

SAVE OUR COPS

Preventing police killings

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On 20 May 2003, a national summit on police killings was held at the SAPS academy in Pretoria – the culmination of a series of provincial meetings on the same topic. Although the national meeting did not achieve its objective – the collaborative drafting of a national action plan – the provincial meetings produced a number of excellent recommendations that deserve to be taken seriously. This article discusses the reasons for the high number of police killings in South Africa and makes suggestions for dealing with the problem.

While being a cop is a dangerous profession anywhere in the world, the number of police killed annually varies substantially between countries. In Canada, an average of three police members were killed annually between 1961 and 2002. In contrast, an average of 79 police were killed in the line of duty each year between 1979 and 1998 in the United States. The US death toll declined throughout that period, however, and by 1998, the rate was about ten on-duty police murders per 100,000 cops, not much more than the seven murders per 100,000 citizens in the general population.

The South African situation is somewhat more dire. In 1994, 265 police members were murdered. That is about 223 murders per 100,000 sworn police, but this number includes deaths both on and off duty. The body count stayed above 200 until recently. It dropped to 176 in the 2000/1 financial year, and then to 136 in 2001/2. Thus, the most recent total is about half what it was at the end of apartheid.

The halving of police murders over seven years would appear to be a remarkable achievement in improving member safety. However, the murder rate for all South African citizens has declined almost 30% since 1994, and the number of sworn police declined 12% between 1996 and 2002. Even looking at last year's favourable figures and

focusing on on-duty deaths, a working police member is still five times more likely to be killed in South Africa than in the United States.

Why do they die?

Why is it so dangerous to be employed by the SAPS? There are several possible explanations, all of which are likely to have some validity.

A violent society

With a murder rate of 48 per 100,000 in 2001/2, the average South African citizen is nearly five times more likely to be killed than the average American police member. Comparing the police on-duty murder rate to the murder rate in the general population for both South Africa and America shows that the relative increase in risk incurred by enlisting is less in this country than in the US. But the ratio of field-deployed cops to the total police service is probably smaller in South Africa than in the US, because the SAPS has a higher share of command staff. To do a fair comparison, the risks of field-deployed staff would need to be compared, and there are no comparable figures for this.

Dealing with all the violent crime encountered on South Africa's streets is clearly a risky business, and thus it is remarkable that the average SAPS member is more likely to be killed while off duty than on duty. Again, comparative data is lacking, but the

2002 figures released at the national summit suggest that 65% of police murder victims are killed while off duty. Commissioner Selebi argued that 60% of off-duty casualties were members who “put themselves on duty” by responding to crimes in progress. If this is true, the value of the interventions made by off-duty police needs to be weighed against the staggering costs.

Robbery

Are the police targeted for their guns?

Commissioner Selebi argues convincingly that since only 20-25% of the victims had their guns taken, this cannot be the primary reason people are attacking police members. Earlier SAPS research also suggested a 26% figure for robbery-related motives. But in interviews with 478 police members who survived attacks, discussed by Professor Conradie at the summit, 58% said they thought the motive for the attack was robbery, and 46% said the object of this robbery was their firearm.

Even if the commissioner is right, the fact that a fifth to a quarter of all police murders are attempted robberies is alarming. In other countries the police would be considered a rather hard target to attack for the purpose of firearms acquisition, and the risks of such an attack would more than outweigh the benefits of acquiring a weapon that most likely is worth less than a good car stereo.

Inexperience

Inexperience may be a factor, because, according to research presented by Commissioner Groenewald at the national summit, 15% of the dead in 2002 were constables. Constables made up only 7% of the workforce at the beginning of 2002, but this share is increasing due the recent recruitment drive. If being new to the job increases the risk of being killed, then the rate of deaths is set to increase.

The other 85% of the casualties were however members of higher ranks, members who should have had some street experience. This experience was clearly not enough to save their lives. Only 66% of the dead were assigned to uniformed duties, which suggests that the hazards encountered are not specific to normal operational policing, especially as most of the deaths occurred off duty.

Confusion

At the national summit Commissioner Selebi made the bold assertion that police were being killed because they did not understand the standard on use of force. To back up this claim, he cited SAPS research suggesting that in 60% of police killings the police member did not offer any resistance.

There are, of course, a number of circumstances under which little resistance would be expected, the common element being that the member was surprised. It is highly unlikely that a police member would take a bullet out of respect for regulations if given the chance to return fire, but delays in reaction time due to confusion may be a serious issue. Members may not be drawing their weapons in time under circumstances that merit the use of deadly force.

In addition, there is clearly a lack of basic tactical knowledge among members. Field observation by the ISS in a range of station areas has demonstrated that some members do not understand the basics of member safety. Lack of knowledge about how to do a vehicular stop and approach, how to do a safe pat-down, and when and how to use handcuffs, all pose risks to members in the field.

What should be done?

Whatever the extent and reasons for police deaths, every effort must be made to minimise these tragedies. The provincial summits produced a number of excellent recommendations, some of which are included and expanded below.

Training on use of force

The use of force standard as defined in the 1998 amendment to Section 49 of the Criminal Procedure Act could not be simpler. Unlike the past standard, where the police had to think about the charge to be brought before shooting at a suspect, the new principle is crystal clear: where a suspect poses a serious risk to the lives of the member or anyone else, shoot to kill.

Unfortunately, the delay in the promulgation of this legislation has muddied the waters. Now an intervening Constitutional Court decision has provided a third standard, somewhere between the

old and the new. As the commissioner suggests, the resulting confusion and the lack of training may pose a real risk to lives.

The solution is simple, but daunting. The law duly passed by parliament must be enacted, and every single member of the service who carries a gun needs to be retrained on the new standard. Use of force must be instinctive, and this means repetitive drills on the range, and combat courses designed to simulate real life situations.

It is a massive task, and ammunition is not cheap. But this is the cost of living in a democratic society with a sane standard for lethal force. It is not enough to send out written memos with pay slips notifying staff that the most basic principles of how they do their jobs have changed.

Training on tactics

Aside from use of force, the basics of police deportment need to be taught and drilled. Members who do not know how to search or handcuff a suspect safely are a hazard to themselves and everyone else. Since these principles are taught at the training academy, field members obviously need continual refreshers. Rather than carting members off to the academy each year, it would make more sense to train a crew of roaming trainers, who travel the country providing in-service training.

The ideal time and place for such training is the parade at the start of the shift. These parades should be a time for information exchange, a briefing of the oncoming staff by those finishing their shift. Hot lists of vehicles and persons should be circulated, the day's work discussed, weapons and uniforms inspected, and some form of training given.

Field observation indicates that this potential is under-realised. In some stations, parades are little more than chaotic exchanges of vehicle keys and operational lists. Structure and discipline must be re-established, and in-service training is a good place to start.

In addition, members must also be required to re-

qualify to use a firearm on at least a semi-annual basis, as is the case in most other armed departments around the world. Presently it would appear that some members have been carrying firearms that they last fired in the academy. The SAPS must issue ammunition for target practice and encourage members to improve their gun skills.

Non-lethal options

Members must have a force option between those situations they can handle with their bare hands, and those that require wielding deadly force. Internationally, police carry batons of some sort as well as at least one other non-lethal option, usually pepper spray. If members have no intermediate weapons, they may feel compelled to disproportionately escalate the level of violence – albeit unwittingly.

In the United States, the 'one plus one' rule is applied for proportionate use of force, meaning that the police are always entitled to the superior weapon. If they only have two – their hands and their guns, there can be little finesse in handling violence. This poses a risk not only to the police, but to the public as well.

Some stations have some of these tools, but they are not issued because of lack of training. Again, roving, in-service trainers can drill troops in the use of tonfa-style nightsticks and other intermediate force options.

Vests

Many of the vests issued to SAPS members are out of date. Those with the AK-47 shell-stopping ceramic plates had their place during the years of guerrilla war, but today these weapons are rarely used by criminals, besides in cash-in-transit robberies. The weight and bulkiness of the old vests are disincentives to use.

The use of these heavy vests needs to be reviewed. While they may have some application in specialised units, every effort should be made to make the standard issue vests attractive to members. Once this has been done, the vest should become part of the uniform required for duty.

Shorten shifts

Many uniformed members work 12-hour shifts, four days a week. This allows for four-day weekends, popular with members who have to travel long distances to see their families. But 12-hour shifts are absurd from a member safety perspective.

Police work on the street requires the maintenance of a heightened state of awareness. This state is essential for safety, and is impossible for most people to maintain for 12 hours. Field observation suggests that many members adapt by working only eight or fewer hours out of the 12. This may as well be made official.

Shortening shifts will not address the transport issue, however. Members who live far from their work sites will legitimately feel aggrieved at such a change. The solution is to allow members, whenever possible, to work in the station area where they live, an idea that has some resonance with the thinking behind the drive for sector policing.

In addition, the use of public transport exposes members to a kind of vulnerability that many station commanders have tried to avoid by providing an informal taxi service using official vehicles at the change of shift. Once again, this might as well become official practice.

Off duty

Many of the suggestions above apply primarily to conduct while on duty, but the majority of police murders occur when the member is off duty. Providing protection to staff out of uniform is difficult, but is perhaps best achieved by a code of conduct that reminds them that a police career is a 24-hour vocation.

This code should dictate when and how it is appropriate to intervene in a criminal situation without the protection of a uniform and back-up. It should prohibit the carrying of a firearm in a liquor establishment. It should specify the acceptable ways of carrying a gun off-duty. And it should contain sanctions for those who violate these rules.

Conclusion

All evidence indicates that there is no single reason why police members are killed in the numbers they are in this country. Addressing the problem will mean taking action on a range of issues, and continuous monitoring to ensure that new trends are quickly detected and addressed. Most important is that the issue is taken seriously, and, gratefully, it seems that police murders are finally being given the attention they deserve.

BAD COPS GET A BREAK

The closure of the SAPS Anti-Corruption Unit

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In 1996 the SAPS established its first internal anti-corruption unit to tackle what was identified as a growing problem of police corruption. Seven years down the line, combating corruption is still a national priority of the SAPS. But recently the SAPS announced that it is closing the anti-corruption unit and integrating some of its members into the organised crime unit. International experience suggests, however, that a specialised unit dedicated to investigating police crime and corruption is crucial if these problems are to be tackled effectively.

Police corruption is not limited to South Africa. It is a problem that has been encountered around the world, throughout history, wherever there are police agencies. It is now generally recognised that corruption is an occupational hazard of policing – where there are police officials with powers to investigate crime and enforce the law, there will be individuals and organised groups who will try to influence these officials. They will typically attempt to do so by offering the police officials cash or other rewards.

The more this becomes the norm in the policing environment, the more policing resources are diverted from tackling crime. Instead, increasing numbers of police officials start using their powers to make extra cash, either by protecting criminals, or by deliberately failing to enforce the law. As a result, police corruption undermines the rule of law, and, moreover, becomes a direct threat to the consolidation of democracy in transitional societies such as South Africa.

In any country the problem of police corruption is typically influenced by a large number of cultural, institutional and environmental factors. However, researchers and analysts studying the phenomenon have over the past decade begun to emphasise the importance of changing police organisational culture to effectively combat corruption and other abuses.¹ This is based on the argument that punitive or reactive approaches (focusing primarily on investigations and prosecutions) are usually inadequate measures to tackle an endemic police corruption problem.

Therefore, to effectively prevent corruption, police agencies should also improve recruitment and selection processes, integrate professional police ethics into all training, enhance management accountability, and strengthen internal disciplinary systems.²

A need for specialised police anti-corruption units

Apart from efforts to change police organisational culture, strong and independent internal investigation

units are recognised as indispensable for effectively tackling police corruption. Around the world, official commissions of inquiry into police corruption have consistently identified weak systems and structures for internal control as significant shortcomings that contribute to a corruption problem.³ Indeed, a common recommendation flowing from such inquiries is the establishment of internal units tasked with investigating police misconduct and criminality, or, if in existence, that they are significantly strengthened.

While external civilian structures may already have the task of overseeing police misconduct, it has been argued that strong internal units are likely to be more effective in tackling corruption and criminality.⁴ This will be the case if such units are staffed by carefully screened and experienced detectives with a deep understanding of the culture of the organisation and how corrupt activities take place and are hidden.

Furthermore, it is critical that these units and their members operate in a secure environment and are 'insulated' from the rest of the policing organisation. The reasons for this are as follows:

- Police culture typically tends to be characterised by the so-called 'code of silence'.⁵ This code emerges as a result of the strong supportive bonds that are commonly formed between police members. They do not want to jeopardise their relationships, or be labelled 'sell-outs', in the event that they investigate or provide information on the activities of their colleagues. This is especially so if such information may lead to the arrest, discipline or dismissal of a police official.
- Police officials have extensive networks within the police agency, and are therefore in a position to obtain information on the case that is being investigated against them. Often they will quickly be able to obtain the details of any witnesses involved. With their careers on the line, they will not hesitate to seriously threaten witnesses to withhold information or to withdraw their co-operation.
- Police officials have detailed knowledge about how the criminal justice system works,

particularly with regard to investigations and prosecutions. They are therefore far more adept in preventing detection, or covering up their tracks when involved in crime or corruption, than ordinary civilians. Generally investigations against police officials (particularly against those involved in organised or 'grand' corruption) require special techniques and skills if they are to be successful.

The above factors are generic to the problem of police crime and corruption around the world, and are the reason why it has been highlighted internationally that "internal affairs units are relatively common in police agencies that have, or are concerned about, problems of corrupt practice".⁶

Apart from independence and resources, such units, if they are to be effective, also need to develop proactive investigative strategies that look for patterns of corruption rather than single events. Not only can the greatest possible number of corrupt police officials be arrested in this way, but the organisational weaknesses that allow for such corruption can be addressed so as to prevent other officers from becoming involved in similar arrangements. Moreover, such units must be able to conduct well-planned undercover operations to trap corrupt police officials, and have the ability to work sensitively with witnesses and ensure that they are adequately protected.⁷

The SAPS Anti-Corruption Unit (ACU)

In September 1995 the then national commissioner of the SAPS, George Fivaz, instructed that a study be conducted on the feasibility of establishing anti-corruption units, one nationally and one for each of the provinces. Up to that point such investigations had been handled by a special investigating unit that had been operating from Pretoria only, with a branch in Johannesburg.

As a result of the instruction the National Anti-Corruption Unit of the SAPS was formally established on 1 January 1996, to:

- investigate all allegations of corruption within the SAPS;
- initiate and implement an anti-corruption awareness programme amongst employees of

the SAPS;

- identify and report on dysfunctionality in the SAPS;
- develop and maintain an effective integrated information management system to support corruption investigations within the SAPS;
- co-ordinate all anti-corruption investigations in the SAPS; and
- educate SAPS employees.⁸

At its full strength the ACU comprised a total of 240 staff members, made up of 201 police members and 39 civilian personnel. These personnel were dispersed between the national office in Pretoria and nine provincial offices, each with its own provincial commander at the rank of senior superintendent.

From the outset the ACU appeared to take heed of international lessons regarding the operations of such a unit. Their offices were separate from other SAPS buildings and they worked from a secured database. Investigators were carefully chosen according to a specific human resources profile, and were required to obtain a 'Top Secret' security clearance, renewable every three years.⁹

In its seven-year existence the unit was involved in both small-scale investigations against single police officials, and larger-scale anti-corruption 'operations' during which members of criminal

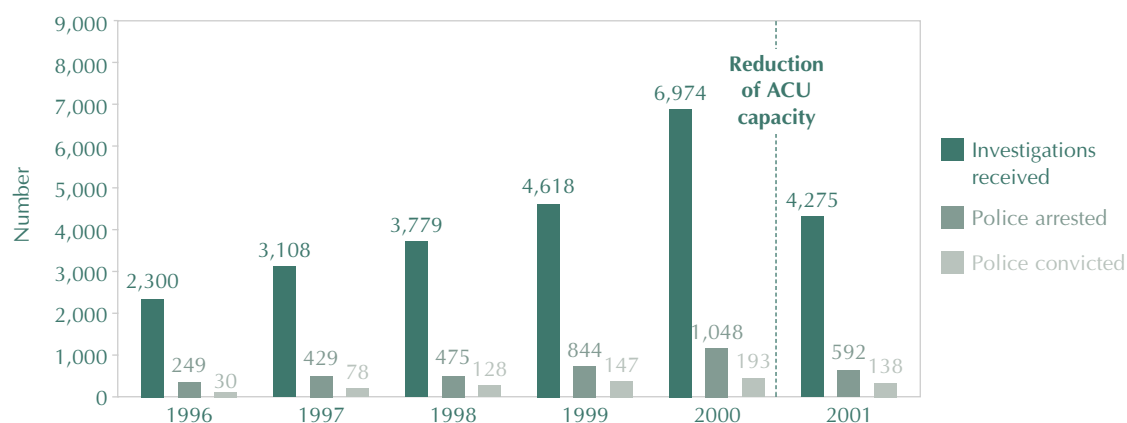
syndicates as well as large numbers of police members were arrested. In one such operation, 'Clean Deal', which lasted eight months, 16 people, including police officers involved in a stolen vehicle syndicate, were arrested, and over R6m worth of exhibits confiscated. Furthermore, a directive was issued by the national commissioner to ensure that members of the SAPS who provided information to the ACU were adequately protected – even if it meant the immediate relocation of the member and family.

As can be seen from Figure 1, as the profile of the unit increased, so did the numbers of allegations of police corruption that were reported to it. Between its establishment in 1996 and the end of 2001, the ACU had received a total of 20,779 allegations of police corruption, 3,045 police members were arrested, and 576 were convicted.

The large discrepancy between the numbers of allegations received and the conviction rate has been put down to a number of factors, including:

- capacity constraints of the unit to respond adequately to all the allegations received;
- the large number of witnesses who remained anonymous and provided insufficient information; and
- the flawed Anti-Corruption Act of 1992 which repealed the common law offence of bribery and provided inordinately difficult legal requirements to prove corruption.¹⁰

Figure 1: Investigations, arrests and convictions undertaken by SAPS Anti-Corruption Unit, 1996-2001



Source: Annual Report of the National Commissioner of the South African Police Service 2001 - 2002

Nevertheless, the work of the ACU resulted in hundreds of corrupt police members going to jail, and the disruption of the activities of thousands of others.

While there have been no independent evaluations of the work of the ACU, it appears to have had a relatively significant impact in a variety of ways. The unit played an important role in sending out a message that the SAPS was serious about tackling the problem of corruption. Indeed, the annual report of the national commissioner of the SAPS argues that the work of the unit (as reflected in the above statistics), "...demonstrates the commitment displayed by management and members alike in eradicating corruption in the SAPS."¹¹

The huge number of complaints received by the unit suggests that police corruption had reached endemic proportions in South Africa, and that the ACU was recognised by the public as a structure where complaints of corruption could be made without fear of victimisation. Moreover, the Review of South Africa's National Anti-Corruption Agencies argues in relation to the SAPS Anti-Corruption Unit that "it is important to retain a specific and dedicated focus on addressing corruption in the Criminal Justice System, which this Unit has done effectively over the years".¹²

Clearly, both perceptions and incidents of police corruption and criminality are a serious problem in South Africa. A recent survey found that, of all government services, the police were perceived to be the most corrupt, with 37% of respondents stating they believed it 'very likely' or 'likely' that they would be expected to offer some material reward or favour in return for services rendered from a police officer.¹³ While these are perceptions, and do not necessarily reflect the actual extent of police corruption and criminality, the fact that on average 1,320 police officials were convicted on criminal charges per year between 1995 and 1999 suggests that a serious problem exists.¹⁴ The question may therefore legitimately be asked: why then was the Anti-Corruption Unit closed?

Why close the ACU?

Long before the SAPS announced that the ACU was to be closed, it was clear that the future of the unit

was uncertain. Towards the end of 2000 the SAPS closed five of the ACU provincial offices, leading to a substantial reduction in cases reported and police members arrested (see Figure 1). For two years the unit continued to operate without knowing what the future would hold, until a newspaper article appeared announcing that it was to be closed down.¹⁵

The official reason given by the SAPS was that the closure was in line with the reorganisation of the detective service, "in order to pool resources and make the SAPS more efficient".¹⁶ Surprisingly, the official statement also included the following sentence: "Furthermore, it should be noted that the investigation of corruption is the duty of each and every member of the service and not a certain sector of the South African Police Service."

This statement flies in the face of both what is considered as international best practice in tackling the problem of police corruption, and the current reality of the SAPS. Only a small number of police commanders referred cases to the ACU when they received substantiated complaints against their members. Very few, if any, cases were opened by ordinary police members against their colleagues.

However, there are various other concerns regarding the transfer of ACU investigators to the Organised Crime Unit (OCU) and to station level. These concerns include:

- Valuable skills and lessons developed by the ACU in investigating corruption in the SAPS could be lost as its investigators are dispersed amongst the OCU and various police stations.
- A significant reduction in cases brought to the attention of the SAPS, as most of the public would not know that they need to report corruption to the OCU (particularly as a large amount of police corruption is ad hoc and does not necessarily involve organised crime syndicates).
- OCU members who may be involved in corruption may now have better access to information about investigations against them, and opportunities to interfere.
- Some investigators may find themselves working with, or at the mercy of those they previously investigated.

As there was very little substantive information given regarding the closure of the ACU, there was much speculation that there were other reasons behind it, such as:

- The ACU had become too independent and had started to tread on the toes of powerful police commanders.
- The unit was not that effective, as most of its investigations did not strictly focus on corruption, but often examined other types of crimes such as petty theft and fraud that other police units could investigate.
- The ACU was perceived as being racist, as most of its commanders and many of its members were white, while most of the members investigated by the unit were black.

There is no verifiable evidence that any of these factors were behind the decision to close the ACU, but they illustrate the importance of proper internal and external communication by the SAPS if it is to gain the trust and support of the public for its decisions.

Conclusion

It is too early to say whether the decision to close the unit and integrate it into the OCU will truly improve the ability of the SAPS to effectively deal with its corruption problem. However, many years of international experience in tackling police corruption would suggest that a better decision would have been to identify the shortcomings of the ACU, and ensure the necessary changes to make it a stronger and more effective unit than it had been before.

If this had been the case, it would have sent a powerful message to those members of the SAPS who abuse their powers and positions for personal gain. Such an announcement would have been welcomed by those many dedicated police members deeply frustrated by the impact of the activities of their corrupt colleagues on the organisation. It certainly would have been welcomed by most ordinary South Africans, who long for a police service characterised by professionalism and integrity.

Endnotes

- 1 See CB Klockars, SK Kutnjak Ivkovich, W Harver & MR Haberfeld, *The measurement of police integrity*,

National Institute of Justice Research Brief. Washington DC: Office of Justice Programs, U.S. Department of Justice, 2000. See also JBL Chan, *Changing Police Culture. Policing in a Multi-Cultural Society*. Cambridge: Cambridge University Press, 1997.

- 2 See T Newburn, *Understanding and preventing police corruption: Lessons from the literature*. Policing and Reducing Crime Unit. Research, Development and Statistics Department, London: Home Office, 1999.
- 3 For a few examples see the findings of the Mollen Commission of inquiry into corruption in the New York City Police Department, 1994, the Fitzgerald Inquiry into the Queensland Police Service in Australia at about the same time, and more recently the findings of the inquiry into the Rampart Bay police corruption scandal in the Los Angeles Police Department, 1999.
- 4 See M Punch, *Control in the Police Organisation*, Cambridge: The MIT Press, 1983.
- 5 Klockars et al, op cit, p 2.
- 6 T Newburn, op cit, p 37.
- 7 Ibid, p 39.
- 8 Report of the Anti-Corruption Unit - An Overview (1996-1998), SAPS National Anti-Corruption Unit, 1998, <<http://www.saps.org.za/divstat/anticor>>
- 9 Ibid.
- 10 Interview with the National Commander of the SAPS Anti-Corruption Unit, Director Stef Grobler, June 21, 2001.
- 11 Ibid.
- 12 A Review of South Africa's Anti-Corruption Agencies, Office of the Public Service Commission, Pretoria, 2001, p 41.
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- 14 S Masuku, Policing the Police: SAPS members charged and convicted of crime, *Nedbank/ISS Crime Index 5 (2)*, 2001, pp 13-15.
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- 16 Ibid.

YOUR BROTHER, MY WIFE

Sex and gender behind bars

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Many of us know that sex, sexual violence and varying levels of sexual coercion occur in our prisons. But the subject of sex in prison remains an uncomfortable one. While recent media reports and revelations on prison corruption have played a role in bringing it more into the public arena, generally not much is understood about the dynamics of sex in men's prisons. This article provides some insight into the relationships of power and vulnerability that underpin much of the sex that is taking place in this context.

It has become imperative that the subject of sex in prison is dealt with openly and publicly. Not only is there a high incidence of sexual violence and coercion behind prison walls, increasing the risk of HIV transmission, but the various sexual experiences in prison may pose potential challenges for offenders when they are released (most after serving relatively short sentences).

A recent CSVr study¹ sheds a disturbing light on an environment in which people are regularly forced into unwanted sex and consistently humiliated as a result. Drawing on in-depth interviews and focus groups conducted in Gauteng with 14 ex-offenders and nine current prisoners, the study aims to understand the social circumstances in which sex takes place in men's prisons, and the meanings and identities attached to these.

Central to the widespread abuse that is taking place are particular understandings of gender. Indeed, the prison environment is one channel through which destructive notions of what it means to be a man or a woman are generated and exacerbated.

'Marriage'

Relationships generally known as prison 'marriages' reportedly provide the most common setting for sexual interactions between male prisoners. These 'marriages' take place between 'husbands' and 'wives', and rigidly guarded rules govern how the individuals in these gendered roles may relate to each other. They are profoundly unequal relationships and are defined by the power that 'husbands' wield over their 'wives', also commonly known as 'wyfies'.² There is very little that 'wives' can do without the permission of their 'husbands'. To differing degrees, 'husbands' will control how their 'wives' relate to the broader prison community of other inmates and warders. These 'marriages' are sanctioned by inmate power structures: they are accepted by dominant inmate culture as the 'right' place for sex to happen.

'Wives' must defer to their men. They are expected to do domestic work, for instance keeping the cell tidy and making their 'man' tea. Most importantly, they are expected to be constantly available to their 'husbands' for sex.

It is the role of the 'husband', on the other hand, to provide materially for his 'wife'. 'Husbands' are involved in the 'business' of the prison, in obtaining and trading goods in the prison economy. Through these activities 'men' are able to provide their 'wives' with goods such as food, cigarettes, dagga and other drugs.

One effect of this arrangement is that the 'husband' role tends to be associated with movement and activity, and the 'wife' role with inactivity and passivity. This dichotomy of active/passive also governs what is done in the actual sex act: 'men' penetrate and 'women' receive.

Certainly, there are variations in how 'marriage' partners relate to each other. Not all marriage-style relationships or sexual interactions will be primarily defined by coercion, and the nature of the relationship may also change over time. But respondents agree that for the most part 'wives' are sex slaves who despise their situations and remain in the 'marriage' only because of fear.

Being a 'woman'

Part of being a prison 'wife' or 'wyfie' is being identified as a 'woman'. According to prevalent inmate culture, being sexually penetrated is associated with being identified as a 'woman'. Most marriages begin with the 'husband' forcing sex with the person he is taking as his 'wife', and thereby initiating 'her' into 'womanhood'. To this end the 'husband' often employs manipulation and trickery.

Being a 'woman' is not a prized position. It usually means that you are a constant target of humiliation and abuse. 'Women' tend to be seen in an entirely sexualised way – the primary purpose of 'women' is to provide 'men' with sex.

One young offender explains:

We are all criminals in here and if I say you are a criminal that means I respect you. But if you have had sex done to you, it's obvious that they will see you differently. Even the criminal in you is now gone and you are now a woman ...There is nothing we can do for you. Some people just look and some want to sleep with you and when you walk past, people want to touch you or they threaten to rape you.

Gangs and 'marriage'

Prison 'marriages' are institutionalised in the structures of the ubiquitous and powerful 'Numbers' gangs.³ While the research sample did not include any identified member of the 28s, the gang most often associated with sex and 'wyfies', respondents make clear that these types of sexual relationships are condoned and protected in all the 'Numbers', even if the gang codes claim to forbid sex.

For example, in several of these gangs at least, hierarchies are divided into feminine or 'wyfie' ranks, and masculine or 'soldier' ranks. New gang members will be classified as either 'women' or 'men', although at the time they will usually have no idea that such classification is taking place.

Gangs organise forced sex in other ways too, and there are intricate rankings, rituals and rules to ensure that the sexual status quo is maintained. It is noteworthy however, that while 'marriages' and 'marriage'-style sex are supported by the gangs, not only gang members participate in these interactions, and not all gang members take part. Gang structures support and organise specific sexual activities, but not all their members endorse these practices. Some strenuously disapprove.

'Ushintsha Ipondo'

One of the ways that gangs and the related dominant inmate culture attempt to maintain the sexual status quo is to outlaw and stigmatise sex that deviates from the power-defined 'marriage' variety.

Another apparently common type of sexual interaction known as *ushintsha ipondo* is one example of sex that is considered deviant. *Ushintsha ipondo* literally means 'to exchange a pound' and, in contrast to 'marriage'-style sex, is marked by mutual agreement between the people involved. Sometimes the people doing *ushintsha ipondo* are also in marriages where they are 'wives' to other inmates.

In *ushintsha ipondo*, neither partner is considered superior or inferior and the interaction is understood as an equal exchange of sex. Participants take turns to penetrate and receive. By both penetrating and receiving, the people doing *ushintsha ipondo* are breaking the rules of prison sex. They are also disrupting the system whereby a gender identity is

allocated in relation to the role performed in sex: where those who penetrate are identified as 'men', and the penetrated as 'women'.

This blurring of gender roles is related to the fact that *ushintsha ipondo* is associated with homosexuality, which is in turn related to the practice being frowned upon. By contrast, the sex that takes place in 'marriages' is distanced culturally from notions of homosexuality by the clearly defined imposed gender roles. For these reasons, people involved in *ushintsha ipondo* need to keep it

secret, or risk punishment. Punishment can take the form of a fine, rape, or gang rape.

Other consensual interactions

While most sex happening in men's prisons reportedly takes place in either 'marriage'-type or *ushintsha ipondo* interactions, respondents also made mention of other types of consensual sexual interactions. Though they have less to say on these, such interactions appear to be defined more by feelings of love that participants have for each other, than sexual norms or particular roles.

Table 1:
Some defining features of three key reported sexual relationship types in prison

Type of relationship	Role players	Norms operating between participants	Sex norms
Marriage - Entrenched and endorsed by prison gangs and prison culture - May involve gang members or non-gang members or both - Usually brought about by coerced sex act perpetrated by <i>husband</i> against <i>wife</i>	Husbands - Identified as <i>men</i> - Often the older partner	<i>Husbands</i> are the superior partners: - Own and control their <i>wives</i> - Must provide for <i>wives</i> (food, drugs and other goods) - Involved in the 'business' of prison (smuggling, procuring goods)	<i>Men/ husbands</i> penetrate
	Wives - Identified as <i>women</i> - Often the younger partner	<i>Wives</i> are the inferior partners: - Must defer to their <i>men</i> - Must maintain the home space and serve their <i>men</i> - Must service their <i>men's</i> sexual desires	<i>Women/ wives</i> are penetrated
Ushintsha ipondo - Outlawed by gangs - May involve gang members or non-gang members or both - Consensual	- Protagonists do not occupy distinct roles - They tend to hold similar positions in broader inmate culture - If in a gang, are of similar gang rankings - May both be <i>wives</i> of other prisoners - Of similar ages	- Neither partner is considered superior or inferior - Relationship/interaction defined in terms of equal sexual exchange - Both parties provide sex to the other	Partners take turns to penetrate and receive
Other consensual relationships (least information available) - Consensual - Often understood to involve gay people	Protagonists do not occupy distinct roles	Relationship defined by 'love'-feelings that partners have for each other	Actual sex not discussed

The three broad relationship types in which sexual interaction takes place, as reported here, can no doubt be expanded upon (Table 1). A potentially vast range of circumstances surround prison sex, which after all, involves numerous and diverse individuals and takes place in different prison contexts. For example, the gang-dominated inmate culture does not necessarily exist in the same intensity in all prisons, prison sections or communal cells. Alternative inmate networks and hierarchies such as those organised around formal education or religions may be stronger in some environments, and militate against sexual activity. Moreover, different ways of relating may be negotiated in the little pockets of privacy that prisoners create for themselves – even when they ostensibly resemble particular types of interaction.

‘Marriage’-type relationships, however, tend to be based on a profoundly socially destructive set of gender identities, which are sustained by violence and abuse, and therefore merit special attention.

Who becomes a ‘wyfie’?

Where prisoners become ‘wyfies’ this is usually against their will. Much of the time it is those who are coerced into an initial sex act – an act that is understood to turn them into ‘women’ – who are consequently taken as ‘wives’ in the longer term. People who are vulnerable to being sexually subordinated in this way are those who are generally vulnerable within the prison environment.

Lack of prison know-how

Newly arrived, first-time offenders are particularly vulnerable. Newcomers are the focus of intense inmate attention and are looked upon as resources at the disposal of other inmates. They are seen as sources of material goods, as gang members, and sexual subjects, and are, on their arrival, usually confronted with frightening and overwhelming situations. A key factor in their vulnerability is that they do not know how prison works, they do not have prison ‘suss’, and do not know how to negotiate the numerous and contradictory invitations or threats with which they are presented. Frightened and overwhelmed, they are often easily intimidated, tricked and manipulated – by other inmates who pretend to be friendly and concerned for their

wellbeing. It is not only direct violence that is used to subordinate people sexually. A range of strategies may be employed, some very sophisticated.

One prisoner explained:

In prison they say one thing. If you don’t have a mind you are in trouble. We are fighting with the mind you see.

In this context ‘having a mind’ seems to entail not falling for gestures of supposed friendliness and support, but rather to know that nothing comes free in prison. To be naïve, gullible and trusting is to possess qualities that are dangerous and are perceived as signals of weakness – and therefore of ‘womanness’.

A typical path into being sexually violated and made into a ‘woman’ is for a new prisoner to accept food, drugs or protection from another inmate who pretends to be generous and concerned. This begins a dependency dynamic. At that same time, what is happening is that by eating the food, smoking the cigarette, or accepting the protection offered, an exchange has taken place and a debt has been created. The new, naïve inmate will be expected to pay back this debt by giving sex to the person who gave him the food, cigarette, or protection. When he tries to refuse, it will be made very clear to him that there is no way out.

Economic vulnerability

Because sex is part of the prison economy, prisoners who are poor also tend to be particularly vulnerable. Those who do not receive money and goods from family and friends on the outside are vulnerable to being subordinated through power-defined sexual relationships, according to interviewees. Basic requirements that are every prisoner’s right become embroiled in this economy where inmates can be made to pay for beds, for their own food rations, and to move between different parts of the prison. As one respondent put it, ‘money makes prison go round’.

Physical weakness

To be physically weak, not prepared to use violence, and/or thought to have committed a ‘sissy’ crime – meaning a crime not involving violence with weapons – increases the risk of becoming a ‘woman’.

Good looks

Those who are considered good-looking are also among the likely targets for sexual coercion, as they are desirable prospective 'wives'. On the basis of interviewee reports 'good looks' include a young, fresh appearance, smooth skin and plumpness:

These young men who look pretty – big thighs and handsome, round, fat and all that – once such a young man comes into prison, Ay yey yey! The excitement! Within the [blink] of an eye, B section, A section, C section will know that, 'There's a young man, something of a queen!'

However, none of these qualities are prerequisites for sexual victimisation. Both poverty and fear can be created to ensure compliance, for example through robbery and assault. If a person has been specifically targeted, those who want him will stop at very little to get him, and this is where blatantly violent rape and gang rape often become part of the picture.

In addition, according to respondents, numerous prison warders are involved in selling sex targets to other inmates, or accepting bribes in exchange for turning a blind eye to abuses. Other allegations against warders are that they do not follow through on complaints that are lodged, and refuse prisoners access to welfare and medical services where they may find more sympathy and support. In other instances correctional officers may not be directly involved in abuses, but appear to be fearful for their own safety or simply apathetic, and resigned to the widespread abuse that they know is happening around them.

Manhood

In the prison context, those who are emotionally closed as well as aggressive and assertive are able to lay claim to the status of 'man' (and are therefore protected from being regarded as 'woman'). Appearing to be emotionally and financially self-sufficient, and being active in smuggling and other aspects of the 'business' of prison, are signals of 'manhood'. Self-sufficiency also means never looking to prison officials for assistance. But perhaps the most important aspect of laying claim to 'manhood' is to demonstrate the potential for violence – to be known to have committed a violent, weapon-assisted crime, and to be physically strong and able to fight for oneself.

Indeed, in order for a person who has been defined as a 'woman' to get rid of the accompanying stigma and sexual abuse, he will usually be required to commit violence in order to prove himself deserving of 'man' status. If he belongs to a gang he will probably be told to stab a specific person (often a non-gang member or warder).

Cycles of violence

The practice of getting promoted from 'woman' to 'man' status is one way in which the dynamics surrounding sex in prison feed cycles of violence: where victims can become perpetrators and where violence is understood as a necessary component of manhood. For a 'woman' to get masculine status, to achieve 'manhood' and respect, and to put an end to repeated sexual violation and humiliation, requires resorting to violence. The violence follows the clear logic laid out by the prevailing inmate culture and the associated ideas around gender that are particularly explicit in prison but certainly not restricted to this environment.

Sexual abuse and subordination also have consequences for the reintegration of offenders into society. Not surprisingly, further violence is reportedly a common phenomenon. The shame of having been raped or turned into a 'woman', for example, is so painful that most victims try by all means to keep what happened to them in prison secret. (The perception that the victim is in some way to blame for the abuse, is a powerful one.)

Respondents explain how some people who were made into 'women' in prison have, upon release, attacked fellow ex-prisoners in order to stop them from giving away these secrets. Some also report attacks to punish people who had already publicised that the person was a 'woman' in prison, and revenge attacks by prison 'wives' on their prison 'husbands', following release. They also link the isolation, shame and loss of self-esteem typically experienced by victims of forced sex and the imposition of a 'woman' identity, to an increased likelihood of re-offence or engagement in other damaging behaviours.

Conclusion

Not only does the prison environment support few opportunities for positive self-expression, but it may

entrench intensely destructive notions of what it means to be a 'man'. It is likely that many exposed to this context, even if not directly involved in abusive sex situations, will continue to act out identities that involve the subjugation, ownership and violation of others. They will also act out the destructive effects of unaddressed trauma. More broadly, prison experiences may be formative in shaping the views of many young offenders on sexuality and gender, impacting on relationships and behaviour following release.

Prevalent sexual practices in prison are at the same time embedded in what goes on outside prison. Prison 'marriages' – the most common setting for sex and where forced sex most frequently happens – are modelled on dominant heterosexual relations that take place outside prison. Interviewees consistently remind us of the connections between inside and outside with statements like 'you can't rape your wife' or 'prison wyfies are treated just like women outside'. Relations between men and women outside are used to explain the sexual status quo behind bars. This is yet another wakeup call to those of us beyond the prison walls in terms of how we relate to each other. Prisoners are not in the business of creating from scratch a whole new society, but rather in drawing on and adapting identities and ways of interacting that they bring with them from outside. In turn, these intensified and adapted social processes will be fed to the outside when prisoners are released.

Tackling this situation requires further research and the implementation and testing of potential solutions. The findings of the CSVr study however suggest a number of initial levels of dedicated engagement if strategies for prevention are to be developed.

Some of the direct services that are required include the provision of efficient and trustworthy complaints channels; the proper functioning of disciplinary processes; and safe spaces where people who dare to report violations (including witnesses and those attempting to escape gangs), and others at increased risk, are protected and supported. In addition, new inmates should be informed of behaviour that may increase their risk when they arrive in prison.

The transformation of warder culture and attitudes is crucial, with questions of appropriate education, recruitment, evaluation and disciplinary measures needing consideration, as well as the provision of staff support services.

Environmental factors that aggravate sexual abuse and other forms of violence require attention. Linked to the issue of warder culture, endemic corruption, theft and smuggling need to be addressed and strategies developed to ensure that all prisoners receive the basic necessities that the Department of Correctional Services is obliged to provide, and are able to access the services offered.

Also relating to the prevention of violence in prison more generally, is the need for management methodologies that ensure that the factors underlying gangsterism and the dominant inmate culture are dealt with differently. Primarily this is about providing opportunities for alternative ways of asserting personal power and identity, which in turn means finding ways to reduce overcrowding and lock-up periods, relieve boredom, enhance people's sense of self-worth, and constructively deal with conflict and frustration.

Underpinning the problem of sexual violence in South African prisons are the broader problems of male violence and the widely experienced attitudes to sex and gender that inform society at large. Ultimately, therefore, the challenge of addressing sexual violence in prisons is part of engaging with these broader societal challenges

Endnotes

- 1 The full report on the study, S Gear & K Ngubeni, *Daai Ding: sex, sexual violence and coercion in men's prisons*, 2002, is available from the Centre for the Study of Violence and Reconciliation (CSVr) and on the CSVr website: www.csvr.org.za.
- 2 Other terms used to refer to role players in such relationships are also reported; however 'husband', 'wife' and 'wyfie' will be used here.
- 3 The Numbers (the 28s, 27s, 26s, Airforce 3 [23], Airforce 4 [24] and Big 5s) date back to the late 19th century. While they originated outside prison, their present-day significance is restricted to the prison context. They operate along hierarchical lines that mimic colonial, militarised institutions.

SOUTH AFRICA'S HEART OF DARKNESS

Sex crimes and child offenders: some trends

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It is a source of great concern that the number of sexual offences committed by children is apparently on the increase. Given that the Child Justice Bill provides for a separate criminal justice process for children, and stricter provisions for child sex offenders, this article explores some of the relevant trends in this regard. The management of child sex offenders appears inconsistent, and very often no appropriate intervention is made at all. Calculating the actual incidence of child sex offenders is difficult, but some data suggests that children might be responsible for a significant proportion of sexual crimes committed against other children.

In the last issue of the *SA Crime Quarterly*, Joan van Niekerk highlights the increased incidence of reported child sex abuse and the declining age of the average sexually abused child. The declining age of offenders is also of concern: she notes that Childline statistics show that "43% of all cases of sexual assault reported to Childline nationally are committed by children under 18".

Given the concerns raised by statistics such as these, the Children's Rights Project of the Community Law Centre at the University of the Western Cape commissioned a research project to further understand the trends with regards to arrest, custody and reporting in respect of child sex offenders. This article is based on that research, which was also designed for the debate on the Child Justice Bill¹ in Parliament in early 2003.

Important to note is that rape, indecent assault involving grievous bodily harm, and indecent assault of a person younger than 16 years – all crime types considered in this research – fall under Schedule 3 of the Child Justice Bill. Schedule 3 offences are more serious offences that have stricter provisions

applicable than for other offences, including those relating to imprisonment of children before trial.²

This article first considers custody data for children in prison for sexual offences, followed by data on the arrest of children for sexual offences in the Western Cape. Both these sets of data provide an indication of the extent to which, and the manner in which, the criminal justice system deals with child sex offenders at present. The third section looks at data with regard to arrests for sexual offences committed against children in one metropolitan police area of the Western Cape, as this subsection of sexual offences is a crime type that is causing concern and which has been linked to children. Lastly, we consider data in respect of abusers identified by persons across South Africa contacting Childline for help, as this provides some indication of trends in respect of sexual crimes against children that may not reach the criminal justice system.

Children in custody for sexual offences

Custody trends are important when considering the future management of such offences, particularly

since the Child Justice Bill provides for imprisonment under certain conditions of children suspected of sexual offences. Comparison with adult figures highlights some problems with the management of these offences.

What are the overall custody trends with respect to all sexual offences and all sex offenders?³ As of 31 March 2001, persons in prison for sexual offences comprised 13% (22,524) of all prisoners, 12% (13,724) of sentenced prisoners and 16% (8,797) of unsentenced prisoners.⁴ Children comprised only 2% (525) of persons in prison for sexual offences, 4% (314) of the unsentenced prisoners, and 2% (211) of sentenced prisoners.

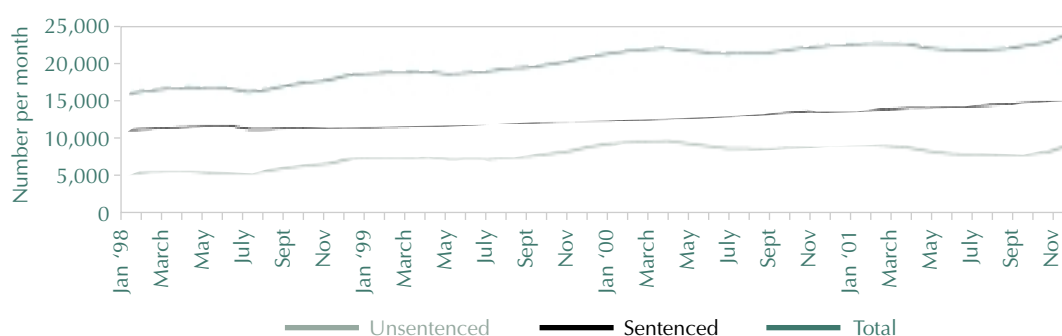
Plotted over time, the number of all sex offenders in prison shows an even increase, with the number of sentenced sexual offenders increasing steadily at a

rate of about 72 prisoners a month. At all times there are more sentenced than unsentenced prisoners (Figure 1).

This is a very different picture from the one that appears from the custody data with respect to children only (Figure 2). This shows significant fluctuations on a month-by-month basis, unlike the even trends for all sex offenders. Another notable difference is that since January 1999 there have been more unsentenced than sentenced child sex offenders. Furthermore, the number of sentenced children in prison for sexual offences has been decreasing over the period under consideration at a rate of about one child every three months.

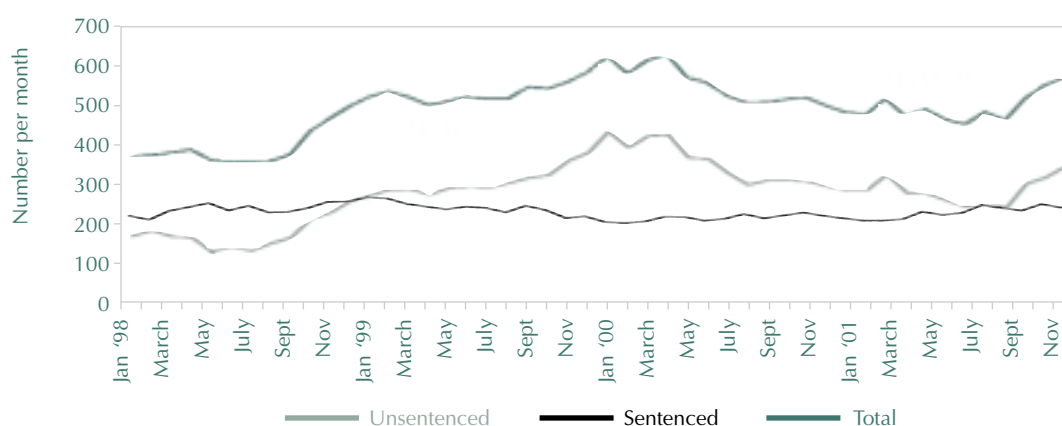
What do these differences suggest? The irregular data for children suggests that there is erratic management of children suspected of sexual

Figure 1: Prisoners (all ages) in custody for sexual offences in South Africa, 1998-2001



Source: Department of Correctional Services

Figure 2: Children in custody for sexual offences in South Africa, 1998-2001



Source: Department of Correctional Services

offences. Particularly worrying is that more unsentenced, rather than sentenced, children are in custody for sexual offences (the reverse of the norm for adults). This is problematic as it suggests that many children are in custody for sexual offences due to the vagaries of the criminal justice system, rather than because a court of law has determined that prison is the most appropriate place for the child in each case.

The fact that the number of children sentenced for sexual offences in prison is decreasing, albeit at a low rate, is probably to some extent a reflection of the courts' increasing unwillingness to sentence children to prison time. This decreasing number would not be cause for concern if it were clear that children accused of sexual offences were instead being dealt with in an appropriate manner (for example, via diversion to a youth programme), as prison time is seldom the most appropriate sentence for a child. However, as we shall see below, the data does not suggest that this is the case: in the Western Cape the proportion of children arrested for sexual offences who are subsequently diverted, remained at 5% or less between 1998 and 2001.

Another point to note is that the peaks in numbers of unsentenced children around December/January and April/May each year correspond with Christmas and Easter holidays. It is unclear whether this

implies that more children commit sexual offences over this time, or that staff (such as probation officers and social workers) who would ordinarily be available to keep children out of prison pending their appearance in court, are less available.

Arrests of child sex offenders in the Western Cape

While custody data provides some insight into the numbers of children ending up in prison, arrest data gives an idea of how many children reach the stage of arrest, but might not reach prison. It is important to note that arrest data does not give a picture of the incidence of a crime type: many other factors such as the preparedness and ability of police to arrest have an impact on arrest data.

However, arrest data is important in order to give an indication of the extent to which police officials might in future be called upon to implement the provisions of the Child Justice Bill in respect of child sex offenders. It may even be the case that once the Bill becomes law, the existence of an appropriate framework for child offenders will lead to a larger number of arrests by police. This data is important to illustrate the position prior to enactment of the legislation.

The office of the Provincial Commissioner of the South African Police Service (SAPS) in the Western Cape provided figures on persons 17 years and younger arrested for sexual offences during the period 1 January 1998 to 31 December 2001. Over this period, more children (498) were arrested in 2000 than in any other year (Figure 3). The high arrest figure in 2000 corresponds with the highest custody numbers noted in the section above. Although there was a drop in 2001 from the high in 2000, the overall trend is toward an increase in these arrests in the province, by about 29 arrests per year.

Of the 498 children arrested in 2000, 470 were arrested for rape, attempted rape or indecent assault. To place this number in perspective, this represents 5% of the total number (8,971) of rapes, attempted rapes and indecent assault cases reported to the police in the Western Cape in 2000.

Figure 3: Children arrested for sexual offences in the Western Cape, 1998-2001



Source: SAPS Provincial Crime Information Analysis Centre

What is the outcome of arrests of children for sexual offences in the Western Cape? About 40%-50% of all these arrests lead to prosecution, while 20%-35% of such cases are withdrawn (Figure 4). Only 5% or fewer of children arrested for sex crimes are diverted from the criminal justice system. It is worrying that between 10% and 25% of all arrest outcomes are classified as 'unknown'.

If the 'withdrawn' and 'unknown' cases are added together, this implies that in all the years considered, around 40% of child sex offenders, who are faced with enough evidence against them to warrant an arrest, are simply not being dealt with by the criminal justice system at all.

How does the situation depicted in Figure 4 compare to the situation for all sexual offences in the Western Cape, and in South Africa? Unfortunately the data in Figure 5 regarding the Western Cape and South Africa is in respect of reported cases, as opposed to arrests. However, if we assume that the number of arrests is equal to the number of reported cases, less those reports that are categorised by the SAPS as 'unfounded' or 'untraced', we find that about 65% of these 'arrests' are prosecuted in the Western Cape and South Africa, and that 35% are withdrawn in the Western Cape while 30% are withdrawn in South Africa.

This would tend to indicate that a higher proportion of adults arrested for sexual offences are prosecuted than are children arrested for these offences.

Diversion of children can explain only a very small proportion of this difference. And since the withdrawal rates are similar for adult and child sex offenders, the difference in prosecution rates boils down to the outcome for child arrestees classified as 'unknown' by the SAPS. This category is cause for concern: what is happening to these children?

Arrests by Child Protection Units in the Western Cape

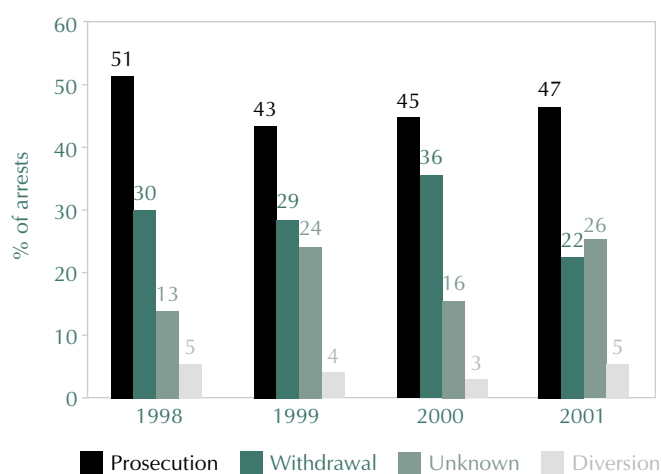
In this section, the ages of perpetrators arrested by the Child Protection Units or Family Violence, Child Protection and Sexual Offences Units (CPUs and FCSs) in the Western Cape are considered. There are 45 such units in South Africa, two of which are in the Western Cape: one located in Mitchells Plain, which serves the West Metropole of the Cape Metropolitan region, and the other at Goodwood, which serves the East Metropole.⁶ The East Metropole CPU has, since April 2000, kept a handwritten record of the ages of all alleged perpetrators arrested in cases referred to the CPU where the victim is under the age of 18 years.

The data from the East Metropole CPU, which covers the period from April 2000 to end January 2002, was reviewed. A total of 865 arrests were

analysed according to monthly trends, age, and type of offence. The record covered 22 months, which implies an average of 39 cases per month.

The majority of the 865 arrests recorded by the East Metropolitan CPU between April 2000 to end January 2002 were for indecent assault and rape. Forty-nine per cent (428) of perpetrators were charged with indecent assault, while rape (excluding attempts, but including statutory rapes and 'sodomy') accounted for 43% (373) of all arrests. Other arrests were for attempted murder, assault with intent to cause grievous bodily harm, assault, kidnapping, abduction, and cruelty towards children.

Figure 4: Outcome of arrests of children for sexual offences in the Western Cape, 1998-2001



Source: SAPS Provincial Crime Information Analysis Centre

Monthly arrest patterns

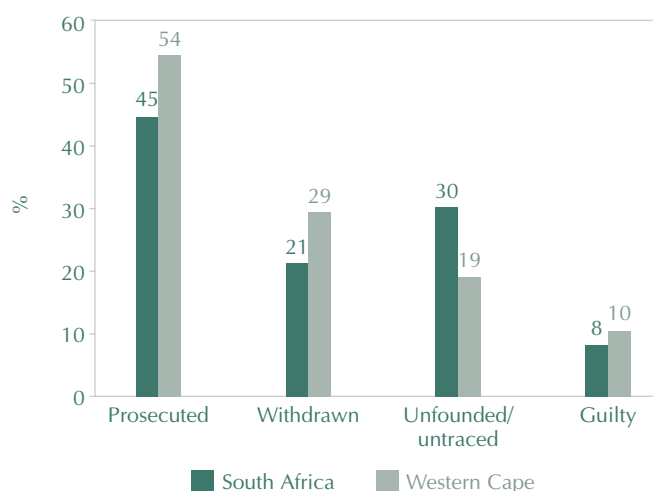
The first noteworthy trend is that the monthly data does not show a consistent pattern over time, which tends to suggest that the number of arrests each month is not predominantly dependent on factors which change evenly over time, such as normal population growth. Instead, it suggests that other more erratic factors, such as staffing levels, have a major impact on the number of arrests each month.

Despite this variation, a trend toward an increase in numbers of arrests can be discerned. Linear equations fitted to the data show that the trend is toward an increase in the total number of arrests of almost one extra arrest per month. The monthly trend with respect to arrests of children is toward an increase of one child arrested every three months, while the trend for adults is approximately one every second month. The fit to a straight-line graph is poor for all three (total, adults, and children), however, so these rates of increase must be seen only as showing the general trend toward an increase in arrests and are not predictive of values in a future month.

In other words, there is a large variation recorded from month to month. Figure 6 shows the number of arrests in each month. The variation is from a minimum of 22 arrests in April 2001 to three times as many, that is, 66 arrests, in November 2001. With respect to child perpetrators, the minimum number of arrests per month is three (in April 2000) and the maximum is 21 – seven times as many (in September 2001). However, various other local peaks and troughs occur before and after these high and low points.

Note that there does also appear to be a suggestion of a seasonal pattern, with higher numbers of arrestees in the latter part of the year (August to December). However, only just less than two years' worth of data is available, which is not enough to see whether this trend is valid. What is clear is that a number of other factors must contribute to the highly fluctuating number of arrests per month, such as, for example, the number of police and social workers

Figure 5: Outcome of all sexual offence cases reported to the police in South Africa and the Western Cape in 2000⁵



Source: SAPS

on duty, available resources (for instance vehicles), and police priorities. What is also clear is that these factors are the same for both children and adult arrestees, as the peaks and troughs are roughly in tandem for children and adults.

Age of arrestees

As is evident from Figure 7, the 18 - 30 age group made up the largest group of arrestees, accounting for 30% (261 arrests), followed by the 31 - 40 age group with 25% (212 arrests). Children (persons aged 17 or younger) were arrested in 201 cases (23%). Once the Child Justice Bill is enacted, it is therefore likely that the East Metro CPU will be required to follow its framework in around 23% of their cases – those that deal with child arrestees.

Another question worth considering is whether the proportion of children arrested by the East Metro CPU (23%) represents a high or low figure for perpetrators of sexual crimes against children. One way of attempting to answer this question is to analyse arrest rates. The extent to which certain age groups might be expected to contribute to arrests for sexual crimes against children in the East Metro area can be assessed by analysing arrests as a proportion that each age group makes up of the Western Cape population.⁷ The various arrest rates (covering the 22 months considered) for each population age group are illustrated in Figure 8.

It is clear that children aged 10 to 17 and those aged 31 to 40 both have the highest East Metro CPU arrest rate (32 arrests per 100,000). For children aged 10 to 17, this might be expected, as only crimes committed against other children are considered; and it is more likely that if a child is to commit a sexual crime, that it be committed against someone of comparable age or younger. Furthermore, given the power relations when an adult offender is involved, it may be more likely for a child to report a sexual crime when it is committed by a child, than when it is committed by an adult.

It is also noteworthy that the rate for children aged 10 to 17 is higher for indecent assault (17 per 100,000) than for rape (13 per 100,000). This suggests that children of this age who commit a sexual crime are either more likely to commit indecent assault than rape, or more likely to be arrested for indecent assault than for rape.

It may be postulated that the high overall rate (32 per 100,000) for the 31 - 40 age group could lie in the greater exposure of persons of that age to children – they are often parents, family relatives or other caregivers of children. As we shall see in the next section on Childline statistics, callers to Childline identified the abuser as a parent in 47% of calls and in 85% of calls the abuser was a person known to the child.

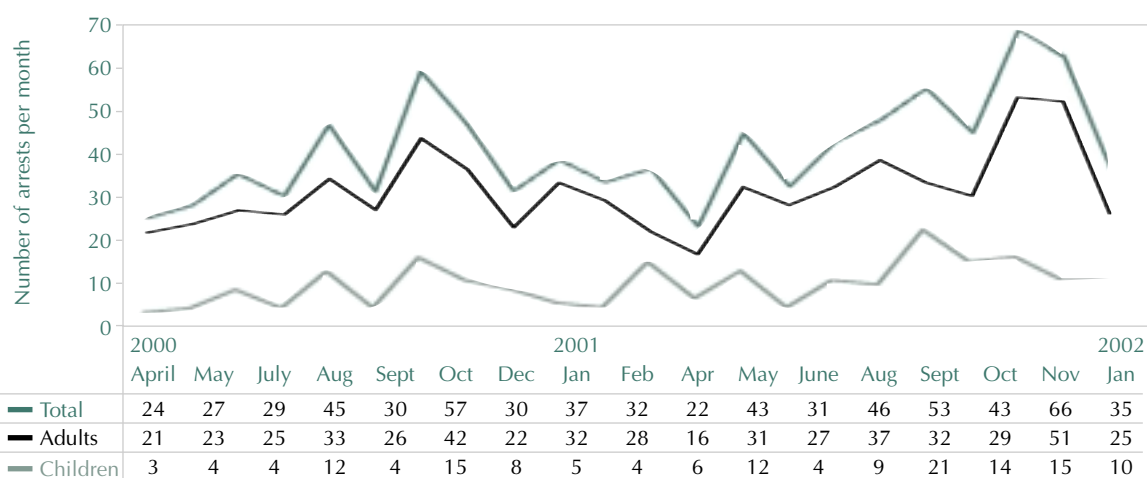
Older people (41+) have the lowest rate (19 per 100,000) for all East Metro CPU crimes, yet they may also be expected to have exposure to children as parents or other caregivers. One explanation for this low rate could lie in the ratio of men to women in the older age groups – as men commit more sexual crimes than do women, so a smaller proportion of men in the population may lead to a lower arrest rate. In the Western Cape only 46.5% of persons in the 41+ age group are men (there are 15% more women than men in the 41+ age group), while 49.6% of the population under 41 is comprised of men (there are only 2% more women than men in the under 41 group).

While persons aged 18 - 30 have a comparatively low indecent assault arrest rate (10 per 100,000), their rape arrest rate (13 per 100,000) is similar to the 10 - 17 and 31 - 40 age groups. This suggests that persons in the 18 - 30 age group who commit sexual crimes against children are either more likely to commit rape than indecent assault, or are more likely to be arrested for rape than for indecent assault. Why this should be so is unclear, but it may be that rape victims are more likely to report the crime than are victims of indecent assault.

Childline statistics

Statistics from Childline are useful in that they count incidents of sexual offences against children that may

Figure 6: Arrests of adults and children for all offences committed against children, East Metro area of the Western Cape, April 2000 to January 2002

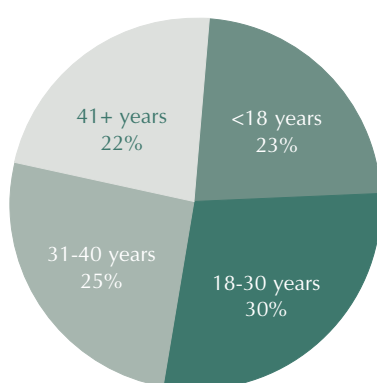


Source: SAPS East Metropole Child Protection Unit

or may not have been reported to the police.⁸ In other words, they provide an indication of the extent to which such instances may be under-reported.

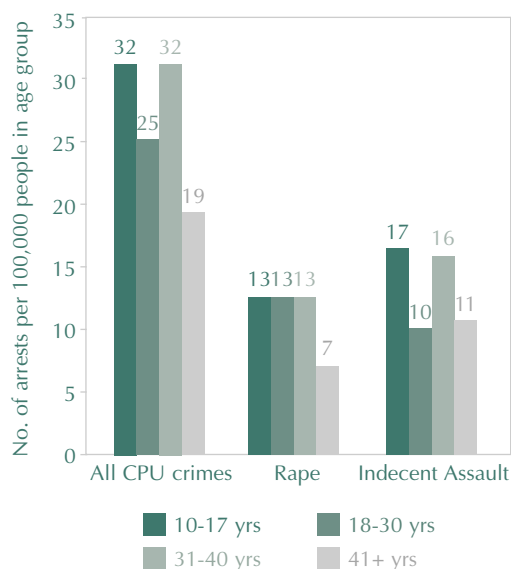
During the six-month period of July to December 2000, Childline's six provincial call centres received 42,234 telephone calls, that is, approximately 230 calls each day, an average of just

Figure 7: Age of persons arrested for offences committed against children in the East Metro area of the Western Cape, April 2000 - Jan 2002



Source: SAPS East Metropole Child Protection Unit

Figure 8: Arrest rates for sexual offences against children in the East Metro area of the Western Cape, by age



Source: SAPS East Metropole Child Protection Unit

fewer than 40 per day per call centre. Two thirds of calls, or 66%, were from children aged 11 - 15. Only one third (13,842) were calls with a specific need – the remainder were what Childline refers to as ‘test calls’. The analysis deals only with ‘non-test’ calls.

The child victim knew 85% of perpetrators, and of these 47% were parents while 8% were stepparents. Calls to report sexual abuse amounted to 1,734, or 13% of the non-test calls. This included both intra-familial and extra-familial abuse.

Figure 9 is based on non-test calls only, and shows the rate at which people of different age groups commit offences against children, based on callers’ reports to Childline between July and December 2000. Because not all callers identified the age of the perpetrator, this graph analyses only the 2,190 (16%) of callers reporting all types of abuse, and the 584 (34%) of calls to report sexual abuse in which the age of the perpetrator was identified.

Those aged 15 - 20 years stand out as being most likely to abuse children, whether for all types of abuse (13 per 100,000) or sexual abuse in particular (4 per 100,000). Unfortunately, we do not know how many of these alleged abusers are under 18 years of age (and would therefore be treated as a child under the Child Justice Bill), and how many are in the 18 - 20 age group.

The age group next mostly likely to abuse children is that between 10 and 15 years (11 per 100,000 for all abuse and 2 for sexual abuse). The rate for the under-15 population is calculated excluding those younger than 10.⁹ Indeed, the Childline research shows that 54% of all child sex abusers, and 51% of all abusers of children, are themselves younger than 20 years of age.

Unfortunately, these age categories are different from the East Metro CPU arrest data, so direct comparison with that data is not possible. However, similar to the East Metro CPU arrest data, the Childline figures show that people in the 40 - 50 age group were least likely to be involved in child abuse.

Conclusion

The relatively high and increasing number of unsentenced children in custody is worrying. If the

aim is to keep children out of prison except where it is appropriate, it makes no sense that fewer are being sentenced, while more are spending time in prison unsentenced. Inconsistent management of child offenders is also suggested by the fluctuating custody figures discussed above.

There is a need to determine what is happening to children suspected of, and arrested for, sexual offences. A significant proportion appears not to go to prison, and it is not clear from the data to what extent diversion or another appropriate intervention is occurring. The data seems to imply that most child sex offenders are simply going through the system without any intervention that might affect their future behaviour.

The arrest figures show that the number of arrests of children for sexual crimes committed against other children is increasing; however, the number of arrests for all age groups of such crimes is also increasing, and at a faster rate.

Children do nevertheless appear to commit a significant portion of sexual crimes against other

children that are reported; the Childline research indicates that the true extent of this problem may be somewhat hidden. The provisions of the Child Justice Bill appear to be necessary to provide for a clear policy framework and consistent management for child sex offenders.

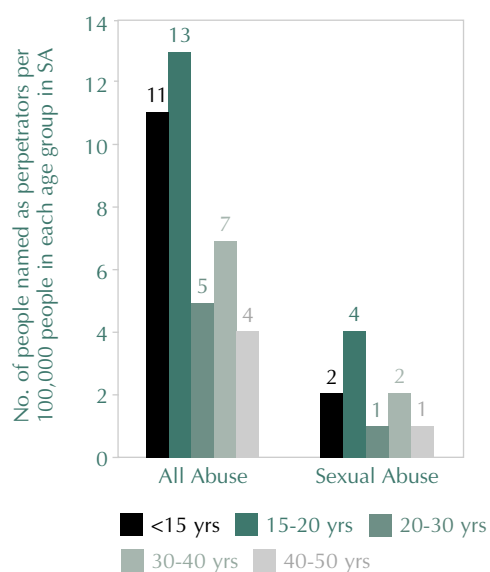
Acknowledgement

The study that this article draws from was commissioned by the Community Law Centre at the University of the Western Cape, website www.communitylawcentre.org.za

Endnotes

- 1 B49-2002.
- 2 For example, an inquiry magistrate may order that a child older than 14 accused of a Schedule 3 offence be detained in prison under certain circumstances, after the child's first appearance at an inquiry proceeding, and before trial. Sections 15,33,36, 58 and 81 of the Child Justice Bill all refer to Schedule 3 offences.
- 3 The Department of Correctional Services provided all custody data.
- 4 The Department of Correctional Services provides 'snapshot' data of the number of persons in prison at a particular date (e.g. at the end of the month). It does not count the total number passing through its doors over, for example, a year.
- 5 Figure 5 does not add up to 100% because of rounding, but also because some of the matters which were withdrawn or prosecuted in 2000 may have been reported in 1999 or earlier, so there may be more of those all together than there were reports in a year. The justice department is also making some progress on the backlog of cases.
- 6 The following police station areas fall under the East Metropole: Atlantis, Bellville, Bellville South, Bishop Lavis, Bothasig, Brackenfell, Delft, Durbanville, Elsie's River, Goodwood, Gordon's Bay, Cape Town Airport, Khayelitsha, Kraaifontein, Kuilsrivier, Macassar, Melkbosstrand, Milnerton, Parow, Ravensmead, Somerset West, Strand and Table View.
- 7 All provincial population estimates were calculated on the basis of Census 96. The predictive table compiled by Calle Hedberg, HISP was used to calculate rates. The predictions take into account estimates of deaths due to HIV/AIDS. Population estimates for mid-2000 were used throughout.
- 8 All the statistics in this section are drawn from a Research Report compiled by Childline and kindly supplied by Lynne Cawood of Childline Gauteng.
- 9 The numbers of alleged abusers younger than ten is small, as is also clear from the East Metro data. The rates including the under ten population: for all abuse the rate is 3.5 per 100,000 and for sexual abuse 0.73 per 100,000.

Figure 9: Rate at which people of different age groups commit offences against children in SA, based on calls to Childline, July-Dec 2000



Source: Childline

GRIPES OR GRIEVANCES?

What the Independent Complaints Directorate statistics tell us (or not)

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When it was created, the Independent Complaints Directorate (ICD) was seen primarily as a mechanism for investigating and deterring human rights abuses by members of the SAPS. It was motivated by evidence of high levels of police brutality, including unjustified killings and the use of torture. However, according to ICD statistics, most complaints received by the ICD are not from victims of police brutality, but from members of the public dissatisfied with the quality of policing service provided to them. ICD statistics cannot therefore be used as indicators of overall levels of police brutality.

One of the fruits of the transition to democracy in South Africa has been the Independent Complaints Directorate (ICD) which opened its doors in April 1997.¹

The ICD operates independently of the South African Police Service (SAPS) and has a separate budgetary allocation (R36.8m in the 2003-4 year), although the key legal provisions dealing with the ICD are provisions of the SAPS Act (68 of 1995).²

Understanding the ICD mandate requires looking both at the legal provisions, and how these have been interpreted by the ICD in practice. While the legal mandate allows some flexibility on this issue, the ICD has tended to identify itself as an investigative body and places less emphasis on the question of ensuring that police carry out internal investigations effectively. Despite this, the ICD does not in fact investigate most of the cases that it receives, but tends to focus its investigative capacity on more serious cases, arguing that it 'monitors' police internal investigations in relation to the rest.

The ICD is also required by law to itself investigate all deaths in police custody and as a result of police action. The high number of these cases (although they have declined significantly since 1997) has imposed a substantial burden on its investigative capacity. In addition to its investigative and monitoring roles, the ICD also makes policy recommendations to the police. The ICD mandate incorporates both the SAPS and municipal police services.

The ICD director is nominated by the Minister of Safety and Security, although the nomination has to be confirmed by the Parliamentary Standing Committee on Safety and Security. The ICD is required to report to the minister and parliamentary committee. The ICD has a staff of roughly 130 personnel located in nine provincial offices and a national office in Pretoria. This includes over 60 investigative staff.

Analysis of all cases reported to the ICD

Since its establishment the ICD has been relatively well used, having received a large number of cases

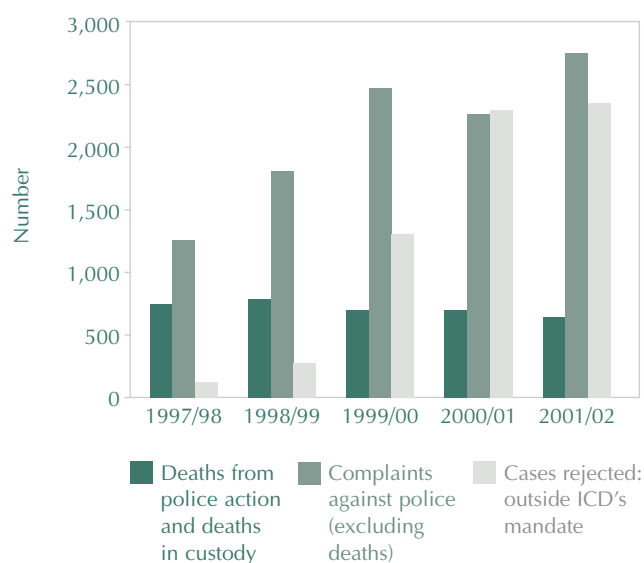
in its first five years of operation. The overall number of cases has increased over the years, which may be interpreted as a positive sign. Column A of Table 1 reflects the total number of cases and complaints received by the ICD over the period April 1997 to March 2002. Another positive sign is that the number of deaths in custody or as a result of police action have, according to ICD reports, decreased by 21% between 1997/98 and 2001/02 (Figure 1).

In analysing ICD statistics it is however important to distinguish between the following three categories (see Table 1):

- **Police action and custody deaths.** The SAPS and municipal police are required by law to notify the ICD of all deaths in police custody and as a result of police action. It is therefore inappropriate to refer to these cases as 'complaints', as the bulk of them are reported to the ICD by the police as required by law. Only a very small number of these cases are received by the ICD in the form of complaints from the public. During the 1997-2002 period police action and custody deaths constituted 17% of cases received by the ICD.
- **Cases outside the ICD's mandate.** A high number of complaints or cases lodged by members of the public are rejected by the ICD as not falling within its mandate. Altogether 31% of cases received by the ICD during the 1997-2002 period were classified in this way.
- **Complaints against the police.** These constituted the majority of cases (52%) received by the ICD during the 1997-2002 period. Most of these are lodged by members of the public, but they also include a number (which is unknown) lodged by police. The most accurate figures to use when talking about complaints lodged against police, are therefore these figures that exclude both ICD statistics on deaths, as well as cases that do not fall within the mandate of the organisation.

Legitimate cases for investigation and monitoring by the ICD, comprising deaths and complaints against

Figure 1: All cases and complaints received by ICD, April 1997-March 2002



Source: ICD

the police, therefore made up 69% of cases which it received in this period (column E in Table 1).

ICD's categorisation of cases according to classes

Class I: A report or complaint of an alleged death as a result of police action or in police custody.

Class II: A complaint referred to the ICD by the provincial MEC.

Class III: A complaint alleging that a member of the SAPS committed a serious criminal offence.

Class IV: A complaint alleging that a member of the SAPS committed a less serious offence or act of misconduct in violation of SAPS regulations.

Cases of police use of force or alleged brutality

ICD statistics relating to cases or allegations regarding the use of force or brutality³ by the police, cover deaths as a result of police action (recorded along with deaths in police custody in Class I)⁴, as well as various types of non-fatal assaults. These are recorded under a range of sub-categories, including:

- Serious assaults recorded under Class III including the sub-category of torture, as well as

Table 1: Cases and complaints received by the ICD, April 1997-March 2002

	A	B	C	D	E
	Total cases received	Deaths as a result of police action and deaths in custody	Cases rejected as falling outside ICD's mandate	Complaints against the police (cases falling within ICD mandate excluding deaths)	Cases which ICD investigates and monitors (Col B+D)
1997/98	1,999	737	91	1,171	1,908
1998/99	2,874	755	279	1,840	2,595
1999/2000	4,380	681	1,237	2,462	3,143
2000/01	5,225	687	2,293	2,245	2,932
2001/02	5,675	585	2,306	2,784	3,369
Total	20,153	3,445	6,206	10,502	13,947
% of all cases received	100%	17%	31%	52%	69%

- assault GBH and attempted murder.
- Less serious assaults including common assault under Class III, and a separate category of assault recorded under Class IV.⁵

Figures for these cases for the April 1997 to March 2002 period are reflected in Table 2.

As indicated in Table 2, deaths as a result of police action have consistently made up roughly 50% of ICD cases relating to the use or misuse of force by police. The ICD therefore receives roughly as many cases dealing with the use or misuse of force from the police themselves (in fulfilment of their mandatory reporting obligations), as it receives by means of complaints from the public (reflected in the categories for torture and assault in Table 2).

Types of complaints received by ICD

Complaints (apart from complaints dealing with deaths as a result of police action or in police custody) are categorised by the ICD in roughly 45 sub-categories which fall mainly under either Class III or Class IV.⁶ Of the 10,502 complaints received by the ICD between April 1997 and March 2002 (reflected in column D of Table 1), only 21% were for incidents involving non-fatal (and non-sexual⁷) assaults.

The bulk of complaints (59%) were classified into one of two sub-categories, namely: 'neglects duty or performs duty in improper manner' and 'failure to perform duties and responsibilities' (Table 3). In fact, in the 2001-2002 year these complaints constituted almost 75% of all complaints received by the ICD (Figure 2) and 90% of complaints received in Gauteng and North West provinces.⁸

The 20% of 'other complaints' include a mixture of sub-categories. In the 1997-1998 year, for instance, the other main sub-categories were an unexplained category titled 'abuse of power' (48 cases), corruption (40 cases) and various forms of misconduct. The main sub-categories in the 2001-2002 year were 'abuse of power' (40 cases), theft (32 cases), and corruption (30 cases).

It should be noted that the vast majority of complaints in the categories 'neglects duty or performs duty in improper manner', and 'failure to perform duties and responsibilities' (and therefore the bulk of complaints received by the ICD), are complaints from ordinary members of the public who are dissatisfied with the service that they have received from the SAPS.

The ICD is therefore used much more by members of the public who are dissatisfied with the service

Table 2: ICD national figures for cases involving police use of force or brutality, April 1997- March 2002

	1997-98	1998-99	1999-2000	2000-01	2001-02	Total	%
Deaths as result of police action (excluding deaths in custody)	518	558	472	432	371	2,351	51
Torture	68	61	28	27	37	221	5
Assault GBH and attempted murder	157	311	500	344	298	1,610	35
Assault (common)	67	69	143	102	81	462	10
Total	810	999	1,143	905	787	4,644	101*

* Exceeds 100% due to rounding.

they received from the SAPS, than it is used by suspects and others who have allegedly been victims of assaults and other abuses at the hands of the police.

While some South Africans may be inclined to see this as an indictment of the poor quality of service received by members of the public from the police, it appears to conform to patterns in the US:

In New York City, for example, only about 10 percent of all complaints in 1993 arose from an incident involving the arrest or citation of the complainant..... [T]he typical complainant is not a young criminal but a middle-aged person who feels that a police officer's behaviour was improper. The vast majority of these complaints involve discourtesy, rudeness, or a failure to provide adequate service and are not related to a criminal incident.¹⁰

ICD statistics – an indicator of police brutality?

While the statistics in some ways reflect patterns in other countries, it is useful to examine the underlying factors that contribute to these patterns locally. An examination of ICD statistics on non-fatal

assaults for the April 2001-March 2002 year (Table 4) points to some of the difficulties in using ICD statistics uncritically.

As indicated in Table 4, ICD figures for serious assaults by the police consistently outnumber figures for less serious assaults by a factor of 4 to 1. Although in practice common assaults by police far outnumber more serious assaults, the ICD statistics indicate that victims of less serious assaults are highly unlikely to report these to the ICD.

There is in fact some evidence that the SAPS itself receives many more complaints and allegations involving forms of assault by SAPS members, than does the ICD. Statistics reported by the Minister of Safety and Security indicated that over the years 1994-1997, an annual average of over 5,300 cases of common assault, assault GBH and attempted murder were lodged against SAPS members. Sixty-seven percent of these were cases of common assault.¹¹

It is furthermore clear from Table 4 and Figure 3 that there are significant discrepancies between the provinces. The fact that Gauteng and the Western

Table 3: Complaints received by the ICD, April 1997-March 2002

	1997-98	1998-99	1999-2000	2000-01	2001-02	Total	%
Complaints of non-fatal assaults ⁹	292	441	671	473	416	2,293	21
Neglect of duty or performs duty in improper manner	506	864	1,279	1,441	2,066	6,156	59
Other complaints	373	535	512	331	302	2,053	20
Total	1,171	1,840	2,462	2,245	2,784	10,502	100

Cape have the highest number of complaints suggests factors such as levels of urbanisation, income and literacy have an impact on the level of use of the ICD. In remote areas the relative inaccessibility of ICD offices is also likely to inhibit the lodging of complaints (although the ICD does allow for complaints by telephone and the internet).

The fact that the KwaZulu-Natal office recorded the lowest number of complaints in this period suggests that there are serious problems with the functioning of this office. Over the April 2001-March 2002 period, the ICD office in KwaZulu-Natal recorded a lower number of assaults than the ICD in the Northern Cape. This seems curious, given that KwaZulu-Natal is the office which consistently receives the highest number of reports on deaths as a result of police action from the SAPS, and given that KwaZulu-Natal has a population ten times the size of the Northern Cape.

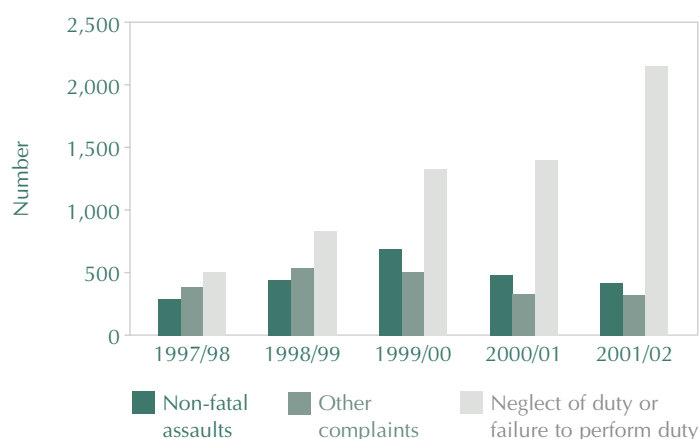
According to a press report, a six month pilot project conducted by the KwaZulu-Natal Campaign Against Torture at six police stations (3% of the roughly 180 stations in KwaZulu-Natal), recorded 86 cases of torture and other abuse of detainees. In six months the project therefore recorded 12 times as many allegations of non-fatal assault by the SAPS, as were recorded by the ICD in KwaZulu-Natal during an entire year.¹²

Conclusion

As indicated by Table 2, the total number of cases received by the ICD recording the use of force or alleged police brutality, reached their highest levels ever in 1999-2000. Thus, while the overall number of complaints received by the ICD has increased steadily over the 1997-2002 period, both reports of deaths and complaints of alleged police brutality have declined after an initial increase in the early years after the ICD was established.

While it is possible that this points to some type of change in the patterns of use and misuse of force

Figure 2: Types of complaints (excluding deaths as a result of police action or in custody) received by ICD, April 1997-March 2002



Source: ICD

by South African police, it is clear that there are other factors which impact on the overall number of cases of non-fatal police violence received by the ICD. These include factors impacting on the public use and productivity of the various ICD offices, including questions of accessibility. At the same time, because victims of police violence tend to be poorer and more marginal members of the public, they are more likely to be vulnerable to police intimidation, but less likely to lodge complaints against the police.

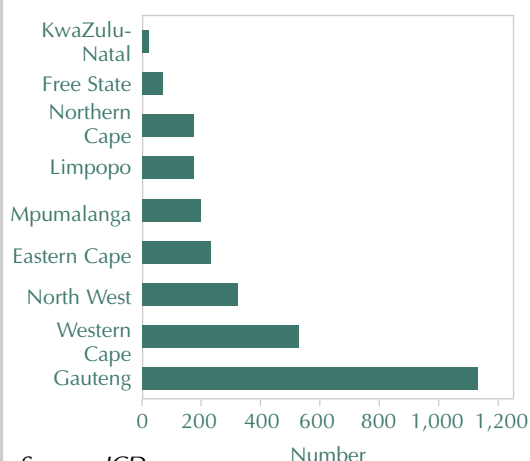
The ICD is relatively underused by victims of torture and other assaults by the police, and ICD statistics on non-fatal police violence cannot be seen as significantly related to overall levels of violence of this kind.

Potentially the ICD could impact on the patterns of complaints by 'outreach' initiatives, directed at people held in custody and aimed at improving their access to systems for the lodging of complaints. Alternatively the ICD could encourage and motivate the SAPS and metropolitan police services to improve their capacity for receiving complaints, and ensure that these are accessible and user-friendly. Any such efforts would be likely to lead to a higher number of cases of non-fatal police violence being recorded in South Africa.

Table 4: Allegations of assaults and other complaints by province, April 2001- March 2002

Provinces	Assault		Total complaints	% of national total	% of national population
	Torture, assault GBH & att murder	Assault common and assault	Total assaults		
Gauteng	75	2	77	1,121	40
Western Cape	38	37	75	519	19
North West	13	2	15	317	11
Eastern Cape	52	12	64	228	8
Mpumalanga	43	6	49	196	7
Limpopo	79	19	98	167	6
Northern Cape	13	3	16	167	6
Free State	15	0	15	52	2
KwaZulu-Natal	7	0	7	17	1
Total	335	81	416	2,784	100

Figure 3: Total number of complaints (excluding deaths as a result of police action or in custody) in provinces, April 2001-March 2002



Endnotes

- 1 Thanks to Moses Dlamini at the ICD for assistance in clarifying questions addressed in this paper.
- 2 The Domestic Violence Act, 116 of 1998 also imposes certain obligations on the ICD.
- 3 Brutality is here understood as unlawful uses of force or violence.
- 4 Note that deaths in custody which are related to the use of force or brutality by police are recorded by the ICD as deaths as a result of police action. ICD statistics on deaths in custody exclude all deaths related to lawful or unlawful police uses of force.
- 5 Prior to the 2001-2002 annual report, assault GBH and attempted murder were presented as a single category. As a result of these and other changes to the system of

categorisation the number of sub-categories in Class 3 has changed between 1997 and 2002 from roughly 18 to 22. Prior to 2001-2002 there was only an 'assault' category under Class IV and no common assault category in Class III.

- 6 Few cases are classified in Class II which deals with cases received from the Minister or MEC.
- 7 Sexual assaults make up a very small proportion of cases received by the ICD. In 1997-98 they constituted 1% of complaints (10 cases of rape, 2 of indecent assault, and 3 of sexual harassment). In 2001-2002 they constituted 0,5% of complaints (14 cases of rape, and 2 of indecent assault).
- 8 The three provinces in which these categories constitute the smallest proportion of complaints (KwaZulu-Natal, Free State and Limpopo), are also the provinces which, relative to population, generate the smallest number of complaints.
- 9 Includes 'torture', 'assault GBH and attempted murder', and 'assault' (Figures in Table 2).
- 10 S Walker, *Police Accountability: The Role of Citizen Oversight*, Belmont, Wadsworth, 2001.
- 11 D Bruce and G O'Malley, *In the Line of Duty? Shooting incident reports and other indicators of the use and abuse of force by members of the SAPS*, Report for the Independent Complaints Directorate, Centre for the Study of Violence and Reconciliation, 2001.
- 12 *Natal Mercury*, 6 November 2002.

Sources for tables and graphs

All ICD statistics are from ICD annual reports except the 1998-1999 figures which are from other statistics provided by the ICD. Provincial population percentages are from the South African Institute of Race Relations 1999/2000 Annual Survey. Budget data is from the National Treasury's budget review.

UNFIT TO OWN A FIREARM?

The role of the police in firearm control

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This article draws on a study that examined aspects of the implementation by the South African Police Service (SAPS) of section 11 of the old Arms and Ammunition Act. This section refers to the declaration by the police of a person to be unfit to possess a licensed firearm.¹ Although the police are more vigilant than ever about declaring people unfit, their lack of knowledge about the process needs to be addressed, as does the tendency of police and prosecutors to blame each other for problems that arise. Unless these deficiencies are ironed out soon, they will obstruct the execution of the new Firearms Control Act.

Even though the new Firearms Control Act (60 of 2000) was passed in October 2000, at the time of this study (July-October 2002) it had still not been promulgated in its entirety.² Until the regulations for the new Act are finalised and promulgated, SAPS members have to apply the old Arms and Ammunition Act (75 of 1969). This has been the case even though since early 2002 the police have been preparing for the implementation of the new Act by setting up the requisite infrastructure such as establishing Firearm Registration Centres and appointing Designated Firearms Officers (DFOs).

SAPS unfitness hearings in terms of s11

Broadly, Section 11 of the Arms and Ammunition Act (s11) enables the police to declare an existing firearm licence holder 'unfit to possess a firearm' without taking the matter to a criminal court. Furthermore, the SAPS may declare a person unfit to possess a firearm without that person being convicted of any criminal offence.

To declare any person unfit the police are required to hold a hearing to look into such a matter. Under certain circumstances they are required to hold a hearing if they have reason to believe, on the grounds of a statement made by a witness under oath, that:

- a person has threatened or expressed the intention to kill or injure him- or herself or any other person;
- a person's possession of a firearm is not in his or her interests or the interests of any other person as a result of his or her mental condition, inclination to violence (whether a firearm was used in violence or not), or dependence on alcohol or drugs; and/or
- a person has failed to take reasonable steps to ensure the safekeeping of the firearm.

S11 hearing procedures

The police need to follow a specific procedure for an s11 hearing prior to a declaration of unfitness being enforced. However, even before an s11

hearing is held, if any of the above conditions are evident, and that person is suspected of having any firearm/s in his or her possession, a warrant for the search and seizure of such firearms must be issued and executed with immediate effect (s11 (2)(a)).

The general procedure is that when a case is reported to the Designated Firearm Officer (DFO), a file is opened. (A similar procedure to that of a case docket is being followed at some police stations.) The file is then 'booked out' to a police member for further investigation. It becomes an official investigation, similar to a criminal docket.

When all the evidence has been collected to the satisfaction of either the Designated Firearm Officer (DFO) or the station commissioner, a presiding officer is appointed to hold the hearing. The DFO then sees to it that all the necessary notices to the accused are filled in and properly served on them (it is a prerequisite that such a person must receive a written notice of the hearing requesting their attendance).

The main purpose of the hearing is to give the person an opportunity to advance reasons why he or she should not be declared unfit to possess a firearm. An attorney may represent him or her at that hearing, and he or she may call witnesses and cross-examine the person who made the sworn statement (s11 (3-4)). However, the hearing can proceed whether or not the person attends the hearing (s 11 (6)).

The presiding officer must be a SAPS officer of the rank of superintendent or higher. (Currently there are moves afoot to lower this rank requirement to the level of captain.) At the hearing all that is required to declare the person unfit, is for the police officer conducting the hearing to satisfy him- or herself that the evidence given during the hearing supports the reasonable belief that the person is unfit to possess a firearm (s11 (4)(a-b)). Notification of the result of an s11 hearing,³ is done on a SAP 21 form. The person must also be furnished in writing with the reasons why the declaration was made. This informs the person declared unfit of their right to appeal in writing to the Firearm Appeal Board within 60 days⁴ from the

date notified of the declaration. The Appeal Board may confirm, vary or set aside the declaration concerned (s14 (1)). During this period of appeal the declaration will remain in force.

The details of a person so declared unfit, together with the information regarding the declaration (date, place, declared by whom, period of unfitness, and full reasons) are also filled in on the SAP 304 form which is sent off to the Central Firearms Register (CFR) for recording.

Any declaration resulting from such a hearing must be for a period of no less than two years although it can also be suspended for two years (s 11 (6)). Irrespective of the declared period of unfitness, the person may appeal in writing to the Appeal Board to have the declaration lifted or discharged after the expiration of a period of two years. At the end of the period the person is entitled to gain possession of a firearm and to carry it legally.

Statistics on applications for firearms and s11

According to the Central Firearms Registry, as of October 2002 the total number of firearms registered to individuals in South Africa was 3,654,434. A further 81,242 firearms were registered in the names of institutions. This means that there was one legal firearm for every 11 people in the country. However, many licensed firearm owners have more than one firearm, indicating that the total number of people in possession of a legal firearm is significantly lower.⁵

From January to October 2002, the Central Firearms Register (CFR) received 117,864 applications for firearm licences. In the same period the vast majority of applications, that is, 103,056, were approved (some of which may have been received before 2002) while only 5,453 applications were refused.

Countrywide for the period January to October 2002, s11 applications resulted in only 541 persons being declared unfit through s11 hearings. This national data masks some stark differences amongst the provinces.

Map 1 shows the number of s11 unfitness declarations in each province, January to October 2002. The Western Cape has by far the most s11

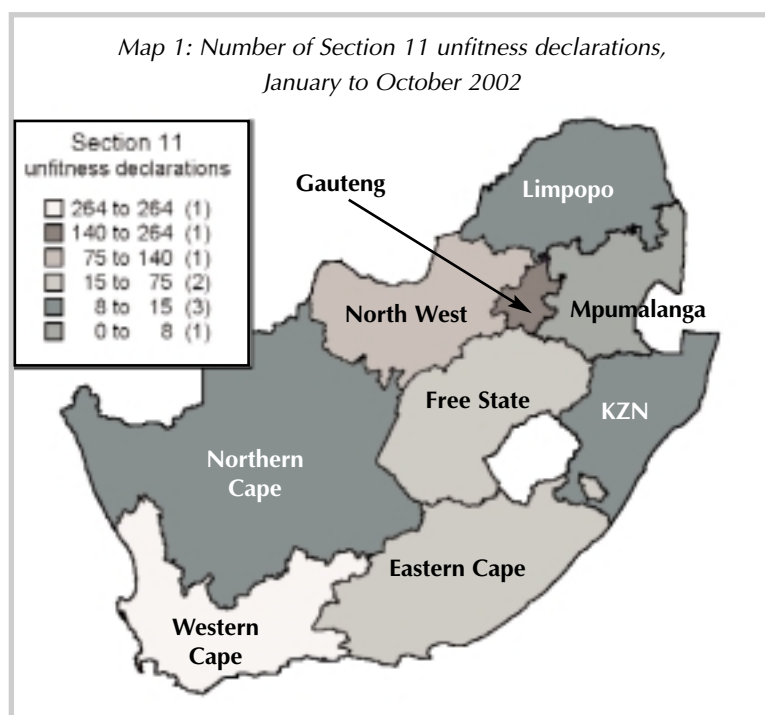
unfitness declarations, accounting for almost half, (49% or 264) of the 541 declarations in South Africa. Next is Gauteng with 26% (140) and North West with 14% (75). Less than 2% (10) occurred in KwaZulu-Natal, Limpopo and the Northern Cape respectively. There were no declarations at all in Mpumalanga. On average there are 4.31 applications per 1,000 adults in any one year, with provincial figures ranging from 2.2 in Limpopo to 8.1 in Gauteng.

However, within the context of the large number of firearm licences already issued, and the continued growth of the number of annual applications, the low number of s11 hearings is of concern. This is particularly the case given the current high levels of violent crime. The question then is, in practical terms, what the situation on the ground is regarding s11 hearings.

Results of interviews with police

The s11 process is initiated when the DFO becomes aware of a transgression (as defined above) and institutes the hearing that will determine if the person should be declared unfit to possess a firearm. It is the duty of the police to obtain an affidavit from the complainant that can be used as a basis for an s11 hearing. The internal procedures also require the police to peruse the Occurrence Book and the dockets returned from court to establish whether or not an s11 hearing is necessary.

Interviews carried out with members of the police during the study provided insight into the practical implementation of s11 hearings. This would include when s11 hearings were held (other than the circumstances prescribed by the provisions of the Arms and Ammunition Act), whether or not police consulted the Occurrence Book for potential s11 hearings, and the problems encountered with respect to s11. (The information for this section of the article emanates from interviews conducted with DFOs in the four



provinces selected: Eastern Cape, Gauteng, KwaZulu-Natal and Western Cape).

Police interviewed indicated that they were obliged to hold an s11 hearing regardless of whether or not a case had proceeded to court. Moreover, a hearing could be instituted in any case involving violence, and not necessarily only involving a firearm. The obligation was independent of the outcome of the court hearing. This was irrespective of whether the outcome of the court proceedings was an admission of guilt by the accused, an acquittal, whether the prosecutor declined to prosecute, the matter was withdrawn, or a conviction had been secured.

In addition, an s11 hearing would also be held if the prosecutor specified on the docket that it was required. Moreover, where a person has attempted to commit suicide and is a licensed firearm holder, the police will institute an s11 hearing to determine his or her fitness to own a firearm. The police also stated that in respect of domestic violence charges laid at the police station, some partners – despite withdrawing such charges at a later stage – are willing to make a statement that enables the SAPS to hold an s11 hearing. This is done in order to remove the firearm from the abuser's possession.

The interviews tried to establish to what extent the police were proactive with regard to initiating s11 hearings by consulting the Occurrence Book on a daily basis at their stations. In most areas someone, for example a branch commander, station commander, detective or DFO, was responsible for inspecting the crimes recorded in the Occurrence Book and determining whether or not a hearing should be instituted.

Moreover, some heads of detectives scrutinised dockets that were returned from court in order to ascertain if s11 hearings were necessary. In some places police admitted that this was not being done despite being aware of internal instructions pertaining to s11 hearings (the SAPS have internal guidelines that prescribe when s11 hearings should be instituted). This was attributed to the lack of liaison and information-sharing between the Crime Information Analysis Centre (CIAC) and the DFOs in those areas.

These problems provide some insight into why so few s11 hearings have been held thus far. There appears to be a gap in the performance of the police in this regard.

Problems related to s11 hearings

Several problems were highlighted with respect to s11 hearings. These ranged from the huge backlog in hearings to the fact that there was an over-reliance on the police to declare people unfit to possess a firearm.

All the police members interviewed acknowledged that previously s11 hearings were not given the attention they deserved – hence the backlog. Some admitted that it was “too difficult to go back in time and check for s11”. When the research was conducted, figures for the number of s11 hearings held thus far and the number outstanding were not available. Nevertheless, figures were provided in some areas.

For example, on the West Rand, 152 s11 hearings were outstanding by April 2002. In the Western Cape a DFO averred that a colleague had ‘inherited’ 53 s11 hearings but could not trace any of the people concerned. In the Eastern Cape a DFO stated that only four s11 hearings had been

held each month since July 2002. All these figures indicated to the researchers that while backlogs continued to exist, not enough s11 hearings were being instituted.

Some complained that s11 hearings were time-consuming because a docket had to be prepared. A DFO in Gauteng criticised the absence of registers concerning s11 hearings at some police stations in his area. Others condemned the lack of knowledge of s11 amongst some police members, saying that it was not being used effectively enough to “get rid of weapons”. Moreover, they averred that detectives were to blame for the increase in s11 hearings because they often did not alert prosecutors to the prospect of s12.⁶ In addition, it appears as if detectives are not familiar with the provisions of s12 (1) and (2) of the Arms and Ammunition Act.

The police complained that there was an over-reliance on them to conduct s11 hearings. According to them this stemmed from the practice by the courts that neglected to declare people unfit in terms of s12 of the Arms and Ammunition Act. Further to this they professed that “the courts only concentrate on the elements of the crime and leave the police to do s11 ... they do not consider s12, thereby increasing the police workload”. They added that when prosecutors declined to prosecute due to a lack of evidence in a matter, the onus rested on the police to hold an s11 hearing. Furthermore, they contended that the “courts leave it to the SAPS to do s11 – they do s12 more seldom”.

Conversely, the prosecutors interviewed placed the blame on the police for not initiating declarations of unfitness. In addition, prosecutors revealed that they would not alert a magistrate to the possibility of an s12 declaration because it was the magistrate’s duty to consider it. Moreover, prosecutors admitted that they would not raise this issue unless the police investigating officer specifically asked them to do so.

Another problem mentioned was with respect to the 60-day appeal period. Some police were concerned that during the period of appeal a large number of weapons are stored at police stations. According to

the police the weapon is “often not sold and no appeal is held”. At times the applicant does not want to appeal and waits for the weapon to be sold, but in the interim it is kept at the police station. The police auction the weapon, which incurs costs, and is an “administrative hassle”. A designated police officer (DPO) interviewed in the Western Cape estimated that at “any one time there are 170 weapons just sitting at the police station, including those handed in to be destroyed”. This, he added, was “a significant danger and target for theft”.

It is evident from the above that the police have a significant role to play in declaring people unfit to possess a firearm. In order to alleviate the burden placed on them of holding s11 hearings, the police have in some provinces (Eastern Cape, Gauteng and Western Cape) developed an endorsement form that is affixed to the outside cover of a docket sent to the local prosecutor’s office. This document serves to alert prosecutors to the prospect of the court declaring an accused unfit to possess a firearm.

The form provides the prosecutor with information such as the accused’s name, address, identity number, offence charged with, and the CAS number. In addition, it stipulates that if the accused is convicted of any offence referred to in s12(1) or (2) of the Arms and Ammunition Act the prosecutor should bring the matter to the attention of the magistrate presiding over the case. The magistrate would then determine whether or not the accused is fit to continue to own a weapon. This initiative is a step in the right direction because it may help to lighten the workload of the police and ensure that the courts play their part in this regard.

Conclusion

Despite the law affecting firearms being in a state of transition, the responsibilities of the police and the courts in excluding unfit persons from firearm ownership, remain. Mindful of this responsibility, the police are seemingly now more vigilant than ever about instituting s11 hearings and thereby declaring people unfit. Nevertheless, the lack of knowledge about these hearings and their impact needs to be addressed by developing standardised procedures and manuals for use by the SAPS countrywide.

The tendency of police and prosecutors to blame each other with respect to the implementation of s11 and 12 of the Arms and Ammunition Act, hampers its effectiveness. Moreover, joint training sessions comprised of police and prosecutors should take place in order that each understands their obligations in respect of s11 and s12 of the Arms and Ammunition Act and performs accordingly. Unless these problems are ironed out soon they will prove to be an obstacle to the smooth execution of the new Firearms Control Act.

Acknowledgement

The information for this article was extracted from a more comprehensive study: D Mistry, A Minnaar, J Redpath & J Dhlamini, *The role of the criminal justice system in excluding unfit persons from firearm ownership*, GFSA/IHRCJS Research Report, December 2002.

Endnotes

- 1 In the new Firearms Control Act provision for such declarations is made in Chapter 12, section 102. This section broadly follows s11 but with two additional requirements, namely that a declaration of unfitness can be made if a final protection order under the Domestic Violence Act, 1998 (116 of 1998) has been issued against such a person, and if such a person has provided false or misleading information for certain information requirements of the Act.)
- 2 The full implementation of the new Act is still some way off since new draft regulations requiring public comment to reach the Central Firearms Register (CFR) by 29 April 2003 were only gazetted on 27 March 2003. These were the third set of draft regulations in the long process of implementation of the Act. The head of the CFR estimated that it would be at least another six months after April before the regulations were finalised so that they could be implemented. Only at that time would all the provisions of the Act be officially promulgated in their entirety.
- 3 Including the period for which the order will be valid (by law not less than two years) and the notice that all licences, certificates of competence, authorisations/permits to possess a firearm/s and ammunition issued to the person declared unfit, and all firearms and ammunition in such a person’s possession, must be surrendered to the police station in question within seven days (s 16). Importantly, the new Firearms Control Act has tightened up on certain of these limitations, namely that the minimum period for which a declaration of unfitness order will be valid is five years (s 104 (2)); while a person declared unfit will have to surrender and hand over all firearms, ammunition and licences in his/her possession to the nearest police station within 24 hours (s 104 (6)).

- 4 The declaration remains in effect until the finalisation of the appeal (either confirmation or lifting).
- 5 These figures do not include those held by dealers, gunsmiths, manufacturers and government departments.
- 6 S12 (1) provides for automatic declarations of unfitness whilst s12 (2) makes provision for discretionary declarations of unfitness by the courts.
- 7 In the Western Cape police appointed to deal with firearms are called DPOs because they are not only responsible for firearms but also for liquor-related matters.