

# Transformation and the Internal Disciplinary System of the South African Police Service

by

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## 1. Introduction

Although much has taken place since 1994 towards transforming the SAPS, it is still confronting serious problems at grassroots level in providing effective and professional service delivery. Ultimately, it will be up to managers at all levels of the police to push the transformation of the SAPS and tackle these problems head on.

In the present situation however, police criminality and corruption have become serious obstacles to the transformation of the SAPS. The following indicators partially reflect this state of affairs. During 1998, 1 283 police members (approximately one percent of the entire service), were convicted of criminal charges.<sup>1</sup> In May 1999, it was reported that 1 175 police members had been suspended from duty while allegations of serious misconduct or criminality were being investigated against them.<sup>2</sup> Figures released by the SAPS in 2000 revealed that approximately 14 000 police members, more than 10% of the entire service, were being investigated for or had appeared in court on criminal charges since 1994. Furthermore, by the end of 1999, the elite Anti-corruption Unit reported that 4 638 police

members had been implicated in corrupt activities during that year, a figure that had more than doubled from 2 197 in 1996.<sup>3</sup> It is generally accepted that these figures reveal only the tip of the iceberg as most incidents of police corruption and other forms of criminality are not reported.

That criminality is happening at such a significant and measurable level reveals much about the state of police morale, competency and effectiveness in general. Given these problems, an effective internal regulatory system is important for broader processes of transformation to be effective.

The early establishment of functioning internal controls is all the more important for police reform processes where a large number of personnel are retained from the former [security structures]. In these cases, there is a clearly increased risk that old and abusive practices will continue. It is undoubtedly important, if the reform process is to be at all credible that police leadership clearly demonstrate that abuse will not be tolerated by developing the mechanisms to confront it. (Rachel Neid, 1998, p.1).

As the above quote highlights, a crucial component of police reform, particularly where there are many of the old faces still in uniform, is the existence of an effective internal regulatory system. A key component of internal regulatory systems is the disciplinary system. Indeed, the concept of discipline in the police is open to a number of subjective interpretations. It is recognised that obtaining high levels of discipline in any police service requires much more than a formal system of rules and procedures. Police managers must be skilled in the application of formal and informal mechanisms and resources at their disposal to ensure that individual police members deliver police services to communities in a professional manner.

For this professional delivery to happen, police managers need to be able to set clear standards, assist members in achieving these standards and deal fairly and objectively with members who cannot or will not work to the standards set.

The level of discipline in a police service will also be dependent on the social dynamics and organisational culture that is in existence. It is an assumption of this paper however, that there is a dynamic relationship between the formal regulatory systems of the police institution and the informal social and cultural dynamics. The former needs to provide a solid foundation that members can rely on to be fair and consistent. This will then have an equalising effect on the inherent structural and power inequalities of society that will be mirrored in the police. It is, therefore, on the formal disciplinary system that this paper will place its focus. The comparison can be made that just as the rule of law is needed to provide for fairness and promote stability in a country, a formal regulatory system in the police is essential to promote a clear sense of what is acceptable and what is not. Therefore the disciplinary system must be seen as the foundation upon which an effective and democratic police service is built.

This paper, therefore, seeks to explore and critically discuss the functioning of the internal disciplinary system of the SAPS as a critical component for transforming the South African police into a professional service.

This will be done in the following manner.

Firstly, the methodology of the research will be presented within which the strengths and weaknesses of the study are discussed. The second section provides an historical overview of the issue of discipline in the police force during apartheid. This section will also examine the reasons for the decline in police discipline since the beginning of the transformation period. The third section presents the new ethos upon which the disciplinary system in the SAPS is expected to operate. The fourth section presents a critique of SAPS policy in relation to the disciplinary system. This critique will focus on two issues, namely, the relative lack of prioritisation of the issue of discipline as part of SAPS policy objectives, and shortcomings in the various phases that the implementation of the system requires. The fifth section will present key findings as to the operation of the disciplinary system at each of the four policing levels. This section will focus on some of the obstacles confronting each level for the establishment of a coherent disciplinary system throughout the SAPS. Finally, brief recommendations will be presented that could lead to significant improvements of the functioning of the disciplinary system in the SAPS.

## **2. Methodology**

The research programme for this paper was qualitative and interpretive in its methodological design. Accordingly, the aim of the research is to capture as accurately as possible, the perceptions and experiences of the research participants. The research was exploratory in nature and combined the following components:

- A review of literature relating to the management and reform of police institutions with a particular focus on disciplinary systems.
- A review of policy documents, legislation, regulations, internal memos and other policing documents relevant to the SAPS disciplinary system.
- In-depth, semi-structured interviews with police managers and disciplinary officials at different levels of the SAPS.

The review of the literature included sources from both local and international publications. Although very little has been published locally regarding police discipline in its present form, South African sources were extremely useful in providing insight into the manner in which discipline was perceived and exercised in the past. Much of the other literature that was used came from the United States of America, the United Kingdom and Australia, where extensive studies have been undertaken on organisational change in the police. These sources were particularly helpful in locating the disciplinary system as a crucial and fundamental element in transforming policing institutions.

In total, in-depth semi-structured interviews were conducted with 27 participants. Thirteen participants from the national, provincial and area levels were selected due to their particular roles in conceptualising and managing the disciplinary system in the police. The fourteen participants at station level were selected through convenience sampling with the criteria that they were in some way responsible for implementing the disciplinary system. Consequently these participants consisted of station commissioners, departmental managers or they were 'disciplinary officials' who had been tasked with investigating cases of misconduct. Interviewees included members of all the ranks ranging from the level of director through to that of sergeant. All respondents were guaranteed anonymity in terms of

the ethical code governing this research and therefore their identities will not be revealed in the report. It should be noted, however, that most of the respondents were forthcoming with their opinions and perspectives without concern about their identities being revealed.

The interviews were semi-structured and conducted along 'ethnographic' principles. This meant that careful attention was paid to the personal experiences and perceptions of the participants of the study. The objective of the interviews was to provide a contextualised picture of the operation of the SAPS disciplinary system from those who have first hand experience of it. Analysis of the data included focusing on the correlations and variations of participant responses at each level of the SAPS.

Limitations and qualifications of any research must always be noted. Research on the police conducted by outside agencies is fraught with difficulties. One of the primary problems confronting researchers is the extent of the variation found within the SAPS. Policy and regulations are determined at national level and are supposed to apply consistently throughout the country. However, wherever policy or regulations are vague or ambiguous, the researcher will come across differing interpretations reflecting 'the various realities of the police.' Furthermore, as an organisation undergoing transformation, changes are commonplace. It was not uncommon for a participant to talk about the 'present moment' in terms of recent or expected changes. Given the capacity and time limitations of the researcher, this paper therefore cannot claim to give more than an exploratory overview of some of the key issues confronting the internal disciplinary system in the SAPS. However, this document will provide insight into the background, philosophical underpinning, regulations, procedures and functioning of the internal disciplinary system at the present time in history of the SAPS.

### **3. Discipline and the Transformation of the SAPS**

To understand the notion of discipline in the old South African Police Force (SAP), it is necessary to locate the issue in a broader picture of police culture under apartheid. Previous studies have documented the extent to which Afrikaner nationalism, Calvinist theology and a belief in 'white supremacy' were instrumental in shaping the culture of the South African police (see Brogden and Shearing, 1993; [Rauch, 2000](#)). These factors shaped a dominant police culture that was driven by a belief that the state was ordained by God with the police as an extension of this divinity. The racist ideology engrained within white society in general and the police force in particular, gave rise to the belief that the police had to maintain law and order over 'inferior races'. Such a perspective is to be found throughout speeches of apartheid era police generals and in police training manuals.

Authors such as Brogden and Shearing (1993, p.49) explain, "This discourse draws on the justifications central to the Afrikaner culture of which it is part to make police violence a sacred mission - far from being a source of humiliation and degradation it is a source of pride and an act of sacrifice. Police officers have been chosen by God to perform the difficult task of maintaining Gods' order. They are chosen people within a chosen people - an elite within an elite."

Such beliefs led to an immensely powerful and highly politicised informal organisational culture within the police. This belief system, combined with a military-style management structure, had a significant effect on the way discipline was understood throughout the

organisation. "Discipline" was a term synonymous with the internal control of members. Authority was primarily determined by the rank an individual member held. It was expected that instructions issued by higher-ranking officers should be obeyed without question. Discipline was measured by the extent to which a police member would adhere to police rules and commands given by superiors. Moreover, the extent to which the police saw themselves as part of the "first line of defence" against what was termed the "total onslaught" of communist agitators trying to overthrow the government through revolutionary means, further contributed to what became a deeply entrenched militaristic and violent culture ([Rauch, 1991](#)). With the South African police forces increasingly brutal subjugation of the popular resistance to apartheid, police discipline was measured in terms of commitment and dedication to a secretive organisation that was involved in enforcing the apartheid state's most oppressive laws.

The culture that had become entrenched within the apartheid police led to little action being taken against police members who had committed acts of violence and torture against members of the public. As stated in Brogden and Shearing, (1993, p.33), "The command staff of the SAP potentially have considerable powers of internal accountability. As an institution with a quasi-military structure, its disciplinary profile contains many of the formal sanctions of highly centralised military organisations. Yet like the legal framework, it seldom operates to control police violence." A host of other evidence also supports the conclusion that during the apartheid period, "The police [were] not too diligent in policing themselves nor in dealing in any serious fashion with their own infringements of the law." (Foster and Luyt, 1986, p.305).

This was the situation until the significant political changes that occurred during 1990 that led to the un-banning of all the liberation movements and a commitment to a negotiated settlement. These events set the scene for significant changes in the police. However, the police were determined to manage their own transformation in an attempt to preclude having change forced upon them ([Rauch, 2000](#)). In 1991, the South African police strategic plan identified the following six areas of change:

- the de-politicisation of the police force;
- increased community accountability;
- more visible policing;
- establishment of improved and effective management practices;
- reform of the police training system, and
- restructuring of the police force.

Initially as part of these changes it was recognised that a regulatory system had to be established that would ensure uniformity and objectivity in dealing with police conduct and thereby contribute to the de-politicisation and improvement of management practices of the police. The first new disciplinary system to be instituted during 1991 was therefore largely based on the Criminal Procedure Act. This was seen to be advantageous as most police members would have been more or less conversant with the relevant procedures. It was assumed that such a system would therefore be understood, accepted and applied more easily and consistently across the organisation.

However, it became clear over the following years that this system was far too complicated to be used as a practical management tool. Apart from the onerous burden of proof 'beyond

reasonable doubt', which in many cases was seen to require too much effort for minor incidents of misconduct, this system also required a substantial bureaucracy of its own. However, this system operated until the introduction of brand new disciplinary regulations during 1997. Although, substantial changes were made to the system (to be discussed at length later), the effects of the previous legal framework are still very much apparent in the system today.<sup>4</sup> A key reason for this is that the physical structures and officials of the new system are generally unchanged from the previous system. There are however, ongoing negotiations between the national level police management structures and the police unions in the Safety and Security Sectoral Bargaining Council (SSSBC) as to the form and structure of a brand new disciplinary system. At the time of writing this paper however, details were not available save to say that an agreement on the new system should be finalised by early 2001.

There appears to now be broad consensus by long-serving members of the SAPS interviewed for this paper that discipline collapsed in the police as a result of some of the key transformation initiatives that occurred after 1994. The key transformation issues that are seen as contributing to this breakdown are: the demilitarisation of the police, the emergence of police unions, racism and racial diversity, and the uncertainty brought about by restructuring.<sup>5</sup> It is important to note, however, that many police managers at the present time are able to realise that it is the process of change, rather than the changes in themselves, that have contributed to problems with police discipline. Nevertheless, it is appropriate to comment briefly on each of these above mentioned issues as they are indicative of common perceptions within the police as to why there is a serious problem with discipline in the SAPS.

### **3.1 Demilitarisation**

One of the significant changes that took place in the 1990s was a focus on "demilitarisation" of the police. As stated in one internal policy document, "The Police Service should offer a respectable, professional career. In order to achieve true professionalism, the police profession must be demilitarised. The system of discipline should be informed by professional, rather than military values." (SAPS Policy Document, 1996, p.18).

Although seemingly simplistic, the strongly held internal values and culture of the police during apartheid made the above statement seem radical to many in the police. While it seemed 'obvious' at the time that there was a need to de-militarise the police if it was to serve the new Human Rights based democracy, the extent to which discipline in the police was related to the militaristic culture was not fully appreciated.

They said that we must de-militarise but we were not sure exactly what that meant. Many policemen took it to mean that you didn't have to salute or listen to your commanders anymore. – SAPS Director, Station Commissioner

The issue of demilitarisation is generally perceived to have played a major role in the breakdown of discipline in the police. This can be largely attributed to the close link between the previous military type management of the police and the meaning of discipline. Managers complained that members did not realise that demilitarisation did not mean that

authority ceased to be an integral part of the police structure. From the side of police management, the whole service was "misinformed" about what the demilitarisation of the police service meant.

We were told at officers school that because of this demilitarisation we no longer had to worry about the old traditions of saluting anymore. But some of the members took this too far and now you will find them sitting on tables and smoking in front of senior ranks. This is undermining our authority. – SAPS Captain, Station Commissioner

There is increasing agreement however, that the previous military style of police discipline was draconian and out dated. Both long-serving police managers and members have expressed their preference for the new ethic as it allows space for better professional working relationships based on trust and respect as opposed to the superficiality of respect commanded primarily on rank status. However, saluting of higher ranks has been re-introduced as a measure of discipline in the SAPS and is generally welcomed.

### **3.2 Unionisation**

The unionisation of the police after the democratic elections is generally seen to have had a pronounced effect on the relationships between managers and employees within the institution.

Some of these unions make it difficult for us to manage people. Some shop stewards feel as if they have been granted special authority in the police because of their position in the unions. This has caused me some problems. – SAPS Captain, Station Commissioner

In the past, orders from senior ranks could not be questioned. With the introduction of unions into the police, significant cases started to emerge where shop stewards would take adversarial stances against commanders and question their orders. This was perceived by police management as contributing to the breakdown of authority and discipline. In many cases this occurred because managers were uncertain about the content of the laws governing labour relations. One respondent stated:

When I first arrived here the union representatives wanted a meeting with me. They walked in and tried to intimidate me by telling me that now I had to consult them on any decision I wanted to make. When I made it clear to them that I knew what the law said and what their rights were, they started to act less confident. I think I intimidated them with my knowledge. – SAPS Superintendent, Station Commissioner

There were, however, respondents who had managed to overcome conflictual relationships with representatives of police unions. Some respondents stated that the initial part of the problem was the absence of training or support provided to station commissioners in working with unions. However, some respondents were adamant that displaying a willingness to engage constructively with union representatives led to better working relationships.

It was difficult at first but I found that having an open door policy with the unions was the best policy. I feel that now we have a good understanding. - SAPS Director, Station Commissioner

Some of the respondents at national and provincial level went so far as to state that unions have important roles to play in the maintenance of discipline in the police. One argument was that a deeper consensus is achievable on the regulations framing disciplinary procedures throughout the police as unions are key role-players of the central bargaining council where such agreements are reached. At a lower level it was also argued that on occasion, the unions have helped to bring cases of misconduct to the attention of senior police management. Furthermore, the unions can act as a check and balance in ensuring that the disciplinary system is applied fairly and consistently throughout the police service.

### **3.3 Racism and Racial Diversity**

Another common issue that emerged as having contributed to antagonistic relationships between police managers and union representatives was that of racism or issues to do with racial diversity. It was not an uncommon complaint from station level police members that managers were perceived to be lenient towards members of their own race and harsh towards members of different races. Whether based on reality or not, disciplinary proceedings were sometimes seen as a form of racial "victimisation". Consequently, situations have emerged where shop stewards would support a member charged with ill-discipline claiming that the action was taken as a result of racism and not for reasons of misconduct alone. As a result, some station commissioners have been hesitant to take disciplinary action for fear of having this accusation levelled against them.

Sometimes it is very difficult. If I as a white officer take disciplinary action against a black member there is always a rumour that it is because I am racist. This can lead to a lot of mistrust and resentment on both sides. - SAPS Captain, Unit Commander.

Allegations of racism were also cited as a reason both in terms of undermining management authority and for weaknesses in the operation of the disciplinary system.

I get a feeling that some white members do not like being told what to do by you as a black officer. Some of them find it very difficult to break with the past. - SAPS Captain, Station Commissioner.

Racial diversity has presented the SAPS with considerable challenges in a number of complex ways. It is therefore not surprising that these challenges would emerge in terms of affecting discipline in the police. It must be noted that a large number of police members did not mention race as a significant issue affecting discipline in terms of their experience. It is recognised that this could be because the issue of race is a sensitive topic to talk about.

### **3.4 Restructuring**

The amalgamation and restructuring process also impacted negatively on the morale of police members and their ability to maintain discipline at station level. Essentially, the new South African Police Services Act of 1995 established a single national police service.

Consequently, national police management spent considerable time focusing on amalgamating the eleven 'homeland' police forces into one national service. This led to a bloated police service consisting of approximately 140 000 members. A restructuring process was then undertaken to place all members in a particular rank.

An important issue to understand the present demoralisation and disarray in the SAPS has to do with the issue of the structural transformation that the Service underwent with the new South African Police Services Act of 1995. As there were more members than there were posts for middle management in the new structure, members at this level had to re-apply for their positions. This was done en masse and took almost two years to complete. It affected around 8 000 to 9 000 members of the ranks of captain and superintendent. The problem was that during this time, many of these members were fearful of doing anything that could affect their re-appointment to their jobs.

Some commanders, therefore, engaged in covering up problems at police stations rather than dealing with them through the disciplinary channels as they feared it would reflect badly on them. – SAPS National level respondent

The transformation process has been painfully slow and even at the present time amongst the middle and lower ranking members there is significant uncertainty within the police service as to what the future will bring. This uncertainty has led to many members and managers having a relatively low personal stake in being a long-term member of the service. This situation can contribute to questioning about the meaning and enforcement of discipline in the police. As will be seen in the next section, the new paradigm of discipline requires a relatively high level of sophistication and management skills. If this new framework of discipline is not effectively implemented, there will be internal pressure within the institution to revert to the previous command control model.

#### **4. Towards a New Paradigm of Discipline in the SAPS**

As with all public sector procedures and regulations, the SAPS disciplinary system flows from legislative requirements. The SAPS disciplinary regulations were gazetted at the end of 1996 and were developed around the constitution and relevant public service and labour laws. The regulatory framework for discipline in the SAPS arises from Section 24 (1) (g) of the South African Police Service Act of 1995.<sup>6</sup> After the passing of this Act, however, there was a time lapse of over a year before new disciplinary regulations were gazetted into law. In the intervening period, managers had to apply the old regulations that were still in force. There were, therefore, situations where station commissioners had to enforce different sets of standing orders as there were members from four previously different police forces in one station.

The change in the national legal landscape had a significant effect on the nature of the new disciplinary system for the SAPS. The Interim Constitution provided the framework for the Public Service Labour Relations Act of 1994, which made provisions for government officials to organise themselves into unions. This was followed by the Public Service Act of 1994 that promoted the concepts of administrative justice in relation to decisions taken within the SAPS that could negatively affect the rights of an employee or any other citizen. Furthermore, the final constitution adopted in 1996, including a Bill of Rights, provided the framework for the Labour Relations Act that brought all labour-related issues firmly into

line with international standards.

These statutory frameworks meant that there had to be significant changes in the way that police members were managed. In the past, state employment was regarded as at "will employment", which meant that state employees could be hired, fired, transferred and promoted without consistent procedures being followed (SAPS Policy Document, 1996, p. 6). However, with the new legal framework, decisions regarding state employees had to be taken following strict procedures which were aimed at promoting fairness

The new approach was called "Progressive Discipline" which began to focus primarily on improving a member's conduct rather than applying punishment. The basic tenets of such an approach are captured by the following quote:

"An employee may be assisted to conform to the accepted standards of conduct by pertinently drawing his/her attention to his/her failings and inducing him or her to correct them. This may be achieved by progressively increasing the severeness of the disciplinary sanctions imposed. Each infraction is visited with a sanction which is more severe than that imposed for the previous infringement. The increased sanction serves as an inducement or an incentive to the employee to reform from his/her conduct. It also serves the purpose of informing or warning the employee that his/her conduct is unacceptable and that unless he or she reforms himself/herself or displays evidence of an ability and willingness to reform, he or she may be phased out of the workplace. An employee will be phased out in accordance with this approach when the employment relationship has no reasonable prospect of future viability." (SAPS Policy Document, 1996, p.22)

This new approach implies that the relationship between a supervisor and subordinate needs to be managed in a new and relatively more sophisticated manner. In contrast to the previous system of heavy reliance on unquestioning obedience, the new approach requires an ethos of trust and partnership (Van Vuuren, 1997, p.5). The member must trust that the manager has an interest in and is willing to contribute to an improvement in the standard of his or her conduct. This approach necessitates participative decision-making between the police manager and the employee. Although final decisions must ultimately rest with the police manager, decisions taken should be arrived at with the assistance and understanding of the employee. Such a cooperative approach between police managers and their members has the potential of ensuring that better decisions are made. Whisen and Ferguson (1989, p. 246) highlight however, that "This does not occur easily. Years of non-involvement and resistance must be overcome."

A common understanding of discipline throughout the police service relies on particular requirements from police managers. Police managers need to establish this understanding through hands-on management and supervision. Employees are given clear indication as to when and how their behaviour or work practice contradicts the regulations and values that govern their work. When it is clear that there is a resistance to these values or regulations, the disciplinary system needs to come into effect. Employees are warned, given an opportunity to state their case and then seek some form of support in order to rectify their behaviour to the necessary standard. The fundamental rights and freedoms inherent in the new constitution meant that greater weight was attached to the moral values and ability of employees to exercise choice. Consequently, qualities such as "loyalty, integrity, self-discipline and balance play an important role in relationships at work" (Van Vuuren, 1997,

p.5). It is these qualities then that should be base-line criteria as to who is chosen as a police manager in order to further promote these values throughout the service.

There was general concern, however, that not all managers and senior members of the police service would be able to adopt the new principles underpinning police discipline. In labour negotiations, the police unions made it clear that they believed that the level of training of the line managers was inadequate for the new discipline system. For managers to effectively implement the new approach, a solid understanding of the new laws and procedures relating to labour would be needed. If these procedures were not strictly followed, employees would have strong cases for unfair dismissal against the police.

It was decided, therefore, that a separate structure consisting of senior members with greater experience would be responsible for holding disciplinary hearings that could result in punishment or dismissal. Police commanders and managers would only be able to issue verbal and written warnings and request that further action be taken. Consequently, action that could affect the rights of employees, such as fines, demotions, suspension or dismissal, could only be taken after a fair hearing by a senior officer with rank no lower than that of director. Furthermore, this officer had to have been designated for this purpose by the National or Provincial Commissioner. A further structural consequence of the new approach was that the issue of discipline had to be located as a management function rather than a legal one. Previously, when discipline hearings were run along the criminal procedure lines they had been seen as a legal services issue. With the emphasis on management practice however, the issue of discipline was moved to the Human Resource Management function of the SAPS.

##### **5. Getting to Grips with Policy and Procedure**

Given the overall agenda of change within the SAPS, it is both useful and necessary to locate the importance of the disciplinary system within the transformation policy context. The White Paper on Safety and Security is a useful start towards highlighting the necessary internal police changes that would rely on a fair and effective disciplinary approach. Section one of the White Paper states boldly that:

The transformation agenda set by the democratic government since 1994 continues to present important challenges to the Department of Safety and Security. The most important of these relate to the development of a professional and representative public service. (1998, p.10).

Towards this goal, developing an integrated human resource development strategy is flagged as an immediate priority for the department. This is commensurate with what is recognised as being a key challenge to the police, improving the necessary skills and competency of police members to achieve the required, "... increase in the standards of professional service provided by the SAPS." (White Paper, 1998, p.12). As importantly, the issue of police corruption is noted as a barrier to improving the standard of police service delivery. Towards this end, the White Paper recognises that, "Fundamental to dealing with corruption is creating and sustaining effective management systems that aim to strengthen administrative controls and improve morale." (1998, p.12).

Other key policy areas identified by the White Paper in relation to demands on the

performance and management of SAPS personnel include improved criminal investigations and service to victims. In both of these policy priorities, it is recognised that the management of police members is a crucial component of achieving the set objectives. With regard to the goal of increasing the effectiveness and efficiency of criminal investigations, the White Paper states: "The management of the detective function must be enhanced to improve deployment and performance. The roles and authority of management must be clarified. Performance indicators for detectives need to be set and monitored." (1998, p.16). In relation to the goal of improving the quality of service delivery to victims of crime, the White Paper states that, "International experience has shown that effective management of both direct and indirect victims and witnesses of crime is a vital part of successful police investigations." (1998, p.19). The principles that are to be followed in this regard place a range of burdens on the police in the sense that there needs to be a high degree of interpersonal contact between police members, and victims, with emphasis on the ability of the police to exercise appropriate discretion, dignity, compassion and care.

The White Paper establishes objectives that were formerly lacking in the police. Furthermore, it states that the goal to achieve the objectives relies heavily on the roles and responsibility of police management. Where the policy is silent, however, is on the tools that the managers can use to assist them in achieving these policy objectives. Although it is implicitly clear that the disciplinary system is a crucial tool for managers to set standards and provide feedback, this is not explicitly articulated in the policy. The consequence that such a 'policy gap' has for the prioritisation and effective implementation of the SAPS disciplinary system will be discussed in greater detail later on.

The Policing Priorities and Objectives (PPO) for 1998/99 sets out the strategic framework of the SAPS towards effective crime combating and effective service delivery on a year-to-year basis. A requirement by law, the yearly production of this booklet is meant to enhance the transparency and accountability of the police by publicly stipulating what the police will focus their resources on. The PPO framework places particular emphasis on:

- the setting of standards to enable performance measurement, and
- the establishment of professional conduct through using the discipline system to enforce the code of conduct and decrease absenteeism, corruption, alcoholism, discrimination and general indiscipline.

The document sets out a number of key focus areas, each with its own objective, people responsible and performance indicators. For instance, Focus Area Four states as its goal, "To improve the service delivery and the morale of employees." (Policing Priorities and Objectives 1998/99, p.34), the functional objective being "to motivate all employees to live up to the Code of Conduct." This responsibility is located with all the Divisional Commissioners and Provincial Commissioners. One of the key performance indicators is "the number of disciplinary proceedings instituted against employees."

The SAPS policies, priorities and objectives therefore emphasises the management of personnel with a view towards improving capacity to tackle the increasingly complex nature of police work within a democracy. As importantly, the code of conduct symbolises a dedicated commitment to establishing a standard of values and ethics to be upheld by all SAPS personnel. Implicit in all these stated policy objectives is that the route towards institutional transformation through the development of human resource capacity, capability

and morale, is reliant on an appropriate and effective internal SAPS regulatory system. It is through this system that police employees will:

- be warned of their deviation from expected standards;
- be given an opportunity to improve their conduct through counselling or training;
- have their concerns addressed and if necessary;
- be dismissed from the SAPS in a manner that is constitutional, fair, objective, equitable and consistent.

The discipline regulations, therefore, provide a distinct framework within which all police members are to be managed according to the values and standards of the SAPS.

Unfortunately, the disciplinary system has not been generally recognised within the SAPS as a tool with which transformation and professionalism can be achieved. The most recent Policing Priorities & Objectives for 1999 - 2000 does not make mention anywhere of disciplinary steps, disciplinary hearings, or the disciplinary system. In terms of Priority Nine relating to professional conduct (as in Focus Area Four in the previous PPO), the two objectives are stated as "To motivate all employees to live up to the Code of Conduct" and "To enhance management/employee relations by establishing participative structures." Although such things as the number of disciplinary steps or hearings on particular cases of misconduct could provide a critical measure for the extent to which both these objectives are being achieved, it is conspicuously absent as a performance indicator. What is worrying is the implication that the potential value of the transformation of the SAPS through a focus on improving the effectiveness of the disciplinary system has not been realised by those concerned with police policy.

## **6. Disciplinary Phases**

The new discipline regulations were drafted and published in the Government Gazette Number 5827 on 27 December 1996 under the schedule "South African Police Service Discipline Regulations." According to the Act:

(1) The objects of disciplinary procedures are to -

- (a) address instances of unacceptable conduct by employees;
- (b) return an employee to an acceptable standard of discipline where appropriate and not to punish the employee;
- (c) ensure that disciplinary measures are taken when appropriate;
- (d) protect and promote the interests of the Service and its employees;
- (e) effectively manage conflict in the workplace, and
- (f) ensure that, as a result of such proceedings and according to the principles of natural justice -
  - (i) an employee has a reasonable opportunity to state his case or her case, and
  - (ii) all relevant circumstances are fully and objectively considered before a decision is taken.

(2) Every employee has a right to fair disciplinary proceedings and to see that disciplinary steps are not taken arbitrarily against him or her, but in a responsible manner and to be fully informed of the reasons for such steps.

(3) An employee may be assisted by a representative at any stage of the proceedings.

(4) An employee shall not be indemnified from disciplinary proceedings in terms of these regulations, notwithstanding the fact that the disciplinary proceedings may concern acts or omissions that formed the subject of a charge in respect of which the employee was acquitted or convicted by a court of law.

(5) In making any finding or determination an adjudication and presiding officer as well as the Appeals Authority shall be guided by the principles of equity and fairness and the rules of natural justice."

Flowing from these fundamental principles, the regulations spell out who is responsible for what aspect of the disciplinary procedure. The regulations further explain inter alia: how the disciplinary procedures should be instituted; the procedures to be followed relating to disciplinary hearings; the sanctions that may be imposed as a result of misconduct; the procedures for appeal; the role of witnesses at a hearing, conditions of suspension; and what acts or omissions constitute misconduct.

The way that the disciplinary procedure can best be explained given the complex nature of the Act is in terms of different phases. This presents a clearer picture of the necessary steps to be followed in effecting the disciplinary process. In this section problems with these phases that have been identified by the SAPS interview respondents will be referred to.

### **6.1 Phase One – The First Step**

For the disciplinary procedures to be put into place, a "commander" (defined in the regulations to include a head of a component or unit and in this paper the word "manager" will be used to mean the same), has to "reasonably suspect that an employee under his or her command has committed misconduct." Although this clause rightly places responsibility for the institution of disciplinary proceedings with the immediate police manager or commander, some key shortcomings were identified.

Firstly, a lack of familiarity with the system has resulted in managers not taking immediate and appropriate action. Although training has been conducted for most managers, getting used to the system requires practice and experience. At the present time this is probably one of the key shortcomings of the entire system as there is no standard implementation of the disciplinary system. Some managers use it regularly for petty instances of misconduct, e.g. neglect of uniform, while others use it very infrequently and only as a response to or form of punishment for more serious incidents. The general sense received from the participants of this research was one of a hesitancy to institute formal disciplinary steps for petty misconduct or ill-discipline.

One of the key reasons is that the disciplinary system is still generally viewed as a means to "peg" or punish a police member. Thus, when the system is instituted, the mere act of issuing a formal verbal or written warning is seen as a form of punishment that will appear

on the member's personal file and could affect future career opportunities. Generally, managers prefer to use informal methods of control to deal with recalcitrant members such as having a one-on-one chat, or, in some instances, writing a note in the member's pocket book. As one respondent stated:

Commanders who rely on disciplinary procedures as managers cannot manage properly. – SAPS Senior Superintendent, Station Commissioner

While the intention of the above respondent was to stress the importance of positive motivation rather than punishment as a management tool, this statement highlights two key issues. As previously mentioned, the disciplinary system is viewed as punishment rather than a motivational tool and secondly, that the system is not being implemented fully by some if not most police managers. Although, in cases of non-serious misconduct, the regulations do not require a formal record of action taken if an interview can solve the problem, it may be a useful inclusion to stipulate that managers should keep a personal record of such steps taken. For instance, investigations into a policeman who was charged and eventually convicted for aiding prisoners to escape, revealed that he had received nine informal warnings for being drunk, or drinking alcohol while on duty. As none of these warnings had been given as part of the formal disciplinary process, appropriate legal action could not be taken against him. A system of recording informal interviews or warnings may help to alert managers towards implementing the formal processes timeously. This establishes a record that could measure the extent to which the regulations are being followed in all instances. In general then, the key problem is that of practical and consistent implementation throughout the SAPS.

## **6.2 Phase Two – Decisions About the Seriousness of Misconduct**

Once a commander reasonably suspects that an employee under his/her charge has committed misconduct, a decision then has to be taken as to whether the alleged misconduct is serious or not serious. The decision taken is important as it determines the kind of action that is subsequently taken. For instance, if the misconduct is non-serious, then a counselling interview, verbal or written warning may be the action required by the regulations. If a decision is taken that the incident is serious, then a formal investigation has to follow.

Although the Act lists no fewer than 38 specific actions or omissions that constitute an incident of police misconduct, there is no definition and there are no guidelines as to what constitutes serious misconduct as opposed to non-serious misconduct. The decision as to the seriousness of an incident of misconduct lies with the commander. For instance, misconduct is defined in section 18 (22), as "[if a member of the police] without proper authority, releases a prisoner or other person in custody or wilfully or negligently allows him or her to escape;" which in the present context would be seen by most communities as constituting a serious crime. There is nothing differentiating this case of misconduct from that described in section 18 (31), as "[if a member of the police] directly or indirectly borrows money from or through an employee holding a lower rank than himself or herself;" which for many would constitute non-serious misconduct. There is nothing in the regulations that distinguishes the levels of seriousness of these two cases of misconduct.

Although some managers indicated that they had received guidelines as to what constituted

a serious case of misconduct in line with stated SAPS policy, there seemed to be inconsistency in the extent to which they were applied. Although some managers stated that being drunk on duty constituted a serious case of misconduct as stipulated by SAPS policy, it was clear that in practice, many managers treated these incidents as less serious misconduct. An example of one extreme case of a misuse of the disciplinary procedures was that of a station commissioner who gave a sergeant a verbal warning after he shot a civilian when accidentally discharging his firearm. At the time of the research there was legal uncertainty if further steps could be taken against the sergeant concerned as he had already been "disciplined" by his superior.

If the misconduct is not considered serious, then phases three and four are implemented (see below). If, however, the decision is taken by a manager that the misconduct is serious, phases five to seven are implemented.

### **6.3 Phase Three – Corrective procedures for Non-Serious Misconduct**

In the case of non-serious misconduct, the manager or a senior member of his or her personnel must interview the employee with a view towards:

1. determining whether misconduct has indeed been committed;
2. ascertaining the reason for the misconduct;
3. addressing the misconduct;
4. determining whether it is appropriate to implement counselling, corrective and/or remedial measures;
5. returning the employee to the required standard of conduct.

If, however, it is the opinion of the manager that corrective or remedial measures are inappropriate (for instance where repeated warnings have been issued to the employee without a change in behaviour), or where counselling, corrective or remedial measures have failed to return the employee to the required standard of conduct, then the procedures of the next phase (phase 4) are followed.

In many instances, disciplinary procedures are not followed even where there are early indications of problems with police members. There was a strong indication that a sufficient tactic for dealing with instances of petty conduct is to have informal words with the employee concerned. These meetings, however, are either often not recorded, or recorded in the member's incident report form (SAPS 135) and, therefore, fall outside of the scope of the discipline regulations. In such cases very little, if any, remedial action is taken. This occurs primarily because of either the manager's attitude towards disciplinary action as mentioned before, or because the manager is not sufficiently skilled in the appropriate corrective measures. Subsequently, there may be informal advice given to the recalcitrant member but this will not be recorded as part of the discipline procedure. Because earlier misconduct had not been recorded in accordance with the regulations, procedures towards disciplinary hearings, suspension or dismissal cannot then later take effect.

As a result of the failure to make appropriate use of the established disciplinary procedures and mechanisms, discipline in the police service is undermined. A related problem is that as a result of delays in instituting disciplinary procedures, the misconduct of ill-disciplined members escalates to serious levels. As mentioned before, however, some managers

instigate disciplinary procedures for relatively minor instances. The broader effect that inconsistency of the disciplinary system may have in the SAPS is that many members do not see discipline as a concern or a priority of the police as a whole, but rather as a concern of particular managers.

#### **6.4 Phase Four – Warnings for Non-Serious Misconduct**

If the employee charged with non-serious misconduct admits to being guilty in the interview with the commander or senior member of staff, then either a verbal or a written warning must be issued. For verbal warnings, the commander must first determine whether or not the employee has committed a similar or unrelated offence within the previous twelve months. If there has been no similar offence committed, then the commander must give the employee a verbal warning which must be recorded on a conduct sheet and inserted into the employee's file. This warning will lapse after a period of 12 months.

If, however, the commander finds that the employee concerned has committed a similar offence within the previous 12 months, or that the employee has already been issued with two verbal warnings for unrelated incidents of misconduct, then a written warning must be issued. The employee must sign the written warning and a copy of it must be filed in the personal file of the employee.

An occasional problem occurring in phase four has been that members either deny guilt or refuse to sign a written warning. One of the reasons for this is that members hope that the issue will be dropped if they force departmental steps to be taken as they are well aware of the inconvenience this causes the manager. In some cases, unions have supported members in this practice by accusing police managers of either intimidation or racism and consequently forcing less serious offences towards disciplinary hearings. This creates delays in the disciplinary process as many cases that could have been dealt with at station level are forced into phase five.

If during the above procedures it is learnt that the employee has already received a written warning in the past, or if the employee refuses to sign the written warning then the commander must file an affidavit to this effect in the personal file of the employee and the following phase, (phase 5), comes into action.

#### **6.5 Phase Five – Procedures for Serious Misconduct**

This phase commences when one of the following is the case:

- 1) the commander decides that the alleged incident of misconduct is of a serious nature;
- 2) the employee denies guilt in an alleged case of non-serious misconduct;
- 3) the employee has already received a written warning for misconduct, or
- 4) refuses to sign the receipt for a written warning for non-serious misconduct.

In this phase an investigation is initiated into the circumstances surrounding the alleged misconduct. For this investigation, statements must be taken from persons who can be reasonably expected to provide evidence and steps must be taken to preserve any evidence collected. A report is then written up that mentions:

- all the details and findings from the investigation;
- the reasons for submitting the report, and
- the steps already taken in relation to the misconduct concerned.

A copy of this report is then given to the employee who is alleged to be guilty of misconduct. A certificate signed by the employee indicating that he or she has received a copy of this report must be included in another copy of the report that is then sent to the relevant disciplinary official at the area or provincial level. Within a period of 14 days after having received a copy of the report, the employee concerned may make written representation with regard to the content of the report to the relevant disciplinary officer or official. It is during this phase that the disciplinary process is taken out of the hands of the station manager, and placed before area or provincial level disciplinary officials for further action.

#### **6.6 Phase Six – Notice to Appear Before a Hearing**

This phase has to do with the formal charging of the employee accused of misconduct to appear before a disciplinary hearing. According to the Act, only a person designated as a disciplinary officer or official in terms of the regulations may charge a member to appear before a disciplinary hearing for misconduct. This may happen after the designated official has received formal complaints of misconduct from:

- 1) any person;
- 2) the [Independent Complaints Directorate](#);
- 3) a director of Public Prosecutions, or
- 4) a public prosecutor.

Typically however, this official will receive a report of misconduct from a station commissioner or other police manager. This official has to decide whether there is, in fact, sufficient evidence to prove a case of misconduct before a formal hearing. If the decision is taken not to charge a member, the disciplinary officer has to do so in consultation with the person who submitted the complaint. If the decision is taken to charge a member, a notice must be delivered to that person, which includes:

- the particulars of the charge;
- information as to when and where the hearing will be held (never fewer than 10 days from delivery of the notice);
- information about the circumstances in terms of which the employee will be able to examine evidence;
- notification that the employee is entitled to a representative, and
- notification of the consequences for failing to attend and or remain in attendance at a disciplinary hearing.

One of the significant problems identified in this phase of the disciplinary hearings had to do with delays in serving notices on members who were charged to appear before a disciplinary inquiry. At the time of this research, out of the 120 members in the Soweto area who had been formally suspended for misconduct, only 15 had received the necessary documentation summoning them to a hearing. One of the key reasons for this was that the member could not be found.

## **6.7 Phase Seven – The Hearing**

Present at every disciplinary hearing will be the "adjudicating or presiding officer" who must hold a law degree, and is appointed by the National or Provincial Commissioner to preside over the disciplinary hearing. According to the regulations the presiding officer:

1. shall have the power to conduct a disciplinary hearing in respect of any employee, and
2. may perform all functions relating to the exercise of such power.

heard, call or cross examine witnesses, produce evidence and make submissions regarding mitigation of possible disciplinary measures.

Wherever possible, presiding officers generally attempt to finalise the matter in the first sitting. A particular problem in relation to the hearings has to do with the representation allowed to the member charged with misconduct. The regulation states that members may make use of any person to represent them at a hearing. It was indicated that a high number of police members are subsequently making use of attorneys. This practice is contributing to delays and backlogs in hearings as postponements are often requested due to the time constraints of the lawyers involved. Given the relatively large numbers of hearings that are being conducted in relation to the limited number of presiding officers available, this often means that disciplinary steps are being hindered and take longer than necessary. In some cases delays in the holding of a hearing have gone on for as long as 18 months.

## **7. The Hierarchy of the SAPS Disciplinary System**

In this section of the report the focus will be on the findings of the in-depth interviews conducted at the various policing levels about the issue of police discipline. Given the complex nature of an organisation the size of the SAPS, it is not possible to capture every issue that exists, nor is it possible to provide a representative account of what is happening given the limited size of the study. The aim of this section, therefore, is to look at what happens at the national, provincial, area and station levels in terms of solving discipline problems. It must be noted, however, that because of the centralised and hierarchical structure of the SAPS, most problems can only be effectively solved by joint efforts of the different policing levels.

### **7.1 National Level**

It is ultimately at the national level that the policy decisions regarding discipline are taken. Furthermore, Section 3 of the SAPS discipline regulations (1996), states that:

The National or Provincial Commissioner, as the case may be, is responsible for the maintenance of discipline within the Service and, subject to the provisions of these regulations, he or she shall be responsible for the development, implementation and management of systems and procedures to attain the highest possible standard of discipline and to encourage a high standard of professional conduct.

The management of discipline at national level falls within the division of Human Resource

Management.<sup>7</sup> The disciplinary section itself is staffed by only three people. The main tasks of this office include reviewing regulations and standing orders, monitoring the disciplinary system and making recommendations based on findings to the National and Provincial Commissioners. To do this effectively, it is crucial that firstly, the issue of discipline in the SAPS is explicitly stated as a national policing priority and secondly, that this office is able to access accurate data on how the system is operating and take appropriate action where it is clear that there are problems.

### ***Prioritisation***

As mentioned before, improving discipline in the SAPS has not been mentioned in policy documents as a key priority for police transformation. However, for the SAPS to achieve most of its operational and functional objectives in the present difficult environment, a significant level of discipline is required. But because much work has been done in relation to changing the philosophy and regulations underpinning the concept of discipline, there appears to be an assumption by SAPS policy-makers and senior officers that discipline has been taken care of and will start to improve on its own. It could be argued that this is a relatively naïve assumption to make. As discipline has become a far more complex issue to deal with, given the new paradigm adopted in the police, it is necessary that police discipline is prioritised and monitored until the system is operating in an optimum manner.

The system of discipline has to be explicitly prioritised and managed from the top of the organisation. This means that mutual accountability needs to be exercised in the relationships between the different policing levels and structures. However, this does not appear to be always the case. For example, in one province a captain irregularly interfered in the disciplinary hearing of two of his subordinates by storming into the proceedings, announcing that no one had the right to discipline his members, and leaving with them in tow. The incident was referred to the National Commissioner who then sent an instruction to the Provincial Commissioner to follow up the case and take relevant action against the individuals concerned. Although this national instruction was issued two years ago, as yet no action has been taken against the individuals concerned. The above is one of a number of cases mentioned to the researcher where, for unclear reasons, there appears to be a hesitancy or inability for police managers at very senior levels to act in a manner which would see the entire system operate consistently and effectively.

### ***Failure to Implement Disciplinary Proceedings***

More disturbing, however, is the relative absence of disciplinary convictions that are obtained against police members compared to the number of complaints laid and criminal convictions secured. This is in spite of a national directive being sent out early in 1997 which states, "The South African Police Service must, henceforth, take steps to institute disciplinary actions against every member, including members under suspension, irrespective as to whether or not a criminal case is still pending, who commits a misdemeanour. The investigation of the misconduct must be conducted independently of the criminal investigation."

Many police members, who had been charged with serious criminal activity, continued to serve as police members while their criminal trials proceeded, sometimes taking longer than a year to finalise. This instruction was issued so that these members could be removed

more speedily from the SAPS where evidence of serious misconduct was available. The burden of proof to charge a member with serious misconduct in a disciplinary hearing is 'on a balance of probabilities', therefore a lower standard than that required to convict a member in a court of law. If the above-mentioned instruction had been implemented, there should have been far greater numbers of members convicted in disciplinary hearings than in a court of law. However, as can be seen from the table below, this was certainly not the case.

**Table 6.1 - Numbers of criminal versus disciplinary convictions as opposed to the number of official charges laid against members of the SAPS for selected crime categories during 1997**

	<b>Charges Laid</b>	<b>Criminal Convictions</b>	<b>Disciplinary Convictions</b>
Murder	256	38	8
Attempted Murder	679	41	54
Rape	115	6	12
Assault	3 817	157	27
Theft	1 201	55	37
Pointing Firearm	843	35	22
Malicious Damage to property	494	13	12
<b>Total</b>	<b>7 405</b>	<b>345</b>	<b>172</b>

In only two of the above categories - attempted murder and rape - was the numbers of disciplinary convictions higher than those for criminal convictions. These figures also suggest that police commanders do not see criminal investigations against their members as enough cause to suspect that misconduct has occurred and to institute disciplinary proceedings.

Given that the disciplinary regulations make it possible for managers to institute disciplinary steps if misconduct is suspected, criminal charges should, therefore, always be followed up by disciplinary steps in terms of either section 18 (3), which states that misconduct occurs if a member "performs or fails to perform an act that constitutes an offence", or section 18 (33) which includes those members who, "fail to comply with any official code of conduct of the Service." Accordingly, the number of convictions for misconduct should never be lower than the number of criminal convictions.

As one respondent stated simply:

Even if we fail to gather enough evidence to prosecute or prove criminality against a member in a court of law, we should use disciplinary hearings to rid the service of bad apples. – SAPS Director, Station Commissioner

It is clear, however, that ensuring an effective and efficient disciplinary system in the police

is not a priority at the highest levels of the SAPS. However, a deliberate strategy to legally and fairly rid the police of ill-disciplined members through the rigorous implementation of the disciplinary system would play a significant role in ensuring that the SAPS was staffed by dedicated and competent professional members who would not fear accountability. This would make it more likely that the other objectives of the SAPS, such as combating crime and delivering adequate service to the communities, could be achieved.

### *Information Management and Analysis*

The national office on discipline receives information regarding discipline from a number of different sources, the two primary sources being regular reports sent from the provinces and the information from the mainframe computer. Every police station is supposed to, but they do not necessarily have, a computer connected to the SAPS mainframe and a trained individual who is responsible for recording the relevant data onto it. Inter alia this data includes disciplinary steps taken against police members at the police station. However, there is no regular system of checking that this data is being entered.

The information that the disciplinary office receives, therefore, has been less than reliable. Statistics that have been received from the provinces have been found to be different from those on the mainframe. Furthermore, certain discipline cases that have come to light from other sources, through reports from unions for example, have not appeared on the mainframe. Indications are that some police stations for a variety of possible reasons, such as lack of capacity, are not recording data onto the mainframe. Consequently, the figures that are available do not provide a totally accurate picture of what is happening in relation to the functioning of the disciplinary system.

The next shortcoming has to do with regular analysis and review of information which is received. While there appears to be adequate management of statistics that are recorded, there is no analysis of these recorded figures with a view towards determining trends, crisis areas or strengths in the disciplinary system. For instance, the SAPS does not conduct regular analysis as to what are the main kinds of misconduct per region, or what are appropriate and consistent sanctions given for the various categories of misconduct. Consequently, there is a lack of adequate information for top officials to identify shortcomings and make appropriate decisions regarding corrective action.

Figures on their own are insufficient to arrive at adequate solutions to problems or to qualitatively understand a given situation. For example, as mentioned earlier, one of the SAPS's stated goals in relation to its priorities and objectives for 1998 and 1999 was to, "Improve the service delivery and the morale of employees." The functional objective in this regard is to, "Motivate all employees to live up to the code of conduct." A key performance indicator is stated as "The number of disciplinary proceedings instituted against employees."

The first problem is that numbers of disciplinary hearings do not tell you if people are guilty of misconduct. Such figures merely inform you as to the relative number of hearings that have taken place. Figures for Gauteng reveal that disciplinary hearings dropped by 829 from 4 209 in 1996 to 3 380 in 1997. The significant decrease could be seen as a result of the new and unfamiliar system being put into place from January 1997. This seems to be supported by the significant increase in the number of hearings by 757 to 4 137 in 1998.

The number of hearings probably increased as managers became more familiar with the system. These figures therefore tell us more about changes in the system than about the morale of police members and the extent to which they are adhering to the code of conduct.

Furthermore, disciplinary proceedings can be instituted against employees for over 38 kinds of misconduct as stated in the regulations. The figures do not indicate what kinds of misconduct members are being charged for. These challenges reveal the need for further detailed analysis of the charges members are facing; whether they are found guilty or not; what the sanctions have been imposed and to what extent members reappear in hearings for specific kinds of misconduct. Only when such rudimentary analysis takes place can meaningful use of disciplinary statistics be made in understanding what the main disciplinary problems and trends in the SAPS. Similarly, until such questions can be answered will it be impossible to evaluate the relative success of the initiatives undertaken to improve discipline in the police.

## **7.2 Provincial Level**

According to the discipline regulations, the Provincial Commissioners have a significant role to play in ensuring that disciplinary systems are operating effectively in their provinces. Whereas the national level is supposed to establish the policies, regulations and the code of conduct, it is expected that the Provincial Commissioners will be responsible for implementation. Given the problems confronting the system however, many of the Provincial Commissioners have failed to ensure that the discipline system has been managed effectively. It has been argued that this is largely the result of the Provincial Commissioners having too many other priorities to concern themselves with.

The management of discipline has been delegated to lower-ranking officers and in most provinces the Provincial Commissioners have not managed to ensure that they have the support and capacity to enforce disciplinary procedures and mechanisms adequately, i.e., the provincial managers of discipline may hold the rank of Superintendent, which would be below the rank of the Area Commissioner. Without the necessary authority, these managers sometimes have difficulty in securing co-operation from the Area Commissioners. A case in point was the neglect of eight of the nine Provincial Commissioners to establish provincial disciplinary committees. A national directive was circulated in October 1997 calling for each province to establish a formal disciplinary committee to be chaired by the Provincial Commissioner and to meet on a monthly basis. The purpose of these committees was to monitor the progress of the disciplinary system in each of the provinces with a view towards identifying problems and coming up with appropriate solutions. The only province to comply with this instruction was the Eastern Cape.

Furthermore, when it was decided that the issue of discipline was more of a human resources issue than a legal issue, all the provinces were expected to locate the management of discipline within their human resources (H.R.) divisions. In some cases however, the provincial H.R. divisions could not deal with discipline, often for capacity reasons, and so the function was referred back to legal services. This occurred in the Eastern Cape and Kwa Zulu-Natal where the "force of personality" of the legal officers meant that discipline reverted to being under their control. In the Western Cape, discipline just remained under legal services. In the Northern Cape discipline remained directly under the Provincial Commissioner.

One of the key strategic issues to be decided by the provincial offices was whether to centralise or decentralise their disciplinary system. Centralisation meant that disciplinary officials would be based at the provincial office where the hearings would be held. This would ensure that a more consistent approach in relation to discipline hearings in a particular province. However, this had practical problems as it meant that members who were facing hearings might have to travel long distances to the provincial head office where hearings would be held. Decentralisation, on the other hand, meant having disciplinary officials based at each area-level office. This is generally seen to be the favoured approach, as the hearings take place closer to the station where the accused member is based.

Although much further research needs to be undertaken to establish exactly what problems each province is experiencing with regard to the functioning of their disciplinary systems, a brief glance at the statistics reveal significant differences between the decentralised versus the centralised approach. During the three-year period between 1996 and 1998, an average of 3 908 disciplinary hearings were held in Gauteng, whereas for the same time period an average of only 411 hearings per year were held in the Western Cape. Although there are fewer police members in the Western Cape than in Gauteng, the difference is not nearly substantial enough to explain the significant difference in numbers of hearings held. It would appear that the main reason for this discrepancy is that the disciplinary system is centralised in the Western Cape while it is decentralised in Gauteng. There are only two presiding officers tasked with conducting hearings in the Western Cape province. They are both located at provincial level and they only accept serious cases of misconduct.

In Gauteng however, the disciplinary system had been decentralised. At the time that the research was being conducted, the Gauteng Provincial Management Services had yet to conclude where the head of discipline should be located. The overall responsibility for discipline in Gauteng had been given to the Human Resources division. The post for provincial head of discipline remained vacant. Consequently, discipline was but one of a number of management functions to be dealt with by the head of the Human Resources division. The practical result of this has been that there is little direct management of the disciplinary system from the provincial level. This function is left to the Area Commissioners to manage. Unless a particular complaint comes directly through to the provincial office, their primary function is to keep a record of the total number of disciplinary hearings held per month.

It is apparent from this research that the issue of discipline is not being managed or dealt with consistently throughout the country.

### **7.3 Area Level**

This is the level at which the presiding officers hold hearings in provinces that have managed to 'decentralise' their disciplinary structures. It is the responsibility of Area Commissioners to ensure that the station commanders and managers under their command correctly institute disciplinary proceedings when appropriate. The Area Commissioner has to receive a report every time any disciplinary action is taken against a member. However, indications at the time of this research are that, as with Provincial Commissioners, discipline is not a priority issue for most Area Commissioners.

Even if it is clear that a station commander is not exercising discipline

adequately, area commissioners are very hesitant to take action against these commanders due to the hassle this involves. - SAPS Senior Superintendent, Provincial Office

Consequently, it was revealed that a vast majority of station commissioners in Gauteng do not send their disciplinary reports to the area level within the stipulated time period of 90 days. This generally hinders the monitoring of disciplinary proceedings and may lead to delays in the outcomes of some of the hearings.

The main problem facing the Gauteng disciplinary system at Area level is the extent of the backlogs experienced. For example, in May of 1999, the Johannesburg Area was facing a total of 714 cases that needed a hearing with most of these having been carried over from the preceding months. The five presiding officers were managing to finalise between 30 and 50 hearings per month. Consequently, it was impossible to adhere to the 60-working-day period within which the regulations stipulate that discipline cases should be finalised. The only answer was for more presiding and "prosecution" officers to ensure that disciplinary hearings can be finalised more quickly. This however, is not the case for all areas. Indications were that where sufficient disciplinary officers are available, the new system has considerably shortened the amount of time that disciplinary inquiries take to become finalised.

#### *Information Management and Analysis*

The issue of information management needs to be examined at all levels, but it is the area level that can possibly play the greatest role. This is because the area level is decentralised enough to process a particular number of police stations. Although the SAPS bureaucracy is able to keep track of a large number of records and files, little or no analysis takes place of the information that is being managed. Thus, the area level should be tasked with monitoring and assessing the disciplinary system at each station. Assessments for each station could be based on the extent to which the different categories of misconduct are occurring and whether or not appropriate disciplinary steps are indeed being taken. If area level offices were tasked with such a responsibility, it would go a long way towards helping the national level to monitor the issue of discipline accurately. It would also improve the ability of the senior management SAPS to intervene where it was clear the discipline system was not functioning adequately.

For example, a particular shortcoming that affects the ability of the SAPS to monitor the discipline system is that there are not enough people to carry out inspections of the station conduct sheets. Inspectorates need to check the registers and conduct sheets at police stations and compare these to other files to ensure that they are being completed properly. As this is not being done, there is no way of knowing if station commanders are implementing appropriate or, indeed, any disciplinary procedures.

#### **7.4 Station Level**

It is at the station level that the disciplinary system needs to operate the most effectively and efficiently. Most of the police members who work amongst the public and who work in the 'front line' against crime are attached to police stations. Depending on the size of the police station, there may be a number of different units resident, each with its own

commander. Within each unit there may be other commanders of sub-units or various shifts. It is the responsibility of all managers (commanders) to institute disciplinary steps (often called "departmental steps") if a member engages in misconduct. To ensure that each police member understands how the new system operates, all members have been given a copy of the new regulations for which they have had to sign a receipt form. Taking into account factors such as the high level of functional illiteracy within the SAPS (approximately 30 000 members), it is not actually clear to what extent most ordinary station-based members have a full and clear understanding of the disciplinary procedures.

There is certainly a lack of uniformity in the functioning of the disciplinary system at the different police stations where research was conducted. However, it was apparent that all station commissioners interviewed were well aware of the new approach to discipline and that there was a general consensus that over the past couple of years police managers were starting to get used to the system. However, whereas at some stations the system had been properly adopted and was operating reasonably well, at others there had been little progress in ensuring that an effective functioning system was in place. It is necessary to note that the stations where the disciplinary system was functioning properly tended to be relatively large in size. Due to the large number of members at these stations, they were likely to have experienced disciplinary officials, and in some cases, human resources managers working at the station.

### *Variation*

To illustrate the extent of the variation of the functioning of the disciplinary system at the station level, a brief description of the system at two stations will be presented. These two stations were chosen as they reflect the levels of variation in the functioning of police disciplinary systems discovered during the study. It must be noted that these examples by no means reflect the best or the worst situations, merely the extent of the difference of the stations involved in the study. Whereas station A had a well established system that had been functioning for almost two years, station B had no disciplinary system in place until shortly before the research was conducted.

At station A, a senior officer with the rank of Senior Superintendent had been tasked by the Station Commissioner to *inter alia* manage the discipline system. Furthermore, an Inspector had been appointed as the head of disciplinary investigations and had been doing this job for well over a year during which time he had gained considerable experience. At this station, once a manager had suspected or uncovered misconduct it was written in the occurrence book. The Inspector would check the occurrence book daily and where incidents of misconduct had been recorded would make a copy of the entry and open a file. Statements would be taken from the manager and the member against whom misconduct was alleged. The Senior Superintendent would be informed and handed the file, following which the member would be summoned to attend an interview. Depending on the outcome of the interview, the Senior Superintendent would decide whether or not to proceed with further disciplinary investigations or steps. Once a month the Senior Superintendent would review all the disciplinary files to determine the status of the procedures that had been taken against members. During 1998, this police station had 233 members working there. During the same period, 188 disciplinary investigations had been instituted. As a result of these procedures, three members had been suspended and a further four had been discharged. This station was generally perceived as expecting and receiving a high level of

compliance and obedience from its members.

At station B there had been almost no functioning disciplinary system in place during 1998. A new station commissioner had been appointed a few months before interviews for this research had taken place. A disciplinary officer, (an Inspector), had been appointed two weeks before the interviews at this station were conducted. This member had until his new appointment, been fulfilling a largely administrative function. Until then, members' SAPS 135 forms were largely seen as a tool for discipline and motivation. The forms are referred to as "Incident Reports" and are used to provide feedback to members as to the way they have handled various incidents. These forms, however, do not form part of the formal disciplinary system or procedure. However, given the need for the formal disciplinary system to be in place following the regulations, the station commissioner had begun to implement it. At first, most managers at this station saw the formal disciplinary procedures as taking up too much of their time and were quick to refer cases to the station commissioner for decisions. However, the station commissioner was determined to ensure that the disciplinary system was to become the responsibility of all management. The following procedure had therefore, been implemented. First thing every morning the disciplinary officer would check the occurrence book for entries pertaining to misconduct. If there were any entries, copies would be made and files opened. These files would then be presented at the officers' meeting every morning and the relevant managers would have to explain what steps they had taken in response to the allegations of misconduct facing their subordinates. At this station, the station commissioner saw his main task as ensuring the effective management of the station through other supervisors. He conceded that previously discipline had been "virtually lacking" and that this had a significantly negative effect on the service the station could offer the community. It was clear, however, that the station commissioner viewed the disciplinary system as a last resort in terms of dealing with errant police members. The commissioner was quick to point out that a number of problem areas had been solved through "restructuring and management", as opposed to instituting disciplinary steps.

A brief analysis of these two short case studies highlights a number of important issues regarding the issue of discipline at station level. Both case studies reveal that there are police stations that have taken the issue of discipline seriously and are dedicated to ensuring that there is a system in place. However, it is clear that in both stations, the managers are primarily concerned with managing problems before relying on the discipline procedures. There is therefore, a clear distinction made between management and disciplinary procedures. Rather than the disciplinary system being accepted as a necessary tool by managers to ensure professional conduct and correct errant behaviour, disciplinary procedures are seen as a separate and 'last straw' endeavour. Consequently, managers are not using the system to the extent that they should, which would ensure that it becomes an effective internal regulatory device. It could be argued that this shortcoming is the result of a lack of understanding and acceptance of the ethos behind the new disciplinary system. For most police members, the word "discipline" is still seen in terms of the negative and punitive connotations it had in the past.

#### ***Powers and Accountability of Police Managers***

As the above section highlights, the effective functioning of the SAPS disciplinary system lies largely in the hands of the police managers. If managers are competent in the various

technical and social skills required to manage their members in line with the values and objectives of the SAPS, they will ensure that the disciplinary system is being effectively operationalised at station level. However, even these managers are thwarted in ensuring effective discipline due to shortcomings of the system at area and provincial levels. There was also a strong feeling amongst some of the station commissioners that the amount of authority they needed to effectively ensure discipline had been taken out of their hands. All they could do immediately was to issue verbal and written warnings. In extreme cases they could request relatively immediate transfers or suspensions from the relevant provincial or area level disciplinary official who had been designated to take such decisions.

A number of examples were provided during the research where a police member had committed serious transgressions but where sufficient action could not be taken until decisions had been made higher up in the SAPS hierarchy. The problems that this creates at station level are captured by the following quote:

This process can take some time and can cause me much frustration as some of these bad cops cannot be effectively and quickly dealt with. An individual, who knows that strong disciplinary action is going to be taken against him, can wreak havoc at a station if he is popular amongst some of his colleagues. Especially if he has weeks or even months to do so. In some cases disciplinary files, dockets, or evidence against a member have gone missing because he has plenty of time to make a plan. Also, he might be buddies with the guy who is investigating him. - SAPS Captain, Station Commissioner

In one of the examples, a period of eight months had elapsed between the time a member was found to have stolen a police radio as one of a number of counts of misconduct, until he eventually appeared before a disciplinary hearing. In the meantime, the Station Commissioner claimed he could take no action to suspend or fire the individual as these decisions were made at the provincial level. This had a negative impact on the morale of the station, as the other police members saw no swift action being taken against a member who had engaged in a serious case of misconduct.

There was a perception that station commissioners should be able to take stronger action against deviant police members and that the appeal process conducted at area level could then determine the legitimacy of the action taken. It has been considered a mistake by a number of respondents to remove the power to suspend and fire from the direct line managers at station level as it is these people who have the most direct contact with the members and an understanding of the situation at their stations.

This issue raises a number of concerns about whether most stations have the management to operationalise current police regulations and public service laws. A concern that has also been expressed relates to the level of accountability of managers in general and station commissioners in particular. This problem is partly facilitated by inadequate accountability indicators for station commanders. Respondents at provincial level revealed that very little action, if any, is taken against station commanders who fail to follow the disciplinary procedures. It was mentioned that it was not uncommon for internal disciplinary investigations to be incomplete after the stipulated 30 day period had passed. One provincial respondent highlighted that many cases are only reported to provincial level disciplinary officers after 90 days.

We sometimes have the opposite situation of competent managers not being able to take quick action against deviant members. There are cases where commanders fail to take the necessary action where it is clear that a member has engaged in an act of misconduct. This may occur if managers do not feel confident about the support they will receive if they take such action, or if they feel that the worth of a particular member in dealing with criminals such as a high arrest rate outweighs concerns of ill-discipline they might have. – SAPS Senior Superintendent, Provincial Human Resources

It was apparent that station commissioners are not generally held accountable for failings of members at their stations. In a number of interviews at station level, mention was made of supervisors who do not know how to discipline those under them. In some cases this was blamed on the inability of managers to handle racial or cultural issues appropriately, or on the fact that some supervisors feel that they have to remain on the good side of those over whom they have authority. These were the reasons given as to why some managers do not take appropriate measures against officers who transgress the regulations and act in an undisciplined manner.

There were also allegations made during some interviews that informal networks at some stations resulted in the ongoing protection of certain police members who were involved in transgressions.

Not all policemen are treated equally. We have had cases here where some officers have committed serious cases of misconduct and nothing has happened to them. In one such instance, the officer was caught out making false entries in a docket. He was called aside and spoken to informally. This happens because these guys are friends of certain senior officers. On the other hand a sergeant had disciplinary action taken against him because he failed to sign his pocket book. He was seen as a 'problem' to some of these officers. Everybody here knows what is going on but nobody wants to talk about it. – SAPS Captain, Unit Commander

When police members see this kind of favouritism they are likely to become resentful and less concerned about discipline generally. Instead of trusting the systems of the SAPS to treat everybody fairly they are likely to become cynical and possibly start engaging in misconduct themselves. These findings suggest that there is a lack of consistent accountability of police managers and station commissioners with regard to the discipline of members in their charge. Where members are found guilty of serious misconduct or criminality, investigations fail to determine to what extent this had occurred because of lax or inadequate supervision and guidance from direct supervisors.

### ***Disciplinary Officials***

As was mentioned earlier, every police station, depending on its size, is generally expected to have a member or unit that is responsible for conducting investigations pertaining to disciplinary charges or inquiries. This person is responsible for conducting ID parades, questioning witnesses, gathering evidence and compiling reports. These members are appointed through a directive from the Area Commissioner in terms of certain requirements. These include having at least a rank of sergeant, having the necessary

academic qualifications, and having a good knowledge of the Police Discipline regulations. Some times these individuals are ordinary police members but often they are attached to a detective unit.

At two of the stations where research was conducted, there were reports that these officials had recently been threatened by members they were investigating for charges of misconduct. Whereas in one case the intimidation had been added to the charges the recalcitrant member was facing, in the other case no action had been taken as the official did not want to provoke retaliation. The station commander in this latter case stated rather indifferently that:

It is up the official to lay charges if he thinks that it will help. But I have never come across a situation where an investigator has actually been killed while investigating misconduct. – SAPS Captain, Station Commissioner

In this case it could be argued that by not ensuring that any action is taken against a member who makes threats against a disciplinary official, there is the risk that the official could feel a lack of support in their work, which could result in less than effective investigations. Furthermore, by not taking action in such a case, other members under investigation may be tempted to threaten a disciplinary official in case it has an effect in their favour, knowing that it will not necessarily harm their case if they do.

Although most of the respondents who were managers appeared to trust their disciplinary officials, there were doubts expressed about the extent to which all cases are investigated equally and thoroughly. This was generally put down to informal networks that exist in police stations and the extent to which subtle or overt pressure could easily be placed on what is usually a relatively low-ranking disciplinary official. At the time of the research, a vast majority of the disciplinary officials tasked with investigating misconduct against police members in the SAPS were non-commissioned officers, i.e. sergeants or inspectors. Some of the respondents who were relatively low-ranking disciplinary officials highlighted the difficulties of investigating higher ranking members.

You have to get his side of the story if he is charged. (with misconduct) So, if he is now a captain. Then he will say to you, 'Come to my office at this time.' Then you go there and he is not there. Then you must find him again and he will make another time. And then again when you go there he says, "I am busy". Hey, he can mess you around. I think he wants that you give up. - SAPS Sergeant, Station based Disciplinary Official

This potential shortcoming appears to have been recognised to some extent given the conditions surrounding investigations of misconduct complaints that come in the form of an instruction from national or provincial levels. In these cases, the investigating officer must have at least the rank of captain. The length of time within which the investigation and resulting report must be finalised stands at 14 days

Arguably, a general improvement in the system could be made if a minimum rank (e.g. captain), was stipulated for heading disciplinary investigations at a station. Although this might deal with some of the shortcomings of the present situation, it would not entirely

eliminate the influence of informal pressures placed on these officials.

## **8. Recommendations**

Improving the values, standards and effectiveness of the SAPS as a whole is vital if South Africa is to one day have a police service that is trusted and respected by all communities. Given the history of the South African police, it could never have been expected that such an organisation could quickly and easily be transformed from a police 'force' to a human rights orientated police 'service'. The police have needed to undergo a profound change in values, competencies and standards. The extent of the change that is required and the difficulties facing the police can easily lead one to despair. However, it must be recognised that any organisational transformation is multi-faceted and complex. It has to be recognised, therefore, that in an organisation such as the police, "There is no such thing as a solution." (Newburn, 1999, p. 48). What there needs to be, however, is a recognition that there is a problem and that it probably requires a multi-faceted and coordinated response, starting at the top and running right through each level of the organisation.

An enormous number of changes have taken place in the police in the past five years. The task of establishing new rules and regulations, amalgamating eleven different police forces, restructuring the SAPS, instigating new training programmes, uniforms, rank system, a culture of transparency and political accountability to a democratically elected government has been no small feat. However, there is also a broad realisation that there are still unacceptably high levels of misconduct and criminality within the SAPS. Some members are unable or unwilling to adapt to the necessary changes for effective transformation. This prevents the SAPS from gaining trust and respect in the eyes of the communities they serve and, therefore, hampers their ability to act against crime.

The disciplinary system that was put into place during 1997 was specifically designed to ensure that all members of the police service could expect to receive fair and consistent treatment when it came to making decisions regarding conduct. The system is consistent with the values of the constitution and has been agreed to by the different police unions. A shortcoming, however, is that there is no assessment as to whether or not it has the potential to actually improve the level of discipline, standards or values of average police members. Statistics point to major variations in the operation of the system between two provinces, for example.

In Gauteng, during 1997 and 1998, there was a total of 7 517 disciplinary hearings as a consequence of which 141 members were dismissed resulting in a ratio of one dismissal for every 53 hearings. In Gauteng there were approximately 21 606 police members at 123 police stations in 1997. In the Western Cape during the same time period there were 587 hearings involving misconduct, where 50 members were dismissed which is a ratio of one dismissal for every 12 hearings. In the Western Cape there were approximately 14 819 police members at 146 police stations in 1997. While there is a major variation between these two provinces, it is not clear in which province discipline is actually being maintained more effectively. More research should be conducted in this area to provide a solid ground for a decision to be made.

It must be born in mind that disciplinary hearings generally only happen if there is significant evidence of serious misconduct, repeated failure to change behaviour after

verbal and written warnings, or denial of wrongdoing for less serious misconduct in the face of evidence to the contrary. In other words, it is unlikely that a dedicated, competent police member who makes an honest mistake will find him or herself facing a disciplinary hearing. It is for this reason that the low number of dismissals in Gauteng for the number of hearings held can be seen to be alarming. From the interviews, it appears that part of the problem is that many managers are unable to effectively manage discipline and tend to send large numbers of relatively minor cases to hearings. On the other hand, concern was raised that the sanctions imposed for many cases of serious misconduct are inadequate to send clear messages that certain forms of behaviour from members of the SAPS will not be tolerated.

For example, an off-duty constable while in uniform and under the influence of liquor was arrested in a public place creating a disturbance, by shouting racist remarks, after being denied entrance into a restaurant. He was charged with misconduct in contravention of Regulation 18(17)(c), in that he behaved himself in a manner which was detrimental to the interest of the service. Although he pleaded to the contrary, he was found guilty and given a R200 fine suspended for one year on condition that he was not found guilty of misconduct again during that period. Many would argue that a suspended R200 fine is far too lenient a sanction and that this member was not fit to hold a position in the SAPS given attempts the organisation is making to build better relationships with the community.

Given the overview of the functioning of the disciplinary system in the SAPS, the following recommendations are presented towards improving the present situation. These recommendations are supported by international literature on police management and transformation.

### **8.1 National Prioritisation**

There needs to be a recognition from the Minister and National Commissioners that police discipline has to become a national functional policing priority. As was often said throughout the research, "It all needs to start from the top." The importance of leadership as a driving force for culture change in policing institutions has long been recognised (Whisen and Ferguson, 1989, p.37). In this regard, the national leaders have to see the disciplinary system as a tool for achieving their values, mission and vision. As a national strategy for transformation of the SAPS, the disciplinary system can be used proactively to promote a new culture and establish minimum standards for the police as a whole. The system could then be used not only to set clear standards for the institution but could also be used in a fair and consistent manner to remove those police members who are undermining the transformation and effectiveness of the SAPS.

### **8.2 Disciplinary System Review**

Once the disciplinary system was recognised as being key to effective transformation of the SAPS, it would be necessary to pull together a multi-disciplinary task team at national level whose job it is to conduct a limited but regular assessment of the functioning of the SAPS disciplinary system throughout the country. Such a team should be tasked with the following:

- to evaluate the role and responsibilities of all policing levels;

- to establish the practical standards against which misconduct is recognised and measured at each level;
- to assess the structural, training and management support needed for all policing levels and areas to improve the functioning of the disciplinary system.

This review body could tackle some of the more structural issues which have proven difficult to make decisions around such as: what the optimum number of disciplinary officials relative to numbers of police members is and to what extent station commissioners' discretionary powers around issues of suspension and dismissal can be increased and held accountable so as to prevent the kinds of abuse that the unions were initially concerned with.

International practice could prove instrumental for the above initiative. Raymond W. Cox (1992, p.31) highlights the emergence and increasing use of management audits since the 1960s and their relevance for a police organisation. A few characteristics of such an audit include that it is a multi-faceted approach that seeks to answer the question "How can we change a practice to make it better?" Typically such an audit would include a five step process:

1. investigation and analysis of current practice;
2. compilation of deficiencies in that practice;
3. development of a strategy for changing a deficient practice;
4. presentation of a report, and
5. implementation of the change process.

Such an endeavour could contribute to an understanding of the costs and benefits of changing aspects of the current disciplinary system towards achieving policing objectives.

### **8.3 Police Management Performance**

An issue directly linked to bolstering the effectiveness of the SAPS's disciplinary system is managerial expertise. Internationally, it is recognised that managerial capacity is directly related to a police organisation's ability to implement its policies and strategies. In the words of noted management academic, Milton J. Esman, "What most distinguishes advanced societies and their governments is not their culture, nor their natural endowments, nor their availability of capital, nor the rationality of public policies, but precisely the capacities of their institutions and the skills of individuals, including those of management" (1991, p.20).

This issue needs urgent attention in the South African police. Policing expert and criminologist, David H. Bayley, emphasises that developing skilled managers is crucial in any police service. By this he means, "... people who can manage complex organisations as opposed to commanding field operations. Senior police managers have been called 'reluctant managers' who do not anticipate needs and reshape their organisations to accomplish new objectives" (Bayley, 1994, p.85). Instead they tend to react to public and political pressures for action, by explaining why they cannot do things. At the very least, managers in the SAPS need to be held accountable to specified responsibilities, such as instituting disciplinary proceedings when necessary.

#### **8.4 Discipline Information Analysis**

There is a dire need for reliable and valid information on the internal operations of the SAPS. This information needs to be consistently monitored and analysed in relation to the police aims and objectives. Whereas there appear to be relatively reliable systems in place to gather information about the numbers of disciplinary inquiries and their various outcomes, there appears to be little or no reflection on what this information is able to tell the police. Thus, there is no analysis of the data that could be used to evaluate the level of morale of the police members or the effectiveness of the disciplinary system as a whole.

The information gathered on discipline in the SAPS could prove useful if properly analysed to evaluate the types of misconduct were most frequently committed and specific shortcomings in the system itself. Raymond W. Cox highlights the usefulness of management-type audits that examine internal police information through techniques for organisational development that promote, "... a comprehensive approach to plan, analyse, and implement a change effort in an organization" (1992, p.47).

Access to relevant information and adopting such an approach can be very useful in measuring the effects of strategies to improve the performance or morale within the police over time. If improvements of overall discipline in the SAPS could be demonstrated, greater levels of community trust could be built.

#### **8.5 Training**

As with all major changes, a relatively comprehensive training programme was developed to help introduce and establish the new discipline system. However, the following quote from a national level respondent demonstrates some of the shortcomings in the training regarding the new disciplinary system so far.

Training is a critical part of this change as discipline is part of management skills. It is not an easy issue to handle and commanders need to understand all the legalities involved. Many are too scared to instil disciplinary procedures as they are unsure what the regulations say or mean. They know that the police can be sued for failing to follow correct procedures. Training in discipline, therefore, needs to be a greater part of line management training. Although the issue of discipline may be touched on during line management training, it is not done properly to the extent that managers are adequately able to handle the management of discipline. Training in command and authority is also critical. People do not have authority just because they have a certain rank. Authority is a skill that a person needs to have developed through training. - SAPS Director, National Level

Although there is an improvement in the functioning of the discipline system as various managers and disciplinary officials become more used to the regulations and procedures, there still appears to be a number of shortcomings that need to be addressed. Ultimately, there needs to be an assessment of the skills needs implicit for the disciplinary system to work. Much of the system requires that managers are able to exercise a high level of discretion and be comfortable with one-on-one supervisory meetings with people of diverse backgrounds. Janet Chan (1997, p.56-57), in her book on policing in a multicultural society,

highlights that, "Many police forces have made substantial revisions to their training curriculum; there is a move away from a focus on operations towards a wider educational base, emphasising effective skills training in the areas of communication, negotiation, conflict resolution, cross-cultural awareness and the proper use of police discretion."

At the present time, it is still apparent that management training in the SAPS is insufficiently geared towards police professionalism and service delivery. Whereas much of the training provided presents the theoretical imperatives of police professionalism and service delivery, it fails to link this to practical action steps to ensure that ordinary members in police stations are doing the right thing in the right way. The management gap that training needs to fill does not concern *what* police should be doing, but rather *how* to ensure that they do what they should be doing.

## **9. Conclusion**

This paper has highlighted two important issues. The first is that much of what the police are hoping to achieve in terms of their organisational priorities and objectives requires a high level of skill and discipline amongst its members. An effective disciplinary system is, therefore, an important part of the foundation upon which the achievement of policing objectives will rely. The second is that the changes required by the police to ensure an effective disciplinary system are multi-dimensional. Not only is there the need for drastic improvement in policing and management skills at all levels, but there is also a need for a change in mindset and overall prioritisation within the police, if an effective disciplinary system is to become a reality.

As was mentioned earlier in the paper, a negotiation process in terms of amendments to the disciplinary regulations is underway at the Safety and Security Sectoral Bargaining Council (SSSBC) between the SAPS national level management representatives and representatives of the police unions. It is understood that this could result in a number of significant changes to the disciplinary system as a whole. Indications are that the disciplinary system will be placed to a far greater degree in the hands of senior station managers. It is hopeful that the change being negotiated will address some of the concerns raised in this document.

It will take more than regulatory amendments however, to improve police discipline within the SAPS. Much of what determines levels of police discipline stems from the day-to-day experiences of police men and women. Such experiences are shaped by the daily behaviour and attitude of managers at all levels. These factors are heavily shaped by the extent to which police managers are recognised and supported for displaying positive attitudes and behaviour, and as importantly, held accountable for displaying negative traits. These factors will have a direct impact on the attitude and behaviours of lower ranking members and in turn on the culture of the policing organisation as a whole. What is certain however, is that unless there is an effective disciplinary system that can be used to hold all police members and managers to account, such police culture changes are unlikely to occur on their own. Without such changes, the transformation of the SAPS to a professional organisation will remain elusive. Given the significant numbers of dedicated and ethical police members in the SAPS the battle is not yet lost. The disciplinary system however, must be seen as an important and necessary armament in this battle for transformation.

## Notes:

<sup>1</sup> This figure was provided as a response by the Minister of Safety and Security to a parliamentary question, (question 643), from an opposition member J.A. Marais in the National Assembly during May 1998.

<sup>2</sup> The Star, 9 May 1999.

<sup>3</sup> The SAPS Anti-Corruption Unit is an elite police unit that only deals with corruption within the SAPS.

<sup>4</sup> Particularly in the use of criminal justice discourse such as "prosecuting officer".

<sup>5</sup> These were the recurring themes that emerged throughout the interviews with police members in response to questions about changes in levels of discipline throughout the transformation period starting in 1990.

<sup>6</sup> This section falls under Chapter 8 headed "Regulations", and reads as follows:  
"24. (1) The Minister may make regulations regarding -  
(g) (i) the institution and conduct of disciplinary proceedings or inquiries;  
(ii) conduct by members that will constitute misconduct  
(iii) the provisions, if any, of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), that shall apply *mutatis mutandis* (unless excluded) to disciplinary proceedings or inquiries under this Act;  
(iv) the attendance by a member or any witness, of such disciplinary proceedings or inquiries;  
(v) the circumstances under which such disciplinary proceedings or inquiries may be conducted or proceeded with in the absence of the member accused of misconduct or affected by such an inquiry."

<sup>7</sup> In relation to the new official ethos of progressive discipline in the SAPS, it was interesting to note that this particular section was still called "Negative Discipline" at the time of the research.

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