

## REPORT SUBMITTED IN 2006

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#### The Independent Complaints Directorate's Domestic Violence Reports to Parliament: Analysis

##### 1. Introduction

Domestic violence is widespread, occurring across geographical, race, class and cultural boundaries. Unfortunately, in South Africa, statistics on domestic violence are not readily available as it is virtually impossible to collate reliable statistical information pertaining to violence against women in the domestic arena. Consequently, it is difficult to do anything other than speculate about these levels of violence.

##### 1.1 Domestic Violence Act 116 of 1998

The *Domestic Violence Act* 116 of 1998 is the primary law aimed for protection against domestic abuse. In terms of the Act, a victim of domestic violence may apply for a protection order to stop the abuse and to prevent the abuser from entering the mutual home, or the victim's residence or place of employment. The Court can attach other conditions to the order. The Court may also evict the abuser from the home or force him or her to pay rent for and/or emergency maintenance to the victim. Furthermore, the Act allows the Court to limit the abuser's custody rights in respect of any children. In order to ensure compliance with the protection order, the Court must issue a suspended warrant for the arrest of the abuser if he or she violates its terms.

The Act obliges members of the South African Police Service (SAPS) to inform a complainant of his or her right to apply for a protection order and to lay criminal charges, as well as to provide the necessary assistance, which may include helping the complainant to find suitable shelter or obtain medical treatment. The Act also requires the National Commissioner of the SAPS to issue national guidelines that must be observed when dealing with domestic violence.<sup>1</sup>

##### 1.3 Independent Complaints Directorate (ICD)

The Act introduces statutory monitoring of police enforcement of the Domestic Violence Act.<sup>2</sup> Failure on the part of a police official to comply with his or her obligations in term of the Act constitutes misconduct, and the Independent Complaints Directorate (ICD) must be informed without delay.<sup>3</sup> The National Commissioner of the SAPS is required to submit reports to Parliament every six months detailing the number and nature of such complaints, as well as of the disciplinary steps initiated and steps taken in terms of recommendations made by the ICD.<sup>4</sup>

<sup>1</sup> Section 18(3), Domestic Violence Act, 1998. See the National Policy Guidelines for the Handling of Victims of Sexual Offences.

<sup>2</sup> Section 18(4)(a), Domestic Violence Act, 1998.

<sup>3</sup> Section 18(4)(b), Domestic Violence Act, 1998.

<sup>4</sup> Section 18(5)(d), Domestic Violence Act, 1998.

Each police station is required to display the ICD's contact details so that members of the public can direct any complaints to it. The ICD is also required to submit six-monthly reports to Parliament on the number and nature of the complaints received, as well as of their recommendations. Unfortunately these monitoring mechanisms have not been effective. In 2006 the ICD submitted three reports covering the period January 2004 to June 2005. However, prior to this, there had been an extended period during which the ICD submitted no domestic violence reports to Parliament.

## 2. The ICD's Domestic Violence Reports: Number and Nature of Complaints Received

This Report deals with the following DVA Reports:

- Period 1 January to 30 June 2006.
- Period 1 July to 31 December 2006.

The types of cases of non-compliance with the DVA included in the reports include the:

- Failure to advise the complainant of options, such as applying for a protection order, laying a criminal charge or both (Section 2, Domestic Violence Act, 1998).
- Failure to refer the victim to a place of safety (Section 2, Domestic Violence Act, 1998).
- Failure to refer the complainant for medical treatment (Section 2, Domestic Violence Act, 1998)
- Failure to affect a warrant of arrest (Section 8, Domestic Violence Act, 1998).
- Failure to assist the complainant to open a case (Section 8, Domestic Violence Act, 1998).
- Failure to issue or furnish a subpoena to the respondent (Section 8, Domestic Violence Act, 1998).
- Failure to seize a firearm (Section 9, Domestic Violence Act, 1998).
- Failure to serve a protection order on the respondent (Section 13, Domestic Violence Act, 1998).

### 2.1. Number of Complaints Received

**Table 1: Number of Complaints Received per Province**

Province	Jan/June 2006	July/Dec 2006	Jan/June 2007
Gauteng	12		
Western Cape	12		
KwaZulu Natal	1		
Eastern Cape	5		
Limpopo	3		
Mpumalanga	1		
North West	5		
Free State	3		
Northern Cape	4		
Applications for exemption from prosecution	0		
<b>Total no. of cases</b>	<b>45</b>		

### Insignificant decline in number of complaints received

What is noteworthy is the fact that when the reporting periods are compared, the total number of complaints received do not appear to be decreasing significantly (Jan-June 2004:78; July-Dec 2004: 80; Jan-June 2005: 76), despite initiatives to educate police officials as to their duties in terms of the DVA and the existence of national guidelines.

### Applications for exemption

Of further significance is the lack of applications for exemption. Of the 78 complaints received between January and June 2004, there were only 3 applications for exemption, while between July and December 2004 out of 80 complaints only 4 applications for exemption were received. Between January and June 2005, only 1 application for exemption was received, despite there being 76 complaints of non-compliance.

### Limitations

There is no table to provide a readily accessible overview of the total number of complaints received per province. Accordingly, the information listed in Table 1 had to be extracted for each reporting period from the text under each province.

## 2.2. The Nature of the Complaints Received

Table 2: 1 January - 30 June 2006

Nature of Complaint	No.
Failure to arrest the Respondent	23
Failure to advise the complainant to apply for a restraining order	22
Failure to assist the complainant to obtain protection order	
Failure to serve a protection order on the respondent	
Failure to assist the complainant to open a case of alleged domestic abuse	
Failure to accompany the complainant to collect personal belongings	
Failure to issue a notice to appear in court	
<b>Total</b>	

Table 3: 1 July - 31 December 2004

Nature of Complaint	No.
Failure to arrest the Respondent	
Failure to advise the complainant to apply for a restraining order, laying criminal charge etc	
Failure to serve a protection order on the Respondent	
Failure to assist complainant to find suitable shelter, obtain medical treatment, accompany the complainant to collect personal belongings and seize any dangerous weapons	
No description of nature of complaint	
<b>Total</b>	

**Table 4: 1 January - 30 June 2005**

Nature of Complaint	No.
Failure to arrest the Respondent	
Failure to open a criminal docket and refer matter for prosecution	
Failure to advise the complainant to apply for a restraining order, laying criminal charge etc	
Failure to serve a protection order/subpoena on the Respondent	
Failure to keep copy of protection order after obtaining it from court	
Failure to assist complainant to find suitable shelter, obtain medical treatment, accompany the complainant to collect personal belongings and seize any dangerous weapons	
No description of nature of complaint	
<b>Total</b>	

### Limitations

As there is no overview of the nature of complaints received for all provinces, Tables 2 – 4 were extracted from information provided in the report. This makes it difficult to gain an overview of the nature of complaints received.

### 3. The ICD's Domestic Violence Reports: Reported Cases of Domestic Violence Allegedly Committed by SAPS Members

The reports also provide details of reported cases of domestic abuse allegedly committed by SAPS members<sup>5</sup>. These are as follows:

Province	Jan/June 2006	Comment
Gauteng	0	
Western Cape	0	
KwaZulu Natal	1	Murder
Eastern Cape	0	
Limpopo	1	Assault
Mpumalanga	0	
North West	5	4x Physical abuse, 1x emotional abuse
Free State	0	
Northern Cape	8	1 x torture of children, 1 x contravene order, rape in custody, Murder, 1x emotional abuse, 3 x abusive towards complainant
<b>Total no. of cases</b>	<b>15</b>	

<sup>5</sup> 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 Services (MPS), including the following categories of offences and misconducts:

- Where a member of the SAPS kills or causes the death of any person involved with him or her in a domestic relationship, such as a spouse.
- Where a member commits an offence such as assault, rape, etc. against a person in a domestic relationship with a member, such as a spouse.
- Where a member neglects or refuses to assist a victim of domestic abuse.

The Report by Northern Cape is confusing, since the understanding is that cases of domestic abuse by SAPS members should be reported on. They report the following:

- A case of unlawful torture of children
- A rape in custody
- Three cases of abusive behaviour towards the complainant

If these cases involved members with which the SAPS members had a domestic (intimate) relationship – which is doubtful – this should be explicitly mentioned as a qualification for classification in this category. Otherwise the province need to report along the same line as other provinces.

**Table 5: 1 January – 30 June 2006**

Nature of domestic abuse	No.
Physical abuse (assault)	5
Murder	1 (1)
Contravene protection order	(1)
Rape in police custody	(1)
Emotional and verbal abuse	4 (3)
Unlawful torture	(1)
<b>Total</b>	<b>8 (5)</b>

**Table 6: 1 July 2004 – 31 December 2004**

Nature of domestic abuse	No.
Physical abuse (assault, assault GBH)	
Attempted murder	
Murder	
Pointing of firearm	
Intimidation	
Emotional and verbal abuse	
<b>Total</b>	

**Table 7: 1 January 2005 – 30 June 2005**

Nature of domestic abuse	No.
Physical abuse (assault, assault GBH)	
Attempted murder	
Murder	
Pointing of firearm	
Intimidation	
Emotional and verbal abuse	
<b>Total</b>	

Although the number of the cases related to domestic violence allegedly committed by SAPS members is small, the fact that they do not appear to be decreasing is nevertheless significant. Furthermore, the fact that three Provinces, namely Gauteng, Western Cape, Mpumalanga, reported no incidents of domestic violence allegedly committed by SAPS members may be significant, although it is impossible to do anything other than speculate on the possible reasons for this.

#### 4. The ICD's Domestic Violence Reports: Awareness campaigns and workshops

The following awareness campaigns were either organised or attended by ICD on invitation:

Province	Jan/June 2006		June/Dec 2006		Jan/June 2007	
	A	W	A	W	A	W
Gauteng	3	1				
Western Cape	2	1				
KwaZulu Natal	12	1				
Eastern Cape	5	1				
Limpopo	3	0				
Mpumalanga	2	1				
North West	9	0				
Free State	0	0				
Northern Cape	10	12				
<b>Total</b>	<b>40</b>	<b>17</b>				

#### 5. The ICD's Domestic Violence Reports: Proactive Oversight

Various ICD provincial offices conducted the following audits at Police Stations to determine the level of compliance with the Domestic Violence Act and the National Instruction. The reports contain details of the following proactive oversight activities:

Province	Jan/June 2006	Jul/Dec 2006	Jan/June 2007
Gauteng	7		
Western Cape	8		
KwaZulu Natal	42		
Eastern Cape	4		
Limpopo	13		
Mpumalanga	1		
North West	14		
Free State	4		
Northern Cape	46		
<b>Total</b>	<b>139</b>		

#### Findings

Several stations were commended for complying with the Act especially in the Western Cape and Gauteng, while some concerns were raised in KwaZulu-Natal. Some of the more common findings were as follows:

- The handling of the domestic violence process was not functioning well at the Community Service Centres.
- There were no copies of station orders.
- Registers were not properly completed, or unavailable.
- No copies of warrants of arrest were to be found or recorded, despite arrests being made.
- No copies of protection orders were found.
- There were no lists or registers of domestic violence incidents or complaints against members.
- There were no copies of the DVA or the National Instructions at the Community Service Centre.
- There were no lists of service providers.
- The relevant forms (SAPS 508(b)) were not completed properly.
- The relevant forms (SAPS 508(a)) were not available.
- The victim empowerment centres were not victim friendly, or there were no victim empowerment centres or facilities.
- Volunteers for the victim empowerment centre were not available on a daily basis.
- Members displayed lack of training with regard to the DVA.
- Complaints of non-compliance were not being properly addressed.
- Members dealing with domestic violence complaints were unavailable.
- No separate rooms were available to interview domestic violence complainants.
- Female staff members were not available on every shift.
- There were insufficient staff members to deal with complaints.
- The cell conditions were 'unsatisfactory'.

### Limitations

It appears that different methods are used to audit the stations. For instance, in the Western Cape several issued are listed as having been inspected with no recommendations in general, while in KwaZulu-Natal lengthy recommendations are made but the findings are very brief. In the Eastern Cape shortcomings were found, but no recommendations made, while Limpopo seems to be extensive in both their findings and recommendations and the North West brief on both scores. The Northern Cape has audited 46 stations and seems to be even handed in their recommendations regarding the commendations and the steps that should disciplinary steps that should be taken against certain members.

It appears that the oversight visits to police stations were conducted on a piecemeal and sporadic basis. While this provides information that is pertinent to the specific police station, the apparently *ad hoc* nature of the inspections makes it very difficult to make any inferences as to how well police stations are complying with the provisions of the Domestic Violence Act in general.

The technical aspects of the report should be improved. For instance on page 50 and 52 under Findings, the word 'converted' is used in stead of 'concerted' and on page 55 under Findings the sentence starts with 'the' instead of 'they',

## 6. Conclusion

It is difficult to measure the Domestic Violence Act's effectiveness in the absence of properly enforced monitoring mechanisms. The Act provides for such mechanisms by requiring that the ICD monitor police enforcement of the Act, and by requiring that it report to Parliament every six-months on the nature and number of the complaints it receives, as well as on its recommendations. As mentioned previously, it is only in 2006 that the ICD submitted its reports to Parliament for 2004 and the first half of 2005 on the Domestic Violence Act. While these reports might provide the requisite information, they need to be tabled more regularly and timeously if they are to be truly of assistance to Parliament in overseeing and monitoring the Act's implementation and effectiveness. In addition, the lack of consistency and uniformity in the gathering and collation of the data informing the reports make analysis very difficult. As result, the contents of these reports provide little insight regarding how well the Act is being implemented or what interventions might be required to improve its effectiveness.

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## Sources

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