

# Implementing the DVA 1999 – 2009

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# Fatal and non-fatal outcomes of IPV

- **Fatal outcomes:** Intimate femicide (murder), suicide.
- Approximately half of all South African women murdered in 1999 killed by their intimate partners - prevalence rate of 8.8 per 100 000 of the female population aged 14 years and older - the highest rate reported in research internationally to date.
- Role in women's suicides in South Africa unknown.
- **Non-fatal mental health outcomes:** suicidal ideation and self-harm, alcohol and drug abuse, depression, anxiety disorders, eating disorders
- SA Trauma survey: amongst women rape has strongest association with PTSD but IPV associated with greatest number of PTSD cases amongst women at population level.

# Non-fatal outcomes

- Disability, disfigurement, headaches, backaches, physical injuries ranging from minor to severe. WHO Multi-country study (2005) - between 19% to 55% of women reported injuries.
- Women ever physically or sexually abused significantly more likely to describe their health as poor or very poor.
- In the month preceding the interview, abused women more likely to have difficulties carrying out daily activities and walking, as well as experiencing memory loss, dizziness, pain and vaginal discharge.
- Recent ill-health associated with lifetime experiences of violence - suggesting that cumulative abuse affects health most strongly, or that the physical effects of violence linger long after the actual incident of violence (WHO, 2005).
- SA: 35% - 60% of women injured in the year prior to the 3 province survey.

# Reproductive and sexual health

- Still birth/low birth weight, unwanted pregnancy, STI, pelvic inflammatory disease, premature labour, antepartum haemorrhage
- Women who had ever experienced physical or sexual violence, or both, significantly more likely to report induced abortions and miscarriages than women who had never experienced partner violence.
- 5% - 9% of women in 3 province survey physically abused during a pregnancy. 2004 ante-natal survey of women attending a Durban hospital - 35% experienced domestic violence during their current pregnancy.
- Women with violent or controlling male partners at increased risk of HIV infection
- Women living in violent relationships experience obstacles to accessing HIV testing and treatment and difficulties in complying with treatment regimes, leading to an increase in ill-health and, in severe cases, treatment failure.

# Law addressing DV

- Pre-1993: High Court interdicts and peace orders
- 1993: *Prevention of Family Violence Act* (also criminalised rape in marriage)
- 1998: *Domestic Violence Act (DVA)*
- 1999: DVA operationalised

# Policies and guidelines addressing domestic violence

- Policy Framework and Strategy for Shelters for Victims of Domestic Violence in South Africa (2003);
- SAPS National Instruction 7/1999 (version 2 issued on 3 March 2006)
- National Policy Standard for Municipal Police Services Regarding Domestic Violence gazetted in 2006.
- *Guidelines for the Implementation of the Domestic Violence Act for the Magistrates (2008);*

# Women's recourse to the police and courts: some figures

- 157 391 protection orders granted at 70% of courts nationally in 2004
- SAPS provided national figures specifically on crimes committed against women for the first time in their report for the period 1 April 2007 – 31 March 2008 (relationship to the perpetrator not specified).
- 182 588 violent crimes committed against women during this period:
  - 91 534 crimes of common assault
  - 62 368 crimes of grievous bodily harm
  - 2 606 acts of indecent assault (from April – December 2007).

# Tip of the iceberg: the example of Acornhoek, Mpumalanga

- Total of 942 episodes of abuse for the 18 month period under study collected from the courts, police and hospital in the area
- BUT:
- Only 63 women (6.7%) pressed charges and became official police statistics
- Only 3 women used all 3 services
- 12 women reported to the police and applied for protection orders
- 28 police dockets contained J88 forms but only 5 of these women were identified from the OPD register

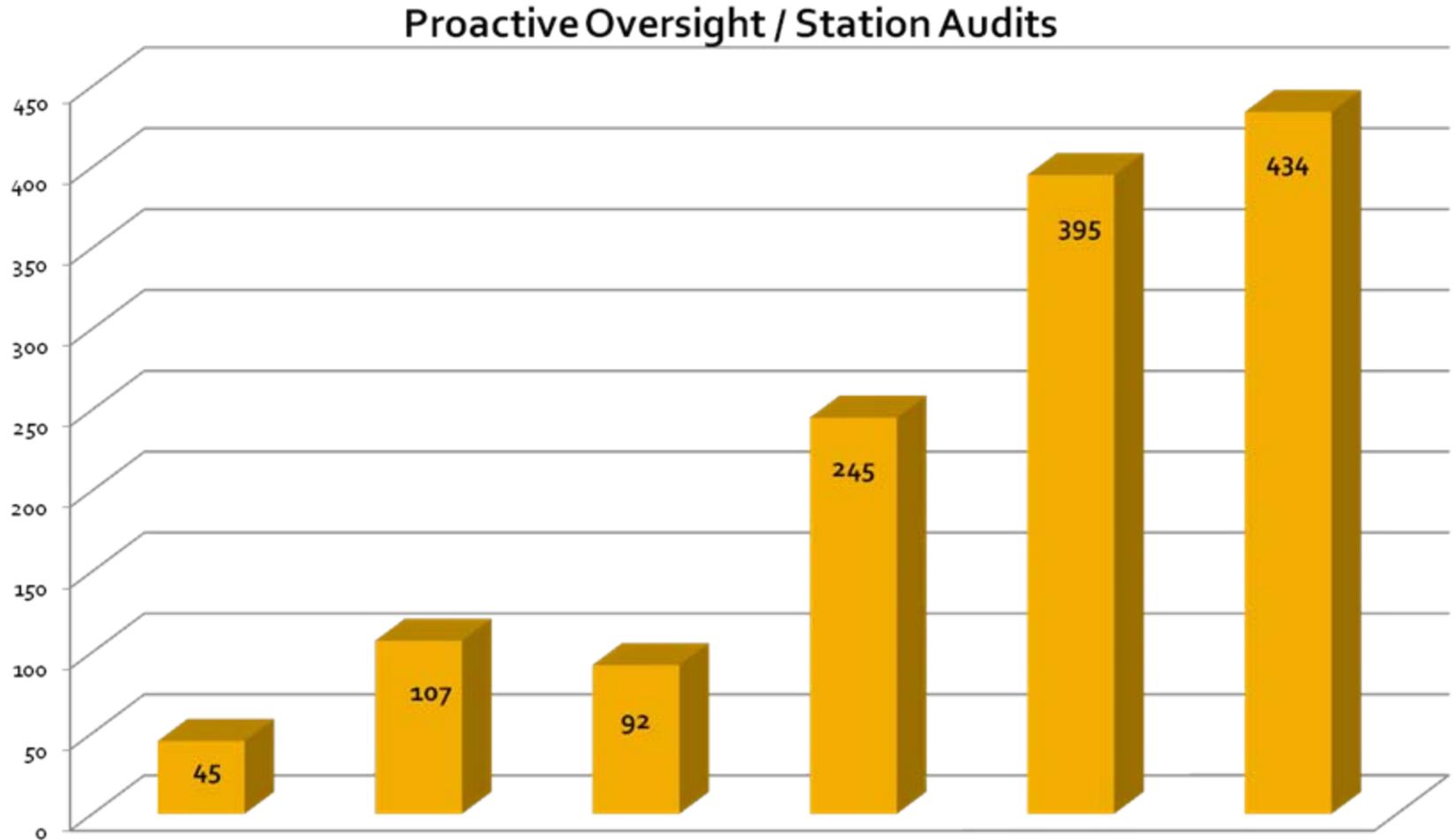
# The police: recordkeeping

- SAPS National Instruction on Domestic Violence section 7(4): police must keep record of their assistance to complainants in either the station's OB, or in individual police officers' pocket books.
- section 12: all reported domestic violence incidents must be recorded in the DV Register (SAPS 508 (b), not just those incidents for which criminal cases are opened.

# Research findings

- While some studies have interviewed police officers, only 1 has examined police records (Mpumalanga).
- Only 19 (15%) of 416 incidents of DV reported at the station recorded in the DV register. Six months' worth of entries missing from the DV register.
- Inadequate recordkeeping not unique to this station – found by the ICD and reported in Western Cape studies.
- Most extensive source of information around SAPS implementation of the DVA is the ICD.
- Note: Police only submitted first mandatory six-monthly report to parliament in 2006.

# Proactive Oversight (2003-2008)



# Proactive Oversight Compliance

Period	Compliance with DVA Implementation
Jan-Jun 06	2%
Jul – Dec 06	30%
Jan-Jun 07	57%
Jul – Dec 07	28%
Jan-Jun 08	14%
Jul-Dec 08	13%

# Responding to complaints

- Section 2 of the DVA the police are obliged to:
  - inform complainants of their right to apply for a protection order and/or lay a criminal charge;
  - assist her/him in finding alternative accommodation, shelter, counselling;
  - collect personal items from his/her residence and obtain medical treatment if necessary
  - serve notice on the abuser to appear in court and the final protection orders
  - arrest an abuser (without a warrant) who has breached a protection order or committed a crime
  - remove weapons from the abuser or from the home.

# OB resolutions (n=373)

- SAPS cannot find perpetrator 32.7%
  - No record of follow up 27.9%
  - SAPS warned perpetrator 14.5%
  - Victim did not want to pursue criminal charges 11.3%
  - Case opened 6.7%
  - SAPS asks family member of perpetrator to tell perpetrator to behave/fix problem 6.2%
  - Family/couple say they will resolve the matter 5.9%
  - SAPS advises victim to obtain a protection order 4.8%
  - SAPS cannot find victim 4%
  - SAPS asks family/families/couple to resolve the problem 1.9%
  - Other 11.5%
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- Generally a problem around arresting those who breach the Protection Order (note *White v Minister of Safety and Security*)

## Provinces and courts studied to date

Province	No. of courts and year of study
Western Cape	2 (2001), 3 (2001), 4 (2006) = 9 courts
Northern Cape	3 (2009) = 3 courts
Gauteng	1 (2006), 2 (2006) = 3 courts
Mpumalanga	3 (2009) = 3 courts
KwaZulu-Natal	4 (2007) = 4 courts
Eastern Cape	3 (2009) = 3 courts
North West	3 (2009) = 3 courts

- To date 14 studies on DVA.
- 9 published after 2004
- 7 studies have focused on the courts' implementation of the DVA

# Who uses the DVA?

- Women the great majority of PO applicants. Men make up between 13.5% (Northern Cape) - 29.5% (Bellville, Western Cape) of applicants.
- Applicants predominantly seek protection from intimate partners, rather than other family members. Ratio of intimate partner to family member applications varies across courts.
- More than two-thirds of women seek protection from their intimate male partners, in comparison to just over half of men.
- Unlike women, men as likely to seek protection from a family member as an intimate partner.

# The economics of domestic violence

- According to data from 9 courts in Eastern Cape, Northern Cape and North West:
- Women abused by their male partners very likely to be economically dependent on their partners
- Men seeking protection from intimate female partners are generally not economically dependent on those women.
- In complete contrast, those seeking protection from family members are abused by those who appear to be economically dependent upon them.

- Married women the greatest proportion of applicants.
- Applicants estranged or divorced from their former intimate partners ranges from 10.8% (Western Cape) - 36.9% (Mpumalanga).
- Women who co-habit with their partners may be under-utilising the DVA (ranging from 5.6% - 23.0% of applicants).
- Prior SA research indicated that women who co-habit are at greater risk of being killed by their partners than married women.

# Who is under-utilising the DVA?

- Younger children
- Same-sex couples
- People with disabilities (eg 4 out of 450 applications from Northern Cape, Eastern Cape and North West)

# Children and the DVA

- Adult child is the family member from whom applicants most likely to seek protection.
- Children almost never seek protection from a parent (2.6% - 4.7%).
- Reference to the abuse of others made in many applications, ranging from 48.8% (Mpumalanga) - 69.4% (Western Cape).
- Across all courts about two-thirds of these others are children.

# Court recordkeeping

- Inadequate and incomplete recordkeeping noted at almost all courts studied.
- Mpumalanga as an example:
- *Of the interim protection orders:* 4.6% were not authorised and 1.9% of orders were missing;
- *Of the returns of service:* 56.6% were missing from the files.
- *Of the final protection orders:* 26.6% were not authorised and 19.0% were missing. Effectively, 45.6% of final orders were not properly authorised;
- *Of the warrants of arrest:* 5.9% were unauthorised and copies of the warrants were missing from 19.4% of files

# Attrition of POs

	<b>Mpumalanga</b>	<b>Northern Cape</b>	<b>Eastern Cape</b>	<b>North West</b>
<b>Applications</b>	519 (100%)	150 (100%)	150 (100%)	150 (100%)
<b>IPOs granted</b>	94.6%	65.3%	65.3%	92.7%
<b>ROS served</b>	43.4%	27.3%	67.3%	44.7%
<b>POs finalised</b>	36.6%	35.3%	54.0%	40.0%

# Finalisation

- George: 11.9% (87.4% unknown)
- Mitchell's Plain: 35.8% (56.6% unknown)
- Cape Town: 37.6% (12.9% unknown)
- Bellville: 40.3% (23.5% unknown)
- Paarl: 54.6% (6.6% unknown)
- Temba: 66%
- Alberton: 79%

# Return of service

- Protection order does not come into effect until served. In terms of DVA may be served by police, sheriff, clerk, or others. If sheriff serves, cost of service must be carried by applicant. If she cannot afford fees, the court pays.
- No criteria for means testing in place at courts.
- In 1998 GAP warned that the DoJ budget allocated towards sheriff's fees was too little.
- Some examples of costs:
  - Alberton court (urban) R53.19
  - Two rural sites R155.19
- At a few sites sheriffs serve but most often service effected by police.
- Sheriffs may be faster than police in serving orders. In only study to compare:
  - Police served half of POs in 6 days and three-quarters within 15 days.
  - Sheriff served half in 4.5 days and three-quarters in 10 days

# The police and service of the protection order

- Police experience a shortage of vehicles;
- Some areas very large;
- Some respondents untraceable;
- Locating respondents time-consuming so serving of notices sometimes delayed in favour of more 'pressing' police matters;
- On-duty police members who received notices left them on the desk and entrusted service to those members on the next shift. However, these members often unwilling to serve the orders because the orders were not originally received by them. The orders were then often served after the return date.

- Women sometimes expected to serve order. Also sometimes expected to take order to police and negotiate service
- Applicants not always receiving warrants of arrest when the IPOs granted, although the reason for this was not clear. Most applicants only received warrants of arrest when the final protection order was granted. A minority of clerks also never made copies of the warrants of arrest. (DVA three province study)
- Interviews in 2006 with 884 women in the Western Cape who had applied for an interim PO, found 70.4% did not receive an interim warrant of arrest, while a further 7.11% were unsure as to whether or not they had received an interim warrant of arrest.

# What affects finalisation?

- Both parties attending court
- **The choice of court**
- **The type of relationship**
- **Successfully serving the notice of the interim protection order**

# Costing research

- No budget specific to the DVA – passed at a time when legislation was not costed beforehand.
- 2000 briefing on the budget to the portfolio committee, representatives of the Department of Justice and Constitutional Development stated that the implementation of new legislation such as the DVA had placed “severe pressure” on its offices and 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.”

# The price of protection study

- One application costs **245.03** (between DoJ and SAPS).
- At least **R38 565 517** spent on protection orders by the state in 2004 (based on 157 391 made that year).

# Some comparisons

- 2000 SAPS budget vote: R35 million, R51 million and R36 million respectively for the following three years, in addition to existing allocations, in preparation for the implementation of firearms legislation due in parliament before the end of 2000 (National Expenditure Survey 2000: 185).
- In his 2004 budget vote address, the Minister of Safety and Security committed R63.2 million to the firearms control project (covering expenditure on 458 vehicles, 1 153 desktops, 728 scanners and 573 printers, amongst other things).
- Justice allocated R23 million towards security at the courts in 2002, allowing the department to secure the houses of 32 judges in the Western Cape. Cash in transit services from private security companies was provided to 184 offices at a cost of R8 million. A further R9 million was spent on the installation of security fencing and lighting. In 2003, R45 million was allocated for security services, which then-Minister Maduna described as still insufficient.

# Consequences of under-resourcing

- Protection orders only come into effect once served on the respondent - any delay may jeopardise the applicant's safety.
- Too few **trained** staff – some courts consequently only consider applications for POs once a week.
- At some courts no privacy – applications done in general civil section for all to hear
- Shabby working conditions and forced under-staffing have a discouraging effect on court staff morale - may translate into impatient, dismissive and brusque treatment of women seeking court orders.
- Understaffing may encourage personnel to find ways of reducing the amount of time spent on cases - applicant receiving inadequate protection, her application being delayed or not being approved.
- Under-resourcing shifts additional costs onto women applying for protection orders.
- Few services – few referrals for further help

# Does the DVA work?

- Yes and no - sometimes worsens abuse and sometimes prevents abuse.
- Just the act of applying for the DVA can sometimes be beneficial by increasing women's sense of agency and control over their lives.
- Women face risks obtaining POs. Not only do abusive partners respond badly to POs, but so do family members who are also implicated in pressurising women to discontinue the PO process.
- Courts should not be frustrating women's efforts to obtain protection.

# Some concluding thoughts

- Statistics, facts and figures can never capture the full extent of the human suffering and misery imposed by domestic violence. But they do help us identify where the problems (and answers) lie.
- The absence of criteria for means testing was noted in 2001 – still absent in 2009.
- Absence of budget for DVA noted in parliamentary debate in 1998 – budget still largely non-existent in 2009.
- Shortage of trained staff noted in 2000 – still the case in 2009.
- Police non-compliance with the DVA noted by the ICD in 2000 – still noting non-compliance in 2008.
- 5 pilot family courts established in 1996 – still 5 pilot family courts in 2009

# Where to?

- Need for public hearings to coincide with ten years of the DVA's implementation – must have a plan to go forward – a national strategy for tackling domestic violence.
- This includes addressing under-resourcing, under-prioritisation, under-training, non-compliance.
- In the same way the DVA places obligations on the police, obligations must be placed on Health and Social Development to respond to DV.
- Links need to be created between housing and domestic violence.
- Norms and standards for the provision of legal, health and social services in this area must be identified.
- The status of family law within the legal system must be elevated – currently the neglected step-child.