

THE RIGHT & THE REAL

A Shadow Report Analysing
Selected Government Departments'
Implementation of the 1998
Domestic Violence Act and 2007
Sexual Offences Act.



TSHWARANANG
LEGAL ADVOCACY CENTRE
TO END VIOLENCE AGAINST WOMEN

LANDROSHOF
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MAGISTRATES COURT



THE RIGHT & THE REAL:

A Shadow Report Analysing Selected Government Departments' Implementation of the 1998 Domestic Violence Act and 2007 Sexual Offences Act.

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December 2010

To be cited as:

Vetten, L, Le, T, Leisegang, A and Haken, S. (2010). *The Right and the Real: A Shadow Report Analysing Selected Government Departments' Implementation of the 1998 Domestic Violence Act and 2007 Sexual Offences Act*. Johannesburg: Tshwaranang Legal Advocacy Centre

Edited by Christi van der Westhuizen

This report was made possible with funding from the Heinrich Böll Foundation and the European Union. The views expressed in this report do not necessarily represent the official views of these agencies.

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ACRONYMS

Alternative dispute resolution	ADR
Civilian Secretariat for Police	CSP
Client Service Centre	CSC
Community Building Credible Ownership	CBCO
Criminal justice system	CJS
Department of Correctional Services	DCS
Department of Health	DoH
Department of Justice and Constitutional Development	DoJ&CD
Department of Social Development	DSD
Domestic Violence Act	DVA
Estimates of National Expenditure	ENE
Family Violence, Child Protection and Sexual Offences	FCS
Grievous bodily harm	GBH
Independent Complaints Directorate	ICD
Independent Police Investigative Directorate	IPID
Inter-departmental Management Team	IDMT
Intersectoral Committee	ISC
Justice, Crime Prevention and Security	JCPS
Lesbian, gay, bisexual, transgender and intersex	LGBTI
Medium Term Strategic Framework	MTSF
National Child Protection Register	NCPR
National Director of Public Prosecutions	NDPP
National Policy Framework	NPF
National Prosecuting Authority	NPA
National Register for Sexual Offenders	NRSO
Non-governmental organisation	NGO
Parliamentary Monitoring Group	PMG
Portfolio Committee	PC
Post-Exposure prophylaxis	PEP
Promotion of Access to Information Act	PAIA
Resources Aimed at the Prevention of Child Abuse and Neglect	RAPCAN
Sexual Offences Act	SOA
Sexual Offences and Community Affairs	SOCA
South African Police Services	SAPS
Thuthuzela Care Centre	TCC
Tshwaranang Legal Advocacy Centre	TLAC
Victim Empowerment Programme	VEP
Women, Youth, Children and People with Disabilities	WYCPD

THE MAJORITY OF POLICE STATIONS DO NOT KEEP RECORD OF DOMESTIC VIOLENCE CASES; AND THE LACK OF REQUIRED DOCUMENTATION SUCH AS FORMS AT POLICE STATIONS HOBBLER THE IMPLEMENTATION OF THE SOA.



EXECUTIVE SUMMARY

South Africa's Constitutional Court makes it clear that, "few things can be more important to women than freedom from the threat of sexual violence." So important is this right to be free from all forms of violence that, along with the rights to life and dignity, it imposes two sorts of duties on the state: the first obliging the state to refrain from acting in ways that infringe on these rights, and the second compelling it to develop legislation and structures guaranteeing those rights. This report examines government's compliance with these constitutionally-mandated duties, taking as its point of departure two pieces of legislation key to combating violence against women – the Domestic Violence Act 116 of 1998 (DVA) and the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SOA).

As the chief custodians of the DVA and SOA, two departments come under particular scrutiny: the South African Police Services (SAPS) and the Department of Justice and Constitutional Development (DoJ&CD). The National Prosecuting Authority (NPA), as a sub-programme within the DoJ&CD, is also analysed. A third component of the report takes a combined look at the Departments of Health (DoH), Social Development (DSD) and Correctional Services (DCS), which play ancillary roles in the implementation of these two laws.

SAPS: Violence against women is a stated policing priority and both the SOA and DVA place a number of obligations upon the police. The bulk of these duties are not complied with however.

The majority of police stations do not keep record of domestic violence cases; and the lack of required documentation such as forms at police stations hobbles the implementation of the SOA. The police themselves acknowledge that their present training around the DVA is not adequate.

Police officers fail to protect domestic violence victims and such failure goes unpunished. Oversight mechanisms such as the Independent Complaints Directorate and Parliament are generally disregarded. Further, the police have either largely ignored their legal duty to provide six-monthly reports to Parliament on the implementation of the DVA, or Parliament has neglected to engage with these reports. The police have also neglected to table other documents in Parliament as required by the SOA.

No explicit budgeting is done to implement the police's legislative mandates. Existing budgets cannot absorb the costs of implementation.

Specialised detective units are the most concrete and detailed SAPS strategy for combating crimes against women. These units will likely benefit victims of sexual

offences more than victims of domestic violence, as many domestic violence complaints are not translated into criminal charges requiring investigation.

In 2010 the police were set the goal of reducing serious and violent crimes such as rape and domestic violence by 4 – 7% every year. The statistics they offer in this regard are open to doubt because (a) the police misunderstand the extent to which rape and domestic violence are under-reported and conflate instead the reporting of an incident of violence with the prevalence of violence; (b) the many anomalies, inconsistencies and errors contained in their figures are neither acknowledged nor explained; (c) the single, global figure now given for all 59 sexual offences, including rape, does not allow for the tracking of trends within individual crime categories; (d) and the pressure on the police to reduce reported crimes, encouraging some officers to not register dockets. In relation to the last point, this is having the unintended consequence of effectively decriminalising some sexual offences and domestic violence.

The police blame every failure to meet their targets on the introduction of the SOA and report decreases in detection rates where there are none. Finally, police performance is measured from the police, not the victim's, perspective in a way that is neither a measure of victims' access to justice, nor a reflection on the quality of the police work.

THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT: A retreat is noted from *gender equality as vulnerability* is increasingly emphasised. This represents a shift from a goal to which all policy, law and practice should aspire, to a descriptor that implies a need for protection. Women may resort to the courts for protection but this does not automatically make the courts or legal processes women's protector.

The Department's implementation of its legislative mandate is characterised by excessive delays. It spent, for example, five years finalising guidelines for magistrates around the DVA and has been reviewing the DVA for the last four consecutive financial years. In the meantime Parliamentary hearings reported Justice department court officials as subjecting applicants to secondary victimisation and unnecessary and lengthy delays in obtaining orders due to problematic working hours that cause court personnel to be unavailable; staff being ill-trained and ill-equipped; and lack of privacy for complainants at court.

No separate budgeting is done for the implementation of the SOA, which makes it difficult to discern the extent of budgeting. Regarding DVA implementation, public communication is prioritised year after year in their budget vote but, as a measure, this hardly addresses the act's implementation. Thus "severely impeded" service delivery and "poor implementation" have been noted in relation to the DVA, arising from the absence of a costing framework.

Regarding DVA implementation, public communication is prioritised year after year in their budget vote but, as a measure, this hardly addresses the act's implementation. Thus "severely impeded" service delivery and "poor implementation" have been noted in relation to the DVA, arising from the absence of a costing framework.

Cabinet declined to legislate the provision of comprehensive management, treatment and care services to rape survivors and their families on the basis of cost, yet allowed the creation of the National Register for Sexual Offences (NRSO), a lesser version of the National Child Protection Register. Implementation of the NRSO has been considerably delayed due to cost, with a police official suggesting it would cost R300 million to fully implement.

Less than half of South Africans who apply for DVA protection orders ultimately qualify, with drops in the Western Cape being of specific concern. This cannot be interpreted to mean the system is "working better", as the department suggests. The protection of the courts is being denied to some by institutional barriers, as well as prejudice on the part of some magistrates.

THE NATIONAL PROSECUTING AUTHORITY: The NPA's primary vehicle for addressing domestic violence and sexual offences is its Sexual Offences and Community Affairs (SOCA) unit. However the SOCA unit's objectives for 2008/09 and 2009/10 make no reference to domestic violence.

The Thuthuzela Care Centres (TCC) are the NPA's star project. While the TCC model seems good, assessment is difficult as TCCs are not subject to independent, external evaluation. Reports on their functioning are not readily available. Further, the bulk of victims attended to at TCCs seem to be children even though women over the age of 18 constitute the bulk of those who report rape. Police officers – perhaps in consultation with TCC staff – prefer to provide TCC services to children. TCCs are chiefly available to victims of sexual offences and not domestic violence.

The combined problems of under-budgeting and incomplete reporting of foreign funding raise two concerns in relation to the TCCs: How can we assess the sustainability of the TCC model if the bulk of its financial support comes from foreign donors? And: To what extent does the national budget address women's

gender equity interests if measures that address violence, one manifestation of gender inequality, must be funded from outside government?

The justice minister's 2005 moratorium on the establishment of dedicated courts has caused sexual offences courts to drop from a high of 67 in 2005/06 to 40 by October 2010. Negative consequences include: cases are randomly allocated to prosecutors, magistrates and courts, whether they have adequate experience and understanding of the complexities of sexual violence, or not. The team approach that pulled together NGO specialists/counsellors, prosecutors and police has been weakened. Victims may also wait longer for trial dates because courts are no longer dedicated to hearing these matters.

Sexual offences courts have been allowed to disappear because they do not suit magistrates' perceptions of what constitutes the "efficient" management of court rolls. An emphasis purely on efficiency and effectiveness that does not also pay attention to equity can result in practices that perpetuate discrimination and inequality.

The Justice department's information on conviction rates at sexual offences courts is contradictory. The lack of data on conviction rates in ordinary courts makes it impossible to compare their performance with the sexual offences courts. Some sexual offences matters are also being resolved through alternative dispute resolution. Information is required around the categories of sexual offence dealt with in this way.

SUPPORTING DEPARTMENTS: The police are required to assist domestic violence victims with shelter but the DVA places no obligation on the Department of Social Development (DSD) to ensure shelters are available. The DSD's approach to the funding of shelters is neither uniform nor consistent.

Earlier versions of the SOA foresaw a more active role for the DSD in the form of psycho-social services to be provided to victims and their families. This role was subsequently diminished by Cabinet, citing cost.

The DVA places no specific obligations on the Department of Health (DoH) to fulfil either. While the DoH has some policy addressing aspects of domestic violence, policy without legal enforcement is less effective; the lack of a legislated role undermines the department's response to domestic violence.

The DoH plays an important role in the implementation of the SOA, chiefly in relation to the provision of medico-legal services. The DoH has not adequately met most of its SOA obligations.

The DoH failed to publish the names of facilities designated to provide PEP and conduct HIV testing within the time frames stipulated by the SOA. Monitoring in 2008 found that some of the health facilities listed by the police did not

provide PEP. Information about the extent to which the DoH had complied with its mandate to provide training could not be found in the department's annual reports; the department has not submitted any reports to Parliament; and has not responded to PAIA applications. Different training courses suggest differing depths of knowledge and differing levels of treatment of rape survivors in different provinces.

The DCS's mandate is solely in terms of the SOA, which includes submitting names to the NRSO of all those who are currently serving, or have served, a sentence of imprisonment for a sexual offence committed against a child or a person who is mentally disabled. This would not appear to have been done as yet due to the delay in the full implementation of the NRSO.

Overall, no department has complied in full with its legislated mandate in terms of either the DVA or SOA. No department would appear to have adequately budgeted for the implementation of the two laws either; in fact, some provisions of the SOA, as well as protective measures for victims at court, have not materialised due to under-budgeting. Departments do not measure the extent to which they uphold their legislative mandate and sometimes use inappropriate performance measures, which are also subject to misinterpretation. Legislating parliamentary oversight of the implementation of these two laws has not guaranteed the exercise of such oversight.

RECOMMENDATIONS are made to parliament as the national legislative authority tasked with oversight over the executive and as the key democratic institution representing South Africans, including women.

Parliament should scrutinise and amend departmental budgets using the 2009 Money Bills Amendment Procedure and Related Matters Act (no 9 of 2009), as this act allows PCs to reject departments' budgets, as well as hold public hearings on those budgets. PCs are also required to play a strong role in assessing departments' ENE, strategic priorities, measurable objectives, strategic plans and annual reports. NGOs should be brought into these processes to contribute knowledge.

Parliament should ensure departments comply with their legislative mandate. Particular aspects of how PCs function need to be considered by Parliament to enhance oversight. Workload is an obstacle to the effective exercise of oversight. This underscores the need for a committee mandated to pay attention to women's rights and gender equality; and the need for joint sittings to exercise oversight. At a minimum the DVA and SOA entail responsibilities for at least four government departments, all of which must be considered in tandem with one another.

Overview of Departments' progress in meeting obligations mandated by the 2007 Sexual Offences Act.

OBLIGATION	JUSTICE	NPA
Issue various directives, instructions and regulations	X	X
	Gazetted to deadline	Not gazetted and now over a year late
Designate health facilities to provide PEP, conduct compulsory HIV testing within 2 months of s29 being effected		
Establish National Sex Offenders Register by June 2009	X	
	Initially delayed by six months; incompletely implemented overall	
Establish Intersectoral Committee to meet at least twice yearly and produce meeting reports	X	X
	Done	Done
Write National Policy Framework by 31 March 2009	X	X
	Not done – 20 months over legal deadline	Not done
Develop training courses and table in Parliament		X
		Courses developed, not tabled
Table training reports on an annual basis		X
		Not done
Table departmental reports on implementation of SOA on an annual basis	X	X
	Not done	Not done

SAPS	HEALTH	SOCIAL DEVELOPMENT	CORRECTIONAL SERVICES
X	X		
Gazetted to deadline	Gazetted late		
	X		
	Not done		
X	X		X
Compilation of historical convictions delayed	Compilation of historical convictions delayed		Compilation of historical convictions delayed
X	X	X	X
Done	Done	Done	Done
X	X	X	X
Not done	Not done	Not done	Not done
X	X		
Courses developed, not tabled	Different courses developed, none tabled		
X	X		
Not done	Not done		
X	X	X	X
Not done	Not done	Not done	Not done

THIS REPORT TAKES UP ... [AN] INVITATION FROM GOVERNMENT TO ENGAGE BY DETAILING HOW KEY GOVERNMENT DEPARTMENTS HAVE GONE ABOUT ENSURING WOMEN LIVE FREE FROM ALL FORMS OF VIOLENCE.



1. INTRODUCTION

South Africa's Constitutional Court is clear: "Few things can be more important to women than freedom from the threat of sexual violence."¹ So important is this right to freedom and security that, along with the rights to life and dignity, it imposes two sorts of duties on the state: the first obliging the state to refrain from acting in ways that infringe on these rights, and the second compelling it to develop legislation and structures guaranteeing those rights.

It is not only sexual violence that constitutes a rights violation of the sort requiring state intervention:

"Indeed, the state is under a series of constitutional mandates which include the obligation to deal with domestic violence: to protect both the rights of everyone to enjoy freedom and security of the person and to bodily and psychological integrity, and the right to have their dignity respected and protected, as well as the defensive rights of everyone not to be subjected to torture in any way and not to be treated or punished in a cruel, inhuman or degrading way."²

Parliament is central to ensuring that government converts these constitutional rights from paper promises to living realities, with section 42 of the Constitution stating:

"The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this...by passing legislation and by scrutinising and overseeing executive action."

Also contributing to the realisation of constitutional protections is civil society. According to the Presidency it is government's aim to promote civil society's engagement with governance processes and policy implementation as this role both contributes to the improvement of government public services and strengthens democratic institutions.³ This report takes up that invitation from government to engage by detailing how key government departments have gone about ensuring women live free from all forms of violence.

The report takes as its point of departure the Domestic Violence Act 116 of 1998 (DVA) and the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SOA), two pieces of legislation key to combating violence against women. As the chief custodians of these laws, two departments come under particular scrutiny: the South African Police Services (SAPS); and the Department of Justice and Constitutional Development (DoJ&CD). The

1 *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) at 44.

2 *S v Baloyi and Others* 2000 (2) SA 425 (CC) at 11.

3 Minister in the Presidency Planning 2009: 40.

THE REPORT TAKES AS ITS POINT OF DEPARTURE THE DOMESTIC VIOLENCE ACT 116 OF 1998 AND THE CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT 32 OF 2007, TWO PIECES OF LEGISLATION KEY TO COMBATING VIOLENCE AGAINST WOMEN. AS THE CHIEF CUSTODIANS OF THESE LAWS, TWO DEPARTMENTS COME UNDER PARTICULAR SCRUTINY: THE SOUTH AFRICAN POLICE SERVICES; AND THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT.

The report is introduced with a brief overview of the two acts under consideration, which is then followed by close analysis of individual departments' efforts to meet their particular legislative mandates. Each departmental review includes an overview of their Medium Term Strategic Framework or annual plan (where available), along with a discussion of their particular budget vote contained in the estimates of national expenditure.

interventions of the National Prosecuting Authority (NPA), as a sub-programme within the DoJ&CD, are also closely analysed. A fourth part of the report takes a combined look at the Departments of Health (DoH), Social Development (DSD) and Correctional Services (DCS), which play ancillary roles in the implementation of these two laws. Accordingly this section examines these three departments' doings only in relation to the mandate conferred upon them by the DVA and SOA.

The report is introduced with a brief overview of the two acts under consideration, which is then followed by close analysis of individual departments' efforts to meet their particular legislative mandates. Each departmental review includes an overview of their Medium Term Strategic Framework (MTSF) or annual plan (where available), along with a discussion of their particular budget vote contained in the estimates of national expenditure (ENE). Information obtained from departments' individual annual reports and performance reports was also considered (again, where obtainable). In addition, minutes compiled by the Parliamentary Monitoring Group (PMG), coupled with departments' presentations and replies to parliamentarians' questions, have been included. This information covered the reporting periods 2008/09 to 2009/10. In relation to the budget votes (which are forward-looking), 2010/11 was also reviewed. Finally, requests for further information, where it was lacking, were submitted in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA).

THE DVA CREATES A PROTECTION ORDER THAT PROHIBITS THE ABUSER (OR RESPONDENT) AND ANYONE ACTING ON THEIR BEHALF FROM ENGAGING IN ACTS OF PHYSICAL, SEXUAL, EMOTIONAL/ PSYCHOLOGICAL AND ECONOMIC ABUSE.



2. AN OVERVIEW OF THE 1998 DOMESTIC VIOLENCE ACT AND THE 2007 SEXUAL OFFENCES ACT

THE DVA IN BRIEF

The DVA was the first piece of legislation enacted by the post-apartheid South African government to deal with gender-based violence. Recognising that domestic violence is prevalent in South Africa and "that victims of domestic violence are among the most vulnerable members of society", the act aims to:

"afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby to convey that the State is committed to the elimination of domestic violence."⁴

The DVA creates a protection order that prohibits the abuser (or respondent) and anyone acting on their behalf from engaging in acts of physical, sexual, emotional/psychological and economic abuse. Violation of any of the terms of the order constitutes contempt of court and may lead to the respondent's arrest. In addition, to ensure the act is effectively applied, legislators placed a range of obligations on the police to assist victims of domestic violence, set out in both the act and accompanying SAPS National Instructions 7/1999 (version 2 issued on 3 March 2006). These obligations include:

- helping the victim to find suitable shelter, obtain medical treatment and collect personal items from her/his residence;
- serving notice on the abuser to appear in court, as well as serving protection orders;
- arresting an abuser who has breached a protection order, or committed a crime (even without a warrant);
- removing weapons from the abuser, or from the home; and
- maintaining records of reports of domestic violence in a prescribed manner.

Failure to comply with these obligations constitutes misconduct and must be reported to the Independent Complaints Directorate (ICD). The police must institute disciplinary proceedings against police officers who neglect to carry out their duties (unless directed otherwise by the ICD); and submit reports to

⁴ Domestic Violence Act 116 of 1998.

Parliament every six months detailing the number and nature of complaints received, the disciplinary proceedings instituted as a result (along with the outcomes of those proceedings) and the steps taken to act upon recommendations received from the ICD.

For its part the ICD is tasked with monitoring the police's compliance with subsection (4)(a) of the DVA and the SAPS National Instructions; receiving complaints where the police have not complied with these obligations; making recommendations to the police around addressing such failures; and submitting reports to Parliament every six months which detail the number and nature of complaints received, as well as the recommendations made. In terms of the soon-to-be-promulgated Independent Police Investigative Directorate (IPID) Act and the Civilian Secretariat for the Police (CSP) Act, these functions of oversight over the police will be transferred from the ICD (to become the IPID) to the CSP.

The DVA in practice

The DVA came into effect in December 1999 and has been in operation for over a decade. This has allowed for the accumulation of a body of research and writing describing various facets of its application. The same broad themes emerge repeatedly in these reports, functioning as a set of yardsticks against which to measure where implementation is lacking:

- inadequate resourcing of the DVA – the act was one of the last to be passed before it became routine to cost the implementation of particular laws. Amongst other things, under-budgeting has affected the service of protection orders⁵, the availability of police and court personnel to give full effect to the act⁶ and the treatment meted out to women by the courts and police⁷;
- the attrition of applications for protection orders – only a minority of those who turn to the police and courts ultimately obtain the protection of the law⁸;
- persistent non-compliance on the part of the police with their obligations, ranging from failure to arrest respondents, to not submitting reports to the ICD detailing complaints received⁹;
- inadequate familiarity with the contents of the DVA, as well as application of its procedures (this applies to both police and court personnel).¹⁰ In this

5 Goldman and Budlender, 1999; Vetten, Budlender and Schneider, 2005.

6 Artz, 2003; Mathews and Abrahams, 2001; Parenzee, Artz and Moulit, 2001.

7 Vetten, Budlender and Schneider, 2005.

8 Vetten et al, 2009b; Artz, 2006.

9 PMG, 18 June 2008; Vetten et al, 2009b; Independent Complaints Directorate, 2005.

10 Vetten et al, 2009b.

2. An Overview of the DVA and the SOA

regard, the Auditor-General¹¹, the SAPS¹² and the ICD¹³ have all commented that the police are insufficiently trained around the DVA; and

- that the DVA places responsibilities on only one department but not others, meaning a complete and multi-faceted social response to individual survivors of domestic violence is lacking. For instance, while the DVA places obligations upon the police to assist women with finding shelter and counselling services, as well as medical treatment, it places no corresponding legal obligations upon either the DoH or DSD to provide such services. Abused women's long-term housing needs have also attracted very little policy attention to date.¹⁴

THE SOA IN BRIEF

Where the DVA was drafted and finalised within two years, the SOA took 10 years to enact, finally coming into effect on December 14, 2007. According to the preamble, the act grew out of a need to incorporate all sexual crimes into one law and to clearly define sexual crimes and related issues. Additionally, as the preamble to the act recognises, both law and government departments' responses to rape survivors fall short in many respects:

“South African common law and statutory law do not deal adequately, effectively and in a non-discriminatory manner with many aspects relating to or associated with the commission of sexual offences, and a uniform and co-ordinated approach to the implementation of and service delivery in terms of the laws relating to sexual offences is not consistently evident in Government; and thereby which, in too many instances, fails to provide adequate and effective protection to the victims of sexual offences thereby exacerbating their plight through secondary victimization and traumatisation;”¹⁵

The act consists of seven chapters, the first setting out the objects of the SOA while the next three introduce new crimes (particularly against children and people with mental disabilities), as well as codify crimes previously defined under the common law. A fifth chapter legislates the provision of post-exposure prophylaxis (PEP) to prevent HIV infection in rape survivors and also sets out the procedures to be followed for the compulsory testing of alleged rapists for HIV. Chapter Six deals with the national register for sex offenders, while the final chapter comprises a miscellany of provisions applicable to defences and sentencing, the establishment of a National Policy Framework (NPF) and transitional provisions around trafficking (amongst others).

11 Auditor-General South Africa, 2009.

12 PMG, 31 October 2007; PMG, 27 August 2008.

13 PMG, 18 June 2008.

14 Vetten, 2006.

15 Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

Perhaps taking its lead from the DVA, the SOA contains a number of requirements which government departments must meet within the first year of the Act's promulgation, as well as on an ongoing basis thereafter. Reporting to parliament on the progress made in implementing the SOA is also obligatory. In theory, because more obligations have to be reported on to parliament by more departments, oversight should be more effective in relation to the SOA than the DVA. Whether or not this is the case in practice is one of the questions explored by this report. Table 1 provides an overview, by department, of these obligations.

Table 1: Summary of further actions required by the SOA, by department.

Commitment	Justice	NPA	SAPS	Health	Social Development	Correctional Services
Directives, instructions and regulations	X	X	X	X		
Designation of health facilities				X		
Establishing National Sex Offenders Register	X		X	X		X
Establishment of Intersectoral Committee to meet at least twice per year and produce meeting reports	X	X	X	X	X	X
Develop National Policy Framework	X	X	X	X	X	X
Develop training courses and table in Parliament		X	X	X		
Table training reports on an annual basis		X	X	X		
Table departmental reports on implementation of SOA on an annual basis	X	X	X	X	X	X

As with the DVA, it was clear that a number of stations did not have the necessary forms required by law and were therefore unlikely to be following procedure. Levels of knowledge varied not only across stations but within stations, making the quality of service contingent upon whoever was on duty. Stations also appeared to be limited in their ability to provide appropriate assistance to deaf, mentally disabled or lesbian, gay, bisexual, transgender and intersex victims, while specialisation in sexual offences had all but disappeared from the courts.

The SOA in practice

Limited research has been conducted to date on the implementation of the SOA. While one study is in press,¹⁶ results are available from two monitoring exercises conducted by the Shukumisa Campaign which comprises some 24 organisations nationally. Organisations affiliated to the campaign monitored police stations, courts and hospitals' compliance with policy and law applicable to sexual offences in 2008¹⁷ and repeated this exercise again in 2010.¹⁸ While the sample on each occasion was based on convenience, limiting the findings' generalisability, the monitoring highlighted the uneven and inconsistent application of the SOA and associated policy. As with the DVA, it was clear that a number of stations did not have the necessary forms required by law and were therefore unlikely to be following procedure. Levels of knowledge varied not only across stations but within stations, making the quality of service contingent upon whoever was on duty. Stations also appeared to be limited in their ability to provide appropriate assistance to deaf, mentally disabled or lesbian, gay, bisexual, transgender and intersex (LGBTI) victims, while specialisation in sexual offences had all but disappeared from the courts.

¹⁶ Artz and Hoffman-Wanderer, in press.

¹⁷ Tshwaranang Legal Advocacy Centre (TLAC) and Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN), 2009.

¹⁸ TLAC and Rape Crisis Cape Town Trust, 2011.

AT THE LEVEL OF RHETORIC, THERE IS NO SHORTAGE OF POLICE COMMITMENT TO COMBATING VIOLENCE AGAINST WOMEN. WHAT, HOWEVER HAS THE SAPS DONE TO MAKE THIS PRIORITISATION MEANINGFUL? THE MEASURE IS THE IMPLEMENTATION OF THE DOMESTIC VIOLENCE ACT AND THE SEXUAL OFFENCES ACT, WHICH IS SCRUTINISED IN THE FOLLOWING SECTIONS.



3. THE SOUTH AFRICAN POLICE SERVICE

Addressing violence against women has been a policing priority since at least 1996 and the release of the National Crime Prevention Strategy. This prioritisation was recently reaffirmed by *Together Doing More and Better*, the Presidency's MTSF for 2009 – 2014 that both guides the work of government as a whole, as well as the allocation of resources across the three spheres of government. The MTSF identifies crime and corruption as one of government's 10 strategic priorities, with the "intensification of efforts to combat crimes against women and children and the promotion of the empowerment of victims of crime"¹⁹ listed as a sub-priority within this larger goal. The Justice, Crime Prevention and Security (JCPS) Cluster (of which the SAPS forms part) echoes this call to step up efforts to combat violence against women and also commits the police to reducing serious and violent crimes such as rape and domestic violence by 7 – 10% per annum (subsequently reduced to 4 – 7% following a Cabinet decision taken in January 2010).²⁰

At a departmental level, the SAPS' Annual Performance Plan 2008/09,²¹ their Strategic Plan 2010 - 2014²² and their budget votes for the period 2008/09 to 2010/11²³ all state that crimes against women are a policing priority. Thus, at the level of rhetoric, there is no shortage of police commitment to combating violence against women. What, however has the SAPS done to make this prioritisation meaningful? The measure is the implementation of the Domestic Violence Act and the Sexual Offences Act, which is scrutinised in the following sections.

SAPS' FULFILMENT OF ITS LEGISLATIVE MANDATE

At a minimum, one of the most important measures of the police's commitment to combating violence against women must be the extent to which they comply with their legal obligations.

The Domestic Violence Act (DVA)

As outlined previously, the DVA imposes two sets of duties upon the police: one being administrative and relating to the proper keeping of records²⁴, and the other dealing with the provision of various policing services to victims of domestic

19 Minister in the Presidency Planning 2009: 31.

20 SAPS Strategic Management 2010a: 5.

21 SAPS Strategic Management, 2008.

22 SAPS Strategic Management, 2010a.

23 National Treasury, 2008; National Treasury, 2009; National Treasury, 2010

24 These include the 508(a) forms and 508(b) registers; the DVA and National Instructions; a list of service providers; the DVA Register; and copies of protection orders, as well as files containing the warrants of arrest.

[T]he DVA imposes two sets of duties upon the police: one being administrative and relating to the proper keeping of records²⁴, and the other dealing with the provision of various policing services to victims of domestic violence.

violence. In addition, the National Commissioner of the SAPS is obliged to submit to parliament six-monthly reports outlining complaints against police officers, the disciplinary proceedings instituted against those officers, as well as the police's response to recommendations made by the ICD. None of these obligations is well-adhered to by the police.

Table 2 sets out the percentage of stations visited by the ICD between 2006 and 2009 which fully complied with the record-keeping obligations demanded by the DVA and National Instructions. As the table shows, the majority of stations do not meet the necessary standard – a state of affairs also noted by the Auditor-General in his 2009 report to parliament.²⁵

Table 2: Percentage of stations visited between 2006 and 2009 which were fully compliant with their statutory obligations

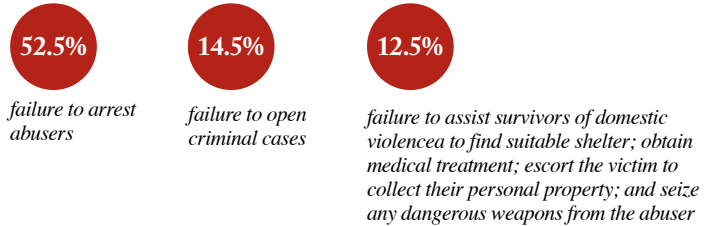
No. stations visited	Period	% stations fully compliant with the DVA
245 stations visited for the year*	Jan – June 2006	2%
	Jul – Dec 2006	30%
395 stations visited for the year	Jan – June 2007	57%
	Jul – Dec 2007	28%
434 stations visited for the year	Jan – June 2008	14%
	Jul – Dec 2008	13%
522 stations visited for the year**	Jan – June 2009	11%
	July – Dec 2009	8%

* All data for the years 2006 to 2008 cited in TLAC, 2010.

** Calculations based on data presented by the ICD to the Women Youth Children and People with Disabilities PC (PMG, 17 November 2010).

²⁵ Auditor-General South Africa, 2009.

AN ANALYSIS OF ICD REPORTS FOR 2001 TO 2008 COLLATED 1 121 COMPLAINTS MADE ABOUT THE POLICE:



THE ICD RECOMMENDED DISCIPLINARY ACTION IN 82.8% OF THE COMPLAINTS REFERRED TO THEM. > POLICE INSTITUTED DISCIPLINARY PROCEEDINGS IN 5.1% OF THE CASES

The police's lack of cooperation with the ICD is equally concerning. An analysis²⁶ of ICD reports for 2001 to 2008 collated 1 121 complaints made about the police, broken down as follows:

- failure to arrest abusers (52.5%);
- failure to open criminal cases (14.5%); and
- failure to assist survivors of domestic violence to find suitable shelter; obtain medical treatment; escort the victim to collect their personal property; and seize any dangerous weapons from the abuser (12.3%).

The ICD recommended disciplinary action in 928 (or 82.8%) of the 1 121 complaints referred to them. However, the police instituted disciplinary proceedings in a scant 48 (5.1%) of these cases. In more than two-thirds of cases (68.2%), the police provided either very little or no response to the ICD regarding these disciplinary hearings. Indeed, the police's ability to disregard the ICD was further strengthened by the removal of the regulation obliging the station commissioner to provide reasons for rejecting ICD recommendations.²⁷

Of that small number of complaints which resulted in actual disciplinary proceedings, only 45 of the 1 121 complaints resulted in some form of punishment or corrective action. These included verbal warnings (23 cases), training (seven cases) and suspensions (five cases). The periods of suspension ranged from two to 12 months.

²⁶ TLAC, 2010.
²⁷ PMG, 26 October 2007.

Perhaps because parliamentary oversight of the police's implementation of the DVA has not been as consistent as it should be, the police have submitted very few of their obligatory six-monthly reports. While no reports were submitted between 2000 and 2006, the SAPS presented two reports to the Police Portfolio Committee (PC) in 2007²⁸ and, in 2008, one six-monthly report.²⁹ What has been submitted on each occasion is impoverished, running to under two A4 pages in length and largely taken up with repeating the provisions setting out the police's duties as contained in the DVA. These documents fall well below the standard of reports submitted by the ICD.

No reports on the implementation of the DVA were presented by the SAPS during 2009 or 2010. This suggests that either the SAPS did submit their reports and the Police PC chose not to discuss their contents or, that the SAPS did not compile their reports and the Police PC has not noticed. Nonetheless, there have been at least two other parliamentary discussions around aspects of the police's implementation of the DVA. In a 2009 meeting reviewing the previous five years of work by the then-Safety and Security Police, problems with the SAPS' implementation of DVA were noted by the new Police PC,³⁰ while in 2010 the ICD also briefed the Women, Youth, Children and People with Disabilities (WYCPD) PC on their six-monthly reports for 2009.³¹

In 2010 two draft bills strengthening oversight of the police were adopted by Parliament. The ICD is to become the Independent Police Investigative Directorate (IPID) while the Secretariat is to become the Civilian Secretariat for Police (CSP). A key consequence of this development will be the shifting of oversight of the police's implementation of the DVA from the ICD to the CSP. Unless subordinate legislation is put in place addressing the current weaknesses in the ICD's oversight of the DVA, it is very likely that these legal reforms may only succeed in transferring the current challenges from the ICD to the CSP, rather than doing away with them altogether. The law reform process has however, had at least one favourable outcome – the creation of a civil society reference group slated to meet on a quarterly basis with the CSP to address issues of policing in relation to women and children.

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28 PMG, 12 September 2007; PMG, 31 October 2007.

29 PMG, 27 August 2008.

30 PMG, 7 July 2009.

31 PMG, 17 November 2010.

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The police, too, provide very little description of their implementation of the DVA in their annual reports. In 2008/09 some two-thirds of a page was devoted to "Extent of the implementation of the Domestic Violence Act". Seven activities were listed under this heading, only two of which were directly relevant to the implementation of the DVA, dealing with training in this regard. The remaining activities were primarily carried out as part of the government's 16 Days of Activism to End Violence Against Women campaign.³² By 2009/10 even this heading had disappeared, replaced with a list of actions entitled "Gender-based violence, child protection and youth crime prevention". While training is mentioned once again, reference is also made to the police participating in a review of the DVA spearheaded by the DoJ&CD.³³

The Sexual Offences Act (SOA)

The SOA tasks the National Commissioner of the SAPS with three sorts of obligations:

- the finalisation of national instructions prescribing the reporting and investigation of sexual offences³⁴ and the procedures to be followed, both in advising rape complainants about PEP, as well as testing alleged rapists for HIV (the latter developed in consultation with the NDPP).³⁵
- The creation of training courses on the SOA,³⁶ to be tabled in Parliament within six months of the act's promulgation.³⁷ Within a year of the SOA's promulgation, and every year thereafter, a report on the training must be submitted to parliament.³⁸
- The submission to Parliament, on an annual basis, of reports detailing the police's implementation of the SOA.³⁹

The SAPS published National Instructions 3/2008 in the Government Gazette on August 15, 2008. But, true to form, they have neither tabled their training courses and training reports, nor their annual implementation reports – although, depending on how section 65(3) of the SOA is interpreted, it may be the Minister of Justice and Constitutional Development's responsibility to submit these reports on behalf of the SAPS.

Further, while the SAPS may have published their National Instructions, this has not guaranteed the application of those Instructions. As with the DVA, the

32 SAPS Strategic Management 2009: 82.

33 SAPS Strategic Management 2010b: 83 – 84.

34 SOA section 66(1)(a).

35 SOA section 66(1)(c).

36 SOA section 66(1)(b).

37 SOA section 66 (5)(a).

38 SOA section 66(5)(b).

39 SOA section 65(3).

National Instructions applicable to sexual offences identify a set of forms and documents which all stations must have on hand (such as the Regulations and forms allowing for the testing of rape accused for HIV and a list of organisations providing services to rape survivors). In 2008, organisations forming part of the Shukumisa Campaign monitored 23 stations in Gauteng, three in North West and eight in Western Cape during the 16 Days of Activism. Of these 34 stations, only eight in Gauteng had copies of all the necessary documents. Monitors noted that many of the officers in the CSC who were asked about these documents were unfamiliar with the SOA and its documentary requirements.⁴⁰ In 2010 this exercise was repeated at 59 stations distributed across the provinces of Gauteng, Limpopo, Western Cape and KwaZulu-Natal. This time 19 stations (none of which was based in Gauteng) had copies of all the documents stipulated.⁴¹ If these forms are not available at stations it is unlikely that the procedures they guide will be practised at a particular station. To illustrate: if only 30 of the 59 stations monitored in 2010 had the forms allowing for HIV testing of alleged rapists, then it can be reasonably assumed that the remaining 29 will neither be informing rape complainants of this procedure, nor be able to complete the documents required by law to process such applications at court.

TRAINING TO SUPPORT IMPLEMENTATION OF THE SAPS MANDATE

It is by now commonplace for parliament, the ICD and even the police themselves to observe that police officers lack training around the DVA, this concern having been raised in at least three parliamentary discussions,⁴² as well as the Auditor-General's 2009 report to Parliament.⁴³ Table 3 only underscores the need for concern. Perhaps the numbers reported here might be somewhat higher, taking into account the five-day module on domestic violence incorporated into the police's Basic Training Learning Programme.⁴⁴ Even so, and accepting that all police personnel, particularly those providing administrative services, do not require training on the DVA, the numbers reflected here suggest a paltry reach in relation to the number of police officials overall.⁴⁵ Excluding the basic training module, there is also no information detailing the length and content of these courses.

40 TLAC and RAPCAN, 2009.

41 TLAC and Rape Crisis Cape Town Trust, 2011.

42 See PMG, 31 October 2007; 18 June 2008; and 27 August 2008.

43 Auditor-General, 2009.

44 SAPS Strategic Management, 2009.

45 Lack of training is however a broader problem within the police generally (PMG, 14 September 2010).

While training around domestic violence is not compulsory in terms of the DVA, training around sexual offences is obligatory in terms of the SOA. Perhaps because such training was legislated, far more thought has been given to training around sexual offences than domestic violence.

Table 3: Number of police officials attending training annually around domestic violence and victim empowerment, in relation to the number of police officials overall

Year	Domestic violence training	Victim Empowerment Programme (VEP) training	Total number of SAPS members
2008/09*	3 626	1 122	182 754
2009/10**	3 181	1 089	190 199

* SAPS Strategic Management, 2009.

** SAPS Strategic Management 2010b: 83.

The police also developed "Process flow mind maps" in consultation with the NPA to illustrate the relationship between police and court processes. Intended as training and information tools for both service providers and the general public,⁴⁶ it is unknown how, if and when the maps were used; certainly there is no reference to their application in the 2009/10 Annual Report.

While training around domestic violence is not compulsory in terms of the DVA, training around sexual offences is obligatory in terms of the SOA. Perhaps because such training was legislated, far more thought has been given to training around sexual offences than domestic violence. (On the other hand, the SAPS may prioritise sexual offences over domestic violence.)

This is what the police have undertaken:

- The training of 182 detectives in the Family Violence, Child Protection and Sexual Offences (FCS) investigators' course in 2008/09;
- 12 courses on sexual offences presented around the country by senior FCS officers, as well as police officers from the USA.⁴⁷

⁴⁶ SAPS Strategic Management, 2009.

⁴⁷ SAPS Strategic Management 2009: 120.

Further training has been developed in terms of the SOA. According to information obtained via a PAIA application (attached in full as Appendix I), the SAPS created seven different courses around the SOA (some in collaboration with officials from the Department of State of the USA). These courses range in length from one day to 15 days and target provincial police trainers, FCS members, general detectives, Client Service Centre (CSC) officials and police officers working in crime prevention. Four types of training programmes have been created: a "First Responder to Sexual Offences Learning Programme"; a sexual offences course for investigating officers; an integrated approach to sexual offences investigation course; and train-the-trainers courses. The "Integrated Sexual Offences Course" was finalised in conjunction with the NPA, the DoH, the DSD, the DCS and the DoJ&CD and enables "learners to understand how to care for victims by establishing purposeful working relations between the relevant State Departments."⁴⁸

According to the information received from the SAPS, the first such course was implemented as of 1 January 2009 and the last on 16 August 2010. During this period 170 courses were offered which were attended by a total of 6 125 SAPS members. This training has more or less evenly targeted both CSC officers and detectives: a total of 2 491 CSC and crime prevention officers attended the "First Responder to Sexual Offences" training, while 2 557 FCS and general detectives have attended sexual offences courses for investigating officers.

BUDGETING TO IMPLEMENT LEGISLATIVE MANDATES

[I]t would seem that the SAPS is seeking donor funding to undertake activities addressing violence against women. For instance, the SAPS' 2008/09 Annual Report notes a donation of \$1.2 million by the US Embassy enabling the SAPS to develop the training around the SOA described in the previous section.

Conspicuous by its absence from the police's budget votes is reference to both the DVA and SOA. While a prior review of the SAPS' budget votes for the periods 1999/00 – 2005/06 was unable to identify any explicit attempt to cost the day-to-day application of the DVA, it was still able to note some monies being occasionally allocated towards training and publicity activities.⁴⁹ By 2008/09 even such throwaway references had disappeared. The SOA also escapes mention. Instead it would seem that the SAPS is seeking donor funding to undertake activities addressing violence against women. For instance, the SAPS' 2008/09 Annual

⁴⁸ SAPS Strategic Management 2010b: 59.

⁴⁹ Vetten, 2005.

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Report notes a donation of \$1.2 million by the US Embassy enabling the SAPS to develop the training around the SOA described in the previous section.⁵⁰

Apart from the US Embassy, the SAPS also received funding from the European Union (EU) for "capacity building to reduce crime incidence" in relation to women and children.⁵¹ According to the SAPS' 2009/10 Budget Vote, Detective Services received the following amounts from the EU to implement this project:

- R6 367 000 in 2005/06
- R11 603 000 in 2006/07
- R13 361 000 in 2007/08

In 2008/09 the police estimated receiving another R13 361 000 from the EU (although only R8 612 000 is recorded as having been committed). In any case this final amount does not appear to have been received. The 2008/09 Annual Report states that a balance of R2 878 000 on the EU funds was brought forward that year and the project audited in October 2008.⁵² These figures constitute the only available description of this project.

The need for resources to be allocated to the FCS units is noted in the SAPS Strategic Plan for 2010 – 2014⁵³ and also highlighted by two different reviews examining the impact of the redeployment of the FCS units. Detectives interviewed for the two studies observed that budgets allowing for the purchase of sexual assault evidence kits, as well as transporting victims (amongst other things) were crucial to their effective functioning as investigators. Moreover, it was also imperative that budgets fall under the management of FCS units, rather than the general detectives or station commanders, who were inclined to divert these resources to other ends.⁵⁴

OTHER ACTIVITIES ADDRESSING VIOLENCE AGAINST WOMEN

The SAPS' most concrete and detailed strategy for combating crimes against women, put forward in both their Strategic Plan 2010 to 2014⁵⁵ and the budget votes for the periods between 2008/09 and 2010/11, is unquestionably the specialised FCS units. Effectively dismantled in 2006 by disgraced former police commissioner Jackie Selebi, all units are expected to be fully operational by 1 April 2011. Welcome as this move is, it is far more likely to benefit victims of sexual offences than those subjected to domestic violence.

50 SAPS Strategic Management 2009: 82.

51 National Treasury 2009: 506.

52 SAPS Strategic Management 2009: 153.

53 SAPS Strategic Management 2010a: 15.

54 Frank et al, 2008; Vetten, Riba and van Jaarsveld, 2009c.

55 SAPS Strategic Management 2010a: 15.

[B]ecause the vast majority of domestic violence complaints are not translated into criminal charges (as will be shown later in this section), an adequate policing response to the problem must also encompass the receiving of complaints - and not only their investigation.

A July 2010 communiqué setting out the FCS units' mandate states that the units will only investigate attempted murder and assault with intent to cause grievous bodily harm (GBH) and perpetrated within an intra-familial context. Breaches of protection orders will also only be investigated when they form part of assault GBH or attempted murder cases already being handled by a particular unit. The remit of the FCS units is therefore narrow in relation to domestic violence. However, because the vast majority of domestic violence complaints are not translated into criminal charges (as will be shown later in this section), an adequate policing response to the problem must also encompass the receiving of complaints - and not only their investigation. The obligations described earlier in the report are chiefly the responsibility of the members of the SAPS' uniform branch working in the CSC. Their underwhelming levels of compliance with the DVA will not be addressed with the re-establishment of the FCS units; different measures are required for such improvements in service to women who have experienced abuse at the hands of their intimate partners.

The police are also establishing victim support rooms to allow FCS detectives to interview victims in privacy and comfort. By 2009/10, 806 such rooms had been opened.⁵⁶

The annual reports hint at other less-detailed and sporadic activities addressing sexual offences and domestic violence. In 2008/09, during the 16 Days of Activism, a rape "reduction" summit was organised in the Northern Cape, while male personnel of the SAPS, the South African National Defence Force and the Tshwane Metro Police arranged a security sector parade through Pretoria to illustrate the sector's (and government's) commitment to ending violence against women. This was in addition to other generalised planning and participation in "16 Days" events. The police also "contributed" to the Domestic Violence Programme, one of their social crime prevention initiatives, in the same period.⁵⁷ But neither the nature of this contribution, nor the Domestic Violence Programme, is described.

The police also participate in an ongoing Anti-Rape Strategy, listed as another social crime prevention initiative. This is a programme forming part of the

⁵⁶ SAPS Strategic Management 2010a: 84.

⁵⁷ SAPS Strategic Management 2009: 34.

Interdepartmental Management Team (IDMT) and focusing both on prevention, as well the improvement of CJS responses to survivors of sexual offences. The content and scope of the former aim is unknown, while the latter finds expression in the establishment of Thuthuzela Care Centres (TCC), one-stop centres uniting health, counselling, policing and prosecution services.⁵⁸ Because they are driven by the NPA, the TCCs will be dealt with in more detail in the section dealing with that institution.

Finally, the police devote some energy into addressing communities on crimes against women. During 2008/09, FCS members attended 1 883 “multi-disciplinary meetings” (what these meetings entail is not specified) and presented 1 900 lectures to unspecified communities around combating sexual offences.⁵⁹ There is also reference to an imbizo in Pretoria West in April 2008. Attended by approximately 3 000 people, it was intended to sensitise community members about “gender-based violence preventative measures.”⁶⁰

MEASURING WOMEN’S ACCESS TO JUSTICE

The police aim to reduce contact crimes like domestic violence and rape by between 4–7% annually. It is, however, difficult to discern from the SAPS’ various documents any strategy specific to, and thus capable of, preventing either domestic violence or sexual offences.⁶¹ Instead, this needs to be inferred from the two performance indicators the SAPS have set themselves in their Visible Policing programme (which contains the sub-programme crime prevention). These indicators are:

- **ESTABLISHING PARTNERSHIPS TO PREVENT CONTACT AND PROPERTY-RELATED CRIMES:** Of the various partnerships the police have entered into⁶², only one might conceivably address violence against women – the Community Building Credible Ownership (CBCO) groups in the Eastern Cape, KwaZulu-Natal, Gauteng and the Western Cape (sometimes also referred to as Churches Against Crime). As described by the police, CBCO partnerships involve church groups in reducing crime through the distribution of pamphlets, the formation of neighbourhood watches, domestic violence discussions, crime awareness programmes,

58 SAPS Strategic Management 2009: 81.

59 SAPS Strategic Management 2009: 120.

60 SAPS Strategic Management 2009: 82.

61 In fact, that portion of the 2010 – 2014 Strategic Plan dealing with crime prevention contains two sub-priorities potentially in conflict with one another: reduction of crime levels and managing perceptions of crime. In relation to the former, the police wish to bring about a 4 – 7% annual reduction in serious crime over the medium term, while in relation to the latter the police wish to see an increase in the number of crimes – and contact crimes specifically – reported to them in the medium term. Attempted simultaneously, these goals are mutually exclusive of one another (SAPS Strategic Management 2010a: 13).

62 These include Business Against Crime SA, the Primedia Crime Line and community policing forums.

community meetings and prayer sessions.⁶³

- **UNDERTAKING VISIBLE ACTIONS TO DETER CRIME:** this refers to roadblocks, cordons, searches and patrols⁶⁴ undertaken by police officials.

Certainly, all these activities have their place and value within the greater policing scheme of things but, as with prayer groups and discussions, it is hard to know what possible and substantive effect roadblocks and the like can have in preventing either domestic violence or rape. The figures presented next provide some indication of the effectiveness of these strategies.

Because “domestic violence” does not exist as a reportable category of crime, its manifestation will most often be recorded as common assault or assault GBH or, at its most extreme, as murder or attempted murder. Table 4 shows reports in all these categories of crime to have increased between 2008/09 and 2009/10. (Because the police do not specify the relationship between the female victim and perpetrator it cannot be assumed that these figures refer exclusively to violence by intimate partners.)

Table 4: Crimes reported by women, by year.⁶⁵

Crime category	2008/09	2009/10
Common assaults	91 390	94 176
Assaults with intent to cause grievous bodily harm	61 509	62 413
Attempted murder	2 966	3 008
Murder	2 436	2 457

Not unsurprisingly, given the absence of any clearly articulated strategy to prevent such assaults, the increase in these crimes against women shows the police to have been unsuccessful in their aim of reducing domestic violence. But such a conclusion is only valid if it is accepted that reducing the number of such reports is a reasonable goal for the police in the first place. Indeed, this target confuses and disguises a number of different things: firstly, reporting an incident of violence, with that incident subsequently being converted into a criminal charge recorded on the police’s Crime Administration System (CAS); and secondly, reporting a crime to the police, with the incidence (or occurrence) of such crimes. These cannot be conflated. Police reports, for example, clearly illustrate the discrepancy between what is reported to them and what becomes a criminal charge. In their report for 1 January – 31 June 2007 to parliament they state that 45 454 domestic violence incidents were reported, with 17 633 of these reports ultimately resulting

63 SAPS Strategic Management 2009: 88.

64 SAPS Strategic Management 2009: 32.

65 All figures sourced from SAPS Strategic Management 2010b: 12.

A STUDY CONDUCTED IN ONE LOCALITY IN MPUMALANGA ILLUSTRATES HOW POLICE STATISTICS CONSIDERABLY UNDERESTIMATE THE INCIDENCE OF DOMESTIC VIOLENCE IN ANY ONE AREA:

942

The number of reports of some form of domestic violence made to one local police station, hospital, and associated courts between 1 January 2006 to 31 July 2007.

6.7%

The percentage of the 942 reports that made their way into official statistics, as only 63 women pressed charges.⁶⁰



Police statistics are not a reliable measure of the full extent of domestic violence being perpetrated in any one locality.

in criminal charges,⁶⁶ while in the final six month period of that same year 50 497 incidents were reported, of which only 11 641 led to criminal cases being opened.⁶⁷

A study conducted in one locality in Mpumalanga illustrates how police statistics considerably underestimate the incidence of domestic violence in any one area. Between 1 January 2006 to 31 July 2007, Tshwaranang collected 942 reports of some form of domestic violence made to one local police station and hospital, as well as the courts serving the area with the greatest proportion of these reports (44.6%) identified from police records. However, no more than 6.7% of these 942 reports ever made their way into official statistics as only 63 women pressed charges.⁶⁸ Police statistics therefore cannot be treated as a reliable measure of the full extent of domestic violence being perpetrated in any one locality.

There is no question that the introduction of the SOA posed challenges to the SAPS. Firstly, the SOA replaced the common law definitions of sexual offences, as well as much of the 1957 Sexual Offences Act, bar those crimes dealing with adult sex work. Between these two Acts, a total of 59 separate sexual offences is now in existence, ranging from public indecency, to keeping a brothel, exposing a child to pornography and rape. While figures for rape were previously reported separately from other forms of sexual offences, now only one blanket figure is provided for all 59 offences. This makes it impossible to track trends within particular categories of sexual crimes. But this global figure is also open to doubt.

The SAPS Annual Report for 2008/2009 stated that a total of 71 500 sexual offences was reported during the period 1 April 2008 – 31 March 2009.⁶⁹ But in their 2009/10 Annual Report, the figure now provided for 2008/09 is 70 514,⁷⁰ meaning that approximately 1 000 sexual offences “disappeared” between one Annual Report and the next. This has real implications for the extent of the putative decrease in

⁶⁶ PMG, 31 October 2007.

⁶⁷ PMG, 27 August 2008.

⁶⁸ Vetten et al, 2009a.

⁶⁹ SAPS Strategic Management 2009: 5.

⁷⁰ SAPS Strategic Management 2010b: 3.

sexual offences between these two years. Based on the 68 332 sexual offences recorded by the police in 2009/10,⁷¹ the decrease between 2008/09 and 2009/10 was either 3 168 or 2 182.

Just how real this decrease may be is called into question by close examination of the police's station level statistics, with the table below setting out some of the most dramatic annual fluctuations. Indeed, the decreases that occurred between 2008/09 and 2009/10 at seven of these stations alone reduces the number of sexual offences by 3 183 (and if the two increases are subtracted from this total, by 3 051). It is therefore not impossible that the decrease in 2009/10's numbers was largely caused by the fluctuations in these stations' statistics.

Table 5: Selected station-level increases and decreases in sexual offences between 2007/08 and 2009/10⁷²

Station	2007/08	2008/09 (% difference)	2009/10 (% difference)
Booyens (GP)	318	187 (-70.1%)	190 (1.6%)
Dawn Park (GP)	128	252 (96.8%)	102 (-147.0%)
Hillbrow (GP)	713	521 (-36.8%)	233 (-123.6%)
Johannesburg Central (GP)	287	1 375 (379.0%)	249 (-452.2%)
Krugersdorp (GP)	251	655 (160.9%)	224 (-192.4%)
Sandton (GP)	64	142 (121.8%)	271 (90.8%)
Durban Central (KZN)	279	1 091 (291.0%)	915 (-19.2%)
Margate (KZN)	130	368 (183.0%)	88 (-318.1%)
Mount Road (EC)	323	798 (147.0%)	66 (-1 109.1%)

The reliability of the SAPS statistics is also called into question when examining how they disaggregate statistics according to age and sex. In 2008/09, the SAPS recorded a total 20 141 children reporting a sexual offence, with a further 30 124 sexual offences reported by women over the age of 18. Combined, these totals amounted to 50 265 sexual offences, meaning that the remaining 21 235 sexual offences were reported by adult male victims.⁷³ Or, to put this another way, more adult men than children were the victims of sexual offences in 2008/2009. Tshwaranang wrote to the SAPS querying these figures and was informed there was no error. Yet the SAPS 2009/10 Annual Report notes a 19.8% increase in sexual offences against women and a 36.1% increase in such offences against

⁷¹ SAPS Strategic Management 2010b: 3.

⁷² Table compiled from data sourced from SAPS, 2010.

⁷³ SAPS Strategic Management 2009: 13.

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children in 2009/10. They now admit to “an age and gender attribute problem” on the CAS caused by the fact that between December 2007 to August 2009 it was not compulsory to record these two fields on the CAS.⁷⁴

There is still further reason to doubt the veracity of the police’s figures. In 2009 evidence emerged that police stations in three provinces were failing to register rape cases on the CAS, as well as dumping or destroying police dockets in an effort to reduce the number of rapes (amongst other crimes) reported to their stations⁷⁵. Focus groups conducted with FCS detectives in Gauteng describe the pressure they are subjected to in order to “reduce” rape:

“...they are comparing every month. They will say, March 2008 compared to March 2007, they will say, ‘R4 last year this time you received 15 dockets, but now it is 25. We are going red.’ So what must you do? You must not register cases...maybe I’m running short of two cases to be above what was happening last year, then I must make sure that I don’t register more cases because I will be red for this year. So statistics is affecting too much...they come down to us and say; ‘we were red on rape cases’...Then I must make sure that I don’t register more cases”. (A2R4).

“...for us, if we can get more reports on rapes, for us it is a success because then we can see we are doing our work...but for our commanders that is negative because then the numbers will just go up. They will say there is 10 rapes, now it’s chaos in area seven. We were at a school during the Child Protection Week and talked to the children...and then afterwards four children came and disclosed. And that is for us a success. But for our commanders and for the management that is bad, that is worse. It is just the numbers that is getting out” (A7R2).⁷⁶

Measuring police performance

Targets apply not only to preventing violence but also its investigation. Detective Services have two different types of targets to which they must aspire: detection rates and conviction rates. A brief explanation of how these are calculated is necessary before the actual targets are presented.

A detection rate is calculated in the following manner:⁷⁷

$$\frac{\text{No. of cases referred to court} + \text{no. of cases withdrawn by the police} + \text{no. of cases declared unfounded}}{\text{Cases reported and carried forward}}$$

74 SAPS Strategic Management 2010b: 11.

75 Sunday Times, July 4 2009; Mail and Guardian online, 30 October 2009.

76 Vetten, Riba and van Jaarsveld, 2009c.

77 SAPS Strategic Management 2008: 39.

This approach to measuring performance provides only an aggregate of how cases are disposed of by the police. It is neither a measure of victims' access to justice, nor a reflection on the quality of the police's work. To someone who has been the victim of domestic violence (or a sexual offence), there is a vast difference between having one's complaint go to court (which implies that an arrest has been made), having the police withdraw one's complaint, or having one's complaint treated as lacking in substance and merit (unfounded). Thus, if targets were again thought of as measuring access to justice, then "detection rates" would be disaggregated in the manner outlined above, being far more reflective of the victim, rather than the police's, experience of the system.

The formula for calculating the conviction rate can be expressed as follows:⁷⁸

$$\frac{\text{No. of charges resulting in a guilty verdict} + \text{Charges concluded by other means}}{\text{No. of charges referred to court} + \text{charges previously outstanding in court}}$$

In terms of this formula, "charges concluded by other means" includes cases where the accused died during the trial, or was declared a President's patient in terms of section 77 of the Mental Health Care Act (meaning an accused is not fit to stand trial); or where the accused is a child and the matter has been diverted in terms of the 2008 Child Justice Act. To complicate matters, the police's approach to calculating conviction rates is different to that applied by the DoJ&CD so it not possible to compare the two departments' figures in this regard.⁷⁹ Additionally, a conviction is as much dependent upon the quality of the prosecution as it is upon the police investigation so it is not accurate to treat a conviction as only reflective of the police's performance.

In their 2008/09 Annual Plan, the SAPS set themselves two different and conflicting sets of targets for their detection rates, as well as the percentage of cases referred to court. In a section dealing with contact crimes generally they said they intended referring 56% of assault GBH cases and 43% of common assault matters to court.⁸⁰ Yet in the section dealing specifically with crimes against women, this target dropped to 40%.⁸¹ Again, under the general section, the detection rate was set at 72% for assault GBH and 69% for common assault.⁸² This rate dropped to 42% in the section dealing specifically with crimes against women.⁸³ In the general section, the detection rate was set at 55% for rape while in the section dealing specifically with crimes against women, it was dropped again to 42%. Later in the report under the section dealing specifically with

78 SAPS Strategic Management 2010b: 104.

79 SAPS Strategic Management 2010b: 106-107.

80 SAPS Strategic Management 2008: 38.

81 SAPS Strategic Management 2008: 14.

82 SAPS Strategic Management 2008: 39.

83 SAPS Strategic Management 2008: 14.

crimes against women, a target of 40% was set for all three crimes.

The 2009/10 Budget Vote continued to commit the police to the same low detection rate of 42% for crimes against women.⁸⁴ However, in 2010/11 the police became somewhat more ambitious, wanting to increase the detection rate for sexual offences to 68%, while 75% is the new target set for assaults against women.⁸⁵

The 2009/10 Annual Report provides information around how the police performed against these targets.

Table 6: Police performance by year and by crime

Crime category	% cases to court		% detection rate		% conviction rate	
	08/09	09/10	08/09	09/10	08/09	09/10
Common assault	53.4%	57.9%	73.6%	77.5%	32.1%	36.2%
Assault GBH	63.57%	67.37%	76.06%	79.38%	27.15%	30.39%
Sexual offences	40.50%	42.93%	50.09%	54.20%	10.61%	11.55%

The police explain every failure to meet their targets, no matter how inapposite and illogical that explanation may be, with reference to the introduction of the SOA. It is the cause of their failing to meet their detection rate for all contact crimes in 2008/09 – apparently because rape and indecent assault essentially became a single crime category.⁸⁶ A slightly different and more coherent version of this excuse is provided in their 2010/11 Budget Vote. Here the 4.3% decrease in the detection rate for contact crimes as a whole between 2007/08 and 2008/09 is attributed to the new act which “implies that more categories of sexual offences are being measured, such as rape and indecent assault.”⁸⁷ It does not follow that the mere inclusion of a greater number of crime categories will bring the detection rate down. This rate will only be brought down if those newly-included crimes already have a detection rate much lower than that of the crimes already under consideration. Further, on a reading of the police’s own data this claim is simply incorrect. In their 2008/09 Annual Report, the police provide data showing that between 2007/08 and 2008/09, the detection rate for sexual offences actually increased slightly, from 61.85% to 62.37%.⁸⁸

84 National Treasury 2009: 497.

85 National Treasury 2010: 493.

86 SAPS Strategic Management 2009: 105.

87 National Treasury 2010: 494.

88 SAPS 2009: 108.

Conclusions

When so many of the basic requirements demanded by the DVA and SOA are not in place, it renders the SAPS' claim to prioritise crimes against women meaningless. And as long as implementation of key laws intended to combat crimes against women remains wanting, it is also unlikely that the police will succeed in reducing crimes against women. In any case, decreasing the number of such crimes is a medium to long-term endeavour. In the short-term, given how extensively under-reported both domestic violence and sexual offences are, the policy should be to encourage complaints and to treat an increase in their number as a measure of women's confidence in the police, as well as one indicator of their access to justice, for crimes cannot come before the courts unless they have been reported to the police first. If anything, the current drive to reduce the number of reports has had the opposite effect: limiting women's access to the police and courts in favour of keeping the number of reports down. Arguably the unintended consequence of this policy has been the effective decriminalisation of some sexual offences and domestic violence complaints.

IN THE SHORT-TERM, GIVEN HOW EXTENSIVELY UNDER-REPORTED BOTH DOMESTIC VIOLENCE AND SEXUAL OFFENCES ARE, THE POLICY SHOULD BE TO ENCOURAGE COMPLAINTS AND TO TREAT AN INCREASE IN THEIR NUMBER AS A MEASURE OF WOMEN'S CONFIDENCE IN THE POLICE, AS WELL AS ONE INDICATOR OF THEIR ACCESS TO JUSTICE, FOR CRIMES CANNOT COME BEFORE THE COURTS UNLESS THEY HAVE BEEN REPORTED TO THE POLICE FIRST ... THE CURRENT DRIVE TO REDUCE THE NUMBER OF REPORTS HAS HAD THE OPPOSITE EFFECT: LIMITING WOMEN'S ACCESS TO THE POLICE AND COURTS IN FAVOUR OF KEEPING THE NUMBER OF REPORTS DOWN.

**UNLIKE THE SAPS ...
THE DOJ&CD TREATS
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ONE OF A RANGE
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GROUPS THAT ALSO
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THE AGED, THE
POOR AND PEOPLE
WITH DISABILITIES.**

INKUNDLA
NTOLO YON
KH
NTOLO YEN
OROTSHEKO YA MBLANTHE
IOTHO YOMT... OSISEKEL
CONSTITUTIONAL COURT
LA DINYEWE LA MBLANTHE
KHOTHE YA NDAVOTEA
KONSTITUSIONEKE H
ATSHEKELB YA MBLANTHE

4. THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Like the SAPS, the Department of Justice and Constitutional Development (DoJ&CD) is bound by the Presidency's MTSF and the priorities of the JCPS Cluster, both of which designate crimes against women and children as priorities. Unlike the SAPS however, the DoJ&CD treats women as but one of a range of vulnerable groups that also include children, the aged, the poor and people with disabilities.⁸⁹ Promoting and protecting these vulnerable groups' rights is seen as one of the department's core functions,⁹⁰ whose difficulties are chiefly conceived of in terms of access to justice. Responsibility for this grouping falls to the Court Service Programme and the Chief Directorate: Promotion of the Rights of Vulnerable Groups, specifically. The chief directorate's mandate is defined as follows:

- developing policies to support the implementation of legislation and programmes to protect and promote the rights of the vulnerable in court;
- coordinating effective and efficient service delivery;
- monitoring and evaluating the impact of policies and legislation on the courts and justice system; and
- developing effective and efficient information systems.⁹¹

What is striking in relation to women is the shift by the DoJ&CD from gender equality to vulnerability. Indeed, the documents perused for the compilation of this chapter barely refer to gender equality. It is as if the aim of the 1999 Gender Policy Statement to "ensure that all decision-making and all practices in the Department of Justice and allied institutions are informed by gender equality analysis" has been erased, along with the goal of gender equity.⁹² Vulnerability, by contrast, is not a goal but a descriptor indicating susceptibility to injury, or exposure to attack or harm. As such, it implies a need for protection, which can be something of a double-edged sword when it emerges from paternalistic impulses that divide societies into "stronger" and "weaker" members. And, while women often do resort to the courts for protection, this does not automatically make the courts or legal processes women's protector. Indeed, it is often those self-same courts and legal processes which create or worsen women's susceptibility to

89 DoJ&CD 2010a: 9

90 DoJ&CD 2010a: 3

91 DoJ&CD 2009: 88.

92 DoJ&CD 1999: 1.

harm and injury. Both this chapter and the next examine the extent to which South Africa's legal system can indeed claim to be reducing women's vulnerability.

THE DOJ&CD'S FULFILMENT OF ITS LEGISLATIVE MANDATE

Above all else, the DoJ&CD has prioritised public communication about domestic violence and sexual offences, as it said it would in its budget votes for the last three financial years. In 2008/09 the department reported training a range of institutions and organisations on domestic violence and sexual offences, among other topics.⁹³ In addition, 42 670 information pieces on the DVA and 1 300 materials on sexual offences were also distributed.⁹⁴ In its Annual Report 2009/10, the DoJ&CD reports developing a theatre drama on the SOA which was performed at five events in Albert Park, Umlazi, Maphumulo, George Campbell and Madadeni. In addition, the department held a men's march in Limpopo and a men's dialogue conference in Mpumalanga.⁹⁵

The Domestic Violence Act (DVA)

Starting in 2007/08, the DoJ&CD has now spent the last four financial years reviewing the DVA.⁹⁶ At least two different reviews seem to have been undertaken: one of the implementation of the DVA and the other taking stock of all initiatives and projects in the courts that CJS intended to address domestic violence.⁹⁷ By 2009/2010 the DoJ&CD stated that the review of the implementation of the DVA had been finalised and submitted to the JCPS Development Committee. Unspecified electronic forms and systems had also been developed and approved for piloting at two magistrates courts. Once tested, these forms and systems would be implemented at all courts to improve the handling of domestic violence matters. What precisely the forms and systems will improve is not explained. Presumably the DVA review report, said to still be in its initial consultation phase and due only for finalisation in 2010/11,⁹⁸ will reveal all.

Parliament, in the meantime, initiated its own review of the implementation of the DVA with the WYCPD PC conducting public hearings on 28 and 29 October 2009 and tabling its report on 25 October 2010. DoJ&CD court officials were noted as subjecting applicants to secondary victimisation, as well as unnecessary and lengthy delays in obtaining their orders. The working hours and consequent unavailability of court personnel were also problematised, as was the lack of privacy at court and personnel who are ill-trained and ill-equipped to deal with

93 DoJ&CD 2009: 40.

94 DoJ&CD 2009: 41.

95 DoJ&CD 2010a: 63.

96 DoJ&CD 2008: 53.

97 DoJ&CD 2010a: 93.

98 DoJ&CD 2010a: 93.

The DoJ&CD reports keeping itself busy with other matters related to domestic violence. In 2008/09 the department translated the application forms for a protection order into nine official languages ... Unfortunately it was not possible to track down any of these translated forms, even when courts using indigenous languages were contacted in this regard.

domestic violence. One recommendation advanced to address some of these challenges was the development of a performance monitoring framework for courts in relation to the DVA, while the DoJ&CD was asked to revise the DVA's regulations to allow for the greater use of sheriffs, rather than police officers, in serving protection orders. This included the DoJ&CD bearing a greater portion of the sheriff's fees than had been the case previously.⁹⁹

The DoJ&CD reports keeping itself busy with other matters related to domestic violence. In 2008/09 the department translated the application forms for a protection order into nine official languages.¹⁰⁰ This was welcome, as in 2001 researchers examining the implementation of the DVA noted that the language used in these forms acted as a barrier.¹⁰¹ Because the forms serve as the basis for the court order, incomplete or inaccurate forms lead to ineffective orders – with obvious implications for the extent and effectiveness of protection offered to women. Unfortunately it was not possible to track down any of these translated forms, even when courts using indigenous languages were contacted in this regard. Either the forms have not been distributed, or the DoJ&CD was referring to the NPA's translation of the DVA and its regulations, also undertaken in the same year. The department did state in 2008/09 that it was developing a draft framework on the alignment of programmes and processes between itself and the NPA's SOCA unit.¹⁰²

In 2003, *Guidelines for the Implementation of the Domestic Violence Act by Magistrates* were compiled by the Magistrates' Working Group on the Implementation of the Domestic Violence Act, in conjunction with the Gender Directorate of the DoJ&CD.¹⁰³ Five years later, in 2008, the guidelines were finally launched.¹⁰⁴

99 Parliament of the Republic of South Africa 25 October 2010: 3072.

100 DoJ&CD 2009: 40.

101 Available only in technical English and Afrikaans, the forms were described as confusing, time-consuming and difficult to complete, even for those who had received training on how the forms should be filled out (Pareeze, Artz and Mout, 2001: 24).

102 DoJ&CD 2010a: 8.

103 Artz, 2003.

104 DoJ&CD 2009: 90.

The Sexual Offences Act (SOA)

While the DoJ&CD may have few obligations in terms of the DVA, the SOA places a significant number of commitments on this department, making it the chief custodian of the legislation. Those requirements that had to be met within the first six months of the SOA's commencement included:

- developing regulations around the provision of PEP to victims of sexual offences, as well as the compulsory testing of alleged rapists for HIV;¹⁰⁵
- creating a series of regulations setting out how the National Register for Sex Offenders (NRSO) is to be set up and maintained and the manner in which the Departments of Health and Correctional Services and the SAPS should submit information to the Registrar managing the NRSO. The regulations also needed to set out how employers should apply for clearance certificates for both current and potential employees.¹⁰⁶

Obligations needing to be met by the DoJ&CD within a year of the SOA's promulgation were the following:

- establishing the NRSO within six months of the finalisation of the regulations referred to above. The register is to contain the details of persons convicted of any sexual offence against a child or person who is mentally disabled, or who are alleged to have committed a sexual offence against a child or a person who is mentally disabled;¹⁰⁷
- establishing the Intersectoral Committee (ISC) for the Management of Sexual Offence Matters, which is to comprise the Director General of Justice and Constitutional Development (the chair of the committee), the National Commissioners of the SAPS and of Correctional Services, respectively, the Directors General of Social Development and Health, respectively, and the National Director of Public Prosecutions (NDPP).¹⁰⁸ The ISC is to meet at least twice-yearly and submit minutes of their meetings to the Minister of Justice and Constitutional Development;¹⁰⁹
- the justice minister, in consultation with the NDPP and the cabinet members responsible for the Police, Correctional Services, Social Development and Health must, within one year of the implementation of the act and every year thereafter, submit reports to Parliament on their implementation of the SOA;¹¹⁰ and

105 SOA section 39.

106 SOA section 53(1)(a-o).

107 SOA section 42 (1).

108 SOA section 63.

109 SOA section 64.

110 SOA section 67.

- the development and compilation by the ISC of a draft national policy framework to be tabled in Parliament within one year of the implementation of the act.¹¹¹

Both the regulations dealing with PEP and HIV testing, as well as the NRSO, were indeed gazetted to deadline with the publication of the "Criminal Law (Sexual Offences and Related Matters) Regulations" on May 22, 2008.¹¹² Fulfilment of the subsequent obligations has either been very delayed, or not met at all.

No reports on the implementation of the SOA, as required by Section 67 of the Act, have been submitted to Parliament.

The National Register for Sex Offenders

In February 2009 the Judicial Matters Amendment Act 66 of 2008 was issued, delaying implementation of the NRSO by six months until 30 June 2009. Also changed was the timeframe in which the Departments of Health and Correctional Services and the SAPS were to send information about historical convictions or orders to the Registrar. Where initially this information was to have been submitted within three months of the chapter dealing with the register coming into effect, this was amended to state that information about historical convictions was to be submitted at least three months before the register was established. Judging from subsequent comments made by the justice minister, the latter deadlines were not met.

In response to a July 2010 parliamentary question, the minister stated that a phased implementation of the NRSO was to be adopted. Phase one would capture all current convictions, while phase two would capture historical convictions (i.e. those handed down prior to June 2009).¹¹³ Phase two would also deal with vetting procedures and the issuing of clearance certificates.¹¹⁴ It was subsequently reported that the second phase would come into effect by April 2012.¹¹⁵ According to a departmental spokesperson, the establishment of protocols, as well as the recruitment of personnel and building of infrastructure, all needed to be undertaken before the NRSO could be implemented in full. Additional monies were also required.¹¹⁶ Justice Minister Jeff Radebe attributed the delay to the costs of updating a number of the affected departments' computer systems, especially those constituting the Criminal Record Centre of the SAPS.¹¹⁷ Due to this delay, the DoJ&CD proposed yet another extension for the NRSO's

111 SOA section 65(1).

112 Government Gazette 31076, 22 May 2008.

113 Parliamentary question no. 1897, 26 July 2010.

114 DefenceWeb, 15 December 2010.

115 The Star, 25 October 2010.

116 The Star, 25 October 2010.

117 DefenceWeb, 15 December 2010.

implementation:¹¹⁸ two years from the date of the Judicial Matters Amendment Bill of 2010¹¹⁹ becoming law.

One consequence of these delays was a court order suspending the operation of section 48(1), issued after Child Welfare South Africa's unopposed application on 4 December 2009 and subsequently published in the Government Gazette.¹²⁰ This allowed social workers to continue with adoptions, fostering processes and the like, which were being delayed by social workers' inability to check whether or not prospective care-givers had previous convictions for sexual offences committed against children.

By October 2010 it was reported that 624 names had been listed on the NRSO at a cost of R5.1 million to the DoJ&CD.¹²¹ The DoJ&CD anticipated incurring further unspecified expenditure covering the creation of 11 new posts. The police had also requested R200 million to upgrade the Criminal Record Centre and Automated Fingerprint System. They had however received only R30 million and could thus only make a limited update to their systems by April 2011.¹²²

The Intersectoral Committee (ISC)

The DoJ&CD reported establishing the ISC in 2008/09.¹²³ It subsequently went on to develop two layers to this committee, one comprising the Directors General (DG), termed the DGISC, and the other the Operational ISC (or OISC), intended to support the DGISC. The OISC, it was said, had developed an interdepartmental implementation plan for the SOA,¹²⁴ as well as a draft monitoring and evaluation tool on the management of sexual offences.¹²⁵ Still another draft discussion document developed by the OISC dealt with "appropriate integrated specialised service provision, which can be adopted in the criminal justice system"¹²⁶. A final document that the OISC was said to have contributed towards was a draft *Policy Framework and Guidelines on Intermediaries*.¹²⁷

118 Parliamentary question no. 1897, 26 July 2010.

119 Judicial Matters Amendment Bill 2010 section 83.

120 Government Gazette No 32850, 29 December 2009.

121 *The Star*, 25 October 2010.

122 *DefenceWeb*, 15 December 2010.

123 DoJ&CD 2009: 12.

124 DoJ&CD 2010a: 89.

125 DoJ&CD 2010a: 96.

126 DoJ&CD 2010a: 92.

127 DoJ&CD 2010a: 92.

The comments by the Constitutional Court in the *Phaswane* matter bear repeating here too. In this matter the Constitutional Court was required to consider the DoJ&CD's failure to make available intermediaries and child-friendly courts to child victims of sexual offences, among other issues. Asked by the court why a supervisory order should not be issued against the Minister of Justice and Constitutional Development to address these concerns, the minister responded that the introduction of the NPF would address these shortcomings.

The National Policy Framework (NPF)

The NPF's purpose is three-fold:

- to ensure a uniform and co-ordinated approach by all government departments and institutions to sexual offences;
- to guide the implementation, enforcement and administration of the SOA; and
- to develop a plan for the progressive realisation of services to victims of sexual offences within available resources.¹²⁸

The NPF must be gazetted, which elevates it to the status of subordinate legislation and renders it more enforceable than mere policy. Finalisation of the NPF however, has exceeded its legislated deadline by more than 18 months, and rising. Initially to have been completed by the ISC within one year of the SOA's promulgation (16 December 2008), it was later given a three-month extension to 31 March 2009.¹²⁹ On 19 February 2009 the Justice PC reported on the DoJ&CD's progress with the NPF, noting the DoJ&CD's statement that a further round of consultation on the NPF was required with civil society stakeholders.¹³⁰ In the 2010 Judicial Matters Amendment Bill the DoJ&CD proposed amending the deadline set in the SOA for the NPF's completion yet again, this time for a further 18 months from the date of section 85 coming into effect.¹³¹ Not unexpectedly, in a meeting of 17 August 2010 the Justice PC expressed "grave concern" over the DoJ&CD's missed deadlines around the NPF and secured an undertaking from the Department that the NPF would be submitted by the end of August.¹³² This was not done, given that a meeting with organisations to discuss the NPF only took place on 18 November 2010.

¹²⁸ SOA section 62(1)

¹²⁹ Judicial Matters Amendment Act 66 of 2008.

¹³⁰ PMG, 19 February 2009.

¹³¹ Judicial Matters Amendment Bill 2010 section 85

¹³² PMG, 17 August 2010.

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Each child complainant who is denied the assistance of an intermediary while the policy framework is being developed has his or her constitutional rights violated.¹³⁴

On this basis the court instructed the DoJ&CD to provide it with information about the availability of protective measures to children, as well as steps being taken to ensure such facilities were put in place. The DoJ&CD was to report back to the court within 90 days.¹³⁵ While the court made its comments in the context of pre-existing provisions of the 1977 Criminal Procedure Act that were not being implemented, their general point about the violation of rights caused by delays in the development of the policy framework is apposite.

TRAINING TO SUPPORT IMPLEMENTATION OF THE DOJ&CD'S MANDATE

Justice College is the DoJ&CD's official training arm. In 2008/09 it reported running 24 courses for family law clerks¹³⁶ - although not specifying which aspects of family law the training had addressed. The department also stated that a family law learnership manual was developed in 2007/08 and family advocates and counsellors trained in domestic violence in 2009/10.¹³⁷ The annual report for this period provides no details on this training, whether it took place and how many people were trained.

The WYCPD PC considered it "imperative" for the DoJ&CD to develop training norms and standards for court personnel on the DVA and to ensure that training was ongoing. These training programmes and their impact, it noted, needed to be regularly evaluated and adapted where necessary.¹³⁸

133 *Director of Public Prosecutions, Transvaal v Minister for Justice and Constitutional Development and Others*, 2009 (4) SA 222 (CC) at 204.

134 *Director of Public Prosecutions versus Minister for Justice and Constitutional Development and Others*, CCT 36/08 [2009] at 205.

135 *Director of Public Prosecutions versus Minister for Justice and Constitutional Development and Others*, CCT 36/08 [2009] at 209.

136 DoJ&CD 2009: 43.

137 National Treasury 2009: 456.

138 Parliament of the Republic of South Africa 25 October 2010: 3075-3076.

Unlike the other departments featured in this report, the DoJ&CD was not obliged by the SOA to provide any training to its personnel. This was something of an oversight, given that clerks of the court are required to manage applications for HIV testing of rape suspects, as well as capture and submit court orders in terms of the NRSO, for example. What can be gleaned from the department's annual reports is the appointment and training in 2008/09 of 30 intermediaries,¹³⁹ followed up in 2009/10 by training of 106 intermediaries (including the 91 contract intermediaries appointed the previous year).¹⁴⁰ This was one result of the *Phaswane* decision.

The DoJ&CD also said that in 2009/10 it trained an unquantified number of court officials providing services in sexual offences courts, in addition to establishing a Sexual Offences Amendment Act Training Material Reference Group and developing a training manual for clerks and the judiciary.¹⁴¹ However, when an application for information on the training of clerks to deal with applications for HIV testing of rape suspects was submitted to the DoJ&CD, the department referred the request to the NPA, which did not respond. The NPA's non-response is understandable. Apart from the fact that the DoJ&CD claims to have trained the clerks, clerks are employees of the DoJ&CD, not the NPA, which makes their training the responsibility of the department.

BUDGETING TO IMPLEMENT LEGISLATIVE MANDATES

The Domestic Violence Act (DVA)

From the outset questions have been raised about the existence of a budget to implement the DVA, beginning with the parliamentary debate surrounding the passage of the legislation in 1998.¹⁴² In its briefing on the 2001 budget to the Justice PC, the DoJ&CD stated that the implementation of new legislation such as the DVA had placed "severe pressure" on its offices. Officials went on to say that the 2001/02 budget for personnel "appears to be less than that required for the number of approved posts; fewer persons can therefore be employed."¹⁴³ The DoJ&CD did not rectify this problem. A review of budget votes for the DoJ&CD, the SAPS and the ICD for the period 1999/00 – 2005/06 was unable to identify any coherent attempt to cost the day-to-day application of the act (although some moneys were occasionally allocated to training and publicity activities).¹⁴⁴ In its 2008/09 Budget Vote, the DoJ&CD was still prioritising public communication about domestic violence.¹⁴⁵ In 2009/10 it continued to prioritise public communication

139 DoJ&CD 2009: 92.

140 DoJ&CD 2010a: 93.

141 DoJ&CD 2010a: 92-93.

142 Hansard, 2 November 1998: 7224; Goldman and Budlender, 1999

143 PMG, 14 May 2001.

144 Vetten, 2005.

145 National Treasury 2008: 411.

IN ITS 2008/09 BUDGET VOTE, THE DOJ&CD WAS STILL PRIORITISING PUBLIC COMMUNICATION ABOUT DOMESTIC VIOLENCE. IN 2009/10 IT CONTINUED TO PRIORITISE PUBLIC COMMUNICATION ABOUT DOMESTIC VIOLENCE, AND WAS STILL DOING SO IN 2010/11. THIS IS THE EXTENT OF THE DOJ&CD'S EXPLICIT REFERENCE TO DOMESTIC VIOLENCE. AS A MEASURE, PUBLIC COMMUNICATION HARDLY ADDRESSES THE IMPLEMENTATION OF THE DVA. INDEED, THE ONLY OTHER REFERENCE TO MONEY BEING SPENT IN RELATION TO DOMESTIC VIOLENCE EMERGES FROM A PRESENTATION TO PARLIAMENT'S SELECT COMMITTEE ON WOMEN, CHILDREN AND PEOPLE WITH DISABILITIES ON 28 AUGUST 2009, WHERE FLEETING REFERENCE WAS MADE TO R1.5 MILLION HAVING BEEN ALLOCATED TO DOMESTIC VIOLENCE FOR NATIONAL OFFICE POLICY SERVICES COUNTRYWIDE. THE DEPARTMENT'S REPRESENTATIVE DID NOT EXPOUND ON THE NATURE OF THESE SERVICES.

about domestic violence,¹⁴⁶ and was still doing so in 2010/11.¹⁴⁷ This is the extent of the DoJ&CD's explicit reference to domestic violence. As a measure, public communication hardly addresses the implementation of the DVA. Indeed, the only other reference to money being spent in relation to domestic violence emerges from a presentation to Parliament's Select Committee on Women, Children and People with Disabilities on 28 August 2009, where fleeting reference was made to R1.5 million having been allocated to domestic violence for National Office policy services countrywide.¹⁴⁸ The department's representative did not expound on the nature of these services.

"Severely impeded" service delivery and "poor implementation" of the DVA, arising from the absence of a costing framework, was the very first finding made by the WYCPD PC in its report on the hearings.¹⁴⁹

The Sexual Offences Act (SOA)

There is no reference to the SOA in the 2008/09 Budget Vote for the DoJ&CD. However, in the 2009/10 Budget Vote the SOA is referred to in a section dealing with the allocation of budget increases, made in the following instalments: an additional R500.1 million for 2009/10; an additional R638.3 million for 2010/11; and R763.4 million for 2011/12.¹⁵⁰ This money must be distributed widely to cover the implementation of the SOA, the 2008 Child Justice Act and other unspecified legislation; increases in magistrates' salary packages, along with an occupation specific dispensation for legally qualified personnel in both the DoJ&CD and NPA, as well as the Legal Aid Board; adjustments for inflation; and IT infrastructure for the South African Human Rights Commission, amongst other things.

These allocations were adjusted again – but downwards – in the 2010/11 Budget Vote. Instead of the R638.3 million estimated for 2010/11 in the 2009/10 Budget Vote, this amount was now revised to R458.9 million, with R679.2 million allocated for 2011/12, and R886.1 million allocated for 2012/13. Once again, this amount was spread broadly to, amongst other things, implement legislation concerning vulnerable groups; build new courts and upgrade existing infrastructure; appoint additional judges, magistrates and public defenders to the Legal Aid Board; as well as cover carry-through costs related to higher-than-budgeted wage increases in 2009/10.¹⁵¹

In a briefing to the WYCPD PC in September 2009, reference was also made to

146 National Treasury 2009: 456.

147 National Treasury 2010: 460

148 PMG, 28 August 2009.

149 Parliament of the Republic of South Africa 25 October 2010: 3061.

150 National Treasury 2009: 459

151 National Treasury 2010: 463

R25.5 million having been allocated to the implementation of the SOA.¹⁵²

Further indication that the SOA was not costed beforehand is illustrated by the NRSO. In 2009, during a briefing to the WYCPD PC, the SAPS representative stated that it would cost in the region of R300 million to establish the IT systems needed to run such a register effectively.¹⁵³

MEASURING WOMEN'S ACCESS TO JUSTICE

This section largely examines the performance of the courts in processing protection orders in terms of the DVA, with their performance in relation to sexual offences dealt with in the chapter on the NPA.

Applying for and obtaining a protection order

Key Performance Indicator (KPI) 17.2 for the DoJ&CD in 2009/10 was an improvement in domestic violence services by 10%.¹⁵⁴ Whether or not this was achieved is unknowable; the DoJ&CD does not specify what the baseline service standard was, which service was being improved, or how these improvements were to be brought about. But, given that the DoJ&CD's report on this KPI includes figures detailing the various outcomes of applying for a protection order, it is presumed that this is what they wish to improve by 10%. On their own figures, it is doubtful such improvement was achieved:

- In the 2008/2009 financial year, 222 912 new applications for protection orders were made nationally. This number increased to 225 232 in the 2009/2010 financial year. The number of applications for protection orders increased in every province but the Western Cape, which experienced a 40% drop in the number of applications from 67 415 in 2008/09, to 40 316 in 2009/10.

Despite an increase in the number of protection orders applied for in 2009/10, both the number of protection orders granted and subsequently made final decreased between 2008/09 and 2009/10:

- In 2009/10, 63% of the 225 232 orders were granted but just over a third (34%) made final. By contrast 79% of the 222 919 orders applied for in 2008/09 were granted and 40% made final. (The full statistics for 2008/2009 and 2009/2010 are attached in Appendix II.)

In other words, while many South Africans are turning to the courts for protection from domestic violence, less than half of those who apply for protection orders ultimately qualify. Admittedly there may be some applicants whose circumstances do not warrant protection orders, just as there are those who, for personal reasons,

152 PMG, 2 September 2009.

153 PMG, 26 August 2009.

154 DoJ&CD 2010a: 93.

These findings suggest that institutional barriers are playing a role in preventing women from obtaining the law’s protection. The fact that some courts are less likely to finalise protection orders may indicate prejudice on the part of some magistrates towards applicants, or that the procedures followed by particular courts – especially in relation to serving the interim protection orders – work in such a way as to exclude applicants from court proceedings.

choose not to return to court (perhaps because they have reconciled with the abusive party, had a change of heart, or been intimidated). But this is not the whole picture. Two studies, one of three courts¹⁵⁵ and the other of nine courts¹⁵⁶, have investigated factors influencing the finalisation of protection orders. These include:

- the court where the application was made;
- whether or not the interim order had been served;
- the presence of the applicant at court;
- whether or not the applicant was a victim of intimate partner violence or intra-familial abuse. The latter group was less likely to return.

These findings suggest that institutional barriers are playing a role in preventing women from obtaining the law’s protection. The fact that some courts are less likely to finalise protection orders may indicate prejudice on the part of some magistrates towards applicants, or that the procedures followed by particular courts – especially in relation to serving the interim protection orders – work in such a way as to exclude applicants from court proceedings.

Nonetheless the Department concluded that “the system was working better” on the basis that fewer matters were withdrawn and fewer breaches of the order recorded.¹⁵⁷ When less than half of those who apply for protection orders ultimately obtain their order, and when this minority constitutes an even smaller percentage than the previous year, this cannot be interpreted to mean the system is “working better.”

¹⁵⁵ Vetten et al, 2009a.

¹⁵⁶ Vetten, van Jaarsveld and Riba, 2009.

¹⁵⁷ DoJ&CD 2010a: 94.

Extreme tardiness is the defining characteristic of the DoJ&CD's implementation of its legislative mandate, making a mockery of its claim to prioritise women's needs. Indeed, on the strength of the information outlined here, the department is merely sustaining, rather than curtailing, women's vulnerability to poor treatment by the courts.

A closer look at the data also raises more questions than the data answers. There were indeed 35 964 fewer withdrawals in 2009/10 than 2008/09 but 16 382 (or 45.5%) of this decline was recorded in the Western Cape alone. The decline in the number of breaches of the protection orders can also be attributed to trends in the Western Cape. Nationally 2 448 fewer breaches occurred in 2009/10. This is slightly less than the decline in breaches in the Western Cape between 2008/09 and 2009/10, which amounted to a reduction of 2 955. Either the Western Cape submitted incomplete data for 2009/10, or a very significant change in practice was instituted in the province that year, accounting for the significant drop in applications, the number of cases withdrawn and the number of breaches.

The other measure of women's access to justice in terms of the SOA is the number of orders applied for and granted to test rape suspects for HIV. A PAIA application was submitted to the DoJ&CD requesting this information and again the department referred the request to the NPA.

Conclusions

Extreme tardiness is the defining characteristic of the DoJ&CD's implementation of its legislative mandate, making a mockery of its claim to prioritise women's needs. Indeed, on the strength of the information outlined here, the department is merely sustaining, rather than curtailing, women's vulnerability to poor treatment by the courts.

Part of the explanation for this must be the inadequate indicators against which the DoJ&CD's performance is measured: there is little for the DoJ&CD to aspire to in relation to the DVA and SOA. In 2008/09, for example, targets for the courts included improving the performance of district courts; reducing the case cycle times of criminal and civil matters involving children by 10% annually, or from 18 months to 16 months in 2008/09; finalizing 50% of cases handled by the Family Advocate within six months; securing justice service delivery points with

perimeter fencing and re-demarcating periodical and branch courts.¹⁵⁸ In 2009/10 they were to improve domestic violence services by 10%. But the vague and imprecise wording of this target makes it difficult to hold the DoJ&CD to account for its attainment.

None of the 12 key priority projects proposed by the department's 2010 – 2014 MTSF contribute in any significant way to gender equity either. Indeed, of the 37 outputs and 77 indicators, only one explicitly relates to gender-based violence, with the sole output for the protection and promotion of vulnerable groups being, "(to) ensure effective resolutions of sexual offences, trafficking in persons, domestic violence and gender hate crimes". No obvious relationship exists between this output and its indicator: a national strategy for the reduction of gender-based offences, developed by 2011.¹⁵⁹

The shift in focus to vulnerability, weak or non-implementation of law and policy, coupled with limited accountability, suggests a retreat from the DoJ&CD's original commitment to gender equality.

¹⁵⁸ DoJ&CD 2009: 45-46.

¹⁵⁹ DoJ&CD 2010b: 13.

THE DVA ... ASKS NO MORE OF THE NPA THAN TO PERFORM ITS USUAL PROSECUTORIAL FUNCTION, WHICH MAY EXPLAIN WHY DOMESTIC VIOLENCE IS NOT PRE-EMINENT AMONGST THE SOCA UNIT'S MEASURABLE OBJECTIVES.



5. THE NATIONAL PROSECUTING AUTHORITY

As one of five programmes managed by the DoJ&CD, the NPA is further divided into four sub-programmes: Public Prosecutions, Witness Protection, Asset Forfeiture and Support Services. Most, if not all, activities addressing violence against women are carried out by the Public Prosecutions sub-programme which is responsible for both general and specialist prosecution in the Lower and High Courts; alternative dispute resolution (ADR); the Sexual Offences and Community Affairs (SOCA) unit; the Specialised Commercial Crimes unit; and the Priority Crimes Litigation unit.

THE NPA'S FULFILMENT OF ITS LEGISLATIVE MANDATE

The SOCA unit plays a central role within the NPA in addressing sexual offences and domestic violence. The DVA, however, asks no more of the NPA than to perform its usual prosecutorial function, which may explain why domestic violence is not pre-eminent amongst the SOCA unit's measurable objectives. In 2008/09 these included:

- increasing the conviction rate of sexual offenders from the current 66% to 68% in 2010/11 by appointing an additional 120 court preparation officers; and
- improving justice services for victims of sexual offences by establishing five additional TCCs, bringing the total to 15 by 2008/09.¹⁶⁰

By 2009/10 the TCCs had become the sole focus of the SOCA unit's work, with the goal being the establishment of five additional TCCs per year to reach a total number of 30 in 2011/12.¹⁶¹

The Domestic Violence Act (DVA)

While domestic violence may be absent from the SOCA unit's objectives, it is not absent from its activities. In 2008/2009, in conjunction with the Department of Arts and Culture, the NPA reported translating the DVA into seven of South Africa's indigenous languages and the act's regulations into eight languages.¹⁶² No information is available as to where copies of these indigenous-language versions of the act may be obtained or how they have been distributed.

In August 2009 the SOCA unit also reported finalising a *Personalised Safety Plan for Victims and Survivors of Domestic Violence*¹⁶³, which was then included in the

¹⁶⁰ NPA 2009: 9.

¹⁶¹ National Treasury 2009: 468.

¹⁶² NPA 2009: 27.

¹⁶³ NPA 2009: 27.

domestic violence learning material developed by the Family Law Learnership Committee referred to in the section of this report dealing with the DoJ&CD. The implementation of this safety plan at nine courts was then evaluated in 2009/10 by the NPA's Research and Policy Information Service Centre, which also developed monitoring and evaluation tools assessing the ongoing use of the Safety Plan.¹⁶⁴ While the NPA describes this as "groundbreaking", it is not clear how this Safety Plan differs from the safety planning routinely undertaken with victims by counselling services and shelters, particularly as the Safety Plan booklets were only due to be printed by the end of January 2011 and only then released, along with a lipstick.¹⁶⁵ It will be necessary to wait for the 2010/11 NPA Annual Report to gauge the impact of this project, which is little-known outside of the NPA.

During 2009/2010, in partnership with the National Operations Centre (NOC), the DoJ&CD and Stats SA, the SOCA unit developed a Domestic Violence Statistical Tool aimed at collecting numerical data for all offences created by section 17 of the DVA (this includes breaches of the order, publication of parties' names and abuse of the protection order), as well as common law and other statutory offences applicable to domestic violence. This tool was piloted during January to June 2009 at all magistrates' courts as part of phase one of the Ndabezitha Imbizo Project. (It is unclear whether this includes all magistrates' courts in South Africa, or only those courts forming part of the Ndabezitha Programme.) The data generated by this tool, as well as information regarding its current use, could not be obtained from any of the institutions involved.

The Ndabezitha Project predates all of these initiatives, having been launched in 2004 as collaboration between the SOCA unit, the DoJ&CD and the National House of Traditional Leaders. It aims to develop a model of dealing with domestic violence that integrates both retributive and restorative justice, or the criminal justice system with "the traditional justice philosophy", in the resolution of domestic violence matters. In practical terms, this involves the creation of a referral system between the police, traditional leaders, prosecutors and magistrates.¹⁶⁶ Part of this programme includes training traditional leaders and domestic violence clerks on the DVA, as well as the application of ADR and restorative justice processes to domestic violence matters. During 2008/09, 81 traditional leaders were trained in this programme.¹⁶⁷ No figures were provided for the numbers of clerks trained. The DoJ&CD reports training still being provided to clerks and traditional leaders in 2009/10 but provides no numbers in this regard.¹⁶⁸

In 2009/10 the Ndabezitha Project hosted izimbizo in the rural communities of

¹⁶⁴ NPA 2010a: 28.

¹⁶⁵ Personal communication, J. Mabothe of the NPA.

¹⁶⁶ NPA 2010b: 5.

¹⁶⁷ DoJ&CD 2009: 90 – 91.

¹⁶⁸ DoJ&CD 2010a: 93.

six provinces, addressing 900 community members between January and March 2010.¹⁶⁹ The objectives of this particular exercise were to raise awareness among rural men and boys about domestic violence and the DVA, as well as educate rural communities about sexual offences and human trafficking. What effect this programme has had in addressing the domestic violence that rural women experience is unknown. Indeed, strengthening the role of traditional leaders in matters affecting rural women (and communities) is controversial, as public hearings around the repeal of the Black Authorities Act made clear.¹⁷⁰

The Sexual Offences Act (SOA)

In contrast to the DVA, the SOA places clear legal obligations on the NPA:

- the NDPP must, in consultation with other departments, compile and gazette a range of directives guiding various aspects of the prosecution of sexual offences, sentencing and the forwarding of accused persons' names to the Registrar of the NRSO.¹⁷¹ These directives must be submitted to parliament within six months of the Act's commencement;
- the NDPP must develop training courses on the SOA and table such courses in Parliament within six months of the implementation of the Act. Reports on the implementation of the training must thereafter be tabled annually;¹⁷²
- in addition, the NDPP is to participate in the ISC¹⁷³ and the development of the NPF;¹⁷⁴ and
- submit reports to Parliament annually on the implementation of the SOA.¹⁷⁵

While draft directives for prosecutors are available on the Judicial Officers' Association of South Africa's (JOASA) website, they have not yet been gazetted, making the NPA more than a year late in meeting this particular obligation. Once again only part-meeting their objectives, the NPA has been training prosecutors on the SOA, but does not appear to have tabled these courses in parliament. Depending on how the scope and extent of its reporting obligations are interpreted, the NPA may or may not have submitted their annual training reports. Annual Reports 2008/09 and 2009/10 each contain between three and four lines describing this mandatory training (which, it must be noted, is the most information supplied by any department in this regard). Thirteen training sessions were conducted in 2008, reaching 406 prosecutors¹⁷⁶ while in 2009 a further 10

169 NPA 2010a: 39.

170 PMG, 20 July 2010 and 21 July 2010.

171 SOA section 66(2)(a).

172 SOA section 66, part 2 (b).

173 SOA section 63(2)(f).

174 SOA section 62(1).

175 SOA section 65(3).

176 NPA 2009: 27.

Glimpses of under-budgeting and its effect on the provision of protective measures to rape survivors can be gleaned from departments' annual reports. For example, in 2008/09 the NPA proposed appointing 40 additional court preparation officers but were unable to appoint any due to an unspecified "reprioritisation of the budget."

sessions were conducted and attended by 239 prosecutors (this was fewer than the projected 550).¹⁷⁷ A further eight courses were proposed for 2010.¹⁷⁸

Finally, the NPA reports participating in the ISC and development of the NPF.¹⁷⁹ Whether all these fleeting references to their implementation of aspects of the SOA in their annual reports meet the requirement of submitting annual implementation reports is open to debate.

BUDGETING TO IMPLEMENT LEGISLATIVE MANDATES

Glimpses of under-budgeting and its effect on the provision of protective measures to rape survivors can be gleaned from departments' annual reports. For example, in 2008/09 the NPA proposed appointing 40 additional court preparation officers but were unable to appoint any due to an unspecified "reprioritisation of the budget."¹⁸⁰ In their 2009/10 Annual Report the DoJ&CD reported that although one of their KPIs for the year had been the rollout of closed circuit television (CCTV) at all TCCs, this had not happened due to financial constraints (although 282 CCTV systems were provided to courts between 2008/09 and 2009/10).¹⁸¹ This deficit may have been addressed by UNICEF, which is recorded as having provided R2 121 000 towards CCTV in 2009/10. Indeed, the SOCA unit receives the most funding to address violence against women reported by any government department, with these monies chiefly allocated to the Ndabezitha Project and the TCCs. Unfortunately, reporting on donor funds was only recorded in the 2009/10 Budget Vote and included the following¹⁸²:

177 NPA 2010a: 28.

178 Personal communication, P Smith of the NPA.

179 NPA 2009: 29.

180 NPA 2009: 10.

181 DoJ&CD 2010a: 55.

182 All information from National Treasury 2009: 479-480.

Ndabezitha Project: The NPA reports the Royal Danish Commission as having committed a total R538 000 over the two financial years 2007/08 and 2008/09 to train traditional leaders and prosecutors on domestic violence;

In 2007/08 Denmark committed R552 000 to train traditional leaders and prosecutors on domestic violence.

TCCs: WK Kellogg is reported as having committed R1 737 000 between 2005/06 and 2008/09 towards training at TCCs;

Between 2007/08 and 2009/10 Greece committed R328 000 towards the upgrading of TCCs and training of their staff;

Between 2005/06 and 2007/08 Vodacom committed R1 842 000 to the upgrading of TCCs and building new centres.

These amounts are far from all that is being contributed towards the TCCs. Various reports on the TCCs, some of which date back to 2006, acknowledge funding support from USAID (but do not specify the amounts). There is further reference in the 2008/09 Annual Report to the Danish government providing financial support to enable the SOCA unit to provide technical assistance to six African countries (the nature of this assistance is unspecified),¹⁸³ while the 2009/10 SAPS Annual Report refers to a donation of \$800 000 towards the training of prosecutors on sexual offences.¹⁸⁴

Knowing what percentage the South African government covers of the TCCs' costs is important for at least two reasons. Firstly, it allows for assessment of the sustainability of the TCC model for, if the bulk of financial support for the TCCs is being received from foreign donors, it leaves the survival of these centres open to doubt following the withdrawal of such funds. Secondly, when measures that address violence, as one manifestation of gender inequality, must be funded from elsewhere, it raises questions about the extent to which the national budget addresses women's gender equity interests.

OTHER ACTIVITIES ADDRESSING VIOLENCE AGAINST WOMEN

The SOCA unit's star project is unquestionably the TCCs which, like the SAPS' FCS Units, is the most consistent and well documented intervention in the

183 NPA 2009: 27.

184 SAPS Strategic Management 2009: 82.

problem of violence against women. The TCCs have also been taken up by the JCPS cabinet cluster, which sees them as a means of “managing” and “improving” “perceptions of crime among the population.”¹⁸⁵

Thuthuzela Care Centres (TCCs)

The first TCC was established in the Western Cape at GF Jooste Hospital in Manenburg in 2000. By 2007 there were 10 such centres nationally and, by 2010, 25 centres.¹⁸⁶ It is planned to have 30 TCCs in existence by 2011/12.¹⁸⁷

TCCs are located in public hospitals; should offer their services on a 24-hour basis; and be linked to a sexual offences court. TCCs aim to provide a range of services to victims, including:

- initial reception of the victim, followed by information outlining the services and procedures;
- history-taking and a medico-legal examination;
- prophylaxis and treatment for pregnancy and sexually-transmitted infections, including HIV;
- bath/shower, refreshments and a change of clothing;
- transportation home (or to place of safety), referrals and follow-up support.

At some TCCs it is also possible for the victim to open a case on-site, give the police a statement and/or receive longer-term psycho-social counselling and other services.¹⁸⁸ Site staff should include a case manager, victim assistance officer and site coordinator, non-governmental organisation (NGO) or DSD counsellors, trained detectives and officers competent to take statements and either SAPS or emergency medical service personnel able to transport victims.¹⁸⁹ While there is a blueprint outlining the requirements to be met for a service to qualify as a TCC, not all TCCs meet these standards.¹⁹⁰

The number of TCCs is increasing constantly, thus the numbers provided here are likely to have been surpassed. Nonetheless, according to information received from the NPA in September 2010, the following 25 centres existed across the country:

185 NPA 2010c: 10.

186 NPA 2010c: 10.

187 National Treasury 2009: 468.

188 Research Triangle Institute (RTI) International 2007: 7.

189 RTI International 2007: 14.

190 RTI International, 2007.

Table 7: Number of TCC sites in each province, as at September 2010

Province	Number of TCCs	TCC sites in province
Gauteng	5	Soweto, Thembisa, Natalspruit, Mamelodi, Kopanong
Northern Cape	5	Kimberley, Kuruman, Springbok, De Aar, Kakamas
Western Cape	3	Manenburg, George, Bellville
North West	3	Rustenburg, Mafikeng, Taung
Eastern Cape	2	Mdantsane, Libode
Free State	2	Bloemfontein, Welkom
KwaZulu-Natal	2	Phoenix, Umlazi
Limpopo	2	Thohoyandou, Mankweng
Mpumalanga	1	Themba

Some filtering of cases may be taking place at the TCCs. Data obtained from the SOCA unit for the period 2003 – 2006 indicated that the bulk of victims (60%) attended to were children. The NPA's Performance Overview Report for the period April – October 2010 suggests this continues to be the trend (58% children versus 42% adults)¹⁹¹ – even though women over the age of 18 constitute the bulk of those who report rape.¹⁹² Either the TCCs are being established in areas where more children than adults report being raped (which is unlikely), or local police officers – perhaps in consultation with TCC staff – prefer to provide TCC services to children rather than women.

The TCC model is a good one. But assessing its strengths and weaknesses in practice is made difficult by the fact that the TCCs have not been subject to independent, external evaluation. Nor are reports on their functioning made readily available in the public domain. For instance, in 2006 the SOCA unit commissioned the consultancy Southern Hemisphere to develop a comprehensive monitoring and evaluation framework for the TCCs. Consisting of 18 outputs (divided still further into a range of sub-outputs) finalized in 2006, no information is available regarding whether or not this framework is being applied and, if it is, how the TCCs are performing against these measures.

Finally, as the parliamentary hearings into the implementation of the DVA pointed out, the TCCs are chiefly available to victims of sexual offences. The WYCPD PC recommended that their facilities also be made available to women reporting domestic violence.¹⁹³

191 NPA 2010c: 18.

192 Vetten et al, 2008; SAPS Strategic Management 2009; SAPS Strategic Management 2010.

193 Parliament of the Republic of South Africa 25 October 2010: 3077.

Other activities

The SOCA Unit undertakes a range of activities, which fall under the loose heading of public awareness and information provision. In collaboration with the Ethiopian Women Lawyers' Association, the SOCA Unit reported developing a documentary entitled, "It's Time: African Women Join Hands Against Domestic Violence". While shown at the Los Angeles Pan African Film Festival in 2009, no reference is made to a South African screening of the documentary, or its distribution locally.¹⁹⁴

To support the establishment of the TCCs, the SOCA unit also reported hosting a Sexual Offences Indaba to ensure "effective and efficient" management of sexual offences by all concerned in April 2008.¹⁹⁵ They also engaged in a range of other miscellaneous awareness activities, including contributing to Amnesty International's "Know your Rights" booklet on Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.¹⁹⁶

Finally, the SOCA unit reports establishing a number of structures such as the IDMT at national level and, at provincial level, Gender Justice Fora. How inclusive these structures are of civil society organisations addressing violence is not made clear.

MEASURING WOMEN'S ACCESS TO JUSTICE

It is impossible to obtain a clear picture of the measure of justice afforded women who approach the courts seeking recourse. Information on the prosecution of domestic violence matters simply does not exist, while that provided in relation to sexual offences matters is opaque and has been made more so with the disappearance of the sexual offences courts.

Sexual offences courts

In 1993 a specialised sexual offences court was piloted in Wynberg, Cape Town. This first such court set itself the following three broad objectives:

- the reduction or elimination of inappropriate and insensitive treatment (or secondary victimisation) of sexual offence complainants;
- the development of a coordinated and integrated approach to the processing and management of sexual offence cases by criminal justice agencies; and
- the improvement of the reporting, prosecution and conviction rate for sexual offences.¹⁹⁷

194 National Treasury 2009: 480-481.

195 NPA 2009: 27.

196 NPA 2009: 28.

197 DoJ&CD 1999: 12.

In 2005 ... the Minister of Justice and Constitutional Development called for a moratorium on the establishment of all dedicated courts (including sexual offences courts) on the basis that dedicated courts placed too great a demand on resources and forced magistrates to specialize ... Not unexpectedly, the number of courts dedicated to dealing with sexual offences has been declining, dropping from an all-time high of 67 in 2005/06 to as few as 40 by October 2010.

The DoJ&CD's 1999 *Gender Policy Statement* committed the department to continue with these courts and in 2003 the NPA and the DoJ&CD agreed on a national strategy to continue creating specialised sexual offences courts dealing with both adult and child victims. The NPA was responsible for the appointment of victim assistants, case managers and court preparation officials, while the DoJ&CD was to facilitate the appointment of dedicated magistrates.

In 2005, however, the Minister of Justice and Constitutional Development called for a moratorium on the establishment of all dedicated courts (including sexual offences courts) on the basis that dedicated courts placed too great a demand on resources and forced magistrates to specialize. A National Project Oversight Committee (NPOC) was constituted to decide on the establishment of future dedicated courts and a set of criteria identified to guide this process. Not unexpectedly, the number of courts dedicated to dealing with sexual offences has been declining, dropping from an all-time high of 67 in 2005/06¹⁹⁸ to as few as 40 by October 2010.¹⁹⁹

This reluctance on the part of the magistracy to develop a specialized body of knowledge around sexual offences, coupled with a pre-occupation with "efficiency" and case flow management, has had a number of negative consequences. Because particular courts are no longer set aside specifically to hear sexual offences, such cases will now be allocated to whichever prosecutor, magistrate and court is available. This means cases may be managed by those with limited experience in prosecuting sexual offences and heard by those with equally little understanding of the complexities and nuances of sexual violence. Team approaches to the prosecution of sexual offences, drawing together NGO specialists/counsellors, prosecutors and police officers, are also made more challenging as the networks of practitioners familiar with working with one another are diluted and disrupted. Victims may also wait longer for trial dates because courts are no longer dedicated to hearing these matters. The impact

198 NPA 2010a: 27.

199 NPA 2010c: 47.

of these decisions on the prosecution of sexual offences, as well as the current functioning of the remaining courts, needs to be the subject of further enquiry.

The NPA notes that the sexual offences courts have a steady conviction rate of 65%, which is repeatedly falling short of the 70% target.²⁰⁰ However, in an October 2010 report, the NPA stated that the sexual offences courts had achieved a 72.8% conviction rate for the period April-October 2010 and thus exceeded their target of 66%.²⁰¹

Table 8: Average conviction rate achieved by sexual offences courts, by year.

Court	06/07: No of courts (conviction rate)	07/08: No of courts (conviction rate)	08/09: No of courts (conviction rate)	09/10: No of courts (conviction rate)
Specialised courts	59 (65%)	64 (64%)	50 (66.7%)	42 (67.7%) ¹

Nevertheless, because no figures are available for the conviction rates in ordinary courts, no meaningful comparisons can be drawn between their performance and that of the specialized courts. The various figures provided by the DoJ&CD for these courts are also not congruent, making it hard to follow what exactly is being reported on. For instance, in its 2009/10 Annual Report the DoJ&CD states that 43 304 sexual offences cases were enrolled without making clear if this total is for all courts, including the sexual offences courts, or whether the sexual offences courts are excluded. Putting aside this question for the moment, the DoJ&CD then states that 3 648 cases, or 22.3%, were finalized. How this percentage was derived is unclear. But if it was calculated by dividing the number of cases finalized with a verdict (3 648) from the total (43 304) then the percentage is 8.4% - and not 22.3%.²⁰²

Two different sets of figures are also provided for the sexual offences courts. In the first paragraph providing these figures it is stated that 3 706 cases were finalized of the 7 356 matters enrolled. In the paragraph immediately following this one it is now stated that 9 213 cases were enrolled and 4 796 finalised.²⁰³ Further in the Annual Report yet another total – 1 143 – is provided for the number of cases finalized.²⁰⁴

Apart from its questionable reliability, the DoJ&CD data is disquieting in other respects. The 2008/09 NPA Annual Report states that 444 cases were finalized

²⁰⁰ National Treasury, 2010.

²⁰¹ NPA 2010c: 11.

²⁰² DoJ&CD 2010a: 19.

²⁰³ DoJ&CD 2010a: 19.

²⁰⁴ DoJ&CD 2010a: 91.

using alternative dispute resolution (ADR) methods, with 134 of these cases involving young offenders.²⁰⁵ The DoJ&CD's 2008/09 Annual Report records 358 matters being settled by ADR.²⁰⁶ (It is not possible to explain the discrepancy between the two different totals provided by the NPA and DoJ&CD.) It is surprising to see sexual offences matters being resolved in this way because (a) the sexual offences courts are based in the regional courts and hear the more serious sexual offence matters and, particularly, (b) rape is subject to minimum sentences of 10 years and more. Perhaps it was appropriate that these particular matters be decided without trial processes but this can only be judged when more information is provided about the types of sexual crimes involved. It is also most curious that, according to the DoJ&CD's data, 160 (or 44.7%) of these 358 cases were resolved in this way at one court – Nelspruit in Mpumalanga.²⁰⁷

Conclusions

There is some suggestion in this chapter that adult women are sometimes being relegated to the back of the queue for specialised services. If this is the case in practice, then steps need to be taken to ensure that such services are equally available to all.

A further question raised by this section is the extent to which the CJS can claim to be victim-centred. The DoJ&CD's Victim's Charter commits departments to being victim-centred, without explaining what that means in practice. This report proposes the following approach, which turns chiefly on the distinction between systems-centred and victim-centred approaches. Systems-centred approaches are developed around the needs of the system and the people who work within it, with the victim being of secondary concern. By contrast, a victim-centred approach examines how systems can be designed around the centrality of victim rights and needs. In practice, there is obviously a close relationship between the two, as dysfunctional systems cannot serve victims effectively.

The treatment of the sexual offences courts illustrates the distinction in practice. Initially set up to improve the treatment of victims of sexual offences, they have been allowed to disappear because they do not suit magistrates or perceptions of what constitutes the "efficient" management of court rolls. Indeed, if magistrates are not careful, their emphasis on efficiency may well come to trump consideration of justice. This leads to a further point, which is the need to include equity within considerations of how courts perform. An emphasis purely on efficiency and effectiveness that does not also pay attention to equity can result in practices that perpetuate discrimination and inequality.

205 NPA 2009: 19.

206 DoJ&CD 2009: 68.

207 DoJ&CD 2009: 68.

**THIS SECTION
CONSIDERS THE LIMITED
CONTRIBUTION OF THE
DEPARTMENTS OF SOCIAL
DEVELOPMENT, HEALTH
AND CORRECTIONAL
SERVICES TO THE
IMPLEMENTATION OF THE
DVA AND SOA.**



6. THE WORK OF SUPPORTING DEPARTMENTS

Strategic priority number five of the Presidency's 2009 – 2014 MTSF to improve the health profile of society is to be achieved by enhancing the ability of public health services to respond to a range of non-communicable diseases, injuries and trauma,²⁰⁸ among other steps. This prioritisation should oblige a stronger response from the Departments of Health and Social Development to rape and domestic violence, given their serious consequences for women's health overall. However, this is currently not the case, especially in relation to domestic violence.

While section 2(a) of the DVA might oblige the police "to render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment", there is no corresponding obligation on the DSD to ensure such shelters are available. Health providers are also not required to do more than stitch women up and send them home with painkillers, following their admission for assault-related injuries. While the DCS plays no legislated role at all in relation to the DVA, it has been written into the SOA where, like the DSD and DoH, it plays a largely supportive role. One consequence of this under-developed response is the subordination of women's psycho-social needs to the entrenched practices of the police and justice services. Another is "the absence of a holistic vision of service intervention"²⁰⁹, to borrow the WCYPD PC's wording.

This section considers the limited contribution of the Departments of Social Development, Health and Correctional Services to the implementation of the DVA and SOA. To bolster and expand these roles, this section also focuses on the public hearings into the implementation of the DVA conducted by the WCYPD PC on 28 and 29 October 2009. The WCYPD PC's comprehensive recommendations, tabled in Parliament on 25 October 2010, set out a more prominent role for the DSD and DoH by pointing out the steps these departments should follow to emerge from the sidelines.

THE DEPARTMENT OF SOCIAL DEVELOPMENT

The Domestic Violence Act (DVA)

Even if the DSD has no legislated role in the implementation of the DVA, the department has still created various policies and other documents which address the problem of domestic violence. These include the 2003 *Policy Framework and Strategy for Shelters for Victims of Domestic Violence in South Africa*, the 2010

208 Minister in the Presidency Planning 2009: 30.

209 Parliament of the Republic of South Africa 25 October 2010: 3062.

The WYCPD PC's report on the hearings on the DVA highlighted a number of inadequacies in the DSD's current responses. One of the recommendations put forward by the WYCPD PC to address these weaknesses was the drafting and gazetting of regulations governing the availability of shelter and counselling services, including the funding of such services.

Social Development Guidelines on Services for Victims of Domestic Violence and the 2009 *Strategy for the Engagement of Men and Boys in Prevention of Gender-based Violence*. The DSD also leads the VEP which guides services to victims of violence as a whole. But, while policy is more flexible and detailed than legislation and thus better able to guide the day-to-day workings of officials, it is limited by its lack of binding power upon officials, which means it simply cannot be enforced in the same way as law. Admittedly, government officials' each and every action cannot be legislated and, in some instances, is better guided by strategies, guidelines and policies, rather than legislation. However, there is a need to compel a psycho-social contribution from the DSD, as Parliament has recognised.

The WYCPD PC's report on the hearings on the DVA highlighted a number of inadequacies in the DSD's current responses. One of the recommendations put forward by the WYCPD PC to address these weaknesses was the drafting and gazetting of regulations governing the availability of shelter and counselling services, including the funding of such services.²¹⁰ (The provision of shelter to women who have been in abusive relationships is not a legislative requirement, unlike the provision of sheltering services to children and people with disabilities.) In their response to the questions arising from the WYCPD PC's hearings, DSD stated that it funded 96 shelters for victims of domestic violence. The Department also committed to establishing two new domestic violence shelters per year and stated that it would develop a model funding policy for civil society organisations in 2010. From the information submitted to the WYCPD PC, it is clear that the DSD's approach to funding shelters is neither consistent nor uniform. Some provinces appear to pay the costs of living incurred by women and their children, whereas others only pay the costs of development workers employed by the shelter and make no contribution to shelter residents' subsistence. In Limpopo the contribution to these costs is R40/day (to cover both the woman and her

²¹⁰ Parliament of the Republic of South Africa 25 October 2010: 3073.

6. The Work of Supporting Departments

children), while in KwaZulu-Natal it is R49/day (having recently been increased from R33/day).²¹¹

To improve the quality of shelter and counselling services the WYCPD PC also recommended developing regulations establishing norms and standards and the required competencies of service providers in this field.²¹² Linked to this would be a further set of regulations guiding the recruitment and management of volunteers, as well as the nature of interventions addressing domestic violence. Another important recommendation was an amendment to the DVA mandating the coordination of services between the various role players.²¹³

The Sexual Offences Act (SOA)

The DSD plays the most negligible role of all departments in the SOA, being required only to participate in the ISC,²¹⁴ contribute to the NPF²¹⁵ and submit reports to parliament on their implementation of the SOA.²¹⁶ While they may have complied with the first two obligations, they have not submitted annual implementation reports to parliament. Still, in 2010 the DSD, of its own accord, published *Guidelines for Services to Victims of Sexual Offences*.

This minimal role for the department was not what had been envisaged originally in the bill drafted by the South African Law Reform Commission, which had included clauses legislating medical care, treatment and counselling to all survivors who sustained physical, psychological or other injuries as a result of the sexual offence. These services were also to be extended to victims' family members. Also proposed were modest measures to protect both adult and child victims from the excesses of the adversarial trial process, including the provision of support persons at court.²¹⁷ The bulk of these psycho-social services would have been the responsibility of the DSD. All these provisions were excised from the bill by Cabinet on the ground that they were too costly to the government.²¹⁸ This argument makes the costs of the NRSO even harder to swallow, particularly when one takes into account that it duplicates, in many respects, the National Child Protection Register (NCPR) created by the Children's Act 38 of 2005 and managed by the DSD. The NCPR pre-dated the NRSO but had not yet come into effect when the SOA was enacted. Although the Justice PC of the time was aware that they were creating a second, very similar register,²¹⁹ they nonetheless went ahead anyway.

211 PMG, 4 November 2009.

212 Parliament of the Republic of South Africa 25 October 2010: 3073.

213 Parliament of the Republic of South Africa 25 October 2010: 3069.

214 SOA section 65(1).

215 SOA section 62(1).

216 SOA section 65(3).

217 Vetten and Watson, 2009.

218 PMG, 6 August 2003.

219 PMG, 15 August 2006.

There is very little difference in purpose between the two registers. While the NRSO includes people with mental disabilities (which the NCPR does not), it is narrower in scope than the NCPR. The NRSO includes only the details of those found guilty of a sexual offence against a child or person with mental disability. By contrast, the NCPR captures the details of those found unsuitable to work with children by a children's court, any other court in any criminal or civil proceedings, or any disciplinary forum in proceedings concerning a person's conduct towards a child. Such a finding must be made if the accused person is convicted of murder, attempted murder, rape, sexual abuse or assault with intent to do grievous bodily harm to a child. The latter stipulation ensures that both lists will contain the same names. The NCPR will however, provide greater protective benefits to children because it focuses on proceedings in addition to criminal trials, as well as a wider range of crimes and other forms of ill-treatment of children.

THE DEPARTMENT OF HEALTH (DOH)

The Domestic Violence Act (DVA)

As with the DSD, the DVA does not establish the nature and extent of the health sector's obligations in relation to domestic violence. Instead, the DoH's current policy response is somewhat fragmented and scattered amongst a range of documents, including the *Primary Health Care Package for South Africa*,²²⁰ the *National Guideline on Prevention, Early Detection/Identification and Intervention of Physical Abuse of Older Persons at Primary Level*,²²¹ and the *HIV & AIDS and STI National Strategic Plan (NSP) 2007 - 2011*,²²², among others. While these documents may make reference to domestic violence, they do not set out in any detail how health workers are expected to respond to either actual or suspected domestic violence – to the extent that health workers are not even required to ask about, or record, the source of women's assault-related injuries.²²³ It is also clear from the DoH's response to questions from the WYCPD PD that they subsume their response to domestic violence within health care services generally; there is no specialised response.²²⁴ To remedy this, the WYCPD PC recommended that a legislative amendment be made to the DVA to specify the role of the health sector and the DoH in providing health care services to victims of domestic violence.²²⁵

The PC also provided further direction around possible interventions by the health sector. Some of these recommendations were²²⁶:

220 DoH, 2000a.

221 DoH, 2000b.

222 South African National AIDS Council, 2007.

223 Vetten et al, 2009b.

224 PMG, 4 November 2009.

225 Parliament of the Republic of South Africa 25 October 2010: 3073.

226 Parliament of the Republic of South Africa 25 October 2010: 3077-3078.

6. The Work of Supporting Departments

- the development of a comprehensive health sector policy addressing domestic violence. Parliament would be required to oversee the development and implementation of this policy;
- reviewing existing health services and programmes, as well as staff skills, so as to determine where skills and resources should be allocated to improve the health sector's response to domestic violence;
- the expansion of the services of the TCCs to survivors of domestic violence;
- tightening cooperation between the police and medico-legal services to ensure better management and investigation of women's reported complaints of domestic violence; and
- creating a systemised screening framework for detecting the presence of domestic violence in women's lives (as well as children's), to be put in place by the departments of Health, Education and the Police.

The Sexual Offences Act (SOA)

Unlike the DSD, the DoH plays an important role in the implementation of the SOA, chiefly in relation to the provision of medico-legal services. These obligations include:

- developing and publishing directives in the Gazette guiding both the administration of PEP to victims, as well as the carrying-out of compulsory HIV testing of rape accused. The directives also needed to address the reporting of sexual offences at health facilities and health workers' assistance with the investigation and prosecution of sexual offences.²²⁷ These directives were to be gazetted within six months of the sections dealing with PEP and HIV testing coming into effect;²²⁸
- designating public health establishments to provide PEP and conduct compulsory HIV testing within two months of the implementation of the applicable sections of the SOA;²²⁹
- submitting to the Registrar of the NRSO the names of all those found unfit to stand trial and directed instead to be detained at a psychiatric hospital, prison or other institution in terms of s77(6) or 78(6) of the 1977 Criminal Procedure Act. This must be done within three months of the chapter dealing with the NRSO coming into effect;²³⁰

227 SOA section 66(3)(a).

228 SOA section 66(4)(a).

229 SOA section 29(1) and (2).

230 SOA section 50(7)(a).

Monitoring in 2010 brought another issue to the fore. The four health facilities monitored in Gauteng provided PEP while not also undertaking compulsory HIV testing of rape accused. Of the six hospitals monitored in the Western Cape, however, three performed compulsory testing in addition to providing PEP to rape victims. The provision of both services at the same facility is not ideal for victims. Knowing that an alleged rapist (even if unconnected to their particular case) is on the same premises cannot be good for rape survivors' sense of safety or peace of mind.

- developing training courses on the SOA,²³¹ to be tabled in Parliament within six months of the Act's promulgation.²³² Within a year of the SOA's promulgation a report on the training must be submitted to parliament and every year thereafter;²³³
- submitting to Parliament, on an annual basis, reports detailing the DoH's implementation of the SOA;²³⁴ and
- participating in the ISC and contributing to the development of the NPF.

The DoH has not adequately complied with most of these obligations. While the *Directives and Instructions on Conducting a Forensic Examination on Survivors of Sexual Offence Cases* have been published,²³⁵ this was only accomplished after the legislated deadline expired. The DoH has also not published in the Gazette the names of those facilities designated to provide PEP and conduct compulsory HIV testing. Instead, the SAPS "designated" such facilities. *Annexure A: Public Health Establishments Providing PEP Treatment* was published on 15 August 2008 by the SAPS and the Department of Safety and Security (now Police) to ensure that police officers were able to meet their obligation to supply victims of sexual offences with a list of hospitals providing PEP.²³⁶ Monitoring in 2008 found that

231 SOA section 66(3)(b).

232 SOA section 66 (5)(a).

233 SOA section 66(5)(b).

234 SOA section 65(3).

235 Government Gazette No. 31957, 6 March 2009.

236 Government Gazette No. 31330, 15 August 2008: 23.

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some of the health facilities listed by the police did not actually provide PEP.²³⁷ The police cannot really be criticised for this as the designation of health facilities is not their responsibility. According to the DoJ&CD's 2009/10 Annual Report, the DoH had identified 164 clinical forensic facilities to provide PEP and other medical treatment to victims of sexual offences. This number is insufficient nationally.²³⁸

Monitoring in 2010 brought another issue to the fore. The four health facilities monitored in Gauteng provided PEP while not also undertaking compulsory HIV testing of rape accused. Of the six hospitals monitored in the Western Cape, however, three performed compulsory testing in addition to providing PEP to rape victims.²³⁹ The provision of both services at the same facility is not ideal for victims. Knowing that an alleged rapist (even if unconnected to their particular case) is on the same premises cannot be good for rape survivors' sense of safety or peace of mind.

The DoH does appear to be participating in the ISC and is presumably contributing to the development of the NPF. Because many of the names the DoH will be submitting to the Registrar relate to historical convictions, they have probably not met this obligation, that section of the NRSO having gone on hold.

Training to support implementation of the DoH's legislative mandate

Information about the extent to which the DoH had complied with its mandate to provide training could not be found in the department's annual reports. PAIA applications were then sent to the national office of the DoH. When these were not attended to, provincial departments of health were contacted instead. Because only the Free State, Western Cape and Gauteng provinces responded, it is unknown whether or not training in the remaining six provinces has taken place. Table 9 below shows the unevenness of provincial fulfilment of the legislative mandate, with only Gauteng having provided specialised training to health workers every year since 2007. Free State and Western Cape appear to have only begun training their officials in 2010.

237 TLAC and RAPCAN, 2008.

238 DoJ&CD 2010a: 92.

239 TLAC and Rape Crisis Cape Town Trust, 2011.

Table 9: Training courses around sexual offences implemented in three provinces

Province	Course	Implementation	Duration	Accreditation	Target Group	Numbers trained
Gauteng	Sexual Assault Care Practice	2007-2010	10 days	Continuing Professional Development	Doctors; Professional Nurses and health administrators who are trained as nurses and doctors	183
Free State	Caring for Victims of Sexual Assault	August-September 2010	10 days	Tender awarded to Medical Research Council	Initially all doctors and nurses working in casualty and paediatric wards	56
Western Cape	Introduction to the SOA; Legal Framework on PEP; Compulsory HIV testing; completing the J88 and giving expert evidence in Court.	October 2010 (there is no record of previous training according to the Department)	1 day	Continuing Professional Development by UCT	Health Professionals and Health Administrators	53

There are also three different training courses in existence, with each obviously containing different content. Finally, where the Gauteng and Free State courses last 10 days, that for the Western Cape is a day in length. This must result in differing depths of knowledge and differing levels of treatment of rape survivors across the three provinces.

No reports on the training have been submitted to Parliament as required.

DEPARTMENT OF CORRECTIONAL SERVICES

The DCS's mandate is solely in terms of the SOA, which has placed four different obligations on the department. These include:

- submitting to the Registrar of the NRSO the names of all those who are currently serving, or have served, a sentence of imprisonment for a sexual offence committed against a child or a person who is mentally disabled. This must be done within three months of the chapter dealing with the NRSO

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having come into effect;²⁴⁰

- participating in the ISC established by the DoJ&CD;²⁴¹
- contributing to the development of the NPF;²⁴² and
- submitting reports annually to Parliament regarding the implementation of their mandate.²⁴³ As noted previously, it is however the Minister of Justice and Constitutional Development's responsibility to submit such a report after consultation with the Minister of Correctional Services.

The DCS would appear to be participating in the ISC and so may have contributed to the development of the NPF (such as it is). However, no implementation report for the DCS has been tabled and nor does the DCS appear to have submitted names to the Registrar either.

Conclusions

This chapter makes clear the low value placed by legislators on mental health, as well as the need to moderate the influence of CJS officials in writing law. Indeed, given how little the CJS ultimately offers women, it must be asked whether such a central role is warranted, especially when it comes at the expense of victims' other equally important needs. For this reason it will be important to monitor the adoption by the DSD and DoH of the WYCPD PC's recommendations. Other policy applicable to the DCS, such as informing and involving rape survivors in parole processes, also needs to be reported on.

240 SOA section 50(5)(a).

241 SOA section 63(2)(c).

242 SOA section 62(1).

243 SOA section 65(3).

IT [PARLIAMENT] IS THE ONE INSTITUTION CENTRAL TO REVERSING THIS DISMAL STATE OF AFFAIRS AND HAS A DUTY TO DO SO, ESPECIALLY IN ENSURING THAT THESE LAWS DO NOT REMAIN AT THE LEVEL OF PAPER BUT FULFIL THE CONSTITUTIONAL MANDATE OF EQUITY BETWEEN SOUTH AFRICANS, WHATEVER THEIR SEX OR GENDER.



7. RECOMMENDATIONS

This report shows implementation of the DVA to have stagnated and the SOA to be largely stillborn, with officials neither routinely expected to justify or explain their (in)action, nor consequences following from their non-implementation of legislation. These failures occur at multiple levels and across a range of dimensions:

THE ADMINISTRATIVE – manifested in absent or highly inappropriate performance indicators that encourage perverse incentives, or make it impossible to hold under-performing departments and their officials to account. The interpretations that departments offer of their statistical data are also open to debate.

THE FISCAL – illustrated by the absence of budgets to effectively implement the DVA and SOA. Whatever shortcomings were introduced into the DVA in the early years of its implementation by the absence of a budget have now been institutionalised and entrenched. The SOA seems destined to meet a similar fate.

THE LEGAL – evident in the police's reluctance to exercise their legal powers, or comply with their mandates; the courts' unwillingness to make specialised services available to women, coupled with the parsimonious provision of "protection;" and departments' failures to comply with the letter of the law.

THE POLITICAL – while departments' efforts to meet their legislative mandate are mediocre, weak parliamentary oversight has only allowed such ineffectiveness to continue. Indeed, this report has shown that legislating oversight is not a sufficient condition for its practice.

Parliament is the national legislative authority tasked with oversight over the executive and the key democratic body endeavouring to embody the representation of all South Africans, including women. It is the one institution central to reversing this dismal state of affairs and has a duty to do so, especially in ensuring that these laws do not remain at the level of paper but fulfil the Constitutional mandate of equity between South Africans, whatever their sex or gender. Set out below are recommendations aimed at assisting Parliament to do so.

Ensuring departments comply with their legislative mandate

Budgets reflect a government's policy priorities and are a useful barometer of the extent to which political commitments are translated into fiscal commitments. In 2009 the Money Bills Amendment Procedure and Related Matters Act (no 9 of 2009) ("Money Bills Act") came into effect, allowing PCs to critically engage with those fiscal commitments. The Money Bills Act allows PCs to reject departments' budgets, as well as hold public hearings around those budgets. It is recommended that:

- PCs enquire into the extent of departments' budgeting towards these two acts; and
- Ask that departments report, as a matter of course, on the full extent and use of donor funding to augment their activities.

The Money Bills Act also requires PCs to play a strong role in assessing departments' ENE, strategic priorities, measurable objectives, strategic plans and annual reports. Each of these assessments is an opportunity to strengthen implementation of the SOA and DVA. Practically, this requires PCs to create detailed lists of all departmental obligations demanded by law (perhaps along the lines of the table provided in the Executive Summary) and to examine departments' strategic priorities, plans, annual reports and Budget Votes against these obligations. Further, PCs need to schedule meetings with departments when their legislated commitments fall due.

In addition, PCs should:

- ensure that legislated commitments form part of departments' performance indicators. Generally, PCs also need to be far more critical of the interpretations offered by departments of their particular statistics and may wish to consider obtaining separate, external analyses of this information.
- Follow up on their decisions. The WYCPD PC for example, issued a comprehensive and wide-ranging set of recommendations to departments around strengthening their implementation of the DVA. These need to be acted upon.
- Ensure that departments table their training courses, as per the SOA. In addition, parliamentarians should ask that these courses be accompanied by multi-year training plans detailing how many public servants are to be trained annually, as well as how competence is to be assessed on conclusion of the training. Given the inadequacies noted by a number of bodies of the SAPS' training around domestic violence, the Police PC should consider asking the police to submit a training plan in this regard too.
- Given that not one department has met all its obligations and, in many instances, has not done so for two years or more, it is not unreasonable for PCs to ask each department to appear before its respective PC detailing how they propose making good on their legislative mandate.
- Finally, PCs could invite a diversity of NGOs to comment on and engage with all of these processes, particularly where they have knowledge that could enhance PCs' ability to carry out their evaluative functions. (The WYCPD PC is a good example in this regard).

However, it is noted that particular aspects of how PCs function dilute parliamentarians' ability to exercise oversight. Firstly, the work load of some committees is an obstacle to the effective exercise of oversight. Table 10, based on minutes available from the PMG website, sets out by year the number of meetings conducted by each PC, showing the Police and Justice PCs to be two of the hardest-working committees. This is chiefly due to the amount of legislation needing to be deliberated, which limits the time available in which to engage both with departments and civil society organisations. Further, all committees had less time at their disposal in 2009 due to the national elections and the FIFA World Cup in 2010 (and will also have limited time in 2011 due to the local government elections).

Table 10: Number of National Assembly Portfolio Committee meetings per year, by committee

Committee	2008	2009	2010
Police	13	27	50
Justice	58	50	53
Health	24	14	25
Social Development	25	19	24
Women*		20	23

*This does not include the Select Committee in the National Council of Provinces. It is noted that they do hold joint sittings however.

Against the backdrop of this workload, attention to legislation promoting gender equality will inevitably be diverted by other matters – except when such legislation is made the specific focus of committees. It is therefore unsurprising that the WYCPD PC has devoted the most attention of any committee to domestic violence and sexual offences; this is their mandate. Where the WYCPD PC has had 10 meetings (including public hearings) about the DVA, the Justice PC has not called the DoJ&CD to account for its implementation of the DVA in a decade, while the Police PC has had two meetings dealing with the police's implementation of the DVA. On the other hand, the Justice PC is the only committee thus far to examine the implementation of the SOA, having had two meetings with the DoJ&CD in this regard. Two points can be drawn from this: the need for a committee mandated to pay attention to women's rights and gender equality; and the need for joint sittings to exercise oversight. At a minimum the DVA and SOA entail responsibilities for at least four government departments, all of which must be considered in tandem with one another.

The report ends, as it began, with this fitting reminder from the Constitutional Court:

“[c]ompliance with the Constitution requires not only that laws be enacted to give effect to the rights in the Constitution, but also requires that those laws be implemented. Failure to implement laws that protect constitutional rights is a violation of the Constitution.”²⁴⁴

²⁴⁴ *Director of Public Prosecutions, Transvaal v Minister for Justice and Constitutional Development and Others*, 2009 (4) SA 222 (CC) at 201.



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APPENDIX I:

COURSE	IMPLEMENTATION	DURATION	TARGET GROUP
3374 Criminal Law (Sexual Offences Related Matters)	2009-01-01	1 day	FCS Members; General detectives; CSC members; crime prevention members
3471 First Responder to Sexual Offences Learning Program, Train-the-trainer	2009-01-01	9 days	Provincial Trainers
3455 Sexual Offences Course for Investigating Officers	2009-01-01	10 days	General detectives
3438 First Responder to Sexual Offences Learning Program	2009-01-29	3 days	CSC members; Crime prevention members
Sexual Offences Course for Investigating Officers	2009-05-07	15 days	Provincial Trainers
2859 Family Violence, Child Protection and Sexual Offences Investigation Course (Revised)	2009-05-07	14 days	FCS Members; general detectives
Integrated approach to sexual offences investigation course, train-the-trainer	2010-08-16	5 days	Provincial trainers
TOTAL			

NATIONAL/ PROVINCIAL	2008/09 TRAINING		2009/10 TRAINING		PLANNED TRAINING 2010/11	
	COURSE	MEMBER	COURSE	MEMBER	COURSE	MEMBER
Provincial level	10	478	2	36	0	0
National Level	0	0	1	16	1	25
Provincial level	0	0	69	1302	48	1005
Provincial level	0	0	67	1363	54	1128
National level	0	0	2	35	1	25
National level	4	192	5	250	5	250
National level	0	0	0	0	1	20
	14	670	146	3002	110	2453

APPENDIX II:

Domestic Violence Statistics 2008/2009 DoJ&CD Annual Report

PROVINCE	NEW APPLICATIONS	ORDERS GRANTED	MADE FINAL	SET ASIDE	WITHDRAWN/ STRUCK OFF THE ROLL	WARRANT ISSUED FOR BREACH
Eastern Cape	29 071	19 623	9 915	1 272	8 453	1 202
Free State	12 522	10 053	6 014	2 028	4 124	1 270
Gauteng	32 341	31 158	12 498	5 837	18 168	2 216
KZN	36 578	29 747	14 613	9 194	12 767	2 311
Limpopo	14 961	11 061	7 550	1 532	4 101	948
Mpumalanga	10 841	8 834	4 093	1 082	4 131	965
North West	12 967	10 268	4 575	932	3 850	1 804
Northern Cape	6 223	4 743	1 924	897	2 330	539
Western Cape	67 415	51 646	28 432	5 210	27 406	6 141
TOTAL	222 919	177 133	89 614	27 984	85 330	17 396

Domestic Violence Statistics 2009/2010 DoJ&CD Annual Report

PROVINCE	NEW APPLICATIONS	ORDERS GRANTED	MADE FINAL	SET ASIDE	WITHDRAWN/ STRUCK OFF THE ROLL	WARRANT ISSUED FOR BREACH
Eastern Cape	34 852	17 346	10 655	1 573	6 729	1 523
Free State	15 297	8 440	5 152	2 302	2 053	1 431
Gauteng	39 965	29 435	15 269	6 622	10 708	2 511
KZN	43 592	28 870	14 409	11 762	9 032	2 954
Limpopo	15 874	11 783	8 110	2 101	2 092	635
Mpumalanga	14 354	10 096	5 294	2 116	3 105	1 123
North West	13 058	8 006	3 461	696	2 521	1 303
Northern Cape	7 924	4 426	1 989	705	2 102	282
Western Cape	40 316	22 757	12 839	3 277	11 024	3 186
TOTAL	225 232	141 159	77 178	31 154	49 366	14 948

THE RIGHT & THE REAL:

A Shadow Report Analysing Selected Government Departments' implementation of the 1998 Domestic Violence Act and the 2007 Sexual Offences Act.

The Tshwaranang Legal Advocacy Centre to End Violence Against Women is a non-profit organisation that promotes and defends the rights of women to be free from violence and to have access to appropriate and adequate services. It achieves its aims through research and policy, litigation and advocacy, training, and public awareness.

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