



Training for Police on the Domestic VIOLENCE Act

RESEARCH REPORT

Heléne Combrinck & Lorenzo Wakefield

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Photographs of SAPS members on front cover kindly supplied by SAPS
Communication and Liaison Services.

We acknowledge with appreciation the financial support of this project provided by
the Open Society Foundation of South Africa and the Ford Foundation.

The views expressed in this report do not necessarily represent the official views of
the above organisations or institutions.

Published by the Community Law Centre and the Saartjie Baartman Centre for
Women and Children.

2009

ISBN: 978-1-86808-697-9

Editing, design and layout: Page Arts cc

Printing: Mega Digital (Pty) Ltd.

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Acronyms and Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
ARV	Anti-retroviral
CAS	Crime Administration System
CSC	Community Service Centre
DoCS	Department of Community Safety
DVA	Domestic Violence Act 116 of 1998
EU	European Union
FCS	Family Violence, Child Protection and Sexual Offences [Unit]
FTO	Field Training Officer
HIV	Human Immuno-deficiency Virus
ICD	Independent Complaints Directorate
JCM	Joint Complaints Monitoring
MEC	Member of the Executive Council
NGO	Non-Governmental Organisation
SAPS	South African Police Service
SC	Station Commissioner

Acknowledgements

We wish to express our sincere gratitude to Senior Superintendent Rita Retief, (formerly with the SAPS Training Division, Western Cape), and Ms Hayley Galgut, who together conceptualised the initiative that led to this project. Senior Superintendent Retief provided us with valuable advice throughout the research project and this report would have been a much poorer product without her assistance.

Our partners at the Saartjie Baartman Centre have played an indispensable role at various stages of the research process. Charmaine Morris and Merle Africa, both paralegals at the Legal Advice and Training Project, shared their considerable experience in the practical implementation of the Domestic Violence Act when we were planning the research design, and then conducted the field research at the police stations in the Cape Town metropolitan area and peri-urban areas around the city. They were ably assisted in this by Fatima Ismail, outreach coordinator at the Centre. Synnov Skorge, Centre director, provided guidance and encouragement throughout.

We also gratefully acknowledge the role of the following persons:

- Dr Lillian Artz, director of the Gender, Health and Justice Research Unit at the University of Cape Town, who provided expert advice on research methodology, the development of research instruments and data analysis; and
- Commissioner Mzwandile Petros, provincial police commissioner for the Western Cape, for his support of the project and the arrangements made through his office for research visits to selected police stations.

We further value the helpful comments provided by our colleagues at the Community Law Centre on the two occasions when we presented this project at the Centre's research meetings.

We also acknowledge with appreciation the financial and other support to this project provided by the Open Society Foundation of South Africa and the Ford Foundation.

Finally, we wish to thank the station commissioners and other SAPS members as well as the representatives of the Independent Complaints Directorate (national and Western Cape) and the Western Cape Department of Community Safety, who gave valuable time to share their experiences and views with the researchers. We trust that they will find this report helpful.

Executive Summary

Background and problem statement

This project has its origins in the work of the Saartjie Baartman Legal Advice and Training Project, a partnership undertaking between the Saartjie Baartman Centre and the Gender Project of the Community Law Centre. Assisting clients in obtaining and enforcing protection orders in terms of the Domestic Violence Act (1998) (DVA) is a major part of the Legal Advice and Training Project's work at the Saartjie Baartman Centre. In the course of this work, the Project has noticed that many of the well-documented shortcomings in the police response to domestic violence still persist. These range from infringements of complainants' right to dignity (for example, making insensitive comments and 'blaming' them for the violence), to conduct that endangers their lives and right to freedom from violence, such as a refusal to intervene in potentially life-threatening situations of domestic violence. Such failures to act or intervene appropriately, in addition to potentially endangering the complainant, also constitute a breach of the duties imposed on the police by the DVA and the accompanying National Instruction issued by the Commissioner of Police in terms of the DVA.

From our analysis of problem cases, the inadequate or inappropriate police responses to domestic violence often result from a lack of knowledge of the DVA and the National Instruction or from a misinterpretation of the DVA's provisions. Research aimed at monitoring the implementation of the DVA has also recommended additional training for police officials. While it would therefore appear that additional training might remedy the existing shortcomings, the reality is that police officials already receive training on the Act, both as part of their basic training and as part of further in-service training programmes. The question that accordingly arises is why training programmes appear to be ineffective in ensuring compliance with the provisions of the DVA and National Instruction.

Accountability and oversight mechanisms

There are currently three external bodies conducting monitoring and oversight of the South African Police Service (SAPS) in respect of its compliance with the DVA, i.e. the Independent Complaints Directorate (ICD), the National Assembly portfolio committee on Safety and Security, and provincial civilian bodies, such as the Department of Community Safety (DoCS) in the case of the Western Cape. A number of mechanisms have also been built into the DVA itself to ensure enhanced levels of accountability, such

as the provisions imposing specific duties on individual police officials when responding to complaints of domestic violence (sections 2 and 8), and the duties imposed on the National Commissioner to issue national instructions and to report to parliament on a six-monthly basis. The ICD is also expected to report to parliament in the same way.

These measures included in the DVA to ensure accountability have not met expectations. It was noted in 2005 that neither the National Police Commissioner nor the ICD had complied with their statutory duty to report to parliament every six months. The two bodies eventually submitted their first reports to the parliamentary portfolio committee in 2007. At the same time, the oversight bodies (such as the ICD) appeared to have limited capacity to fulfil their functions.

HIV/AIDS and the Domestic Violence Act

The DVA does not make any reference to HIV/AIDS and the linkages between domestic violence and HIV/AIDS. However, given the increasing evidence of these connections, and the extent of the AIDS epidemic in South Africa, it is important for us to consider whether these intersections between domestic violence and HIV/AIDS should, firstly, be included in police training on domestic violence (as part of the social context of domestic violence in South Africa), and secondly, whether it should inform current policing policy and practice in any way.

Objectives and research design

The objectives of this project are thus to:

- strengthen the capacity of members of the SAPS to comply with their duties as set out in the DVA through evaluating and contributing to existing training programmes, where appropriate; and
- increase police accountability in respect of dealing with domestic violence matters through reinforcing the capacity of formal oversight mechanisms.

The following central research question was identified: 'Do current training programmes provide SAPS members with the knowledge and skills required to apply the DVA and National Instruction in practice?'

Two research teams (from the Community Law Centre and the Saartjie Baartman Centre respectively) conducted interviews with SAPS members and station commissioners at 20 police stations, identified by the provincial commissioner in the Western Cape. These stations were more or less evenly distributed among rural, peri-urban and urban areas. In addition, focus group discussions were also held with representatives from the national and provincial offices of the ICD and the Western Cape DoCS.

Research findings

Seventy-five SAPS members were interviewed at the 20 police stations. On average they had 8.8 years' experience in the SAPS. The interview schedule for SAPS members focused on the following four areas:

- training that the interviewee received;
- knowledge of the DVA and National Instruction and application in practice;
- linking domestic violence to HIV/AIDS; and
- the interviewee's view of the DVA and recommendations for training.

The station commissioners interviewed were generally very experienced, with an average length of service in the SAPS of 22.9 years. The interview schedule covered areas similar to that for SAPS members, except that applying the DVA in practice was expanded to include various aspects related to management of domestic violence cases at station level. In this regard, questions around the following topics were included:

- responsibility for training of SAPS members at station level;
- prioritisation of domestic violence; and
- ensuring compliance with the National Instruction.

Returning to the central research question, i.e. whether the current training programmes provide SAPS members with the knowledge and skills required to apply the DVA and the National Instruction in practice, our response here is a qualified 'yes'. It appeared from the interviews that the majority of the research participants (members dealing with domestic violence complaints) had a basic awareness of the DVA and the National Instruction. Their explanations of the meaning of operational concepts such as 'domestic violence', 'domestic relationship' and 'protection of the complainant', while basic, were generally satisfactory.

We were encouraged to note that 73% of the SAPS members interviewed had received training on the DVA, mostly of more than one day. However, it was not possible to draw sharp distinctions in levels of knowledge between those members who had been trained and those who had not.

However, when it came to the practical application of knowledge in a 'problem-solving' scenario, it was notable that the majority of interviewees experienced difficulties when multi-faceted variables were included, for example, the possibility of more than one complainant or the possible need to evaluate the complainant's state of intoxication before taking her statement. On one hand, this points to limitations in the ability to *apply* existing knowledge; on the other hand, it links up with the general theme emerging from comments regarding existing training courses (as well as recommendations by research participants) that training should be more 'practical' and oriented towards problem-solving.

We found that the notion of 'training' on domestic violence encompasses a range of training initiatives (including the basic training conducted with new recruits, the two-day skills-transfer workshops recently developed by the Western Cape training division,

the five-day training courses dealing specifically with the DVA, as well as training on victim empowerment). This means that it is fairly difficult to offer recommendations in respect of particular training initiatives, except where participants were specific in their comments. It is also a complex task to draw even comparisons between the training courses that research participants reported having attended. However, it does appear, given the limited information at our disposal, that there may be gaps in the current curriculum of the six-month basic training in respect of domestic violence.

There appears to be a need to adjust the current training methodologies to be more practice-oriented.

Looking at the core components of compliance with the DVA identified by researchers, our assessment is that two elements warrant specific attention in terms of training:

- to ensure the complainant's safety (including by arresting the perpetrator, where appropriate) and inquire into her injuries; and
- to inform her of her rights and options.

Regarding station commissioners, it was encouraging to observe that 19 of the 20 participants had been trained on the DVA. We noted the same trends here, i.e. that the training consisted of a broad range of initiatives, and that the training methodologies used were reportedly more lecture-style and based on theory rather than practical or experiential.

When it came to presenting or arranging training on domestic violence at station level, certain station commissioners leave formal training to centralised training divisions, while others take full responsibility for training at station level, including ensuring that members who attend formal training courses away from the station share this information on their return. In addition to arranging formal training for members, station commissioners also make use of informal training opportunities, such as station lectures, 'parade' meetings, informal training while checking registers, etc.

The training of reservists on the implementation of the DVA is an area of concern at certain stations.

Recommendations

SAPS members and station commissioners emphasised in their recommendations that more members need training on the DVA, and more frequent and/or more in-depth courses should be offered. Training should be more practical and based more on practical examples. We further recommend that special attention be devoted to training on domestic violence during the basic six months' training for new students.

We have identified a number of areas where training should be developed and/or current knowledge reinforced. A number of these topics (for example, arrest and completion of forms and registers) may already be included in training courses; however, the interviews showed that specific attention is warranted. We also suggest issues that may not currently form part of training on domestic violence.

We have also developed recommendations to be addressed on the level of management, including policy guidance to station commissioners regarding their responsibility for training of members on the DVA on station level and development of a measurement tool(s) for measuring progress in policing domestic violence at stations. If such an instrument is already in existence, it should be implemented at the stations included in the study.

In respect of station commissioners, we recommend that they should take greater responsibility for training of members on the DVA at station level. This includes ensuring that knowledge is disseminated when members have attended formal training courses and making use of informal training opportunities, such as station lectures, meetings with shift managers or feedback to members while registers are being checked.

Chapter 1

Introduction

1. Background: Origins of this research project

This project has its origins in the work of the Saartjie Baartman Legal Advice and Training Project, an initiative established at the Saartjie Baartman Centre for Women and Children (the Centre) in 2003. The Legal Advice and Training Project was introduced to complement the range of services available at the Centre to women who have experienced gender-based violence and who seek assistance at the Centre either as residents at the shelter or as clients of partner organisations such as the Trauma Centre. The Legal Advice and Training Project is a partnership undertaking between the Saartjie Baartman Centre and the Gender Project of the Community Law Centre.

Assisting clients in obtaining and enforcing protection orders in terms of the DVA is a major part of the Legal Advice and Training Project's work with individual clients. In the context of this work, it has become apparent that many of the well-documented¹ shortcomings in the police response to domestic violence still persist. These shortcomings range from infringements of the right to dignity of complainants (in the form of insensitive comments and 'blaming' them for the violence), to conduct that endangers complainants' lives and their right to freedom from violence, such as a refusal to intervene in potentially life-threatening situations of domestic violence. Additional shortcomings include the failure to inform complainants of their rights as prescribed in the Act, the refusal to arrest respondents who are in breach of protection orders (where this poses imminent harm to complainants), as well as the failure to effect timeous service of protection orders on respondents.² These experiences are in line with those of clients of other service-providing organisations in the Western Cape, for example, MOSAIC.³

In addition to potentially endangering the complainant, such failures to act or intervene appropriately are also in breach of the statutory duties imposed on the police by the DVA

1 See literature review in Chapter 2.

2 These examples are taken from the Legal Advice and Training Project's client files.

3 Personal communication with Dr Lillian Artz of the Gender, Health and Justice Research Unit, University of Cape Town. This Unit recently completed research, in partnership with MOSAIC, on attrition in domestic violence cases.

and the accompanying National Instruction⁴ issued by the National Commissioner of Police in terms of section 18(3) of the Act.

1.1 A question of training?

From our analysis of the problem cases we have encountered, inadequate or inappropriate police responses to domestic violence often result from a lack of knowledge of the DVA and the National Instruction, or from the misinterpretation of the provisions of the Act. While it would therefore appear that additional training might remedy the existing shortcomings,⁵ the reality is that police officials already receive training on the Act, both as part of their basic training and as part of further in-service training programmes. The question that arises is therefore why the existing training programmes appear to be ineffective in ensuring compliance by members with the provisions of the Act and the National Instruction.

1.2 The role of formal oversight bodies

We have also noted that the existing oversight mechanisms (most notably, the ICD and the parliamentary portfolio committee on Safety and Security) appear to have a limited capacity to fulfil their oversight functions.

The broader measures included in the DVA to ensure accountability have not consistently met expectations. A study conducted in 2005 noted that neither the National Police Commissioner nor the ICD had complied with the statutory duty to submit a report to Parliament every six months.⁶ (Perhaps more disconcertingly, Parliament did not appear to be demanding these reports either.) The two bodies eventually prepared the reports in 2007 after pressure was exerted by civil society organisations.

At a meeting of the National Assembly portfolio committee on Safety and Security on 12 September 2007, the SAPS presented its first report, which covered the period July to December 2006.⁷ This report contains a number of references to training on domestic violence. The committee's discussion of the SAPS report reveals a somewhat limited understanding of the DVA by committee members and accordingly a superficial exercise of the oversight functions envisaged by the drafters of the Act.⁸

In October 2007, the ICD submitted a condensed report for the period January 2005 to June 2007, and the SAPS handed in a report for the period January to June 2007.⁹ Both bodies have subsequently been reporting to the portfolio committee on a six-monthly basis, as required in terms of the DVA.

It should be mentioned that the Western Cape provincial Department of Community Safety (DoCS) has also taken up certain oversight functions in respect of the implementation

4 SAPS National Instruction 7/1999 on Domestic Violence, Version 02.00 (published in *Government Gazette* No 207, 3 March 2006).

5 See literature review in Chapter 2.

6 Vetten, Budlender & Schneider (2005) 6.

7 The report forms part of the minutes of the meeting of the National Assembly portfolio committee on Safety and Security for 12 September 2007, which can be accessed at the website of the Parliamentary Monitoring Group, www.pmg.org.za.

8 See minutes of the committee meeting for 12 September 2007 at www.pmg.org.za.

9 See minutes of the committee meeting for 26 October and 31 October 2007 respectively at www.pmg.org.za.

of the DVA in the province. With three bodies (the parliamentary portfolio committee, the ICD and the DoCS) taking responsibility for monitoring how the Act works in practice, it is important to ensure that these supervisory functions complement each other and optimally contribute to the operation of the legislation.

1.3 Domestic violence and HIV/AIDS

The DVA, which was drafted during 1997–1998 and adopted by Parliament in 1998, unfortunately does not make any reference to HIV/AIDS and the linkages between domestic violence and HIV/AIDS. However, given the increasing evidence of these connections, and the extent of the AIDS epidemic in South Africa,¹⁰ it is important for us to consider whether these intersections between domestic violence and HIV/AIDS should, firstly, be included in police training on domestic violence, and secondly, whether they should inform current policing policy and practice in any way. For this reason, this study provided a good opportunity to include a question on members' awareness of the link between domestic violence and HIV/AIDS in the interviews.

2. Objectives

Against this background, we have identified the need for a one-year project aimed, firstly, at strengthening the capacity of members of the SAPS to comply with the duties set out in the DVA through evaluating and, where appropriate, contributing to existing training programmes; and secondly, at increasing police accountability in dealing with domestic violence matters by reinforcing the capacity of formal oversight mechanisms.

This project forms part of a broader programme, administered by the Open Society Foundation, entitled the Criminal Justice Initiative, which has as its goal to build accountability within the individual agencies of the criminal justice system (i.e. police, courts, prisons), with the intention of 'ensuring a broader humanity, efficiency and accountability within the criminal justice process as a whole'.

The Criminal Justice Initiative has, among others, the following objectives:

- to support an agenda to build accountability in relation to the provision of criminal justice services based on the principles and provisions of the Constitution and other international human rights instruments; and
- to generate, document and disseminate learning about what strategies and activities best serve an accountability agenda.

The objectives of the research project can therefore be summarised as follows:

This project aims to:

- strengthen the capacity of members of the SAPS to comply with their duties as set

10 In 2008, South Africa was reported to be the country with the largest number of HIV infections in the world – UNAIDS (2008) 40.

out in the DVA through evaluating and, where appropriate, contributing to existing training programmes; and

- increase police accountability in respect of dealing with domestic violence matters through reinforcing the capacity of formal oversight mechanisms.

3. Scope of this report

Whereas previous studies have focused on the implementation of the DVA by the courts and police,¹¹ or specifically on measuring police compliance with the DVA,¹² this project examines the role of training against the broader framework of police accountability. Although this investigation may bear a certain resemblance to a ‘compliance study’, we have been careful throughout to remind ourselves that we were not, for present purposes, trying to establish to which extent a particular police station was in line with the prescriptions of the relevant official documents. For this reason, this report does not constitute a ‘report back’ in the traditional sense on the 20 police stations included in the study.

It should further be noted that the report covers the findings from our interviews with SAPS members and station commissioners as well as with representatives from the oversight bodies (i.e. ICD and the provincial DoCS). In the interests of time and space, the report does not contain any evaluation of training material on domestic violence used by the SAPS training divisions or other bodies conducting training with police officials. We accordingly base our observations on the comments of research participants only.

4. Limitations

The fact that the study had to be relatively small scale is a limitation. Although the 20 research sites were well divided between urban, peri-urban and rural, it would have been ideal if we were able to conduct more interviews per station. Unfortunately, neither time nor resources permitted this. While we are confident that our findings are reliable in respect of the research sites, the limited scale of the study does have implications for the broader applicability of our results.

We are also conscious of the fact that much of the data consists of self-reporting by research participants. We have therefore, as far as possible, ‘backed up’ these interviews with supplementary information, such as interviews with oversight bodies and from secondary data, for example, research reports.

¹¹ See Chapter 2 below.

¹² Artz *et al* (2005) (copy on file with authors).

5. Research team

The research team consisted of:

- *Heléne Combrinck*: senior researcher, Gender Project, Community Law Centre, UWC;
- *Lorenzo Wakefield*: research assistant, Gender Project, Community Law Centre, UWC;
- *Charmaine Morris* and *Merle Africa*: paralegals, Saartjie Baartman Legal Advice and Training Project.

The research design was jointly developed by the above members of the team, drawing specifically on the experience of the Saartjie Baartman Legal Advice and Training Project in assisting women who are victims of domestic violence.¹³ These team members also conducted the field work, assisted by *Fatima Ismail*, outreach coordinator at the Saartjie Baartman Centre for Women and Children.

Dr Lillian Artz (director, Gender, Health and Justice Research Unit, University of Cape Town) assisted with the development of the research design and research instruments, and also provided support with the analysis of the research findings.

¹³ During 2008 alone, the Saartjie Baartman Legal Advice and Training Project assisted 1,053 women; the majority of these clients sought advice regarding domestic violence protection orders.

Chapter 2

Literature Review

1. Introduction

This chapter outlines the background to this study. It first provides a broad overview of the concept of police accountability, with specific reference to its application in the context of domestic violence. It then sets out the relevant constitutional and legal framework and explains the origin of the provisions in the DVA that impose duties on the police. The section on police accountability is concluded with an examination of the reports that have been submitted to parliament in compliance with the accountability framework set out in the Act.

The chapter then looks at research studies monitoring the implementation of the DVA to establish whether the question of training for police officials (or lack thereof) has featured in the findings. Finally, it considers the association between alcohol and domestic violence.

2. Police accountability

2.1 A broad overview

Newham and Bruce explain that in democracies, the police are typically directly accountable to state legislative and executive structures.¹ Such structures are responsible for passing legislation, developing policy and approving the budget of the police agency. However, in democracies there is also a range of other state and civil society structures that are involved in police accountability. In South Africa these include:

- the judiciary, including the Constitutional Court, which interprets the legislation guiding the police;
- the ICD, which is mandated to investigate all deaths occurring in police custody or arising from police action, and also deals with other allegations of police misconduct or criminality;

¹ Newham & Bruce (2004) 9.

- ‘Chapter 9 institutions’ such as the Human Rights Commission, the Gender Commission and the Public Protector, all of which receive complaints and information about problematic police conduct;² and
- the Public Service Commission, which conducts research and evaluates the adherence of the SAPS to key government policies.

Similarly, outside of the state a wide range of institutions, organisations and structures contribute to the oversight of the police. These include non-governmental organisations, academic and research organisations, the media, organised business (e.g. Business Against Crime); and community-based organisations (including community policing forums and related structures). For the purposes of this report, of particular importance are the oversight functions of the national legislature (in the form of the National Assembly portfolio committee for Safety and Security), the provincial executive structure (in the form of the DoCS) and the ICD.³

Although the notion of police accountability in the general sense has received a great deal of attention internationally, measures for holding police accountable to fulfilling duties created in *domestic violence legislation*, in particular, are less clearly established.⁴ The relative scarcity of literature addressing police accountability with regards to domestic violence laws and protections may be because policing domestic violence is still an evolving field of law enforcement and for the most part, well documented and evidence-based ‘good practices’ have only begun to emerge in recent years.⁵ Two sets of measures are important here: ensuring that police officials know what they are accountable for, and the mechanisms for maintaining accountability.⁶ Brief examples of each follow.

Measures to ensure that police officials know what they are accountable for typically include clearly defined police roles, policies, and procedures; training on domestic violence; prioritisation of domestic violence; and strict discipline for acts of domestic violence committed by police officials themselves. Mechanisms for maintaining accountability include both *internal* and *external* accountability. Internal accountability mechanisms include, for example, internal investigation of public complaints and concomitant disciplinary measures;⁷ creating measuring instruments and indicators to see how well members are doing; and ‘early warning systems’.⁸ External mechanisms for accountability include the bodies listed above, such as legislative and executive structures, and independent review commissions such as the ICD. Litigation in the form of civil claims against the police is a further external ‘accountability’ mechanism.

2 These bodies are created in Chapter 9 of the Constitution and are therefore commonly referred to as ‘Chapter 9’ institutions.

3 See discussion in Section 2.4.2 below and Chapter 6.

4 Artz et al (2005) 22.

5 See in this regard e.g. Rollings & Taylor (2008); Hanmer & Griffiths (2000).

6 Artz et al, *op cit*. See also Newham (2005) 167.

7 See Masuku (2005) 11.

8 *Ibid*. Masuku explains that ‘early warning systems’ are used by police managers to provide them with a range of information on the activities of members. Data produced by this system is then analysed to identify members exhibiting problematic conduct. Generally these systems are non-punitive, in that the intervention prompted includes peer reviews, counselling and/or additional training, rather than formal discipline.

Newham explains that external mechanisms of police accountability can only be effective if they complement well-developed internal forms of control.⁹ While important, civilian oversight should not be the primary mechanism for holding individual police officials accountable.¹⁰ Writing in 2005, he pointed out a number of weaknesses in the internal mechanisms of accountability, most notably in respect of the internal disciplinary framework.¹¹ As will be seen below, this system is especially relevant for ensuring individual accountability in the context of domestic violence legislation.

2.2 Constitutional provisions

To understand the role of the SAPS in policing domestic violence, it is important to first look at section 205(3) of the Constitution, which reads:

The objects of the police service are 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 law.

These objectives are further confirmed in the Preamble to the South African Police Service Act,¹² which sets out the aims of the police service. Among others these include ensuring the safety and security of all persons and property, upholding and safeguarding the fundamental rights of every person as guaranteed by the Constitution and reflecting respect for victims of crime and an understanding of their needs. These provisions must be read in conjunction with the police duties arising from the constitutional guarantee of certain human rights.

In this regard, the inclusion of the right to freedom from violence in the Bill of Rights is of obvious significance.¹³ This right must further be read with section 7(2) of the Constitution, which provides that the state must ‘respect, protect, promote and fulfil’ the rights in the Bill of Rights.¹⁴ Read in conjunction with the guarantee of the right to be free from violence, section 7(2) implies that the state is expected to do more than refrain from violating this right: it must also take positive or proactive steps to ensure its ‘promotion’ and ‘fulfilment’, which includes measures to *prevent* acts of private violence against women.¹⁵

This interpretation has been confirmed by the South African Constitutional Court and Supreme Court of Appeal in a number of cases.¹⁶ In one of the leading cases, i.e. *Carmichele v Minister of Safety and Security*,¹⁷ the Constitutional Court held that the

9 Newham *op cit* 168.

10 *Idem* 167.

11 *Idem* 168–170.

12 South African Police Service Act 68 of 1995.

13 Section 12(1)(e).

14 *S v Baloyi* 2000 (1) BCLR 86 (CC) Para 11.

15 *Carmichele v Minister of Safety and Security and Another* 2001 (4) SA 938 (CC) Para 44.

16 For a more detailed discussion of these cases see Combrinck (2005) 171.

17 2001 (4) SA 938 (CC).

constitutional guarantee of the rights to life, dignity and freedom and security of the person imposes a duty on the state (and all its organs) to refrain from infringing on these rights. In certain circumstances, this guarantee also involves a positive duty to provide appropriate protection to everyone through the laws and structures designed to afford such protection.¹⁸ The court considered the provisions of the interim Constitution and the Police Act of 1958, and concluded:

The police is one of the primary agencies of the state responsible for the protection of the public in general and women and children in particular against the invasion of their fundamental rights by perpetrators of violent crime.

The judgment of the Constitutional Court was subsequently applied in a number of cases dealing with the duties of the police to take positive action in order to avoid harm occurring through acts of private violence against women.¹⁹

2.3 Legal provisions

2.3.1 The Domestic Violence Act

The DVA contains a number of provisions imposing duties on members of the SAPS in respect of managing domestic violence cases. Section 2 states that a member of the SAPS must, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible (or when the incident of domestic violence is reported), render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment. They must also, if it is reasonably possible to do so, hand a notice²⁰ containing information to the complainant in the official language of the complainant's choice,²¹ and if it is reasonably possible to do so, explain to the complainant the content of the notice, including the remedies at his or her disposal in terms of the Act and the right to lodge a criminal complaint, if applicable.

Section 8(4)(b) deals with arrest of the perpetrator for breach of a protection order. The prescribed process entails that a complainant may hand the warrant of arrest (which accompanies the protection order), along with an affidavit that states that the respondent has contravened the protection order, to any member of the SAPS. If it appears to the SAPS member concerned that, subject to subsection (5),²² there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged

18 Para 44.

19 *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA); *Van Eeden v Minister of Safety and Security* 2002 (4) AllSA 346 (SCA); *Minister of Safety and Security v Hamilton* 2004 (2) 216 (SCA); *K v Minister of Safety and Security* 2005 (9) BCLR 835 (CC).

20 This notice, which is known as 'Form 1', is discussed in more detail in Chapter 4. It is attached to this report as Annexure A.

21 At the time of writing, the notice is only available in English and Afrikaans.

breach of the protection order by the respondent, the member must forthwith arrest the respondent for allegedly committing the offence of breaching the order.²³

If the SAPS member believes there are insufficient grounds for arresting the respondent (in other words, that the complainant will not suffer imminent harm as a result of the alleged breach), s/he must hand a written notice to the respondent calling on the respondent to appear before a court, and on the date and at the time specified in the notice, on a charge of committing the offence referred to in section 17(a).

Section 3 of the DVA addresses the question of arresting the perpetrator without a warrant at the scene of an incident of domestic violence.²⁴

The provisions of the Act are underpinned by an 'accountability framework' set out in section 18. In terms of this framework, the National Commissioner of the SAPS is required to issue national instructions²⁵ with which its members must comply in the execution of their functions in terms of this Act. Such instructions must be published in the *Gazette*.²⁶ This National Instruction, which was issued in 1999 and updated in 2006, forms the subject of much of this report.²⁷

A failure by a member of the SAPS to comply with an obligation imposed in terms of this Act or the National Instruction referred to above constitutes misconduct as contemplated in the South African Police Service Act of 1995.²⁸ The ICD must be informed of any such failure reported to the SAPS. Unless the ICD directs otherwise, the SAPS must institute disciplinary proceedings against any member who allegedly failed to comply with their obligations.²⁹

The ICD must, every six months, submit a report to Parliament regarding the number and particulars of matters reported to it, and setting out the recommendations made.³⁰ The National Police Commissioner must similarly submit a report to Parliament every six months regarding the number and particulars of complaints received against SAPS members in respect of any failure to comply with the DVA or National Instruction, the disciplinary proceedings instituted as a result thereof, the decisions which resulted from such proceedings, and steps taken as a result of recommendations made by the ICD.³¹

22 (5) *In considering whether or not the complainant may suffer imminent harm, as contemplated in subsection (4)(b), the member of the South African Police Service must take into account:*

- (a) *the risk to the safety, health or wellbeing of the complainant;*
- (b) *the seriousness of the conduct comprising an alleged breach of the protection order; and*
- (c) *the length of time since the alleged breach occurred.*

23 Contravention of section 17(a) of the DVA.

24 See Chapter 5 below for further discussion.

25 As contemplated in section 25 of the South African Police Service Act 68 of 1995.

26 Sec 18(3).

27 SAPS National Instruction 7/1999 on Domestic Violence, Version 02.00 (published in *Government Gazette* No 207, 3 March 2006).

28 Sec 18(4)(a) of the DVA.

29 Sec 18(4)(b).

30 Sec 18(5)(a).

31 Sec 18(5)(d)(i)–(iii).

2.3.2 Background to the provisions in the DVA³²

The legislature's inclusion of explicit police duties in the DVA should be seen against the historic background of the police response to domestic violence in South Africa. In 1995, Human Rights Watch, in its comprehensive study on violence against women in South Africa, pointed out that the greatest problem with the implementation of the Prevention of Family Violence Act³³ appeared to lie with the police,³⁴ whose response to domestic violence was often unsympathetic or hostile.³⁵

Fedler, commenting on the effectiveness of the Prevention of Family Violence Act, similarly observed that the police were 'the weakest link' in the structure created by the Act, in that they did not treat domestic violence as a crime and failed to respond promptly when called upon to assist.³⁶ Clark also pointed out that what was urgently needed was a clarification of police duties in relation to domestic violence.³⁷ She further argued that the police should actively assist a woman and her children to leave the scene of a domestic violence incident.

The project committee convened by the South African Law Reform Commission in 1997 to investigate the need for reforming the Prevention of Family Violence Act accordingly paid close attention to the role of the police. The committee eventually resolved that there might be several ways to attempt to address the shortcomings in the police's response to domestic violence. The first of these would be to clearly spell out the duties of police officials attending to complaints of domestic violence in legislation. This was the origin of the provisions in sections 2 and 8 of the DVA.

The second measure would be to prescribe penalties for failure to comply with such duties. The project committee's approach was that the support of law enforcement agents (such as SAPS members) would be essential to ensure the successful implementation of new legislation. The committee observed that the imposition of duties, without adding a sanction for dereliction of these duties, has often resulted in 'careless attitudes by law enforcement agents in taking the issue of domestic violence seriously.'³⁸

For this reason, when the project committee drafted a Bill reflecting its recommendations, it included a provision to the effect that police officials who failed to comply with the duties imposed in the Bill would be guilty of a *criminal offence*. This proposed clause was the cause of some controversy, and the parliamentary subcommittee tasked with considering the draft Bill eventually resolved not to make failure on the part of police to comply with the duties set out in the legislation a criminal offence. Instead, section 18(4)(a) was drafted as it currently appears in the Act. This provision, as set out above, states that failure to comply constitutes misconduct as contemplated in the South African Police Service Act. The parliamentary committee also added a number of 'structural' provisions to underpin the implementation of the new Act. These have been described in some detail above.

32 This section is based on Artz *et al. op cit.* 20–22.

33 Act 133 of 1993. This Act preceded the DVA.

34 Human Rights Watch (1995) 74.

35 *Idem* 76.

36 Fedler (1995) 246.

37 Clark (1996) 598.

38 South African Law Commission (1999) Para 7.7.1.

2.4 Reports submitted in terms of the Domestic Violence Act

2.4.1 South African Police Service

At the time of writing, the National Commissioner (or his delegate) has submitted three reports to the National Assembly portfolio committee on Safety and Security, which is tasked with parliamentary oversight of the SAPS.³⁹ These covered the periods *July to December 2006*, *January to June 2007* and *July to December 2007* respectively.⁴⁰

A comparison of the three reports shows a startling similarity between them. The second and third reports, especially, are almost verbatim the same, with only the numbers for the relevant periods having been changed. A second observation is that they do not really supply all the information required by the DVA. They do provide the numbers of complaints of non-compliance that were received, and what the outcomes were (e.g. 'unfounded', or 'warning'); however, they do not include the nature (particulars) of the complaints. The DVA further requires the report to set out 'steps taken as a result of recommendations made by the ICD'. Although the reports contain a category entitled 'ICD – no disciplinary action', there is no way of linking this to the steps actually taken following recommendations by the ICD.

The reports contain information about the number of domestic violence incidents registered during the relevant periods, as well as the number of criminal cases resulting from these incidents.

Figure 2.1

	July to December 2006 [Report 1]	January to June 2007 [Report 2]	July to December 2007 [Report 3]
Number of domestic violence incidents reported to SAPS	43 440	45 454	50 497
Number of criminal cases resulting from these reported incidents	16 245 [37.4%]	17 663 [38.9%]	11 641 [23%]

There may be a number of reasons for the differences between the number of incidents reported and the number of criminal cases resulting from these incidents. First, the DVA recognises certain acts of domestic violence (e.g. emotional abuse, stalking and harassment) for purposes of obtaining a protection order in terms of the Act. However, these acts do not constitute criminal offences and therefore a complainant would not have been able to lay criminal charges against the perpetrator as she would have been able to do for physical or sexual abuse, which are criminal offences. A second reason for the

39 See also discussion in Chapter 1 above.

40 For ease of reference, we will refer to these as the First, Second and Third reports.

discrepancy may be that the complainant was either unaware that she could lay criminal charges against the perpetrator, or was unwilling to do so (e.g. she may want the police to intervene without formally laying charges or having the perpetrator arrested).

The SAPS reports also provide details about the number of police officials who have received training on domestic violence as part of basic training, in-service training, training for members specialising in the investigation of Family Violence, Child Protection and Sexual Offences, as well as training for station commissioners.

Figure 2.2

	July to December 2006 [Report 1]	January to June 2007 [Report 2]	July to December 2007 [Report 3]
Number of new recruits trained on domestic violence (basic training)	5 002	6 159	5 671
Number of members who received in-service training on domestic violence	4 628	4 628	More than 4 000
Members specialising in family violence, child protection and sexual offences (FCS) investigation	70% of all FCS staff	90 FCS members	146 FCS members

Although none of the three reports provide specific numbers, it is explained that station managers have received refresher courses on their specific duties in respect of domestic violence. By June 2007 station management in Free State and Gauteng received refresher training, while by December 2007 the Eastern Cape was added to that list. The Third Report stated that station commissioners in the Western Cape were being trained.

As mentioned above, the reports presented to Parliament seemed to mechanically highlight the same issues at each session. This inevitably portrays a lack of commitment on the part of SAPS to address these problems, as well as to adopt better monitoring and evaluation mechanisms. For example, at every reporting session the SAPS raised the point that gender sensitivity is required to properly deal with domestic violence incidents, yet no reportback was given on what had been done to actively address this since the First Report. The same point applies in respect of the rest of the challenges that were pointed out.

2.4.2 Independent Complaints Directorate

Although the ICD also had a considerable backlog in terms of its six-monthly parliamentary reports, it is interesting to note that this backlog has now, for the most part, been cleared.⁴¹

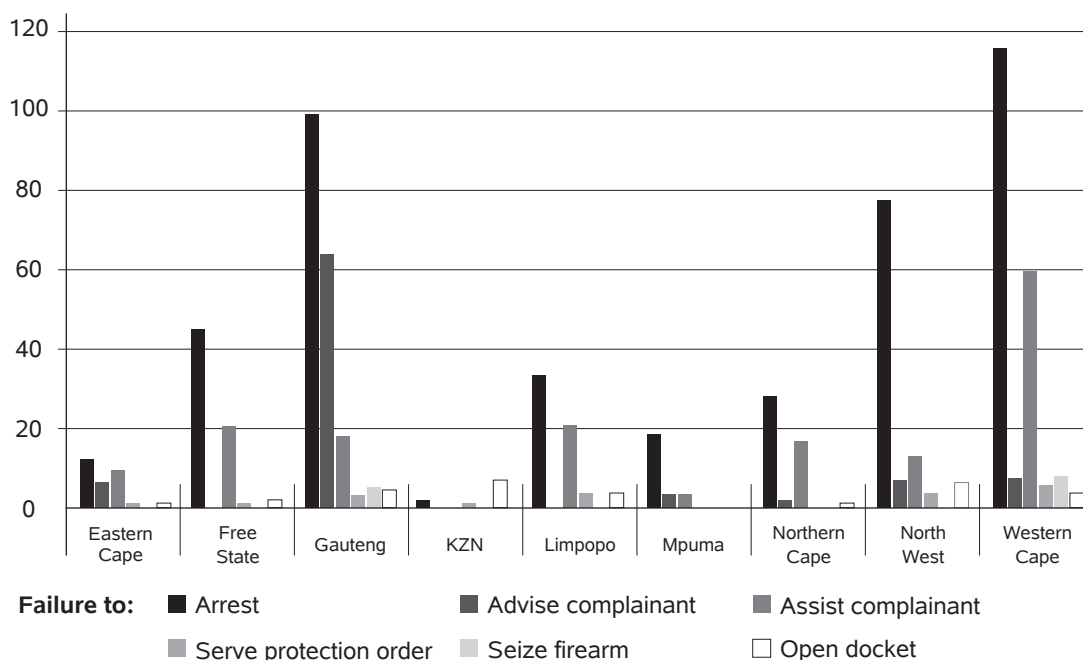
⁴¹ These reports are available on the ICD website at www.icd.gov.za.

The ICD reports contain information on the complaints relating to non-compliance received by it, divided by province and further subdivided in terms of the specific nature of the complaint, e.g. ‘failure to effect a warrant of arrest’, ‘failure to serve a protection order on the respondent’, etc. The reports set out the case number, the relevant police station, the ICD’s recommendation and the current status of each case.

The reports further provide information on ‘proactive oversight’ functions undertaken by the ICD in the form of station audits to examine compliance with the DVA and the National Instruction.⁴² They set out the date of each station visit, the findings of the ICD representative and the recommendations. Finally, the ICD also reports on awareness and outreach campaigns.

A comprehensive analysis of the ICD’s parliamentary reports falls outside the scope of this study. We have, however, compiled an analysis of the complaints of non-compliance recorded by the ICD for the period 2003–2007, based on the reports available to us. Figure 2.3 sets out the nature of these complaints,⁴³ with reference to the six categories of complaints most frequently received, divided among the nine provinces. It is immediately apparent that there is one complaint that stands out in terms of frequency, i.e. failure to arrest the respondent.⁴⁴ The next two categories are failure to assist the complainant and failure to advise the complainant of her options, i.e. that she can obtain a protection order or lay criminal charges.

Figure 2.3 Complaints of Non-Compliance



⁴² See in this regard also Chapter 6 below.

⁴³ This graph was compiled by the authors based on information contained in the ICD parliamentary reports.

⁴⁴ It should be noted that this analysis only examines the nature of the complaints; we have not attempted to match this with their outcome, given that in many instances the investigation was still in process. We are therefore not suggesting that these complaints were either founded or unfounded.

It was notable that the ICD reports dealt with instances where SAPS members allegedly committed domestic violence up to the period July to December 2006.⁴⁵ The subsequent report (for the period July to December 2007) does not include any information on this aspect.⁴⁶

Training features prominently in the recommendations put forward by the ICD to remedy instances of non-compliance found during its station audits. For example, the most recent report⁴⁷ includes the following recommendations:

It was recommended that DVA training be conducted at station level.⁴⁸

A DVA co-ordinator should be identified to take responsibility for training. New members should receive DVA training and refresher course should be done for other members.⁴⁹

It was recommended that the Station Commissioner provide training to other stations.⁵⁰

Thus the ICD has highlighted the need for SAPS members to be trained where they found instances of non-compliance by SAPS with the DVA.

3. Implementation of the DVA: Research reports

Since the introduction of the DVA in 1999, a number of studies have examined its operation in practice. Researchers understandably devoted considerable time to developing an understanding of the role of the SAPS in the implementation of the legislation. In this section, we provide a synopsis of the findings from the key studies in this area.

The Consortium on Violence Against Women⁵¹ carried out a series of monitoring studies from 2000 to 2003. In the first of these studies, researchers examined 616 applications for protection orders from three magisterial jurisdictions,⁵² combining this

45 See ICD *Domestic Violence Act Report July –December 2006 22-28*.

46 This exclusion was reportedly because the SAPS had pointed out that the reporting duties of the ICD in terms of the DVA do not include acts of domestic violence committed by SAPS members.

47 For the period July to December 2007.

48 *Idem* 53.

49 *Idem* 59.

50 *Idem* 64.

51 The Consortium consisted of the Gender, Law and Development Project of the Institute of Criminology (Faculty of Law, University of Cape Town), the Gender Project of the Community Law Centre (University of the Western Cape), Rape Crisis Cape Town, a health consultant and the Women on Farms Project. It operated from 2001 to 2004 under a grant from the Open Society Foundation.

52 Cape Town, George and Mitchell's Plain. A random sample of 10% of court orders were drawn from each court.

with 60 in-depth interviews with clerks, police, magistrates and prosecutors. Problems identified related predominantly to poor knowledge on the part of SAPS members of the provisions of the DVA and a paucity of training on operational aspects of implementing the Act.⁵³ Specific issues that were raised included inconsistent responses by SAPS members to breaches of protection orders,⁵⁴ reluctance to serve protection orders,⁵⁵ resource constraints (including non-availability of vehicles) resulting in delayed responses to reports of domestic violence incidents⁵⁶ and the perception held by SAPS members that complainants were abusing the Act to exact revenge against their partners or to extract maintenance payments.⁵⁷

A subsequent study by the Consortium consisted of focus groups and workshops with magistrates in an effort to develop a more thorough understanding of their interpretation and application of the Act.⁵⁸ In all, 300 magistrates attended these workshops with approximately 40 magistrates participating in focus-group discussions and providing detailed written submissions to the researchers on their experiences with implementing the Act. Magistrates raised specific problems in relation to police compliance with the Act, including the concern that police officials tended to send domestic violence complainants directly to the court for protection orders rather than providing them with the information provided in Form 1 of the Regulations of the Act (such as their right to lay criminal charges against the perpetrator).⁵⁹ It was further suggested that the police might have the impression that until the complainant takes 'the first step' of applying for a protection order, they are somehow not required to intervene in domestic violence cases.⁶⁰

To examine issues of access to justice the Consortium also did research on farms in the Western Cape, interviewing 38 farm workers, as well as farm managers and health care and development professionals.⁶¹ In these rural contexts, researchers noted concerns around police attitudes towards domestic violence and that SAPS members were particularly unlikely to respond to domestic violence reports over weekends, when there was a perception that complaints were the result of 'drunken brawls' among farm workers.⁶² Substantial resource constraints were also listed.⁶³

The Gender Advocacy Programme and the Medical Research Council conducted an investigation in Paarl and Belville during 2001.⁶⁴ The aim was, in particular, to describe women's perceptions and experiences with the process of applying for a protection order.⁶⁵ The study noted major concerns about police attitudes and responses to domestic violence, with women indicating that SAPS members did not respond to calls for

53 Parenzee et al (2001) 85–86.

54 *Idem* 88–89.

55 *Idem* 92.

56 *Idem* 82.

57 *Idem* 87–88.

58 Artz (2003).

59 *Idem* 25.

60 *Idem* 26.

61 Parenzee & Smythe (2003).

62 *Idem* 40, 51.

63 *Idem* 51.

64 Mathews & Abrahams (2001).

65 Breaches of the terms of protection orders were not included in this study.

assistance,⁶⁶ were judgemental (especially where the complainant had been drinking),⁶⁷ and were reluctant to provide assistance, instead suggesting that the complainant should obtain a protection order.⁶⁸ Researchers concluded that the management of domestic violence cases by SAPS members perpetuated secondary victimisation and recommended that resources be allocated to ongoing training on the legislation, with gender sensitivity training receiving priority.⁶⁹

A subsequent evaluation of the implementation of the DVA included a specific focus on the issue of training⁷⁰ with interviews with SAPS trainers and an evaluation of the training programme.⁷¹ Although the training programme was considered by the researchers to be relatively comprehensive, concerns were expressed about the brevity of the training sessions and about resource constraints, including the non-availability of forms prescribed under the regulations.⁷² Again, one of the key recommendations was that more emphasis should be placed on ongoing training in relation to both the Act and gender sensitivity, which addresses the day to day practice of policing domestic violence.⁷³

Altbeker paints a fairly bleak picture of the implementation of the Act as part of his broader participatory study of policing in South Africa. This study entailed accompanying SAPS members attending to complaints at ten police stations across the country, for a year.⁷⁴ He concedes that the research process was not especially scientific, nor were the views of those who needed the police obtained.⁷⁵ His objective was rather to watch ordinary SAPS members policing the streets in order to understand ‘how they saw and responded to their world’.

Regarding domestic violence, his observation is that by far the most common incidents to which patrol officers were called were ‘domestic disturbances of some sort or another’.⁷⁶ Almost all of these cases involved little or no physical violence, although in many instances threats had been made. Even in the small number of cases where there had been some pushing and shoving, or punches had been thrown, the quantum of violence was relatively small and the physical injuries were very light. These calls consumed large portions of uniformed officers’ shifts, especially on weekends; however, they very seldom resulted in arrests or any other formal intervention by the attending SAPS members. Altbeker reports that the police would instead hear out both of the feuding parties and then offer some advice about talking to their parents or a priest, getting a protection order or finding a way to live with each other. Then they would leave the scene and inform radio control that no crime was going to be reported and that no further action was required. He nevertheless does add that cases where there was evidence of more serious violence were handled differently, especially if ‘blood had been spilled’.

66 Mathews & Abrahams *op cit.* 26.

67 *Idem* 27.

68 *Idem* 26.

69 *Idem* 40.

70 Smit & Nel F (2002).

71 *Idem* 49–50. The training programme in question refers to the training manual developed by SAPS Legal Services. Training sessions were presented jointly to 1,771 trainers by Legal Services and Technikon Southern Africa during September to December 1999.

72 Smit & Nel *op cit.* 53–54.

73 *Idem* 55.

74 His findings were published as Altbeker (2005a).

75 Altbeker (2005b) 13.

76 *Idem* 13–14.

He proposes a number of reasons for this lack of enthusiasm. The first is the workload of SAPS members: a serious intervention (such as taking statements at the scene of domestic violence and making an arrest) would lead to a significant delay before they could attend to the next complaint.⁷⁷ The second reason is the perception that most domestic violence cases are ‘petty’: they involve shouting and threats, or even some minor physical violence, but usually none of this rises above the level of common assault.⁷⁸ There is further the view that it is very likely that domestic violence cases will be withdrawn before the matter comes to court and intervention is therefore viewed by SAPS members as a waste of their time, energy and resources.⁷⁹ Finally, there is an element of police having more sympathy with the perpetrator (if he is male) than with the victim (if she is female).⁸⁰

Altbeker’s observations ultimately lead him to question whether the DVA, even if it is optimally implemented as conceived by its drafters, will have the desired effect in addressing domestic violence. He concludes that ‘the powers of the police are very poor tools with which to effect the changes that these families need’.⁸¹

4. Domestic violence and alcohol

There is a growing body of evidence indicating a significant connection between domestic violence and the abuse of substances (specifically alcohol) in the South African context. Matthews and Abrahams found that the majority of women interviewed linked the abuse of alcohol and drugs to their partners’ abusive behaviour.⁸² They attributed the change in their partners’ personalities to substance abuse and reported that ‘when he is sober he is not violent’. Researchers observed that many women perceived the abuse of alcohol and drugs as the reason for the violence they experienced. Men excused their violence through the use of alcohol and drugs, while women ‘bought into this idea’ and made excuses for their partners.⁸³

The findings of Matthews and Abrahams confirmed those of an earlier study conducted with men in three municipalities in Cape Town. Among other factors, the men who reported abusing their partners were more likely to drink alcohol and take drugs than those who reported that they did not abuse their partners.⁸⁴

The evidence of the connection between domestic violence and alcohol extends beyond research on domestic violence as such.⁸⁵ A study on intimate femicide⁸⁶ found

77 *Idem* 14-15.

78 *Idem* 16.

79 *Idem* 17.

80 *Idem*.

81 Altbeker (2005b) 18.

82 Matthews & Abrahams *op cit* 21.

83 *Idem* 36.

84 Abrahams *et al* (1999) 16. See also Abrahams *et al* (2004) 333.

85 See e.g. also Parenzee *et al* (2001) 33; Parenzee & Smythe (2003) 4–5, 28–29.

86 Intimate femicide is defined as the killing of a woman by an intimate partner (a current or ex-husband or boyfriend, same-sex partner, or a rejected would-be lover). Conversely, non-intimate femicide would be the killing of a woman by someone other than an intimate partner. See Matthews *et al* (2004) 1.

that more than a third (34.2%) of the perpetrators of intimate femicide for the period under review had problems with alcohol, compared with the 12.5% of perpetrators of non-intimate femicide.⁸⁷

During the discussion of the first SAPS report on the implementation of the DVA to the parliamentary portfolio committee, this theme also found expression. Assistant commissioner Geldenhuys, the SAPS representative, commented that the most serious problem with domestic violence was the combination of alcohol and emotions, ‘as the two do not mix happily’.⁸⁸

The question, however, is what the exact nature is of this link between domestic violence and alcohol abuse.⁸⁹ Jewkes points out that alcohol is thought to reduce inhibitions, cloud judgment and impair ability to interpret social cues.⁹⁰ Alcohol may provide men with an opportunity to act in an antisocial manner: they are more likely to act violently when drunk because they do not feel they will be held accountable for their behaviour.⁹¹ Interestingly, research shows that the connections between violence, drinking and drunkenness are socially learnt.⁹² There is little support for the suggestion that alcohol abuse causes domestic violence. On the contrary, this belief may be unhelpful or even dangerous, where it leads victims to believe that once the perpetrator’s alcohol abuse is treated, the abuse will stop. Researchers have in fact found that once perpetrators begin to get sober, the violence does not always stop and may even worsen.⁹³

One aspect that has received little attention is the issue of alcohol abuse by victims of domestic violence. Nicholas reports that there may be different aspects to the association between women’s alcohol use and domestic violence.⁹⁴ For example, alcohol abuse by women may promote male violence;⁹⁵ women’s drinking may also be a reaction to, or a coping mechanism for, being abused.

It has been observed that victims of domestic violence who have problems with alcohol or other substance abuse should be seen as particularly vulnerable.⁹⁶ First, there is generally a lack of services for victims of domestic violence who also have substance abuse problems. Second, there may be a belief among police officials that the woman’s alcohol abuse is the cause of the domestic violence, which in turn, ‘mitigates’ or excuses the perpetrator’s responsibility. Finally, there may be a decreased likelihood that the perpetrator of domestic violence will be arrested if the victim is intoxicated or ‘high’. The reasons are, on one hand, that police officials believe that the likelihood of a successful prosecution will be hampered by the victim’s intoxication – her evidence ‘won’t stand up in court’. On the other hand, especially where both victim and perpetrator are intoxicated, this may lead to the trivialisation of domestic violence by police officials.

87 *Idem* 3.

88 Minutes of portfolio committee meeting on 12 September 2007, accessed on www.pmg.org.za.

89 This issue has been the subject of some debate in academic literature. For a summary of these debates see Nicholas (2005) 10–14.

90 Jewkes (2002) 1425.

91 *Idem* 1426. See also Parenzee & Smythe *op cit* 4–5.

92 Jewkes *loc cit*. The strength of the association between alcohol and violence is reportedly the stronger in countries with ‘explosive’ patterns of consumption than it is in countries in which alcohol is consumed at a slower rate – Nicholas *op cit* 9.

93 *Idem* 13.

94 *Idem* 14.

95 See also Abrahams *et al* (1999) 13–14, for findings in the South African context.

96 See Nicholas *op cit* 8, and authorities cited there. It should be noted that the research cited refers mainly to the US situation.

Chapter 3

Research Design

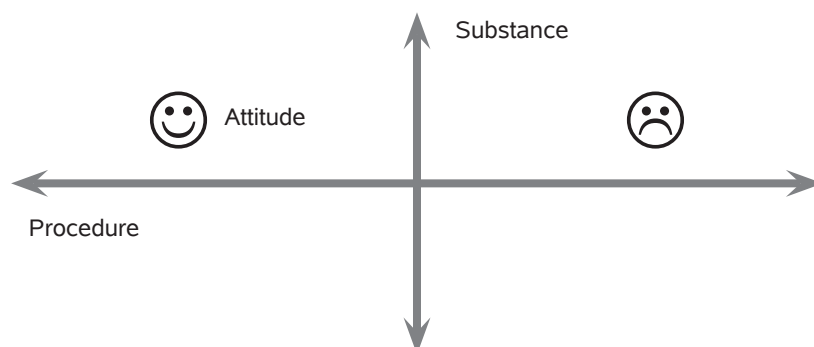
1. Central research question

Based on the background and problem statement as outlined above,¹ we developed the following question as a starting point:

*Why are existing training programmes apparently inadequate to ensure **compliance** by members with the provisions of the DVA and National Instruction?*

The formulation of this (provisional) question led to a recognition of the need to determine the meaning of ‘compliance’ first. We noted that ‘compliance’ had different components, i.e. the substance of the Act, prescribed procedures and also the attitude with which SAPS officials carry out the prescribed tasks. A question that came up at this stage was whether it would be possible for a SAPS member to comply with the substance of the Act without necessarily following strict procedure; alternatively, is it possible for a SAPS member to comply with procedural prescriptions while violating the substance or ‘spirit’ of the Act? These variables can be illustrated as follows:

Figure 3.1



¹ See Chapters 1 and 2.

We subsequently attempted to identify the ‘minimum contents’ of compliance for purposes of this study. While acknowledging an element of subjectivity, we drew five or six elements from the DVA and National Instruction with which a SAPS official, at a minimum, should be expected to comply when dealing with a complaint of domestic violence (either at the Community Service Centre [CSC] or at the scene of the violence). This assessment, done in conjunction with the Saartjie Baartman Legal Advice and Training Project, was specifically based on our understanding of clients’ needs.

These were:

- to listen to the complainant and treat her with respect;
- to provide her with immediate assistance;
- to ensure her safety (including by arresting the perpetrator, where appropriate) and inquire into her injuries;
- to inform her of her rights and options;
- to assist her to obtain medical attention and find shelter and to refer her to other service providers, where appropriate; and
- to open a criminal docket and investigate the case.

If the objective of this study had been to establish whether SAPS members are complying with the provisions of the DVA and National Instruction (a so-called ‘compliance monitoring study’),² we would have limited our inquiry to these six components and established whether these requirements were being met. However, the current study needed to go one step further. The next question was therefore whether current training equips members (i.e. provides knowledge and skills) to apply these core components of the DVA and National Instruction in practice.

The central research question was therefore formulated as follows:

Do current training programmes provide SAPS members with the knowledge and skills required to apply [core components of] the DVA and National Instruction in practice?

2. Development of research instruments

2.1 Background

At this point we returned to the DVA and National Instruction. We linked the ‘minimum contents’ of compliance identified above to certain key duties specified in these documents and used these duties to develop a list of monitoring indicators for both

² See e.g. Artz *et al* (2005).

members responding to complaints and for station commissioners. These indicators in turn formed the basis for the interview schedules we subsequently put together.

The interview for SAPS members dealing with domestic violence complaints was designed along four broad themes, i.e:

- details of training received on the DVA;
- knowledge of the DVA and National Instruction and application in practice;
- awareness of the linkages between domestic violence and HIV/AIDS; and
- view of the DVA.

In designing the interview questions, we were also aware of the possibility that a lack of training may not be the only aspect limiting compliance with the DVA and National Instruction. There may also be other structural factors obstructing compliance by members, such as attitudinal factors, the 'culture' prevailing at station level, resource constraints, etc. These attitudinal or indirect factors are difficult to test in a personal interview of this nature, which is an aspect that had to be considered in developing the research instruments. For this reason, we included practical case studies in the interviews with SAPS members.

In respect of station commissioners, we identified the following aspects of management to be covered in the interviews, in addition to the above four areas:

- responsibility for training of members;
- prioritisation of domestic violence cases;
- ensuring members' compliance with the National Instruction; and
- awareness of the linkages between domestic violence and HIV/AIDS.

2.2 Research instruments

We developed two research templates for use during interviews with SAPS members and station commissioners respectively.

(a) Template 1 – Interview with SAPS members

The template was used by researchers to note the responses of members during personal interviews. The objective was to obtain in-depth, qualitative data about the training that members who deal with domestic violence complaints on a day-to-day basis have received, and to explore their current knowledge and application of the DVA and National Instruction in practice. The interview also attempted to probe hidden assumptions about domestic violence.

The categories of the interview schedule included:

- Information about the training that the official received about the DVA, including:
 - the length of the training;
 - who conducted the training;
 - what the training covered; and
 - which aspects of the training were most useful.

- Knowledge and application of the Act, including:
 - understanding of the term ‘domestic violence’;
 - understanding of the term ‘protection’ of the complainant as used in the National Instruction;
 - questions on how the official assists complainants in finding shelter or obtaining medical treatment;
 - ability to explain contents of Form 1 to complainant; and
 - the official’s approach to arrest for breach of protection order.
- Awareness of the link between domestic violence and HIV/AIDS, i.e. whether the official is aware of an increased risk of HIV infection in a coercive or violent non-monogamous domestic relationship.
- View of DVA, including:
 - opinion on whether the DVA and National Instruction are easy or difficult to apply in practice; and
 - recommendations for training.

Three case studies were included to ensure that the questions were practice-oriented. These case studies, with their results, are discussed in more detail in Chapters 4 and 5 below.

The template also captured certain basic demographic information (rank, number of years in service, nature of duties at station). No names or other identifying information were taken down and participants were assured of anonymity. Before starting the interview, the purpose of the research was explained and measures to ensure the confidentiality of results were set out. Participants were informed that they could decline to answer any question and could end the interview at any point.

Although we did not anticipate any personal disclosures relating to HIV/AIDS during interviews (the interview did not call for this information), we ensured that researchers had the contact details of relevant organisations in the event that referrals were required. Before starting Part C of the interview (the section dealing with the link between domestic violence and HIV/AIDS), participants were also assured that they were not required to share any personal information with the interviewer, but rather their experiences as a police official.

(b) Template 2 – Interview with station commissioners

Similar to the interviews with members dealing with domestic violence complaints, the interviews with station commissioners began with a general section requiring demographic information, including the length of time that the respondent had been commissioner at that particular station.

The template for station commissioners has a number of aspects in common with the one for SAPS members, for example, the initial section on training received on the DVA as well as the concluding section on views and recommendations. The emphasis in the

station commissioners' interview is on management, and it is assumed that in order to manage compliance with the DVA and National Instruction, the station commissioner will have a sound knowledge of the relevant documents.

The categories of the interview schedule include:

- Information about the training that the station commissioner received about the DVA, including:
 - the length of the training;
 - who conducted the training;
 - what the training covered; and
 - which aspects were most useful.
- Responsibility for training of members, including:
 - whether the respondent conducted or arranged any training for members on the DVA at the station;
 - understanding of the term 'protection' as used in the National Instruction;
 - guidance to members on responding to domestic violence complaints; and
 - guidance to members on arrest for breach of protection orders and arrest where there is no protection order in place.
- Prioritisation of domestic violence, including:
 - whether domestic violence is regarded as one of the five priority crimes at the station;
 - how progress in policing of domestic violence is measured at the station;
 - whether members are required to service protection orders at the station and if so, what the station commissioner's instructions to members are regarding prioritisation thereof (how soon should orders be served);
 - whether targets have been set for response to domestic violence complaints by patrol vehicles;
 - whether these targets are being met and if not, why;
 - whether telephonic complaints at the station are handled through centralised call centre (10111) or the CSC (or both); and
 - how the station commissioner ensures that domestic violence calls going through call centre or CSC are prioritised.
- Ensuring compliance with National Instruction, including:
 - whether the station commissioner has taken specific steps to ensure compliance with administrative requirements of National Instruction; and
 - dealing with complaints of non-compliance by members.
- Awareness of the link between domestic violence and HIV/AIDS, i.e. whether the station commissioner is aware of an increased risk of HIV infection in a coercive or violent (non-monogamous) domestic relationship.

- View of DVA, including:
 - opinion on whether it is easy or difficult to ensure compliance of members with the DVA and National Instruction in practice; and
 - recommendations for training.

Similarly to the interview schedule for SAPS members, case studies were included in the station commissioners' interviews. In one instance (the link between domestic violence and HIV/AIDS), the case study and questions were the same as for the interview with SAPS members; in the second instance (responding to an incident of domestic violence), the case study is the same, but the question posed to station commissioners differed from that put to SAPS members in order to examine managerial responsibilities. The third case study related to members' non-compliance with the DVA and National Instruction, and how the station commissioner would respond to this form of misconduct.

(c) Interviews/focus group discussion with Independent Complaints Directorate and Department of Community Safety

We also developed schedules for interviews and focus group discussions with members of the ICD and the DoCS. The interview schedule for the ICD consisted of three parts, focusing firstly on monitoring of police compliance with the DVA and secondly on training of SAPS members by the ICD. The final section of the interview dealt with non-compliance by police officials with the DVA and National Instruction, and included recommendations for improvement of training. We conducted two focus group discussions with ICD staff members, one at the national office and one at the Western Cape provincial office.

We further conducted an interview with a provincial investigator of the DoCS using broadly the same interview schedule. However, because the DoCS doesn't do any training with SAPS members, the second part of the interview schedule was not used. The results of these focus group discussions and interviews are set out in Chapter 6.

3. Research sites and sampling

The research was conducted at 20 stations in the Western Cape, located in the metropolitan area, in peri-urban areas as well as in rural areas. Although we had originally identified 20 stations as research sites based on criteria such as whether the provincial training department had recently conducted skills transfer training on domestic violence at the station, the office of the provincial commissioner identified the following 20 police stations as the most appropriate research sites:

Beaufort West
Bellville
Bishop Lavis
Claremont
Delft
Grassy Park
Gugulethu

Heidelberg
Hermanus
Khayelitsha (Site B)
Klawer
Knysna
Kwanonqaba
Mbekweni

Mitchell's Plain
Nyanga
Oudtshoorn
Thembalethu
Vredenburg
Vredendal

In addition to the station commissioner, we aimed to interview three to four members at each station, which would yield a total sample of between 60 and 80 respondents (in respect of members dealing with domestic violence complaints) and 20 station commissioners. As set out in Chapters 4 and 5, we achieved this objective, with a total of 75 interviews with members and 20 interviews with station commissioners or their delegates.

4. Research ethics

Because of the nature of the research (involving human subjects) and in particular, the sensitive nature of the topic, we applied for and received ethics approval from the Senate Research Committee of the University of the Western Cape. In addition, we obtained permission to conduct research in terms of Par. 3 of National Instruction 1/2006 from the national SAPS office as well as from the provincial commissioner in the Western Cape.

5. Data analysis

Researchers entered quantitative data into MS Excel for purposes of checking and analysis. Because this project is for the most part an exploratory qualitative project, it was not necessary to conduct extensive cross-checking of statistical relationships between different variables.

Qualitative data was coded and grouped according to theme and each of the two researchers working on the data analysis occasionally went back to templates already covered by the other researcher to ensure that relevant data had not been lost or overlooked.

Chapter 4

Interviews with SAPS Members

1. Introduction

1.1 Demographic information: SAPS members

Researchers interviewed 75 SAPS members at the 20 police stations identified by the provincial commissioner's office. The ranks of these officers ranged from student constable to superintendent (see Figure 4.1 below). Although the majority of the interviewees worked in 'Visible Policing' (i.e. attending to complaints from the public either in the CSC or while on vehicle patrol), there were also some participants from a broader group of officials who deal with domestic violence in different capacities, such as disciplinary officers, domestic violence coordinators, crime prevention and information officers, detectives, shift commanders, victim support officers and designated firearms officials. In this regard, interviewees were led by station commissioners or their delegates who selected the persons to be interviewed.

Table 4.1

Rank	Participants
Student constables	6
Constables	4
Sergeants	8
Inspectors	12
Captains	5
Superintendents	2
Unknown ¹	1
TOTAL	75

¹ One participant was a police reservist and the interviewer did not note down his rank.

The participants' years of experience in the police service ranged from one to 30 years, with an average of 8.8 years. The distribution of the length of service was as follows:

- Less than 10 years: 70 per cent
- 10–14 years: 4 per cent
- 15–19 years: 12 per cent
- More than 20 years: 14 per cent

Of the participants interviewed, 56 were men and 19 were women.

2. Training received by SAPS members

Seventy-three per cent of the participants said that they had received training on the DVA, while 27 per cent replied that they had not. Of this latter group, 65 per cent had been in the SAPS for less than seven years. We found this interesting, considering that these members would have received such training as part of their basic training (the initial six months) at the SAPS training college.

2.1 How long was the training?

Of the participants who had been trained, 13 per cent were trained for one to two hours, while 3.7 per cent received training consisting of half a day. A further 20.3 per cent of the participants had training for a full day, while 63 per cent had training for more than one day. The latter varied from two days to up to three weeks.²

2.2 At which level was training on the DVA provided?

Thirty-five of the participants received training on the DVA as part of in-service training, while for twenty-two others it formed part of their basic training. One of the participants received specialised training,³ while five participants received 'other' training.⁴ It should be noted that four of the participants received both in-service and basic training or basic and specialised training.

2.3 Who provided the training?

The following responses were received to the question on who had provided the training:

2 Some of the participants stated that they were trained from about one to six months. The researchers interpreted this to mean between one and six months, on average and at various times during basic training.

3 This training covered domestic violence under the broader topic of victim empowerment.

4 This included shift commanders giving information dissemination talks and NGOs providing training.

Table 4.2

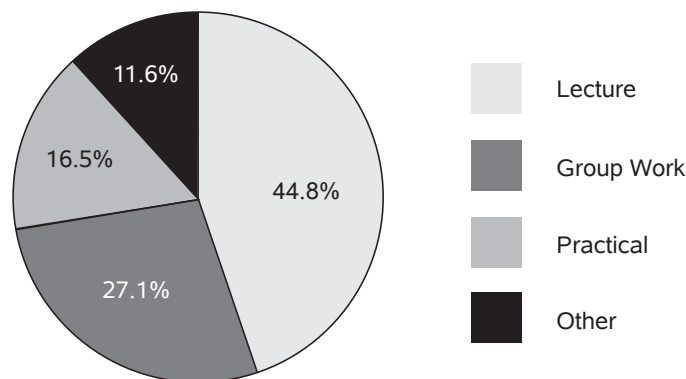
Basic training	SAPS legal services	SAPS training division	Station commissioner	NGOs	Other
20	10	17	3	3	16

The category ‘Other’ here included colleagues at the same station (excluding the station commissioner), persons from the area offices and the ICD. We were surprised to note that only three members had received training from their station commissioners.

2.4 Which training methodologies were used?

We asked participants how the training was done, and their responses relating to the options provided, i.e. ‘lecture-style’, ‘group-work’, ‘based on practical examples’ and ‘other’ are depicted below. Under ‘other’, participants listed role-playing and videos.

Figure 4.3



2.5 What did the training cover?

There seemed to be a general consensus that the following areas were covered in the training:

- what constitutes domestic violence;
- the role of SAPS members role when attending to a domestic violence complaint;
- how to treat victims of domestic violence; and
- how to correctly complete the prescribed registers.

One of the participants stated that his training also covered the procedure to follow where the perpetrator is in possession of a firearm. Another was trained in the use of Form 11, which is the prescribed written notice that should be handed to a respondent notifying him to appear in court on a specified date on a charge of contravening a protection order.⁵ (This procedure must be followed when the police official is of the opinion that there has been a violation of the protection order, but that there are insufficient grounds for arresting the respondent.⁶)

We observed that 20 per cent of the participants could not recall what the training had covered. Interestingly, the majority of these participants were in the SAPS for less than seven years. We therefore assumed that they must at least *have* covered domestic violence as part of their basic training.

3. Knowledge of the DVA and its application in practice

3.1 Definition of ‘domestic violence’

The researchers found it important, as a starting point, for participants to give their understanding of what domestic violence is. As a general trend, interviewees appeared to be aware of the broad definition of a domestic violence as contained in the DVA. In other words, they understood that domestic violence was not limited to violence occurring between husband and wife living under the same roof, but could also occur between people who are not married and who do not necessarily live in the same house. Similarly, participants generally related that the notion of violence included physical violence, and in some instances, extended more broadly to include emotional and other forms of abuse.

However, we were interested to note that participants did not refer to any of the less ‘conventional’ domestic relationships listed in the DVA, for example, persons living together in a shared residence even where they are not involved in any romantic or sexual relationship. Similarly, the less conventional forms of ‘domestic violence’ such as intimidation, harassment and stalking received no mention. One member included a good example of economic abuse (even though he did not use the term itself): he explained that selling the household property to buy liquor also constituted domestic violence.

3.2 Applying the National Instruction on domestic violence

3.2.1 Meaning of ‘protecting the complainant’

According to the National Instruction, a police official’s first step, when attending a scene of domestic violence, must be to secure the scene and to protect the complainant

5 Sec 17(a) of the DVA.

6 Sec 8(4)(c) of the DVA.

from any danger.⁷ The participants were accordingly asked what their understanding of the term ‘protecting the complainant’ was.

The general trend seemed to be that the separation of the perpetrator and the complainant was the key to protecting the latter. The majority of the participants stated that they would either arrest the perpetrator or take the complainant to a place of safety (such as other family members or shelters for abused women or the Trauma Room at the police station).

One participant stated candidly that they do not follow the National Instruction verbatim. However, they would normally take the complainant to the Trauma Room to protect her.

Other participants understood ‘protecting the complainant’ as keeping her in the police van until both parties had ‘cooled down’. Needless to say, such a measure does not afford her the maximum protection as envisaged by the Act, as she is still left at the mercy of the perpetrator once the police officials leave the scene. One participant alluded to this by stating that ‘protecting the complainant’ does not work in reality, as in most cases they leave the complainant with the perpetrator.

Only three participants described a more comprehensive understanding of ‘protecting the complainant’. They stated that apart from just separating the parties for the evening, they would also advise the complainant of her options as stipulated in Form 1.⁸

The majority of the participants thus followed a correct point of departure by separating the parties. For purposes of training, we recommend that this paragraph in the National Instruction be broken down into practical measures to demonstrate to officials how to ensure complainants’ safety under different circumstances.

3.2.2 Attending to a complaint of domestic violence: Case study 1

To gain an understanding of how police officials apply paragraphs 5(2) and 6 of the National Instruction in practice, the interview schedule contained the following case study.

Radio Control/Community Service Centre has assigned a domestic violence complaint to you, which was phoned in by a neighbour. The only information supplied to you is that the complainant has allegedly been stabbed. When you arrive at the scene, you find the following:

The address where the alleged incident happened is a house shared by a husband and wife. The wife is in the kitchen, crying hysterically, with her right hand wrapped in a blood-stained towel. She shows you a small, sharp vegetable knife, indicating that this was the knife with which her husband stabbed her in the hand. Her husband, the alleged perpetrator, is being held ‘captive’ in the bathroom by a neighbour who came to intervene. The husband is shouting loudly that he is actually the victim: his wife had thrown hot water at him and he was just defending himself.

7 Para 5(1).

8 See discussion in 3.2.4 for more information on Form 1.

The aim of this question was to see how interviewees would prioritise the following actions required in terms of the National Instruction:

- establish whether either party was in further danger of violence from the other;
- ascertain the injuries of both parties and whether they required medical attention;
- establish whether either party required assistance to find shelter; and
- establish whether either party wanted to lay criminal charges.

Given that there will always be some element of individual discretion in the assessment of a scene, when evaluating interviewees' responses we bore in mind that there would not necessarily be any clear 'right' and 'wrong' ways of dealing with this scene. We therefore aimed to identify trends rather than to categorise each answer.

We found that the responses fell into three broad groups. Firstly, 40 per cent did not see the need to focus on any of the above activities when attending to a domestic violence scene. Instead, the predominant focus seemed to be to try and work out which party should be arrested, instead of providing assistance to the parties as required by paragraph 5(2) of the National Instruction. Secondly, 33 per cent of the participants reported that they would perform at least one or two of the duties stated above. Even though they were trying to investigate the reason for the violence – and subsequently find out who should be arrested – they did see a need to address the medical consequences that flowed from this violence and/or the need to assess whether the parties were a further danger to each other. Finally, 27 per cent of the participants saw the need to perform three or four of the duties as stated above. These officers identified medical assistance as a priority, and also saw the need to keep the parties apart to ensure the safety of both of them. Further, they would either arrest the husband or would ask the wife if she needed a suitable place of shelter.

These results prove that there is still a need to improve the understanding of paragraphs 5(2) and 6 of the National Instruction to the SAPS members being trained on implementing it. The training should focus on how to prioritise various sequences of events. In other words, members should be able to distinguish when medical assistance, for example, would take precedence over investigating whom to arrest.

3.2.3 Helping the complainant to find shelter or to obtain medical assistance

Paragraph 8 of the National Instruction requires that a SAPS member assist a complainant in finding suitable shelter. When the participants were asked where they normally take the complainants, most stated that they either take them to other relatives or friends or to a shelter, subject to there being one in the area and to a place being available. One official stated that normally he would ask the sector commander to assist him. Four participants from different police stations said that they normally arrest the perpetrator (where there is a violation of a protection order) or take the perpetrator into custody for the evening, and therefore they would not need to find suitable shelter for the complainant. We can thus conclude that SAPS members do assist complainants in finding suitable shelter when

necessary. Knowing that suitable formal shelters are limited (especially in the rural areas), it did appear that officials understood the true nature of paragraph 8 of the National Instruction, which is to assist or make arrangements for the complainant to stay in a safe area away from the perpetrator. It thus seems that the following two elements should be emphasised when doing training on this paragraph of the National Instruction:

- the availability of shelters; and
- the choices of the complainants.

Paragraph 9 requires SAPS members to assist complainants in obtaining medical treatment. There seemed to be some uncertainty regarding the use of police vehicles to provide transport for this purpose. The National Instruction states that a member may transport a complainant in a police vehicle, provided that there is no other means of transport for the complainant to get to a medical facility (and that such vehicle is available).⁹ Some participants stated that under no circumstances are they allowed to transport complainants in their vehicles to obtain medical treatment, while others said that they may do so. A further point of confusion that became evident from the interviews relates to who should pay for the medical treatment. One participant stated that he normally just takes complainants to the CSC when they request assistance to obtain medical treatment, but are unable to pay for it.

We were interested to note the different arrangements regarding when police officials will transport complainants to medical facilities and when they will summon an ambulance. This appeared to largely depend on local conditions and on the response times and availability of ambulances. Certain participants stated that they would transport the complainant to a medical facility, provided that the injuries were not serious. If injuries were serious, then they would normally radio the CSC to request them to contact an ambulance. While some participants stated that they contact ambulances themselves when complainants are seriously injured, they also stated that should ambulances take too long, then they would take the complainant to the hospital themselves. Others would wait for the ambulance.

For training purposes it seems important to give clear guidelines on:

- when to use the police vehicle to transport an injured person; and
- informing the injured person about payment for services.

3.2.4 Handing Form 1 to the complainant and explaining the contents

Paragraph 10 of the National Instruction requires that members provide Form 1 and explain the contents thereof to a complainant. This form is incorporated in the regulations to the Act. Its purpose is to ensure that complaints are informed about all the legal options available to them and about the assistance that police officials can render to them.¹⁰

9 See Para 9(2)(c) of the National Instruction. The complainant must also be informed that he or she is being transported at their own risk.

10 See Annexure A at the end of this report.

Interviewees were handed an English copy of the form and were asked to explain the content to the researcher, as if the researcher was a complainant in a domestic violence case. We were concerned to note that *40 per cent* of the participants did not know what Form 1 was. Or, as one of the participants told a researcher:

*Dié [vorm] kom ons nie eintlik baie by uit nie.*¹¹

What was even more disconcerting was that one participant stated that Form 1 was not covered as part of his training and thus he was not aware of its existence. On a more positive note, a number of the officials thought that Form 1 was a good idea. In the words of the interviewee:

Each SAPS member should be issued with one. This form is quite impressive.

Of the 20 per cent of the participants who explained the content of Form 1 comprehensively and coherently, one interviewee went even further. This official told a researcher that he also advises the complainant which court to go to if she wants to get a protection order and on which floor of the court building she might find assistance. He was the only participant to do so.

The majority of those who did know what Form 1 was explained that copies of it can either be found in the CSC or in the patrol vehicles or in a file kept by the SAPS member. However, one participant who was taught about Form 1 on a training course related that he could not find any copies of it upon his return to the station.

As far as training is concerned, it could only be an advantage to the SAPS to ensure that its members are, firstly, aware of the existence of Form 1 and secondly, to enforce its applicability when members attend to a domestic violence complaint.

3.2.5 Arrest of the perpetrator for breach of the protection order:

Case study 2

Section 8(4)(b) (read with subsection 8(5)) of the DVA instructs police officials on the arrest of a perpetrator in the event of a violation of a protection order. It states that an SAPS member must make such an arrest if there are reasonable grounds to suspect that the complainant may suffer imminent harm as a result of the alleged breach of the order. Subsection 5 lists the elements that the member must take into account when assessing whether the complainant may suffer imminent harm. On the other hand, if the member is of the opinion that there has been a violation of the protection order, but that there are insufficient grounds for an arrest, he or she must hand a written notice¹² to the

¹¹ 'We don't really get to this form that often.' [Our translation from original Afrikaans.]

¹² Form 11.

perpetrator to appear in court on a specified date on a charge of violating a protection order (contravention of section 17(a) of the DVA).¹³

The second case study in the interview accordingly dealt with this duty to arrest. As set out above,¹⁴ we specifically included this case study to assess how the participants apply section 8(4) and (5) in practice. However, certain additional variables were added. The facts of this case study were as follows:

Lindiwe is a 23-year old woman who lives with her boyfriend, Peter. She has in the past repeatedly called the police station for assistance because Peter assaulted her. However, on each occasion she subsequently withdrew the criminal charges because Peter is the breadwinner and she does not want him to go to jail.

One Friday evening Lindiwe arrives at the police station with a domestic violence protection order that prohibits Peter from assaulting her, and the accompanying warrant of arrest. She alleges that Peter has again assaulted her, thus breaching the protection order, and has also threatened her with a knife. She is therefore really scared of him and asks you to arrest him for breaching the order. When you take Lindiwe's statement, you realise that her breath smells of alcohol and that her speech is slightly slurred.

In evaluating the responses received, we again proceeded from the premise that there was not necessarily only one 'right' way of approaching this situation. We discerned a general trend in favour of arrest, i.e. most participants would arrest Peter for violating the protection order. Only eight per cent of the participants decided to warn Peter by handing him a 'Form 11' notice, as they were of the opinion that there were insufficient grounds for arresting him.

However, there seemed to be some indecision as to *when* to arrest him. In this regard Lindiwe's state of sobriety (or lack thereof) presented interviewees with considerable difficulties. Twenty-two per cent of the participants said that they would arrest Peter immediately for breaching the protection order. Some participants stated that they could not take a statement from someone smelling of alcohol, while others stated that they could, but she should not be under the influence to such a degree that she would not remember what she did once she was sober. In other words, they would assess how intoxicated Lindiwe was. These participants would assist Lindiwe by finding her suitable shelter or have her stay over at the station's Trauma Room, and then take a statement from her once she had sobered up. At this point they would arrest Peter.

13 Sec 8(4)(c).

14 See Chapter 3 above.

Some of the participants used a ‘creative’ interpretation of the law and decided to arrest Peter – though not for violation of the protection order or assault, but for riotous behaviour instead. Two participants would arrest Peter for riotous behaviour and once Lindiwe was sober, they would take her statement and re-arrest him for violation of the protection order. Another participant stated that he would arrest Lindiwe for riotous behaviour should she protest against the fact that they could not take steps against Peter, because she was under the influence of alcohol. Three participants stated that there was nothing that they could do as she was under the influence of alcohol. Of these three participants, one would send her back home – thus exposing her to further serious violence from Peter – another participant would warn Peter, while the third officer would speak to Peter ‘man to man’.

Ninety-one per cent of the participants reported that they deal with similar cases in practice. The similarities generally lie in frequent withdrawals of cases (for various reasons) and the involvement of alcohol – often in the case of ‘binge drinking’. The participants perceived that the abuse of alcohol serves as a catalyst for the escalation of domestic violence. Many participants also related that domestic violence seems to be more prevalent around weekends (when both complainants and perpetrators abuse alcohol) and at the times when social assistance grants are paid to beneficiaries. This ‘income’ is often used to purchase alcohol, which leads to a sharp increase in the levels of domestic violence at these times.

It should be noted that this question (inadvertently) yielded a wealth of background information on domestic violence and socio-economic circumstances in the communities served by the police stations included in the research project. While a detailed analysis of this information goes beyond the scope of this project, one factor listed by participants stands out as having a significant impact on both their policing of domestic violence as well as, ultimately, their perceptions of victims of domestic violence. This factor is the link between domestic violence and alcohol abuse by both perpetrators and complainants, as described above.

When asked how the participants deal with cases similar to the case study in practice, the majority of the participants stated that they arrest the perpetrator. A very small fraction stated that they warn the perpetrators to appear in court by means of Form 11. Of the other solutions available, some participants stated that they arrest the perpetrator for drunken behaviour, should he be intoxicated. Others give counselling to the victim, while some officials stated that they ensure the safety of the complainant.

This case study highlighted the fact that the practical application of knowledge relating to arrest for breach of a protection order may create difficulties under circumstances where it is not possible to immediately take the complainant’s statement (for example, where she is under the influence of alcohol). Members may require training on how to deal with this situation, as well as how to optimally use section 8(4)(c) in practice.

The links between domestic violence and alcohol abuse by *complainants* in domestic violence cases should be explored further, not only in training, but also in terms of further research in the South African context.

4. The link between domestic violence and HIV/AIDS

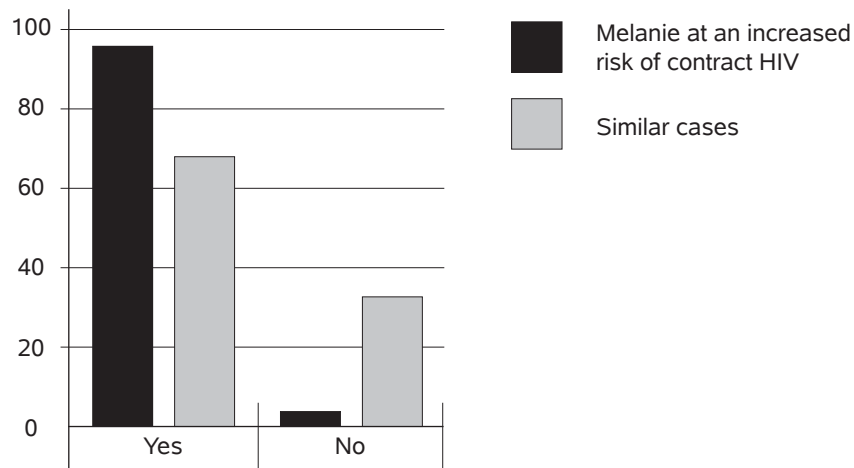
The following case study was included in the interview in order to assess, firstly, the perceptions of SAPS members relating to the links between domestic violence and HIV/AIDS, and secondly, the extent to which members deal with cases where the two issues are interlinked.

Melanie and Sam have been married for three years. Initially they were happy together, but after a while Sam started behaving in a very domineering manner towards her. He began shouting at her when they argued and this soon escalated to constant verbal and emotional abuse. When Melanie discovered that she was pregnant, she believed that their relationship would improve but instead, the opposite happened. Sam spent most evenings away from home, and Melanie heard rumours that he was seeing other women.

She confronted him and a furious argument ensued, during which he pushed her against a wall and twisted her arm. This incident really scared Melanie and she seriously considered getting a divorce, but then decided that she didn't want her child to be born without a father. She therefore asked Sam's family to speak to him and for a few months, until their son was born, his behaviour improved. However, when their son was six months old, Sam went back to his old ways, threatening Melanie with 'a good hiding' whenever she protested about his behaviour.

The participants were asked whether they thought that Melanie was at an increased risk of contracting HIV and whether they had dealt with similar cases in practice. The results were as follows:

Figure 4.4



Ninety-five per cent of the participants answered that Melanie was indeed at an increased risk of contracting the virus due to the rumours that Sam was having extra-marital affairs. Those who stated that there was not increased risk of contracting the virus based this view on the fact that there was no clear evidence that Sam was seeing other women, as it was only a rumour. A small number of participants questioned whether Sam was using a condom, stating that if he was not practicing safer sex, then it would definitely expose Melanie to contracting HIV. One participant stated that if Sam knew that he was HIV-positive and did not inform Melanie thereof before having sexual intercourse with her, that amounted to a serious criminal offence. Significantly, only one interviewee explained that by physically abusing Melanie, Sam could also transmit the virus to her. Thus only one participant directly linked physical violence to possible HIV transmission.

In response to the question of whether they had dealt with similar cases in practice, 68 per cent of the participants said that they have done so. The cases that the participants listed related to HIV and various forms of abuse. For example, in one case the complainant found out that her husband was having an extra-marital relationship. She subsequently requested that he use a condom when they have sex. He refused and she laid a charge of rape against him.

Examples of physical abuse cases were also listed in which women asked their partners to use protection if they were having sex outside of their relationship, since both of them were living with HIV. Following this request, the women were subjected to physical abuse. In another physical abuse case, the complainant, who contracted HIV from her husband, was assaulted by him whenever she talked to him about it. In a case of economic abuse, one participant described a case in which the (female) perpetrator (who was living with HIV) deprived the (male) complainant of financial assistance after the complainant told a SAPS officer that he had contracted the virus from the perpetrator. Another economic abuse case dealt with maintenance. The complainant in this case learnt that she was HIV positive three months after the father of her child left them. Even though both the complainant and the child were HIV positive, the husband was not paying maintenance. This left the mother with no assistance in obtaining anti-retroviral (ARV) treatment for herself and her child.

These factual situations, which raise issues that are both highly personal and legally intricate, present SAPS members with much 'untested ground'. It is interesting to consider the fact that, in practice, they are presented with these admittedly difficult interpersonal situations, despite the sentiment expressed by a number of station commissioners that it is not the role of SAPS members to advise on matters of a highly personal nature.¹⁵ Each of the examples above constitutes at least an act of domestic violence as defined in the DVA; they may also constitute criminal offences, depending on the circumstances.

It is therefore important for these intersections between domestic violence and HIV/AIDS to be considered for purposes of training, especially considering that police officials are confronted with these situations in the course of their work.

Another aspect that is important for training purposes is that of referral to service organisations or, where available, specialised units – only one of the participants stated that he had referred such a case to the FCS unit.

15 See Chapter 5.

5. View of the DVA and training recommendations

5.1 View of the DVA and National Instruction

Sixty eight per cent of the participants stated that the DVA and the National Instruction are easy to apply in practice, while 31% believed that this is not the case. (One participant did not answer this question as he had not yet dealt with a domestic violence complaint in practice.)

Those who felt that the DVA and National Instruction are *not* easy to apply were also asked what would make it easier. Some of the responses related to the arrest of the perpetrator. One participant said that he found it difficult to apply the DVA when the two parties (applicant and respondent) have protection orders against each other. He explained that he normally arrests the man, despite not being sure whether the man is actually the perpetrator. Two participants said that they do not know when to arrest a perpetrator for breach of a protection order (arising from an incident of physical abuse) and when to arrest for assault. They accordingly felt that more clarity should be given around the differences, for purposes of making an arrest, between physical abuse and assault. Another participant (surprisingly) stated that she cannot arrest a perpetrator for assault if the complainant does not have a protection order.¹⁶

Two other participants explained that drafting Form 1 in 'plain language' would make the form easier for SAPS members to use and for victims to take note of it. Other factors that were listed included involving other stakeholders (e.g. social work services) and identifying a dedicated task group in SAPS to deal with domestic violence complaints.

Regarding training, one student constable said that he found it difficult to apply in practice what he had learnt during his basic training. Two interviewees said that it would have been easier to apply the DVA and National Instruction in practice if the training had been practical enough. On the other hand, two respondents (who were somewhat unsure about whether or not it was easy to apply the DVA in practice) pointed out that they found these tasks easier once they had received training.

5.2 Essential topics for training

As part of the participants' recommendations the researchers also asked them what topics they would include if asked to put together a one-day training session for SAPS members. The majority of the participants emphasised that SAPS members must be trained on what to do at the scene of domestic violence. Nineteen participants felt that each SAPS member should know how to fill out the various forms and registers and what is expected of them in terms of the DVA. Part of their recommendations included the use of more practical examples and role playing as methodologies for training.

Five participants listed training on 'alcohol-related' complaints. These participants felt that SAPS members should know what to do if either the complainant or the perpetrator,

¹⁶ See also discussion in Chapter 5 Para 3.1.4.

or both, are under the influence of alcohol or any illegal substances. Considering that most participants explained that alcohol plays a major role in the domestic violence complaints they receive,¹⁷ it is interesting to note the small number of respondents who listed this topic as a training need. Four interviewees recommended training for SAPS members on the linkages between HIV/AIDS and domestic violence. These interviewees stated that they started thinking about the connections between HIV/AIDS and domestic violence for the first time while participating in this interview.

Only two participants highlighted the importance of ensuring uniformity in training on the DVA. These participants candidly explained that there are conflicting interpretations of the application of the DVA and the National Instruction.

One participant mentioned the need for training of SAPS members on the procedures to follow where a firearm is involved in an incident of domestic violence. Such training would entail looking at both the DVA and the Firearms Control Act.¹⁸

5.3 General recommendations

When the participants were asked if they had any other recommendations around training SAPS members on the DVA and domestic violence in general, the majority of the participants had broad initiatives in mind. The general trend seemed to be that more members need training and that more frequent and/or more in-depth courses need to be presented on domestic violence.

Even though several participants stated that there should be more frequent training, only two were more specific on how frequently training should take place. One stated that there should be at least one day per month on which 'refresher' courses are conducted at station level, while another stated that SAPS members should be sent on annual one-week 'refresher' courses. (Interestingly, both these recommendations appear to relate to members who have already received training on previous occasions.¹⁹) Another participant emphasised that there should be a broader dissemination of information if one SAPS member receives training.

Participants also expressed the opinion that more awareness should be raised in communities regarding domestic violence and the actual contents of the DVA. They were especially concerned about the abuse of the protection order and making the community aware of the police mandate, with particular reference to situations where the complainant does not have a protection order. Four interviewees further recommended that reservists and Community Policing Forums should receive training on domestic violence complaints.

An important concern, listed by two participants, is the situation where a SAPS member is a perpetrator of domestic violence within his or her own home. These interviewees were especially concerned with the objectivity with which the perpetrator's colleagues would approach such a case.

17 See Para 3.2.5 above.

18 Act 60 of 2000.

19 See also Chapter 5 Para 5.2.

Seven participants expressed their dissatisfaction in respect of training they had received themselves. One participant was not satisfied with the way in which the training was conducted: he could only grasp 45 minutes of the three-hour session that he had attended. A second interviewee recommended that the terminology used at the training should be simpler. Yet another participant stated that there were too many courses to follow simultaneously at the training college during basic training, while a student constable appealed for more attention to be paid to students, as they have no experience to fall back on when they start with the practical element of their training (at stations).

The issue of knowledge dissemination arose here as well: one participant explained that of the four shifts at the station, only one person per shift had attended training. Thus more focus should be placed on the dissemination of information received at training.

6. Discussion

In this section we comment on certain of the observations set out above. For ease of reference, we will follow the same heading outline.

6.1 Training received by SAPS members

It was encouraging to note that the majority of the SAPS members interviewed had received training on the DVA and furthermore, that this training, for the most part, had taken place over more than one day. However, it would appear that there is a gap in the training received on domestic violence during the six months of basic training. We deduced this from two aspects: firstly, the fact that members who have been in the SAPS for less than seven years (and who would therefore have received this training during their basic training) informed us that they had never been trained on the DVA. Secondly, among the members who had been trained, those who could not recall the content of the training had, for the most part, been in the SAPS for less than seven years (and indicated that their training had taken place during basic training).

One SAPS member explained this by saying that little time was devoted to the DVA and domestic violence during the six months of basic training, and in addition, trainees have a lot of other information to absorb during this period. This means that they only really start to learn about policing domestic violence when they are placed at police stations as student constables. This explanation was borne out by the interview responses received from respondents who are student constables.

Our recommendations will therefore include that special attention be devoted to training on domestic violence during the six months' basic training for new recruits. In addition, when student constables are placed at stations, it is important to ensure that they are paired up with appropriate mentors (where Field Training Officers are not available) to ensure that their knowledge is consolidated and that good habits are entrenched – instead of the opposite happening. This learning process must be monitored.

Another observation relates to the training methodologies reported by interviewees. It is clear that, for the most part, training consisted of ‘lecture-style’ presentations. One of the strong recommendations²⁰ emerging from participants is that training should be more practical and based more on practical examples. This has also been included in our recommendations.

6.2 Knowledge of the DVA and its application in practice

The analysis of this section of the interview was not an easy task because interpretation of the DVA and National Instruction, although on the face of it relatively clear, still occasionally allows scope for some individual discretion. We were accordingly careful not to approach responses in an ‘either/or’ manner, and many of the answers we received indeed reminded us of the many shades of grey with which police officials are confronted when policing domestic violence.

6.3 Definition of domestic violence

In considering this question, we had to be mindful of the fact that when an interview question asks a respondent to give a definition or explanation of a particular concept (such as ‘domestic violence’), if the respondent leaves out an element (such as ‘emotional abuse’), it does not necessarily imply that they believe that this element does not form part of the concept – it could simply mean that they forgot to mention it. One therefore can’t read *too* much into the omission of certain elements of the definition here.

It was, however, disconcerting that the more unconventional forms of relationships, as well as the less conventional forms of domestic violence, did appear to be left out. In our practical experience, these are precisely the situations where complainants would be turned away from police stations, either because this would not be a ‘domestic relationship’, or because this would be ‘a civil matter’. It is therefore important to ensure that police officials understand the scope of the DVA in its broadest sense.

6.3.1 Protecting the complainant and providing assistance

In comparing responses to the questions on the meaning of the concept of ‘protecting the complainant’ and to Case Study 1 (which dealt with the scene where the husband and wife were both potential victims of domestic violence), we were interested to note that the majority of respondents had little difficulty in dealing with the ‘theoretical’, straightforward question that required them to give a definition or a description of a term. However, when it came to the application of this term in a more complex, multi-faceted scenario, it was clear that they experienced trouble putting into practice the principles contained in the National Instruction. The difficulty lay not so much in terms of deciding what should be done, but rather in which actions should be *prioritised* at the scene of the domestic violence.

²⁰ See Chapter 7.

6.3.2 Handing Form 1 to the complainant and explaining the contents

The findings were quite disappointing: 40% of the respondents didn't know what Form 1 was, or didn't make use of it. In evaluating the implications of this finding, we asked ourselves whether this was perhaps an instance where members could still adhere to the substance of the Act without necessarily complying with the prescribed procedure. For example, if a police official can explain the essence of Form 1 to a complainant, without having the form in front of him or her, is it really such a major concern if the document itself is not handed to the complainant?

In this instance, we had to concede that the current situation is still cause for concern, for two reasons. Firstly, the respondents who answered that they didn't know Form 1, or didn't make use of Form 1, were in any event not able to explain the contents of the form. This eliminates the 'substance' part of the above theory. Secondly, one of the reasons for handing the form to the complainant is for her to be able to re-read the contents once she has settled down and is no longer agitated or upset (as she is likely to be when she first encounters the police official to lay a complaint). This means that one of the major purposes of the form is frustrated when it is not used properly.

While it may therefore appear that we may be formalistic in our insistence on the use of this document, it was designed to assist both the police official and the complainant. A good practice encountered at one of the stations is for the complainant to sign as acknowledgement that she received Form 1, either in the pocket book of the member attending to the complainant, or in the Occurrence Book, as the case may be.²¹

6.3.3 Arrest of perpetrator for breach of protection order

The two additional variables included in Case Study 2 were Lindiwe's history of withdrawing cases against Peter, and the fact that when she comes to the station to report the breach of the protection order, her speech is slurred and her breath smells of alcohol, i.e. her state of intoxication. As stated above, the latter aspect presented respondents with considerable difficulty.

If this variable were left out of consideration, this would have been a textbook case for a police official to exercise his discretion to arrest, based on the fact that Lindiwe may suffer imminent harm, considering the factors in section 8(5) of the DVA.²² However, as explained, the fact that Lindiwe could be under the influence of alcohol apparently muddied the waters to some extent.

Because the issue of intoxication was not intended to be the main focus of the case study (and because this was a hypothetical exercise only), we didn't attach too much weight to the varying interpretations of the phrase 'her breath smells of alcohol and her

21 The former if the police official attends to the complaint at the scene of the domestic violence incident; Occurrence Book if the complaint is made at the CSC.

22 (5) *In considering whether or not the complainant may suffer imminent harm, as contemplated in subsection (4)(b), the member of the South African Police Service must take into account-*
(a) *the risk to the safety, health or wellbeing of the complainant;*
(b) *the seriousness of the conduct comprising an alleged breach of the protection order; and*
(c) *the length of time since the alleged breach occurred.*

speech is slightly slurred'. However, it was interesting to note that certain participants stated that they cannot take a statement from someone who smells of alcohol.

One assumes that all instances where a police official has to gauge where a complainant (not only in domestic violence) is too intoxicated, high on drugs or traumatised to immediately give a statement involves two aspects: a judgment on the part of the police official, based on certain criteria, of whether a statement can be taken. If not, the second aspect involves a decision about what should be done until a statement can be taken. It is important for police officials to be trained on what the criteria are for making these judgments in the case of intoxication (presumably more than the complainant smelling of alcohol), and even more importantly, on what they should do where, for whatever reason, they are temporarily unable to take a statement under circumstances where the complainant's safety is dependent on the statement being taken, for example, to effect the arrest of the perpetrator. Since members' options may depend on the facilities available at the station and in the community, guidance from the station commissioner is also advisable here.

6.4 The link between domestic violence and HIV/AIDS

The area of intersection between domestic violence and HIV/AIDS, and the role of the SAPS in addressing this, is to a large extent still uncharted territory. However, there are some areas where legal certainty has begun to emerge, for example, regarding the criminal liability (for attempted murder) of a person who rapes another with the knowledge that they are HIV positive and may transfer the virus to their victim.²³ It is important for SAPS members to be aware of these criminal offences, especially where they occur in a domestic relationship. Furthermore, it is also important for SAPS members to be aware of how HIV-related conduct may constitute domestic violence in terms of the DVA. Our recommendations will therefore include proposals that this information be included in training sessions for SAPS members.

23 See e.g. *S v Nyalunga* [2005] JOL 13254 (T).

Chapter 5

Interviews with Station Commissioners

1. Introduction

1.1 Background information

Researchers conducted interviews in person with station commissioners at 18 of the 20 stations identified for purposes of the research project. At one station they held a joint interview with the station commissioner and a senior member of the station management. (Both respondents agreed on their responses as the researchers noted them down; for purposes of the demographic information below, they took into account the details of the station commissioner.)

At two stations we were unable to interview the station commissioners in person due to their absence at the time of our visit. However, at one station the commissioner had delegated the commander of the CSC to be interviewed on his behalf. This interview is included as if it was conducted with the commissioner himself.¹ The commissioner of the second station subsequently completed the interview schedule in writing and returned it to the researchers. On completion of this process, the researchers thus had responses from the full complement of 20 stations.

1.2 Demographic information: station commissioners

The researchers noted, firstly, that the interview participants were generally very experienced. The years of service in the SAPS ranged from 13 to 34 years, with the average being 22.9 years. These high levels of experience were also reflected in the ranks of the participants, which ranged from captain to director. The ranks were represented as follows:

• Captain:	6
• Superintendent:	3
• Senior Superintendent:	4
• Director:	7
Total:	20

¹ However, we left this participant's details out of consideration when calculating the demographic details of station commissioners.

The researchers interviewed 14 men and six women.

What we found interesting was the relatively short time that the majority of participants had been commissioners of the stations in question. Four were acting as station commissioners at the time of the interviews; two of these had been in this position for two and four weeks respectively.

Looking at the remaining 15 (permanent) station commissioners, it was noteworthy that longest-serving commissioner had been in the post for three years; two participants had been in their posts for only three weeks. The average length of service as a commissioner was 13.6 months (i.e. just over a year). In practice this situation may have an adverse impact on the ability of the station commissioner to organise training for members on station level and to ensure that training, management and monitoring mechanisms become institutionalised. We refer to specific examples below.

2. Training received by station commissioners

Of the 20 participants, 19 had received training on the DVA. This training varied in length: two participants had attended training for one to two hours, six had attended one-day training sessions, and 12 had attended training lasting for more than a day (in some cases, a five-day course). Among these 12 participants, some indicated that they had attended more than one training session.

The majority of participants had received this training as part of in-service training, although five indicated that they had also been trained on the DVA as part of basic training. Two participants had also received training on the DVA as part of specialised training.

We next asked participants who had provided them with training on the Act. The following responses were received here:

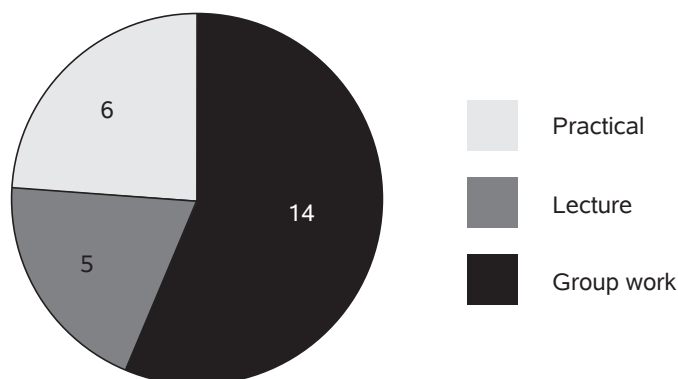
Figure 5.1

During basic training	SAPS Legal Services	SAPS Training Division	Other
1	14	6	4

The category 'Other' here included NGOs as well as the ICD and detectives. It was interesting to note that at the level of station commissioners, SAPS Legal Services appeared to play a much larger role than the Training Division.

Participants reported the following in terms of training methodologies employed in the training they received:

Figure 5.2: Training methodology



It therefore generally appeared (with the exception of the single station commissioner who reported not having received any training) that the participants had received adequate training on dealing with the DVA. This was also discernible from their own perceptions: very few felt that there had been any gaps in their training, or that any crucial aspect had been omitted.

One participant noted that he had found the training ‘eye-opening’ – he realised, for example, that domestic relationships extended beyond partners living under the same roof. Two participants commented on the accessibility of the training: they felt confident to ask questions and could introduce scenarios arising from their practical experience into the general discussion. Interestingly, one participant noted that he had found the two-day ‘skills transfer’ session more informative than the one-week training course.

Among those who did identify particular aspects that could have been addressed in the training they had received, there was a common call for a more practical approach. (This appears to be in line with the report-back on training methodologies above.) More than one participant suggested the need to demonstrate how the legislation and accompanying instructions operate in practice and recommended that this could be done through the inclusion of practical scenarios in the training. One participant suggested simulations of debriefing victims and dealing with scenes of domestic violence. Another also cautioned against over-burdening trainees with notes and other written information.

3. Management

3.1 Responsibility for training of members

3.1.1 Training of members

The first section on ‘Management’ focused on the training of members by station commissioners, through both formal and informal guidance. Nine participants indicated that they had conducted or arranged training on the DVA for members at their station;

another nine had not done so. Two indicated that such training had been scheduled, but had not yet taken place.

Among the station commissioners who had conducted or arranged training at their stations, different approaches could be discerned. One method was to ensure that interested members attend the training courses periodically arranged by the Training Division; another was to initiate training (of some kind) at the station themselves. A third method combined these approaches.

One participant explained that informal training occurs during monthly station lectures because the training courses arranged by the Training Division can only accommodate limited numbers. Meetings are also held with shift managers to point out shortcomings relating to domestic violence cases.

A similar approach is followed at another station, where informal 'in-service' training is conducted by managers as they check the domestic violence registers. Once a month station lectures are also held. Interestingly, this is a station where a Field Training Officer (FTO) has been deployed. However, the station commissioner conceded that due to staff resource constraints, the FTO has had to take on additional duties (unrelated to training) when not directly engaged with the field training of student constables. The station commissioner did indicate that under more ideal circumstances, the FTO should be able to assist with training other members as well.

As our interviews with members progressed, we became interested in the question of how information and skills from the formal training courses are transferred to members 'back home' at the station. Although the interview schedule for station commissioners did not specifically include a question about this, we did flag this as an issue of interest.

One participant replied that he had sent all the relevant members, including captains, to the two-day training course, to filter the information to the rest of the team. Another station commissioner showed a commendable degree of planning in terms of ensuring that the two-day training course is replicated on station level: she had arranged for members from the four shifts to be trained, six at a time, in two groups, so that the entire shift complement would receive the training in a relatively short time. (At this station, informal training also takes place in the form of discussions with the shift groups, especially following register inspections.)

We also realised after the fact that it would have been useful to investigate in more detail the reasons for station commissioners not to have conducted or arranged training at their stations. In some instances, respondents did provide reasons; however, this is something that could have been explored in more detail. One participant explained that training is centralised, and that station commissioners are accordingly not responsible for it. Two other participants linked the fact that they had not done training to the fact that they had only been at the station for a short period.

3.1.2 Training of reservists

Our question regarding training further looked at whether it included reservists. We received 11 responses here. While it appears from the responses that the training of reservists to deal with the DVA is receiving some attention on station level, it may also be an area for some concern.

Participants reported the following:

Modules for reservists include domestic violence – it is part of their ongoing training. It is the responsibility of the reservist functionary.

We present lectures to reservists of half an hour to an hour per month, in which domestic violence is also included.

It forms part of reservists' in-service training, but this is not so intensive.

I present the reservists' training myself. In the shift where they work, they also work under supervision of a senior member, and thus receive in-service training.

We have a Field Training Officer, who is responsible for the reservists.

Reservists are important, because they are just as exposed. It forms part of their training. However, our priority is the permanent members.

The reservists receive their own training; they do different modules, done by trainers.

The reservists attended a lecture on domestic violence – they were all sent to attend. The lecture was presented by Legal Services (national).

We don't have a specific training occasion for reservists.

3.1.3 Approach to the National Instruction

In order to gain a sense of the station commissioners' approach to implementing the National Instruction, we asked participants the same question as the one put to SAPS members regarding their interpretation of 'protecting the complainant' when attending a scene of domestic violence.²

Five participants referred to the criterion of 'imminent harm', explaining that this determines whether the perpetrator should be arrested. A further two similarly answered that their actions would depend on the extent of the danger to the complainant. Two participants pointed out that it is their duty to prevent further violence against the complainant.

Responses further included reference to checking whether the complainant needed medical assistance and arranging shelter or safe accommodation for her if she didn't want to remain at the house. Only one participant spoke about the need to make sure that no firearms were involved. Another explained that it was necessary to look after the needs of children, including having them placed in emergency care if necessary. It was interesting to note that at least two station commissioners reported making use of the stations' Trauma Room as an emergency safety facility in situations where the complainant has nowhere else to go.

² Paragraph 5(1) of the National Instruction.

Certain of the responses received were somewhat disconcerting. One participant said that he would ensure that the complainant was taken to a safe place, and would then have a conversation with her to find out whether she wanted to lay a charge and also to establish whether an offence had been committed according to the DVA, since one 'shouldn't immediately arrest people'. This approach is, of course, technically-speaking correct; however, one would be concerned if this suggested some reluctance on the part of the participant to carry out arrests for offences related to domestic violence. Again, one can refer to section 3 of the DVA, which clearly empowers police officials to make arrests at the scene of domestic violence without a warrant, provided that the requirements of the section are met.

Another participant stated that he would identify the extent of the abuse. If the complainant's life was in danger, he would refer her to a friend, relative or a shelter. Again, it would have been useful to have more information about the particular interviewee's proposed approach; however, it is troubling that no reference is made to the arrest of the perpetrator. (If the complainant's life is in danger, this represents 'imminent harm', and one of the first steps towards protecting the complainant would be the arrest of the perpetrator.)

A similarly disconcerting approach was suggested by a participant who explained that he would usually give the complainant a choice to either go to her family, or to a shelter. If this was not possible, the perpetrator would be arrested.

One participant explained that it is the responsibility of the police to take the complainant out of the violent environment, to shelters or to family members. He related that police officials would, however, occasionally arrive to find the woman intoxicated, and the man (who doesn't drink) had been provoked by his intoxicated partner. There is a religious organisation in the community who then takes the men into their houses until the situation is under control.

Finally, one participant said that 'protecting' the complainant on the scene of domestic violence meant ensuring that no offence was committed in presence of SAPS members, and that no exhibits (evidence) were removed.

3.1.4 Guidance on arrest

Given the documented complexities of arrest for domestic violence, we posed two questions to station commissioners regarding guidance to members on arrest. The first dealt with whether they had given guidance to members on arrest for breach of a protection order (in other words, where there is a protection order, with the accompanying warrant of arrest). In practice, this is the more straightforward situation. Sixteen of the respondents indicated that they had given members at their station some form of guidance on arrest in this situation; four had not. One explained that there was already a circular in place from the Provincial Commissioner regarding arrest (and therefore he presumably felt it wasn't necessary to add anything at station level).

Although the question didn't require information on this, we did gain some insight into the *methods* used by participants to provide this guidance. Two station commissioners had issued station instructions on this issue; others make use of station lectures, parade meetings and joint meetings with the Department of Justice and Constitutional Development.

Interestingly, two station commissioners pointed out that they specifically brief members to exercise their discretion when it comes to arrest – if the complainant is not in imminent danger, members must instead hand a written notice to the respondent to appear in court.³

The second question looked into the slightly more challenging situation where there is no protection order in place (and therefore no warrant of arrest), and the perpetrator commits an act of common assault. Prior to the introduction of the DVA, police officials did not have the power to arrest without a warrant for common assault, unless the offence was committed in their presence; however, section 3 of the DVA now provides that:

[a] peace officer may *without warrant* arrest any respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence against a complainant.⁴

Without going into the legalities of what the correct interpretation of this apparently straightforward section should be, our second question enquired whether station commissioners have provided members with guidance regarding arrest in such situations. Eighteen station commissioners had done so; two had not.

One station commissioner explained that members can't make an arrest if the incident didn't happen in their presence. As explained above, this is no longer the correct position. We found this response disconcerting, especially since this interviewee was one of the station commissioners who had provided members with guidance on arrests in this situation.⁵

3.2 Prioritisation of domestic violence

The next section of the interview dealt with the prioritisation of domestic violence by station commissioners. It may be recalled that one of our hypotheses was that in spite of having received training, SAPS members might not be taking domestic violence matters seriously enough because management was not prioritising it.

Our first question here was therefore whether domestic violence is regarded as one of the five priority crimes at the particular station. Eighteen station commissioners indicated that this was indeed the case; one said it was not. Another respondent explained that domestic violence *leads* to priority crimes such as assault and murder.

3.2.1 Measuring progress

We next asked how station commissioners measure progress or success in policing domestic violence. We received two types of responses: the first showed how station commissioners conceptualise 'progress' in this area, and the second gave us an indication of measurement tools, without really setting out what these tools were measuring.

3 Sec 8(4)(c) of the DVA.

4 Our emphasis.

5 The interviewee had also received training.

One participant stated that domestic violence presents a difficulty in the sense that one can't only look at a decline in the number of reported cases – one also has to look at an increase in reporting. (With 'general' offences one may want a decline, but here one actually wants the frequency of reporting to increase as a measure of success.) One needs to measure success against frequency and also the impact on the broader community. Progress must also be measured in terms of members' understanding and application of the DVA.

This point about the dichotomy between a decline and increase in reporting rates as an indicator of success was also made by another participant, who explained that one initially wanted to see an increase. As awareness in the community grew, one expected to then note a decline. Interestingly, this was not the case at this particular station. Another participant conceded that progress was difficult to measure. This station had observed more complainants applying for protection orders. This was ascribed to an education campaign that had been conducted in the community earlier in the year.

A fourth participant explained that looking at the SAPS 508 registers as well as the members' pocketbooks gave one a picture of the 'problem' households in the station's area. It is important to identify cases such as assault, malicious injury to property and trespassing that may not be obviously linked to domestic violence, in order to establish how much domestic violence there really is. She has therefore issued a station order to capture these 'hidden' domestic violence offences. This participant agreed that with domestic violence, as in the case of rape, one ideally wanted to see an increase in reporting rates.

One participant follows an interesting, and commendable, approach. He explained to researchers that the outcomes of case dockets referred to court do not provide a clear measure of success, since case outcomes are not within the control of the police. It is therefore necessary to go back to the complainant to establish how the service was, and whether she still feels protected. For this reason, this station commissioner draws dockets at random from the investigating units and contacts complainants telephonically to establish whether they were happy with the service they received from the SAPS.

A further indicator of success listed was the absence of complaints of non-compliance. Another participant said that success was indicated firstly, by a decrease in reported cases and secondly, by a decrease in complaints about poor service from the community.

Participants listed the following measurement tools:

- Weekly inspection of registers, forms and dockets;
- CAS system and Form 11 – 'spot check';
- Social Crime Prevention Officer, Trauma Room;
- Station Crime Combating Forum: twice a week; and
- Person in charge of CSC.

Interestingly, this was one area where the relatively short stay of station commissioners had an influence. Two participants expressly responded that they had not yet been able to attend to measuring progress in this area – they had been at their stations for only three weeks and a month, respectively.

The responses to this question have therefore led us to the important conclusion that there is currently a gap in the uniform measurement of progress or success in policing

of domestic violence. However, we were also able to identify some good practices in this respect.

3.2.2 Service of protection orders

The next aspect of dealing with domestic violence that we examined was the service of protection orders, an area that is often an area of criticism of the SAPS. Nineteen participants said that members have to serve protection orders at their stations, while one was not sure (this interviewee had been in the position of station commissioner for a very brief period at the time of the interview).

We next inquired what station commissioners' instructions were, if any, about prioritising the service of protection orders. From the complainant's perspective, it is essential that the protection order should be served as soon as possible, since the order only comes into effect once it has been served on the respondent (perpetrator). It was therefore encouraging to note an acute awareness of the urgency of serving protection orders among the majority of station commissioners interviewed. (This also bore out the earlier affirmative responses regarding domestic violence being one of the priority crimes at the stations.) As one of the participants expressed it:

The instruction is that they must serve orders as soon as they receive them. It must be done now: he may kill the woman when he gets home.

Certain stations have allocated specific members or dedicated units to oversee this function. At some stations members are required to serve protection orders within a particular period, e.g. 48 hours from the time they are received, either from court or from the complainant herself. At another the rule is that members should try to effect service on the same day, but should take no longer than three days. At a third station, the instruction is that it should be done within 24 hours of receiving the protection order.

Other station commissioners indicated that while they didn't specify a period within which members were expected to serve protection orders, they had to do it 'as soon as possible' or 'as soon as they receive' the order. Another noted that members' first priority was to serve orders immediately. Yet another pointed out that although members are supposed to serve orders on the day that they receive them, it often happens in this peri-urban community that respondents work in Cape Town and only return home over the weekend, which means that the goal of same-day service can't be met. We were also advised that service targets are occasionally frustrated when respondents can't be found by members on the same day.

We were also interested to note that certain stations have monitoring mechanisms in place to ensure that service targets are met. These include weekly inspections of the protection order service registers (this is one of the stations where a dedicated unit is responsible for service), as well as ongoing monitoring, where a captain is responsible for the service of orders.

This proactive approach stands in contrast to that of one participant who explained that the goal at their station is to serve the order before the return date. While this approach may be technically useful in the sense that it would at least prevent the applicant (complainant)

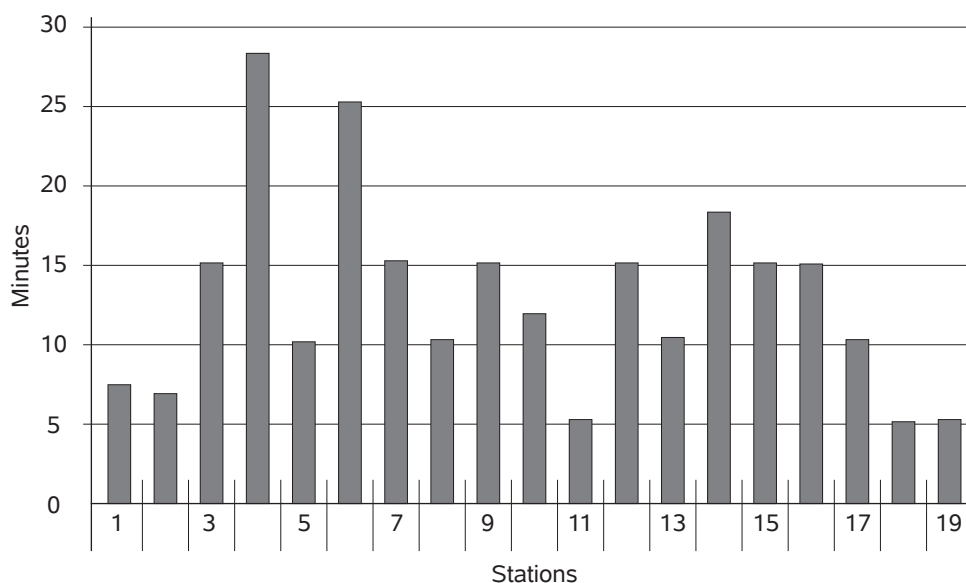
from having to re-apply for a new interim order on the return date (which is what would happen if there was no return of service filed before then), it does have dire consequences for the complainant's safety, as explained above.

3.2.3 Targets for response times

The next aspect that we looked into was the question of response times in respect of complaints of domestic violence. We established that a national standard of 15 minutes has been set for response times in respect of all complaints. We then set out to find out what response times station commissioners had set for domestic violence complaints and whether the patrol vehicles at their stations were managing to meet these targets. We believed that this would provide us with further insight into the issue of prioritisation at station level.

The graph below sets out the results of the first question, in respect of the 19 quantifiable responses received.⁶ The shortest target time is five minutes,⁷ the longest is 28 minutes and the average is 12.7 minutes. It was encouraging to note that the majority of the target times were under or equal to the national target of 15 minutes.

Figure 5.3: Domestic violence response times



When it came to the question of whether the patrol vehicles were meeting these target times, 16 station commissioners reported that this was indeed the case. Four stations were not meeting the targets, for a number of reasons. One station was experiencing resource

6 Certain stations had more than one target. For example, one had a target for complaints received in respect of sectors in town, and another for sectors located on farms. For this station, we calculated the average between these two target times. Another station differentiated between complaints relating to crimes that are in process and those that have already been committed (i.e. someone phoning in to report that they had arrived home to discover their house had been broken into). Again, we took the average as the relevant value.

7 One participant indicated that the target is three to five minutes; however, we took the value as the upper of these two figures.

constraints: it only had two patrol vehicles per sector, and if the patrol vehicle was called out, for example, to a shopping centre to attend to shoplifting, they might have to deal with a number of cases (which would be time-consuming to process), even though this would be registered as only one complaint. More than one participant explained that domestic violence cases are generally time-consuming, especially where the complainants require the assistance of the SAPS members to transport them to shelters or other safe accommodation. This would, in turn, impact on the time that members have available to respond to new incoming complaints, which could well be further domestic violence complaints.

3.2.4 Prioritising complaints of domestic violence

Finally, we wanted to see how incoming complaints are prioritised and where domestic violence complaints fit into the ‘hierarchy’ of priorities. For this reason, we tried to establish whether telephonic complaints (which would be assigned to patrol vehicles) are handled directly by the CSC, or by both the CSC and a centralised call centre (the 10111 number).⁸ As we began the interviews, we realised that sector policing introduced another option, i.e. the cell phones carried by the patrol vehicles assigned to each sector. (One of the advantages is that complaints can be phoned in directly to the patrol vehicle by complainants in the sector, which is intended to produce a faster response.)

Eleven of the 20 stations receive complaints at the CSC and through the centralised call centre (in addition to the sector cell phone complaints). This means that the prioritisation of complaints is to some extent done at central level: the call centre assigns priority based on a tiered system, classifying complaints as A, B or C complaints. This system is based on a Provincial Instruction from the Provincial Commissioner.

Nine stations deal with incoming complaints at the CSC and through sector cell phones. We were interested in any measures implemented at these stations to ensure that domestic violence calls are prioritised. At three stations, station instructions have been issued to ensure prioritisation of such calls. The approach taken at one of these stations is that complaints where violence (including domestic violence) is involved should take precedence over economic offences. Similarly, at another station, the underlying principle is that one should look at whether life is at stake and should therefore prioritise domestic violence over property issues. At another station, although no formal instructions have been issued, members are regularly briefed at station lectures on the seriousness of domestic violence.

3.3 Ensuring compliance with the National Instruction

The topic of ensuring compliance with the National Instruction is a larger one that goes well beyond the scope of this research report. For purposes of these interviews, we included two questions only. The first was whether station commissioners had taken any steps to ensure that their station complies with the administrative requirements of the National Instruction and if so, what these steps entailed. The second question consisted of a case study on managing non-compliance by members.

⁸ This system is generally used in the urban areas.

3.3.1 Steps to ensure compliance with administrative requirements

Nineteen of the 20 participants said they had taken steps to ensure compliance. It is noteworthy that the only one who had not was again one of the newly-appointed station commissioners.

The steps taken generally consist of, firstly, appointing a dedicated manager who is tasked with overseeing compliance with the National Instruction, and secondly, instituting a system of regular inspections of the prescribed registers, pocketbooks and completed forms. It is the task of this dedicated manager to inspect the registers on a regular basis. Certain stations make use of a ‘three level’ system, where the registers are checked on a daily basis in the CSC, on a weekly basis by the manager allocated to this function and on a monthly basis by the station commissioner. (At one of the smaller stations, the station commission carries out weekly inspections.) Notably, two station commissioners had issued station instructions dealing with the management of compliance with the National Instruction.

One proactive station commissioner has instituted a practice that entails tracking incoming complaints from the Radio Control Room and checking whether they have been entered into the relevant registers.⁹ At another station, complainants are contacted telephonically to establish whether they are satisfied with the service they received at the station.¹⁰ Pocketbook entries are also compared with the completion of SAPS 508(a) forms to ensure that they ‘add up’. If this is not the case, steps are taken against members.

One participant expressed concern about apparent discrepancies between training received on completion of the SAPS 508(b) register and instructions emanating from the SAPS National Inspectorate. This participant explained that the training and subsequent instructions appeared to be in conflict with each other and resulted in the register having to be redone following an inspection. This was again in contrast with how the register had been completed at another station where the participant had previously been stationed.

3.3.2 Addressing non-compliance by members

In order to establish how interviewees would deal with instances of non-compliance, we compiled a case study. The facts of the case study were based on the practical experience of the legal advisors at the Saartjie Baartman Legal Advice and Training Project, who often receive complaints from clients about having been turned away by police officials, who refused to listen to their complaints and instead told them to go to court to get a protection order.

⁹ This station is not connected to a centralised call centre.

¹⁰ Contact details are obtained from protection orders received back from court.

You have received an informal complaint from an organisation providing services to domestic violence victims that several of their clients have been turned away from the Community Service Centre when they arrived to lay criminal charges relating to domestic violence. Instead of taking their statements and opening case dockets, the SAPS members in question told the victims that the police could not assist them, and they instead had to go to court the next day for a protection order. The organisation is reluctant to lay a formal complaint, because it feels that this may have a negative impact on their work relationship with the SAPS members in question, and they rely on them to serve protection orders on behalf of their clients. However, they show you written statements from their clients confirming that the above information is correct.

In analysing the answers from interviewees, we identified three aspects. The first was their response in relation to the organisation, the second was their response to the individual clients and the third was their reaction to the actions of the SAPS members.

As a starting point, it should be noted that not all participants specifically made reference to the service-providing organisation in their response. However, among the ones who did, some interesting divergences were apparent. One participant described at some length that she would reassure the organisation that their report would not have a negative impact on the working relationship with the SAPS members at all. The members' conduct was incorrect, and she would set their mind at rest that they were correct to report this. Similarly, another participant said that he would persuade the organisation that it would be in the public interest to take the complaint further.

A different approach was that the issue was not about the organisation, but rather about 'service provision' by the SAPS members. Two other participants similarly explained that they would work with the individual complainants instead of with the organisation. Yet another participant put this even more strongly, stating that he was not concerned with the organisation: the client/victim was his concern.

In terms of the second aspect, i.e. the response to the victim, virtually all the participants indicated that they would return to the complainants to have their complaints followed up and where applicable, to have criminal charges laid against the perpetrators of domestic violence. One participant used the term 'service recovery', which seems apposite in this context. Certain participants indicated that they would either meet with the complainants in person, or would appoint selected officials to look into the matter. We believe that this is a commendable approach.

Interestingly, two participants pointed out that depending on the nature of the domestic violence committed by the perpetrator, the members may have been technically correct in referring the complainants to court to obtain a protection order. (Certain of the acts defined as 'domestic violence' in the DVA, such as economic abuse, emotional abuse and stalking, are not classified as criminal offences in South African law. While the complainant may therefore obtain a protection order based on the fact that one of these acts has been

committed against her, she cannot lay criminal charges of, for example, stalking against the perpetrator.) However, on receiving a complaint such as the one set out in the case study, the station commissioner would still have to investigate the matter before being able to give a satisfactory explanation to the organisation and/or the complainant.

Regarding the third aspect, i.e. the response of station commissioner to the actions of SAPS members, the answers of participants was almost unanimous: they would investigate the matter and if it appeared that the members had failed to comply with the National Instruction, the necessary disciplinary steps would be taken.¹¹ ‘The reason might be that they are young or lazy.’ Additional measures mentioned by participants include re-examining members’ training, issuing station instructions, meeting with shift commanders and visiting parade meetings to emphasise the seriousness of domestic violence matters.

4. Link between domestic violence and HIV/AIDS

The next part of the interview was designed to examine the links between domestic violence and HIV/AIDS. The interview first looked at the perceptions of the station commissioners by means of a case study (see below), and then asked whether interviewees had dealt with similar cases.

Melanie and Sam have been married for three years. Initially they were happy together but after a while, Sam started behaving in a very domineering manner towards her. He began shouting at her when they argued, and this soon escalated to constant verbal and emotional abuse. When Melanie discovered that she was pregnant she believed that their relationship would improve, but instead, the opposite happened. Sam spent most evenings away from home and Melanie heard rumours that he was seeing other women.

She confronted him and a furious argument ensued, during which he pushed her against a wall and twisted her arm. This incident really gave Melanie a fright and she seriously considered getting a divorce, but then decided that she didn’t want her child to be born without a father. She therefore asked Sam’s family to speak to him, and for a few months, until their son was born, his behaviour improved. However, when their son was six months old, Sam went back to his old ways, threatening Melanie with ‘a good hiding’ whenever she protested about his behaviour.

¹¹ The only exception was one of the two participants mentioned above who had given the explanation regarding the nature of the act of domestic violence.

The first question that we asked participants was whether they believed that Melanie was at an increased risk of contracting HIV. Nineteen participants answered yes, while one stated that she didn't believe this to be the case. We then asked participants for the reasons for their answers. The interviewees who had replied in the affirmative all found the increased risk for Melanie in Sam's (suspected) promiscuity¹² and the likelihood of unprotected sex; interestingly, no participant referred to Sam's controlling and abusive behaviour as an additional risk factor in itself. The participant who answered 'no' explained that Sam's absence didn't mean that he was involved in other relationships; and if this was the case, he could have taken precautions (i.e. practiced safer sex). This respondent's reservations are accordingly based on the particular set of facts, rather than on the links between domestic violence and HIV/AIDS.

Regarding the second question, i.e. whether participants had encountered similar cases, 14 replied that they had, while six had not. Analysing the examples provided by participants, we noted that as in the case with SAPS members, station commissioners interpreted this question broadly, with 'similar' referring to any of the elements of the case study, including extra-marital relationships, domestic violence, etc. While this in some instances provided us with extraneous information, it did also give us a glimpse into the type of intimate relationship conflict that senior police officials are called on to mediate. This, in turn, gave additional insight into an ambiguity that seemed to arise from some of the answers that we received to this question, i.e. what the role of the police should be in cases of a domestic or closely interpersonal nature.

On one hand there seems to be the 'interventionist' approach, as demonstrated by the participants who related an incident of a woman who asked to speak to the station commissioner. She complained to him that her husband was 'playing around'. The participant had the husband brought to the station and offered the couple counselling. No further complaint had been received.¹³

This example, while not directly related to HIV/AIDS or domestic violence, does give an indication of the extent to which station commissioners are expected by community members (and specifically women) to mediate in situations that strictly speaking go beyond the traditional ambit of the SAPS brief. However, some would say that intervention at this level is likely to fulfil a preventive function, and that by calling on the police to resolve their personal problems, these women are drawing on the one form of authority that they know their wayward male partners are likely to respect.

The station commissioners involved clearly felt that they were up to the task, or, where they were not, they called in professional service providers. However, another participant expressed caution about who should be tasked with these types of complaints. He related an incident of a woman who came to the police station to complain about an extra-marital relationship. He advised her to go for an HIV test, and to 'look after herself'. He further noted that this kind of problem should be handled by the Social Crime Prevention section (consisting of two women members) – not all members would be able to handle this type of complaint.

12 One interviewee described this quite succinctly: '*Hy is 'n rondloper.*' ['He runs around.']

13 Two similar examples were identified, but are not specifically described here.

On the other hand, a view that goes counter to the ‘interventionist’ approach holds that there are certain areas where the police do not have a role to play. For example, certain station commissioners were outspoken about their doubts as to whether the police should get involved in discussions of a ‘personal’ nature with complainants. One explained that if the complainant wants to stay with the perpetrator (of domestic violence), the police don’t regard it as their place, or at least, *she* would feel it was not her place, to discuss this with the complainant.

Another participant expressed this reservation specifically in relation to HIV/AIDS. She explained that in cases where HIV/AIDS issues arise, people are mostly referred to Social Services, since members are not equipped to provide the public with guidance on sexual conduct. It is the role of Social Services to provide HIV education and awareness in the community.

Yet another interviewee echoed this view. He said that even though he as station commissioner had intervened in many cases of domestic violence, one has to consider that the Constitution protects everyone’s right to privacy and one has to question when it is proper for the SAPS to get involved. He pointed out that there may well be a need for intervention by a pastor or social worker.

One station commissioner noted, in relation to HIV testing, that the police can’t force people to go for testing; however, the Health Department can assist. (It’s a different matter where someone has been raped and there has been a contravention of the Sexual Offences Act.)

Having set out these disparate views, certain participants related situations where HIV-related offences had been committed in domestic relationships. The reality is therefore that police officials are being confronted with these crimes.

We had a case of domestic violence. The man was HIV-positive, raped his partner – they were in a relationship. She was tested and luckily she wasn’t HIV-positive. We assisted her to lay a criminal charge of rape.

Another participant related a case of a woman who came to the CSC complaining that she contracted HIV from her partner, because he had extra-marital affairs and he abused her. SAPS referred her to a clinic for medical advice and opened a case of abuse. At another station, a husband was charged with attempted murder for infecting the victim with HIV.

5. View of the DVA

We asked participants whether, in their experience, it is easy to ensure that members comply with the DVA and National Instruction. Thirteen respondents said that it was, while seven said it was not.

Those who said it was not easy were asked what would make it easier to ensure compliance. Interestingly, more than one interviewee related their answer to the issue of training.¹⁴ Other reasons for why ensuring compliance is not easy included personnel constraints, resistance on the part of perpetrators of domestic violence and frequent withdrawals of cases by complainants.

5.1 Essential topics for training

In response to the question of what they would include in a one-day training course for SAPS members on the DVA and domestic violence, respondents generally started with the ‘basic’ components, such as what constitutes a domestic relationship, what constitutes domestic violence, and the different forms of domestic violence. Several participants said that they would include training on the administrative requirements of the DVA and National Instruction, such as the completion of forms and registers. (This is understandable, given the fact that the participants were responsible for ensuring that members comply with these requirements.)

More than one interviewee also listed the duties placed on SAPS members by the DVA and the legal implications if they do not comply with these duties. Additional topics suggested included the importance of linking the victim with counselling services (such as trauma room volunteers, Social Services or NGOs), statement-taking and arrest. An interesting proposal, which we support, was to include conflict resolution, i.e. problem-solving aimed at stabilising the situation, before the police official tried to comply with the ‘procedural’ tasks.

Participants emphasised the importance of including practical exercises, case studies, role-playing and making use of multi-media such as DVDs. This links up with our findings regarding the training methodologies used in the training attended by participants.¹⁵

During an earlier part of the interview, where we looked into the training received by station commissioners, we put the question to participants who had received training on the DVA whether they could think of anything that should have been included in the training but wasn’t. Responses to this question provided further insight into topics that participants regarded as important for inclusion in such training. Interviewees listed situations where police officials have to exercise their discretion, for example, in relation to arrest and where reciprocal orders exist. They also emphasised practical scenarios, practical examples and ‘problem solving’.

5.2 General recommendations on training

Going beyond the content, we asked participants whether they had any other recommendations in respect of training of police officials on domestic violence. One aspect that emerged from almost every response was that training should be an ongoing activity for every SAPS

14 These recommendations are discussed in Chapter 7 below.

15 See Section 2 above.

member, with ‘refresher’ courses or sessions featuring high on the list of recommendations.¹⁶ This indicates that one cannot assume that having attended one or two training courses, a police official has now been ‘trained’ and has all the knowledge and skills required to comply with the DVA and National Instruction for the rest of their career as a police official. One respondent ascribed the need for updating to the fact that the legal position may change from time to time, or new instructions may be issued by the provincial or station commissioner. Another respondent explained it by saying that SAPS members may forget information, especially where they don’t work with domestic violence all the time.

More than one participant expressed the view that members dealing with complaints in the CSC or while conducting vehicle patrols duties (‘working outside’) should be the priority in terms of training. Others stated that *all* members should receive training on domestic violence; yet another explained that the focus should be on basic training in the training college. Students should already know what to do when they are placed at stations. After that one could then move on to those who are already in service.

There was concurrence in the opinions of station commissioners that, although there were resource implications in providing training to members on a continuous basis (in the form of ongoing ‘follow-up’ even with members who have already been trained), the necessary resources had to be made available. As one participant expressed it:

Domestic violence is seen as the number one crime: therefore we must go the extra mile with training.¹⁷

This interviewee suggested that training of trainers on station level may address some of the resource constraints.

We noted divergent views about the role of the SAPS Legal Services in the provision of training. One participant noted that it was good for Legal Services to be involved in training; however, it was important to avoid ‘getting stuck’ in legal terms or intricate legal points. The training should be straightforward, otherwise members will become afraid to apply the legal provisions in question. On the other hand, another participant voiced concern about the involvement of SAPS Legal Services in training – he explained that they were lawyers and had not had enough exposure to the policing of domestic violence in practice.

The theme of the need for instructors to have practical experience was repeated by another participant. Interestingly, this interviewee suggested inter-sectoral training, i.e. for police officials to be trained with prosecutors and magistrates. (One reason provided for this proposal was the fact that prosecutors in this particular jurisdiction follow a different interpretation of the DVA regarding withdrawal of domestic violence charges from the interpretation preferred by SAPS Legal Services.)

One respondent had an innovative recommendation: he suggested that one should go back to the National Instruction, unpack it in ‘step by step’ format and have these steps

16 Eight (of the 18) station commissioners who answered this question specifically listed updating or ‘refresher’ sessions as part of their recommendations.

17 Translated from Afrikaans.

printed on small cards. This may make the National Instruction more accessible and may also be useful for reservists.

A second noteworthy recommendation was that interviews evaluating training (similar to the interviews for this research study) should be conducted once a year. The participant observed that those who have been trained have a great deal of practical experience and should feed this back into the training environment. This can be done by means of a 'debriefing' in the form of such an interview, which reminds one of the training received and also serves to give practical examples to the trainer.

Another interesting proposal, which goes beyond the area of training as such, entailed the placement of a person with legal qualifications at each station. The interviewee suggested that where a member is in doubt, he or she must be able to call on this person's expertise and will therefore know there won't be any surprises waiting at court or civil claims against the police.

6. Discussion

As in the case of the chapter setting out the findings relating to SAPS members, we will briefly discuss certain of the results of the interviews conducted with station commissioners here.

6.1 Training received by station commissioners

There are a number of observations that stand out here, most notably the fact that the majority of respondents had attended training sessions consisting of more than one day. In some instances, they had attended more than one training session on the DVA. Although this question was not included, it would have been interesting to know to which extent attending more than one session or workshop on the DVA was repetitive or provided added value to trainees.

As indicated above, the responses from participants showed that SAPS Legal Services play a major role in training station commissioners. Our recommendations will therefore include close liaison between the Training Division and Legal Services in respect of training for station commissioners.

As is the case for SAPS members, respondents reported the methodologies employed in the training sessions they attended, predominantly (56%) consisted of lecture-style presentations. Our recommendations here will accordingly include more practice-based scenarios, as also suggested by the interviewees themselves.

6.2 Management

6.2.1 Training

6.2.1.1 Responsibility for training of members (including reservists)

We were somewhat concerned by the hands-off approach followed by certain station commissioners, who appear to be leaving training (in the formal sense, at least) to the Training Division. While these station commissioners may well be conducting informal training without identifying it as training, (for example, by giving guidance to members on arrest in the form of station orders), the role of training and supervision at station level (given our findings regarding basic training of new recruits) is very important. We accordingly recommend that greater clarity should be provided to station commissioners on their role in providing training to members at station level.

The training of reservists, who deal with domestic violence cases in the same way as regular SAPS members, deserves further attention, given the indications from more than one respondent that this training is not necessarily their first priority.

6.2.1.2 Approach to the National Instruction: attending the scene of domestic violence

Although we have opted not to discuss the responses to Case Study 1 in detail here, it is noteworthy that none of the respondents commented on one of the variables built into the case study, i.e. the fact that the members are sent to the scene without sufficient information to enable them to properly establish who the complainant is. The National Instruction requires the person taking a telephonic complaint of domestic violence to obtain sufficient information to ensure that the crew of the police vehicle despatched to attend to the matter is informed whether any violence or threatened violence is involved, and who the complainant is.¹⁸

6.2.2 Prioritisation of domestic violence

Our questions regarding the prioritisation of domestic violence yielded important information about the management of this category of offences at station level and enabled us to identify a number of good practices. We deal with the possible broader application of these good practices in our recommendations.¹⁹

What the section on prioritisation did not provide, however, was a clear pattern of a failure to prioritise domestic violence on the part of any particular respondents. At the same time, we saw that the number of police officials interviewed per station was too small to allow for any connections to be made between a possible failure to prioritise domestic violence by a station commissioner and the levels of knowledge shown by

18 Para 4(3).

19 See Chapter 7.

the SAPS members at the station. The sample size was therefore too small and random to allow for any conclusions to be drawn about linkages between the (self-reported) information on prioritisation of domestic violence by station commissioners and the application of the DVA by members.

6.2.3 Ensuring compliance with the National Instruction

The steps described by a number of participants for ensuring compliance with the administrative requirements of the National Instruction (in terms of allocating dedicated managers and instituting a system of regular inspections) are laudable, and constitute good practices that would be replicated more broadly. However, on a more fundamental level of principle, ensuring compliance should start with empowering members, through training and mentoring, to do it right the first time. This should obviate the need for elaborate checking and inspection systems, which are at best corrective measures aimed at addressing mistakes that have already been made.

It was encouraging to note in the responses to Case Study 2 that a number of participants had identified opportunities for informal training of members, if inexperience or lack of knowledge were the reasons for their failure to provide appropriate services.

6.3 The link between domestic violence and HIV/AIDS

It is interesting to compare the view of certain station commissioners that there are ‘no-go’ privacy areas where police officials should not get involved, with cases relating to domestic violence and HIV/AIDS listed by police officials as practical examples that they have dealt with.²⁰ This reminds us that these matters do occur and that police officials will require some guidance on how to respond to them. Our recommendations therefore include that this issue requires further discussion and consideration within SAPS for policy guidance to managers at station and provincial levels.

²⁰ See Chapter 4.

Chapter 6

Oversight Bodies

1. Introduction

There are currently three bodies conducting monitoring and oversight of the SAPS in respect of its compliance with the DVA, i.e. the ICD, the parliamentary portfolio committee on Safety and Security in the National Assembly, and civilian bodies at provincial level (for example, the Department of Community Safety in the case of the Western Cape). The reports submitted by the ICD to the parliamentary portfolio committee (as well as the reports of the SAPS itself) in 2007 highlighted the importance of training in ensuring members' compliance with the DVA.

The researchers conducted interviews with the national ICD office, the provincial ICD office for the Western Cape and the provincial DoCS. Even though the aim of these interviews was to assess the extent to which training for SAPS members featured in the portfolios of these bodies, we also probed about their role in monitoring compliance with the DVA and what happens where non-compliance occurs.

2. The national office of the Independent Complaints Directorate

Researchers held a focus group discussion with members of the ICD's national office in Pretoria, as well as with members of the provincial office in the Western Cape. As previously explained,¹ we developed a semi-structured interview schedule to guide these focus group discussions. This interview was loosely divided into three sections, focusing on the *monitoring functions* of the ICD, *training initiatives* conducted with SAPS members, and *dealing with non-compliance* with the DVA. Because of slight differences in emphasis between the national and provincial offices of the ICD, the responses are set out separately below.

¹ See Chapter 3.

2.1 Monitoring functions of the ICD

Our first observation, looking at the six-monthly reports submitted to parliament by the ICD, was that it appeared to interpret its monitoring mandate quite *broadly* – firstly by investigating complaints of failure to comply with the DVA and acts of domestic violence committed by SAPS members,² but also by conducting ‘proactive oversight’, for example, through station visits and public awareness initiatives. We accordingly asked the ICD how this broad mandate had been decided on.

Respondents reported that the ICD mandate had initially presented a problem. It gradually became clear that the role of the ICD should be broader than ‘waiting’ for the SAPS to submit the monthly returns required by the National Instruction, given that this was not happening – six months to a year would sometimes pass without the ICD receiving a single return from certain SAPS provincial offices. The ICD accordingly redefined ‘monitoring’ to include a more proactive meaning, as set out above.

The ICD has now developed a proactive oversight unit, i.e. the research unit. This is aimed at addressing non-compliance, along with the pro-active thrust, such as station visits. In order for people to know they can complain to the ICD, it is important to publicise this. Although this extended mandate does have resource implications, the ICD has received additional staff resources from Treasury to accommodate this.

We next looked into station visits conducted by the ICD. Respondents explained that planning of station visits (audits) takes place at a national level, based on a strategic plan that incorporates a target system. Provincial offices conduct five station audits per quarter, with a total of 20 per year. (However, during November more station audits take place, as the ‘16 Days of Activism Campaign’ is launched in this month. The ICD does fewer audits between January and March, as training takes place then.) Provincial offices are required to submit their plans for station visits to the national office for coordination.

The station audits are coordinated with the particular SAPS station beforehand to avoid resistance from the SAPS. However, the ICD respondents reported that certain SAPS provincial commissioners appreciate unannounced visits, since these give them a good indication of problems at particular stations. The ICD has decided, as far as possible, to work with the national SAPS Evaluation Services (Inspectorate).

Station visits are conducted by DVA monitors accompanied by investigators and (depending on capacity), the heads of the provincial offices. In the Free State, for example, it has been possible to cover all the police stations (around 300).

The ICD makes use of an audit instrument (developed with the assistance of the EU) to monitor stations’ compliance with the DVA and the National Instruction. This instrument is percentage based and it is possible to check a station’s compliance against previous reports. The audit instrument is divided into two categories, measuring ‘regulatory compliance’ and ‘execution of the DVA’ respectively.

The first category consists of the completion of a checklist, where the DVA monitor conducting the station audit is required to award a mark of ‘1’ against a score of either

² The latter appeared to be a point of contention between the ICD and SAPS and an agreement has now been reached that these acts will no longer be reflected in the ICD’s reports on compliance with the DVA.

‘Yes/Properly’ or ‘No/Incomplete’ for each of the 15 questions. These questions cover most of the documentation, recording and supervision requirements set out in the National Instruction. For example, whether:

- copies of the DVA and National Instruction are available in the CSC;
- there is an updated list of service providers in the CSC and patrol vehicles;
- the 508(b) register is available in the CSC and whether the incidents of domestic violence are recorded correctly;
- 508(a) forms are available in the CSC and whether they are completed correctly;
- the SAPS members’ pocketbooks and the occurrence book on the DVA are thoroughly maintained;
- monthly returns are maintained; and
- female members are assigned to each shift.

The monitor also checks how and when protection orders are served. This entails seeing if there are any protection orders still not served and how the copies of protection orders (with the accompanied warrants of arrest) are filed.

The number of answers in the ‘Yes/Properly’ column are added up, and the total out of 15 is calculated as a percentage. This percentage allows for the station to be placed on the following grading system:

0–49%: Non-compliant

50–79%: Fairly compliant

80–99%: Substantially compliant

100% Fully compliant

The second category consists of 21 questions relating to management of non-compliance by members, training of members on the DVA, and whether all members have received directives relating to the DVA and the National Instruction. This category also includes questions dealing with the availability of vehicles, the inclusion of the DVA and crimes against women and children in the operational plan and the availability of a victim-friendly centre. These questions are, for the most part, framed to be answered with either ‘yes’ or ‘no’. Category 2 does not have any scoring system attached to it.

Both categories make provision for comments where incidents of non-compliance are found by the ICD monitor, as well as for recommendations aimed at assisting the station in improving compliance.

Once an ICD investigator has completed a station visit, the report is forwarded to the particular station commissioner and the provincial commissioner. These station visits are also recorded in the six-monthly reports that are tabled in Parliament. However, if the parliamentary committee on Safety and Security would like specific information, then a

report is also compiled for them, based on their request. The six-monthly reports that are presented to Parliament can also be obtained from the ICD website.

A concern arose in the discussion with the ICD regarding instances where SAPS members had allegedly failed to arrest perpetrators of domestic violence. The ICD explained that the SAPS does not want these instances to be listed as ‘non-compliance’; the argument is that police officials have a discretion to arrest and if they decide not to do so, they are just exercising this discretion. Although it is difficult to comment without examining individual complaints, it should be stated that this is not a particularly helpful approach on the part of the SAPS.

The ICD explained that they occasionally encounter certain challenges when conducting station visits. These usually relate to access to records and other documents: for example, the office where the records are kept is locked and the only person with keys has already gone home for the day.

2.2 Training initiatives undertaken by the ICD

We noted from the parliamentary reports that the ICD described a number of training workshops with SAPS, either at station or provincial level. For this reason, we included a section on training initiatives in the interview with ICD representatives.

The interview questions aimed to discuss who conducted the training, how many SAPS members were trained, what the focus was, etc. Respondents explained that the ICD has recommended training for SAPS members many times in its reports. It hasn’t developed a structured training programme for SAPS members, but rather conducts *ad hoc* workshops on request.

The training conducted by the ICD relates mostly to the technical administration around documenting domestic violence complaints. In other words, the ICD trains SAPS members on how to correctly fill out the various forms and make the correct entries in the correct registers. Representatives try to cover the basics of problems encountered during station visits. For example, should stations say that certain prescriptions are not in the National Instruction, then this would be discussed.

Training initiatives are normally developed at provincial level. The ICD monitors and investigators conduct training sessions in their respective provinces and report on these sessions to the national office. The monitors and investigators use the standard monitoring instrument as a guide to conduct the training with SAPS members.³ Formal funding is not required as the particular station provides the venue and refreshments, while the ICD staff would be at the station in any event for purposes of the station audit. For example, in Limpopo they might have a workshop at a station and invite representatives from the smaller stations in the vicinity to attend it.

There is no formal evaluation of the training sessions. However, the ICD uses its monitoring instrument to indirectly assess whether the training was successful the next time it performs an audit on the station. Respondents cautioned, however, that as a result

³ Although the ICD in the past used an inter-disciplinary training manual (including the ICD and SAPS) that was developed under the leadership of the SOCA Unit of the National Prosecuting Authority, this appears no longer to be in use at the time of writing.

of high staff turnover at station level, a positive outcome at the next station audit is not necessarily directly linked to successful training by the ICD on a previous occasion.

The ICD hardly had any critique on the Technikon SA training material that the SAPS uses to train its members, apart from the fact that it does not cover the administration work around domestic violence complaints and that it has too few practical examples.

2.3 Non-compliance with the DVA

In the six-monthly reports presented to parliament by the ICD, numerous instances of non-compliance with the DVA were indicated, both in terms of complaints received and in the results of the station audits. The third section of our interview accordingly aimed to discuss trends of non-compliance perceived by the ICD. We were interested, firstly, in whether weaknesses lay mainly in compliance with prescribed *procedures*, in adherence to the *substance* of the DVA or in approaching the legislation with the correct *attitude*. Respondents indicated that the difficulties they noticed were largely with the former, i.e. compliance with procedure. They added that attitude and personal beliefs also played a role. For example, even when members had received training some were still of the opinion that domestic violence was a matter that should be resolved privately or through the intervention of family members.

Another concern that the ICD raised relates to disciplinary matters. They stated that it might happen that a station commissioner has no reservations about disciplining a member; however, the problem resides with the area commissioner's office, where the disciplinary officer may decide against taking disciplinary action against the member.⁴ This creates a conflict at the management level of the SAPS. In terms of the ICD mandate, they can not take action against a SAPS member; they can only make recommendations. What seems to be even more worrying is that members who failed to comply with the DVA often only receive verbal warnings, which do not go on their record and have no adverse effect on their future promotion prospects.

3. The Independent Complaints Directorate: Western Cape Provincial Office

As noted above, we conducted a focus group discussion with three representatives of the Western Cape office of the ICD at its offices in Belville. We made use of the same interview schedule to guide this discussion, with minor changes to the questions as required.

⁴ It should be noted that at the time of writing, the SAPS is undergoing a restructuring process aimed at phasing out area commissioners' offices.

3.1 Monitoring functions

Participants explained that the Western Cape ICD draws on its provincial strategic plan and statistics of complaints when planning the police station audit visits. They noted that ideally they would like to do these visits on a weekly basis; currently station audits are only done monthly. Normally the Western Cape ICD does its own independent planning. However, since it forms part of the Joint Complaints Monitoring (JCM) body,⁵ it also plans station audits in conjunction with the provincial DoCS (among others).

The Western Cape ICD carries out both announced and unannounced visits to police stations. Respondents explained that when ICD monitors announce their intended visit to a particular police station beforehand, they find that the station is usually well-prepared. However, it is a cause for concern that when they conduct unannounced visits, instances of non-compliance with the DVA and National Instruction are found.

This office makes use of the general monitoring instrument described above. Respondents raised the issue of access to registers as a particular challenge encountered during their station audits.

3.2 Training initiatives undertaken by the Western Cape ICD

Since 2007, the Western Cape ICD office has participated in the two-day skills transference training session developed for SAPS members by the training division at the Provincial Commissioner's office. This module includes the following topics, among others:

- what the ICD monitors expect to see at a police station visit; and
- what the duties of a SAPS manager are, including how to fill out and send an application for exemption.

Another training initiative undertaken by the office involves tuition at the SAPS training colleges in Bishop Lavis and Philippi. This outreach programme is a directive from the national ICD office and includes, among others, the following topics:

- the mandate of the ICD;
- the process of investigation;
- the DVA; and
- what is expected of SAPS members.

However, these training initiatives are not funded. The ICD respondents noted that they were experiencing difficulties raising funds for these projects as training initiatives fall outside the scope of its mandate. Thus far the ICD has no tool to evaluate these training programmes.

5 See section below on DoCS for more information on the JCM body.

3.3 Non-compliance

As with their national counterparts, we were interested in the respondents' views on whether the weaknesses they perceived lay mainly in compliance with prescribed *procedures*, in adherence to the *substance* of the DVA or in approaching the legislation with the correct *attitude*. Respondents indicated that they saw shortcomings in all three areas.

They have received complaints of SAPS members 'chasing people away' from the CSC. On numerous occasions they have found that the required registers were incomplete. They accordingly suggested that those in managerial positions should have a firmer hand in monitoring the policing of domestic violence.

Respondents explained that possible reasons for non-compliance by SAPS members related to the complicated and difficult wording of both the DVA and the National Instruction. They recommended that the language be simplified or the National Instruction be reduced to a 'simple' document. SAPS members are required to be familiar with a plethora of statutes, while many of them are not highly educated. That said, they also stated that SAPS members' attitude is attributable to their levels of understanding of the DVA and the National Instruction. Thus, a change in their attitude towards domestic violence could only benefit their understanding of their role as SAPS members.

The Western Cape ICD has found that what was being taught to student constables during basic training was differently interpreted at the CSC. They accordingly suggested that more 'in-house' training should take place at station level by SAPS members themselves. They also reported that the two-day skills transfer training is mostly attended by members in managerial positions, with the idea that these participants will disseminate the information and train other members at their respective stations. However, the ICD has found that this does not necessarily take place at station level.

4. Department of Community Safety

The Western Cape provincial DoCS, which forms part of the provincial government (under the political leadership of the MEC for Community Safety),⁶ has a directorate responsible for civilian oversight. The functions of this directorate include, among other things, the monitoring of policy implementation and service delivery of the SAPS. It has accordingly also undertaken certain oversight functions in respect of the implementation of the DVA.

We therefore conducted an interview with a representative from this department. The interview schedule was broadly similar to the one used for the focus group discussions with representatives from the ICD, but omitting the second section of the interview (in

⁶ At the time of writing, this position was held by Mr Patrick McKenzie, who was succeeded by Mr Lennit Max following national and provincial elections in April 2009.

light of the fact that this department does not currently present any training workshops or similar sessions for SAPS members).

4.1 Monitoring functions

We firstly enquired how the DoCS interpreted its mandate relating to the monitoring of SAPS compliance with the DVA. The interviewee explained that the department saw its mandate as extending beyond the Act itself. This was apparent, for example, in the different tools that investigators used to elicit information. For example, they would go to the police station and look at the SAPS 508(a) and (b) forms to see whether they matched up. They would also look at arrests for breach of protection orders. Furthermore, the investigators use a monitoring tool that entails speaking to the complainant (victim) to establish the nature of the service she received from SAPS members.⁷ The DoCS investigators also look at how many members have been trained, how many victim support workers have been trained, whether the station has established relationships with accredited organisations in order to ensure that victims of violence receive counselling, etc. The DoCS therefore sees its mandate as not only looking strictly at whether the SAPS complies with the DVA, but rather more broadly at how the police are dealing with domestic violence.

In the Western Cape an important recent development on provincial level has been the establishment of a JCM body, consisting of the DoCS, SAPS (various directorates, including the National Evaluation Services), ICD, and the Metro Police. This body, which has signed a memorandum of understanding to ensure that there is a shared vision, jointly examines instances of non-compliance with the DVA.⁸ The respondent reported that this body is a good forum to ensure police accountability for non-compliance and that the levels of cooperation from all partners are generally acceptable. The initiative appears to be a 'first' nationally, although Gauteng is reportedly in the initial stages of developing a similar forum, with the additional benefit of an electronic record-keeping system.

The JCM body has appointed a task team to develop a tool for data collection to measure service delivery in respect of domestic violence and this will be piloted at nine stations.

Regarding station visits, the respondent explained that these are conducted twice a year, together with representatives of the ICD and SAPS National Evaluation Services. Each representative examines a different aspect: one inspects the domestic violence registers, another contacts complainants, and yet another examines cases that have been struck off the court roll to determine the reasons for this. Although the DoCS had previously tried to include all the police stations in the province in its schedule of visits, this was impossible due to resource constraints and the number of stations in the province (more than 160). At present, the station visits are limited to the 53 stations included in the Premier's social transformation programme. Where the DoCS receives complaints from a specific station, such a station would also be included in the programme.

⁷ See discussion below.

⁸ The JCM body handles not only non-compliance under the DVA, but also other instances of alleged police misconduct, e.g. deaths in custody.

Station visits are conducted without prior announcement and are accordingly not planned in advance with SAPS management. (The Department's view is that everything should be in place at all times and it should therefore not be necessary to arrange visits beforehand.)

The schedule used by DoCS investigators to assess administrative compliance with the DVA is similar to the one employed by the ICD.⁹ The interview schedule used to conduct telephonic interviews with complainants of domestic violence incidents to assess the levels of police service delivery consists of eight questions that may largely be answered with 'yes' or 'no'. The questions cover aspects such as whether the police official explained all procedures to the complainant, whether he or she spoke to the complainant in the language that they preferred, whether the complainant was given the choice to speak to an official of the same sex or ethnic group and whether he or she was taken to a place that was completely private in order to take down their statement.

Once the DoCS investigator has completed the station visits, a report is compiled and submitted to the head of the department and then to the MEC. The MEC brings the report to the attention of the SAPS provincial commissioner. When the investigator is working with the ICD, copies of station reports are sent to each station as well.¹⁰ Information flowing from station visits is also shared through the JCM body.

Challenges encountered during station visits include the fact that the prescribed registers are not where they are supposed to be. Police officials also occasionally berate the DoCS representative conducting these visits for not warning them in advance 'so that they could get organised'.

4.2 Non-compliance

Our first question here related to the experience of the interviewee regarding police compliance with the DVA. He reported that in his opinion some police stations were doing well while some were faring very badly. It is still important to ensure that police stations work hard towards full implementation of the DVA, including training of all members. Many stations still need to be sensitised about the fact that dealing with domestic violence is not just about compliance with the National Instruction, but rather addressing a broader socio-economic problem. Instead of being concerned about being monitored, they should see it as a matter of principle and commitment, and work to reverse the current trends.

Asked to identify where the main weaknesses lie, i.e. in terms of procedure, substance or attitude, the interviewee pointed out that completion of the SAPS 508(a) form is particularly problematic, for example, where details are missing such as the date on which the complaint is received, the brief description of the incident and the details of the member who assisted the complainant. It is especially important to note down the complainant's contact details correctly. He has noted that the second page, which contains the details of assistance provided, is not really discussed in detail with the victim. He

⁹ See discussion above.

¹⁰ See discussion on ICD reporting system above.

further explained that members often used their own judgment about whether a specific incident constituted 'domestic violence' and this could be influenced by members' attitudes. He added that some SAPS members do not know what Form 1 is.

The interviewee suggested that one of the reasons for non-compliance could be the fact that the administrative requirements are labour-intensive and his recommendations included the design of a more user-friendly format. He also added that since not all SAPS members have been trained, not everyone understood the significance of proper record-keeping.

5. Discussion

As is the case for both station commissioners and SAPS members, the interviews and focus group discussions with representatives from the ICD and DoCS yielded information on a much broader range of issues than just the training of members to comply with the DVA. Certain of these issues, such as an in-depth discussion of the monitoring functions of the ICD and DoCS, or the interaction between the ICD (which can only recommend certain disciplinary steps against SAPS members) and the accountability of the SAPS in respect of these recommendations, go beyond the scope of this report.

The *ad hoc* training sessions conducted by ICD members as 'remedial' measures at station level are a commendable practice, being both responsive to a clearly identifiable need and cost-effective. These training sessions have the additional advantage that they do not require SAPS members to be away from their stations for extended periods. (It may, however, be useful to develop an evaluation form to test knowledge and skills acquired during the training, even if the training sessions are conducted on informal basis.)

Similarly, the participation of ICD members in the two-day skills transfer workshops developed by the Western Cape provincial Training Division appears to be a successful initiative, since it gives representatives from stations a clear idea of what the ICD monitors expect when conducting station audits. At the same time, interaction with skilled ICD investigators may provide inexperienced members with opportunities to have questions answered about difficulties encountered in practice.

These training initiatives appear to be in line with the extended understanding of its mandate that the ICD has adopted in respect of the policing of domestic violence. Nevertheless, two concerns arise here. The first relates to resources: if one accepts that such training is indeed an integral part of the ICD's sphere of work (an approach that we support), it is important that the required resources are allocated. The second concern is that where ICD members conduct training independent of the SAPS Training Division, there is a significant potential for overlap or duplication of training initiatives between these two bodies. We will accordingly recommend that the ICD informs the SAPS Training Division at the provincial level of its training initiatives, in instances where such training is not done jointly. This liaison is also necessary to ensure that

conflicting *content* is not conveyed – an issue that was raised in an interview by one of the station commissioners.¹¹

We do need to add one caveat regarding the participation of ICD staff members in training courses at SAPS training colleges. It is understandable for the ICD representatives to contribute to such courses in respect of their particular areas of expertise, which would include what the ICD investigators expect in their technical inspections during station audits. On the other hand, it would not make sense for ICD members (who are currently doing this training without funding) to conduct training on areas that should fall within the expertise of SAPS instructors.

Turning to the DoCS, our first observation here is that the JCM body that has been established in the Western Cape appears to hold promise as a forum for increasing police accountability for instances of non-compliance with the DVA, and, as such, deserves to be considered for replication in other provinces. Although this body does not add any additional ‘teeth’ to any of the individual monitoring bodies taking part, it appears as if the combined presence of the different organisations and departments provides a greater sense of urgency.

A second observation is that given the similarities in the monitoring functions carried out by the ICD and the DoCS, liaison between the two bodies on station audits is important to avoid duplication. It is encouraging to note that resources are being ‘pooled’ and joint station visits conducted. It would further be useful if the DoCS’s reports (or key findings from DoCS visits) are made available in the public domain.

Having said this, the presence of a second monitoring body to complement the work of the ICD is a definite advantage and opportunities should be identified to maximise the potential for additional synergies between the ICD and DoCS. We address this in our recommendations below.

Finally, although this section does not address the question of monitoring in detail, it is worth pointing out that the aspects of compliance monitored especially by the ICD fall almost exclusively in the sphere of responsibility of the station commissioner, particularly in terms of the prescriptions set out in the National Instruction. This emphasises yet again the pivotal role played by station commissioners in ensuring compliance with the DVA and the National Instruction.

11 See Chapter 5 Para 3.3.1.

Chapter 7

Conclusions and Recommendations

1. Introduction

In this chapter, we revisit the central research question,¹ and also draw together observations already set out in the report. Finally, we set out our proposals with reference to these observations, as well as to the recommendations of research participants.

2. Returning to the central research question

In Chapter 3, we identified the central research question for this study as follows:

Do current training programmes provide SAPS members with the knowledge and skills required to apply [core components of] the Domestic Violence Act and National Instruction in practice?

It will be recalled that the following six core components of compliance were formulated:

- to listen to the complainant and treat her with respect;
- to provide her with immediate assistance;
- to ensure her safety (including by arresting the perpetrator, where appropriate) and inquire into her injuries;
- to inform her of her rights and options;

¹ See Chapter 3.

- to assist her to obtain medical attention and find shelter and to refer her to other service providers, where appropriate; and
- to open a criminal docket and investigate the case.

We will respond separately regarding SAPS members and station commissioners.

2.1 SAPS members

As a starting point it is useful to recount here that we were mindful, in interpreting the research findings, that this is a small-scale, qualitative study and that care therefore had to be exercised in terms of generalising the findings. We are accordingly not claiming that our conclusions hold true in respect of all SAPS members or station commissioners nationally, or even in the Western Cape. At the same time, we do believe that the similarities that we observed in the responses allow us to identify certain trends and patterns. Confirmation has also been found in responses from the ICD and DoCS and secondary sources.

Regarding SAPS members, our findings in response to the above research question is a qualified 'yes'. It appeared, from the interviews, that the majority of the research participants had a basic awareness of the DVA and the National Instruction. Their explanations of the meaning of operational concepts such as 'domestic violence', domestic relationship' and 'protection of the complainant' were, while basic, generally satisfactory.

When it came to the practical application of their knowledge in a 'problem-solving' scenario, it was notable that the majority of interviewees experienced difficulties when multi-faceted variables were included, for example, the possibility of more than one complainant (in Case Study 1) or the need to evaluate Lindiwe's state of intoxication before taking her statement (Case Study 2). Especially in Case Study 2, the inclusion of this component appeared to result in easily retrievable knowledge that should have been available for problem-solving, being 'lost' and new solutions being created. On one hand, this points to limitations in the ability to *apply* existing knowledge; on the other hand, it links up with the general theme emerging from comments regarding existing training courses (as well as recommendations by research participants) that training should be more 'practical' and oriented towards practical problem-solving. We were at the same time disconcerted by the fact that 91 per cent of interviewees indicated that they encounter similar cases in practice. The question that arises is: to what extent does the same problem-solving process also apply when members are confronted with 'new' variables challenging their ability to apply their knowledge in practice?

We were encouraged to note that 73 per cent of the SAPS members interviewed had received training on the DVA. (This contrasted favourably with a finding of 45 per cent who reported having received training on the DVA in a study conducted in the Eastern Cape in 2005.)² As indicated, for the majority of these respondents this training had consisted of more than one day. However, we observed that it was not possible to draw sharp distinctions in the differences in levels of knowledge between those members who

2 Artz *et al* (2005) 116. In this instance, n=150.

had been trained and those who had not. The qualitative nature of the research instrument did not allow for a precise 'points-based' distinction between those interviewees who had attended training on the DVA and those who had not; hypothetically speaking, such a comparison would have been an interesting exercise, since our impression was that in a number of cases 'untrained' interviewees may have fared better than 'trained' ones.

There are different reasons for this observation. One is the qualitative nature of the interview and the fact that, as indicated, there were certain questions where we could not take a 'right' or 'wrong' approach in evaluating the responses received. Another is that even where formal feedback sessions are not held for members who have attended training courses to share their new knowledge with their colleagues at station level, knowledge dissemination does occur in informal ways. The informal training initiatives used by station commissioners, such as station lectures, may of course also play a role.

A further observation is that the notion of 'training' should be understood to encompass a range of training initiatives. This range included the basic training conducted with new recruits, the two-day skills-transfer workshops recently developed in the Western Cape, as well as five-day training courses dealing specifically with the DVA. However, participants also referred to being trained on domestic violence as part of their training on victim empowerment. This means that it is fairly difficult to offer recommendations in respect of particular training initiatives, except where participants were specific in their comments. It also implies that it is a complex task to draw even comparisons between the different training courses that research participants reported having attended.

Having said that, it does appear, given the limited information at our disposal, that there may be gaps in the current curriculum of the basic (six-month) training. We base this observation on various factors. Firstly, on our own observation that respondents who must have received training on the DVA as part of their basic training during the past seven years indicated that they had not been trained. Secondly, the majority of interviewees who could not recall the content of their training were those who had been trained as part of their basic training. Thirdly, feedback from student constable interviewees indicated that domestic violence received very little attention during the six-month basic training period and that trainees have a lot of other information to absorb during this period. Another student constable explained that he found it difficult to apply in practice what he had learnt during his basic training. Fourthly, although the number of participants who were student constables was very small ($n=6$), our qualitative assessment of these responses was indeed that these participants experienced difficulties across a number of questions. These factors indicate that the basic training curriculum and training methodologies deserve further attention.

On the topic of training methodologies, there appears to be a need to adjust the current training methodologies to be more practice-oriented. This is borne out by the following:

- Participants reported that training methodologies predominantly consisted of lecture-style presentations, rather than taking the form of group work and being based on practical examples.
- The difficulties that certain respondents showed during the interview in systematically applying their knowledge to hypothetical scenarios suggested a lack of prior experience in this type of problem-solving activity.

- Recommendations from members included the use of more practical examples and role playing as methodologies for training.

Looking again at the six core components of compliance as identified above, our assessment is that there are two elements where specific attention is warranted in terms of training, namely:

- to ensure the complainant's safety (including by arresting the perpetrator, where appropriate) and to inquire into her injuries; and
- to inform her of her rights and options.

Our concerns specifically arise from our observations around *arrest* as well as the use (or rather, failure to do so) of *Form 1* to inform the complainant of her rights and options. However, it should be noted that these two elements do not operate in isolation; a failure to arrest, for example, may also mean that the police official similarly omits to open a criminal case docket and initiate an investigation. Along the same lines, if the complainant is not duly advised of her rights and options, she may not be aware of the fact that she can lay criminal charges in addition or as an alternative to obtaining a protection order against the perpetrator.³ This will in turn influence the element of opening a docket and investigating the case.

It should be noted that although the interviews with members did not directly address all components, we gained information about these components from interviews with station commissioners as well. For example, looking at the section of the interview on prioritisation of domestic violence cases, station commissioners reported an average target time of 12.7 minutes for responding to domestic violence complaints, and the majority [16 out of 20] respondents indicated that these targets were being met. Station commissioners also reported that they approached the issue of service of protection orders by police officials at their stations with a sense of urgency. This suggests that members are provided with guidance from management level to provide complainants with immediate assistance (the second core component of the six).

2.2 Station commissioners

As was the case with members, it was encouraging to observe that 19 of the 20 participants had been trained on the DVA.⁴ We noted the same trends here, i.e. that the training consisted of a broad range of initiatives, and that the training methodologies used were reportedly mainly lecture-style and based on theory rather than being practical or experiential.

The responses to the section of the interview relating to the management of domestic violence cases provided researchers with valuable insights into the role of station commissioners in ensuring compliance with the DVA. They also yielded a number of

3 Provided that the act of domestic violence also amounts to a criminal offence; not all acts listed as 'domestic violence' in the DVA also constitute criminal offences, e.g. 'emotional abuse', 'harassment', and 'stalking'.

4 By comparison, 76 per cent of the station commissioners in the 2005 Eastern Cape study had received training on the DVA ($n=28$). See Artz *et al op cit.* 56.

examples of ‘good practices’ in the management of domestic violence. An in-depth discussion of these practices would extend beyond the scope of this report. However, this section, together with the information gained from the ICD and DoCS, made it clear to us that station commissioners to a large extent hold the key to successful compliance with the DVA.

The first point of importance is responsibility for training of members at station level. As noted, there appear to be different approaches to this question. The first method is the ‘hands-off’ approach, which assumes that training courses on the DVA are co-ordinated centrally by the Training Division and therefore no training initiatives are required at station level. This attitude is typified by a respondent who explained that only one or two persons can attend a training session at a time and stations have to wait for nominations to be called. He pointed out that at the current rate, it would take approximately five years for all members to ‘know domestic violence’.

On the other end of the spectrum, one finds the proactive approach of a station commissioner who had arranged training for the members of the Visible Policing shifts, which meant that all these members would be trained within a period of three months after representatives of the station had attended the two-day skills transfer workshop on domestic violence. Given the demands placed on members by the DVA and National Instruction and the reality of limited opportunities to attend courses held at training centres away from stations, there can be no doubt that station commissioners have to take responsibility for training at station level – even if this is not stated explicitly in the National Instruction.

This acknowledgment does not necessarily imply that station commissioners have to conduct the training themselves; as indicated in the above examples, members who have attended formal training sessions may be required to repeat the training on their return. NGOs, members of specialised units (e.g. FCS units or Designated Police Officials [in terms of the Firearms Control Act 60 of 2000]) or the ICD may also be approached to participate in training sessions.

Having said this, it is important for station commissioners to be equipped for the task of training and it could be useful to run workshops on generic training skills that include the use of multi-media, such as data projectors, and incorporate practical scenarios and evaluation of knowledge after training. Needless to say, since these skills would be used for training in other areas in addition to the DVA, this would be a generally valuable investment. Workshops or training sessions of this nature would also enable station commissioners to exchange good practices on informal training opportunities. Another option to be explored is an email discussion group or making resources available by means of the internet.

As noted, the section on prioritisation of domestic violence cases contributed to a broader understanding of the policing of domestic violence. One gap that we identified was in relation to the measurement of success or progress: it is apparent from the responses of participants that this is an intricate phenomenon, which is complicated further by the fact that no single offence of ‘domestic violence’ is registered on the CAS. Any attempt at measuring progress will therefore have to be multidimensional, with more than one measuring tool – similar to the approach adopted by the DoCS. (The monitoring process

followed by the DoCS consists of telephonic interviews with complainants, audits of the prescribed documents and registers as well as an examination of dockets where the case has been struck from the court roll.)

One recalls here the various measures that have been introduced by station commissioners to gauge or monitor the levels of service provision at their stations, including tracking incoming complaints, checking whether they have been entered into the relevant registers and contacting complainants telephonically to establish whether they are satisfied with the service they received (with contact details sourced either from protection orders or from dockets). If dockets are drawn as part of such a monitoring system, these should include not only cases that have been removed from the court roll, but cases covering the whole spectrum of the criminal justice process.

Our recommendations in this regard accordingly include the development of a system to enable station commissioners to monitor progress or success at station level in a meaningful way. If such a measuring system or tools are in existence, it is evident that these have to be introduced and applied at the stations included in this study.

3. Role of oversight bodies

The oversight bodies operating in the Western Cape (i.e. the ICD, DoCS and the SAPS Evaluation Services) are relatively well placed in the sense that the JCM body appears to be amplifying their capacity. This should allow these organisations to work together in a co-ordinated way in order to systematically visit more police stations more regularly. At present, the one danger that may exist is duplication; however, the JCM body and the opportunities it provides for structured collaboration should hopefully obviate this prospect.

In the interests of accountability, it is important for both the ICD and DoCS reports to be made available in the public domain. Specific proposals regarding the oversight bodies, including the parliamentary portfolio committee, are set out in more detail below.

4. Recommendations

In this section, we recount the general themes of the recommendations received from research participants and supplement them with our own proposals. We have attempted to group them according to the department or division that may bear responsibility for implementation, bearing in mind that there may be areas of overlap.

4.1 SAPS training divisions (national and/or provincial)

The general theme of recommendations from SAPS members was that more members need training on the DVA and that more frequent and/or more in-depth courses should be offered. Station commissioners emphasised that training on the DVA should be an ongoing activity for every member, with ‘refresher’ courses or sessions featuring high on the list of recommendations.

Based on our observations regarding basic training, we recommend that special attention be devoted to training new students on domestic violence. Another observation relates to the training methodologies reported by interviewees. It is clear that for the most part, training consisted of ‘lecture-style’ presentations; where training did include practical case studies, role play or other experiential work, interviewees spoke favourably of these methods. A strong recommendation emerging from interviewees is that training should be more practical and based more on practical examples. Suggestions from other jurisdictions that have been found to be helpful include playing tapes of domestic violence calls and discussing police strategies to break the cycle of repeat victimisation.⁵

We further recommend that training divisions:

- ensure uniformity between training initiatives (for example, through liaison with the ICD) to avoid conflicts in content, especially in relation to ‘technical’ requirements such as the completion of domestic violence registers;
- examine the content of different training courses relating to domestic violence to avoid duplication;
- liaise with SAPS Legal Services in respect of training, especially relating to station commissioners;
- periodically conduct interviews evaluating training on the DVA, which will provide trainers with feedback and with practical examples to incorporate into training material; and
- develop and present a workshop for station commissioners or senior station managers on basic training skills.

4.2 Topics for training

Based on the interviews, we have identified areas where training should be developed and/or current knowledge reinforced. While we acknowledge that a number of these topics (for example, arrest and completion of forms and registers) are already included in training, the interviews showed that specific attention is warranted. We also suggest issues that may not currently form part of training on domestic violence.

- Arrest:
 - when to arrest for breach of a protection order (contravention of section 17(a) of the DVA) and when to arrest for assault;

5 Plotnikoff & Woolfsen (1998) 38.

- when to arrest the perpetrator and when to issue him with a notice to appear in court (using Form 11);
- when a perpetrator can be arrested in the absence of a protection order (sec 3 of the DVA); and
- what to do when you cannot take an affidavit regarding breach of protection order, e.g. because the complainant is intoxicated;
- administrative aspects: completion of forms and registers;
- the definitions of ‘domestic violence’ and ‘domestic relationship’;
- the purpose and importance of Form 1;
- referral of the complainant to service-providing organisations or specialised units;
- conflict resolution, i.e. problem-solving aimed at stabilising the situation;
- alcohol and domestic violence;
- domestic violence and HIV/AIDS: criminal offences (attempted murder, assault), HIV/AIDS and DVA;
- firearms and domestic violence: DVA and the Firearms Control Act – how do they work together; and
- domestic violence committed by fellow SAPS members.

4.3 SAPS management (national and/or provincial)

The following are recommended for management:

- policy guidance to station commissioners regarding their responsibility for training on the DVA at station level;
- development of a measurement tool(s) for measuring progress in policing domestic violence at stations. If such an instrument is already in existence, it should be implemented at the stations included in the study;
- the JCM body implemented in the Western Cape is a promising practice, which should be considered for replication in other provinces;
- co-ordination of opportunities for informal exchange of good practices around training and discussion of problem cases, for example, by means of an email discussion list or as a standing item at regular management meetings. The use of internet technology should also be explored.

4.4 Station commissioners

In respect of station commissioners, we recommend the following:

- refresh own knowledge on legal provisions regarding arrest in domestic violence cases, including section 3 of the DVA;

- take steps to ensure that knowledge is disseminated when members have attended formal training courses;
- make use of informal training opportunities, such as station lectures, meetings with shift managers or feedback to members while registers are being checked;
- take responsibility for training of reservists, including evaluation of knowledge following training;
- when student constables are placed out to stations, ensure that they work with FTOs (or are paired up with appropriate mentors where FTOs are not available) to ensure that their knowledge is consolidated and that good habits are entrenched; and
- monitor this learning process.

We have identified the following good practices regarding the prioritisation of domestic violence at station level:

- *Service of protection order*: it appears to be a good practice to allocate specific members to attend to this function. Where this is not feasible (either due to personnel constraints or because the station does not handle a great number of protection orders for service), a dedicated manager is appointed to oversee this area. Specific time targets are set within which the protection order must be served. Prompt service of protection orders is important, since it forms part of the station audit conducted by the ICD and also is an integral part of the protection envisaged by the DVA.
- *Steps to ensure compliance with administrative requirements of National Instruction*: Certain stations make use of a ‘three-level’ system, where the registers are checked on a daily basis in the CSC, on a weekly basis by the dedicated manager allocated to this function and on a monthly basis by the station commissioner. (At one of the smaller stations, the station commission carries out weekly inspections.) Notably, two station commissioners had also issued station instructions dealing with the management of compliance with the National Instruction.

4.5 Independent Complaints Directorate and Department of Community Safety

For purposes of these recommendations, we have not drawn a particular distinction between the national and provincial offices of the ICD. However, the proposals set out here mostly relate to the *provincial* office.

We recommend the following:

- the allocation of additional resources to enable ICD members to conduct training on compliance requirements where necessary;
- liaison between ICD and the SAPS training divisions at provincial level to ensure that conflicting content is not conveyed and to streamline training initiatives, thus avoiding overlap or duplication;

- liaison between the ICD and the DoCS regarding station visits to ensure that opportunities for working together (and making the most of joint resources) are explored; and
- publication of monitoring reports.

We further recommend that provincial DoCS investigators are also involved in ICD training initiatives, given their experience in conducting station audits and the information gained in the process.

4.6 Department of Justice and Constitutional Development

We propose that the Department of Justice and Constitutional Development, which bears responsibility for this function, revisits Form 1 in order to make it available in languages other than English and Afrikaans, and also to simplify the language where possible. The latter recommendation is specifically in line with proposals received from participants.

4.7 Areas for further investigation

We have identified a number of aspects that warrant further attention and/or investigation. Given that this component of the study does not constitute a comprehensive investigation into the content of SAPS training manuals on domestic violence or the managerial arrangements of the organisation, it may well be that the answers to certain questions can be found without much trouble. In other instances, it is already clear that additional research is warranted.

- *Role of Field Training Officers in training on domestic violence:* The scope of this study has not been extensive enough to yield significant information on the role of FTOs in training on domestic violence. However, it should be clear that given the need for practical in-service training, the FTOs can potentially play a significant role both in training new students when they arrive at the stations from their basic training, as well as in training for ‘established’ members. Our findings, on the other hand, indicate that FTOs are used for functions other than training due to resource constraints at station level. While this is understandable, it is not an ideal position and requires another look at the optimal use of FTOs for training purposes.
- *Role of training in performance management systems:* An issue that we have not explored in detail is the extent to which the completion of training courses (e.g. on domestic violence) features in the performance management of members.
- *Monitoring progress of the Joint Complaints Monitoring body:* We have recommended the replication of the JCM body in other provinces since this mechanism appears to enhance the accountability of the SAPS in terms of compliance with the DVA. However, in order to support such replication as a ‘best practice’, it is important to document and monitor the operation of the body in order to demonstrate innovation and successes. This should ideally be an ongoing aim of the JCM itself.

- *Implications of alcohol abuse (by both complainant and perpetrator) for policing of domestic violence*: The realities of policing domestic violence under circumstances where alcohol abuse is endemic have not really been addressed in South African literature, and this matter deserves further attention both in terms of research as well as policy-making within the SAPS itself. As suggested above, consideration should also be given to inclusion of this topic in training on domestic violence, with specific reference to conflict management aspects.
- *‘Transformative’ training*: A final aspect that was raised by one of the station commissioners, but hasn’t really been discussed elsewhere in this report, is the question of training as personal transformation. In other words, to which extent does one expect training on domestic violence to convey knowledge and skills, or to also transform the trainee’s personal attitude towards domestic violence? Given the highly personal nature of domestic violence, and the fact that an individual’s attitude towards such violence is underpinned by their understanding of power and gender as well as personal experience, the position of training cannot automatically be accepted as a ‘neutral’ one.

5. The way forward

On completion of this report, copies will be distributed to all research participants as well as the relevant divisions of SAPS. We are also planning dissemination workshops where the research findings will be discussed. Further work will include collaboration with the SAPS Training Division in the Western Cape to establish how the findings may inform future training of SAPS members on domestic violence.

Although this report does not provide conclusive answers to resolve all problems relating to police compliance with the DVA, it does give a ‘snapshot’ of the views and experiences of members and station commissioners regarding training. As such, we hope that the findings will contribute to both existing and future training programmes.

Bibliography

- Abrahams, N *et al* (1999) *'I Do not Believe in Democracy in the Home': Men's Relationships with and Abuse of Women* Tygerberg: Medical Research Council.
- Abrahams, N *et al* 'Sexual violence against intimate partners in Cape Town: Prevalence and risk factors reported by men' (2004) 82(5) *Bulletin of the World Health Organisation* 330–337.
- Altbeker, A (2005a) *The Dirty Work of Democracy* Johannesburg: Jonathan Ball.
- Altbeker, A 'Policing domestic violence: The enthusiasm gap' (2005b) 12 *SA Crime Quarterly* 138-143.
- Artz, L (2003) *Magistrates and the Domestic Violence Act: Issues of Interpretation* University of Cape Town: Institute of Criminology.
- Artz, L *et al* (2005) *Domestic Violence Act Compliance Monitoring Survey: Final Report*. Unpublished report prepared for SAPS/ European Union.
- Clark, B 'Cold comfort? A commentary on the Prevention of Family Violence Act' (1996) *South African Journal of Human Rights* 587–604.
- Combrinck, H 'The dark side of the rainbow: Violence against women in South Africa after ten years of democracy' (2005) *Acta Juridica* 171–199.
- Fedler, J 'Lawyering domestic violence through the Prevention of Family Violence Act – An evaluation after a year in operation' (1995) 112(2) *South African Law Journal* 231–251.
- Hanmer, J & Griffiths, S (2000) *Reducing Domestic Violence... What Works? Policing Domestic Violence* London: Home Office Research, Development and Statistics Directorate.
- Human Rights Watch (1995) *Violence against Women in South Africa* New York: Human Rights Watch.
- Independent Complaints Directorate (2003–2007) *Domestic Violence Report* (except January–June 2007) Pretoria: Independent Complaints Directorate.
- Jewkes, R 'Intimate partner violence: Causes and prevention' (2002) 359 *The Lancet* 1423–1429.
- Masuku, T (2005) *Strengthening Democratic Policing in South Africa: Enhancing and Coordinating the Internal and External Accountability Systems of the South African Police Service* Braamfontein: Centre for the Study of Violence and Reconciliation.
- Mathews, S & Abrahams, N (2001) *Combining Stories and Numbers: An Analysis of the Impact of the Domestic Violence Act (No. 116 of 1998) on Women* Cape Town/ Tygerberg: Gender Advocacy Programme & Medical Research Council.
- Matthews, S *et al* (2004) 'Every six minutes a woman is killed by her intimate partner' *MRC Policy Brief* 5 June 2004.
- Newham, G 'Strengthening democratic policing in South Africa through internal systems for officer control' (2005) *South African Review of Sociology* 36(2) 160–177.
- Newham, G & Bruce, D (2004) *Provincial Oversight of the Police* Braamfontein: Centre for the Study of Violence and Reconciliation.
- Nicholas, R (2005) *The Role of Alcohol in Family Violence* Marden: Australasian Centre for Policing Research.
- Parenzee, P *et al* (2001) *Monitoring the Implementation of the Domestic Violence Act: First Research Report* University of Cape Town: Institute of Criminology.

Parenzee, P & Smythe, D (2003) *Domestic Violence and Development: Looking at the Farming Context* University of Cape Town: Institute of Criminology.

Plotnikoff, J & Woolfsen, R (1998) *Policing Domestic Violence: Effective Organisational Structures* Home Office Policing and Reducing Crime Unit: Police Research Series.

Rollings, K & Taylor, N 'Measuring police performance in domestic and family violence' (2008) December *Trends & Issues in Crime & Criminal Justice*.

Smit, J & Nel, F 'An evaluation of the Domestic Violence Act: What is happening in practice?' (2002) 15(3) *Acta Criminologica* 45–55.

South African Law Commission (1999) *Report on Domestic Violence* Pretoria: South African Law Commission.

South African Police Service (2006) *Domestic Violence Report July–December* Pretoria: South African Police Service.

South African Police Service (2007) *Domestic Violence Reports*, Pretoria: South African Police Service.

UNAIDS (2008) *2008 Report on the Global AIDS Epidemic* Geneva: UNAIDS.

Vetten, L *et al* (2005) *The Price of Protection: Costing the Implementation of the Domestic Violence Act* Braamfontein: Centre for the Study of Violence and Reconciliation.

Case Law

Carmichele v Minister of Safety and Security and Another 2001 (4) SA 938 (CC).

K v Minister of Safety and Security 2005 (9) BCLR 835 (CC).

Minister of Safety and Security v Hamilton 2004 (2) SA 216 (SCA).

Minister of Safety and Security v Van Duivenboden 2002 (6) SA 431 (SCA).

S v Baloyi 2000 (1) BCLR 86 (CC).

S v Nyalunga [2005] JOL 13254 (T).

Van Eeden v Minister of Safety and Security 2002 (4) AllSA 346 (SCA).

Legislation and National Instructions

Prevention of Family Violence Act 133 of 1993.

South African Police Service Act 68 of 1995.

Constitution of the Republic of South Africa Act 108 of 1996.

Domestic Violence Act 116 of 1998.

Firearms Control Act 60 of 2000.

SAPS National Instruction 7/1999 on Domestic Violence Version 02.00 (published in *Government Gazette* No 207, dated 3 March 2006).

Websites

www.icd.gov.za

www.osf.org.za

www.pmg.org.za

www.saps.gov.za

Annexure A: Form 1

Notice to Complainant in a Case of Domestic Violence

[Regulation 2]

Section 2(b) of the Domestic Violence Act, 1998
(Act No 116 of 1998)

This notice explains your rights and the steps you may take to protect yourself, your children and/or other members of the shared household. If, after reading this notice, there is anything you do not understand I will to the best of my ability explain the contents to you. If I or other members of the South African Police Service present are unable to answer any of your questions regarding this notice, you may contact the clerk of the magistrate's court for further information.

1. I, as a member of the South African Police Service will render such assistance to you as you may require in the circumstances including assisting or making arrangements to-
 - find a suitable shelter; and/or
 - get medical treatment.
2. You may lay a criminal complaint against the person who committed the act of domestic violence (who will now be called the respondent) if the conduct of the respondent constitutes a criminal offence which will be investigated by the police.
3. In addition, you may apply, on any day and at any time, for a protection order at the Magistrate's Court in whose area:
 - you reside, carry on business or are employed, permanently or temporarily;
 - the respondent resides, carries on business or is employed; or
 - the act of domestic violence occurred.
4. I will provide you with an application form if you want to apply for such an order. It is not necessary to lay a criminal charge in order to obtain a protection order.

5. The Court will consider your application and may thereafter issue a temporary order which will:
 - only come into effect once it has been delivered to the respondent (the cost of which you have to pay unless you do not have the means to pay therefor); and
 - be valid for a certain period of time.
6. After such period of time the court will consider to issue a permanent order.
7. In your application you may request the court to prohibit the respondent from:
 - committing any act of domestic violence;
 - getting the help of another to commit any act of domestic violence;
 - entering your workplace, home or the shared residence or any part thereof;
 - preventing you or any child who normally lives in the shared residence from entering or remaining in the residence or any part thereof;
 - committing any other act determined by the court.
8. You may request the court not to disclose your physical address to the respondent. The court may also, in order to protect you and to provide for your safety, health and well being:
 - order that the respondent may pay rent, mortgage or other monetary relief (such as medical expenses and loss of income);
 - refuse the respondent contact with your children;
 - order the seizure of any arm or dangerous weapon in the possession or under the control of the respondent;
 - order that a peace officer accompany you to assist you with the collection of your personal property;
 - impose any other condition it deems reasonably necessary.
9. The court will, when an order is made, issue a warrant of arrest for the respondent. This means that the respondent may be arrested if he or she fails to comply with any provision of the protection order and after you have given the police the warrant and an affidavit that the respondent has breached the order.

WARNING:

It is a criminal offence if you knowingly give false information when applying for a protection order or when laying a criminal charge, you will be prosecuted and may be convicted.

Training for Police on the Domestic VIOLENCE Act

RESEARCH REPORT

This report sets out the findings of a research project aimed at determining whether current training programmes provide members of the South African Police Service with the knowledge and skills they require to apply the Domestic Violence Act and accompanying National Instruction on domestic violence in practice. Against a broader background of building accountability within the agencies of the criminal justice system, this project had as its objectives firstly to strengthen the capacity of members of the South African Police Service to comply with the duties set out in the Domestic Violence Act through evaluating and contributing to existing training programmes where appropriate, and secondly to increasing police accountability in respect of dealing with domestic violence matters through reinforcing the capacity of formal oversight mechanisms.

The report describes the research design and methodology for the field research, which consisted of interviews conducted with police officials and station commissioners at twenty police stations across the Western Province as well as group discussions and interviews with representatives from the Independent Complaints Directorate and the Department of Community Safety. We discuss the results of these interviews, and set out our recommendations to various divisions of the South African Police Service and other bodies.