



09 November 2011

INDEPENDENT COMPLAINTS DIRECTORATE – DOMESTIC VIOLENCE REPORTS ANALYSIS: January – December 2010

1. Introduction

The ICD legislative mandate includes monitoring of police enforcement of the Domestic Violence Act. Section 18 of the *Domestic Violence Act* (Act 116 of 1998) provides that it is misconduct for a member of the SAPS to fail to comply with an obligation imposed on him or her in terms of the DVA or the National Instructions issued in terms thereof. The ICD must be informed of any such failure reported to the SAPS and that, unless the ICD directs otherwise, disciplinary action must be implemented against the offending member. In terms of the *South African Police Service Act*, 1995, the ICD is empowered to investigate all cases of misconduct against the SAPS and Municipal Police Service (MPS). Categories of misconduct in relation to the DVA include:

- failure to effect warrants of arrest
- failure to advise complainants of options (e.g. failure to advise complainant to lay a criminal charge, or apply for a protection order, or both)
- failure to assist complainants to open cases,
- failure to issue or furnish a subpoena,
- failure to refer the victim to a place of safety,
- failure to seize firearms, and
- failure to serve protection orders.

Furthermore, the *Domestic Violence Act*, 1998, provides that when a member of the SAPS fails to comply with an obligation imposed on him or her in terms of the Act or in terms of the National Instruction, his or her actions constitute misconduct. The ICD must be informed of any such failure reported to the SAPS, and make recommendations in this regard. The ICD must report to Parliament on a six monthly basis, setting out the number and particulars of the cases received by the ICD regarding non-compliance with the Domestic Violence Act, as well as its recommendations in such matters.

2. Challenges identified by the ICD

The ICD highlights that the challenges highlighted in previous reports insofar as SAPS meeting their obligations in terms of the Domestic Violence Act persist and that little improvement has been noted.

Key challenges include the following:

- Poor submission of applications for exemption
- A lack of sufficient training on the DVA and National Instructions
- Poor record keeping
- Attitude and commitment of SAPS members towards victims of domestic violence
- A general lack of compliance with regard to the DVA – of the 309 police stations audited during the period January to December 2010, only 26 were fully compliant with DVA prescripts.

3. Number of Complaints Received

PROVINCE	JAN/JUNE 2010	JULY/DEC 2010	Total Jan- December 2010	Total 2009
Eastern Cape	3	2	5	7
Free State	9	11	20	20
Gauteng	9	15	24	39
KwaZulu-Natal	6	3	9	4
Limpopo	3	4	7	5
Mpumalanga	3	1	4	4
North West	2	4	6	5
Northern Cape	6	6	12	13
Western Cape	13	13	26	26
Total	54	59	113	123

In 2010, a total of 113 cases of misconduct in relation to the DVA were reported. This is slightly less than the 123 cases reported in 2009. However it must also be noted that despite the overall decrease, there has been an increase in the number of cases in certain provinces when compared to 2009.

4. Main Categories of non-compliance

From the reports it is indicated that non-compliance occurred mostly in relation to the following:

Type	Number	Percentage
Failure to arrest the abuser if an offence of violence has been committed	31	27%
Failure to arrest the alleged transgressor where a warrant has been issued	26	23%
Failure to open a docket and refer the matter to the National Prosecuting Authority for decision to prosecute	11	10%
Failure to issue a notice against the alleged transgressor to appear in court	11	10%

5. Station Audits

The ICD conducted 177 police station audits during January - June 2010, and found that:

- 24 stations were complying on a level of Non-Compliant (0-49%)
- 57 stations were complying on a level of Fairly Compliant (50-79%)
- 84 stations were on a level of Substantially Compliant (80-99%)
- 12 stations were Fully Compliant (100%) with the DVA prescripts.

The ICD conducted 132 police station audits during July - December 2010, and found that:

- 25 stations were complying on a level of Non-Compliant (0-49%)
- 37 stations were complying on a level of Fairly Compliant (50-79%)
- 56 stations were on a level of Substantially Compliant (80-99%)
- 14 stations were Fully Compliant (100%) with the DVA prescripts.

Key concern: For the period under review only 26 of the 309 police stations audited were fully compliant with DVA prescripts.

QUESTIONS FOR CONSIDERATION

- In terms of the outcomes of station audits, what recommendations have the ICD made to SAPS to ensure improvement and compliance with DVA prescripts.
- The ICD indicates that it had hosted a number of community outreach activities/events. Has the ICD noticed a marked increase in the number of reported cases of misconduct in relation to the DVA following these activities?
- Kindly clarify what is meant by "Fairly Compliant" and "Substantially Compliant" in relation to audit outcomes.
- Several investigations are pending and await an outcome, by when will these cases be concluded? Why have the cases not been concluded to date?
- Does the ICD receive or request updates from SAPS insofar as the implementation of recommendations is concerned?
- Who determines the recommendations and outcomes/punitive measures in cases of non-compliance? Is this the responsibility of SAPS or the ICD?

For members' information: Key challenges identified in relation to the DVA at the Domestic Violence Public Hearings, October 2009

Numerous reports of non-compliance by members of the police with provisions of the Domestic Violence Act were made by presenters at the Domestic Violence Public hearings hosted in October 2009. These included:

Non-compliance

- It was noted that there appeared to be a disincentive by police officers to record incidents of domestic violence, abuse or rape as this would negatively affect their target of reducing contact crimes between 7 - 10% annually. Hence, incidents of rape were often reported as a common assault or turned away, with the same practice being adopted in abuse cases.
- Firearms were not always confiscated after being used to threaten victims and the license of the alleged perpetrator suspended.
- The safety of persons who had obtained protection orders were being compromised by some police officials' unwillingness to arrest perpetrators who violated the protection order.
- The behaviour of police officials dealing with victims of domestic violence were reported as being demeaning and discriminatory. Police officials discouraged women from taking action. Police officers also often did not inform victims about accessing a protection order or laying a criminal charge. Numerous incidents were reported citing the appalling attitude of police officials who often subject victims to secondary abuse.
- Numerous concerns arose regarding protection orders as it relates to ensuring the safety of persons requesting protection orders, the reluctance and often refusal of police officers to serve the order, or to arrest the perpetrator who has violated the protection order.

Serving of protection orders

- Some police officers were reluctant to serve protection orders and in some instances even refused to do so. The undue delay in serving a protection order on an assailant placed the victim in grave danger.

Training

- There was insufficient training of SAPS officials to deal with victims of domestic violence. In addition, once-off training was inadequate to ensure officials were equipped to deal with matters related to domestic violence.
- Some training of police officials has taken place. However, given the reports of negative attitudes by some police officials, there was a need to review existing training modules and monitor and evaluate their application. The monitoring and evaluation of whether officials require training, at what level, as well as if officials were implementing what they know required serious attention.

Record-keeping

- Domestic violence registers were not being maintained in the manner required.

