

SOUTH AFRICAN CRIME QUARTERLY



Control of the use of lethal force by the police

Restoring public confidence in the SAPS

Design principles for more effective security governance

Prevalence of antisocial personalities among offenders

Interview with Francois Beukman, Executive Director, ICD

No 36 • June 2011

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Cover photograph

A SAPS member opens fire with rubber bullets in Hangberg, Hout Bay - 21 September 2010. The Hangberg community in Hout Bay violently resisted the City of Cape Town's attempted removal of structures built along a 'fire-break' on the Hangberg, which prompted the SAPS & Cape Town Metro Police to respond with force." (Photo by David Harrison)

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Editorial

For a number of years we have watched as the SAPS has descended into serious trouble. Sometimes it's difficult to know whether the troubled state of the policing organisation is a figment of media exaggeration, or a reasonably true reflection. Over the past sixteen years the SAPS has undergone dramatic changes – it had to transform itself from the keeper of the apartheid state into a policing organisation that reflected the good intentions and stringent human rights requirements of the new democracy. In doing so it had to contend with deep internal divisions along race and gender lines, and at the same time provide a home for the police of the former Bantustans. When we should have been settling down to consolidate the organisation, deepen and improve training and address the shortcomings of crime scene management and crime detection, the organisation was the subject of a curious management experiment that involved the closing down of all specialist units and the redeployment of skilled police specialists to stations. While the argument in favour of this 're-structuring' was beguiling – to make sure that the skills of specialists were available at station level to deal with crime – as it happened, however, the outcome was in fact the dilution, or loss, of badly needed skills and the weakening of the administrative and internal oversight systems.

As if that wasn't enough, over the past 11 years the police have been treated by the ruling party as a prize to be passed to loyal cadres as a reward for loyalty to the chief – "No experience required". We thus have had two successive Commissioners of Police whose integrity and suitability for the position have been questionable at best: former Commissioner Jackie Selebi was found guilty of corruption after a lengthy criminal trial, and current Commissioner Bheki Cele has been found by the Public Protector to have mismanaged matters relating to the expensive lease of property from a politically connected businessman. So we find ourselves in 2011 with a deeply embattled police service. It is difficult to see how this can be remedied without at least professionalising the position of Police Commissioner and ensuring that all senior appointments are made purely on merit.

It is true that this is a bleak view of the current state of the SAPS that doesn't accurately reflect the micro-level reality. There are many examples of effective dedicated policing taking place around the country. However, addressing the macro-level shortcomings will be essential in the long term.

Two of the articles in this edition of SACQ shed light on manifestations of the current crisis in the police. David Bruce presents evidence that ordinary police members have, over the last few years, resorted to an ever more brutal style of policing. Johan Burger looks at the effect that media coverage of police brutality and corruption has had on public faith in the institution, and calls for an urgent remedy. In addition, Andrew Faull interviews Francois Beukman, a lawyer and politician who has made his way to the head of the police oversight body responsible, at least in the minds of the public, 'for cleaning up' behind the police.

Also in this edition, Sonja Loots and Dap Louw present the findings of research to establish the extent of anti-social psychological disorders amongst adult male offenders in South African prisons; and Clifford Shearing and Julie Berg ponder the ongoing challenge of preventing crime.

Chandré Gould (Editor)

Beyond Section 49

Control of the use of lethal force

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Prominent incidents of the misuse of lethal force have contributed to the issue becoming a focus of concern in South Africa during 2011. Proper control of the use of lethal force needs to be prioritised by the South African Police Service and other police agencies in South Africa because of the serious consequences that can result from its use, but also because it is so important to police safety. The legal framework relating to the use of lethal force is the subject of a Bill which is due to come before Parliament. There are various options for amending the law but irrespective of which ones are chosen, the end result is likely to be unsatisfactory. Improvements in the control of the use of lethal force and how professionally it is used by SAPS members will ultimately depend on a reorientation of the SAPS in its approach to managing the use of lethal force by its members. A use of force policy, and a new system for reviewing use of force incidents could form part of such a reorientation, with potential benefits for police and civilian safety and for overall police effectiveness. These changes would require the support of police leadership in order to be implemented effectively.

The use of lethal force¹ by police gained prominence as a result of a number of incidents in 2011, most notably the killing of Andries Tatane in a demonstration in Meqheleng outside Ficksburg on May 13 2011.² Available ICD statistics on killings by police during the last two years (2008/9-2009/10) indicate that 1 092 people were killed as a result of the use of force by police during this period.³ Leaving aside for the moment the question of what proportion of these shootings might have been unlawful,⁴ these statistics indicate that killings by police are at their highest levels since the late 1990s when the ICD was established and began reporting on these figures.

Statistics on killings by police also do not tell the full story. Shooting incident data from three

provinces covering the 1996-1998 period, for instance, indicated that fatal shooting incidents accounted for only 6,5% of all shootings. In a further 17,5% of shooting incidents someone was injured by the police, whilst in the remaining 76% of incidents no one was killed or injured, possibly indicating that police had missed their targets or merely fired warning shots.⁵ In the absence of up-to-date data on the use of lethal force by police in South Africa (other than in respect of those fatal incidents reflected in ICD statistics) it seems reasonable to surmise that there are several thousand incidents each year in which police in South Africa discharge their service firearms in the course of their duties.

Considering that there are in the region of 160 000 serving police officials currently in South Africa⁶ this may indicate that in any year upwards of 90% of them are not involved in an incident in which a firearm is discharged.⁷ Indeed, there may be some who go through their entire careers without ever discharging their firearms other than during training. Even in South Africa, where

* David Bruce is an independent researcher. This article is related to a project on 'Respectful, fair, professional and accountable policing' which the author is managing for the Centre for the Study of Violence and Reconciliation. The project is funded by the Open Society Foundation for South Africa. The author is indebted to three anonymous reviewers and the editors of SACQ for comments on the article.

levels of use of lethal force by police are far greater than in most countries that have this kind of data, the use of lethal force may be a relatively rare event in policing. But it is nevertheless a matter of profound concern because so much hinges upon it: the lives and safety of police and members of the public, and more.

In some cases the misuse of force gives rise to public instability. The image and public reputation of a police service may be profoundly shaped by an incident where lethal or other force is used. Because incidents in which lethal force is used may have grave consequences, police organisations need to take the issue of controlling the use of lethal force very seriously. The way in which a police service deals with the issue of lethal force also says much about its approach and attitude to the more general issues of non-lethal force⁸ (of which there are far more incidents), and of police conduct and integrity.

Proper attention to lethal force is also necessary because of its importance to the safety of police. During 2009-10, for instance, 101 police officers were killed by assailants in South Africa.⁹ Following a spate of such killings in April and May 2011, Bheki Cele, National Commissioner of the South African Police Service, expressed a concern that there was not sufficient attention given to the issue. Police organisations that give proper attention to the question of the use of lethal force by police therefore need to balance at least three overlapping concerns: that police are able to act effectively in the public interest where their intervention is called for; police safety; and the concern that police do not use lethal force unjustifiably or unnecessarily. The common thread that binds these three together is that police should act wherever possible to protect human life.

THE AMENDMENT TO SECTION 49

Legislation, particularly provisions which expressly set out to regulate when lethal force may or may not be used, is often the central focus of efforts to control the use of lethal force by police. In South Africa, Section 49 of the Criminal Procedure Act, which deals with the use of lethal force for arrest,

is the main legislative provision of this kind. It has in the past been the subject of much controversy and contestation.¹⁰ At the time of writing a Bill was due to come before Parliament, providing for amendments to be made to Section 49. The amendment will potentially expand police powers to use lethal force.

The South African legal framework relating to the control of the use of lethal force by police has also recently been revised in another respect: Legislation providing for a reorientation of the Independent Complaints Directorate into the Independent Police Investigative Directorate (IPID) provides for an expansion of the ICD mandatory responsibilities relating to the use of lethal force. When the Act comes into effect this will mean not only that the IPID must investigate deaths as a result of police action – as was the case with the ICD – but also that it must investigate all complaints relating to the discharge of firearms by police (see the interview with ICD director, Francois Beukman, in this edition of SACQ).¹¹

It seems that there is a reasonable argument for amending Section 49, due to the difficulty of interpreting it in its current form. In addition to providing that police (and members of the public) may use lethal force to protect themselves or other people who face an immediate threat of death or grievous bodily harm, it also provides for the use of lethal force to prevent the flight of a person who presents a ‘future danger of such harm’. Whilst this principle may make sense from a moral perspective (because it seeks to prevent future harm), the difficulty is that it is possible to give widely differing interpretations to it in practice.¹²

The problem is that, if one accepts that Section 49 needs to be more clearly articulated and that the principles it is based on should be more concrete, there are not many options available. The one option would be to entirely remove the legal provision for lethal force to be used for arrest from South African law. This would mean that lethal force is only allowed in situations where it is immediately necessary to defend oneself or another person (as is permitted anyway in terms of common law principles). The implication of this

would be that there would be an unlimited 'right to flee', even by people who are believed to have been involved in the most violent crimes. One of the defining features of the law on the use of lethal force for arrest is that lethal force may only be used for arrest if there are no other reasonable means available for securing the arrest of the fleeing person. In situations where police are not able to do so by vehicle or foot pursuit there might be no way of apprehending someone, especially where there is no clear information about his identity. If the use of lethal force is restricted to defence situations this will weaken the state's power to arrest perpetrators of even the most serious violent crimes.

Adopting such an approach would put South Africa in a unique position, particularly compared with societies that face comparable levels of violent crime, and where it is generally accepted that police should have some power to use lethal force for arrest. Canada doesn't qualify as a high violence society in the same way that South Africa does but the Canadian Criminal Code, to take just one example, does authorise the use of lethal force against a fleeing suspect. Though the principle embodied in Canadian law is a 'future danger' principle similar to that in current South African law, this nevertheless demonstrates that even in Canada it is regarded as necessary for police to have powers to use lethal force in situations that go beyond defence or 'imminent threat' situations.

International human rights law on the subject is somewhat ambiguous. Though the commentary to the UN code of conduct for law enforcement officials appears to recommend that lethal force be restricted to situations of defence,¹³ the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials endorses the use of firearms by law enforcement officials for arrest.¹⁴

Apart from the option of restricting the use of lethal force to defence situations, the other main alternative appears to be the principle that is embodied in the Bill currently before parliament. This allows an arrestor to use lethal force if 'the suspect is suspected on reasonable grounds of

having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later'.¹⁵ Here the justification for the use of lethal force, in a situation where it appears that it will not be possible to apprehend a person by other means, is related to the crime that the person is alleged to have committed rather than the likelihood that they may commit such a crime in the future. The original source for this principle was a 1985 judgment of the US Supreme Court.¹⁶ It has subsequently received approval from the Supreme Court of Appeal¹⁷ and Constitutional Court,¹⁸ thereby becoming part of South African law. Though it has endorsement from such high authority, in reality it seems to provide greater leeway to the police, and indeed to any member of the public, to use lethal force than does the current Section 49.¹⁹

In a situation such as we have in South Africa, where there are already very high levels of the use of lethal force by police, it appears undesirable to expand these police powers. But if it is necessary for police in South Africa to have access to some powers to use lethal force for arrest and for the law to articulate these powers in concrete terms, the law may have to be based on this principle.

Nevertheless, there may be scope for tightening up certain aspects of the legal framework, for instance establishing a higher standard of belief. It may be argued that the standard of 'reasonable belief' or 'reasonable suspicion' is not high enough, considering the gravity of the possible consequences of the use of lethal force. It would follow that police should only be allowed to use lethal force for arrest if they are very certain that the suspect has indeed committed a crime of serious violence. In addition, the power to use lethal force for arrest should be limited to police, and the civilian power to use lethal force restricted to defence situations.

POLICE INTERNAL POLICIES ON THE USE OF LETHAL FORCE

The implication is that, whether it is amended or not, Section 49 is likely to be unsatisfactory as a legal provision in some or other way. It should also

be borne in mind that the number of killings by police in South Africa has escalated dramatically in recent years, notwithstanding the provisions of the current Section 49. This highlights the limitations of an approach to the control of the use of lethal force that relies on legislation. One set of reasons for this has to do with the enormous power which police have to obstruct the operations of the criminal justice process against them. Much policing is shielded from outside scrutiny, and police officers, like everyone else, enjoy the right to remain silent. Typically, in cases of brutality, their colleagues close ranks with them. An investigation into a case of police brutality often only has some chance of success in the rare cases where there are independent civilian witnesses who are not intimidated by the prospect of giving evidence against the police. In cases of killings the SAPS is required to notify the ICD (IPID), but in practice they use their discretion as to when exactly to do this.

The police also know how to manipulate evidence. In situations where unarmed people have been killed it is not unheard of for police to plant weapons or otherwise tamper with the scene, and then claim that they were acting in self defence. Also, prosecutors generally work quite closely with police members and, related to this issue, may soft-peddle cases against them. The fact that we have an ICD/IPID in South Africa is clearly some kind of counter-weight to the problem of police violence. But relying on enforcement of Section 49 by the ICD/IPID, with its limited human and financial resources, offers little chance that the problem will be addressed in an effective way.

Another set of reasons for the ineffectiveness of Section 49 has to do with the fact that the law, whatever the legal standards may be, represents a minimum threshold for acceptable conduct. Police organisations that rely on the law as the sole instrument for evaluating whether use of force is appropriate, are in effect neglecting a range of possibilities as to how police officers could best engage with situations where force may have to be used. In many of these situations there is a wide gap between approaches that might be

regarded as skillful or professional, and those that are unlawful.²⁰ Police officers often act with good intentions, but because of a lack of understanding, skill or experience they unnecessarily use force, cause harm or expose themselves to danger, rather than dealing with the situation in another way. A police organisation that takes the control of the use of force seriously should not only ensure that members use force lawfully, but should also try to optimise the ability of its members to use force professionally and avoid such 'unnecessary' uses of force.

Police organisations in South Africa should therefore look beyond Section 49 for other measures that can assist them to engage in a more purposeful manner with how their members use force. One option here would be for the SAPS and metropolitan police services to adopt internal policies that give greater direction to their members around the standards to uphold in using lethal force. This has been the approach taken by many police departments in countries such as the United States and Australia. Such policies supplement the standards set out in legislation, enabling police agencies to better support their members in understanding the standards that are expected of them when using lethal force. Issues that may be addressed in such policies include

- **Warning shots:** Many professional police agencies forbid the use of warning shots on the basis of the danger these pose to members of the public. A 2009 statement by President Zuma²¹ indicated that there was confusion at the highest level of government about whether or not it was necessary or appropriate for these to be used by police in South Africa.
- **Verbal warnings:** In situations where police are legally justified in using lethal force against a fleeing suspect they should, where possible, give verbal warnings prior to the use of lethal force.
- **The safety of bystanders:** It needs to be emphasised to police that their interest in preventing dangerous suspects from fleeing does not take precedence over the need to protect innocent members of the public from harm. A lethal force policy would emphasise

to police that they should not discharge their firearms when doing so might unnecessarily endanger innocent people.

- **The use of lethal force against moving vehicles:** A number of police agencies in the US generally discourage the use of lethal force against a moving vehicle or the inhabitants thereof. This is partly because 'gunfire is generally ineffective as a means of bringing a vehicle to a halt'.²² If the driver of a moving vehicle is killed, the vehicle potentially poses major dangers to other members of the public.
- **The dual expectations that off-duty police carry firearms and intervene in crimes in progress:** A high proportion of killings of police take place in situations where they are off duty.²³ As the SAPS annual report emphasises, 'when police officers are off duty they are at their most vulnerable, as operational police support mechanisms are not available'.²⁴ For these reasons many professional police agencies advise their members against interventions in crimes in progress in these kinds of situations, motivating that they should see their obligation in such situations to call in support, if possible.

Over and above these more 'technical' questions, a use of lethal force policy should foreground values relating to the use of lethal force, particularly the need to give pre-eminence to the protection of human life. This implies prioritising the safety of police and members of the public, and firmly discouraging unjustified and unnecessary uses of lethal force. For instance, the deadly force policy of the NYPD states that:

The New York Police Department recognises the value of all human life and is committed to respecting the dignity of every individual. The primary duty of all members of the service is to preserve human life. The most serious act in which a police officer can engage is the use of deadly force. The power to carry and use firearms in the course of public service is an awesome responsibility. Respect for human life requires that, in all cases, firearms be used as a last resort, and then only to protect life.

Uniformed members of the service should use only the minimal amount of force necessary to protect human life. ... Above all, the safety of the public and ... members of the service must be the overriding concern whenever the use of firearms is considered.²⁵

Even if Section 49 is amended along the lines provided in the Bill currently before Parliament it will still be appropriate to emphasise to police that the motivation for the use of lethal force is essentially to protect life. *Tennessee v Garner*, the judgement of the US Supreme Court from which the principle contained in the Bill is derived, states that the core motivation for the use of lethal force is the threat of 'serious physical harm, either to the officer or to others'²⁶ posed by the suspect. In effect, the fact that the suspect is believed to have 'committed a crime involving the infliction or threatened infliction of serious bodily harm' serves to justify the use of lethal force to prevent his flight, because, the court implies, this may indicate that he might harm more people in the same way in the future. The implied justification for the use of lethal force in these circumstances is to protect people against the potential for harm of this kind.

A use of force policy is therefore an internal directive to police members from the police service to which they belong, which supplements the standards set out in legislation. In the case of the SAPS, the policing agency in South Africa most extensively involved in the use of lethal force, such a policy would be supplementary to their Code of Conduct. While the Code of Conduct says that SAPS members should uphold human rights, it does not directly address issues relating to the use of lethal force or the protection of life.

The potential value of such policies however depends crucially on whether they are implemented with full leadership backing, and as part of a commitment on the part of leadership to improved standards within the police in relation to the use of lethal force. It is widely recognised that the adoption of various policies is not in itself a recipe for improved standards. Policies

may be adopted by police organisations largely for ‘presentational’ purposes – to comply with international legal instruments or so that police and government leaders can create the right impression in international forums – but without genuine leadership commitment to the goals espoused by the policy.²⁷ Despite the adoption by the SAPS in 1998 of a Prevention of Torture Policy, the police continue to be linked to torture.²⁸ It would therefore appear that a policy can only be expected to be of value if it is taken seriously by leadership. This might require a reorientation of the current leadership in terms of how they understand their role in guiding members in relation to the use of lethal force.

THE NEED FOR A NEW APPROACH WITHIN THE SAPS

Since the transition to democracy one of the principal changes that has taken place in controlling the use of force has been the creation of the ICD, with its mandate to investigate deaths as a result of police action (pending amendments to the legal framework in this regard are referred to above). In addition, Section 49 of the Criminal Procedure Act was amended by Parliament in 1998 with the intention of preventing the unjustified use of lethal force by police. Within the SAPS there has also been a substantial shift towards incorporating human rights standards into the training curriculum. There has also been a reorientation of the SAPS in terms of its approach to the policing of demonstrations; though unfortunately it has not been able to sustain the improvements made in this regard and the quality of public order policing units appears to have deteriorated over recent years.²⁹

While it would be a mistake to deny that these have been significant changes, there is nevertheless a sense that SAPS systems for managing the use of force by police members remain unchanged. This applies in particular to the core internal process for controlling the use of lethal force by SAPS members. This is based on an apartheid-era standing order (Standing Order 251), which requires incidents where a firearm is discharged to be reported and

investigated by a member of officer rank. Considering the uneven standards of management within the SAPS,³⁰ adherence to the provisions of the standing order is likely to be uneven. But even where it is properly enforced it has limited impact. This is not simply to do with the fact that the investigation is carried out by an SAPS member, and therefore lacking in independence, but has much to do with the inadequacies, outlined above, of an approach to managing the use of force that only engages with the use of force after the fact and is purely concerned with whether police have violated the law or not.

SAPS neglect of the issue is reflected in the fact that the SAPS has no internal information on the levels of the use of lethal force by its members. There is therefore a need for a wholesale reorientation of the SAPS in terms of its approach to dealing with the use of lethal force. This requires not only proper monitoring of the use of lethal force by the SAPS, but also making a concern with the professional use of force part of the process of day to day police management. Police managers need to be able to engage with police members about questions of professionalism in approaching and dealing with the myriad situations in which there is the potential for the use of lethal or other force. It is customary for all kinds of organisations to deal with issues of professional standards through processes such as performance monitoring and mentoring. In just the same way, police organisations need to be able to engage with their members about the standards which they uphold in using lethal and other force. Such engagement should be developmental in orientation and extend into the day to day management processes of the police organisation, rather than being restricted to the training academy, the shooting range and the aftermath of shooting incidents.

But, as a leading US writer on policing, the late Carl Klockars, emphasises, this requires management systems that make it possible to ‘discover and discuss the use of force freed from the threat or fear of punishment’.³¹ A lethal force policy could provide the basis for such a system.

Such a policy should make it clear that it is not intended to replace existing laws, but to support police in adhering to these laws and upholding the highest standards in their use of lethal force. Violations of the policy would not provide the basis for a criminal charge, though deliberate violations would lead to disciplinary measures. Implementation of the policy would require that uses of lethal force not only be investigated in terms of whether police officers have violated the law or not. Alongside, but separate from, these investigations should be processes of review which focus on building the understanding of police about the type of judgments that will enable them to deal with potential use of force situations most professionally. Police should be encouraged to adhere to the policy because of the values it is based on and the benefits of doing so for the reputation of the police, rather than primarily because of the risk of discipline.

THE POLITICAL MOTIVATION TO IMPROVE CONTROL OF THE USE OF LETHAL FORCE

Occasionally, as a result of prominent incidents like the death of Andries Tatane, the issue of the use of lethal force becomes a leading media and even political issue. But most of the time questions of the use of lethal force are a political non-issue and there is even some sense that the use of excessive force is tacitly encouraged at a political level. Public sentiment too is often tolerant of excessive force by police, as reflected in a 2009 survey by TNS Research Surveys which found that 54% of interviewees supported a 'shoot to kill' policy.³²

The reasons for these permissive public attitudes are related to public anxieties about crime. With a few notable exceptions, those who are at the receiving end of the use of lethal force are, generally, marginalised young men.³³ Due to the fact that most of the perpetrators of serious violent crime are also from this demographic group it is assumed by many members of the public that those who are injured or killed by police using lethal force are 'criminals', and there is little sympathy for them.

While it is undoubtedly true that many of the victims of police use of lethal force are violent criminals it is also likely that there are many victims who, while they are marginalised young men, are wrongly identified as being suspects by the police and in fact are not guilty of any, or at least any serious, crimes.³⁴ However, the concerns of this constituency have little political weight and are unlikely to have much political importance attached to them in the face of broad public sentiment, which tends to be uncritical of excessive force.

Policing that is oppressive however not only undermines the potential for cooperation from members of this group, but reinforces their sense of alienation and hostility to the law. In so far as police are guided by official or public sentiment which encourages them to do their work in a manner that is oppressive and violates human rights, this may prove to be counterproductive. Whatever public sentiment may be, it is possible that police will take the issue more seriously if they can be persuaded that the most effective type of policing is that which is based on earning the respect of those whom they deal with.

Police services that take pride in the fact that they adhere to high standards may potentially be more effective in securing respect, and as a result cooperation, particularly from those constituencies who are most often at the receiving end of police attention.³⁵ Better control of the use of lethal force, and force in general, is one vehicle for achieving such high standards – and internal policies that provide guidance to members on the use of lethal force, a way to achieve such control.

In addition to winning greater public respect for the police, the successful implementation of these policies has a number of other potential benefits. These include:

- Greater clarity at a leadership level regarding questions relating to the use of lethal force will enable commanders and supervisors to more authoritatively provide direction to members on the use of lethal force.

- Greater control over the use of force by police leads to reduced civil liability on the part of government.
- Greater police identification with the need to observe high principles and compliance with legislation leads to improved *esprit de corps* and morale.

As Geller and Toch argue, 'the best results in upgrading the use-of-force decision making and tactical skill of most officers very likely will be obtained through positive incentives rather than through punishment. These incentives include the appeal of officer safety, crime- and disorder-control effectiveness, and building rapport with community members who can help prevent crime.'³⁶ A use of force policy supported by a new approach to reviewing use of force incidents could assist the SAPS in moving towards an overall improvement of its standards in using lethal force, potentially with multiple benefits, not only for the safety of police and civilians, but for policing in South Africa.



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NOTES

1. In this article the term lethal force is used mostly to refer to shootings by police, though the term more broadly refers to 'force reasonably capable of causing death or great bodily harm' (William Geller and Michael Scott, *Deadly Force: What We Know*, Washington, D.C.: Police Executive Research Forum, 1992, 23).
2. See also the shooting of Jeanette Odendaal on 26 April 2011 (Franny Rabkin, *Outrage over new case of police shooting*, *Business Day*, 28 April 2011, 3).
3. The total number of deaths as a result of police action reported in the 2008-9 year was 612, of which 44 were in vehicle accidents and the remaining 568 involved use of force by police. For the 2009-10 year the total number of deaths as a result of police action was 566 of which 42 were in vehicle accidents and 524 as a result of the use of force. During 2008-9, four deaths and during 2009-10, ten deaths were at the hands of municipal police services with the balance being caused by members of the SAPS. (Figures are from ICD annual reports available at <http://www.icd.gov.za>).
4. Questions regarding the prevalence of unlawful shootings by police are discussed in David Bruce, *An acceptable price to pay – the use of lethal force by police in South Africa*, Cape Town: Open Society Foundation, 2010, 25-30, http://www.osf.org.za/File_Uploads/

- docs/CJI_Occasional_Paper_8.pdf (accessed 24 February 2011).
5. David Bruce and Gabriel O'Malley, *In the Line of Duty? Shooting incidents reports and other indicators of the use and abuse of force by members of the SAPS*, Centre for the Study of Violence and Reconciliation, 2001, 26-27 (Table 12), <http://www.csvr.org.za/docs/policing/inthelineofduty.pdf> (accessed 28 April 2011).
6. The SAPS website indicates that there are currently 154 898 SAPS members, http://www.saps.gov.za/_dynamicModules/internetsite/buildingBlocks/basePage4/BP444.asp (accessed 28 April 2011). The total staff complement of South Africa's five additional metropolitan police service members is in the region of 5 000 members (Bruce, *An acceptable price to pay*, 12 (footnote 17)).
7. In the absence of up-to-date SAPS shooting data this projection is based on the 1996-98 shooting incident data from three provinces. Using this data it would appear possible that there may currently be in the region of 8 000 – 9 000 shooting incidents per year if fatal shooting incidents account for roughly 7% of all shooting incidents. The number of police involved in shooting incidents would be greater than the number of shooting incidents as in many incidents more than one police shooter is involved. The three provinces data for instance indicated that 19% of shooting incidents involved more than one police shooter, including 14% which involved two shooters and 5% which involved more than two. Altogether there were 129 police shooters for every 100 shooting incidents. Bruce and O'Malley, *In the Line of Duty?*, 43 (Table 27). If there were 8 000-9 000 shooting incidents these might therefore have involved somewhere between 10 000 and 12 000 police shooters.
8. As noted by a reviewer of this article the reverse also applies: If 'police officials are trained and knowledgeable in appropriate and proportionate use of force, and if force (at any degree) is well managed (and punished where abused), it will surely impact on the use of lethal force too'.
9. South African Police Service, *Annual Report of the South African Police Service, 2009/10*, 92 http://www.saps.gov.za/saps_profile/strategic_framework/annual_report/2009_2010/6_prg2_vispol.pdf (accessed 28 April 2011).
10. See for instance N Haysom 'License to Kill Part II: A Comparative Survey of the Law in the United Kingdom, United States of America and South Africa' *South African Journal of Human Rights*, 4, 1988, 202-222; D Bruce, *Killing and the constitution – arrest and the use of lethal force*, *South African Journal of Human Rights*, 19(3) (2003), 430-454.
11. Independent Police Investigative Directorate Bill, 15 of 210, Section 28 1(c).
12. It may be noted that section 49 is presently formulated in an exceptionally confusing manner and could be made much clearer whilst retaining this future danger principle. In the end the question as to how to interpret this would remain.
13. Commentary to Article 3 of the Code of Conduct states that 'In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardises the lives of others

- and less extreme measures are not sufficient to restrain or apprehend the suspected offender. Code of Conduct for Law Enforcement Officials Adopted by General Assembly resolution 34/169 of 17 December 1979, <http://www2.ohchr.org/english/law/codeofconduct.htm>, (accessed 6 May 2011).
14. Point 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that 'Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.' <http://www2.ohchr.org/english/law/firearms.htm> (accessed 28 April 2011).
 15. Criminal Procedure Amendment Bill, 39 of 2010.
 16. *Tennessee v Garner* 471 US 1 (1985) 11.
 17. *Govender v Minister of Safety and Security* 2001 (4) SA 273 (SCA).
 18. *S v Walters* 2002 (4) SA 613 (CC).
 19. Due to the wide leeway which the 'future danger' principle provides for interpretation it is possible to interpret it in a manner which is much narrower than that provided for in the Bill or in a manner similar to that put forward in the Bill. D Bruce, Clarity needed on use of lethal force, *Business Day*, 17 September 2003.
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 21. Graham Hosken and SAPA, 'Police have no time to fire warning shots', *The Star*, September 30 2009. Also on www.iol.co.za.
 22. Police Assessment Resource Centre, 'The Portland Police Bureau: Officer-involved shootings and in-custody deaths', 2003:191-192, http://www.parc.info/portland_police_bureau-publications.shtml (accessed 18 May 2011).
 23. For instance in the 2009-10 year of the 101 killings of police, 62 took place off duty and 39 on duty. South African Police Service, Annual Report of the South African Police Service, 2009/10, 92, http://www.saps.gov.za/saps_profile/strategic_framework/annual_report/2009_2010/6_prg2_vispol.pdf (accessed 28 April 2011).
 24. South African Police Service, Annual Report of the South African Police Service, 2009/10, 92.
 25. Police Assessment Resource Centre, Appendix to The Portland Police Bureau: Officer involved shootings and In-custody deaths – First follow up report', 2005, 65, http://www.parc.info/client_files/Portland/Follow-up/2%20-%20Appendix.pdf (accessed 28 April 2011).
 26. *Tennessee v Garner* 471 US 1 (1985) 11.
 27. See the various sources referenced in Robert Reiner, *The politics of the police*, Brighton: Wheatsheaf Books, 1985, 176; Also Andrew Sanders and Richard Young, *Criminal Justice*, 2nd ed, London: Butterworths, 74.
 28. See for instance ICD statistics dealing with non-fatal police violence for the 1997-2006 in David Bruce, Gareth Newham and Themba Masuku, In service of the people's democracy – an assessment of the South African Police Service, Johannesburg: Centre for the Study of Violence and Reconciliation & Open Society Foundation for South Africa, 2007, 123, as well as subsequent ICD annual reports (available at <http://www.icd.gov.za>).
 29. Bilkis Omar, SAPS' Costly Restructuring – A review of public order policing capacity, Pretoria: Institute for Security Studies, 2007; See also Johan Burger and Bilkis Omar, Can practice make perfect? Security and the 2010 FIFA World Cup, *SA Crime Quarterly* 29, 2009, 9-16.
 30. Bruce, Newham and Masuku, In service of the people's democracy.
 31. Klockars, A theory of excessive force and its control, 19.
 32. Brendan Boyle, Shoot to kill – but dump the posh cars, *Sunday Times*, 20 December 2009, 4.
 33. ICD data on deaths as a result of police action for 2007-08 and 2008-2009 indicated that 89% and 92% of victims respectively were male (ICD 2007-2008 and ICD 2008-2009 annual reports available at <http://www.icd.gov.za>). However the vast majority of the female deaths in these cases take place either in police vehicle accidents and in a sub-category of shootings which includes domestic violence and other killings related to interpersonal arguments involving police. In the sub-categories of deaths which may be seen to generally involve alleged criminal suspects 98% of victims are male. In a 2007 analysis of deaths in three provinces 122 out of 127 (96%) were black, 2 were coloured, 2 Indian and 1 white (Independent Complaints Directorate, An investigation into deaths as a result of police action in KwaZulu-Natal, Eastern Cape and Gauteng, 2007, 31, http://www.icd.gov.za/documents/report_released/research_reports/researchreport2007.pdf (accessed 17 May 2011)). Of 84 victims for whom age data were available the 2007 analysis of deaths states that the mean age of victims was 29,5 years and mode 25 years (previous citation, 26). Data on the socio-economic status of victims of the use of lethal force are not available. However it has been consistently documented elsewhere that the victims of police abuse tend to be from more marginalised sectors of the population (Reiner, *The politics of the police*, 175-6; PAJ Waddington, Armed and unarmed policing, in R Mawby (ed), *Policing Across the World – Issues for the Twenty-First Century*. London: Routledge, 1999, 163; Paul Chevigny, *Edge of the Knife: Police Violence in the Americas*, New York: New Press, 1995) and there is little reason to doubt that this is also the case in South Africa.
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To protect and serve

Restoring public confidence in the SAPS

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Persistent incidents of brutality, criminal behaviour and abuse of authority by members of South Africa's police agencies have serious implications for public trust and confidence in the police. A decline in trust and confidence in the police is inevitably harmful to the ability of the government to reduce crime and improve public safety. Firm action is needed to stop the decline in policing standards, which is placing both police officers and civilians at unnecessary risk of injury and death. This article explores the underlying reasons for many of the problems confronting the SAPS and considers how they may be addressed.

South Africa appears to be in a situation where public trust in the police is declining, while fear and mistrust of the police is on the increase. Political commentator, Justice Malala, captured this state of affairs in an article titled 'Our cops can't be trusted: Too many police linked to too many gangsters and killers'.¹ The statement that he is 'afraid of the police' and that '[s]ome of them seem to be at the centre of some of the most heinous crimes and ominous acts ...' gives expression to the impact of increasingly negative reports of police conduct, including acts of corruption, brutality, torture and indifference.

Both perceptions and incidents of police brutality and abuse of authority are likely to have a negative impact on the legitimacy of the police. The implications for the police of such negative perceptions were highlighted by the Mollen Commission, set up to investigate corruption in the New York Police Department (NYPD), in their report in 1994:²

Regardless of the truth of this perception, it is the perception that often matters. And this perception poisons relations between the community and the police, compromising the credibility of the vast majority of honest and dedicated cops who need the community's cooperation to carry out their difficult jobs effectively.

Reports of police brutality and criminal activity tend to result in police leadership trying to downplay the problem or distract the public in an effort to manage the image of the police organisation. No matter how persistent reports of police malfeasance are, police leadership typically try and portray these as isolated incidents. Nevertheless, problems continue as the organisational factors that contribute to the problem remain unchanged.

EXTENT OF THE PROBLEM

Allegations of misconduct and illegal activity have been levelled against all strata of the South African Police Service (SAPS), from the National

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Commissioner, General Bheki Cele, to the lowest ranking officials. In 2011 the *Sunday Times* newspaper published allegations that Cele had irregularly approved a R500 million lease for new police premises in Pretoria from a businessman, Roux Shabangu, who was said to have close ties to ANC leaders. An investigation into these allegations by the Public Protector resulted in a finding that *inter alia*, the conduct of the National Commissioner was 'improper, unlawful and amounted to maladministration'.³ For several weeks this matter received prominent media coverage and at the time of writing the recommendations of the Public Protector had not been acted on by the Cabinet.

Shortly after these allegations came to light the South African Police Union (SAPU) publicly accused the Commissioner of nepotism, arguing that he had appointed close family members and friends to senior positions in the police ahead of other better-qualified members and without following normal procedures.⁴ Public debate about the suitability of the Commissioner's leadership of the SAPS followed and most opposition political parties called for his dismissal.⁵

The SAPS Crime Intelligence Division has also been the subject of allegations and reports of misconduct and abuse of power. During the Scorpions' (Directorate for Special Operations) investigation into the corrupt activities of former police commissioner, Jackie Selebi, and his subsequent trial three years later, this unit engaged in unlawful activities, such as interfering with key state witness Glen Agliotti.⁶ This led to criminal charges being laid against the previous Head, of the Division Mulangi Mphego. Mphego later resigned and his case was struck off the court roll due to prosecutorial negligence.⁷

More recently, in April 2011 allegations were made against the current head of Crime Intelligence, Major General Richard Mdluli and other senior officers. During investigations into the activities of Czech fugitive and alleged organised crime boss, Radovan Krejcir by the SAPS Directorate for Priority Crime

Investigations (also known as the Hawks), it was claimed that SAPS Crime Intelligence officers allegedly illegally tapped the telephones of the investigators and shared the information with Krejcir, thereby jeopardising the case.⁸ Shortly thereafter, the Hawks charged Mdluli, along with two other senior crime intelligence officers and a court orderly, with a murder that took place a decade ago.⁹ During his bail application, Mdluli presented to the court a report containing details of an alleged conspiracy by high-level ANC members to undermine President Jacob Zuma's attempt to secure a second term of office.¹⁰ Thus, for a sustained period of time the media carried allegations of police at the highest levels of the organisation being involved in corrupt and criminal activities and of using police intelligence resources for political purposes.

With such allegations levelled at those at the top of the SAPS it is not too surprising that there were substantial problems occurring lower down the ranks. During the first half of 2011 there were a number of high profile incidents where SAPS members used excessive force under circumstances where it was not justified. In two separate cases CCTV cameras filmed abusive conduct by members of the SAPS Tactical Response Unit: one at a restaurant in Melville and another at a bar in Hillbrow, Johannesburg.¹¹

In April and May 2011 there were also numerous media reports of incidents of police brutality and abuse of authority. Among the more prominent incidents was the assault and killing of Andries Tatane by members of the Public Order Police Unit (POP) during a protest march in Ficksburg, Free State, on April 13, 2011.¹² A video of this incident was broadcast on the public broadcaster's prime time television news.

In yet another incident (on April 23, 2011) the *Cape Argus* newspaper carried footage of the police assaulting the owner and patrons of a sports bar in Cape Town.¹³

The public outcry that followed Tatane's death, even from within the ANC, elicited from Cele an

announcement that all members (approximately 8 500) of the POP units would undergo a refresher course.¹⁴ That gesture would however have been unlikely to have any effect on the negative public perception of the police created by the Tatane killing.

This perception was strengthened by the fact that a few days later, on April 26, a woman (Jeanette Odendaal) was shot and killed in her car by a police sergeant outside the Kempton Park police station in Johannesburg.¹⁵ She allegedly crashed into a stationary police vehicle when she parked outside the police station. She was shot in the head by a police officer whilst sitting in her vehicle. On the same day two other cases of police brutality were brought before the courts in KwaZulu-Natal.¹⁶ In the one incident, in Greytown, five policemen allegedly strangled a person in custody while in the other, in Hammersdale, fifteen policemen allegedly beat a suspect to death.¹⁷

These were not isolated incidents, as claimed by SAPS leadership,¹⁸ but rather examples of a widespread and growing organisational problem within the SAPS.¹⁹ This trend was noted at presidential level with Jacob Zuma expressing concern about police brutality and saying '[w]e cannot have this culture from [the] police.'²⁰ And on 16 March 2011, the chairperson of the National Assembly Portfolio Committee on Police, Sindi Chikunga, stated that MPs in the committee were getting more reports of torture by police '...not seen since apartheid.'²¹ Confirming that the incidents of police abuse were not simply isolated incidents, the Independent Complaints Directorate (ICD) Annual Report for 2009/10 revealed that in the last twelve years the total number of complaints against the police increased by 146% while the number of criminal cases opened against police officials increased by 285%.²²

Given the extent to which police deviance is seen as widespread and persistent, it is important to consider the long-term effect it may have on the relationship or social contract between citizens and the state in relation to law enforcement.

IMPLICATIONS FOR THE POLICE AND FOR POLICING

The importance of sound police community relations for effective crime fighting was emphasised in a recent British Home Office publication in support of community or 'neighbourhood policing'.²³ In its publication the Home Office remarked, for example, that:

neighbourhood policing is about fighting crime more intelligently and building a new relationship between the police and the public – one based on active cooperation rather than simple consent.

The South African equivalent to neighbourhood policing is called 'sector policing'. According to the police this is a practical form of community policing and essentially means policing in small and more manageable sectors of a police precinct area.²⁴ Community policing philosophy and its operational expression, sector policing, is heavily dependent on good relations and cooperation between the police and communities and, therefore police legitimacy.²⁵ However, in spite of community policing being expressed in law through the *South African Police Service Act, 1995 (Act No. 68 of 1995)*, after the first few years after democratisation in 1994, the SAPS gradually forewent the concept in favour of more traditional law enforcement and punitive methods of crime fighting.²⁶ This was largely as a result of political and public pressures on the police to 'do something' about the high levels of violent crime, and the fact that the motivation for community policing was more concerned with achieving political than policing objectives.²⁷

According to Professor John Casey (City University of New York), in his study on international and transnational policing practices, the possibilities for community policing depend to a large extent on a number of conditions.²⁸ Amongst his list of nine conditions the following four are particularly relevant for the South African situation:

- Stability and community cohesion. The essence here is political stability and shared values.

- Pay, motivation and morale of police. This condition refers to low morale as a result of 'serious management issues' and corruption, while low pay tends to attract poorly educated persons with 'a general lack of respect for policing as an occupation'.
- Trust in the police. Trust is both a desired outcome of community policing and a pre-condition for its success.
- Political will and commitment to change: This condition includes a commitment by government and police management to implement community policing and 'to firm action on key contextual issues such as corruption, human rights abuses, and excessive use of force'.²⁹

It is arguable that South Africa currently does not properly meet any of these four conditions. This largely explains the SAPS' lukewarm attitude towards community policing and to a large extent also sector policing.

That the SAPS is not adequately implementing sector policing nine years after its formal introduction in 2002³⁰ suggests that they no longer regard it as a priority. Further evidence for this can be found in the *Strategic Plan of the South African Police Service 2010-2014* that underlines the secondary position of community policing in favour of the intensification of the 'fight against crime and corruption'. Concepts such as 'community policing', 'partnership policing' and 'sector policing' receive scant mention in the Strategic Plan.³¹

Since public trust and confidence in the police are prerequisites for effective policing in a democracy,³² alienation between police and the public has a number of negative consequences. The police are increasingly pushed behind the 'thin blue line' where an 'us versus them' attitude is nurtured, and the public is generally seen by the police as the 'enemy'. As a result the police stand to lose the public as partner in the fight against crime and as an invaluable source of information. In a recent article on public trust and police legitimacy, Bradford and Jackson argue that '...if people do not trust that the police have their

interests at heart and believe there is a wide gap between the values of the two parties – very possibly because they themselves or people they know have been treated unfairly by officers in the past – they may withdraw from engagement and fail to offer assistance'.³³

Andrew Faull, a researcher with the Crime and Justice Programme at the Institute for Security Studies, in a 2010 study involving fifteen focus groups to explore public experiences and perceptions of police and police corruption in South Africa, found that 'despite constant reductions in overall crime over the past decade, public perceptions of police remain fairly negative'.³⁴ The participants in these focus groups did not wish for police who were effective in 'fighting crime' but for police that were 'polite and respectful'.³⁵

In the United States, in the aftermath of the racial tensions and social unrest of the 1960s the police also reacted with a 'get tough' policy.³⁶ This resulted in widespread violence between the police and largely black communities, leading to a renewed interest in improving police effectiveness.³⁷ In a 1968 report on the ghetto riots in the United States the National Advisory Commission on Civil Disorders (the Kerner Commission) outlined the problem as follows:

The policeman in the ghetto is a symbol of increasing bitter social debate over law enforcement. One side, disturbed and perplexed by sharp rises in crime and urban violence, exerts extreme pressure on police for tougher law enforcement. Another group, inflamed against the police as agents of repression, tends toward defiance of what it regards as order maintained at the expense of justice.³⁸

The SAPS currently find themselves in much the same position when they police 'service delivery' protests, which are an expression of citizen objection to the failure of the state to meet their expectations. The result is often a confrontation between the police and large crowds of angry people, with the police representing the state and its failures. This only contributes to further

alienation between the police and communities, which is exacerbated when the police show little or no restraint.

FINANCIAL IMPLICATIONS

Unlawful and ill-disciplined actions also come at a high financial cost to the state. On 29 March this year the Minister of Police admitted in parliament that civil claims against the police had increased by 33% in the last financial year from R87,2m in 2008/09 to R115,9m in 2009/10.³⁹ These figures might have been lower had it not been for the fact that the police's Legal Services Unit appears to have a policy of challenging every civil claim irrespective of the merits of individual cases and in spite of advice to consider out of court settlements in cases with a limited prospect of success.⁴⁰

This is an irresponsible approach that not only flies directly against the letter and spirit of the Public Finance Management Act, 1999 (Act No.1 of 1999), but also shows disregard for the additional and unnecessary legal costs of civil cases where the judgment goes against the police. This approach to departmental expenditure of public funds may very well fall within the ambit of the Act. In Section 1 of the Act 'fruitless and wasteful expenditure' is defined as an 'expenditure which was made in vain and would have been avoided had reasonable care been exercised'. Similarly, section 2 explains the object of the Act as 'to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which this Act applies.'

In an effort to address rising concerns about the increase in civil claims and the concomitant financial burden on the police budget the Minister of Police, Nathi Mthethwa, in a written reply to a question in Parliament on March 29, 2011, announced the creation of a new Litigation and Administration Unit as part of a 'turnaround strategy'.⁴¹ Of particular interest is his reference to the development of a case management strategy as an integral part of the turnaround strategy that, *inter alia*, is aimed at:

- A coherent policy on settlement of matters, whose essential feature would be a process of ensuring that cases that indicate settlement need not unnecessarily become litigious before such is considered.
- Recovering the costs from police officials who have acted beyond their authority.⁴²

These are early days and it remains to be seen whether the new strategies will bring about any improvement. At least these strategies show some recognition of the importance of managing civil claims in a responsible manner and, even more importantly, that there should be personal financial implications as part of the overall consequences for members who abuse their authority. It is all too apparent that in the past members generally considered it the state's responsibility to pay for their misconduct and therefore disregarded civil claims as a deterrent. In this regard, in a relevant study on police litigation in Australia, it was concluded that:

... civil litigation can form part of a regulatory web for controlling police misconduct and misbehaviour, and should be seen as a positive tool for police management to identify problem situations and behaviours and develop improved training and prevention systems.⁴³

For Mthethwa the obvious lesson from the Australian study is that he should not limit the engagement with civil claims to that outlined above, but should use these, and complaints against the police, to identify systemic problems within the police so that appropriate policy and other interventions may be developed and implemented.

WHAT CAN BE DONE TO 'FIX' THE SAPS?

The previous national commissioner of the SAPS, Jackie Selebi, was forced to leave the Service at the end of June 2009, when his extended contract expired. He left behind an organisation that was deeply scarred by the allegations that he had close ties to individuals involved in organised crime. In 2010 Selebi was convicted on a charge of

corruption and sentenced to fifteen years in prison.⁴⁴ The outcome of this case was preceded by a complex and prolonged investigation and prosecution that revealed a deeply troubled police service led by a man the judge castigated for having a complete lack of integrity. This affected both civilian trust in the police and internal morale. Unfortunately Selebi's conviction did not result in any perceptible improvements to the way in which the organisation deals with corruption and criminality within the police.

Similar allegations of corruption, maladministration, nepotism, intimidation and criminality were made about the staff of the Department of Correctional Services after the murder of a senior Correctional Services member in KwaZulu-Natal in 2000. In that instance the President appointed a judicial commission of inquiry, headed by Judge Thabani Jali, to thoroughly investigate these allegations and to make comprehensive recommendations for improvement.⁴⁵ While the Jali Commission was criticised for taking too long (its final report was submitted in December 2005), it helped to expose the extent of the corruption problem within the department and made recommendations as to how these could be addressed.⁴⁶

Had these recommendations been implemented properly, it is possible that the incidence of corruption in the department would have been addressed, and the treatment of prisoners by warders improved. The Commission did have the effect of stimulating the Portfolio Committee on Correctional Services to take their oversight role more seriously and to hold regular reporting meetings with the department to monitor progress in respect of the recommendations of the Commission and the reports by the Auditor General. While many of the recommendations by the Jali Commission have not yet been acted upon, the Commission did serve an important function of bringing to light the extent of the problem within prisons and providing the basis for advocacy to address these problems.

This raises the question of whether a judicial commission of inquiry into police conduct might

not go some way towards providing a basis on which to address the problems in the police.

An example of an effective independent inquiry is the Mollen Commission of Inquiry into police corruption in the New York City Police Department (NYPD) that took place in 1992. The findings of the Mollen Commission, of the nature and extent of corruption within the NYPD, as well as the recommendations for preventing and detecting are instructive.⁴⁷ In spite of the NYPD leadership denying that corruption was a serious problem, the Commission found that:

Today's corruption is far more criminal, violent and premeditated than traditional notions of police corruption suggest and far more invidious ... Testimony and field investigations demonstrated that its most salient forms include groups of officers protecting and assisting drug traffickers for often sizable profits – stealing drugs, guns and money – and often selling the stolen drugs and guns to or through criminal associates; committing burglary and robbery; conducting unlawful searches of apartments, cars and people; committing perjury and falsifying statements; and sometimes using excessive force ...⁴⁸

It is increasingly clear that poor management supervision, training and even recruitment are at the root of many of the problems within the SAPS. For example, an internal investigation by the SAPS's Policy Advisory Council, detailed in two reports for the period November 2006 to October 2008, uncovered a range of basic deficiencies that refer, *inter alia*, to poor discipline, weak command and control, high levels of corruption, etc.⁴⁹ The Policy Advisory Council was established by the National Commissioner of the SAPS in 2006 'to advise him on the levels of service delivery and crime in the country.'⁵⁰ The Advisory Council comprised of 14 retired SAPS commissioners (current ranks would be at the level of lieutenant general) chaired by a former Deputy National Commissioner.⁵¹

Sub-committees of the Advisory Council visited police stations throughout the country and

provided regular interim reports to the National Commissioner. However, although the latter announced the appointment of management task teams to attend to issues raised by the Council,⁵² no evidence could be found that SAPS top management acted on any of the findings and recommendations of the Advisory Council. Amongst an array of findings the Council, for example, remarked as follows on command and control in the SAPS:

There is a general lack of command and control within the Police Service at local level. Resultant poor levels of discipline and high levels of corruption is of serious concern.⁵³

In their second report, a year later in 2008, the Council again expressed the 'firm opinion' that:

...many of the problems of the Police are the direct result of a "breakdown" in command and control and a lack of supervision in certain areas. In most instances poor service delivery, mal-administration, ill-discipline and corruption have at its core the lack of supervision and control.⁵⁴

The Council also criticised the absence of regular inspections at police stations and the inability of the SAPS' National and Provincial Inspectorates to carry out their mandates.⁵⁵ An efficient inspectorate should be able to identify and address most of the deficiencies that exist at police stations and units. In fact, they should be doing what the Policy Advisory Council was eventually appointed to do.

So, could a judicial commission of inquiry provide the basis for an overhaul of the SAPS and address the crises in public accountability it faces? Given the fact that (i) the nature of the problems facing the SAPS and underlying poor policing have been identified already and have been known to both Cabinet and police managers; and (ii) the recommendations of high-level panels have failed to be implemented, it is debatable whether a judicial commission of inquiry would be able to succeed where others have proved to be ineffective. In addition, inaction on behalf of the

Cabinet in the face of findings by the Public Protector that the Commissioner of Police was indeed responsible for mismanagement and unlawful conduct in relation to the procurement of property by the SAPS suggests that there may be insufficient political will to undertake such an intervention; let alone push for the implementation of what are likely to be hard hitting recommendations.

There are however a number of advantages to having a judicial inquiry, the most important being that it would go some way towards responding to the public desire to see the serious problems of police mismanagement being properly addressed. In order to have the desired effect the inquiry would have to be independent; would have to do its work openly and transparently (unlike the secrecy that surrounded the Khampepe Commission); thirdly, it should allow for presentations from individuals and groups outside the police; and should involve experts other than serving police officers as members of the commission. In other words, it should function more like the Goldstone Commission of the early 1990s than the Jali Commission.

The Goldstone Commission, chaired by Judge Richard Goldstone, was set up in 1991 as a structure of the National Peace Accord agreed to between the parties working towards a negotiated political settlement in South Africa.⁵⁶ The objectives of the Commission were 'to inquire into the phenomenon of public violence and intimidation in the Republic, the nature and causes thereof, and what persons were involved therein; inquire into any steps that should be taken in order to prevent public violence and intimidation; and to make recommendations to the State President in respect of public violence or intimidation.'⁵⁷ The Commission was eventually authorised (in 1992) to appoint its own independent investigation teams that made them less reliant on the police and enabled them to gather information on allegations, including allegations against the police, more efficiently and quickly. However, political interference that saw the release of the final report of the Goldstone

Commission being delayed because of the extent of malfeasance in the old South African Police force, should be avoided.

The terms of reference for a commission of inquiry would need to include at least the following terms: To conduct an investigation (a) to determine the nature and extent of police criminality, including acts of brutality, torture and corruption; (b) to establish the root causes of the problem; and (c) to make recommendations on measures to correct the problem areas.

CONCLUSION

If democratic policing is what we want in South Africa it must be obvious that the current and ongoing state of affairs as far as our police and policing practices are concerned, cannot be tolerated. It may be acceptable in an authoritarian state, but not in a democracy. If what increasingly begins to look like a slide towards authoritarian police practices is allowed to continue we face a dangerous future. Firm action is needed to stop what is happening with the police and an urgent intervention is required. It is in the interest not only of all South Africans, but also of the professional and dedicated police members who are inevitably caught up and tarnished by what is happening around them.

A commission of inquiry is not the only route to take in improving policing. In the absence of an obvious alternative however, it does appear to be sensible to establish an independent structure with the capacity to thoroughly assess the functioning of the SAPS and its leadership. This should have occurred the moment Selebi was found guilty of corruption, so that there could have been a fresh start. However, there has been little difference in the response of SAPS leadership to ongoing problems of police brutality and corruption. SAPS leadership have either remained silent, denied that there is a problem, attempted to distract the public from the initial problem (i.e. police brutality) by pointing at other problems (i.e. the killings of police officials), or attacked those who have raised the problems.

What is needed is a comprehensive strategic plan that clearly explains how the SAPS will become a professional policing agency in the foreseeable future. Such a plan must be able to logically demonstrate how new policies, systems and procedures will ensure that all police members will become widely respected by the public because they are well trained, adhere to a higher standard of conduct than the average citizen and operate in a respectful and accountable manner. It has been done in other countries and can be done in South Africa. It is now time for all South Africans to demand a professional and depoliticised police service that upholds the Constitution and acts in the interest of all people.



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NOTES

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The practice of crime prevention

Design principles for more effective security governance

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South Africa has had a comprehensive crime prevention policy agenda for some time in the form of the 1996 National Crime Prevention Strategy and the 1998 White Paper on Safety and Security. Despite this, prevention has remained very much a second cousin within the South African criminal justice family, notwithstanding the fact that there is widespread agreement that it warrants far more attention. In this article we briefly review some of the principal obstacles to effective crime prevention. Our understanding of 'crime prevention' is a broad one – it involves simply asking the question: How can we reduce the likelihood of this happening again? This question opens up a range of preventative possibilities. Whether they are of a socio-economic, environmental or law enforcement nature depends on the nature of the (crime) problem. On the basis of our analysis, we propose three design principles to be followed if we, South Africans are to establish crime prevention as a central focus of our security governance. These design principles articulate what might be thought of as 'best thinking' rather than 'best practice'.

SO LITTLE PREVENTION

It is by now widely accepted that the crime prevention impetus in South Africa has waned considerably since government adopted the National Crime Prevention Strategy (NCPS) in 1996. However, the NCPS, and the enthusiasm that surrounded it at the time of its release, along with the White Paper on Safety and Security (1998) that followed soon afterwards, remain historical reminders of a hope for effective crime prevention as a central feature of South African security governance.¹ What these policies, particularly the NCPS, argued for was the creation of a holistic, whole-of-society approach to the governance of safety and security – a whole-of-society approach that entailed aligning resources to solutions, rather than solutions to resources. They aimed at

mobilising the resources, knowledge and capacities of a host of role players for the resolution of safety problems. For every safety issue a whole-of-society approach encourages us to ask the question: 'Who could be involved in crafting a solution?'

To realise this approach, the NCPS envisaged a 'maximisation of civil society's participation in mobilising and sustaining crime prevention initiatives.'² Similarly, the White Paper on Safety and Security set out a preventative approach that would encompass all

activities which reduce, deter or prevent the occurrence of specific crimes firstly, by altering the environment in which they occur, secondly by changing the conditions which are thought to cause them, and thirdly by providing a strong deterrent in the form of an effective Justice System.³

Despite these strong calls for a preventative focus, a reactive law enforcement approach has taken

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centre stage in South African security governance reform initiatives. To the extent that crime prevention has been given attention this has been in a piecemeal fashion and, importantly, in ways that have narrowed the definition of crime prevention to little more than a handmaiden of law enforcement.⁴ Accordingly, although crime prevention is intended to offset more traditional, coercive strategies of crime control, it has been implemented in South Africa in ways that have seen it sidelined in favour of short-term and tougher approaches.⁵ This is evidenced, for instance, in longer minimum sentences; more aggressive policing tactics, the most recent of which have been statements about shooting to kill; as well as in name changes in the South African Police Service – for instance the suggestion to replace the SAPS term ‘service’ with the term ‘force’, and the reintroduction of military ranks.⁶

These developments have flown directly in the face of the proposals set out in the NCPS.⁷ The predominance of law enforcement approaches has also manifested itself in the way policing partnerships have evolved between the South African police and other policing institutions. Private security and community patrols in neighbourhoods have increasingly evolved as adjuncts to the state police in ways that reinforce a law enforcement approach, rather than as a source of policing resources that support a more preventative approach.⁸

Accordingly, while there is much knowledge, much policy and much agreement, today, some 15 years after the introduction of the NCPS, there is still very little to show for it. Prevention is not a central feature of South African security governance. It remains very much a second cousin within the South African criminal justice family – and a poor and neglected second cousin at that. This is not to say that there have not been successful crime prevention programmes in operation – a recent very significant example was the policing of the South African Soccer World Cup, which was in many ways a model of successful crime prevention. This success was in large part due to the fact that the relevant

resources needed to resolve potential safety issues – state and non-state – were aligned in novel ways. A whole-of-society governance approach was adopted, and this enabled preventative solutions to be realised through ‘flexibly linking different nodes together or drawing on a particular node as the situation demanded.’⁹ The challenge, of course, is how to sustain this approach, developed during a ‘state of exception’, beyond the World Cup.¹⁰

Despite these and other successes, prevention remains very much an historical ideal rather than a reality in South Africa today. Prevention, particularly within criminal justice, continues to be seen almost exclusively through the narrow lens of deterrence. Yet, as the NCPS made so abundantly clear, the domain of prevention is, and should be, much more extensive:

Crime needs to be tackled in a comprehensive way, which means going beyond an exclusive focus on policing and the Justice system. It means problem-solving to address the causal factors which provide opportunities for crime and limit the likelihood of detection. The framework outlined in this strategy brings a far wider range of solutions to bear on specific crimes, as well as creating roles for a broader range of participants.¹¹

BLAMING AND PUNISHMENT

Why is this so? Answers to this question are not hard to find. One obvious answer is that the business of criminal justice is fundamentally the business of blaming, and blaming and prevention do not make easy bedfellows. Invariably one will be emphasised at the expense of the other, who will be forced to leave the bed. Given this, why does blaming so often, and so typically, trump prevention? Although this is a complex issue we propose to draw out three significant threads in answering this question by turning around a pithy, albeit rather crude, turn of phrase that Bill Clinton reportedly used when asked by his campaign team what the focus of his election campaign should be. He is reported to have retorted, ‘It’s the economy, stupid’.

From blame to prevention: Crime

The label 'crime' and the meaning it brings with it constitute a problem for prevention. This meaning stands in the way of prevention within criminal justice. More specifically, it is the linking of the terms 'crime' and 'prevention' within the expression 'crime prevention' that is a source of the problem. When 'crime' and 'prevention' are tightly coupled, prevention tends to be sidelined.

John Braithwaite makes this point when he argues that when we label a harm a 'crime', we 'call out' or 'hail out' a blaming response.¹² We realise this blaming response by giving this harm/crime over to the institutions of criminal justice. Braithwaite argues that one of the interesting things about the assemblages of institutions we refer to as the 'criminal justice system' is that they are one of the few sets of governance institutions that consider a problem to be solved when someone has been blamed and punished for a harm.¹³ Braithwaite in making this point contrasted this feature of criminal justice with the response to 'accidents' within the airline industry, where blaming might take place but it is most definitely not considered to be the end of the matter.

One might add to Braithwaite's example the case of the financial services industry. For instance, while blame has certainly been applied as the world has responded to the recent set of financial crises, and while some people have indeed been punished, these blaming actions have not been thought of as providing an adequate problem-solving analysis of the regulatory inadequacies that gave birth to this crisis.¹⁴ Braithwaite, in advocating an alternative solution to the problem of offending goes so far as to say '...for no type of offending is imprisonment the normal response that is needed...'.¹⁵

Jonathan Simon has taken this line of thinking forward by coining the term 'governing through crime'.¹⁶ What he uses this term to refer to are the meanings and associated actions we bring to the security governance table when we 'make up' harms as crimes. For instance, in order for the police to be able to do something about an

incident, they have to open a docket and classify it according to a particular crime type. This classification process results in the governing of harms exclusively through institutions designed and developed to blame and punish 'crime' – such as the criminal justice system.

Simon's argument is that if we insist, within our mainstream security governance institutions, on governing harms primarily through crime – that is, if we insist on labelling harms as crimes and then look for people to blame and punish for these harms – we must expect prevention to fall by the wayside. In other words, if the institutions of criminal justice insist on making blame and punishment their top priority, as they now do, prevention will not fare well within their boundaries. That is not to say that the blaming done by criminal justice doesn't have an important place within security governance. What it does mean is that blaming should not be the only mainstream response.¹⁷ When we, as a society, insist on only labelling harms as crimes, we favour a blaming/punishing response at the expense of prevention. For instance, making up harms as losses (as insurance companies, for example, often do) entails a different way of responding to that loss. Rather than automatically favouring a blaming response, the response would be more orientated towards trying to prevent future losses and shaping governance practices to achieve this.

How might one loosen the tight coupling of crime and prevention? The short answer: Through reforming our institutions of security governance.

From blame to prevention: Institutions

Institutions of criminal justice consist of a set of organisational arrangements that bring people together to construct harms in terms of 'offenders' and 'victims' and then go through a process of allocating both blame and punishment to offenders. These functions, and the institutions that realise them, lie at the very core of the criminal justice assemblage. One can moderate what the criminal justice system does by adding

on various other objectives and processes (as is done for example by building restorative processes into it), but this does not alter what the assemblage does. If the principal set of institutions dealing with harms is the criminal justice system, then we should expect blaming and punishment, not prevention.

This will not be altered by a shift of intention, or by policy reports such as the NCPS. One can talk about prevention in policy after policy but if our principal state institutions for governing security have as their central functions blame and punishment, prevention will not become an important feature of our government of security. It is not our thoughts, intentions or words that determine where our commitments really lie, but our institutions.

If one hands the problem of crime exclusively over to a set of institutions that are not designed to be preventative, one cannot expect those institutions to deliver preventative solutions.¹⁸ If we hand over our security problems exclusively to the criminal justice system we should expect them to be dealt with by means of blame and punishment. Or, as Braithwaite puts it, if blame and punishment constitute our 'ritual of comfort' we will continue to do this, no matter what evidence there is to the contrary.¹⁹

If we are serious about prevention we are going to have to ensure that we rely on institutions that are designed to prevent, to govern security. If, as a society, we are serious about prevention we will need to reform our existing institutions so that they hold prevention to be important, as well as build new ones that are designed to promote prevention.²⁰ For instance, in order to give effect to a whole-of-society governance system, the Western Cape Provincial Government is involved in conceptualising a new institution, the Western Cape Safety Partnership – a non-state organisation – with the purpose of strengthening already existing whole-of-society initiatives, and creating new ones across the Western Cape.²¹ An important feature of this envisaged partnership will be its ability to mobilise resources from both state and non-state sectors and align these with

context-specific solutions. The Partnership would have fulcrum capacity. (A fulcrum, as we have used the term here, is a site of coordination that establishes effective governance capacity for public goods by connecting the relevant institutions able to contribute to the resolution of the problem – whichever institutions these may be.)

So how is this to be done? Short answer: By changing the flows of money.

From blame to prevention: Money

If we are to understand why prevention is almost always a second cousin within the governance of security we are going to have to understand where the spend on security goes. Similarly, if we want to change things so that prevention becomes a first cousin, we are going to have to find ways of changing the paths along which money flows. If we are to realise the dream of a set of procedures for governing security that gives priority to prevention, we are going to have to get much better than we have been at following the money, and then, and more importantly, changing the flow of that money.

Although there are oversight procedures that see to it that our money is not wasted or stolen, this is not what we have in mind. What we do have in mind is determining whether budgets are being used to fulfil whole-of-society objectives. If we are going to be able to engage in reshaping the way we govern security we are going to have to find ways of redirecting our security governance budgets.

One of the reasons so little prevention is taking place (this is obvious but needs to be explicitly stated) is that there is so little money for it. At present most, indeed almost all, of our tax monies allocated to security governance are spent on blaming and punishing. The reason for this (and again it is obvious but needs to be stated) is that there is so little zero-based budgeting within our security governance arrangements. What we need are systems that require outcomes that answer the question highlighted at the outset: 'How can we

reduce the likelihood of this happening again?’ rather than ‘Who is to blame?’

When funding security, governments seldom start out with a clean slate, with what might be thought of as a security budget, that they then allocate to institutions and programmes they believe will be effective in dealing with the prevention of harms. Instead, our governments currently give almost all our security governance money to the institutions that specialise in blame and punishment. It follows that any prevention either takes place as a spinoff of blaming activities – for example, as deterrence brought about through punishment – or through temporarily, and usually poorly funded, ‘add-ons,’ as is typically the case with more whole-of-society approaches.

None of this will be easy. It is particularly difficult when our dominant ‘rituals of comfort’ encourage the way of thinking we are currently stuck in. Furthermore, none of the shifts we have advocated can be made without taking specific contexts into account and without seeking out, and responding to, opportunities for change when they arrive. Policy alone, as we know from the NCPS, is not going to provide solutions. But, having said this, we do need a set of guiding principles that will enable us to look for, and create, opportunities for change that are context specific. We need design principles.

DESIGN PRINCIPLES

The story we have painted above is the story of a rut – a thinking rut. We are in a thinking rut in terms of the way we think about ‘crime,’ the institutions we have designed to govern ‘crime,’ and the way we have spent our tax monies.²²

The message here is that we should start with our thinking. Only if we first change our thinking will we be able to change our practice. Practice follows thinking. For best practice we first need best thinking.

This distinction between thinking and practice is important and is intended to shift the focus from practice to thinking. An emphasis on best

practice, and the idea that practices from one context can simply and easily be shifted to another, downplays the importance of context. In doing so it fails to recognise that context almost always matters. What works in one context is unlikely to simply work in another. To get from one context to another it is necessary to work at the level of thinking, of principle, rather than at the level of practice. Well-founded thinking (principles) travel well. Context-specific practices do not.

Identifying best practices usually entails drawing on the *ways of doing things* that have worked in one context and applying them to another context. However, experience has shown that this is typically not possible – practices that have worked in one context will often not work in another. To implement prevention in a meaningful, context-specific way one needs to identify the ways of thinking, or principles, underlying the practices. To put it in another way, we can derive rules from principles, and ‘whereas rules may be specific, principles may be very abstract,’ and thus applicable to a number of contexts.²³

Design principle 1

Limit governing through crime to a minimum, and insist on governing harm

We need to be more careful about how, and when, we use the label ‘crime’. Achieving this will require a different way of thinking about our world and the harms we face in it. Applying this principle will force us to adopt a broader way of thinking about security governance. It will require us to think more carefully about the harms we may face, and whether these harms should be thought of as crimes, or as risk to be managed in other, more preventative, ways.

There are many contexts that demonstrate how this principle can be effectively applied in practice, for example any well-run company that is focused on reducing its losses rather than on simply blaming and punishing. The airline industry has also applied this principle to very good effect.²⁴

DESIGN PRINCIPLE 2

Reshape the institutional environment within which harms are governed

One context where this principle has been taken seriously, and applied, is Northern Ireland. For instance, one of the recommendations made by the Patten Commission (an independent Commission on Policing in Northern Ireland) was to create a Policing Board (as opposed to a Police Board).²⁵ The establishment of a Policing Board worked, at the level of practice, to broaden the understanding of security governance in ways that enabled non-blaming activities to be recognised and supported. The establishment of a Policing Board in Northern Ireland enabled the government to focus on, and support, institutions and activities that were explicitly preventative in their design.²⁶ Although developing a similar approach here may be a possibility (such as the Western Cape Safety Partnership mentioned above), the idea or underlying principle, as mentioned, is to develop fulcrum capacity, so that a range of resources may be aligned to appropriate solutions.

Design principle 3

Change the flows of money so that it is channelled to institutions and activities that support prevention

One way this can be done is for governments to shift their focus from institutional budgets that assume money only goes to the established blaming institutions, to functional budgets that are explicitly designed to support preventative activities. Depending on the context, this can mean funding anything from a local community patrol to an early childhood development centre.²⁷ Again Northern Ireland provides an example. Functional budgets were developed to support community safety partnerships that were explicitly designed to find and maintain preventative initiatives involving a range of partners including 'statutory agencies, such as police, probation, social services, education and health; voluntary agencies and groups; local

government; community groups; and the private sector.'²⁸ Functional budgets allow governments to move beyond existing institutions and to seek out arrangements within and outside state institutions that enable a wide variety of preventative outcomes.²⁹ Once again, this is not to say that the criminal justice system should not be recognised as an important set of institutions within the security governance mix, but it does encourage these institutions to look for ways in which they can attract monies earmarked for prevention, and enables others to put in bids for these funds.

CONCLUSION

These three design principles direct us to what we at the outset termed a whole-of-society approach to security governance. This emphasis is consistent with a significant body of evidence, much of which was surveyed and considered in the NCPS, that confirms that prevention requires the identification, mobilisation and integration of a variety of resources found across the public, the private and the civil society sectors. Prevention can only succeed if security is broadly conceived and acted upon through a range of state and non-state entities at all levels, all bringing to the table their own sets of knowledge, skills and resources. A prominent normative focus then becomes how one best promotes this while also adhering to the practices of good governance. What is required is an approach that allows the following question from Colleen Lewis and Jennifer Wood to be posed, considered and answered.

...what mix of governance mechanisms might best contribute to the protection of fundamental democratic principles like equity, fairness, access to justice, and human rights whilst at the same time allowing innovative arrangements to 'bubble up' in ways that acknowledge local needs and preferences?³⁰

Finding practical answers to this question, in South Africa, will take time and effort. This will only be possible if the normative search that Lewis and Wood advocate is guided by principles that have been honed in a crucible of practice.

We believe that the three principles we have outlined provide the required basis for pursuing this quest.



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Antisocial personalities

Measuring prevalence among offenders in South Africa

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The identification of offenders who meet the criteria for psychopathy, antisocial personality disorder or dissocial personality disorder could be of significant value to help address the violent crime crisis in South Africa. A sample of 500 male maximum security offenders was selected to determine the prevalence of these disorders among South African offenders. Results for the incidence of psychopathy and dissocial personality disorder indicate a similar trend to that found in other countries; whereas the prevalence of antisocial personality disorder contradicts international findings.

In 2010 the South African Police Service (SAPS) reported a slight decrease in most crime categories from previous years. However, it is disquieting that over 70% of all offenders are currently incarcerated because of violent crimes.¹

The social factors related to violent crime have been identified as poverty-related variables, urbanisation and the influx of illegal immigrants, as well as a lack of policing and economic inequality.² South Africans have also been criticised for adopting a 'culture of violence', implying the acceptance of violence in conflict resolution and everyday life.³ Despite social factors that contribute to the incidence of crime, there is little research regarding intrapersonal factors (such as personality characteristics) that could contribute to violent crime.

The identification of a distinct criminal personality type has been fraught with methodological problems and complexities associated with personality formation. However, several studies have determined a significant link between violent crime and antisocial personalities, including psychopathy, antisocial personality disorder (ASPD) and dissocial personality disorder (DPD).⁴ Studies have also shown that offenders who meet psychopathic or ASPD criteria have greater criminogenic needs, commit more violent crimes, and tend to recidivate more than non-psychopathic offenders.⁵ Regrettably, disagreements surrounding the classification of the antisocial personalities have hindered the identification of individuals who meet the diagnostic criteria of an antisocial personality. As a result the possibility of an antisocial personality disorder is not taken into account when planning and implementing treatment and rehabilitation strategies.

For this reason, the present study focuses on differentiating between the various antisocial personalities in order to determine their prevalence in a South African offender sample.

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ANTISOCIAL PERSONALITIES

Since the early 1800s, the various antisocial personalities have been referred to as madness without distinguishing between psychotic features: moral insanity, psychopathy, sociopathy, antisocial personality disorder and dissocial personality disorder.⁶ The concept of psychopathy evolved from earlier descriptions of the disorder and finally expanded into a modern clinical portrait with a set of characteristics associated with the psychopathic personality.⁷ Among others, the characteristics included superficial charm, intelligence and unreliability, a lack of remorse, antisocial behaviour, pathological egocentricity, and impersonal sexual relations.

The American Psychiatric Association (APA)'s *Diagnostic and Statistical Manual of Mental Disorders* (DSM) incorporated Cleckley's characteristics into their formulation of diagnostic criteria for antisocial reaction, one of six personality disturbances under the broader sociopathic personality disorder.⁸ In a failed attempt to minimise confusion among clinicians and to promote the effective communication of mental disorders, the APA replaced the term 'sociopathic personality disorder' with ASPD in the third publication of the DSM.⁹

While *personality traits* played a central role in the original construct of psychopathy, the diagnostic criteria for ASPD focus more on the *behaviours* that typify the disorder.¹⁰ According to the most recent APA guidelines, the DSM-IV-TR, ASPD can only be diagnosed when the individual is 18 years old and has a proven history of conduct disorder before the age of 15. Other prerequisites include the presence of three or more of the following criteria: a disregard for social norms and the safety of others, deceitfulness, impulsivity, aggressiveness, irresponsibility, and a lack of remorse.¹¹ The APA also stipulates the manifestation of these criteria in behavioural terms. The reasoning behind moving away from the original personality-focused criteria was that behaviour, unlike personality traits, can, arguably, be more reliably measured.¹² In response to the adaptation, Hare contends that ASPD fails to

assess the interpersonal factors that maintain antisocial behaviour. Widiger, Frances and Trull,¹³ in agreement with Hare, argue that a specific personality trait may cause a variety of behaviours and that a specific behaviour could reflect more than one personality trait. Basing his study on Cleckley's original personality-based criteria for psychopathy, Robert Hare set out to discriminate between ASPD and psychopathy. He developed a set of measurable criteria, the Hare Psychopathy Checklist (PCL),¹⁴ to assess the extent to which psychopathic traits are present in certain individuals. Studies have found that only 15% to 38% of individuals who are diagnosed with ASPD meet the revised version of the PCL criteria for psychopathy, while around 80% to 90% of psychopathic offenders also meet the ASPD criteria.¹⁵

Adding to the confusion surrounding the diagnosis of psychopathy and ASPD, the 10th edition of the World Health Organisation's *International Classification of Diseases* (ICD-10), uses the term 'dissocial personality disorder' to conceptualise a set of symptoms also based on psychopathic personality traits. In contrast with ASPD, the diagnostic criteria for DPD focus more on the traditional concept of psychopathy, but emphasise *the lack of affect or expressed emotion* rather than the presence of specific personality traits or behaviours.¹⁶ Unlike psychopathy, which has been the most researched of the antisocial personalities by far, very few studies have focused exclusively on DPD.

Despite overlapping concepts, it is clear that the criteria for psychopathy, ASPD and DPD emphasise the presence or absence of different characteristics, thereby encouraging the notion of three distinct, but related, disorders.

METHODOLOGY

Participants and procedure

Permission for the current study was granted by two ethics committees representing the Department of Psychology and the Faculty of the Humanities at the University of the Free State. Furthermore, an independent review of this research proposal was

conducted by the Department of Correctional Services. A non-experimental quantitative research approach was employed to acquire data at Mangaung Correctional Centre (MCC), a maximum security correctional facility located near Bloemfontein, housing approximately 3 000 male offenders. A randomised sample of 500 offenders representing various ethnicities and types of crime was selected through the MCC database. The selected offenders were asked to sign a consent form, thereby agreeing to take part in the study and granting permission for the use of the information.

Measures

Along with a biographical questionnaire, the following self-report measures were used in this study:

- 1) *The Psychopathic Personality Inventory – Revised* (PPI-R).¹⁷ The PPI-R is a self-report inventory designed to identify a continuum of psychopathic traits and attitudes. It consists of 154 items and eight content scales: Machiavellian Egocentricity (ME), Rebellious Nonconformity (RN), Blame Externalisation (BE), Carefree Nonplanfulness (CN), Social Influence (SOI), Fearlessness (F), Stress Immunity (STI), and Coldheartedness (C). It also consists of four validity scales, including Deviant Responding (DR), Virtuous Responding (VR), and two Inconsistent Responding (IR-15; IR-40) scales. The DR and VR scales are used to identify faking bad and faking good responses respectively, whereas the IR scales eliminate careless or random responses.¹⁸
- 2) To measure antisocial and dissocial personality disorders *The DSM-IV and ICD-10 Personality Questionnaire* (DIP-Q)¹⁹ was used. The DIP-Q is derived from the ICD-10 and DSM-IV classification of mental disorders. Preliminary validation of the relevant DIP-Q subscales did not render sufficient reliability coefficients for either the DPD or the ASPD subscales.²⁰ However, findings from a pilot study in the present project did deliver sufficient reliability scores,

with alpha coefficients of 0,81 and 0,63 for the ASPD and DPD subscales respectively.

No studies administering the PPI-R or DIP-Q in South African samples could be found to corroborate the mentioned psychometric properties.

Administration of questionnaires

The Mangaung Correctional Centre houses offenders from a variety of different cultures and ethnicities. Administering the measures raised challenges such as language and comprehension difficulties. Translators were employed to assist with the correct interpretation of the questions as well as to explain the use of English jargon contextually. Ten translators, including the researcher, assisted with the paper and pencil administration of the instruments. In some cases participants were illiterate and responded to the questions verbally. Participants were divided into small groups (one to five) and were allocated a translator who spoke the same language as the group. Each translator then translated item by item while those in the group marked the relevant answers.

Statistical analysis

SAS Version 9.1.3 and SPSS Version 18 were employed to analyse the data. Recent taxometric analyses report that both antisocial personality disorder and psychopathy are more dimensional in nature than categorical, and should therefore rather be measured on a continuum.²¹ The DIP-Q, however, only allows for categorical responses; thus the results for the prevalence of ASPD and DPD traits will mainly be portrayed as such. On the other hand, the PPI-R allows for the dimensionality of psychopathy to be incorporated. The participants' total PPI-R scores were divided into four groups representing scores ranging from 60-69 (low psychopathy), 70-79 (moderate psychopathy), ≥80 (high psychopathy), and non-psychopaths.

RESULTS AND DISCUSSION

Table 1 presents the sample's demographic characteristics. Most participants were aged

Table 1: Demographic characteristics

Characteristic	Total sample (N=442)	%
Age		(N=439)
18-35	174	40
36-55	251	57
56+	14	3
Language		(N=439)
Sesotho	152	35
Afrikaans	124	28
Xhosa	66	15
Tswana	50	11
Zulu	31	7
English	11	3
Northern Sotho	5	1
Education		(N=429)
None	28	7
Some primary	195	45
Some secondary	170	40
Tertiary	36	8
Current crime classification		(N=431)
Violent/aggressive	198	46
Sexual	129	30
Economic	104	24
Length of sentence		(N=411)
Less than 10 years	19	5
11-40 years	294	71
More than 40 years	17	4
Life	81	20

between 36 and 55 years and Sesotho was the most spoken home language. The various crimes were grouped into violent, sexual and economic offences. Sexual crimes are often included in the violent crime category; however, the high rate of sexual crimes in South Africa deserves individual attention. For this reason sexual crimes, including violent crimes of a sexual nature, and violent crimes unrelated to sex are portrayed as separate categories. Violent crimes represented almost half of the sample, while sexual and economic crimes represented almost a third and a quarter of the sample respectively. Most of the participants are serving 11 to 40 year sentences, with 20% serving life sentences, and less than 10% serving either more than 40 years or less than 10 years.

Psychopathic traits

The reliability of the PPI-R in the current study indicated internal consistency estimates for the

original content scales that ranged from 0,52 to 0,73. After conducting exploratory and confirmatory factor analyses, several items producing low factor loadings were omitted to increase the instrument's psychometric properties. The alpha coefficients after omission of the items indicated a moderate increase in reliability (0,60 to 0,75). Table 2 discloses the prevalence of antisocial personalities in the current sample.

The total percentage of offenders who met the criteria for psychopathy represented 27% of the sample. This figure is similar to other reports of psychopathic traits among offenders, which fluctuate from 15% to 25% in American samples. British samples, on the other hand, reveal a much lower account of psychopathy.²² Reasons for the dissimilarity in psychopathy scores could be cultural differences and the possibility of co-morbid disorders. It should also be noted that the majority of psychopathy studies do not include the PPI-R, which increases the possible influence methodological differences could have on the reported prevalence of psychopathy. The probability of malingering should also be taken into account.

ASPD traits

Similar to the results of the pilot study, the ASPD subscale showed good internal consistency ($\alpha=0,84$), while the DPD subscale indicated a lower score ($\alpha=0,65$). The prevalence of ASPD in this sample represented 17% (Table 2). This finding is inconsistently low when compared to other studies where ASPD represented between

Table 2: Prevalence of antisocial personalities

	Total	% of total N
Psychopathy:		
Total	114	27%
Low psychopathy (60-69)	25	6%
Moderate psychopathy (70-79)	58	14%
High psychopathy (≥ 80)	31	7%
Antisocial personality disorder	77	17%
Dissocial personality disorder	185	38%

N = 442

N = 414 (PPI-R psychopathy)

38% and 49% of the offender population.²³ Estimations of the prevalence of ASPD among offender populations are as high as 80%.²⁴ However, another South African study similar to this research indicates a prevalence of ASPD of only 12% among an unsentenced offender sample.²⁵ The prerequisite of conduct disorder in the diagnosis of ASPD could influence the low prevalence of the disorder among offenders in South Africa. Most South African cultures still advocate a collectivistic way of living, with extended families and community engagement central to children's upbringing. Children are not necessarily involved in antisocial behaviour from a young age, but poverty-related issues, unemployment, and the effects of HIV/AIDS might influence future antisocial behaviour and increase the allure of crime.

DPD traits

The number of participants meeting the criteria for DPD represented 42% of the total sample (Table 2). Although slightly higher, this finding seems to confirm other reports of DPD, ranging from 20% to 40% in offender samples.²⁶ Smal and Louw²⁷ reported a much lower incidence (5%) of DPD among an unsentenced offender sample in South Africa. The discrepancy in prevalence of DPD could be attributed to the lack of a culture-specific standardised measure to assess traits related to DPD, as well as the lack of sufficient research studies to compare results. In addition, the relatively low reliability of the DIP-Q's DPD subscale could impact on the results of the current study.

CONCLUSION

This study aimed to contribute to the ongoing battle against crime in South Africa by refocusing attention beyond the known social factors that contribute to criminal and antisocial behaviour. The main findings indicate a similar prevalence of traits associated with psychopathy and dissocial personality disorder to those found in international studies. Together with reaffirming the dimensionality of psychopathy, this finding also supports the notion of differing cross-

cultural expressions of antisocial traits. However, additional research on the topic is needed. The significantly lower prevalence of antisocial personality disorder also emphasises the need for additional research concerning cultural influences on the manifestation of mental disorders.

However, this study is not without limitations. Comprehension and language differences were evident throughout the study. Even though the use of translators aided with the interpretation of the measures, differences in comprehension in terms of the context were still evident. The lack of comprehension of certain concepts could also affect the reliability of the measure. In addition, the measuring instruments used to identify ASPD and DPD criteria did not allow for the dimensional nature of these disorders.

Against this background it is recommended that the exploration of antisocial personalities in the South African context be extended to include other vulnerable populations, including female offenders, youth offenders, as well as the community in general.



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On the record...

Interview with Francois Beukman, Executive Director of the Independent Complaints Directorate

The Independent Complaints Directorate (ICD) is South Africa's primary independent agency responsible for investigating complaints against the police. It was established in 1997 under Chapter 10 of the South African Police Service Act. The Act makes the ICD's sole compulsory mandate the investigation of deaths in police custody or as a result of police action. However, the ICD has also been open to receipt of complaints of police involvement in criminal activity, and failure to comply with the Domestic Violence Act.

A new Bill, the Independent Police Investigations Directorate (IPID) Bill, is likely to be adopted in the third quarter of 2011. The new Act will significantly change the current functions of the ICD and will guide the transformation of the ICD into the Independent Police Investigations Directorate (IPID), providing it with its own legislation (independent of the SAPS Act). Under the new legislation the IPID will be mandated to investigate not only deaths in police custody or as a result of police action, but also complaints relating to the discharge of an official firearm by a police official; rape by a police official, rape of any person in police custody; complaints of torture or assault against a police official in the execution of his or her duties; and systemic corruption. The Bill also puts an onus on SAPS managers to report to the IPID on action taken against members following the submission of post-investigation IPID recommendations.

Andrew Faull speaks to ICD Executive Director, Francois Beukman, about the changes taking place.

Andrew Faull (AF): Can you tell me a bit about your background and what you were doing before you were appointed ED of the ICD?

Francois Beukman (FB): I did a BA (Hons) and MA (political science) at the University of Stellenbosch and a BProc and LLB at the University of South Africa. I worked in the Department of Constitutional Development as a senior constitutional planner during the multi-party negotiation process. For the last two years of the Constitutional Assembly I was the Department of Justice and Constitutional Development's representative in Cape Town. In 1995 I left the department for the private sector, did my articles, worked for law firms, became a director of a law firm, and in 1999 was elected to parliament where I served for ten years. From 1999 to 2005 I was a Member of Parliament for the NNP, and from 2005 to 2009 I was a Member of Parliament for the ANC. For three years I was the chairperson of

Parliament's Standing Committee on Public Accounts (SCOPA) and also served on other portfolio committees. In August 2009 I was appointed Executive Director of the ICD.

AF: How do you envisage the IPID Bill will change the way the ICD currently functions?

FB: We are preparing for the implementation of the Act, which we expect to be tabled by October. The one important thing is that we must be ready from an operational point of view. That means the re-organisation of the ICD moving to the IPID, bringing our crime investigation in alignment with that of the Act. We are bringing in Legal Services as a new Chief Directorate, a new division. We are also strengthening the provinces. The posts of Provincial Head are being upgraded so we have to advertise for these. We're going to add new talent and address the issue of gender equity at the same time.

Very importantly, we must be ready from the perspective of dealing with more serious crimes, moving from a complaints-driven organisation to one that focuses proactively on investigations, not waiting for complaints to come to us but dealing with matters when they are detected. I think that our approach in the last few months has been in line with that. If we anticipate a matter coming up we go for it. If there is something happening out there we must be able to respond. I think that should be the approach. So the culture of the organisation needs to change to become more proactive. That is going to take a lot of effort in terms of training. Our investigators must be trained in the new six priority crimes so that they are *au fait* with new developments. We will ensure that our training modules are up to date and that we have the necessary skills in the organisation to deal with priority crimes.¹

AF: What do you mean by becoming more 'proactive' in your work?

FB: If we become aware of an abuse that has not been reported we will look at it. In the past a lot of these cases have come from the media or third party sources, not necessarily a complaint that has been formally registered. So the message to ICD managers is that they must be proactive. They must be aware of what's happening in their community. If you are aware of what is happening in your province it will be easier to deal with cases effectively.

AF: How will the IPID Bill change the impact of the Directorate?

FB: There are going to be serious obligations on the police in terms of reporting. There will also be sanctions if they do not report matters in time. The police have to institute disciplinary procedures against members within 30 days of the IPID making recommendations to them following an investigation, and they will have to report back to us on those. So there is now a checking mechanism in place to ensure that on the one hand, if there are priority crimes being committed by police, we must be alerted to the fact. If they don't alert us there will be sanctions.

So it's going to be a much more regulated environment.

The Bill also puts an onus on police as individuals. If you have a group of police who assault somebody and an individual police official witnesses this, but doesn't alert us to the crime, all of them are going to be liable. There will be sanctions in terms of the IPID Bill in addition to the Criminal Act. So there will be a lot of focus on that, but also on the ability of the IPID to respond to reports, to deal with them from a management point of view. In this regard we have introduced a new software programme that will enable us to better monitor the progress of cases. We must be able to give more regular feedback to complainants about the progress of their cases. So IPID investigators must keep complainants informed in this regard.

AF: Do you think the Bill will lead to changes in police conduct?

FB: We believe it will have a positive effect in terms of general police conduct and culture, as well as a greater responsiveness to the community in terms of adherence to the Constitution and police regulations. We believe that by giving the IPID the necessary 'bite' our work will lead to a re-think of police procedures and protocols. In the end that is the rationale for police oversight, to ensure that the culture changes. So we believe it will have a positive long-term effect.

AF: The IPID Bill significantly expands the mandate and powers of the ICD, yet the budget allocated to the Directorate for the 2011/12 financial year was only R151,6 million. Additionally the Directorate has very few actual investigators. Is it reasonable to expect the IPID to fulfil the new mandate without a substantial increase in budget and manpower?

FB: Increases in budget and manpower are a precondition for us to fulfil the intention of the legislation. We must have the necessary human and financial resources and logistical capability. We have prepared a submission to the Executive Authority and Treasury for the next three years

that will go to the Portfolio Committee for Police in early June, and we are making substantial proposals in line with the Medium Term Expenditure Framework. If the Act is signed off before August, we have proposed that in October we get a further allocation to ensure that we have the necessary framework in place, and then next year the budget will look at bringing in more investigators, satellite offices and so on. It is going to be very important because in terms of the priority crimes like rape, assault and shooting incidents, if you are not able to be at the scene soon after the crime occurs; it's going to be an academic exercise. So it's going to be necessary to broaden our footprint in the country.

We have funds from Treasury this year for one additional satellite office. We're going to put it in George in the Southern Cape. There have been a lot of high profile cases there in recent years and we don't have any footprint currently in the Southern Cape, or the Eastern Cape, near Port Elizabeth, so hopefully the George office can fulfil that role. Then hopefully next year we can open a satellite office in Mpumalanga. But we will try to increase our footprint in priority areas. In our presentation to the Portfolio Committee in June we will propose two or three more offices in each province.

AF: Since 2006 we have seen drastic increases in shooting incidents involving police, as well as increases in complaints of attempted murder and assault laid against police. Why do you think this is the case?

FB: One should look at this holistically. There was a major increase in the number of police recruited in recent years and increases in major crime in certain provinces, so I think incidents in which violent crime occurred increased and that impacted on those figures.

AF: So do you think we are seeing an increase in the misuse of force by police and an increase in brutality?

FB: I think it must be looked at over a three-year term, and we will release our figures in

September. I think there's more focus in the media on police brutality than there was previously, but whether there is an actual increase, one would need to look at the final figures in September. I think it's clear that there has been a recent focus on police brutality and I think that is line with the thinking of the Portfolio Committee to bring in assault and torture as priority police crimes, and I think that is an appropriate response and will assist to curb that trend.

AF: So you don't feel there is necessarily an increase in abuse by police?

FB: I think the reporting is more comprehensive than it used to be. We can ask: Is this the full picture? Is there still underreporting in the rural areas? But that is why every incident must be reported and registered with us so that we can get a real assessment of what is happening and how we should respond.

AF: In a 2006 ICD report on investigations into deaths as a result of police action the Directorate stated that '*A critical issue further highlighted by the research relates to the public utterances in the media by high ranking police officials and politicians, which, although not necessarily incongruent with or overriding official policy regarding the use of force by police, could be interpreted as such by especially those young inexperienced police officers, the majority of whom work in the front line...high ranking police officials should not fall in the trap of being driven by emotion when briefing the media in the aftermath of criminal activities that tend to generate intensive media interest*'.² These sentiments have been echoed by analysts who have cautioned against overly aggressive rhetoric from police leadership. What is your comment on this rhetoric and the perceived link with police brutality?

FB: It has always been our view that every case reported to us should be investigated and dealt with accordingly. I think it's important to determine in each case what the overriding factor was influencing that conduct. Is it a criminal case and can we present a firm case to the NPA? In

terms of misconduct, did the police person operate in terms of the police regulations, yes or no? So that is really our core mandate and we are going to focus on that.

AF: But this observation was made in an ICD report...

FB: Once again, looking at the statistics, if you look at the past financial year we couldn't find any link between utterances that were apparently made and the incidences, because there was a downward trend in some categories in that same financial year. So I think one should look more specifically at issues of command and control at local level, experience of police officers and so on.

AF: What are the limitations of the ICD's role in preventing police brutality and violence?

FB: One important factor that we must always promote and instill is that we are an oversight body. You cannot work from a premise that you are just another government department or institution. Of course you are a public service department but employees of the ICD should be prepared to go the extra mile. So it's also about the philosophy that you are there to protect the public, you are the last resort for a lot of people with no access or no resources to contest a certain incident. It's vitally important in this move from the SAPS Act to the IPID Act that we foster and instill that in our employees, and future investigators coming here. That is a very important thing, to have the cultural change to ensure that we execute our duty without fear or favour.

Then also the question of resources and logistical capability. It's vitally important that it should be upgraded so that we can deal effectively with matters arising. So the human resources element is vital, I've said this at the Portfolio Committee level, that we must improve our national and provincial management, we must strengthen it, bring in new talent, get expertise in terms of our new priority crime areas so that we have the expertise to do it. We can't outsource it; we must be able to deal with those cases. So it's very

important that we have the financial, logistical and human skills to fulfil our mandate going forward.

AF: Is it the role of the ICD to contribute to reductions in police abuse and brutality?

FB: Absolutely, I think the mere fact that we are there is an indication of this. We must in a sense be a deterrent to any police member who thinks 'If I'm going to engage in acts that are against the Constitution, that's against the law and against the police ethos, there is an institution that will come in and I will be held accountable.' I think it's vitally important that we can make that contribution.

AF: The issue has been raised that it took less than a week to make all the arrests in the Andries Tatane case, but 18 months in the Olga Kakane case.³ Why was there such a big difference between the two?

FB: I think that especially with criminal cases it depends on a case-to-case basis. In the Tatane case we had the video feed, it was easy to determine what happened, we had good witnesses; we had it in real time. Nobody could dispute the version of what happened. In other cases maybe there are no witnesses involved, maybe it's difficult to get cooperation, so it depends. That is why it is very important that there must be very good cooperation between us and the NPA. Since I came here I have worked very hard on that, to ensure that there is good cooperation, to ensure that we have regular meetings, to check if there are any issues that are hampering us, are we doing enough? I will be the first to say that we must improve on that. In terms of the IPID Act there is an obligation on the NPA and us to work closely together.

If there are cases for instance where the public feels we are dragging our feet or there's not progress then they must put it on the table and we must address it. It might be related to technical issues but it might be our investigators, maybe there is not the correct supervision, and we must correct that. We can't have cases dragging out, but

again, in technically difficult cases we are unfortunately not the only role player. I don't want to blame other institutions, but especially in court cases there are a lot of issues that come into play. But we want to improve our current track record. Unfortunately some cases take a long time. It's not necessarily that people are dragging their feet but they want to make sure that when cases go to court that there are no loopholes, that they've got their witness statements in, so it's a complex chain and one outstanding issue can delay that.

AF: Can we expect more of the kind of rapid response we saw to the Tatane killing as we move forward?

FB: My approach is that we must improve. You can have a lot of excuses but we must focus on the issues and we must work in a team-oriented approach, especially if it's a more complex matter. We must get a mix of experienced investigators together and say 'run with it'. So we're getting a whole mix of investigative skills together in a team. We must update our approach. There is a lot of room for improvement, so we will see a shift in the investigative model. You must be sure that the expertise you are bringing in to deal with complex cases can deal with them sufficiently, otherwise that case won't reach the court, that is just reality.

AF: The changes in the Act will lead to fundamental changes in the way the ICD functions and is likely to cause various management challenges. Given the substantially expanded mandate which doesn't appear to be matched by the ICD budget for this financial year, how are you handling the kinds of insecurities and concerns that must be manifesting in the organisation?

FB: With any change process there are of course going to be challenges. The status quo is comfortable for people and if you make changes there will of course be resistance in some quarters. But our approach is that everybody will have job security and a role to play. In cases where people's functions are no longer needed, we will look at other options such as placement in another

government department, but everyone will be catered for. As with any change process there will be some turbulence but that's anticipated. The only way to deal with that effectively is for people to understand the new mission and vision and buy into that approach. The only way we're going to improve our capability and ability to improve police conduct and reduce police crimes is to ensure that we have the necessary skills and management experience, so that's why we want to make sure that we've got the correct team to do it. Hopefully we'll be able to do it over the next three years.

AF: These are exciting times to be heading up the ICD. What is your vision for the IPID in coming years?

FB: That we will be an effective organisation able to fulfil our mandate and deliver an effective service to the public, and to make sure that police conduct is in line with the Constitution. I think that will be our major focus. If we've got the necessary resources and skills I think we will be able to attain that.

NOTES

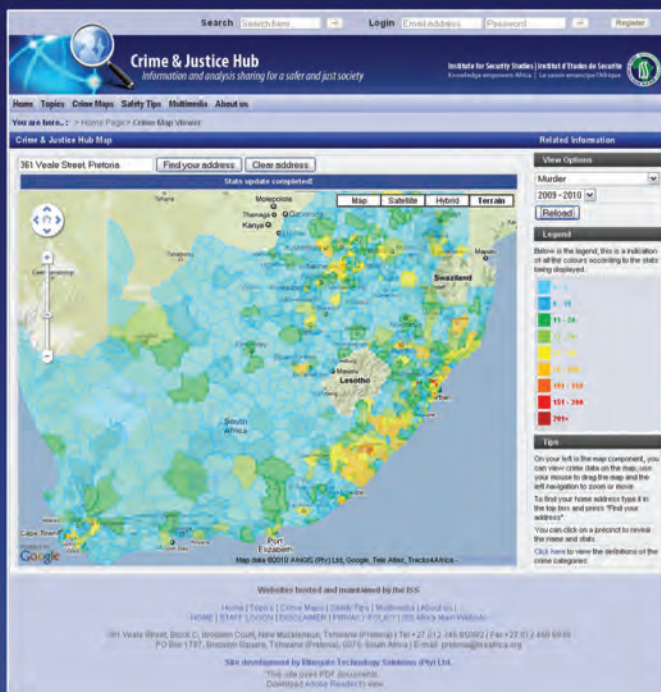
1. In this context 'priority crime' refers to offences outlined in the IPID Bill that the new Directorate will engage with, such as rape or torture by a police official. Within the SAPS the term 'priority crime' refers to those crimes considered most important by police.
2. Proactive Research Unit, Independent Complaints Directorate, *An Investigation into Deaths as a Result of Police Action in Kwazulu-Natal, the Eastern Cape and Gauteng*, 2006.
3. In April 2011 Andries Tatane was allegedly shot and beaten to death by police in Ficksburg in the Free State during a protest march over poor service delivery. The incident was captured on camera by television news journalists and broadcast on prime time news across the country. Olga Kakane was allegedly shot dead by police in October 2009 in Mabopane, Gauteng after they mistook her for a hijacker and opened fire on the car she was driving. Two other occupants were injured in the same incident.



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