

Implementation of the Domestic Violence Act, Act 116 of 1998

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID)

12 AUGUST 2015

BRIEFING TO THE PORTFOLIO COMMITTEE ON POLICE

Parliament



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

**Presented By Mr K.I Kgamanyane
Acting Executive Director**

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LEGISLATIVE MANDATE

Domestic Violence Act 116 of 1998 - Section 18

- 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.
- In terms of this Act, SAPS are compelled to comply with the provision of the DVA and the National Instructions 7 of 1999, and any failure to do so constitutes misconduct which must be reported to the Civilian Secretariat for Police (CSP).
- This mandate previously resided with the former Independent Complaints Directorate (ICD) according to Sec 18 (4{a}, {b} and 5 {c} of the DVA.
- This has since been repealed in terms IPID Act (No.1 of 2011) and the functions are currently carried out by the CSP.
- ICD also had an obligation to report to Parliament twice a year on the investigations and result of these investigations (Section 18{5}).

ICD MANDATE

- Section 18 (4) (a) Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the national instructions referred to in subsection (3), constitutes misconduct as contemplated in the South African Police Service Act, 1995, and the Independent Complaints Directorate, established in terms of that Act, must forthwith be informed of any such failure reported to the South African Police Service.
- Section 18 (4) (b) Unless the Independent Complaints Directorate directs otherwise in any specific case, the South African Police Service must institute disciplinary proceedings against any member who allegedly failed to comply with an obligation referred to in paragraph (a).
- Section 18 (5)(c) The Independent Complaints Directorate must, every six months, submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4) (a), and setting out the recommendations made in respect of such matters.

IPID MANDATE: IPID Act 1 of 2011

- The IPID Act came into effect as from 1 April 2012.
- As from this date, IPID had no mandate to investigate, make recommendations, exempt SAPS members from disciplinary actions or to report to Parliament, as its predecessor ICD.
- Regarding any form of Domestic Violence related matters, IPID has a classification speaking to Domestic Violence related such as Sec 28(1)(b), deaths as a result of police action.
- In terms of this classification, IPID recorded 42 case of death as a result of police action in the 2012/2013 financial year and 32 cases in the 2013/2014 financial year.
- The 2014/2015 financial year cases will be released in due course.

ICD INVESTIGATION PROCESS (CLASS II CASES – DVA)

- ICD was tasked to establish if non-compliance with the DVA took place.
- Complaints were registered and investigated as Class II matters along with the relevant sub code (slides 8 & 9).
- In the event that no transgression took place the ICD could exempt the member from the disciplinary process.
- In the event it was found that the member did make themselves guilty of non-conformance with the DVA, the said member should be charged in terms of the relevant disciplinary prescripts.

TYPES OF NON-COMPLIANCE INVESTIGATED AND REPORTED ON

The DVA Report presented a factual analysis of cases of non-compliance with the Domestic Violence Act (DVA) by members of the South African Police Service (SAPS) and the recommendations made to address same.

The type of cases of non-compliance with the DVA addressed in these reports include:

- failure to arrest the abuser if an offence of violence has been committed,
- failure to arrest the alleged transgressor where a warrant has been issued,
- failure to dispatch a police vehicle to a scene of domestic violence,
- failure to establish whether the person has a valid license to possess the firearm,
- failure to inform a victim on where and how to access alternative shelter, if available,
- failure to inform the victim of their options,

TYPES OF NON-COMPLIANCE INVESTIGATED AND REPORTED ON

- failure to inform victim on where and how to access counselling services, where required,
- failure to inform victim on where and how to obtain a protection order,
- failure to keep a copy of the protection order after it has been obtained from court,
- failure to locate victim and establish whether they are safe,
- failure to note reason why no charge or arrest was made,
- failure to note the incident in a domestic violence register (SAPS508),
- failure to open a docket and refer the matter to the National Prosecuting Authority for decision to prosecute,

TYPES OF NON-COMPLIANCE INVESTIGATED AND REPORTED ON

- failure to search and seize arms (firearms) and ammunition,
- failure to seize a dangerous weapon and/or firearm,
- failure to take a witness statement,
- failure to inform the victim on where and how to access medical assistance,
- failure to issue a notice against the alleged transgressor to appear in court,
- failure to complete the J88 (medical report) and other relevant information.

DVA MONITORING TOOL DEVELOPED BY ICD



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The Station Commissioner

SAPS: _____
 P/Bag X _____

DVA STATION AUDIT FINDINGS AND RECOMMENDATION REPORT FOR SAPS

In terms of the Domestic Violence Act 116 of 1998, the Independent Complaints Directorate is responsible to monitor the implementation of the said Act by the SAPS. Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the National Instructions (7/1999), constitutes misconduct as contemplated in the South African Police Service Act 68 of 1995. The ICD is conducting Station Audits as part of monitoring the implementation of the Domestic Violence Act.

On _____ ICD members visited SAPS: _____ for a station audit.

The purpose of the audit was to oversee the implementation and compliance by the Station with the DVA.

Our ICD official _____ was met by _____ from the station.

We requested that documents relating to domestic violence be brought for inspection.

Our office make use of a specific evaluation format that evaluates the Regulatory Compliance and the Execution of the DVA.

Different areas are measured and a 1 point score is allocated to each question answered positively.

Only Category 1 is scored.

These were our findings:

CATEGORY 1: REGULATORY COMPLIANCE

Does the police station comply with the following:

- 1.1 Is a copy of Domestic Violence Act (DVA) readily available in CSC?
- 1.2 Is there an updated list of service providers in Community Service Centre (CSC)?
- 1.3 Is there an updated list of service providers in each vehicle utilized to attend to complaints?
- 1.4 Is a copy of National Instruction 7/1999 readily available in CSC?
- 1.5 Is a Domestic Violence Register, SAPS 508 (b) in CSC?
- 1.6 How are DVA incidents recorded in the Domestic Violence Register 508 (b)?
- 1.7 Are SAPS forms 508(a) readily available in CSC?

Yes / Proper	No / Incomplete

DVA MONITORING TOOL DEVELOPED BY ICD

2. CATEGORY 2: EXECUTION OF DVA

Do the SAPS and its members comply with the following:

- 2.1 How is the register maintained of all complaints against members i.t.o. non-compliance to DVA?
- 2.2 Are all non-compliance DVA records of members recorded on forms SAPS 508?
- 2.3 In cases of non-compliance by members, were disciplinary proceedings instituted?
- 2.4 If no steps have been taken against members, did they apply for exemption?
- 2.5 Were recommendations / steps taken / exemption from disciplinary procedures granted by ICD recorded?
- 2.6 Are monthly returns in relation to disciplinary producers adhered to by commanders?
- 2.7 Are all members of Crime Prevention (CP) trained in relation to the DVA?
- 2.8 Are all members of the CSC trained in relation to the DVA?
- 2.9 Are all members of the Detective Unit trained in relation to the DVA?
- 2.10 Have members of CP received all directives (instructions), in relation to the DVA?
- 2.11 Have all members of the CSC received all directives in relation to the DVA?
- 2.12 Have all members of Detective Unit received all directives in relation to the DVA?
- 2.13 Is the DVA regulatory framework and directives clearly explained to CP members?
- 2.14 Is the DVA regulatory framework and directive clearly explained to CSC members?
- 2.15 Is the DVA regulatory framework and directives clearly explained to the Detectives?
- 2.16 Are all vehicles of station readily available (especially after hours)?
- 2.17 Are the DVA and crimes against women and children addressed in the operational plan?
- 2.18 Are there clearly defined objectives in relation to DVA and crimes against women and children?
- 2.19 Is the operational plan comprehensive (set targets, action steps, progress reports etc)?
- 2.20 Is a Victim friendly care centre readily available?
- 2.21 Are volunteers (i.e. to staff Victim Friendly Care Centre), readily available?

Comments regarding the Non Compliance:

RESULTS

Subtotal: Category 1: Yes answers = $(0.15) \times (1.00)$ 0.00

Compliance with the implementation of the DVA is com 0% Out of a possible 100%

0% - 49%	50% - 79%	80% - 99%	100%
NON COMPLIAN	FAIRLY COMPLIA	SUBSTANTIAL LY	FULLY COMPLIA

The following Recommendations are made in order to assist your station to improve compliance:

ASPECTS COVERED DURING AUDIT

- Is a copy of Domestic Violence Act (DVA) readily available in Community Service Centre (CSC)?
- Is there an updated list of service providers in CSC?
- Is there an updated list of service providers in each vehicle?
- Is a copy of National Instruction 7/1999 readily available in CSC?
- Is a Domestic Violence Registers, SAPS 508(b) in CSC?
- Are all reported DVA incidents recorded in the Domestic Violence Register 508(b)?
- Are SAPS forms 508(a) readily available in CSC and properly maintained?
- Are all responses to domestic violence incidents recorded on SAPS forms 508(a)?
- Are the SAPS 206 (Pocket Book) of members thoroughly maintained?
- Are monthly procedures of File 39/4/2/3 on DVA incidents maintained? (Returns)
- Are procedures of SAPS 10 (Occurrence Book) on DVA thoroughly maintained?
- Are all protection orders served (zero outstanding protection orders)?

ASPECTS COVERED DURING AUDIT

- Are copies of every protection order received filed? (file 39/4/3/1)
- Are copies of every warrant of arrest received filed? (file 39/4/3/1)
- Are female members assigned on each shift?
- Is a victim friendly care centre readily available?
- Is a register maintained of all complaints against members in terms of non-compliance to DVA?
- Are all non-compliance DVA records of members recorded on form SAPS 508?
- In cases of non-compliance by members, were disciplinary proceedings instituted?
- If no steps have been taken against members, did they apply for exemption?
- Were recommendations / steps taken / exemption from disciplinary procedures recorded?
- Are monthly returns in relation to disciplinary action adhered to by commanders?

CONCLUSION

These were some of the challenges experienced by the then ICD:

- ✓ Some SAPS management did not take disciplinary action against members.
- ✓ Some SAPS members did not apply for exemptions.
- ✓ Lack of understanding of the DVA by SAPS members.
- ✓ Existence of a culture of silence around domestic violence.
- ✓ Lengthy period taken to discipline SAPS members



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THANK YOU