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The management of the use of force in the South African police service

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The management of the use of force in the South African Police Service.

Title:	The management of the use of force in the South African Police Service.
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Abstract: The work of the police is characterised by the potential need for recourse to the use of force which is associated with the risk of police resorting to unnecessary and/or unlawful violence. Historically policing in South African has been characterised by an over reliance on the use of force. This trend appears to continue. Current levels of violent crime in South Africa also imply that members of the South African Police Service (SAPS) need to be equipped physically and psychologically to use force effectively. There are also currently high levels of victimisation of members of the SAPS and of unlawful violence by SAPS members in non-occupational circumstances. Drawing on open ended interviews with managers and supervisors and a survey of police Area managers in the SAPS the report presents a framework for understanding the operation of current systems for the management of the use of force in the SAPS. Emphasis is placed on administrative review, particularly as described by Klockars (1996), and the report evaluates the current system of reporting on shooting incidents in this regard. The report puts forward a series of recommendations for improving the management of the use of force in the SAPS.

Declaration

I declare that this report is my own, unaided work. It is submitted in partial fulfilment of the requirements of the degree of Master of Management (in the field of Public and Development Management) at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other University.



Robert David Bruce

29 February, 2000.

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In addition I would like to thank: The office of Divisional Commissioner Eloff for providing the initial approval for this research; the interviewees, many of whom gave extensively of their time and knowledge; the head of the (Negative) Discipline section Director Van Vuuren particularly for his assistance with the e-mail survey of policing areas; other members of the SAPS including the Head of SAPS Legal Services, Dr Tertius Geldenhuys and others who at different points in time have contributed to or influenced the ideas in this paper in one way or another; the staff and management at the Centre for the Study of Violence and Reconciliation and particularly my colleagues, Amanda Dissel, Gareth Newham and Kindiza Ngubeni in the Criminal Justice Policy Unit, as well as Janine Rauch for her comments on the document referred to above; Judy Klipin and other members of the proposal committee and teaching staff at P&DM; Ros Atkins, Ian Liebenberg, Joe Komane, Gabriel O'Malley and Kate Savage; the United States Information Service and Judith Sowerby for assistance in setting up a telephonic interview with William Geller and Carl Klockars in April 1999; my family and friends.

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"We would not find the behaviour of a physician, lawyer, engineer, teacher, or any other professional acceptable merely because it was not criminal, civilly liable, or scandalous, and it is preposterous that we continue to do so for police".

Carl B. Klockars (1996, p. 8)

"The skill involved in police work, therefore, consists of retaining recourse to force while seeking to avoid its use, and using it only in minimal amounts".

Egon Bittner, (1974, pp. 261-262):

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Glossary

Important terms used in this report including terms relating to the level or type of force used (e.g. **non-physical force, intermediate force, extreme force, lethal force** etc) and terms which imply an evaluation of uses of force in terms of concepts of legality and skill (e.g. **professional use of force, unnecessary force, police brutality, (non occupational) police violence**) are discussed in sections of Chapter 3.

Administrative review - procedure entered into for purposes of reviewing aspects of practise within an organisation. The procedure therefore is administrative (or managerial) in nature being the responsibility of managers or supervisors and not necessarily that of internal investigative or disciplinary staff. However this simply means that it is open ended being concerned with understanding organisational issues, identifying priorities and finding ways of tackling them. Administrative review may therefore lead to legal or disciplinary measures being considered in some circumstances, where these are the most appropriate way of dealing with a problem, but this need not be its main concern or purpose. However in practise systems of administrative review may be fairly narrowly conceived and may purely address a narrow range of issues, for instance being purely focussed on whether actions are legal or not. The words administrative review are thus not always used in this broad sense.

In this report **force** is distinguished from **violence** primarily in that the use of force is an activity authorised by law while violence generally involves deliberate (or criminally negligent) criminal acts. However where the term force, (and sometimes the term violence), is used it does not necessarily imply that a final legal judgement as to the legality of the actions referred to has been made. Thus in discussing deaths as a result of police action, which are primarily the result of

police shootings, these are referred to as resulting from the use of force even though some may be the result of unlawful actions. Note also that in the section in Chapter 3 dealing with levels of force the report indicates that "force" (and therefore violence) is not understood to include forms of non-physical force.

The words **management of the use of force** are understood to mean the management of any systems which impact on how force is used by the police and how the consequences of the use of force are dealt with. The focus of this report is on systems which are internal to the SAPS.

The term **misconduct** has a narrower and a broader meaning. In the phrase police crime and misconduct, the term refers to acts which amount to a breach of disciplinary regulations but do not necessarily amount to criminal acts. This, narrower meaning is the sense in which this word is generally used in this report. In its broad sense the term is used to refer to both breaches of the criminal law and of disciplinary regulations.

The words **the police** are understood as referring to the South African Police Service (SAPS) and its major predecessor the South African Police (SAP).

The words **police officer** and **member** (of the police service) are here used interchangeably and the words police officer are therefore in general not a reference to rank. Officer rank is primarily of relevance in this report only to the discussion of the investigation of shooting incidents in terms of Standing Order 251 (see in particular Chapter 5, section 8). The **duty officer** whose responsibilities are referred to in Chapter 5 is specifically of officer rank. Where the term "officer" is used in relation to rank this will be expressly indicated.

Proactive and reactive systems - within the SAPS the words "proactive" and "reactive" have come to have a specific meaning referring respectively to crime

prevention and law enforcement related activities. In this report these terms are however used to refer to systems which in some ways contribute to the management of the use of force. In general **proactive systems** are systems which are involved in preparing members of the SAPS for potential situations where they may be required to use force. **Reactive systems** are systems which deal with the consequences of the use of force incidents. As will become apparent, certain systems, such as the "helping professions" function in a way which can be understood as both reactive and proactive.

In this report **senior management** in the SAPS is understood to be management operating at the national and provincial levels. **Middle management** is understood as management operating at Area level as well as the commanders of police stations and heads of specialised units. **Line management** is therefore understood as management beneath the middle management level, for example the heads of particular sections at police stations or in specialised units.

References to **the transition** are primarily references to the political transition which in some ways can be dated as having started on February 2 1990 and culminated in South Africa's first democratic election on 27 April 1994. References to **transformation** in the context of the SAPS refer to an ongoing process which can be seen to have been initiated in the early 1990s and is concerned with the development of the SAPS into a police agency which is constituted and provides its services in a manner appropriate to the democratic developing country which is South Africa.

Abbreviations used

ICD	Independent Complaints Directorate
LTL force	less than lethal force
POP	Public Order Police
SAP	South African Police
SAPS	South African Police Service
SIR	Shooting Incident Report
SO	(SAPS) Standing Order

Chapter 1 Introduction

1. Policing and the mandate to use force

In modern societies the police are intended to serve as a central component of government's, and society's, attempts to control and limit violence and crime. On a general level the police engage with the task of dealing with the problem of crime through activities such as responding to crime reports, investigation of crime, and other activities, in part orientated towards crime prevention, such as patrol. Most of the time while they are at work police are involved in activities such as driving in cars or walking on the street, maintaining observation in one or other place, speaking to or interviewing people and taking down statements or writing reports.

But a central thread that runs through police work is that it frequently "consists of coping with problems in which force *may have to be used*" (Bittner, 1974, pp.256). According to Bittner this is the common factor which links police involvement in activities such as dealing with crime and violence with other activities, which are not concerned with crime, such as dispersing a crowd "hampering the rescue mission of an ambulance" (p. 249).

It is also a factor which helps to explain why, at the same time that they are intended to be part of the solution to the problem of violence (distinguished from the use of force by the fact that it is illegal) in society, police agencies appear prone to becoming part of this problem. The SAPS, it can be argued, itself contributes to the problem of violence in South African society. Of the high number of people killed, injured and otherwise physically assaulted in South Africa, some (the total number cannot be known) are at the hands of members of the SAPS. Many of these incidents are lawful police actions but many others (some

of which may nevertheless appear in official records as lawful police actions) are not.[1]

Another factor which, in addition to being linked to the police responsibility for responding to crime, also amounts to a by-product of the capacity to use force, is that members of police services may also be, disproportionately, victims of, often fatal, violence. As public servants responsible for the use of force then, members of the SAPS also need to be recognised as prone to the associated risks of becoming perpetrators and victims of violence.

2. The management of force: motivation

The use of force is therefore a component or characteristic of the work of the police and it is therefore appropriate to ask how that use of force is managed in any police organisation. In the South African context there are three key reasons which motivate that special attention be given to the issue:[2]

- Firstly South Africa is a society which is affected by high levels of violence. The police are intended to serve as a key component of society's efforts to tackle the problem of violent crime. In the sense that the use of force by the police is of use to society in assisting in the control of violence and crime it is then firstly a concern of managers in the police sector that such force be used effectively. Where it is deemed lawful to arrest a person, and where it is necessary for the police to use force in affecting such an arrest, it is desirable that they should use such force effectively in

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1 As will be discussed further in Chapter 2 it is not possible to quantify with any degree of exactness what proportion of police actions involving the use of force are lawful. In this report it will nevertheless be assumed that the majority of these uses of force, and particularly fatal uses of force, are lawful, though as will be argued, some situations of lawful use of force nevertheless amount to "unnecessary force".

2 These are discussed further in Chapter 2.

order to achieve this purpose. A concern with improving the management of the use of force is therefore firstly intended to ensure that, where it is appropriate, force is used in an optimum manner.

- The second motivation for a focus on the management of the use of force in South Africa is that there is evidence that an over reliance on the use of force continues to be a significant characteristic of policing in South Africa. While South Africa has adopted a Bill of Rights, many members of the SAPS continue to conduct themselves in a manner contradictory to the principles of South Africa's newly established democracy. Part of the concern with improving the management of force is therefore to address this inconsistency.
- The third reason for being concerned with the management of the use of force in the SAPS relates to the need to improve the ability of SAPS members to prevent and limit their own victimisation and traumatisation by violence.

This "integrated focus" on improving the management of the use of force makes sense for several reasons over and above those already outlined. Firstly it is to be doubted that initiatives towards preventing violence by the police will win credibility with members of the police service unless they are combined with measures which are also intended to deal with the problems of victimisation of SAPS members. Secondly the victimisation of police officers may be a factor which feeds into problems of low morale in the service. If a concern is to improve the effectiveness of the police, then it makes sense to tackle problems, such as the victimisation of the police, which undermine morale.

Thirdly it appears reasonable to assume that forms of "victimisation" of SAPS members may themselves feed into violence by SAPS members. Not only may high levels of fear encourage an over- reliance on force but desensitisation may also feed into brutality by members of the service. At the same time it appears plausible

that police violence may contribute to increasing levels of violence against SAPS members. Thus for instance a suspect who at some point has been brutalised by members of the police service may be more likely to be able to justify the killing of members of the service to him or her self. In addition, a suspect who believes that if he is apprehended by the police he is likely to be tortured or killed may be more likely to feel that it is justified to go to whatever lengths are necessary to avoid being apprehended by the police. Where the police are known to be brutal this may also discourage community members from assisting them. As Geller and Toch remark,

> "The dangers to officers in subsequent incidents might grow if suspects, enraged or afraid due to stories they have heard about police brutality, become "cop fighters", and if bystanders, who could assist an officer in need (at least by calling .. for backup), decline to offer such help". (1996, p. 315)

The police are therefore not necessarily simply part of the solution to the problem of violence. Their actions may impact in diverse ways on the "culture" within which violence takes place in society and may feed into societal cycles of violence. Several pragmatic concerns can be seen then to reinforce what at base should be a human concern to reduce levels of violence in society and, where possible, to limit the impact of violence on its victims.

3. Structure of the report

In Chapter 2 this report examines in more detail factors - including the history of police brutality, and violence by and against police, in South Africa - which motivate for a focus on the management of the use of force. Chapter 3 discusses

various concepts relevant to an analysis of the management of the use of force including:

- General characteristics of the use of force .
- The situational occurrence of the use of force;
- Concepts relevant to describing the level or type of force used;
- Concepts relevant to evaluating uses of force. In particular the report distinguishes legal standards from professional standards, which address issues relating to the skill with which force is used. Related to this distinction, and central to the argument put forward in this report, is the distinction between police brutality and unnecessary force
- The management of the use of force - understood as taking place through various systems which collectively serve to impact on how force is used and how its consequnces are dealt with.
- The report identifies systems of administrative review as being particularly appropriate in relation to the identified general characteristics of the use of force. However systems of review need to address issues both of legal and professional standards.

The research questions and methodology of the study are discussed in Chapter 4. Ten systems through which force is managed in the SAPS, including systems of review, are discussed in Chapter 5. In Chapter 6 the report then lists a number of key issues which need to be addressed in order for the management of the use of force to be improved and puts forward a number of recommendations in this regard. Chapter 7 makes some brief concluding comments focusing primarily on the issue of review.

4. Key issues addressed

In summary then the research on which this report is based sought to:

- Provide an overview of the SAPS as an organisation which is concerned with the management of force by identifying and examining the operation of the key systems within the organisation which impact on the use of force; and
- Explore to what extent systems which can be said to provide for "administrative review" of the use of force exist within the SAPS, their strengths and limitations and the scope for improvement of such mechanisms.

The report therefore evaluates the "framework" for the management of force in the

3. It is hoped that the report may contribute to a process of improvement of the management of the use of force in the SAPS which assists in:

- Improving the capacity of members of the SAPS to use force in order to enhance the effectiveness of the SAPS;
- Preventing and reducing unnecessary force and violence by members of the SAPS; and
- Improving the safety of SAPS members.

Chapter 2 Factors which motivate for a concern about the use of force by police in South Africa

1. South Africa's immediate history

The brutality of the South African Police (SAP)

Prior to South Africa's transition to democracy (1990 - 1994) the then South African Police (SAP) were widely associated with a heavy reliance on the use of force and high levels of brutality. This brutality was largely directed against black South Africans. Brewer points to statistics recording large numbers of people killed and wounded by the SAP, and large amounts of money paid out in compensation inter alia for assaults and injuries as evidence which helps to explain the SAP's "reputation for violence and brutality" (1994; p. 301). According to Brogden and Shearing, during the years of apartheid the policing of the SAP "ensured that sustained brutality" was a central feature of "black South African experience" (1993. p. 16). In the words of Cawthra the SAP was characterised by a "readiness to revert to the power of the gun". "Periodic political massacres" were "but one reflection of this" the SAP being "equally trigger-happy in their day-to-day operations" (1993, p. 2). According to Maduna, to the victims of the system, the SAP wore the image of a repressive force "that shoots and kills at the drop of a hat" (1993, p. 42).

As political violence in South Africa intensified (initially in the 1960s, but particularly after the June 1976 uprising, and most notably in the period 1983 - 1988) sections of the SAP were increasingly drawn into forms of "counter-

insurgency warfare, as developed by the U.S. in the arenas of Korea and Vietnam". This involved extensive use of covert methods including assassinations and 'dirty tricks' (Rauch and Marais, 1992, pp. 2-3). A particularly sinister aspect of this period was the systematic use of torture by the police. While during the time of apartheid expressions of concern about torture largely focussed on its use against political detainees (see for example Foster, et al, 1987) it also appears reasonable to believe that torture was also widely used against non-political criminal suspects (see Fernandez, 1991).

While much of the more recent literature dealing with policing in South Africa provides examples of police brutality directed against political activists and people involved in political protests it appears that violence amounted to a general habit of conduct of members of the SAP. Arguably, police violence merely represented a more organised form of a generalised racist violence which whites (and others associated with the authority structure) targeted against black members of the population.

Much of the literature emphasises the degree to which such violence was facilitated by "an abundance of permissive rules and a protective legal system which has produced a penal system of immunity" (Steytler, 1990, cited in Rauch 1992c, p. 3 .) In this regard Foster and Luyt point to instances where officers who had ill-treated detainees "have not only escaped punishment, but have been promoted in spite of their records" (1986, p. 311) At the same time it should be taken into account that the formal value system of the SAP, which was based strongly on Calvinistic religious doctrine, emphasised "a high standard of moral behaviour" (Rauch, op cit p. 5) and placed a strong emphasis on rules and the law. What remains unclear, is to what extent brutality was formally actively discouraged within the SAP and to what extent factors such as legalism, Calvinistic morality, and possibly a concept of policing standards, might have served to restrain the police impulse towards violence.

Whether it was due to the actions of the majority or a minority of SAP members, and whether it was legally authorised and officially approved, unofficially condoned, or whether it represented a deviation from and corruption of an ethos which placed a strong emphasis on the law and high moral standards, the SAP nevertheless came to be seen as synonymous with a generalised reliance on intimidation, bullying and undue violence.

The transition and establishment of the South African Police Service (SAPS)

The SAP was just one of 11 police agencies, all of which had a reputation for brutality (Rauch, 1998, p. 2), which were eventually amalgamated into the South African Police Service (SAPS) in the mid-1990s.[3] During the key years of the political transition these 11 agencies became the focus of efforts to "transform" them into a single policing agency which would be equipped to provide the type of policing appropriate in a democratic society. This process of "rapid change" (Rauch, 1998, p.2) was to some degree characterised by contestation between the "old guard" police elite and those associated with the emerging democratic political leadership, as well as by resistance from sections of the rank and file.

Nevertheless, by certain standards the process of transformation can be seen to have been relatively successful. Initiatives intended to assist this process of transformation were varied in nature but included (see Rauch, of cit):

- The creation of a new legal framework which provided inter alia for: the creation of National and Provincial Secretariats for Safety and Security. These were intended as mechanisms for ensuring police accountability to democratically elected National and Provincial governments;

The others were the police agencies of the four "independent homelands" and six "self-governing" homelands. The process of amalgamation lasted over an extended period but can seen to have to some extent consolidated by the time of the passing of the South African Police Service Act in late 1995 (Rauch, 1998: pp. 1-2, also see Rauch, et al, 1994).

- The creation of statutory Community-Police Forums (CPFs) intended as a mechanism of direct police accountability to communities;
- The creation of a statutory Independent Complaints Directorate (ICD) intended to ensure that "complaints of alleged police crime and misconduct" were effectively investigated;
- Changing the symbols, including the rank system, uniform, insignia and colouring of police vehicles;
- Efforts to improve the representation of black people and women within the service and particularly the management echelon;
- A new approach to recruitment and basic training;
- Initiatives intended to address the rift between the police and (black) communities. This included the adoption by the police of "community policing" as its operational philosophy and, as required by legislation, the establishment of a Community Police Forum (CPF) at each police station.

But problems relating to the apparent propensity to violence of some members of the SAP/SAPS did not simply evaporate. During the period in question there was a continuation of the problem of brutality including continued use of torture, unrestrained use of lethal force and deaths in custody in suspicious circumstances (see Network of Independent Monitors, et al, 1995).

It could appear that while some of the initiatives might have had a positive impact on the internal functioning of the service the mechanisms of control which were established amounted primarily to external checks on the conduct of the police. It appears fair to say that inadequate attention was paid to the internal machinery of the organisation and to internal mechanisms of control. While for instance the "new guard" derided the existing militaristic ethos and system of discipline within the service, little emphasis was given to the development of a new framework for the internal regulation of the organisation.

While the tendency is to explain the apparent deterioration in police discipline and increase in corruption in democratic South Africa as by-products of transition, it would appear that these factors might to also be attributable to a neglect of issues relating to these internal systems during the transitional process.[4]

2. High levels of violent crime

What is also crucial to note however is that the process of transformation of the SAPS began, and continues to take place, against the back-drop of a severe escalation of levels of crime and particularly violent crime in South Africa during the 1990s. While these increases in crime levels have not necessarilly continued during the latter part of the 1990s this has merely meant that serious crime has "stabilised" at disturbingly high levels.[5]

At the time that efforts were being made to "transform" South Africa's previously brutal police service, South African society found itself relying on this same police service as its first line of defence in combatting an upsurge in violent criminality. While some emphasis was given to improving police conduct, for instance through programmes of Human Rights education, a major facet of the

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[4] The issue of whether for instance discipline has deteriorated or corruption has increased is inherently complex and not uncontroversial. It involves, for instance, a consideration of levels of discipline and corruption in all of the 11 pre-democratic South African police services. Lodge for instance notes that "pre-1994 police corruption is especially difficult to estimate" (1997, p. 9). At the very least it can nevertheless be said that issues of internal control relating to already corrupt and ill disciplined police services were not adequately addressed in the transitional process (in relation to corruption in the SAPS see also Syed and Bruce, 1998b).

[5] Statistics on reported crime for the period January to December 1998, at time of writing the most recent annual statistics available, record, inter alia, the following numbers for cases of violent crime against the person: murder - 24 875; attempted murder - 29 418; assault with intent to inflict grievous bodily harm - 234 056; common assault - 199 313. The statistics quoted also record disturbingly high levels of other violent crimes such as rape and robbery, not to mention the host of other offences, some of which, such as "cruelty to or ill-treatment of children" incorporate elements of violence, but most of which are distinguishable as property - or financial - offences. (Crime Information Management Centre, 1998, Annexure A)

transition was something of a decline in the operation of internal systems of discipline within the police service. While issues of respect for Human Rights began to be espoused within society and by the senior members of the service, police on the ground found themselves pushed onto the front line relatively unconstrained by formal systems of organisational restraint and control. A police service which, in the recent past, had distinguished itself by its penchant for violence was now called upon to serve as the agents of a newly democratised society in fighting a wave of exceptionally violent crime. The available evidence suggests that it responded in time honoured fashion.

3. Persons killed and injured as a result of uses of force by members of the SAPS

Persons killed by members of the SAPS

Discussing annual figures on persons killed by SAP during the years 1970 - 1984, Foster and Luyt indicate that:

> "If one examines the data in terms of five year cycles, the mean [annual] death rates for the three cycles under scrutiny are: 1970 - 1974 = 84.2; 1975 -1979 = 170,2; 1980 - 1984 = 210" (1986, p. 304).[6]

Foster and Luyt point out that these figures imply that "the annual rate of deaths due to police action has increased at a greater rate than either the population or the police force" (ibid). The three cycles discussed by Foster and Luyt also exclude the year 1985 when, they indicate, 798 people were recorded as killed by the

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[6] Sources for the data are given by Foster and Luyt as "annual surveys of the South African Institute of Race Relations, and questions in Parliament". The figures for the 1975 - 1979 cycle exclude those killed during the civil unrest of 1976 and 1977, while those for the 1980 - 1984 cycle include persons killed in unrest during 1984 (1986, p. 303).

police. The figure of 798 represents an increase of 180% (178%) on the figure of 287 for the previous year 1984, which itself represented the highest recorded figure for any of the preceding years.[7]

Subsequent to the advent of democracy in South Africa what have been the trends? Table 1 attempts to estimate the number of people killed by members of the SAPS using statistics provided by the Independent Complaints Directorate during the 30 month period 1 April 1997 to 30 September 1999.[8]

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7 Prior to 1984 the highest figures were: 1983 (211); 1978 (203); 1976 (202); 1982 (199); and 1980 (178). As indicated in the previous note however the figures for 1976 (202) and 1977 (149) would have been significantly higher if deaths in civil unrest were included.

8 The figures in the table are derived from a November 1999 internal SAPS report, based on ICD statistics, by J Schnetler of the SAPS Research Centre. The computation in the third and fifth columns is based on estimates that 95% of deaths as a result of police action are the result of uses of force by members of the SAPS (the other 5% may include, for instance, vehicle accidents) and that 12% of deaths in custody are the result of uses of force by members of the SAPS. The estimates are from a memorandum prepared by the Centre for the Study of Violence and Reconciliation on behalf of the ICD which was submitted to the Minister of Safety and Security also in November 1999 and are based on Bruce (1998), Bruce and O'Malley (1999) and Dissel and Ngubeni (1999).

Table 1: Estimated number of persons killed as a result of uses of force (lawful or unlawful) by members of the SAPS during the period April 1997 - September 1998.

	1 April '97 - 31 March 1998	1 April '98 - 31 March '99	1 April '99 - 30 September 1999 (6 months)	Total: 30 months	Average per 12 month period[9]
Deaths as a result of police action as per ICD statistics (shooting related deaths in brackets)	518 (458)	558 (501)	237 (202)	1313 (1161)	525 (464)
Estimated deaths as a result of police action resulting from use of force (95% of deaths as a result of police action)	492	530	225	1247	499
Deaths in police custody as per ICD statistics.	219	198	102	519	208
Estimated deaths in police custody as a result of police use of force (12% of deaths in custody).	26	24	12	62	25
Estimated total deaths as a result of police use of force.	518	554	237	1309	524

[9] Numbers are rounded.

According to Table 1 an average of 524 people were killed per 12 month period by members of the SAPS during the April 1997 to September 1999 period. Current statistics therefore indicate that:

- The rate of people killed by members of the SAPS exceeds that for people killed by the SAP during the period 1970 - 1984. In fact the rate of 524 exceeds that of 210 for the 1980 - 1984 period by 150%;
- The average rate exceeds that for people killed in any year prior to 1985 and represents roughly 66% of the figure (798) for that year.[10]

In terms of available statistics it would therefore appear that the number of people killed by members of the SAPS is comparable with that during the worst years of state repression under apartheid. However there is reason to doubt the advisability of making such comparisons. Since April 1997 statistics on deaths in police custody or as a result of police action have been collected and issued by the ICD a statutory body which operates independently of the police. In terms of sub-section 53(8) of the SAPS Act, (68 of 1995) the SAPS is required to notify the ICD of each such death. Prior to the establishment of the ICD however all such statistics were collected by the police themselves and issued either by the police or government ministers. In the words of one of the people interviewed for this study

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10 As far as the current writer is aware there are no statistics which are regarded as reliable estimates of people killed by the SAPS during the years 1986 to 1996 (see further Bruce and O'Malley, 1999, Appendix 1) 1The report of the Truth and Reconciliation Commission (TRC) for instance, based as it is on victim statements, does not appear to contain any systematic attempt to calculate the number of people killed by members of the SAPS, or the security forces generally, during the period (1960 - 1994) which it was authorised to investigate. While no figures are provided graphs in volume three of the report indicate that 1985 and 1986 were the years in relation to which the TRC received reports of the greatest number of killings (roughly 500, and 450 respectively) by members of the SAP. Of 13 908 killings recorded by the TRC during the years 1960 to 1994 roughly 4 400 (32%) were attributed to the IFP, 2700 to the SAP (19%), 1 300 (9%) to the African National Congress, 350 (3%)to the South African Defence Force, 300 (2%) to the United Democratic Front and 2 '0 (2%) to the KwaZulu Police. Roughly 3750 (27% of killings are attributed to unknown perpetrators. It should be noted that the TRC report also provides evidence of collusion between the SAP and Inkatha (later the Inkatha Freedom Party). The TRC information indicates that killings by the IFP were at their highest levels during the 1990 to 1994 period (Truth and Reconciliation Commission of South Africa, 1998, p. 9).

"the police are experts at controlling and manipulating statistics - they use this to protect each other". There would appear no reason to assume that statistics on this issue issued by the South African government during the 1970s and 1980s are to be relied upon.[11] It would therefore appear unwise to attempt to make apparently authoritative comparisons between these respective periods on this issue.

Notwithstanding the above, the rate of these deaths appears high relative to available statistics on such deaths during the apartheid period. Furthermore, while fatalities recorded by the SAPS may be comparable with those recorded in some US cities if one takes into account general levels of societal violence[12], "in a context of massive levels of societal violence the fact that police use of force is not necessarily high *relative to societal violence* does not justify a lack of concern. Nor does it necessarily imply that force, when it is used, is used appropriately, effectively or justifiably" (Bruce and O'Malley, 1999, p. 56).

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11 Furthermore the statistics cited by Foster and Luyt would presumably exclude deaths in "independent homeland" areas. As indicated above - see footnote 6 - the statistics presented by Foster and Luyt for 1976 and 1977 do not include persons killed in civil unrest. The official statistics presumably also exclude persons killed in detention, assassinated, "disappeared", or otherwise murdered in a covert manner by police or other security force members, practises which were revealed to the Truth and Reconciliation Commission as not having been uncommon during the period in question.

12 If it is not advisable to attempt to make comparisons between the number of persons killed by members of the SAPS during the late 1990s and numbers killed by the SAP during the days of apartheid it may be possible to compare fatalities as a result of police action in South Africa with such fatalities in other countries (see further Bruce and O'Malley, 1999 though arguably more rigorous standards of statistical analysis are called for).

Legality of fatal uses of force by members of the SAPS - shootings on and off duty

SAPS data covering police shootings in the Western Cape, Eastern Cape and Free State during the 1996 - 1998 period provides the following indication regarding the lawfulness of police shootings (Bruce and O'Malley, 1999, p. 31):[13]

- Of 4754 shootings 14% were evaluated as not legal in the shooting incident reports. However in relation to fatal shootings the proportion evaluated to be not lawful increases dramatically to 41% (127 of 311 fatal incidents).
- When on-duty and off-duty fatal shooting incidents are compared the data indicates that nearly 80% (78%) of fatal shootings which were evaluated to be not lawful occured off duty. While 16% of on-duty fatal shootings (28 out of 178) were evaluated to be not lawful, 74% of off-duty shootings (99 out of 133) were evaluated to be not lawful.[14]

The evaluation contained in shooting incident report is merely the initial evaluation of the investigating duty officer and does not have the status of a court judgement. Nevertheless this data provides grounds for the most serious concern about the misuse by SAPS members of their firearms while off duty.

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13 SAPS Standing Order 251 provide for all shootings involving members of the SAPS to be investigated and the results of the investigation reported on in a standardised format. The report is merely the initial evaluation of the investigating police officer and does not have the status of a legal judgement. The conduct of these investigations and the processing of the resulting reports is discussed further in Chapter 5, Section 8.

14 It must be emphasised that the report from which this data is drawn is a draft report. The report notes that there appears to be some a level of duplication which particularly affects the data from one of the three provinces from which the data is drawn. The figures should therefore not be taken as authoritative. Nevertheless it is believed that the overall trends which they suggest can be taken seriously.

Persons injured as the result of uses of force by members of the SAPS

Police uses of force, whether lawful or not, do not usually result in fatalities. SAPS data, covering police shootins in the Western Cape, Eastern Cape and Free State during the 1996 - 1998 period, suggests that the overall ratio of persons killed to wounded in police shootings is in the region of 1:3 (see Bruce and O'Malley, 1999, p. 21). Based on figure of 524 deaths per year as a result of police uses of force (see Table 1) this suggests that during the same period the number of persons seriously wounded as a result of police shootings and other uses of force may have been in the region of 1572 per year.[15]

4. Murders of members of the SAPS[16]

Members of the SAPS are not only perpetrators of violence but also disproportionately suffer the consequences of violence. Thus on one level SAPS members suffer excessively as the direct victims of violence. Over the last few years for instance members of the SAPS have been murdered at a rate of roughly 20 per month (see Minnaar, 1998; Nel and Conradie 1998).[17]

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15 If all firearm related wounds are classified as serious. The figure would also include a minority of serious woundings not caused by firearms but caused by e.g. other weapons or police dogs. Estimating the number of persons suffering non serious wounds as a result of police uses of force requires a higher level of speculation.

16 A multi-disciplinary task team dealing with the attacks on and murder of police officers was appointed by the Minister for Safety and Security in May 1999. The activities of the team have to some extent been suspended pending the outcome of work being conducted by the research sub-committee and is being managed by a directorate established in the Division Crime Prevention.

17 Nel and Conradie provide a figure of 970 for the four year period 1994 - 1997 while Minnar provides figure of 924 for the same period. The highest annual figure recorded by Nel and Conradie is 265 in 1994 while Minnaar's highest figure is 254 in the same year. (This represents a decrease on the figure of 280 recorded by Minnaar in 1993 - the highest number of murders of SAPS members in any year in South Africa's recent history). The lowest figure in a single year during the 1994- 1997 period, according to Nel and Conradie, is 221 while according to Minnaar it is 211 in the same year.

The one aspect that has emerged from the research conducted thus far is that the overwhelming majority of these murders (roughly two-thirds) occur while members are off duty. Thus an analysis of the alleged murder of 970 members of the SAPS during the period 1994-1997 indicates that two-thirds of these deaths (65.7%) occurred while the victim was off duty (Nel and Conradie, 1998, p.1).

However in so far as these murders occur in the ordinary performance of police duties it may be assumed that a primary motive of the "killers" will be to evade apprehension. Minnaar for instance indicates that roughly 32% of the murders (146 of 455 listed on p. 77) occurred in circumstances where police were for instance "responding to a complaint, investigating a case, following up on information or doing a search, apprehending a suspect" etc.(p. 68). Similarly Nel and Conradie (Table 2, looking at the circumstances of 357 of these murders, is compiled from data provided in their report) indicate that 27% of murders on duty were by suspects resisting arrest. In addition their figures indicate that "robbery from police officials" (both on and off duty) is the single biggest "circumstance" associated with these murders.

In general it would therefore appear that the primary explanation for these deaths may therefore be found in the general factors which are currently contributing to high levels of crime in South Africa.

Table 2: Circumstances of murder of 357 police officers (Compiled from Nel and Conradie, 1998)

Circum-stance	On duty		Off duty		Combined (on and off duty)	
	No	% of 122	No	% of 235	No	%
Suspects resisting arrest	33	27	3	1.3	36	10.1
Robbery from police official	33	26.2	60	25.5	93	26.1
Ambushes	7	5.7	4	1.7	11	3.1
Unexpecte d attacks	20	16.4	51	21.7	71	19.9
Crime in general	18	14.8	19	8.1	37	10.4
Argument s	7	5.7	67	28.6	74	20.7
Love triangles	3	2.5	13	5.5	16	4.5
Revenge	2	1.6	14	6	16	4.5
Unknown	0	0	3	1.3	3	0.9
TOTAL	123	99.9	234	99.7	357	100.2*

* Does not add up to 100 due to rounding

A key concern of the research conducted thus far has been to attempt to ascertain the motives behind the attacks. In this regard initiatives towards engaging with

these deaths have to some extent "stuck" on the question of, to what extent, robbery of a firearm (usually the service pistol) is in fact the primary motive for many of these attacks. However a possible limitation behind analyses conducted thus far has been an attempt to analyse these murders in terms of a single "pure" motive. Following Margarita (1980, cited in the Geller and Scott, 1991, p. 259) it is possible to distinguish two broad categories of motives:

- Where the motive is "expressive" this implies that the killing is carried out, for instance, as a direct expression of anger or hatred against the individual police officer or police officers generally. While anger towards the authorities - and the police as representatives of the authority structure - has undoubtedly diminished since the change of government in 1994, one can presume that there remains a significant sub-stratum in South African society who carry forward an inheritance of hostility towards the police.
- Where the motive is "instrumental" the killing of the police officer is not the primary objective. Rather the killing is carried out for some other purpose. Thus where the motive of the killer is, for instance, to evade apprehension or injury at the hands of the police, or to carry out a robbery, this is in fact the primary purpose behind the killing.

It is suggested that where police members are targeted, "expressive" attitudes may feed into other crime related motives (evading apprehension or robbery), rather than being the dominant factor. It is apparent that in a significant number of these murders (18% or 83 of the 455 murders listed in Minnaar's table 7) the firearm of the murdered member have been stolen. It may be suggested that, where police members are in possession of firearms, and robbery of one kind or another is the motive for an attack, this creates the need for the attacker to escalate the level of violence in order to successfully carry out the attack. While "expressive" factors may feed into the motivations of attackers it may therefore be the case that the main effect of the possession of firearms by the police is to provide a motive for,

and to escalate levels of violence against them, particularly in off- duty circumstances.

What also needs to be examined, is the degree to which these murders are simply a by product of the presence of firearms, associated with other factors such as alcohol use, in the domestic and recreational life of police officers. According to Nel and Conradie's report, 16% of the murdered police officials "had to some degree been intoxicated when the murders occurred"[18] (p. 12). Furthermore 5.5% of the incidents which occurred off duty occurred in shebeens, 14.5% occurred in the home of the members involved, and 10.6% at other homes (p. 21). As indicated in Table 2 above explanations for the murders which occurred off duty included "robbery" and "ambushes/ unexpected attacks" (25.5 and 23.4 % of cases respectively) but also "arguments" in 28.6% of cases (compared to 5.7% on duty), and "love triangles" in 5.5% of cases (compared to 2.5% on duty) (1998, pp.20-21). Similarly a table compiled by Minnaar describing the circumstance of death of 455 SAPS members during the same time period indicates that 33% (150) of these deaths occurred in what may have been domestic or recreational circumstances (p. 77).[19]

Furthermore what may place a police officer at risk is his or her exposure to other police officers, whether this is on duty or in domestic or recreational circumstances. Thus, for instance, Nel and Conradie indicate that in 9.4% of the

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18 "In a further [illegible]% of cases information was not available with regard to whether alcohol had played a role or not".

19 If the categories "argument with colleague/fellow member of service" (54 deaths), "family argument/dispute" (22), "fight argument with girlfriend/boyfriend" (13), "fight/argument with member of the public" (34), "wedding/party" (2), "shebeen/tavern/nightclub/hotel" (22), and "sports/entertainment event" (3) are combined the total is 150.

385 murder ·es in their sample "perpetrators were indicated as being other SAPS members" (1998, p. 16).[20]

While popular stereotypes assume the deaths of police officers to be "in the line of duty" these deaths are therefore often not directly connected to their occupational responsibilities. Overall then key factors which appear to currently contribute to the high level of attacks on members of the SAPS could be seen to include:

- General societal factors including high levels of crime and violence and the easy availability of firearms;
- The persistence of a legacy, amongst a criminal sub-stratum of South African society, of hostility towards the police;
- The carrying by SAPS members of firearms both on and off duty as a result of which SAPS members are not only targeted by offenders but also, through their access to firea ..s, tend to escalate confrontations in which they are involved, whether these are in occupational, crime related or domestic and recreational circumstances
- Neglect at a policy level and low levels of control at a management level, within the SAPS, relating to members and their possession and use of firearms while off duty.

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[20] Minnaar (1998, p.10) indicates that out of 924 cases where members of the SAPS were murdered during the four year period 1994-1997, the identity of the attacker/perpetrator was known in 95 cases. Of these 95 the attacker/perpetrator is indicated to have been a "c. eague/fellow member of the service" in 55 (6% of the total) cases.

5. Other destructive consequences associated with the use of force for members of the SAPS and others

Suicides of members of the SAPS

The SAPS has also been affected by a disturbingly high number of suicides of its members. Statistics provided by the SAPS, for instance, indicate that 518 SAPS members committed suicide during the three year period 1994 - 1996 (Correspondence from Crime Information Management Service, August 1997). Explanations for the high level of these deaths need to take into account a range of factors including for instance stresses associated with the transition (see e.g. Sussman, 1998) but also the consequences of involvement in the use of force as well as exposure to attacks and crime and its consequences more generally (see for example Nel and Burgers, 1996). What has however been recognised increasingly of late is the key role of the easy availability of service weapons in these suicides. (See for instance Van Rensburg, 1998).

Families members, colleagues and friends as victims of police violence and trauma

Not infrequently these suicides are preceded by the murder of an intimate partner and/or a rival in a "love triangle" or other person, for instance in a brawl.[21] In fact it appears that as many as 25 - 30% of police suicides are preceded by the wounding or killing of another person. (Liesl Rossouw, personal communication, 18 February 2000).

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21 Sometimes the rival may be a fellow member of the SAPS. As indicated, according to Nel and Conradie, 4 -5% of murders of SAPS members occur in "love triangles". In their study 10% of perpetrators of all murders analysed were fellow members of the SAPS.

The wives or intimate partners of male police officers may also more generally be disproportionately exposed to domestic violence (Nix, 1998). Thus the families, friends (and colleagues) of police officers may run a relatively high risk of exposure to incidents involving negligent, or other misuse, of force. In these incidents including accidents, threatening behaviour, and violence, firearms (usually service weapons) often play a significant role.

Psychological and medical consequences

High levels of generalised exposure to violence including involvement in the use of force, combined with other stresses, do not only have an impact in terms of suicide and violence by members but also in terms of factors frequently associated with a deterioration in psychological and/or physical health. These factors might include trauma, alcoholism, desensitisation as well as stress related diseases. Nel and Burgers for instance point to the high number of medical boardings as being one of the consequences of, inter alia, the exposure of SAPS members to high levels of violence and other stresses (op cit, p. 18).

Firearm accidents

As indicated above family or friends of SAPS members may be exposed to a relatively high risk of firearm accidents. SAPS members themselves may also be the victim of such accidents. According to figures provided by the SAPS 82 SAPS members died as a result of firearm accidents during the 1994 -1996 period, 23 on duty and 59 off duty.

Loss of firearms

Finally the possession by SAPS members of firearms contributes to the overall problem of proliferation of illegal firearms in South Africa through these weapons being lost by police officers or stolen from them. One set of figures for instance is that SAPS members lost or had stolen or robbed from them 7261 firearms during the period April 1990 to September 1995. (Gun Free South African & Network of Independent Monitors, 1997).

Chapter 3 Concepts relevant to analysing the management of the use of force

1. General characteristics of situations involving the use of force

Low visibility from a management perspective

It is a characteristic of the use of force that

> "[t]he actual decision to use force to enforce the law falls on the members of the lowest level of the organisational structure. (Major City Chief Administrators, 1991, p. 12)

In this respect it reflects the characteristics of police work more generally. In the words of Reiner

> "The dispersed character of routine uniformed or plain-clothes police work [gives] it 'low visibility' from the point of view of police management or any outside regulatory bodies" (1997, p. 1009)

Most police use of force therefore takes place in circumstances where managers are not, and cannot be, present and involves a decision by a police officer that force is justified or necessary in the circumstances.

Unpredictability

The management of the use of force therefore involves management of a discretionary activity which takes place in localities which are dispersed. These

localities and the times at which the use of force may occur are therefore to a large degree unpredictable not only because incidents which justify the use of force are themselves unpredictable but also for the related reasons that different persons who are the focus of police action, and different police officers, evaluate and respond to situations in different ways.

The use of force is also unpredictable in terms of its consequences both immediate and long term. Thus it may sometimes lead to the arrest of a suspect or the prevention of a crime. It may also lead to the injury or death of a person who may be a suspect who was the original target of the use of force but may also be a police officer or some other person. Potentially the use of force may also have other consequences for a police officer including contributing to a sense of excitement about, or pride in his or her work, destabilising effects on his or her mental health, recognition for skill or bravery, or disciplinary and/or criminal charges.

(The myth of) the split second syndrome

According to Geller and Toch

> "[b]y focussing on officer decisions made prior to arrival in the immediate vicinity of the subject, trainers and analysts have begun over recent years helpfully to debunk the myth of the 'split-second decision'" (1996, p. 312).

Scharf and Binder (1983) for instance have "characterised five decision phases in a potential or actual deadly force encounter:

- anticipation;
- entry and initial confrontation;
- dialogue and information exchange;
- final frame decision; and

- aftermath'.

Geller and Scott (1992) "have pointed to another phase involving nonlethal tactics between the dialogue/information exchange and final frame decision points". (both cited in Geller and Toch p. 312). Police responses relating to situations relating to the use of force therefore reflect a series of subjective judgements regarding unfolding situations.

2. The purpose of the use of force

Arrest, defence and keeping the peace

According to Adams "police are most likely to use force when dealing with a criminal suspect, especially those who are resisting arrest" (1999, p. 5). But when the police use force this is not always for the purpose of arrest.

Most obviously a use of force will not primarily be directed at securing an arrest in a situation where the police officer or another person is threatened with death or injury. In such a situation the immedia purpose of the use of force is to disrupt the course of action being taken by the person posing the threat, in such a way as to prevent the loss of life or injury of the person threatened. In such a situation while, while it may still be desirable that the person posing the threat be subjected to arrest, this cannot reasonably be seen as the initial primary purpose of the use of force which effectively amounts to an act of "private defence".[22]

More generally, in practise, where they do respond to a call or come across an incident in progress, the police hold a considerable degree of discretion in

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22 Private defence is discussed further in the first section of Chapter 5.

deciding how to deal with the situation. In particular where a "suspect" is present at the scene when the police arrive, decisions which the police make relating to arrest are likely to be influenced by a range of factors. These might include not only the seriousness of the alleged offence and the available evidence, but also factors such as the complainant's preference, the relational distance between the complainant and suspect[23], the level of respect shown by the suspect, and other factors such as race (see Black, 1971)[24] and gender as well as "the beliefs, expectations and self interest" (Walsh, 1986; p. 362) of the individual police officer.

Potentially, in many situations the primary concern of the police will be to restore the "peace" ("keep the peace", "restore public order") rather than to enforce the law. The police may merely intervene to restore the peace, without arresting any of the parties or pressing charges. In other situations their presence may discourage a person, on the verge of violence, from resorting to such violence. In certain situations it may even appear prudent to subordinate considerations relating to enforcing the law to those of maintaining public order. In the words of Morgan and Newburn, "there are inevitably situations in which the enforcement of the law is not compatible with the public peace" (1997; p. 83).[25] Where a person is arrested this is not simply because "a crime has been committed" but because "police officers *are satisfied* that a crime has probably been committed and because they

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23 According to be Black "the probability of arrest is highest when the citizen adversaries have the most distant social relationship to be one another i.e. when they are strangers (p. 341).

24 Black's study, in a US setting, concluded that race was not in fact one of the major explanatory variables for variations in practise relating to arrest. Another obvious factor would be likely to be the demeanor and behaviour of the complainant. However, a piece in the June 20, 1999 New York Times magazine demonstrates persuasively that many, both black and white, US police follow a practise of "racial profiling" which would be likely to have consequences for the use of force (Goldberg, 1999).

25 For example in dealing with an illegal demonstration "law enforcement" orientated responses might increase the anger of the crowd and lead to a breakdown in public order.

deem it *appropriate"* to arrest (Morgan and Newburn, 1997, pp. 82-83, emphasis in original).

The key point is that the police may often intervene, and therefore use force, in situations without having decided that a crime has been committed or despite the fact that they have no real intention of placing charges once they have pacified those who are involved. The use of force might in many situations be primarily directed towards restoring the peace rather than to arrest. Even where arrest follows the use of force, this may depend on a subsequent decision, influenced perhaps by the continued insubordination of one of the parties.[26]

South Africa, as we know, is affected by high levels of crime. Therefore it might be assumed that members of the SAPS, in so far as they may sometimes encounter situations where they regard it as necessary to use force, often do so in situations that are connected with crime. Furthermore, levels of serious crime may encourage the police to disregard 'less serious' problems. Nevertheless in general it can still be said that where members of the SAPS use force this might be for any one or a combination of the following purposes:

- Law enforcement (where the use of force is primarily directed to securing an arrest);
- Preventing threats either of injury or to human life;
- Maintaining the peace or public order.[27]

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[26] Of course even where there is some evidence that a crime has been committed, where an arrest is carried out, whether or not involving the use of force, this might be followed by a decision not to proceed with a matter against a particular individual.

[27] These distinctions are relevant to, for instance, SAPS basic training where emphasis is placed on the distinction between armed or unarmed "suspects". An example of a situation which may call for police intervention is one where an armed person is involved in a fight with another person who may or may not be armed. The police, when they arrive, may know nothing about who "started" the fight and therefore who is the aggressor. The issue about whether the person is armed or unarmed is of course highly relevant but it is also useful to enable police to understand that they may be required to mediate or use force in situations where the people that they are dealing with are not necessarily best understood as "suspects".

As Bittner states "the duties of patrolmen are of a mind-boggling variety" and that this "compels the stronger inference that no human problem exists, or is imaginable, about which it could be said with finality that this certainly could not become the proper business of the police'" (1974, p. 250). There are therefore a range of other situations, too vast and ill defined, which might necessitate or justify the use of non-lethal force by the police (the example of a crowd obstructing an ambulance is given in the opening of Chapter 1). No effort will be made to list the potential range of these situations here.[28]

Crowds and the use of force

One factor which should be noted as a significant variable in understanding the situational occurrence of the use of force is the factor of the number of people against whom the use of force might be directed. In South Africa, as in many other countries, special policing units are created for the purpose of policing large public gatherings and demonstrations. Thus the SAPS Act provides in Section 17 for the establishment of a national public order policing unit.[29]

In fact the idea, suggested by Morgan and Newburn, that situational factors may sometimes motivate for law enforcement to be subordinated to considerations of public order, is in explicitly acknowledged in the current Public Order Police policy document. The document states that,

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28 This discussion is possibly more relevant to the work of uniformed police than to detectives. For detectives exposure to situations of the potential use of force is much more likely to occur in situations of arrest overlapping somewhat with situations of defence of life or against injury.

29 The title should not be taken to imply that "public order" is the jurisdiction of the public order policing unit. Rather the unit is primarily concerned with large scale threats or disruptions to public order. Where such threats or disruptions are of a small scale, such as a fight in a public place, they are the responsibility of police generally.

"According to the principle of situational appropriateness, arresting people at the scene is not always viable, as this could antagonise and aggravate the crowd even further. One can proceed to the necessity of making arrests at a later stage when the persons are isolated and away from the scene" (South African Police Service, undated ; p. 5).

3. Describing the level or type of force used

Physical vs non physical force

The question of what should and what should not be regarded as "force", in itself, presents certain difficulties on a definitional level. One publication indicates that the use of force "may range from a loud, vocal command to deadly force, depending on the circumstances involved" (Major city Chief Administrators 1991, ii). And that "many police training programmes teach a force 'continuum' that starts with verbal commands and ends with deadly force" (p. 2). Similarly, another text refers to police officers being "authorised to use both psychological and physical force to apprehend criminals and solve crimes" indicating that "psychological force or a show of authority can be a police presence, an order (either verbal or visual), or some other form of coercion or deception used to gain a suspect's compliance" (Alpert and Smith, 1994; p. 481).

"Loud, vocal commands", and even more softly spoken verbal commands or other forms of non-physical force might achieve the same purpose as physical force might achieve, for instance in encouraging a person to submit to arrest. Often a situation where a "verbal command" is used will be one where this is combined with physical force. A police officer might verbally threaten the use of physical force or even implicitly do so by his or her actions, such as by raising a baton. As

the police are seen to have authority, and are recognised as having the mandate and capacity to use force, any request or instruction from a police officer, or even merely the presence of a police officer, may, in some way, be seen as coercive or presenting a threat of force.

Such commands might also be used unnecessarily, or even in a manner which is contrary to the law, such as where a police officer verbally abuses a person. A police officer may therefore abuse his or her authority through the use of non-physical force in the same way that he or she may abuse the use of physical force. Thus, if force were to be defined in terms of its potential consequences, or the manner in which it might be abused it might appear worthwhile to define "force" as, for instance, *any act or form of activity that has the capacity to intimidate, coerce or ensure compliance.*

However, such a definition may in fact fail to capture what is in many ways the quality of force (and of violence) that causes the greatest concern - its physical nature and thus its capacity to cause physical, and sometimes even fatal, injury. At a very basic level it would appear therefore that physical force needs to be distinguished from non-physical force. This is particularly important because measures which fall short of physical force may not only be seen as "non-physical force" but if used skilfully may be used as a way of diminishing the need to use physical force. Not only is non-physical force a form of the use of force, it is also potentially an alternative to the use of physical force.[30]

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[30] In this report therefore it is accepted that "force" includes physical and non-physical forms. However the force (and violence) which will be focused on will overwhelmingly be that which is physical in nature. Non-physical force will therefore be seen primarily as an alternative to the use of physical force.

Levels of physical force

A second distinction is between different levels of physical force. Thus for instance McEwen states that

> "Law enforcement officers frequently encounter situations that require some type of coercive action or force, but not deadly force. Common scenarios include close encounters (e.g. breaking up bar fights and intervening in domestic disputes), flights by suspects, hostage situations, barricades and crowd control. Officers clearly respond to many situations where LTL [less-than-lethal] force is the appropriate action". (1997, p. 40).

- In fact it appears evident that Less-than-lethal force (henceforward LTL force), while not necessarilly a day to day occurrence ofr all police, is far more more common than lethal or deadly force.[31] One American study, covering 7 512 arrests, for instance, inter alia, found that (Garner and Maxwell, 1999):
- Their was some use of physical force or threat of physical force in 19% (1 418) of the arrests studied while actual physical force was used in 17% (1 283) of the incidents.[32]
- "In almost 80% of all incidents involving physical force or threats of force, the most severe form of force used was a weaponless tactic; less than 12%

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31 This typology of force does not take into include forms of torture. Arguably rture can be combined with lethal force in a category of "extreme force" representing the most severe forms of violence which police have been known to use. However torture is excluded from this typology, relevant to the management of the use of force, which deals with forms of force which may legitimately be used by police in appropriate circumstances. See further footnote 47.

32 The authors note that "handcuffing alone is not typically perceived as involving force"(p.33). In 57.3% (4 305) of all the arrests the most forceful behavior by the police was handcuffing (p. 41).

of the arrests which met our definition of the Physical Force Plus Threats involved the use of a weapon" (p. 41).

- In discussing whether weapons were used one of the questions raised is what constitutes "use". Thus in relation to the use of handguns they ask "Does a firearm have to be discharged to be 'used'?"(p. 30). In relation to handguns they note that these were threatened, displayed or used by the police in 204 arrests (or 2.75 of the total number) but merely "used" in 11 arrests (or 0.1% of the total).
- Weapons were used in 158 incidents. Those used most commonly were (in some incidents more than one weapon was used): chemical sprays (56% of the 158 incidents); flashlight (26%); dogs (13%); baton (10%); motor vehicle (10%); handgun (7%); and rifle/shotgun (4%) [33]
- In all the 1 092 arrests in which the most severe force used was a weaponless tactic a total of 1 184 such tactics were used. Of the1184 weaponless force tactics used the most common were: grab (50%), control hold (19%), twist arm (8%); wrestle (8%), push/shove (7%) and hit/kick (1.4%).

LTL force it would therefore appear most frequently involves no weapons but sometimes could involve LTL weapons such as batons and, as is the case in countries such as the U.S., chemical sprays. However the distinction between LTL and lethal forms of the use of force is far from watertight. In the US some police departments are authorised to use a variety of electric-shock weapons. According to an Amnesty International report "there have been several reported deaths following the use of such weapons". These weapons have been used for the

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33 Note that in Chapter 2 the report indicated that vehicle related deaths (recorded as "deaths as a result of police action" by the ICD) were not being included in the calculation of deaths as a result of police use of force. There is however a strong argument that they should be. At the same time one should bear in mind that many deaths may occur in "ordinary" car accidents, and in discussing the police use of force, these would be distinguished from people killed by a motor vehicle during a vehicle chase. (See further footnote 70).

purposes of torture in some countries while countries including Canada and most West European countries have banned them for the purposes of law enforcement (Amnesty International, 1998, p. 37). The use of weaponless tactics may also have lethal consequences."Suspects have also died from police choke holds, where pressure is applied to the neck" with the consequence that some large US police departments have banned the use of such holds (ibid, p. 34).

Just as psychological force may be used as an alternative to physical force, it has been suggested that improving the ability of police officers to use LTL force (by, for instance, improving their LTL weaponry) may assist in reducing the use of lethal force. This appears to be both a consequence of the fact that effective use of LTL force may diminish the need for lethal force, as well as the fact that an improved ability on the part of police officers to use LTL force increases their ability to use appropriate levels of force and, therefore, appropriate restraint.

Non- physical force, LTL force and lethal force therefore may be seen as different "levels" in terms of their severity or seriousness, of the "continuum" of force. Table 3 depicts non-physical force, LTL force, and lethal force in terms of key and general characteristics.

Table 3: Key types of force of escalating levels which constitute the continuum of force[34]

Type/level	Key quality	Generally associated with:
Non-physical force	Non physical in nature. Referred to by somne as "psychological force".	Usually understood as verbal in nature but may be accentuated through e.g. demeanour, posture, level (e.g. large number of police officers attending). Physical acts which amount to threats of physical force but fall short of actual physical force may also fall into this category.
Less than lethal force	Physical in nature but unlikely to cause death or serious injury unless misused.	Involves weaponless physical force or LTL (or intermediate) weapons such as batons (e.g. the tonfa); "sprays", and water cannons. Handcuffs (and other restraints) could also be in this category.
Lethal force	Likely to cause death or serious physical injury.	Normally associated with the use of firearms. Particularly aggressive uses of weaponless force (such as certain choke-holds) and batons may also have potentially fatal consequences. The use of police dogs in apprehending suspects may also fall into this category though more likely to cause serious injury than be fatal.

[34] Examples of several other approaches to classification of levels or types of force can be found in the 1999 U.S. Department of Justice report on the use of force by police.

Thus it has been observed that "(m)any police training programs teach a force "continuum" that starts with verbal commands and ends up with deadly force. Officers can employ each level on this continuum as effective policing techniques. They can also potentially misuse each level" (Major City Chief Administrators, 1991, p. 2). The essential information about any use of force incident is therefore "not so much the strength of the level employed" (ibid) but if the level was appropriate for the particular situation. This however requires a set of concepts by means of which the appropriateness of the force used can be evaluated.

4. Evaluating the use of force

Legal vs professional standards

Literature on the police has traditionally distinguished between the *use of force* - where members of a police service are acting within the law in fulfilment of their responsibilities as police officers - and the use of *excessive force* frequently referred to as *police brutality* [35]. Thus *police brutality* is where a police officer "chooses or intends to use force beyond what is reasonably necessary" (Alpert and Smith, 1994, p. 489) and is therefore involved in conduct which is itself unlawful. It would also include the criminally negligent use of force. What characterises this "traditional" approach is that it places an emphasis on the distinction between lawful and unlawful uses of force by the police.

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35 There are some objections to the term. Thus the Major City Chief Administrators argue "police brutality" may be misleading, they suggest, as "what may have been present was individual brutality, not brutality by the entire group of police in a community". The point is valid and it needs to be borne in mind in relation to a discussion particularly of unlawful uses of force, which may occur even in police services which make a concerted effort to discourage these types of behaviours.

However what has been increasingly recognised in more recent years is a category of *unnecessary force* which occurs when "well-meaning officers prove incapable of dealing with the situations they encounter without needless or too hasty resort to force" (Fyfe, 1993, quoted in Alpert and Smith, 1994, p.489) [36]

In fact as various analysts have argued the emphasis on a legal standard contributes to an overall situation where the basic standards by which uses of force are evaluated are set at an unacceptably low level. As Skolnick and Fyfe argue, the criminal law may be a fairly inappropriate instrument for analysing issues of professional skill and professional judgment.

> "[T]he criminal law remains so broad and presents so many enforcement problems that it cannot serve meaningfully as the parameters for any professional's discretion. When we try to use criminal law as a substitute for standards that should be applied within a profession or occupation, we almost invariably are disappointed with the results". (1993, p. 197-198)

An approach to the evaluation of use of force incidents which focuses only on a legal standard may therefore fail to recognise incidents of the use of force which are lawful but which are not strictly necessary. In the words of Carl Klockars "We would not find the behaviour of a physician, lawyer, engineer, teacher, or any other professional acceptable merely because it was not criminal, civilly liable, or scandalous, and it is preposterous that we continue to do so for police" (1996, p.

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[36] Unnecessary force may therefore reflect factors such as a lack of skill and/or training or for instance that the police officer concerned is not, by temperament, well suited to this aspect of police work. There may also be situations where force is used inappropriately as the result of an error of judgement on the part of a police officer who is acting in good faith and to the best of his ability but otherwise in terms of high professional standards. While unnecessary force is in theory preventable through, for instance, improved selection or other procedures or through improved training, not all inappropriate uses of force are thus preventable in so far as the possibility of human error cannot be eliminated even in respect of the highly skilled police officer.

8). In practise, Klockars says, the "traditional" approach implies that the only standards applied to the evaluation of use of force incidents are those of the criminal and civil law and, sometimes, of public scandal.

It is for these reasons that Klockars has motivated that excessive force should be defined in terms of a professional rather than a legal standard.

> "Excessive force should be defined as the use of force more than a highly skilled police officer would find necessary to use in that particular situation".

Such a definition, he says,

> "imposes the highest possible standard on the conduct of the police. It leads to findings of excessive force far more frequently than any other reasonable definition and does so in many instances where criminal, civil, commonsense, and even less than expert police understandings would find no excess whatsoever".

Inter alia, Klockars suggests that the value of an approach to evaluating the use of force which emphasises skill is that,

> "If police administrators wish to keep police officers in their employ from use-of-force behaviour that is criminal, civilly liable, or scandalous, the way to do so is to develop and require a standard of officer performance that is so far above those minimal standards that, for all practical purposes, police officers and police agencies need not be concerned with them"(p. 11).

However Klockars emphasises that such a "new definition" of excessive force requires "new mechanisms" (p. 12) which make it possible to "discover and discuss the use of force freed from the threat or fear of punishment" (p. 19). This calls for an "administrative apparatus" which "would work differently from a mechanism designed to discover criminal misconduct, unreasonable violence, or behaviour that risks civil liability or scandal" (p. 12).[37]

Non occupational violence

As indicated in Section 2 incidents of unauthorised force which are of concern to the police organisation may not only be those which occur during the performance of police duties. In fact they may not be directly related to the occupational responsibilities or role of the police officer and may occur in non-occupational settings.

As was also suggested in Chapter 2 the point is also relevant to understanding the circumstances of victimisation of members of the police service themselves. "The presence of a gun in police officers' households also helps to explain high off-duty victimisation rates for police officers. In Chicago, 20 percent of the off-duty shootings of police by civilians involved officers shot during their own domestic quarrels or other personal situations" (Geller and Karales referenced in Geller and Scott, 1991, p. 461).

It must therefore be noted that the fact that the occupational role of the police involves the use of force may not only be associated with problematic uses of force in occupational settings, as well as with occupationally related problems of high levels of victimisation, but also potentially with violence and victimisation in

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[37] The issue of an "administrative apparatus", concerned with the review of use of force incidents, is returned to below in the discussion of administrative review.

non-occupational roles and settings. Even while off duty, members of the SAPS are usually armed and are apparently expected to "place themselves on duty" if they witness acts of criminality. This therefore means that they may potentially be linked to incidents in non-occupational settings where they are involved in the use of force. It also means that, while off duty, they may also be involved in incidents of police brutality and exposure to victimisation which are related to their role as police officers. Finally it may also mean that members of the police service are perpetrators of unlawful acts which are not related to their occupational responsibilities. For example the victims may be their own family members rather than suspected offenders. For the purpose of simplicity and clarity therefore a terminological distinction will be drawn in this report between *police brutality* and *non-occupational police violence* where:

- The term *police brutality* is used to refer to unlawful violence by the police which *is directly related to the police occupational role* (for instance it would usually be targeted at a suspect and/or involve the police officer in making use of occupational power or authority, for instance, against a person who fails to show respect for this authority);
- The term *non-occupational police violence* will be used to refer to unlawful violence which is *not directly related to the fulfilment of the occupational role* of a police officer. It will usually occur in non-occupational settings (e.g. at home) but may also occur in occupational settings (e.g. police officer shoots another police officer in charge office following argument between them).[38]

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[38] The above distinctions are not watertight. For example "authorised force", "unnecessary force", and "police brutality" are distinguished from "non-occupational violence" to some extent in that they are likely to be targeted at persons who, by reason of present or former conduct would often be regarded as the "legitimate focus" of police work. However persons who are not police may also legitimately act against such other persons, particularly in self-defence and therefore a police officer who for instance acts in self defence while off duty need not necessarily "place himself on duty". In terms of the terminology used here if he or she goes beyond the bounds of the law, for example, his or her actions might either be "police brutality" or "police violence" depending on whether he or she is regarded as having "placed" him or herself on duty or not.

Preferred terminology

In summary then it is possible to distinguish between incidents of the use of force or violence by members of a police service in terms of whether they represent:

- **A professional use of force** - the police officer uses high standards of professional judgement in evaluating the situation and uses force accordingly.
- **Unnecessary force** - an experienced and skilled police officer would have evaluated the situation differently and/or acted differently. Excessive force in terms of a professional standard.[39]
- **Brutality** - the act is criminally negligent or a deliberate violation of the law which occurs while member concerned is acting in the police role. In fact not necessarily lacking in technical skill but contradicts ethics of professional policing. Excessive force in terms of legal standard.
- **Non-occupational violence** - the police officers act is a criminally negligent or deliberate violation of the law which occurs in circumstances not related to the police role.

Appendix 1 sets out more systematically the similarities and differences between these terms in relation to the characteristics of such incidents, their legality and relationship to the occupational role.

[39] Note that lack of experience or skill may also result in a police officer, for example, failing to use force in circumstances where such force is appropriate. The category of "unnecessary force" could therefore be seen as part of a broader category of responses to situations of potential use of force which lack professional judgement and skill.

5. Structures and systems impacting on the use of force

In analysing the management of the use of force, one starting point might be that there are different structures involved in the management of the use of force within a police service. Their management responsibilities include ensuring that certain internal systems are operating effectively and engaging with certain external role players.

In an organisation such as the SAPS the management of the use of force occurs not only through senior management (the National Commissioner and managers at the provincial level), middle management (including area management as well as station or units commanders) and junior managers (line managers and supervisors within stations and units) but also through the work of particular divisions of the police service (e.g. the training division, personnel services, managements services etc). Sometimes a particular system is not necessarily the sole responsibility of a particular division or management level but the result of collaboration (to the degree that it exists) between sections charged, for instance, with a training function, and the efforts of middle managers and supervisors. For instance the tasks of promoting organisational values, selection, training, or discipline depend on different components of the SAPS in order to function and are effectively "co-managed".

The task of managing the use of force occurs not only through internal systems but also through engaging with external structures and processes (e.g. the constitutional and law courts, government, the Independent Complaints Directorate, the media).[40]

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[40] In this paper the focus is on "internal mechanisms". This obviously raises questions about other mechanisms, most notably the Ministry/Secretariat and Independent Complaints Directorate and whether they should also not be regarded as mechanisms for managing the use of force. The approach taken here is that they can be seen as mechanisms which have the potential to impact on the management of force but are not part of the SAPS management system. In particular the

In Table 4 an attempt has been to depict the relationship between the different levels and types of management structure within the SAPS and some of the systems relevant to the management of the use of force.

ICD's obligation to investigate all deaths "as a result of police action" (some deaths "in police custody" may also be the result of uses of force), as well as its broader concern with alleged police crime and misconduct, implies that it can potentially be regarded as a *quasi* internal mechanism in terms of its potential contribution to the management of the use of force (see footnote 46).

Table 4 Rough schematic representation of relationship between management structures and systems relevant to the use of force as currently operational within the SAPS (✓ indicates key level(s) at which system is managed.

INTERNAL SAPS SYSTEMS IMPACTING ON THE USE OF FORCE	STRUCTURES			
	Senior management	Divisions	Middle management	Line management and supervisors
Developing regulatory framework	✓	✓		
Defining and promoting organisational values	✓	✓	✓	✓
Selection		✓		
Training		✓	✓	✓
Control of firearms			✓	
Operational command				✓
Review of use of force			✓	✓
Debriefing and other support		✓		
Discipline			✓	

There are therefore a range of systems within the police organisation which can be seen as part of the management of force. These systems are not necessarily focused on managing the use of force. Thus for instance the broad system of operational

command is concerned with a range of issues to do with deployment and crime control and is in many ways relatively unconcerned with the use of force. However certain systems, and particular aspects of certain systems, are focused on issues relating to the use of force. For instance certain policies and procedures, components of basic and advanced training, and for instance mental health promotion activities, are focussed directly on aspects of the use of force.

Understanding how the management of the use of force within the SAPS operates is therefore a potentially complex task involving an examination of the interplay between a range of structures in operationalising various systems.[41]

6. Administrative review

Forms of administrative review

The use of force, though it is itself constituted by "banal" acts of apparent violence is in many ways a complex activity for a police organisation to come to terms with and manage effectively and is managed through a diverse range of mechanisms. Ultimately however as indicated, while there are some "proactive" measures, such as selection and training, which can impact on how force is used, situations where force may be required mostly cannot be predicted and when they occur take place in situations of low visibility from a managerial point of view. The management of the use of force therefore to some extent necessarily involves an after the fact response to police actions. Police managers are therefore compelled to rely on systems which attempt to evaluate the use of force retrospectively. Such systems, which can be regarded as forms of administrative review, fall broadly into two categories:

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41 In Chapter 5 the report examines the operation of ten key systems within the SAPS which in one way or another serve as mechanisms for the management of the use of force within the SAPS

(a) Incident investigation

Where police members are involved in shooting incidents (and rarely it would appear in relation to other uses of force) many police organisations require that an investigation be conducted into the incident. .

(b) Trend identification and evaluation

Trend identification could for instance include an analysis of "Written use of force reports; Citizen complaints; Supervisory observation; Peer observation; Media inquiries; Problems experienced by family and friends; Behavioural indicators including sick leave abuse, alcohol abuse, marital problems and others; Critical incident stress inducers and other officer stress factors. The evaluation process might include: Staff review; Outside professional assistance; Advisory committees (Major City Chief Administrators, 1991, p. 42).

The two types of review are therefore quite different with the one focussing on individual incidents while the other involves a review of general data relating to the involvement of police officers in the use of force. Nevertheless what is often the common factor in these systems is that they "focus primarily on criminal and other grossly substandard officer misbehaviour that merits *punitive* responses". But, as Geller and Toch argue, "little progress will be made in upgrading the skill with which police decide whether to use force, what type of force, and how much force to use, until we broaden administrative inquiries and other interventions". (1996, p. 293)

Broadening administrative enquiries - supervisory incident investigation

According to Klockars the type of system of review that can be most effective depends first of all on defining "excessive force as more force than a highly skilled

police officer would find necessary to use in a given situation" (1996, p. 12). Thereafter it is possible to "configure an administrative control apparatus that is specifically designed to respond to that definition. Such an administrative apparatus would work differently from a mechanism designed to discover and control criminal misconduct, unreasonable violence, or behaviour that risks civil liability or scandal" (1996, p. 12). In order to be effective it should be composed of two parts "[a] policy, goal or objective, and an organisational apparatus through which to realise it".

- The statement of policy which he proposes is simply that "*police officers shall work in ways that minimise the use of force*".
- The organisational apparatus, he suggests, must at minimum "do three things: monitor the use of force, evaluate the skill with which it is used, and educate officers in its skilled use" (p. 12).

The approach which Klockars suggests therefore uses a standard which is defined in police agency policy rather than a legal standard with the emphasis being on evaluating issues of skill. His proposal is effectively for a form of incident investigation which focuses on whether the incident represents an appropriate use of force or whether the use of force could have been avoided (or reduced in level) by more skilful policing. Furthermore, rather than disciplinary measures, where the investigation points to shortcomings in skill the emphasis should be on education of the individual officer concerned. As Klockars describes it [42]

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[42] This quote is from a transcription of a telephonic conference which was held on the 22 April 1999. The telephonic conference was organised by the United States Information Service and the questions were put forward by researchers from the Centre for the Study of Violence and Reconciliation and the Policing Programme at the School of Public and Development Management at the University of the Witwatersrand. The transcription is by Susan Chung.

"On each occasion on which you have a police use of force[43], you write a use of force report. And at the end of that report, the immediate supervisor of the officer reaches one of three conclusions. The use of force was justified and appropriate - fine, no further problem; The use of force was a violation of the agency policy - it was wrong, and you refer that for further investigation to internal affairs; Or the use of force was consistent with agency policy, but an alternative approach would have been desirable, one which might have avoided the use of force. And it's that third option that you want officers to consider. You want a supervisor to look at that, use that supervisor's skill and history in policing and say: "Is there a way that this could have been handled better?" You don't punish the officer whom you find in this case. You simply say this is the way it could have been done. If that sergeant can't find that "way" that report then goes up to a lieutenant. The lieutenant reads the case and says, wait a minute, it didn't have to happen this way - that police officer could have handled it this way. So that lieutenant then turns it back down to the sergeant and officer and says, this whole thing could have been avoided if you did X, Y, and Z".

The approach put forward by Klockars therefore puts initial responsibility for the evaluation of use of force incidents in the hands of first line supervisors, building in a process of evaluation and criticism into the day to day management of the use of force. One of the strengths of the model put forward by Klockars is therefore that it provides those who interact on a day to day basis with police officers with

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[43] In his article on the issue Klockars proposes "two rules to govern when a low-level use of force that does not produce injury should be reported: whenever anyone gives any indication or suggestion of any dissatisfaction with the officer's use of force, or any occasion on which any officer involved in the incident believes for any reason that a use-of-force report would be desirable. Both rules are admittedly imperfect but extend the scope of force monitoring beyond instances causing injury" (1996, p. 14).

a tool which enables them to become involved in the management of how force is used.

Identifying possible problem officers

Where police officers are involved in the use of force their actions are based on subjective judgements made in unfolding situations. These situations may be difficult to recreate. Systems of incident investigation are necessary to evaluate the conduct of officers in these situations particularly whether the issues being addressed are ones of legality or skill.

But the investigation of individual incidents does not necessarily provide indications as to the general behaviour of a police officer. As Toch says there are "officers who are involved in difficulties more frequently than on would expect.. Such officers would be said to manifest a propensity to use force, and one could predict that they would continue to manifest this propensity" (1996, pp 95 - 96)

While an effective system of incident investigation may render the need for such analysis superfluous, particularly where there are, for instance, high levels of complaints against officers such systems may demonstrate their value. This may particularly be the case where the officers in question are involved in attempts to conceal or cover-up acts of brutality. "Charges of resisting arrest (or of assault on officers) may be frequently filed to "cover" or try to justify excessive uses of force. The practise is prevalent across agencies , and repeated filing of charges of resisting arrest can be a reliable indicator of excessive use of force by individual officers" (Toch, op cit, p104).

Trend analysis therefore might involve the analysis of one or more data sources and be conducted by police managers rather than the immediate supervisors of those police officers involved in the use of force. This may be particularly useful

where there is some level of reluctance on the part of supervisors to expose or reprimand officers involved in brutality.

Potentially then both supervisory incident investigation and trend analysis may be of value and would serve to supplement or enhance the management of the use of force.[44]

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[44] Systems of review currently in use within the SAPS are discussed in Section 8 of Chapter 5. The issue of problem officers is discussed further in Sections 9 and 10 of Chapter 5.

Chapter 4. Research questions, methodology and limitations

1. Research questions

The study therefore focuses on examining a number of questions which relate to two broad issues:

I Key systems within the SAPS which impact on the use of force

(a) What are the major components or systems within the SAPS which are concerned with the management of the use of force?

(b) What impact does the operation of these systems have on the way in which force is managed within the SAPS?

(c) What are the key issues in terms of improving the management of the use of force in the SAPS?

II Administrative review

(d) What use is made within the SAPS of systems of administrative review of the use of force?

(e) To what extent may improved mechanisms of administrative review contribute to improving the effectiveness of systems for the management of the use of force?

2. Methodology

Initial access

The initial work on this report was conducted as part of a broader research project, conducted on behalf of the Independent Complaints Directorate, for which approval was granted by the SAPS Divisional Commissioner, Management Services in November 1998. Permission for continuation of the research was granted by the Divisional Commissioner in January 2000.

The research programme

The research programme combined the following components: review of literature, legislation and SAPS regulations; interviews; an e-mail survey of Area Commissioner's offices.

The review of literature included local and international sources relating to issues covered in this report. The literature review draws extensively from the US literature on the subject. It would appear that the United States is the country where issues to do with the use of force and control thereof have been analysed most extensively. Furthermore policing in the US is characterised by relatively extensive firearm usage with the consequence that, unlike many other English speaking developed countries, issues faced there bear a strong resemblance to those being faced in South Africa.[45]

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[45] It would appear that the international literature on police use of force outside the developed world is not particularly sophisticated or extensive. Outside South Africa the best examples appear to be studies of policing particularly in Brazil (e.g. Cano, 1997; Human rights Watch/Americas, 1997) as well as Chevigny's book (1995) which covers police violence in North, Central and South America and the Caribbean.

The interview programme consisted of 15 interviews (A list of the interviews is provided in Appendix 2):

- Eight interviews were with SAPS Senior and Divisional Management (indicated in Appendix 2 as organisational level 1): At national level these included representatives of the SAPS psychological services, the negative discipline section, the multi-disciplinary task team dealing with attacks on police officers, the Public Order Police Development Services, the SAPS Research Centre, the training division and the SAPS training college. At provincial level one interview was conducted with a representative of the legal services division.
- Five interviews were with SAPS "mid-level" managers (organisation level 2): These included two station commanders and the head of a specialised reaction unit, a representative of legal services in one area and the head of negative discipline in another.
- Two interviews were with SAPS members involved in a line management function (organisation level 3). The interviews involved a recently resigned former member of the SAP and SAPS with a total of 14 years experience and the head of the CID at a police station.

The report attempts to reflect the complexity of the SAPS and therefore the interviewees are drawn from the three identified "levels" of the organisation. Interviewees were however selected and identified while the research was in progress. In identifying interviewees emphasis was given to selecting SAPS members who would have in depth experience of the management of the use of force within the SAPS. In terms of number of interviews the coverage which was given to different "systems" therefore depended partly on an evaluation as to its relative importance in terms of the management of the use of force. Thereafter consideration was also given to whether it appeared that the area had been adequately covered. For example the interview with psychological services appeared to have dealt with the role of the helping professions fairly

comprehensively. It was therefore decided that interviews with other representatives of the helping professions would not be a priority.

An additional operating assumption, which was confirmed by the research, was that managers at the middle level (the area level as well as station and unit commanders) could be identified as the "key" level of the management of the use of force and this level was therefore prioritised not only through the interviews (one third of the interviews were conducted at this level) but also through the e-mail survey. In this respect a modest effort was made to reflect some level of the diversity of the conditions under which policing is conducted in South Africa. Thus the station commanders and line managers interviewed included representatives of diverse stations including ones situated in a relatively affluent area and others situated in areas regarded as particularly dangerous for SAPS members.

Potential interviewees were to some extent identified on the basis of the station or unit at which they were based but also through the advice of informal sources with respect to SAPS managers who might be "good people to talk to". This form of selection may mean that many of the interviewees were in some ways relatively exceptional as managers and, where their practises are reflected in this report, this may mean that the report is in some ways biassed towards examples of good practise rather than being representative of the general state of affairs within the SAPS.

Interviews were semi-structured and of an exploratory nature. Each interview was focussed on the area of specialisation of the interviewee and therefore did not follow a consistent format. Prior to the first five interviews rough sets of themes was identified before each interview. Thereafter a standard list of themes was developed (see Appendix 3) as an interview guide. Prior to each interview themes which were though likely to be most relevant were identified. Some of the interviews therefore covered a wide range of the themes listed while others

focussed virtually exclusively on one or two. In relation to ithe second training interview and those with representatives of legal services further lists of sub-themes were drawn up. With the exception of one telephonic interview all interviews were conducted in person. The bulk of interviews exceeded one hour in duration and a couple exceeded two hours. All of the interviews were recorded by means of detailed written notes during the interview. In all cases the interviews were transcribed onto computer soon thereafter (generally on the same or following day) with the information organised around the thematic areas or others which emerged during the interview. Printouts of the interviews were analysed using a rough coding system to draw out key issues relevant to the study.

The e-mail survey was conducted with the assistance of the Head of the Negative Discipline Section of the SAPS in Pretoria. A set of questions was drafted by the author and forwarded to the Negative Discipline office from where it was circulated to all policing areas with a request that answers be returned within one week. Replies were eventually received from 15 of the 42 (36%) policing areas in South Africa. With the exception of one reply received from an Area in the Eastern Cape all of the replies were received in the form of consolidated reports from the Provincial Commissioners office. The Gauteng report covered all seven policing areas, and that from the Free State covered all three policing areas in the province. The KwaZulu-Natal report covered four of the six policing areas (excluding Durban and Ulundi). The Free State report also included a report from the Provincial Commissioners office. In addition to the 15 area reports responses were also received from the Provincial Commissioners offices in the Western Cape, Mpumalanga and the Eastern Cape. In addition to covering 35% of areas, the replies received also therefore included responses from four of the nine SAPS Provincial offices. While the responses therefore represent a fair proportion of the overall [illegible] of areas and provinces, they cannot however be seen as representative of the overall state of affairs in the SAPS as sampling is neither comprehensive nor random.

Confidentiality

The use of force tends to be seen as a sensitive issue in policing circles and all interviews were conducted on a confidential basis. The names of interviewees have therefore not been provided in the Appendix. Chapter 5 is based primarily on information provided by interviewees, with occasional reference to insights from the e-mail survey or from relevant literature. However even where interviewees are directly quoted they are not identified.

3. Limitations of research

Due to the fact that the report touches on a wide number of areas (e.g. the history of policing in South Africa, abuses of human rights in South Africa, general police management, the use of force and control thereof, police selection, police training, police stress and trauma, police suicides police oversight, police and professional ethics) in relation to each of which much has been written the literature review does not claim to be comprehensive.

Police culture is known to be fairly secretive and resistant to "outside" intrusion. Furthermore the use of force is a particularly sensitive area. Scrutiny by outsiders is feared because it is assumed that this will involve application of subjective judgments which do not accord with those of the police and because police fear criticism and sanctions as a result of practises relating to the use of force being publicised.

It was assumed that the research programme, which relies quite extensively on interviews with police members, would therefore be likely to come up against a degree of resistance and suspicion of outside investigation. To a degree this appears not to have been too significant a problem. This might partly have been

due to the fact that the research is not actually focussed on exposing covert police behaviours but rather on understanding the operation of systems and management structures in relation to the use of force. Prior to each of the interviews the researcher explained the purpose of the research project in fairly straightforward but value neutral terms and this might have tended to put the interviewees at their ease. Furthermore, as indicated, the researcher was able to benefit from guidance as to who might be some of the more helpful members of the SAPS to approach for interviews.

Nevertheless it is likely that some of the interviewees engaged in a degree of "impression management" (Jupp, 1989, p. 155) which might have involved presenting police structures as functioning in an optimal manner as well as a reluctant to acknowledge problematic aspects of the functioning of the SAPS. In particular one of the interviewees appeared to regard the interviewer with a degree of suspicion while another one's responses to some of the questions asked appeared to some extent implausible. Two of the other interviewees, while being relatively candid, specifically indicated that there were particular aspects which they were not willing to discuss. In this respect it should also be noted that most of the interviewees were police managers and therefore to some extent "cut off" from practises relating to the use of force on the ground.

In analysing the data (both from the interviews and e-mail survey) it will therefore be necessary to treat responses with a degree of scepticism. A further factor which might have impacted on the degree of candidness of interviewees was the fact that the research was approved by senior management of the SAPS. It is possible that interviewees saw themselves as responding to the authority structure of the SAPS and appropriately modified their responses. This applies, perhaps even more so, to the e-mail survey which was sent out from the national office of the negative discipline section. At the same time the fact that the research was authorised by Senior SAPS management and the e-mail survey sent out from within the SAPS

might have contributed to minimising the distrust of outsiders which is supposed to characterise policing services and therefore might have also contributed to placing interviewees to some degree at ease and possibly to some degree of truthfulness.

Finally the research was conducted over a limited time period and based primarily on interviews with a small number of members of the police service in the major urban areas of Gauteng. It must be strongly emphasised that, particularly in discussing the operation of systems at area and station level, the research is based on an extremely limited survey of existing practises, and cannot be taken as representative of how such systems operate throughout the SAPS. Furthermore the study, based as it is on a range of interviews with relatively senior managers, should be understood as indicating more how such systems are intended to work rather than actually evaluating their day to day operation. While it is felt that many of the conclusions reached in this report are strongly persuasive it should therefore be borne in mind that this is in many ways an exploratory sketch of the management of force in the SAPS which was primarily conducted in some of the more affluent and highly resourced urban areas of South Africa.

Chapter 5 Systems impacting on the use of force in the South African Police Service

Understanding the management of the use of force appears to necessitate understanding the operation of various systems which in one way or another impact on how force is deployed and used within the South African Police Service. As indicated the systems or structures which impact on the use of force can be seen to include ones which are both external and internal to the police service. This section begins with the discussion of a system, the legal and regulatory framework which can be characterised as both external and internal. Thereafter this section focuses on a number of systems internal to the SAPS.[46]

1. The common law and the Constitutional, legal and regulatory framework

Components of the legal and regulatory framework which are relevant to the use of force include the following:

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[46] Other external systems or role players, none of which are discussed in this report can be seen to include: The Independent Complaints Directorate (see footnote 40) which is in fact regulated by the SAPS Act provided for in terms of Chapter 10 of the SAPS Act, though functionally independent (see Melville, 1999); the government and parliamentary system including committees such as the Standing Committee on Safety and Security; Police unions; the local and international media; Civil society organisations; Communities and community structures including Community Police Forums, and a range of others.

The common law

The core provisions of law which justify the use of force are provisions of the common law which in combination define the circumstances in which the use of force in "private defence" may be justified.

> "A person acts in private defence if he defends himself or somebody else against an unlawful attack upon life, limb, property or dignity.... In daily parlance this ground of justification is often referred to as "self defence". But this description is too narrow, since it is not only persons who defend themselves but also those who defend others who can rely upon this ground of justification" (Snyman, 1995, p 97).

The law on private defence is of general application and therefore applies to everyone in South Africa including members of the police service.

The Constitution of the Republic of South Africa, Act 108 of 1996

Chapter 11 of the Constitution deals with security services. In so far as it deals with the SAPS it largely deals with issues relating to the distribution of national and provincial powers in relation to political and executive control over the police service. At 205(3) it provides that "the objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law. One of the general provisions relating to security services which may be seen as of direct relevance to the use of force is section 199(6) which provides that "no member of any security service may obey a manifestly illegal order".

The use of force by the police is not addressed directly anywhere in the Constitution. The section of the Constitution which has profound and wide ranging, though not necessarily straightforward implications in terms of the use of force is Chapter 2, the Bill of Rights. Provisions which may be seen as relevant to the use of force include provisions regarding:

human dignity; life; freedom and security of the person; privacy; assembly, demonstration, picket and petition; freedom of movement and residence; labour relations; property; children; just administrative action; access to courts; arrested, detained and accused persons, limitations of rights; states of emergency. Provisions which also impacts on the investigation of incidents involving the use of force are those which provide, or support, a right to remain silent to persons "arrested for allegedly committing an offence" (see Savage and Bruce, 1999). It would appear that Section 36(1) of the Bill of Rights, which provides for rights to be limited by a "law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom" is also relevant to interpreting provisions of the Constitution and legislation which impact on the use of force.

The Arms and Ammunition Act, 75 of 1969 and associated regulations

The Act inter alia defines the circumstances in which a person may be disqualified from owning a firearm.

- Section 11 "deals with the Commissioner having received information under oath from a person stating that an applicant or owner of a firearm has expressed the intention to kill or injure" someone with a firearm. "It also states that a person could be declared not fit to possess a firearm because of his/her mental condition, inclination to violence, dependence on an intoxicating substance or if the person in possession of the firearm failed to store it safely"(Gun Control Alliance, 1999b).
- Section 12 deals with a person being declared unfit to possess a firearm inter alia because of a contravention of the Arms and Ammunition Act, or any other crime listed in the schedules to the Act.

The requirements for safe storage of firearms are outlined in regulations to the Act (Gun Control Alliance 1999a). A draft amendment to the Act is presently the subject of some controversy in the public arena.

The Criminal Procedure Act, 51 of 1977

Provisions of the Criminal Procedure Act which may relate directly the use of force include sections 27 and section 49.

Section 27(1) empowers a police official who is legally entitled to search any person or any premises to use "such force as is reasonably necessary to overcome any resistance against such search or against entry of the premises, including the breaking of any door or window of such premises". Section 27(2) requires that the police official first audibly demand admission except in particular circumstances which are outlined (Joubert, 1998, p. 123).

Issues concerning arrest, including when arrest is authorised, are dealt with in the Criminal Procedure Act primarily in section 39-52. According to Section 39(1) "Unless the arrestee submits to custody, an arrest is effected by actually touching his person or, if the circumstances so require, by forcibly confining him" (op cit, p. 87). The prevailing position in South African, with respect to Section 49 the provision governing the use of force in effecting arrest is one of uncertainty. Early in 1997 the SAPS issued a Special Service Order which effectively modified the fairly permissive provisions of Section 49 particularly by restricting the categories of offences in relation to which lethal force was authorised. An amendment to section 49 was passed late in 1998 (section 7 of the Judicial Matters Second Amendment Act, No 122 of 1998). Subsequently however the Minister of Safety and Security refused to allow the provision to come into operation. (See inter alia Haysom, 1987a and 1987b. In relation to the amendment of section 49 see

Proudlock, 1999 and Bruce 1999b). Effectively therefore, almost six years after April 1994, government has not as yet implemented an amendment to this notorious provisions of the Criminal Procedure Act. The current position regarding the use of lethal force in affecting arrest can therefore only be deduced from an informed reading of the Constitution, the Criminal Procedure Act and the SAPS Special Service Order, and a number of court judgements relating to the issue.

The Regulation of Gatherings Act, No. 205 of 1993

Most notably in sub-section 9(2) the Act provides a framework for the use of force by the police in situations, inter alia, where a gathering poses a "danger to persons or property" which cannot be averted by other steps (detailed at 9(1)), or where the gathering is prohibited.

The South African Police Services Act, 68 of 1995

The powers of members of the police service are to some extent defined by section 13 of the SAPS Act. The issue of the use of force is referred to explicitly in subsection 13(3) which provides that:

(a) A member who is obliged to perform an official duty, shall, with due regard to his or her powers, duties and functions, perform such duty in a manner that is reasonable in the circumstances

(b) Where a member who performs an official duty is authorised by law to use force, he or she may use only the minimum force which is reasonable in the circumstances.

Section 13 goes on to provide, inter alia, for searches without warrant (at 13(6)); the cordoning off of an area (at 13 (7)); and the setting up of roadblocks and search of persons or vehicles stopped at such roadblocks (at 13(8).

Policy on the prevention of Torture and the Treatment of Persons in Custody of the South African Police Service

Known as "the anti-torture policy" at Section 2 it makes it explicit that "no member may torture any person, permit anyone else to do so, or tolerate the torture of another by anyone". Torture is prohibited by the South African Constitution (at 12(1)) and, particularly where it involves physical force, constitutes a criminal offence. It is also, as the policy indicates contrary to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984. The provisions of the policy came fully into effect on July 1st 1999. The concern of managers within the police service torture should effectively be a concern to ensure that the use of torture is totally discouraged and if possible eliminated.[47]

SAPS Standing Order as amended from time to time

Many of the standing orders of the South African Policy Service are of relevance in one way or another to the management of the use of force. Most notable is Standing Order 251 which is discussed below in Section 8. Also of particular

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[47] As indicated (see footnote 31) in terms of the approach taken in this report the topic of the management of the use of force, concerned as it with enabling members of the police service to use force effectively in situations where this is appropriate, is seen as largely a separate topic from the subject of the prevention of torture. The issue of the prevention of torture can be seen as linked to the more general topic of the "management and care of persons in custody". While lawful acts of the use of force (e.g. in restraining a person or preventing an escape), and acts of brutality, do take place in custody and the issue of the management of persons in custody is therefore related to the issue of the use of force by police (issues include: ensuring that arrested persons are searched and otherwise prevented from getting access to weapons; the use of handcuffs and other restraints) this report is focused on the general issue of the use of force and does not explicitly address these issues (on issues relating to the management of persons in custody and the relationship between police use of force and deaths in custody see, Leigh et al, 1998; Bruce, 1998; and Dissel and Ngubeni, 1999).

relev..ce is Standing Order 108 in terms of which members are issued with firearms as part of their personal issue (discussed in the section on systems for issuing firearms and other weapons to police officers). Other relevant standing orders would include, for instance, those relating to the operation of the disciplinary system.

SAPS Discipline Regulations

The regulations outline how disciplinary procedures are to be dealt with. In section 18 the regulations define the different forms of misconduct. In terms of the misuse of force 18(3) which indicates that an employee commits misconduct when she or he "performs an act or fails to perform an act which constitutes an offence" may be the most relevant.

2. General management of the SAPS

The organisational and management structure of the SAPS

The SAPS is a vast and cumbersome organisation with a staff complement of roughly 129 000 which included, in 1998, 12 300 commissioned officers, 97 760 noncommissioned officers (including students) and 19 000 civilians. Roughly 60 000 members are involved in "visible policing" while 21 000 are based in detective units (Nel and Conradie, 1998, P.5). The Public Order Policing section has roughly 7 600 members

The SAPS is structured at national, provincial, area and station levels. The structure with the greatest degree of authority in the SAPS is probably the National Management committee which includes the National Commissioner, the 10 divisional commissioners and 9 provincial commissioners and meets roughly every

two months. Under the National and Deputy National Commissioners of the SAPS are organised a number of divisions each under the authority of a Divisional Commissioner.

In terms of a restructuring plan announced in December 1998 the divisional management of the SAPS was restructured from five into ten divisions. These divisions are: Management Services, Personnel Services, Training, Crime Prevention, Operational Response Services, the Detective Service, Crime Intelligence, Career Management, Logistics, and Financial and Admin Services. (The organogram in Appendix 5 provides an outline of this divisional structure).

Of these divisions the following seven would appear to be most relevant to the use, and management, of force within the SAPS:

- Management Services - inter alia the legal services section[48] of this division plays a major role in ensuring that the legal and regulatory framework (discussed in section 1 above) is communicated to members of the police service and, where necessary, incorporated into internal regulations and standing orders;
- Personnel Services - the psychological and social work services sections of the SAPS fall under this division which deals, inter alia, with recruitment (discussed in section 4), the provision of support services to police members (discussed in section 11) as well as promotions, transfers, leave and organisational health and safety;
- Training - (the role of the training in the management of the use of force is discussed in section 5);

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[48] Many of the divisions have a legal services section. For instance that in the personnel division is focused more on labour law issues. There are also legal staff at each of the provincial and area offices.

- The four divisions concerned most directly with operational policing.[49] The divisions per se do not receive much attention in the remainder of this report. Their interaction with the use of force is understood primarily to be through the other systems outlined in this report and through that of ordinary members, who, whether as members involved in visible policing, detective or public order units, effectively fall under these divisions.

The 10 divisions are also represented at the provincial level, and have offices at the area level, though on a smaller scale which should enable them to function in a more integrated manner.

The provincial and national levels are to a great extent a management coordinating structure.[50] To some extent the management of the organisation can be understood in terms of "top down" and "bottom up" issues. Top down issues would include for example regulatory issues, for instance relating to the implementation of new laws, policies and regulations. In relation to plans to combat crime for instance, some priorities are set at the national level (potentially by the Minister). The provincial structure will then co-ordinate development and implementation of strategies. However implementation primarily actually takes place at the area and station level. Bottom up issues may for instance concern problems being experienced in particular areas.

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49 Crime Prevention - responsible, inter alia, for uniformed (visible) policing; Operational Response Services - responsible, inter alia, for Public Order Policing and Border Policing; the Detective Service - sections of the service deal, inter alia, with, general investigations, serious and violent crime, organised crime, and responsible for the Criminal Record Centre and Forensic Science Laboratory; Crime Intelligence

50 These levels nevertheless do have operational units attached to them. For instance the VIP protection unit is linked to the Crime Intelligence division, while Public Order Policing units are linked to the provincial level.

The area level on the other hand engages directly with issues which relate to the management of stations. Overall in South Africa there are 42 policing areas within which roughly 1200 police stations are situated.

The members of the SAPS therefore are primarily based at these stations or in specialised units which are based at area level. In the Johannesburg Area there are roughly 23 police stations while in Soweto Area there are roughly 12. Examples of specialised units in the Soweto Area include the Child Protection Unit, the Firearm Investigation Unit, the Internal Investigation Unit (IIU), the Murder and Robbery Unit, and branches of the Flying Squad and the South African Narcotics and Alcohol Bureau (SANAB). Station commissioners and the heads of specialised units fall under the overall command of the area commissioner.

Operational personnel are then primarily uniformed members who are based at the station level, detectives, who are based either at police stations or in one of the specialised units and Public Order Police members based in linked to the provincial level. It is primarily these members, roughly 90 000 in all, who potentially may be involved in the use of force.

Structures of command and control at station and unit level

Personnel at station level might be allocated to a one of a number of sections, units or divisions (not to be confused with the national divisions discussed above). For instance at some stations staff are either allocated to the charge office (often referred to as the Community Service Centre), the investigative services division, crime prevention unit, crime intelligence unit, and for instance a plain clothes "crime combatting" units. Charge office staff other than those responsible for staffing the Community Service Centre might be involved in patrol along with members of the crime prevention unit.

In addition to the heads of various sections one of the important line management functions is that of the "shift commander"[51] who is the senior member on the shift and might be a member of Captain, Inspector or Sergeant rank. The shift commander is in overall charge of the charge office and people on patrol. He or she might, for instance, be based in the charge office and occasionally go out on patrol to check on what the other members are doing. Alternatively the shift commander might base him or herself with people on patrol. The shift commander might therefore be the same person as, or in charge of, the charge office commander or the person is charge of members on patrol.[52] Depending on the size of the station the shift commander might, on any shift therefore be in charge of anything from a handful to about 30 members.

In addition for being responsible for ensuring that complaints in the charge office are attended to the charge office commander should visit the cells on an hourly basis. At smaller stations she or he will be in charge of cells though some bigger stations have a person specifically designated to this task.

The officer on duty (duty officer)

Another significant role, though one which may be understood fairly differently in different areas is that of the "duty officer".[53] As far as could be ascertained the duty officer appears to have a general responsibility for attending "scenes" of a serious nature. These might include serious crime scenes (the scene is nevertheless under the control of the investigating officer), scenes where police are shot or otherwise injured and the scenes of police shootings where the duty officer is

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51 Referred to in Standing Orders as the "relief commander" (see SO 256).

52 In standing orders the "section commander" but often referred to as "wykbevelvoerder" which is Afrikaans for area commander (See SO 256.3).

53 As far as could be ascertained the position or role of duty officer is not defined in Standing Orders. SO 251 merely refers to "an officer".

responsible for investigating the incident and compiling the shooting incident report.[54]

It appears that the duty officer function is organised differently in different policing areas. Thus at some stations the duty officer position is allocated to 2 to 4 members, of officer rank, at the station, who then fulfil the responsibilities either in relation to specific units or on a rotating basis. The station commander might fill in for one or more of the duty officers if, for instance, they were sick or on leave. These station-based duty officers are responsible for investigating shooting incidents involving specialised units (such as the Flying Squad) which take place in their station area.

In another area where the study was conducted the interviewee indicated that the duty officer position served as a "stand-in" for the station commander at night time when the latter is not on duty. Here the duty officer is the officer in charge at the Area (often the Flying Squad) radio control. In addition to the circumstances outlined [illegible] the duty officer would also be called in where "there is a complaint against [illegible]ice officer that can't be resolved by the shift commander". The station comman[illegible] would fulfil the responsibilities associated with the duty officer during the day.[55]

The general management of the SAPS and responsibility for the management of the use of force

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54 At 251.15.1 it specifies that "if an officer was not present at the time of the incident, [the commander or other senior member referred to in 251.15.1] shall immediately arrange to notify an officer about the incident, in order that, that officer can visit the scene witho[illegible]t delay to investigate thoroughly the circumstances of the shooting incident.

55 The investigation of shooting incidents whether carried out by a "duty officer" or other person (in what follows the shooting incident investigator will be referred to as the duty officer) is explored further in section 8 of this chapter.

The SAPS as an organisation can be understood as a system for the deployment of force. Thus any decisions made regarding the allocation of SAPS members to a particular geographical area or task is effectively a decision relating to the deployment of the capacity to use force (though members are deployed in relation to their other capabilities as well). But this does not mean that managers in the SAPS, pre-occupied as they are with a potentially extensive range of tasks, devote much attention to the management of the use of force. Thus, some station commanders, other than by minimal attention to issues relating to the issuing of firearms to police officers (see section 6) and occasionally to disciplinary issues (see section 9) might otherwise be said to be hardly involved in the management of the use of force if this is understood as direct attention to actual issues associated with the use of force in the police service.

One of the questions which this research tried to address is whether there is in some sense a "key level" of the SAPS in terms of the management of the use of force. The answer to this question would appear to be roughly the following:

- Some station commanders or heads of specialised units might give a relatively greater level of attention to issues concerning the use of force, for instance by occasionally addressing issues relating to the laws and values which should inform police officers in relation to their use of force, by maintaining a greater degree of scrutiny over the conduct of police officers and by implementing remedial or corrective measures where appropriate, or by attending to issues relating to the provision of training to members.
- More generally however the key component of the SAPS concerned with the management of the use of force would appear to be the legal sections, based particularly at area but also at provincial level, operating to a greater or lesser degree in cooperation with the (negative) discipline section at area level.

As the report will argue, the latter aspect reflects the basic approach, and limitations of the management of the use of force within the SAPS, which is primarily orientated towards an emphasis on legal issues and standards.

Information systems for monitoring the use of force

The SAPS maintains a computerised database (the PERSAP database) which is intended, inter alia to serve as facility for recording all shooting incidents. An analysis of shootings recorded on the database over the 1996 - 1998 period indicated that shooting incident data had only been recorded with a reasonable level of consistency in three[56] of South Africa's nine provinces during the period in question (see Bruce and O'Malley, 1999). It appears that an instruction was issued in 1997 to the effect that data, which previously had been entered from the national office, should henceforward be issued by staff based at the area offices. While in some provinces a deterioration in the level of recording of shooting incidents appears to have roughly coincided with this instruction it nevertheless appears that levels of recording in many provinces prior to the instruction was far from satisfactory. In the Northern Province four shootings were recorded on the database during the three years in question.

However even in those areas or provinces where data is entered on the data base it is far from clear that the information recorded is used for any purpose, connected to the monitoring of the use of force (The issue is discussed further in section 8). The SAPS also appears to have problems in gathering reliable information regarding complaints and civil and disciplinary cases against members (see Bruce and O'Malley, 1999, p. 47)

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[56] The provinces are the Western Cape, Eastern Cape and Free State.

3. Values of the SAPS related to the use of force

All organisations in some ways promote and reflect, though sometimes by default, certain values which are reflected in the culture and practises of the organisation. "An organisations values create its culture which is a powerful influence on people's behaviour. In many ways, culture defines the way people do things in the organisation ... this points to the [police] department's need to carefully develop a statement of values, as opposed to letting culture develop without serious consideration" (Major City Chief Administrators, 1991, p. 23).

The Code of Conduct of the South African Police Service

The importance of values to the police, has been recognised by the SAPS who in 1997 developed and adopted a Code of Conduct. However despite the fact that the use of force is a core and distinguishing characteristic of the police role the SAPS code of conduct makes no direct reference to it. The code, intended to be signed by all SAPS members commits them inter alia to:

- "at all times.. uphold the constitution and the law"; and
- "undertake to uphold and protect the fundamental rights of every person".

As noted above (see section 1) the South African Constitution, which the Code refers to, makes no direct reference to the issue of the use of force by the police. Effectively therefore the Code requires of members that in order to understand the formal organisational values of the SAPS in relation to the use of force members need to make an in depth study of the Constitution. Furthermore the Code appears to fail to recognise that the police in fact are the one key agency in society that is most frequently required, in certain circumstances, to impose on people's rights, sometimes through the use of force. In the words of Coady and Bloch "some [codes of conduct] contain statements of such generality that they could not be

disagreed with, but they also provide very little practical guidance"(1996, p. 9). In providing guidance to SAPS members in relation to the use of force, and arguably in relation to the police role generally, it would appear that the SAPS Code of Conduct is in many ways fairly inadequate.

The role played by middle management in promoting values relating to the use of force

Effectively therefore the SAPS provides no national statement of values to its members that directly addresses issues of values relating to the use of force. An indication of how values relating to the use of force are understood, and sometimes articulated, by the middle management level of the SAPS can be gained through examining the responses received to one of the questions in the e-mail survey sent to the offices of SAPS Area Commissioners. The question asked respondents to indicate what, if any, "message" the Area office tries to send out members in relation to the use of force".[57] One of the strong characteristics of a number of the responses received was an emphasis on legal rules. For example one response indicated that "members were made aware of the proposed amendments to Section 49" while another stated that "to the extent that a 'message' is sent out, the message is that the use of force must comply with applicable legal rules". Other responses were more threatening in tone, stating, for example, that "no member of the service is above the law of the country and when the law is contravened they will be dealt with severely according to the law." Related to this was an emphasis on the potential consequences of the misuse of force for members. In addition to emphasising that members who acted illegally would be prosecuted, others

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[57] It should be noted that the question was merely "what message?" is sent out. The issue of to what extent the message is properly communicated, or emphasised, and whether it is contradicted by other "messages" sent out by the same office, or by other sections of the SAPS, is not addressed here.

indicated that unlawful use of firearms could lead to suspension or dismissal from the service.

Aprt from this the fifteen replies received were somewhat diverse but included references to:

- Discouraging the use of force - for example " members should refrain from the use of force...", "force should only be used as a last resort";
- Discouraging excessive force - for example "members should refrain from using excessive force..."
- The conditions members should observe when using force - for example referring to "minimum justifiable force" or "appropriate force" or to using force "responsibly" or "fairly".
- Conditions for using firearms - for example members should "only use their firearms when their own, or other people's lives are in danger", "members are encouraged to act responsibly when using firearms".
- One referred to the Code of Conduct and one (from a Provincial office) to the Constitution as guiding documents. Another said that "regular discussions are held with members regarding the subject [of the use of force] and human rights generally".

There was therefore little in the way of consistency in the response received. Furthermore the responses were uneven in their quality. Some, sometimes fairly succinctly, addressed key issues relating to the use of force while others were completely insubstantial effectively ignoring major issues relating to the use of force and indicating a lack of understanding of the issues at hand.[58] Finally of the many responses which emphasised legal standards, some did so in a manner which

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[58] For instance one Area's sole respo[illegible] to the question was that "the amended Act regarding the use of firearms must be adhered [illegible]". The response would appear to demonstrate an ignorance both as to the fact that the Act in q[illegible]tion is not in force and that there are major issues relating to the use of force that do not concern firearms.

was primarily threatening in nature. In only describing those levels of behaviour "below which a member should not be entitled to act" such statements fail to "embrace the ethical ideals" (Coady and Bloch, op cit, p. 6) of the police occupation. Furthermore such messages may ring hollow, particularly if, as may often be the case, they are only selectively implemented.

The POP Policy Document On Crowd Management

One section of the SAPS where the need for a statement of values has been recognised is the Public Order Police. The POP Poli y Document on Crowd Management sets out the "goals" of the POP as well as a set of "principles of crowd management"(South African Police Service, undated). Amongst the goals set out by POP are:

- being firm, fair and impartial, ...
- no loss of life, ..
- no injuries, ..
- all citizens present at a gathering to feel safe and secure.

The POP policy therefore provides a set of ideals or goals. In some situations which POP members deals with these may be difficult to achieve. But they may be seen to serve to guide POP members in understanding the values which should inform their actions.

Discussion

In relation to the use of deadly force Geller and Scott, state that

> "Ultimately, to minimise or, more accurately, to "optimise" the use of deadly force by police (that is, to attain a proper combination of prudent restraint and prudent use of force), the values of the police culture need to

be purposefully shaped. The object of such efforts at managing organisation culture is to encourage a high respect for human life among officers and encourage responsible - but not foolhardy - restraint in the use of force". (1991, p. 470).

One of the many themes of international literature on policing concerns the informal culture of rank and file member of the police organisation, how this is shaped by occupational pressures and influences, and tends to be characterised by something of a divide between the worlds of "street" and "management" cops (Punch, 1983; See also for instance Reiner, 1992). Shaping the values of members of a police service is therefore not a simple or straightforward task. Not only does addressing the issue of organisational values require a statement of such organisational values
or policy but it requires that managers in the organisation, and others, such as training staff continually address these issues. In order for this to be done effectively however it has to be done in a way which addresses the realities of police occupational life.

Other than in the POP Policy it seems clear that issues of values relating to the use of force by SAPS members are not concretely addressed in any policy statement. As long as the SAPS lacks a clear policy of this kind, SAPS managers will effectively be denied a proper tool for engaging with members about these issues.

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One of the many themes of international literature on policing concerns the informal culture of rank and file member of the police organisation, how this is shaped by occupational pressures and influences, and tends to be characterised by something of a divide between the worlds of "street" and "management" cops (Punch, 1983; See also for instance Reiner, 1992). Shaping the values of members of a police service is therefore not a simple or straightforward task. Not only does addressing the issue of organisational values require a statement of such organisational values
or policy but it requires that managers in the organisation, and others, such as training staff continually address these issues. In order for this to be done effectively however it has to be done in a way which addresses the realities of police occupational life.

Other than in the POP Policy it seems clear that issues of values relating to the use of force by SAPS members are not concretely addressed in any policy statement. As long as the SAPS lacks a clear policy of this kind, SAPS managers will effectively be denied a proper tool for engaging with members about these issues.

4 The recruitment and selection system

The selection of new recruits [59]

Since about 1992 the psychological services section has been involved increasingly in addressing issues of selection in the recruitment process. In 1997 the SAPS received roughly 500 000 applications for 1 200 posts which had been advertised as part of a drive for new recruits. After "hard criteria" such as whether the applicant has a drivers licence and standard 10 or matric[60] a large number of applicants remained. Psychological services was involved in compiling a battery of tests, based on an extensive analysis of the characteristics of police work. The battery, involving 11 tests in all, was applied to 19 000 applicants. The results enabled a final short list of 2 000 applicants to be drawn up. These were interviewed by selection panels using a standardised interview in order for the final 1 200 selected.

The tests were intended to assist in identifying a range of character traits associa with effectiveness in the police role. Some of the qualities tested for would however appear to be relevant in some way to the use of force and perhaps to whether recruits are susceptible to misusing force in both occupational and non occupational domains. These factors may include:

- Mental alertness - addresses issue of how person is going to function under pressure;

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59 The basic training system - see section 5 below - effectively also functions as part of the selection system for new recruits. Those who fail specific tests or examinations (passing requirements are set at different levels for different tests) are not inducted into the police service (See section 37 of the SAPS Act, 68 of 1995).

60 The SA citizenship criteria which was applied in 1997 has since been dispensed with.

- Cognitive skills - includes testing of verbal skills through tests of vocabulary. An assessment of verbal skills was also made during interviews;
- Interpersonal skills: includes assertiveness and "influencing style";
- Stress and frustration tolerance;
- External or internal locus of control - the tendency to accept responsibility as opposed to blaming others for ones situation. [61]

Discussion

According to Grant and Grant "selection procedures need to take into account not only the diversity of current police performance requirements, but also the changing demands on the police and the consequent changing nature of policing" (1996, p. 153. See also Coetzee and Shaw, 1998). However psychological tests may not accurately assess the individuals psychological traits. Furthermore police officers may "change over time and may develop problems related to their performance long after their probationary period" (p. 155). Factors in the police organisation, the community, and in his or her domestic world will continue to influence and impact on the police officer as well, possibly contributing to changes in behaviour.

Psychological testing is not a fail safe mechanism for ensuring that recruits are not prone to violence. It is nevertheless likely that it makes some contribution to improving the quality of recruit selection and may have some benefit in contributing to the selection of police recruits who are less prone to the abuse of

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[61] In addition to assisting in the process of selecting new recruits the Psychological Services section has also been involved in developing selection systems for some of the specialised units such as, for example, the special task force, bomb units or the dog unit. Potentially the assistance may be provided to any unit for which specialised training is needed and not just the "high tension" units. A special selection process has also been used for the Public Order Police though as far as is known this has not been connected with the work of Psychological Services.

force. However, in so far a' it does have beneficial consequences this is only likely to impact on the SAPS relatively slowly partly due to the fact that as the SAPS is not acquiring new recruits at a particularly rapid rate. Finally neither selection, nor as th. eport argues, training, can substitute for day to day attention by managers to issues relating to the use of force by operational personnel.

5. Training

Basic training

The old basic training framework (see Rauch 1992b) was extensively revised during the mid 1990s with the assistance of a range of international policing and police training experts (see Scharf and Van Der Spuy, 1995). At the same time, while foreign expertise was drawn on, those involved in red..signing the curriculum attempted to ensure that the basic training curriculum appropriately reflected South African realities.

The current basic training programme is structured into an initial 26 weeks of training at the SAPS college in Pretoria, four weeks of training in tactical policing at Malleoskop and a further 22 weeks of field training, under the guidance of a Field Training Officer, at one of the poli:- stations around the country where such officers are based. The curriculum is presented in terms of an "integrat·d approach" where each "topic" is dealt with in terms of ethical, legal and functional aspects. This app·oach helps to avoid problems previously experienced where, in the words of one interviewee "what one person [for example the law person] was saying was often contradicted by another". The emphasis within the new

curriculum is also on providing "basic guidelines". "We cannot provide everything they need to know" an interviewee said.

The following components of the current basic training programme may be seen as directly relevant to the use of force by members of the police service

- Physical training;
- Training regarding physical and mental disablers;[62]
- Communication skills
- Conflict resolution;
- Authority presence;[63]
- Weaponless defence;
- Tonfa training;
- Firearm training;
- Tactical policing;
- Familiarisation with protective equipment (bullet-proof vests).

The basic training programme appears to deal with the issue of the use of force fairly comprehensively and with a high level of sophistication. It would appear that the programme addresses issues of skill in the use of force, along with legal issues. Without having extensively analysed the framework of values presented in the basic training curriculum it is not possible to comment on it in detail. Some apparent shortcomings would appear to be that:

- It may reproduce some of the overall flaws of the SAPS policy and values framework relating to the use of force (as discussed in Section 3)

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62 Deals with how to minimise one's susceptibility to factors, such as alcoholism or heart disease, which can physically and mentally debilitate.

63 Deals with aspects of posture, dress, facial expression, body language, "overall confident appearance" etc. required to assert authority and thereby obtain compliance.

particularly in relation to issues of (skill in) avoiding unnecessary force [64] as well as in relation to the defence of life principle.

- As Fyfe emphasises police training must address the role of police during their non-working hours.

> "Answers to the question of what is *appropriate* police action, however, vary dramatically depending on whether an officer is on duty. It is relatively easy to prescribe appropriate police actions for officers who are in uniform, in easily identifiable police vehicles, in radio contact with their colleagues, and not a party that gave rise to the need for police intervention. But these prescriptions may be singularly inappropriate for an officer who enjoys none of these conditions and who may find that his or her actions may simply make bad situations worse" (1996, p. 177).

The curriculum does not appear to deal with the issue of the responsibilities of police officers while off duty. However here again, the training system would merely appear to be reflecting shortcomings of overall SAPS policy.

Notwithstanding these possible limitations it appears that the SAPS Basic Training programme may in many ways be exemplary in its engagement with issues relating to the use of force [65] Regrettably however it appears that its benefits are unlikely to be sustained once recruits complete their initial year of training.

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64 The issue is touched on in the lecture on authority presence (Module 1, Study Unit 5).

65 The Public Order Police also appear to have, and be involved in the further development of, a relatively sophisticated training system which deals directly with issues of minimising the need for violence, as well as limiting the risks which police members are exposed to. However for reasons of brevity this is not examined here. A particularly promising aspect however is the development, by personnel in the Public Order Development Services of a training programme on "Preventative Survival Tactics" described by an interviewee as "strategies for avoiding the need to use force and becoming a victim of violence". here.

In-service training [66]

Interviewees at police stations indicated that the system of in-service training relating to the use of force suffers from serious deficiencies. A recently appointed commander at one station indicated that on his arrival he had discovered that there had been no firearm training for members in the last six years. At another station in another policing area a senior member indicated that he couldn't remember any firearm training at the station since 1993.[67]

Whether in-service training is provided or not would appear in part to depend on whether the station commander has given attention to the issue. Furthermore stations where Field Training Officer have been appointed are able to channel this training capacity into one which is of benefit to members at the station generally. A handful of members from each station, it appears, are occasionally able to attend SWAT (Special Weapons and Tactics) courses at special SAPS weapons training facilities. Finally in some areas members occasionally received lectures particularly regarding new aspects of law relating to the use of firearms.

As might be expected the basic obstacles to providing in service training are those of the availability of the financial and human resources for this purpose. Furthermore, where for instance there are openings in a SWAT training course the implication may be that the station or unit at which they are based will suffer shortages in terms of the availability of personnel.[68]

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66 Another aspect of training relevent to the use of force is that in debriefing skills, which is referred to in the discussion of critical incident debriefing in section 10. The issue of to what extent management training addresses issues of the use of force is not addressed in this report.

67 In so far as there is a policy on the issue this would appear to be that members should receive firearm training roughly twice every year.

68 One of the interviewees, the commander of a rapid reaction unit which has its own "in house" training personnel, indicated that as a result of personnel shortages it was not possibly to withdraw members from their duties. Members who attend in service training do so on one of

In their responses to questions regarding in-service training respondents effectively highlighted what would appear to be another major flaw of the system. In service training, at least in relation to the physical aspects of the use of force (at some stations there is also occasional training on the legal aspects), is apparently understood as being almost synonymous with firearm training. Effectively in-service training, where it exists at all, appears to serve as a mechanism for re-producing the SAPS's firearm reliance in relation to the use of force (similarly the lectures on issues of law tend to focus on lethal force).

As Fyfe remarks "most often it does not matter whether officers' actions conform with their tactical training". As a result "some of the most critical police violence reduction and prevention skills are needed so rarely that they are likely to atrophy into uselessness unless officers receive frequent refresher training" Periodic training therefore, reminds them "that there are real dangers out there."(1996, p. 176 - 177). The issue of in service training presents real difficulties partly in terms of making appropriate resources available. Nevertheless consistent in-service training would appear to be a necessity in maintaining and developing the capacity of members to adequately perform their responsibilities in terms of the use of force.

Maintaining physical fitness

A further cause for concern is the level of attention to the maintenance of basic standards of physical fitness by SAPS members. Members of the police service who fail to maintain their own physical fitness are likely to be more susceptible to finding themselves either unable to cope with situations requiring the use of force,

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their rest days every month.

or where they are, unable to do so other than by relying on their firearms. Basic physical fitness is not something that can be addressed through the in- service training and should be recognised as primarily a, often neglected, responsibility of individual members. Such neglect is potentially also a problem that needs to be addressed by management.

6. Weapons and other equipment - systems for issuing, inspection and confiscation [69]

Issuing of firearms and ammunition

(a) Service pistols - 108 and station issue

Standing Order 48 specifies that service pistols are to be issued to members with other equipment which is detailed on the SAP 108, the list of equipment issued to members when they leave police college. Most members have pistols which have been issued to them on their 108 issue.

Where members do not have 108 issue firearms, firearms are usually issued to them as "station issue" by the logistics section at the station. Effectively the difference between 108 and station issue firearms is that latter weapon has to be handed in by the member if she or he is transferred to another station.

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[69] This section overlaps to some extent with issues raised in subsequent sections. This section deals with the confiscation of firearms from police officers in situations of alleged misconduct particularly where this involves the misuse of firearms. This section touches on the issue of the role of the helping professions in assisting officers with alcohol or stress related problems. Issues relating to the role of the "helping professions" in providing support to officers - particularly following incidents of the use of force are discussed in section 9. The general issue of disciplinary procedures relating to members involved in alleged misuses of force is discussed further in section 10.

While the general practise has been to issue firearms on the 108 issue it appears that, in about the mid-1990s there was a temporary shift away from this practise, and an instruction was given out that firearms should be administered as part of the station issue system In addition it appears that, prior to 1994, SAP practise was not to issue black members, unless they attained officer rank, with 108 or permanent station issue weapons. Exceptions were sometimes however made where black members applied to be issued with weapons on a permanent basis on the grounds of threats to their personal safety.

All members who have 108 or station issue firearms are supposed to have a fixed safe at home for storage of the firearm. The implication of enforcing this requirement is that the station or unit management inspect the persons home in order to confirm that she or he has a safe. Otherwise, as one interviewee said " a guy could lie and say I've got a safe". Furthermore the current Arms and Ammunition Act appears to provide a loophole in this regard in that it merely specifies that the person must have "access to a safe".

(b) Firearms issued for specific shifts or tasks

A member who does not have a station or 108 issue firearm will therefore be issued with a firearm when he or she comes on duty and would hand in the firearm at the end of the shift. These weapons are therefore stored in weapon storage facilities at the station or unit. Where members are issued with other weapons or pistols, such as the R5 assault rifle, these should be booked out from the storage facility for a specific shift. Where police reservists are issued with service pistols, this should also be in terms of this system.

(c) Ammunition

At one of the station where interviews were conducted practise is to issue members with 30 rounds (2 magazines) of ammunition while at another station the practise is to issue them with 25 rounds (a box). Administration relating to ammunition is also dealt with by the logistics department.

Other weapons - the tonfa

The tonfa is a special type of baton and appears to be the main LTL or intermediate weapon in use by the SAPS. However, apparently due to problems with misuse of the tonfa, the current state of affairs is that, in terms of an instruction issued by National Head Office, members who have not received tonfa training are forbidden to carry the weapon. With only a minority of SAPS members having received tonfa training, it would therefore appear that the majority of operational SAPS members are effectively denied an intermediate weapon. Furthermore, according to one of the interviewees a problem with the tonfa is that "if you don't keep in touch with tonfa you will forget it". It would appear that in terms of the current operation of the system of in-service training, members may be unlikely to maintain their tonfa skills.

Other equipment

Other equipment which may be issued to police members and which is specifically relevant to issues of the use of force, restraint of arrested persons, and officer safety is the following:

- **Handcuffs** - usually issued to members up to the rank of Captain.

- **Two way radios** - in some station areas all police have radios, in others not.
- **Bullet proof vests** - in some "high risk" units the use of bullet proof vests is mandatory but at other stations it is optional. While press reports have indicated that there may be problems o f bullet proof vests not being used by SAPS members (The Star, 25 May 1999) according to an interviewee some stations have a shortage of such vests. The interviewee said that "in terms of equipment the biggest shortage is bullet-proof vests".
- **Vehicles**[70] - the issue of the use of vehicles (and pursuit generally) in relation to the use of force is not discussed in this paper. One interviewee remarked however that "If you have a faster car you can control the situation. If their vehicle is more powerful, shooting might be the only chance to apprehend them."
- **Other equipment** - other equipment, such as torches, sometimes used in use of force situations, is sometimes provided.

Inspections

Standing orders provide for both a daily inspection[71] particularly for uniform members (in the detective section for instance this may take more of the form of a "briefing") prior to each shift as well as a six monthly inspection and annual parade inspection[72]. The daily inspection is intended as a means of checking that

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70 As mentioned - see footnote 33 - in certain situations motor vehicles may be used as a type of weapon. However whether or not they are classified as such they definitely qualify as equipment which impacts on the police capacity to use force (For more on the use of vehicles in policing, particularly in vehicle pursuits, see for instance, Alpert (1987), Alpert & Dunnham (1989), Dunnham, Alpert et al (1998), and Kappeler and Del Carmen (1990))

71 Standing Order 256.1.5.1/2/3 is relevant here.

72 Standing Order 28.(20) is relevant here.

firearms are in working order, as well as for instance the tidiness of members. At the time of the parade inspection all equipment is supposed to be checked.

The interviewee at one station indicated that they had recently introduced a firearm inspection register. This is one of the registers filled in at inspections held once fortnightly. Firearms are inspected for cleanliness and members must account for missing rounds.

Circumstances which may lead to confiscation of firearms from members

(a) Members with alcohol, stress or other personal or domestic problems or demonstrating suicide risk behaviour

In certain circumstances where it appears that a member is experiencing personal problems of one kind or another this may lead to his or her firearm being withdrawn. One of the interviewees, the head of a reaction unit, indicated that in his unit whenever there are indications that a member is experiencing any stress related problems, including for instance the abuse of alcohol, depression or excess levels of aggression, his firearm will be taken away immediately. The situation will be reported to the Area social worker who will make contact with the member and possibly refer him for counselling or to a clinic for people with alcohol problems. Thereafter the member will work for a month on "inside" duties such as in the control room. During this time the member in question will be monitored by the social worker, a doctor and the head of the unit. At month end a meeting, which is attended by the members shift commander [supervisor], decides whether the member is fit to resume his normal duties. Potentially the shift commander may be in the best position to give feedback as to whether person is still manifesting problem behaviour. The doctor also needs to specify that he is fit to resume duties. Only if the member is judged properly fit to resume normal duties will this be

permitted. During the entire period in question the member's firearm is taken away.

Where problems are reported the interviewee said this might be by the member him or herself, by family members or by colleagues. Sometimes, where a person reports another person, they will request that his or her identify be kept confidential, though this is not necessarily the case.

Another station commander also indicated that where a member whose firearm had been confiscated applies to have the firearm returned (for example in connection with personal safety) an investigation will be initiated into the matter. This may include interviews with family members and possibly, for instance where there has been evidence of depression, obtaining a certificate from a medical practitioner. Where there is access to a social worker, he or she might also be asked to evaluate whether the member is a threat to himself or herself or someone else.

As discussed in Chapter 2, negative consequences for the SAPS, associated with the use of force, include not only a high rate of murders of police officers (in relation to which the robbery of the service pistol is believed frequently to be a motive) but also an exceptionally high rate of police suicides of which in the region of 95% are committed using the service weapon.

The SAPS has begun to attempt to address the suicide problem, with about about 3.5 million in RDP funds having been allocated to the development of a suicide prevention programme. The money has first of all been used for research intended to identify, inter alia to what extent, commanders or other persons were aware of "warning signs" prior to the suicides of particular members. Initial indications are that fairly frequently members who committed suicide were experiencing financial or alcohol related problems or problems in their marriages or other intimate

relationships. It appears that a significant number of suicides are those of members who have been suspended, particularly those suspended without pay. Subsequently work has been conducted on the development of a curriculum for suicide prevention, intended to assist managers in identifying risk factors and procedures to follow where such factors are apparent.

To some extent SAPS practise is already to withdraw the service weapon, and any personal firearms where a member demonstrates behaviour which points to a risk of suicide. However it is not clear to what extent such practise is consistently followed. Another issue here relates to the ability of managers to identify the fact that the member is experiencing problems. If a member is booking off work regularly, has frequently been absent from work, or has reported for duty while drunk, these might be positive indications that the member is experiencing problems of one kind or another.

A key difficulty is evaluating the seriousness of the behaviour in question. Thus one station commander indicated that where there are indications that a member has an alcohol problem, it is not necessarily regarded as mandatory to send the member for treatment. Initial an effort might be made to discuss the issue with the member and to adopt "remedial steps". Another interviewee mentioned the case of a colleague and friend of his who had committed suicide. Both the service and personal firearms of the member, who was experiencing family problems, had in fact been taken from him. However the member managed to persuade the psychiatrist that he was okay and his firearms were returned to him. Whether he did this with the express purpose of committing suicide or for other reasons is not clear".

According to an SAPS psychologist "police men see taking their service pistol away as removing their status" (quoted in Krost, 1998). It appears that pol c members

who have had their firearms withdrawn might often modify their behaviour with the primary purpose of persuading the relevant persons that they are in a suitable state of mind to be in possession of a firearm. The reality may be that their underlying problems continue. As one of the station commanders said "we will take their guns away until we are satisfied that they've recovered - but it's always a difficult thing to know". In addition, he added "guns are something we are not short of". Even where both personal and private firearms are withdrawn, members may have access to other firearms, for instance, through borrowing these from colleagues.

(b) Alleged criminal acts involving firearms or the use or threat of violence

The station or unit commander then has a general discretion to confiscate a members firearm(s). Sometimes this occurs where the member has been involved in an alleged unlawful shooting. In such a case the firearm might need to be handed in partly because it needs to have ballistic tests. However firearms may also be confiscated where an offence which does not involve the shooting of a firearms, has allegedly been committed by a member. This should be done particularly where the alleged offence is the unlawful pointing of a firearm or any alleged offence involving the use or threat of violence. Sometime, for instance station commanders might receive information from a member's wife to the effect that he has threatened to shoot her, or information from another person that he was involved in the reckless use of the firearm. If the alleged offence or incident occurs in an area outside the members station or unit area, the station commander in that areas should report it to the members commander so that appropriate steps can be taken.

According to one interviewee sometimes, depending on the seriousness of the offence, a member might simply be called into the office and reprimanded, or

submitted to an informal punishment, and no official disciplinary action will be taken. This however might change if the offence happens a second time. Some commanders will rather handle things informally as formal steps potentially jeopardise a member's career.

Depending on the circumstances, the confiscation of the firearm may be immediate or following an initial investigation. Whether the firearm is confiscated will sometimes depend on a recommendation made by the investigating officer. In response to the e-mail survey one of the areas for instance stated that the matter is investigated. If the allegation is found to be positive, the members firearm is confiscated and the member is charged with a criminal offence or departmental steps are taken against him. One of the obstacles to investigation, even where threats have been made against a family member, is sometimes that the person is reluctant to make a statement for fear of jeopardising the member' source of livelihood.

Where firearms are confiscated it appears that the member is frequently still permitted to make use of a firearm while on duty. Thus, in relation to a question regarding firearm misconduct off duty, four or the Areas and two of the Provinces which replied to the e-mail survey indicated that members would only be denied use of the firearm while off duty. Thus for instance one of the Areas replied that "this office requests the commanding officer to revoke his firearm when the member goes off duty until the criminal case is finalised." Another indicated that " the members authority to possess a firearm after hours is also withdrawn in serious cases." Another replied that "If clear grounds exists that the member has misused his firearm, it will be confiscated and only issued when necessary, for official duties in exceptional circumstances." Thus in addressing this issue it appears that the Station Commander or investigator might also give consideration to the member's work related responsibilities. If these involve high risk activities

this might be taken into account in deciding whether or not to confiscate the member's firearm.

Criminal or disciplinary proceedings therefore may have been instituted against the member. One of the consequences of allegation of criminal activity against the member may be that the member is suspended from his duties. One interviewee said that if a member is suspended his or her firearm will automatically be confiscated. Furthermore a member, whether or not his firearm has been temporarily confiscated, may be subjected to an inquiry in terms of the Arms and Ammunition Act.

Person declared unfit to possess firearms and other circumstances leading to permanent confiscation of firearm

As indicated (see Chapter 5, Section 1) the current Arms and Ammunition Act defines certain circumstances and procedures in terms of which a person may be disqualified from owning a firearm. The Act provides for a person to be declared not fit to possess a firearm either by a court (it is not clear to what extent courts may do this where a person is acquitted of an offence) or by a Police Commissioner. According to some of responses to the e-mail survey, in some cases the Commander do this on the instructions of the Province or Area Commissioner.

If a member is declared unfit to possess a firearm this is likely to have serious consequences for his or her career. One interviewee indicated that this type of measure was not something that was frequently considered in the SAPS. If the SAPS "wanted to go to that extreme" he said, the matter would have to be sent for a legal opinion as it would have serious implications if the member was subsequently injured on duty. In general such members are likely to be placed in an administrative post pending the commander's report in respect of the future

deployment of the member. A board intended to establish whether the member is fit to remain in the service, in terms of sect 34 of the SAPS Act, will also be considered.[73]

Consequences of loss of firearms

Loss of a firearm is to some extent also governed by the provisions of the Arms and Ammunition Act. A member who negligently loses a firearm may be guilty of a criminal offence and may be declared unfit to possess a firearm and might also face disciplinary action. According to one interviewee, if a member loses his firearm repeatedly, even if the facts do not show that he or she has been negligent, the member may not be permitted to carry a firearm off duty.

Discussion: The disarmament debate

As indicated (see Chapter 2) police suicides are frequently associated with violence against another person. Withdrawal of the service weapon should be one of the steps promptly taken where a member displays not only suicide risk behaviour but other behaviour pointing to a risk of violence against other people. Not only in circumstances where a member is alleged to have committed an offence where firearms, or violence was used or threatened, but also in relation to suicide or violence risk behaviour more generally, a members firearm(s) should be withdrawn. Not only should the service pistol be withdrawn but he or she should

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[73] Apparently the Arms and Ammunition Act provides for applications to be made for person declared unfit to possess a firearm to have this declaration reviewed. One response indicated that where a members services were retained, such an application would be submitted to Head Office after 2 years.

also be compelled to hand in any firearms privately owned. Whether or not criminal charges are instituted against the member a full internal investigation should be entered into.

An important issue concerns the rigorousness with which questions, relating to the suitability of members to be in possession of firearms, both on and off duty, are addressed. It would appear that in many of the circumstances outlined above members of the SAPS would effectively qualify to have a declaration that they are unfit to posses a firearm made against them. Procedures may however vary from informal ones, to temporary withdrawal of the firearm (possibly only while the member is off duty), to criminal and/or disciplinary proceedings, and/or a section 12 or 11 declaration. Frequently it appears that where members have their firearms confiscated this is only on a temporary basis and only affects their access to firearms while off duty.

Even if the member is convicted of an offence, such as culpable homicide, it would appear that the fact of whether or not he or she is declared unfit will depend firstly on whether he is declared unfit to own a firearm by the court, and failing this, whether departmental steps are instituted to have the member declared unfit to own a firearm. Pending this, even if a member is convicted of a firearm related offence, he or she may continue to have access to a firearm, possibly only on duty, but potentially even on the station, or 108 issue. Particularly if, for instance the prosecution decides not to proceed with charges against the member, it may be unlikely that departmental steps will be entered into and nothing may end up being done.

Ultimately however what may be the key issue here concerns the 108 and station issue systems. Despite what appears to have been an apparent retreat from it during the mid-1990s, it appears that the 108 system remains as the status quo. While

there are serious risks to police officers in South Africa these appear to derive as much from the fact that they are in full-time possession of firearms as any vulnerability which they may be exposed to if they are not. As Van Rensburg suggests, while the 108 issue system has something of the status of a "holy cow" it is also an anachronism that has simply been absorbed into current procedure without critical attention. Focussing on police suicides in the Northwest he points out that every single one of these was committed with a service pistol. At the same time "every one of these persons was off duty where there was no reason to have a firearm available". (1998, p. 236). This links to another apparently problematic aspect of the responsibilities of SAPS members. As suggested in Section 5, and discussed further in Section 7, an issue in relation to which there is a great demand for policy clarification is the expectation that SAPS member are available to "place themselves on duty" at any time. As long as this expectation remains it will be difficult to tamper with the status of the 108 issue as the SAPS's "holy cow".[74]

In concluding this section it is perhaps appropriate to return to two issues concerning the availability of equipment:

- The one issue concerns the avaialibility of equipment that is relevant to the safety of police officers. While most killings of police officers occur off duty, in the region of one third do occur on duty. A crucial question concerns what level of improvement in the safety of members can be brought about by improving their equipment. In addition to bullet proof vests the one example which appears particularly relevant is that of two way radios. It is fair to ask to what extent problems with the availability of radios adds to the vulnerability which members are exposed to?
- The other issue concerns the availability of intermediate weapons to SAPS members. As indicated in Chapter 3, it has been suggested that improving

[74] Regarding the issuing of firearms to police see Sarre (1996) for examples of variations in policy in different Australian jurisdictions.

the ability of police officers to use LTL force may assist in reducing the use of lethal force. The current status of the tonfa in the SAPS has the regrettable consequence that the majority of SAPS members have no access to an effective LTL weapon. As long as this continues to be the case, management of the use of force in the SAPS will continue to be primarily about dealing with the often devastating implications of the dependence by SAPS members on firearms.

7 System of operational command in situations of potential and actual use of force

As indicated in Section 1 of Chapter 3 a key distinguishing feature of the work of the police, and the use of force, is its "low visibility" from a managerial point of view. . How police deal with situations generally is therefore in some ways discretionary (though this should not be taken to mean that they can always "determine" whether they become involved in use of force situations).

Furthermore incidents of the use of force are unpredictable in terms of when they occur and, particularly when they involve the use of lethal force, do not necessarily occur on a regular basis According to one interviewee, for instance, in 14 years in the SAP and SAPS he had been involved in 3 shooting incidents. Iincidents of the use of LTL or intermediate force are likely to be far more frequent but are themselves, for many police not necessarily, frequent occurrences. At one suburban station the commander for instance, estimated that members at that station combined would tend to be involved in incidents where some level of physical force was used 2 or 3 times a week. These might involved, for instance arresting a drunk, an illegal immigrant, a person whose stolen or broken into a car, or intervening in a domestic violence incident.

In general, whatever their frequency, it is not possible to predict when situations which may require the use of force (or skill in avoiding the use of force) may arise and therefore there is little scope for supervisors or managers to issue instructions relating to them. As one interviewee said "to prejudge the situation is difficult. You might have an ordinary assault case and one simply wants to take a statement from the person. Because the police approach him he becomes abusive and the situation gets out of hand."

. may thus be suggested that it is inappropriate to talk of issues of operational command in relation to the use of force in general. However there would appear to be certain ways in which issues of operational command - where decisions or instructions relating to the use of force are made by a member other than the member directly involved in the use of force - do come into play in relation to the use of force.

Public order policing and large scale operations

Thus for instance the Public Order Police generally operate in terms of a highly defined command structure. The same may apply where other police units are engaged in public order policing activities or other large scale operations. Furthermore the process of preparing for such operations provides an opportunity for commanders to address issues to do with the use of force. In this connection one station commander said during briefings regarding the objectives of the operation "I always address the issue of the use of force. Senior management has a responsibility to highlight these issues before we go out on operation".

Anticipating possible violence

In certain situations it is possible to identify the fact that there is a direct risk of violence. According to one interviewee detectives may at times, for instance, face this type of situation, for instance if you are going to arrest a known bank robber. Particularly if one has knowledge before hand that the person is aggressive or violent, or that a number of people may be involved extra precautions can be taken to deal with, or avert, the risk of violence. Such situations therefore allow for a certain level of planning and therefore potentially a certain level of operational command to be applied.

Support by colleagues or "back-up"

Within the SAPS, and many police services, there is a generalised practise whereby members call for "back-up" in situations where they perceive a need for support. Interestingly here, in so far as there is a system of operational command at work, it is in some ways one where the "front line" member is the one who makes the decisions, at least in respect of calling for support.

There appear to be no written guidelines on when such calls for help are appropriate.[75] Whether a member calls for help will therefore depends on his or her own assessment of the situation. According to one interviewee a member will ask for assistance where he "sees that he is in a situation that he can't handle himself". This might be a situation that calls for a certain level of skill, such as an argument in a home. Thus it might be appropriate to call for the assistance of someone who may be able to deal with a situation, for example, more

[75] A further issue which was not explored for this report is to what extent issues to do with "back-up" are covered in training curriculums.

diplomatically, and not purely because one needs the support of more physical muscle or firepower. The interviewee added "if he calls for assistance he's professional enough to know that he needs assistance. I never had a situation of someone telling me 'you should have handled this yourself'".

Other situations where support is called for might include a vehicle pursuit. According to another interviewee in such a situation "we will always try to first get the back-up car with this car before we pull a car off". Here rather than one of the members in the vehicle being in charge they "will each act on their own initiative" but " talk to each other about how they are going to act". Even if the member arriving as back-up is a more senior member "it's always best to consider the 1st car at the scene to be in charge. The 1st car at the scene - it's his scene" he said.

While the system of providing back-up is often useful in many situations events may unfold too quickly or members may be unable to call in support for other reasons (such as the lack of two-way radios). In such a situation a member's only support will be from his or her partner. While on-duty police in South Africa generally work in pairs partly because of the risk of attacks.

Off-duty police

The support of one's partner and other colleagues may not however be available when one is off duty. As Geller and Scott state,

> "Police officers traditionally have considered their responsiblity for off-duty action to include aggressive intervention (termination of crime and arrest of suspects) and not just careful observation and notification of on-duty police. The arming of off-duty police .. facilitates such aggressive

action. But police frequently are at a tactical disadvantage while off duty, being out of radio communication with other officers and usually not having the opportunity to plan a course of action as they travel to a suspected crime scene. Nor do off-duty officers have the same perceived legitimacy to intervene that on-duty officers have when they are summoned to a disturbance by a civilian complaint. ... Moreover, off-duty officers who happen to be socialising in a tavern when armed robbers enter may be in no condition to outdraw the holdup men, yet the presumed imperative to take police action may prompt an ill-advised confrontation" (1991, p. 460).

In South Africa, as in many other countries, there is a generalised expectation that police members will "place themselves on duty" whenever they encounter a crime in progress. In terms of considerations of police safety as well as a concern to prevent inappropriate police action it would appear to be appropriate that this expectation be revisited at the policy level.

8. Review mechanisms - the investigation and monitoring of shooting incidents and other uses of force

The investigation of shooting incidents in terms of Standing Order 251

(a) Standing Order 251

Standing Order 251 provides, inter alia, that:

- Following a shooting incident a member must promptly report the matter to his immediate commander;
- That a member of officer rank should be immediately notified by the commander, if such a member was not present at the time of the incident,

so that he or she can visit the scene to investigate the circumstances of the shooting;

- That a full factual shooting incident report (SIR) under 32 specified headings should then be submitted; and
- That while the commander may conduct the investigation if an officer (of officer rank) is not available, in specified circumstances of a serious nature, such an officer must still visit the scene and verify the investigation that has been conducted;

Effectively therefore it is only actually mandatory that a member of officer rank attend the scene in these specified circumstances which are:

- where a person has been killed or injured;
- property seriously damaged;
- where the events reveal the unjustified use of a firearm and/or its reckless or negligent handling;
- where the events "cause particular public interest or are of such a nature that Head Office ought to be informed.[76]

As indicated in Section 2 as far as could be ascertained the term "duty officer" appears to have different connotations attached to it in different areas. In one areas it refers to station based members of officer rank (possibly including the Station Commander) tasked with investigating shooting incidents. In this area the duty officers based at the station are also tasked to investigate shootings in their station areas involving units such as the Flying Squad, Dog Unit, or Highway Patrol. In another area it appeared to refer to a member of officer rank based at the area radio control who stands in for the Station commander or other station based personnel when they are off duty (at night). Standing Order 251 also does not refer to a

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[76] The implication in several of the provisions therefore is that an evaluation needs to be made by the member's commander in order for the officer to be called to the scene.

"duty officer". It is not entirely clear therefore to what extent the position of duty officer and his or her involvement in the investigation of shooting incidents is a characteristic of certain areas or a standardised practise throughout the SAPS.

Furthermore while SO 251 specifies that a member of officer rank must attend the scene and investigate it does not specify that this person must complete the shooting incident report. It is therefore not entirely clear to what extent the specified officer who is called to the scene also tends to be the person who compiles the SIR.

If one interprets SO 251 to the letter it would therefore appear that it allows a degree of flexibility in its application. Furthermore we cannot assume that in all areas even the unambiguous aspects of SO 251 are rigorously followed. Out of the 14 responses received from SAPS Area offices, 12 (86%) explicitly answered yes to the question "Are copies of all shooting incident reports from stations in your area submitted to your [Area] office?". Only one Area gave a negative answer to the question indicating that "at some of the shooting incidents no officer visited the scene and therefore the shooting report was not compiled. On other cases members involved do not report to their station immediately."[77] According to the vast majority of responses received to the e-mail survey the system for reporting of shooting incidents is functioning entirely smoothly in the SAPS. Other evidence (see for instance Bruce and O,Malley, 1999) suggests that this is not necessarily the case.

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77 One Area did not answer the question directly.

(b) Processing of Shooting Incident Reports

According to the responses received to the e-mail survey it appears that, with a greater or lesser degrees of variation in many areas, where SIRs are completed they are processed roughly as follows:

- Where they are submitted to the Area office this may be to the "Nodal Point" or another component.
- The SIR is then passed on to someone in the (Negative) Discipline or other representative of the Personnel (or Human Resource Management) section and/or to a representative of the Legal Services section. The responsibility for review of the shooting incident report therefore may fall on either a representative of the (Negative) Discipline section or of Legal Services. Sometimes for instance the (Negative) Discipline person may check the report and if there is an indication that the shooting was unlawful or needs a legal input may consult with the legal section. The Negative Discipline section may then give instructions regarding further steps to be taken including for instance further investigation of the incident.
- In many areas the SIR may lead to a /5 file (a disciplinary file) being opened. In some areas this will be automatic while in other areas this will be only if the SIR alleges unlawful behaviour.
- A copy may also be referred to social work services (or other component concerned) for the purposes of notifying the social worker regarding the need to debrief the member.
- A copy may also be referred to the Provincial Commissioners office.
- If a member from another area (or station) is involved there may also be issues concerning informing the member's commander.

In general therefore the Area office, usually as represented by the (Negative) Discipline section has to evaluate whether there are any discrepancies or other

problems with the report and whether grounds existed for use of a firearm. If the answer to the latter question is in the negative the office also needs to see to it that criminal or departmental steps are instituted if this has not already been done.

Fairly frequently it appears that the major problem is that the report is unclear and the office may then call in the member involved or the member who compiled the report to clarify matters. Where it appears that there has been nothing irregular about the incident the file is then closed and an entry to this effect entered on the control register (where such registers exist).

According to an interviewee the main purpose of processing the SIR at area level is to evaluate "whether it has been dealt with appropriately in relation to whether the shooting was justified or not justified". The process at area level is therefore intended to serve as a check on the actions of the duty officer or other member who investigated the incident at the scene.

(c) If the shooting incident is believed to have been unlawful

At 15.5.2.8., SO 251 indicates that the SIR must indicate whether the police member's actions were "legal, or not (if doubtful this should be specifically mentioned)". One of the interviewees emphasised that such an indication could not be taken as a final judgement on the guilt of the member(s) involved. "Effectively it is an administrative decision as to whether or not to open a criminal case against the member" he said. Another interview indicated that this should be regarded as a " preliminary finding regarding whether the shooting was justified or not".

Where the duty officer decides that a shooting has been unlawful he or she should initiate the process of opening a criminal case. It would appear that again in this

regard practise may vary. If a criminal investigation is to be conducted therefore the Internal Investigation Unit, or detectives from the station to which the member belongs, may be called in for this purpose. If a person is killed, the SAPS Act requires that the ICD be called. Where a person is killed, if there is no preliminary finding of unlawfulness, an inquest rather than a criminal docket must be opened..

According to one of the responses to the e-mail survey if the incident is believed to have been unlawful both a criminal case and a disciplinary "investigation for the purpose of departmental steps" are conducted. In addition consideration is given to having the member declared unfit to possess a firearm in terms of the Arms and Ammunition Act. Another area response indicated that "a notice of contemplated suspension would be served on the member" and by this time "a members firearms would normally have been taken away by his Commander either on own initiative or on instructions from [the area] office".

According to one of the interviewees however the way in which the investigation is conducted and evaluated may frequently be characterised by a "protectionist attitude" particularly if it is perceived that the member was acting within the scope of employment. "Unless it is a clear cut case of murder, they will try and protect him as far as possible" he said. In addition, there may be a risk of the scene having been tampered with. As another interviewee put it " a lot can happen before he [the duty officer] gets to the scene".

Replies to the question "Would there be circumstances where issues relating to particular shootings would be taken up with someone outside your office?" mostly indicated that where this occurred this would involved referring the case to either the Deputy Public Prosecutor, or Internal Investigating Unit or detective responsible for investigating the case, or the Independent Complaints Directorate, or the Station Commander of the member in question in relation to the need to

institute disciplinary steps. Effectively therefore where such incidents are "taken up with someone outside the office" other than when this is for the purpose of clarifying the report, this is almost exclusively in relation to the prospect of further steps of a criminal or disciplinary nature.

In a few instances responses indicated that the member might also be referred to the State Attorney. Thus according to one of the responses from a Provincial office the SIR might be referred to the State Attorney in order to assist member to compile statements "for the investigations authority". This would only apply to members involved in incidents in execution of their duties. "Normally this is where there is presumption that member has overstepped legal boundaries." Another response indicated that if the member requires assistance with making a statement for the purposes of an inquest, or other legal advice, then he is referred to the area office. "If it appears that it is in the interests of the state to assist the member, then such assistance is given. If not, due to a conflict or potential conflict of interest, then he is advised to see his own attorney".

(d) Cooperation by police officers with SI investigations and the right to remain silent

One interviewee said that he could not recall an incident "of a guy refusing to speak to the officer completing the shooting incident report". However at 15.4, SO 251 provides that on arriving at the scene the Commander or other senior member must warn the person who fired the shot "in accordance with the Judge's rules" before he questions him. The shooter is therefore not actually compelled to make a statement about the shooting. One station commander said that the shooter "has right to call lawyer from legal services a area level. Sometimes you will go to a

scene and will advise the constable that "I think there will be a problem" and that he should speak to lawyer".

(e) Records of shooting incidents

In different areas it appears that different systems for recording shooting incidents are used. Sometimes areas make use of more than one of the following systems.

- A number of responses indicated that they made use of a "register"
- As indicated in section 2 the SAPS has a national database, the PERSAP system, for recording of data from SIRs. However only a minority of responses made reference to PERSAP. One area indicated that they had no access to the PERSAP system as " the terminals were deactivated and not replaced. Thus no registering can currently take place".
- Others indicated that records were kept through the /5 file system. One area indicated that these files were numbered so that a person could "with a glance perceive the number of shooting incidents the members were involved in".

In addition to being filed at the Area the report may also be filed at the station. At one station the commander indicated that the station maintained a general file for SIRs. The file is also used by logistics to check up on ammunition which must be replaced. It also means that the shooting incident is available for instance to the duty officer if he or she is called to court to lead evidence.

Another station commander indicated that copies of the report would be placed both in the relevant case docket and in the members file at the station.

Investigation of deaths in police custody or as a result of police action by the ICD

Another measure which provides for the review of uses of force is ss53(2)(b) of the South African Police Services Act, 58 of 1995. Sub-section 53(2)(b) provides that the ICD must investigate all deaths in police custody or as a result of police action. "Deaths as a result of police action" are also usually the result of shootings by members of the SAPS. It would appear that the focus of the ICD and thus ss53(2)(b) investigations is also primarily on issues of legality. In particular, Section 222 of the Interim Constitution, the provision in terms of which the ICD was originally established, indicates that the purpose of the ICD is to ensure that "*offences and misconduct* allegedly committed by members of the Service are investigated in an effective and efficient manner" (italics added).

Incident Investigations in the Public Order Policing Services

As is the case with all components of the SAPS, if the Public Order Police are involved in a shooting incident an investigation will also be conducted in terms of SO 251. However the POP also make use of another system of incident investigation which is not provided for in terms of formal policy documents but implemented in terms of the obligations of the National Head of Public Order Police to investigate the functioning of the POP and operations in which they are involved.

The National Head therefore has a discretion to decide whether or not an incident needs to be investigated. Investigations will generally be conducted where the National Head thinks there is an irregularity or where it appears that there was a departure from the policy of the POP. The Commissioner may therefore authorise such an investigation in cases where it appears that force was used inappropriately, not used when it should have been, or where it appears that insufficient force was

used. In certain circumstances the force used may be lawful but the person conducting the investigation may be able to say, out of their experience, that "if you used this or this or this option you could have got a better result". The investigation therefore potentially applies judgements based on skill and experience and does not only use legal standards.

Where the Commissioner calls for an incident investigation, the unit in question will have to complete a report. If that is not sufficient, another person may be appointed to conduct the investigation. During some of the investigations a debriefing format is used in evaluating whether an action was appropriate. The result of these investigations may be used to adapt training programmes or even policy with a view to improving the effectiveness of the POPS.

Mechanisms to identify stations or members linked to a high number of shootings

In response to the question in the e-mail survey "does your office ever look at trends in shooting incidents (e.g. to identify stations with high shooting levels, comparing one year to another)?" ten of the fifteen areas answered that they did not and four (27%) indicated that they have some such mechanism in place.

Of these four areas, one indicated that "the statistics are compared with the previous year and individually as well. The rate of shootings is also compared to the ratio of crime and incidents reported during a specific period". The other positive responses appeared to indicate that whatever monitoring of stations was undertaken was fairly informal. One indicated that shooting levels at stations were compared on an "informal basis" emphasising that "due to differing manpower at station levels a raw figure is not an accurate reflection". Another response was that the "shooting register is perused by the Area Commissioner on a regular basis and he draws the attention of the Station Commander or Unit Commander to the high

incidence of the use of force if applicable". One Provincial response also indicated that Area Commissioners do take "remedial steps" where stations are identified as having a high number of shooting instances as well as a high number of civil and criminal cases arising from shooting incidents. "These steps include comprehensive training lectures by Legal Services at Area level regarding the use of force".

In response to the question "Are shooting incident reports ever analysed from the point of view of identifying members who appear to be involved in a particular high number of shootings?" seven areas answered in the negative while eight (53%) indicated that they did have such systems in place. However in most of the latter cases the responses indicated steps which might be taken if such members were identified without clearly indicating how such identification took place. The few which indicated how such identification took place appeared to mainly rely on the /5 file for this purpose. One said "This is the reason why incident reports are filed on the individual members /5 file. A general file will not enhance individual control or identification of certain behavioural trends".

In relation to situations where members were identified who were involved in an apparently high number of (lawful) shootings one area indicated that the "current Area Instruction is that when a specific member has more than three shooting incidents in a year, the member is interviewed by Legal Services and then tested by Psychological services to determine if a problem exists and to evaluate his or her state of mind. The two divisions compile reports which are filed on the member's /5 file for further reference". In a number of other areas it was also indicated that the member might be interviewed by the Area Commissioner or the Station commander. In other areas it was indicated that steps taken would take the form of an investigation after which the member might be interviewed and dealt with by means of disciplinary measures such as an oral or written warning, or sent for "remedial measures" such as the help of social or psychological services, or

the member might be transferred to another post. In some areas it appeared that the member would however have to have been involved in for instance "a high number of shooting incidents which also includes unlawful reports" for any action to be taken.

In another area it was indicated that while no systematic analysis took place, it had occasionally happened that members were identified who were involved in an exceptionally high number of shootings and who were "transferred to places where they were less likely to be involved in shootings". Two responses, one from a Provincial office, indicated that the identification of members of this kind was actually a responsibility of the members Station or unit commander. The area office said that where however it noticed problems of this kind it would be taken up with the members comm anding officer "who has to inform members that he is jeopardising his career in the SAPS". The Provincial office said that "if the member is involved in a number of unjustified shooting incidents, an Article 11 (of the Arms and Ammunition Act) investigation is requested by this office from the area office".

Discussion - systems of review of the use of force in the SAPS

Those evaluating the system of shooting incident investigation in terms of SO 251 might be inclined to focus on questions regarding the integrity of the system. If they are inclined to be suspicious of the police they might even be inclined to see the system as nothing but an elaborate system for covering up abuses of force by the police. It should be borne in mind however (see Chapter 2) that a certain proportion of these investigations do in fact declare the shooting to have been unlawful, though this happens more frequently where shootings occur off duty.

Whatever the truth may be about the integrity of these investigations what is apparent is that investigations under SO 251 never address behaviour other than that which, in Geller and Toch's words "merits *punitive* responses". While Standing Order 251 provides that the shooting incident report should contain detail on a number of questions, the report is ultimately concerned with whether the shooters actions "were legal or not" (at 15.5.2.8).[78] Investigations by the ICD, in terms of ss53(2)(b) are similarly focussed on issues of legality.[79]

However approaches taken to incident investigation within the SAPS are not uniform in this respect. In particular the Public Order Police make use of a system of incident investigation which evaluates incidents partly in terms of standards of skill or experience. In addition to being instructive for those who are involved in, and those whose actions are the subject of, the investigation, these investigations may be used to feed into modification of POP policy regarding the use of force by members or into the improvement of training programmes.

Other than in the Public Order Police, instead of constructive criticism or advice, all that members ever face, particularly where they are involved in shooting incidents, is a type of double jeopardy. In terms of the requirements of the job he or she must act. As soon as he or she has done so, where such action involved shooting a firearm, he or she will be faced with an inquiry whose sole purpose is

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78 Even where "remedial" rather than disciplinary measures are applied following a SO 251 investigation it appears that these may focus on the issue of legal standards. Thus one area indicated that "remedial" measures would be likely to be instituted where "it is necessary to explain the national instruction regarding the use of force to a member".

79 It may legitimately be asked whether SO 251 investigations, or investigations conducted by the ICD in terms of ss53(2)(b) for that matter, are not therefore essentially criminal investigations rather than processes of administrative review. There is not a watertight distinction between these two types of processes. However to a large degree these types of processes primarily serve the purpose of confirming that most of the incidents in question are not criminal. To some extent where evidence of criminality is uncovered these investigations lead to a criminal investigation being initiated, rather than themselves constituting such an investigation (see the discussion in Section 10 regarding uses of force declared to be unlawful).

to discover whether he or she acted criminally or not. As a result of the inquiry he or she will either be cast as a hero or a villain.

As is the case in criminal investigations, police members in SO 251 investigations may make use of a right to remain silent. The report notes the fact that, at least in the experience of one interviewee, members rarely if ever make use of this right. In a certain sense it would therefore appear that members usually cooperate with SO 251 investigations. However this is to miss the point. If one is faced with an enquiry where the only options are either to be caste as the hero or the villain of the piece one will be ill-advised not to be cautious about what one says. Rather than making use of the opportunity to analyse and evaluate one's handling of the situation one is virtually compelled to give a one-dimensional narrative of events which focuses purely on emphasising the degree to which one's actions were legally and otherwise justified.

Referring to the example of dog units who are called to serious crime scenes one of the responses to the e-mail survey notes that "there are also members who, because of the type of function they perform, are more prone to be involved in shooting incidents". It is true that police officers who are allocated to certain units or assignments might be more likely to encounter situations where there is the potential (need) for the use of force.

It is also true however that some police officers may deal with such situations effectively while at the same time minimising the need for force to be used, while others may inevitably escalate the situation. But as one interviewees, a staff member in one of the SAPS legal sections involved extensively with the review of SO 251 reports, indicated "a lot of unlawful shootings don't come down to criminal intent but to a lack of experience". Police officer who use force ill advisedly might therefore for instance be well motivated, but ill-experienced,

officers who lacks understanding of the potential for carrying out their work while minimising levels of violence. But SO 251 is of little help to the inexperienced member or to members generally who seek to conduct themselves in terms of the law other than in that it, generally, serves to confirm that they are not criminals.

In responding to the question regarding the review of trends at stations one of the Provincial offices responded that these trends are evaluated by "obtaining statistics from the computer and discussing it at the Provincial Disciplinary Committee". However they said "If all or most of the incidents were justified the committee will just take note of it. If not the committee will decide on steps to be instituted." What this points to is the fact that the legally orientated framework which is dominant in the SAPS fails to provide adequate tools for proper critical evaluation even of levels of shootings which are cause for real concern.

A positive sign is that in some areas some attention is given to the issue of identifying members who appear to be linked to a relatively high number of shooting incidents. Where measures do not involve disciplinary procedures or reprimands they may involved "educational steps" but these it seems are only ever focused on explaining the law. At other times members may be referred to SAPS psychologists or social services. In such cases therefore the presumption is that something may be "wrong" with the officer. While this might be the case what appears never to be considered is that part of the problem may be the inadequacy of the framework which the SAPS uses for evaluating uses of force.

One estimate, based on recorded shooting incidents in three provinces, is that SAPS members are involved in over 6 000 shooting incidents per year (Bruce and O'Malley, 1999, p. 21). Where shooting incidents are dealt with in terms of the formal procedures of the SAPS a significant organisational process is set in motion. This organisational energy could, it would appear, be used far more

productively but for this to happen the SAPS will need to develop new frameworks for review.

9. Systems for providing support to police officers suffering the consequences of stress and exposure to traumatic incidents

General role played by the helping professions

In 1999 the "helping professions" in the SAPS consisted of about 350 members including 87 psychologists, 170 social workers and about 90 members of the chaplaincy services. While there are now psychologists and/or social workers in all areas in Gauteng, this is unfortunately not the case in the rest of South Africa despite a significant effort in recent years to decentralise staff.

The role of the members of the helping professions has already been alluded to in previous sections such as that dealing with selection (section 4), that dealing with the issuing of firearms to SAPS members (section 6) and the section on review (section 8). Very broadly the role played by the helping professions in contributing to the management of the use of force is through the operation of various systems of support for members of the SAPS. These include:

- The development of systems for the training of Employee Assistance Programme (EAP) "practitioners" equipped to identify occupational "risk factors" (such as low productivity, alcohol abuse, high levels of aggression) and initiate interventions (in this regard see Schoeman, 1998).

- Training aimed at the development of peer support systems - focuses on support structures available to police with an emphasis on the ability of colleagues to help each other in dealing with difficulties experienced in the work environment. Intended to improve the ability of colleagues to deal with stress, conflict, and interpersonal or group dynamics including issues of diversity and transformation.

A 24 hour crisis line is also staffed by members of the national office. However a person needing psychological counselling will generally be referred out to another professional (this can be paid for by the police medical aid). While the helping professions do also provide general support to members or their families the focus of the helping professions is primarily on proactive work including training, evaluation (see Section 4), and debriefing

Critical incident debriefing

The system for providing trauma - or critical incident - debriefings to SAPS members involve all three helping professions in working together. A standardised model is used which aims to create a safe environment where person can express negative feelings. Debriefings may be conducted on a group or individual basis with the ideal being that a debriefing session take place within 48 hours of the traumatic incident. The debriefing is therefore a once off event but a need for further support may be identified at the briefing session. Emphasis is also given to the debriefing of debriefing staff.

SAPS national instructions now require that traumatised persons, such as those involved in shooting incidents, be referred to social work services or other person responsible for debriefing. While the person referred does have a choice as to whether to make use of the service, there has been a major increase in the number of debriefings. In 1997 for instance the SAPS did 5329 debriefings. One rough estimate is that 70% of debriefings have been for members who for instance have attended crime scenes or vehicle accidents, had a colleague killed or themselves been shot at. Possibly 30% of debriefings therefore have been for incidents where members have primarily been involved in the use of force (rather than the target of violence).

Particularly since about 1998 strong emphasis has been given to publicising the fact that there will be no negative consequences attached to use of the helping professions. In certain situations however this may create something of a "Catch 22" situation for the staff involved as members may disclose behaviour or information which strictly should be drawn to the attention of their commanders. Where these situations arise the approach taken is that helping profession staff should try and convince the member to raise the issue with the appropriate person.

At this stage there are in the region of 350 trained debriefers of whom nearly 300 are helping profession staff. The programme is also looking into the possibility of using members, particularly those in high risk units, to be the first line debriefers.

Discussion - systems of support and the paradox of the problem officer

In looking at the issue of police officers who misuse force it is necessary to acknowledge that these may extend along a continuum from "officers with a horrendous problem" to "clearly non-problem officers" (Toch, 1996; p. 96). While the personal profiles and motivations of these police officers are not necessarily uniform it is not infrequently a characteristic of such police officers that they are in many ways highly committed to what they perceive, possibly in fairly crude terms, to be the objectives of the police organisation. While their approach to encounters with citizens "leads to escalation of conflict" (p. 98) they may not necessarily be corrupt police officers - who cynically use the authority conferred on them for personal aggrandisement - but might for instance see themselves as dedicated crime fighters .

While the psychological profile of officers of this kind is not uniform some of them may, for instance, be driven by a need for approval or lack of self esteem, and may respond to social pressures within the police organisation in terms of which "the

willingness and ability to handle physical conflict are requisites for peer acceptance" (p. 102). Other officers may become involved in violence because they have "limited verbal or interpersonal skills" (p. 104) and therefore feel unable to assert authority other than through violence. Whatever the underlying causes Toch suggests that one option may be to "assist the person to gain insight into his or her patterns of violence and help the person discover or invent a different mode of response to situations in which he or she reacts violently"(p. 108).

For this to be possible however depends firstly on such officers being identified and secondly on their managing or being assisted to recognise that their behaviour is not only unacceptable in terms of organisational policy, but also ultimately may undermine their own interests. If this is possible there may be scope for deepening the proactive violence prevention role of the helping professions by focussing on developing programmes orientated towards dealing with officers manifesting violence risk behaviour both in their personal lives as well as on an occupational level. If, as was suggested in section 8, systems of trend identification are utilised more effectively, the ability of the SAPS to identify problem officers may be strengthened.

Where systems are established which can identify risk behaviour and therefore potentially lead to engagement with such officers at an early stage, programmes and interventions by members of the helping professions may therefore be of value in assisting such officers. Timely action in this regard may save not only careers but lives, and contribute to the development of effective and professional police officers.

However this option can only be considered where such officers, while their style of operating may lead them into violent confrontations, have not as yet committed any, particularly serious, violations of the law. However in many cases it may be

too late. Ultimately those who flagrantly and deliberately violate the law will need to be dealt with through the legal and disciplinary system.

10. The SAPS complaints reception, internal investigative and disciplinary systems[80]

Reception of complaints

In general complaints against SAPS members might either be complaints about service delivery or complaints which relate to an alleged crime or misconduct committed by a member. Complaints against SAPS members can be lodged in one of the following ways:

- Interviewee's indicated that an officer is required to visit the cells every day in order to ensure that the needs of those in the cells are taken care of. If someone for instance complains that they have been assaulted the person should be allowed to open a case.
- Complaints can be lodged with the ICD. Inter alia the anti-torture policy (see Section 1) provides that a register be completed in relation to each person taken into custody. The register provides for an indication to be given if the person has been assaulted and for the person in custody or medical practitioner to notify the ICD regarding allegations of torture.
- A person who is not in custody may be able to lay a complaint at the charge office.
- Complaints may also be lodged by letter, for instance by a person's attorney, and, according to one interviewee, even by phone.

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[80] For a more in depth review of the SAPS disciplinary system and problems being faced currently see Newham (1999).

Complaints against SAPS members relating to uses of force would generally amount to an allegation that a member committed a criminal offence .They would be likely at minimum to amount to an allegation of assault charge if not something more serious.

Possible consequences of alleged unlawful use of force or firearm

(a) Criminal or disciplinary investigation and charges against member

A criminal investigation might therefore be initiated against a member in relation to the use of force either because a complaint has been lodged by a member of the public (see SO 101), or else due to an internal process such as a SO 251 investigation where it has been concluded that the member acted unlawfully. In addition SO 143 provides that where a civil claim received by the SAPS amounts to an allegation of assault, a docket should be opened.

As mentioned (see Section 8) in relation to shooting incidents declared to have been unlawful, where a criminal investigation, is initiated procedures followed are not necessarily uniform. The investigation may for instance be based at the station or unit in question, or, particularly if it is more serious, be conducted by the Internal Investigating Unit or other detectives or internal units. Furthermore where the complaint is lodged with the ICD, the complaint may be dealt with either by the ICD or by SAPS investigators as per ICD instructions. (Where the case is one of a "death in police custody or as a result of police action the ICD is required, in terms of ss53(2)(b) of the SAPS Act to carry out an investigation itself).

Where a person is killed the docket which is opened might be a murder or inquest docket depending on the conclusions reached by the investigating member though this decision can be changed.

If the investigation is of a disciplinary nature this is likely to be carried out, under the instruction of the Station or unit commander following which a report will be submitted to the disciplinary unit at area level. The present practise if for a disciplinary investigation to run in parallel with the criminal investigation.

(b) Withdrawal of firearm

As indicated in Section 6 there may be a variety of circumstances where questions concerning whether a member's firearm should be withdrawn will arise. As indicated, in relation to alleged offences by members it appears that the issue will primarily be regarded as relevant where it appears that someone was involved in a shooting incident, or other incident of violence, which was not lawful. However even in these circumstances it appears that such withdrawal is not mandatory or automatic. Those responsible might still evaluate what steps to take in terms of, for instance, the members current psychologically stability.

Where the fire-arm is withdrawn this should be at least until a full investigation has been completed..

(c) Suspension (see SO 106)

As is the case with the withdrawal of firearms the suspension of members is not mandatory but is considered where a member faces criminal charges. A member can only be suspended where the misconduct is regarded as serious. Beyond this the key consideration should be "whether there is a need in terms of the interests of the public or the service to relieve members of their powers as an official" while other considerations which may be relevant would include whether the member is likely to interfere with investigations if he or she is not suspended, the strength

of the evidence against the member, the possibility of discharge, or the personal circumstances of member.

The power to suspend has been delegated to area commissioners. In terms of regulations whenever a person is suspended he must receive a salary. Here again though there is a discretion regarding the seriousness of the case and other factors.

(d) Impact on possible promotion

If a member is facing criminal or disciplinary investigation this may result in any promotion which was being considered being "held back".

(e) Criminal and/or disciplinary charges

The process of investigation may therefore lead to criminal and/or disciplinary charges being placed against the member. Once a criminal investigation has been initiated it is supposed to run its full course with the docket eventually being submitted to the Deputy Public Prosecutor's (DPP's) office. The DPP may decide to prosecute. Otherwise cases where a fatality is involved will be referred to the inquest courts. In recent years allowance has also been made for "lesser cases" (including not only assault but also GBH cases) to be referred to a Senior Prosecutor.
Commanders would generally initiate disciplinary proceedings. Formal or informal warnings would also be issued by the station commander but, where the matter goes to a departmental trial, this is currently dealt with by disciplinary officials based at the area level.

While in theory disciplinary proceedings can be completed prior to the completion of a criminal case, where the latter case is proceeding there is a general tendency

to delay disciplinary proceedings. Factors which appear to be behind this tendency appear to be considerations relating to jeopardising the criminal trial as well as considerations to do with witnesses such as not wishing, if possible, to put them "through the same ordeal twice".

(f) Dismissal

Where a dismissal is authorised this is usually by means of a disciplinary hearing.[81] Even where a member has been acquitted in a criminal case the departmental prosecutor (disciplinary official) should still apply his or her mind independently to the question of whether there is the prospect of the member being prosecuted successfully at the departmental level. However departmental prosecutors may sometimes be overly influenced by the fact that the criminal prosecution was unsuccessful despite the fact that departmental prosecutions require a lower standard (a balance of probabilities) of proof. At the same time, as one interviewee emphasised one "always has always has to look at the reason for the failure of criminal prosecution". Ultimately, he said, "one is still working with one incident, one set of facts, one set of witnesses" and a witness who lacks credibility in a criminal court may be just as lacking in credibility in a disciplinary hearing.[82]

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81 Section 36 of the SAPS Act provides for members to be automatically discharged on account of being sentenced to imprisonment without the option of a fine. It appears that members may also be discharged by a section 34 enquiry.

82 Appeals against the findings of a disciplinary enquiry go to the Independent Appeals Board.

(g) Civil claims

Where civil claims are lodged against SAPS members these are dealt with by SAPS legal services. Once the claim is settled, if the SAPS is held liable or accepts liability the State Attorney should address the matter of whether the member "forfeits" or "enjoys" state protection. The key question here is whether the member acted within his or her duties and acted in good faith. If the member acted outside of these standards he or she should forfeit state protection and the state may exercise its right to recover the amount paid out from him or her. Statistics on the April 1995 - March 1998 period indicate that in 96% of cases of common assault and 98% of shooting incidents in relation to which the SAPS made payments against civil claims the SAPS members concerned were judged to enjoy state protection (Bruce and O'Malley, 199, p. 49).

Disc··'on - effective and appropriate measures against members who de misuse force

.ationally, for a variety of reasons the prosecution of complaints against .ice, not only at the departmental level, but also in the criminal courts, is frequently unsuccessful (Maguire and Corbett, 1991, p. 37; Skolnick and Fyfe, 1993, pp. 196-197; Klockars, 1996, p. 3) This appears particularly to be the case where these complaints are in the form of assault charges by arrested persons. Even where independent investigative agencies are involved the rate of such prosecutions is not necessarily higher (Perez and Muir).

But this should not obscure two important facts. The first is that police like all other citizens are entitled to be treated fairly in terms of disciplinary or other procedures against them. As Toch says this, therefore means that where officers have accumulated "a long string of unsubstantiated charges" (p. 110) they must,

where appropriate still be given the benefit of the doubt. At the same time, where there are substantial grounds for taking disciplinary action, or pressing criminal charges against police officers, this should be done.

It is therefore important to draw a distinction between issues which primarily draw attention to the need for support to the officer and actions which should have disciplinary consequences. (In either type of situation the implication may be that the police officer concerned should be deprived of his or her firearm(s)). Those who deliberately abuse the capacity to use force should do so with the full knowledge that this is disapproved of by the police organisation which they work for and that in doing so they are placing their careers, and even their freedom, in jeopardy.

Chapter 6 Main Findings And Recommendations

Functioning of systems relevant to the management of the use of force within the SAPS

This report primarily concentrates on understanding the types of systems, relevant to the management of the use of force, which are currently in place with the SAPS and on evaluating issues relating to their operation. However the report does not evaluate the degree to which the systems concerned are actually functioning in an optimal manner. Some of the practises reflected in this report may reflect the status quo in areas where systems for management of force are in fact functioning quite well (or the opposite) and might not therefore reflect the general operation of these systems throughout the SAPS.

Recommendation 1: An audit should be conducted within the SAPS in order to evaluate to what extent systems relevant to the management of the use of force are operating in an optimal manner. Furthermore measures to ensure conformity with minimum standards should be identified and implemented, and examples of good practise should be publicised in the SAPS.

General characteristics of the management of the use of force within the SAPS

With the exception of specific divisions such as the training division the system for the management of the use of force has a number of general characteristics. These include:

- Lack of a clearly defined and articulated policy;[83]
- Review processes purely evaluate the use of force in terms of legal standards and issues of skill relating to the use of force, and in avoiding the need to use force, are not addressed other than in training;
- In so far as force is "managed" within the SAPS the focus is almost exclusively on the use of firearms. Little attention is given to issues relating to LTL or intermediate force through processes of review or any other organisational process other than in basic training.

Need for development of the legislative and policy framework

As indicated in Chapter 5, Section 1 limited progress has been made in the process of amending legislation relating to the use of lethal force in affecting arrest. The current position is indefensible in relation to Constitutional provisions and the commitment to Human Rights standards as well as from the point of view of a commitment to protecting human life. Furthermore the current lack of clarity can be of little benefit to the police in understanding how to act in situations of the use of force. In this respect it is worthwhile to bear in mind Geller and Scott's remark that "marked decreases in shootings by the police" which have followed the introduction in the US of more restrictive shooting policies appear also to have been associated with

> "increases in the proportion of the shootings that are responsive to serious criminal activity, *greater or unchanged officer safety*, and no resultant adverse impact on crime levels or arrest aggressiveness". (1991; p. 465, italics added)

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[83] The word policy as used here means "the general standard that guides relevant conduct in an agency and from which subordinate rules and procedures are ultimately derived" (Klockars, 1996, at endnote 11).

Recommendation 2: An amendment to section 49 of the Criminal Procedure Act which clearly defines the circumstances in which the use of lethal force is justified, and which broadly upholds a "defence of life and against serious injury" standard should be formulated and passed as a matter of urgency.

Furthermore the SAPS lacks a clear and accessible statement which articulates organisational values or policy in relation to the use of force.

Recommendation 3: The SAPS should develop a statement of policy relating to the use of force which encourages or directs members to:

- Protect and value human life;
- Conduct their duties in a manner which seeks to avoid the use of force;
- Where it is necessary, to use force effectively according to the principles of minimum force.

Furthermore there is a generalised expectation that SAPS members will "place themselves on duty" at any time of the day or night when they encounter criminal activity while they are off duty. As far as could be ascertained this expectation is however not defined anywhere and is not addressed through any process concerned with the management of the use of force. This expectation has a number of undesired consequences including no doubt contributing to the stress which SAPS members are exposed to, sometimes contributing to foolhardy action on the part of SAPS members, and feeding into the need for them to be armed while off duty which itself feeds into attacks on SAPS members as well as other undesired consequences.

Recommendation 4: The SAPS should define in policy the responsibilities of members when off duty and issues relating to "placing themselves on duty". The option should be considered that while off-duty SAPS members should have the

same legal obligations as other members of the public. As should be the case with all members of the public responsible and civic minded attitudes should be encouraged.

Other issues which have implications for the legal and policy framework are raised in what follows.

Systems of review of individual incidents of the use of force

The present system of the review of shooting incidents has positive benefits in terms of serving as a mechanism of control over the use of firearms by SAPS members. At present it is not at all clear however to what degree this system is consistently followed and this issue should be evaluated (see Recommendation 1). However it is also apparent that the system has limited value as a mechanism for evaluating incidents of the use of force by members of the SAPS. This is most obviously because issues of the skilful handling of situations of the potential use of force, in relation to considerations of officer safety, avoiding unnecessary uses of force, and the effective handling of such situations are never addressed.

Recommendation 5: A system of incident investigation should be developed and implemented which is intended to address issues of skill relating to the handling of potential use of force situations. In developing such a system attention could be paid both to the model currently in use within the POP as well as that put forward by Klockars (1996). While there are issues which would need to be addressed in refining and implementing such a systems it can in general be assumed that such a system of incident investigation would come into play other than when a finding is made that a member deliberately violated the law. Furthermore this system

should potentially not only be applied in relation to situations of the use of force involving firearms.[84]

It is likely that efforts to implement such a system will be met by some level of distrust from members of the SAPS particularly if they are concerned that any frank disclosures by them will result in criminal or other legal liability. (See the discussion of issues relating to police cooperation with S) 251 investigations at the end of Chapter 5, Section 8). Effectively such distrust may virtually eliminate any possibility that such a system will have any beneficial impact. This dynamic has been recognised recently in the US where a national data collection system relating to the use of force by police, which relies on self-reporting by individual officers, is declared in terms of legislation to be "immune from legal process". The legislation specifies that data identifiable to an individual shall not be "used for any purpose in any judicial, legislative or administrative proceeding" (quoted in Garner and Maxwell, 1999, p. 27).

Recommendation 6: Legislation should provide that the content of reports compiled in terms of the aforesaid system of incident investigation cannot be used in legal or disciplinary proceedings against the member(s) whose actions are the subject of such investigation.

In order for the SAPS to develop a culture which supports members in seeking to avoid unnecessary uses of force managers and others should recognise and affirm examples of good practise in avoiding the use of force along with other aspects of policing which are worthy of commendation.

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[84] There may also be value in evaluating SO 251 in relation to whether it meets the needs which it is intended to serve.

Recommendation 7: SAPS systems for recognising and rewarding policing excellence should be extended to address the issue of excellence in minimising and reducing the need for force to be used.

The management and use of firearms

It is apparent that the current system, in terms of which virtually all members are issued with firearms either in terms of the 108 or station issue system, is something of an anachronism which cannot stand up to scrutiny particularly in terms of current knowledge about the risks associated with firearm possession. The system is associated with a number of problems including high levels of suicides by SAPS members, unlawful and unjustified killings and other shootings by SAPS members while off duty, other undesirable behaviour including the use of firearms for the purpose of intimidating persons including family members, as well as creating a motivation for, and escalating levels of violence in, attacks on police officers. On balance it appears reasonable to argue that the undesirable consequences associated with the current state of affairs outweigh any beneficial consequences that may arise from it either for SAPS members or South African society.

Recommendation 8: Alternatives to the 108 and station issue system should urgently be explored. The preferable position which should be adopted should be one where the "default" assumption is that individual police officers should not be provided with service weapons off duty unless this is clearly motivated for. Furthermore issues concerning the ownership of private firearms by SAPS members may have to be addressed as well. In addressing the issue the fact that it is in some ways a "sensitive issue" in police circles should also be taken into account. The process of identifying alternatives should take into account the concerns of, and seek to involve, SAPS members at all levels.

One of the responsibilities of police managers, particularly at station and unit level, is to enforce a rigorous system relating to issuing of firearms to SAPS members. This should apply under the present 108 and station issue system as well as if the system whereby firearms are issued is changed. Two key, and to some extent overlapping, considerations which need to be addressed in managing the issuing of firearms to members are risk behaviour and risk factors (discussed further below) and legal standards relating to firearm ownership and possession. Addressing the issue goes beyond simple enforcement of the law but the minimum standard is that firearm related legislation also needs to be enforced in relation to members of the SAPS. Where members are declared unfit to possess firearms this will have implications for their careers in the police service.

Recommendation 9: Standing Orders should provide guidelines relating to circumstances where SAPS members should be denied access to firearms either on a temporary or permanent basis. These guidelines should taken into account risk behaviour and risk factors and legal standards. The guidelines should also identify procedures which should be followed in evaluating whether to re-issue firearms to SAPS members.

Issues relating to Less than Lethal Force and tactics intended to minimise levels of violence

One of the characteristics of the management of the use of force within the SAPS is that those systems which do exist and are functioning, are focussed overwhelmingly on the use of firearms. Some of the recommendations made thus far have implications for the use of less than lethal force as well as for lethal force. However what needs in general to be promoted is a greater emphasis on weapons and skills which will enable police officers to minimise the need for force to be used while carrying out their work effectively.

Recommendation 10: The present situation whereby most members do not have access to the tonfa or other intermediate weapon (this conclusion needs to be confirmed) limits their capacity to use force effectively in situations where this is necessary, increases their vulnerability, and increases reliance on lethal force. It needs to be recognised as a serious problem and measures put in place to address it.

In service training systems

There are problems with the provision of in-service (refresher and skills development) training. Furthermore such training, in so far as it is provided, appears to be constituted primarily by firearm training and lectures regarding legal developments. While it is recognised that resources are limited and there are also difficulties associated with the availability of personnel for training, the provision of ongoing training to members, is a necessity for effective policing.

Recommendation 11: The SAPS should set minimum standards relating to in-service (refresher) training, and put in place systems to ensure that these standards are met. Inter alia this in service training should focus on intermediate weapons (currently the tonfa), weaponless tactics, issues of skill in avoiding the use of force, and other relevant issues, in addition to firearm training. Issues of prioritisation, for instance in relation to providing training to police members based in areas where policing requires higher levels of the use of force, should also be addressed properly.

Other equipment

It should be noted that some interviewees mentioned shortages of two way radios and bullet proof vests and that the availability of these types of equipment has

implications for police effectiveness, officer safety and also the ability to minimise the need for force to be used.

Identification of risk behaviour and factors

The SAPS suicide prevention programme has drawn attention to the need to identify suicide risk behaviour in order to prevent suicides. Within the SAPS there is also to some extent a practise of taking precautionary steps where members demonstrate behaviour which suggests either that they may not be capable of coping with certain work related situations or may pose a risk to themselves or other people. However it appears that there is room for improving approaches to the identification of risk behaviour as well as for developing guidelines and publicising good practise in this regard.

Recommendation 12: Risk behaviour should be understood as behaviour which may indicate that the member potentially poses a danger to him or herself or others or is unsuited to coping with aspects of the occupational role. It should therefore be understood to include suicide risk behaviour and violence risk behaviour and recognise the connection between these different behaviours. Violence risk behaviour may include threatening or aggressive behaviour in domestic circumstances as well as behaviour which suggests an over reliance on the use of force in occupational circumstances.

Recommendation 13: The issue of identifying members who pose a suicide risk, appear to pose a threat to intimates or others while off duty, or appear to be disposed to violence, should be recognised as an important management responsibility. Systems should be identified and put in place whereby managers can fulfil this responsibility. Improvements of systems for identifying risk behaviour may include improvement and/or better use of systems for trend identification.

There is some level of experienc[illegible] relation to the operation of systems of trend identification and this should experience should be shared more broadly. Furthermore attention should be given to evaluating these systems with a view to bringing about improvements. It may also include taking steps to involve colleagues, family members and others in assisting managers to identify such behaviour.

Recommendation 14: Support services can potentially strengthen their proactive role in assisting members to address underlying problems which are manifested in behaviour.

A credible and effective system for the reception and investigation of complaints

While interviewees stressed that, for instance, "if a person wants to open a case [against a member] we can't stop him" where members of the public attempt to open such cases, police members may often take steps to discourage this, if not by direct intimidation, than by for instance making such complainants wait for extended periods in the charge office. Even where this is not the case members of the public would generally be intimidated by the prospect of going to a police station to place charges against an SAPS member. However it is unrealistic to expect the ICD to be the agency which receives the vast majority of complaints from members of the public. In particular the ICD only has provincial offices and therefore cannot offer an accessible (in the sense of being geographically dispersed) complaints reception system (see Criminal Justice Policy Unit, 1999).[85]

[85] The Criminal Justice Policy Unit (1999) document provides a number of recommendations relating to clarifying the role of the ICD. Notably in relation to the use of force by the police it recommends that obligation of the ICD to investigate all deaths in police custody or as a result of police action should be maintained but that the ICD's obligation should be to conduct a preliminary investigation following which it may decide to investigate further or to instruct the SAPS to take further investigative steps.

Recommendation 15: The SAPS should establish complaints reception offices at Area level which operate independently of stations and specialised unit. Steps should be taken to build public trust in the integrity of this system.

Recommendation 16: These measures should be combined with steps at the policy level to provide greater clarity in relation to questions about the reception and investigation of complaints against the police, the investigation of police crime and misconduct more generally, and the role of the ICD.

The strengths and weaknesses of the police internal disciplinary and investigative system have not been examined in detail in this report. In general they would appear to be associated with difficulties associated with operationalising the new disciplinary framework (Newham,1999). In particular it would appear that the internal investigative system is something of a neglected area and that there is probably scope for intr ntions to be made aimed at improving its effectiveness. Furthermore, due to the close working relationship which they have with the police public prosecutors are far from the ideal persons for the findings of investigations which may implicate police members to be submitted to.

Recommendation 17: Further attention should be paid to improving the effectiveness of police internal inves tative units and the internal investigative system generally.

Recommendation 18: Emphasis should be placed on ensuri g the credibility and integrity of the system for prosecutorial scrutiny of dockets relating to alleged police criminality

Other area of concern

While management systems can address a range of issues relating to the use of force at the end of the day these issues cannot be addressed properly unless SAPS members have the basic levels of physical and mental fitness to deal with the demands of potential use of force situations.

Recommendation 19: Emphasis should be placed on developing a culture of personal responsibility for basic physical and mental health and fitness amongst members. Members in the SAPS should have a personal obligation to maintain basic levels of physical fitness and be able to demonstrate that they are attending to this matter.

Finally systems which are put in place to deal with the risks which police officers are exposed to should deal with these issues directly rather than, as is the current situation, in ways that have few beneficial consequences.

Recommendation 20: The current system by which SAPS members serving in "red" (more dangerous) areas receive a pay supplement should be dispensed with and resources should be channelled to improving equipment, in service training, and review and support systems in these areas.

Chapter 7 Conclusion

Review as a mechanism of learning

South Africa's current situation of high crime undoubtedly places major demands on members of the police service in terms of the use of force. Systems intended to ensure discipline and restra[illegible]e use of force within the police are often primarily punitive in nature. They thus feed into a culture which discourages self criticism within the police organisation. As a consequence the police culture is shaped by influences amongst the rank and file which are resistant to learning and criticism.

The interest in administrative review is then an interest in building mechanisms into the police which serve to promote a culture of learning, self analysis and self criticism within the police organisation. However the culture of silence within police organisations may inhibit the potential for the implementation of such mechanisms. According to a Human Rights Watch report which examined police brutality in 14 US cities, for instance

> "In each city we examined, internal affairs units too often conducted substandard investi[illegible]tions, sustained few allegations of excessive force, and failed to identify and punish officers against whom repeated complaints had been filed. Rather, they, in practice, often shielded officers who committed human rights violations from exposure and guaranteed them immunity from disciplinary sanctions or criminal prosecutions" (1998, p. 5)

What this reflects is a culture within police services which condones the abuse of the capacity to use force and in many ways supports it as functional to achieving

the objectives of the police. At the same time police modify their behaviour in such a way as to avoid external criticism. As a consequence what may emerge is an attitude that "anything goes" as long as it is not likely to incur such criticism. One consequence is that initiatives intended to restrain abuses by the police, such as mechanisms of external oversight and accountability, are undermined, or prove to have unpredicted consequences, a reflection of the resilience of the police culture.

> "[A] police department's "culture" reflects what the department believes in as an organisation. The department's recruiting and selecting practises, policies and procedures, training and development, and ultimately, the actions of its officers in delivering services reflect these beliefs. Clearly all police departments have a culture. The key question is whether or not the department has carefully developed that culture or simply allowed it to develop without benefit of thought" (US Department of Justice, cited in Major City Chief Administrators, 1991, p. 59).

Particularly where they are involved in the use of firearms police officers take other peoples lives in their hands and it is appropriate that issues of legality should be evaluated in examining such incidents. But the evaluation of use of force incidents should not be restricted to this type of enquiry. Where members of the SAPS are involved in use of force incidents, particularly where these involve the use of firearms, and whether the basic evidence at hand indicates that there was not deliberate foul play on the part of the police officer mechanism of review which promote learning in the police organisation may feed into the growth of skill. Such learning and such skill may contribute to:

- Improving the safety of SAPS members;
- Improving the capacity of members of the SAPS to use force in situations where this is appropriate; and
- Preventing and reducing unnecessary force.

The emphasis of current mechanisms on behaviour which may incur a punitive response makes them in some ways incompatible with process of learning which police officers can unreservedly engage in. In particular members of the SAPS who believe that their actions may incur a punitive response may refuse to answer questions which are put to them on the grounds that they have a right to remain silent in terms of the Constitution. The potential for the development of such mechanisms may therefore depend on whether members who actively and willingly cooperate with them are able to do so without fear of sanction.

Towards professional policing

In addition to motivating for the improvement of systems of review this report motivates for a number of issues to be addressed. These include:

- Development of the legislative and policy framework;
- Addressing issues relating to the management and use of firearms
- Ensuring access of SAPS members to non-lethal weapons and other measures aimed at assisting them to use force effectively and minimise levels of violence;
- Defining risk behaviour in broader terms and improving systems aimed at identifying and engaging with it;
- Improving systems for the reception of complaints and internal investigative systems.

In the current period the SAPS is facing intense pressure to improve its performance in tackling the crime problem. In these circumstances the temptation is to turn a blind eye to the police in relation to their use of force. But failing to restrain the brutal elements in the police service does not ultimately serve any constructive interest. It does not serve the cause of democracy, it does not serve the community or to build police-community relations, and it does not serve the objective of establishing a respected and professional police service.

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APPENDIX 1: Terms for evaluating use of force incidents

Term - Relationship to professional policing	Characteristic of use of force/ violent act	Legality	Relationship to occupational role
Professional use of force	A use of force - the police officer uses high standards of professional judgement in evaluating the situation and uses force accordingly.	Lawful	Professional policing.
Unnecessary force - A highly skilled police officer would have evaluated the situation differently and/or acted differently therby avoiding the use of force. Excessive force in terms of professional standard.	A use of force - the police officers act is well intentioned but lacks professional judgement and/or skill. (Lack of professional judgement or skill may also result in a police officer using less force than would have been appropriate.)	In general falls within law. "Borderline" cases may be judged by a court to be criminally negligent and thus unlawful.	Attempts to fulfil police role effectively and lawfully but falls short of standards of highly professional policing
Police brutality - not necessarily lacking in technical skill but contradicts ethics of professional policing. Excessive force in terms of legal standard.	An act of violence - the police officers act is criminally negligent or a deliberate violation of the law which occurs in the fulfilment of police duties	Criminal.	Abuse of police power in course of police duties - may be connected to misguided zealousness or corrupt motives connected for example to individual gain.
Non-occupational violence - amounts to ordinary criminal act	An act of violence - the police officers act is a criminally negligent or deliberate violation of the law which occurs in circumstances not related to the police role.	Criminal.	Not directly connected to fulfilment of the police role. However e.g. possession of service weapon may be a contributing factor.

APPENDIX 2: Interviews conducted

No.	Date of interview	Description (position in SAPS)	Organisation level
1	36327	Recently resigned former SAP and SAPS member (14 years experience in SAPS)	3
2	36328	SAPS Station Commander	2
3	36331	Representative of SAPS Psychological Services, National Head Office	1
4	36355	Represenative of SAPS Training Division, National Head Office.	1
5	36543	Representative of SAPS Negative Discipline Section, Personnel Division, National Head Office.	1
6	36549	Representative of the National Multi-Disciplinary Committee on the attacks on and murders of members of the SAPS	1
7	36549	Representative of Public Order Police, Development Services	1
8	36549	Representative of SAPS Research Centre, Division Management Services.	1
9	36555	Head of a reaction Unit	2
10	1&8/1/00	SAPS Station Commander	2
11	36557	Representative of Provincial Legal Services Division	1
12	36557	Head of Area Negative Discipline Section (telephonic interview)	2
13	36558	Senior members of staff at SAPS Pretoria Training College	1
14	36562	Head of CID, police station, Gauteng	3
15	36566	Head of Area Legal Services	2

APPENDIX 3: The management of the use of force in the SAPS: Interview themes guide

1. **The Constitutional and legal framework**

2. **General management of the SAPS and the use of force (structures/systems)**
   - how is the SAPS "managed" - where does control lie?
   - key role players at area and station level in relation to the use of force?
   - what are the main "divisional" sections of the SAPS concerned with the use of force
   - proactive: training, support, logistics? (3,4,5,6,7) - reactive: legal services (6,7,8,9)
   - integration of "reactive" with "proactive"?

3. **The selection/recruitment system**

4. **Training** - basic and in-service components

5. **The system whereby firearms, other weapons and restraining devices are procured, stored and issued to police officers**

6. **Support services - welfare, spiritual and psychological**

7. **The system of operational command in situations of potential use of force**
   - what are responsibilties of operational commanders/duty officers/supervisors re: usof?
   - how does this system work? (Shift commander/wykbevelvoerder/area commander" + charge office commander)

8. **Accountability and review mechanisms (shooting incident reports, CPFs?, other)**
   - shooting incident reports (duty officer) - how does this system work?
   - role of legal services;
   - trend analysis or other systems of review - supervisory review/informal?

9. **The SAPS complaints reception, internal investigative and disciplinary systems**
   - People with violence problems (on or off duty), alcohol problems, domestic problems
   - Their access to firearms, issues of discipline, suspension, dismissal etc?

10. How do these structures and systems contribute to:

(a) **Forming the values of the SAPS** - what are the "values"of the SAPS (particularly relating to the use of force)? how are they conveyed? (What are values of SA society?)

(b) **Managing the use of force** - in terms of effectiveness and avoiding unnecessary force?

(c) **Preventing the murder (victimisation) of police officers?**

(d) **Dealing with problems associated with off-duty firearm use** (murder by/of, suicide, accidents)

APPENDIX 4: E-mail survey sent to Area Commissioners offices.

1. Are copies of all shooting incident reports from stations in your area submitted to your office?

2. How are shooting incident reports dealt with at the Area office? Does your office have a system for keeping records of shooting incidents? What is this system? Does someone review them? Who, if anyone, has the responsibility of reviewing them (i.e what is the persons position or title)?

3. Would there be circumstances where issues relating to particular shootings would be taken up with someone outside your office? Who, if anyone (outside of the Area Comm office) might this be? In what circumstances would this occur?

4. In what circumstances are steps taken to "follow up" on shooting incident reports? What form does this "follow-up" take?

5. Apart from steps taken to deal with individual shooting incident reports does your office ever look at trends in shooting incidents (e.g. to identify stations with high shooting levels, comparing one year to another)? If the answer is positive please describe steps that are taken.

6. Are shooting incident reports ever analysed from the point of view of identifying members who appear to be involved in a particular high number of shootings? If the answer is positive, what steps are taken in this regard?

7. Is information on complaints against members of the SAPS ever analysed in your area in order to identify trends including members who appear to have a particularly high number of complaints lodged against them? Please describe any steps that are taken in this regard.

8. What is the standard procedure for your office in terms of dealing with allegations of members who have misused their firearms while off-duty?

9. What do you see as the main responsibility of your office in terms of the management of the use of force?

10. Would you say that your office tries to send out any particular message to members in your area in relation to the use of force? What is this message?

APPENDIX 5: National Structure: SA Police Service

NATIONAL STRUCTURE: SA POLICE SERVICE

APPENDIX 6: Issues for further research

1. Factors impacting use of force by police and patterns of police victimisation including for instance issues of diversity including e.g. race, culture, gender etc.

2. SAPS systems for rewarding outstanding service and their implications in relation to issues of the use of force.

3. The operation of the system of incentives for members working in high risk areas (red areas) - all officers working there get R300 per month.

4. Medical aid systems in relation to police officers suffering medical or psychological consequences of exposure to violence.

5. Disability grants and other issues relating to the position of police officers disabled as a result of the use of force;

6. Provision of medical treatment for persons injured as a result of police use of force.

7. Bereavement - how the SAPS deals with circumstances of death including that of police officers and that of persons killed by members of the SAPS.

8 Prevention of violence in custody - searching those coming into custody (weapons), restraint of violent persons.

9. Exteranl structures or systems impacting on the use of force.

10. Other internal systems, such as for instance the Logistics Section or the Inspectorate.

11. Communications within the SAPS including the role played by the magazine Servamus and other media in relation to issues of values and others concerned with the management of the use of force.

12. SAPS systems for external communications and media relations and their role in dealing with issues concerning the use of force including high profile incidents of a "scandalous" nature.

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