

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

**Synopsis:**

**The South African Police Service**

The National Crime Prevention Strategy of 1996 highlights violence against women as a policing priority, a position that the police's annual performance plans, strategic plan for 2010-14 and budget votes all confirm.

The Presidency's medium term strategy framework for government for 2009 – 2014 includes intensifying efforts to combat crimes against women (and children).

Government committed the police in 2010 to reducing serious and violent crimes such as rape and domestic violence by 4 – 7% every year.

**1. The police do not comply with the requirements of the DVA**

**The majority of police stations do not keep record of domestic violence cases**

1. The ICD has found that the vast majority of police stations monitored in 2006-09 did not fulfil their record-keeping mandates as demanded by the DVA.

**Police officers fail to protect domestic violence victims, and such failure goes unpunished**

2. In a study of 1 121 complaints made to the ICD between 2001-2008, Tshwaranang Legal Advocacy Centre found police non-compliance regarding the following:

- 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%).

Despite the ICD recommending disciplinary action in 928 (or 82.8%) of the 1 121 complaints referred to them, the police only took action in a paltry 48 (5.1%) of these cases. In more than two-thirds of cases (68.2%), the police provided either very little or no explanation to the ICD regarding these disciplinary hearings. This impunity will be strengthened by the removal of the regulation obliging station commissioners to provide reasons for rejecting ICD recommendations.

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 ranging from two to twelve months (five cases).

**The police disregard oversight mechanisms**

3. Apart from the police's disregard for the ICD, it also avoids reporting to Parliament

From 2000 to 2010, the police ignored the DVA prescription of submitting regular reports to Parliament on its implementation of the law, with the exception of 2007 (two six-monthly reports) and 2008 (one six-monthly report). These three submissions were impoverished, running to less than two A4-pages and mostly regurgitating the law's contents with little actual reporting. Similarly, the police's annual reports contain scant information on its implementation of the DVA.

The police have done the following in accordance with the SOA:

- Training 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.
- Seven different courses of between one and 15 days targeting provincial police trainers, FCS members, general detectives, 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 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. Between 1 January 2009 and 16 August 2010, 170 courses 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.

#### IV. The budget is still insufficient to implement legislative mandates

Police budget votes make no mention of the DVA or SOA. Only expenditure on training and publicity was noted between 1999/00 – 2005/06 but even that disappeared by 2008/09. However, existing budgets cannot absorb the costs of implementing the laws.

Overseas funding has been used to implement the laws, for example:

- \$1.2 million for SOA training from the US Embassy in 2008/09;
- Funding from the EU for "capacity building to reduce crime incidence" in relation to women and children to the tune of R6 367 000 in 2005/06; R11 603 000 in 2006/07; and R13 361 000 in 2007/08. In 2008/09, the full estimated amount of R13 361 000 appears not to have been received. A balance of R2 878 000 on the EU funds was brought forward for 2008/09. These figures represent the only available description of this project.
- The SAPS Strategic Plan for 2010 – 2014 acknowledges that resources are required for the FCS Units to work. Detectives interviewed for two studies emphasized the need for sufficient budgets for the purchase of Sexual Assault Evidence Kits and transporting victims; and that budgets must fall under the management of FCS Units, to prevent general detectives or station commanders diverting funds to other ends.

#### V. FCS units will benefit victims of sexual offences but not those of domestic violence

VII. Police statistics are not a reliable measure

- Table 4 shows reports in all these categories of crime that could refer to domestic violence<sup>i</sup> to have increased between 2008/09 and 2009/10.

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

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

This would suggest the police have been unsuccessful in reducing the incidence of violence but only if reducing the number of such reports is a reasonable goal. This target confuses and disguises the distinction between a reported crime and a criminal charge. For example, the police report that in 2007 states that 95 951 domestic violence incidents were reported, with 29 274 of these reports ultimately resulting in criminal charges.

Tshwaranang's study in a locality in Mpumalanga found that, between 1 January 2006 to 31 July 2007, 942 reports of some form of domestic violence complaint made to local police station, hospital and courts. However, no more than 6.7% of these 942 reports ever made their way into official statistics as only 63 women pressed charges.

- Previously figures for rape were reported separately but now one blanket figure is provided for all 59 offences, making it impossible to track trends within particular categories of sexual crimes.

This global figure is open to doubt: The police's 2009/10 Annual Report revised the total of 71 500 sexual offences reported during the period 1 April 2008 – 31 March 2009 to 70 514, meaning some 1 000 sexual offences "disappeared" between one annual report and the next. The reported decrease in sexual offences between the two years could be either 3 168 or 2 182, depending on which figure is accurate.

Examination of the police's station level statistics reveals dramatic annual fluctuations, which would account for the decrease in 2009/10.

**Selected station-level increases and decreases in sexual offences between 2007/08 and 2009/10**

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%)

	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 blame failure to meet their targets on the introduction of the SOA, for example apparently missing their detection rate for all contact crimes in 2008/09 because rape and indecent assault became a single crime category.

Their 2010/11 Budget Vote attributes the 4.3% decrease in the detection rate for contact crimes between 2007/08 and 2008/09 to the new act which "implies that more categories of sexual offences are being measured, such as rape and indecent assault". This rate will only drop if newly included crimes already have a detection rate much lower than that of the crimes already under consideration. Further, the police's own data shows this claim is incorrect: their 2008/09 Annual Report shows that between 2007/08 and 2008/09 the detection rate for sexual offences actually increased from 61.85% to 62.37%

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<sup>i</sup> "Domestic violence" does not exist as a reportable category of crime, it will most often be recorded as common assault, assault GBH, murder or attempted murder. These figures may also not refer exclusively to violence by intimate partners as the police do not specify the relationship between the victim and perpetrator.

<sup>ii</sup> In 2008/09, SAPS recorded that 20 141 children reported 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.