

Draft Report

Verification Exercise on

Non-Compliance to Domestic Violence Act [DVA]

Based on Report Prepared by the

Independent Complaints Directorate [ICD]

During the 2006 / 2007 Financial Year

**Research Unit
December 2010**

Introduction and Background

Domestic Violence is a serious social evil – it is a commonly known fact that there is a high incidence of Domestic Violence within South African society.

Domestic Violence includes the following: physical, psychological and sexual abuse; economic and verbal abuse; intimidation, harassment and willful damage to property; and the entry into a complainants' place of residence without consent.

In 1999, the **Domestic Violence Act No 116, 1998 [DVA]** was promulgated. The purpose of the Act was to afford victims of domestic violence the maximum protection from physical and psychological abuse, and to introduce measures which seek to ensure that the relevant organs of the 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.

According to Domestic Violence Act [DV Act], members of the South African Police Service [SAPS] are compelled to comply with the provisions of this Act. For example, when an incident of domestic violence is reported, the South African Police Service [SAPS] members are expected to render assistance to the complainant. These include ...

- Assisting or making arrangements for the complainant to find a **suitable shelter** and to **obtain medical treatment**;
- Hand a **notice containing information as prescribed to the complainant in the official language of the complainant's choice**, and,

- Explain to the complainant the content of such notice in the prescribed manner, including the remedies at his or her disposal in terms of this Act and, the right to lodge a criminal complaint if applicable.

During 2004 / 2005, the **Independent Complaints Directorate** received numerous complaints from the public about issues related to SAPS non-compliance with the DV Act. These complaints essentially centred around the fact that victims of domestic violence continued to be marginalized and discriminated against by the police.

In 2006 the Independent Complaints Directorate [ICD] conducted research on the factors contributing to the South African Police Service's non-compliance with the Domestic Violence Act. The aim of the research exercise was essentially to determine the reasons for non compliance to the provisions of the Domestic Violence Act by South African Police Service and to identify factors contributing to non-compliance.

The research exercise makes use of both quantitative and qualitative methodologies. This combination of quantitative and qualitative is known as TRIANGULATION. This method is widely used by social scientists and allows for the measurement of responses from police officers at the identified police stations, and also for a critical analysis of the findings.

In November 2010 the Research Unit was requested, *in compliance with the Annual Performance Plan [APP]*, to conduct a monitoring exercise to verify whether the recommendations of the ICD Report were implemented.

1. Objective / Aim

The objective of monitoring and verification process was to ...

- Determine the extent to which the recommendations of Independent Complaints Directorate were implemented.
- To trace the impact that the recommendations had in improving South African Police Service's compliance with the Domestic Violence Act.
- Assess, in general, the implementation of Domestic Violence Legislation by SAPS at the identified stations, and further to check whether the procedure followed by SAPS members when opening the case of Domestic Violence was in line with stipulations of the DV Act.

2. Methodology

The Independent Complaints Directorate research report was assessed and monitoring indicators were developed and used during the verification process. An interview template¹ was developed as a guideline to collect data from the affected stations. Interviews were conducted with the Station Commanders and the Head: Community Service Centre [CSC] in the six affected police stations, viz. Seshego, Nebo, Polokwane, Jane Furse, Thohoyandou and Mahwelereng.

¹ A copy of the questionnaire is attached to this Report.

3. Limitations

In all the police stations we visited,

- It should be noted that participants were not aware of the ICD research report [namely, **Factors contributing to non-compliance of Domestic Violence Act**] prepared by the Independent Complaints Directorate.
- Participants were also not aware about the research recommendations.

It became apparent, during the interviews sessions that the ICD research exercise was not known to the police stations we visited. It is possible that the Provincial Office was also not aware of the research exercise, and therefore not familiar with the recommendations made in the ICD research report.

4. Findings

4.1 Implementation of recommendations by affected police station

Recommendations as per Independent Complaints Directorate	Findings
<p>1. National Instruction 7 / 1999 - the Domestic Violence Act must be simplified so that it is interpreted in a uniform way by all Police Officers. This will assist all members to know what is expected from them and will reduce the inconsistency in dealing with domestic violence cases.</p>	<ul style="list-style-type: none"> ▪ In all police stations we visited, participants indicated that they were not aware about the independent Complaints Directorate' research nor the recommendations emanating from the research.
<p>2. Complainants must be informed / reminded about the seriousness of reporting domestic violence cases.</p>	
<p>3. 16 Days of Activism campaign must be conducted on <i>Violence Against Women & Children</i></p>	
<p>4. Public education, for example Awareness Campaigns on domestic violence must be conducted.</p>	
<p>5. Police officers must inform the community about the steps that must to be followed when they feel that their cases are not handled properly. For example, the community must be encouraged to report domestic violence cases to a station commissioner before reporting to ICD.</p>	<ul style="list-style-type: none"> ▪ The participants further indicated that they received no directives or instructions from the Provincial office relating to the ICD research.
<p>6. Community members must be reminded to involve the police in serving protection orders to the transgressors / perpetrators of abuse.</p>	
<p>7. The public must be sensitized about the protection order as a legal document.</p>	
<p>8. Community must be encouraged to provide police with honest information when they open the domestic case. This will minimize withdrawal cases.</p> <p>9. Community Service Centre [CSC] head must ensure that all members in his / her station are fully conversant with the DV Act, so that when they interact with the community they are in a position to explain to clients the provisions of the Act and also the protection it offers to the victim.</p>	

4.2 Implementation of Domestic Violence Legislation, and

4.2.1 SAPS National Instruction 7/1999

- In all visited police stations, participants indicated that South African Police Service members received training on the National Instruction 7 / 1999.
- Participants further indicated that all members are conversant with National Instruction 7 / 1999. The exception is that new members are not conversant with the legislation – however, they receive instructions on the implementation process as and when required.
- Participants added that the National Instruction 7 / 1999², does provide clear directions / instructions on how to respond to a complaint of domestic violence – this does help with compliance to the obligations imposed upon him or her in terms of Domestic Violence Act.

4.2.2 Domestic Violence Act No.116 of 1998

- In all the police stations that were visited, participants indicated that the majority of South African Police Service members receive training on Domestic Violence Act No.116 of 1998. This training forms part of the basic training received by all new members [recruits] during their first year in the force;
- Participants indicated that the Domestic Violence Act provides guidelines to every member of South African Police Service as to how the victim of domestic violence must be handled / treated;
- The participants further added that they are aware that as a member of South African Police Service, they are compelled to comply with the provisions of DV Act.

² A copy of the SAPS National Instruction is included as an attachment in the Final Report

4.3 Keeping of records of domestic violence cases

In all visited police stations, participants indicated that domestic violence cases are:

- Documented on the “Report of Domestic Violence Incident Form” 508 [a]
- In the 508 [a] form, the Community Service Centre [CSC] member enters the name of complainant in the form; provides a brief description of incident of domestic violence; identifies the domestic violence category; makes an assessment of the type of assistance needed by the complainant [for example: the Community Service Centre member(s) check if the victim will need medical assistance, shelter, protection order, interpreter and the particulars of a respondent];
- Enter all the pertinent details from form 508 [a] to the Domestic Violence register 508 [b];
- In the Domestic Violence register 508 [b], the Community Service Centre member enters the monthly serial number, date and time of the incident, particulars of the complaints, particulars of SAPS member(s) who dealt with the incident, enters the Pocket Book reference; the type of incident; the outcome; indicates whether the respondent was arrested; whether a Protection Order is already in existence; whether the perpetrator received the Protection Order; indicates the Magistrate’s Court where the Protection Order was issued; and whether Notice J645 [e] was served to the respondent to appear in court, etc.
- During our visits to the police stations, all the registers 508 [b] were available in the Community Service Centre.

4.4 Application and Serving of Protection Order

- In all the police stations that were visited, participants indicated that victims of domestic violence are assisted to complete the J 480 E form; ***This form complies with Application for Protection Order Section 4{1} of the Domestic Violence Act, 1998 (Act No. 116 of 1998) by the Community Service Centre member;***
- Participants further indicated that community members are sensitized about the importance of applying for the Protection Order and are encouraged to treat the Protection Order as a legal document;
- Participants also indicated that community members are reminded to involve the police in serving the Protection Order (s) to the transgressors / perpetrators of abuse;
- Protection Orders can only be served by an officer attached to the police station where the complaint was lodged;
- The provisions of the Protection Order must be explained to the recipient [perpetrator / transgressor], and further that non-compliance to the provisions may result in arrest / detention of the perpetrator.

4.5 Public Awareness Campaigns

- In all the police stations visited, the participants indicated that **public education** such as **Awareness Campaigns** and **16 Days of Activism [Violence Against Women and Children]** are conducted in collaboration with Department of Justice and the relevant Non- Governmental Organizations.
- Participants further indicated that during the **Awareness Campaigns**, community members are informed about their rights; are given details about the various forms of domestic violence; and also told about the preventative measures that are available to victims of abuse [or potential victims of abuse].
- Participants add that during **Awareness Campaigns**, community members are reminded about the seriousness of domestic abuse, and are encouraged to report domestic violence cases; they are further encouraged to provide the police with honest and accurate information;
- Participants further add that information pamphlets on Domestic Violence are also distributed during their **Awareness Campaigns**.

5. Analysis

In general, the findings indicate that the participants were not aware about the Independent Complaints Directorate research related to the non-compliance to the Domestic Violence Act, nor were they aware about the recommendations of the ICD report.

The findings further indicate that while the domestic violence legislation such as the Domestic Violence Act No.116 of 1998 provides clear direction / instructions to the South African Police Service members as to how to respond to a complaint of domestic violence. Despite this, some SAPS stations are failing in their duty to comply with the provisions of this Act.

With regard to the keeping of records related to domestic violence, the South African Police Service members do document domestic violence cases on the **“Report of Domestic Violence Incident Form”** 508 [b] and the **Domestic Violence Register** 508 [b]. What is interesting is that all the registers were available.

In cases where a police officer attended a scene of a domestic violence incident, and no charge or arrest is made, the police officer must record this visit, together with the reasons why no charge or arrest was made in his or her **Pocket Book** [SAPS 206]. While this might imply that the South African Police Service members are doing well on record keeping of Domestic Violence cases, no physical checks were made to establish whether these entries are recorded in their **Pocket Book**.

In addition to the above, victims of domestic violence are assisted to complete the J480E form. This form is completed only if the victim feels that she needs protection from further abuse by his/her spouse. This application for

Protection Order complies with the provisions, viz. Section 4 [1] of the Domestic Violence Act, 1998 (Act No. 116 of 1998). This Act allows for a victim of domestic abuse / violence to seek a Protection Order from the Magistrate's Court against the person who is committing the abuse. What is interesting is that in the Domestic Violence Register 508 [b], the investigating police officer must indicate the date the **Protection Order** was served, and the name of the police officer who served the Protection Order. The respondent must sign to verify that he received the order, and that he fully understands the terms and provisions as set out in the **Protection Order**.

Finally, the findings confirmed that **public education**, such as **Awareness Campaigns** and **16 Days of Activism** [Violence against Women and Children] are conducted in collaboration with Department of Justice and Non-Governmental Organizations. What is interesting is that during these awareness campaigns, community members are sensitized about their rights such as: rights to lay a criminal charge, rights to apply for **Protection Order** and the right to lay charges.

Victims are also encouraged to treat the **Protection Order** as a legal document. This implies that the community members are aware about the domestic violence issues, and, should the need arise, the places where they can get assistance if they become a victim of domestic violence.

6. Recommendations

- The Independent Complaints Directorate [ICD] research report must be submitted to the SAPS Provincial Office, and they in turn, should circulate the Report to all police stations and ensure that members of the service comply with the recommendations of the report.
- A detailed plan of action on the implementation of recommendations must be submitted to the Department of Safety, Security and Liaison by South African Police Service Provincial office.
- We further suggest that a research project on the "Attitude and perceptions of South African Police Service member towards the victim of domestic violence" must be conducted.
- A further research exercise / project on the "Experience of victims of domestic violence towards South African Police Service" must be conducted.

**Research Unit
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