

**"Show Me the Money":  
A review of budgets allocated towards the implementation of the  
Domestic Violence Act (no. 116 of 1998)**

by

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### **Introduction**

"Show me the money that the Justice Department can use to really make a difference to the lives of millions of women and their children in this country," demanded MP Susanne Vos during the parliamentary debate surrounding the passage of the Domestic Violence Act (No 116 of 1998) (Hansard 2 November 1998: 7224). Her question remains of pressing importance to the one in two women in South Africa who, in one form or another, is subject to abuse in her intimate relationship (Jewkes et al, 1999).<sup>1</sup> It has also proved prescient, continuing to run like a refrain through subsequent commentary and research on the implementation of the Domestic Violence Act (hereafter the DVA or Act). This article takes up her challenge, using it as the starting point for an examination of budgets allocated to and expenditure on the Act.

Budgets reflect a government's policy priorities and are a useful barometer of the extent to which political commitments are translated into fiscal commitments. Because no country has access to unlimited funds with which to finance its workings and must work within particular constraints, choices need to be made about what programmes to prioritise. These are not merely neutral technical decisions but political choices, and this article argues that budget allocations are a part of the political contestations around the mechanisms through which gender equality should be advanced.

The argument in this article proceeds in the following form. [Section 1](#) begins with a description of the Act and then attempts to trace what money has indeed been spent on pursuing and prosecuting perpetrators of violence against partners. The information presented here draws on prior research by Goldman and Budlender (1999) and Vetten and Khan (2002b), as well as the annual budget votes for the Departments of Justice and Constitutional Development (hereafter referred to as Justice), Safety and Security (hereafter the police) and the Independent Complaints Directorate (ICD) contained in the Estimates of National Expenditure (ENE). I focus exclusively on these three departments because of the key roles they play in implementing the Act. This assessment of the budget votes is limited by the fact that budgets are not disaggregated, making it impossible to know what proportion of expenditure in each line item ultimately makes its way to the many projects and activities planned and undertaken by government departments. [Section 2](#) attempts to address this gap with findings from original research conducted by the Centre for the Study of Violence and Reconciliation (CSVr) ([Vetten, Budlender and Schneider](#)) describing and

costing the implementation of the DVA at nine sites in three provinces. This section concludes by outlining the consequences of under-resourcing the DVA for women and the criminal justice system.

[Section 3](#) attempts to identify the spaces for contestation around budget priorities. Civil society's efforts to engage with the budget, particularly from a gendered perspective, are also discussed here. I argue in conclusion that budgets have not been a sufficient focus of political contestation between the state and the women's movement in South Africa. As the example of the DVA shows, the fact that we have not grappled sufficiently with these more technical aspects of state policy has ultimately weakened state accountability to women in this regard.

## **Section 1: Spending on the Domestic Violence Act 1999 - 2005**

### ***The Domestic Violence Act (no 116 of 1998)***

The first piece of legislation enacted specifically to deal with domestic violence was the Prevention of Family Violence Act (PFVA) (No. 133 of 1993), introduced in 1993. It was subsequently replaced with the Domestic Violence Act (No. 116 of 1998) which came into operation on December 15 1999. According to the Preamble of the DVA:

It is the purpose of this Act 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. (Preamble to the Domestic Violence Act)

This preamble should also be read with the Constitutional Court's decision in *State v Baloyi*, which outlines the state's obligations to women experiencing domestic violence:

Read with section 7(2), section 12(1) has to be understood as obliging the state directly to protect the right of everyone to be free from private or domestic violence. 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 (S v Baloyi 2000 (1) BCLR 86 (CC) at para 11).

The Act introduces South Africa's first definition of domestic violence and includes both a broad range of behaviours,<sup>2</sup> as well as a variety of familial and domestic relationships<sup>3</sup> within its ambit. Powers vested in the court by the DVA include being able to order the abuser, or respondent, not to commit any act of domestic violence (nor engage anyone else to perpetrate such behaviour), nor enter the family home or his/her partner's workplace. Respondents may also be instructed to leave the residence while continuing to pay rent or mortgage as well as providing money for food and other household expenses. In some circumstances, respondents may be prevented from having contact with a child or children.

In addition, courts may order the police to remove the respondent's guns or other dangerous weapons, as well as provide a protective escort to the victim, or applicant, while she fetches clothing or other personal items from the home.

Because victims of domestic violence have long been on the receiving end of an ineffectual criminal justice system (Human Rights Watch, 1997; Artz, 1999), the DVA attempts to provide for mandatory oversight of the police's adherence to the Act. Police officers' failure to comply with either the Act or its regulations constitutes misconduct which must be reported to the ICD, the civilian oversight body established in terms of the 1995 South African Police Service Act. The ICD primarily fulfils a monitoring and oversight role with the police obliged to institute disciplinary proceedings against recalcitrant officers, unless the ICD directs otherwise. Additionally, the ICD is required to submit six-monthly reports to parliament recording the number and nature of complaints received against the police, as well as the recommendations made around such complaints. The National Commissioner of the SAPS must also submit six-monthly reports to Parliament detailing the number and nature of complaints against the police for failing to adhere to their statutory obligations; the disciplinary proceedings instituted; and steps taken as a result of recommendations made by the ICD.

The next two sub-sections explore what budget has been made available to implement this ambitious and progressive piece of legislation.

#### ***Expenditure on the DVA: The Estimates of National Expenditure 1999/00 – 2005/06***

Before discussing the individual budget votes for the three departments under consideration, some general contextualising information is required around the criminal justice system's budget as a whole.

In 2005/06 R43.6bn, or 10.4% of South Africa's national budget, went to the three departments comprising the criminal justice system, Justice, the police and the Department of Correctional Services (DCS). This equated to about R900 for every woman, man and child in the country. Almost two-thirds (65%) of this amount went to the police (R28.5bn), followed by 21% (R9.2bn) to the DCS and 14% (R5.9bn) to Justice ([Altbeker 2005](#)). Spending on the criminal justice system consumed 3.1% of South Africa's GDP in 2004, in contrast to the 1% spent by many other countries around the world (*ibid*).

While South Africa might spend more on its criminal justice system, this does not necessarily translate into having more human resources at its disposal. The South African police service employs 234 police officers per 100 000 citizens, in comparison to the 380 employed in countries for which data is available, while Justice employs 6 prosecutors in comparison to the 7 employed internationally. Altbeker argues that this inefficient translation of expenditure into person-power is a consequence of our paying criminal justice personnel, relative to South Africa's GDP per capita, more than their equivalents in other countries, relative to their GDP per capita (*ibid*).<sup>4</sup>

Secondly, our high crime rate also affects the availability of criminal justice personnel. With 7 police officers per murder versus 158 internationally, and 0.14 prosecutors per murder versus 2.6 prosecutors internationally, South African criminal justice officials have higher workloads than officials in most other countries for which data are available (*ibid*).

Another factor complicating Justice's implementation of legislation was the high number of laws passed post-1994, amounting to 72 new pieces of legislation between then and 2000 (in Stack and Soggot, 2001). These were not costed beforehand with the result that new laws were introduced, which then faltered on implementation. Following a Cabinet memorandum, it has since started becoming practice to ensure that bills presented to Cabinet also include an outline of their financial implications.

Accurate costing is dependent on thoroughly thinking through an act's implementation. Such planning is clearly a good thing. Costing however, produces its own challenges. These include the risk of getting only as much gender equality as technocrats' fiscal discipline will allow and perhaps increasing the competition between interest groups to have their particular issues prioritised in the budget.

The Act was thus passed at a time where legislation was not routinely costed beforehand and is being implemented in the context of an under-resourced and under-capacitated criminal justice system. Enforcing the DVA is therefore but one of a number of activities competing for members of the criminal justice system's time and attention.

### **The Department of Justice and Constitutional Development**

Justice received a budget of R2 545 million in 1999/00 which increased to R5 072 million<sup>5</sup> in 2005/06. Five programmes absorb this total, including administration (responsible for overall management of the department as well as the development of policies and strategies); court services (responsible for the provision and management of court facilities); state legal services (developing legislation and providing legal services to government); the National Prosecuting Authority (NPA) (responsible for witness protection, the Directorate of Special Operations, or Scorpions, and the prosecution service generally); and auxiliary and associated services (including all the various chapter nine institutions, the Legal Aid Board and the Special Investigating Unit, amongst other bodies). Expenditure on the DVA will be located within court services (consuming 45% of the total budget) and the NPA (allocated 25% of the total budget). Court services comprised ten sub-programmes in 2005/06,<sup>6</sup> with the Lower Courts' sub-programme (allocated 68% of the programme budget) likely to be most involved in the implementation of the DVA. The NPA consisted of three sub-programmes,<sup>7</sup> with public prosecutions most relevant to implementation of the Act. This sub-programme received 68% of the NPA programme budget in 2005/06.

Justice rarely makes reference to either domestic violence or the Act in its budget votes. While some kind of initiative to address to sexual offences is noted every year, specific reference to domestic violence occurs only in the 2003/04 and 2005/06 budget votes.<sup>8</sup> The 2003/04 budget vote states that the Sexual Offences and Community Affairs (SOCA) Unit of the NPA began training prosecutors around domestic violence in 2002 (ENE 2003/04: 548) but provides no budget details for this activity. In 2005/06 it is said that 100 clerks have been appointed to deal with maintenance and domestic violence, leading to unspecified improvements in the maintenance system (although not domestic violence matters) (ENE 2005: 538).

Review of the Justice budget votes for this period suggests that the department is most likely to see the Family Courts as their primary - if not sole - strategy for addressing domestic violence. Given that only five family courts centres<sup>9</sup> currently exist nationally,

expenditure on these courts is unlikely to benefit the overwhelming majority of women seeking the Act's protection. Beyond this, the various votes refer vaguely to strengthening services, or increasing access to justice, to vulnerable groups which at different times comprise women, women and children, women, children and the disabled and by 2005/06, all crime victims generally.

### **The Department of Safety and Security**

The police's budget rose from R14 534 million in 1999/00 to R28 457 million in 2005/06. This amount is divided between five programmes: administration (responsible for developing departmental policy and managing the department); visible policing (instituting and preserving safety and security at station level); detective services (responsible for investigations, analysis of forensic evidence and the Criminal Record Centre); crime intelligence (gathering and analysing information to inform policing strategies and activities); and protection and security services (protection for local and foreign dignitaries, as well as government interests). Activities related to the DVA will be located within the visible policing (48% of the total budget) and detective services programmes (17% of the total budget). The sub-programme most likely to be dealing with the Act within visible policing is crime prevention, allocated 88% of the programme budget, while two sub-programmes within detective services – general investigations and specialised investigations – will deal with the Act. Combined, these two sub-programmes account for 86% of the budget for this programme.

Contrasting the police's budgeting for the Firearms Control Act with that of the DVA is instructive, given that both are recognised policing priorities.

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 are earmarked over the next three years, in addition to existing allocations (National Expenditure Survey 2000: 185). There is no similar anticipation of the DVA in the 1999 budget vote. In 2003, the police budget vote states that "Spending on firearm control will receive particular attention in the medium term" (ENE 2003: 575) 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).

The police budget votes are most likely to refer to training in relation to the DVA. However, no budget is provided for the "extensive police training programme" mentioned in the 2001 vote. The 2002 vote states some 20 000 members have been trained around the DVA, but does not provide the costs for this. In the 2003 vote, the number of those trained is said to exceed 25 000. Training reappears in the 2004 vote but this time it is said that a new domestic violence training curriculum was being developed for implementation in 2004/05. The same point is repeated the following year, with the training now set for 2005/06. Again, no amounts are provided for either the development of the training manual or its implementation.

### **The Independent Complaints Directorate**

In 1999/2000 the ICD's budget totalled R24 million, increasing to R49 522 million by 2005/06. This budget is split between three programmes: administration (responsible for the overall management, policy development and organisation of the ICD); investigation of complaints (primarily focusing on deaths in police custody and as a result of police action); and information management and research. Work around the DVA is located within this third programme, which also receives the smallest proportion of the ICD budget as a whole.

Information management and research was allocated 16% of the total ICD budget in 1999/2000, increasing to 22% by 2005/06. Close to three-quarters of this particular amount (73%) is allocated towards personnel costs. Information management and research is further divided into two sub-programmes: monitoring and research, and information management system. Monitoring the Act is the responsibility of the monitoring and research sub-programme which receives 15% of the budget allocated towards this particular programme. It follows then that the work of monitoring the DVA falls to the sub-programme with the smallest budget and least staff.

The ICD first refers to its statutory obligations in terms of the Act in the 2000/01 budget, where it is noted as a policy development (National Expenditure Survey 2000: 170). By 2001/02, monitoring of the Act was listed as a key objective for the ICD (ENE 2001: 444). Some indication of the impact of the DVA upon the ICD's work is suggested in 2002/03 where it is stated that the ICD's role in terms of DVA "meant a change in the balance of ICD activities" (ENE 2002: 495). What this change entails is not detailed but hinted at later in the vote where it is stated that the ICD is to receive an increase in its budget allocations for 2002/03 and 2003/04 to strengthen its monitoring of the Act, amongst other activities (*ibid*: 497). Monitoring the Municipal Police Services' (MPS) implementation of the Act was also added to the ICD's mandate in 2003/04.

Additionally, the 2003 vote states that it has recommended training for junior police officers around both domestic violence and the Act. The police are said to be acting on this recommendation by establishing a partnership with the South African Management Development Institute (SAMDI) (ENE 2003: 520). There is no indication as to whether or not this training took place or who paid for it.

### ***Expenditure on the DVA: Research findings***

In contrast to the mobilisation of many women's organisations and networks around the content and passage of the DVA (see Meintjes, 2003), engagement with the budget for implementation of the Act (beyond merely noting that its implementation will be hampered by a lack of resources) has been substantially limited. Only one such effort can be identified.

In June 1998 the Gender Advocacy Programme (GAP) co-ordinated an information session for NGOs around the Women's Budget Initiative (WBI) and the process of allocating government budgets. This was followed with a further workshop in May 1999 which concluded that there was a need for further research examining the Act's budgetary implications (Goldman and Budlender 1999: 6-7).

Goldman and Budlender's (1999) subsequent study found that a total budget of R830 662 had been set aside in 1999 to cover the training of all 111 500 SAPS members nationally. R55 416 of this amount was allocated to the police's head office for training of trainers; and

R774 246 to the provincial offices. The budget came from the Secretariat for Safety and Security, SAPS human resources management and DfID. Technikon South Africa provided an additional R100 000 over and above this total in the form of a lecturer who commented on drafts of the training manual and spent six weeks travelling with the police presenting aspects of the training (*ibid*: 20). Approximately R50 000 from the police's Victim Empowerment Programme went to the police's communications department to produce 10 000 full colour posters and 300 000 two-colour brochures around the Act (*ibid*: 23).

Justice was allocated R91 400 by the National Crime Prevention Strategy (NCPS) business plan for the training of trainers around the DVA. This money was supplied by international donors and did not include expenses for further training at local level. Individual magistrates' courts were expected to cover their participants' subsistence and travel costs, estimated at R128. Where courts could not afford this, they were assisted by Justice with funds from the Netherlands government and USAID (*ibid*: 37-38).

Justice also allocated R2 million in 1999/2000 from the policy reserve budget for the service of documents nationally. This is likely to have been insufficient as Goldman and Budlender (1999) calculated that it would cost R1.3 million to serve documents in the Western Cape alone. Other money set aside by Justice included R200 000 from the communications budget for publicity material (including caps, T-shirts, brochures and posters) around the Act. A further R250 000 was allotted to the launch of the Act in QwaQwa on 25 January 2000. This was to cover both a seminar for NGOs and community workers, as well as media kits to encourage coverage of the DVA (*ibid*: 42).

No further information is available about the impact of the GAP initiative and whether it resulted in any changes to budgeting practices in the Western Cape.

Some three years later Vetten and Khan (2002b) asked police officials about the budget received to implement their work combating violence against women. The only figure specific to domestic violence provided by the official responsible for victim empowerment at the time, was R1 million allocated in 2001/02 towards domestic violence training. More generic programmes which included some focus on domestic violence included an awareness programme (R176 000 in 2001/02); a programme described as improving feedback to women and children, allotted R84 000 in 2001/02; the development of an unidentified policy framework and guidelines - given R34 000 in 2001/02; and the establishment of infrastructure, allocated R540 000 in 2000/01 and R720 000 in 2001/02. No detail was provided around the nature and type of infrastructure planned.

The representative from crime prevention, which had one staff member dealing with domestic violence and rape, stated that R80 000 had been allocated in 2001/02 towards raising police officers' awareness of rape and domestic violence, while R75 000 had been allocated towards public awareness-raising around rape and domestic violence. Finally, a programme described as '20 station pilots on gender-based violence' was allocated R1.2 million in 2001/02. Again, no detail was provided as to what this activity entailed.

In conclusion, this attempt at unravelling the budget has yielded snippets of information at best. In the case of the police budget, the DVA is clearly under-prioritised and less planned-for in comparison with legislation around firearms control. Training also appears to constitute the police's primary response to the Act. Within the Justice budget, sexual

offences enjoy far greater prominence than domestic violence does, suggesting that it is also under-prioritised. In relation to the ICD budget, their monitoring function has been located in the smallest and least-funded of its sub-programmes. Where research has identified budget amounts they primarily relate to ad hoc once-off projects around training and publicity, some of which have been funded by international donors rather than government. Clearly there is place for such activities, both to familiarise criminal justice system personnel with the content and application of a new act as well as to inform the public of the existence of the Act and its protection. But these are activities which should support the actual daily and ongoing enforcement of the Act, on which costs budget documents are silent. As [section 2](#) will show, it is in this daily routine where shortfalls are most likely to have occurred.

## **Section 2: Calculating the cost of implementing the DVA**

### ***Costing methodology***

In early 2005 the CSVR ([Vetten, Budlender and Schneider](#)) undertook research costing the implementation of the DVA at nine courts and police stations in the provinces of Gauteng, Free State and KwaZulu-Natal.<sup>10</sup> Courts selected in Gauteng included Alberton, Themba and Sebokeng; in KwaZulu-Natal Howick, Umbumbulu and Phoenix; and in the Free State Thaba Nchu, Sasolburg and Tshepong Centre/Bloemfontein. These courts were selected on the basis of rankings provided to us by Justice and represent a mix of the well, average and under-functioning, as well as urban or rural location. Table 1 sets out the number of cases dealt with by our sites during 2004.

<b>Court</b>	<b>Total no. applications</b>
Alberton	1 949
Sebokeng	3 346
Themba	1 819
Sasolburg	216
Thaba Nchu	616
Bloemfontein	7 245
Howick	93
Verulam	2 232
Umbumbulu	8 460
<b>Total</b>	<b>25 976</b>

A total of fifty-seven interviews<sup>11</sup> were conducted with clerks of the court, magistrates, prosecutors, police officers and ICD monitors around the various activities they engaged in relevant to the Act, as well as the length of time each activity took. Factors complicating or expediting these various activities were also identified.

### ***What must a budget for the DVA account for?***

A variety of criminal justice personnel is required to effect the Act's provisions which are both personnel and time-intensive. Clerks of the court are the entry points into the system and responsible for assisting applicants to complete the forms. The application forms are presently available only in English and Afrikaans. Applicants unfamiliar with either of these languages will require assistance from the clerk with completing the forms, as will semi- and illiterate women. At our sites, this application process took between 16 to 123 minutes.

Once completed, the clerk takes the application to the magistrate who decides whether or not to grant the interim protection order, and also issues a notice to the respondent informing him/her of the application and the date of the court hearing. This process took between 5 to 35 minutes at our research sites. If the respondent fails to appear in court on the day, the order may be granted in his/her absence. Otherwise if both parties are present, a hearing is instituted enabling both sides, as well as witnesses, to present evidence either supporting or challenging the application. The magistrate then either finalises or sets aside the application. Depending on who was present at the hearing, this was estimated by our interviewees to take between 12.1 to 31.9 minutes. It is also possible after the hearing to apply to have the order varied or set aside.

If granted, the order is served on both the respondent and the applicant, who also receives a suspended warrant of arrest to be used in the event of the order being breached. A copy of the arrest warrant should also be sent to the police station of the applicant's choice. Sheriffs are typically responsible for serving these orders. The sheriff's fees will be paid by the applicant unless she lacks the necessary funds. Where this is the case, the DVA suggests that a means test be performed and that the state carry the costs of service. The criteria to be applied in conducting such tests have not been defined.<sup>12</sup>

The Act also allows the police to deliver protection orders and at our sites, this took between 30 minutes to 115 minutes, depending on how far the respondent lived from the police station.

Police officers may also help women with applications for the protection order. Whenever assisting someone with the DVA, they are required to carry out a number of obligations in terms of the DVA and accompanying regulations (no R.13311). Briefly, they are required to explain to applicants that they are there to provide whatever assistance the circumstances require, which may include helping the applicant to find a suitable shelter or obtain medical treatment. In addition they should inform the applicant of her right both to apply for a protection order, as well as lay criminal charges. Where reasonably possible this information should be provided to the applicant in the form of a notice (Form 1, Regulation 2: *Notice to complainant in a case of domestic violence*). The notice also sets out the steps required to apply for a protection order, explains what the applicant should do in the event of a breach and also sets out the type of relief or protection the complainant may request from the court. Where applicants cannot read the notice, police officers should read it to them in the language of their choice. This requires patience and sensitivity towards applicants who may be distressed, angry, fearful or ambivalent in asking for help and recounting their experiences of abuse. Police officers spent between 16.5 and 60 minutes on these steps.

Breaches of the protection order will also be reported to the police who are then responsible for arresting and charging the abuser, as well as investigating the breach in preparation for a trial. We were not provided with times for these activities. Hearing breaches of the protection order involves both magistrates and prosecutors, and was calculated as requiring an hour.

The ICD's function in relation to the Act is to receive complaints around police non-compliance with its provisions, forward these to the police stations concerned, and follow up on actions subsequently taken by the relevant officials. The police should also forward any complaints received regarding their conduct to the ICD. We decided against costing their time given the relatively small number of complaints they received which appeared to take cents' worth of their time.<sup>13</sup>

To calculate the cost to government of implementing the DVA, we multiplied the mean time taken for each step by the percentage of cases to which it applied and by the cost of employment of the staff involved. For cost of employment, we took the annual or monthly salary and converted it to an amount per minute. For each type of worker we took either the lowest grade possible or the grade that we were told most commonly undertook work in relation to the Act. For clerks we used salary notch 2 of level 3 for the year beginning July 2004. The annual salary is R42 366. The most common level for police constables is grade 5. Cost to company for this level is R77 829 per year. The lowest grade of magistrate currently earns R258 576 per annum. The relevant level for prosecutors is C3, notch 1, for which the National Prosecutions Agency provided a salary figure of R76 428 for the year beginning July 2004.

The amount for police constables is cost to employer, while the other three amounts are gross salary. Cost to employer is the relevant figure for our purposes as it includes both the gross pay of the employee, and additional costs such as employer contributions to unemployment insurance and medical aid, and the skills levy incurred by the employer. To convert the gross salary figures to cost of employment, we multiplied by 1.36.<sup>14</sup>

Table 2 shows the annual cost for each type of staff and the equivalent per minute cost.

## 2) Annual and per minute cost of different staff

	<b>Annual</b>	<b>Per minute</b>
Magistrate	351663	2.78
Prosecutor	103942	0.82
Clerk	57618	0.45
Police	77829	0.61

Table 3 combines the time estimates, the estimates of proportion of cases to which a particular step is applicable, and the cost of the relevant staff to calculate the cost of a single protection order. The calculation yields an amount of R245,03 per case in terms of staff costs alone. This ignores a range of other costs, including stationery, rental, and support staff of various sorts. It also assumes that the lowest level of staff possible usually

deals with each step.

### 3) Calculating the cost of a single protection order

	Minutes	Worker	Mins*cost	Proportion of cases	Cost/case
Application	43.6	Clerk	19.82	0.50	9.91
Application	37.4	Police	38.01	0.50	19.01
Certify Form 2	21.1	Magistrate	58.56	1.00	58.56
Notify respondent	55.1	Police	55.71	1.00	55.71
Return admin	9.3	Clerk	4.23	0.80	3.38
Hear return case	22.0	Magistrate	61.05	0.08	48.84
Serve final order	55.1	Police	55.71	0.06	33.43
Assign breach case	25.0	Control Pros	20.51	0.06	1.23
Handle breach case	101.0	Prosecutor	82.85	0.06	4.97
Hear breach case	60.0	Magistrate	166.51	0.06	9.99
<b>Total per Case</b>					<b>245.03</b>

Thus at least R6 364 899.28 was spent at these eight sites processing 25 976 applications for protection orders in 2004. If we apply this cost to the 114 142 protection orders granted between March 2004 and February 2005,<sup>15</sup> then at least R28 million was spent on protection orders by the state.<sup>16</sup> Was this amount sufficient? Did it enable members of the criminal justice system to provide 'maximum protection from domestic abuse,' give 'full effect' to the Act's provisions and convey the State's commitment to the elimination of domestic violence? By the state's own account, the answers would appear to be 'no' on all counts.

The first reported indication of the budget being insufficient came in 2001 during Justice's briefing on the budget to the portfolio committee. Justice representatives stated that the implementation of new legislation such as the DVA had placed 'severe pressure' on its offices; that in fact, 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' (Briefing to the Portfolio Committee on Justice: Budget 2001). Magistrates have also pointed to an increase in all components of legal work without receiving any corresponding increase in staff numbers (Artz, 2003). In 2001 police commissioner Jackie Selebi was quoted as saying that the DVA was "made for a country like Sweden, not South Africa" and was not practical or implementable (Louis Oelofse and Siyabona Mkhwanazi, "Well-meaning laws can't be policed – Selebi", *The Star*, 14 August 2001; Jeremy Michaels, "Selebi summoned for domestic violence remarks", *The Mercury*, 22 August 2001). Under-resourcing of police

stations and courts in the form of too few personnel and a lack of police vehicles, fax machines and photo-copiers was also found by three studies investigating implementation of the DVA in the Western Cape (Mathews and Abrahams, 2001; Parenzee et al, 2001; Artz, 2003). One of only two ICD reports to parliament states that a shortage of police vehicles and the refusal of the Sheriffs to assist the police in serving protection orders had left these orders piling up in the Community Service Centres of police stations visited in Gauteng, KwaZulu-Natal and the Eastern Cape (ICD Domestic Violence Report to Parliament, March 2001).

A number of possible consequences flow from this under-resourcing. First, protection orders only come into effect once served on the respondent. Thus any delay in service may jeopardise the applicant's safety. Second, where the state has not provided an adequate budget, the costs of financing the Act's implementation have been carried by civil society and donors. The organisation Mosaic in the Western Cape is a case in point.<sup>17</sup> Between April 2000 to February 2001, Mosaic assisted 15 142 applicants to obtain protection orders. From January 2001 to November 2001, Mosaic spent a total of R373 364.15 providing this service to women (Vetten and Khan 2002a: 23). At a practical level it makes some sense for NGOs to step in and provide those urgent and necessary services the state appears incapable of. However, as long as organisations can be relied upon to plug the gaps, the state is absolved of financing its constitutional mandate to protect everyone from private or domestic violence.<sup>18</sup>

Third, under-resourcing shifts additional costs onto women applying for protection orders. Too few clerks to deal with the number of applications made daily will inevitably result in long waits. Some women may not be attended to on the same day they arrive, necessitating their return to court. At the least, this results in additional travel costs, childcare costs, loss of income and time off work, costs some women cannot afford.

Fourth, as former Chief Justice Arthur Chaskalson has pointed out, shabby working conditions and forced under-staffing have a discouraging effect on court staff morale ("Courts must not suffer as 'apartheid' debts are paid", De Rebus, August 2004).<sup>19</sup> Pressured work environments also increase the likelihood of women being seen as burdensome and demanding sources of resentment, rather than citizens with a legitimate claim to protection. In relation to the DVA, this may translate into impatient, dismissive and brusque treatment of women seeking court orders.

The Constitutional Court best captures the sum total of these various consequences for women:

The ineffectiveness of the criminal justice system in addressing family violence intensifies the subordination and helplessness of the victims. This also sends an unmistakable message to the whole of society that the daily trauma of vast numbers of women counts for little. The terrorisation of individual victims is thus compounded by a sense that domestic violence is inevitable. Patterns of systemic behaviour are normalised rather than combated. (S v Baloyi 2000 (1) BCLR 86 (CC) at para 12)

### **Section 3: Contesting the budget**

I have suggested that there is no comprehensive or adequate budget provided for the Act by the state. This begs the question of what constitutes an adequate standard against which to measure whether or not a budget enables or contributes to the realisation of women's rights. Because this question of 'how much' is quintessentially political, it is best contested in the public arena, rather than held hostage to what bureaucrats and politicians decide we can afford in terms of gender equality. This section considers what spaces are available for such debate.

One small such opening exists on the Treasury website through the affably-named "Tips for Trevor." An e-mail enables the writer to tell the Minister what s/he thinks can be done to improve her/his life and the economy of the country. Another emerges in the official opposition's criminal justice policy proposal which states (without providing any figures) that the Act "must be fully funded and properly implemented to ensure that it can offer protection to all victims of domestic violence." (Democratic Alliance undated: 14).

More substantive opportunities for engaging with the budget lie in the People's Budget Campaign and Women's Budget Initiative.

#### ***The People's Budget Campaign (PBC)***

In mid-2000 the South African Council of Churches (SACC), the Congress of South African Trade Unions (COSATU) and the South African NGO Coalition (SANGOCO) began collaborating to develop a People's Budget which was intended to present an alternative macro-economic framework and public spending priorities for the country. The first People's Budget was put forward on 20 February 2001 (SACC, 2001). The Campaign has two aims: engaging with government policies through the budget process and putting forward proposals from civil society organisations; as well as improving the capacity of PBC member organisations to understand and engage with the budget at all levels of government (People's Budget 2005 – 2006: 2).

The budget report of 2004 – 2005 states that a gender review of previous documents highlighted a number of weaknesses and blindspots<sup>20</sup> and recommended in this regard, that the Campaign pay greater attention to aspects of the protective services, amongst other things (People's Budget 2004 – 2005: 1). In the 2006 - 2007 People's Budget this was translated into a proposal to increase funding to implement the DVA (People's Budget 2006 – 2007: 24 – 25).

It is too early to say what effect this proposal will ultimately have.<sup>21</sup>

#### ***The Women's Budget Initiative (WBI)***

The WBI was established in 1995 by the Joint Standing Committee on Finance's (JSCOF) Gender and Economic Policy (GEP) working group, the Community Agency for Social Enquiry (CASE), the Law, Race and Gender Project of the University of Cape Town and IDASA (Govender, 1996). (When the Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women was established, it replaced the GEP.) The WBI was officially launched on 11 March. Two days later during the annual budget speech, then-Minister of Finance Chris Liebenberg committed to developing a statistical database

disaggregated by gender on the impact of expenditures; implementing gender equality and equity targets and indicators; and developing a performance review mechanism evaluating progress and reporting to parliament (*ibid*: 9). In the late 1990s, as part of a broader Commonwealth Secretariat pilot initiative, the National Department of Finance was part of a gender budget initiative for two years.

Five women's budgets were ultimately produced, with the first three examining the budgets of all the national departments and related agencies. Deciding that such exercises should be the responsibility of government departments, the WBI then shifted focus in order to explore both the boundaries of gender budget analysis, as well as the gender and budget implications of new issues emerging in public debate (Budlender 2000: 1). These various research endeavours are the real strength of the WBI. Its advocacy and expansion into civil society more broadly has been less successful.

Reflecting in 1995 at the launch of the WBI, parliamentarian Pregs Govender warned that if the WBI lacked a strong political base, it would become dependent on the good will and patronage of politicians and would likely be sidelined if it remained outside of government. At the time she identified an effective Office on the Status of Women (OSW), working with a strong parliament and organised civil society as essential to the success of the WBI (1996: 10 – 11). Her concerns appear to have been borne out with time. By 2002 Budlender et al noted that gender budget work within government had disappeared. It now appears confined to some provincial and local government departments, as well as a handful of NGOs.

### ***Parliamentary briefings***

On one level, challenging the bland, vague generalisations made around domestic violence could be done by the parliamentary committees during the departmental budget briefings. Review of the minutes for these briefings does not suggest this has ever happened. There is also no indication of civil society participation in these briefings either. But Parliament too has limited power to influence or amend budgets, partly because section 77 of the Constitution has not been given legislative effect.<sup>22</sup> A draft money Bills amendment law was presented to the Finance Portfolio Committee in 1997, but rejected due to the limited powers it gave Parliament to amend the budget. No alternative Bill has been tabled since (People's Budget 2005 – 2006: 26).

But in relation to the DVA specifically, the parliamentary committees have not been fulfilling their obligations. There is no evidence in minutes that the portfolio committee for Safety and Security has ever requested the six-monthly reports required of both the ICD and SAPS. At the time of writing only two reports by the ICD had been submitted to parliament and none by the police.

### **Conclusions**

Protection from domestic violence is essential to the realisation of gender equality, with the DVA playing a key role in combating such violence. This article set out to explore what budget had been allocated to implementing this crucial piece of legislation and found little evidence of the day-to-day application of the Act having been planned and accounted for. This failure to back up national and constitutional commitments with budgetary commitments represents one aspect of weak political accountability to women. Another

aspect of weak political accountability (which applies to South African citizenry in general) is illustrated by the absence of spaces in which to contest budget formulations and the corresponding lack of consultation with women around the budget. Weak legal accountability is also evident in parliament's failure to carry out its statutory oversight role in terms of the Act. The other aspect of weak legal accountability highlighted by this article is the impoverished role of the ICD. This may partly be the result of how their role is conceived but is also a consequence of having too few personnel to give bite to their oversight.

In conclusion, while meaningful implementation of the DVA is not reducible to budget allocations alone, adequate financing is clearly essential to its effectiveness. In this instance what has been given on the one hand by the Act and the Constitution, has been taken away by the other, budgetary hand.

#### **Notes:**

<sup>1</sup> This study surveyed 1 306 women in three South African provinces and found that 27% of women in the Eastern Cape, 28% of women in Mpumalanga and 19% of women in the Northern Province had been physically abused in their lifetimes by a current or ex-partner. The same study investigated the prevalence of emotional and financial abuse experienced by women in the year prior to the study and found that 51% of women in the Eastern Cape, 50% in Mpumalanga and 40% in Northern Province were subjected to these types of abuse. National figures for intimate femicide (men's killing of their intimate female partners) suggest that this most lethal form of domestic violence is prevalent in South Africa. In 1999 8.8 per 100 000 of the female population aged 14 years and older died at the hands of their partners - the highest rate ever reported in research anywhere in the world ([Mathews et al., 2004](#)).

<sup>2</sup> Acts constituting domestic violence include physical, sexual, emotional, verbal and psychological abuse; economic abuse; intimidation; harassment; stalking; damage to property; entry into the complainant's residence without consent, where the parties do not share the same residence; and any other controlling or abusive behaviour where such conduct harms, or may cause imminent harm to the safety, health or well-being of the complainant.

<sup>3</sup> Domestic relationships covered by the DVA include: married, divorced or separated couples; couples living together (including gay or lesbian couples); parents of a child; family members (including the extended family); people who are or were engaged or dating one another - including those circumstances where one party (but not the other) perceives some form of romantic, intimate or sexual relationship to be in existence; children; and people who share or have recently shared the same residence (such as flatmates, housemates).

<sup>4</sup> He goes on to say that this is largely a function of our high rates of unemployment which drag down our GDP per capita and so raise the ratio of average salaries to that figure ([Altbeker 2005](#)).

<sup>5</sup> This excludes judges and magistrates' salaries.

<sup>6</sup> These included the Constitutional Court, the Supreme Court of Appeal, High Courts, specialized courts, lower courts, the family advocate, the magistrate's commission, government motor transport, capital works and administration of courts.

<sup>7</sup> The other two sub-programmes included witness protection and the Scorpions.

<sup>8</sup> The 2001/02 budget vote states that the South African Law Reform Commission finalised legislation around domestic violence in the previous year but this is most improbable, given that the Act had already been passed in 1998.

<sup>9</sup> Family court centres include a divorce court, a maintenance court, Children's court and family violence court. These centres are located in Johannesburg, Durban, Port Elizabeth, Thohoyandou and Cape Town.

<sup>10</sup> This section draws extensively from [Vetten, Budlender and Schneider](#).

<sup>11</sup> Ideally we had hoped to interview 36 criminal justice system personnel involved in implementing the act per province, resulting in a total of 108 interviews plus a further four interviews with representatives from the ICD. This reduction in number was the result of some sites having only one person involved with implementing the Act, rather than three. Some sites (usually very busy sites) were also unwilling to make more than one person available for interviews. Some interviews also had to be discarded due to the quality of information provided. These were the interviews involving people who clearly had no experience with the Act but had nonetheless been sent to the interviews anyway.

<sup>12</sup> Parenzee et al's research (2001: 94) monitoring the implementation of the DVA in the Western Cape found that at some courts impoverished women received state aid while at others they did not benefit from this provision in the Act.

<sup>13</sup> Few complaints are being reported to the ICD, which is perhaps just as well given their personnel constraints. During the interview the ICD national office it was said that DVA monitors are also special programme officers and also do work around disability, HIV/AIDS, gender and other equity issues. In Gauteng for example, the monitoring is being done by a secretary as the complaints' officers are too overburdened.

<sup>14</sup> Conversion figure provided by Bupendra Makan.

<sup>15</sup> This figure was provided to us by the Board of Sheriffs who, in turn obtained this total from courts around the country (in addition to a whole variety of other information).

<sup>16</sup> This is less than the budgets ostensibly available for other Justice activities, including R36 million allocated in 2004/5 to the re-demarcation of magisterial districts, increasing to R40 million in 2005/06 and R44 million in 2006/07. Security at the courts is also of concern to Justice which allocated R23 million to this item 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 (see his 2003 budget speech).

<sup>17</sup> Mosaic is a community-based organisation addressing domestic violence in and around Cape Town and Paarl. The organisation offers a range of services to women including counselling, training and legal support. Mosaic Court Support Desks at Wynberg, Goodwood, Belville, Cape Town, Simons Town, Kuilsriver and Paarl courts help applicants, mainly women, complete applications for protection orders. They are not charged by Justice for the use of these courts.

<sup>18</sup> See *Baloyi*

<sup>19</sup> *De Rebus*, the South African attorneys' journal quoted him as saying, "[I]n an institution as vital as the courts and judiciary, one must be very careful in trying to effect savings...if you do not provide the resources that are necessary, you are actually undermining a system which in time...can cease to be a system in which we can take pride in." ("Courts must not suffer as 'apartheid' debts are paid", *De Rebus*, August 2004.)

<sup>20</sup> These included a limited analysis of the informal sector, lack of attention to public works programmes (which are required to allocate 60% of jobs created to women) and a failure to evaluate the gender impact of different educational interventions (People's Budget 2004 – 2005:1)

<sup>21</sup> The People's Budget Campaign suggests that their campaign has contributed to the expansion of basic free services; the decision to roll out anti-retroviral treatment; the extension of the child-support grant; and the adoption of a slightly more appropriate fiscal policy that moves away from the cuts and restrictions of the late 1990s (People's Budget 2005 – 2006: 2).

<sup>22</sup> Section 77 states "A Bill that appropriates money or imposes taxes, levies or duties is a money Bill. A money Bill may not deal with any other matter except a subordinate matter incidental to the appropriation of money or the imposition of taxes, levies or duties. All money Bills must be considered in accordance with the procedure established by section 75. An Act of Parliament must provide for a procedure to amend money Bills before Parliament."

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