper mechanisms of justice (Das & Poole, 2004; Sharma & Gupta, 2009). This approach to legal anthropology is informed by ethnographic understandings of the state. Such an orientation considers people's perceptions of the state (and state institutions like the criminal justice system) and how these interpretations and adaptations of state-sanctioned institutions are leveraged by citizens whose legal subjectivities are necessarily informed by other cultural, historical, and political understandings of justice (Basu, 2015; Hlavka & Mulla, 2020).

Inherent in this approach is an attention to the everyday practices and individual actors who instantiate how law is practised, interpreted, and carried out at international, national, provincial, and local levels. This includes government officials and state agents situated within a legal bureaucracy who translate legal documents or procedures into tangible practices and outcomes of the law (Das & Poole, 2004). Theorists in criminology and public administration highlight how implementers' decisions and actions are shaped by discretionary and sometimes "hidden" powers which are a central and inevitable part of legal systems (Hawkins, 2001; Scott, 1990). Maynard-Moody and Musheno (2003) argue that normative, personal, organisational, and political factors influence the decisions of so-called "street-level bureaucrats". These individuals craft unique responses to individual clients and their situations, and their decisions impact outcomes for participants in the criminal

justice process. As such, the routines and adaptations emerging from interactions between workers and clients are not fully explained by top-down policy imposition (as described, for example, by Lipsky, 1980). In this way, ordinary people have a unique role in shaping what policy means in practice. They (re)move power from the "centre" (government departments or the legislature) to the "periphery" (local service offices), where implementers use their discretion to meet the needs of the community. Outcomes are, therefore, not only shaped by law and policy but also by cultural context, organisational structure, and social and local pressures (Bottomley, 1973; Gelsthorpe & Padfield, 2003; Merry, 2009).

Street-level bureaucrats' morals and values are critical factors in these legal interactions. Workers base their decisions about what to do on their personal client assessments (for example, a survivor "deserving" assistance), and their own sense of what is right or fair (Moult, 2019; Maynard-Moody & Musheno 2003). They make discretion-based judgments to use policy as a barrier (for example, by avoiding, dismissing, or reducing contact with difficult cases) and may bend the rules to help selected clients (Ohlin & Remington, 1993; Walker, 1993). Importantly, their decisions have far-reaching implications for individuals, the state, and the social order. Street-level bureaucrats replicate, define, and enforce dominant community values, rights, and order, instigating informal, but nevertheless powerful, legal norms and procedures. In the case of gender-based violence (GBV), cultural norms and stereotypes of sexual violence and DV also inform how law is practiced by these legal role players and taken up by both claimants and defendants (Adelman, 2017; Baxi, 2014; Hlavka & Mulla, 2020).

Navigating the assemblages of official and unofficial norms, and the actors who shape, define or mandate them, complainants must be conversant in the rules of certain legal genres to become legible to the court or the state as compelling victims. This includes the formal ways of speaking and documenting evidence accepted by the court (Lazarus-Black, 2007; Mulla, 2014; Trinch, 2010). Institutions of justice are additionally comprised of non-state actors like NGOs, organisations which are nevertheless accountable to their own institutional mandates and procedural habitus (Moore, 2001). Essentially, rather than talking about a country's legal system as a singular, self-explanatory unit, we should instead consider the multiplicities which occur within these legal assemblages. In South Africa, magistrates' courts often operate through a constellation of formal and informal legal actors, including security guards, court clerks, and NGO staff, as well as referral to customary and tribal procedures. Thus, this more pluralistic and porous understanding of the systems and legal spaces that DV survivors occupy is critical to our analysis.

## South Africa's Domestic Violence Act

The South African Domestic Violence Act (DVA) was first promulgated in 1998 and amended in 2021. When it was introduced, the DVA was considered a highly progressive piece of legislation which reflected contemporaneous developments in international human rights law recognising DV as a human rights violation (Parenzee, 2018).[3] Prior to the 1990s, violence against women was largely conceived and addressed in contexts of war and repression (Thomas & Beasley, 1993). DV had largely been neglected in human rights discourse internationally—the private sphere of the home was seen as effectively outside the reach of human rights law. Between 1990 and 2000, persistent activism from women's movements in the Global South contributed to a paradigm shift in human rights discourse (Jaleel, 2021), institutionalising the state's duty of care to survivors of DV (United Nations Human Rights Council, 2015).

Accordingly, the DVA provides for individuals who are experiencing DV to both obtain a PO and lodge a criminal complaint against their abuser. It also sets out the obligations of the police and courts to inform the public of their rights and to assist survivors to apply for, serve,[4] and enforce a PO. The DVA defines DV as physical, sexual, emotional, verbal, psychological, and economic abuse; intimidation and harassment; controlling and abusive behaviour; stalking; damage to property; and entry into the complainant's residence without consent (DVA, s. 1). To apply for a PO, the complainant[5] and the alleged perpetrator must be in a "domestic relationship," which includes married or previously married couples (married according to any law, custom, or religion); cohabiting people; family relationships; and those in current or former intimate relationships (DVA, s. 1). This broad definition encompasses a diverse range of domestic dynamics, aimed at tackling the manifold forms in which domestic abuse can manifest.

A complainant seeking a PO must apply at the closest magistrates' court by completing an application form and writing an affidavit.[6] Survivors may receive assistance from a DV clerk or an NGO in preparing these documents. The clerk must "immediately" pass these documents to the magistrate, who considers whether to grant an interim protection order (IPO) (DVA, s. 4(7); Domestic Violence Amendment Act (DVAA), s. 12). An IPO is an order which provides temporary protection until the "return date". The court decides whether to grant a final PO at this oral hearing before the magistrate, which both the complainant and respondent are requested to attend. The decision of whether to grant an IPO is usually reached based on the information provided in the complainant's application alone, although some magistrates call the complainant in to answer questions in person (Rehse et al., 2022; Waldman, 2021). At the interim stage, the magistrate is obliged to grant an IPO if they find that there is *prima facie* evidence that the complainant is suffering, or may suffer, harm as a result of the DV (DVA, s. 5 and DVAA, s. 8). If the magistrate does not find this *prima facie* evidence, they will issue a notice of

application to the complainant and respondent with a return date where the evidence can be tested at an oral hearing. Where the application appears to be unfounded or vexatious, it is dismissed (DVA, s. 5, as amended by the DVAA).

Once the IPO or PO has been granted, it must be served on the respondent, at which time it comes into effect. Upon receiving a report that a PO has been breached, the police are obliged to arrest the respondent where DV is alleged to have taken place and reasonable grounds exist to believe that the complainant is at risk of harm (DVA, s. 8, as amended by the DVAA). The law, therefore, envisages a system where the different organs of state work together effectively to provide a coordinated and responsive service to complainants. As Justice Albie Sachs states, "The interdict process is intended to be accessible, speedy, simple and effective" (Constitutional Court of South Africa, 1999, p. 21). The situation on the ground, however, is far from this ideal and complainants endure a disjointed and disparate experience where fairness and consistency—cornerstones of the law—are lacking. Survivors seeking legal protection at a desperate and vulnerable time of need are instead subject to the local legal practices of the court where they apply, as well as the attitudes of the personnel that assist them.

## Paper-Based Disparities

The DVA states that an application for a PO must be made on prescribed Department of Justice (DOJ) forms. Yet, we observed numerous differences between the PO application forms used in the courts where we conducted fieldwork. These differences ultimately impact how effectively complainants can navigate the PO process and the kind of protection that is specified in the order they receive. The form is supposed to be simple enough for any survivor to use without a lawyer, but, in reality, this is often not the case (Parenzee et al., 2001). The PO application form is a complainant's first, and most important, opportunity to convey their story and the urgency of their needs accurately to the court to request the specific protections that they require.

Disquietingly, we observed that the actual appearance, format, tone, and content of the PO application form varied significantly between courts. Important differences in wording and layout were noted between the version provided by the police (and downloadable from the Department of Justice and Constitutional Development's website) and those available at different magistrates' courts across the Western Cape. This variation in paperwork is significant for several reasons. First, a complainant who is given the form elsewhere than the court (for example, by the police or a social worker) can find that the court does not accept their version of the application. Thus, court staff may ask the complainant to recomplete the whole form. This uses precious time in an urgent situation, risks retraumatisation, and can make the court process feel hostile and obstructive for the survivor. Second, the different forms can increase or decrease the likelihood of an IPO being granted. The various iterations of the form asked non-standardised questions—placing emphasis on different aspects of the complainant's history—or provided additional, critical detail that may increase the likelihood that the order is granted. These differences also create disparities in the information placed before the court, aspects of breadth, depth and specificity that can materially affect the way safety is assessed. For example, one version of the form had a section specifically on why the application was urgent, such as whether the complainant felt unsafe to go home. Meanwhile, the other versions of the form did not offer an opportunity for the complaint to express if, and why their case was urgent.

Another key difference in PO forms related to the space provided for the complainant's affidavit. Forms with less space inevitably lead to fewer details being provided about the violence an applicant has experienced. Survivors are often uncertain about what is most relevant—whether to detail all their experiences of violence, only the last incident, or the most serious. Limited space creates the impression that complainants should be brief which, in turn, affects the likelihood they will receive a PO if their statement is considered lacking or insufficient. The different forms also lacked uniformity in what is constituted as DV. Some forms illustrated the wide scope of DV by providing 20 subtypes of DV, whilst others gave a narrower list, summarily limiting who might be considered to "count" as a survivor. Another form had an annexures section, which encouraged the complainant to supply additional documents as evidence, if available.

Disparities between different forms may also make certain legal provisions around protection and support more or less likely to be included on the PO. Most forms we viewed invited the complainant to list the children in the home who were affected by DV, whereas one form did not have this section. Under the "Additional Orders Sought" section, one version of the form highlighted that the complainant could apply for maintenance (in addition to, or as an alternative to, emergency monetary relief),[7] while others did not. In some courts, NGO volunteers provided additional sheets of paper for the complainant to write her affidavit, which means that the magistrate is presented with a more in-depth, detailed description of the facts on which to base their decision. These might seem like small differences, however, the material affordances enabled or restricted by these forms circumscribe how violence is described, how convincing a survivor's testimony might be to a magistrate, and the extent of the protection that the survivor (and her children) may receive. The application form is, therefore, vitally important as it represents a list of options available to the complainant within the courts. If an avenue of potential relief is missing from the application form, the survivor will not have recourse to access it, with potentially life-threatening consequences.

Additionally, the contact details requested on the PO form may increase or decrease the probability of attrition, i.e., the likelihood of a case falling out of the system before it has been finalised. For example, some forms requested additional personal details from the applicant, such as their work address and work telephone number. This increases the chance that they could be contacted, if—as occurs frequently in South Africa—their mobile number changes. Some forms asked the complainant for clues regarding how to trace the respondent, beyond their address and phone number, increasing the chances of successful service of the application. Without this information, SAPS may have difficulty tracking down the respondent to serve the IPO and warrant of arrest. Both the complainant and respondent also risk missing crucial updates, for example, if court dates for the finalisation of the IPO is changed.

Within the idiosyncratic operations of each court, unofficial forms have also been developed by different role players. These serve to make their jobs more manageable and channel cases to other departments or institutions, often outside of the court. For example, certain magistrates develop their own memoranda which are issued to the police regarding cases which are not perceived to fall within the PO process. Other forms have been used to define cases outside of the PO system. One memorandum we documented stated that certain offences, such as assault and kidnapping, were "not a protection order" but should rather be treated as a criminal complaint. The creation and circulation of this document led to the mistaken impression that a PO cannot be obtained whilst a criminal complaint is underway. Consequently, the clerk would be encouraged to turn away complainants who were victims of serious criminal offences and send them back to the police. These types of *ad hoc* documents produced by role players contribute to divergent local legal cultures (Currul-Dykeman, 2014), or circumstances in which each court operates within its own unique ecosystem. While these forms are created for practical purposes, their effect is less innocuous. Complainants essentially face a lottery, where their chance of obtaining an IPO is contingent on the material affordances provided by one form over another.

Courts need to be responsive to local contexts and will necessarily tailor managerial processes accordingly. However, within the PO process, these paper-based variations have substantive impacts on survivors' access to justice, particularly during a highly precarious period when survivors are at great risk of retribution (and even intimate femicide) from their partners (Mathews et al., 2015). Whilst trying to adapt to these differences—especially in contexts where literacy is not always assured—survivors are regularly accused by court clerks and police officers of "abusing the process". This double standard—where justice officials can alter and manipulate procedures and paperwork, yet survivors are expected to be able to understand and respond to these variances during a highly stressful and vulnerable period—necessitates reflection. Far from realising the "maximum protection" that the DVA promises, current iterations of its implementation often fail to offer the bare minimum to survivors.

## Process-Based Disparities

Paper-based differences are compounded by marked variations in the way that courts handle the PO application process itself. Despite the clear stipulations laid out in the DVA, evidence shows wide variability in how the law is interpreted and used to grant IPOs and POs to applicants across courts. This, in turn, has important implications for case outcomes and survivors' rights and protection.

Firstly, there are differences in critical access or assessment points within the court that may affect complainants' experiences and the likelihood of obtaining a PO. Some of these are formal, such as the availability of a clerk or volunteer to provide information on the process and confirm whether a survivor qualifies to apply for an IPO. Others are (problematically) informal. For example, security guards may screen complainants as they enter the court, assessing whether survivors should be directed to the DV office, to another section of the court, or turned away because their complaint is "not domestic violence" (see also Rehse et al., 2022). These decisions can be critical in facilitating or impeding someone's access to justice. They also create key, but often hidden, points for defining the parameters of legitimate claims.

Other differences across courts arise from staff's working routines, rules, and interpretations of the DVA's requirements. For example, some courts will see all complainants present before court on any given day, with the magistrate spending the afternoon in the clerk's office to ensure that all applications are processed expeditiously. Other courts do not accept applications after 1 pm and magistrates are seldom available in the afternoons. In some courts, applicants will receive the IPO on the day of application, whereas at others, survivors must return to court the following day or later in the week to collect their order. These varying temporalities highlight how legal bureaucracies enact control through time (Greenhouse, 1989) and create structures where it seems easier to obtain an interim or final PO at some courts, and more difficult at others. Due to these variable timeframes, the police may refuse to respond to further violent incidents because an order is in process at the court but is not yet finalised (Moult, 2010; Vetten et al., 2010; Waldman, 2020).
In response to the high number of applications they receive, courts also develop their own routines by referring cases *out* of the system to other government structures like social services or separate sections in the court. Court staff make referrals to

other organisations—both state and non-state—that will first attempt to resolve the problem, after which the court will consider granting the order (Moult, 2010). These referral processes, however, are not uniform across courts, nor are they provided for in official law or policy. Court staff exercise relatively unfettered discretion over where cases go for resolution, if resolution is offered at all. As such, these kinds of idiosyncratic court practices and referral procedures create obvious risks of abuse within the process.

There are also important differences in the kinds of applications the courts will entertain, particularly regarding the conditions requested to be considered as part of a PO. Some courts will allow adolescent minors to apply for POs, while others will not. Some courts will make orders that evict an abuser from the shared home, while other courts are much more reluctant to do so. Some magistrates will make orders that prohibit sexual abuse based on a complainant's allegations in the PO application. Others will require proof that a case of sexual abuse or rape has been opened with the police. Most courts are reluctant to order that the police confiscate weapons used by an alleged DV perpetrator (Moult, 2010; Parenzee et al., 2001; Smythe, 2004), even where there is evidence of ownership. These process-based differences are critical as they create variable, and sometimes unpredictable, protection for a complainant, depending on where they submit their PO application.

POs only come into effect after they have been officially "served" by being handed to the respondent, but there are also striking differences across courts as to how service is effected. Some courts have required that applicants serve orders on respondents themselves, occasionally with the assistance of the police. In some courts, the orders are collected daily; in others, this happens twice a week. Certain police stations have a dedicated officer for this task, but others do not. In other courts, the applicant must take the order to the police station themselves (Waldman, 2021). These differences in service are critical—they not only impact the vulnerability of the complainant but also create delays in securing protection through an IPO if the process of service takes a long time or is not properly completed.

The process of obtaining a warrant of arrest to accompany the PO is not uniform for survivors either. The warrant of arrest is one tool that may convince the police to act when subsequent violence is reported. According to the DVA, where a PO is granted, a warrant of arrest should be issued, but many courts do not routinely issue the warrant with the IPO. Instead, survivors are often required to return to court to describe the alleged perpetrator's conduct and justify why they now need the warrant of arrest. Other courts will issue a warrant of arrest with an IPO only "in very, very severe cases" (Waldman, 2021, p. 56). In some courts, issuing the warrant of arrest is a decision made by the court clerk, on a case-by-case basis, with approval from the magistrate. This lack of uniformity represents a critical failure, as the police frequently force survivors to return to court for a copy of the warrant of arrest before they will act in future incidents of violence. Inconsistent processes for issuing the warrant of arrest causes additional burdens and risks for survivors in enforcing the order. This is especially chilling given the number of intimate femicide victims who had taken out IPOs or POs prior to their murders (Mathews et al., 2015).

These practical, process-based differences are not confined to the courts but also manifest in how the police enforce the law. Officers are more likely to respond to physical violence—especially where it causes injuries—compared to less visible forms of harm, such as emotional, psychological, and financial abuse (Moult, 2010; Parenzee et al., 2001). Research has shown that police are frequently reluctant to open a criminal complaint for DV or to exercise their power of arrest upon the breach of a PO (Parenzee et al., 2001; Spies, 2019). Instead, they will refer survivors to court to apply for an IPO.

The differences across courts in how a complainant should apply for a PO and the different rules, requirements, and routines of doing so can make the experience bewildering and alienating for complainants. Survivors consequently feel that the system is stacked against them. The first implementation studies on the DVA in the early 2000s documented many of these process-based disparities (Parenzee et al., 2001), but little has changed. The new DVAA, promulgated in 2021, attempts to address some of the DVA's shortcomings, for instance by providing guidance on outcomes at the return date where parties are not present. However, the new Act is unlikely to address the fundamental, but hidden, discrepancies in procedure that impact outcomes for survivors.

## Actor-Based Disparities

When survivors enter a magistrates' court to apply for a PO, they will interact with several different actors who operate within the space. Some of these (for example, court clerks and magistrates) are formally employed by the Department of Justice, while others (like security guards and NGO staff) serve in more interstitial roles. Survivors are not necessarily familiar with the different roles that these actors play, and the affiliations, processes, and strategies each draws upon to fulfil particular mandates within their roles. The presence of multiple actors co-existing within the same space, sometimes operating out of the same rooms in the court, can be confusing for survivors. As one NGO staff member stated, they're "part of the system and not part of the system". Survivors are nevertheless often reliant upon these different actors to gain clarity about the application process, navigate the confusing court set-up and administrative procedures, and fill out a PO, before

their application is even seen by a magistrate. Oftentimes, the positionality of these actors, and the various forms of persuasive power and accountability that motivate their roles, determine whether survivors receive assistance within the court.

While the magistrates make both the interim and final determinations on the outcome of a PO application, the affidavit may pass through several different hands, including both formal and informal legal actors, before a decision is made. Court clerks are vital in the preparation and processing of PO applications. They hold discretionary power in determining the viability and urgency of a survivor's testimony, despite having limited training on the dynamics of DV (Moult, 2010; Rehse et al., 2022). Clerks enjoying close relationships with their magistrates can potentially "twist the application" (Moult, 2010, p. 145) in ways that might improve a survivor's chances of their application being approved. They might also draw upon their own "persuasive power" (Moult, 2010, p. 145) to convince a magistrate of the urgency of a particular application, strategically using their positionality to intervene on a survivor's behalf.

Clerks, however, are not always sympathetic to the needs of survivors and can sometimes work counter to the expressions of harm and urgency articulated by complainants. Due in part to insufficient training, clerks can demonstrate mistrust or dismissal of applicants. They may tell survivors that their experiences are not serious enough to constitute DV, ask insensitive questions about why a survivor chose to remain in an abusive relationship, distil and flatten survivors' experiences into the legal language of an affidavit, or dismiss a survivor's application outright. These examples highlight the negative consequences of clerks' discretionary powers, and the extent to which they can serve as "gatekeepers" in access to justice (Mathews et al., 2001; Moult, 2019; Rehse et al., 2022). Clerks, like magistrates, might impose their personal biases when determining the "worthiness" and "validity" of survivor applications. Clerks who express concerns for the "sanctity" of marriage can recommend that applicants undergo mediation or provide referrals to couples counselling or street committees[8] through outside organisations rather than processing a PO application (Moult, 2019). In these circumstances, clerks redirect survivors *out* of the legal system, essentially issuing a statement that DV is an issue that should be determined and resolved elsewhere.

Court clerks also operate alongside NGOs, organisations that take on additional administrative and support roles within the courts. These NGO actors represent the interstitial, and sometimes confusing, presence of informal duty-bearers within legal spaces—they help to translate court procedures and legal language into accessible and understandable avenues of support for the public. The presence of NGOs within magistrates' courts emerged from the growing recognition—after the implementation of the DVA—that survivors required additional emotional assistance when exiting an abusive partnership and navigating the justice system. Memoranda of understanding established between these NGOs and the Department of Justice have expanded over the years to encompass other informal duties fulfilled by these organisations. As a result, NGO have increasingly served as legal interlocutors—translating legal genres, processes, and expectations for court applications, and transforming survivor stories into testimonies that are legible within the court context.

While outside NGOs were initially intended to complement the administrative work carried out by court clerks and render the PO process more accessible to survivors, NGO staff have reported to have been pressured by clerks and magistrates to take on the duties and labour of court staff. Throughout our research, NGO staff reported conflicts with court clerks who felt that they were not working fast enough or seeing enough clients throughout the day, even though the primary function of the NGO staff was to provide counselling. Nevertheless, NGO staff felt that clerks perceived their role as "just to do their dirty work. The court is like—do everything!" (Waldman, 2021, p. 49). To maintain good relationships with magistrates and clerks—relationships which they can leverage to ensure that applications are more successful—NGOs have conceded and taken on more roles within the court space. This has included assisting with affidavit statements and even, in some cases, providing informal mediation between couples. Accordingly, NGO relationships and responsibility for survivors has shifted further into the ambit of managerial and bureaucratised court procedure. As one NGO staff member reported, "how much time I must spend with clients and what I must do with clients" has changed.

NGO staff and court clerks both play formative roles in generating the statements used in PO applications, serving as legal interlocutors or translators for survivors. Where survivors struggle with literacy or are not fluent in a language accepted by the court, their affidavit may be scribed by a clerk or NGO staff. Some clerks and NGO staff are more willing or able (due to time availability) to take on the role of scribe than others. The willingness of these actors to step in and write on behalf of the survivor can have a deterministic impact upon the outcome of their case. Clerks and NGO workers often know best which words to use to motivate the magistrate to grant an order. Nevertheless, clerks and NGO staff can tend towards using generic terms or stock phrases which are known to have legal resonance (for example, "I feared for my life"), but can detract from the authenticity of the survivor's personal narrative. This linguistic and narrative homogenisation can impact the perceived legitimacy of the statement because it lacks the personal specificity required to elucidate the complainant's case. Magistrates write the provisions of an IPO based on the contents of the application form and affidavit, so this lack of

specificity about the survivor's unique situation can also lead to orders which omit key information required to effectively protect the complainant (Artz & Smythe, 2005; Carter, 2002; Moult, 2010; Parenzee et al., 2001).

Clerks and NGO staff can also be caught between addressing the needs of complainants and meeting the preferences of their magistrates, resulting in competing forms of accountability and responsibility to both survivors and court procedures. Magistrates' preferences on what constitutes an effective and convincing affidavit are not consistent across the documented courts. Turnover in staffing, or changes in magistrates, mean that clerks and NGOs have to continuously adjust and revise the unwritten rules magistrates use to assess PO applications. These adjustments behind the scenes have a cascading effect on clerks, NGO staff, and survivors as they must adapt to suit shifting and inconsistent individual preferences. As one NGO staff member explained: "we know which magistrate to give which application. We sometimes take the cover off [an application that has been denied], change it, and give it to another magistrate," in the hopes of promoting a more favourable outcome for the survivor. Complainants, therefore, have very different experiences depending on the court that they approach, and court workers argue that this "all depends on who is sitting on the bench" (Waldman, 2021, p.51). These significant differences across magistrate preferences are not provided for under the law and have obvious equity implications for the complainants left vulnerable during the application period.

Although the courts and the police should work closely together under the DVA to ensure a continuum of support for survivors before, during, and after their PO applications, however, the two institutions and coordinating actors, as one police officer put it, "don't talk to one another". Rather than opening a case for survivors at the police stations, police officials often send survivors to court, "And their attitude when they come here is bad because of what SAPS told them. [The police] didn't even listen to the problem … Our clients' experience with [the police] is very weak—very, very weak" (Moult, 2010, p. 18). The communication failure between these systems of legal and criminal justice not only impacts survivors' experiences but also serves to degrade basic trust within these institutions and the rule of law. Survivors encouraged to access courts for POs must, therefore, manage and negotiate the multiple actors and institutions which occupy the legal space surrounding DV. While these individuals and organisations all ostensibly work on behalf of survivors, in practice, they rarely communicate or collaborate in a coherent manner. Thus, the process becomes even more confusing, and context-specific, for applicants seeking justice.

## Conclusion

Only a few years after the DVA was enacted in 1998, it became clear that the Act was not delivering on its promises to protect and support survivors (Naidoo, 2006; Parenzee et al., 2001). These slippages are largely attributable to inconsistent implementation by criminal justice officials, working under minimal oversight within an overburdened, and under-resourced (Vetten, 2005), court system, rather than deficiencies in the Act itself. Throughout the first two decades of the 21st century, advocates, legal scholars, and policy makers have attempted to reform the Act. Additional training was provided for duty bearers and more NGO staff were introduced into the court space, in the hopes of improving service delivery. These attempts, as we have illustrated, tinker around the edges of a system which is not delivering justice, yet one in which the arbitrariness of unsuccessful PO applications is regularly blamed on those most in need of protection. The patchy, idiosyncratic, and piecemeal implementation and uptake of the DVA across the country has precluded a single, unitary, and synchronised system of justice. Rather, multiple systems and assemblages of justice around DV are contingent upon the network of actors, procedural mannerisms, and local legal cultures of each magistrates' court. Nevertheless, survivors who are left to "bargain within the shadow of the law" (Basu, 2015, p.4) are expected to abide by these informal, implicit and variable legal ecologies.

These systems of justice have produced siloed and discordant legal apparatuses that operate differently for each survivor. A complainant's experience is dependent on which court they access, who provides assistance, and the internal expectations and processes they must follow. Different PO application forms provide inconsistent and unpredictable material and legal affordances for vulnerable survivors. They elicit variable contingencies around affidavit statements and permissive structures around what can be said, and what will be included in an applicant's file. The lack of uniformity in PO paperwork also means that survivors might need to rewrite and reframe their statements at a different court only a few kilometres away from where they initially began their entreaty to justice. These forms often pass through multiple hands—a clerk, an NGO staff member, and a magistrate. Each actor provides new inflections, additions, and changes to the narrative, thereby altering the ultimate trajectory and potential success of a survivor's application. Magistrates' different schedules and preferences around DV affidavits not only produce relational and individualised adjustments by clerks and NGOs within the court space, but also alter the processes survivors must follow to obtain a PO. During a highly stressful, and often vulnerable, point in a survivor's experience of abuse, they cannot know what to expect out of the application process because the procedures, timeframes, and resolution mechanisms vary so widely across magistrates' courts. Survivors must navigate a system that presents itself as accessible and transparent, despite internal policies, practices, and procedures that even those operating within the court describe as fluctuating and irregular. Within this context, survivors experience very little predictability in how their POs will be dealt with, degrading not only their chances of protection but also their faith in the justice system overall.

Due to the slow and uneven process of DVA implementation since 1998, each court—and the street-level bureaucrats (Lipsky, 1980) that inhabit and operate within them—has devised their own processes, expectations, and relational dynamics around POs. In this way, local legal cultures (Merry, 2006) are not necessarily *resistant* to formalised and official legal rules and doctrines but are rather remarkably *resilient* to change. They incorporate certain elements of the law while tweaking and manipulating the established norms and procedures that are already operating within a given space or community. Within these varying assemblages of "justice", we are reminded that effective implementation is neither top-down nor bottom-up (Ferguson & Gupta, 2002; Gelsthorpe & Padfield, 2003). Rather, it is a complex process of negotiation, raising the question of how to effectively change local legal culture. Within this contested legal field, however, survivors stand to lose the most, especially given the vast disparities in favourable PO outcomes and the attendant risks of intimate femicide associated with DV in the country. Rather than the maximum level of protection afforded to all survivors—regardless of class and geographic location—these disparate and contradictory conditions of legal multiplicity often serve to minimise the harms and perils associated with DV. Complainants are cast as unruly and unreliable legal subjects when reform needs to be directed at the juridical system, or rather systems, as the true culprits of failing to "follow the process".

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[1] The application for a PO is a civil process, and South Africa has no specific criminal offence of domestic violence. Where charges are laid, cases are dealt with under the common law (for example, as attempted murder, assault, or assault with the intent to do grievous bodily harm). The complainant (survivor) is also not required to lay a criminal charge against the abuser to be able to request a PO from the court.
[2] While our fieldwork was confined to one province, the findings have found support from practitioners across South Africa, who have used it for policy and advocacy activities. Therefore, while somewhat limited in generalisability in that it emanates from a single province, experience suggests that the data broadly describes the situation in courts around the country. Throughout the draft, we do not name the NGOs that we have worked with to ensure the anonymity of the organisations, in alignment with the ethical research protocols approved by our respective institutions. We have also chosen not to name the specific courts in question throughout the draft, to preserve the anonymity of the NGOs, which tend to work and have MOUs at specific courts and would therefore be identifiable by such assignations.
[3] The first United Nations Convention document to mention domestic violence is the 1992 General Recommendation No.19, Committee on the Elimination of Discrimination Against Women, U.N. Doc A/47/38 of 1992.
[4] Service of an order means delivering the sealed order to the complainant and alleged perpetrator, as well as others who must receive a copy, such as the local police station.
[5] "Complainant" is the term used in the DVA to describe individuals seeking protection from the police and courts. In this article, we use it interchangeably with our preferred term, "survivor". "Respondent" means the alleged perpetrator against whom the order is sought.
[6] An affidavit is a witness statement.
[7] Emergency monitory relief (DVA, s. 7(4)) allows the complainant to claim for losses they have suffered because of domestic violence, including loss of earnings, and medical, relocation, and accommodation expenses. It is rarely granted by magistrates (Artz & Smythe, 2005).
[8] Street committees are informal justice structures that provide community ordering and anti-crime functions, including hearing and mediating complaints between neighbours and family members (including domestic violence complaints) and settling disputes.

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