SUBMISSION TO THE PORTFOLIO COMMITTEE & SELECT COMMITTEE ON WOMEN, YOUTH, CHILDREN AND PEOPLE WITH DISABILITIES:
IMPLEMENTATION OF THE DOMESTIC VIOLENCE ACT, NO. 116 OF 1998

Prepared by Tshwaranang Legal Advocacy Centre to End Violence Against Women, Alexandra Justice Centre, Centre for the Study of Violence and Reconciliation (CSVR), Justice and Women (JAW), Lethabong Legal Advice Centre, Lifeline Stop Gender-based Violence Helpline, Lungelo Women’s Organisation, Nisaa Institute for Women’s Development and Thohoyandou Victim Empowerment Programme (TVEP)
1. INTRODUCTION

This submission is put forward by a coalition of organisations which provides counselling, shelter and para-legal services to women who have experienced abuse, in addition to undertaking research and advocacy around domestic violence. The various organisations are located in Gauteng, North West province, Limpopo, KwaZulu-Natal and Mpumalanga. Our submission is based on a workshop on the implementation of the Domestic Violence Act (DVA) held in Braamfontein, Gauteng on the 12th of October 2009, as well as research conducted by some of our members. Organisations involved include:

- Tshwaranang Legal Advocacy Centre to End Violence Against Women,
- Alexandra Justice Centre,
- Centre for the Study of Violence and Reconciliation (CSVR),
- Justice and Women (JAW),
- Lethabong Legal Advice Centre,
- Lifeline Stop Gender-based Violence Helpline,
- Lungelo Women’s Organisation,
- Nisaa Institute for Women’s Development and
- Thohoyandou Victim Empowerment Programme (TVEP)

This coalition of organisations welcomes the opportunity to make submissions to the Portfolio Committee on the implementation of the Domestic Violence Act 116 of 1998 (DVA, or ‘the Act’). In line with the Portfolio Committee on Women, Youth, Children and People with Disabilities’ (PCWYCPD) objective of improving the implementation of the Act, this submission will first briefly outline each Department’s obligations in terms of the DVA and documentation issued in support of the legislation; and then identify key challenges faced in implementing the legislation and associated policies. We conclude by making recommendations to Parliament and the Executive around strengthening government and civil society responses to domestic violence in South Africa.

2. IMPLEMENTATION OF THE DOMESTIC VIOLENCE ACT

The DVA came into effect in December 1999 and has been in operation for almost a decade. It is widely regarded as one of the more progressive examples of such
legislation internationally.\textsuperscript{1} It would also appear to be widely used: in 2004 at least 157,391 protection orders were sought from the courts. The total is likely to be much higher as this figure only applies to the 70% of courts nationally which submitted information.\textsuperscript{2}

The implementation of the DVA is also supported by regulations (no R.13311) issued by the Department of Justice and Constitutional Development (DoJ&CD) in 1999, as well as \textit{Guidelines for the Implementation of the Domestic Violence Act for the Magistrates} (launched by the DoJ&CD in 2008). The police issued National Instruction 7/1999 (version 2 issued on 3 March 2006) to outline the police's obligations in relation to the DVA. In March 2006 the \textit{National Policy Standard for Municipal Police Services Regarding Domestic Violence} was also gazetted. In terms of section 18(2) of the Act, the National Prosecuting Authority (NPA) has issued directives to prosecutors setting out how they should deal with domestic violence matters.

In 2003 the Department of Social Development (DSD) released their \textit{Policy Framework and Strategy for Shelters for Victims of Domestic Violence in South Africa}. In February 2009 the Department held a workshop to discuss draft guidelines around services to victims of domestic violence. According to the PCWYCPD's minutes of 16 September 2009, these are not yet finalized however.\textsuperscript{3}

\textbf{2a. The SAPS}

The DVA and associated National Instructions place a number of obligations on the police, including assisting the victim of an incident of domestic violence to find suitable shelter, obtain medical treatment and collect personal items from her/his residence. Police officers are further obligated to serve notice on the abuser to appear in court; serve protection orders; arrest an abuser who has breached a protection order, or committed a crime (even without a warrant); and remove weapons from the abuser, or from the home.

The SAPS National Instruction 7/1999 provides clear direction to police officers on how to respond to a complaint of domestic violence in order to comply with the obligations imposed by the DVA.

- The station commissioner is expected to ensure the station is provided with an updated list of organisations willing and able to provide counselling and support


\textsuperscript{3} Available at \url{http://www.pmg.org.za/print/18394}
services and also to have the legislation and other supporting documents readily available

- When assisting a complainant, the police officer is expected to open a docket and have it registered for investigation. Even if the complainant has been referred to counselling or conciliation services, they are still expected to assist the complainant in laying a criminal charge. All assistance must be recorded in the Occurrence Book (OB) or the individual police officer’s pocket book.

- In assisting the applicant to find suitable shelter, the police officer must at least provide her (or him) with names and details of a suitable shelter and relevant support and/or counselling services. If possible, they are to contact such an organisation on behalf of the complainant and assist in arranging transport to the service. Any assistance rendered must be recorded in the OB or pocket book.

- If a complainant requires medical treatment the police officer is expected to arrange such medical treatment, including transport to such a facility. This too should be recorded in the OB or pocket book.

- The officer must inform the complainant of the remedies available to her/him and make it clear that laying a criminal charge is not a prerequisite for a protection order. S/He must give a copy of the Notice to the complainant and explain and ensure understanding of its contents. Thereafter this must be recorded in the OB or pocket book.

- The officer is to request that the complainant signs the OB or pocket book as an acknowledgement that the right and remedies available to the complainant were understood.

- Where a protection order is breached the officer may arrest the respondent if there is reason to suspect that the complainant is in imminent danger. If not, a notice to appear in court must be handed to the respondent and a copy of the notice placed in a docket opened for the contravention of the protection order.

- An officer is to serve an interim or final protection order at the request of the court and this should be done without delay.

- An officer is expected, if requested, to accompany a complainant to collect his/her personal property and ensure the safety of the complainant.

- All domestic violence incidents must be recorded in a Domestic Violence register and the station commissioner is expected to ensure that an accurate record is kept. Once recorded, a docket must then be opened and registered.

- An officer is expected to keep a file of all protection orders and warrants of arrest received and make it readily available at all times.

- The station commissioner is expected to report on incidents of domestic violence to the area commander on the third day of each month.

**2a.i) Police record keeping**

In organisations’ experience, which is supported both by research and monitoring by the Independent Complaints Directorate (ICD), the police do not always maintain their
records as mandated. For example, in a study conducted in Mpumalanga, it was found that only 5% of domestic violence incidents reported at the station were recorded in the Register. Six months worth of entries was also missing from the Register.

The Auditor-General’s report to parliament in March 2009 also comments on the police’s failure to maintain their records in accordance with their statutory obligations.  

2a.ii) Responding to complaints
While the National Instructions clearly explain how officers are expected to attend to domestic violence cases, organisations note that police officers often display a lack of knowledge regarding the procedures to be followed. In some instances this includes mediating the situation, rather than arresting the abuser as required by law. Indeed, according to the ICD’s six monthly report submitted to parliament in June 2008, failure to assist complainants, or advise them of their options, are some of the most common reasons for complaints being lodged against the police.

This lack of procedural knowledge was also noted in a study on the implementation of the Act in Mpumalanga. The police suggested legal remedies in just over one in four matters (22.8%) recorded in the OB; more frequently, they reported being unable to find the perpetrator and took matters no further (32.7% of cases). In a further 14% of cases the parties and their families were left to settle matters amongst themselves, either at the police’s suggestion or their own. In those 11.3% of cases where the victim did not wish to pursue criminal charges, the complaint appears to have been left at that and no further options explored. In more than one in five cases (27.9%), no information regarding the police’s intervention was recorded. In only 4.8% of cases recorded, did police officers note that they had informed the victim of the option of obtaining a protection order.

In another Western Cape study, women interviewed in Paarl and Bellville described their contact with the police as being “fraught with frustration” and characterised by inadequate assistance, general apathy and, on a few occasions, racist attitudes.

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7 See note 4.
2a.iii) Serving protection orders

Neither interim nor final protection orders come into effect until notice of the order has been served on the respondent. In terms of the DVA, these documents may be served by police members, sheriffs or clerks of the court. When the sheriff serves the order, applicants are expected to bear these costs. If a means test indicates that the applicant cannot afford the sheriff’s fee, the state must bear the costs of service. In practice it would seem there is little consistency around the criteria applied in conducting such tests. Thus at some courts, impoverished women will receive state aid while at others they will not benefit from this provision in the Act. Instead, it would appear that most courts rely on the police to serve the orders.

Studies suggest that the service process is a real obstacle to women’s access to the DVA’s protection. At some courts, clerks instruct applicants to take the orders to the police stations and organise service with the police members themselves – if they do not expect the applicant to serve the order herself. At a minimum this is likely to inconvenience applicants. The police station responsible for service may not be in the immediate vicinity of the court, requiring applicants to make a further trip at additional cost and, once at the station, to negotiate with the police around service. If the clerks experience difficulties in getting the police to serve orders, then it is very likely applicants do too.

Reasons for the police’s failure to serve notice of the protection order include a shortage of vehicles, which particularly hampers service in rural areas where the geographical distances between police stations and villages may be great; untraceable respondents; and incorrect or incomplete addresses for respondents. Because locating respondents can be time-consuming, police members who received notices have been known to leave service to the next shift. However, the police members on the next shift were often unwilling to serve the orders because the orders were not originally received by them. Thus, the serving of notices is sometimes delayed in favour of more ‘pressing’ police matters unless the order was urgent.

All these reasons may explain why many protection orders are not successfully served. For example, in one study of 450 applications made at nine courts less than half (46.4%) protection orders had been successfully served; in another study 50.2% appeared to

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12 See note 2.

13 See note 11.
have been served. Western Cape studies also find problems with the service of the protection order and notice to appear in court.

2a.iv) Arrest of respondents
The most common problem that Tshwaranang’s clients experience in relation to the DVA is the police’s failure to arrest the respondent for breaching the protection order. Their failure to act has serious repercussions. In The Minister of Safety and Security and Others v WH the court ruled in favour of the respondent who sued the police for damages when they failed to effect a warrant of arrest in terms of the protection order. Their inaction resulted in Mrs White being raped by her husband.

2a.v) Police compliance with their obligations
Section 18(5)(d) of the Act requires the National Commissioner of the SAPS to submit reports to parliament every six months outlining complaints and disciplinary proceedings instituted against members who fail to comply with the Act, as well as any steps they have taken to implement recommendations made by the ICD. Notably, the first such six-monthly report was only submitted to Parliament by the police in 2006. While they have been regularly submitted since, the ICD six-monthly reports to Parliament continue to highlight numerous inadequacies on the police’s part.

Figure 1, taken from an ICD report, sets out, for the period 2003 – 2008, the number of stations visited annually by the ICD during this five year period.

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14 See note 4
16 2009 (4) SA 213 (E)
17 Mariaan Geerdts, seminar presentation 5 August 2009, ‘Monitoring the implementation of the DVA.’
Figure 1: Number of stations audited annually by the ICD for compliance with the DVA between 2003 – 2005

Table 1 sets out the percentage of stations visited who fully complied with their obligations in terms of the Act and national Instructions. It is striking how few stations totally comply with their obligations.

Table 1: Percentage of stations visited who were fully compliant with their statutory obligations

<table>
<thead>
<tr>
<th>Period</th>
<th>Compliance with the DVA</th>
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</thead>
<tbody>
<tr>
<td>Jan – June 2006</td>
<td>2%</td>
</tr>
<tr>
<td>Jul – Dec 2006</td>
<td>30%</td>
</tr>
<tr>
<td>Jan – June 2007</td>
<td>57%</td>
</tr>
<tr>
<td>Jul – Dec 2007</td>
<td>28%</td>
</tr>
<tr>
<td>Jan – June 2008</td>
<td>14%</td>
</tr>
<tr>
<td>Jul – Dec 2008</td>
<td>13%</td>
</tr>
</tbody>
</table>

The ICD is empowered by the DVA to investigate all cases of misconduct and make recommendations regarding the disciplinary proceedings to be followed. The SAPS is therefore obliged to report all misconduct cases to the ICD who will either exempt the member from disciplinary action, or investigate; or ask the SAPS to investigate, with the purpose of holding a disciplinary hearing. The ICD is mandated to submit a report to Parliament every six months including recommendations made in such matters. The
powers of the ICD do not extend beyond making recommendations however, leading the organization to state that their power to hold the police to account is limited.\textsuperscript{18}

In a briefing to the Police Committee in June 2008, the ICD said their powers had been stripped further with the removal of the regulation stating that the station commissioner should give reasons for rejecting ICD recommendations. The Committee noted that the ICD had been rendered a “toothless bulldog” by the SAPS’ unwillingness to inform the ICD of cases of non-compliance. When such cases were reported, the SAPS was said to either ignore the ICD recommendations, or take long periods to discipline their members. To remedy this, the Committee suggested that the ICD develop legislation to strengthen its powers in relation to ensuring police compliance with the DVA.\textsuperscript{19}

\textbf{2a.vi) Training of the police around the DVA}

Some of the problems identified by our organisations and research could be addressed through effective training programmes for the police. Since 2007 the SAPS has also regularly identified inadequate training as a major challenge to implementing the DVA. The ICD too notes a lack of training as one of the reason why the police fail to comply with the DVA.

During a briefing to the Police Portfolio Committee in October 2007 the National Commissioner of the SAPS reported that since the passing of the DVA, 1 771 commanders and trainers across the country had been trained and were, in turn, expected to train the remaining members. During the reporting period 5 002 new recruits were trained on the DVA as part of their basic training, 4 628 members received in-service training and 70\% of members in the Family Violence, Child Protection and Sexual Offences (FCS) Unit received training. Nonetheless, they stated that still more training was needed, especially around gender sensitivity.\textsuperscript{20} (It should be noted that the police employ some 180 000 people.)

In August 2008 the SAPS National Commissioner told the Committee yet again that the SAPS were still challenged by a lack of adequate training – particularly specialized training on responding to domestic violence incidents and gender sensitivity training. The Committee went on to question the SAPS around the kind of training they were receiving as it did not seem to be having a noticeable effect.\textsuperscript{21}

\textsuperscript{18} Available at \url{http://www.pmg.org.za/report/20080618-domestic-violence-act-report-july-december-2007-independent-complaint}
\textsuperscript{19} Ibid.
\textsuperscript{20} Available at \url{http://www.pmg.org.za/minutes/20071030-domestic-violence-report-saps-annual-report-20067-national-commissioner}
\textsuperscript{21} Available at \url{http://www.pmg.org.za/report/20080827-domestic-violence-act-departments-implementation-report}
This need for more training was reiterated yet again in an ICD briefing to the Police Committee in June 2008.\textsuperscript{22} In this meeting, Committee members highlighted a discrepancy in reports made and visits conducted to stations and the continued training reports by the SAPS. The ICD also reported training the SAPS on the DVA. However, it would appear that the ICD’s training and the police’s training differ in important ways from one another, which has the potential to confuse police officers.

In March 2009 questions around the police’s training of their members around the DVA emerged in the Auditor-General’s report to Parliament.\textsuperscript{23} This report examined police officers from five stations’ attendance at a variety of training programmes, one of which was domestic violence. Their analysis suggests that only 10.7% of a possible 1 268 police officers attended the training on domestic violence. Worse, only 1.2% of the same number attended training around the victim empowerment programme.

\textbf{2b. The Courts}

\textit{2b.i) Court working hours and facilities}

The DVA places a duty on the court to avail itself any time of the day and week for a complainant to apply for a protection order. However, not all courts adhere to this provision, some only assisting applicants for a few hours every day, or selected days of the week. Some courts also do not provide privacy to applicants, with applications completed in the general civil section for all present to hear.\textsuperscript{24}

\textit{2b.ii) Record keeping}

The clerk of court receives applications and affidavits for the purposes of a protection order application and then submits such an application to the court. When protection orders are granted the courts must authorise warrants of arrest and make available a replacement of the warrant at the complainant’s request if expired or lost. Lastly, the court is expected to keep a file containing all court processes, affidavits and evidence taken to effect the application of a protection order.

A protection order file can contain up to 13 forms. These are important for showing that the correct procedure was followed and that the granting of the protection order was therefore lawful. Complete records are also necessary for prosecution purposes, appeals, as well as applications for further warrants of arrest. They may also be utilized in other court proceedings such as divorce and custody matters. Despite their importance, files kept by the clerk of court on domestic violence incidents are often inadequate and incomplete.

\textsuperscript{22} See note 18.
\textsuperscript{23} See note 5.
\textsuperscript{24} See note 11.
In a study on the Implementation of the Act undertaken at nine courts, the following was found:

- **Interim protection orders** – These were in the files 78.9% of the time. There were no interim protection orders in more than a tenth (12.9%) of the files. Magistrates did not authorise 5.6% of the interim protection orders granted.

- **Return of service** – This form provides evidence that the interim protection orders has been served on the respondent, as well as the notice to appear in court. Approximately half (50.2%) of the files contained the return of service. At some courts it is practice to keep the returns of service at the local police station, rather than the court.

- **Final protection order** – Final protection orders were not in the files 53.4% of the time. The magistrates did not authorise 4.7% of the final orders with a signature.

- **Warrants of arrest** – Only 62% of files contained warrants of arrest, 6.6% of which had not been signed by the magistrate.

The administrative problems identified by this study are not unique to these particular sites. Inadequate and incomplete recordkeeping has been found at the Johannesburg family court, three Mpumalanga courts, as well as a number of Western Cape courts.

2b.iii) *The attrition of protection order applications*

A significant number of applications for protection orders are not made final. Table 2 below (taken from a study of nine courts distributed across the three provinces highlighted) illustrates how progressively fewer protection orders proceed to the next stage in the process.

<table>
<thead>
<tr>
<th>Table 2: Attrition of protection orders, by province</th>
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<tbody>
<tr>
<td><strong>No. of applications</strong></td>
</tr>
<tr>
<td>------------------------</td>
</tr>
<tr>
<td>n=150</td>
</tr>
<tr>
<td><strong>No. of IPOs granted</strong></td>
</tr>
<tr>
<td><strong>No. of notices and IPOs served</strong></td>
</tr>
<tr>
<td><strong>No. of POs confirmed, made final and/or amended</strong></td>
</tr>
</tbody>
</table>

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26 See note 11.
28 See note 4.
29 See notes 8 and 9.
30 See note 11.
In research conducted at a further ten courts, only three courts finalized more than half of protection orders.\textsuperscript{30}

Two studies have investigated factors associated with the finalisation of protection orders.\textsuperscript{31} They identified the following as being associated with whether or not a protection order was finalised:

- The court where the application was made
- Whether or not the 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.

While some applicants may choose not to return to court for personal reasons, it is clear that institutional barriers are playing a role in preventing many other 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 (such as those around serving the protection order) work in such a way as to exclude applicants’ from court proceedings. In this regard the lack of training provided to both clerks and magistrates around the DVA is of concern.\textsuperscript{32} It is also worth pointing out that in 2001 the absence of accepted criteria for means testing applicants’ ability to pay sheriffs’ fees was noted.\textsuperscript{33} Further in as early as 1998, a study examining the budget allocated towards the implementation of the DVA noted that the money set aside to pay sheriffs’ fees was insufficient.\textsuperscript{34}

2b.iv) Under-resourcing of the DVA

Questions around the extent of the budget available for the implementation of the DVA were already being raised by parliament in 1998 when MP Suzanne Vos asked “Show me the money that the Department of Justice can use to really make a difference to the lives of millions of women and their children in this country.”\textsuperscript{35}

In their briefing on budget 2001 to the portfolio committee, 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


\textsuperscript{31}See notes 4 and 11.

\textsuperscript{32}See note 11.

\textsuperscript{33}See note 9.


\textsuperscript{35}Hansard, 2 November 1998, p.7224
less than that required for the number of approved posts; fewer persons can therefore be employed.”

The DoJ&CD has, however, been attentive to the safety and security of the courts and court personnel. The department 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 were 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.

More recently, in response to the following question from MP D Robinson:

“What amount has been budgeted for the implementation of the said act [the DVA] and what was the actual expenditure in the past three financial years up to the latest specified date for which information is available?”

the police stated that they did not have a separate budget for the implementation of the Act; and that

“the costs incurred as a result of the performance of the police functions imposed by the Domestic Violence Act, are covered from the operational budget of the South African Police Service and cannot be distinguished from the expenditure incurred during the performance of other operational functions.”

Yet it would appear that the police are capable of budgeting for particular pieces of legislation. The Firearms Control Act, for example, is also a recognised policing priority and it is instructive to contrast the thinking that went into the budgeting for this act with that for the DVA.

The policy developments section described in the police’s budget vote for 2000 contains the first reference to the DVA. It announced that the DVA had come into effect in December 1999 and required the police to offer a range of services to victims of domestic violence. The next paragraph stated that the firearms legislation was due in parliament before the end of 2000 and in preparation for its implementation, new allocations of R35 million, R51 million and R36 million were earmarked over the next three years, in addition to existing allocations. There was no similar anticipation of the DVA in the 1999 budget vote. In 2003, the police budget vote stated that ‘Spending on

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firearm control will receive particular attention in the medium term and 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). By contrast, one study calculated that the police and the courts spent at least R38 565 517 on protection orders in 2004.

2b.v) Family court services
Five pilot family courts were established in 1996. According to the DoJ&CD, the family court structure and extended family advocate services are “priority areas for the department.” Their focus includes maintenance, domestic violence and matters relating to children. The establishment of family courts is motivated by three broad aims:

- the provision of integrated and specialised services to the family as the fundamental unit in society
- facilitating access to justice for all in family disputes
- improving the quality and effectiveness of service delivery to citizens who have family law disputes.

In 2002 the Family court task team developed a family court blueprint which recommended that 17 interim projects be established to strengthen the existing pilot projects. In 2003 R17.4 million was set aside for these activities. It is difficult to ascertain both the number of family courts in existence today, as well as their status and functioning. As a consequence, they appear to be peripheral, rather than central, to the courts’ response to domestic violence and their potential incompletely developed.

2c. Social services to victims of domestic violence

The DVA places an obligation on the SAPS to avail a list of domestic violence services to the complainant. However, no reciprocal obligation has been placed on the Department of Social Development to make such services available.

2c.i) Limited shelters and services

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42 See note 2.
43 Available at http://www.info.gov.za/aboutgovt/justice/courts.htm
Domestic violence exposes victims to significant and different forms of hardships. While the courts can intervene by providing protection orders to victims, it cannot supply the full range of assistance required by victims. At a minimum, applicants may require health care, counseling services, alternative accommodation – either for themselves or abusive adolescent children – and economic assistance, in addition to a protection order. However, our organisations’ experience, as well as research, indicates that not only are referral systems between the courts and most agencies undeveloped, but in many cases non-existent due to the fact that there simply are no services – particularly in rural areas, with a counsellor claiming that only 35 lay counsellors able to deal with domestic violence existed in the whole of Mpumalanga province at the time of the interview.\textsuperscript{46} Generally, while the absence of services is most stark in rural areas, the number of organizations overall that deal specifically with domestic violence is small.

Another important service offered by civil society is shelters to which abused women and children can flee to escape the violence. Shelter services range from providing material necessities to counselling, legal advice, skills development and employment programmes. Shelters typically house women for between one and six months.

The Domestic Violence Act obligates police to help an abuse victim locate a shelter. The dearth of shelters however, makes it difficult for the police to comply with this obligation to ensure women’s safety. One study quoted a police officer expressing frustration with the shelter system:

“In May we had a domestic violence case and the complainant was taken to a shelter. But they can only stay at the shelter for three months. It is four months since we helped the complainant and her case is still not dealt with by the courts. It is not finalized. This woman is out of the shelter and has moved into the home where the respondent is because she has nowhere else to go.”\textsuperscript{47}

In the absence of long-term housing and financial assistance, shelters are at best a short-term solution that in the end may result in the woman returning to her abuser.

\textit{2c.ii) Services for children and their mothers}

Studies on the Act’s implementation have found that when applicants report being abused, they also report the abuse of others in addition to themselves. Reference to the


\textsuperscript{47} See note 9.
abuse of others has been found in 48.8% to 69.4% of applications. Children have also been the group most likely to be identified as being abused in addition to applicants.

It is clear that at the least, children are affected by their mothers’ abuse – if not recipients of abuse themselves. However, children very rarely feature in interventions addressing domestic violence. Equally, mothers are very rarely considered in interventions addressing child abuse. Far more thought needs to be given to integrating these two problems.

3. RECOMMENDATIONS

Overarching recommendation 1: Encourage the development of a comprehensive, integrated national strategy to end domestic violence

The DVA creates a police and court response to the problem of domestic violence. Important as this intervention is, it is insufficient. Firstly, all women do not seek to lay charges, or obtain protection orders, against their partners. This decision needs to be respected, particularly in a context where so many women are economically dependent on their partners. Secondly, women need very much more than a court order if they are to be enabled to live lives free of violence. We therefore recommend the development of a comprehensive and wide-ranging response to the problem of domestic violence in which the police and justice system play an important role, rather than the only role. The strategy envisaged requires the participation of a range of departments so as to address the policing, justice, health, housing, shelter, psycho-social and economic needs of abused women and their children. A carefully-monitored strategy for working with abusers, as well preventing domestic violence in future is also needed. Such interventions are the responsibility of both government and civil society and both should contribute equally to the development of such a strategy. Given the cross-cutting nature of this strategy, we recommend that it be driven by the Ministry for Women, Children and People with Disabilities.

Overarching recommendation 2: Revision of the DoJ&CD’s regulations in terms of the DVA

Section 19(1)(b) of the DVA permits the Minister of Justice to make regulations regarding various aspects of the Act. We therefore propose that the existing regulations

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48 See note 4.
49 See note 8.
(R1311, 5 November 1999) be revised in the following manner and then submitted to parliament and gazetted as the Act suggests.

**Sub-recommendation 2a: Development of a performance monitoring framework**
A performance monitoring framework is required to assess courts’ effective implementation of the Act. Amongst other things, this should assess the quality and completeness of recordkeeping by the courts; the standardisation of processes and procedures across courts – including courts’ working hours and their interpretation and application of the DVA’s provisions; and making it mandatory that all domestic violence applications be dealt with in private offices where applicants’ confidentiality may be maintained.

The Committee should therefore request the Quality Assurance Division of the Magistrates Commission to outline their current procedures for monitoring court performance in relation to the DVA. The Commission should also be requested to come up with recommendations regarding how they think such monitoring could be strengthened and its findings made enforceable by courts. These should be submitted to the DoJ&CD for inclusion into the regulations.

**Sub-recommendation 2b: Service of the protection order**
In addition the DoJ&CD should be asked to rework section 15 of the regulations, ‘Service of documents’, to ensure that courts increase their use of the sheriffs and substantially reduce their use of the police to serve orders. Service of court orders is one of the sheriff’s primary functions and priorities; they must therefore make the time and resources available to carry out this task. By contrast, serving court orders is one of a range of activities for which the police are responsible and it is not the primary purpose of their existence. Their resource constraints are also real.

To make use of the sheriff’s services, the DoJ&CD is required to set out an equitable means testing process, taking into account that service is likely to cost more in rural areas than urban areas. The threshold for assistance adopted in rural areas should therefore be lower than that applied in urban areas. At this point the section grants too little guidance to clerks, merely stating:

(4) The Complainant or respondent who requires a document to be served in terms of the Act or these regulations shall be responsible for the costs of such service: Provided that the clerk of the court may, after consideration of such proof as he or she may require, direct that the State must be responsible for the costs of any service in terms of the Act or these regulations if he or she is satisfied that the complainant or respondent as the case may be, or both the complainant and respondent, do not have the means to pay for such costs at the time when service is required.
The regulations must therefore also make explicit reference to courts’ need to take payment of the sheriff’s fees into account when compiling their annual budgets.

**Sub-recommendation 2c: Ensuring the availability of shelter and counselling services**
The DVA places obligations on the police to assist women to obtain health care services, as well as access to counseling services and shelters. However, the DVA placed no corresponding obligations on health or social service providers to make such services available. This gap weakens referral systems and contributes to fragmenting responses to domestic violence. Section 19(c) allows the Minister to make regulations on “any other matter s/he deems necessary or expedient to be prescribed in order to achieve the objects of this Act.”

On this basis we propose that because they are still at a draft stage, DSD should be asked to consult around the guidelines for shelters and services to victims of domestic violence. Such consultation is essential because these guidelines directly concern and impact upon civil society service providers. Amongst other things, these documents must spell out how counselling services and shelters will be funded; the training norms and standards, as well as competencies required by those working in this field; the management and recruitment of volunteers; and the nature of interventions required to address domestic violence. Further, these documents should note and address the relationship between child abuse and intimate partner violence and describe how both children’s agencies, as well as those dealing with abused women, could address this link. In addition, little attention has been paid to those women and men abused by their families, especially when such victims are not elderly. There is a need to increase public awareness of this phenomenon, as well as identify and implement interventions to prevent such abuse.

Once finalised, these guidelines should be submitted to parliament and gazetted as regulations in terms of 19(1)(c).

**Sub-recommendation 2d: Develop a costed policy and/or legislation around the Family Courts**
The status and future of the Family Courts is unclear. It is recommended that a clear policy be issued in this regard and that the blueprint be elevated to the status of regulations. Clear timeframes and goals for the proliferation of family courts also need to be developed.

**Sub-recommendation 2e: Develop norms and standards around training for court personnel**
It is imperative that training standards and norms around the DVA be clearly established by the DoJ&CD. These should include stipulating the basic level of knowledge that magistrates, prosecutors and clerks should demonstrate before being permitted to deal with domestic violence. This training framework should also indicate the basic content of the training, as well as the minimum competence required of those who provide the
training. Training also needs to be ongoing, with follow-up courses building on previous training.

In the case of the DoJ&CD this training framework should be included in the revised regulations.

**Overarching recommendation 3: Revision of the SAPS National Instruction 7/1999 version 02.00 in terms of the DVA**

*Sub-recommendation 3a: Develop norms and standards around training for police*

As with the DoJ&CD, it is imperative that training standards and norms around the DVA be clearly established by the SAPS, in line with the points made previously about the DoJ&CD’s training. This training framework should be included in the SAPS National Instructions.

In addition, we recommend that the SAPS be asked to develop and submit to Parliament a costed training strategy for the next three years.

*Sub-recommendation 3b: Set out clear guidelines around arrest*

We recommend that the police amend their National Instructions to provide clear guidelines around when they should or should not arrest perpetrators of abuse.

*Sub-recommendation 3c: Develop a five year plan for the effective policing of domestic violence*

This plan needs to set clear goals, timelines and targets for the effective implementation of the DVA. It should also spell out the role of the SAPS Evaluation Service in monitoring whether these targets are being met or not. A police response to domestic violence is not confined to the DVA alone so the police should be encouraged to think of ways of dealing more effectively (rather than punitively) with withdrawals, or situations where women do not wish to lay charges but nonetheless still require help and protection.

**Overarching recommendation 4: Amend the legislation pertaining to the ICD in order to widen their powers**

To challenge SAPS complacency around poor implementation of the Act, oversight bodies such as the ICD should have their powers broadened to enable them to take disciplinary action against personnel which fail to comply with obligations imposed in terms of the Act. We support and encourage current legislative reform processes in this regard.

**Overarching recommendation 5: Come up with approaches to address the marginalisation of some groups from the Act’s protection**
The DVA is under-utilised by people with disabilities, gay and lesbian couples, women cohabiting with their partners, as well as refugee women and undocumented migrant women. Steps need to be taken to increase their use of the Act. Such steps include training for court personnel around sexual orientation, disability, xenophobia and prejudice. Because violence in same-sex relationships, as well as in disabled people’s relationships, is relatively hidden, campaigns also need to be initiated to raise awareness of the existence of such violence.

Overarching recommendation 6: Prioritise the finalisation of legislation dealing with domestic partnerships
It is difficult to describe with confidence the kind of interventions that would encourage women who cohabit to seek the Act’s protection. However, at a minimum it would be important to pass legislation recognising domestic partnerships and granting them both legitimacy and entitlements. At this point women who cohabit, on the dissolution of their relationship, are entitled to nothing but that which they brought to the relationship. They have no legal claim to property or any other assets to whose purchase they have contributed. This group of women thus lose substantially and materially when their relationships end.

Overarching recommendation 7: PCWYCPD should develop a five year strategy and implementation plan setting out parliament’s role in addressing domestic violence in South Africa
Based on the outcomes of the hearings we recommend that the PCWYCPD develop a strategy for the next five years aimed at strengthening the country’s response to domestic violence through the use of their oversight powers. This may include holding hearings annually to assess progress towards the achievement of the implementation plan.

Further, over the years the PCWYCPD (in its various guises) and the Police Portfolio Committee have been most likely to pay attention to the DVA, while the Justice Committee has paid the least attention to the DVA. It is suggested that the PCWYCPD engage with these committees, as well as those for Health, Social Development and Human Settlements, to examine how coordinated oversight can be exercised when required. For instance, when SAPS and the ICD present their six-monthly reports, it may be useful to also have the PCWYCPD in attendance. It may be particularly important for the Justice and Police Committees to collaborate with PCWYCPD around their respective departments’ annual reports and budgets. This is particularly important for ensuring the resourcing of the DVA in future. In addition, the Committees may consider meeting with domestic violence organisations prior to the departmental briefings for an update of key issues that have emerged in the field over the past year. They may also want to solicit questions from organisations to put to departments, as well as request responses from organisations to each department’s briefing.
In addition, we request that PCWYCPD ask each provincial office of the DSD to submit a breakdown of the funding provided on an annual basis to shelters and organisations addressing domestic violence in the province. The Committee should also request clarity from the DSD regarding parity in the payment of NGO staff and DSD staff. At this point social work staff employed by NGOs and funded through DSD agreements are paid less than social workers employed by DSD.