



DOMESTIC VIOLENCE ACT IMPLEMENTATION CHALLENGES:

Presentation to the Select Committee on Security and Constitutional
Development – 31 July 2013

CIVILIAN SECRETARIAT FOR POLICE




police

Department:
Police
REPUBLIC OF SOUTH AFRICA

BACKGROUND

- The Domestic Violence Act 116 of 1998 (DVA) was promulgated in 1999 in an attempt to provide victims with an accessible legal tool to stop domestic abuse. Though far-reaching in its definition of what constitutes an act of ‘domestic violence’ and ‘domestic relationships’, implementation has been negatively affected by a lot of challenges.

INTRODUCTION

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- The Civilian Secretariat for Police (CSP) conducted 145 DVA audits during the 2012/13 financial year in order to identify gaps in the implementation and develop recommendations for improved implementation.
 - Other initiatives have been conducted jointly with the SAPS and these include a national and provincial work sessions on legislation, DVA Compliance Forum meetings and Reference Group meetings.
 - From all these engagements, there has been some common key challenges identified that impact negatively into the implementation of DVA resulting in low compliance levels.

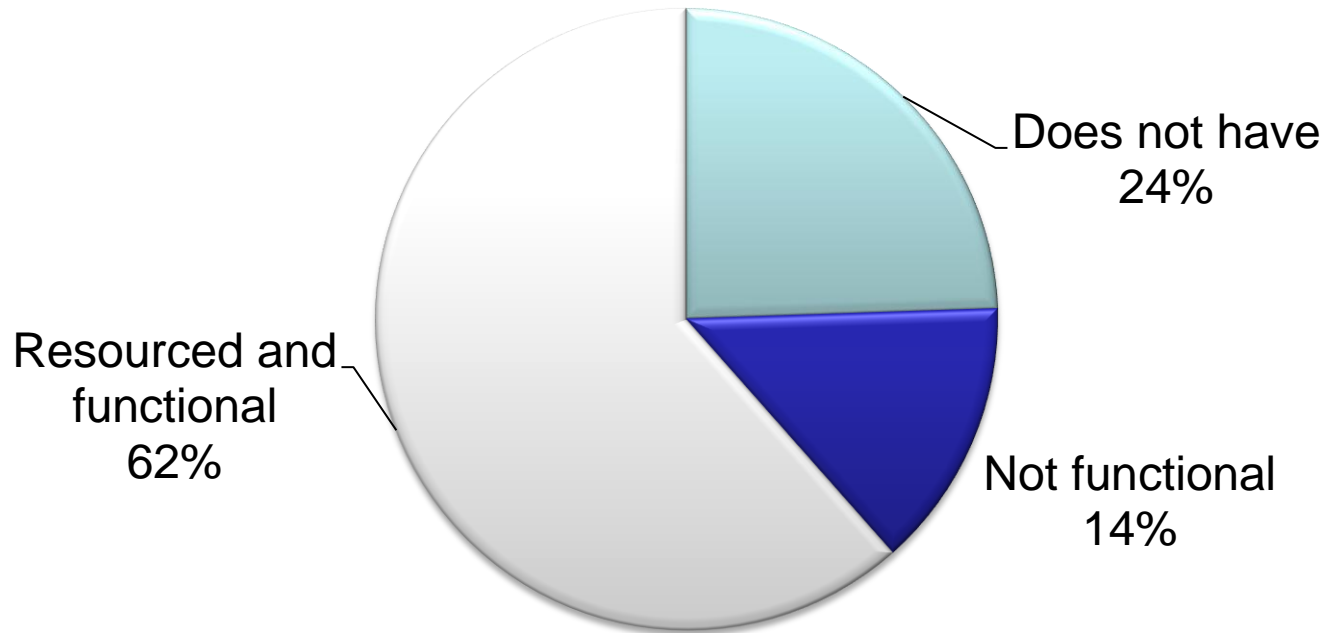
NON COMPLIANCE CHALLENGES

- The files with documents that should be kept at the CSC and in the patrol vehicles are not available in most stations.
- The poor or incorrect completion of SAPS 508a (incident form) and SAPS 508b (Domestic violence register).
- Elements of the DVA incidents are sometimes recorded differently in the DV register and on the SAPS 508a form even though the incident is the same.
- The non-compliance register/form (SAPS 508) in which the Station Commander should be recording complaints against members for failing to comply with the DVA is non-existent in almost all the stations visited
- Management and availability of Victim Friendly Rooms

VICTIM FRIENDLY ROOMS



AVAILABILITY OF VICTIM FRIENDLY ROOM



RECOMMENDATIONS

- A process flow chart on how to provide practical assistance to victims of DVA should be developed and posted in the CSC and the VFR for easy reference.
- The DVA register (SAPS 508b), needs to be reviewed and updated. There should be additional columns for updating information, e.g. reasons for no arrest, details of investigation officer where a case has been opened and space for signatures, details and comments of inspecting officer. This will assist in ensuring that there is no communication breakdown during shift changes and also between the detectives and the CSC when there is a need to follow up on cases.
- The SAPS 508a form can be redesigned into a checklist format, whereby a member will use it to check if they have followed all the proper procedures in assisting the victim of domestic violence.

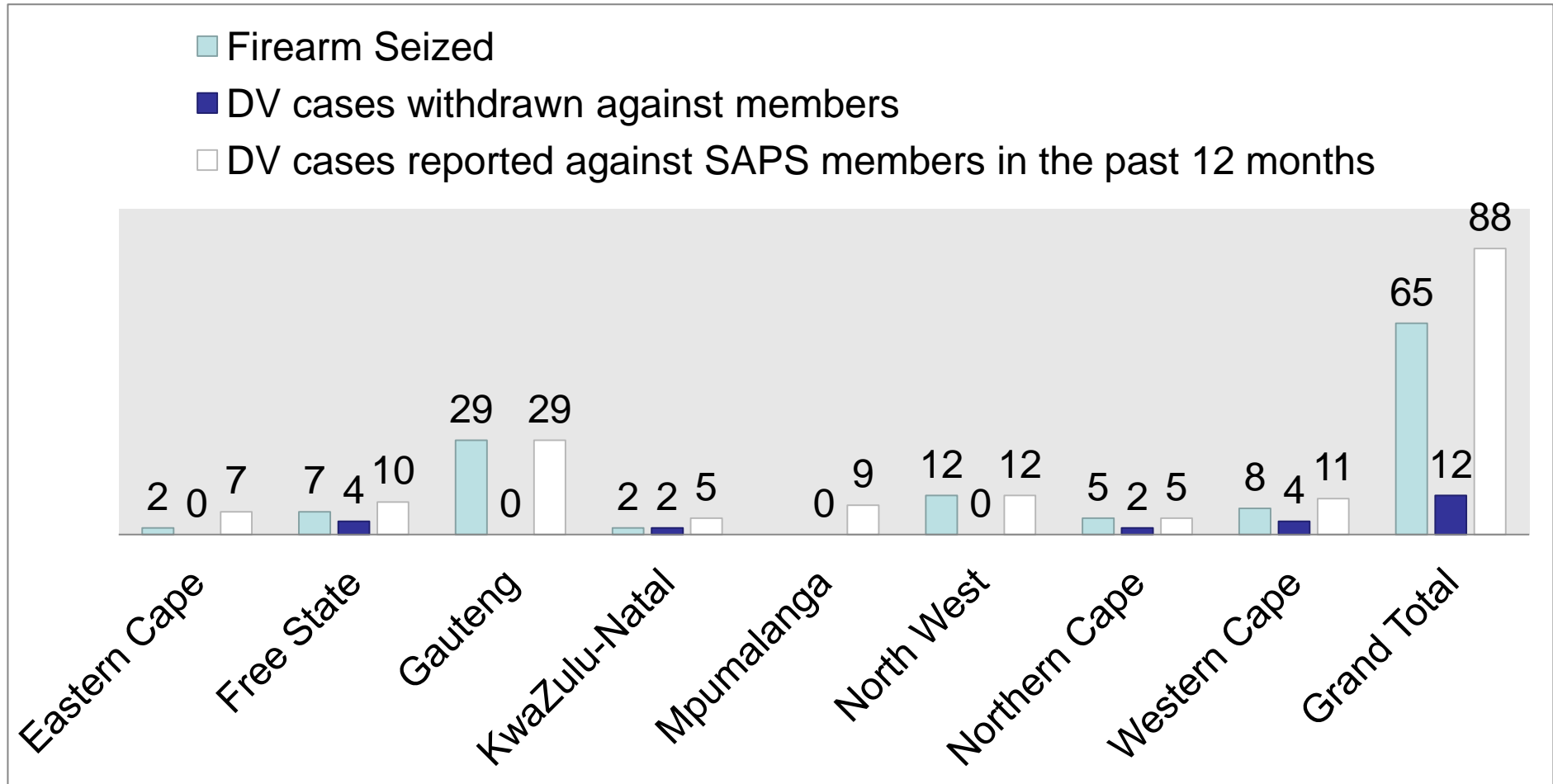
RECOMMENDATIONS

- The non-compliance form (SAPS 508) should be re-issued to all stations as most Station Commanders indicate no knowledge of the form. The form should also be updated to substitute ICD with Secretariat.
- Management of the VFR should be strengthened, for example, in stations where there is a CSO operating, or active CPF involvement, an MOU with the Station should be drawn. This should clearly define the role of SAPS, CPF, the CSO and the volunteers.
- The SAPS should also develop a volunteer management policy which will cover screening and management of volunteers at the station.

RECORDING OF DOMESTIC VIOLENCE CASES

- According to the SAPS' Crime Administration System (CAS), DVA contravention is not interpreted as a criminal offence on its own.
- This poses a challenge as it becomes difficult to assess how many arrests were made as a result of the Protection Order contravention.
- The system also does not capture DVA incidents reported as they appear in the register.
- There is no standard system of handling cases where SAPS members that are perpetrators of domestic violence. Some stations record these in red ink in the DVA register, some have a separate register for members.
- The SAPS disciplinary regulations and DVA National Instructions also do not explicitly indicate how these cases should be dealt with and what should be the consequences. In some provinces these cases are referred to the Provincial Commissioner and some they are dealt with at Cluster level.
- Following graph shows breakdown of these cases from the 145 stations audited


CASES AGAINST SAPS MEMBERS AS PERPETRATORS/ ALLEGED PERPETRATORS



RECOMMENDATIONS

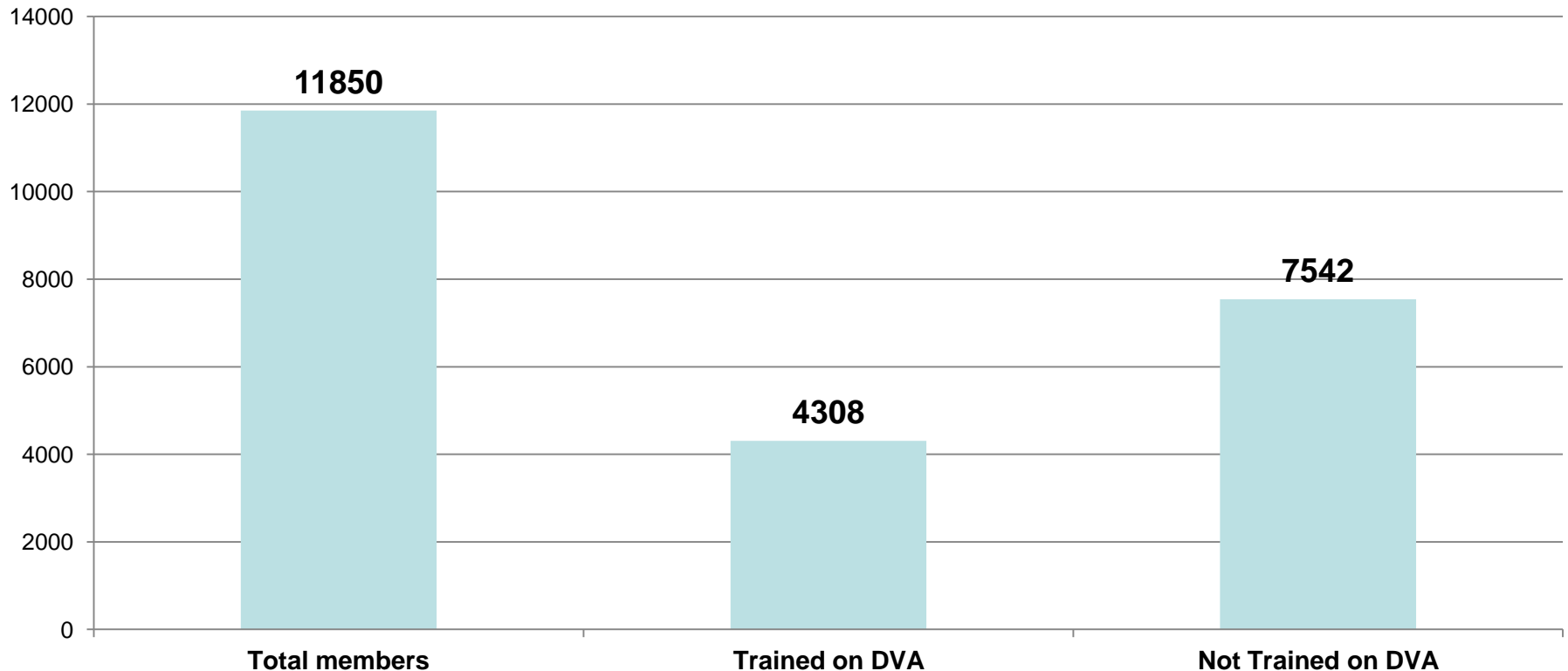
- CAS should be reviewed so as to recognise DVA as a criminal offence not attached to other crimes
- System should also be able to capture incidents reported so as to make it easy to draw comparisons between incidents reported, cases opened, arrest made and cases withdrawn
- Employee Health and Wellness Programme division should conduct regular information session with employees at station level so that they can easily identify and intervene with SAPS members that are in crisis or at risk.
- Members who commit acts of domestic violence are in direct contradiction with the SAPS' commitment to protect women and children. The SAPS disciplinary regulations should therefore have a specific clause on how to deal with members that are perpetrators of DVA.

RECOMMENDATIONS

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- The National Instructions should also include a paragraph on reporting and record keeping of the data of members who are involved in domestic violence either as perpetrators or victims. This will help to ensure that members are properly placed (pending outcome) where they can neither be a danger to complainants, respondents or themselves.
 - All cases involving members as perpetrators should be referred to the Provincial Inspectorate for investigation and reports be forwarded to the Secretariat to monitor progress.
 - A protocol with regard to time frames for investigation of these cases should be developed as the time taken has implication on the member's ability to perform their duties, e.g. seizure of firearm and placement of the member

IMPLEMENTATION CHALLENGES

- Out of the 145 stations visited, less than half of the members (4380) had been trained on DVA according to HR records.



1. UNDERSTANDING OF DVA

- Even though there is some improvement in number of members trained, this does not translate into improved implementation.
- Some of the key areas that displayed lack of knowledge are the following:
- Form 1 (notice that explains remedies available to the complainant) – generally members do not know what this form is and what purpose it serves.
- Arresting the perpetrator on contravention of the Protection Order.
- Sending members that are not directly involved in responding to domestic violence cases for refresher training.
- There are not enough practical scenarios presented during training which can allow members to identify with what happens outside the classroom. This is also shown on the research report by Combrinck H, et al,(2009).
- Participants reported that training methodologies predominantly consisted of lecture-style presentations, rather than taking the form of group work and being based on practical examples.

RECOMMENDATIONS

- The CSP will conduct a joint visit with the SAPS to some of the basic training institutions in order to observe the methodology of training and make informed recommendations.
- Station Commanders should be obliged to discuss DVA as a standing item during the station lectures. Discussion should be based on areas identified by the Commanders as in need of attention.
- The National Instruction can be sub-divided into small handy information notes of about one A4 page per section for discussion during parade sessions. These information notes can also be used during station lectures.
- Clear and simplified legal interpretation on the issues of arrest after contravention of the order should be done. The role of SAPS and how the discretion to or not to arrest must be applied should come out clearly during training, station lectures and in the station orders.

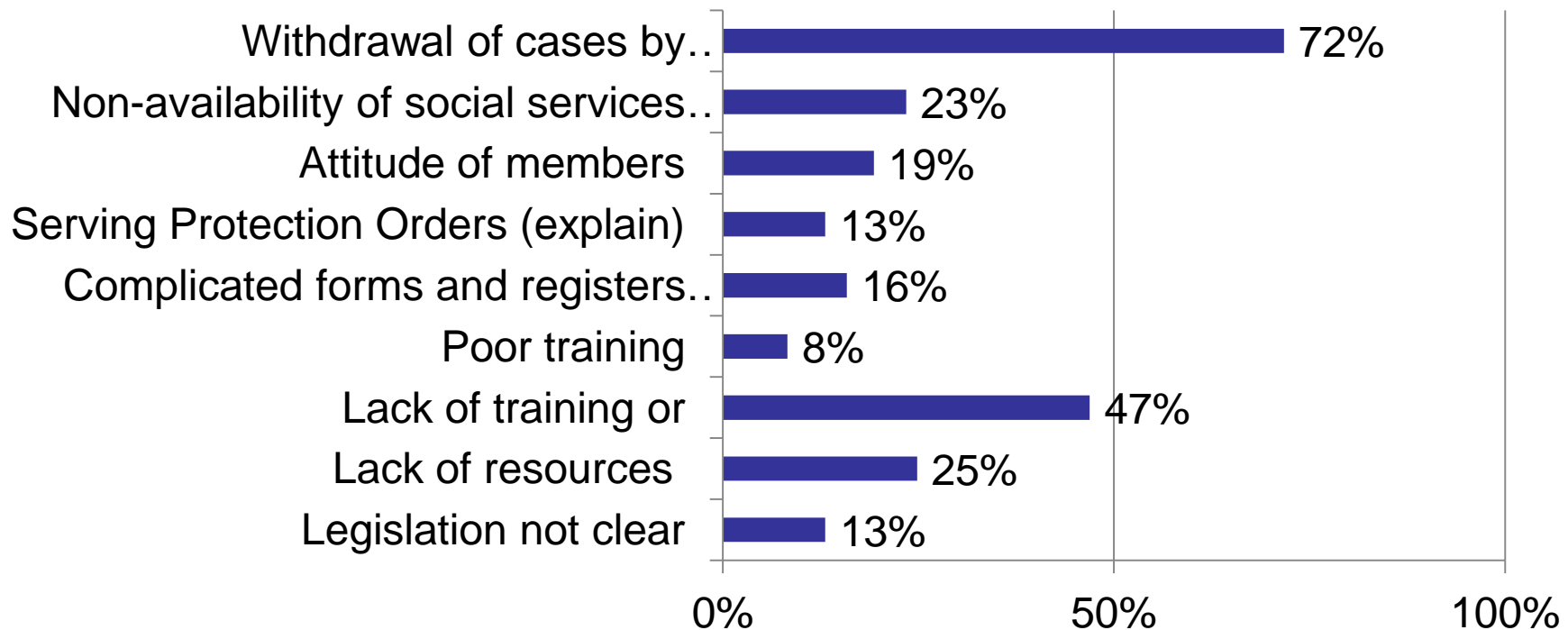
RECOMMENDATIONS



- Copies of Form 1 and Form 11 should be added to the documents that must be in the patrol vehicles. These must be captured in the relevant section of the National Instruction.
- Form 1 needs to be simplified, with user friendly language (less legal jargon) and a space for signature by the complainant and the issuing SAPS member.
- Evaluation of the DVA training and impact assessment study should be conducted by the SAPS jointly with the CSP
- A mentorship and coaching programme at police station level for all new recruits should be considered

2. WITHDRAWAL OF CASES

- 72% of the stations visited experience high numbers of withdrawal of cases by the complainants.
- As a number of research projects have shown, high withdrawal is linked to socio-economic status of the country.



RECOMMENDATIONS

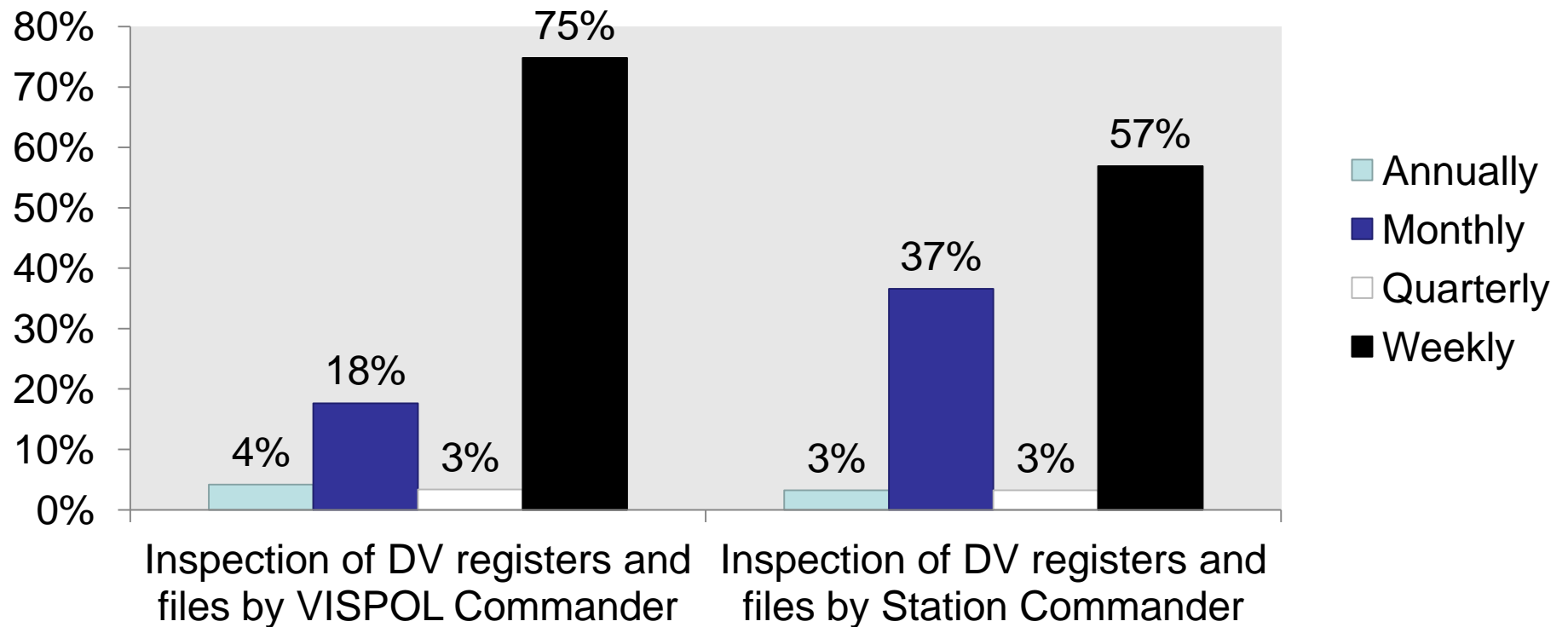
- Stringent measures on withdrawal of cases to be included on DVA and National Instructions
- The SAPS and the CSP should engage civil society and academia in exploring various ways of policing domestic violence taking into consideration social and economic context of our country. A study to explore regional and international practices should be undertaken.

3. COMMAND AND CONTROL

- Paragraph 3(6) of the National Instruction states that as part of his/her responsibilities in implementing the DVA, the Station Commander must “taking into account the unique circumstances prevailing in his / her specific station area, available resources, etc., issue station orders...”.
- Most Station Commanders do not adhere to this prescript, what has been identified is that station orders, where available, are either a copy of the Provincial Order, or an outdated copy that is not relevant when one consider that particular station’s current circumstances.
- DVA registers and files are mostly inspected by CSC Commanders and by Station Commanders on weekly basis according to information obtained from the audits.
- However, this appears to only be a matter of putting signatures and it does not fulfill the intended purpose of inspecting the registers.
- Station managers (including Station Commanders, VISPOL Commanders and Shift Commanders) are also not well conversant with the DVA. As a result they are unable to provide proper guidance to the subordinates

INSPECTION OF REGISTERS

DV FILES AND REGISTERS INSPECTIONS



4. LEGISLATIVE GAPS

- Poor coordination and cooperation among all the role players that deal with domestic violence is a serious challenge.
- Provision of shelters; counselling services and places of safety falls within the mandate of Department: Social Development. Lack of these psycho social services, especially in rural areas, makes it difficult for both the SAPS and the Courts to refer complainants; however the Department of Social Development is not obliged by the DVA to ensure that these services are accessible in all policing precincts.
- According to the DVA a complainant can apply for a protection order any time and on any day, however this is not fulfilled in implementation as the courts only operate during working hours and the SAPS cannot get hold of NPA personnel on standby as suggested in the DVA regulations.

LEGISLATIVE GAPS

- The management of protection orders between the court and the police stations is also a challenge, e.g. in cases where a complainant goes directly to court without going to the police station.
- The responsibility and manner of serving the order together with the resource implications is also not specific in the DVA which results SAPS and the NPA pointing fingers at each other and in some instances the complainants find themselves in position whereby they are told to serve the order themselves.
- There is no clear time frame with regard to service of protection orders as well as provision of proof of service, except to say they must be served without delay. As a result both the regulations and the National Instructions use the same terminology.
- The Act should oblige both the SAPS and NPA to provide clear time frames in their Regulations and instructions

LEGISLATIVE GAPS

- Budget allocation for implementation of DVA does not come out clearly in the SAPS Annual Performance Plan and this affects the amount of resources allocated. All the departments that have a role to play in DVA implementation should be obliged to allocate budget so as to ensure effective implementation.
- The SAPS DVA National Instructions need to be reviewed and all the functions relating to ICD should be rewritten to read as the Secretariat. This delay in changing the Instruction is affecting the working relationship at Provincial Level.
- It was observed during the oversight visits that some of the mistakes in the completion of registers are as a result of conflicting information given by different oversight structures that visit stations (including the SAPS). This conflicting information can be due to different ways in which these different structures interpret DVA and the National Instructions.

RECOMMENDATIONS

- The DVA should enforce that a Multilateral Agreement be developed between all the government departments that contribute to implementation of the DVA. This agreement should clearly define the roles and responsibilities of each department, resources required for effective implementation of the DVA and define the kind of partnership that will exist amongst these departments
- The DVA should also oblige all the relevant departments to report on their implementation of the DVA annually.
- Responsibility and resource requirements for service of protection orders should be clearly defined. In order to avoid glitches, the legislation should designate one department, i.e. either Department of Justice and Constitutional Development (DoJ&CD) or SAPS to be responsible for this service. Both the SAPS and DoJ&CD should be obliged to develop a service level protocol that will clearly define the process of receiving and serving the order.
- The CSP should coordinate a workshop on DVA interpretation for all SAPS oversight bodies so that a common and standardized understanding of DVA can be developed.

PLANS TO STRENGTHEN OVERSIGHT

- The engagements with other stakeholders has made it clear to the Secretariat that the best response to domestic violence would be broad policing that is inclusive of community members, faith based organisations and any other community based organisation. In order to come up with a model on how this can be achieved, the CSP will explore, regionally and internationally, best practices with regard to policing of DVA and other laws aimed at addressing violence against women and children.

PLANS TO STRENGTHEN OVERSIGHT

- Joint fact-finding visit with SAPS focusing on provinces that reported high number of incidents and those with the lowest, e.g. Western Cape and Northern Cape.
- Visit to the basic training college – observe method of training so as to make informed recommendations
- Public awareness campaign to cover the following areas: marketing of the Secretariat's role in monitoring DVA, educating communities on DVA. This will be carried out at Provincial level in partnership with the SAPS, CPF and the NPA.
- Dialogue on improving SAPS response to violence against women and children. This initiative will take place IN August 2013 and will be done in partnership with the CSO, Joint Gender Fund. It will involve government and civil society organisations



Thank you