

Seminar Report

26 June 2009

Seminar title: No Service Without Force? Shifts in Policing Discourse: Implication For Oversight, Integrity and Human Rights

Venue: Committee Room, Centre for the Book, Queen Victoria Street, Cape Town

Facilitator: Dr Johan Burger, ISS

Panelists:

David Bruce – Senior Research Specialist, CSV

Andrew Faull – Researcher, ISS

Elias Valoyi – Acting Executive Director, ICD

Tommy Tshabalala – Chief Director of Investigations, ICD

Introduction (by Dr Burger)

There seems to be a change in the rhetoric, if not the manner in which government is dealing with crime in South Africa, from a soft approach to a much harder approach. The re-naming of the Ministry of Safety and Security to the Ministry of Police was not accompanied by a convincing explanation as to the reasons and intentions for this change. The messages from officials and top politicians about how crime and criminals should be handled (adopting a hard approach) has the potential to send the wrong message to members of the SAPS as to how they should be dealing with crime and criminals, and how far the use of force by SAPS members should go. There also indications that with the offensive policing stature, community policing may become less important to the SAPS. However, irrespective of what approach the police decide to follow, crime should be addressed within the parameters of the law.

Important points raised by panelists:

Presentation by David Bruce:

There seems to be a shift in the tone of the language used by officials and top politicians with regards to crime. The Minister of Police, Nathi Mthethwa and his deputy, Fikile Mbalula, have been quoted by the media making statements such as “we are at war with criminals”, “taking the war to the criminals”, “no mercy for criminals” among others. Such statements can be understood or interpreted in the following three ways:

- As political rhetoric (hot air)- no need to be paying much attention and being sensitive over the language used as this kind of tone is not necessarily new to the police ;
- A gloves off approach (encouragement to the police) – this could invite interpretations that the police should disregard the law and several undesired consequences could emanate from this ; and
- A professional policing approach – that the use of such language could be part of an effort to improving policing in South Africa by the Minister of Police in the manner that the police should handle perpetrators of crime

However, taking all of this into account, what is important to communicate to the police is that they need to have a clear understanding about the proper use of force, which includes using force to reduce harm and not using force outside the law regulations. The working conditions of the police also need to be improved by taking into consideration important issues such as improving the overall ethics framework of the SAPS as an organization, strengthening the tasks of management levels in assisting those members who are frequently exposed to, or required to use force (especially firearm related force). It should also be made clear what type of action is expected from police members when they are off-duty, with regards to interventions in criminal activity.

In closing therefore, support towards the police needs to be improved rather than encouraging the use of lethal force. The new tone relating to policing will hopefully bring a renewed purpose and direction to the work of the police and the law enforcement system as a whole.

Presentation by the ICD representatives

Oversight structures of the police such as the ICD were not created to take over the duties of the police but rather to assist in overseeing that the SAPS carries out its duties lawfully. However, the resources that the ICD has to work with (financial, human, etc) are lacking which

then has an impact on how the ICD carries out its mandate. The representatives also expressed that the recommendations that the ICD will make in the Annual report due to come out later this year, will hopefully be taken seriously by the SAPS.

The ICD felt that it was making gains in its work in view of the fact that they have recently noticed an improvement in the manner in which the junior members of SAPS have been engaging with the ICD.

However, there are still a number of challenges which facing the ICD including the limited powers that they have to implement their recommendations and the lack of cooperation in some SAPS units throughout the country.

Furthermore, the ICD felt that their work is still relevant and very important especially when dealing with high profile cases. With regards to the stand the ICD takes in the use of force by the police, they feel that the police should use their force within the ambit of Section 49 of the Criminal Procedure Act (Act 56 of 1977). This is not to say that they should not do anything to protect themselves when they are under attack, but that criminals too should understand that police officers will retaliate when they are attacked. If the force used by the police in circumstances such as this does not exceed that which is in the scope of the Act, then there would be no harm done by the police. In circumstances relating to resisting arrest, police should always use force that is proportional to the resistance. Police must always act skillfully and professionally when using force. They must be reasonable in their approach and their application of their rules. If police act outside the guidelines of the Act, they should be dealt with appropriately.

The ICD feels that it is always important to participate and make their views known in forums such as this one and expressed gratitude for the opportunity.

Presentation by Andrew Faull

Integrity management (or lack thereof) is one of those important issues that need to be looked at when it comes to an organization such as the SAPS given the role they have to play in society. The presentation flagged the dangers of the rhetoric highlighted by David Bruce, suggesting that if not handled responsibly, it could threaten to erode the culture of integrity in the SAPS by giving members leeway with which to bend the law as they deem fit. This, Faull suggested, would be particularly dangerous in station cultures already weakened by a growing tolerance of integrity violations and corruption.

Additionally, the following conclusions were reached:

- the SAPS as an organization exists within a particular framework or context where it is faced with having to strike a balance between upholding the values of human rights and equality enshrined within the Constitution, working within a country that is plagued by violent crime and a “dysfunctional justice system” and pressure to “solve and prevent crime in the country” compounded by the political rhetoric to deal with crime and criminals;
- the organization is founded upon a certain culture of values and ethics which form a part of the bigger picture of integrity within which the organization functions, which are slowly being undermined in some circumstances through “integrity violations” such as theft, misconduct, inappropriate use of force to name a few. But the more pressing question to ask here is whether it is the individuals who work within SAPS that are the “rotten apples” or if in fact it is the organization as a rotten “barrel” that itself leads to the creation of rotten apples is to blame;
- the actions by some police members such as those of losing or selling of documents, taking money from motorists at roadblocks adds fuel to the fire by creating certain perceptions by some police members themselves that certain types of conduct which constitute “integrity violations” have gone unpunished. This creates the space for such conduct to be overlooked in some cases (therefore creating a skewed organizational culture);
- the morale must be improved in the organization if integrity violations and corruption are to be prevented;
- the certain things such as “better remuneration, recruitment , motivation, leadership and the creation of an anti-corruption unit” could contribute to creating a more functional and satisfied organization;
- the problems within these stations and SAPS as a whole need to be addressed proactively so that the “cracks” do not get any wider;
- the role to be played by government with regards to improving the conditions of the police (both at the organizational level and in the societies they exist in) needs to be clear to avoid sending mixed messages to the police and society as a whole; and
- the SAPS has created excellent working codes, internal mechanisms and policies that look good on paper but do not translate clearly in practice. The integrity of SAPS as an organization has become weak in some circumstances, the current aggressive tone needs to be handled more responsibly by those in power, the pressure to prevent crime on the police must define the boundaries within which the police act and that “cultures of integrity must be monitored very strictly and stabilized through improved discipline, leadership and interventions”.

Compiled by:

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