

Strengthening democratic policing in South Africa through internal systems for officer control

Gareth Newham

Centre for the Study of Violence and Reconciliation,
PO Box 30778, Braamfontein 2017.
Tel: (011) 403-5650, Fax: (011) 339-6785
gnewham@csvr.org.za <http://www.csvr.org.za>

Although much has improved over the past decade in the South African Police Service (SAPS) since the dark days of apartheid, a glaring fault line in the transformation process has been the high levels of police abuse of power and misconduct. This is manifest particularly as a challenge of widespread police corruption and ill-discipline which has hindered the legitimacy of the police organisation in the eyes of a substantial proportion of the South African public. This article explores some of the dimensions of this challenge and argues that one of the contributory factors for this situation is the failure of the police reform initiative to establish effective systems for internal control. In particular, it is highlighted how the SAPS is not able to adequately identify problematic officers and use the internal disciplinary system to correct their behaviour or remove them from the service. This article explores the reasons for this and goes further to explore the failure of the external structures for police accountability to identify and respond to this challenge appropriately. A number of practical suggestions are presented as to how the external oversight structures could refocus their activities to contribute to the strengthening of these internal police systems.

Keywords: South Africa, police reform, democratic policing, police accountability, police criminality, police misconduct, civilian oversight, internal management systems

Introduction

Amongst the many features of the police transformation process that took place in South Africa following the birth of democracy in 1994, was the establishment of substantial civilian oversight framework. With the abuses of apartheid era policing still fresh in the minds of many citizens, the architects of South Africa's new constitution were careful to ensure that the police could be held accountable through a number of civilian run structures and institutions. Nevertheless, a little over a decade of police reform in South Africa and concerns have been expressed that "accountability and oversight have faded from the public agenda as the democratic government's control of the police has consolidated and as rising crime rates have instead come to dominate public and political concerns." (Bruce & Neild, 2005:6).

Indeed, the past decade has seen a dramatic transformation of the national South African Police Service (SAPS). In almost every way it is a vastly different organisation from its

notorious apartheid predecessor. It operates under a Human Rights based constitutional order, presents itself as a 'service' rather than a 'force', has adopted community policing policies and has made great strides towards demographic representation. With increased police visibility, and more recently, decreasing crime rates,¹ overall public confidence in the organisation has risen since 1994.² The SAPS has received generous funding from the government so that it will be able to improve salaries and increase its staff complement to 156 760 by 2007.³ With expansions in the vehicle fleet, equipment supplies and technological infrastructure and various human resource initiatives, further improvements are expected in the future.

Nevertheless, there is a serious and critical challenge that continues to face the SAPS which has placed severe limits on its ability to achieve legitimacy amongst substantial proportion of the public. Due to the continued widespread problem of police misconduct and abuse of power, the SAPS have had uneven success in promoting social order in all communities. This paper argues that while ensuring political accountability at the highest levels of the organisation has been achieved, the current systems of control are inadequate for holding sufficient numbers of individual police officials accountable for poor service and abuses of power at the local level.

The first section of the article will briefly explore the key manifestation of this problem, namely the extent and nature of police abuse of power in South Africa. While this article will not dwell on the large amount of evidence of poor service delivery, it is sufficient to state that shortcomings in holding police officials accountable for serious crime and misconduct is reflective of the broader problem of inadequate work performance measurement and review.

The next section of this article will draw from a recent body literature on police accountability to present a conceptual framework against which to identify the key shortcoming with regards to police accountability in South Africa. Much of the recent literature on police accountability has highlighted the importance of oversight taking into consideration the dual, but linked concepts of police performance and police conduct. However, as will be highlighted, strengthening internal police controls to deal with police abuses is particularly important for police agencies undergoing reform that have historical legacies of abusive conduct. The article will then explore the primary SAPS internal systems for dealing with police misconduct and abuses of power. The paper concludes by providing suggestions as to ways of improving police oversight mechanisms in order to strengthen police accountability in South Africa.

1. Following the dramatic increases in crime between 1994 and 1999, the national rate stabilised in 2000 and by 2003 had subsequently decreased by 1.5 per cent on 1998 figures (Burten *et al*, 2004).
2. A national victimisation survey held in 2003 revealed that 52 per cent of the population thought the police in their areas were doing a good job (Burten *et al*, 2004). This is the first survey since 1994 to reveal a majority perception in favour of the police service.
3. This represents a 31.1 per cent increase in the size of the SAPS since 2002.

Police abuses in democratic South Africa

If one compares the abuses committed by the apartheid era police with those of the democratic SAPS, it is clear that substantial improvements have taken place. No longer are the police actively involved in a systematic use of brutality, torture or extra-judicial killings that characterised policing during the apartheid era. Nevertheless, the dramatic changes in the police service brought about by democracy have weakened previous systems of police officer control, creating the space for other types of abuses to flourish. While there are numerous media reports of police misconduct and abuses of power, the precise nature and extent of the problem is not really known. Nevertheless, there are a number of indicators that suggest the problem in South Africa remains significant and is cause for concern.

Corruption

Although there is little information on the extent of police corruption⁴ before 1994, there is sufficient evidence that the abuse of police power for personal gain was relatively widespread and occurred at the highest levels under apartheid. The trial of the police 'hit squad' commander Colonel Eugene de Kock revealed the extent of corruption among senior commanders and elite members of the apartheid police force. Throughout the duration of his 18-month trial, a large number of witnesses presented a litany of evidence laying bare how common fraudulent activities were within his unit including the pervasive smuggling and dealing of drugs, diamonds, and illegal weapons. A vast majority of the 121 criminal charges that De Kock was faced with were related to fraud and corruption, while eight were for murder.

While most of the evidence at this trial related to the powerful Security Branch of the South African Police force, there are indications that bribery, protection rackets and theft were also commonplace among many 'ordinary' police members. These forms of corruption were fuelled by the enforcement of laws restricting the movement of black South Africans and the policing of illicit markets such as gambling, sex-work and the illegal sale of liquor. Lodge (1997) reveals how Auditor-General reports reflect increasing cases of police fraud after 1966, and highlights a criminal case that details corrupt connections between senior police officers and the leader of a well-known criminal syndicate. Lodge (1997:9–10) also mentions how during the 1970's, "black policemen were commonly believed to refrain from charging pass offenders in exchange for bribes", and that shortly before the end of apartheid "the repeal of pass laws and restrictive liquor legislation ended the two most common opportunities for police bribery and extortion."

Since the advent of democracy, corruption committed by police officials has emerged as one of the most common forms of police abuse of power. Greater media freedom has contributed to police corruption becoming more publicly recognised as "reports continually surface of SAPS members being guilty of ill-discipline, nepotism, theft, improper use of government property, fraud, the sale of police dockets, and a host of other scams." (Hopkins, 2004:127).

4. Police corruption is simply defined as the abuse of police powers for personal or private gain.

Typology of police corruption

Syed and Bruce (1998) have collated and analysed the instances of police corruption as reported in the press over a 15-month period from February 1996 to April 1997. They have categorised various forms of police corruption demonstrated in Table I below.

Table I Forms of police corruption

Category	Types
Types of favouritism	"Looking the other way" for family and friends. "Looking the other way" for colleagues and influential people. Using police access and influence to provide illegitimate assistance to members of the above groups.
Bribery and related practice	Taking a bribe for non-enforcement of the law Bribery for the obstruction of the criminal justice process. Bribery for direct intervention in the criminal justice process Extortion Limited paid protection to criminal operations Regular paid protection to criminal operations
'Kickbacks' and similar payments	Paying for favouritism regarding the delegation of legitimate tasks Payment (among police officers) in return for the awarding of work-related opportunities for corrupt incomes Payment regarding delivery or favourable treatment in respect of delivery of legitimate services Payment for delivery of illegitimate services
Diversion of police resources	Officers or commanders selling, or providing disproportionate police services during or after working hours. Officers or commanders selling legitimate police services to criminals Targeting (using police powers illegitimately to help or victimise certain groups)
Deceptive practices	Falsely enhancing the performance of self or others in the police. Making false statements or committing perjury
Theft	Stealing from a crime scene and other areas of legitimate police presence Stealing from stored goods, eg. evidence, recovered property
Pre-meditated criminal activity	Pre-meditated criminal acts for personal gain Extensions of corruption such as pooling of corrupt money among officers or selling stolen goods

Syed and Bruce concluded that "it seems reasonable to assert that the occurrence of reports on so many different types of corrupt activities in the South African press in little over a year indicate that police corruption in South Africa is fairly extensive as well as being varied in nature" (1998:11).

The SAPS recognised the problem and in 1996 officially announced that one of its national priorities would be the combating of corruption by its members. That same year a specialised national police Anti-Corruption Unit (ACU) was established consisting of 250 police members working from offices in all nine provinces. Given that police corruption is internationally accepted as an under-reported phenomenon (Newburn, 1999), the figures that were provided by the ACU for the first time gave some indication as to the extent of the problem. Whereas 2,300 cases were reported during 1996, this figure had almost tripled to an annual total of 6,480 reported cases with over 1,000 officers charged and arrested by the year 2000. Unsurprisingly, the unit was highly unpopular within the SAPS given that it drew attention to the scale of the corruption problem and by the end of 2001 half its provincial offices were closed down.

In 2002, an initiative to restructure all the investigation units in the SAPS was used as a pretext to close the ACU down totally. Following the unit's closure, the official numbers of reported corruption cases drastically decreased so that over the two year period ending in 2003, an annual average of 1,185 corruption related cases were investigated against police officials. Of the two year total of 2,370 cases investigated, 1,332 resulted in criminal prosecution and 641 in internal disciplinary hearings (SAPS, 2004). Police seemed increasingly unwilling to publicise the extent of corruption in the organisation and in the most recently released SAPS Annual Report, the only figure relating to corruption was that 347 police members were suspended as a result of "corrupt activities" (SAPS, 2004:9) None-the-less National Commissioner Jackie Selebi conceded during a briefing before parliament in 2005 there were still many cases of police dockets being sold to offenders and that a greater number of firearms had been lost or stolen from police officials than was the case previously (Ensor, 2005:4).

Data from national victimisation surveys suggests that the problem is still significant. In the latest Afrobarometre survey conducted in 2004, 36 per cent of all South Africans thought that "all or most" police were involved in corruption (Mattes *et al*, 2005). The number of respondents who indicated that in the previous year they had paid a bribe or given gift to "avoid a problem with the police" increased from 6 per cent in 2002 to 10 per cent in 2004 (Mattes *et al*, 2005). A global survey conducted by Transparency International, found that South Africans would most like to see corruption eliminated from the police, the single highest choice from all respondents from a range of political and state structures (Transparency International, 2003). A recent survey of 3,500 police officials working in the country's largest metropolitan area, Johannesburg, revealed that 54 per cent of respondents thought that police corruption had been increasing over the past four years (Newham, 2005). Police corruption is so pervasive in some localities and amongst certain groups (e.g. drug dealers, sex-workers, refugees), that it is referred to as a "street tax" (Thulare, 1999:19). Official SAPS data on the subject is limited making it extremely difficult to accurately know how extensive corrupt police activities are.

Criminality and misconduct

When it comes to other forms of police criminality and misconduct, there are a number of indicators that reveal that these too remain worryingly prevalent. Between

1995 and 1999, an annual average of 1,200 police officers were convicted of criminal offences, a 98 per cent increase in the number of police officials convicted between 1998 and 1999 (Lue-Dugmore, 2003). During 2000, there were 14,600 criminal cases opened against police officials for crimes including murder, attempted murder, rape, armed robbery, theft, fraud, and serious assault (Masuko, 2001). The civilian run Independent Complaints Directorate (ICD), a structure tasked with investigating all police action/ custody deaths and public complaints against individual police officials, states in their most recent Annual Report that "there was a substantial 47 per cent increase in reports of serious criminal offences allegedly committed by SAPS members in 2003, compared with previous years" (ICD 2004:47). The SAPS Annual Reports to parliament have so far been silent on the numbers of criminal cases opened against police members and the outcomes of these cases. But, the latest SAPS Annual Report revealed that a total of 21,283 complaints of all kinds were received by only two of its formal reporting systems, both telephone hotlines (SAPS, 2004:106). However, the ICD Annual Report for 2004 highlighted that the allegations it received of police misconduct increased by 27.6 per cent (from 2,913 to 3,716) on the previous year. These cases are divided into three broad categories of which 86.4 per cent (3,209 cases) are recorded as "neglects duty or performs duty in an improper manner", with 7.3 per cent (271 cases) recorded as "gross discourtesy" and 6.4 per cent (236 cases) recorded as "failure/ refusal to perform duties and responsibilities." (ICD, 2004:62).

Victimisation surveys provide some indication of the impact of police corruption on the public's perception of the police. In the 2003 national survey, 45 per cent thought that the police in their areas were doing a "bad job" in their area, (Burton, *et al*, 2004:77). When asked the reasons for dissatisfaction with the police, respondents stated that the police are slow to respond (35 per cent), corrupt (13 per cent), don't come into the area (12 per cent) and lazy (11 per cent).

Given the complexities of policing, there is no single explanation as to why police abuse of power and misconduct exists. Nevertheless, there are a number of useful theories as to why these problems occur, and what can be done about them. Such theories can be clustered into the following three key categories including, those that focus on the characteristics of individual police officers, those that focus on the nature of the police organisation or occupation, and those that focus on the broader social environment within which policing occurs.

Approaches to understanding police corruption that focus on individual police officers reflect the traditional police agency response to scandals of police abuses and are popular because it provides a mechanism for police leaders to reassure the public that the police officials involved represent only a few "bad apples". Increasing recruitment and selection standards are usually highlighted as a critical component for reducing problems of police abuse (Palmer, 1997). If we were to take a bad apple explanatory approach to understanding police corruption in South Africa, it could be argued that there are a number of police officers who joined the police for reasons other than altruistic ones and because the labour market was extremely limited for certain groups of people. The police force was an available option given low educational requisites for recruits during apartheid (Rauch, 2000). It seems reasonable to argue that the new SAPS was born with a substantial

number of individuals who were not fit or able to provide professional policing services. Most of these individuals have remained in the police service during the past decade of democracy.

Organisational or occupational theories relating to police corruption and abuses recognise that not all corruption is as a consequence of character flaws of individual officers. As New York City Police Department Commissioner Patrick Murphy argued following repeated corruption scandals: "The 'rotten apple' theory won't work any longer. Corrupt police officers are not natural-born criminals, nor morally wicked men, constitutionally different from their honest colleagues. The task of corruption control is to examine the barrel, not just the apples – the organisation, not just the individuals in it – because corrupt police are made not born." (cited in Newburn, 1999:15).

Policing scholars who advocate a more institutional approach to understanding police corruption tend to argue that changing the management systems is necessary for controlling abuses of police power (Bayley, 2001). There is comparative research that has highlighted that all successful cases of police corruption control have corresponded with moves, 'from less authoritarian to more authoritarian administrations' (Sherman, 1983:375). Indeed, 'rule tightening' or strengthening internal discipline systems are staple recommendations following commissions of inquiry into police corruption. But resorting to rule tightening while a necessary condition, is not sufficient as an organisational strategy for changing police culture that supports abuse and poor performance (Chan, 1997; Carter, 1993). The South African Police Service has gone some way to making the required institutional changes evidenced by a new focus on internal police organisational democratisation (marked by the acceptance of police unions and labour law) but there has been inadequate attention paid to officer supervision and oversight.

Some have argued that the 'task environment' or what Janet Chan calls the 'field' of policing plays a critical role in determining the extent to which police abuses occur (Sherman, 1983). A number of environmental factors have been shown to be directly correlated to levels of corruption (Newburn, 1999:17). These include low direct managerial and public visibility of most police actions, peer group secrecy, low police professional status in society due to low pay, and frequent contact with criminals with significant resources. In this regard, it has been long recognised that certain forms of policing, particularly those related to 'victimless crimes' or 'illegitimate markets', typically represent the 'invitational edge' to police corruption (Manning & Redlinger, 1991).

In South Africa large numbers of people operate within illegitimate markets, often as a means of survival. In addition there are many hundreds of thousands of foreign immigrants, many of whom have come into South Africa illegally to look for a 'better life' that are vulnerable to police abuses. Apart from marginalised groupings, local and international organised crime syndicates are a growth area in South Africa and create further opportunities for police corruption since those behind these organisations are always looking for ways to 'neutralise' enforcement agencies (Manning & Redlinger 1991).

While, the SAPS may not be able to do much about the 'task environment' within which its members operate, it is clear that much can be done improve recruiting criteria and practices, to support and reward honest officers, and to improve the internal systems

of the organisation. While changes are underway in each of these areas, the biggest weaknesses remain in the deficits of mechanisms for individual and collective police accountability and performance management.

A conceptual framework for police accountability

While accountability is key to the democratic governance of policing, it remains a indistinct term (Jones, 2004). There are a wide variety of approaches to understanding 'police accountability'. In essence, however, the challenge of police accountability is one of ensuring that the police use their powers and resources to promote the rule of law within prescribed parameters. For this to occur, mechanisms must be established to ensure that police autonomy is kept in check without completely tying the hands of the police to tackle criminals. It is important for there to be clarity as to what the police are to be held accountable for and how this is to be best achieved. These are by no means straight forward questions since police are embedded in particular social, political and economic environments and policing priorities and styles are often the result of political debate and deliberation (Jones, 2004).

The question remains however, as to how public representatives should go about overseeing police agencies to ensure that policing takes place according to the law and in accordance with governmental policy objectives.

Performance and conduct

While police performance is an important element of any police reform initiative, internal controls governing police conduct are important determinants of the extent to which police use their powers and resources appropriately, which in turn is an important determinant of police legitimacy. In countries undergoing a process of a democratic transition following an authoritarian and brutal past, police legitimacy will typically be low. Strong arguments have therefore been made that enhancing internal accountability for conduct must take precedence (Neild, 1998).

Nevertheless, given the complexity of policing in a democracy, police agencies need to be accountable to multiple audiences through multiple mechanisms simultaneously (Stone & Ward, 2000). Stone and Ward (2000), present a framework that highlights the three levels of control that police would be subjected to in a democracy. These include:

- Internal or departmental control;
- State or governmental control;
- Social control, or control by civil society.

Mechanisms within each level of control can be used to strengthen the democratic accountability of the police the specifics of which will be determined by the local conditions and opportunities within which a police agency operates. What is becoming increasingly apparent in the policing literature is that while important, civilian oversight should not be the primary mechanism for holding individual police officials accountable (Bayley, 2001; Carter, 1997; Jones, 2003; Kersetter, 1985; Neild, 1998; Punch, 1983; Stone & Ward 2000). Increasingly, internal disciplinary systems are viewed as an important weapon in the war against police corruption. If effective, disciplinary systems are more efficient in remov-

ing or sanctioning problematic officers as they rely on a civil burden of proof (on a balance of probabilities) to convict and sanction while criminal justice systems rely on a far higher burden of proof (beyond reasonable doubt).

The argument has been repeatedly made that external mechanisms of police accountability can only be effective "if they complement well developed internal forms of control." (Jones, 2003:603). It's all very well for an external agency to recommend that certain police officers are sanctioned, but unless these agencies have the legal power and resources to do so, it will ultimately be up to police organisation to take the necessary action. The effectiveness of the internal systems therefore need to become the key measures of a police agencies commitment to professional policing within the law.

Limitations of internal control in the SAPS

While the SAPS has consistently stated as a strategic objective the need to improve service delivery, the most recent 2004 to 2007 strategic plan tends to focus on training and resourcing as the only means through which to do so without mentioning the need to improve systems to hold officials accountable.

The relative lack of attention given to the disciplinary system in relation to other SAPS organisational initiatives could be merely seen as a consequence of an overburdened reform programme, as was suggested by the previous Minister for Safety and Security, Steve Tshwete (Tshwete, 2001). It is more likely, though, that this shortcoming was the result of political decisions taken around policing early in the transition to democracy. The focus of the newly elected government was to embark on a "confidence building" campaign amongst the security forces which involved giving the new government a human face and identifying the ANC as the stable political authority during the insecure period of amalgamation of the police forces" (Rauch, 2000:5). Placing too much emphasis on establishing systems to identify and remove problematic police officers at this time was viewed as antithetical to building the confidence of the security services in the new government.

To promote a new democratic philosophy of the SAPS a process of 'demilitarization' was undertaken as part of the police reform programme. This led to changes in the rank structure and protocol which were in stark contrast to the previous police system of command and control as epitomised by the bargaining power of the newly established police unions (Hopkins, 2004). During 1998, a new disciplinary framework for the police was established which was based on labour law rather than the military style procedures used previously.

While there is general agreement that the current system is more fair than that used in the past, it required many more procedures and paperwork than was previously been the case, shaped in many ways by police union demands. The SAPS was unprepared for the rigours of the new system. Inadequate numbers of trained officers meant that the new system was overwhelmed by the number of disciplinary cases being received from the stations.⁵

Attempts were made to reduce the backlog by training all officials at the rank of Captains (the first commissioned officer rank) to be 'prosecuting officers' and all Superintendents and above to be 'presiding officers' in disciplinary hearings. While this has substantially

increased the overall number of disciplinary hearings being held and disposed of, it has failed to address other systemic weaknesses that limit the ability of the organisation to remove police officials who are involved in misconduct or corruption (Table 2).

Table 2 Disciplinary hearings and outcomes for 2003 and 2004.^a

Outcomes of Hearings	2002 to 2003		2003 to 2004	
	Frequency Distribution	Percentage Distribution	Frequency Distribution	Percentage Distribution
Counselling	0	0	316	3.4
Verbal warning	1,181	25.6	2,022	22.2
Written warning	522	11.3	1,131	12.4
Final written warning	57	1.2	201	2.2
Suspension	445	9.6	5	0.1
Fine	0	0	903	9.9
Demotion	0	0	6	0.1
Dismissal	362	7.8	260	2.8
Not guilty	880	19	1,677	18.4
Case withdrawn	1,176	25.4	2,596	28.7
Total	4,623	100	9,117	100

a. This information comes from the SAPS Annual Report for 2002 – 2003 and 2003 – 2004 respectively. The information in the Annual Reports is collected on a financial year which runs from 1 April until 31 March of the following year.

The table above indicates that police officials have been increasingly subjected to disciplinary processes in recent years. However, in 2003 the proportion of officers subjected to a disciplinary hearing that received no sanction at all was 44 per cent.⁶ This proportion increased to 47.1 per cent for 2004. This means that for an officer facing a disciplinary hearing (which are only instituted upon the completion of an investigation into complaint from a member of the public or supervisor and where *prima facie* evidence is available), the chance of receiving no sanction at all is almost 50 per cent. The single biggest result of a case referred to a disciplinary hearing is that it will be withdrawn. The number of officers that have been dismissed following a hearing after being charged with misconduct has fallen from 7.8 per cent to 2.8 per cent of the hearings held. For the most part, offending officers received verbal or written warnings.

Research into police station level management practices around handling public complaints and taking disciplinary steps revealed that significant challenges remained five years after the new disciplinary system had been implemented (Newham, 2003). These include:

5. For example, between the end of March to the end of August 2001, 7,045 new disciplinary cases had been registered and while only 3,718 had been finalised. These backlogs reflect the extent to which the system could not cope with the number of cases it had to deal with. Statistics obtained from the SAPS national Head of Discipline management on 15 October 2001.
6. This figure is arrived at by adding the percentage of cases that were withdrawn to the percentage of cases that ended in a not guilty verdict.

- A lack of knowledge amongst the public about how to lay complaints against police officials,
- Many complaints are not officially recorded or acted upon;
- A reluctance amongst some managers to institute disciplinary steps
- Inconsistent application of disciplinary steps
- Inadequate training on disciplinary procedures
- Inexperienced presiding and 'prosecuting' officials at disciplinary hearings

A further challenge is that union officials who represent their members at disciplinary hearings are well trained and typically more experienced than the commissioned officers prosecuting or presiding over the hearing. In many police stations, commissioned officers who are expected to act as officials prosecuting and presiding over disciplinary hearings are placed on a rotating system to ensure that all receive some experience. Depending on the size of the station and number of hearings scheduled, this may result in an officer only being involved in a hearing once a year or less. In contrast, union officials are specifically appointed to represent members facing disciplinary hearings and will therefore be involved in many cases and gather experience far more quickly than police managers.

Research into police member's perceptions of the disciplinary system is instructive. In a survey of 392 or 40 per cent of the officials working at three police stations in Johannesburg, the question was asked as to what type of disciplinary sanction a police member would receive if caught taking a bribe in order not to make an arrest. Six alternative answers were provided (Newham, 2003):

- | | | |
|-----------------------------|---|---------------|
| • None | - | 5.9 per cent |
| • Verbal warning | - | 15.5 per cent |
| • Written warning | - | 32.2 per cent |
| • Suspension, no pay | - | 21.7 per cent |
| • Demotion | - | 6.7 per cent |
| • Dismissed | - | 18 per cent |

The survey results reveal a number of important findings. There is little consistency in expectation as to the sanction one would receive for a serious case of misconduct. One third of respondents thought that the worse thing that would happen is that they would receive a written warning which as a matter of policy, automatically gets removed from a police member's official record after a period of 12 months. Less than one fifth of the respondents thought that they would be dismissed from the SAPS if caught committing the criminal act of bribery. Over 80 per cent did not think that they would lose their job if they were caught committing such an act.

Part of the reason for these results could be that police officials adhere to what has been termed the "code of silence" which refers to, "the informal prohibition in the occupational culture of policing against reporting the misconduct of fellow officers." (Klockers, *et al*, 2004:7). Indeed research in the SAPS in which police officials were asked to respond whether or not most of their colleagues would report the incident described in eleven typical cases of police misconduct, has revealed that, apart from one case far less than 50 per cent thought that their colleagues would report the misconduct (Newham, 2004:246).

Strengthening civilian oversight in South Africa

While many in the SAPS have long recognised the need for improvements in police discipline there is no indication that substantial moves in this direction are on the cards. Even the civilian oversight structures that are currently in place have not prioritised this matter.

Like most police organisations, the SAPS would prefer to handle issues of discipline and officer control internally. But, where this is not effective, we need to think about the role of external civilian oversight bodies in dealing with this matter. The truth is that despite having a very comprehensive framework for police accountability, since 1999 external civilian oversight structures have had relatively little influence on the direction or pace of police reform in South Africa. Part of the reason for this is that the National Commissioner is the ultimate authority in charge of the organisation and is directly accountable to the National Minister. At the current time there is little space for external state structures (or civil society for that matter) to influence policy development within the SAPS. All SAPS strategic plans and objectives are developed within the SAPS at a national level. These plans then are presented by the SAPS National Commissioner to the Minister and the legislature for ratification.

At both national and provincial levels there are civilian staffed executive structures called 'secretariats' headed by ruling party politicians. These structures were established in 1995 with the aim of monitoring police policy and its implementation so as to instil a culture of transparency and accountability in the SAPS. However, with the appointment of a new National Commissioner for the SAPS in 1999, the role and status of the national secretariat changed quite dramatically (Rauch, 2000). According to officials and parliamentarians involved with the policing department the national secretariat has become "so marginalised and understaffed that it cannot do its job properly" (Honey, 2005). This is problematic since the National Secretariat could ideally play an important role in monitoring the number and nature of public complaints against the police and the effectiveness of the disciplinary systems of the SAPS at a national level. With adequate resourcing it would be well placed to conduct research on these systems and report to the Minister as to their functioning and provide policy recommendations to affect improvements. Similar, but more localised activities could be undertaken by the nine Provincial Secretariats. This would allow for better identification of geographically based systemic weaknesses pertaining to police discipline leading to targeted interventions monitored by the relevant secretariat. But, such strategic oversight and direction is unlikely to be mounted by the provincial secretariats given the lack of direction at the national secretariat level (Mistry & Klipin, 2004). At present, while most of the work of the provincial secretariats is related to police station visits and engaging in community safety projects and activities, at least three of these structures have established desks to look into community complaints about police performance. However, these are relatively new structures and in many cases are struggling to establish how to go about dealing with complaints and in distinguishing their role from that of the key state structure established to deal with complaints against the police, the Independent Complaints Directorate (Mistry & Klipin, 2004).

To date these newly established 'complaints desks' within the secretariats have not undertaken a sustained focus on the internal police systems for dealing with officer mis-

conduct or criminality. There have been no reports or recommendations forthcoming on these issues to the SAPS at either a national or provincial level (or at least not publicly available). Similarly, no inputs or recommendations have been made from these structures regarding the development and implementation of a strategy to tackle and prevent police corruption.

While the national and provincial parliaments have an oversight role in regard to various secretariats through their portfolio committees, the primary information source that the parliamentary committees have on policing comes from the SAPS. Unsurprisingly, then, the national and provincial legislatures have not given adequate consideration to the internal systems for dealing with public complaints against the police, investigating police officer misconduct or criminality, or the disciplinary system. These committees could play an important role in facilitating research (best conducted by independent agencies) on these matters against which to question briefings provided by the police on their handling of public complaints and discipline. This would allow, at least, for serious empirically based deliberation on possible routes for improving police oversight and for reigning in police misconduct.

The Independent Complaints Directorate (ICD) as the body set up to receive and investigate public complaints against members of the SAPS, is well placed to make recommendations on dealing with police misconduct given the insights it has as a result of the many investigations it conducts annually. One of the ICD's strategic objectives for 2004 to 2007 is to investigate each and every complaint it receives against police officials (ICD Annual Report, 2004:3). At the current time it often hands over the complaint to the SAPS for investigation and monitors the progress of the police investigation. However, far from becoming a body that can oversee and monitor the extent to which the internal systems are operating effectively and efficiently, the ICD wants to conduct many more of the investigations itself. This is worrying given that the ICD is already battling to investigate the roughly 5 903 cases it receives annually. There is also the danger that as the ICD takes increasing responsibility for investigating cases against police officials, the SAPS will start to take less. Already the national parliamentary Portfolio Committee on Safety and Security tends to tackle the ICD as to why allegations of police abuse are increasing rather than the SAPS. It may be better for the ICD to concern itself more with ensuring that the SAPS systems for receiving and investigating complaints are improved through tracking complaints it receives through the internal processes. Where it appears that the internal systems are not functioning adequately with respect to particular cases or if allegations of a 'cover-up' are made by the complainants, then the ICD could conduct the investigations itself.

While at present the ICD plays an important role in holding some individual police officers to account for abuses, it is not authorised to make policy recommendations relating to organisational changes within the SAPS that could prevent the occurrences of abuses. It can only make recommendations related to the individual cases that it investigates. If evidence of criminality emerges from its investigations it will forward a case docket directly to the National Prosecuting Authority (NPA) who may decide to prosecute specific criminal charges. However, if it comes across evidence of misconduct or poor management during its investigations, the ICD has no authority over the SAPS to

ensure that recommendations regarding disciplinary or other necessary action are enforced. At the time of writing the ICD was in the early stages of establishing a 'proactive research unit' that will be tasked with conducting systems research and developing policy recommendations based on its investigatory work. Whether or not the recommendations that the ICD makes to the SAPS are accepted and implemented will however, continue to remain at the sole discretion of the SAPS National Commissioner.

Community policing forums and police accountability

Community policing emerged shortly after the democratic elections in 1994 as one of the key philosophies driving the reform of policing in South Africa. Its expression was found primarily in the establishment of Community Policing Forums (CPFs) to be attached to each police station in the country. Given the animosity that existed between the vast majority of citizens and the police during apartheid, CPFs were seen as an important structure to build relationships between the police and the communities they were expected to serve. Moreover, CPFs were seen as forums that could ensure police oversight at local level and mobilise communities to work with the police in the fight against crime. CPFs are expected to elect an executive structure and meet monthly following a set agenda.

In the past decade however, the impact of CPFs has been variable. Research has revealed that the interpretation and implementation of CPF policy has been very inconsistent (Pelser *et al*, 2002). In some cases CPFs have failed to get off the ground, particularly in poorer communities where resources are limited (Shaw & Louw 1998). In other areas, CPFs have been marked by very poor community-police relationships, with the police seeing the forums as nothing more than a complaints forum against them. Given the complex nature of most communities, not all groups are always represented on CPFs. In some instances it has been found that CPFs have been representing specific vested interests (i.e. business owners, traditional authorities, political parties), rather than community wide interests more generally.

Where CPFs have been successful, this has been primarily attributed to partnerships which have been forged between the police and community in carrying out anti-crime initiatives (e.g. neighbourhood watch schemes) or in campaigning for increased resources and capacity for the police station (e.g. vehicles, computers, volunteers). However, the extent to which CPFs actually hold the police accountable has proven extremely limited. This is largely due to the absence of regulations or guidelines for community oversight. In addition, there is a tension between the objective of building community police partnerships and communities overseeing the police. In some instances, where the CPF has taken it upon itself to expose police corruption or abuses, this has generally led to deterioration in the community-police relationships.

Given the mixed impact of CPFs on community policing relations, there is talk that the government will revisit the role and functioning of these structures. Certainly, there is a need to provide clearer guidelines as to how CPFs should operate and achieve their objectives. If it is decided that they should be strengthened in their role of enhancing local level police accountability then their ability to register complaints against police officials and

monitor the resulting investigation should be developed through clear guidelines and training. All CPFs should be aware of the minimum standards of conduct and competency that they should be able to expect from police officials and why it is in their interest to ensure that these standards are adhered to. CPFs should be able to access formal police channels to ensure that the complaints are dealt with adequately. If they are dissatisfied with the internal systems, they should be able to approach the other oversight structures, (i.e. secretariats, parliamentary committees) with their concerns with factual reports as to what problems they are experiencing. The relevant Provincial or Area level SAPS commanders could then be tasked with taking the necessary management interventions to ensure that the systems are working effectively.

Conclusion

It has been argued that in spite of the many achievements and improvements that have taken place in the South African Police Service over the past decade, South Africans continue to experience unacceptably high levels of police abuses of power and misconduct. Institutional reform to tackle police abuses are driven by factors specific to the police organisation in question and typically require a multi-faceted approach. Nevertheless, common to most if not all police reform initiatives to reduce abuses of power is the strengthening of internal systems of control. As such, this element is usually seen as a necessary if not sufficient aspect of a successful reform initiative. However, the political context of police reform in South Africa meant that this component was inadequately pursued.

The first concern of the country's first democratically elected government with regards to policing was to establish a single national police service and bring it into the new system of political accountability. This required building police confidence in the newly elected government and maintaining job security. Identifying and removing the large numbers of problematic police officials from the apartheid era who remained in the new organisation was an anathema to this initial concern. Challenges to establishing direct officer accountability was further compounded by the nature of racial inequality in the SAPS. Most commanders who would be responsible for establishing discipline were white while those most likely on the receiving end, (i.e. lower ranking police officials) were largely black. This inequity lay at the foundation of the highly adversarial relationship between police management and the biggest police labour union the Police and Prisons Civil Rights Union (Hopkins, 2004).

This situation has contributed to a significant decline in management command and control in the SAPS during the transformation period. Inadequate attention has been paid to the internal systems for control in relation to the extent of the challenge faced in tackling misconduct and abuses of power. Few police officials feel that the internal systems are able to hold those involved in either minor or major irregularities directly accountable. Indeed, the external structures that were established to enhance police accountability have had a limited impact. The ICD is the only agency to have the power to investigate individual cases of alleged police abuse and unless sufficient evidence of criminal conduct is gathered, has no power to ensure that the appropriate action is taken. The political exec-

utive and legislative structures are generally weak and have no direct ability to ensure that the police improve systems to address any problems of conduct or service delivery. At the local level, community police forums have evolved in their mandate from holding police accountable to establishing partnerships between the SAPS and select individuals or groups in any given community.

Now that it has been a little over a decade since the birth of democracy in South Africa, it is appropriate to reflect on the continuing challenges facing police reform. This paper has argued that misconduct and abuse of police powers remain the most critical challenge. Addressing this challenge would have a positive spin-off for improving police service delivery as it is difficult to hold police officers accountable for a failure to follow standard operating procedures if they are not held sufficiently accountable for serious cases of misconduct or criminality. Many other important elements of police reform in the SAPS have made significant headway, (i.e. improving racial representivity, better training, increased salaries, to name a few). It is now time to increase attention on strengthening internal accountability systems with a focus on complaints management and discipline systems. This will have the greatest impact on addressing the primary challenges currently facing the SAPS and in doing so strengthen democratic policing in South Africa as we enter our second decade of democracy.

References

- Bayley, D.H. 1994. *Police for the future*. New York: Oxford University press.
- Bayley, D. H. 2001. *Democratising the police abroad: What to do and how to do it. Issues in international crime*. Washington DC: National Institute of Justice, Office of Justice programmes, US Department of Justice.
- Bruce, D. and Neild, R, 2005., *The police that we want: A handbook for oversight of police in South Africa*. Centre for the Study of Violence and Reconciliation, Johannesburg, South Africa and the Open Society Justice Initiative, New York USA.
- Burton, P, Du Plessis, A., Legget, T., Louw, A., Mistry, D. and van Vuuren, H. 2004. *National victims of crime survey South Africa 2003. Monograph No. 101*. Pretoria: Institute for Security Studies.
- Carter, D.L. 1997. The identification and prevention of police corruption. A paper presented to the Japanese Ministry of Justice Public Lecture Programme, Tokyo: Japan.
- Chan, B.L. 1997. *Changing Police Culture. Policing in a multi-cultural society*. United Kingdom: Cambridge University Press.
- Ensor, L. 2005. Selebi blames court prosecutors for case backlogs. *Business Day*, Thursday, 7 April, 2005:4.
- Harris, B. 2001. *A foreign experience: Violence, crime and xenophobia during South Africa's transition. Violence and transition series volume 5*. Johannesburg: Centre for the Study of Violence and Reconciliation.
- Honey, P. 2005. Police oversight role arrested. *The Financial Mail*. 25 March, 2005.
- Hopkins, P. 2004. *Justice for all: The first 15 years of POPCRU*. Johannesburg: Police and Prisons Civil Rights Union.
- Independent Complaints Directorate, *Annual Report 2003-2004*. Pretoria: Independent Complaints Directorate.
- Jones, T. 2003. The governance and accountability of policing. In Newburn, T. (ed.) *The handbook of policing*. Portland Oregon: Willan Publishing.

- Kerstetter, W.A. 1985. Who disciplines the police? Who should?. In Geller, W.A. (ed.) *Police leadership in America: Crisis and opportunity*. New York: Praeger.
- Klockers, C.B., Ivkovic S.K. & Haberfeld, M.R. 2004. The contours of police integrity. In Klockers, C.B., Ivkovic S.K. & Haberfeld, M.R. (eds.) *The contours of police integrity*. Thousand Oaks, California: Sage Publications, pp.1-8.
- Lodge, T. 1997. Political corruption in South Africa. Seminar paper presented in the Richard Ward Building, Institute for Advanced Social Research, University of the Witwatersrand, Johannesburg. 18 August 1997.
- Lue-Dugmore, M. 2003. An examination of institutional models and mechanisms responsible for the administration of justice and policing. Occasional Paper Series. Institute of criminology, University of Cape Town,
- Masuko, S. 2001. Policing the police: SAPS members charged and convicted of crime. *Nedbank/Institute for Security Studies Crime Index*, 5(2):13-16.
- Mattes, R., Chikwanha A.N. and Magezi, A. 2005. *South Africa: After a decade of democracy. Summary of results*. Cape Town: Afrobarometer and the Institute for Democracy in South Africa.
- Mistry, D. & Klipin, J. 2004. *South Africa: Strengthening civilian oversight over the police in South Africa: The national and provincial secretariats for safety and security*. Institute for Security Studies Paper 91. September 2004
- Neild, R. 1998. Internal Controls and Disciplinary Units. In *Themes and Debates in Public Security Reform: A manual for civil society*. Washington: Washington Office on Latin America.
- Newburn, T. 1999. *Understanding and preventing police corruption: Lessons from the literature*. London: Research Development and Statistics Directorate, Home Office.
- Newham, G. 2000. *Transformation and the internal disciplinary system of the South African Police Service*. Braamfontein: Centre for the Study of Violence and Reconciliation, (November). Available at www.csvr.org.za
- Newham, G. 2003. The Report of the Police Integrity Measurement Survey at three Johannesburg Area Police Stations. A report for the SAPS Johannesburg Area Commissioner. Braamfontein: Centre for the Study of Violence and Reconciliation.
- Newham, G. 2004. Out of step: Integrity and the South African Police Service. In Klockers, C.B., Ivkovic S.K. & Haberfeld, M.R. (eds.) *The contours of police integrity*. California: Sage Publications, pp.232-247.
- Newham, G. 2005. *The South African Police Services Johannesburg Police Area transformation survey, 2004*. Braamfontein: Centre for the Study of Violence and Reconciliation.
- Palmer, M. 1997. Controlling corruption. In Moir, P. & Eijkman, H. (eds.) *Policing Australia: Old issues new perspectives*. Melbourne: The Macmillan Company of Australia.
- Pelser, E., Schnetler, J. & Louw, A. 2002. *Not everybody's business: Community policing in the SAPS priority areas*. Pretoria: Institute for Security Studies Monograph Series, 71.
- Punch, M. 1983. *Control in the police organization*. Cambridge: MIT Press.
- Rauch, J. 2000. *Police reform and South Africa's transition*. Braamfontein: Centre for the Study of Violence and Reconciliation. Accessible on www.csvr.org.za
- Rauch, J. 2004. *Police transformation and the South African Truth and Reconciliation Commission*. Race and Citizenship in Transition Series. Braamfontein: Centre for the Study of Violence and Reconciliation.
- Syed, T. & Bruce, D. 1998., Inside and outside the boundaries of police corruption. *African Security Review*, 7(2):3-17.
- Shaw, M. 2001. Crime and policing in transitional societies: Conference summary and overview. *Seminar report: Crime and policing in transitional societies, 2001, No.8*. Johannesburg: South

African Institute for International Affairs.

- Shaw, M. & Louw, A. 1997. *Stolen opportunities: The impact of crime on South Africa's poor*. Monograph Series, No.14. Pretoria: Institute of Security Studies.
- Sherman, L., 1983. Scandal and reform. In Klockars, K.B. (ed.) *Thinking about police: Contemporary readings*. New York: McGraw-Hill:
- South African Police Service, 2003. *Annual Report for 2002 – 2003*. Pretoria.
- South African Police Service, 2004. *Annual Report for 2003 – 2004*. Pretoria.
- Stone, C. 2004. The double demand on police and the role of police oversight in democratic societies: An international perspective. Address to the Conference for Policing Oversight in Africa: Accountability and Transformation, Johannesburg, South Africa, 26 – 29 January 2004.
- Stone, C. & Ward, R. 2000. Democratic policing: A framework for action. *Policing and Society*, 10:11-45.
- Tshwete, S. 2001. South Africa: Crime and policing in transition. Seminar Report: Crime and Policing in Transitional Societies No.8. Johannesburg: South African Institute for International Affairs.
- Thulare, P. 1999. Welcome to Hellbrow: Talking to Johannesburg's drug syndicates. *Crime and Conflict*, 16(Winter):17-21.
- Transparency International. 2003. *Transparency International global corruption barometer*. Press Release 3 July 2003.
- Walker, S. 2001. *Police accountability: The role of civilian oversight*. Belmont CA: Wadsworth.