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## **SAPS COMPLIANCE TO THE DOMESTIC VIOLENCE ACT,**

### **1. Introduction**

Almost twenty years after the promulgation of the Domestic Violence Act, 1998 (DVA), the South African Police Service (SAPS) is still not complying with the provisions of the DVA. The last compliance audit conducted by the Civilian Secretariat for Police (CSP) found that only two of 145 police stations were fully compliant to the Act, which is 1.4 per cent of the sample size. This should be seen as a serious indictment on the commitment of the SAPS to the implementation of the DVA.

The mandate for monitoring the implementation of the DVA (by the SAPS) used to lay with the Independent Complaints Directorate (ICD) until 2011 when its mandate changed through the IPID Act, 2011. The function of monitoring the implementation and compliance to the DVA was shifted to the CSP, as this body is mandated to oversee the implementation of all policy and legislation by the SAPS. Since April 2012, the CSP has taken over this role and developed a standardised tool used during oversight visits to police stations. The visits are also aimed at identifying challenges with implementation of the DVA by police stations and to equip the police stations with information on the manner in which compliance and implementation can be improved focusing on the following areas:

- Regulatory compliance;
- Record keeping; and
- Services offered to complainants.

This paper considers the third (April 2013 – 30 September 2013) and fourth (October 2013 – March 2014) compliance reports on the DVA and focusses on the following four aspects:

- 1) Regulatory compliance;
- 2) Victim Friendly Services;
- 3) Non-compliance cases brought against members of the SAPS; and
- 4) DVA incidents reported against members of the SAPS.

### **2. Legislative mandate**

The Civilian Secretariat Act places the responsibility of monitoring the implementation of the DVA by the SAPS with the Secretariat. This function was previously performed by the Independent Complaints Directorate or ICD (before it became the Independent Police Investigative Directorate or IPID). Section 6(1)(c) and (d) of the Civilian Secretariat for Police Service Act mandates the Civilian Secretariat to:

- Monitor the compliance with the DVA No.116 of 1998 by the SAPS; and



- Make recommendations to the SAPS on disciplinary procedures and measures with regards to non-compliance with the DVA.

Further hereto, the Act provides for the cooperation of the SAPS to assist the Secretariat to monitor and evaluate its compliance with the DVA.

The DVA, through Section 18(5)(c), provides that the Civilian Secretariat must submit a six-monthly report to Parliament regarding the number and particulars of matters reported to it in terms of any member of SAPS who fails to comply with an obligation imposed by the DVA (Section 18(4)(a)), and setting out the recommendations made in respect of such matters.

### 3. Compliance

#### 3.1 Regulatory compliance

Regulatory compliance assesses the police station's level of compliance as set out in the National Instructions. These include the following:

- Checking the availability of documents in the CSC and in the vehicles as per section 3(5)(a-e) of the National Instructions.
- Record keeping with specific reference maintenance of registers, proper filing of documents ( forms and protection orders);
- Submission of relevant monthly returns
- Accessibility and maintenance of the Victim Friendly Room (VFR)

The compliance levels are distributed in three levels, i.e. full compliance, which is equivalent to 100%, followed by partial compliance, which is equivalent to 60 -99%, and lastly non-compliance, which refers to any station performing below 60%.

**Table 1: Regulatory compliance and record keeping**

Compliance	01 April 2013 – 30 Sept 2013		01 Oct 2013 – 31 March 2014	
	Report 3		Report 4	
	Stations	%	Stations	%
<b>Full compliance (100%)</b>	0	0.0%	2	1.4%
<b>Partial compliance (61-99%)</b>	93	69%	113	77.9%
<b>Non-compliant (0-60%)</b>	42	31%	30	20.7%
<b>Total</b>	<b>135</b>	<b>100%</b>	<b>145</b>	<b>100%</b>

Source: CSP (2013-2014)

During the April 2013/Sept 2013 reporting period, the audits conducted by the CSP found that none (0) of the 135 police stations audited had with full regulatory compliance to the DVA. This improved slightly during the subsequent Oct 2013/March 2014 reporting period, with two (2) police stations having achieved 100% regulatory compliance (both stations, Kroonstad and Zamdela, are in the Free State province). During the Oct 2013/March 2014 period, the average



compliance rate of stations with partial compliance increased to 77.9% from 69% in April/Sept 2013. As such, the rate of non-compliant police stations decreased in the Oct 2013/March 2014 period from 31% to 20.7%.

The table below shows the provincial breakdown of regulatory compliance to the DVA. During the April/Sept 2013 period, the Eastern Cape, Limpopo and Western Cape provinces seemingly fared well with no stations having non-compliance findings. However, these provinces had a very small sample size audited, which could account for the finding of no non-compliant stations. The Mpumalanga province had the highest rate of non-compliant stations (76%), followed by the KwaZulu-Natal province (75%) and the North West province (62%). Overall, the Gauteng province had the best rating out of all nine provinces. The Gauteng audit included 44 stations, of which 98% were partially compliant and only 2% non-compliant.

During the Oct 2013/March 2014 period, this trend continued. During this period, the CSP provided average ratings for provinces, which makes it easier to assess the performance of provinces. The national average rating for regulatory compliance was 72% for the reporting period. Only four provinces achieved ratings above the national average (Eastern Cape, Free State, Gauteng and Western Cape). The KwaZulu-Natal and Northern Cape provinces recorded an average compliance rate below the national average of 69% and 64% respectively. The Mpumalanga and North West provinces scored well below the national average (56%), which is an average non-compliant finding. The Limpopo province was not audited during the Oct 2013/March 2014 period.

**Table 2: Provincial breakdown for regulatory compliance**

Province	Report 3 01 April 2013 – 30 Sept 2013				Report 4 01 Oct 2013 – 31 March 2014				
	Stations	Compliance			Stations	Compliance			
		Full	Partial	Non		Full	Partial	Non	Average
Eastern Cape	4	0%	100%	0%	14	0.0%	100%	0%	<b>88%</b>
Free State	26	0%	77%	23%	23	8.7%	86%	4%	<b>81%</b>
Gauteng	44	0%	98%	2%	44	0%	100%	0%	<b>80%</b>
KwaZulu-Natal	4	0%	25%	75%	10	0%	70%	30%	<b>69%</b>
Limpopo	3	0%	100%	0%	n/a	n/a	n/a	n/a	<b>n/a</b>
Mpumalanga	17	0%	24%	76%	24	0%	29%	71%	<b>56%</b>
North West	13	0%	38%	62%	11	0%	45%	54%	<b>56%</b>
Northern Cape	20	0%	55%	45%	3	0%	33.3%	67%	<b>64%</b>
Western Cape	4	0%	100%	0%	16	0%	100%	0%	<b>85%</b>
<b>National</b>	<b>135</b>	<b>0%</b>	<b>69%</b>	<b>31%</b>	<b>145</b>	<b>1.4%</b>	<b>77.9%</b>	<b>20.7%</b>	<b>72%</b>

Source: CSP (2013-2014)

Most of the non-compliance challenges identified in relation to record keeping can be attributed to the poor recording of the 508a, which is a domestic violence form that is used to descriptively register the incidence of domestic violence received. Of the 145 police stations visited during the



Oct 2013/March 2014 period, about 92% did not record the 508a form correctly. Some of the examples include the nature of DVA incidents that are sometimes recorded differently in the SAPS 508a and in the domestic violence register even though the incident is the same. This might lead to an unsuccessful conviction of the suspect as records might be conflicting when presented in court.

The stations fared better in having a list of organisations and services with contact details to assist the victims of domestic violence when they are in need of shelter, as required by the National Instruction. However, the CSP reports that in a majority of the stations (52%), this list is not always available and often outdated. According to the National Instructions, this list should be updated every six (6) months and it is the role of the station commander to ensure that.

### Comments and questions

- 1) The Secretariat should indicate the reasons for the Limpopo province not being audited during the Oct 2013/March 2014 period. This hampers comparative analysis of the performance of the province going forward.
- 2) The Secretariat recommends that the DVA Register (SAPS 508b) needs to be reviewed and updated. It is further recommended that *“there should be additional columns for updating information, reasons for no arrests, details of investigation officer where a case has been opened and space for signatures and comments from inspecting officers.”* The Secretariat should provide clear time-frames for the review of the SAPS DVA Register – when will this review be completed.
- 3) The Secretariat should indicate whether the SAPS 508a form will also be reviewed, as these forms are also not filled properly.
- 4) The Secretariat should provide a clear direction for the manner in which the non-compliance to regulatory requirements will be improved. As this is prescribed by legislation, National Instructions and Stating Orders, the non-compliance to regulatory compliance should be seen in a very serious light and dealt with as a serious matter. The Secretariat should engage with the SAPS to ensure improvement, as this constitutes dereliction of duty.
- 5) The Secretariat should indicate what remedial action will be taken in the Mpumalanga and North West provinces, where both provinces received an average non-compliance score.
- 6) The Secretariat should indicate what the impact of the development of flowcharts and checklists is on the compliance to the DVA and whether it has enhanced the capacity of frontline members to respond victims of domestic violence on any meaningful level?
- 7) Reasons for the small sample size for the Western and Eastern Cape should be provided as it inhibits the ability to fully track progress in these provinces.

### 3.2 Victim friendly services

The table below provides a comparative view of the findings made by the CSP during station audits on the availability of victim friendly rooms (VFRs):



**Table 3: Stations rendering a victim friendly service**

Oct 2013-March 2014	April 2013 – September 2013
<p>Of the 145 stations visited, 63% of them had Victim Friendly Rooms, however the CSP reported that in some stations these structures are not used for their intended purpose and this impact on the provision of a victim friendly service for victims of domestic violence and sexual offences.</p>	<p>Of the 135 police stations visited, 94 had a functional victim friendly room whilst in 16 police stations the room existed, but was not used for its intended purpose. A total of 25 stations did not have a VFR, mainly due to lack of space in the police stations. Some of these stations however, had a working relationship with nearby service provider to assist them in provide a victim friendly service.</p>
Challenges identified	Challenges identified
<p>One of the main challenges with the Victim Friendly Rooms is the management of volunteers. There is no clear indication on how volunteers working at the VFRs are recruited and managed, e.g. there are no records to show they have been screened to asses and verify that they have not been involved in domestic violence either as perpetrators or as victims. The role of SAPS in management of these volunteers in stations where they are present is also not clarified.</p>	<p>There is still a challenge with management and resourcing of the VFR. Some rooms could not be accessed as the keys could not be located. Paragraph 13 (2) of National Instruction 2 of 2012 obliges the Station Commander to designate a member to be the station's Victim Empowerment Programme (VEP) coordinator who will be responsible for the implementation, coordination and management of matters relating to victims in his / her station. Most stations that were visited did not have the designated VEP Coordinator; hence the above mentioned challenges with the management of the VFR.</p>

The SAPS identified a performance indicator for the percentage of police stations rendering a victim friendly services to victims of rape, sexual offences and abuse, with a target for 2013/14 of 100% (1 131 stations). At the end of the 2013/14 financial year, the SAPS reported that this target was exceeded and that the total number of police stations (1 137) are rendering a victim friendly service to victims of rape, sexual offences and abuse. This is in stark contrast to the findings made by the Secretariat.

#### Comments and questions

- 1) It seems that the major challenge is located within the management of VFRs. The Secretariat should indicate what it is doing to assist the SAPS Management to improve the management of volunteers at VFRs.
- 2) The Secretariat should indicate the main reasons for VFRs not being used for its intended purpose and the manner in which this challenge is addressed.
- 3) Can the Secretariat venture a response to the discrepancy between its audit findings and the performance reported in the 2013/14 SAPS Annual Report regarding the rendering of a victim friendly service?



### 3.3 Non-compliance cases

The DVA stipulates that failure by SAPS members to comply with the duties as outlined in the DVA constitute misconduct and the Station Commander should institute disciplinary action against such members, unless such members has been granted for exemption by the CSP. The National Instructions further urges SAPS to submit returns of non-compliance cases received each month and to register such cases on the SAPS 508 form, which is mostly not found or known at police stations.

The table below provides a comparative view of the findings made by the CSP during station audits on non-compliance cases against SAPS members:

**Table 4: Non-compliance cases made against SAPS members**

Oct 2013-March 2014	April 2013 – September 2013
The Western Cape has highest number of reported cases of non-compliance during the period under review (196) and all the cases reported disciplinary action against members have been instituted. This was followed by Free State with 10 cases, of which five cases was followed-up with disciplinary action. The other provinces reported no cases against members.	27 non-compliance complaints were reported against the SAPS for failing to comply with the DVA. It should be noted that these complaints were identified by the Provincial Secretariats during the audits. No complaints were forwarded to the CSP or to the Provincial Secretariats. According to information contained in the SAPS registers, in 25 of these matters disciplinary proceedings had been instituted.

As seen above, the Western Cape Province has a very high number of reported non-compliance cases. The Secretariat reported that the main reason for such high numbers in the Western Cape, is that all non-compliance matters identified during station audits are recorded and recommendations to institute disciplinary against all members who have been found to have not fully complied.

#### Comments and questions

- 1) The Secretariat should explain the manner in which and under which circumstances exemptions for disciplinary actions against members are granted by the Secretariat.
- 2) The Secretariat should indicate what steps are taken against Station Commanders failing to complete the SAPS 508 form for cases of non-compliance, which should be submitted monthly.
- 3) The Secretariat should explain the situation regarding the high number of non-compliance cases against SAPS members in the Western Cape. It was stated that this is due to the fact that the Western Cape Provincial Commissioner is taking serious steps against SAPS members failing to comply with the requirements of the DVA, National Instruction and Stating Orders. From the audit findings of the Secretariat, it is implausible that other provinces do not experience equally high levels of non-compliance. The Secretariat



- should explain the steps taken by National to address non-compliance of other Provincial Commissioners.
- 4) The Secretariat should clarify what number of the cases reported in the WC constitutes public complaints against members failing to assist them in terms of the DVA and what number of these 196 cases are due to inspecting officers finding the SAPS DVA Register not filled in correctly.

### 3.4 DVA incidents reported against members

The table below provides a comparative view of the findings made by the CSP during station audits on DVA incidents reported against SAPS members

**Table 5: Domestic violence incidents reported against SAPS members**

Oct 2013-March 2014	April 2013 – September 2013
<b>Cases</b>	
Out of all the 145 police stations visited, 74 members were found to have been offenders in domestic violence incidents. Out of these reported incidents 40 criminal cases were opened by complainants.	Out of the 135 stations visited, 37 stations in eight provinces reported that 59 domestic violence cases have been reported against SAPS members.
<b>Firearms seized</b>	
Even though in majority of the incidents especially where criminal cases have been opened, firearms were seized (some stations who did not seize firearms despite a criminal case being opened). A total of 40 firearms were seized out of the 74 incidents and in 20 of the incidents firearms were not seized as indicated in the provincial breakdown below.	Out of the 59, 28 firearms have been seized and the 9 cases where firearms were not seized the stations involved are contravening the section 102 and 103 of the Firearms Control Act.
<b>Withdrawal of cases</b>	
Not reported	<p>Out of the 59 cases reported, 30 criminal cases were opened while 16 cases were withdrawn by the complainant.</p> <p>The Secretariat stated that the withdrawal of cases by complainants can hypothetically be attributed to economic dependency or that the police officers exercises their power and control by intimidating, isolating and terrifying the victim thus leading to the withdrawing of the cases due to fear of victimisation. This is, however, an area that needs to be explored further though a study that would involve the victims of domestic violence where law</p>



	enforcers are involved.
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Recently reported incidents of SAPS members shooting partners/family members:<sup>1</sup>

- June 2014: A 47-year-old police officer shot his girlfriend and mother of this 8-year-old son before turning the gun on himself.
- May 2014: A 23-year-old police officer shot his wife before turning the gun on himself at a restaurant at Cape Town International Airport. She survived, but he died. Two other restaurant patrons were wounded.
- August 2013: Constable Mzwandile Bolotina murdered his wife and then turned the gun on himself. Police received a complaint about the noise at their home in the afternoon. Neighbours went to investigate and found Bolotina and his wife dead with gunshot wounds in their bedroom. Bolotina was part of the Krugersdorp police station's detective unit, but stayed in Kagiso on Gauteng's West Rand.
- August 2013: A constable attached to the Kuils River police station shot and killed his 40-year-old wife at their home in Kleinvlei, Western Cape. He then fled to a home in Delft and was arrested soon after.
- February 2013: In North West, a police officer shot and wounded his wife before killing himself. The 34-year-old sergeant's wife was en route to the Koster police station to lay a charge of domestic abuse when he tried to stop her by firing seven bullets at her car. He then turned the gun on himself.
- December 2012: A police constable tried to kill his 21-year-old girlfriend after an argument at a tavern in Modimong Village, near Taung, North West. After the argument, he and the woman drove to a bush-lined area, where he handcuffed her to a tree and shot her in the hip. He then shot himself just metres away.
- November 2012: A Cape Town policeman, Sergeant Max Gwanya, killed his family before shooting himself in the head, after an argument with his wife, Nosivuyise. The argument led Gwanya to shoot and kill his sister-in-law, wife and 4-year-old-son.
- April 2012: An enraged policeman at the Moot police station in Pretoria shot his girlfriend five times in front of his colleagues before he ended his own life. Constable Vutivi Mabunda shot the woman, 23, after she had asked for help at the police station in getting her clothes from Mabunda's flat.
- October 2012: An award-winning police officer, Sergeant Annesh Bootram, shot his former girlfriend, her mother and the couple's 6-year-old daughter and a family friend in a Mossel Bay flat in the Western Cape.

### Comments and questions

- 1) It is deeply concerning that the number of cases against members committing domestic violence offences increased since the last reporting period. Out of the 74 members who offended during the Oct 2013/March 2014 reporting period, criminal cases were opened against only 54% of the offenders. The Secretariat should state the possible reason for this low number of cases opened against members. The Secretariat should also indicate

<sup>1</sup> <http://www.iol.co.za/news/crime-courts/why-cops-kill-loved-ones-1.1697805#.VFcrsTSUceE>



the number of criminal cases opened in the April 2013/Sept 2013 reporting period, as this is not stated in the report for the period.

- 2) The Secretariat should indicate whether the SAPS has specific programmes in its Employee Health and Wellness (EHW) programme in place to assist members to deal with their aggression and not take it out on their partners.
- 3) The Secretariat should indicate the reasons for the SAPS not seizing the firearms of members against whom complaints of domestic violence were filed. This is against the Firearms Control Act, 2000 and should be closely monitored by the Secretariat. Reasons for the failure to seize firearms from members guilty of domestic violence should be provided.
- 4) The Secretariat should explain the manner in which the new reporting template for recording information on members who are either offenders or victims of domestic violence. It is believed that the amended reporting template will improve the reporting and recording of these incidents – the Secretariat should explain how this will be achieved.

### 3.5 Training

The number of members trained on key legislation, like the DVA, is improving and forms part of basic training. The Secretariat reported that a total of 5 128 SAPS members were trained on the requirements of the DVA during the Oct 2013/March 2014 reporting period. Of this 5 128 members, the majority of members were from the Visible Policing (VISPOL) division (4 097), 896 from the Detective Services and 135 from Support Services.

The Secretariat further reported that the SAPS will be engaging in an impact assessment of training during the 2014/15 financial year. The process will assist the SAPS to identify the gaps with the current training curriculum. One of the major challenges is to apply the theoretical training in practice at station level.

#### Comments and questions

- 1) The Secretariat should elaborate on the Compliance Forum established between the CSP and SAPS, which will attend training sessions at basic training institutions with the aim of observing the methodology implemented. The Secretariat should indicate what the envisaged outcome of these visits is.
- 2) The Secretariat should indicate whether training provided by the SAPS is adequate. And if it is, the Secretariat should indicate what they consider the problem is with the lack of implementation of the DVA.
- 3) Future compliance checks by the Secretariat on DVA implementation at police stations should include the percentage of personnel at that station trained in DVA legislation. This will assist in tracking the effective implementation of the DVA at station-level.

### 4. Conclusion

Command and control in the monitoring of the implementation of the DVA are crucial. The lack of consequences for SAPS members failing to comply with the requirements of various



instruments are having a devastating effect on the realisation of the imperatives of the DVA as envisaged by the legislators that crafted the Act. The services that should be rendered to victims of domestic violence are not being realised. As such, the non-compliance to the legislative requirements of the DVA is denying justice to those who fall victim to domestic violence.

The Secretariat needs to start assessing the reasons for non-compliance to the DVA at all levels of the SAPS. At station level, the assessment needs to centre on the lack of consequences to members failing to complete the necessary forms correctly and comprehensively and why Station Commanders are not overseeing the relevant registers. At cluster level, the Secretariat must assess the reasons for Cluster Commanders not overseeing and inspecting the registers at their cluster stations and not addressing the deficiencies with the relevant Station Commanders. Lastly, at National level, the Secretariat should assess the reasons for Provincial Commissioners not being held responsible for the failure of the management structures under their command and control in being accountable for the non-compliance to various key pieces of legislation aimed at protecting the most vulnerable groups in society, not only the non-compliance to the DVA.

Victims of domestic violence deserves better service delivery from the SAPS, who is mandated to enforce all domestic legislation. Currently, the SAPS seems to show disregard for the DVA and this needs to be addressed.

### **References**

Civilian Secretariat for Police (2013) DVA Monitoring Report: No: 3. April 2013 till 30 September 2013.

Civilian Secretariat for Police (2014) DVA Monitoring Report: No: 4. October 2013 till March 2014.

Parliament of the Republic of South Africa: Research Unit (2014) Gender-based violence (2009 – mid 2014): A review of the work of the fourth Parliament)