



**Western Cape
Government**

Community Safety

Effective implementation of the Domestic Violence Act

Workshop Minutes
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Cape Town Lodge



Gender, Health & Justice
Research Unit
Faculty of Health Sciences
UNIVERSITY OF CAPE
TOWN



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Effective Implementation of the Domestic Violence Act

Programme Director: Amanda Dissel

BACKGROUND

Recently the Western Cape High Court matter of *S v Bennie Adams* (Case number SS 69/2015) highlighted the failure of the South African Police Service to respond and protect a complainant and her son and failed to act on a Protection Order with the result that a young child died following the assault and lack of medical attention. The court directed that this matter be brought to the attention of the SAPS, the MEC for Community Safety and to oversight structures.

Since the Domestic Violence Act was promulgated in 1998, measures have been introduced to improve the response of the criminal justice system to victims of violence. The Bennie Adams case highlights some of the shortcomings with its implementation. The Western Cape Police Ombudsman and the Department of Community Safety, in partnership with UCT's Gender, Health and Justice Research Unit organised a roundtable workshop to address the reasons for the failure to uphold the legislation and protect the rights of victims of domestic violence. The workshop aimed to develop a plan of action for relevant stakeholders.

The following key stakeholders were invited to attend the meeting: The South African Police Service, the National Prosecuting Authority, the Department of Justice and Correctional Service, Magistrates, National and Provincial Secretariat for Police, representatives of health care services for victims of intimate partner violence, and important domestic violence support service providers.



Above: Advocate Vusi Pikoli

(A) Adv Vusumzi Pikoli – Western Cape Police Ombudsman

- Adv Pikoli opened the session, thanking everyone for their presence and set out the main objectives of the workshop.
- In reflecting on the implementation of the Domestic Violence Act Adv Pikoli argued that we must acknowledge our *collective* failures in order to improve the implementation of Act.
- Although there have been “pockets of excellence” in relation to the implementation of the Act, particularly in the Western Cape, there must be a push for “general excellence” amongst all stakeholders.
- The scourge of domestic violence is alarming and there are mechanisms to prevent and protect victims of domestic violence. These just need to be used by communities, victims and those implicated by the Act.
- We all can acknowledge that under-reporting is an issue but we need to ensure that those cases that do come to our attention are treated professionally and with the full cooperation and support of the system.
- The obligations that are laid out in the DVA for each state actor and in order to make all stakeholders accountable and implicit in the effective implementation of the Act, they must show renewed and continued commitment to the obligations contained in the Act.
- He asks: After 18 years, what have we achieved? What has been our progress?
- He stressed that this session is an opportunity to review these questions.

1. INTRODUCTION

This workshop – the gathering of experts in the area of domestic violence – is an opportunity to review what has been achieved since final report of the Khayelitsha Commission of Inquiry (2014). Since the promulgation of the DVA in 1998, approximately 19 000 women have been murdered at the hands of their intimate partners. This obviously does not include the potentially large numbers of children who have also been murdered in the crossfire or as direct victims of domestic violence. This presentation reviews a number of key studies on the implementation of the Domestic Violence Act. The findings of these studies provide an evidence-base from which to make strategic changes to how the Act is currently being implemented. The findings, and analyses of these findings from these studies, are presented below.

2. RESEARCH ON THE DVA

There have been a number of studies and reports since the promulgation of the DVA – including academic studies, DOJ Annual Reports, parliamentary committee reports and parliamentary researcher reports – that have found issues with the implementation of the Act. The findings of these studies follow, although this is not a comprehensive review of these works.

- Vetten (2014, citing Watson 2012) found that there are roughly 220 000 applications for Protection Orders 220 000 a year. Approximately 35% of these are finalized. Of these finalised orders, about 25% result in breaches of the order.

(Artz et al., 2016) recently published a study on child sexual abuse and other forms of violence and maltreatment against children. This was the first nationally representative population study on the prevalence of child abuse and maltreatment in SA where 9730 children between the ages of 15-17 were interviewed about their life time experiences of these forms of abuse. 24.6% reported being exposed to 'some form' of family violence in their lifetime. Girls (37.6%) reported more family violence exposure than boys (25.6%). Other findings from this study follow:

- Parent ever threatened to hurt the other parent *and* it appeared that this threat was real and they might get hurt: Males (20.8%), Females (27.1%), Total (23.8%)
- There was a time when one of respondents' parents got hit or slapped by the other parent: Males (16.7%), Females (22.1%), Total (19.3%)
- One of respondents' parents has ever been kicked, choked or beaten up by the other parent: Males (11.4%), Females (16.9%), Total (14.1%)

- Ever seen parent hit, beat, kick or physically hurt brothers or sisters (does not include “spanking”): Males (25.1%), Females (30.8%), Total (27.8%)

Studies by Artz (2010), Artz & Jeffthas (2011), Artz (2014) have explored both the systemic and personal reasons (reasons cited by applicants) for why interim protection orders are not finalised. Some of these findings follow:

- *Reasons why interim protection orders (IPO's) are not finalised:*
 - No return of service: 15%
 - IPO not issued by court: 16%
 - IPO not served on respondent: 6%
 - Struck off roll: 5%
- *Personal reasons cited by those who applied for PO's but did not return:*
 - 40% threatened with death over the course of the relationship
 - 21% were threatened with death by their abusive partners/the abusers if they returned to court (1 out of every 5 women)
 - Threats of further violence occurred in 26% of cases (incl. threat of gang rape or other gang retaliation)
 - The abuse actually 'got worse' in 10% of cases after application for IPO
 - In 7% of cases, the abuser threatened to burn down the applicant's house
 - In 7% of cases, children were 'kidnapped'
 - In 10% of cases, applicants were threatened with some form of sexual assault

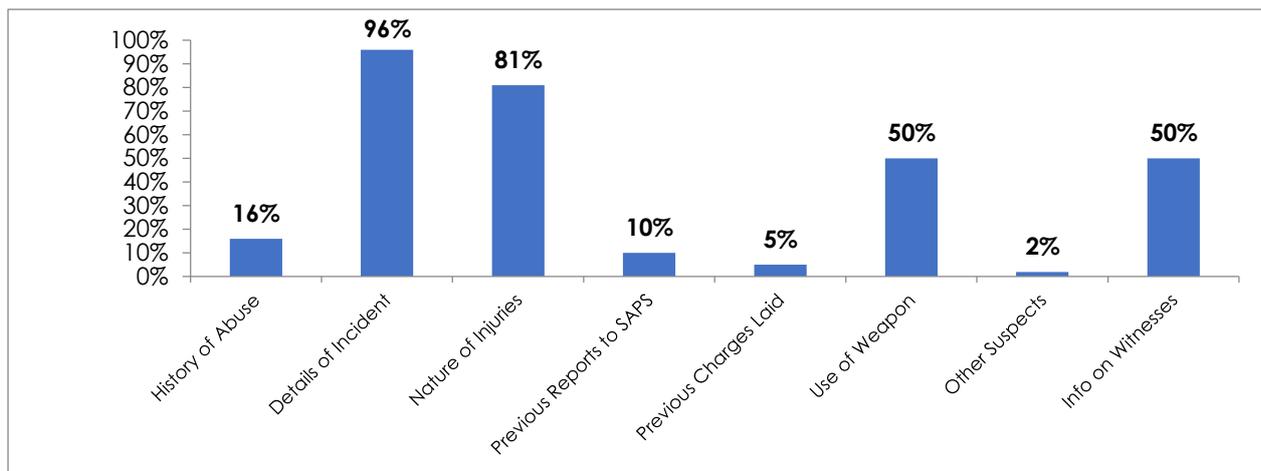
3. COMPLIANCE WITH THE DVA

- When the Independent Complaints Directorate (ICD) was monitoring the implementation of the Act (pre-2012), they received three broad categories of complaints, including complaints of failure to: (i) serve a protection order; (ii) arrest a respondent for committing a criminal act of violence or breach of a PO; and (iii) investigate criminal cases arising from incidents of domestic violence.
- The Civilian Secretariat for Police has shown low non-compliance figures and continues to develop mechanisms to better monitor the implementation of the Act.

Positive practices: Section 17 Dockets are criminal dockets that are opened when there is a breach of the PO/court order. A review of these dockets in 2005 and analysis prior to the Khayelitsha Commission of Inquiry found generally high levels of compliance when opening these dockets. By example:

- Copy of the protection order was present in 75% of S. 17 dockets.
- Arrests were made in approximately 80% of cases where there was a breach of the order and a criminal docket was opened.
- Additional charges were laid in 30% of S. 17 dockets.

Details in Dockets



3.1 Basic administrative compliance issues have been cited in various studies and monitoring reports including ICD Monitoring Reports (2007-2012), Artz et al. (2005), Artz (2014), Artz & Jeffthas (2011), Watson (2012), Combrinck and Wakefield, L. (2009), Lugulwana (2009), MRC (2009/2012), Khayelitsha Commission of Inquiry submissions and reports (2013/2014). A summary of these issues follow:

- No copy of National Instruction 7/1999 readily available in CSC
- DVA incidents not recorded in the Domestic Violence Register 508(b)
- Responses to domestic violence incidents not recorded on SAPS forms 508(a)
- Monthly procedures of File 39/4/2/3 on DVA incidents not maintained
- Procedures of SAPS 10 (occurrence book) on DVA not thoroughly maintained
- Protection orders are not served (no zero outstanding protection orders)
- Copies of protection orders received not filed
- Copies of warrants of arrest received not filed
- Form 1's not issued to complainants

3.2 Implementation challenges:

- It is evident that compliance with the DVA and the National Instructions is problematic.
- By imposing positive legal duties on the SAPS through legislation and instructions, the state's expectations of the quality of service to be delivered by the SAPS is made explicit.
- However, this loses effect when:
 - There is an indifferent or weak management in place (oversight)
 - Case disposition is not monitored and reviewed regularly
 - The law allows for too much police discretion
 - SAPS National Instructions are not regularly reviewed, practiced and enforced
 - SAPS National Instructions appear too complicated for police to follow

- The compliance emphasis is on “numbers” rather than service
- There are three primary functions for the police in addition to service: (a) register complaints; (b) provide information to complainants; or (c) follow up on these complaints. These are mandatory but allow discretion. *For instance:*
 - S. 2(a): *if it is reasonably possible to do so, [to] hand a notice containing information as prescribed to the complainant in the official language of the complainant's choice.*
 - It is recommended that this be amended to say: The police must hand a notice to the complainant explaining his/her rights under the Act, must explain those rights and, if reasonably possible, to do so in the language of the complainant's choice.
- There is something problematic with existing training and systems if research evidence is showing that:
 - The number of people trained does not speak to the quality of training - it does not matter HOW MANY are trained but the quality of training and veracity of knowledge intake by trainees.
 - Occurrence books, Incident Forms SAPS 508(a) [the Domestic Violence Incident Forms] and the SAPS 508(b) [the DVA Registers] are not complete or being completed properly.
 - There is a continued emphasis – broadly speaking – on physical violence.
 - Cases are not being investigated, followed through or monitored.
 - There is little “protection” of complainants when emphasis on compliance focuses on “form filling”: Must re-examine duties relating to prevention & protection.
 - There are still high attrition rates (cases “falling out” of the system).

4. REPORTING, RECORDING AND DOCUMENTATION

- The SAPS 508(a) Incident Forms and the SAPS 508(b) Register need to change.
- For instance, the SAPS 508(a) Incident Forms: (i) confuses current and past events; and (ii) assumes police are first point of contact – which they are often not.
- Proper documentation as required by section 12(3). Input and analysis of SAPS 508(a)'s = proper “incidence and prevalence” data.
- Members must be given more detailed instructions about how (and why) to fill out the DV Incident Reports (SAPS 508(a)'s) and the DV Registers (SAPS 508(b)'s).
- Receive training on how to optimally utilise these records.

4.1 Proposed amendments to the Incident Form:

The SAPS 508(a) is an excellent management tool and should be amended to also include:

- A section where the complainant signs the form in addition to the signature of the SAPS member.
- A section where it can be verified that the complainant *has* been informed of his/her rights under the DVA.
- A section denoting whether (i) the accused is in possession of a firearm or dangerous weapon; and (ii) whether the complainant would like that firearm removed.
- A section to indicate that the complainant is a person with a disability or a child in need of care and protection.

5. EVIDENCE BASED TRAINING

- Minimum standards of information that must be imparted to each complainant of domestic violence.
- Extra-judicial interventions when a child is affected by or at risk of domestic violence.
- Service of protection orders (Service to applicants!)
- The filing and execution of suspended warrants of arrest.
- Proceeding with the investigation of cases where there is *prima facie* evidence of an offence, regardless of complainant withdrawal.
- After-hours complainants (when the courts are closed/after-hours applications to bail magistrates).
- When members of the SAPS are implicated in domestic violence cases/have a protection order issued against them: case management
- Being fully compliant with the duties imposed on the police by the DVA.

(C) Lieutenant Colonel Pause – Section Commander, Gender Based Violence and Victim Empowerment, South African Police Service

Lieutenant Colonel Pause outlined his presentation to include four central focus areas, including: (i) the legislative framework for domestic violence, (ii) the SAPS programme of action; (iii) flow charts denoting the duties of the first responder, duties of the Community Service Centre Commander and duties of the Domestic Violence Coordinator; as well as (iv) critical issues in policing domestic violence cases. He emphasised the efforts by the SAPS to streamline reporting, complaints and service practices. Acknowledging that efforts on the ground are not always commensurate with the policy-level initiative, he presented the ideal service-level practices that SAPS should be undertaking and argued that if these service 'flowcharts' are followed, practices will be improved.

1. LEGISLATIVE FRAMEWORK

A summary of the key obligations for the SAPS under the DVA are presented below:

Domestic Violence Act (Act No. 116 of 1998):	<ul style="list-style-type: none">• <i>imposes certain obligations on a member who receives a complaint of domestic violence.</i>
National Instruction 7 of 1999 is:	<ul style="list-style-type: none">• <i>intended to provide clear direction to members on how to respond to complaints of domestic violence in order to comply with the obligations imposed upon him or her in terms of the Domestic Violence Act</i>
National Instruction 7 of 1999 includes content on the following:	<ul style="list-style-type: none">• <i>Definitions of DV</i>• <i>Responsibilities of Station Commander</i>• <i>Responsibilities of CSC Commander</i>• <i>Responsibility of member</i>

2. SAPS PROGRAMME OF ACTION

There have been numerous efforts to improve police compliance to the DVA. These include:

- Continuous training of members
- Station Visits to ensure compliance
- Appointment of DVA Coordinators at all stations – 2012/10/03
- The following Directives were disseminated to the Stations in the Province:
 - Appointment of Domestic Violence Act and VEP Coordinators - 2007-04-26
 - Provincial Instruction - 2007-12-27
 - DVA Procedure Guide – 2007-10-01
 - Non-compliance Notification implemented 2008-08-01
 - Members involved in DVA Notification implemented 2008-08-01
 - Presented at Station Commanders Conference 2008-11
 - Administration of Protection Orders – 2011-09-09
 - Standard Operational Procedure: Members of SAPS who have allegedly committed an act of Domestic Violence and employee of SAPS who has failed to comply with the Act, Regulations or National Instruction - 2012-05-25
 - Provincial Instruction 28/2013 – Addressing Non-Compliance by members
 - Provincial Instruction 29/2013 – SAPS members allegedly involved in Domestic Violence
 - Provincial Instruction 1/2014 – Registration of Domestic Violence related case dockets
 - Flowcharts (see below)

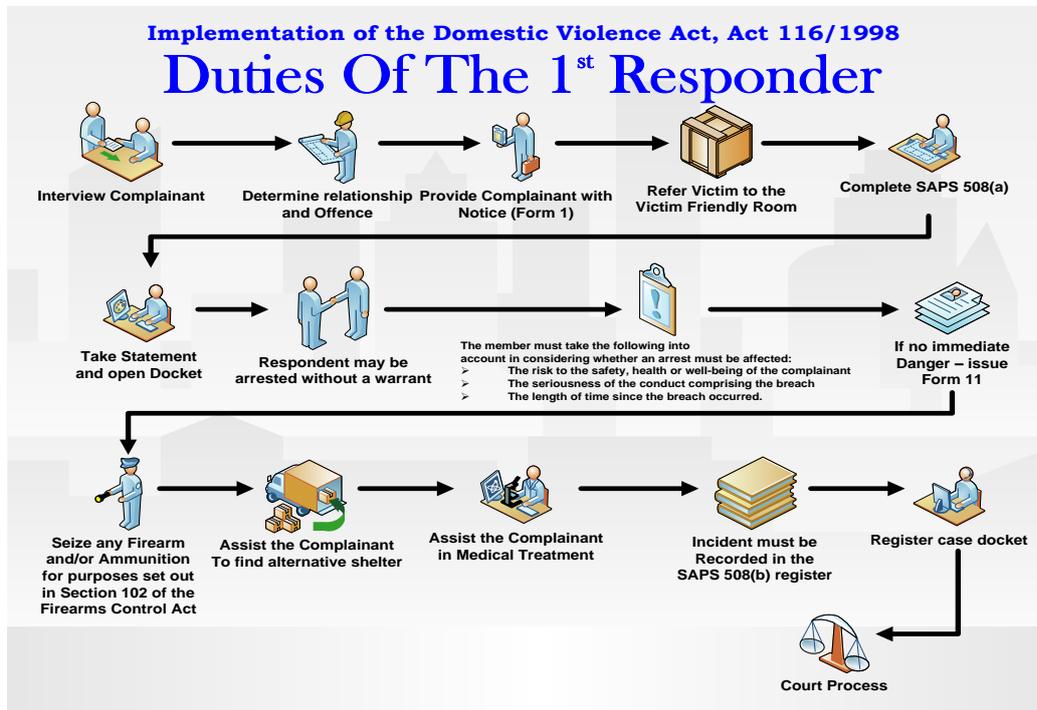
- A five-day Domestic Violence Training programme currently exists, but this needs to be extended to a two week training with the requirement of an assessment on completion.



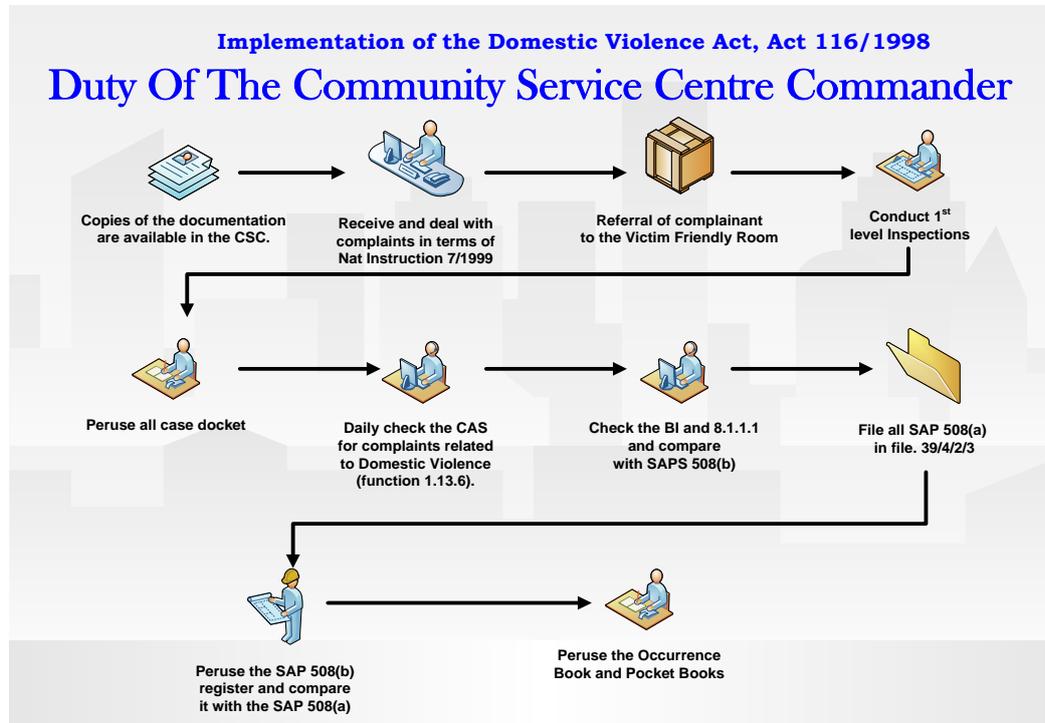
Col Pause, SAPS

3. FLOWCHARTS

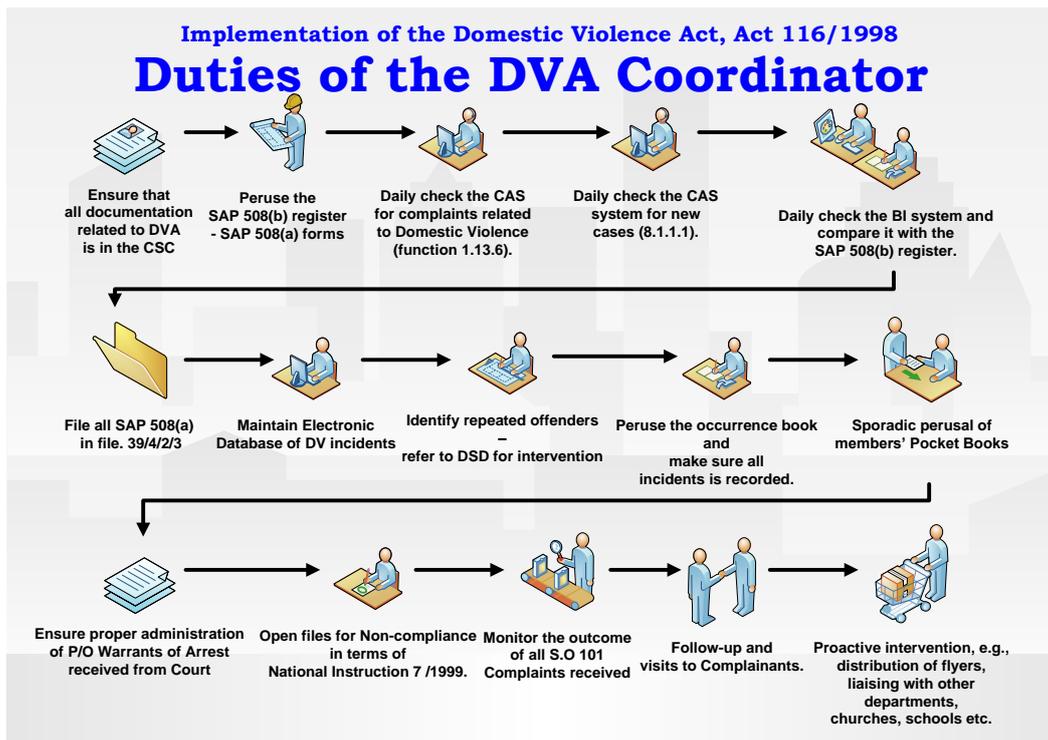
3.1 Duties of the First Responder



3.2 Duties of the Community Service Centre Commander



3.3 Duties of the Domestic Violence Coordinator



(D) Ms Ashika Singh – Department of Justice and Constitutional Development

- There are a number of violence prevention initiatives DOJ&CD is awaiting comment on, including the Hate Speech Bill (1 December 2016: comments due). **NB:** Since this presentation, the organisers of the workshop have been informed that submissions on this Bill have been extended to 31 January 2017.
- The DOJ&CD recognises and must deal with the effects on families, children, and the elderly as well as intimate partners.
- There is an inordinately high withdrawal of cases from the Criminal Justice System which is concerning.
- Why do victims of DV not return to court to finalise those orders? Cites research (Artz & Jeffthas, 2011 and Artz 2008):
 - Cites socio-demographic data including the high levels of women applying for orders, but also the significant amount of men applying too (approx. 15%).
 - There are both systemic and personal reasons to withdraw from the application process or to not appear in the courts.
- Cites ICD (2011) data on compliance with the DVA: service of PO, information about legal options and follow through with arrests and investigations of criminal matters have been subject to criticism.
- Victims of DV are “unschooled” in the court process and are not aware of the procedures and expectations (returning to court) – cites Lugulwana (2009) research on compliance with the DVA.

- Lack of knowledge for victims of domestic violence, means losing faith in the CJS when the system is too complex or simply does not work as intended.
- Further research is required in the changing trends – if any – in the way the DVA is being implemented. Existing research is useful, but we require more contemporary research.
- As the DOJ&CD, the victim often does not come to the court for assistance. The initial application is often not made by the complainant (under-reporting).
- In the Western Cape, we have 51 courts which are specialised to deal with Domestic Violence, including a new “section” in Beaufort West Court (model court).
- CCTV facilities are installed in most courts.
- Application for Protections Orders – Form 4 – has been translated into 11 official languages as well as a booklet in brail for the blind on the DVA.
- There are 55 clerks specifically dealing with DVA protection orders in the Western Cape. These clerks are regularly trained and updated on DVA.
- Paarl has highest level of DVA cases followed by Bellville and Mitchell's Plain. These are cases that have come to courts and have been registered in the Integrated Case Management System (ICMS).

(E) Adv Lizelle Africa – Acting Head of the Sexual Offences and Community Affairs Unit, National Prosecuting Authority

1. INTRODUCTION

- DVA is a multi-disciplinary issue.
- Approach must be holistic, from the point of reporting to the intervention (and follow up), including the role of communities.
- Response must encompass all interfaces at every stage of dealing with DV matters

2. CHALLENGES

- Complainants do not proceed with DV matters.
- Offences like Assault, Assault GBH and Attempted Murder etc. are not always depicted as domestic violence related.
- Monitoring forums don't always get to know what challenges or gaps there are in the system if these gaps or challenges are not reported.
- Complainants not following through on cases may result in police and prosecution not responding positively to instances of DV.
- Non-service or no timeous service of protection orders.
- Not sufficient shelters with relevant support structures.
- Lack of socio economic support for complainants.

- Is there sufficient psycho social support in relation to long term counselling to assist victims of DV?
- Abuse of protection order for eviction purposes.
- Lack of communities taking responsibility to report instances of DV (turning a blind eye).
- Cultural issues and social context are not always considered when dealing with DV matters.
- Are relevant departments like DSD involved in mediation and conciliatory processes in order to deal positively with a domestic violence incident where circumstances allow (support programs for perpetrators).
- Lack of accountability amongst stakeholders in relation to DV.

2.1 In addition to the above challenges presented:

- Prosecutors need to “see” the history of domestic violence in the docket and the docket often does not reflect this – only the immediate/more recent “once off” offence.
- Because complainants withdraw cases, CJS personnel become disheartened by this and find it difficult to effectively intervene.
- How do we – as a group of stakeholders – address the lack of shelters or places to go after an incident of abuse (or once the criminal justice/application process) has been initiated?
- *S v Bennie Adams* Case: There is something wrong with the community response where you hear a child screaming or that violence is being perpetrated and communities do not intervene/remain silent.
- Example of cultural issues: Told to accept certain things, or against my religion/religious practices, or goes against customary norms.
- When prosecutors attempt to proceed with matters – where complainants want to withdraw cases – complainants do not appear in court or state that the alleged incident did not happen.

3. INTERVENTIONS AND CURRENT RESPONSES

- Awareness raising and education on safety plans
- Training of frontline staff
- Directives, national instructions, circulars and departmental policies pertaining to DV
- Monitoring complaints about service delivery and acting accordingly (Monitoring by the Gender Justice Forum GJF resulting in improved service delivery)
- Prosecutors not allowed to withdraw matters without having regard to very specific criteria
- Imbizo with traditional leaders and religious institutions (March 2016 in Khayelitsha)
- A number of sessions with religious leaders under the forum SAFFI – the South African Faith and Family Institute – to see how religious leaders respond to DV

and alternatives to reconciliatory approach where this should not be considered as an option).

- Awareness session at a church in Khayelitsha where only men were addressed.
- DV training for prosecutors
- Thuthuzela Care Centres (TCCs) also see DV clients but not as frequent as sexual offences
- Khuseleka Centres (one stop centres launched by the Department of Social Development)

4. SUGGESTIONS

- Need a more holistic approach.
- Can the sheriff's board play a greater role in serving of protection orders as part social responsibility?
- Can other law enforcement agencies assist with service of interim protection orders?
- Communities, ward counsellors, leaders within communities should play a bigger role in reporting incidents of DV.
- Life orientation curriculum as part of school education should deal with DV related issues under the banner of abuse. (Educating children will assist in changing mind sets).
- Domestic violence response teams within corporate structures and government etc. should provide prevention and response.
- Corporates need to develop a domestic abuse policy like sexual harassment policies, etc.
- Responsibilities on supervisors in workplace to deal with DV positively.



DISCUSSION: PART 1

The participants had the opportunity to raise issues for discussion. This discussion generally fell into two categories: (1) policies versus systemic issues; and (2) the role of the courts.

1. POLICY FOCUS VERSUS SYSTEMIC ISSUES

- There was a concern that the system often focuses on policy changes, but there is an obvious issue with policing culture and general structural issues. These need to be addressed as there is something occurring at the systems level that inhibits proper policing of DVA cases.
- Technical adjustments vs major structural (and cultural) changes? It does not require an either/or approach. There are multiple entry points for changing current practices and there are “quick fixes” as well as concerning policing culture and other systemic concerns. Some of these challenges require long term solutions, others do not.
- There are several grey areas of the DVA that need attention:
 - certain provisions in the DVA are not clear or are difficult to interpret (e.g. what constitutes “imminent harm” or “reasonably possible to do so”, such as Section 2 of the Act which imposes certain duties on the SAPS but creates some discretion when it employs the phrase “reasonably possible to do so”);
 - oversight processes as they pertain to disciplinary actions – who oversees the disciplinary actions taken against SAPS members for failing to adhere to the DVA;
 - the role of other stakeholders such as DSD, health services and education;
 - reciprocal orders (and when to arrest); and
 - the issuing of instructions for further investigation of cases.

2. THE ROLE OF THE COURTS

- One particular area that concerns the courts is the question of service:
 - There is a concern that S 13 of the Act requires the service of documents to be made by the Clerk of the Court, peace officer, or sheriff and makes provisional for financial assistance to the applicant where required. However, there is an agreement between the SAPS and court that the SAPS will serve protection orders. The SAPS stated that it will confirm whether this is a formal arrangement by memorandum.
 - Some courts do this seamlessly with arrangements with police while other still struggle to have interim protection orders (IPOs) served in a timely manner, or in some cases, at all.

- Participants noted that, with regard to service there are other “peace officers” (traffic and metro police) that can serve orders.
- When one deals with criminal justice reform, one must look at a number of things:
 - Structure
 - Systems
 - Skills
 - Attitudes and/or culture
 - There are certainly systemic problems here and there but what we are dealing predominately with is skills and attitudes (e.g. the treatment of DV applicants). How do we reverse the attitude of those who work within the system?
- Presiding officers: After making findings/orders are they making the effort to make referrals to DSD programmes or for reports especially when there is a child involved or there is an obvious need for the perpetrator to go to a programme?
- What about *before* the finalisation of the order? How can we enhance the role of presiding officers before that?
- District Enhancement Processes exist.

(F) Ms Ayanda Xongwana – Deputy Director, Monitoring and Evaluation, Civilian Secretariat for Police

This presentation discussed the role of the Civilian Secretariat for Police Service Act (CSP), including its mandate, as well as findings from DVA Compliance reports that have been undertaken by the CSP. Ms Xongwana reflects on the challenges that have, and continue to, face the CSP in monitoring compliance and she concludes with recommendations about how to address some of these challenges.

1. INTRODUCTION

- The Civilian Secretariat for Police Service Act, 2011 (Act No. 2 of 2011) responds to section 208 of the Constitution which obliges the Minister of Police to establish a Civilian Secretariat for Police that operates directly under the Minister's direction and authority.
- The Civilian Secretariat for Police Service Act also takes into cognizance section 206 of the Constitution that entitles the Provincial Executive to perform certain oversight functions that relate to policing.

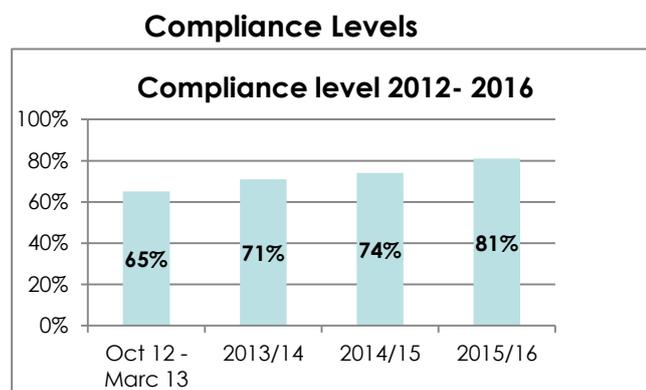
1.1 CSP Mandate:

CSPS Act mandates the Civilian Secretariat for Police (CSP) to (S 6):

- Monitor and evaluate SAPS' compliance with the DVA;
- Make recommendations to the police service on disciplinary procedures and measures with regard to non-compliance to the DVA;
- Provide the Minister with regular reports with regard to implementation of and compliance with policy directives issued or instructions made by the Minister.

2. COMPLIANCE

- In determining the actual level of compliance, indicators for key focus areas are coded and interpreted into a score out of 100.
- The compliance levels are distributed in four levels, i.e.:
 - Full compliance which is equivalent to 100%,
 - Significant compliance which is 80-99%
 - Partial compliance which is equivalent to 50 -79% and
 - Non-compliance which refers to any station performing below 50%.
- The compliance levels by the SAPS are still unacceptable.
- When it comes to response to domestic violence, the SAPS should implement and comply fully (100%) with the DVA in order to ensure that the complainants are receiving appropriate service from the police.
- There has been steady improvement over the years that can be attributed to implementation of recommendations made by the Secretariats. But police stations are still not achieving 100% compliance.



The following numbers have been recorded by the CSP from the police stations visited over the mentioned years. They also include administrative non-compliance, which is the failure by members to properly complete registers and maintain documents as per National Instruction.

Non-Compliance

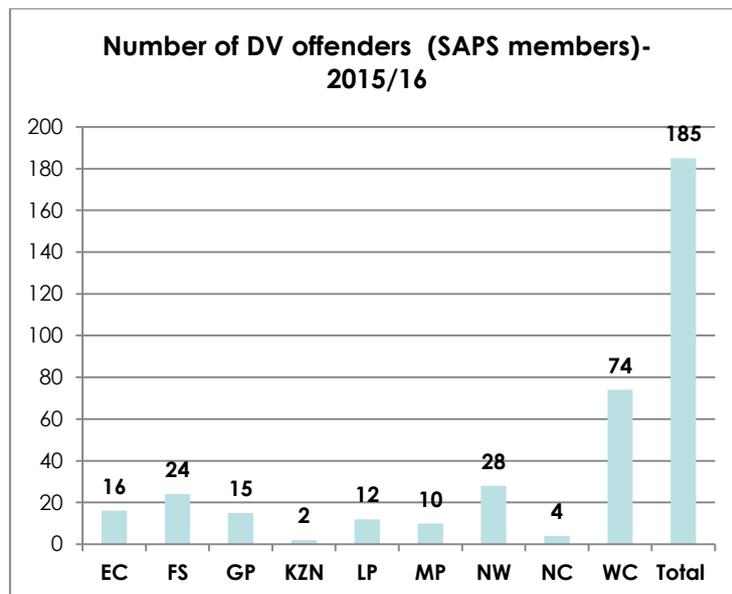
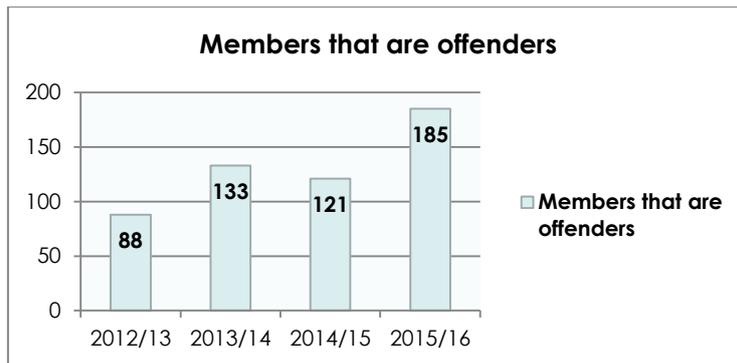
Financial year	Number of non-compliance
Oct 12- March 13	15
2013/14	237
2014/15	218
2015/16	235

2.1 Non-Compliance by SAPS members:

- As reflected in the figures above, the number of members that are failing to comply with the DVA seems to be increasing.
- This may be attributed to the fact that the SAPS has strengthened its recording and reporting mechanisms, therefore statistics that were previously not coming through are being revealed.
- Sanctions imposed by SAPS are minimal, and this may also contribute to non-compliance levels not decreasing
- This, therefore, poses another challenge to the SAPS, i.e. the need to heighten their response in handling of non-compliance.
- Members that allegedly commit domestic violence related incidents pose a serious challenge to the SAPS.
- There is a need for swift and vigorous action to be taken by management to repair the negative impact on image of SAPS.
- Handling of these incidents still poor – removal firearms, disciplinary/ criminal processes, referral to EHWP.

2.2 Handling non-compliance by SAPS:

- CSP discovers incidents of non-compliance through station monitoring visits (both administrative and operational).
- Clear reporting channel for non-compliance complaints are not clear for community members – posters & pamphlets developed by CSP.
- Challenge regarding communication of progress regarding disciplinary processes – Need to have a compliance Forum and Standard Operating Procedure (SOP) to address this.
- Consequences for non-compliance – not serving as a deterrence.



- Looking at the figures above, the number of members who are reported as perpetrators of domestic violence has increased when compared to the 2015/16 financial year.
- The CSP made a recommendation that the process of investigating these matters must be handled at either cluster or provincial level and not at station level.
- Another possible solution would be to have this included in the matters that are investigated by the Independent Police Investigative Directorate (IPID) which would mean amendment of the IPID Act.

3. GENERAL CHALLENGES:

- Delays in amendment of both the DVA and National Instructions negatively impacts on the oversight role of the Secretariats – SOP developed but no full implementation yet.
- Understanding and interpretation of the National Instructions is not consistent within the SAPS – e.g. use of Form 11 (Notice to Appear before Court), issuing of the Notice explaining to victims of domestic violence about the remedies available under the DVA.

- There are gaps in the SAPS administrative systems which contribute to inconsistencies in recording and ultimately impact on proper response – e.g. SAPS 508(b) (columns on PO and whether arrest has been made).
- Number of members trained has improved with DVA training incorporated within basic training – this does not seem to translate into improved implementation – need to explore further
- SAPS is the first point of entry into the criminal justice system and therefore should be able to provide a victim friendly service that will contribute positively to a complainant navigating through the system successfully.
- Having noted this, SAPS is not the only role player that ensures effective response to victims of domestic violence.
- In order for the SAPS to be fully effective in their response there is a need for other government departments to fully implement their roles.

3.1 Discussion of Other Challenges:

- There has not been a proper transitional process between ICD and the Secretariat to change mandate.
- National Instruction still has not changed and still refers to the ICD – should have clear instructions referring to Secretariat and the process(es) that the Secretariat undertakes with complaints. In absence of this amendment, the Secretariat created an SOP.
- The Secretariat has not received the monthly reports from stations relating to complaints so their data may be different than station level data.
- Get (contravention/non-compliance information) reports through station visits and not from the monthly reports compiled by the SAPS.
- CSP does not have investigative powers (unlike the ICD did) which poses challenges for the Secretariat. No authorisation clause in the CSP Act.
- Should also be in the domain of the Independent Police Investigative Directorate (IPID) – but this is a long-term solution as it requires amendment to the IPID Act.
- SAPS (in 2014) has done a review of its training but that report is not available yet.
- All stakeholders – Departments – should present a joint report to Parliament on the DVA: a report that provides an overall picture of the implementation of the Act and the inter-sectoral (composite) challenges across departments.
- Embark on an in-depth study on handling non-compliance of members.

4. RECOMMENDATIONS

- There was a consultative workshop hosted by SAPS in 2012 which identified critical areas of interventions for the SAPS registers and the National Instructions. That process needs to be finalised as there were good recommendations and processes of drafting revised documents in place.
- Amendment of the both the DVA and National Instruction (NI) should include a clause on coordination and cooperation – consequences for failure to implement by all relevant stakeholders.

- Coordinated accountability – joint reporting by all relevant stakeholders.
- SAPS needs to establish collaborations with local Civil Society Organisations that can assist in capacity building initiatives and provision of psycho social services – to be clearly defined in the NI.
- Coordinated awareness campaigns – CSP, SAPS, NPA.
- CSP will embark on an in-depth study to explore SAPS handling of non-compliance by its members – analysis of directives issued, analysis of sanctions imposed, role of management (Cluster, Station and VISPOL commander), training, recommendations – report due by December 2017.
- For 2016/17- CSP will do a census approach to station monitoring – all police stations around the country will be visited by Provincial Secretariats.

(G) Charmaine Morrison – MOSAIC – Auxiliary Social Worker

Ms Morrison gave a brief, but important, input about how the DVA is being implemented in Mitchells Plain. She provided both positive practices as well as recommendations for how to improve the implementation of the DVA. She presented the following key points:

- Mitchells Plain has established a model approach to DVA. There is an open-door policy at Mitchells Plain police station about problems that the organisation(s) experience with the police. This close relationship allows for a more “personalised” and preventative service by the police where situations are dealt with swiftly. Thus, early intervention is key in diffusing and preventing further violence.
- It was asked whether the police can “screen” domestic violence clients as victims may present with a case of assault but often do not make it explicit that it is DV.
- Training of staff, especially those who are new recruits was critical as there was a high turn-around of police members as well as police members that clearly need refresher training on the contents of the Act and their duties in relation to it.

(H) Dr Genine Josias – Medical Practitioner, Thuthuzela Care Centre, Khayelitsha

Dr Josias presented on some her observations as a medical practitioner at the Thuthuzela Care Centre (TCC) in Khayelitsha. She explained the range of services offered by the TCC as well as provided recommendations about how to improve services to victims of domestic violence from an “on-the-ground” perspective. She also emphasised the critical role that community care workers and social workers

play in the implementation of the Act and in generally supporting victims and their families in the Khayelitsha community.

1. GENERAL OBSERVATIONS

- Training must be ongoing, especially new officers
- Require dedicated/assigned officers so that DV victims do not have to first go to uninformed police officers
- Early intervention with Counselling is required: (i) to prevent further abuse; and (ii) must engage men/ perpetrators

2. KHAYELITSHA: EXPERIENCES OF IMPLEMENTING THE DVA

2.1 Police:

- Level and quality of service depends on the police at the CSC
- Lack of ongoing training, especially for uninformed officers
- SAPS do not understand the date on the PO
- Short staffed SAPS
- No trauma room staff/counsellors
- Survivors are just sent to the court and no assessment is done to assess their safety
- After hours: clients are sent home or have to wait at CSC
- Not enough vehicles and staff to go to the house of the perpetrator when survivors report at CSC
- Specific police officers are assigned to attend to DV – when that person is on leave/off sick/not available

2.2 Courts:

- The PO is not served on the perpetrator before the court appearance date
- Or, the Return of Service is not at court, so the magistrate does not sign the Warrant of Arrest
- The Warrant of Arrest is with the police

2.3 Medico-Legal Services:

- Clients come to Thuthuzela:
 - Lay charges of rape (marital/relationship) because of **quick arrest**
 - Withdraw charges later: court effort is wasted
 - Medical: The patient is examined, administered medication, a J88 is filled in, and the Family Violence, Child Protection and Sexual Offences Unit is contacted.
- Services offered by Thuthuzela:
 - FORENSIC Medical Examination (SAECK)
 - Collection of evidence

- Preservation and storage of evidence (keep locked for 3 months)
- Full medical care and containment counselling, including: (i) treatment of injuries; (ii) STD's; (iii) pregnancy; and (4) HIV (PEP)

2.2 Role of Community Care Worker (CCW):

- Valuable role: access to the home and first contact with community
- Many clients are not aware of their rights. The CCW can:
 - *Inform* community about services (Thuthuzela, Mosaic, Rape Crisis, Nonceba)
 - *Educate* about risk for children, aged, mentally challenged and sexual violence (SV) and DV
 - *Assist* to report or request ambulance or police car or social worker
 - *Reassure*, even if it is a "false" report, in the best interest of the vulnerable
 - *Offer services* not attached to the police due to stigma and other factors
 - *Prevent* STDs, pregnancy, HIV, PTSD
 - *Inform and educate* carers and parents and children about signs of sexual abuse, including non-physical signs: behaviour change; sexualized behaviour; promiscuity; withdrawn; playing truant; substance abuse, access to money.

2.3 Duty to report:

- Children under the age of 16 years
- Mentally Challenged and Aged
- Report even if suspected
- In the best interest of the vulnerable

2.6 Perpetrators:

- Most are KNOWN
- Barriers to REPORTING if known
- Children do NOT report immediately
- No time limit to REPORT

3. ADDITIONAL DISCUSSION POINTS

- Some CSCs in Khayelitsha are helpful to patients/complainants and others do not know the contents and remedies within the DVA.
- They do not understand the "date" of the protection order, they say it has expired.
- TCC is terribly short staffed – and so is the local FCS where experienced police were replaced with newer, less experienced police – as a result of a case of fraud at the Unit.
- There are no Counsellors at the Trauma Rooms at the CSCs.

- No assessment being done on whether DV victims are safe going to the court from the police station.
- There are no after-hours services for protection orders – complainants have to wait until the following Monday/next day when courts are in operation.
- Specific officers are assigned to cases and when they are off/sick then there is no one to assist the complainant.
- Cases where a medico-legal examination and care is proffered simply because the complainant/ patient knows she is at risk of future abuse and it effects arrest (which DV complainants tend not to). Then, complainant withdraws the matter.
- FCS has 88 dockets at the time (should have 20 or 30) – they are totally overwhelmed.
- Screening for DV at health care level – and where to refer once screened? DSD understaffed and outsource work to NGO's, no funding etc.
- Khayelitsha TCC does not have NPA staff at their centre.
- Costs of DV long term: children, injuries and long term health effects, mental health effects and addictions, schooling issues etc. Massive corollary effects of not intervening.
- Case study of child raped at 14 and was failed by health, educators, social workers, police and NPA (all of whom she has had contact with).
- In Western Cape Health Department – Forensic Medicine Task Team – have done an SOP on domestic violence.
- 5 of 9 provinces that had some “plan” around DV and sexual offences (at a National meeting).
- No accountability between departments – at all, at any level – and no capacity either.
- Attitude change needs to accompany more capacity to do their jobs.

(I) Deon Oosthuizen, Police Monitoring and Evaluation, Department of Community Safety (DVA Inspections)

Deon Oosthuizen presented on the efforts by the Department of Community Safety (DoCS) to monitor the implementation of the DVA and well as explained practical challenges with monitoring implementation.

- SAPS records the highest non-compliance in Western Cape. However, DoCS believe that it is the only province that understood and documented non-compliance in the correct manner.
- Focused on stations with the highest DV statistics and then stations with a low 'record' of DV cases.
- Some of these cases registered as assault or assault GBH (possibly to avoid additional administrative load re: SAPS 508s etc.).
- There are no surprise visits. Question is should they be unscheduled?
- The Department uses the DVA monitoring tool which is captured on a spreadsheet and to get compliance rates.

- Rural stations: Cannot cope with the volume of cases (capacity) and high turnover of managers.
- Unique case studies should be fed back into the training processes during their 5 day programme.
- Findings from this Unit are more 'administrative' in nature.
- Form 11 is certainly an issue – not used often.
- Problem: communication channel between the courts and the police (the way POs come to the station and when they are varied or set aside) – there should be a process of ensuring that protection orders are received and can be actioned/served.
- Latest version of the tool used for monitoring moves beyond administrative processes, but to contact complainants and get input about the quality of service. This is a recent development and will be analysed at a later stage.



COMMENTS AND QUESTIONS: PLENARY

The presentations were followed by a plenary discussion that involved both general clarifications about the presentations as well as general concerns and challenges with the implementation of the Domestic Violence Act. These are summarised at the end of this document. The points below, however, have been set out in order to reflect the wide range of these issues that were raised by participants.

- SAPS would like from the Secretariat:
 - more detail about the Western Cape regarding compliance. There are 64 non-compliance cases in this financial year in the Western Cape; and
 - a greater focus on police culture of the police (and its impact on implementation).
- N.B.: The training report on the DVA that was referred to by the Secretariat is indeed out (see CSP input).
- The most recent CSP reports after 2014/15 are not on the website. There is a fundamental misunderstanding about accountability (about how many police stations have or do or do not do certain things). It is a cataloguing of events. There is a difference between not issuing a Form 1 and sending someone away when they attempt to report.
- The Portfolio Committee misunderstands “accountability”. They too need to move beyond the numbers – the non-compliance and disciplinary statistics – and consider the quality of service to communities.
- Is there any attempt to standardise sanctions for misconduct (like the ICD did)?
- SAPS – and other criminal justice sectors – should be using data to learn from and not just to refute the statistics. It should be a learning opportunity and not a constant battle to disregard or dismiss them.
- Needs to be a general move away from monitoring through “checklists” (by any research or oversight body). There should be more than that. We should be measuring the quality of service, through qualitative measures.
- On a practical level, this forum should engage with the *Gender Justice Forum* (hosted by DOJ):
 - There is a Compliance Forum which can escalate problems to another level.
 - The SAPS is not the only sector to be monitored.
 - The forum holds forum members accountable and has taken complaints from organisations about Court Clerks.
 - The Gender Justice Forum is currently looking at the development of a Protocol to map the services provided to improve complaints of domestic violence and so being able to hold each other accountable = a SOP for all state role players.
- Intention of putting new things in place is promising, however, the existing structures should be better utilised. Monitoring needs to be more nuanced.

- SAPS acknowledges that there are some issues of non-compliance in terms of members not reading Instructions and Standing Orders.
- Accountability and compliance must have swift and serious consequences to work. This can also come with incentivising good practice.

FINAL DISCUSSION ON STEPS TO IMPROVE IMPLEMENTATION

Adv Pikoli and Amanda Dissel facilitated a final session on what steps need to be taken to improve the implementation of the Domestic Violence Act. Adv Pikoli firstly summarised some of the key issues that emerged from the day's proceedings:

- Reliving the Khayelitsha Commission of Inquiry and how far have we moved? We need to look at those findings and recommendations and see what has changed, or not, and work from there.
- Poor work and poor performance continues to overshadow the good work to be done.
- Constitutional obligations imposed on SAPS, NPA and others.
- Regarding concerns about being "heavily monitored": civilian oversight is an important Constitutional imperative.
- When we speak of accountability, there needs to be consequences for non-compliance and poor performance. Accountability and impunity do not sit side by side.
- Basic test of performance is whether we are serving the needs of people, the complainants, the victims and patients.
- Domestic violence has been a priority issue for a long time and there should be progress on how these cases are dealt with at every level.
- Need to examine our respective roles here. To sustain what we are doing well and to acknowledge where are not.

The following issues were then raised by the participants in a plenary discussion. These are also summarised in the final section of this document: *Summarising the Way Forward*.

- Four areas need to be looked at: (a) reporting and documentation; (b) structural issues; (c) oversight; and (d) accountability.
- If the public loses confidence in SAPS – and fail to report crime – they will take crime into their own hands. Encouraging people to report and the SAPS being efficient in detention and the NPA doing their work well, we increase public confidence.
- Instructions from prosecutors are often not followed by SAPS.
- Concern about SAPS as being responsible for the *prevention* of domestic violence: there is a Constitutional and substantive obligation to prevent and protect victims of domestic violence.
- Focus on convictions dissuades prosecutions and the lowering of police statistics affects how cases are proceeded with.

- When we address domestic violence, we need to look at how *government responds* in term of victim empowerment (Victim's Charter) etc. There is a skewed perception that SAPS are social workers but that is not the case. Referral and cooperation are key to the functioning of the Act.
- Victim Empowerment Forum, Trafficking Forum and Gender Justice Forum – 3 forums with the same role players and not effective. There should be one forum.
- Victims' rights should be the core of the service.
- Even at provincial level we need a DV strategy.
- The extent of domestic violence is often not recognised which accounts for a huge number of crimes reported. But, remains seen as an interpersonal matter.
- Recurring theme is institutional culture within SAPS. Has there been any research done into SAPS and institutional culture when it comes to addressing domestic violence. What we are talking about here is behavioural change. There may be things operating below the surface that is affecting how police engage with gender-based violence or other victims of violence.
- SAPS needs to look at hiring and recruiting of members: Who are we employing and what is their perspective on domestic violence, child abuse or what-have-you?
- The question is whether stakeholders – both state and NGOs – are going to continue to be reactive or whether they will come to a point where a proper service can be honestly and effectively delivered? The focus is on the service delivered.
- How do we know what we are doing is right? That is no always about compliance?
- The service of the order – police should be collecting orders from the courts on a daily basis and was confirmed in a DOJ Circular supported by SAPS. This is happening but not the courts. However, this is *also* considered putting off the responsibility of the courts. SAPS will confirm that this is a formal agreement and will be made consistent across stations.
- Nationally there was an agreement between SAPS and DOJ to say SAPS would be serving orders.
- We need to do a thorough analysis of the DVA – and recommend reforms based on data/findings.
- For example, the Bennie Adams case: failed to give her assistance and when obtained PO they failed to execute it.
- Monitoring: Who are the organisations that stations/police refer to? Is there a formal system? Perhaps asking these services about their relationship with the police to get another perspective of how cases are referred and managed?
- In the 'Provincial Plan' – causes and responses to DV.
- Oversight functions: Community Safety produces reports. Where are they? Where are these presented and how do they hold people account?
- What is the CSP actual function in terms of DVA? Why are we not hearing back about what happened with their recommendations? And the IPID?
- Is the DVA a priority of the province? For SAPS, for IPID or CSP? And where is this set out in plans and strategies?

- How do you track recommendations from reports of the Ombudsman Office?
- Reporting and documentation – there is certainly room for improvement. And we need to properly analyse the 'findings' from these reports and use them constructively to change practice.
- The different oversight structures and other Forums need to *share* findings and recommendations.
- DVA Compliance Forum: Obligation for SAPS to report on a monthly basis is non-compliance, on the top 10 stations with more than 10 cases of DV, report on number of applications for exemption from Secretariat, disciplinary procedures where there was non-compliance, training, complaint received. Question is: How do you take the findings forward from this forum?
- Indicators for success – Follow up on certain cases, for example.
- How many people who have been killed by domestic partners/relations, did they have a protection order? We should be charting this. How do we prevent domestic homicide?
- Code 92 (alpha code) which means calls must be attended to in 15 minutes; referred to as an "alpha complaint". Could this be an indicator as first responders?
- Does the DVA Compliance Forum feed into the Gender Justice Forum? It should.



SUMMARISING THE WAY FORWARD

There are three key areas for follow up and interventions that emerged from this meeting: (a) reporting and documentation; (b) oversight; and (c) accountability. The high-level recommendation is that a PROVINCIAL PLAN ON DOMESTIC VIOLENCE should incorporate these areas.

1. REPORTING AND DOCUMENTATION:

The development of more qualitative service delivery indicators. The current practice of “counting” performance and service factors such as reporting on arrest rates, cases brought to trial and convictions dissuades investigations and prosecutions. A small but practical example of this is using “Code 92” (the alpha code) as an indicator of first response to domestic violence complaints.

Similarly, a review of the SAPS 508(a) and (b) forms – as per the conclusions of the 2012 National SAPS Conference – is a solid foundation from which to establish the extent and nature of services rendered by the police. The proposed Protocol by the Gender Justice Forum could serve as another tool to monitor the implementation of services from reporting to finalisation (however finalisation as defined can simply mean completing a process partially to the satisfaction of the complainant/applicant).

In addition, research and monitoring findings – whether these are internal to the SAPS or from other bodies, commissions and institutions – should be used to learn from.

2. OVERSIGHT:

There are a number of oversight bodies for the police (IPID, the CSP, the Ombudsman, Department of Community Safety, NGO's and the Portfolio Committee on Safety and Security). There needs to be some level of agreement with regard to:

- (i) the specific role each plays in monitoring the police;
- (ii) the indicators that are and indeed should be used to measure both compliance and general service provision; and
- (iii) finding other modes and measures of oversight aside from the current checklists that are being employed.

The same applies for other role players, such as the Department of Justice and the NPA.

3. ACCOUNTABILITY:

Accountability refers to the measures that are used to hold various sectors that are implementing the DVA accountable through administrative, disciplinary or criminal action. It is evident that the recommendations from reports from official oversight bodies are generally not taken into consideration. Clarity needs to be sought in terms of: (a) the ambit of each oversight structure for each criminal justice department; and (b) the influence or standing of their recommendations when the DVA, and other accompanying violence prevention laws, is not adhered to.

The second layer of accountability relates to accountability *between* sectors. The Gender Justice Forum Protocol goes some way towards addressing this. This protocol ought to consider what mechanisms will be used once a sector is found to be lacking in terms of their duties/responsibilities towards domestic violence complainants. Two particularly important observations were made at this forum in this regard:

- The intention of putting new things in place is promising, however, the existing structures need to be better utilised.
- Accountability and compliance must have swift and serious consequences in order to work. These measures can also include incentivising good practice.
- There also needs to be a direct link – a flow of information and of initiatives and practices – between the various forums, such as the DVA Compliance Forum(s) and the Gender Justice Forum.

There was an appeal by the participants to consolidate, or at least bring some level of coordination and information-sharing, amongst the many forums and monitoring systems that focus on the DVA. It was evident that there are a number of dedicated processes and initiatives being undertaken that are striving for better implementation of DVA. However, these largely continue to operate independently of each other.

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