

Gendering state accountability in South Africa: Police accountability and the Domestic Violence Act

Lisa Vetten

Introduction

In a 1994 submission to the Police Board, the then-South African Police explained its hierarchy of policing priorities:

'It is a world-wide belief that the police should not interfere or get involved in household disputes. The rationale behind this relates to law enforcement as the primary function of the police – and law can only be enforced when someone lodges a criminal complaint with the police. Once they get involved in household disputes, the police are blamed for interfering in private matters.'

*The priorities of policing are determined by the community. Figures of other serious crimes reported to the SAP confirm this fact. More attention has to be devoted to those serious crimes, which are more frequently reported.'*¹

Situating domestic violence somewhere between the invisible and the trivial, the submission was a model of gendered logic, its bias made all the more pernicious by domestic violence being the most common form of violence experienced by women² and by the particular risk faced by women of being killed by their intimate partners.³ In an attempt to eradicate this hands-off approach, legislators took the novel step of prescribing a set of duties applicable to the policing of domestic violence, backed up by an accountability structure intended to identify and penalise non-compliance with this mandate. These are contained in the Domestic Violence Act (DVA) of 1998 and accompanying National Instructions issued by the South African Police Service (SAPS).

While still unparalleled amongst South African laws seeking to promote gender equality, the DVA's accountability structure is by no means unique internationally. Penalties for non-compliance with gender equity commitments are a feature of the 1998 Venezuelan Law About Violence Against Women and the Family, as well as Costa Rica's 2007 Criminalisation of Violence Against Women Law, while the United Nations' (UN) recommendations around good practice in legislating against violence towards women promote the creation of specific institutional mechanisms to monitor implementation of laws (established in Honduras, the Philippines, Spain and Uruguay).⁴

These developments prompt a range of critical questions about how these institutional arrangements work in practice. Do they in fact promote gendered accountability to women? This paper explores these considerations through the lens of the DVA. It begins by briefly sketching a framework for thinking about gendered accountability and describes how oversight is structured by the DVA. It then traces the practice of oversight over time through the archive of documents produced by the agencies responsible for overseeing SAPS. Turning to the future, the paper concludes with a series of recommendations intended to further develop the DVA's accountability framework.

Gendered accountability: A conceptual framework

Accountability is a multi-layered, multi-dimensional concept encompassing two aspects: answerability – the obligation on authorities to explain and justify their actions; and enforceability – which provides for the sanctioning of authorities. Mechanisms of state accountability operate vertically and horizontally to establish different types of relationships between the state, its citizens, and the various institutions and arenas of the state. In terms of the vertical axis, the primary relationship is that between state and citizen, and is chiefly exercised through elections and participation in law reform processes. The horizontal axis, by contrast, is largely closed to non-state actors and is constituted instead by the range of agencies and bodies which monitor and answer to each other.⁵ Because this effectively creates a state monopoly on 'official' oversight of the executive, Goetz and Jenkins argue for 'diagonal' accountability, or the insertion of citizens into oversight functions.⁶ They suggest that five conditions are required to prevent such hybrid efforts degenerating into bland and unproductive exercises:

- Legal recognition of citizens' inclusion within oversight institutions;
- Citizens' on-going presence within the agency's work;
- Structured access to information;
- Procedures organising encounters between citizens and officials during meetings; and
- The right to issue dissenting reports to legislative bodies.⁷

In relation to the police specifically, oversight mechanisms may be both internal and external, consisting of ombuds, human rights desks, independent complaints authorities, judicial reviews and ad hoc parliamentary enquiries. It is through the interaction of this ensemble of institutions and mechanisms, argues Christopher Stone, that accountability is created. Accountability thus resides not in the work of any one mechanism, but in the integrity of the structure as a whole.⁸

Policing, however, is a deeply masculine enterprise, whether gauged by reference to the composition of its workforce or its clientele of suspects. When women enter the picture they do so primarily as victims, particularly of sexual violence, or of abuse at the hands of their intimate partners. Policing thus situates women, men and their encounters with the law in particular ways. To capture the differential impact of state institutions and practices on women and men, Annemarie Goetz proposes conceptualising accountability's various domains in gendered terms. *Legal* accountability will scrutinise police and courts' enforcement of the law, and their gender stereotypes in decision-making. *Political* accountability may be assessed by the extent to which legislatures encourage the participation of women's groupings in the formulation of law and policy, as well as through their efforts to correct gender bias in either existing or proposed law. *Fiscal* accountability may be determined by analysing patterns of expenditure on programmes and legislation promoting gender equality, while *administrative* accountability may be evaluated through the nature and type of performance indicators adopted to measure institutions' and officials' compliance with their gender equity commitments.⁹

While police accountability structures most commonly address individual cases of misconduct, the administrative data they generate can also be analysed for patterns both of performance, as well as complaint.¹⁰ Utilised in this way, accountability mechanisms can encourage learning and reflection in state institutions.¹¹ Developing this idea further in relation to domestic violence, Betsy Stanko proposes three sorts of analytic reviews: one of information gathered in relation to domestic violence homicides; a second scrutinising the nature of requests for policing services in relation to domestic violence; and the third examining the needs of repeat victims of domestic violence. The findings of each analysis, she suggests, can inform the development of policing interventions on an ongoing basis and ultimately ensure better safety for domestic violence complainants.¹²

The Domestic Violence Act's accountability structure

Two notions of accountability inform the DVA. One of these focuses on the conduct of public officials, and the second on the institutional arrangements designed to hold public officials to account.¹³ In terms of the former, the DVA prescribes a normative framework of desired conduct for police members which comprises two sorts of obligations: the provision of various policing services to victims of domestic violence; and the proper keeping of records. Non-compliance with either set of responsibilities is classified a form of misconduct in terms of the South African Police Service Act of 1995.¹⁴ These duties then give rise to the institutional mechanisms comprising the DVA's accountability structure.

Services to be provided by SAPS include supporting complainants to find suitable shelter or obtain medical treatment, as well as providing complainants with written information about their rights in the language of their choice. In addition, members are required to explain the contents of the notice to complainants and inform them of available criminal and civil remedies. Police members are further obligated to serve notice on the abuser to appear in court;¹⁵ serve protection orders;¹⁶ arrest an abuser who has breached a protection order, or committed a crime¹⁷ (even without a warrant);¹⁸ remove weapons from the abuser, or from the home;¹⁹ and accompany the complainant to collect personal items from her/his residence.²⁰

Where the DVA largely prescribes services to victims, National Instruction 7/1999 and the National Policy Standard for Municipal Police Services Regarding Domestic Violence (gazetted in March 2006) set out all aspects of the police's duties to maintain records of domestic violence incidents. These documents comprise, amongst others, domestic violence registers; copies of protection orders and warrants of arrest; and notes regarding the handling of individual complaints. Because these documentary obligations largely provide evidence of individual police officers' compliance with their service duties (although this is not their only purpose), commanding officers are expected to scrutinise these various records and take corrective action both when they are not satisfactorily maintained, as well as when officials have not provided the necessary services. In addition, all cases of non-compliance must be referred to the Independent Complaints Directorate (ICD) which may recommend either exempting or charging officers with misconduct.

Corrective action does not only depend on commanding officers' performance of their supervisory functions. The DVA also created two avenues of complaint for victims of domestic violence: the station commander in charge of the particular station; and the ICD, which could also investigate such complaints and make recommendations to SAPS around how these were to be remedied. Both SAPS and ICD were to submit separate reports to Parliament every six months setting out the number and nature of complaints received, as well as the disciplinary proceedings instituted as a result (along with the outcomes of those proceedings). Furthermore, the ICD was to report on the recommendations it had made to SAPS, while SAPS was to detail its responses to those recommendations.

Chapter 10 of the South African Police Service Act, 68 of 1995 established the ICD to promote proper police conduct. This ranged from investigating deaths as a result of police action, or in police custody, to domestic violence complaints. However, it had no power to enforce the recommendations arising from its investigations. To address these and other concerns, the ICD was reconstituted as the

Independent Police Investigative Directorate (IPID) in 2011. This also resulted in the transferral of the ICD's DVA-related duties to the Civilian Secretariat for Police (CSP).²¹ Although this shift did not particularly alter the structure of accountability, it did away with an avenue of complaint.

The establishment of the CSP is mandated in terms of the Constitution of the Republic of South Africa.²² But while provincial structures date back to this period, legislation detailing the institutional arrangements and functions for the national office was only articulated in 2011 (with the existing provincial structures required to align their plans and operations with the national CSP by May 2013).²³ In terms of the CSP Act, the purpose of the Secretariat is to exercise civilian oversight over the police,²⁴ as well to provide the Minister with strategic advice regarding the development and implementation of policies. The CSP's chief functions and duties in general are supervisory, cooperative and commendatory. In relation to domestic violence specifically, they comprise monitoring the police's compliance with the DVA,²⁶ as well as making recommendations to the police regarding disciplinary procedures and measures to be adopted in cases of non-compliance.²⁷ As an advisory body the CSP cannot enforce compliance with its recommendations and nor is it formally empowered to receive complaints.

Against this backdrop, the paper now describes oversight of SAPS prescribed duties.

SAPS compliance with its duties

Records maintained in terms of the DVA

To assess SAPS' fulfilment of its administrative duties, the ICD developed a checklist against which it audited SAPS performance. While this initially focused on the duties prescribed by the DVA, the ICD expanded the scope of its supervision to assess the training, operational planning and infrastructure (in the form of victim-friendly rooms) required to support the police in the execution of their duties.²⁸ In 2009, the ICD's research division also released a report analysing 30 cases it had identified of police officers killing their female partners between 2004/2005 and 2006/2007.²⁹

Table 1 sets out the percentage of stations visited by the ICD between 2006 and 2011 which fully complied with the record-keeping obligations demanded by the DVA and National Instructions. As the table shows, the majority of stations did not meet the necessary standard – a state of affairs also noted by the Auditor-General in his 2009 report to Parliament.³⁰

No. stations visited	Period	% stations fully compliant with the DVA
245 stations visited for the year ³¹	Jan – June 2006	2%
	Jul – Dec 2006	30%
395 stations visited for the year	Jan – June 2007	57%
	Jul – Dec 2007	28%
434 stations visited for the year	Jan – June 2008	14%
	Jul – Dec 2008	13%
522 stations visited for the year ³²	Jan – June 2009	11%
	July – Dec 2009	8%
208 stations visited for the year	Jan – June 2010	7%
	July – Dec 2010	11%
208 stations visited for the year	Jan – June 2011	12%
	July – Dec 2011	7%

The ICD also routinely highlighted the problem of police officers' lack of training around the DVA to the Portfolio Committee for Police – a concern also shared by SAPS itself³³ and the Auditor-General.³⁴ Figures supplied by SAPS for the period between 2008 and 2010 bear out these concerns: 3 626 officers were trained around domestic violence in 2008/2009³⁵ and 3 181 in 2009/2010.³⁶ When this monitoring function was transferred to the CSP, the Secretariat continued recording the training provided to police officers and also began testing individual officers' knowledge of, and compliance with, procedure. Again, limited evidence of police members' familiarity with the DVA was noted.³⁷

In addition to the focus on training, the CSP continued assessing SAPS regulatory compliance with the DVA and station-level infrastructure supporting the DVA's application. The CSP also began investigating whether or not stations designate specific officers to deal with domestic violence, and collaborate with other local institutions and organisations. Domestic violence committed by police officers is also being recorded, the CSP finding 147 such cases to have been reported at 74 stations between 1 October 2012 and 30 September 2013.³⁸

At the time of writing, the CSP had issued three reports and monitored a total of 427 (38%) stations' compliance with the DVA. However, because the CSP did not name the stations visited between 1 October 2012 and 31 March 2013, more stations may have been revisited than Table 2 calculates. Provincial offices' ability to monitor the DVA is also variable. Both Limpopo and the Eastern Cape have monitored less than 10% of their respective provinces' stations, while KwaZulu-Natal and the Northern Cape have monitored less than a third of their stations. By contrast, Gauteng, North West and Free State have monitored more than 70% of the stations in their provinces. Overall, the number of stations monitored during each of the six-month periods for which reports are available is decreasing, rather than increasing.

Province (no. of stations) ³⁹	April 2012–September 2012 ⁴⁰	October 2012–March 2013	April 2013 – September 2013	No. stations revisited	Total (% of all stations)
Gauteng (141 stations)	38	30	44		112 (79%)
Mpumalanga (85 stations)	11	10	17	2	36 (42%)
Limpopo (96 stations)		4	3		7 (7%)
North West (81 stations)	20	20	20		60 (74%)
Free State (110 stations)	18	37	26	2	79 (72%)
KwaZulu-Natal (185 stations)	11	13	4	1	27 (15%)
Northern Cape (90 stations)	4	8	13	1	24 (27%)
Eastern Cape (194 stations)	1	12	4		17 (9%)
Western Cape (149 stations)	51	11	4	2	64 (43%)
Totals (1 131 stations)	155	145	135	8	427 (38%)

The CSP reports provide only the overall score for a province (and later, by station) but do not detail compliance within each of the domains monitored. This makes it difficult to pinpoint what precisely is not being adhered to and, therefore, which corrective actions need to be prioritised. In addition, neither the DVA nor the accompanying National Instructions require stations to designate a specific police officer to deal with domestic violence and so, strictly speaking, stations who do not have such officers cannot be judged as non-compliant with the DVA's prescripts. Nonetheless, according to information contained in the second and third CSP reports (the first report is excluded because it contains no scores), no stations monitored during this period were fully compliant with the CSP checklist. However, 65% of the 145 stations monitored for the second report had achieved partial compliance (defined as 60 to 99% compliance with the tool) and 35% were non-compliant (recording compliance of 59% or less).⁴¹ In the third report, 69% of the 135 stations monitored were recorded as partially compliant and 31% non-compliant.⁴²

Although the CSP has recommended that monitors revisit stations in order to assess whether or not shortcomings have been corrected, this does not appear to be happening to any significant degree in practice. Further, because the first CSP report did not score stations it is not possible to know if the eight stations revisited during the CSP's third reporting period demonstrated any improvement on the initial assessment. The national office of the CSP also undertook four return visits to stations in 2013, finding two stations to show no change and the other two to have demonstrated some improvement.⁴³

SAPS provision of policing services to complainants of domestic violence

SAPS erratic adherence to their documentary obligations is matched by the unreliable provision of their services. Analysis of ICD reports for 2001 to 2008 collected 1 121 complaints against the police, with the most common being the failure to arrest the abuser (52.5% of all complaints). In a further 14.5% of cases the police were accused of failing to open criminal cases. In 12.3% of complaints the police were alleged to have not assisted survivors of domestic violence to find suitable shelter, or obtain medical treatment. This percentage also included cases where the police neither escorted the victim to collect their personal property, nor seized dangerous weapons from the abuser.⁴⁴ While the ICD recommended disciplinary action in 928 (or 82.8%) of these complaints, the police instituted disciplinary proceedings in a scant 48 (5.1%) of cases. In more than two-thirds of cases (68.2%) the police provided either very little or no response to the ICD regarding these disciplinary hearings. As the ICD plaintively – and helplessly – noted in 2005:

*'What should concern our nation, is the blatant failure or unwillingness of the SAPS management in taking disciplinary steps against their members for violating the law. This is evident in the myriad of cases where disciplinary action is recommended by the ICD and yet six months down the line nothing has been done, despite the fact that management up to the level of the Provincial Commissioner is aware of the concerns raised by the ICD on many occasions.'*⁴⁶

SAPS provided the CSP with even less information than the ICD regarding their members' non-compliance with the DVA. During the 18-month period between 1 April 2012 and 30 September 2012 a total of 49 complaints was collated by the national office of the CSP.⁴⁷ By contrast, a SAPS presentation to the Police Portfolio Committee on 13 May 2013 reported that during the 15-month period spanning 1 July 2011 and 30 September 2012, 280 DVA-related cases of misconduct had come to the attention of SAPS' disciplinary fora.⁴⁸

These numbers do not capture the shattering consequences of police members' inaction. In 2009 judgement was handed down against SAPS in *Minister of Safety and Security and Others v WH* (2009) (4) SA 213 (E). In this matter the police failed to effect a warrant of arrest in terms of the DVA, resulting in Mrs WH being raped by her estranged husband. Similarly, in *Minister of Safety and Security v Venter* (570/09 [2011] ZASCA 42) Ms van Wyngaardt was raped by her estranged husband who also shot and injured her companion, Mr Venter.⁴⁹

Approximately one in 20 of the women (4.9%) killed by their intimate partners in 2009 was in possession of a protection order.⁵⁰ Although the circumstances surrounding each death were not captured by the study, other cases reported in the media suggest that in some instances these deaths may well have been the result of police failure to act. For example, on 28 June 2010, Mr Nthite killed his two children and committed suicide while his estranged wife, who had been informed of his intentions, begged the police to act on her protection order.⁵¹ In January 2012, Ms Masemola was stabbed to death by her ex-boyfriend following a long history of abuse, which included burning her house down prior to the attack. Again, despite Ms Masemola being in possession of a protection order, the police had failed to arrest her former partner following any of these incidents.⁵²

As this litany of non-compliance suggests, the various oversight mechanisms mandated by the DVA have not always been effective.

From individual mechanism to accountability structure: The effects of political accountability

The ICD was initially the only audience for its parliamentary reports, SAPS and Parliament only being roused to their responsibilities in 2007. That they eventually did so was the outcome of two processes.

In 2006, the Tshwaranang Legal Advocacy Centre (TLAC) served papers on SAPS indicating its intention to approach the courts for an order compelling the police to comply with their parliamentary reporting obligations. Subsequent discussion between SAPS and the organisation resulted in the latter halting legal proceedings, on the understanding that these would be resumed should SAPS not submit its parliamentary reports within a reasonable period.⁵³ Research which dealt with budgeting for the DVA, as well as compliance with the DVA's prescripts, was also circulating in the public domain during this period, alerting a researcher attached to the Police Portfolio Committee to these duties. She then brought these to the attention of the chair of the Portfolio Committee.⁵⁴ From 2007 onwards, minutes for the Portfolio Committee demonstrate a more consistent engagement by the Committee with SAPS and the ICD around the DVA – and their increasing frustration with SAPS. Indeed, during a discussion on the DVA the Portfolio Committee described the ICD as a 'toothless bulldog', and proposed that legislation be drafted to increase the ICD's capacity, as well as strengthen its powers.⁵⁵

By 2009, other horizontal accountability mechanisms began training their focus on SAPS' implementation of the DVA. The Auditor-General's report for that year expressed its concerns, and the first case dealing with non-compliance appeared before the courts. The Portfolio Committee for Women, Children and People with Disabilities also conducted public hearings around the DVA, in which mention of the police figured prominently.⁵⁶ The following year, Parliament began altering, for good, the ICD's limited powers.

On 2 August 2010, draft bills establishing both IPID and the CSP were introduced at the Portfolio Committee.⁵⁷ The first draft of the IPID bill was unthinking however, and repealed section 18 of the DVA in its entirety. The consequences of this were to remove the obligation on SAPS to comply with the National Instructions issued in terms of the DVA. Further, the repeal of section 18(4) meant that failing to comply with the national instructions and the DVA no longer amounted to misconduct in terms of the South African Police Service Act of 1995. Finally, the loss of section 18(5)(d) removed all obligations upon the police to publicly account for non-compliance with the DVA.⁵⁸

In July of that year, when the call for public comment was issued, a petition protesting the removal of section 18, signed by 17 organisations, including the National Shelter Movement, was submitted to the Police Portfolio Committee. TLAC also appeared before the committee to express its concerns, while the South African Human Rights Commission raised similar issues in its submission.⁵⁹ These interventions led to the Bill being redrafted and a workshop between the CSP and women's organisations discussing how best to structure oversight. A concrete outcome was the creation of a civil society reference group, which was to meet with the CSP on a quarterly basis to address issues of policing in relation to women and children.⁶⁰ However, neither the concern regarding the loss of an avenue of complaint, nor the inability to enforce recommendations, was addressed in substantive ways by the new CSP Act. The ramifications of this decision are taken up later in the paper.

The third, and key, intervention by women's organisations came in September 2011 when the Gender, Health and Justice Research Unit, TLAC and the Limpopo Legal Advice Centre were asked to address the committee, alongside the ICD, on the policing of domestic violence. SAPS were invited to respond to the presentations and were severely criticised by the Portfolio Committee in the process.⁶¹ The effects on senior police management of such a public drubbing were electrifying, and served to place domestic violence on the management agenda in a way that had not been achieved previously. A detailed circular went out to all stations in the country instructing them on their responsibilities, as well as those of the provincial office and SAPS Inspectorate. For the first time, performance indicators were adopted to encourage Provincial Commissioners' administrative accountability for the implementation for the DVA.⁶²

Provincial training targets were set, and by November 2011 a workshop had been arranged to examine how to streamline processes. By 2012, SAPS was exploring the development of a national strategy around the DVA where none had previously existed.⁶³ SAPS' Annual Performance Plan for 2013/2014 also points to increased attention by the police to training around violence against women. Domestic violence was the fifth-largest training programme for that period, with 460 courses planned to reach 6 500 officers.⁶⁴

Parliament and organisations had finally succeeded in embarrassing the police into action, as a circular issued in 2013 reminding SAPS members of the need to comply with their duties implied: 'In this regard SAPS top management is constantly being criticised by the various Portfolio Committees and NGOs for poor compliance to (*sic*) the Act.'⁶⁵

There is also greater evidence of SAPS working with the CSP to improve compliance with the DVA. In 2012, the CSP instituted a quarterly compliance forum, meeting both nationally and provincially, whose purpose is to discuss improving the police's implementation of the DVA.⁶⁶ The forum includes the compliance directorate of the CSP and the following divisions of SAPS:

- visible policing (which reports on the status of the DVA's implementation);
- personnel services (which reports on the status of disciplinary proceedings);
- the human resources division, which reports on SAPS training around the DVA;
- SAPS Inspectorate, responsible for providing information regarding the investigation of cases of non-compliance; and
- crime intelligence, which provides statistics on the reporting of domestic violence to SAPS.⁶⁷

Some conclusions can be drawn from this record. First, while legislating accountability may be the minimum condition for its practice, it is not sufficient. Nor do institutions, by the mere fact of their existence, compel accountability either. In the case of the DVA, it was the increasing practice of political accountability between 2007 and 2013 that eventually converted a set of oversight mechanisms into an accountability structure. As SAPS was increasingly compelled to answer for the implementation of the DVA, a more substantive notion of accountability came into being, one which resulted in greater responsiveness, transparency and liability. However, whether or not this more cohesive set of institutional arrangements will succeed in altering police conduct remains a question for future research.

Second, the interventions of women's groups were catalytic in producing these shifts, highlighting how accountability is as much the product of politics as it is of state institutions. However, these gains were themselves contingent upon other factors, not least the robustness and responsiveness of the Police Portfolio Committee during this period. While the chair of the Committee between 2004 and 2009 did not invite representations from civil society generally, this changed under the two Committee chairs appointed between 2009 and 2014 – Sindiswa Chikunga and then Annelize van Wyk.⁶⁸ Indeed, the engagement between organisations and the Committee provides an all-too-fleeting glimpse of diagonal accountability at work – such as the 2011 Portfolio Committee meeting when organisations were given the opportunity to present what was, in effect, a set of dissenting reports on the policing of the DVA. This would suggest that, in addition to having access to decision-making bodies, women's organisations need to understand the nature of the information that parliamentary structures require if they are to exercise any influence within those structures.

New terrains of struggle: Developing the DVA's accountability framework further

The focus and practice of accountability is dynamic, rather than static, and alters as conditions and circumstances change. In recognition of this, the paper concludes by examining how the safety of domestic violence complainants may be better safeguarded through revising current procedures applicable to the reporting, recording and management of complaints; refining and systematising

monitoring processes; developing diagonal accountability; and introducing a system of intimate femicide case reviews.

Revising current approaches to complaints against SAPS

The ICD was mandated to investigate four classes of SAPS misconduct, non-compliance with the DVA being included within the category of level four misconduct. When the IPID Bill was introduced into the Police Portfolio Committee, it was explained that investigation of these 'lesser cases' would not fall within the remit of IPID but be investigated by station commanders alone.⁶⁹ The concerns expressed during the public hearings over the loss of an independent complaints mechanism have been borne out with time.

Table 3, compiled from the ICD's six-monthly reports to Parliament between 2003 and 2011 (the last full year for which they were responsible for monitoring the DVA), sets out the total number of complaints received annually.⁷⁰

Year	Total number of non-compliance reports nationally
2003	198
2004	137
2005	146
2006	104
2007	123
2008	137
2009	123
2010	113
2011	94

Following the transfer of oversight of the DVA from the ICD to the CSP, the number of complaints dropped precipitously. During the first six months of its new role (April to September 2012), the CSP received seven complaints from three provinces only (five of which came from the Western Cape) and an eighth was made to CSP itself.⁷¹ In its second biannual report for the period 1 October 2012 to 31 March 2013, complaints once again emanated from three provinces alone, with the number of complaints amounting to 15.⁷² In the first year of its new role, the CSP thus received 22 complaints from three provinces, a 77% decline in the number (94) recorded by the ICD in its final 12 month reporting period. In their third six-monthly report for the period 1 April to 30 September 2012, the CSP could count 27 complaints from four provinces.⁷³ However, not one of the complaints recorded in the CSP's second and third reports had been forwarded to the CSP by SAPS as stipulated by the DVA. Instead, they had been identified by monitors in the course of their station audits.⁷⁴

Further, those ill-treated by the police may not wish to return and complain to the same station where they were mistreated. But while the ICD was authorised to receive complaints against police officers, the CSP has no such mandate. Thus in doing away with an independent avenue of complaint, Parliament limited individual women's ability to demand accountability from errant officials and watered down a prior gain. Although the CSP drafted regulations allowing provincial offices to receive complaints directly from the public, investigate and respond to these (amongst other matters),⁷⁵ these regulations have not yet been gazetted. Further complicating the monitoring of complaints is the fact that SAPS possesses neither a central point for receiving complaints generally, nor a standardised system of dealing with complaints.⁷⁶

The following recommendations are proposed to ensure that the enforceability dimension of accountability is better realised.

- Re-introduce an independent avenue of complaint. Currently, the majority of provincial secretariats attached to the CSP do not appear to have the capacity to investigate individual complaints. Until this is addressed, it is recommended that members of the public lodge complaints with the CSP, who will then forward such complaints to a dedicated, appropriate body within SAPS for investigation. Such a body must have a dedicated mechanism for receiving complaints and be equipped with resources to conduct independent investigations of SAPS members.⁷⁷ The findings of these investigations and the resultant recommendations should be submitted to the CSP, given that their mandate includes making recommendations to the police service on disciplinary procedures and measures with regards to non-compliance.
- According to the CSP,⁷⁸ the vast majority of stations do not maintain the register recording police officers' non-compliance with the DVA (although some stations are recording such misconduct in the general Disciplinary Register). This alone will ensure that no complaints can be forwarded to the CSP. Stations' failure both to maintain such registers, as well as forward instances of misconduct to the CSP, must be reported separately in the CSP's parliamentary reports. SAPS Station and Provincial Commissioners should be required to explain to Parliament why they are not enforcing this requirement.
- Finally, as a matter of priority, SAPS' National Instruction 7/1999 must be amended to reflect the changes from ICD to CSP. The failure to effect these changes appears to be affecting cooperation between SAPS and provincial offices of the CSP.⁷⁹

Refining and systematising monitoring processes

The purpose of oversight is not solely to provide inventories of police inadequacy. If the station audits are to induce change, then follow-up visits must be made routine to ensure that deficiencies are corrected. Indeed, failing to follow up on the findings of visits may well undermine monitoring because no consequences flow from non-compliance. Further, the extent to which particular stations correct deficiencies identified by an audit should itself become an indicator for the effectiveness of oversight (which is currently not being evaluated). How the CSP is reporting on the findings of its audits will therefore need to be refined and data disaggregated by the domain of activity being reported on. This also implies change to the CSP's current monitoring tools.

- There is great unevenness in provinces' ability to monitor police stations. Between 1 April 2012 and 30 September 2013, Limpopo and the Eastern Cape monitored less than 10% of the stations in their provinces, while Free State, North West and Gauteng monitored over 70% of their respective province's stations. The low rate of monitoring by some provinces requires investigation and improvement.
- It is recommended that the provincial offices of the CSP present the findings of their province's audit to the legislature, so ensuring that accountability is exercised at both national and provincial level.
- The CSP should ensure that every station monitored be audited again within a month of the station having received the findings of the monitoring. Where no attempt has been made to address the shortcomings identified by the audit, this must be reported to both the Provincial Commissioner and the SAPS Inspectorate. Both the findings of the initial and follow-up audits must be reported on in the CSP report to Parliament.
- SAPS are unreliable in providing Parliament with its six-monthly reports. No reports were submitted between 2009 and 2012, with reporting only resuming in May 2013.⁸⁰ The Police Portfolio Committee needs to exercise greater vigilance in ensuring SAPS reporting does not lapse again.

To make oversight more precise and substantive, the CSP needs to widen the focus of its information-gathering exercises, as well as disaggregate its findings. At this point its reports provide only a station's overall score, which provides little insight into the specific nature of its non-compliance. As a minimum, future reports need to detail the following:

- compliance with the prescripts of the DVA and National Instructions;
- the extent of training offered by each station;
- collaboration with local domestic violence organisations;
- the human and material resources available to support stations' implementation of the DVA (such as victim-friendly rooms and police officials designated to deal with domestic violence); and
- the number of domestic violence incidents perpetrated by SAPS members, as well as intimate femicides where the victim was in possession of a protection order at the time.

In addition, when compiling a station report, the CSP must independently interview local domestic violence organisations to obtain their views on the station's attention to domestic violence.

Finally, the fact that both the ICD and CSP broadened their supervision beyond the confines of the DVA is suggestive of reflection and learning on the part of the two agencies. Similarly, some police stations' introduction of officers designated to deal with domestic violence matters illustrates learning and reflection. Capturing change and innovation on an ongoing basis is important to emphasise that accountability is not only an exercise in fault-finding but also an opportunity for institutional learning.

Developing diagonal accountability

The civil society reference group has not been effective, and is by now almost moribund. While referred to in the first CSP six-monthly report⁸¹ it had disappeared by the third,⁸² with the CSP referring instead to a dialogue conducted in partnership with the Joint Gender Fund around creating violence-free communities for women and girls. The unintended consequence of this initiative has been to divert attention away from oversight of SAPS' response to sexual victimisation and intimate partner violence. This space, because legislated, needs to be regained if diagonal accountability is to be attempted. It could potentially provide organisations with an ongoing presence within the CSP's monitoring work – and perhaps even the opportunity for joint monitoring activities – as well as access to the sort of information that could allow organisations to hold their local stations to account. It is therefore recommended that:

- The reference group meet on a quarterly basis, and that a standing item on the agenda be the DVA. The regular convening of this reference group should also be an indicator against which the CSP's performance is monitored. The reference group should also be given the opportunity to comment on the CSP's reports before they are submitted to Parliament.
- Organisations dealing with domestic violence should be invited by both the provincial legislatures as well as the Police Portfolio Committee to present independent reports on the policing of domestic violence.

Implementing intimate femicide case reviews

A key goal of the DVA was the prevention of repeat violence. It is therefore essential to identify and understand when and why it fails to do so. For this reason, any family homicide in which the victim, or a family member, was in possession of a DVA protection order at the time of their death (or had applied for one) should automatically trigger review by a panel comprising SAPS, CSP and independent experts in domestic violence. This should also be the case for intimate partner killings perpetrated by police officers. The purpose of such reviews is not only to determine whether or not police negligence contributed to the victim's death, but also to learn more about the prevention of intimate femicide.

The following procedures could be adopted by the panel:

- All intimate femicides perpetrated by police officials must be immediately reported to the national office of the CSP. Any other intimate femicide which occurs must be checked against SAPS 508(a), 508(b) and file of protection orders maintained by the police station in the jurisdiction where the killing occurred. Should the victim have been in possession of a protection order, or in the process of obtaining such an order, then this case must automatically be forwarded to the CSP. In addition, when a child is killed by a parent, their details must also be checked against this documentation to ascertain whether or not one of the parents was in possession of a protection order, or was in the process of applying for one. Where this is found, such cases must also be forwarded to the panel.
- In 2009, approximately 55 women were in possession of protection orders at the time of their deaths. This number of cases could be managed by a national panel meeting on a monthly basis.
- Initial investigation of a station's handling of a particular case of domestic violence in the period leading up to the victim's death should be undertaken by a SAPS-dedicated investigation mechanism. Their report should also be forwarded to the panel for review.
- The independent panel should issue an annual report containing their findings and making recommendations around how police practices, as well as those of other relevant institutions, could be adapted to prevent cases of intimate femicide in future.

Endnotes

- 1 Cited in Olckers 1997: 131
- 2 Kaminer, Grimsrud et al. 2008
- 3 Abrahams, Mathews et al. 2013
- 4 UN 2008
- 5 Goetz 2003
- 6 Goetz and Jenkins 2001: 365
- 7 Goetz and Jenkins 2001: 369
- 8 Stone 2007
- 9 Goetz 2003: 31–32
- 10 Stone 2007
- 11 Bovens 2010
- 12 Stanko 2008
- 13 See Bovens (2010) for further discussion of accountability as conduct and accountability as mechanism
- 14 Section 18(4)
- 15 Section 8(4)(c)
- 16 Section 13
- 17 Section 8(4)(b)
- 18 Section 3
- 19 Section 9
- 20 Section 7(2)(b)
- 21 Civilian Secretariat for Police Service Act, 2 of 2011
- 22 Section 208 Constitution 1996
- 23 CSP 2012
- 24 Section 5(a)
- 25 Section 5(b)
- 26 Section 6(c)
- 27 Section 6(d)
- 28 ICD 2011
- 29 ICD 2009
- 30 Auditor-General South Africa 2009
- 31 All data for the years 2006 to 2008 cited in Vetten et al. 2010

- 32 All data for 2009 to 2011 drawn from ICD reports for those years
- 33 See PMG 31 October 2007; 18 June 2008; and 27 August 2008
- 34 Auditor-General 2009
- 35 SAPS Strategic Management 2009
- 36 SAPS Strategic Management 2010
- 37 CSP 2012; CSP 2013a
- 38 CSP 2013a; CSP 2013b
- 39 Station totals for each province are based on the crime statistics released by SAPS on 19 September 2014 (http://www.saps.gov.za/resource_centre/publications/statistics/crimestats/2014/crime_stats.php). Although SAPS states that there are 1 137 police stations nationally, only 1 131 stations are included in the crime statistics.
- 40 The CSP report for this period has mistakenly attributed a number of stations to the wrong province. In addition one station was included twice. The table corrects for these errors.
- 41 CSP 2013a: 8
- 42 CSP 2013b:12
- 43 CSP 2013b
- 44 Vetten, Le et al. 2010
- 45 Ibid.
- 46 ICD 2005: 21
- 47 CSP 2012; CSP 2013a; CSP 2013b
- 48 PMG 13 May 2013
- 49 Prior to this incident the couple had approached both the police and courts for help in stopping Mr van Wyngaardt's stalking, threatening and harassing behaviour (which on one occasion including threatening to kill the couple's children while they were in his care) without the police ever informing the couple of the provisions in the DVA. In addition the police officers concerned had told the couple on a number of occasions that they could not assist them and failed to investigate complaints.
- 50 Personal communication Naeema Abrahams, Medical Research Council
- 51 van Schie 2010
- 52 Hosken 2012
- 53 Vetten 2013
- 54 Ibid.
- 55 Parliamentary Monitoring Group [PMG] 18 June 2008
- 56 Parliament of the Republic of South Africa 25 October 2010
- 57 PMG 2 August 2010
- 58 The redrafting also removed a host of checks and balances upon the prosecutorial services, contained in section 18(1)
- 59 PMG 9 August 2010
- 60 Vetten 2013
- 61 PMG 22 August 2011
- 62 Vetten 2013
- 63 Ibid.
- 64 SAPS Strategic Management 2013: 43–44
- 65 Phiyega 2013
- 66 CSP 2012
- 67 CSP 2012: 9
- 68 Vetten 2013
- 69 PMG 2 August 2010
- 70 It should be noted that no complaints were received from KwaZulu-Natal in 2003, meaning that the total number of complaints was for eight provinces only. This was also the case for 2004 where no complaints were received from Eastern Cape during the first six months of the year and KwaZulu-Natal for the second six-month period of the year.
- 71 CSP 2012: 20–21
- 72 CSP 2013a: 13–14
- 73 CSP 2013b
- 74 CSP 2013a; CSP 2013b
- 75 CSP 2012: 18–19
- 76 CSP 2102
- 77 The role and functions of the current Police Inspectorate should be explored as a potential vehicle for this
- 78 CSP 2012: 14
- 79 CSP 2012; CSP 2013a
- 80 PMG 13 May 2013
- 81 CSP 2012
- 82 CSP 2013b

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ABOUT THE AUTHOR

Lisa Vetten is a research associate based at the Wits Institute for Social and Economic Research. She has worked in the field of violence against women for more than two decades, initially as a counsellor, paralegal and trainer and, in more recent years, as a researcher. Much of her research has focused on the implementation of domestic violence legislation and the role of the state in addressing such violence.

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The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

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CONTACT APCOF

African Policing Civilian Oversight Forum
Suite 103–105A, Building 17
Waverley Business Park
Wyecroft Road
Mowbray 7925
South Africa

Tel: +27 21 447 1818
Fax: +27 21 447 0373
Email: info@apcof.org.za



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