

RESEARCH REPORT:

***THE USE OF FORCE BY MEMBERS
OF THE SOUTH AFRICAN POLICE SERVICE:
CASE STUDIES FROM SEVEN POLICING
AREAS IN GAUTENG***

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EXECUTIVE SUMMARY

This research project was commissioned by the Independent Complaints Directorate (ICD), and funded by Department for International Development (DFIDSA). It set out to examine the use of force or violence by members of the South African Police Service in Gauteng Province, South Africa.

The project aimed to identify trends and patterns in the use of force by members of the SAPS, to analyse these and to make recommendations regarding remedial steps and preventative strategies.

The project is primarily based on an analysis of selected files in the SAPS in all seven policing areas of Gauteng. Event and modus operandi analysis was undertaken. Problems with disciplinary procedures and stress management were also ascertained.

To enhance the analysis, the information collected from the files was coded on a template. The latter enabled a statistical analysis to be applied to the research information collected. In addition, the researchers undertook a series of focus group interviews with various SAPS units across Gauteng. The interview information from the focus group interviews was thematically analysed.

Moreover, the research results have been further contextualised with reference to a number of international studies.

The report has been divided into five different sections: international perspectives on the use of force and the South African legal position (Section 49); an overview of information emanating from the files perused; the statistical analysis of the coded information collected from the files; the analysis of the focus group interviews; and the concluding section with recommendations.

The overview section, based on the perusal of selected cases of use of force, deals with a number of issues. Among these are: lack of information; delays in finalisation of cases; Director of Public Prosecution's decisions on whether to prosecute or not; linkages between internal disciplinary processes and criminal court; case dismissals; suspensions; discharge from service; shooting incident reports; ready use of firearms; inquests; complaints and warning signs.

Among the more general conclusions emanating from the statistical analysis of the coded information are the following:

- The majority of perpetrators were of the rank of constable (48%) or sergeant (42%) at the time of the recorded incident. This is unsurprising, since sergeants and constables are at the cutting edge of crime and are in constant contact with members of the public.
- Just over two-thirds of the incidents examined in this study were work related, while 19% occurred in a social situation and 7% were domestic episodes.
- Common assault (32%) was the most frequently listed transgression in the

files perused, followed by shooting incidents (30%), assault GBH (11%), murder and pointing of a firearm (both 4%).

- More than half of the recorded incidents occurred in a public place (street, road, pub or shebeen). A further 11% took place at the victim's place of residence while 9% happened at a police station.
- The most commonly used (50%) instrument of perpetration was a member's firearm. However, this did not necessarily involve the firing of the weapon. Firearms were also used to hit the victim, either with the butt or barrel of the firearm or to threaten with. The next most common method of perpetration used was hitting, slapping and kicking. To a lesser extent, use was also made of teargas and electric shocks.
- In 48% of job-related shooting incidents no verbal warning was issued, while in 95% of non job-related incidents (i.e. social or domestic matters) no verbal warning was issued.
- In only 53% of job-related incidents where a firearm was used, were warning shots first fired. Furthermore, in only 11% of non-job related incidents where a firearm was used, were warning shots fired.
- Males made up 87% of victims. In just under a third of the cases the victim's race was not recorded. Of the rest, 79% were black people. Just under half of the victims were suspects. Nine percent were colleagues of police members.
- Fatalities were recorded in 8% of cases. Gunshot and stab wounds were suffered by 14% of victims. Minor injuries were recorded in 12% of cases. In 35% no details of the injuries sustained by the victim were recorded, while in 23% victims either did not sustain any injuries or injuries were not applicable.
- Departmental charges were laid in 62% of the recorded incidents while in only a quarter of the charges investigated in this study a departmental hearing resulted. Furthermore, in only 7% of the incidents a guilty verdict is the outcome.
- Criminal charges were laid in 66% of the cases. However, the state prosecutor decided to prosecute in only 35% of these cases. The conviction rate (at the time of the study) for these cases is 13%.

The focus group interviews supported a number of the results from the statistical analysis. The interviews also raised additional issues and factors surrounding the use of force.

The focus group interviews were analysed thematically. Among the main themes arising from the interviews are:

- “Criminals have more rights than the police”;
- “s49 supports the police”;
- “Demilitarisation of the police has been its downfall”;
- “Policing is more about politics”;
- Thoughts uppermost when in hot pursuit or rushing to a crime scene;
- How suspects are apprehended;
- Police members’ attitudes toward suspects;
- Suspects’ perceived attitudes towards the police;
- Police attitudes towards the use of a weapon;
- Procedure at the scene of a shooting incident;
- Departmental hearings; and,
- Police attitudes towards counselling and debriefing.

From the all of the above, a number of recommendations were also made. These recommendations were divided into four categories: human rights; monitoring and public scrutiny; shooting incident and other procedures; modifying behaviour and training.

The main recommendations deal broadly with the following aspects:

- ❑ Human rights training
- ❑ Increased ICD role
- ❑ Investigating shooting incidents
- ❑ Internal disciplinary hearings
- ❑ Provision of counselling/critical incident debriefing on a more regular organised basis
- ❑ Warning signs, performance review; investigating established patterns of abuse
- ❑ Additional training (weapons handling; mediation skills; refresher courses) and Section 49 workshops
- ❑ Stricter enforcement of existing disciplinary regulations
- ❑ Use of police dogs

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THE USE OF FORCE/VIOLENCE BY MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE

1. THE PROJECT

Problem statement

Prior to 1994, policing was characterised by the abuse of power by members of the former South African Police (SAP). In this period, the political situation characterised by the liberation struggle led to the SAP being used as a tool of repression and agent of the apartheid regime. The widespread use of force in arrests, police raids in the townships, detention without trial, interrogation and use of violence to extract information was common. Torture of suspects was also prevalent.

However, after April 1994 new forms of policing centred on principles of equity and democracy were adopted. It became imperative for the reconstituted South African Police Service that the use of excessive force by police officials be addressed.

The new political order, reflected in the Constitution and Bill of Rights, called for a dramatic transformation of the modus operandi and ethos of the SAPS. In order to win community confidence and establish itself as a credible policing service, the abuse of force by the SAPS needed to be drastically reduced with the long-term aim of complete eradication from within its midst.

One of the steps taken to address this problem was the establishment of the Independent Complaints Directorate (ICD), which became operational in April 1997. This body investigates complaints and charges of misconduct (which inter alia include the use of force as well as serious criminal offences) against members of the police service.

However, the ICD telephone helpline, and the publicity and media attention given to the problem, appeared to lead to a rapid growth in the number of cases reported. The ICD was unable, in the first few years of its operations, to deal with all the cases or to make an in-depth analysis of trends, characteristics, results and patterns of misconduct or modus operandi.

Accordingly, by the end of March 2000 the ICD had been able to complete and finalise 56%, that is, 5 153 cases¹ of the 9 253² Class I-IV cases reported to the ICD since April 1997. This excludes minor cases of misconduct or complaints from the public reported directly to the SAPS and dealt with internally by them. Clearly, the existence and operation of the ICD cannot on its own address the problem.

The pre-existing culture of violence and use of force in the SAPS implies a need to

¹ See ICD Annual Report 1997/1998, p. 3; ICD Annual Report 1998/1999, p. 25; and ICD Annual Report 1999/2000, pp. 33, 37 & 38.

² The number of cases reported per year were 1997/98 = 1 999; 1998/99 = 2 874; 1999/00 = 4 380. The number of cases reported for the year April 2000 – March 2001 again increased to 4 863 (ICD's Budget Vote Speech, 7 June 2001, p. 2).

deal with this behaviour in a holistic manner. The eradication of such behaviour calls for a systematic transformation of the police as a whole and of the methods used by its personnel. Such transformation requires a thorough understanding of the abuse of force by police.

This would entail the identification of those with a predilection for violence or criminal acts, minor infringements, or disciplinary problems. Such an investigation would enable the ICD and the SAPS to put into place early-warning systems, intervention strategies and prevention measures to curb the use of excessive force, which is damaging to not only the service delivery of the police but also their public image.

In early 2000 the Institute for Human Rights & Criminal Justice Studies at Technikon SA were approached by the ICD to formulate a research project to investigate the use of force and violence by members of the South African Police Service (SAPS). Approval and funding for such a project was obtained in mid-2000 whereupon the project was implemented.

The research project

The project was commissioned by the Independent Complaints Directorate (ICD) and funded by the United Kingdom's Department for International Development (DFIDSA). It set out to examine the use of force or violence by members of the South African Police Service in the Gauteng Province.

The project is primarily based on an analysis of selected files in the SAPS in all seven policing areas of Gauteng. Event and modus operandi analysis was carried out and problems with disciplinary procedures and stress management identified.

The aim was to develop an offender profile as well as establish trends and patterns in the use of force. In addition, recommendations on remedial strategies were formulated.

To enhance the analysis, the information collected from the files was coded on a template. This enabled a statistical analysis to be applied to the research information collected. In addition, the researchers undertook a series of focus group interviews with various SAPS units across Gauteng. The interview information from the focus group interviews was thematically analysed.

Researchers

The following researchers have been involved in this research project: Ms Duxita Mistry, Ms Jabu Dhlamini and Dr Anthony Minnaar of the Institute for Human Rights & Criminal Justice Studies and Adv. Boreka Motlanthe, a lecturer in the Programme Group: Police Practice at the TechnikonSA. Ms Jean Redpath of the Institute completed sections on the law and edited the report.

Research methodology

International precedent

In the Netherlands a similar use of force study has been conducted. It involved a case study with police in the Rotterdam-Rijnmond and Gelderland-Midden areas. The methods used to gather information included interviews, questionnaires, examination of complaints' files and participant observation.

The aim of the Netherlands study was to do an *“analysis of the influence of juridical regulations governing the use of force with the framework of Article 8 of the Police Law (Politiewet 1993) and the official instructions of 1994 (Ambtsinstructie 1994) and to investigate the possible criminal consequences of the unlawful use of force”*.³

In the present study participant observation was not considered since it was felt such observation would moderate the behaviour of the police members under scrutiny. Although there have also been use of force studies in the United States of America, the Netherlands study is most close to the current study. The methodology of the present study is outlined below.

Literature study

A preliminary literature study looking at the context of the use of force was undertaken. This study dealt not only with the South African situation in terms of training, legislation, regulations, but also the crime situation; police culture or ethos, socialisation of new members and performance of duties, but also drew on research, studies and literature from an international perspective. Such a literature survey was necessary in order to build a frame of reference for the research project and place it in context.

File perusal

This involved an examination of selected files from Gauteng Province. An information database using a template of selected categories of violence was built. This part of the research project was undertaken from August-December 2000. All seven policing areas in Gauteng were visited and selected files perused. In total 186 individual's files amounting to 859 incidents were examined.

The analysis was based on categories such as age, gender, rank, position, unit, area and event analysis and case outcome. Event analysis looks at the type of transgression as well as progression in terms of use of violence, from less serious, to more serious, to murder, as well as the injuries caused. Case outcome looks at what action was taken and the final outcome of that action. Outcomes include prosecution, disciplining, suspension, demotion or dismissal.

Case analysis

This was done by means of codes for different categories of violence. All the information collected from the examination of the files was coded onto a template for statistical analysis.

³ Uildriks, N. 1997. De normering en beheersing van politiegeweld. Doctoral thesis, University of Rotterdam, p. 220

Focus group interviews

These were undertaken with members of selected units in six of the policing areas of Gauteng during January and February 2001. The list of interviews completed and units visited is attached as an annexure (Annexure 1).

Qualitative (thematic) analysis of focus group interviews

The information collected in focus group interviews was qualitatively analysed along thematic lines.

Recommendations

Recommendations and policy guidelines were formulated during the writing-up phase, drawing on the results of the case analysis and qualitative analysis.

Research problems

This project encountered a number of research delays beyond the control of the researchers. The project proposal was formulated and submitted to the ICD in January 2000; however, approval and funding were only finalised in late April. Subsequent to that, permission from the SAPS Gauteng Provincial Commissioner had to be secured. The letter of request for permission was first passed through the Gauteng SAPS legal adviser. The Provincial Commissioner then made a request for further written undertakings by the researchers concerning full confidentiality, anonymity, and use of the information. Final permission from the Provincial Commissioner was granted only in late June 2000.

In order to get further permission and buy-in to the project, the researchers then had meetings with the area commissioners in all seven policing areas of Gauteng. Additional meetings were then held with the area heads of the SAPS internal discipline sections.

This was in order to make specific arrangements to have files drawn and have an office made available where the files could be perused in private. Most needed to be informed well in advance of dates when the researchers would be visiting. Furthermore, no files were available in any areas during the last week of any month, since this was when internal disciplinary officers were drawing up their monthly returns.

In a number of areas no formal register of files was kept. Therefore no random selection could be made: it would appear that lists or registers have not been computerised. Instead files were selected by the head of internal discipline in an area. In addition, some of these files also dealt with forms of misconduct other than cases of the use of force, such as reckless driving, being drunk on duty, or refusing to obey an order.

Often in drawing files the staff of the internal discipline section relied on current files available in their offices or on memory of which cases had come before them. In one area the researcher was told that there simply were no more files of use of force cases at that internal discipline office.

A start was made on the file perusal field research in mid-July. It was, however, found that the whole process of file perusal was extremely time consuming and labour intensive. The time needed to go through the files had been completely underestimated.

Furthermore, since the researchers were not permitted to remove files from the internal discipline offices, they had to be examined during set hours at the police area offices. The researchers were not permitted to make any photocopies of the contents of any files. In essence, this meant that written notes of all information had to be made.

While very valuable information was found in the files, the sheer volume of information, as well as the number of sub-files in each main file proved to be very time consuming. For example, an individual member's personal file might contain up to twenty or thirty specific incident files, with each having to be carefully read and notes made.

The aim was to peruse thirty files per policing area (30x7 = 210 files). It often took up to half-a-day to complete reading and making notes on one person's files. Therefore the fieldwork perusal of the full complement of files per area was only completed in mid-December. (Please note that for both the Vaal and Soweto areas the perusal of the full complement of files was not undertaken.)

The files represented a spread of charges ranging from murder, rape to assault GBH and crimen injuria, as well as shooting incident reports. The files cover all types of units in the Gauteng region, and all ranks of police members. There were certain differences from area to area in the type and amount of information provided in the files.

Ms Mistry and Dr Minnaar were, however, able to report back to the management of the ICD on 7 December 2000 and present them with brief preliminary impressions gleaned from the perusal of the files. From this report back and ensuing discussions it was decided to code all the information so far collected and to place it in a standard template so that some statistical conclusions could be drawn.

The legal services and the internal discipline officers in the province harboured grave ethical doubts and feared the possibility of civil actions (i.e. breach of confidentiality in making personal files of members available to the researchers) if the researchers undertook personal interviews with members who had been convicted on charges of use of force and had been either expelled from the SAPS or jailed.

It was therefore decided instead to undertake focus group interviews with various units from all the policing areas in Gauteng. Since December was a problem month in terms of police members availability, these interviews could only be organised and undertaken from mid-January onwards. (See Annexure 1 for dates and units of such interviews completed.)

The aim of the focus group interviews was to get a sense of the daily work of police members at ground level and how they respond to crime scene situations, and events such as hot pursuit, use of a firearm or dog, or car chase. The aim was to

gauge how they handle stress and whether counselling or other support, such as stress management techniques were being made available to members. The information collected would hopefully assist in the formulation of some remedial measures and preventative strategies in terms of the use of force by police members.

A number of delays were encountered in trying to organise suitable interview dates. Unit commanders struggled to accommodate our requests because of the difficulty of fitting in an interview during any one particular shift of a unit's members. Often such interviews had to be scheduled at the beginning or end of a shift (the latter not always being convenient for members wanting to go off duty and home at the end of a long and tiring shift). The interviews, with approximately ten unit members at a time, generally lasted between one and one-and-a-half hours.

Some unit commanders in certain areas were reluctant or did not bother to reply to telephone and faxed messages trying to set up interviews. Often replies were only forthcoming after repeated faxes and telephone messages. However, persistence paid off and the Institute's researchers managed to complete 13 focus group interviews by the end of February. An attempt was made by the researchers to undertake interviews with at least three different types of unit from each policing area.

Limitations

In the light not only of the research problems but also in terms of methodology, this study has a number of limitations. Briefly these are as follows:

- ❑ Files could not be randomly or representatively selected. There was no formal register of files from which to make a selection of cases. File selection was done by the negative discipline officers.
- ❑ The incidents analysed cannot be said to be a comprehensive overview of use of force committed by members of the whole organisation (SAPS). However, there was a good spread of cases and incident types.
- ❑ This research roughly falls into the category of what is termed the micro-behaviour sequential model. In other words, actions leading to incidents of use of force in specific recorded events are analysed. This methodology is in contrast to other models, namely the social control of behaviour model that focuses on behaviour in the organisation as a whole.
- ❑ One-on-one interviews with members whose files were perused were not possible.
- ❑ The researchers were not able to observe the police in their daily work. (This should possibly be factored into any future research)

2. SOME INTERNATIONAL PERSPECTIVES ON THE USE OF FORCE

Introduction

The problem of the excessive use of force by law enforcement officials has been recognised internationally. Although there have been a limited number of in-depth studies of the problem commentators have openly acknowledged that:

*“Control of excessive force by police officers is a major challenge for the departments they work for, and it will be increasingly important to the success of community policing initiatives”.*⁴

Furthermore that:

*“Making appropriate decisions regarding the use of deadly force is the most critical challenge confronting law enforcement officers. Ensuring that officers possess the requisite knowledge and skills to make and implement those decisions is the challenge for law enforcement administrators and trainers. These challenges can be met only through training”.*⁵

The various theories in the available literature on the use of force by police, pertinent to this report, provide invaluable insights into this phenomenon. Below are a number of these that have particular relevance for and resonance to the South African situation.

In a 1980 article dealing with the controlling of deadly use of force by police in America Albert Reiss contended that the *“central problem for a democratic government is how to limit their own use of force, particularly their use of deadly force”*.⁶ He suggests that the use of force can be limited by *“controlling [the] opportunities for its exercise and decisions to use it”*.⁷

According to Reiss, this can be done in two ways. First by *“controlling the opportunities that cause harm and lead to intervention by government agents such as a gun law”* and second *“controlling the opportunities for government agents to use force that causes harm, for example, disarming the police or disarming off-duty police officers”*.⁸

In addition, Reiss suggests that policies [and laws] (such as those embodied in section 49 of our Criminal Procedure Act) in effect legitimate the use of force under certain conditions. He argues that the behaviour of police members is a good

⁴ Scrivner, E.M. 1994. Controlling Police Use of Excessive Force. NIJ Research in Brief. Washington: NIJ, p. 4.

⁵ Hall, J. D. 1994. FBI Training on the New Federal Deadly Force Policy. www.fbi.gov/publications/leb/1996/apr1966.txt, p. 1

⁶ Reiss, Albert, J. Jr. 1980: ‘Controlling police use of deadly force’. The Annals of the American Academy of Political and Social Sciences: The Police and Violence, November, p. 122

⁷ Ibid

⁸ Ibid

example of how “*choice is institutionalised in police departments*”.⁹ According to him, some police departments make the use of deadly force subject to review, requiring that every discharge of a firearm be reviewed whilst others require review only when the consequences of its use are serious injury or death.¹⁰ The SAPS falls into the latter category.

Reiss observes that most of the evidence regarding an incident of the use of force is based on individual police members’ accounts of the event. The member’s partner usually supports this and wider tacit support is obtained from the unit in which they serve. This appears to be true in South Africa.

The current study noted that the shooting incident reports¹¹ and the duty officer’s judgement that the shooting was justified is primarily based on the individual police member’s version. From the files it appears as if no attempt was made to obtain statements from any eyewitnesses besides that of the police official involved and/or his/her partner and other colleagues on the scene. Moreover, it appears from the files examined that the unit commanders and station commanders accepted the member’s version as the final word in the matter. Often no attempt was made to hold an ‘inquiry’ into the circumstances under which the member used his weapon.

Reiss asserts that a police department’s decision to review a matter is usually based on pressure from outside the organisation.¹² Such review, according to him, is therefore precipitated by public pressure on the police to justify the actions of its members. In South Africa there have been several cases highlighted in the media that have provoked public outcry. Reiss is of the view that, where police department’s make provision for the review of acts that lead to serious injury resulting from the use of deadly force, they are likely to have done so in the interest of controlling the consequences resulting from public pressure on the organisation, rather than from an interest in ensuring that force is used legitimately and properly for law enforcement ends.¹³

In South Africa, the interim Constitution as well as the new Constitution made provision for the establishment of bodies such as the Independent Complaints Directorate (ICD) to ensure that the police work within a human rights framework. The precursor to the ICD, the Police Reporting Officer/s, highlighted a number of cases of police abuse of power with incidents of torture.

Reiss argues that by “*restricting the use of force to defence-of-life situations – those where an officer’s life or that of others is endangered by a threatened use of force – the number of situations where it can be used legitimately is sharply reduced*”.¹⁴ The death rate from police use of force fell sharply in both New York City and Los

⁹ Opcit., p. 124

¹⁰ Ibid

¹¹ The shooting incident reports are in fact admissible in a court of law. If used, an additional full statement by the Duty Officer who compiled the particular shooting incident report, with an affidavit, will be called for. In addition, such Duty Officer will normally be required to act as a witness in the criminal case so that he/she can be subjected to cross-examination. (Telephonic discussion with Snr Supt. A. Van der Merwe, West Rand Behaviour Management Unit, SAPS, Krugersdorp. 3 September 2001).

¹² Reiss, p. 125

¹³ Ibid

¹⁴ Ibid

Angeles, for instance, when “each restricted the use of deadly force against fleeing felons”.¹⁵

This illustrates Reiss’ point that where changes are made to the law or police department policies (to lower the death rate of suspects) the impact can be seen in the reduction in the number of suspects injured or killed by police. This is impact in the short term but in the medium to long term more carefully designed strategies need to be developed.

In analysing the use of force Reiss discusses the social control of behaviour model and the micro-behaviour sequential model. The social control of behaviour model advocates the need to focus on the behaviour of the organisation rather than the individual member and on how different forms of organisation and means of implementing organisational objectives affect the conduct of its members to use or not use deadly force.¹⁶

The micro-behaviour sequential model analyses each step in the process to deadly force. A common presumption in police reports of shooting incidents and use of deadly force is that there is a decision point at which the officer decides to fire his weapon. This Reiss calls a point-in-time event – a shooting is conceptualised as involving a decision.

The examination of that point-in-time leads invariably to the conclusion that there is a relatively short interval during which an officer has an opportunity to make the decision to draw and fire. These are known as split-second decisions. Reiss contends that analysing the officer’s behaviour from the moment he encounters threatening behaviour until the shooting has its limitations. According to him the micro-behaviour sequential model “provides little opportunity for intervention to avert the use of deadly force”.¹⁷ The source of intervention could be fellow officers – but they may not be mobilised to provide support.

Lastly, Reiss contends that research on the use of deadly force focuses on the encounters or events in terms of the micro-behavioural sequential model – the implication is that such research will be biased against the learning of ways that encounters can take place without the necessity to use deadly force.

Peter Manning has a slightly different perspective than Reiss on the use of force by police. He argues that “the mandate the police possesses supports and legitimates their violence”¹⁸ and notes “the degree to which the law, administrative regulations and policies, and peer control mediate, shape and channel police use of violence”.¹⁹

Manning insists that there is a link between “police practice, various forms of social control, and violence”.²⁰ He states “the police represent the state and as a natural

¹⁵ Opcit., p. 126

¹⁶ Opcit., p. 134

¹⁷ Opcit., p. 129

¹⁸ Manning, Peter, K. 1980. ‘Violence and the police role’. The Annals of the American Academy of Political and Social Sciences: The Police and Violence, November, p. 136

¹⁹ Ibid

²⁰ Ibid

*consequence they are violent. He contends that the police are “obligated to dispense violence and must therefore enforce the law”.*²¹

Manning argues that, *“the place of violence is so central in policing and to the role of the officer, it is not surprising that the occupational culture of the police, all the values, standards, beliefs, and practices that grow up around a set of named tasks, contains central themes of violence”.*²² He notes that *“the potential for violence lies beneath the surface of any encounter between the police and citizens”.*²³ So *“events are embedded in the context of the potential for violence, even when it is not apparent”.*²⁴

Manning suggests that there are various controls over police violence namely:

- the community
- political-legal
- administrative and organisational ,and
- the occupational culture of the police.

Manning points out that *“there are at least three potentially conflicting standards by which an officer’s use of violence can be judged: public standards constituted from public opinion; mass media attitudes and politicians statements and reactions to an incident of violence that comes to public attention; the official departmental standard; and the response and reactions of the police occupational culture”.*²⁵

Public standards vary from one person to another in South Africa. The law according to Manning is not a *“significant source of deterrent control over the use of violence”.*²⁶ The reason being that *“the law is an after-the-fact source for the construction and reconstruction of the event for the officer”.*²⁷

With regard to administrative controls, the current study was not able to determine what the effect is of internal regulations on current police practice. However, it is important to note that *“a salient feature of the evolution of police rules and regulations is that rules tend to reflect organisational responses to a single case”.* This is called the single incident effect. In the present study members of the various Dog Units indicated that they are not allowed to use their dogs to apprehend suspects for minor crimes or illegal immigrants. This was as a result of the incident involving the North East Rand Dog Unit. Manning correctly observes that rather than formulating a rational response to such incidents and violations, police rules are either *“punitive in their intent”* or *“reflective of organisational needs to avoid embarrassment”.*²⁸

²¹ Ibid

²² Opcit., p. 137

²³ Opcit., p. 138

²⁴ Ibid

²⁵ Opcit., p. 139

²⁶ Ibid

²⁷ Ibid

²⁸ Opcit., p. 141

The occupational culture is a “system of meanings, rules, and principles for the guidance of sense making and occupational behaviour”.²⁹ “This system of meaning is, located as it is within the segmentalised, fragmented, and semi-coherent police world gives sanction to all that comes before it”.³⁰ Manning argues that the occupational culture of the police “reflects general common sense understandings of the public insofar as it views shooting as an essential part of the stock and trade of police work”.³¹

Human rights and the use of force

Concerns about the use of force by law enforcement agencies are a worldwide phenomenon. Various United Nations agencies such as the United Nations High Commission for Human Rights (UNHCHR), NGOs like Amnesty International and Rights Watch, individual governments, policing agencies themselves and ordinary citizens throughout the world have expressed concern in particular at the seemingly frequent excessive or unnecessary use of force by law enforcement officials within the context of their daily work.

Since the start of the 1990s there has been an increased emphasis on the monitoring of human rights in a world that is currently experiencing democratisation and transformation. Many societies are in a period of transition. With increased vigilance and media exposure, policing agencies have found themselves under such scrutiny that they can no longer hide behind a culture of impunity or agency silence, and thereby avoid or ignore investigating use of force complaints.

Country by country, reports³² indicate very similar trends in terms of firearm use, arrest violations, unnecessary use of violence, shortcomings in disciplinary procedures and inadequate training - not only in policing procedures but also in applying human rights principles in everyday policing situations.

Excessive use of force by police officers represents a violation or abuse of human rights. For this reason it is also important not only to train police officers in the correct use of force but also to make them aware of the obligations and responsibilities to apply accepted human rights standards in policing.

International standards

There are a number of international treaties, conventions, protocols and principles agreements that many governments have subscribed to in recent years.³³

²⁹ Ibid

³⁰ Ibid

³¹ Opcit., p. 143

³² For instance the Amnesty International reports on Jamaica, Dominica, Brazil, France, Romania, USA, UK (including Northern Ireland) and the overview report on the European Union.

³³ The most well-known of international human rights treaties and standards of relevance here are the following:

- International Covenant on Civil and Political Rights (ICCPR)
- United Declaration on Human Rights (UDHR)
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- UN Code of Conduct for Law Enforcement Officials

Protections and rights are also conferred by various internationally acknowledged non-treaty standards and guidelines. These set forth the duty upon states to prevent and investigate human rights violations. The standards represent the consensus of the international community to which states should aspire. They have the persuasive force of having been negotiated by governments over many years, and of having been adopted by political bodies such as the UN General Assembly. Many are considered by states to have the binding force of treaties. One example is *The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* of 1990.³⁴

One of the most important aspects of implementing such standards is governments' commitment to applying and enforcing compliance from its policing agencies to such standards on use of force and firearms. While many governments are signatories to a number of United Nations human rights conventions, treaties and documents, there has been widespread tardiness in disseminating the information and documents or in actually training law enforcement officers to comply with these standards.

The defining international document in this context is *The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (the UN Principles). This document clearly defines the circumstances under which law enforcement officials may use force and firearms.

According to the UN Principles, law enforcement officials may use firearms if other means remain ineffective or have no chance of achieving the intended result. Firearms may be used against people only after giving a verbal warning. Furthermore, a firearm may be used in order to prevent death or serious injuries and where less extreme means are insufficient to achieve this stated aim.

Further, in using force or a firearm, law enforcement officials must respect and preserve human life while simultaneously minimising damage and injury to the targeted person, let alone any innocent bystanders. The UN principles underscore that intentional lethal use of firearms may be made only when it is strictly unavoidable and in order to protect life. Principles 4, 5, 9 and 10 of the UN document are of relevance here and state the following:-

Principle 4 states that law enforcement officials, *"in carrying out their duty, shall as far as possible apply non-violent means before resorting to the use of force and*

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- UN Convention against Torture, Inhuman or Degrading Treatment or Punishment (Convention Against Torture)
 - UN Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)
 - UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
 - UN Declaration on Human Rights Defenders
 - UN Guidelines on the Role of Prosecutors
 - UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.
 - UN Rules for the Protection of Juveniles Deprived of their Liberty
 - UN Convention on the Rights of the Child (CRC)

³⁴ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.” The emphasis in this principle being the reference firstly to ‘as far as possible’; secondly to ‘non-violent means’; and finally ‘before resorting to ...’

Principle 5 states that:

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;*
- b) Minimize damage and injury, and respect and preserve human life;*
- c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;*
- d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”*

Principle 9 of the UN declaration postulates further responsibilities and obligations, namely that:

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

Principle 9 provides for very strict situational limitations on the use of force and more specifically the use of a firearm. Principle 9 is also reinforced by the requirements in Principle 10, which states that law enforcement officials:

“Shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

Obviously in such circumstances a police official has to make a judgement call and a split-second decision. Often this is where problems arise. However, it is important here for law enforcement agency management to provide the appropriate and requisite training so that police officials can make the correct decisions immediately without hesitation (there is a need for situational simulation training so that responses are practised and habitual).

The responsibilities of governments and the proper authorities to implement these principles and to sanction law enforcement officials who transgress them have also been inserted in the UN declaration. Principle 7 states that: *“Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement*

officials is punished as a criminal offence under their law.”

It was the intent of the UN that signatories enforce sanctions by means of independent investigation of all excessive or unlawful use of force incidents. In addition, signatories should bring to justice any law enforcement officials reasonably suspected of having used firearms in a manner inconsistent with international norms. There is an obligation in this process to make public the results and findings of any such investigation and subsequent trial.

The UN Principles imply that correct, adequate and proper training be provided in all matters pertaining to weapons handling and general policing activities such as an arrest and detention of a suspect. This raises the question of what level of practical firearms handling is adequate for police training programmes.

One of the anomalies arising from international use of force abuses is that irrespective of the fact that a government might subscribe to the UN Principles, their commitment to enforcing and implementing such principles is sometimes only on the surface. Far too often governments have exhibited a ready and continued willingness to employ arbitrary state violence in order to silence inconvenient protests. Legitimate public protests are stifled by the use of excessive force and violence by security officials of the state.³⁵ In a number of countries police agencies are viewed with extreme hostility. Much of this hostility is in fact based on the public's experiences of human rights abuses and brutality at the hands of the very people tasked to protect them.

To give an example, in September 2000, researchers from Amnesty International (AI) investigated the attitude of the public towards the police in deprived, urban areas of Jamaica where many human rights abuses occur. According to these AI researchers people had grown used to a police force where some members fail in all spheres to respect human rights. Many of those interviewed described the police not *“as protectors from crime but as a force to be feared, almost akin to an occupying force”*. In the communities visited by Amnesty International, almost everyone claimed to have had direct experience of police brutality.³⁶

Of particular concern to Amnesty International in the case of Jamaica was the fact that despite public assurances and support for the *UN Basic Principles*, the Jamaican authorities appeared to be failing dismally in preventing serious and

³⁵ For a recent public example of such state action see Amnesty International. 2000. Brazil: Police Violence & the 500th Anniversary. AI index: AMR 19/29/00 DISTR: SC/CO/GR. December. On 22 April 2000, the 500th anniversary of the Portuguese arrival in Brazil, the Bahia state military police reportedly used arbitrary and excessive police force in order to prevent protestors from the Marcha Indígena 2000 and Outros 500 campaigns from reaching Porto Seguro, Bahia, where official celebrations were taking place. The police used tear gas, rubber bullets and baton charges to break up two peaceful marches, injuring 34 protestors and temporarily detaining over 140 others. Photographs and witnesses appear to bear out the claims of those who participated in the protest that the police action was unprovoked. According to Amnesty International the Brazilian state and federal authorities, which had invested both politically and financially in the 500th anniversary celebrations, sought to make political capital from violence by portraying the victims as the perpetrators, while commending those apparently responsible. However, efforts to prosecute those responsible and secure compensation for the victims of the violence were made by the Federal Prosecutor's Office. Unfortunately this office was severely hampered by a lack of resources and a clear unwillingness on the part of the federal and state authorities for the case to be pursued.

³⁶ Amnesty International. 2001. Jamaica - Killings and Violence by Police: How many more victims? AI-index: AMR 38/003/2001 10/04/2001. April, p. 1.

systematic abuses of human rights by its policing agency. In particular the:

*“unjustifiable use of lethal force to effect arrests with no prior attempt to resort to non-lethal means; [and the] unjustifiable use of lethal force against unarmed civilians posing no threat to human life, including excessive force employed as a means of crowd control”.*³⁷

Moreover, in many cases of lethal shootings the police accounts of victim-initiated ‘shoot-outs’ continued to be disputed particularly by witnesses, as well as being contradicted by forensic evidence. A further area of concern for Amnesty International was the frequency³⁸ with which deadly force was being employed allied to the absence of prompt, thorough and effective investigations.³⁹

Jamaican law prohibits torture and cruel, inhuman or degrading treatment and provides mechanisms to enable victims to obtain redress. Yet witnesses, relatives of victims or victims themselves have been intimidated, and, in a substantial number of cases, received death threats.⁴⁰ Many of these threats centre on efforts by law enforcement officials against victim’s families precisely in order to deflect any action against guilty police officers.

Finally, Amnesty International found that the pattern of excessive use of force was still evident in Jamaica despite procedural reform.⁴¹ As early as 1991, a review of the Jamaica Constabulary Force (JCF), undertaken by British police officers at the request of the government had concluded that:

*“No...strategy exists in Jamaica...to ensure that the use of firearms is an action of last resort only and not an immediate response...The continuing level of deaths attributable to firearms operations involving the JCF are undoubtedly produced by their use of firearms as an action of first resort.”*⁴²

³⁷ AI. 2001, p. 4.

³⁸ According to official statistics the rate of lethal police shootings in Jamaica is one of the highest in the world. For the last ten years an average of 140 people per annum have been shot and killed (a peak of 354 killings was experienced in 1984). This in a country whose population is only 2,6 million. Per capita rates of police killings show that Jamaican police kill at a rate almost five times that of their South African counterparts. In South Africa - a country facing similar problems to Jamaica in terms of escalating levels of violent crime and whose population is approximately 16 times that of Jamaica (42.4 million) - recent figures indicated that there were 472 deaths as a result of police action during the course of arrest or other situations during the period 1 April 1999 to 31 March 2000. (AI. 2001, p.1, 4-5)

³⁹ Apparently, the investigations which do occur continue to fail to conform to international standards. The scenes of shootings are not preserved; with forensic and ballistics evidence contaminated or removed, while autopsy reports are inadequate and poorly executed (AI. 2001, pp. 2 & 25)

⁴⁰ AI. 2001, p. 2.

⁴¹ Currently Jamaica Constabulary Force policies forbid firing from or at a moving vehicle unless necessary to protect life. Appendix A to Force Orders 2494, dated 20 February 1997, Procedures and Regulations, provide that:

- B.3 Weapons shall not be fired from a moving vehicle unless it is necessary to protect a life;
- B.4 Weapons shall not be fired at a moving vehicle unless that vehicle poses an immediate threat to human life;
- B.5 Firearms shall not be discharged when it appears likely that an innocent person may be injured (AI, 2001, p. 38)

⁴² AI, 2001, p. 4.

Much of the use of force abuses stem from a longstanding culture of impunity within law enforcement agencies as well as the failure of the management structures to deal effectively or adequately with what is essentially an internal problem.

To give an example, the Special Rapporteur of the UNCHR was invited by the government of Brazil to visit the country to assess the situation concerning torture and other forms of ill treatment. After the visit, which took place during August-September 2000 the Special Rapporteur found that:

“The problem of police brutality, at the time of arrest or during interrogation, was reportedly endemic. The failure to investigate, prosecute and punish police officers who commit acts of torture was said to have created a climate of impunity that encouraged continued human rights violations”.⁴³

In its own *Initial report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the Government of Brazil recognised that:

“Many of these crimes remain unpunished, as a result of a strong feeling of esprit de corps among police forces and reluctance to investigate and punish officials involved with the practice of torture... The lack of training of police officers and penitentiary officials to carry out their duties is another important aspect affecting the continuation of the practice of torture”.⁴⁴

Brazil is not alone in international terms in recognising the underlying problems to the excessive use of force by law enforcement officials. These are the lack of sanctions, a culture of impunity and a policing subculture of silence or protecting colleagues and more importantly, shortcomings in police training and the absence of the inculcation of respect for human rights. However, the Special Rapporteur identified other factors as reinforcing the use of force abuses in the Brazilian situation:

- Some of those guilty of using excessive force act out of ignorance and others out of pure habit since they have acted that way for a long time without fear of any consequences
- Members of the public accept or even encourage a certain degree of violence against suspected lawbreakers
- A common perception among the population at large is that adhering to human rights is merely a way of protecting law-breakers⁴⁵
- Prosecutions in court reportedly take many years as the justice system is said to be overburdened and inefficient.

⁴³ United Nations Economic and Social Council (UNESCO), Commission on Human Rights (UNHCHR). 2001. Civil and political rights, including the questions of torture and detention. Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43. Addendum: visit to Brazil. E/CN.4/2001/66/Add.2. 30 March, pp. 4-5

⁴⁴ Initial report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by the Government of Brazil (CAT/C/9/Add.16), Paras. 80, 82, 83.

⁴⁵ UNESCO, UNHCHR, 2001. Report of the special rapporteur, Sir Nigel Rodley... p. 7

- A lack of willingness by police officers to investigate fellow officers⁴⁶
- The training and professionalism of police and other personnel responsible for custody are often inadequate, sometimes to the point of non-existence
- A culture of brutality and, often, corruption is widespread.⁴⁷

All of the above have resonance in the South African context where the courts suffer from severe backlogs and delays, and are understaffed and under resourced. The SAPS is still grappling with issues of transformation, old apartheid attitudes and the police sub-culture. In addition there are public demands for criminals to be dealt with harshly or be faced with citizens taking the law into their own hands by means of vigilante actions. The question of suitable and professional training is also an issue in South Africa.

A further concern of the UN and a number of international NGOs such as Amnesty International has been the fact the certain countries' domestic laws allow for the use of firearms in situations⁴⁸ other than as provided for by the principles contained in *The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. It is therefore incumbent upon any government that subscribes and supports the *UN Basic Principles* concerning the use of force and firearms to in fact review, revise and see to it that its own legislation and laws are in harmony with those principles and not in conflict with them. South Africa's own Section 49 is a particular point in question in this matter.

THE SOUTH AFRICAN LEGAL POSITION

South African Legislation on the Use of Force on Arrest

Under what circumstances may South African police officials kill suspects while trying to arrest them? Under what circumstances may a police official harm suspects? The South African law on the use of force in effecting an arrest was amended in 1998, but the new provisions are not yet in force.

The old law

⁴⁶ Opcit., p. 37

⁴⁷ Opcit., p. 38

⁴⁸ For instance Romanian law currently allows police officers to use firearms in circumstances prohibited by international standards, particularly the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Article 19(d), of Law No. 26 of 1994: *Concerning the Organization and Functioning of the Romanian Police* allows police officers to shoot "to apprehend a suspect who is caught in the act and attempts to escape without obeying an order to stay at the scene of the crime". In addition Article 47 of Romanian Law No. 17 of 1996: *On the Use of Firearms and Ammunition*, listed no less than 10 situations under which firearms may be used. These include the use of firearms against persons "posing a threat to a guarded objective/target"; against "persons who illegally enter or exit guarded areas or premises"; and against "groups of persons or persons who unlawfully try to enter the premises of public authorities and institutions". Such situations clearly fall outside those under which the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials permit the use of firearms by law enforcement officials. The Principles permit firearms to be used against persons only for the purpose of preventing death or serious injury, when less extreme measures are insufficient to achieve those objectives. (See Amnesty International. 2000. Romania: Excessive use of firearms by law enforcement officials and the need for legal reform. AI-index: EUR 39/003/2000 09/08/2000).

The old s49 appears below. The 'shoot to kill' provision is section two. Section one provides for the more general use of force. Where a person resists or flees arrest, the use of force in preventing their action must be 'reasonably necessary'. Section two provides for 'justifiable homicide', the justifiable killing of a fleeing suspect. Because the subsection was very broad, the courts developed limits on the scope of the section.

Criminal Procedure Act 51 of 1977, s49

(1) If any person authorized under this Act to arrest or assist in arresting another, attempts to arrest such person and such person-

(a) resists the attempt and cannot be arrested without the use of force; or

(b) flees when it is clear that an attempt to arrest him is being made, or resists such attempt and flees,

the person so authorized may, in order to effect the arrest, use such force as may in the circumstances be reasonably necessary to overcome the resistance or to prevent the person concerned from fleeing.

(2) Where the person concerned is to be arrested for an offence referred to in Schedule 1 or is to be arrested on the ground that he is reasonably suspected of having committed such an offence, and the person authorized under this Act to arrest or to assist in arresting him cannot arrest him or prevent him from fleeing by other means than by killing him, the killing shall be deemed to be justifiable homicide.

In the case of *Matlou*⁴⁹ the court said 49(2) had to be read in the light of certain pragmatic limits: that a shouted warning had to be given first, then a warning shot fired into the ground or air, and then any shots aimed at the suspect should be fired into the legs first.

In the case of *Britz*⁵⁰ and confirmed in *Swanepoel*,⁵¹ the Appellate Division held that the person responsible for an arrest killing must show on a balance of probabilities that he/she was justified in that killing in terms of the section, in order to succeed on the justifiable homicide defence. In other words, the onus was on him/her to prove his/her defence in terms of this section, rather than on the prosecution to show that he/she did not qualify for the defence.

The Constitutional Court in 1995 in the case of *Makwanyane*⁵² (the case which declared that capital punishment was unconstitutional) remarked that s49 was probably not constitutional. The court said if the state was not permitted to kill those who had been convicted of crime, it was paradoxical that an arrestor acting with intent in terms of s49 could justifiably kill those merely suspected of crime.

The legislature responded by passing the Judicial Matters Amendment Act of 1998, which attempts to bring s49 in line with the constitution. However, this act has yet to be implemented, with the result that the old s49 remains in force.

Subsequently, the Supreme Court of Appeal in 1999 in the case of *Govender*⁵³

⁴⁹ *Matlou v Makhubedu* 1978 (1) SA 946 (A)

⁵⁰ *R v Britz* 1949 (3) SA 293 (A)

⁵¹ *S v Swanepoel* 1985(1) 576 (A)

⁵² *Sv Makwanyane* 1995 (3) SA 391 (CC)

⁵³ *Govender v Minister for Safety and Security* Case number 342/99

outlined a new approach to the old s49, which looks at whether s49 is a reasonable limitation on the constitutional rights to life, physical integrity, dignity, the presumption of innocence, and equality.

The constitutional validity of s49 was not being challenged in this case, rather, the court was asked to “read down” s49 so it would comply with the correct constitutional standard. The court found it was possible to do so and outlined the way in which that was possible.

The court, per Olivier JA, said:

“I am of the view that in giving effect to s49(1) of the act, and in applying the constitutional standard of reasonableness the existing (and narrow) test of proportionality between the seriousness of the relevant offence and the force used should be expanded to include a consideration of proportionality between the nature and degree of force used and the threat posed by the fugitive to the safety and security of the police officers, other individuals and society as a whole. In so doing, full weight should be given to the fact that the fugitive is obviously young, unarmed, or of slight build, etc, and where applicable, he could have been brought to justice in some other way. In licensing such force, necessary to overcome resistance or prevent flight, as is ‘reasonable’, section 49(1) implies that in certain circumstances the use of force necessary for the objects stated will nevertheless be unreasonable. It is the requirement of reasonableness that now requires interpretation in the light of constitutional values. Conduct unreasonable in the light of the Constitution can never be ‘reasonably necessary’ to achieve a statutory purpose.”

The court found that it was possible to ‘read down’ s49(1) so that it could encompass a constitutional approach, by interpreting it to include a threat of danger approach in deciding on reasonableness. The court concludes:

“... The act must... be interpreted to so as to exclude the use of a firearm or similar weapon unless the person authorised to arrest, or assist in arresting, a fleeing suspect has reasonable grounds for believing
(1) that the suspect poses an immediate threat of serious bodily harm to him or her, or a threat of harm to members of the public; or
(2) that the suspect has committed a crime involving the infliction or threatened infliction of serious bodily harm.”

However, the constitutional validity of s49 as a whole was subsequently directly challenged in the matter of *Walters*⁵⁴ in the High Court (Transkei Division) in 2001. That court disagreed with the *Govender* decision. The court felt it was not correct to read in provisions that did not exist in the legislation. The court said, per Jafta AJP:

⁵⁴ S v Edwin Joseph Walters & Marvin Edward Walters Case No 45/2001 High Court of South Africa (Transkei Division).

“In my respectful view the decision in Govender is not consistent with the decisions of the Constitutional Court on the issue of dealing with legislation that limits the rights entrenched in the Bill of Rights.”

The court found that s49(1)(b), and s49(2) insofar as it refers to a fleeing suspect, is inconsistent with the Constitution and therefore invalid. These findings have been referred to the Constitutional Court for consideration. The Constitutional Court has not yet confirmed or overturned the decision.

The court further commented that this finding has no impact on the new law. It therefore remains to be seen whether the changes implemented by the new law would survive a constitutional challenge.

The new law

The first change in the law which would be effected on implementation of the legislation is that the general use of force must now not only be reasonably necessary but also ‘proportional’.

‘Proportional’ implies, amongst other things, that the force used must be weighed against the seriousness of the offence. The retention of the ‘reasonable’ requirement means that the old requirements, such as warning shots, remain. Where deadly force is to be justified, other limits now come into play.

The New s49

- (1) For the purposes of this section-
- (a) ‘arrestor’ means any person authorized under this Act to arrest or assist in arresting a suspect; and
 - (b) ‘suspect’ means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence
- (2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing: Provided that the arrestor is justified in this in terms of this section is using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds –
- (c) that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;
 - (d) that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or
 - (e) that the offence for which the arrest is sought is in progress and is of a forcible or serious nature and involves the use of life-threatening violence or a strong likelihood that it will cause grievous bodily harm.

Proviso (a) is what would commonly be called a ‘self-defence’ proviso. The proviso is merely a restating of the defence of ‘private defence’ and ‘putative (imagined or

mistaken) defence' at common law.

All the usual principles (where not excluded by the legislation) with regard to those defences come into play, such as that the force used must not be more than was necessary.

The arrestor's belief of imminent harm must be based on 'reasonable grounds'. This means that the situation with putative defence, for an arrestor, is a bit more restrictive than it is at common law. This is discussed further in the box below.

An aside on putative defence

At common law, a murder conviction can be escaped by arguing putative (mistaken or imagined) defence. The lack of the requisite *mens rea* (state of mind) for committing a murder (a crime requiring intent to act unlawfully) means a murder conviction is not possible.

That is, a person kills in the real belief, however unreasonable, that he or she was acting lawfully in defence of yourself or someone else, and so it was not murder. (Of course, a conviction of culpable homicide would still be possible in these circumstances.)

It has been pointed out¹, however, that under the new proviso, an arrestor would have to have acted on a real belief *based on reasonable grounds* to justify the killing and thereby escape a murder conviction. An unreasonable real belief would not be sufficient to justify a murder in an attempted arrest.

If this is correct, paradoxically an 'arrestor' prosecuted in this situation might do better if he did not maintain he was in an arrest situation. Rather, that he was simply acting in putative defence. As long as he was able to convince the court his belief was real, even though unreasonable, a murder conviction could thereby be avoided (but not a culpable homicide conviction).

The proviso does widen the ambit of acts falling within this statutory private and putative defence. At common law, the defence relates to imminent harm only. Here, the proviso speaks also of 'future' harm. How far into the 'future' will qualify? It will remain for the courts to interpret what 'future' actually means.

Proviso (b) speaks of the situation where the arrestor believes delay in the arrest will lead to harm or death. This belief must also to be on reasonable grounds. This is different from the situation in the US, where all that is required is the belief on the arrestor's part.⁵⁵ The belief need not be reasonable.

It is unclear in what way proviso (b) is different from proviso (a). Perhaps (a) refers to the situation where the deadly force is directed at defending oneself or others, while in (b) the force is directed at effecting the arrest itself. The courts may well read different time frames into these two provisos, with (a) perhaps being the more immediate situation of direct conflict. Would (b) then, for example, cover a sniper

⁵⁵ Ibid.

targeting a suspect in a hostage situation that has not yet become critical, or a sniper taking out a man, known to be on his way to detonate a bomb?

Proviso (c) covers the situation where the arrestor believes on reasonable grounds that a crime is in progress, which involves life-threatening violence or a strong likelihood that it will cause grievous bodily harm. A possible scenario, which is likely to be covered, is an arrestor shooting a suspect carrying out a hijacking in progress. It is unclear whether the courts will require the onus to be on the arrestor to show that he falls within these exceptions, as was the case under the old s49, or whether it will be up to the prosecution to show he does not.

Finally, the new section makes no reference to Schedule 1. The emphasis is on the subsequent danger of violence to any person, rather than on the type of crime originally committed.

In summary

All of this legalese is unlikely to be of use to the police official fighting crime. An attempt will be made to give a simple guide as to how a police official should proceed according to the current law.

When dealing with a fleeing suspect, a warning should be shouted and a warning shot fired into the ground. Thereafter, there should be no attempt to shoot to kill, but rather to shoot to stop the person, but only in respect of serious offences. Even a shot in the leg would not be appropriate for an unarmed person suspected of a minor offence.

Where there is any real danger of serious harm to anyone, including the police officer, he or she is justified in shooting at the suspect to halt the harm. But at all times, the belief in the danger of harm must be reasonable. And where he or she is able to shoot to injure rather than to kill in halting the harm, that must be the action taken. Killings in the reasonable belief that there was no other way of avoiding harm may succeed in being justified; however, it remains to be seen whether the Constitutional Court will find even such killings to infringe on the right to life.

3. CASE STUDIES FROM THE SEVEN POLICING AREAS IN GAUTENG

Overview of findings from file perusal

This section is based on the perusal of selected files of cases of use of force by members of the SAPS in the seven policing areas of Gauteng.

This section is also an overview of issues that emanated directly from the information contained in the sample files perused. These include: a lack of information; delays in finalisation of cases; prosecutors' decisions on whether to prosecute or not; linkages between internal disciplinary processes and criminal court; case dismissals; suspensions; discharge from service; shooting incident reports; ready use of firearms; inquests; complaints and warning signs.

1. Lack of information in files

The general lack of detail was an inhibiting factor. The selection of files was also part of this problem in that the researchers, in some of the policing areas, had no control over which files would be drawn and given to them. In only one area, was the researcher able to randomly select files of use of force from the file racks.

In addition, there appeared to be an over-representation of shooting incidents. Therefore the files perused are probably not a representative picture in terms of the extent of use of force. From experience with other research projects on policing, it is our contention that more subtle forms of force are used in daily police work that are not reported. This would include detaining suspects for the full permissible 48 hours without releasing them on bail or charging them; driving around with a suspect (delaying booking in); driving with a suspect in the back of a police van with a loose spare wheel or speeding over speedbumps. These kinds of incidents often go unreported.

2. Long delays in the finalisation of cases

It was found that prosecutors delayed making decisions on cases. In some cases, there was a three to five years' delay before a case was finalised.⁵⁶ The finalisation of inquests also took a long time and substantially delayed the process.

3. No reasons given for prosecutors' decisions to 'decline to prosecute'

The letter from the Director of Public Prosecution's office in most cases merely states that the State Prosecutor has decided 'to decline to prosecute'. No other information is provided. (However, where the decision is to prosecute, the letter at minimum states the charges). Although disciplinary officers are entitled to request that reasons for the decision be given, none of the officers did so in any of the cases reviewed in this study.

4. Internal disciplinary processes linked to external criminal court process

A criminal case is often dealt with on issues very different from those that would arise in a purely disciplinary matter. Yet it would appear that disciplinary hearings are often not held or undertaken UNTIL the prosecutor makes a decision on whether to prosecute or not. If the prosecutor declines to prosecute – for whatever reason, even a legal technicality – this refusal seems to be taken as justification for 'no further departmental steps' being taken. The case is summarily closed.

In some instances, the prosecutor's decision was awaited *"in order to be able to recommend a decision for discharge if the member is prosecuted."*⁵⁷ Surely internal disciplinary measures and sanctions should be imposed internally irrespective of the outcome of the criminal case?

5. Clear cases of misconduct would appear not to be disciplined

Clear cases of misconduct should result in a disciplinary hearing irrespective of the fact that the prosecutor has declined to prosecute. This is because a decision not to

⁵⁶ The following was a particular illustrative case of using delays to close a case. In this case the Station Commander did not see his way clear to institute disciplinary proceedings in the *"light of the long delay"* in completing the investigation, while the Area Commissioner commented that *"there has not been enthusiasm in this matter to have this member charged criminally or even departmentally."* (ER No. 12).

⁵⁷ *"ten einde om beslissing te kan aanbeveel vir skorsing indien die lid word vervolg"* (PTA No. 9)

prosecute may be on practical rather than legal grounds, for example, dockets being missing or witnesses failing to turn up for a court hearing.

Furthermore, in terms of the SAPS Regulations, a member commits misconduct if he or she performs any act or fails to perform any act with the intention of causing harm or to prejudice the interests of the SAPS, whether financial or otherwise, or with the intention of undermining the policy of the SAPS, or with the intention not to comply with his or her duties or responsibilities. Committing an offence is only one possible type of misconduct.

There were a number of what appeared to be clear cases of misconduct, according to witness statements, Memo of Facts by investigating officer, and the injuries sustained, but when the prosecutors declined to prosecute the unit commander would state that “*no further departmental steps*” would be taken.

In other words, commanding officers tend not to institute disciplinary hearing, and thereby impose some form of service sanction on member, but rather use the DPP decision as a justification to close the case by regarding it as having been dealt with.⁵⁸

In one case it appeared that a member “*acted outside of the law, he used maximum force by firing four shots at the victim without any valid reasons for doing so*”, no criminal case was instituted against the member. Moreover, no further departmental steps were ever taken against him.⁵⁹

6. Internal disciplinary case if State Prosecutor 'declines to prosecute'

The disciplinary officer takes no steps since he is “*awaiting the decision of the SP*”; “*suspension will only be implemented if member prosecuted*” or “*suspension not recommended at this stage but after the completion of the criminal case will be reviewed*”. The latter very seldom happens. Even where suspension is recommended this would appear to be implemented in only a limited number of the cases reviewed.

7. Cases closed

There were a number of cases from the sample which were either dismissed or closed due to delays in the court proceedings. Such delays were the result of witnesses not appearing in court, the dockets being lost or files going missing. In other words, cases were being closed due to factors other than the merits of the case.

8. Ignoring recommendations made by State Prosecutor

Even where a prosecutor declines to prosecute (or a magistrate dismisses the case) but nevertheless recommends that departmental steps be taken, this is largely ignored. It is simply stated that “*no further dept. steps to be taken*” and the case is dismissed as closed and finalised.

⁵⁸ “*beskou as afgehandel*” (See ER No. 22).

⁵⁹ See ER No. 25 for more detail on these comments in the shooting incident report.

9. Lack of evidence in some cases

In some cases there appeared to be substantial lack of evidence. This can, in some instances, be pointing either to poor investigation or reluctance by the member to co-operate with Internal Investigators. It seems members hold the view that they need not co-operate in their own prosecution. Many refuse to make a statement, rather saying they will wait for the court case before they make any statements.

10. Suspensions rare

Where a letter of intention to suspend is sent out, the member usually contests the suspension on the basis of *“family and financial commitments, can’t afford to lose pay etc.; have accounts to pay”*. He or she seldom defends his or her actual conduct. Most commanding officers tend to await the State Prosecutor’s decision before making any decision to suspend a member. It was only in the cases of excessive misconduct and brutality that members were suspended immediately. Suspensions are delayed *“but will be reviewed after completion of the criminal case”*.⁶⁰⁾

In one particular case a member was suspended and served with a ‘possible suspension’ notice for an alleged assault with intent to cause grievous bodily harm. The member, in opposing his suspension, wrote that he had never been found guilty in any criminal case for any of the other eleven charges against him, ranging from assault, assault GBH to attempted murder.

This points to a fundamental flaw in the interpretation by some members of disciplinary charges against them. They seem to believe they must be found guilty in a court of law before they can be sanctioned for any possible misconduct or misbehaviour on their part in an internal hearing. There would appear to be very little recognition of the fact that their behaviour might nevertheless constitute misconduct even if it does not merit a criminal conviction.

Furthermore, this case has an additional bizarre twist. The commanding officer, in recommending that the member not be suspended, used as justification for this view the fact that he was currently experiencing a severe manpower shortage and the member was part of a specialised reaction unit so could ill afford to have him suspended from duty.

The outcome this case was that the member’s suspension for ‘misconduct’ by the Area Commissioner was overturned by the Provincial Commissioner on condition that the member sign a letter whereby he undertook in future not to perpetrate any ‘similar behaviour’ otherwise the Commissioner would have no choice but to ‘charge’ and ‘suspend’ him. One of the complicating factors in this case was that the four members who were present at the alleged assault incident refused to make any statements to the investigating officer while also denying all charges.⁶¹

11. Previous disciplinary proceedings not taken into account

It is unclear whether previous disciplinary findings of misconduct are taken into account when reviewing a particular case. There were a number of cases where a

⁶⁰ *“maar sal na afhandeling van die kriminele saak in heroorweging geneem word”* (PTA No. 10).

⁶¹ ER No.6

member had other charges, or had been given a suspended sentence on condition that he was not again found guilty of misconduct, but the disciplinary hearing again finds him guilty of misconduct and again suspends the sanction conditionally. It therefore seems that no link to previous suspended sentences is made nor that the suspended sentence will be implemented is mentioned.⁶²

12. Suspended sentences

Suspended sentences seldom seem to kick in. This is especially so where the incident is in any way different from the incident for which the suspended sentence was imposed. For example, a member was found guilty in a disciplinary hearing for pointing a firearm and robbery. His sentence was suspended for 12 months on the proviso that “*no further act of misconduct or dishonourable violence [our emphasis] is perpetrated*” (ER No. 6). However, barely eight months later he received another suspended sentence for misconduct in a disciplinary hearing, for *crimen injuria*. However, the previous suspended sentence did not automatically kick in.

13. Discharge from service rare

In some cases an officer was 'discharged'. This discharge was often suspended for 12 months on condition the officer is not found guilty of similar conduct. To all intents and purposes, this is not any punishment at all, as the officer is back on active operational duty. Recourse to a 'desk' job is a seldom-used alternative; nor is the authorisation to use a firearm withdrawn as a measure of sanctioning misconduct.

In one example a member was “*sanctioned to discharge from the Service suspended for 12 months on condition that they are not again found guilty*” (translation).⁶³ It seems inexplicable that a member found guilty of serious misconduct by a departmental hearing and is discharged, can have that discharge suspended on the basis of future good behaviour. Surely, disciplinary hearings should be used precisely to root out bad elements in the SAPS.

It can only be speculated as to what the public's attitude to seeing such members back on duty even though they have been guilty of gross misconduct in the performance of their duties or in their private life, must be. Such behaviour must be sanctioned and sanctioned by the ultimate in severity by dismissal from the service. The SAPS does not need members who abuse their positions, perpetrate gross violations of people's rights or are guilty of severe misconduct. Departmental disciplinary hearings should precisely provide and be used as a form of 'cleansing'.

In addition, besides dismissals not being implemented (the member being allowed to remain in the SAPS on probation or sentence suspended), negative psychologist and psychiatrist reports also do not result in a suspension or discharge on medical grounds. In at least one case a person with severe emotional or mental disorders was not discharged.⁶⁴

14. Disciplinary steps not commensurate with level of misconduct

Often the departmental punishment would appear not to fit the seriousness of the misconduct perpetrated. For example, a case of assault with intent to cause grievous

⁶² See ER No. 20 for more detail of this example.

⁶³ “*gesanksioneer tot ontslag uit die Diens opgeskort vir 12 maande op voorwaarde dat hulle nie weer skuldig maak aan...*” (PTA No. 19).

⁶⁴ NR No.22

bodily harm resulted in a R200 fine or three months suspended for six months.

Often verbal warnings alone are given. For example, *“that both members are to be seriously advised (warned) by their commander that in future they should use better discretion when they make use of their firearms”*(translation).⁶⁵ This verbal warning was given in a case where a *“suspicious”* looking young man was stopped for questioning by members doing patrol. The young man broke loose from the members and started running away. The two policemen fired six shots. Fortunately the young man was only slightly injured. He had clearly not represented a threat, was unarmed, and was not suspected of perpetrating a violent crime (he was suspected of being involved in vehicle theft). This incident also illustrates the far too ready use of a firearm to effect an arrest. Alternative methods, for example, running and catching a suspect, are seldom employed.⁶⁶ There is a need for training in alternative methods of apprehending a suspect, as well as in evaluating how ‘life threatening’ any policing situation is.

15. Shooting incident report shortcomings

Shooting incident reports are usually investigated by the Duty Officer from the member's own police station or policing area. They are based on what the investigating officer is told by the member or his or her partner. There is a tendency to provide information that fulfils the legal requirements (e.g. gave a verbal warning, fired warning shots into ground, aimed at wheel of the vehicle or legs of suspect running away). There would appear to be minimal use of witnesses, other than the SAPS members involved by the police investigator of shooting incidents (see recommendations).

In very few of the shooting incidents were the members involved recommended for counselling, or for a visit by their minister, or for debriefing by either the station or unit commander.

16. Inquests do not show 'degree of force' used

There was very little detail in the inquest report form, J56, kept in an individual's files. It seems the full inquest report is only kept in the full case docket that is sent to the prosecutor. The form J56 indicates only the final inquest finding. It will record, for example, an inquest finding of: *‘no-one can be held criminally responsible for the death’*, but makes no mention of any other details of the incident. No evaluation of inquest findings could therefore be done in terms of the degree of force used in the incident. It should also be noted that in most cases of shooting deaths in this sample, long delays of a number of years occurred before the inquests were heard.

17. Ready use of firearms or violence tolerated

In a number of cases members drew their firearm as first resort. ‘Resistance against arrest’ was used as justification of the use of so-called ‘necessary force applied’⁶⁷. This may point to incorrect subduing techniques being used.

Furthermore, the justification ‘necessary violence or force’ is used to cover a wide

⁶⁵ *“dat beide lede ernstig deur hulle bevelvoerder vermaan moet word om beter diskressie aan die dag te le wanneer hulle hul vuurwapens gebruik”*. PTA No. 17).

⁶⁶ PTA No.17

⁶⁷ *“nodige geweld toegepas”*.

range of violence. For example, dragging a suspect by the hair or handcuffs and throwing them into the back of a police van was said to be ‘necessary force’ and was the usual procedure in a number of the arrest situations reviewed.

In some cases there appears to be clear grounds for complaint. Although a suspect may have resisted arrest, questions as to whether the officer “*handled* [the suspect] *with the requisite expertise or competence*” (translation) arose.⁶⁸

In one case there was recognition of the inappropriateness of the level of force used. Yet in referring to this case the commanding officer, while thanking the member for the arrest, issued the following piece of advice of “[you] *are amicably but seriously warned/advised to utilise only the necessary force and not to exceed its limits*”.⁶⁹ In another case the Area Commissioner merely instructed that the content of Section 49(1) of the Criminal Procedure Act No. 51 of 1977 “*again be brought to the attention of the member.*”

It was apparent that there was a quick resorting to the use of a firearm in most situations, whether in public, at a social situation, at work or at home.)⁷⁰

18. Withdrawal of firearm authorisation seldom recommended

There were very few recommendations for the withdrawal of authorisation to use a service firearm, even in clear cases of negligent handling of a firearm, misconduct or inappropriate use of a firearm. There was also very little evidence of moving members guilty of some misconduct to serve in the charge office or desk duty and to take them away from the streets (active duty) as a form of sanction.

In one case where authorisation was in fact removed and the member transferred to an desk job, the member brought a case against SAPS for reinstatement. This member maintained that being permitted to carry a firearm at all times was part of his work and he therefore wanted to be placed back on active street duty.

One recommendation in a shooting incident, a case of reckless shooting at a suspect running away, was that “*in future members use their firearms under supervision. [Underlined for our emphasis] Not recommended withdrawal of after hours permission to use a firearm.*”⁷¹ This recommendation appears to be a contradiction. Firearm use is restricted while on duty, as it has been accepted there has been an element of either negligence or reckless use of the weapon, yet no restriction is placed on after-hours use.

19. Off-duty incidents: closing of ranks

A number of incidents occurred while members were off-duty. These included incidents in domestic situations, social gatherings or at shebeens. Service firearms were used to intimidate or threaten someone, or were used as blunt instruments. A number of assaults, cases of *crimen injuria* and even murder, were recorded where

⁶⁸ “*wel met die nodige bevoegdheid gehandel*” (PTA No. 16).

⁶⁹ “*word vriendelik dog ernstig vermaan om slegs die nodige geweld aan te wend en nie sy perke te oorskry nie.*” (ER No. 1).

⁷⁰ There was also a worrisome use of service firearms as a weapon of threat, and also often used as a weapon to perpetrate an assault, in domestic violence (See ER No. 10).

⁷¹ ER No.1

the victims were colleagues of the perpetrator. Domestic violence and aggression towards ordinary members of public were also recorded.

Commanders appeared to be reluctant to institute any departmental steps, particularly in a domestic situation or where the incident happened while the member is off-duty. This was particularly so in less serious crimes such as common assault, pointing of a firearm or *crimen injuria*, and where no serious injuries occurred. The incident is often explained as follows: *“this is just a ‘house’ (domestic) problem” (“huisprobleem”)*⁷²; *“has a problem controlling his temper”*; *“gets angry quickly”*.

Members tend to support their colleague’s version of events. In one case the misconduct was of an extremely serious nature.⁷³ The member, in a drunken brawl, had committed assault with intent to cause grievous bodily harm while off-duty. It became apparent that the commanding officer was protecting the member from the consequences of his actions. The hearing clearly identified the member as having an *“aggression problem”*. Yet the hearing went on to say that *“he was working on it”* and any *“disciplinary steps”* might *“adversely affect”* such progress. Accordingly, the member was merely warned *“that this office [Area Commissioner] regard the alleged offence in a serious light and that a repeat of this conduct (behaviour) will lead to negative disciplining”* (translation).⁷⁴

In a subsequent incident, the same member, while drunk, followed a civilian home and beat him up. Again the commander tried to protect the member. For example, he was removed from the scene without having a blood test done. Disciplinary steps were only taken when the father of the victim complained directly to the National Commissioner and threatened to take the case to the press. The member was eventually discharged after being found guilty in a criminal case. The pattern of misconduct had been well-established before this incident; yet the problem was never adequately dealt with and therefore persisted.

20. Use of transfers to deal with a 'problem' officers

In at least one case (an off-duty assault) no departmental disciplinary steps were taken. This was because the officer in question had been transferred to another station (*“since he has in the interim been transferred”* (to another police station) (translation)).⁷⁵

21. Use of alcohol on and off duty

The presence of alcohol was noted in both on- and off-duty incidents.

22. Use of a dog to affect an arrest

There is a difficulty in assessing whether there was unnecessary use of a dog in affecting an arrest. However, in making a decision to use a dog the rationale used by

⁷² In one case an assault was merely dismissed as a *“huis probleem”* (this was in June 1998 before the implementation of Domestic Violence Act). In this case there appeared to be an evident reluctance by the station commander to interfere in the personal off-duty life of a member (ER No. 7).

⁷³ Being drunk off duty, arguing and fighting in public (*Crimen Injuria*, Assault GBH) with a fellow officer, and being extremely aggressive and out of control.

⁷⁴ *“dat hierdie kantoor die beweerde oortreding in ‘n ernstige lig beskou en dat ‘n herhaling van hierdie gedrag tot negatiewe dissipline sal lei”* (PTA No. 24).

⁷⁵ *“aangesien hy intussen verplaas is”* (PTA No. 18).

police members interviewed was that 'a dog is better than a firearm.' Dogs are indeed perhaps a better option than a firearm in that they are less likely to cause a death. However, dog bites can be severe (see recommendations).

23. Warning signs and red flagging

The little information in the files nevertheless often contains sufficient indication that problems might exist with particular members. None of these seem to be noted or followed up by station and unit commanders.

24. Incorrect procedures and lack of detail

Regulation 18(1)(a) as explained in the Procedure Manual compiled in 1999 by the West Rand Behaviour Management Unit states that a member can be suspended for "*allegedly perform[ing] an act with the intention to cause harm to or prejudice the interests of the service be it financial or otherwise.*" This regulation would clearly cover acts of misconduct that brought the Service into disrepute or harmed the image and impacted on effective and efficient service delivery.

The regulations also require that when a member is warned either verbally or in writing by the station commander such warning must per SAP 172 (B) (filled in with a red pen), and be sent to the Negative Discipline Section.⁷⁶ It, however, remains the station commander's decision and prerogative whether the member is departmentally charged ("*vervolg*") or not. If the station commander holds a departmental inquiry (a first step towards the possible holding of a disciplinary hearing) irrespective of whether this emanates or not from a criminal case, the investigation must be completed and a Regulation No. 8 Report filled in. The regulations require that this report and other documents pertaining to the case, such as the Memo of Facts and the Station Commander's recommendations, be attached and sent to the Negative Discipline Officer's office for his further decision.

However, in the files perused this generally did not occur. The relevant documentation was either missing or incomplete or lacking in sufficient detail. When reporting back to commanding officers does take place, it is often in the form of a standard letter usually saying "*nothing to report*" or "*case still at AG*".

Statistical analysis of Gauteng use of force cases

This section is based on the statistical analysis of the coded information collected from the sample of files perused. It is a comprehensive overview of the data emanating from the files. It covers the types of incidents, injuries sustained by the victim, whether it occurred on or off-duty, the circumstances of the incident occurred and the sanction handed down to the member.

Demographics

There are at present 102 294⁷⁷ police members in the SAPS. Constables and sergeants constitute 7% and 36% respectively of the total number of police members. There are currently 27 733 (27%) white police members and 74 561 (73%)

⁷⁶ Now called the Behaviour Management section/unit.

⁷⁷ This was the number as at the 1 April 2001 and was obtained from the Efficiency Services component of the SAPS. The figure excludes civilians, temporary members and those on contract.

black members in the police service.⁷⁸ In addition, there are 13 093 females (13%) and 89 201 males (87%) in the SAPS.⁷⁹

In this study it was not always possible from the files to determine whether a police member was white or Coloured. There are many surnames that are common to both groups. When faced with this dilemma the researchers recorded the race as white. This is perhaps incorrect but there was no way of verifying the police members' race.

Files of 186 police members were perused for this study, with 859 use of force incidents being recorded. Fifty-nine (32%) police members were involved in one incident each while 30 (16%) were involved in 2 incidents each. Twenty-two (12%) police members were involved in seven incidents. A further twenty-two (12%) were involved in 9 incidents.

Four police members (2%) stand out in the present study and have been classified as problem cases. This is because of the kind of incidents as well as the number of incidents in which they have been involved.

Figure 1 illustrates the rank of the police members, per incident, who were under scrutiny in the present study.

Rank at the time of the incident	Number of incidents	Percentage
Constable	407	47.7
Sergeant	355	41.6
Captain	14	1.6
Inspector	48	5.3
Unknown members	1	0.1
No details	28	3.3
Total	853	99.6*

**figures will not necessarily add up to 100% due to rounding off error*

Most of the police members were constables (48%) and sergeants (42%) when they committed use of force incidents. This is to be expected since these ranks work at grassroots level. They are the ones who are most likely to interact with suspects and members of the public.

The police members involved in such incidents were primarily from the Uniform branch (22%), Crime Prevention Unit (20%), Dog Unit (14%), Flying Squad (10%), Public Order Policing Unit (8%) and the Detective branch (7%). However, it must be remembered that the files were not properly randomly or representatively selected, as has been described in the section on research problems.

Situation of incident (circumstances)

Just over two thirds of the use of force incidents were work related (see Figure 2).

⁷⁸ These figures include males and females. However, the figure excludes civilians, temporary members and those on contract.

⁷⁹ This figure includes both black and white people. But excludes civilians, temporary members and those on contract.

Use of force typically took place in pursuit of a suspect, whilst effecting an arrest or during crime prevention. Incidents of use of force also occurred during an argument with a victim or colleague, whilst responding to a complaint, at a crime scene and during interrogation of a suspect.

Figure 2 indicates the situation in which the incidents took place.

Category	Number	Percentage
Domestic	65	7.6
Work related	579	67.2
Other (social)	160	18.7
No details	54	6.3
Total	853	99.8*

**figures will not necessarily add up to 100% due to rounding off error*

Nineteen percent of use of force incidents occurred in a social situation, that is, at a social gathering, and 7% were domestic episodes. Twenty-five percent of all incidents occurred while the member was off-duty. (See Figure 3).

Figure 3 points out whether or not the police officers were on duty when the incidents took place.

Police member on or off duty	Number	Percentage
On	543	63.7
Off	211	24.7
Other	40	4.7
No details	59	6.9
Total	853	100.00

This compares to the Netherlands study which found that “43% of all police use of force can directly be linked with a (potential) threat to police safety”.⁸⁰ The police also used force to prevent or end “violence between citizens, to calm a person down, make clear that the behaviour encountered is not appreciated, or to maintain public order”.⁸¹

That study also found that “most force is employed during arrests”⁸² and the use of force usually occurs when police officers intervene in conflict between people. In addition, the research found that in hot pursuit or emergency situations (where colleagues are in trouble) the use of force is more the rule than the exception. Uildriks observed that since these situations are “both dangerous and highly emotional ... the force employed is often based upon emotion as well as upon the functional grounds of effort to attain speedy control of the situation”.⁸³

In the present study, common assault was the most frequent transgression (see Figure 4). It accounted for 32% of the use of force incidents. Second most common were shooting incidents (30%) and third, assault with intent to cause grievous bodily

⁸⁰ Uildriks, opcit., p. 221
⁸¹ Ibid
⁸² Ibid
⁸³ Ibid

harm⁸⁴ (11%). The next highest categories were murder (4%) and pointing of a firearm (4%).

Figure 4 specifies the types of incidents in which police members were involved

Incident	Number	Percentage
Assault Common	277	32.5
Shootings	256	30.0
Assault GBH	97	11.4
Attempted murder	71	8.3
Murder	38	4.4
Culpable homicide	6	0.7
Armed Robbery	8	0.9
Intimidation	14	1.6
Kidnapping	2	0.2
Pointing of a firearm	36	4.2
Crimen Injuria	16	1.9
Negligent discharge of a weapon	14	1.6
Negligent driving	12	1.4
Rape	4	0.5
Attempted rape	1	0.1
Indecent assault	1	0.1
Total	853	99.8*

**figures will not necessarily add up to 100% due to rounding off error*

Constables and sergeants were more likely to be involved in shooting incidents and common assault. The study carried out in the Netherlands found that at most only 2% of violent incidents result in a complaint being lodged against a police officer. According to Uildriks the “decisive factor appears to be whether the civilian concerned felt partly responsible for the violence incurred”.⁸⁵ This was not established in the present study since complainants were not the specific focus of the research.

Constables were more likely to inflict minor injuries and gunshot and stab wounds on their victims. Sergeants were more likely to assault their victims. Constables and sergeants were more likely to use their firearms to execute use of force against their victims. Firearms were more likely to be used in committing the following crimes:

- shooting incidents
- pointing of a firearm
- murder
- attempted murder, and
- armed robbery.

Police members used their fists to carry out common assault and assault GBH. Dog bites were more likely to take place in assault GBH cases. In respect of common assault and assault GBH, a victim was more likely to be kicked, slapped and/or

⁸⁴ Assault with intent to commit grievous bodily harm

⁸⁵ Uildriks opcit., p. 223

fisted.

The Dutch study found that *“the forms of force employed are to a large extent determined by circumstances and personal preference. Police officers chiefly make use of their own physical capacities: incapacitating someone by a special hold, dragging someone along the ground, hitting or kicking”*.⁸⁶ According to Uildriks the short truncheon carried by the police is considered by them to be *“relatively useless”* and *“in the absence of adequate weaponry”* this results in excessive use of force or the use of *“unauthorised weaponry”*.⁸⁷ Reiss makes an important point that is pertinent to the current study. He maintains that by only focussing on the harm inflicted by a firearm serves to ignore the injuries caused by a police member’s ‘hands and booted feet or with his truncheon or flashlight’.⁸⁸ These instruments can also result in the victim’s death. In the present study police member’s used their fists and kicked victims with their booted feet.⁸⁹

Location

More than half of the incidents took place in a public place, that is, on the road, at a pub, tavern or shebeen. Eleven percent occurred at the victim’s place of residence whilst 9% happened at the police station. A further 9% ensued at the scene of another crime.

Figure 5 indicates the place where the use of force incidents took place

Location of incident	Number	Percentage
Public place (road, tavern)	487	57.1
Victim’s place	96	11.3
Police station	80	9.4
Scene of the crime	79	9.3
No details	52	6.1
Policeman’s home	38	4.5
In casspir	9	1.6
Farm	7	0.8
Friends place	3	0.4
Several places	2	0.2
Total	853	100.7*

**figures will not necessarily add up to 100% due to rounding off error*

Instruments used to perpetrate use of force

The instrument most frequently used by police members was a firearm. This was used in just over half of the use of force incidents in the sample of files perused. This does not necessarily mean that the gun was fired – victims were also hit with the butt or barrel of the firearm or threatened with the firearm itself. It is a weapon that is easily accessible to police members. The next instrument of choice was the police

⁸⁶ Uildriks, pp. 221-222

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Reiss’ contention about the use of alternative ‘weapons’ other than a firearm is supported by other research in the USA. In an examination of 1 585 adult custody arrests undertaken by the Phoenix Police Department, Arizona, over a two week period in June 1994 it was found that the police had used some physical force in about 1 out of every five arrests while officers used weapons in 2% of the arrests, with the flashlight most often being their weapon of choice (See Garner, et al., 1994).

members' fist. Police members also kicked, slapped and fisted their victims. Other forms of use of force included the use of teargas and electric shocks.

Number of shots fired

In most of the incidents (62%) no shots were fired. This is not surprising since the most frequent use of force recorded by this study was common assault.

Figure 6.1 gives a breakdown of the number of shots fired in all incidents

Number of shots fired	Frequency	Percentage
One shot	114	13.4
Two shots	55	6.5
Between three & five	72	8.4
Between five and ten	49	5.7
More than ten	34	3.9
<i>Subtotal</i>	<i>324</i>	<i>38.0</i>
None	195	22.8
No details	83	9.7
No firearm	251	29.4
Total	853	99.8*

**figures will not necessarily add up to 100% due to rounding off error*

However, in those incidents in which a firearm was fired, police members fired one shot only in 35% of incidents. In 22% between three and five shots were fired. However, in 10% of shooting incidents, more than 10 shots were fired. This would imply that in 10% of cases there was near indiscriminate firing of a firearm.

Figure 6.2 gives a breakdown of the number of shots fired in shooting incidents

Number of shots fired	Frequency	Percentage
One shot	114	35.2
Two shots	55	17.0
Between three & five	72	22.2
Between five and ten	49	15.1
More than ten	34	10.5
Total	324	100

This data was further analysed by rank. When shots were fired by constables an average of 3.5 shots were fired. However, when compared to sergeants, constables were more likely to fire either a single shot or a volley of shots (more than ten shots). The average number of shots fired by sergeants was 3.7. This indicates that sergeants would on average fire more shots. But, having said that, at the same time they would not go to the extremes, which is the tendency with constables. Consequently, sergeants were more likely to fire between five and ten shots.

In job-related incidents between two and five shots were more likely to be fired. It is less likely that more than ten shots would be fired in a job-related incident. Instead police members in non-job related incidents were more likely to conduct themselves

less like police. Consequently, they were more likely to fire either one shot or a volley of shots.

The data was further analysed by whether or not a verbal warning was given by police members. It was found that in 48% of job-related incidents where details were available and where a firearm was known to be used no verbal warning was issued.

By contrast, in 95% of non job-related incidents (i.e. social and domestic matters) where details were available and where a firearm was known to be used no verbal warning was given. This suggests that police members in these incidents used their firearms indiscriminately, irresponsibly and impulsively. It is of grave concern that in only 5% of non job-related incidents where a firearm was known to be used a verbal warning was issued.

In 47% of job-related incidents where details were available and a firearm was known to be used warning shots were not fired. By contrast, in 89% of non-job related incidents where details were available and a firearm was known to be used warning shots were not fired.

Victims

The majority of victims (87%) were male. In just under a third of the cases the victim’s race was not recorded. Of the rest, 79% were black people. Just under half of the victims were suspected of a crime. Nine percent were colleagues of police members.

Injuries sustained by victims

In 8% of cases the injuries sustained were fatal. A further 14% of victims suffered gunshot and stab wounds. Minor injuries were recorded in 12% of cases, while in 23% of victims either did not sustain any injuries or injuries were not applicable. In 35% of cases no details regarding the injuries sustained by the victim were recorded (see Figure 7 below).

Figure 7: Injuries sustained by the victim

Injuries sustained by the victim	Number	Percentage
Fatal	70	8.2
Gun & stab wounds	118	13.8
Assault	46	5.4
Minor injuries	104	12.2
Other	16	1.9
No detail	302	35.4
Not applicable or none	197	23.1
Total	853	100.00*

Sanctions for use of force

The sanctions will be divided into two categories, those that are the responsibility of the South African Police Service (SAPS) and those dealt with by the courts.

SAPS Sanctions

➤ **Suspensions**

In only 11% of the cases was suspension of the police member recommended. Even where suspension was recommended, a suspension notice was served in only 7% of the cases. In more than half the cases suspension was not recommended. However, the files were incomplete. There were some details on this issue in only 28% of the cases. In 33% of the cases no details of a suspension notice were contained in the files.

Further analysis revealed that a suspension was recommended in only 12% of shooting incidents. In 39% of shooting incidents the suspension of a police member was not recommended. The balance of cases is explained as follows. If the officer called to the scene decides that the actions of the police member involved were lawful, neither departmental charges nor criminal charges are laid. Hence suspension will not arise.

With respect to common assault, the most prevalent crime committed by police members, suspension was only recommended in 23% of the cases. In 33% of the common assault cases suspension was not recommended.

Assault GBH cases were the third most likely crime to be committed by police members. Suspension was not recommended in 11% of assault GBH cases.

With murder there is more decisive action. Perhaps it is because a criminal charge is usually laid very soon after the murder was committed, there is usually no dispute about the individual involved, and the deceased's body is often sufficient evidence. Consequently, a suspension was recommended in 17% of murder cases. With regard to attempted murder, a suspension was recommended in 18% of the cases.

In respect of pointing of a firearm, a suspension was only recommended in 4% of the cases.

➤ **Departmental charges, hearings and sentences**

In all incidents, except shooting incidents, departmental charges were laid.⁹⁰ Yet only 16% of all incidents resulted in a subsequent departmental hearing, and less than half of these resulted in a guilty verdict. The conviction rate as a percent of all incidents is 7%, while as a percent of those charged it just over 11%.

Departmental charges were laid in all the crimes under scrutiny in the present study except shooting incidents. In terms of a shooting incident no departmental charges are laid against a police member if his or her actions were deemed to be lawful and justified by the officer called to the scene.

Departmental charges were laid in 534 incidents, hearings were held in 133 incidents and in 61 incidents a guilty verdict was the outcome. Therefore, only a quarter of the charges resulted in a departmental hearing. Furthermore, slightly under half (46%)

⁹⁰ For a shooting incident, no departmental charges are laid against a police member if his or her actions are deemed lawful and justified by the officer called to the scene.

resulted in a guilty verdict. This means that at the time of the present study the conviction rate of charges laid in a departmental hearing was 11%.

Twenty-nine percent of departmental hearings were for common assault cases. However, a departmental hearing was not held in 57% of common assault cases. Departmental hearings were held in 13% of assault GBH cases and 10% of shooting incidents, but were not held in 5% and 14% of assault GBH and shooting incidents respectively. In the balance of cases details were not available, the hearing was pending, or the departmental hearing was not applicable.

In 59% of the cases where a departmental hearing was held the hearing was concluded and sanctions against the police member were handed down. These sanctions were in the form of verbal or written warnings, fines, discharges, sent for counselling, reprimanded etc. In addition, in 7% of cases where a departmental hearing was not held the police member was sentenced. These would be cases where the police member paid an admission of guilt fine. When this information was analysed further by crime type it was found that of the 59% (78) of cases where a departmental hearing was in fact held, 41% of common assault cases were departmentally sentenced. In addition, 86% of shooting incidents and 86% of murder cases were sentenced departmentally. Moreover, 58% of attempted murder and 53% of assault GBH cases received a departmental sentence. Fifty- five percent of cases involving the pointing of a firearm and 80% of intimidation matters were departmentally sentenced.

➤ **Departmental verdicts**

In 76% of cases where there was a departmental hearing and a departmental sentence the result was a guilty verdict. But in 4% of the cases where there was a departmental sentence a 'not guilty' verdict was the outcome. This data was further analysed by crime type.

There were 133 incidents for which departmental hearings were held and a verdict given. Common assault comprised 29% or 39 cases whilst shooting incidents, assault GBH, murder and attempted murder accounted for 10% (14), 13% (17), 14% (19) and 5% (7) respectively. It was found that in 20% of the cases where the departmental verdict was guilty this was for cases of common assault.

In addition, 18% of the guilty verdicts were for shooting incidents whilst 11% were for assault GBH. Moreover, 10% of the guilty verdicts were for murder. A further 10% were for attempted murder. Another 10% pertained to the negligent discharge of a firearm.

Criminal charges

➤ **Director of Public Prosecutions**

Criminal charges were laid in 569 incidents and the Directorate of Public Prosecutions (hereafter referred to as the DPP) decided to prosecute in 200 of those cases. Of those 18 cases were still pending and no details were available on another 12 cases. The balance was 170. Of the 170, 75 (44%) incidents attracted a court sentence. The conviction rate for these cases at the time the study was conducted was 13%. There is therefore very little difference between the conviction rate for

departmental hearings and court trials.

➤ **Decision to prosecute**

In 21% of common assault cases the DPP decided to prosecute the police member involved. Conversely, the DPP declined to prosecute in 51% of common assault incidents. In addition, in 6% of common assault cases the complainants withdrew charges against the police member. Furthermore, in 3% of common assault incidents the decision of the DPP to prosecute was still being awaited.

In 9% of shooting incidents the DPP decided to prosecute police members involved. On the contrary, in 7% of shooting incidents the DPP declined to prosecute. But in 6% of shooting matters the DPP recommended that an inquest be held before making a decision to prosecute the police member concerned.

In 46% of assault GBH cases the DPP prosecuted police members. However, in 32% of assault GBH cases the DPP declined to prosecute the police members involved. In addition, in 4% of assault GBH cases the complainant withdrew the charges of assault GBH.

➤ **Court verdict**

There were 349 (64%) incidents for which details were available that did not go to court. This data was further analysed by crime type. In total there were 216 common assault incidents that were sent to court. Of these 167 were not applicable for criminal charges for one reason or another. Therefore, only 49 incidents could be heard by the court. In fact, there were only 22 (45%) common assault incidents in which the court handed down a guilty verdict of some kind. But in 55% (27) of the incidents the court handed down a not guilty verdict.

With respect to assault GBH there were 84 incidents sent to court. Of those 48 were not applicable for one reason or another. Therefore, only 30 incidents could be heard by the court. In fact, there were only 12 (40%) incidents of assault GBH wherein the court decided on a guilty verdict. By contrast, in 60% (18) of the incidents a not guilty verdict was the outcome.

There were 60 shooting incidents that were sent to court. Of those 37 were not applicable for one reason or another. As a result, there were only 14 incidents in which the court reached a decision. Seven (50%) shooting incidents attracted a guilty verdict of some kind. In a further 7 (50%) of shooting incidents the court verdict was not guilty. In effect there was no difference between the rate for a guilty and not guilty verdict for shooting incidents.

In total there were 28 murder incidents sent to court. Of those 9 were not applicable for one reason or another. Accordingly, there were only 19 that could be heard by the court. In 17 (89%) of the murder incidents the court verdict was guilty and in only 2 incidents, that is ten percent, a not guilty verdict was the outcome.

In total there were 61 attempted murder incidents sent to court. Of those 35 were not applicable for one reason or another. Thus, only 26 incidents could be heard by the court. In fact, there were only 10 (38%) attempted murder incidents in which the court handed down a guilty verdict. But in 61% (16) of the attempted murder

incidents the court handed down a not guilty verdict.

Current status of police members involved in use of force incidents

There were 115 incidents in which a verdict of guilty was handed down by the departmental hearing and the court. Of those 115, 56% were still working for the police, 29% were dismissed, less than one percent bought their discharge ?, 5% were in prison, 3% had resigned, 2% had been suspended and less than 1% were having their fitness to be in the SAPS investigated. In 3% of the cases there were no details to be found in the files on their current status.

Some concluding remarks on the statistical analysis

From the files perused it was evident that the police officers in the sample committed common assault (32%) and a shooting incident (30%) as the most prevalent form of the use of force. Although these two forms can be considered to be the opposite ends of the spectrum both indicate specific areas of concern in terms of the use of force.

Common assault, although considered to be one of the 'less serious' forms of crime can still be construed as an area of concern in that its occurrence is so frequent. The distinction between common and assault GBH is usually merely a matter of end result injury and the extent of violence used in the actual assault. Accordingly, it is of further concern that police officers resort to a 'slap, kick or push' even where no serious injuries occur.

At the other end of the spectrum is the high level of use of firearms. This high level is an indication of frequent shooting incidents. But this must be contextualised within the scenario that suspects are often armed and dangerous. Furthermore, this also within the further context of the ready availability of firearms in South Africa. However, the shooting incidents in the sample did not always indicate whether the suspects were armed or not.

A further area of concern is that some of the murders committed off-duty were perpetrated with a firearm. Firearms are used frequently in many of the sample incidents. The off-duty nature of some of the incidents is also of concern in that commanding officers and internal discipline appear to be reluctant to do anything about misconduct of a member when that member is off-duty.

If the incident of misconduct, such as drunken behaviour, assault or domestic violence, does not directly impact on policing activities or the image of the SAPS, managers and commanders appear to ignore it. There is no internal disciplinary hearing, especially where no criminal case emanates from the misconduct.

There is very little difference between the conviction rates for internal disciplinary hearings (11%) and criminal processes (13%). However since the implementation of the draft November 2000 regulations, the management of the SAPS have made strenuous efforts to speed up internal processes. For cases such as rape, however, the internal process may be held back waiting for the criminal case to be finalised, due to a reluctance to subject a victim to the internal hearing process. It is our contention that the long delay in finalisation of all cases needs attention.

Even though the DPP declined to prosecute in 51% of common assault incidents, the SAPS, the station and unit commanders, should still review each case and address each matter internally. There are different standards of proof, and different charges in the internal disciplinary process as opposed to criminal procedures. Irrespective of the decisions by the DPP, members' behaviour should still be investigated internally.

Those cases which did not necessarily result in a criminal case could perhaps be addressed by means of a mediation-type forum between police officers and victim where an apology may be given. In this way the victim has a hearing and knows that the SAPS has taken his or her complaint seriously.

4. FOCUS GROUP INTERVIEWS

The section that follows broadly describes member's perceptions of use of force in everyday policing situations. The perceptions were gleaned from a series of focus group interviews undertaken with different policing units in Gauteng (See Annexure 1).

Rationale for focus group interviews

The project team decided to change certain components of the study. Some of the Area Commissioners and Negative Discipline officers were concerned that perusal of the personal files was a breach of confidentiality and this could be the subject of legal action. Therefore, instead of identifying police officers from the files, who had been dismissed, for face-to-face interviews, the decision was made to hold focus group discussions with certain units, namely specialised units dealing with serious violent crimes.

In focus group interviews police officers feel more comfortable and more able to express themselves freely than in a one-on-one interview, which may be perceived as an interrogation. The focus groups discussion put the information received from the files into context and yield an understanding of the circumstances in which police officers use force in their encounters with suspects.

Selection of the Units

Use of force is not confined to any particular units. However, specialised units such as the Flying Squad and Highway Patrol, Dog Unit and Murder and Robbery are called out when a serious violent crime is in progress or has been committed. They are reactive units who have to search for some of the most violent suspects. Consequently, it is conceivable that they will use some force in their daily work.

The concept of the focus group had to be explained to the various Area Commissioners and Unit Commanders. As with the perusal of the personal files, the researchers gave an undertaking to the unit commanders that all the information obtained would be treated with the utmost confidence, in that names would not be linked to statements made. No tape recorders were used, only fieldnotes of what was said. Furthermore, no names were requested from those who participated in the focus group interviews.

The researchers requested lists of the members working in the various units. Some unit commanders were reluctant to provide such lists to the researchers. However,

respondents for the focus group needed to be representative in terms of rank, race and gender. Where unit commanders were hesitant to provide staff lists, a compromise was reached. This entailed the unit commanders suggesting a suitable date for the interviews and thereby making a particular shift available.

General impressions of the focus group interviews

The respondents were very frank, open and at ease, possibly because the researchers did not know the participants' names. The questions on the use of force were introduced slowly, as the topic is sensitive and might could elicit strong emotions.

The police members were very vocal and used their hands at times to explain their actions, often with the gesture of a slap or beating. At times they would make sounds by clapping their hands together or using their voices. The latter would indicate the use of a firearm. This was particularly prevalent when questions were asked about hot pursuit, their encounters with suspects and the apprehension of suspects.

They also tended to express their feelings in terms of their facial expressions. At times a question brought a smile to their faces, obviously evoking certain memories. This coupled with their verbal responses pointed to the police members' feelings on the use of force.

In the focus group the following questions were asked:

- ❑ *How long have you been in the police service?*
- ❑ *Why did you join the police service?*
- ❑ *What does your daily work involve in that specific unit?*

They were also asked:

- ❑ *What thoughts are uppermost in your mind when in hot pursuit or rushing to a crime?*
- ❑ *Describe your thought processes and emotions whilst in hot pursuit or rushing to a crime scene.*
- ❑ *Explain your decision making in such incidents.*
- ❑ *Explain your encounters with suspects who have just committed a serious crime*
- ❑ *Explain your thoughts and emotions during such encounters*
- ❑ *Describe the consequences (departmental hearing and criminal trial) of shooting a suspect*
- ❑ *Express your opinion on whether or not such consequences are fair*

- *Express your opinion on whether or not such processes are necessary*
- *Make suggestions on how the internal process could be improved*
- *How do you deal with stress emanating from your professional and private lives?*
- *Does this stress impact on how you deal with suspects?*
- *Is it necessary for you to take your firearms home?*

RESULTS OF THE FOCUS GROUP INTERVIEWS

Police members' perceptions of their environment

➤ ***“Criminals have more rights than the police”***

The police officers of all the units felt that suspects have more rights than they do. They said the Constitution hampered their work, in statements such as *“our hands are tied by the law”*. One extreme statement was that the Constitution *“is like a rope around the police’s neck”*. They felt powerless because in their view even the supreme law of the country worked against them.

A detective in a specialised unit said *“in the early years we had great success. But now criminals have human rights. If arrested he immediately gets hold of his lawyer. Now you need to investigate more thoroughly. It has to stand up in court but the community demands immediate results”*.

The respondents were unhappy that they are tried both departmentally and by a criminal court for certain acts of misconduct and violence. Most felt this was unfair. If the criminal trial found a police officer not guilty of an offence, they felt there should be **no** internal departmental hearing. They did not appear to understand that an action which is not an offence in a court of law might still be misconduct in terms of their own regulations and standing orders. The departmental hearing was not perceived as necessary to ensure that police officers are held responsible and accountable for their actions.

The respondents were quite bitter about their experiences in the courts. They said that when they appeared in court to give evidence, prosecutors and magistrates questioned them very harshly. Further galling to them is the fact that the accused has the right to cross-examine them also. As a result, they felt that **they** were on trial and not the offenders. This enhanced their perception that the ‘criminals have more rights than the police’.

The respondents said this has led them to adopt a *“hands off approach”* for fear of *“getting into trouble”*. In other words, they would rather allow a suspect to getaway instead of shooting at him. They said that if they did their work properly they would get into trouble, meaning that charges would be laid against them.

They were rather disgruntled by the fact that if a case is pending against them then a

promotion is held back. This issue stimulated a great deal of reaction and stirred strong emotions. Hence, they follow the 'hands off' approach. It appears that they are unsure about what they can or cannot do.

The study by Uildriks found that police officers do *"fear complaints and being held accountable"* and this *"sometimes has a restraining effect upon police actions in situations where the use of force can be regarded as legitimate from the standpoint of police safety"*.⁹¹

➤ ***"S49 supports the police"***

Most of the police officers said that they regarded s49 as their 'back up'. Accordingly, they felt that it supported them when they shot at suspects. Some of them said it was comforting for them to know that the law 'was behind them' so they had nothing to fear.

➤ ***"Demilitarisation of the police has been its downfall"***

Many respondents said that the change from a police force to a police service has resulted in the SAPS' downfall. Almost all the respondents joined the police before 1994 and had therefore undergone military style training at the police college. Almost all the respondents cited 1994 and 1995 as the years of change in the police service, and in their view that change has not been for the better. The respondents cited the lack of respect shown to them by members of the public as another example of the deterioration of the SAPS.

➤ ***"Policing is more about politics"***

Many respondents felt that there was too much political interference in their work, which was reminiscent of the old South Africa. They felt decisions made by top management and senior management were primarily for political expediency, rather than for the good of the police at ground level. Consequently, they feel highly frustrated.

Members of the Soweto Flying Squad gave the following example to illustrate the point. In February, the speaker of the Gauteng provincial government was hijacked. Instead of calling the police, he called the MEC for Safety and Security and the president. After that he called the police. All available cars were dispatched. The Soweto Flying Squad recovered his car within half an hour. However, the victim expressed his dismay that the Flying Squad rather than the Highway Patrol recovering his car. The respondents were angered by his reaction, as they felt he did not even convey his gratitude to them.

Police members' experiences with the use of force

➤ ***Thoughts uppermost when in hot pursuit or rushing to a crime scene***

Almost all the respondents said that their adrenalin started to pump when in hot pursuit of a suspect or rushing to a crime scene. But one said: *"going out becomes routine"*. But he added: *"you hope you can catch them"*. He continued by saying *"if you are young you are hasty but the older you get the more calmer (sic) you are"*.

⁹¹ Uildriks, p. 223

A station level detective's response: *"you get tense – butterflies – its traumatic"*. Another said: *"the adrenalin pumps... but things happen so fast you don't think about the steps (to be taken). You expect the worst, always"*. Others said: *"it depends on the case. Armed robbers are the most dangerous - you expect the worst. You fear they will kill you. You must always be prepared"*. Other police members indicated that they prepare themselves mentally because *"you know you are facing danger. The AK47 is the most feared gun in South Africa"*.

➤ ***How suspects are apprehended***

The researchers tried to gain insight into the kind of encounters police members had with suspects, to understand the context within which force was used. The emphasis was on the hot pursuit of suspects both in cars and on foot.

According to the respondents, suspects in a stolen car often *"first start shooting at you, they drive recklessly, skip robots, and go up one ways. Our main objective is to stop him, we shoot at them"*. They continued by saying *"many cannot drive properly, they cause accidents. They jump out and only then we shoot. We seldom shoot at cars racing away – its too difficult, you could hit oncoming cars and pedestrians"*.

A member of the Flying Squad said, *"if they (the suspects) chase away we put on our blue lights and siren. But if they still refuse to stop we will use a firearm and aim at the wheels"*. He continued by saying *"normally with a high speed chase, they crash and run away. When they jump out the first thing they do is to shoot at you. So you fire back and give him as much as you can to scare him. He just wants to get away – he does not care who you are"*. Members of the Highway Patrol explained that in a hijacking situation they were allowed to shoot because *"often hijackers use firearms, they have stolen a vehicle but we shoot only as a last resort"*.

Respondents were also asked how they apprehended suspects on foot. A police member from the dog unit retorted, *"my first response is to draw and point my firearm. We are lucky we can use our dogs unless he (the suspect) is shooting at me. If the dog has got him in his eye (meaning his line of vision) he will chase him (the suspect) until he is caught"*.

Another described what happens while chasing a suspect: *"if you are chasing a suspect you must fire a warning shot. If he turns around and shoots at you, you can shoot him if your life is in danger"*. Another in the same group said *"I will shoot to kill"*. All the police members interviewed were of the opinion that the decision whether or not to shoot is made in a *"split second"*.

A member of the Flying Squad described the interaction with suspects as *"it happens so fast, you are also excited. You just want to get done with it. It happens so fast you don't really think of where you aim. Sometimes you think of using minimum force and aim at their legs"*. A member of the crime prevention unit explained, *"There is no time to aim for the legs... we just try to shoot at them, pull out and fire"*.

A member of the Highway Patrol put another slant on the issue. His appraisal of such encounters was that their specialised training was an overriding factor. He said, *"It is a matter of life and death. Your training takes over. The criminals are like soldiers. At*

that moment you just concentrate if the suspect might pull a gun. You don't think, you just do it – that's where training takes over".

Members of the Dog Unit said that there was a Standing Order that forbids them to use their dogs for minor crimes such as the arrest of illegal immigrants, trespassing and drinking in public. This Standing Order came into effect after the video footage of the North Rand Dog Unit was publicised in the media. However, the Dog Units were generally unsure about when it would be appropriate to use their dogs. They said *"fifty percent of the time when we are using our dogs we are unsure"*. Members of the Dog Unit regarded the use of their dogs as minimum force. A station level detective described minimum force as *"if they resist (arrest) we get more people to come and hold him"*. Conversely, in the same group one of the detectives said *"there are some times when you need to slap them if they resist"*.

According to a member of the Dog Unit the rules do state that minimum force should be used. But in practice he said *"sometimes a suspect becomes violent when you arrest him. The authorities want you to use minimum force but the suspect wants to fight and get away. We call other members to come and help but then he calls his neighbours"*.

Some station level detectives explained as follows; *"when you go and arrest a suspect you plan on everything... you look carefully. When you arrive at the suspect's residence you have to be alert, you draw your weapon. You must make sure he does not move until he is handcuffed. Point and talk. Shout at him, make him confused so that he does not pick up a firearm and shoot you. You must stop him, you can shoot him and stop him"*.

➤ ***Police members' attitudes toward suspects***

Unsurprisingly, respondents had a low opinion of suspects in general. A typical response would be *"a criminal is like an animal...once cornered he will react. [Therefore] you must treat him as armed; you must go in with an aggressive attitude. They must be scared of you...you must go in and take control"*.

➤ ***Suspects' attitudes towards the police***

Many respondents felt that criminals had changed over the years. They felt that they had become tougher and more brazen. One remarked, *"Criminals these days are doing what we used to do – showing that they are aggressive and serious"*. In response he said, *"So we must also show them we are serious and [that there are] no weaknesses"*. Another remarked, *"We have definitely noticed more violent criminals. They have become more clever, they can handle firearms better"*.

One respondent said suspects do *"bait and tease"* them particularly if there is a crowd. This often causes the police member concerned to become aggressive.

One respondent described how suspects related differently to black and white members. He explained, *"If I were to slap a black suspect a charge of assault would be opened against me. But if my black colleague did that the black suspect would accept it"*. Laughingly he added, *"So I get him (black colleague) to slap him"*. This

issue was only raised once and the researchers did not pursue this point in other focus group interviews.

Respondents said suspects that have an 'attitude' irritated them immensely. Some would retaliate by slapping the suspect. Police members rationalised this as follows *"if a person gives you an attitude you also give them attitude – if it means a smack you do it"* and *"it makes you angry and most people use maximum force towards a suspect with attitude – you give them a nice beating"*.

This corresponds with the statistical analysis of the files, which found that common assault was the most prevalent crime amongst police members. The general use of force should therefore not be seen predominantly in terms of deadly force but in terms of lesser crimes such as common assault. The respondents appeared to suggest that the stress of police work coupled with defiant suspects drives some police members to cross the line beyond justifiable action.

➤ **Police attitudes towards the use of a weapon**

One respondent explained the training he had received at police college. His words were *"at college we are trained to shoot at the upper body"*. Another replied that *"most policemen "point" in an arrest situation"*. However, he emphasised that *"you cannot compare one scene with another, everyone is different"*.

Procedure at the scene of a shooting incident

All the respondents knew the procedure to be followed when involved in a shooting incident, which requires waiting for an officer to arrive on the scene. The role of the officer would be to determine whether or not the shooting was justified: *"if the shooting was justified the commanding officer has to decide if the internal inquiry must be held"*. Respondents said the internal inquiry occurred *"after the criminal case is finalised"*. They said that the shooting incident report was often faxed to the area nodal point. Many said they were in favour of the procedures because *"we have got a lot of trigger happy policemen who mess things up"*.

Departmental hearings

There was a difference of opinion amongst respondents on the efficiency of the departmental hearings. Many said that this procedure was inefficient and rather time consuming. They said, *"You wait months and months"*. Some felt that some duty officers *"look for fault at a shooting incident"*. According to them these officers have *"preconceived ideas [of what happened]"* and place *"too much emphasis on protecting the state's image"*. They also found the internal inquiry *"stressful because they are trying to prove you acted incorrectly"*.

Another said, *"some of my colleagues have a murder docket or even an inquest hanging over their heads – it is very stressful"*. In addition, they said, *"while the internal inquiry is going on, everything is frozen. But these are only allegations but you will be suspended without pay – all promotions are stopped"*.

These respondents were of the view that the *"internal inquiry should only happen after the finalisation of the criminal case"*. Furthermore, that the *"disciplinary issue must be separated from the criminal case"*. A minority said, *"The departmental*

hearing is usually finished first”.

Some respondents said that in *“most of the cases they want first to hear the decision of the court before proceeding with the departmental inquiry”*. Respondents appear to feel the courts’ decision carries more weight than the outcome of the departmental hearing. They feel that the departmental hearing *“should wait for the case to be proved in court”*.

Others expressed some misgivings when the matter goes to court primarily because their actions were scrutinised rather critically. One said, *“If it goes to court you feel like a criminal – why should we be treated like a criminal just for doing your job”*. According to them, prosecutors are *“very aggressive towards police (in the dock). They use legal terminology...use language in questioning to their advantage”*.

The police officers interviewed by Uildriks expressed similar sentiments. Most of those police officers found such procedures to be ‘a threatening experience’. In fact, their feelings of uncertainty and insecurity emanated primarily from the *“increased involvement of the public prosecutor, the extent to which management is thought to assume that an incident occurred in the way alleged by the complainant, the stated aim of the complaints procedure to satisfy a complainant, the lengthy elapse of time before settlement is completed and the question whether police officers are informed of the final judgement”*.⁹²

The police in the Netherlands study also complained of their procedures taking too long to be finalised. This, according to Uildriks, had the effect of hindering *“the possible use of the complaint as a learning experience”*.⁹³ Manning writes *“the most sacred tenet in policing is that no one other than the person who was there can understand fully what happened”*.⁹⁴ These sentiments seem true of police officers generally irrespective of the country in which they are based.

Police attitudes towards counselling and debriefing

Many respondents did not have a favourable impression of the counselling services offered by social workers. They were emphatic that police social workers did not understand the environment in which they worked and the situations they had to contend with internally and externally. They are reluctant to make use of the social workers services because they feel that their confidentiality is breached. According to some respondents, lack of confidentiality has a negative impact on their prospects for promotion. *“A social worker means nothing to us, they do nothing for us. They don’t help. They are not professional in their approach. Nothing is confidential”*. One police member summed up the social workers as follows: *“they just want to see if we are nuts”*.

Respondents were resolute in their belief that their colleagues understood them better than the social workers. Respondents said they relied on each other - the buddy system - as well as their unit commanders for support. A few said that they had hobbies such as fishing to take their minds off trauma and stress. Others cited

⁹² Uildriks opcit., p. 223

⁹³ Ibid

⁹⁴ Opcit., p. 142

social activities such as a braai.

Respondents were adamant that any person who counselled them should have a police background. Some cited the example of one social worker, who herself had to be counselled because she was so traumatised by what they had told her. Another said: *“cowboys don’t cry”*. The same respondent suggested that a private psychologist might be the best option because of the problems they experience with social workers. A further criticism of the police psychologists was that they are *“unfit, unsympathetic and only consider the interests of the SAPS”*. Clearly, the current services offered to police are unsatisfactory and inadequate.

Respondents’ coping strategies was described as follows: *“you have got to harden yourself, stand up and carry on. You become very protective of your family”*. Many relied on the buddy system and a supportive family to help them cope with their environment.

Case Studies

Few respondents thought that disciplinary procedures were a good idea. It is therefore fitting at this point to highlight four police members who were identified in this study as being the worst offenders in terms of use of force and misconduct. These case studies indicate the range of violent encounters in which police members are involved, and their use of firearms. They also employ other methods such as fists, hands and feet. The incidents range from shooting incidents to *crimen injuria*.

Case 1

This police member had 31 incidents registered against him. These consisted of 19 shooting incidents, 6 assault GBH, 5 common assault and one negligent driving charge. The use of force incidents were mainly perpetrated with a firearm. In some cases a dog was used. However, this police member had also used his hand to slap the victim. Departmental charges were laid in 14 of the cases. For the balance departmental charges were not laid. A departmental hearing was held and the member sentenced in respect of one of the charges of assault GBH. The DPP declined to prosecute in 4 cases (assault GBH) and prosecuted the police member in a further 4 cases (common assault, assault GBH and negligent driving). In eighteen of the cases, that is shooting incidents and assault GBH, criminal charges were not applicable. When the research was undertaken this police member was still working for the police service.

Case 2

The police member under scrutiny had 30 incidents in his file. These consisted of 17 common assaults, 8 shooting incidents, 3 assault GBHs, 1 armed robbery and one *crimen injuria* charge against him. A firearm and fists were used in most of the cases. A dog and teargas were other instruments. This police member’s first incident occurred while he was still at the police college. Departmental charges were laid in 22 of the incidents whilst the DPP decided to prosecute the member in only 2 cases (common assault and assault GBH). In 24 of the cases, that is 13 common assaults, 7 shooting incidents, 2 assault GBH, 1 armed robbery and 1 *crimen injuria*) criminal charges were not applicable. There was no information in the files on whether the member was sent for any kind of evaluation and counselling. This police member was still working for the police when the research was conducted.

Case 3

This police member had 21 shooting incidents in his file. The incidents date back as far as 1996. Only after the twelfth incident did management begin to take notice of the number of incidents in which this member was involved. Management noted the many shooting incidents against the member and warned him to use his discretion better. Police management expressed the hope that this would have the desired effect on the member. At the fifteenth incident a psychological evaluation determined that there were areas of the police member's life that required assistance and intervention. In addition, it was recommended that there should be a re-evaluation if there were further shooting incidents. After the twentieth incident concern was once again expressed about the number of shooting incidents in which this member was involved. The provisions of the Special Service Order, particularly instructions relating to the use of force in carrying out arrests as well as the provisions of section 49, were brought to the member's attention. Management was upbeat about the impact of this intervention. However, another psychological evaluation was done and once again it was suggested that the member be evaluated after each incident. No departmental charges were laid against the member in any of the cases. Criminal charges were not applicable either. This member was still working for the SAPS at the time when the research was conducted.

Case 4

This police member was involved in 19 incidents of use of force. He was primarily involved in 9 common assault cases and 8 shooting incidents. Attempted murder and the negligent discharge of the weapon accounted for one incident each. This member used a firearm, his fists and slapped the victim with an open hand. In addition, handcuffs were also used in one of the incidents. Departmental charges were laid in 11 of the cases. The DPP prosecuted the member in 3 of the common assault cases. In a further 4 cases (common assault, attempted murder and negligent discharge of a weapon) the DPP declined to prosecute. In eleven of the cases, namely 8 shooting incidents and 3 common assaults, criminal charges were not applicable. At the time of the research this police member was on suspension.

Uildriks observes that "the extensive individual differences in the use of force are due less to sex or age than to personal qualities such as character, conception of duties, style of working and personal experiences with violent encounters".⁹⁵ Moreover, he provides insight into the kind of police officer involved in use of force incidents. He contends that "frequent use of force is often found in those holding outspoken ideas about the behaviour they are prepared to accept from citizens. These would seem to explain a frequent resort to violence to a greater extent than does a possible absence of social skills".⁹⁶ Even though researchers in the present study were not able to interview the police members whose files were perused, future research should endeavour to do so.

Concluding observations emanating from the focus group interviews

One of the negatives that came out of the whole process of focus group interviews

⁹⁵ Opcit., p. 222

⁹⁶ Ibid

was the fact that those interviewed generally perceived that they were being victimised in terms of the following issues:

- Criminals have more rights than they do
- They experience a lack of support from the SAPS
- Departmental and criminal trials 'crucify' them
- ICD and internal disciplinary structures are somehow conducting 'witchhunts' against them, specifically with respect to use of force incidents
- They displayed low morale and had a very negative attitude towards a range of issues
- They appeared to be overwhelmed by all the problems they experience; tend to feel weighed down by structural organisational problems, a high crime rate, and the high level of violence encountered on a daily basis. Added to all these were the internal disciplinary procedures, which they felt unnecessarily interfere with their policing work

Furthermore, it was fairly obvious that members currently operate under high levels of stress due to a variety of factors. Among the main stressors (as identified from the focus group interviews) are the following:

- Poor working conditions
- Lack of equipment and resources
- Shortages of vehicles
- Poor pay
- Perceptions about criminals having more rights than police and members of the public (victims)
- Lack of proper debriefing and post-trauma counselling
- Inadequate counselling services
- Overload of cases to investigate
- Unsuitable refresher training courses
- Perceptions that criminals have become more violent
- Section 49 (in general)
- Promotions being delayed through cases being opened against members
- The slow process of disciplinary hearings and criminal cases (long delays before finalisation)

Moreover, one of the impressions emanating from the interviews is that members under such stressful conditions are not always able to exercise control over their emotions. Something small can trigger an angry reaction or expression of violence, especially if, for example, suspects give them what they called 'attitude'.

Furthermore, there was a widespread belief among those interviewed that nobody else knows or understands what they experience in their daily police work – "if you were not there you don't understand or know how they feel or how they should

react". This resentment was particularly directed at the courts, and at prosecutors as well as the counsellors appointed to counsel. They particularly felt that if they did make use of counsellors (psychologists/social workers) these should at least have some policing background or experience in policing. This attitude would, however, appear (from the literature on the subject) to be common to policing agencies worldwide.

A specific point made by some in the focus group interviews was that the shooting training they had all received at the SAPS College in Pretoria emphasised shooting at the upper body of a suspect. This brings into question the shooting training they receive and raises the issue not only of better training but also the need for receiving situational and simulation training (see Annexures 6 & 8). In addition there were consistent complaints that the refresher training courses that they did receive were 'repetitive, boring and the same old thing' and not worth attending at all.

Overall, other than the SAPS taking responsibility for the behaviour of its members, it also needs to nurture and support individual members in terms of their psychological and social well-being. This involves the provision of counselling and improving the staffing and training of the existing helping professions complement in the SAPS. There is also a need to empower and capacitate station and unit commanders in the debriefing and counselling functions they are now supposed to provide to their subordinates. In essence a substantial overhaul of the existing system is required (see specific recommendations on this point).

Finally, it is apparent from the focus group discussions that the police interviewed had a rather negative disposition towards both the internal disciplinary procedures and the criminal procedures and court processes. These procedures did not have a positive impact on the behaviour of police members. In fact, the police members did not perceive the holding of such hearings as an opportunity through which their behaviour could be addressed. Similar views were noted by Uildriks in his study. He observed that *"very little learning effect for the police officers themselves emanates from complaints. Their negative attitude towards complaints usually leads them to consider that a complaint says more of the complainant than the quality of their line of action"*.⁹⁷

Uildriks questions whether a detailed analysis of complaints can be used as an indicator of trends in police behaviour. Even though in some cases changes in policy and procedure may occur.

Both Uildriks and Reiss maintain that the use of force should be dealt with at an organisational level. Uildriks in particular singles out internal training within the police as crucial. He asserts that in order *"to minimise police risk of violence particular attention is paid to the procedures to be followed in traffic control, arrests of potentially dangerous suspects, entry into and safe operation within premises"*.⁹⁸ He argues that if such procedures are followed and maintained it could *"contribute to a reduction and regulation of the police use of force"*.⁹⁹ Furthermore, he is of the opinion that it is vital that police officers obtain the necessary *"training in physical and*

⁹⁷ Ibid

⁹⁸ Opcit., p. 225

⁹⁹ Ibid

professional skills...for the everyday use of force".¹⁰⁰ In other words it is of utmost importance that police members "*master certain basic procedures and techniques and become aware of their own ability and inability to cope with situations physically*".¹⁰¹ Uildriks describes mastery of a skill as "*when the command over the skill concerned is available more or less as a reflexive reaction*".¹⁰² He warns that if the police member does not have a repertoire of skills there is a personal risk to the member and the "*likelihood of a disproportionate use of force*".¹⁰³

Uildriks discovers that the individual police officers (not the organisation) under scrutiny in his study had the responsibility of ensuring that they had the requisite physical skills. Consequently, since physical fitness standards were not being enforced organisationally, there was a decline in the physical condition and skills of these officers.

One of the crucial points made by Reiss is that police departments tend to try and change the behaviour of police officers. Instead they should identify "*structural and organisational strategies for controlling behaviour in accordance with organisational objectives*".¹⁰⁴ Reviews of the use of deadly force according to Reiss "*do not focus upon what the organisation did or did not do or what it might and might not have done*".¹⁰⁵

However, a thorough analysis of deadly force incidents can lead to changes in departmental policies. For example in New York City an encounter between a mentally disturbed man wielding scissors and the police resulted in the man's death. However, the police were held not to have criminally violated federal civil rights by killing the man. However, this incident resulted in a new training policy and procedures being introduced. Chemical mace spray would in future be used against such persons.

CONCLUSIONS AND RECOMMENDATIONS

The researchers in this study recognise and acknowledge that police in South Africa have a difficult and often dangerous job. Moreover, section 49, does allow the police to use force in certain situations. But it is our contention, that the exercise of such force should be carefully regulated within a rights approach. Moreover, that its (use of force) application be backed up by the requisite training.

The public use of force, particularly if it is lethal and excessively violent, by officials of law enforcement agencies in any country does irreparable harm to the image of that agency, as well as damaging relations with the communities they are supposed to serve and protect. Such incidents not only cause a breakdown in the trust between the public and the police but also impact on the morale of the members themselves.

Moreover, use of force incidents often make it difficult for the police to do their work. Relations with members of a community have first to be repaired and bad or negative

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ Opcit., p. 131

¹⁰⁵ Ibid

feelings towards all members of a policing agency have to be overcome. Members have to work extra hard to get the public to co-operate with them in matters of everyday policing such as reporting crime, acting as witnesses and even treating members civilly. Any incident of use of force has a tremendously negative influence on a wide range of issues, not the least being service delivery.

In essence, violence by police is a public relations nightmare. In this regard, one can mention very public incidents which resulted in trials for the members involved: the beating given to Rodney King by officers of the Los Angeles Police Department (LAPD),¹⁰⁶ the shooting in 1999 of Amadou Diallo in New York city and the so-called training exercise by members of the North Rand Dog Unit of the South African Police Service (SAPS). The LAPD and SAPS Dog Unit incidents were both video taped and the incidents would not have been public knowledge if this had not happened. Such incidents point to the fact that it is imperative for any policing agency wanting to improve its service delivery and effectiveness to put into place measures to promptly deal with and sanction its members if any such unfortunate incidents occur, whether secretly or publicly.

Part of this process is to have proper procedures in place and to have clear regulations and rules governing policing behaviour. Furthermore, these procedures need to be fully implemented and followed by all members. However, this needs to be coupled with adequate and effective training on a number of issues. Clearly members have to know about these procedures, must understand how they should be implemented in practical situations, and must be fully aware of consequences (sanctions) if they flout the procedures or do not adequately follow them.

None of this is of any use unless members as a whole subscribe to policing within a culture of human rights. This underpins, or should underpin, all policing actions, from making an arrest of a suspect, taking down statements, detaining or holding them in custody through to interrogating such suspects. All of these actions are interlinked and need to be reinforced by members following correct procedures while simultaneously implementing such actions within a human rights framework.

While it is recognised that certain situations will arise where excessive or lethal force needs to be used not only to protect members of the public but also for the safety of members themselves, what is of greater concern is the gratuitous and unnecessary use of force by members while doing their work. This study then tried to identify trends and patterns in the use of force by members of the SAPS, to analyse these and to make recommendations regarding remedial steps and preventative strategies. Such measures are clearly required not only to protect members themselves but also to eliminate and avoid use of force incidents and to fully protect all members of the public from abuse whether they are suspects or not. It is also doubly important for the public image of the SAPS as well as being good for improving service delivery.

Although this research was not able to develop a profile of specific individual characteristics of perpetrators or to identify those who might have a predilection for using violence, a profile regarding modus operandi, situational (time, location and manner of use of force) and event analysis was compiled from the coded information

¹⁰⁶ The use of excessive force in this incident led directly to and triggered severe riots in Los Angeles.

and statistical data obtained from the sample of selected files perused. Moreover, although the files examined dealt with the period prior to the implementation in November 2000 of the new draft regulations on discipline, the researchers managed to identify a sufficient indication of a number of trends and patterns of behaviour. These trends and findings are important in that they serve to inform and support the recommendations made in this report, specifically those aimed at remedial steps and preventative measures concerning the reduction and final eradication of patterns of use of force abuses and the accompanying misconduct by members of the SAPS.

In the process a good understanding of the underlying problems and shortcomings, both within the policing activities of members as well as procedures, was gained by the researchers involved in this study. Most of the recommendations are predicated on the research results and findings coupled to the insights and understandings gained by the close perusal of the contents of the selected files. This analysis was further deepened and enhanced by the series of focus group interviews that were conducted and analysed.

The recommendations must then be seen within the context of the efforts by police management to implement measures designed to curb the use of excessive force. The continuation of such misconduct by members is damaging not only to police service delivery but also to their public image. In short, in order to win back the trust and confidence of the community in their policing activities, and to establish itself as a credible policing service, it is imperative for the SAPS to be seen to make an all-out effort to eradicate the use and abuse of force and violence by its members. No police service can afford to be accused of making use of excessive force in performing their policing functions. One needs only here to refer to the controversies that have recently erupted around the behaviour of the Italian carabinieri (police) during the G8 Summit in Genoa during July 2001.¹⁰⁷

RECOMMENDATIONS

The recommendations are divided into a number of categories, namely:

- ❑ human rights
- ❑ monitoring and public scrutiny
- ❑ shooting incident and other procedures
- ❑ modifying behaviour
- ❑ training

The recommendations below are further supported and directed by the information from a number of other studies, in particular the American experience. This information is contained in the annexures.

Human rights

¹⁰⁷ See Follain, 2001 for detail. Currently the Italian general in charge of the special police, the Mobile Operative Group (GOM), accused of beating dozens of British and other protesters at the G8 meeting in Genoa has been summoned to appear before magistrates, who are leading an inquiry into the violence, for questioning where he will be asked to account for the actions of the detachment of police under his command.

□ **UN Basic Principles**

In line with and fulfilling its obligations in terms of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*,¹⁰⁸ the South African government and the South African Police Service should, at the very least, ensure and see to it that:

- All law enforcement officials, in carrying out their duty, should, as far as possible, apply non-violent means before resorting to the use of force and firearms
- Furthermore, whenever the lawful use of force and firearms is unavoidable, law enforcement officials are to exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved. In other words law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty
- Arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under the law.

The above are guiding principles on which to base additional preventative strategies in the matter of combating and eventually eliminating use of force abuses and gross misconduct within the SAPS.

□ **Human rights training**

These principles should be further reinforced by specific training in human rights especially pertaining to policing. Of specific relevance here is Article 2 of the UN *Code of Conduct for Law Enforcement Officials*,¹⁰⁹ which states that “*in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.*”

Of crucial importance here is to inculcate a full understanding in the members of the SAPS of the implications for law and order of policing within a strict human rights framework (as envisaged by the UN Code of Conduct.) While it is accepted that the Human Rights Unit¹¹⁰ of the SAPS has made considerable progress in human rights training within the SAPS, there remains considerable scope for additional and more intensive training at grassroots level of police officers. The ‘trickle down effect’ of this human rights training must be encouraged specifically by public support being expressed for it by police management. There still exists a certain amount of resistance in some quarters to the necessary mindset changes this training requires and the general acceptance of human rights oriented policing at ground level.

The authorities should also ensure that the United Nations standards are fully incorporated into the training, procedures and practices of all law enforcement officials

Monitoring and public scrutiny

¹⁰⁸ Adopted by the Eight UN Congress on the Prevention of Crime and the Treatment of Offenders on 7 September 1990.

¹⁰⁹ United Nations. 1979. *Code of Conduct for Law Enforcement Officials*. Adopted by General Assembly resolution 34/169 of 17 December 1979.

¹¹⁰ See Annexure for some detail on the SAPS human rights training programme.

□ **Support and commitment from political and public leaders**

Moreover, there is an urgent need for political and government leaders to make public declarations that they will not tolerate excessive use of force (torture, unnecessary use of a firearm, violence against suspects, harsh or other ill-treatment by public officials, especially police members). In support of these public statements the relevant authorities need to demonstrate their commitment and take vigorous measures to make such declarations credible and make clear that the culture of impunity must end.

The public must see that those who transgress the internationally accepted standards and norms within the framework of the *UN Basic Principles* on the use of force and firearms are suitably sanctioned or punished not only in court but within the internal disciplinary procedures of the SAPS. Furthermore, the findings and sentences emanating from these processes should be made public. This can be tied into a public awareness campaign dealing with improving the public image of the police (e.g. the regular public release of results of all cases).

□ **Monitoring, public scrutiny and increased ICD role**

The institution of a far stricter regime of monitoring and public scrutiny (oversight) (see Annexure 3 for detail on the system in place for the New York City Police Department) of police activities than is currently the case should also be an important component of any preventative strategy regarding the use of force.

The role of the ICD in investigating use of force cases needs to be further strengthened and formally supported. Investigations of police criminality or excessive use of force, shootings (lethal or 'deadly' use of force) should not be solely under the authority of the police themselves. Alternatively, such investigations should be monitored and reviewed by the ICD. As a minimum, the ICD should have the authority to control and direct the investigation. They should also have unrestricted access to police stations. Furthermore, in principle every **serious** case should be the responsibility and prerogative of being investigated independently by the ICD.

An additional role for the ICD could be the extension of their support for the launching of civil cases by victims of police violence and use of excessive force. The launching of civil cases being supported by the ICD is based on the premise that the aberrant behaviour (excessive use of force) by police members must be eliminated. Therefore, a civil action by a victim will serve precisely as a form of sanction and consequence of their unlawful actions.

Shooting incident and other procedures

□ **Investigating shooting incidents**

Shooting incidents where an injury or death occurs need to be investigated (as opposed to merely filling out a shooting incident report by the duty officer) in more detail by specialist investigators (if possible within 48 hours of the shooting incident occurring). This recommendation points to some needed reform in the shooting incident investigations. The system as employed by the New York Police Department (NYPD) has a number of guidelines that would be well worth incorporating (See Annexure 4 for details).

Among the specific recommendations in this regard are:

- The establishment of Special Shooting Investigation Teams or Officers at area level
- The institution of a requirement for more detail to be inserted in the shooting incident report including full statements from witnesses (if possible member/s of the public who may have witnessed the shooting incident) and from the police officer involved and his partner. The past shooting records of the officers involved, with recommendations on whether police regulations/Section 49 have been violated should also be included
- An ICD representative should accompany such a shooting investigation team to the scene

In terms of immediate sanctions it is suggested that every police officer involved in a shooting be temporarily relieved of his or her gun and placed on desk or charge office duty while the investigation is underway. In addition, in line with the new draft regulations (November 2000) the investigation must endeavour to be completed within a period of 30 days and the case finalised within the stipulated 90-day period.

□ **Institution of automatic post-incident review hearings**

It is strongly recommended that an automatic post-incident (shooting) review hearing by the commanding officer, duty officer and negative discipline officer be instituted in order to determine whether a firearm has been used in a responsible, regulated and restrained manner. This should be irrespective of whether a victim has been shot, injured or a killed or remained unharmed. This does not refer to right, incorrect or wrong actions but to the fact that negative discipline officers need to know all the details of the whole incident.

Such a procedure not only protects the member individually but also the image of the SAPS as a whole. It demonstrates that management are serious about dealing with use of force incidents across the board as well as enhancing the public profile of policing.

Such post-shooting inquiries and investigations should be standard practice in terms of evaluating the responsible use of a firearm. Irrespective of outcome, the mere fact that the firing of a firearm had occurred warrants further examination to determine whether the firearm usage was done in a responsible manner and according to standing order regulations. (This is the process in most major policing departments in the USA, i.e. if an American police officer fires a shot irrespective of hitting a person, a further post-shooting investigation is carried out besides the on-the-scene shooting incident report. See Annexure 4).

The decision to rule any shooting incident as justified or not should at the very least be done in conjunction with a commanding officer and the disciplinary hearing or inquiry itself. Members have learnt to say the 'right' things in the shooting incident reports to the Officer on Duty about verbal warnings, warning shots and aiming for legs of a suspect or the wheels of a vehicle. Accordingly, the actions (shooting) of a

police official are routinely justified by the Officer on Duty, irrespective of the circumstances, as being part of police work and in the line of duty.

Such review hearings should also be extended to those instances of use of force such as assaults and other forms of violence where firearms were not used. Such post-incident review hearings play an important role in formulating remedial steps to deal with less serious misconduct and to assist in changing and influencing attitudinal changes in members themselves.

Too often starting patterns for more serious misconduct behaviour are overlooked. Such post-incident review hearings can timeously identify these. A starting point for such remedial steps is the inculcation of the principle that while police officers are often faced with difficult situations no matter the extreme and provocative nature of the actions of suspects, their guiding principle should be the exercise of restraint and control. Here specialised training will be of great assistance.

□ **Gradations of force**

Formal guidelines for the applying of degrees of force in any situation should be developed and copies disseminated to every operational member in the service. The NYPD guidelines are of interest here and can easily be applied to the South African situation. In particular these guidelines insist that there are clear steps in any situation for the escalation of force with firearm use definitely being the final and last resort.

The NYPD guidelines also discourage the shooting of warning shots. Instead they maintain that if a gun is drawn the officer's clear intention would then be to shoot to stop or kill a suspect and thereby protecting the officer's own life and that of any nearby bystanders. Accordingly if such a situation has been reached it means that the threat is of such a nature that firing of a gun is definitely warranted (see Annexures 4 & 5).

Finally in terms of the use of force, both the UN Code of Conduct and Basic Principles provide, among other things, that force should be used only as a last resort when non-violent measures have failed or would be clearly inappropriate, and that in all cases the amount of force must be proportionate to the threat encountered and designed to minimise damage and injury.

□ **Verbal warning**

If a firearm is drawn for whatever reason it should be a standing requirement that a verbal warning be given unless the situation is of such a life threatening nature that this is not possible or feasible.

□ **Warning shots**

Warning shots¹¹¹ should not be a requisite at all since if warning shots are fired the

¹¹¹ Warning shots: According to Adams *et al*, (1980, pp. 87-95) unintentional hits are amongst the gravest hazards of high stress situations, and can arise from rounds fired as warning shots, those fired at or from a moving vehicle, those fired while running and those fired when uncertain of the suspect's location or in a crossfire situation. When it comes to warning shots, it is not a matter of whether they do or don't work but that they are rarely worth the risk involved. Most legislation worldwide holds that any time a law enforcement officer

assumption is that a suspect is making an attempt to flee and hence could not possibly be seen as a threat to life of the officer or any bystanders. Under no circumstances can the shooting of an unarmed person running away be justified.

□ **State Prosecutor should provide reasons for declining to prosecute**

The Office of the National Director for Public Prosecutions (NDPP) should be approached with the request that as a matter of course brief reasons for either declining to prosecute or to prosecute be provided in cases of police use of force or other criminal offences for which a member has been charged.

□ **Internal disciplinary hearings**

Internal disciplinary hearings should take place and be finalised as quickly as possible¹¹² and independently of any criminal judicial process since the SAPS cannot afford to be seen to delay in any way in dealing with issues of use of force or misconduct. The SAPS internal processes must not wait for the courts to deal with any charges especially in the light of current backlogs and delays in the court system.

Modifying behaviour

□ **Extending line officer accountabilities and responsibilities**

Furthermore, lines of responsibility should be extended upwards. In other words, commanding officers of members guilty of perpetrating abuses should have these taken into account when performance evaluations occur or when they (commanding officers) are reviewed for promotion. Management is ultimately responsible for abuses and misconduct that occurs since the problem should be better managed and dealt with at the management structures' level. Moreover, such responsibility should include, but not be limited to, adversely affecting promotion prospects of line managers themselves or even involve their removal from their positions of authority and management.

□ **Dealing with police culture ('code of silence')**

There were a number of cases in which police officers refused to testify against their colleagues or even make a statement to the investigating officer. Most preferred to wait for advice from a legal representative or their union representative before making any statements. The lack of co-operation from members appears to have contributed to a sense of impunity in some members (a feeling that such behaviour is

fires a gun in the work situation, then deadly force has been employed. This means that every time the trigger is pulled, whether the intention was to hit the suspect or not, there must be legal justification for killing or wounding such a suspect. If a policeman is justified and lethal force is necessary, it is probably safer for oneself, a fellow partner policeman and innocent bystanders to aim directly at the suspect rather than shoot at the ground or into the air. In most circumstances, warning shots unnecessarily endanger other people or members of the public whose safety should be the first consideration. There is also a high risk of accidental hits when shooting from a moving vehicle. It is also extremely difficult to hit the moving target while you are moving (in a moving vehicle or when running). More often than not the best option is not to give chase but to alert a policeman that might be better able to intercept a fleeing suspect. At the very least, police officers on patrol should call for backup at the beginning of a chase.

¹¹² The current draft regulations disseminated in November 2000 emphasise that any case should be dealt with within a period of 90 days. Present indications (August 2001) are that backlogs have been substantially reduced and that most cases are being dealt with within the 90-day limitation (Interview: Snr Supt. A. Van der Merwe, West Rand Behaviour Management Unit, SAPS, Krugersdorp. 16 August 2001).

part of the police culture and in any case they have been getting away with it for many years).

This behaviour can broadly be placed under the so-called 'code of silence' that is evident among police officials worldwide. Efforts will have to be made by police management to break down this culture within the service and put in place mechanisms whereby members will feel free, as a matter of principle, to report flagrant abuse of the use of force by any colleagues. Police management, in this regard, should try to aim to create an enabling environment whereby members are not placed in a position where they feel 'it is wrong' to report fellow officer's indiscretions. Allied to this is the need to inculcate respect for the principles of adhering to all the regulations and having 'zero tolerance' for any deviations by anyone from the letter of the law and the responsibilities and obligations of the regulations.

These efforts tie into a recommendation for more transparency in terms of the provision of information regarding the investigation of cases of use of force coupled to the publication of regular statistics on police shootings and deaths in custody in order to ensure public accountability and confidence in the process.

Furthermore, the outcome of criminal, disciplinary and administrative investigations into alleged police ill treatment, disputed killings and deaths in custody should be made public promptly after completion of an investigation, unless doing so would jeopardise any ongoing criminal proceedings. Such information (transparency) requirements should also be extended to the State Prosecutor's offices by obligating them to provide information on the reasons for not seeking or recommending criminal charges.

□ **Provision of counselling and debriefing on a more regular organised basis**

Although the researchers were not always able to get a good idea or clear picture of a police member's home situation, there was some indication that in a number of cases, there existed an obvious need for greater ongoing attention being given by commanders to members' home life situation and emotional state of member. Commanders need to recognise signs of stress other than only those related to the work situation. For both experiencing traumatic incidents and as a check on the emotional stability in terms of personal circumstances, it is recommended that more regular debriefing and interviews with their commanders, than is currently the case, should be instituted.

In order to implement this on a systematic basis it is recommended that all commanders receive some form of basic debriefing technique and counselling training since they are the first line of contact and observation. If unacceptable levels of stress are detected at the commanding officer level such members to be immediately referred for further counselling and advice to the helping professions' services in the SAPS. Furthermore, a corollary to this support would be a drastic improvement of the capacity, specialised training and staffing of the helping professions' services within the SAPS.

Accordingly it is strongly recommended that superiors debrief or interview on a regular basis, and where necessary members be referred for counselling (promotion

or being placed back on active duty can be made dependent upon a course of counselling being successfully completed). Problems need to be addressed so that a more efficient and effective service is the result.

Too many commanders appear to hide behind the excuse of overwork, other stress factors, no time or lack of resources, 'can't do it when they are off shift duty' etc. Therefore, regular debriefings should be included in station commander's managerial duties and accountabilities. In addition, the international literature suggests that for the in-depth debriefing and counselling that psychologists with either a policing background or experience of policing activities are best suited for such a service to members. This view was also strongly supported in the focus group interviews.

□ **Warning signs and performance review**

A system of regular review of personnel behaviour and performance should be instituted at station level. This should be a standard management requirement of commanders and that written assessments be noted in the personal files of members for evaluation purposes when promotions are due. Part of this system to be a form of 'red-flagging' of areas of behavioural concern, for instance excessive alcohol use or abuse; incidents of domestic violence (a check to be made whether the register requirements of the Domestic Violence Act are being adhered to in the cases of members themselves); expression of inappropriate anger or aggression in work situations; and frequent absenteeism. Such behaviour review to include a review of past patterns of possible misconduct so that all incidents can be included in the assessments (See Annexure 9).

□ **Electronic database**

It is therefore further proposed that an electronic information database be established into which all relevant information of reported cases of misconduct by police personnel can be entered. Such an electronic database (using a template for the different categories) will serve as a valuable tool for analytical purposes and in making crosschecks for repeat offenders, comparative and similar patterns of behaviour, success rate and impact of preventative and interventionist programmes.

This electronic database will also assist in the drawing up of offender profiles, while also guiding the choices in terms of remedial steps that need to be taken. In essence this electronic database can serve as an early-warning system by red-flagging possible areas of concern for each individual under a station commander's command. In addition, this can assist the Special Shooting Investigation Team's investigations by providing a record of an officer's past shooting incidents.

Moreover, the electronic database can be used in the analysis of all these cases so that trends in misconduct, patterns of escalation, histories and types of misconduct can be identified. An ancillary objective would be for the development of a generic training module dealing with all the aspects linked to the use of force which can be presented to SAPS managers (train-the-trainers approach) so that this training can be fast tracked throughout the service and have the desired multiplier effect.

□ **Investigate established patterns of abuse**

All complaints of ill treatment or violence, whether made to the police or the ICD, should be expeditiously and diligently investigated. In particular, the outcome should

not be dependent only on proof in the individual case; patterns of abuse should be similarly investigated. Unless the allegation is manifestly ill founded, those involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. Where a specific allegation or a pattern of acts of excessive use of force or ill treatment is demonstrated and proven, the personnel involved should be discharged from the SAPS.

□ **Suspect's rights**

It is absolutely imperative that any suspect, when being arrested, be informed of their rights (as is the practice in the USA with the so-called Miranda Rights obligations). No police officer should at any time dissuade a person in detention from obtaining legal advice. A list of suspect's and detainee's rights should be displayed prominently at all police stations as well as being available for perusal as an information sheet.

□ **Better record keeping**

A complete and full record of any person arrested or who comes and lays a charge should be made by police officials. Incomplete records do not protect either the victim or the police officer (from false charges or revenge complaints). To this end a concerted effort is needed to ensure that CCTV cameras be installed in such vulnerable areas as holding cells and charge offices, not only to protect all members of the public but also police officials (from being falsely accused of misconduct or use of force).

□ **Need to educate the public**

There is a need to educate the public more clearly on the necessity for laying a charge and providing clear evidence (witnesses and statements) in order to obtain a court conviction in a case. For example the need to obtain a written doctor's report in cases of serious assault or sexual abuse; written statements and a commitment or willingness to act as a witness or give evidence in court by the complainant.

This need can be accommodated within current public awareness campaigns dealing with complaints against the police. Like the recommendation regarding suspect's rights, the guidelines for victims and members of the public to lay complaints, the procedures to follow and requirements to fulfil, should be displayed prominently at all police stations as well as being available for perusal as an information sheet.

□ **Assaults in custody or at service centre**

Special attention needs to be given to the monitoring as well as random inspections of police stations in order to prevent abuse of not only suspects but also complainants in the police station service centres and holding cells. A public awareness campaign for people to be made aware exactly what they can expect in terms of treatment and service delivery, as well as procedures and channels to follow when laying complaints against members of the police.

□ **Greater use of the Witness Protection Programme**

Because of fears of intimidation and threats of violence from police officials accused of ill-treating members of the public, greater use of the witness protection programme should be made. This will go a long way towards breaking down the culture of impunity as well as obtaining the needed convictions of those guilty of perpetrating such acts.

Victims with previous criminal records, those who have criminal cases pending or been sentenced and who are currently imprisoned should not in any way be prejudiced in being offered protection under the witness protection programme. The programme also needs to be fully extended to them since criminals are often the victims of ill treatment.

Training

□ Additional training

Basic and refresher training for police and others involved in law enforcement should include courses not only on human and constitutional rights, but also scientific techniques and other best practices for the professional discharge of their functions.

□ Section 49 workshops

There is an obvious need for clear and concise explanations and definitions of the whole Section 49. It is suggested that workshops be formulated dealing with all aspects, in particular the practical applications by means of case studies and interactive role-playing, and that these be presented countrywide at area level.

These training workshops should be used to re-asses what comprises a 'life threatening situation'; use of 'appropriate' levels of force etc. by drawing on the practical experiences of officers at ground level. There is still a good deal of confusion and lack of clarity concerning the use and meaning of such terms as 'use of necessary force' versus the gratuitous use of violence and what is meant by 'excessive and unnecessary'.

In addition, there is the need to emphasise in the training of any officer the following: Firstly, that at the scene of a police incident police officers have an obligation and a legislated responsibility to ensure that the law and regulations are complied with. Secondly, to observe and to actively intervene if necessary if the use of force by other police members against a suspect becomes excessive. (This is an obligation and responsibility not only in the law, as excessive use of force is a criminal offence, but also in the current SAPS Code of Conduct).

□ Training in conflict mediation skills for operational police officers

A pattern that consistently emerged from this study was poor people management skills, a lack of conflict mediation skills or the implementation of anger management techniques. It is recommended that specific courses for the training in these particular skills be implemented. Moreover, that such courses be supplemented with a range of other life skill training and stress management techniques (e.g. lectures on the meaning and content of 'appropriate professional behaviour').

Such training is in fact crucial since the spin-offs in other areas will be significant particularly by way of reducing stress levels while simultaneously ensuring more effective policing occurs. Members proficient in these skills automatically enhance overall efficient service provision. It is therefore essential that police management recognise the need for a more holistic and all encompassing approach to training police officers in terms of overall personnel development (See Annexure 9 for detail

on the importance of implementing the correct stress management programmes and counselling).

□ **Simulation training**

It is strongly recommended that operational police officials be given specialised situational training using available programmes (See Annexure 6). Such simulation training, although the initial outlay is costly, can save on the costs of such training items as bullets and firearms. Simulation training in particular can help to inculcate split-second decision making and critical assessment of life-threatening situations etc. (See Annexure 8 on street survival tactics and training).

□ **Weapons handling training**

There was an evident need for an emphasis in basic training for police members to be more intensively trained not only in the handling, firing but also methods of retention of a firearm, and approaching a crime scene with a firearm, and arresting a suspect.

□ **Refresher courses**

It is imperative to ensure that police members are thoroughly conversant with techniques and strategies by means of frequent refresher courses for such policing activities as arrest procedures, handling and detention, subduing a suspect using only 'minimum force', approach to a crime scene, apprehending of a fleeing suspect without firing a firearm.

□ **Alternative techniques for subduing or restraining suspects**

Training also to be provided in non-lethal hand and restraining holds (e.g. pressure points techniques) so that injuries during arrests and detention do not occur. In addition the police management should seriously consider the standard issuing of pepper spray and the steel 'concertina' batons which can be more easily carried on the person than the current tonfa baton (this should still to be issued to officers but to be part of their equipment stored in a vehicle)

□ **Provision of alternative equipment**

Equipment other than a firearm which can be used in arrest situations or where a suspect needs to be restrained or even domestic violence situations e.g. concertina steel baton, pepper spray .

□ **Stricter enforcement of existing disciplinary regulations**

An awareness and training programme on the regulations pertaining to disciplinary procedures and section 49 for all commanding officers, duty officers, investigating officers, presiding officers at internal inquiries and negative discipline officers should be implemented. This in order to ensure the strict adherence to the regulatory requirements regarding the correct procedures to follow in the disciplinary regulations.

□ **Use of police dogs**

Properly trained and well-controlled police dogs are undoubtedly a valuable crime prevention tool, especially when used responsibly and judiciously. Such proper use of police dogs, especially in arrest situations, obviate the necessity of police officers

having to resort to the use of firearms when making an arrest or attempting to subdue a violent or dangerous suspect.

However, in the cases¹¹³ of dog use in the sample of files it was more often than not found that these incidents were a case of the police officer 'setting the dog' on the suspect. A logical conclusion is that police dog handlers ought to exercise stricter control over the actions of their dogs or alternatively the training of the dogs themselves be changed to reduce the uncontrolled aggression of dogs 'set upon' suspects.

Accordingly, it is recommended that attention be given to providing more intense training to police dog handlers but also that the numbers of dogs in training be increased substantially. Emphasis in the person training to be on the correct and proper use of dogs, while the dogs themselves be trained to refrain from savaging a suspect once caught.

FUTURE RESEARCH

It is suggested that additional research on the topic of the excessive use of force by police officers be undertaken.. It is recommended that this research covers the following aspects of use of force:

- ❑ One-on-one interviews to build up proper biographical and social profiles.
- ❑ Research that incorporates and follows the social control of behaviour model. Such research will allow for the organisation as a whole to be looked at and not just the behaviour of individual officers. Such research would provide more information on behavioural patterns throughout the organisation thereby assisting and identifying specific remedial steps and actions that can be implemented organisationally.
- ❑ Impact assessment studies on the effect and impact that internal regulations have on the behaviour of members with reference to the use of force (a longitudinal study).
- ❑ A review research study in terms of the training content of curricula in respect of use of force.
- ❑ Impact study (field research and participant observation) of the effects and impact (results) of officers receiving simulation training.

¹¹³ In the sample of files preused there were 49 incidents of dogs being used.

ANNEXURES

ANNEXURE 1

Focus group interviews with various SAPS units in Gauteng:

1. 19 January 2001: Johannesburg Dog Unit, Langlaagte
2. 23 January 2001: Johannesburg Central Detectives
3. 24 January 2001: Brixton Flying Squad, Johannesburg
4. 29 January 2001: Brakpan Crime Prevention
5. 30 January 2001: Germiston Murder & Robbery Unit & Kettlehong Detectives
6. 1 February 2001: Van der Bijl Park Murder & Robbery Unit & Flying Squad/Highway Patrol
7. 5 February 2001: North Rand Flying Squad/Highway Patrol, Benoni
8. 6 February 2001: Murder & Robbery Unit, Kempton Park
9. 7 February 2001: West Rand Flying Squad, Krugersdorp
10. 8 February 2001: Dog Unit, Vereeniging
11. 16 February 2001: West Rand Dog Unit, Dobsonville
12. 19 February 2001: Germiston Flying Squad
13. 26 February 2001: Soweto Flying Squad, Highway Patrol & Dog Unit, Protea Area HQ

ANNEXURE 2

SAPS HUMAN RIGHTS TRAINING PROGRAMME

According to Dir Pieter Cronje (Legal Services, SAPS) the Human Rights Directorate in the SAPS decided in the mid-1990s to develop a little booklet and a training program for the SAPS on human rights. By the end of 1998 the material was completed and a start was made in piloting the workshop, working on the contents of the material, chopping and changing and then a project team was put together. Twenty people, two from each of the nine provinces and two from police head office in Pretoria, formed the core group. Although there are approximately 400 full-time trainers in the SAPS they are involved in basic training, detective training and many other programs and no trainers could be spared for the human rights training programme. The psychology department in the police were approached to draw up a trainer profile in order to identify people in the police whose attitudes were very positive and with enough policing experience. Eventually a number of people were interviewed, selected and put on a 'train-the-trainer' workshop where they were taught how to present the training packs that had been developed. In the train-the-trainer programme there was a focus on basic training techniques, basic adult education principles, things like

how to brainstorm, do a 'fish bowl', group discussions, facilitate role playing, things like that but in a very basic way. Every trainer had to attend an 8-day workshop and then go out and co-facilitate. A method of coaching was used so that the first workshop that they present there should be a person that has already undergone the train the trainer workshop there. So the workshop is then presented together with one or two persons. Although the wish was not to be prescriptive of how the workshop must be presented the manual itself is extremely prescriptive because specific activities in each of the workshop activities were worked out, specifically to assist the trainers. Originally the material was given to them but in the pilot workshops everybody was running off in their own direction. It had to be made sure that the same message was being brought over and that the same things were taught to everybody in the police. By May 2000 300 trainers had been trained and the aim is to train 600 trainers to present 6 000 workshops countrywide, which will hopefully be completed by the end of 2002. It is simply a process of cascading.

The next part of the process is the assessment process. Currently an assessment battery is being developed. Again in this process a lot of NGOs and other organisations are involved. The assessment is necessary in order to evaluate the impact of a program like this on the SAPS, whether it added any value, if civil claims have been reduced, if people stop torturing, if deaths in custody have gone down – all these are indicators of whether human rights are being respected and adhered to in the SAPS. These are, however, only one of the indicators. There are also other methods to evaluate the process. For instance by having interviews with people, asking their peers how their behaviour has changed, to ask the station commanders to talk to the community etc. This is the phase in which the SAPS are in at this moment in order to develop some kind of assessment and evaluation over a period of time.

The current SAPS Human Rights Training Programme has been an interim process, just a process to train people who did not have any human rights experience in the past. But when human rights has been implemented and fully taken up in the basic training program, hopefully after 2001, the SAPS will not have the need to call a program in the SAPS a program on human rights and policing. There should only be a program on good policing and all these principles should be integrated into the normal training process of the SAPS.

Unfortunately the training program had to be called 'human rights and policing' because there are still people in the SAPS who have been there for the past 20 to 30 years who are still negative about the process and if they hear the name human rights they still feel that it will bind their hands so that they cannot do their work properly. In order to make a process like this successful you really need the commitment of top management, middle management and the members at grassroots. That was one of the reasons why quite a number of people at grassroots level were involved in giving the Human Rights Directorate inputs on the content of the training programme. Although the Directorate had been unable to consult as widely as they would have liked to, constables, sergeants and inspectors were consulted as well as higher ranks. But the latter were more difficult to reach than consulting the people at the basic level. When a workshop was presented, an attempt was made to have as diverse a group of people from different ranks and from different backgrounds and from different stations, different races and different genders as possible. This approach worked well. At these workshops it was good to see people, who were afraid of each other and never had the opportunity to speak their minds to challenge each other, speak their minds freely about things that worried and concerned them.

The training materials pack was first in English but the booklets have now been translated into Zulu, Sesotho, IsiXhosa, and recently money was given for the translation of this into Setswana and Afrikaans. Eventually these booklets will be available in each of the eleven official South African languages to make it more accessible to all. It will also be available for

the community in the form of a poster and the list of rights will be put up in each police station. This is a co-project between ABSA bank, E-TV and Technikon SA (Minnaar, 2000).

ANNEXURE 3

THE CIVILIAN COMPLAINT REVIEW BOARD (CCRB) AND THE NEW YORK POLICE DEPARTMENT (NYPD)

New York City has had a review board to investigate complaints by members of the public against police officers since 1953. Until 1987 the board was composed entirely of non-uniformed members of the Police Department. From 1987 until 1993, the Civilian Complaint Review Board (CCRB) was composed of six private citizens appointed by the mayor and six civilian employees of the Police Department appointed by the Police Commissioner; it lacked subpoena power and most of its investigators were serving police officers. However, there was increasing concern about the board's lack of independence and the very small proportion of complaints which were substantiated (around 7% on average).

In January 1993 the City Council amended the City Charter to create for the first time an all-civilian board which was completely independent of the police. The new Civilian Complaint Review Board (CCRB), which came into operation in July 1993, has 13 members. While all are appointed by the mayor, five are chosen by the mayor; five representing each of the City's five boroughs are designated by the City Council; and three are designated by the Police Commissioner (the last three being the only board members permitted to have law enforcement backgrounds, although they may not be serving police officers). It also has a staff of all civilian investigators, with power to subpoena documents and compel witness testimony.

There was strong opposition within the NYPD to the creation of the all-civilian complaints review board. When Mayor Dinkins' original proposal was being debated by the City Council in September 1992, thousands of off-duty police officers took part in a protest demonstration outside City Hall, organised by the main police union, the Patrolmen's Benevolent Association (PBA). The present mayor of New York City, Rudolf W. Guiliani, who was elected to office in January 1994, also opposed the creation of an all-civilian board. The bill that was eventually passed made some concessions to opponents of Dinkin's original proposal (which was for a board selected solely by the mayor) by providing that three board members would be chosen by the Police Commissioner and five by the City Council, but it retained its all-civilian composition and independence of the police department.

Under its present remit, the CCRB may investigate complaints involving excessive force; abuse of authority; discourtesy; and offensive language (including slurs against a person's sexual orientation, race, ethnicity, religion, gender or disability). Other types of misconduct, including corruption, do not fall within its jurisdiction. In cases involving deaths or serious injuries, there may be overlapping jurisdiction and the CCRB may conduct investigations that are concurrent with IAB inquiries. However, if the District Attorney is already conducting a criminal inquiry, the CCRB will suspend its own investigation until the results of the criminal inquiry are known. The CCRB reports its findings and recommendations to the Police Commissioner. The CCRB clearly has an important role in ensuring public accountability in investigations into alleged police misconduct. However, there are signs of serious conflict between the police and the new CCRB, with each accusing the other of lack of co-operation. These strained relations undermine confidence in the investigation of complaints and in police willingness to be subjected to outside scrutiny, an issue that is discussed in more detail below. (Amnesty International. 1996, p. 4-5).

ANNEXURE 4

NYPD: PROCEDURES FOR INVESTIGATING POLICE SHOOTINGS

Until 1995 most NYPD police shootings were investigated by a senior officer on duty in the patrol borough where the shooting occurred, under the supervision of the borough commander if the shooting resulted in serious injury or death. Although NYPD regulations provided that the Internal Affairs Bureau (IAB) be immediately informed of shootings involving serious injuries, this did not always happen in practice. According to a 1996 Amnesty International report IAB investigators rarely attended the scene immediately after a shooting. However, as a result of the Mollen Commission of Inquiry the department decided to establish specialised shooting investigation teams, as the quality of the investigation in the first 48 hours after a shooting was of vital importance.

Accordingly special Borough Shooting Teams were established in each patrol borough in February 1995. These respond to all shootings in the borough and are composed of borough police officers, usually of the rank of supervisor, led by a Captain. As a consequence IAB officers also now attend the scene of all shootings resulting in injury or death, but will conduct the investigation only if the circumstances are particularly controversial or they are asked to do so by the Borough commander. Otherwise the Borough Shooting Team will investigate the shooting and prepare a report of the circumstances, including witness statements and the past shooting records of the officers involved, with recommendations on whether departmental guidelines have been violated. Under police regulations, officers involved in shooting incidents are not questioned during the first 48 hours after a shooting to allow them time to consult with police union representatives and their attorneys before being interviewed.

A police officer may be relieved of his/her gun and placed on modified assignment (usually desk duty) while an investigation is underway. An officer may also be suspended for a maximum of 30 days while the case is being investigated. The report of the investigation is forwarded to Chief of Department and the Firearms Discharge Review Board, an oversight body of senior NYPD police officers established in 1972.

The Firearms Discharge Review Board reviews all police shootings, whether or not someone has been hit, and prepares annual statistical reports. It also reviews the findings of departmental investigations and makes a final determination of whether the shooting conforms to departmental policy, with a recommendation on whether disciplinary action or retraining should be undertaken. The Review Board receives the report on a case only after the investigation has been completed. Unfortunately there are often long delays before the case reaches the Firearms Review Board, which limits its effectiveness in reviewing individual cases and making recommendations. The Board's findings are also dependent upon the quality of the initial police investigation. There have been allegations in some cases of a lack of thoroughness in police investigations of shootings or other incidents, or even of 'cover-ups' (ranging from accusations of weapons being planted on suspects to inaccurate reporting of the incident leading to a shooting or failure to release pertinent information about the evidence). Although the Borough Shooting Teams are designed to increase the efficiency and quality of internal police shooting investigations there is still a need for the whole system to be carefully monitored and that steps be taken to ensure that reports are sent to the Firearms Discharge Review Board without undue delay. There is no provision for civilian oversight of police shooting investigations. However, the all-civilian CCRB established in 1993 can investigate individual shooting cases if a complaint is lodged with them (Amnesty International. 1996, p. 24-25).

ANNEXURE 5

NYPD GUIDELINES ON THE USE OF FORCE

New York state law and police department policy provide that officers may use only the minimum amount of force which is necessary to achieve a legitimate purpose (e.g. effect an arrest or prevent the commission of an offence) when other options are not available or have been exhausted. NYPD guidelines set out the following five stages through which force can progress:

- (1) verbal persuasion;
- (2) unarmed physical force i.e. restraining techniques, 'choke holds' or handcuffing;
- (3) force using non-lethal weapons (e.g. pepper spray or mace);
- (4) force using impact weapons (e.g. police batons); and
- (5) deadly force, which may be used only when an officer or another person's life is in direct danger.

The guidelines also state that flashlights, radios and handguns are not designed as impact weapons and make clear that they should not be used as such in most circumstances. NYPD regulations also state that any officer at the scene of a police incident has an obligation to ensure that the law and regulations are complied with, and to intervene if the use of force against a subject becomes excessive. The guidelines note that failure to do so constitutes an offence under the law as well as departmental policy. (Amnesty International. 1996, p. 6)

ANNEXURE 6

FIREARMS TRAINING SIMULATOR (FATS)

One of the computerised and highly realistic simulation training programmes currently available is the so-called Firearms Training Simulator, also known as FATS, used by a number of American police departments (e.g. Boston). FATS provides police officers regular practice on how to respond properly in a wide variety of life-threatening situations. FATS should be seen as an extension and addition to the more usual real-life situation in which police officers go through a range, duck for cover behind fire hydrants and other objects, and shoot at pop-out paper targets as opposed to merely undertaking firing practice at a still target on a shooting range. The latter does not in anyway remotely prepare police officers for the real-life situations they will encounter on the streets. FATS goes a long way in preparing them for such.

The gun that the trainees use at a FATS training simulator, however, is not real. It is an exact replica of most American police department's standard-issue Glock semiautomatic, but instead of shooting bullets, it shoots a laser beam. And instead of paper targets, there is a large video screen where 'bad' guys (potential suspects) jump out of doors, and lean around corners, sometimes with innocent bystanders nearby. Trainees must make literally split-second decisions on whether to shoot. Scores reflect how quickly the shooter fires, how accurately each fired laser dot hits its intended target, and whether or not you used proper judgement. In addition, the trainers assess the trainee's other behaviours -- his movements, his voice commands. They also test his memory of what he/she had just experienced. One trainer sits at the computer controls, ready to select different video situations (scenarios) for

each trainee.

The main purpose of FATS simulator training is practising how to handle threatening situations. Trainers insist that trainees use strong voice commands to try to take control of situations since the decision to use force must be made in an instant. FATS training is not intended to equip trainees *"to shoot guns out of people's hands,"* but to stop the immediate threat.

When a trainee either misses or scores a hit the computer screen informs trainer and trainee that the trainee has made a miss or a lethal or non-lethal hit. If non-lethal the computer is prompted to allow the wounded video character to get up a second time and resume firing.

The experience of the FATS trainers at the Boston Police Department has been that many trainees start off being clueless and 'mess up' on the simulated situations with it taking months of training before they are able to use the weapon automatically and smoothly. According to these trainers *"so much is rushing through your mind when a person threatens, or appears to threaten, your life, that it is hard to distil everything and respond safely and effectively,"* Many law-enforcement professionals and gun-violence-prevention experts believe that traditional paper target training is counterproductive to public safety, and the more intensive simulated methods, like those of the Boston Police's FATS, reveal the tremendous difficulties implicit in real-life self-defence (Dahl. 2001).

ANNEXURE 7

US DEADLY FORCE POLICY

When the new federal policy on deadly force for all law enforcement agencies within the US Department of Justice (the Department of Treasury also adopted the new policy at a later stage) was approved in October 1995 the FBI categorically stated that classroom instruction and practical application of the general principles would provide the foundation for this new policy. Furthermore, that the training in the use of deadly force should *"encompass the knowledge and skills necessary to make appropriate decisions"*. In addition, it was further felt by the FBI that this training should *"reflect the commitment of management to share the burden of responsibility for making those decisions"*.

The FBI training on the use of deadly force provided clear principles to govern its application which are then supported by practical examples that illustrate its appropriate application. However, it was also acknowledged that such guidelines might cause uncertainty and hesitancy on the part of officers. This in itself would therefore increase the danger to themselves and to any members of the public close to such a situation.

According to Hall (1996) underlying the FBI's training doctrine for use of force was the premise that: *"the requisite knowledge for assessing threats – like the requisite skills for countering them – must be learned."* In other words the emphasis on use of force training must be instilled and strongly inculcated in trainees before they are sent out on the streets.

To accomplish this the FBI uses a multistage approach for instructing law enforcement officers on the use of deadly force. The first stage is classroom instruction on the policy, accompanied by an instructional outline that explains the criteria used to determine the manner in which the policy is to be interpreted. A second stage (also in the classroom) uses written scenarios to illustrate how the policy applies to various situations. In the latter trainees are given scenarios and challenged to determine the propriety of using deadly force by using the established criteria. After thorough discussion of their responses, they are given a model response to illustrate the appropriate application of the policy.

In addition to the scenarios depicting the necessity for using deadly force, the FBI's training package includes scenarios where either the absence of imminent danger or the availability of a safe alternative obviates the necessity for its use. There are also scenarios where the level of danger to innocent third parties makes its use impractical.

The third stage incorporates practical application of the principles through use of interactive video simulation and practical exercises using role players and blank or paint firing weapons (at the FBI Academy at Quantico this roleplaying practical application takes place in the real life setting of the so-called Hogan's Alley where actual street scenes and buildings are used in the training).

Similar to the South African Section 49 the US federal policy on deadly force establishes an "*imminent danger*" standard. It also reaffirms the basis use of force principle that even when imminent danger exists, deadly force should not be used if to do so would create unreasonable risk to innocent third parties.

The first paragraph ("Permissible Uses") of the new policy had stated categorically that:

"Law enforcement officers... may use deadly force only when necessary, that is when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person."

A commentary accompanying the policy also explains key words and concepts and provides some guidance for the interpretation of the application of the policy.

The policy deals with a number of situations namely:

- defense of life
- fleeing subject
- subject possess a firearm
- subject is armed and running
- verbal warnings
- warning shots
- firing at vehicles
- safe alternatives
- response to commands
- availability of cover
- time constraints
- use of deadly force
- use of deadly force not permitted

(See Hall, J.C. 1996. FBI Training on the New Deadly Force Policy. FBI. (<http://www.fbi.gov/publications/leb/1996/apr1996.txt>))

ANNEXURE 8

SUMMARY OF DISCIPLINARY PROCEDURES

Below is a short summary of the most pertinent disciplinary procedures and requirements in terms of the legislation and regulations pertaining to some of the shortcomings raised in this regard in this report.

Discharge on account of sentence being imposed

In terms of the South African Police Service Act 1995, any member of SAPS convicted of an offence and sentenced to a period of imprisonment without the option of a fine, is deemed to have been discharged from the day after being sentenced, except where a suspended sentence only was imposed.

A member of the SAPS whose conviction is set aside after appeal or review may, within thirty days after the conviction is set aside, apply to be reinstated as a member, as long as no alternative conviction with a sentence involving imprisonment is imposed at the appeal or review stage. Where the conviction is not set aside, but the sentence reduced so that it no longer includes a term of imprisonment, the member may also make an application.

The National Commissioner must, on such application, reinstate the member from the date from which he or she was deemed to be discharged, if the member was not convicted of any alternative offence.

Where the members' conviction was replaced with an alternative conviction or the conviction not set aside but the sentence reduced, the National Commissioner has the discretion to either reinstate the member from the date of he or she was deemed to be discharged, or institute an inquiry as to the suitability of reinstating the person.

Suspension while in detention or imprisoned

A member detained or serving a term of imprisonment is deemed to be suspended for the period of detention or suspension, subject to the provisions above regarding discharge. While under such suspension, the member is not entitled to any salary, wages, allowances, privileges or benefits which he or she would normally be entitled to as a member.

If the member is detained while awaiting trial and is subsequently found not guilty, he or she can make representations to the National or Provincial Commissioner to have such benefits restored to him or her. The National or Provincial Commissioner may of his own accord, or after representations from a member, order that the benefits be restored.

Obedience

A member must obey any lawful instruction given by a superior or a person competent to do so. However, a member must not obey an obviously unlawful order or instruction.

A member may demand that an order be recorded in writing before obeying it, where it is reasonable in the circumstances to do so. A member may also demand that an order be recorded in writing after having obeyed such an order.

Disciplinary proceedings

The Act provides that disciplinary proceedings may be prescribed by regulation. Regulations for the South African Police Service were published in the Government Gazette on 27 December 1996.

Misconduct

In terms of these regulations, a member commits misconduct if he or she performs any act or fails to perform any act with the intention of causing harm or to prejudice the interests of the SAPS, whether financial or otherwise, or with the intention of undermining the policy of the SAPS, or with the intention not to comply with his or her duties or responsibilities. A member commits misconduct if he or she commits an offence.¹¹⁴

Disciplinary proceedings

Misconduct which is viewed as not serious

A commander, who reasonably suspects a member under his or her command of misconduct which is not serious (in the commander's opinion), must take steps to ensure that the commander or any other appropriate person interviews the person concerned to ascertain and address the cause of the misconduct and implement counseling or other remedial measures.

If the commander is of the opinion the remedial measures are inappropriate, or if they fail, and the person admits the conduct and the commander is satisfied that it did indeed occur, he must orally warn the member, unless there has been prior misconduct by the member in the past year. The oral warning must be recorded on the conduct sheet in the personal file of the member. If the member has had a prior oral warning for the same misconduct, or two oral warnings for different misconduct in the past year, the commander must warn the member in writing and file the warning in the member's personal file. If the member has had a prior written warning, this must be recorded and a report submitted to the disciplinary officer for the area concerned.

If the member denies the misconduct, the commander must investigate and gather all the necessary evidence, and report the matter to the disciplinary officer for the area concerned for consideration. The member has 14 days to make representations to the official concerned regarding the alleged misconduct.

Misconduct which is viewed as serious

A commander, who reasonably suspects a member under his or her command of misconduct which is serious (in the commander's opinion), must investigate the misconduct and gather all the evidence, and report the matter to the disciplinary officer for the area concerned. The member has 14 days to make representations to the official concerned

¹¹⁴ A member also commits misconduct if he or she: fails to comply with a lawful order or instruction; takes part in a strike; assaults or threatens a fellow member; falsely accuses a fellow member of improper conduct; treats a lower ranking member oppressively; withholds or delays any complaint in connection with a member; deserts the SAPS; is absent without leave; fails to report for duty; goes off duty before being relieved; makes a false alarm; uses a narcotic drug; drinks alcohol or is under the influence while on duty; feigns illness; willfully causes injury to self or another to render either unfit for duty; fails to notify the commander that he or she has a notifiable disease; sleeps on duty; neglects duty; releases a prisoner willfully or negligently without proper authority; uses unlawful force against a prisoner; demands monetary reward for any act or omission; sells any SAPS property; misappropriates any public property; neglects any animal under control of the state; displays gross discourtesy to any person while on duty; knowingly makes false or incorrect statements in public about the SAPS; with intent to prejudice any person, knowingly conceals or falsifies evidence; borrows money from someone of lower rank; sexually harasses, victimizes, or unlawfully discriminates against a member or employee of the SAPS; gives false information in disciplinary proceedings; knowingly conducts him or herself in a manner not conducive to good labour relations. A member also commits misconduct if he or she, without permission, engages in any trade or business, or any private work connected with the performance of his or her duties, or any other remunerative work. The relevant commissioner should not withhold such permission unless the economic activity concerned: prejudices the public image of the SAPS or interferes with its functions or fails to comply with any official code of conduct of the SAPS.

regarding the alleged misconduct.

Charge of misconduct

The disciplinary officer on receipt of a report, or a complaint from any person, or a recommendation from the ICD or public prosecutor that disciplinary proceedings be instituted, may charge the member with misconduct, or refuse to charge the member with misconduct. The decision to refuse to charge may only be taken after consulting with the person who originated the report, complaint or recommendation.

A charge must be served in the form of a notice. The notice must contain the particulars of the charge and all other relevant information. A member served such a notice must attend the disciplinary hearing specified in the notice. If he or she fails to attend, that failure constitutes misconduct. The hearing is then postponed. If the member fails again to attend, the member may be suspended from all wages or benefits and the hearing postponed indefinitely.

At the conclusion of a disciplinary hearing, the presiding officer must make a finding on the charge. If it is found that there was misconduct, the presiding officer must also make a finding on any mitigating or aggravating circumstances and determine the sanction to be imposed. This may be: counseling, warning or reprimand; a fine deducted from the member's salary; reduction in salary to a notch below rank for not more than 12 months; discharge from the SAPS. Sanctions may also be postponed or suspended pending other hearings.

Suspension

The National or Provincial Commissioner may, after hearing a member against whom disciplinary proceedings have been instituted, temporarily transfer, or suspend such employee on conditions as determined by the commissioner. Such a commissioner may only take such action where there are clear grounds for the allegation or suspicion that the employee has committed serious misconduct, or the circumstances are such that the employee should not be allowed to exercise his or her powers or to perform his or her duties or functions. The commissioner may also take these actions without hearing the person if it is in his or her opinion not reasonably possible to do so. The member concerned may make representations to the commissioner.

Suspension continues until the member's employment is terminated or he or she is dismissed, or until he or she resumes duty after having been ordered to do so. A suspended member may not wear a uniform of the SAPS. A member on suspension is entitled to all salaries and benefits, but the National or Commissioner may, after first hearing the member, decide that any further suspension be without a portion of the member's salary or benefits. If the member is not discharged at the disciplinary hearing he or she must be paid his or her full salary. The regulations further provide for appeals.

ANNEXURE 8

STREET SURVIVAL TRAINING, STRESS MANAGEMENT AND THE USE OF FORCE

In the international literature on use of force most of the preventative programmes focus either on the aspect of stress related to work (dangerous situation) or alternatively the correct training to avoid such situations. Since the problem of the use of force by law enforcement officials is not a priority in terms of general policing and crime prevention strategies the international literature on this aspect of policing, with the exception of the United States of America, is in reality sparse and limited. In fact, except for where it features as an aspect of stress management programmes, publications and reports dealing specifically with the topic are few and far between, even more so when it comes to looking at ways and means of limiting or preventing the excessive use of force. However, there is considerable literature that deals inter alia with general street survival tactics, firearms training, weapons retention and body defense, arrest and handcuff procedures, crime scene approaches etc.

Accordingly, some of the preventative strategies revolve around the ancillary literature dealing inter alia with such issues as stress related work experienced by police officers in the normal course of their duties, and of police officials being 'street smart' in terms of officer survival.

As a result most of the preventative and interventionist strategies concentrate largely on either specialised training for survival in dangerous situations or developing anti-stress programmes for police officers and their families. In other words to handle the work-related stress better so that they do not express that stress in terms of the excessive use of force in certain situations.

Street survival tactics

Essential for preventing the unnecessary use of force by police officials is in fact to build confidence in their abilities and expertise by equipping them with the practical experience and techniques to enable them to better handle and deal with dangerous situations on the streets. These survival tactics relate specifically to the detailed and in-depth training necessary to give them the correct skills and procedures for ensuring an improved rate of survival and more acceptable level of safety.

Equally it must be remembered that when the police member is in a crisis and under stress, they will instinctively revert to the way that they have been trained.

In reducing the use of force in dangerous situations specialised training plays a key role. A police officer's 'street survival' might often depend on the quality of the training and the instinctual correct response (i.e. a learnt reaction).

True survival readiness involves a number of things. Of relevance in terms of restricting the unnecessary use of force are the following:¹¹⁵

- practical proficiency with firearms includes learning and practising new techniques under stress in as realistic an environment as it is possible to simulate
- One should always approach a situation anticipating a possible armed confrontation
- accordingly, plan ahead but let circumstances dictate tactics

¹¹⁵ This information is drawn from Adams, R. J., McTernan, T.M.& Remsburg, C. 1980. Street survival: tactics for armed encounters. Evanston, Illinois: Caliber Press

- follow good practices faithfully that will make safe procedures habitual

Adams *et al* (1980) have formulated detailed practical guidelines of survival tactics in their publication on street survival dealing inter alia with the following specific situations:

- building searches
- field interrogations
- vehicle stops
- firearms readiness
- re-loading under fire
- control of lighting (enhancing visibility when darkness descends)
- utilisation of available cover
- awareness of location and surroundings
- use of surprise
- verbal challenges
- firearm retention
- shooting tactics
- making allowances for muzzle flash in dark or dim light
- physically disarming a suspect
- the final approach (closing in on a suspect down)
- handcuffing procedures
- unpredictable reactions
- remaining alert
- dealing with multiple adversaries
- recovering firearms at the scene

All of the practical guidelines contained in the Adams *et al* (1980) street survival publication can and need to be incorporated into training for officer survival specifically in dangerous and tense situations where the possibility of the use of firearms exists.

Stress management programmes

In America over the last few years a number of comprehensive and up-to-date law enforcement stress programmes have been developed to enable individual officers, civilian employees and officers' families to cope with the stresses of a law enforcement career. These have been specifically designed to reduce the debilitating stress that so many officers experience and thereby help these officers do the job they entered law enforcement for, namely protect the public.¹¹⁶

In particular the Finn & Tomz (1997) report provides practical guidance regarding the development and maintenance of a law enforcement stress programme. This publication, however, does not discuss specific counselling approaches but does include references to counselling literature and related resources.

Law enforcement officers face a number of sources of stress particular to their field, ranging from organisational demands, for example shift work, to the nature of police work itself, for instance exposure to violence and suffering. In addition, some US officers report new or increasing sources of stress in particular attacks on police and the deaths of the officers in the line of duty, some of which have resulted from the implementation of community policing, negative publicity, and reduced resources. In such stress-reducing programmes it is important to follow an established number of steps inter alia conduct a needs assessment, form an advisory board, formulate programme objectives, and develop written policies and

¹¹⁶ See Finn & Tomz, 1997, for detailed outlines of specific US programmes.

procedures that identify the extent and limitations of programme activities. Most law enforcement stress experts in the US recommend a systematic and holistic approach to programme development, focusing on both the prevention and treatment of stress at the individual and organisational levels. In particular they stress the establishment of a referral network. Furthermore, in such programmes there is a need to train officers and their families to recognise the sources and signs or indications of stress and thereby to develop strategies for coping with them as a primary goal for any stress programme. Among the treatment services that law enforcement stress-reduction programmes can provide are short- and long-term counselling, critical incident (e.g. shooting incidents, attacks on or murder of police officials etc.) stress debriefing, crisis intervention, and assessment and referral to other service or support providers.¹¹⁷

Such stress-reduction programmes by their very nature also deal with the related problems that arise when law enforcement officials come under attack or are killed for whatever reasons. Finally, such programmes need to be continually monitored and assessed for effectiveness and impact. Moreover, they also need to be evaluated by independent practitioners so that ways of improving the programme operations and effectiveness, as well as new guidelines can be suggested.¹¹⁸

Despite limited resources, many US law enforcement agencies have implemented stress programmes in order not only to benefit officers and their families but also to improve efficiency, morale and image, as well as to protect the significant financial investment that they have made in officers, and to help ensure that officers are in the best condition to protect and serve the public. It is therefore important for any law enforcement or policing agency to recognise the multitude sources of stressors inherent in daily police work such as the frequent exposure to violence and human suffering, frustration with other parts of the broad justice system, for example the perceived leniency of court sentences, easy bail conditions, and blockages within the criminal justice system, and of course the high level of violent crime. In addition, such factors as the perceived increasing public scrutiny and negative publicity and the emphasis on cultural diversity and political correctness also play a role. Commonly reported effects of the stresses on officers include intense cynicism, suspiciousness, physical ailments, and family and other relationship difficulties, as well as the excessive resort to use of force in work (street crime) situations.¹¹⁹

The Finn & Tomz publication in particular provides guidelines for action rather than discussions of theory, and includes detailed descriptions of what agencies are actually doing to prevent and treat stress. In addition, many of the suggestions in this publication can be put into practice by employee assistance programmes that already serve small policing agencies. Many of these programmes, because of limited resources, are designed as low cost stress services for small departments.¹²⁰

Finn & Tomz also outline a number of reasons why such stress programmes should be started for all law enforcement agencies namely:

1. To provide a confidential, specialised approach to treating and reducing stress for officers and their families, and to improve their ability to cope with stress on their own (most officers do not trust, or use, city or county programmes and other social welfare services outside of agencies)
2. To increase officer morale and productivity

¹¹⁷ Opcit, p.6

¹¹⁸ Opcit., p. 7

¹¹⁹ Opcit., pp. 7-8

¹²⁰ Opcit., p. 9.

3. To increase the overall efficiency and effectiveness of police
4. To reduce the number of early retirement cases and workers compensation claims due to stress-related disabilities
5. To reduce the number of on the job incidents
6. To reduce the potential for civil liability claims due to officers stress-related inappropriate behaviour (e.g. excessive use of force)
7. To reduce negative media attention, and
8. To improve the general well-being of police families.¹²¹

Obviously all these reasons are applicable to the high stress related situations that the South African Police Service finds itself in. Accordingly any such stress reduction programmes will benefit the SAPS in not only retaining available employees but also by inspiring the members to be more motivated, compassionate, and loyal to the service. If any such programme can assist the individual officer to have less stress it would also thereby assist those who sometimes resort to the use of force as a result of frustrations or stress to deal better with such stress related incidences. The stress programme in and of itself cannot ensure that all officers will cope more effectively with stress. To a great extent, coping better with such stress depends on individual characteristics of police members such as personality, physical condition, and spiritual and family support. However, stress-management programmes can educate officers about how to reduce and cope with stress and it can also provide the framework for utilising the needed services at critical moments. No single example of stress programming will be suitable for all types of law enforcement agencies; departments need to structure their services to the size of their organisations, geographic jurisdiction, available resources, officers, career paths and particular needs, and other agency characteristics.¹²²

In America, although it was recognised that organisational factors and departmental policies may well be the most prevalent and frustrating sources of stress for many law enforcement personnel, the job of policing itself certainly entails a number of others, including:

- fear and danger on even supposedly routine calls
- critical incidents such as shootings, hostage situations, environmental disasters, and crime scenes involving death or severe injury
- the pressure of the responsibility for protecting other people
- particularly stressful assignments, such as undercover duty or drug raids, and
- finally being specific targets of attack by members of the public or of criminal organisations, gangs or syndicates

Furthermore, in America researchers have identified additional emerging sources of stress namely the increase in violent crime. The widespread rise in violent crime in the late 1980s

¹²¹ Opcit., pp. 9-10

¹²² Opcit., pp. 10-11

and early 1990s became an added source of stress for US law enforcement officials. Although the threat of danger and violence has always been a part of law enforcement work, many police officials feel that they no longer have the upper hand over heavily armed criminals who do not think twice about shooting an officer. The general perception today being that criminals have become "*nastier and meaner*".¹²³

Research in United States since the 1970s has highlighted causes and effects of stress that are unique to, or more pronounced among, law enforcement officers. Many researchers, as well as officers and family members themselves, consider law enforcement to be one of the most stressful of all occupations, with correspondingly reported higher rates of divorce, alcoholism, suicide, and the attendant emotional and health problems. Furthermore, despite the growing number of law enforcement agencies that offered training and treatment for stress related problems, and despite the reported increased recognition among some officers that experiencing stress is inevitable but sometimes avoidable, much of the literature indicates that officers feel they are under considerably more stress now than were law enforcement personnel 10 or 20 years ago. It is therefore a given fact that it is essential to continue to address, and to address ever more effectively, the stress and the stress situations that law enforcement officers find themselves subject to. If only for the sake of their own personal well being, their productivity on the job, and improved performance of police services.¹²⁴

From studies undertaken in the USA it is quite apparent that many law enforcement officers also feel anxious about the increasing threat of criminal prosecution and even imprisonment for using a level of force that they may feel is legitimate given the dangerous situations in which they may find themselves. As a result, they often feel they are constantly having to choose between second guessing themselves and, as a result, endangering their lives – and using the amount of force they feel is required to protect themselves from criminals. This too can be a factor within the South African context of policeman trying to protect themselves from attack or preventing being killed, i.e. the fear of using excessive force in trying to deflect attackers.

Obviously the negative spill over of this stress into such areas as reduced morale, impaired performance, reduced productivity, and even tardiness and absenteeism impact greatly on overall service delivery. One of the particularly important aspects of American law enforcement stress-management programmes is the establishing of peer support groups.¹²⁵

In brief then the most common method for preventing stress is:

- to train officers to recognise its sources and signs and to develop individual strategies for coping with stress
- to train officers to recognise its sources and signs and to develop individual strategies for coping with stress.

In fact, some stress programme practitioners consider prevention efforts, through training and education, their single most important activity.

The most fundamental component of stress prevention training is **general awareness**. Many officers never talk about stress or consider it a problem only for weak individuals. They are

¹²³ Opcit., p. 16

¹²⁴ Opcit., pp. 11-12

¹²⁵ Opcit., p. 80

therefore often unaware of how it can affect them. Simply increasing officers' awareness about stress may serve to help reduce it.¹²⁶

In conclusion then, to be successful, a stress management programme must generate **awareness, support, and referral** particularly among the four targets groups, namely administrators and mid-level managers, union officials, line officers, and, if targeted for services, family members of all personnel. Adhering strictly to a **code of confidentiality** usually ensures success of such stress-management programmes by all participants in the peer support group.¹²⁷

ANNEXURE 9

POLICE PSYCHOLOGISTS AND CONTROLLING EXCESSIVE USE OF FORCE

In a survey¹²⁸ of police psychologists working in police departments in the biggest cities in the USA to determine the role they played in controlling excessive force and how their services can be used to counter police use of force a number of psychology-based intervention strategies were suggested that could assist managers to reduce excessive force.

A crucial question posed by the study was whether police departments should rely almost exclusively on pre-employment screening to identify violence-prone candidates. The study openly questioned whether existing psychological screening was effective in predicting the propensity for violence.¹²⁹

Among the key findings of this study were that:

- ❑ psychologists services consist of counselling and evaluation more than training and monitoring of police behaviour. Counselling is more likely to be a response to excessive force incidents than a preventative step.
- ❑ in order to periodically evaluate police members the police psychologists surveyed supported using methods other than routine psychological tests. They, in fact, recommended increased behavioural monitoring (preferably by commanding officers) and better training.
- ❑ current screening methods in the USA to evaluate police candidates are limited almost exclusively to psychological tests and pre-employment clinical interviews. The surveyed psychologists strongly recommended that new screening technologies could enable psychologists to alternatively examine such areas as a candidate's decisionmaking and problem-solving abilities and quality of interactions with others. It was highlighted that these dimensions are important for resolving situations without using excessive force.

The study also attempted to develop profiles of officers who abuse force. An important result of this attempt at profiling was that:

¹²⁶ Opcit., p. 142

¹²⁷ Opcit., p. 117

¹²⁸ See Scrivner, E.M. 1994. Controlling Police Use of Excessive Force. NIJ Research in Brief. Washington: NIJ.

¹²⁹ Opcit., pp. 1 & 5-6

- not one but several (five)¹³⁰ distinctive profiles were created on the basis of the psychologists' descriptions of officers at risk. This multiplicity of profiles belies the popular stereotype of a few 'bad apples' being responsible for most of the excessive use of force incidents.

From these profile developments a further finding was postulated namely:

- ❖ excessive force needs to be considered as a result not only of individual personality traits but also of organisational influences or deficiencies (e.g. quality of candidates selected, training, management supervision and control and working conditions).

In addition the study recommended that psychological services activities be expanded beyond merely the job of screening applicants to include a broader range of psychological support services – *inter alia* counselling to help officers to cope with the unique stresses inherent in police work, training in human relations and general stress management, debriefing after traumatic incidents. However, critical-incident debriefing (interventions), to be fully effective need to be applied soon after the incident.

The study also found that the monitoring of officers' behaviour to detect precursors of excessive force was the function used the least often by the police psychologists. Although the majority of the police departments surveyed in the study used some form of monitoring they seldom included the psychologists in this monitoring. Computer tracking of complaints appeared to be the most prevalent form of early warning. However, while computer tracking may provide useful management information, it is not as helpful in changing behaviour because the behaviour is relatively well established by the time it is picked up by the computer monitoring. Accordingly, monitoring police behaviour on an ongoing basis can serve other purposes besides early identification and intervention. It can encourage regular contact between officers and commanders/managers.

The study also indicated that there existed a lack of any coherent strategy to systematically integrate the functions performed by police psychologists that are relevant to the use of excessive force. The police departments surveyed did not appear to use the psychologists on a consistent basis but rather on an ad hoc as needed one and as protection against liability from charges of negligence. According to the study there should be:

*“a greater emphasis on involving the police psychologist in a proactive approach to managing human resources. Screening out potential violators, counselling problem officers, and evaluating them for fitness to perform their duties are critical activities, but there is a strong need for ongoing prevention activities to lead to early identification of problems and timely intervention”.*¹³¹

Some of the psychologists interviewed in the study had developed training models that take into account how people function under adverse conditions and in highly-charged situations: Components of these models included:

- ◆ cultural sensitivity and diversity
- ◆ intervention by fellow officers to stop the use of excessive force

¹³⁰ The five profiles developed were broadly categorised as i) Officers with personality disorders that place them at chronic risk; ii) Officers whose previous job-related experience places them at risk; iii) Officers who have problems at early stages in their police careers; iv) Officers who develop inappropriate patrol styles; v) Officers with personal problems. Scrivner, 1994.

¹³¹ Scrivner, 1994, p. 14.

- ◆ the interaction of human perception and threat assessment
- ◆ decisionmaking under highly-charged conditions
- ◆ psychological methods of situation control
- ◆ patrol de-escalation and defusing techniques that not only teach tactical response but also respond to the fear stimulated by confrontations
- ◆ anger management programmes that use self-assessment and self-management techniques for providing individual feedback to officers on how variable levels of legitimate anger influence judgement
- ◆ training in verbal control and communication, including conflict resolution¹³²

Many of the above are of great relevance to the South African situation and in line with the recommendation that regular monitoring and counselling be implemented at both the helping professions', as well as the commanding officer levels.

¹³² Opcit, pp. 16-17

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