

DOMESTIC VIOLENCE ACT (DVA) MONITORING REPORT

**Report on the status of DVA implementation and compliance by the SAPS
from 1 April 2020 to September 2020.**

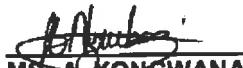


**civilian secretariat
for police service**

**Department:
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REPUBLIC OF SOUTH AFRICA**

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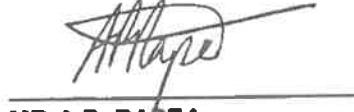
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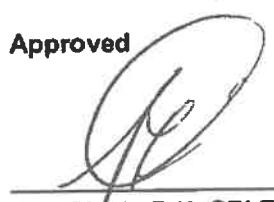

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TABLE OF ACRONYMS

ACRONYM	DESCRIPTION
CAS	Crime Administration System
CSC	Community Service Centre
CSPS	Civilian Secretariat for Police Service
DV	Domestic Violence
DVA	Domestic Violence Act No. 116 of 1998
FCA	Firearms Control Act No. 60 of 2000
NATIONAL INSTRUCTIONS	DVA National Instruction No 7 of 1999
SAPS	South African Police Service
SAPS 508	A form used to register DVA non-compliance complaints against members
DISCIPLINARY CODES	
DS1	Remedial steps after initial interview (not serious)
DS2	Verbal warning after initial interview (not serious)
DS3	Written warning (not serious)
DS4A	Departmental investigation (serious): still under investigation
DS4B	Departmental investigation (serious): guilty (state sentence)
DS4C	Departmental investigation (serious): not guilty
PROVINCES	
EC	Eastern Cape
FS	Free State
GP	Gauteng
KZN	KwaZulu-Natal
LP	Limpopo
MP	Mpumalanga
NC	Northern Cape
NW	North West
WC	Western Cape

1. INTRODUCTION

The Domestic Violence Act, 1998 (Act No.116 of 1998) herein referred to as DVA, is aimed at providing victims of domestic violence with the maximum protection from domestic abuse. The definition of a victim of domestic violence, according to the DVA does not only refer to women or married people. A victim of domestic violence can be any person who is in a domestic relationship with another through - marriage; a romantic or intimate relationship; sharing a place of residence; family ties; and parental responsibility, irrespective of gender and age. The Domestic Violence Amendment Bill (2020) has further extended the definition of domestic violence to include elder abuse; coercive behaviour; controlling behaviour; and exposing or subjecting children to any form of domestic violence, like physical abuse, sexual abuse, verbal abuse and others.

In order to ensure full implementation of the DVA, a number of obligations are placed on the South African Police Service (SAPS) and other state departments with regard to rendering of specific services for victims of domestic violence. In terms of Section 18(4)(a) of the DVA, it is a misconduct, as contemplated in the SAPS Act, for a SAPS member to fail to comply with the obligations imposed by the DVA or the Domestic Violence National Instruction No 7 of 1999 (National Instruction). According to this section, the Civilian Secretariat for Police Service (CSPS) must be informed of all incidents of DVA non-compliance by SAPS members.

Additionally, as mandated by the Civilian Secretariat for Police Service CSPS Act, (No 2 of 2011), the CSPS has a responsibility to make recommendations to the police service on disciplinary procedures and measures with regard to non-compliance with the DVA. The CSPS is further mandated by the CSPS Act to monitor and evaluate the SAPS' compliance with the DVA and, as obligated by Sec 18(5)(c) of the DVA, to submit reports to Parliament on SAPS non-compliance with the DVA every six months.

This report will provide information on non-compliance by SAPS members during the period 01 April to 30 September 2020. Information provided by the SAPS for this period will be analysed to determine the number of non-compliances reported and disciplinary steps taken; number of members who were perpetrators of domestic

violence and how these were managed; and number of members who were reported as victims of domestic violence.

2. OBJECTIVE

The objective of the report is to provide information on the status and management of non-compliance by the SAPS management during the period April – September 2020.

3. SCOPE

Information contained in this report is based on data received from the SAPS regarding the total number of reported DVA non-compliances by SAPS members nationwide; data on members that are offenders and those that have been recorded as victims of domestic violence and how all these matters have been managed by the SAPS.

4. NON COMPLIANCE BY SAPS MEMBERS

According to section 18(4) (a) and (b) of the DVA, failure by SAPS members to comply with the duties or any obligations as imposed in the DVA and National Instruction constitutes misconduct. The Station Commander is expected to institute disciplinary action against such a member unless an exemption has been granted by the CSPS

In accordance with both section 18(5)(d) of the DVA and National Instruction, SAPS is obligated to submit consolidated report of non-compliance cases to the CSPS for submission to Parliament. The consolidated report should include details of SAPS members who fail to comply by not fulfilling the administrative obligations (administrative non-compliance) as outlined in the National Instructions and in the DVA. Additionally, when a complaint from the public is received due to failure by a member to provide the required service as prescribed by both the DVA and the National Instructions (operational non-compliance), that information should also be captured in the consolidated return.

Table 1 below provides a breakdown of the number of members who were reported to have failed to comply with the DVA obligations across all provinces.

Table 1: Number of members who failed to comply with the DVA

Categories	Apr'20	May'20	June'20	Jul'20	Aug'20	Sep'20	Total
EC	0	0	0	0	0	0	0
FS	0	1	0	0	0	1	2
GP	0	0	0	0	0	0	0
KZN	0	0	0	0	0	0	0
LP	2	2	7	4	5	0	20
MP	0	0	0	0	0	0	0
NC	0	0	0	0	0	0	0
NW	0	0	0	0	0	0	0
WC	15	2	3	16	8	2	46
Total number of complaints received	17	5	10	20	13	3	68

As reflected in Table 1 above, a total of 68 members failed to comply with the DVA and national instructions during the period April – September 2020. These members were reported from three (3) provinces which are FS; LP; and WC. The other six (6) provinces which are, with EC, GP, KZN, MP, NW and NC submitted a zero return on non-compliance. The highest number of non-compliances was reported in the WC with 46 members, followed by LP with 20 members and FS had two (2) members.

Even though the other provinces did not report any members who failed to comply, it has been observed over the years that there is no direct correlation between the number of non-compliances and proper implementation of the DVA at police station level. Findings based on various sources, such as independent research reports; and CSPS complaints reports point to the limited knowledge of community members on available complaints mechanism at police station level as the primary reason for the absence of non-compliance complaints. Moreover, taking into consideration the wide spread media reports of complaints, (which are not officially reported) by victims accusing the SAPS of non-compliance, this inference can be deemed to be true. It therefore raises a challenge for both the SAPS and the CSPS to enhance its information sharing and awareness programmes in order to ensure all members of the community are aware of the services they should expect from the police and what to do if they are not happy with the service received.

Table 2 below reflects the number of actual non-compliances by SAPS members recorded during this reporting period.

Table 2: Categories of non-compliance by SAPS members

Categories	EC	FS	GP	KZN	LP	MP	NC	NW	WC	Total
Failure to complete SAPS 508(a) and 508(b)	0	2	0	0	20	0	0	0	26	48
Failure to record DV incidents in the Occurrence Book (OB) and in the Pocket book (SAPS 206)	0	1	0	0	0	0	0	0	5	8
Failure to conduct first level inspection	0	0	0	0	0	0	0	0	3	3
Failure to arrest the perpetrator	0	0	0	0	0	0	0	0	4	4
Failure to assist a complainant to open a case	0	0	0	0	0	0	0	0	3	3
Failure to serve a Protection Order	0	0	0	0	0	0	0	0	1	1
Failure to confiscate a firearm of a perpetrator	0	0	0	0	0	0	0	0	2	2
Failure to render a satisfactory service to the victim	0	0	0	0	0	0	0	0	3	3
Total number of complaints received	0	3	0	0	20	0	0	0	47	70

Table 2 above illustrates the number of both administrative and operational non-compliances committed by SAPS members in the three (3) different provinces. It should be noted that the number of the actual cases is more than the number of members who failed to comply with DVA, and this is due to the fact that some of the members have committed more than one offence.

Administrative non-compliance continues to be a serious challenge for the SAPS with majority (57) of the reported non-compliances relating to this nature and the remaining 13 relating to operational non-compliance. The administrative non-compliances involve 48 cases of failure to complete SAPS 508a and 508b; six (6) cases of failure to record DV incidents in the OB or Pocket Book; and three (3) cases of failure to conduct first level inspection. Failure to fully comply with the administrative obligations like proper recording and filling raises a question in terms of the ability to effectively provide services to the complainants. Proper recording of reported incidents assists in the safekeeping of information relating to the reported incident which can be used in the court of law should the need arise.

This weakness in the SAPS systems can result in a compromised criminal justice process for the victim should they opt to open a criminal case. This is aggravated by

the lack of quality control at station level. For instance, there were three (3) recorded cases of the failure by either the CSC or VISPOL commander to carry out the first level inspection as prescribed. In order to ensure that members at the CSC fully adhere to their obligations and are provided with proper guidance, first level inspections are crucial. Failure to conduct these deprives the frontline members of the opportunity to identify their mistakes, correct them and in the process learn so that the mistakes are not repeated.

Out of the 13 reported operational non-compliances, the following were identified: failure to arrest the perpetrator, four (4) cases; failure to assist a complainant to open a criminal case, three (3) cases; failure to render a satisfactory service to the victim, three (3) cases; failure to confiscate a perpetrator's firearm, two (2) cases; and failure to serve a protection order, one (1) case. Operational non-compliance can be detrimental to the safety of victims. For example, as reflected in table 2 above, there were cases where the perpetrator firearms were not seized and a protection order not served. These are some of the incidences that may result in death of victims if not attended to adequately.

Equally, failure to assist a complainant to open a criminal case deprives the victim of fair access to justice. When a victim reports a domestic violence incident at a police station, they have an option to lay a criminal charge should they wish to do so. A domestic violence incident is not considered a criminal offence until there is a breach or violation of a Protection Order (in terms of Section 17 of the DVA) whereby a domestic violence case can be registered in the Crime Administration System (CAS). Therefore, if a victim opts to lay a criminal offence when reporting a domestic violence incident, it is captured on the CAS in terms of the actual incident, e.g. assault, murder or rape with a specification that it relates to domestic violence, and the police have the duty to assist with this process. These operational non-compliances are an indication of existing weaknesses within the first response to domestic violence.

Paragraph 13(1) of the National Instruction indicates that disciplinary proceedings must be instituted in line with the SAPS Discipline Regulations for any member who has failed to comply with any obligation as imposed in terms of the DVA or National Instructions. Should the Station Commander, after investigation, be convinced that the member involved should not be subjected to the disciplinary process, they need to

submit an application for exemption to the Provincial Secretariats through the Provincial Commissioner's office. Table 3 below provides information on disciplinary steps taken against the identified members who failed to comply.

Table 3: Disciplinary steps taken

Action taken	Number of members involved
DS1 Remedial steps after initial interview (not serious)	24
DS2 Verbal warning after initial interview (not serious)	5
DS3 Written warning (not serious)	3
DS4A Departmental Investigation (serious)	34
Application for exemption	2
Exemption granted	0
Total	68

Table 3 above shows the departmental steps taken by station commanders to address the above mentioned non-compliances. Disciplinary proceedings were initiated for all the 68 members with departmental steps taken and there were two (2) applications for exemption that were made. Both applications were from the WC and the outcome is still pending. There were 34 members subjected to DS4 A, which is a serious misconduct that requires departmental investigation. The outcome of these investigations are still pending. The remaining 32 incidents were considered non-serious and steps taken ranged from remedial steps (DS1) for 24 members; verbal warning (DS2) for five (5) members; and written warning (DS3) for three (3) members. There appears to be some positive strides that SAPS is making in dealing and managing non-compliance as disciplinary processes were initiated for all members that failed to comply.

5. SAPS MEMBERS AS OFFENDERS OF DV

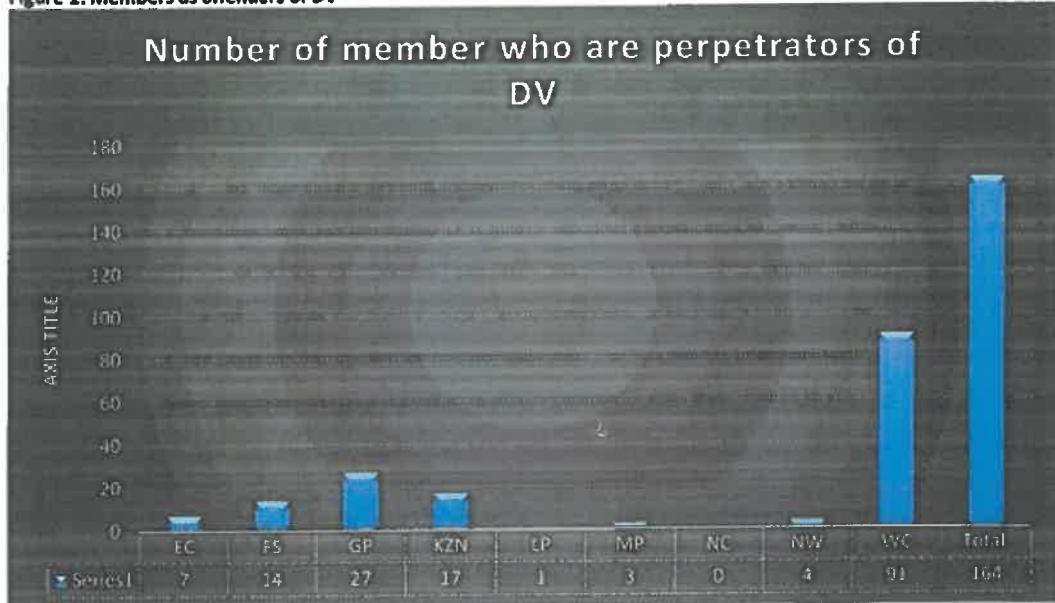
SAPS has a responsibility to prevent, combat and investigate crime; to maintain public order; to protect and secure the inhabitants of the Republic and their property; and to uphold and enforce the law¹. Despite having this responsibility to serve and protect, some SAPS members are found to be perpetrators of domestic violence. The DVA

¹ Constitution of the Republic of South Africa : Section 205 (3)

requires that a domestic violence offender should be subjected to the same process irrespective of whether they are a police official or not.

Figure 1 below illustrates the total number of members that were reported to have been perpetrators of domestic violence across all police stations during the reporting period.

Figure 1: Members as offenders of DV



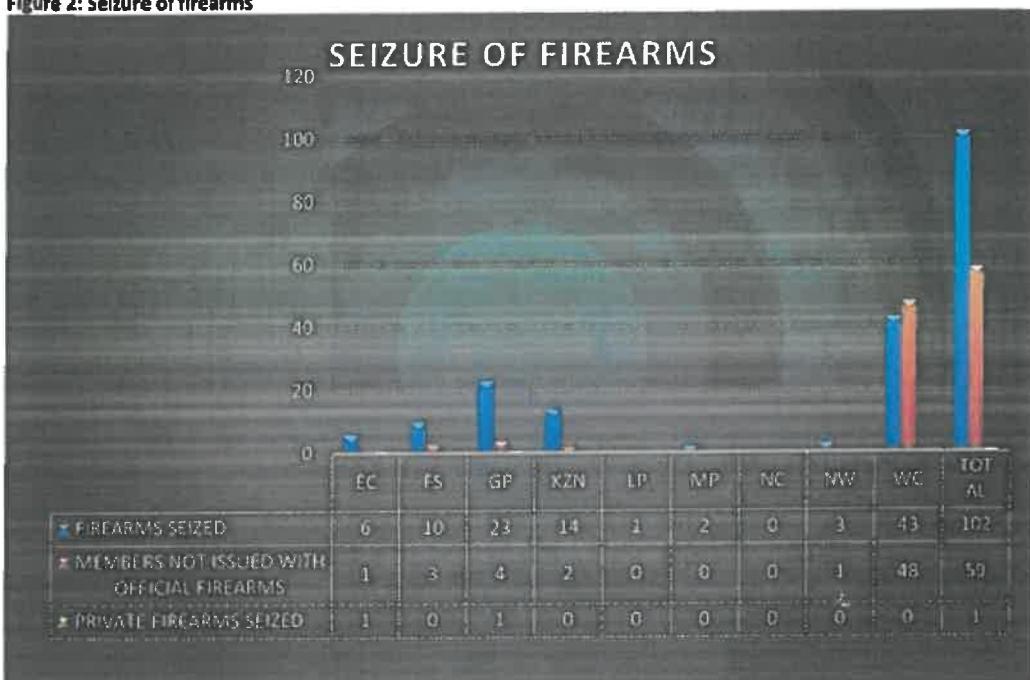
There was a total of 164 members that were reported to be offenders of domestic violence with the highest number of reported members in WC (91), followed by GP (27), KZN (17), FS (14) and the lowest numbers were in EC (7), NW (4), MP (3) and LP with one (1) member each. There was no reported case in the NC.

By virtue of being members of the SAPS, police officials who commit domestic violence offences are in violation of the SAPS code of conduct and should be subjected to disciplinary proceeding. The SAPS records do not provide an indication of whether there were any disciplinary proceedings initiated against these members or not. The number of members that commit acts of domestic violence is high and there is a need for an internal intervention by the SAPS management.

The DVA requires that dangerous weapons be seized from a person that committed an act of domestic violence. And furthermore, the Firearms Control Act (No 60 of 2000) (FCA), requires that an inquiry into fitness to possess a firearm be conducted for any

person found to be a perpetrator of domestic violence. Figure 2 below reflects the number of firearms seized from the 164 members.

Figure 2: Seizure of firearms



There were 103 firearms seized from the 164 members, as reflected in Figure 2 above. Out of this number, a total of 102 were official firearms allocated to members as part of the SAPS 108 inventory and one (1) firearm was a member's private firearm. WC with 43 members' firearms seized had the highest number followed by GP with 23, then KZN and FS with 14 and 10 respectively. The high number of firearms seized can be an indication that the SAPS is committed to protection of victims. This however needs to be combined with disciplinary proceedings and section 102 inquiries to ensure limited exposure of these members to firearms.

A total of 59 members were not issued with official firearms (SAPS 108) and three (3) members were declared unfit to possess firearms in terms of section 102 of the FCA.

6. MEMBERS AS VICTIMS OF DOMESTIC VIOLENCE

Police officials are not immune to the scourge of domestic violence and some members have been found to be victims. Figure 3 below reflects the number of members that were reported to be victims of domestic violence during the reporting period.

The main aim of the campaign was to increase awareness to communities on the expected role or response of the police when one is reporting a domestic violence incident. The campaign also sought to make communities aware of the intervention measures by the CSFS based on obligations imposed by section 18 of the DVA and section 6 of the CSFS Act. The campaign involved a radio interview by the Secretary General of the CSFS to highlight activities conducted by the CSFS to improve the monitoring of DVA implementation by the SAPS during the year 2020.

The CSFS undertook DVA awareness campaign during November and December 2020. The campaign falls out of the reporting period covered, however it is included in the report to highlight activities conducted by the CSFS to improve the monitoring of DVA implementation by the SAPS during the year 2020.

7. DVA AWARENESS CAMPAIGNS

The CSFS awareness campaign during November and December strengthened and improve the provision of the psychosocial support for police members. Members as victims of domestic violence. This again points out to the need to strengthen and improve the provision of the psychosocial support for police members. Each reported two (2) members and LP one (1) member. EC did not report any KZN with five (5) members; and MP with 4 members. The NC, NW, and FS provinces in the WC with 30 members which was followed by the GP with nine (9) members; eight (8) provinces, as reflected in Figure 3 above. Most of the members were reported from

There were 55 members who have been reported as victims of domestic violence from

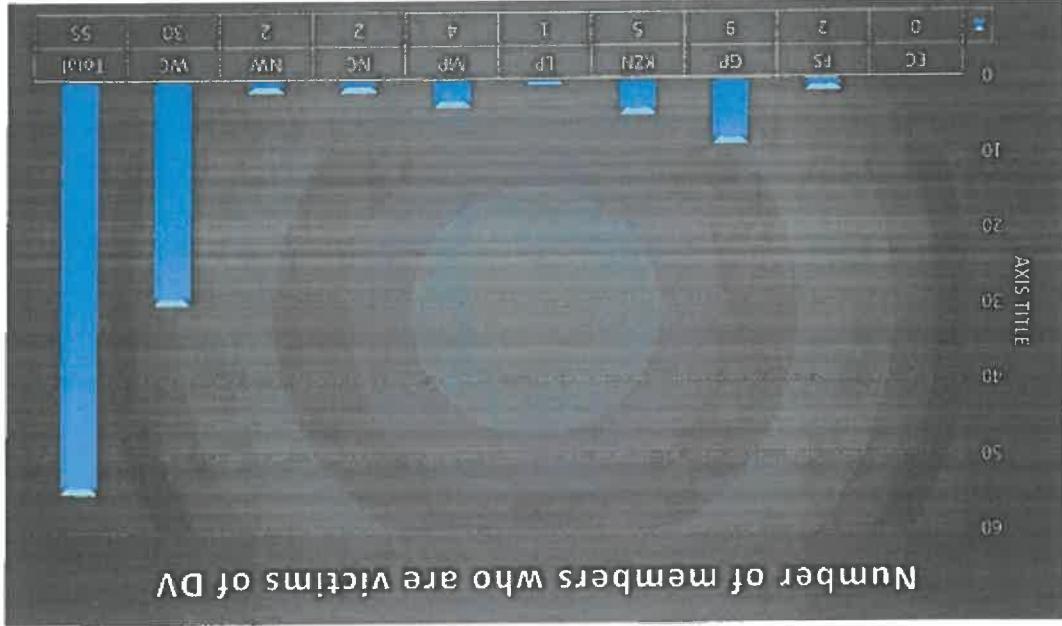


Figure 3: Members as victims of domestic violence

In terms of dealing with members that are perpetrators of domestic violence, the SAPS management compiled with the DVA obligations aligned to the FCA and firearms of members involved were seized. It is however, concerning that there were no disciplinary proceedings instituted against members who committed acts of domestic violence and it is not clear whether the 102 inquiries were conducted for members whose firearms were seized. There are members who are not issued with SAPS 108 firearms, however, they are allowed to book a firearm when conducting operations.

The SAPS has managed to institute disciplinary proceedings for all members that had failed to comply with the DVA and National Institutions during this reporting period. This is a positive step and an indication that the SAPS management takes non-compliance seriously. Despite this positive developments, it is evident that there are still gaps in the implementation of DVA at police station level. This is shown by the high number of administrative non-compliances as well as the operational non-compliances which are serious matters that can endanger the lives of the victims.

8. CONCLUSION

Engagement with the communities highlighted the need for the CSPs and Provincial Secretariats to be more visible in the communities. There were community members who were assisted on the spot during the engagement session, e.g. in Bloemspuit and in Sebokeng where community members were taken to the police station to open criminal cases. The campaign also confirmed the view that the absence of recorded non-compliance complaints is not an indication of full compliance by the police. Some community members are not aware of the channels or mechanisms in place to lodge complaints against the police.

Community activation sessions were held in the following areas: Sebokeng (GP); Bloemspurit and Kopanong (FS); Bushbuckridge and Nelspruit (MP); Kageng (NW); Kakamas (NC); Kharu, Gugulethu, Phillipi and Delft (WC); and Tzaneen and Thohoyandou (LP). Sessions for EC and KZN had to be rescheduled due the high rise in number of Covid 19 infections in these areas.

for Police Service on Radio 2000 and community activation sessions whereby pamphlets were distributed at identified hotspots within the targeted communities.

9.1. The SAPS should strengthen its management of non-compliance by members, in line with the SAPS disciplinary regulations, all members that are offenders of domestic violence should be subjected to disciplinary proceedings.

9.2. In line with the SAPS disciplinary regulations, all members that are offenders to firearms for members who have been reported as perpetrators of domestic violence.

9.3. The SAPS management needs to develop control measures regarding access to firearms for members who have been reported as perpetrators of domestic violence.

9.4. Section 102 inquiries should be conducted for all members whose firearms have been seized in line with the FCA.

9.5. The SAPS needs to work jointly with the CSPs to increase awareness on domestic violence response.

9. RECOMMENDATIONS

This is an area that requires control for members that have domestic violence cases reported against them. In spite of the improvements made in relation to management of non-compliance by SAPS, there is still a lot of room for improvement. It is also important to increase community awareness on understanding their rights and responsibilities when reporting a domestic violence incident at a police station.