

EXECUTIVE SUMMARY

Domestic Violence Act Compliance Survey 2005

Based on the following report:

Artz, L., Combrinck, H., Gallinetti J., and Smythe D. (2005). *Commissioned Report on Compliance with the Domestic Violence Act at 29 Priority Police Stations in the Eastern Cape*, p. 1-183. SAPS/European Union.

In order to address this question, researchers started with a detailed analysis of the police duties set out in the DVA, the Regulations to the Act and the SAPS National Instruction, as well as the provisions of the CCA where they intersect with the DVA. From this set of duties, a list of monitoring indicators was drawn up, which was narrowed down on the basis of reliability and the need to contain the study within the prescribed time limits. Researchers subsequently developed a set of ten research instruments, including interview schedules and templates for the analysis of dockets, prescribed domestic violence records and court files and for purposes of conducting a station audit.

A total of 13 researchers conducted the fieldwork at the 29 priority police stations across the province over a period of approximately one month. The field researchers worked in two-person teams, and each team of two researchers was assigned 6-8 police stations, with the four key experts and a statistician 'roaming' in the field. The experts participated in research activities and also acted as supervisors for the field researchers.

The field research yielded the following data:

- Station audits at 29 stations;
- Analysis of 1,457 dockets;
- Interviews with 150 SAPS members responsible for handling complaints of domestic violence;
- Interviews with 28 Station Commissioners;
- Analysis of 1,207 SAPS 508 (a) forms (Domestic Violence Report Forms);
- Analysis of 29 SAPS 508(b)'s (Domestic Violence Registers);
- Interviews with 4 Commissioners of Child Welfare at children's courts;
- Analysis of 100 court files from 2 children's courts; and
- Interviews with members of 4 FCS Units and the Provincial ICD.

The findings and recommendations for each component of the study are presented below.

with responses suggesting no uniform approach is currently followed, especially regarding the institution of disciplinary proceedings against perpetrators and the withdrawal of official firearms.

Due to the close link between the responsibilities assigned to Station Commissioners in terms of the National Instruction (specifically relating to the institution of disciplinary proceedings against members for non-compliance with the DVA) and the functions assigned to the ICD, researchers also briefly examined the functions of the ICD. The role of the ICD can be described as one of monitoring and overseeing disciplinary proceedings against members, whereas the SAPS itself is responsible for investigating complaints, instituting disciplinary proceedings and enforcing disciplinary measures, where applicable.

Researchers set out to obtain general background information from the Eastern Cape office of the ICD on the nature of complaints of non-compliance received against members to establish whether specific trends could be identified. We also aimed to establish how this compliance survey could be integrated with existing monitoring processes, including the ICD.

Based on the information made available to researchers, we were encouraged to note that the ICD includes in its monitoring function not only complaints against members of non-compliance with the DVA but also cases of domestic violence committed by SAPS members. Unfortunately, the information at our disposal was insufficient to allow for the identification of any trends in complaints of non-compliance and the manner in which they were handled. We also observed areas of overlap and potential duplication between the proactive overview functions taken on by the ICD and the activities of the SAPS Provincial Evaluation Unit. We accordingly recommend that the roles and responsibilities of each body should be clarified as a matter of urgency.

It is apparent from our research findings that station commissioners play a pivotal role in ensuring compliance with the DVA. For this reason, we recommend that the station commissioners at the 29 priority stations should form the primary focus of initiatives to improve current levels of compliance. As a starting point, station commissioners should be tasked with drafting 'action plans' to rectify the weaknesses identified in this study. These action plans should include clear objectives, verifiable indicators of success and timeframes for completion. The plans should also include a well-motivated assessment of the resources (human and other) required in order for the station to improve its compliance with the DVA.

It is important that these action plans themselves should be evaluated before stations embark on the proposed actions, and that progress in terms of carrying out these plans should be assessed on a regular basis. To facilitate the drafting of the action plans, we have drafted a set of indicators. We also identified additional areas for action beyond station level. These include, on the level of provincial management, the formulation of instructions to station commissioners on dealing with complaints of domestic violence committed by SAPS members, including the institution of disciplinary proceedings, withdrawal of firearms and providing assistance to the complainant.

Docket Analysis

Although neither the DVA nor the National Instruction stipulate how criminal cases arising from domestic violence should be handled once registered for investigation, researchers were nevertheless of the opinion that a study of 'domestic violence' case dockets would provide useful information on various aspects of the duties that are set out in the National Instruction (for example, the seizure of firearms and dangerous weapons), and would also allow for the identification of areas for further inquiry.

Looking at the outcome of dockets relating to breach of the protection order, we observed that approximately 23% of these cases resulted in a conviction (as opposed to the overall conviction rate of 15%). In addition, we noted that SAPS members appear to be less likely to take responsibility for closing section 17 dockets on the basis of a withdrawal statement from the complainant. Only 17% of section 17 dockets were disposed of in this manner, as opposed to 33% of non-section 17 dockets. This presumably means that the cases are seen as being of greater 'consequence' and are therefore referred to the prosecution for a determination. Furthermore, the arrest rate of perpetrators who had breached a protection order was very high in the sample analysed, at approximately 85%. In contrast only 52% of suspects in non-section 17 domestic violence cases were arrested, despite a high prevalence of violence in these cases.

As can be deduced from the figures given above, in at least half of the dockets a decision by the SAPS or prosecution to withdraw the case or to decline prosecution resulted from the complainant lodging a withdrawal statement. This is a disappointing finding, and we acknowledge the likely frustration of SAPS members who had conducted thorough investigations only to have them come to nought when the case was withdrawn. Equally disappointing, however, were cases indicating extreme violence, including rape and attempted murder, where the accused had admitted to the offence in his arrest statement, and where the complainant's withdrawal statement itself reflected that the violence had occurred as alleged or continued to occur, which were not prosecuted.

On the other hand, we also noted a very small number of cases where the accused was prosecuted regardless of the fact that the complainant had filed a withdrawal statement. Each of these cases resulted in a conviction. All of them involved assaults by a husband on a wife, in one case occurring in front of an 11-year old child. In all cases the complainant had suffered documented injuries. There is, however, nothing that sets these cases apart in terms of severity or circumstances from the numerous other dockets seen by the researchers that were withdrawn at the request of the complainant.

Based on our observations, we formulated a number of recommendations relating to areas where training of members is required and where members should receive specific instructions (these relate both to investigating officers and members responding to the initial complaint of domestic violence). We also suggest the ongoing monitoring of the outcomes of all domestic violence cases (starting on station level), further investigation into the apparently low incidence of seizure of firearms and dangerous weapons, and discussions with the National Prosecuting Authority to develop clear policies on the prosecution of domestic violence cases where the investigation reveals prima facie evidence, but the complainant wishes to withdraw the charges.

Interviews with Police Members

The interviews with members focused on their knowledge of the procedural aspects of the DVA and the National Instruction and the manner in which they attend to domestic violence complaints. The interviews also sought to examine members' interpretation of key concepts (for example, 'imminent harm') and how they exercise their discretion in cases of domestic violence.

Interviews were conducted with 150 members at the twenty-nine stations. As far as possible, we tried to ensure that those members interviewed worked directly with domestic violence complaints. At certain stations, members were selected for interviews by station management; at others, researchers chose the interviewees themselves. Interviewees' experience ranged from 1 to 32 years, with an average length of service of 13.4 years.

Forty-five percent of the respondents reported having received training on the DVA. Of these, 69% had been trained for more than one day (in some cases, for up to one week).

Interviews with members of the Family Violence, Child Protection and Sexual Offences [FCS] units in the Eastern Cape noted differences across the four units in terms of the demarcation between domestic violence cases handled by the FCS and those investigated at station level. Certain of the concerns raised by FCS units coincided with those members interviewed at stations, for example, the high levels of withdrawal of cases by complainants. Others were more specific to the particular nature of the work done by these units, for example, cooperation with social workers.

Based on our findings and observations, researchers compiled a set of performance indicators drawn from the duties imposed on members in order to improve levels of compliance. We also identified areas for further action, including an assessment of human resource allocation on station level to ensure that the skills of members who have received training on handling domestic violence are put to optimal use.

Recording Incidents of Domestic Violence

Researchers conducted a detailed examination of two of the systems of record-keeping prescribed by the National Instruction, i.e. the Domestic Violence [DV] Incident Report or SAPS 508(a) and the DV Register (SAPS 508(b)). The research team looked at a total of 1,207 DV Incident Reports for the period January 2004 to June 2005, and reviewed the DV Registers at the 29 stations.

In the very early stages of the fieldwork, the research team found that the DV Incident Reports were being filled out differently across stations and that there were stark differences even within stations. Furthermore, the 29 stations included in the study commenced the practice of recording domestic violence incidents at different times, some having the practice in place for a number of years and others only introducing it a few months prior to or shortly before the study. This is of concern in light of the fact that the Act came into operation in December 1999 - almost 6 years ago.

For the most part the DV Reports and the DV Registers were available from at least January 2004. There were however instances where stations could not find their completed registers for either 2004 or 2005 or parts thereof. These factors rendered the results of this component of the study difficult to interpret.

Researchers established that the two record-keeping systems both have a primary purpose and a potential secondary benefit. The purpose of the DV Incident Report form is to ensure compliance with section 2 of the DVA and to record the steps taken in this regard. The form should therefore provide a record of the discussion between the SAPS member who attended to the complaint and the complainant. A secondary benefit is that a number of completed forms relating to the same complainant could be utilised to establish a history of violent behaviour by the perpetrator.

The DV Register is a comprehensive register that contains all the information on domestic violence complaints reported to a police station, and its purpose is to ensure compliance with the obligations imposed by the Act. The secondary benefit is that the information in the register could be utilised to determine, for example, the prevalence of domestic violence (or a particular category thereof) at each station.

Our findings here indicate that the DV Incident Reports and DV Registers are at present neither serving their primary purpose nor yielding the potential secondary benefits. This is due, firstly, to the way in which the DV Incident Report form is drafted and secondly, to inconsistent and haphazard completion of the records by members. Shortcomings in record-keeping practices are apparent from our analysis of the Reports and Registers as well as from the station audits and interviews with SAPS members. The interviews revealed that members do not necessarily record all reported incidents, either because of a lack of time or because they do not appreciate the importance of these practices. Our research findings also suggest that where members do complete the DV Incident Reports, the information is not necessarily transferred to the DV Register.

Children

Because of the specific vulnerabilities of children and the obligations resting on the police in this regard, we dedicated a specific component of this study to an examination of the ways in which the police respond to situations where domestic violence affects children. Specific attention was paid to the provisions of the CCA dealing with the removal of children who are at risk of harm, and the initiation of children's court proceedings to determine whether a child is in need of care.

The research instruments consisted of child-oriented questions included in the interviews with SAPS members and the analysis of case dockets. In addition, instruments were developed for conducting interviews with Commissioners of Child Welfare and examination of court records at selected children's courts. We also drew on interviews conducted with members of FCS units.

Of the total number of domestic violence dockets examined in this study, children were the complainants in only a small percentage of cases (7.96% or 114 dockets). We considered this in the evaluation of our results, and the findings presented here are therefore largely based on qualitative rather than quantitative analysis. Our scrutiny of the case dockets revealed little evidence of an integrated approach to cases of domestic violence (i.e. drawing on the CCA and/ or DVA in addition to laying criminal charges). In addition, we noted shortcomings in the investigation of cases and communication between police and prosecutors.

The section in the police interview schedule (Template 3) dealing with children was firstly aimed at eliciting qualitative responses from the SAPS members in relation to three scenarios involving domestic violence and children. The factual circumstances of the scenarios varied in order to determine the level of understanding of SAPS members as to which course of action they should follow – laying criminal charges, obtaining a protection order, initiating a children's court inquiry or different combinations of the three options. A second aim was to elicit information on the procedural steps that members would apply to the situations described in the scenarios.

The conclusion we have drawn from the responses received from members at station level is that there is little, if any, understanding of how the protection of children can be achieved through the application of a combination of, or all of, the DVA, CCA and criminal law provisions. On the other hand, the responses from FCS members clearly showed a high level of understanding of the different protective measures for children. Respondents from all four units explicitly referred to the CCA, indicating better knowledge of the legislation applicable to the protection of children than that noted for members at the general station level.

Research was further conducted at three children's courts (East London, Port Elizabeth and Mthatha). We aimed to establish from court records how frequently children's court proceedings are initiated by SAPS members (as compared with, for example, social workers). No court records were examined at Mthatha court, since both the Commissioners of Child Welfare interviewed there advised that, in their extensive experience, SAPS members have never brought matters to the children's court and therefore an examination of court records to examine and compare police compliance with the CCA would have been fruitless.

We noted a marked difference between Port Elizabeth and East London courts in terms of the number of children's court proceedings initiated by SAPS members. The greater frequency of police-initiated cases at Port Elizabeth was attributed to special training conducted for SAPS members at this court during November 2004. The court records at East London indicated very low levels of police involvement in bringing matters before the children's court. These findings were confirmed through interviews with the Commissioners of Child Welfare at each court.

The sum of our findings for this component of the study was that police appear not to be sufficiently aware of the importance of the three-fold 'protective mantle' consisting of the DVA, CCA and criminal law, and are not making optimal use of the procedures available to them for the protection of children vulnerable due to domestic violence. We accordingly recommend a number of measures, including training (preferably of an inter-disciplinary nature), the drafting of provincial instructions on dealing with vulnerable children coupled with individual station orders containing information relevant to the particular area, for example, the places of safety that are available and contact details of social workers, and the review of Standing Order SO (G) 292 dated 18 May 1992.